
- Draft -

Forbidden Families

Family Unification and Child Registration in East Jerusalem

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Introduction

In 1967, Israel annexed East Jerusalem and cut it off from the rest of the West Bank. However, the establishment of the political border did not sever social and family ties between the residents on both sides, which continue to the present. These ties include marriage.

Residents of East Jerusalem are permanent residents in accordance with the Entry into Israel Law, 5712 – 1952.¹ This immigration law addresses the entry of individuals as tourists and their stay as immigrants. The law gives the Minister of the Interior almost complete discretion to terminate permanent-resident status if the resident settles in another country, and to determine that a resident's children who were born in Israel will not be automatically granted the status held by their parents.² In applying this law to residents of East Jerusalem, the state treats residents of Jerusalem as immigrants who willingly chose to come and live in the country.

Since 1967, Israel has made great effort to preserve the “demographic balance” in Jerusalem by reducing the number of Palestinians living in the city and maintaining a majority of seventy percent of its population is Jewish.³ To accomplish this goal, Israel imposes broad restrictions on Palestinian building in East Jerusalem, fails to invest in infrastructure there, and allocates significantly smaller sums than it does for West Jerusalem.

The Interior Ministry – which is responsible for implementation of the Entry into Israel Law – plays a major role in implementing this policy of discrimination. The Ministry set rigid rules for the approval of family unification and registration of children in the Population Registry. In almost every request for family unification or registration of children, the residents must submit numerous documents. If they fail to do so, their requests are rejected. It was the Interior Ministry that implemented the policy of “quiet-deportation” from 1996-1999, in which the Ministry permanently revoked the residency of hundreds of Palestinians on the grounds that they lived for a prolonged period outside of Israel, including the Occupied Territories.⁴

People going to the East Jerusalem office of the Interior Ministry face physical conditions visitors far worse than at other Ministry branches. Just getting in to the office is itself an

¹ *Book of Laws*, 5712 (1952), p. 354.

² Entry into Israel Regulations, 5724 – 1974, Sections 11-12.

³ See B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, January 1997.

⁴ Regarding this policy, see B'Tselem and HaMoked: Center for the Defence of the Individual, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*, April 1997; *The Quiet Deportation Continues: Revocation of Residence and Social Rights of East Jerusalem Palestinians*, September 1998.

exhausting experience. Palestinians have to wait in line outside for hours, and often have to return at a later date because they are unable to enter before the doors are closed. Interior Ministers have almost without exception, visited the East Jerusalem branch of the Ministry upon taking up office and promised to improve the situation. To date, none of these promises have been kept.

On 17 June 2003, Interior Minister Avraham Poraz proposed a bill that followed directly from the Ministry's family unification policy. In explaining the proposal, Poraz stated:

I want to tell you that I am not happy about this law. It would be better if such a law did not find its way into the law books, because an enlightened and humane society must find some way to enable family unification. But the situation that has developed is one in which we have no choice, and this law is brought in the absence of any alternative.

On 31 July 2003, the Knesset passed the bill into law. The Nationality and Entry into Israel (Temporary Order) Law, 5763-2003 prohibits Israelis who are married to, or get married to in the future, residents of the Occupied Territories to live in Israel with their spouses. Children born in the Occupied Territories to one parent who is a resident of East Jerusalem and a parent who is a resident of the Occupied Territories, are forbidden under this law to live in Jerusalem with their family.⁵

The law does not establish a new immigration policy for residents of the Occupied Territories. International law recognizes the right of every state to determine who is entitled to enter its territory - aliens have no intrinsic right to enter the state. Some countries set immigration quotas, based on varying criteria. However, when the foreigners are married to nationals or residents of the state different rules apply, and there are limitations to the discretion that the government may exercise. As in every case where a state authority exercises discretion, the rules must be reasonable, based on substantive grounds, and applied equally. The question involved here is not whether the alien has a right to enter the state. We are dealing with the right of citizens and residents of the state to live with their spouses in their (the citizens' and residents') country.

This report discusses Israel's human rights violations against Palestinian residents of East Jerusalem that result from the new law. The first part of the report deals with family unification, and the second part with the registration of children in the Population Registry in cases in which the children are born in the Occupied Territories to parents who are residents of Israel. The report describes Israel's policy over the years, explains the new policy and its

⁵ *Book of Laws*, p. 544.

effects on the daily lives of residents of East Jerusalem, and examines the considerations underlying the new law.

Family unification

Background: Policy of the Interior Ministry until March 2002

Palestinian residents of East Jerusalem who are married to residents of the Occupied Territories and who want to live with them in Jerusalem, are required to submit a request for family unification to the Interior Ministry. The Ministry's policy on approving such requests has changed over the years.

Until March 1994, the Interior Ministry only processed requests for family unification that were submitted by male Palestinian residents of Jerusalem for their alien spouse. Requests filed by female residents of Jerusalem were not considered. The Ministry justified this policy on the claim that in Arab society "the wife follows her husband," and there was, therefore, no reason to grant legal status in Israel to the spouse residing in the territories.⁶

Following a petition to the High Court of Justice filed by The Association for Civil Rights in Israel, the Minister of the Interior ended this discriminatory policy and allowed women to file requests for family unification on behalf of their spouse. According to Interior Ministry criteria, the request would be approved if the couple proves that they are married and live in Jerusalem, and provided that the spouse did not have a criminal or security past.⁷ Following the change in policy, thousands of women filed requests for family unification, including women who had married many years earlier and already had children.⁸

Until 1996, if the Interior Ministry approved the request for family unification, it immediately granted permanent-resident status to the spouse.⁹ In early 1997, the Interior Ministry announced the implementation of a new "graduated procedure," under which permanent-resident status would only be given after five years and three months from the day the request for family unification was approved. According to this procedure, following approval of the family unification request, the spouse from the Occupied Territories was given a permit to stay and work in Israel, but was not granted social rights or health insurance. These permits, issued by the Civil Administration, were given for periods of six months to one year and could be renewed for a period of up to twenty-seven months. In the three-year period that

⁶ For a discussion on this assumption as the basis for Ministry action, see HCJ 48/89, *Reinheld 'Issa v. Director, East Jerusalem District Office of the Population Administration et al.*, *Piskei Din* 43 (4) 574.

⁷ Letter from Attorney Yochi Gensin, Senior Deputy to the State Attorney, to Attorney Eliahu Abrams, of ACRI, of 23 June 1994, following HCJ 2797/93, *Garbit v. Minister of the Interior*.

⁸ In 1993, 650 family unification requests were submitted by residents of East Jerusalem for their spouses. In 1994, 2,550 requests were filed, and in 1995, there were 1,800 requests. Letter from Attorney Moriah Bakshi, Legal Department of the Ministry of the Interior, to Attorney Malchiel Blass, of the State Attorney's Office, on 31 March 1996, following HCJ 7316/95, *Menuhin et al. v. Minister of the Interior*.

⁹ The term spouse in this report relates to husbands and wives. In certain instances, the use of the plural is liable to be confusing, so the male, singular form is used for clarity's sake.

followed, the spouse received temporary-resident status, which had to be renewed once a year. As a temporary resident, the spouse was entitled to social rights and health insurance. Throughout the period of the graduated arrangement, the Interior Ministry checked the authenticity of the marriage, the location of the family's center of life, and whether the spouse had a criminal or security record.¹⁰

On average, it took ten years from the day a request for family unification was submitted to the day that the spouse from the Occupied Territories received a permanent status in Israel – if the Interior Ministry approved the request. During this period, the Interior Ministry made conflicting demands on the spouses and more than once even ignored rules that the Ministry itself had set. The Ministry often changed the procedures without informing the public and without explaining the new requirements. The Ministry's policy harmed couples in every stage of the application process.

1. Prior to approval of the request

Based on the experience of HaMoked: Center for the Defence of the Individual, the Interior Ministry took an average of five years from the day of submission to grant approval of the request. During this period, the couple were not allowed to live together in Jerusalem.

Until 1991, people could freely move between the Occupied Territories and Israel, including Jerusalem. Residents of the Occupied Territories married to residents of Jerusalem could live in the city with their spouses and children, without having to obtain special permits. As a result, requesting family unification was of little importance.

In February 1991, Israel began to require permits for all Palestinians wanting to enter Israel. In the next two years, Israel issued many permits for relatively extended periods, but in March 1993, Israel imposed a general closure on the Occupied Territories and set up checkpoints. Checkpoints were also set up between East Jerusalem and the rest of the West Bank. Since then, permits have been given in small numbers and according to unknown criteria.¹¹

the change in the policy created a new reality for Palestinian couples as the restrictions on movement made it difficult for them to live together. For this reason, many Palestinians then decided to submit requests for family unification, years after they married. At first, the Civil Administration instituted a special procedure enabling residents of the Occupied Territories who were married to Israelis to receive permits to stay in Israel for periods of up to three months, prior to approval of the request for family unification. The procedure was not fully

¹⁰ The State presented this policy to the High Court in HCJ 2950/96, *Hana Musa et al. v. Minister of the Interior et al.*, and the Court approved it.

¹¹ See B'Tselem, *Divide and Rule: Prohibition on Passage between the Gaza Strip and the West Bank*, May 1998; *Bureaucratic Harassment; Abuse and Maltreatment during Operational Activities in the West Bank in the First Year of the Declaration of Principles*, September 1994.

implemented, and the Civil Administration often refused to issue the permits, or issued them for only short periods of time. Israel occasionally imposed a total closure on the Occupied Territories and revoked all the permits, requiring the spouses to return to the Occupied Territories. In 1996, following a series of Palestinian attacks inside Israel, the procedure was cancelled, and the couples were no longer allowed to live together in Jerusalem.¹²

The Interior Ministry also instituted procedures enabling a spouse from the Occupied Territories to stay in Jerusalem until approval of the family reunification request.¹³ These procedures were only applied in cases when a petition was submitted to the High Court of Justice. In these cases, the Interior Ministry granted the spouse a permit to stay in Israel until the Court gave its decision. On June 1997, the Interior Ministry announced that it would no longer issue permits to stay in Israel prior to approval of the family unification request.¹⁴

This policy made it impossible for couples to comply with the law and at the same time obtain approval of their request for family unification. If they went to live together in the Occupied Territories until they received approval of the request, the Interior Ministry would reject their request on the grounds that they did not live in Jerusalem. Furthermore, in such a case, the spouse from Jerusalem endangered his residency status.¹⁵ If the spouse from the Occupied Territories decided to live with his family in Jerusalem without a requisite permit, he had to live in hiding, always at risk of being deported. If such a person was arrested by the security forces for being in Israel illegally, the Interior Ministry could reject his family unification request on the grounds of his “criminal actions.” In addition to harming (or causing suffering to) the couple, living separately during this period was also liable to lead to rejection of their request for unification because the couple failed to prove the “authenticity of the marriage.”

2. Conditions for obtaining approval of the request for family unification

In 1996, the Interior Ministry began to demand that couples filing requests for family unification submit numerous documents to prove that they live in Jerusalem, such as evidence of ownership of a house or apartment, a rental contract or affidavits stating they live in the parent’s home; a description of the house they live in and details of the other people living there; a printout from their health fund indicating that the family is a member of the fund; proof of receipt of medical treatment; birth certificates and immunization cards of the

¹² Letter from Attorney Moriah Bakshi, of the Ministry of the Interior’s legal department, to B’Tselem, 30 March 1997.

¹³ These procedures were established in HCJ 7930/95, *Mahfuz et al. v. Minister of the Interior et al.*, statement on behalf of the State Attorney’s Office.

¹⁴ Section 10 of the responding affidavit, given on behalf of the respondent in HCJ 463/97, *Hizmah et al. v. Minister of the Interior*.

¹⁵ See B’Tselem and HaMoked: Center for the Defence of the Individual, *The Quiet Deportation*.

children; report cards from the children's schools; wage slips and confirmation of employment, or an attorney's affidavit detailing the place of work or source of income.¹⁶

The Minister of the Interior did not formulate a list of documents needed to obtain approval, and the requirements differed depending on the clerk handling the file. More than once, the couple were required to bring documents that had been previously submitted, and after doing so were told to bring more documents. In some instances, the couple also had to submit an attorney's affidavit, but the rules regarding the affidavit were never made clear. The policy created difficulties even for people who had lived their entire lives in Jerusalem, and led to the rejection of their requests.

In addition to the Interior Ministry's review of the couple's documents, the General Security Service conducted a comprehensive security check of the spouse from the Occupied Territories. When the request was filed on behalf of a female spouse, frequently the GSS also carried out a security check on the Jerusalemite husband. Checks were also made to ensure that the spouse from the Occupied Territories did not have a criminal past.

In some instances, the Interior Ministry summoned the couple for an interview, in which the spouses were asked separately about issues that had been previously raised and resolved, and regarding which documents had already been provided. Some of the questions related to events that had taken place many years earlier. Any contradiction between the answers of the spouses, even regarding minor, technical, matters, was liable to result in denial of the family unification request.

3. Following approval of the request

Following approval of the request for family unification and throughout the period of the graduated arrangement, the couple was repeatedly required to meet the same conditions set by the Ministry as applied prior to approval of their request. Every time the spouse needed to renew a permit from the Civil Administration or a visa issued by the Interior Ministry, they had to submit documents proving that they reside in Jerusalem, including documents that were previously submitted or documents that had never been requested. The GSS also questioned the spouse. In some instances, the couple were summoned for further questioning at the Ministry's office.

Even couples who met all the conditions were not always allowed to live together in Jerusalem after the request was approved.

¹⁶ For details on the change in policy, see HaMoked: Center of the Defence of the Individual, *Residency of Palestinians in East Jerusalem – Developments in Ministry of the Interior Policy, 1994-1996*, Autumn 1996.

In the first stage of the graduated arrangement, the spouse from the Occupied Territories was required to obtain a Civil Administration permit to enter Israel, which entailed a lengthy bureaucratic procedure. After the Interior Ministry approved the family unification request, the handling was turned over to the Civil Administration to issue a permit to enter Israel to the alien spouse. This process was supposed to be completed within two weeks, but in practice it lasted many months. In some cases, the Interior Ministry did not forward the approval to the Civil Administration, and in others, the Civil Administration did not forward the approval to the Coordination and Liaison Office, which was supposed to issue the entry permit. In some cases, even though the spouse had obtained a permit to enter Jerusalem, soldiers did not let the individual cross through the checkpoints and enter the city.

If the couple met all the requirements, twenty-seven months later the spouse from the Occupied Territories received the status of temporary resident, which had to be renewed every twelve months. According to Interior Ministry procedures, the request for renewal had to be submitted two months before its expiration date. Based on HaMoked's experience, the check took an average of ten months, which meant that the spouse was in Jerusalem illegally. If the spouse left the city, the Interior Ministry was liable to reject the request for family unification.

This policy created a reality in which the Interior Ministry formally recognized the right of a Palestinian couple to live together in Jerusalem, but created many obstacles when the couple wished to exercise that right in practice.

The New Law – Nullification of Family Unification Procedures

In July 2003, the Knesset enacted the Nationality and Entry into Israel (Temporary Order) Law, 5762-2003. The law nullifies the procedures for family unification of Israelis with residents of the Occupied Territories. As a result, these couples are prohibited from living together in Israel. Israelis who married aliens who are not residents of the Occupied Territories continue to be allowed to file requests for family unification on behalf of the alien spouse.

Sixteen months earlier, on 31 March 2002, Shadi Tubasi, blew himself up in a restaurant in Haifa, killing sixteen Israelis. Immediately after the bombing, the then Interior Minister, Eli Yishai, decided to freeze the handling of all applications for family unification filed by Israelis on behalf of spouses living in the Occupied Territories, and held that new requests would not be accepted until a new policy was adopted.¹⁷

On 12 May 2002, Minister Yishai presented his plan to the Cabinet, which adopted it in its entirety in Government Decision 1813. The decision states that, “In light of the security situation and because of the implications of the processes of immigration and settling in Israel of aliens of Palestinian descent, including through family unification, a new policy will be formulated to handle applications for family unification.” Until formulation of such a policy, “no application to obtain the status of resident or other status will be accepted from residents of the Palestinian Authority. An application that has been submitted will not be approved, and the alien spouse will be required to stay outside of Israel until another decision is made.” As for requests that were already approved and the spouses had begun the states of the graduated arrangement, the decision stated that their permit to stay would be extended, but “there will be no upgrading of status.”

The Cabinet established a number of principles on which the new policy was to be based. Among these was the rule that “a request of a person who violated the Entry into Israel laws will not be processed,” greater stringency “to prevent the entry into Israel of spouses of fictitious or polygamous marriages,” and that the possibility to institute family unification quotas would be examined. It was also determined that the Minister of the Interior would consider the need to enact legislation to implement these decisions.

In June 2003, more than a year after the government’s decision, a proposed bill on the subject was put before the Knesset for a first

¹⁷ Mazal Mualem, “Yishai freezes family unification of Israeli Arabs married to residents of PA,” *Ha’aretz*, 1 April 2002. For comments on the case of Shadi Tubasi.

reading. The bill did not set forth a new policy, but rather the canceling of the procedures for family unification between Israelis and residents of the Occupied Territories. On 31 July 2003, after the Knesset's Interior and Environment Committee slightly changed the bill, it was presented to the Knesset plenum for second and third readings. Fifty-three members voted in favor of the bill, twenty-five against, and one abstained.

Section 2 of the law states the statute's general principle:

During the period in which this Law shall be in effect, notwithstanding the provisions of any law, including Section 7 of the Nationality Law, the Minister of the Interior shall not grant a resident of the region nationality pursuant to the Nationality Law and shall not give a resident of the region a permit to reside in Israeli pursuant to the Entry into Israel Law, and the regional commander shall not give such resident a permit to stay in Israel pursuant to the defense legislation in the region.

A "resident of the region" includes not only residents of the Occupied Territories but also persons who live there temporarily and are not registered in the Palestinian population registry. The law does not apply to settlers.¹⁸

The law sets forth exceptions to the general principle set forth in Section 2, enabling the Minister of the Interior and IDF commanders to allow the entry of Palestinians into Israel in only two situations. The first exception is "for purposes of work or medical treatment, for a fixed period of time, and also for other temporary purpose – for a cumulative period that shall not exceed six months." The second exception is "to prevent the separation of a child under age 12 from his parent who is lawfully staying in Israel."¹⁹ The only case in which the law allows the Minister of the Interior to grant nationality or permanent residency to residents of the Occupied Territories is when the request is submitted on behalf of a collaborator or the collaborator's family.²⁰

The law contains provisions relating to requests for family unification that were submitted or approved before the law was enacted.²¹ Where a spouse's request was approved and the spouse was participating in the graduated arrangement, the spouse will

¹⁸ Section 1 of the law.

¹⁹ *Ibid.*, Section 3(1).

²⁰ *Ibid.*, Section 3(2).

²¹ *Ibid.*, Section 4.

continue to receive the same permit that he was given at the time the law was enacted. The spouse is not allowed to continue to the next stage of the arrangement, or to receive permanent status in Israel. As for requests that have not yet been approved, if they were submitted prior to 12 May 2002, the date of the government's decision, they will be processed. If they are approved, the spouse residing in the Occupied Territories will only be given temporary permits, issued by the Civil Administration, to enter Israel.

The law applies only for one year. After that, the government may extend it, with the approval of the Knesset, "for a period that shall not exceed one year each time."²²

The state's position

The state's official position on cessation of the procedures for family unification of Israelis and residents of the Occupied Territories was first given in the state's response to a petition filed against the government's decision.²³ Before the decision was given, the Knesset enacted the said law, as described above, The Association for Civil Rights in Israel, Adalah, Members of Knesset, and couples who would be harmed by the law, petitioned the High Court and demanded that the law be nullified.²⁴ In the course of the hearing on these petitions, the State Attorney's Office filed an updated response to the Court, in which it set forth its position at length.²⁵

The response argues that the cessation of family unification procedures is justified to meet security needs:

According to the defense establishment's evaluation of the situation, there is a security need to prevent the entry of residents of the region – whoever they are – into Israel at this time, and the entry of residents of the region into Israel permanently, and their freedom of movement within the state by means of Israeli documents, are liable to endanger, in an extremely significant way, the welfare and safety of citizens and residents of the state...

²² *Ibid.*, Section 5.

²³ HCJ 4022/02, *The Association for Civil Rights in Israel v. Prime Minister et al.*; HCJ 4608/02, *Imad Abu Assad et al. v. Prime Minister et al.*

²⁴ Seven petitions were filed against the Minister of the Interior, the Attorney General, and IDF commanders in the West Bank and the Gaza Strip. Among these petitions were: HCJ 7052/03, *Adalah – the Legal Center of Arab Minority Rights et al. v. Minister of the Interior et al.*; HCJ 8099/03, *The Association for Civil Rights in Israel v. Minister of the Interior, et al.*; HCJ 7102/03, *MK Zahava Galon et al. v. Minister of the Interior et al.*

²⁵ *Ibid.* (HCJ 7052/03). The state filed its response on 16 December 2003.

The granting of a permit to stay for the purpose of settling in Israel to a resident of a state or political entity that is in armed conflict with the State of Israel entails a security risk, in that the allegiance and commitment of the said person is liable to be to the state or political entity in conflict with Israel. And because it is possible to pressure a person whose family members continue to live in such a place, to get that person to assist terror organizations, if he doesn't want any harm to come to his family...

In the conflict, which has become an armed conflict, the Palestinian side uses every means available against the citizens and residents of the State of Israel, and unfortunately has *in certain cases used and been assisted by Arab citizens of the State of Israel, primarily by those who were residents of the territories and received legal status in Israel as part of the various family unification procedures*. As a result, there is grave danger to the citizens of the State of Israel and public safety, danger that has increased significantly since the beginning of the armed conflict in September 2000.²⁶

This position, the state argues, is based “only on the unique features of the current armed conflict,” taking into account three principal elements:²⁷

1. The Palestinian civilian population, the State Attorney's Office's response contends, is involved in a violent struggle against Israel and supports suicide attacks, and “this high degree of support intensifies the danger to public safety by the civilian population in the region.”²⁸
2. The state asserts that residents of the territories who received legal status in Israel following family unification were involved in attacks. In the interrogations conducted by security officials, it was found that, “Among the residents of the region who received legal status in Israel pursuant to marriage, some were involved in the carrying out attacks in Israel, both as attackers and in assisting attackers in infiltrating into Israel from the territories.” This involvement is the direct result of their ability to move about freely within Israel. Furthermore, the state argued, although they received legal status in Israel and became integrated in Israeli society, they continue “to maintain extremely close relations with their families in the territories and with institutions and ‘organizations’ in the territories, and some of them clearly

²⁶ *Ibid.*, Paragraphs 4-5.

²⁷ *Ibid.*, Paragraph 8.

²⁸ *Ibid.*, Paragraph 9.

feel complete allegiance to the Palestinian issue and the
Palestinian Authority.”²⁹

3. According to the State Attorney’s Office, the security services are unable to anticipate the danger posed by residents of the territories. As proof of this contention, the state argues that, “Many individuals who, in the absence of concrete information indicating a security problem, were granted legal status in Israel by the state in the framework of family unification to ... assisted in perpetrating lethal terror attacks.” In addition, “the danger to the security of the State of Israel can arise at any time without prior warning,” in that any stage the organizations fighting against Israel can convince the person to collaborate with them by pressuring his family members who live in the Territories. “The past tells us nothing about the future,” the state declares, and “the fact that a certain person was allowed to enter Israel in the past, and/or there was no concrete, updated security data in regard to the individual, cannot in and of itself, predict that the person will not pose *a future danger* to state security.” These persons, in fact, are the ones who pose a danger, as “terror organizations prefer to use a person against whom the terror organizations believe Israel has no negative security information.”³⁰

The state then presents six cases that illustrate the “involvement of persons holding Israeli documents following family unification, in carrying out attacks and in assisting in the commission of terrorist attacks.” The state emphasizes that these are only sample cases:

The security services have information indicating that, since 2001, twenty-three residents of the region who received legal status in Israel through family unification were involved in providing meaningful assistance in hostile activity against state security. The attacks that were carried out with the assistance of the residents of the region mentioned above resulted in the deaths of forty-five Israelis and the wounding of 124 Israelis. These figures on the involvement of residents of the region who received legal status in Israel indicates the dangerous trend that has developed in recent years among the population that is the subject of the petition.”³¹

²⁹ *Ibid.*, Paragraphs 10-12.

³⁰ *Ibid.*, Paragraphs 15-16 (emphasis in original).

³¹ *Ibid.*, Par. 17.

The state concludes its brief as follows:

In the opinion of the legislature, the state is entitled as part of its duty to its citizens and residents to safeguard their lives and bodies, and establish special and proper arrangements that can ensure that marriage with an Israeli citizen will not result, sooner or later, in harm to the national security of the State of Israel, or to the personal safety of its citizens and residents...

The temporary order [the law] should be perceived, therefore, as a fulfillment of the legal duty imposed on the governing authorities to defend the right to life and bodily integrity, a basic right of paramount importance.³²

Is the law necessary to meet a “security need”?

1. The stated justification –Security

The nine-page response filed by the state to the Supreme Court contains only one statistic: twenty-three residents of the Occupied Territories who received legal status in Israel were involved in “carrying out attacks.” According to figures published by the Interior Ministry, in the past ten years, between 100,000 and 140,000 residents of the Occupied Territories came into Israel as a result of the family unification process.³³ Some 0.02 percent of them, according to the state, were involved in attacks on Israelis.

The state does not provide any details regarding the twenty-three cases. It contends that in the attacks in which these individuals played a role, forty-five Israelis were killed and 145 were injured, but it does not indicate how many attacks were carried out, their location, the nature of the involvement of the Palestinians who had legal status in Israel, and how having an Israeli identity card benefited them in carrying out the attack.

The state provides only six examples of the twenty-three cases. The acts attributed to the Palestinians in these sample cases are grave – recruiting Arab citizens of Israel to commit attacks, collecting information, and intention to bring explosive devices into Israel. However, the facts involved in these cases are not clear. The state does not mention whether these acts resulted in the carrying out of attacks or whether the attacks were prevented. In its brief, the state does not discuss the measures taken against these individuals – how many were tried, the offenses for which they were convicted, and the sentences they received – if, in fact, some of them were tried and convicted. In none of the six sample cases did the state contend that the individual was directly involved in an attack in Jerusalem. The state also does not mention when the individual received legal status in Israel, and if it was prior to 1997, when the graduated arrangement was instituted. This information is vital because before the Interior

³² *Ibid.*, Paragraphs 22-23.

³³ The lower figure was published in May 2002. See, Jerusalem Population Administration, Ministry of the Interior, *Immigration and Settlement of Aliens in Israel*, May 2002.

Ministry instituted the graduated arrangement status was immediately granted following a one-time security check. The graduated arrangement entails repeated security checks, and the permanent status is given long after the couple marries.

Shadi Tubasi is not among the sample cases provided by the state. Tubasi carried out the attack on the Matza Restaurant, in Haifa. The previous Interior Minister, Eli Yishai, used that case as an example when he froze the handling of family unification applications between Israelis and residents of the Occupied Territories, after he learned that Tubasi was an Israeli citizen. However, Tubasi's nationality had nothing to do with family unification - he received Israeli citizenship at birth, because his mother was an Israeli citizen. For this reason, apparently, the state did not mention Tubasi expressly in its response, but it is not clear if he is one of the seventeen cases about which the state did not give details.

Even if the state's contention that these twenty-three Palestinians were involved in carrying out attacks is entirely accurate, this statistic is certainly not a sufficient basis for the state's contention that "a dangerous trend" had developed among residents of the Occupied Territories who received legal status in Israel and that all residents of the Occupied Territories therefore pose a threat. The state did not base its arguments on other statistics, expert opinions, articles, or any other source. Lacking additional information, this statistic cannot justify the complete cancellation of the family unification process.

The state's logic, whereby isolated cases are sufficient grounds to punish hundreds of thousands of people could be similarly used to justify the imposition of all sorts of other prohibitions. For example, is it not justifiable to forbid Arab citizens of Israel to enter Jewish towns and villages after an Arab citizen carried out an attack and several others were accomplices? Is it not justifiable to forbid settlers from crossing the Green Line and entering Israel after one of them transported the suicide bomber who committed the attack at the Geha intersection, and after a number of settlers were convicted of selling weapons to Palestinians? The same rationale can also lead to prohibiting the entry of British nationals after two of them bombed a restaurant in Tel-Aviv.

The state's contention about the danger presented by residents of the Occupied Territories is unconvincing for another reason as well. The law allows the entry of Palestinians into Israel to work, obtain medical treatment, or "any other temporary purpose," and allows the granting of permanent residency to collaborators and their families. The law also allows residents of the Occupied Territories whose request for family unification has already been approved to remain in Israel, and states that the Interior Ministry will consider the requests that were submitted prior to the government's decision.

The state believes that there is no contradiction here. The granting of temporary permits, they contend, “is done for purely humanitarian reasons... for a fixed and limited period, to a specific location, and without allowing the individual free movement in Israel.” The state also contends that workers do not stay overnight in Israel, are checked daily at the points of entry into the country, all have families and are above a certain age, and the proof is seen in the fact that, “to date, there has only been one attack in which a person who entered Israel to work was involved.”³⁴

The same arguments against family unification could be made against allowing workers from the Occupied Territories into Israel. Why is a daily worker, who enters Israel in the morning and returns home to the Occupied Territories at night, a lesser danger. The checks at the checkpoints will not prevent the person from finding a place to carry out an attack or recruit Arab citizens of Israel, and Palestinian organizations can also put pressure on the individual and his family to ensure that they cooperate. It can reasonably be assumed that a person who has a family in Israel is less likely to do something that is liable to result in the loss of the legal status that had been granted.

Regarding the granting of legal status to collaborators, the state contends that, “his acts... indicate that he does not constitute a danger.” However, this argument ignores the rule that the state itself set regarding the population in the Occupied Territories, whereby “the past tells us nothing about the future.” Collaborators may want to prove that they have “changed their ways” in order to protect their family members that remain in the Occupied Territories. In fact, they are an easier group to pressure. Indeed, there have been cases in which collaborators attacked their GSS operators.

The state justifies the continued granting of permits to individuals whose requests for family unification have been approved, or in those instances where the requests were submitted prior to the government’s decision, arguing that doing so is consistent with the individuals’ expectations at the time they submitted the request. The state ignores the fact that the couple’s expectation was that, at the end of the exhausting process, the spouse that is a resident of the Occupied Territories would receive legal status in Israel - an expectation that will not be realized solely because of the new law.³⁵

2. The real reason – Demographics

The contention that cancellation of the procedure for family unification of Israelis and Palestinians was based on security considerations was not raised in a comprehensive and

³⁴ Paragraph 180 of the state’s brief in HCJ 7052/03, cited above.

³⁵ See the discussion on the state’s arguments regarding protection of couples who were already married.

detailed manner until the state had to justify the cancellation to the High Court of Justice.³⁶ Prior to that, the state cited other reasons to justify the policy, including the danger to the Jewish character of the state resulting from family unification, and the claim that residents of the Occupied Territories exploit the family unification procedure to carry out a “creeping right of return.”

In July 2001, the Knesset held a hearing on the subject “Realization of the Right of Return by Foreign Palestinian Workers by Means of Advantageous Marriage.” During the hearing, the head of the Population Administration, Herzl Guedj, said that, “The problem is complicated and has demographic implications... I think that this subject warrants a discussion that relates to future demographics and what will take place in the State of Israel.”³⁷

The then Interior Minister, Eli Yishai, who initiated the change in policy, spoke out on the subject on a number of occasions. According to press reports, Yishai sought ways to reduce the number of non-Jews who obtain Israeli citizenship. He believed that these non-Jews “threaten the Jewish character of the State of Israel.” Senior officials in the Population Administration contended at the time that family unification effectively constituted the “realization of the right of return in a roundabout way.”³⁸ In February 2002, after the Interior Ministry published figures showing that some 140,000 Palestinians had come to Israel through family unification since 1993, Yishai said that the figures “prove that the right of return was being realized through the back door of the State of Israel,” and that the statistics were “staggering and worrisome.”³⁹

Following the government’s decision in May 2002, the subject of family unification arose in the Knesset plenum. Minister Dani Naveh responded on behalf of the government to the arguments made against the decision:

This involves a phenomenon that is motivated by political reasons... All the data show that this phenomenon is not some innocent thing, but an attempt to realize the so-called right of return through the back door ... Clearly, there is a desire to significantly change the character of the state in many ways... The State of Israel is a democratic Jewish state, which believes in humanitarian values of equality and human rights, but it is also a state that clearly has the elemental right to protect itself and preserve its character as a Jewish state, as the state of the Jewish people, against the desire and attempt to misuse its values and its democratic principles.⁴⁰

³⁶ HCJ 4022/02, cited above, response of the state, filed on 13 April 2003.

³⁷ Committee for Inquiry into the Matter of Foreign Workers, hearing held on 17 July 2001.

³⁸ Mazal Mualem, “Yishai Acts to Reduce Number of Arabs Receiving Israeli Citizenship,” *Ha’aretz*, 9 January 2002.

³⁹ Mazal Mualem, “Since 1993, 140,000 Palestinians began Naturalization Process,” *Ha’aretz*, 6 February 2002.

⁴⁰ Proposal to agenda – The new policy of the Ministry of the Interior on naturalization, 22 May 2002.

About a year after Minister Yishai cancelled the family unification procedures, the new Interior Minister, Avraham Poraz, explained the reasons for the decision:

A decision was reached at the time that for now, family unification would cease, as it was felt that it would be exploited to achieve a creeping right of return... That is, tens of thousands of Palestinian Arabs are coming into the State of Israel.⁴¹

About three months later, when he presented the proposed bill to the Knesset for the first reading, Minister Poraz completely ignored this contention and adopted the argument that the law was needed solely for security reasons.⁴²

The chair of the Interior and Environment Committee, Yuri Shtern, presented the main elements of the bill prior to the vote on second and third readings. Although Shtern spoke primarily about the security aspect, he exposed the real reason for the law, saying, “We have a political argument on the right of return; here we have a right of return actually taking place.”⁴³

The presentation given by the Population Administration to the Cabinet before its vote on cancellation of the family unification process, make the reasons for the change in policy clear.⁴⁴ Using huge headings, exclamation points, and arrows, the Population Administration alludes to the existential threat it believes the state faces as a result of family unification. This argument is based on the effect of family unification on demographics and the heavy burden on the state’s treasury that results.

The presentation begins with the declaration: “The State of Israel constitutes, for known reasons, a destination of immigration by non-Jews from around the world, and primarily from neighboring Arab states and areas of the Palestinian Authority. This wave of immigration constitutes a threat to the national security of the State of Israel – a security, criminal, and political threat. It also is an economic burden and primarily a demographic burden on the State of Israel.” It concludes: “The growing number of alien Palestinians obtaining legal status in Israel requires a review and statutory change.”

The first part of the presentation deals with the ways in which residents of the Occupied Territories receive legal status in Israel. By the use of quotation marks around the words family unification, the Population Administration describes the “fraudulent methods” used by purported residents of the Occupied Territories to realize their desire to obtain an Israeli

⁴¹ Proposal to agenda – The family unification new policy and handling by the Ministry of the Interior of the matter of residents of East Jerusalem, 26 March 2003.

⁴² Debate in the Knesset plenum on the Proposed Nationality and Entry into Israel (Temporary Order) Law, 5763 – 2003, 17 June 2003.

⁴³ The second and third readings were held on 31 July 2003.

⁴⁴ Jerusalem Population Administration, Ministry of the Interior, *Immigration and Settlement of Foreign Nationals in Israel*, May 2002.

identity card. For example, the alien spouse gets divorced and “imports” another person (‘friend brings friend’),” “the alien spouse fictitiously divorces the Israeli and ‘imports’ another person (polygamy),” and as if that is not enough, “the alien spouse who received legal status brings his parents and/or children from a previous marriage and/or the children of his wife’s previous marriage,” and “the children of the Israeli and the alien who received legal status even undergo ‘family unification’ (second and third generation).” The Population Administration later presents figures on the number of requests for family unification submitted over the years, which relate to all “aliens of Arab nationality” and not just residents of the Occupied Territories.⁴⁵

The second part of the presentation deals with the payments made by the National Insurance Institute to families whose requests for family unification were approved. Using family trees, the Population Administration summarizes the amounts that the state has to pay the children of these families – all of them Israeli children. The presentation describes how “a resident of Judea and Samaria” married an Israeli citizen, “six children were registered as citizens based on their mother’s nationality, who was given back her [Israeli] citizenship, and nevertheless continued to live in the Territories.” And in conclusion: “The result: payment of about NIS 92,000 from the National Insurance Institute and a son who is an Israeli citizen and blew himself up in the Matza Restaurant, in Haifa.” Under the heading, “A bit of the budget for what? And what do we get in return?!” is written: “How much does the children’s allotment *alone* cost us? Not including unemployment, income supplements, health insurance, education, etc., (calculated on an average of a four-person household) – NIS 3.3 billion over ten years.”⁴⁶

In its recommendations, the Population Administration states that, “Given that a real and present danger exists, action must be taken on two levels.” In the immediate future, requests for family unification must not be approved. After that, legislation must be enacted to “establish a policy that will assist in stopping the phenomenon and preserving the character of the State of Israel as a Jewish and democratic state in the long-term.”

This document was presented to the government ministers before they voted on continuing the policy of Minister Yishai, and in favor of canceling family unification between Israelis and residents of the Occupied Territories. Security considerations were not mentioned, except for the hint about Shadi Tubasi, who blew himself up in the restaurant in Haifa, as to whom family unification was irrelevant.

⁴⁵ Regarding these statistics, see above.

⁴⁶ Emphasis in original.

In its brief to the High Court, the state denied that the law was based on demographic considerations, and strongly contended that only security reasons were taken into account by the drafters of the law. The state added that even if the primary purpose of the law was demographic – which was not the case – this purpose is liable to comport with the values of the State of Israel as a Jewish and democratic state.”⁴⁷ The state did not explain this contention.

Throughout the entire process of canceling the family unification process, no debate took place over the general statements on the “creeping right of return” or the “danger to the Jewish state,” partially because of the state’s attempt to conceal the demographic argument. These contentions were never proven, and no state official presented any statistics on these topics.

The figures presented by the Interior Ministry, which were ostensibly intended to support these contentions, are not relevant to a discussion on family unification between Israelis and residents of the Occupied Territories. According to the Interior Ministry, between 100,000 and 140,000 Palestinians received legal status in Israel over the past ten years.⁴⁸ However, these figures included spouses who were not residents of the Occupied Territories, and as to whom family unification was not cancelled. In addition, they also included the couple’s children, who did not require the family unification process. Children of Israeli citizens receive Israeli citizenship at birth and children of permanent residents received, until recently, legal status in Israel under another procedure.⁴⁹ The Association for Civil Rights in Israel, Members of Knesset, and others failed in their attempts to receive precise and detailed information on the number of residents from the Occupied Territories who received legal status in Israel following their marriage to Israelis.⁵⁰

For many years, demographic considerations have indeed affected Israeli government policy. However, the new law adds a particularly grave innovation in that it was enshrined in law in July 2003. This is the first law that explicitly denies rights on the basis of national origin.. The official reliance on security considerations is an attempt to create an ostensibly legitimate legal basis for the law, on the assumption that the state will have difficulty defending the real reasons before the High Court of Justice and the international community.

⁴⁷ Paragraph 169 of the state’s response in H CJ 7052/02, cited above.

⁴⁸ See footnote 33.

⁴⁹ See section 4 of the Nationality Law, 5712 - 1952. Regarding the status of children of permanent residents, see below

⁵⁰ See, inter alia, the hearing in the Knesset’s Interior and Environment Committee, 14 July 2003.

The effect of the new law on residents of East Jerusalem

The new law harms ties between residents of Jerusalem and the rest of the West Bank. Residents of East Jerusalem married to residents of the Occupied Territories will now have to live apart from their spouses. Couples that want to live together in Israel will be breaking the law, and as such will live in constant fear and unable to lead a normal life. If couples choose to live together in the Occupied Territories, the Israeli spouse will be breaking the law, because of the military order that prohibits the entry of Israelis into the Occupied Territories.⁵¹ The law also harms married couples. In the hearings in the Knesset's Interior and Environment Committee regarding the proposed bill, a representative of the Ministry of Justice, Attorney Meni Mazuz, argued that, "Everyone who submitted a request prior to the government's decision will continue to have it processed in accordance with the previous policy."⁵² However, according to the previous policy, residents of the Occupied Territories who were married to Israeli citizens were able to receive, following an exhausting process, permanent-resident status. The new law prohibits the granting of that status, or even temporary-resident status, and only allows temporary permits issued by the Civil Administration.

Residents of the Occupied Territories whose request for family unification has already been approved, and were in the graduated arrangement on the day the law was enacted, will continue to require temporary permits. Those who are in the first twenty-seven months of the arrangement will have to continue to receive permits from the Civil Administration, a problem in its own right, and which are cancelled whenever Israel tightens the closure on the Occupied Territories. In addition, these permits do not grant social rights and health insurance to the holder. Spouses in the second stage of the graduated arrangement who received temporary-resident status will have to renew it once a year. The Interior Ministry's slow handling of these requests results in such individuals being illegally in Israel during the months before they receive the renewal. If they are caught, they can expect to be deported and even to be incarcerated. Residents of the Occupied Territories whose requests for family unification were submitted before the government's decision, on 12 May 2002, but no decision has yet been made, will only be entitled to permits from the Civil Administration in the event that their requests are ultimately approved. Even before this law was passed, couples had difficulties living together in Jerusalem, as a result of problems in obtaining permits from the Civil Administration or the Interior Ministry. Enshrining the situation in law will make the couple's life uncertain, with no chance for favorable change.

⁵¹ Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, Proclamation Regarding Closure of Area (Prohibition on Entry and Stay) (Area A), 5 October 2000.

⁵² The hearing was held on 14 July 2003.

The provision in the law that spouses in the first stage of the graduated arrangement will not be allowed to pass to the next stage and obtain temporary residency, and that in cases of new requests that are approved the spouse will be able to obtain at most, permits from the Civil Administration, also raise doubts about the contention that the new law is based on security considerations. In the two stages, residents of the Occupied Territories are allowed to stay, sleep and work in Israel. However, temporary-resident status also grants social rights and health insurance, which the state wants to prevent them from receiving.

The law is supposed to remain in effect until July 2004, by which time the government is to have formulated a new policy. However, the March 2002 decision of Minister Yishai and the government's decision of May 2002 are to remain in effect only until formulation of the new policy. The law that was enacted is identical to the original decision of Minister Yishai. In a hearing held in the High Court on 18 January 2004, Attorney Yochi Gensin, of the State Attorney's Office, stated that government had not yet formulated its position on whether to extend the law, and that the decision depended on the "security situation." Attorney Gensin said nothing about formulation of a new policy. With events unfolding in this manner, and with renewal of the law requiring only the Knesset's approval and no additional legislation, the provision that the law applies for one year only is no guarantee that the family unification process will be reinstated.

Testimony of Yasser Abu Marir, 29, construction worker, married with three children, resident of Beit Safafa⁵³

I am a construction worker for A. I. Marir Company in Beit Safafa. I mostly work in Jerusalem, but sometimes in Tel Aviv and Ein Gedi as well.

On 24 June 1996, I married Samaher, a resident of Yata who has a Palestinian identity card. We have three children: Sirin, 6, 'Iz, 4, and Yazen, 2. Sirin is in the first grade at the elementary school in Beit Safafa, and 'Iz goes to a nursery school in the neighborhood.

Two months before we got married, I submitted a request for family unification at the Interior Ministry office in East Jerusalem. I filed the request on my own, without an attorney. I prepared all the documents and submitted them together with the request. I attached bills for water, municipal property taxes, electricity, and telephone, as well as our marriage certificate. I was given a confirmation that the request had been submitted. It stated that I must check [with the Ministry] every six months to see where the matter stands. Over the first year and a half, I went to the Interior Ministry three times, and each time they told me that the request

⁵³ The testimony was given to Sohad Sakalla on 3 August 2003.

“was still being processed.” Then, after eighteen months had passed, I received a letter from the Ministry notifying me that I had not submitted all the documents they needed to process the application, such as an affidavit from an attorney regarding my place of residence. I went to the Interior Ministry and gave them the additional documents they requested. The clerks told me that they would send me a letter. I continued to check [the status of the application] every six months, until 2001.

In August 2001, my brother, who married a Jordanian woman and also submitted a request for family unification, went to the Interior Ministry to check on the status of his application. The clerks told him that his request had been approved. When he asked about my request, they said that it had been rejected. He asked to speak with the director of the office. He told the director that we had not received any letter. He also asked how my request could be rejected when we both live in the same house. The director, whose name was Avi Lekach, I think, promised that he would check into why the request was rejected, and that he would respond by letter.

I did not receive any letter. I did not want to go back to the Interior Ministry because I was afraid that they would give me a rejection letter and that I would not be allowed to file an appeal. About a month later, an attorney filed an appeal on my behalf. Since then, I have called every six months to check on the status of the appeal, and each time, they told me that no decision had been reached yet.

In June 2002, I called the Interior Ministry, and they told me that all requests for family unification had been frozen because of the government’s decision. Six months later, I again called to find out the status of my appeal, and they told me that my request had been rejected and no appeal had been filed. I told the clerk that I was holding the confirmation that the appeal had been filed. Eventually, he told me to come to the office to get the decision on the request for family unification and on the appeal. I did not go, because I was afraid that if they gave me the letter, I would not be allowed to file another appeal.

A month later, I contacted HaMoked: Center for the Defence of the Individual to request their assistance. Now, I am in contact them to find out the status of my request. They told me that they are in contact with the Interior Ministry [on the matter].

Since we got married, my wife and I have lived in my parents’ home in Beit Safafa. My wife living here [in Israel] without a permit. I went to the DCO [District Coordinating Office] in Hebron to get a permit that would allow her to enter Israel. The officials there told me that only the Interior Ministry issues such permits. My wife goes to Yata to visit her family once every month or two. Since she doesn’t have a blue [Israeli] ID card or even a permit to enter Israel, she takes a risk every time she leaves Beit Safafa.

In July 2002, she went to Tsur Baher [a neighborhood in East Jerusalem] with our children, my mother, and my brother to buy some things for our daughter Sirin's birthday. On the way home, they were stopped by Border Police officers. One of them asked for her ID card and she gave him the application for family unification that we had submitted. The officer demanded that she get out of the car, and summoned other officers to the site. She tried to explain that she lived in Jerusalem with her husband and three children, but the officer again ordered her to get out of the car. She tried to convince him to let her stay in the car, because she did not want problems in front of the children, who were already crying, but he refused, and she was forced to get out of the car.

In the meantime, my brother called and informed me that the police officers had arrested my wife. I went there immediately and spoke with the officer in charge. I told him that she is my wife and that our request for family unification was still pending in the Interior Ministry. I explained that she is staying inside Israel because the Interior Ministry wants proof that she lives with me in Beit Safafa. The officer was not convinced. He said that she needed a permit to be in Israel. Since she doesn't have a permit, she must be deported. I insisted that he call the police. He replied, "I'll show you about the police. Come with me to the station." He wanted to take my wife in the jeep, but I refused and insisted that I go with her to the police station in my car. In the end, he agreed.

I drove to the Moriah police station in Talpiot. With me were my wife, my brother, and our baby, Yazen. Our other two children went with my mother and my other brother, who had also come to the scene. Before leaving to go to the station, I heard the commanding officer say to one of the officers who took us: "Tell the interrogator that I request that she be deported."

When we arrived at the police station, they finger-printed my wife. Then, a police officer took her statement. I translated what she said, and the officer wrote it down. I noted that the officer did not write what my wife said. For example, he asked her how she got to Tsur Baher, and she replied that she had been living in Jerusalem for seven years to prove to the Interior Ministry that she lives in Israel. The officer wrote that she had gone to take a dirt road to Tsur Baher from Bethlehem to visit her children and then go back. When he asked her to sign the statement, I asked to read it first to see what he had written. I [read it and then] said that she would not sign it as it was currently written.

As we were arguing, an interrogator came into the room. He heard what happened and demanded that the officer rewrite the statement. The officer took another statement from my wife, and then she signed it. Then we spoke with the interrogator, and I told him what happened. He replied, "I recommend that she never leave the house," and told us to go home.

Our situation is very bad. Since that day when my wife was stopped, which was about a year ago, she almost never leaves home. We do not leave the neighborhood. I take the kids out, while she stays imprisoned in Beit Safafa. Sometimes, she wants to join us, but the older children do not allow her to come along. They tell her, “Don’t come because the army will take you again.” Since the incident in Tsur Baher, the children have been very frightened. Sometimes, a jeep comes by when they are playing outside the house, and they rush into the house and tell my wife to hide so that the army doesn’t take her.

Now I am waiting, and I hope that the situation improves and that our request for family unification is approved. My wife cannot return to Yata, because the children and I have Israeli ID cards, and we cannot live with her. I want us to live like a normal family. I know other families that are living in the same horrible situation.

Testimony of Jada Taha, 26, married with three children, resident of Shu’afat refugee camp⁵⁴

In 1995, I married Ishak Taha. He was a resident of Qatana, a village located northwest of Jerusalem. Since we got married, we have lived in rented apartments in the Shu’afat refugee camp, which is in Jerusalem. Two years ago, we stated building a house in the refugee camp, but the municipality demolished it. My husband and I have three children: Amal, 5, ‘Omar, 4, and Muhammad, 3.

After we got married, I submitted a request – at the East Jerusalem office of the Interior Ministry – for family unification on behalf of my husband. Since 2000, I have been going to the Interior Ministry to check the status of the request. Each time, I leave home at four or five o’clock in the morning to get in line. There were times when I left late and did not manage to get a number, so I was unable to get in. When I got a number, I would wait until between eight and ten o’clock to talk with one of the clerks, who always told me that there was no news on my request.

I went to the Interior Ministry dozens of times, in summer and winter, even when I was pregnant, until I finally gave up and stopped going. About two years ago, we received a notice of rejection. Now, HaMoked: Center for the Defence of the Individual is handling my request.

In the past, my husband worked at a restaurant in Jerusalem and was able to supported us with dignity. Two years ago, it became much harder for residents of the West Bank to enter Israel, and he stopped working in Israel. If he had an Israeli identity card, he would be able to work and provide a livelihood for us, as in the past. We are now living on the income supplement [provided by the National Insurance Institute].

⁵⁴ The testimony was given to Najib Abu Rokaya on 30 July 2003.

The children and I can leave the refugee camp and go to Jerusalem or wherever else we want to go, but my husband can't come with us. He cannot work outside the camp, and inside the camp, he is unable to find work. He is imprisoned inside the camp and can't come with us anywhere.

*Testimony of Hanan Jubran, 33, married with seven children, resident of Silwan*⁵⁵

My grandfather, my father, and I were born in Tsur Baher, a neighborhood in Jerusalem. My grandfather is buried in the cemetery in Tsur Baher. I studied at the school in Tsur Baher until ninth grade, and in 1987, I married a resident of Beit Sahur, Bethlehem District. We have seven children. Wisam, my eldest daughter, is 14 years old, and the youngest, Sohad, is three years old.

In 1995, we submitted an application for family unification. We filed it then because until 1994, I could not submit the request. Also, we did not have any special problems resulting from the fact that my husband did not have a permit to stay in Jerusalem. There were no checkpoints in the area between East Jerusalem and Beit Sahur, and it took five minutes to go from our house in Tsur Baher to my husband's family's home.

Since submitting the request for family unification, I have gone to the Interior Ministry every six months to check if the request has been approved. Every time, they told me that no decision had yet been reached. The last time I checked with them was in June 2003. We provided the Ministry of the Interior with all the documents that they requested, including receipts for the payment of municipal taxes, electricity, and water for the house in which we lived in Tsur Baher.

On 11 June 2002, we moved to Silwan to live in an apartment that we bought. The apartment is located in a building with sixteen apartments. Until recently, the bills were sent with the name of the previous owner. We recently changed the electricity bill and municipal taxes bill to my name.

My husband lives with our children and me in Jerusalem. Over the years, he has been arrested a few times. Usually, the police officers take him to Checkpoint 300, in Gilo, and order him to walk to Bethlehem. He always manages to return. One of the times, about two years ago, the police officers beat him, and he had to be hospitalized for two days at Hadassah Hospital, on Mount Scopus.

My husband is a construction worker. He does not have a work permit. He manages to find work about fifteen days a month. Now, the only income we have comes from the children's

⁵⁵ The testimony was given to Najib Abu Rokaya on 13 August 2003.

allotment that we receive [from the National Insurance Institute] and from the small amount that my husband earns. I should be sending my daughter to preschool, but I can't because we do not have the money for it. If Israel would approve our request [for family unification], my husband would be able to get regular work and earn wages that could support us properly.

Registration of Children

The Interior Ministry 's new policy

A child who is born to an Israeli citizen, or to two parents who are permanent residents, receives an identity number at the hospital and is registered in the Population Registry. After that, the parents go to the Interior Ministry, where the child's name, date of birth, and identity number are recorded in the parent's identity cards. For children born to parents one of whom is a permanent resident, the procedure is different. The identity number is not given at the hospital, and the parents must submit a request to the Interior Ministry to register the child.

The legislation regarding the registration of children of permanent residents in the Population Registry is incomplete. A child born in Israel receives the same legal status as that of the parents, and if the two parents have a different status, the child receives the status of the father. If the one of the spouses objects, the Interior Minister determines the status of the child.⁵⁶ As for children born abroad, including the Occupied Territories, there is no relevant provision of law, and the registration is done in accordance with the Interior Ministry 's internal procedures.

HaMoked: Center for the Defence of the Individual routinely submits requests to register the children of residents of East Jerusalem to the Interior Ministry. Several months after the government's decision, HaMoked noticed that the Interior Ministry was refusing to register children born outside of Israel, even if both parents were residents of the city. At first, the Interior Ministry refused to explain its policy, but ultimately, after receiving additional requests from HaMoked, explained that, "the subject of their [the children] registration in the Population Registry will be considered in the context of a request for family unification, and at this stage and in light of the government's decision of 12 May 2002 we are not accepting such requests."⁵⁷

Only then did HaMoked learn that the Interior Ministry had changed the procedure for registering children in the Population Registry. According to the new policy, parents wanting to register their children who were born outside of Israel must submit a request for family unification rather than a request for registration of children, as the Interior Ministry had previously required. The change affected children born in the Occupied Territories to parents who were residents of Jerusalem. Such cases occurred, when the mother is a resident of the

⁵⁶ Section 12 of the Entry into Israel Regulations.

⁵⁷ For example, a letter of 3 September 2002 from Tova Amadi, of the East Jerusalem office of the Interior Ministry, to HaMoked; a letter of 16 October 2002 from Khaled Salhi, of the same office, to HaMoked.

Occupied Territories and preferred to give birth close to her parents' home, when the mother went into labor while she was on a visit to her parents or her husband's parents in the Occupied Territories, or if the couple decided to give birth in the Occupied Territories because the hospital costs were lower there.

Since the new law makes it impossible to submit a request for family unification, it is also impossible to arrange the status of the children. HaMoked received no response to its requests for an explanation of the legal basis for the new policy, a copy of the new procedures, and information as to where they were being published.⁵⁸

The proposed bill did not mention the issue of registration of children. Following hearings in the Knesset's Interior and Environment Committee, the bill was changed. The version of the law that was passed states, in Section 3(1), that:

The Interior Minister or the regional commander, as the case may be, may give a resident of the region a permit to reside in Israel or a permit to stay in Israel.... A residency permit or a permit to stay in Israel [may also be given] in order to prevent separation of a child under the age of 12 from his parent who is legally staying in Israel.

The meaning of this change, which was accepted without debate, is unclear.⁵⁹

On 3 December 2003, HaMoked petitioned the High Court of Justice against the Ministry's new policy regarding registration in the Population Registry of children of residents who were born outside of Israel.⁶⁰

What does registration of children have to do with family unification?

The government's decision was not intended to apply to the registration in the Population Registry of children born outside of Israel to residents. This conclusion is clear from the state's justifications for the new policy regarding family unification, and from the decision-making process regarding the government's decision and the law, and the implementation of the Interior Ministry's policy over the years.

1. Registration of children was never a family unification procedure

The state contends that the registration of residents' children born outside of Israel was always done after the parents submitted a request for family unification on their behalf. If

⁵⁸ Among the letters sent by HaMoked: to Ms. Hiyat Natzra, Documents Coordinator in the East Jerusalem office of the Ministry of the Interior, 18 November 2002; to Avi Lekach, Director of the East Jerusalem office of the Ministry of the Interior, 14 January 2003; to Attorney Galit Lavie, of the Ministry of the Interior's legal department, 9 July 2003.

⁵⁹ Regarding this exception, see below.

⁶⁰ HCJ 10650/03, *Mifat Teysir 'Abd al Hamid Abu Jawila v. Minister of the Interior et al.* The state has not yet filed its response.

there were cases in which the parents were instructed to submit another request, “it was due to the mishandling of the individual request, and not an expression of policy.”⁶¹ The state adds that, “even if technically the document is titled “Request for Registration of Children,” in practice, when a child is not born in Israel, a check is made like that done with applications for family unification, in which an extensive examination of center of life is conducted...”⁶²

However, the Ministry’s policy over the years was different. The demand that, where children of residents are born abroad, family unification was the procedure for registering the children arose only after the government’s decision, which held that family unification requests would no longer be accepted. This fact is clearly set forth in documents and letters sent to HaMoked by the Interior Ministry over the years, which prove that the distinctions that the state currently makes did not exist in the past.

Until the government’s decision, the Interior Ministry had two separate procedures. One procedure was family unification and dealt only with requests that the spouse resident in Jerusalem filed on behalf of the alien spouse. The other procedure was for registration of children, which related to arranging the status of children of residents and their registration in the Population Registry – whether the children were born in Israel or elsewhere. In 1994, following the change in policy that also enabled female residents of Jerusalem to submit requests for family unification, the Interior Ministry indeed unified the two procedures.⁶³ However, two years later, it admitted that the unification had been a result of “faulty handling” and that from then on, “the request for family unification for the spouse will be considered in a separate stage according to the customary criteria,” and the parents will be required to complete a “form requesting registration of children in the usual manner.”⁶⁴

Also, the Ministry handled the two types of requests differently. In 1997, the Ministry instituted the graduated arrangement, which lasts 5 ¼ years, and applied it only to the spouse. Registration of children was handled more rapidly, and in most cases took less than a year. Indeed, in both cases, the family was required to prove that its “center of life” was in Jerusalem, but such proof was required in almost every instance in which a resident of East Jerusalem submitted a request to the Interior Ministry. The requests were always submitted on different forms, and different clerks were assigned to handle them. The request to register a child was submitted on a form titled “Request to Register Birth in Population Registry,” in

⁶¹ Paragraph 6 of the state’s response, of 10 March 2003, in Adm. Pet. 952/02, *Mirpat Teyisir ‘Abd al Hamid Jawila et al. v. State of Israel*.

⁶² *Ibid.*, Paragraph 9.

⁶³ Regarding the change in policy, see background section, p. 5.

⁶⁴ Letter from Attorney Moriah Bakshi, of the Ministry of the Interiors’ Legal Department, to Attorney Andre Rosenthal, 18 March 1996.

which the parents listed all their children – in Section 2, the parents listed their children who were born in the Occupied Territories and in Section 4 their children who were born in Israel.

The differences between registration of children born in Israel and those born outside of Israel were primarily procedural. At the end of the 1990s, the Interior Ministry began to demand a fee for the registration of children born outside of Israel. In mid-2001, Ministry determined that a child born abroad was given the status of temporary resident for the two-year period following approval of the request, and only afterwards, the status of permanent resident. The test for approval of the registration of children was identical in the two cases, as was the separate handling of the request for registration of the child and the request for family unification of the parent.

Further proof that registration of children was never done though the family unification procedure can be found in the government's decision, which stated several principles on which the new policy on family unification would be based. One of these principles was that a person whose request for family unification was approved could not submit another request for "another alien member of the family."⁶⁵ If the Ministry is correct when it contends that a request to register a child is a request for family unification, the parent is forced to choose whether to submit a request for the spouse who is a resident of the Occupied Territories or for their children born outside of Israel. In any case, the family would not be allowed to live together in Jerusalem. This interpretation renders a new policy on family unification, which the government undertook to establish, unnecessary.

Separate procedures were justified because of the substantive difference in the requests. First, a request to register a child involves protected interests unrelated to the parents' request, in particular the best interest of the child and the right of parents to raise their children. Second, in requests for family unification, the Ministry also checks the sincerity of the marriage and whether the non-resident spouse has a criminal or security past, which is irrelevant in a request to register a child in the Population Registry.

2. The government's decision and the law are not intended to apply to children

In discussions that preceded the government's decision and the new law, and in other documents on the subject, no mention is made that cancellation of the family unification process would make it impossible to register in the Population Registry a child born in the Occupied Territories to parents who are Israeli residents.

In the presentation that the Population Administration gave to the Cabinet, which immediately preceded the ministers vote in favor of ending family unification between Israelis and

⁶⁵ Section C(5) of the government's decision.

residents of the Occupied Territories, no mention is made of registration of the residents' children. The only mention to children appears in the context of payment of the children's allotment to parents whose request for family unification was already approved.⁶⁶ The presentation's lack of particular concern on the issue of children may be the reason why the government's decision does not relate to the status of the children of residents. The decision states that no requests to obtain a lawful status in Israel would be accepted from residents of the Occupied Territories, that requests previously filed would not be approved, and "the alien spouse will be required to stay outside of Israel until decided otherwise." The decision relates to requests that are in the midst of the "graduated arrangement," calling for more stringent criteria "to prevent entry and the granting of legal status in Israel where an individual with a security or criminal background is involved... to prevent the entry into Israel of spouses from fictitious or polygamous marriages, and children of the invited spouse from prior marriages and his other relatives."⁶⁷ These clauses relate only to spouses, and does not address children at all.

On 26 May 2002, two weeks after the government's decision, Herzl Guedj, head of the Population Administration, sent a letter to the directors of the administration's offices setting forth the new procedures for the handling of family unification requests. These procedures relate only to requests that Israelis submit for their spouse – whether they are residents of the Occupied Territories or hold another nationality. For example, the procedures state that, "every citizen/resident may submit a new request to obtain a status for his spouse." If a resident of the Occupied Territories is involved, the applicant receives a letter that the request was not accepted. It is necessary to attach documents, including a "photocopy of the marriage certificate," and if the spouse is not a resident of the Occupied Territories, when the request is approved — "both spouses will be summoned to extend their status." The letter makes no mention that the government's decision affects the procedures relating to the registration of children in any way whatsoever.

The hearings on the proposed bill, which began more than one year after the Interior Ministry informed HaMoked that the cancellation of the family unification process also related to the registration of children, dealt only with spouses. Registration of children was not mentioned in the explanatory notes to the proposed bill or in Minister Poraz's comments of when he presented the bill in the Knesset plenum on first reading, on 17 June 2003.⁶⁸ When Attorney Daniel Salomon, of the Legal Department of the Interior Ministry, presented the bill in the Knesset's Interior and Environment Committee on 14 July 2003, he said that, "What currently is on the table is the same temporary order that limits or prevents the Minister of the Interior

⁶⁶ Regarding the presentation, see pp. 17.

⁶⁷ Sections B and C of the government's decision.

⁶⁸ See Section 2 of the explanatory notes.

from approving requests to grant legal status in Israel to the spouse of an Israeli.” When Attorney Adi Landau, of HaMoked, sought to discuss application of the law to children, the Committee’s chair, Yuri Shtern, said that, “I do not think that this [subject] is relevant to legislation before us.” None of the state’s representatives present at the hearing, among them Attorney Salomon, Meni Mazuz, of the Ministry of Justice, and Herzl Guedj, head of the Population Administration – corrected him.

Two weeks later, on 29 July 2003, the Committee held another hearing. This time, Knesset Member Micha’el Melchior, Chair of the Knesset’s Committee on Rights of the Child, raised the subject of the bill’s application to the registration of children of residents. Attorney Salomon did not respond, contending that children born in the Occupied Territories whose parents are citizens receive Israeli nationality at birth. When MK Melchior persisted, and asked about children of residents of East Jerusalem, Salomon stated that, “For permanent residents, it is a different story. I assume we will handle that in the future.” Following a lengthy discussion on other matters, Attorney Salomon explained that the bill indeed applies to children with one parent who is a permanent resident and the other is a resident of the territories, in cases when the child is born in the territories. When Committee members asked for further details on the new policy and sought to understand the effects on the lives of the children and the families, the state’s representatives refused to respond.

On second and third readings of the law, which were held on 31 July 2003, the Chair of the Interior and Environment Committee, Yuri Shtern, presented the bill. In his comments, he did not mention that the bill applies to children of residents of East Jerusalem, and only spoke about the bill’s application to spouses.

None of the state’s responses to the High Court in the petitions filed against the government’s decision and the law mentioned the subject of children.⁶⁹ The state’s brief to the High Court states explicitly that, “The temporary order itself limits its application to cases in which the Israeli married a resident of the region.”⁷⁰

Clearly then, government ministers and members of the Knesset did not know that their support for the cancellation of the family unification process affected children, and would separate them from their parents. The deliberate concealment of this vital information while asking decision-makers to support a policy that has such destructive consequences, flagrantly breaches the norms of proper administration.

3. Security reasons are irrelevant in the case of children

⁶⁹ H CJ 4022/02, cited above (the response was filed on 13 April 2003); H CJ 8099/03, cited above (the response was filed on 5 November 2003).

⁷⁰ Paragraph 21 of the state’s brief in H CJ 7052/03, cited above.

After several months passed and the Interior Ministry did not respond to HaMoked's inquiries regarding the change in Ministry policy, HaMoked petitioned the Court for Administrative Matters in Jerusalem. In its response, filed in March 2003, the state explained for the first time why it believed that the government's decision also applied to the registration of children. According to Attorney Sagi Ofir, of the Jerusalem District Attorney's Office, the security arguments underlying the government's decision were also relevant in the matter of the registration of children:

12. As regards the attempt to restrict the application of the said Decision 1813 to requests that are submitted for spouses only, in addition to this argument being heard in HCJ 4608/02, it would render meaningless the purpose of the directive freezing handling of applications for family unification of applicants of Palestinian descent.
13. The Respondent will argue that the central rationale lying at the base of the freeze is purely a security rationale that relates to the present and looks toward the future, and the fact that the Petitioners or other applicants are minors cannot remove the bite from this rationale, taking into account the reality that created the need to adopt the decision.⁷¹

About two months after the state filed its response, the then Attorney General, Eliyakim Rubinstein, expressed doubts about this contention, though in a different context. In his comments on the plan of Minister Poraz to grant a legal status in Israel to children of foreign workers who stayed here for a prolonged period, Rubinstein contended that, if Poraz's policy is adopted, the state would also have to apply it to the children of residents of the territories who are staying in Israel without a permit. According to Rubinstein, "Distinguishing between the two groups would be discriminatory, and it would be difficult to find any legal basis to support it... It would be hard to distinguish between the two cases, when the contention about a security threat that the children of a resident of the territories is liable to pose will not necessarily withstand [judicial] review, primarily when a minor is concerned."⁷² Despite this position, Rubinstein said nothing after the state filed its response to the Court for Administrative Matters.

The state's claim – that cancellation of family unification between Israelis and residents of the Occupied Territories is grounded on security justifications – is not convincing in the case of adults, and even less so regarding children. The discussion on the real reasons for the law, presented above, is also applicable to the registration of children.⁷³

⁷¹ Adm. Pet. 952/02, cited above, response on behalf of the respondents, 10 March 2003.

⁷² Letter from Attorney General Rubinstein to Prime Minister Ariel Sharon, 20 May 2003.

⁷³ See pp. 14-17.

Consequences of the new policy

The Interior Ministry's new policy – refusal to register Israeli residents' children born in the Occupied Territories in the Population Registry – makes it impossible for the family to live together. The policy only affects families that live in Jerusalem. Families living in the Occupied Territories were already unable to register their children in the Israeli Population Registry.

The new policy creates an unreasonable situation. The Interior Ministry registers some children in the family and allows them to live with their parents in Jerusalem, but forces other children in the family to go and live in the Occupied Territories or to remain in Jerusalem illegally. The state bases its decision solely on the place where the children were born, and not on any substantive reason. Indeed, the Interior Ministry's willingness to register the children born in Israel indicates its recognition that the family lived in Jerusalem.

The exception provided in the new law does not improve the situation. The Interior Minister or the Civil Administration is allowed to grant permits to enter Israel "to prevent the separation of a child under age twelve from his parent who is lawfully staying in Israel." This exception requires that the parent have a permit to stay in Israel. Yet, the same law cancels the family unification process and states that permits to enter Israel, based on marriage, will no longer be issued to residents of the Occupied Territories. Therefore, it is impossible for both of the parents to have a legal status in Israel and thus, the child will be able to live with only one of them.

Setting the age in the law at twelve years old is arbitrary, and will harm children who were older at the time that the law took effect and were not registered in the Population Registry. These children have yet to be registered because of the Ministry's slow handling of the requests and because many parents preferred to postpone the lengthy and complicated registration process as long as possible. As a result of the change in policy, these children will be separated from their family members who live legally in Jerusalem.

Regarding children under the age of twelve, the law leaves the question of the status they receive to the discretion of the Interior Minister. The law allows arrangement of their stay in Israel by means of permits from the Civil Administration, but it also gives the Interior Minister authority to grant them a temporary or permanent-resident status. If the state prefers that they stay in Israel on the basis of permits issued by the Civil Administration, separation of the children from their parents would result, because these permits are given for a limited period of time and are frequently cancelled. The permits do not grant social rights or health

insurance. At age twelve, the children will have to leave their families and go live in the Occupied Territories.

The change in policy has turned many children into lawbreakers. Children who are not yet born will also be breaking the law. The parents cannot accept a decree that they are not allowed to live with their children, so the children will continue to live with their family in Jerusalem without permits. They will be subject to constant harassment by the security forces who discover that the children are not registered in their parents' identity cards. The children will not be entitled to state health insurance, and the parents will not receive the children's allotment for them from the National Insurance Institute.

Testimony of N. R., 33, married with six children, resident of Jubal Mukhaber⁷⁴

I was born in Jabel Mukhaber, which is in [East] Jerusalem. On 5 June 1994, I married Jalal Rabi'a, from al-'Obediyya, Bethlehem District. We have six children. The three older children were born in the hospital in Bethlehem, and are not recorded on my identity card. The three younger children were born in Jerusalem and are listed in my card. I never lived in the Occupied Territories. I gave birth in Bethlehem because it was less expensive there. At the time, I did not have health insurance or the money to pay the hospital.

After we got married in 1999, we lived with my parents. Then we rented a place in Jabel Mukhaber. In 2002, we returned to my parents' home. My husband works in construction along with his brothers. He does not work inside Israel.

When I was pregnant with our first child, I submitted an application for family unification. I did not know that I had to check on the request, and thought that they would call me or send me the approval by mail. The first time I checked was in 1999, when an acquaintance told me that I had to go the office of the Interior Ministry to check on the request. I went, and the clerk told me that my request had been rejected, and that I could file an appeal. I filed the appeal and she said I should come back in three months.

In 2000, I went to the Interior Ministry to register my children. I submitted all the documents they requested, such as receipts for municipal taxes, electricity, and water, and confirmation from their school. Since then, I have gone back to the Interior Ministry office every three or four months, and each time, they told me that the request was still being processed.

A few months after I gave birth to Nada, on 26 June 2001, I again went to the Ministry's office. The clerk told me that my request to register the children had been rejected, and that

⁷⁴ The testimony was given to Sohad Sakalla on 27 August 2003. The particulars of N.R. are on file at B'Tselem.

they had sent notification of the rejection to my home. He said that the letter stated that the birth certificates and school documents for the older children were lacking. I told the clerk that I had been unable to go to the Ministry's office because I had just given birth. He said that was not his problem, and that if I wanted, I should talk to the person in charge. At the time, I couldn't wait to talk to the person in charge because I had my baby with me.

Another clerk, named 'Issa, saw me and told me that I should bring the documents and file a new request. In January 2002, I did that. I did not go back to the Interior Ministry office because it is very hard to get inside. I have a baby, and to enter, I have to spend the night waiting outside so that I can get a number. I called the office a number of times, but they always put me on hold. I do not have a telephone at home, and I use a telecard. Once, I called and used up the whole card before I got to speak with anybody.

In August 2002, I think it was, I contacted HaMoked: Center for the Defence of the Individual. They managed to get my three small children recorded on my ID card, and are still working on the cases involving the three older children – 'Elian, Amal, and Amir.

'Elian is in the fourth grade, Amal in the third grade, and Amir is in the first grade. 'Elian and Amal are in the a-Sal'ah school, in Jabel Mukhaber. Amir, 7, and Isra, 6, are blind and study at the Helen Keller School for the Blind. I want to send Nada, who is two years old, to preschool, but I do not have the money.

We do not visit my husband's family in Bethlehem because we are afraid that it will affect the requests that are pending with the Interior Ministry. I want to stay at home to prove that I live in Jerusalem with my husband and the children. A year ago, I went to visit my husband's family after his brother was killed, and have not been there since. Our situation is very bad. My husband is not working, and my brothers support me and my family. The new school year will soon start, and I do not even have enough money to buy clothes and books for the children.

Testimony of S. K., 36, married with two children, resident of Ras el-'Amud⁷⁵

In 1995, I married a resident of Bethlehem. My husband came to live with me in Ras el-'Amud. We lived in a house with one bedroom, kitchen, and bathroom. The house belonged to my father. In June 1996, the Interior Ministry informed me that my request for family unification had been rejected. They said it was due to security reasons, but they did not give any details. I filed an appeal, which also was rejected.

⁷⁵ The testimony was given to Iyad Haddad on 2 October 2003. The particulars of S.K. are on file at B'Tselem.

My husband still lives with me in Jerusalem. He has a magnetic card and a permit to enter Jerusalem, which is given to merchants. He got that through the company that his brother owns. Because of a heart problem, my husband has not worked since 1999. We live off the assistance we get from my brother-in-law and from a National Insurance Institute allotment.

I have two children: Nur a-Din, who was born on 8 April 1998, and Baha a-Din, who was born on 3 November 2001. I gave birth to Nur at a hospital in Bethlehem, and he has a Palestinian identity card. The Israeli Interior Ministry refused to register him in my identity card. I told the official at the Interior Ministry that I had to give birth in Bethlehem because I went into labor while I was in the city. The officials demanded that I prove this, and I brought them a medical certificate that confirmed what I said. In early 2002, I went to HaMoked: Center for the Defence of the Individual, in Jerusalem, to help me get Nur registered in my ID card. I gave HaMoked the medical document relating to Nur's birth. It was issued on 25 May 2001. HaMoked managed to register Nur at the Health Fund, but I have not yet received word about recording him in my ID card. Nur has speech problems and I take him to the Center for Child Development, in Beit Hanina [East Jerusalem]. Baha a-Din was born in Hadassah Hospital, in Ein Kerem, but the officials at the Interior Ministry still refuse to record him in my identity card. I also sought HaMoked's assistance on that matter. Not long ago, on 6 July 2003, HaMoked received a positive response, and Baha was recorded in my ID card.

The fact that my husband cannot live with us legally has a great effect on us. He only has a temporary permit to enter Israel. So, at any time, the authorities may prohibit him from moving freely within Israel. Also, the permit does not allow him to spend the night in Jerusalem. As a result, he is living in our house illegally, which causes a great deal of stress. Sometimes, my husband has to run away from the house or hide when the army comes to the area where we live. As I mentioned, my husband has a heart problem. On one hand, he does not have health insurance in Israel, and on the other hand, he cannot go to the West Bank for treatment because of the checkpoints and the restrictions on movement.

I am worried about the future of my two children, particularly Nur. I cannot register him in school in Jerusalem because he is not recorded in my identity card. I will have to register him in a school in the West Bank, which is harder to get to.

Human rights violations ⁷⁶

The new law, enacted by the Knesset in July 2003, is the first law that explicitly denies rights on the basis of national origin. The determination that Israelis are allowed to live with the person of their choice inside the country, unless they are married to residents of the Occupied Territories, is racist and discriminatory. The law also critically impairs the family life of Israelis who married, or intend to marry, residents of the Occupied Territories. Existing families will be broken up and other families will not be established. Children will be separated from their parents. The law infringes the right to choose one's spouse, have children together, and live as a family unit. The law also infringes the right of every child to grow up living with both parents.

The state's brief to the High Court of Justice states that the new law does not infringe any human rights. "In light of the supremacy of the right to life as a right without which there is nothing, which lies at the foundation of all the rights," it contends, "and in light of the existence of the exceptions and the provisional nature of the temporary order [the law] – the temporary order meets the demand for the internal balance, and it can be said that the law does not infringe protected rights in any way."⁷⁷

Furthermore, the state rejects the contentions raised in the petitions, that the law infringes certain human rights. The law, it states, does not infringe the right to equality, because "there is an objective justification to differentiate on the basis of the nature of the alien spouse."⁷⁸ According to the state, the law also does not impair the right to family life, because "all the state is doing is refrain from granting the alien spouse immigration benefits that accompany establishment of the family."⁷⁹ The state contends that it does not prevent the couple to marry, but only limits their ability "to establish the family unit in the State of Israel."⁸⁰ In any event, the state argues that international law allows the infringement of human rights in times of emergency.⁸¹

The state's arguments regarding the legal basis for the law span seventy pages, in which the state presents complex legal theories, accompanied by dozens of references to decisions of Israeli, foreign, and international courts. However, all of its arguments are based on the contention that the law was enacted to meet security needs, and that it is necessary to protect

⁷⁶ For extensive discussion on this subject, see B'Tselem and HaMoked: Center for the Defence of the Individual, *Families Torn Apart: Separation of Palestinian Families in the Occupied Territories*, July 1999.

⁷⁷ Adm. Pet. 952/02, cited above, state's response, Paragraph 50.

⁷⁸ *Ibid.*, Paragraph 105.

⁷⁹ *Ibid.*, Paragraph 59.

⁸⁰ *Ibid.*, Paragraphs 153.

⁸¹ *Ibid.*, Paragraphs 157-158.

the lives of Israeli citizens. Given that this contention has been refuted, and it has been shown that security arguments were raised only to conceal the concern for demographics that lay at the basis of the law, the legal argument of the state collapses, leaving only a racist, and thus illegal, law.

Furthermore, the state errs in its imprecise interpretation of international law. The principle of equality is among the fundamental values of Israeli law and is firmly established in decisions of the High Court.⁸² The same is true in international human rights law and international humanitarian law.⁸³ This law flagrantly breaches the principle of equality. It discriminates between Israelis, some of whom can continue to live in their homes following marriage, while others will have to leave, with the discrimination based solely on the national origin of the spouse, and not on substantive grounds. Settlers, who live in the same geographic area, are not subject to the provisions of the law.

The right to marry and to a family life is an integral part of Israeli law. In recognition of the importance of the family unit, the Knesset enabled alien spouses of citizens to receive legal status in Israel, while waiving some of the conditions that others were required to meet to obtain permanent status in Israel. A long line of High Court judgments has recognized the importance of these rights.⁸⁴

These rights are also enshrined in international law. The family is recognized as the “natural and fundamental group unit of society and is entitled to protection by society and the State.”⁸⁵ The state is forbidden to interfere arbitrarily or illegally with the privacy, family, or home of a person, and must grant the family protection and assistance, primarily while it is responsible for the care and education of children.⁸⁶ The Convention on the Nationality of Married Women imposes a duty on states to grant nationality, in specially privileged naturalization procedures, to alien women who are married to its nationals.⁸⁷

International law allows infringement of these rights in times of emergency, but only to the extent strictly required and when no other means are available.⁸⁸ The sweeping infringement

⁸² See, for example, H CJ 721/94, *El Al Israeli Airlines v. Danilowitz*, *Piskei Din* 48 (5) 749; H CJ 453/94, *Israel Women's Network v. Government of Israel et al.*, *Piskei Din* 38 (5) 501.

⁸³ Regarding human rights law, see, for example, Universal Declaration on Human Rights, Article 2; International Covenant on Civil and Political Rights, Article 26. Regarding humanitarian law, see the joint Article 3 of the Geneva Conventions of 1949; Fourth Geneva Convention Regarding the Protection of Civilians in Time of War, of 1949, Article 13.

⁸⁴ See, for example, H CJ 693/91, *Efrat v. Head of Population Registry et al.*, *Piskei Din* 47 (1) 749; H CJ 3648/97, *Stemkeh et al. v. Minister of the Interior et al.*, *Piskei Din* 53 (2) 728.

⁸⁵ International Covenant on Civil and Political Rights, of 1966, Article 23.

⁸⁶ *Ibid.*, Article 17. See, also, the International Covenant on Economic, Social and Cultural Rights, of 1966, Article 10 (1).

⁸⁷ Article 3. Justice M. Heshin ruled that, based on the right to equality, this right also applies to men. See H CJ 3648/97, cited above.

⁸⁸ See, for example, International Covenant on Civil and Political Rights, Article 4.

of these rights in the new law, based on the “fear that has not been refuted,” clearly does not meet these conditions, primarily because it discriminates between citizens. International committees charged with interpreting and implementing human rights conventions rejected Israel’s interpretation and held that the law contravenes international law. The Human Rights Committee, which is responsible for implementation of the International Covenant on Civil and Political Rights, held that this law breaches the right to marriage, the right to family life, and the principle of equality.⁸⁹

The state’s contention that the law does not infringe the right to family life is incomprehensible. The question is not one of “benefits” for the alien spouse, but the right of the couple to live together where they choose and to the right of Israeli spouses to live where they were born and raised. The argument that the couple can exercise their right to live together outside of Israel is irrelevant. The matter is comparable to the argument that shutting down a newspaper because of an article it published opposing the government does not infringe the right to freedom of speech because the article can be published in another country. The only question is whether Israel allows the exercise of rights within its territory.

The state makes no mention of the infringement of the rights of children born in the Occupied Territories that results from the prohibition on registering these children in the Population Registry. This prohibition is not in the best interest of the child, which is one of the guiding principles in Israeli law, and infringes the right of their parents to raise them, to provide them a home, to support and to protect them. The former president of the Supreme Court, Justice Me’ir Shamgar, held that, “The right of parents to maintain custody of and raise their children, with all that entails, is a primary, natural, statutory right, resulting from the natural ties between parents and their children.”⁹⁰

According to international law, every child has the right to be registered immediately after birth, acquire a nationality, and be recognized by law.⁹¹ The Convention on the Rights of the Child provides that the states “shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child,” and that “a child shall not be separated from his or her parents against their will,” except when competent authorities, in accordance with applicable law, determine that such separation is necessary for the best interests of the child.⁹²

⁸⁹ Human Rights Committee, *Concluding Observations: Israel*, 21 August 2003. See, also, Committee on the Elimination of Racial Discrimination, 63rd Session, 14 August 2003.

⁹⁰ Civ. App. 2266/93, *Doe v. Doe*, *Piskei Din* 49 (1) 221, 235.

⁹¹ International Covenant on Civil and Political Rights, Article 24 (2); Convention on the Rights of the Child, of 1989, Articles 7(1) and 8(1).

⁹² *Ibid.*, Article 18(1), Article 9(1).

Based on international law, East Jerusalem is occupied territory, and Israel must also respect the rights granted its residents by international humanitarian law, which states that the occupying power must respect family rights, which necessarily includes the right to live together, and to refrain from interfering arbitrarily with those rights.⁹³ The new law forces families to leave Jerusalem even though they wish to live together in the city, and thus breaches Article 49 of the Fourth Geneva Convention, which prohibits the deportation of residents of the occupied territory from their homes. The prohibition relates to expulsion of protected persons to an area outside the occupied territory and also within the territory, except in extraordinary cases for their benefit or for imperative military reasons. Such conditions do not exist in this case. Violation of this section is considered a grave breach of the convention.⁹⁴

⁹³ Hague Regulations attached to the Hague Convention Respecting the Laws and Customs of War on Land, Article 46; Fourth Geneva Convention, Article 27.

⁹⁴ Fourth Geneva Convention, Article 147.

Conclusions

Since September 2000, when the current intifada began, Palestinian attacks in Israel have killed 412 civilians, including seventy-four children, and wounded hundreds more. These attacks violate every principle of humanity, morality, and law, and constitute a war crime. Undisputedly, the government has the duty to protect Israeli citizens and prevent such attacks.

Over the past three years, Israel has justified many of its actions in the Occupied Territories on the grounds that they are necessary to prevent attacks inside Israel. In this way, Israel has sought to justify policies including the establishment of hundreds of checkpoints and roadblocks within the West Bank, the administrative detention of thousands of Palestinians, and the imprisonment of tens of thousand of Palestinians in enclaves resulting from construction of the separation barrier.

As the intifada continued, Israel increased the scope of its actions in the Occupied Territories. In response to reports of increasingly grave human rights violations, Israel always raised the same, security-based argument. The Supreme Court has approved the IDF's actions, and always completely adopted the state's arguments.

Realizing that this argument serves its purposes, Israel recently took another measure. In order to prevent attacks in Israel the state declared that it was necessary to prohibit Israelis married to residents of the Occupied Territories to live with their spouses in Israel. The state was so sure of the strength of its argument that it did not notice how inapplicable it was in this case. The state presented only one statistic – twenty-three Palestinians who had received legal status in Israel pursuant to the family unification process had been involved in the carrying out attacks against Israelis. These twenty-three cases, about which the State provided no details, together with the vague assessments of the security forces, were sufficient in the state's opinion to justify the collective punishment of hundreds of thousands of individuals, including many children.

The state's confidence in its argument blinded it from the realization that the decision to base the new policy on security reasons was only adopted after officials had already exposed the real reason for the policy. In documents filed with the High Court, the state denied this reality, and repeatedly offered its new version: it never claimed that the law was intended to prevent a "creeping right of return," despite the fact that the "demographic danger" facing Israel had been mentioned more than once, and the fact that the procedure for registering children was always called "family unification."

This is not the first time that the Interior Ministry has failed to accurately describe its past policies. In 1995, the Ministry began to implement its policy of "quiet deportation," which

resulted in the revocation of the residency status of hundreds of residents of East Jerusalem who had lived outside the city for many years. The Interior Ministry insisted that the policy was not new, and that “we are talking about an existing policy, still in effect, that is applied by the respondents.”⁹⁵ The High Court accepted this contention and held that “there is no basis” to the contention that the policy had changed.⁹⁶ However, the State Comptroller’s report for 1996 stated that, in December 1995, a meeting was held in the office of the Attorney General in which the participants decided to change the policy and establish new procedures.⁹⁷

The government’s decision to cancel the family unification process is racist. The security argument was raised only after the state was required to defend its position before the High Court. The state understood that preserving the “demographic balance” cannot justify such a sweeping violation of human rights. With the knowledge that over the past three years, the High Court of Justice has rejected almost all the petitions in which residents of the Occupied Territories claimed that Israel had violated their rights, and the state raised security arguments, the state decided to rely on this argument in this case as well. It can only be hoped that the justices, who have not yet decided in the matter, will nullify the law.

The new law is an integral part of Israel’s long-term policy of preserving a Jewish majority in Israel, in general, and in Jerusalem in particular. To achieve this objective, the state has not hesitated to break up families, deport people from their homes, and separate children from their parents. Therefore, more is required than a nullification of the law by the High Court or a decision by the Knesset not to extend the law in July 2004. The violation of the rights of residents of East Jerusalem will continue until Israel changes its policy in the city.

B’Tselem and HaMoked urge the government of Israel to change its policy and treat its citizens and residents equally, and call on the Knesset to repeal the new law. The Interior Ministry must reinstate the procedures for family unification and the registration of children, and process these requests efficiently and fairly. They must recognize the right of residents of East Jerusalem to marry whomever they choose and live with their spouse and children wherever they wish.

⁹⁵ Paragraph 36 of the state’s response in HCJ 7952/96, *Fares Salim Fares Butani v. Minister of the Interior et al.*

⁹⁶ Paragraph 8 of the judgment in HCJ 7952/96, cited above.

⁹⁷ State Comptroller, Annual report 47, p. 576. On this subject, see B’Tselem and HaMoked: Center for the Defence of the Individual, *The Quiet Deportation Continues*.