



המוקד להגנה הפרטית

HAMOKED

Center for the Defence of the Individual

هموكيد - مركز الدفاع عن الفرد

Written Submission for Consideration
Regarding Israel's Third Periodic Report to the
UN Human Rights Committee

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HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (hereinafter: "HaMoked"), is an organization whose main objective is to assist Palestinians of the OPT whose rights have been violated due to Israel's policies. HaMoked's activities include, among others, litigation and advocacy in the areas of freedom of movement, rights of detainees, detention, torture, and family unification in Israel and the OPT. Many of the issues that HaMoked addresses on a daily basis will be considered by the Human Rights Committee in its upcoming session. Given that the majority of these issues have been addressed at great length by other NGO's, this report will focus exclusively on the issues faced by Palestinian residents of East Jerusalem and Israel's violations of the International Covenant on Civil and Political Rights with respect to them. For additional information concerning HaMoked activities, we refer the Committee to our website: <http://www.hamoked.org>.

I. Legal Status of Residents of East Jerusalem under Israeli Law

Since the unilateral and illegal annexation of East Jerusalem, Israel has invested great effort in preserving what it calls the "demographic balance" in Jerusalem, by reducing the number of Palestinians living in the city and by maintaining a Jewish majority of some 70 percent.¹

The residents of East Jerusalem received their status as Israeli subjects following the annexation in 1967. Their status was defined as "permanent residents," in accordance with the Entry into Israel Law, 5712 – 1952, an immigration law that addresses the entry of individuals as tourists and their stay as immigrants. For purposes of Israeli law, residents of East Jerusalem are viewed as aliens whose status may be routinely revoked. And not, as should be, as the indigenous people of the area annexed and protected persons under international humanitarian law.

Residents of East Jerusalem struggle for their right to continue living in the place where they were born and where their families have lived for generations, and despite this, many of them are forced to leave the city due to Israel's ongoing policy of deliberate and systematic discrimination that includes, among other things, revocation of status, strict limitations on building,² failure to provide adequate infrastructure, and shameful budget allocations for education.³ In all these areas, Israel marks Palestinian residents of East Jerusalem as unwanted in their own city. Behind the establishment's neglect of East Jerusalem is an aspiration that its residents will seek their future outside the city, which in turn will serve the official goal of maintaining demographic balance in the city.

This report will address two of the main ways in which Israel's Interior Ministry – which is responsible for implementation of the Entry into Israel Law – keeps the number of Palestinians living in Jerusalem to a minimum: (1) by revoking residency en masse; and (2) by limiting the granting of legal status in Israel to Palestinian residents of the OPT who marry residents of East Jerusalem and to the children of

¹ HaMoked and B'Tselem, *The Quiet Deportation: Revocation of Residency of East Jerusalem Residents*, April 1997, footnote 2, available at: http://www.hamoked.org/items/10200_eng.pdf.

² Ir Amim, *Jerusalem Master Plan 2000 – General Analysis and Comments*, June 2010, available at: <http://www.ir-amim.org.il/Eng/Uploads/dbsAttachedFiles/master.pdf>.

³ Association for Civil Rights in Israel: *Human Rights in East Jerusalem: Facts and Figures*, May 2010 (Hebrew, Arabic, and English), available at: <http://www.acri.org.il/pdf/eastjer2010.pdf>.

these unions.⁴ It should be noted that the Interior Ministry executes these policies through a specialized branch of the Population Administration located in East Jerusalem.⁵

II. The Silent Deportation - Mass Revocation of Residency

Since Israel's annexation of East Jerusalem, more than 13,000 Palestinian residents of East Jerusalem have lost their right to live in their city.⁶

Mass revocation of residency can be traced to the 1998 decision of Israel's High Court of Justice in *Awad v. the Prime Minister*.⁷ The Court ruled that the annexation of East Jerusalem turned East Jerusalem residents into Israeli permanent residents and that such residency "expires" upon the relocation of the center of one's life. Specifically, the court applied the Regulations on Entry into Israel to residents of East Jerusalem.⁸ According to Regulation 11A, a person shall be considered as one who has left Israel and has settled in a country outside of Israel, if he meets one or more of three criteria: (1) residency outside of Israel for a period of at least seven years; (2) permanent residency abroad; and (3) foreign citizenship.

Since the decision, the Interior Ministry has used the *Awad* ruling as a device for revoking the status of thousands and for the "dilution" of the Palestinian population in East Jerusalem.⁹ The *Awad* ruling has become a legal cage that imprisons the residents of East Jerusalem, denies their mobility, and binds them to a narrow and

⁴ See HaMoked Annual Report 2007, Jerusalem Residency, pp. 109-139, available at: http://www.hamoked.org/items/13200_eng.pdf.

⁵ Israel established a special office for the Population Administration to handle East Jerusalem residents. This is the only city in the country in which there are two population administration offices. Jewish residents who live in the area that was annexed by Israel receive their services from the population administration office in central Jerusalem. Only Palestinian residents of East Jerusalem – from the north, east and south – are referred to the East Jerusalem office. This inaccessible office has become notorious for its inferior and insufferable service that flouts the basic ideas of sound administration.

See HaMoked Complaint to Interior Ministry, "Overcrowding and Degrading Treatment at the Entrance to the Office of the Population Administration in East Jerusalem," 26 Aug. 2009, available at: <http://www.hamoked.org.il/items/111850.pdf>; Anat Faruz, "HaMoked: Center for the Defence of the Individual: Degrading Treatment to Those Using the Population Administration Office of the Ministry of the Interior in Wadi Joz," *Kol HaIr*, pg. 40, 2 Oct. 2009; HCJ 2783/03, *Jabra v. Minister of the Interior*, *Piskei Din* 58(2) 437 (2003); Admin. Pet. (Jerusalem) 754/04, *Bedewi v. Director of the District Office of the Population Administration*, (Judgment dated 10 October 2004).

⁶ See Annex I for a table of the Interior Ministry's official figures for the years 1967 to 2008, with the exception of 2002, for which no statistics were available.

⁷ HCJ 282/88, *Awad v. Prime Minister*, *Piskei Din* 42(2) 424 (1988). Extensive analysis of the *Awad* decision and its devastating consequences can be found throughout the Joint Application of HaMoked and the Association for Civil Rights in Israel, Admin. App. 2392/08, *Syag v. Minister of Interior*, Application to Join as *Amicus Curiae*, available at: http://www.hamoked.org/items/110021_eng.pdf.

⁸ Regulations on Entry into Israel are available in Hebrew at: <http://www.hamoked.org.il/files/2010/3050.pdf>.

⁹ See HaMoked and B'Tselem, *The Quiet Deportation: Revocation of Residency of East Jerusalem Residents*, April 1997, available at: http://www.hamoked.org/items/10200_eng.pdf. See also HaMoked and B'Tselem, *The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of East Jerusalem Palestinians*, Sept. 1998, available at: http://www.hamoked.org/items/10300_eng.pdf.

abandoned space in which they were born.¹⁰ The sanctions for leaving the city for a limited period, as well as for acquiring status in other regions, are the loss of the home and the impossibility of returning to the homeland.¹¹ All residents of East Jerusalem may be exposed to this policy and its outcome; and yet, the harm to female residents is especially severe.¹²

The year 2008 was the harshest year of the “silent deportation.”¹³ In response to a Freedom of Information Law request by HaMoked, the Interior Ministry reported that in 2008, it revoked the residency of **4,577 residents of East Jerusalem**, including the residency of 99 children.¹⁴ The Interior Ministry also reported that the majority of revocations were executed in March and April. The year 2006 saw a similar explosion in the number of revocations, with the number standing at **1,363 persons**. Thus, half of the revocations from 1967 through 2008 occurred between 2006 and 2008 alone. The sharp rise in revocation of residency status was touted as an illustration of improvement in work procedures and proper monitoring by the ministry. According to Israel, “improvement” does not mean enhancing the level of service provided for the welfare of the residents, but rather trapping in its net as many Palestinians as possible and condemning them to the State’s policy of revocation of residency.

The Interior Ministry’s revocation policy deprives residents of East Jerusalem of their special rights as “protected persons” under international humanitarian law.¹⁵ Article 12(4) of the International Covenant on Civil and Political Rights states explicitly that “no one shall be arbitrarily deprived of the right to enter his own country.”

United Nations Human Rights Committee General Comment to the Article 12(4) provisions of the Covenant state that the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable.¹⁶

The United Nations Human Rights Committee has also held that the right to return to one’s country per Article 12(4) to the Convention is not available exclusively to those

¹⁰ Joint HaMoked and the Association for Civil Rights in Israel application, Admin. App. 2392/08, *Syag v. Minister of Interior*, Application to Join as *Amicus Curiae*, available at: http://www.hamoked.org/items/110021_eng.pdf.

¹¹ Amira Hass, "Palestinian Jerusalemites Go Work Abroad and Get Residency Revoked Upon Return," *Haaretz*, 20 June 2010, available at: <http://www.haaretz.com/misc/article-print-page/palestinian-jerusalemites-go-work-abroad-and-get-residency-revoked-upon-return-1.297136?trailingPath=2.169%2C2.225%2C2.239%2C>.

¹² *Syag*, para. 62-66. For a particularly heartrending example of the disproportionate impact of revocation on women, see Adm. Petition 8612/08, *Abu Haikal v. Minister of the Interior*, available at: http://www.hamoked.org/items/110840_eng.pdf.

¹³ Ministry of Interior's Response, "Revocation of residency status from permanent residents in Jerusalem," 5 Nov. 2009, available at: http://www.hamoked.org/items/110587_eng.pdf; see also Nir Hasson, "Israel Stripped Thousands of Jerusalem Arabs of Residency in 2008," *Haaretz*, 1 Dec. 2009, available at: <http://www.haaretz.com/hasen/pages/1132170.html>

¹⁴ Ministry of Interior's Response, id.

¹⁵ See *Syag*, para. 96-732.

¹⁶ Human Rights Committee's General Comment 27, CCPR/C/21/Rev.1/Add.9 of 2 November 1999, para. 21) (hereinafter: "General Comment 27").

who are citizens of that country. It most certainly also applies to those who because of their special ties to that country, cannot be considered a mere “alien”. As an example, the Committee points out that this right shall also be available to residents of OPT whose rule has been transferred to a foreign country of which they are not citizens.¹⁷

In light of the above, Israel is in clear violation of Article 12(4) of the International Covenant on Civil and Political Rights, as respect to residents of East Jerusalem. So long as we are dealing with East Jerusalem residents, for whom Jerusalem is their first home, and who enjoy the status of protected persons according to international humanitarian law, it must be established that their residence permits in Israel include a general stipulation that the **permit does not expire even in the wake of continuous living abroad or the acquisition of status in another country.**

Suggested Questions: Please explain how Israel’s policy of revocation of residency complies with Israel’s obligations under Article 12(4) of the International Covenant on Civil and Political Rights. Specifically, why does Israel continue to treat residents of East Jerusalem as aliens, rather than natives of Jerusalem entitled to a right to their homeland?

III. Draconian Limitations on Right to Family Unification and Child Registration - The Nationality and Entry into Israel Law (Temporary Order)

Since 2003, Israel has also implemented the silent transfer of Palestinian residents of East Jerusalem from their homes through the apparatus of the Nationality and Entry into Israel Law (Temporary Order) (hereinafter "Temporary Order" or the “Law”).¹⁸ The Law disproportionately impacts residents of East Jerusalem, who are forbidden from family unification not only with their spouses, but with their minor children.¹⁹

HaMoked with other human rights organizations petitioned the High Court of Justice, challenging the constitutionality of the law. In May 2006, the Court rejected the petitions.²⁰ Although in the ruling, six of the eleven justices on the panel wrote that the law was unconstitutional and constituted a disproportionate violation of the constitutional rights of the Arab citizens and residents of Israel to family life, the court allowed the Knesset the possibility of replacing it with a different arrangement within seven months, and did not abolish it.

In 2007, the Knesset amended the Law and inserted a “humanitarian clause,” as if implementing the Court’s comments and minimizing the Law’s damaging effect, but in practice, the amendment in effect expanded and solidified the arrangement that was

¹⁷ General Comment 27, para. 20.

¹⁸ The Temporary Order is available in Hebrew at: <http://www.hamoked.org.il/files/2010/5727.pdf>. For extensive information regarding the Temporary Order’s application to residents of East Jerusalem and their families, see HaMoked and B’Tselem, *Forbidden Families*, Jan. 2004, available at: http://www.hamoked.org.il/items/12600_eng.pdf.

¹⁹ As the children of citizens are granted citizenship as of right, the only children affected by the restrictions of the Temporary Order are the children of residents of East Jerusalem. The latter are not entitled to residency by virtue of birth to an East Jerusalem resident.

²⁰ HCJ 7052/03, *Adalah v. Minister of Interior*, available in English at: http://elyon1.court.gov.il/files_eng/03/520/070/a47/03070520.a47.htm.

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disqualified on principle by a majority of the justices. After its passage, several additional petitions were submitted against it, including HCJ 5030/07 *HaMoked v. Minister of Interior*.²¹

At the center of HaMoked's petition is the Law's deleterious impact on children.²² HaMoked has petitioned the court to cancel the Law as it applies to minors who are children of permanent residents of Israel, or, alternatively, to rule that every child, one of whose parents is a permanent resident, and who lives permanently in Israel, shall be entitled to permanent residency in Israel.

As part of its petition, HaMoked critically attacked the 2007 amendment. Section 3A1 was added to the Law which enables the Minister of the Interior to approve temporary status in Israel on special humanitarian grounds, according to the recommendation of a professional committee which he appointed for such purpose. This "humanitarian exception," however, is limited from every aspect, to the point that it loses any substantial content. Thus, for example, the maximum status that may be received according to the "humanitarian exception" is temporary residence. The exception is not applicable unless a "family member" of the applicant is staying in Israel legally, and a "family member" is defined only as the applicant's spouse, parent or child. A humanitarian exception is primarily intended for non-routine cases, for unique circumstances, which are not recognized by this narrow definition. To the list of defects of the "humanitarian exception" section is added the determination that it will not be possible to assist the children of permanent residents in the absence of an additional humanitarian reason in their case. In other words, **the child's mere residence in Israel, together with his resident parent, does not constitute sufficient humanitarian grounds for granting him status.**

In the Interior Ministry's most recent response to HCJ Petition 5030/07, the state provided enlightening statistics regarding the functioning of the above-mentioned "Humanitarian Committee."²³ Since its establishment, over 600 requests were filed, only 282 were reviewed, and most shockingly, only 33 requests received a positive recommendation to grant the petitioners temporary military permits, that allow their stay in Jerusalem but deny them all social rights. Of particular significance is the fact that while the committee has jurisdiction to recommend temporary residency (which does entitle a recipient to accompanying social benefits), no such recommendation was made in any of the meager 282 cases reviewed.

It should also be noted that most recently, the Interior Ministry has taken a radical position with respect to its interpretation of the Temporary Order as applied to children of Palestinian residents of East Jerusalem. Its newest claim is that the Law (which amongst its provisions, distinguishes between children under and over age 14) creates **no obligation to grant permanent residence to children under 14**. In its

²¹ The petition is available at: http://www.hamoked.org/items/8732_eng.pdf.

The additional petitions pending before the High Court of Justice are: HCJ 830/07, *Tabila v. Minister of Interior*; HCJ 544/07, *Association for Civil Rights in Israel v. Minister of Interior*; and HCJ 466/07, *Galon v. Minister of Interior*.

²² For further discussion of the Temporary Order's application to children and spouses of East Jerusalem residents, see HaMoked's Annual Report 2007, *Jerusalem Residency*, pp. 109-139, available at: http://www.hamoked.org/items/13200_eng.pdf.

²³ HCJ 5030/07, *State's Supplemental Response*, 13 April 2010.

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Notice of Appeal in Adm. App. 5718/09 *Minister of Interior v. Srar*, the State's intention is clear: to provide permanent residency status to as few Palestinian children as possible.²⁴

In addition, on 15 June 2008, Executive Order 3598 was issued, widening the scope of the Temporary Order to include an absolute prohibition on family unification with residents of Gaza, aged 14 and over.²⁵ In other words, Palestinian residents of East Jerusalem with Gazan spouses and/or children are given no choice but to return to Jerusalem without their loved ones or permanently shift their lives to Gaza, thereby forfeiting their constitutional right to live in their homeland

Since the Temporary Order went into effect on 31 July 2003, it has since been amended twice, and its validity has been extended time and again.²⁶ Not only does Israel have no intention of revoking the Law, but in its most recent submission to the High Court of Justice in the matter, it argued vehemently in favor of the continued enforcement of the law.²⁷ Moreover, Executive Order 1379, dated 14 February 2010, orders that a team of governmental bodies, headed by the Prime Minister's Office, commence drafting of a uniform immigration law. A legal expert opinion provided by the Prime Minister's Office on 10 February 2010 makes explicit that the legislative proposal should address immigration of family members, **including an examination of the Temporary Order** – thus, expressing a clear intention of the Executive Office to anchor the Temporary Order into permanent law.

Suggested Questions: Please explain how Israel's implementation of the Temporary Order and Executive Order 1379 complies with Israel's obligations under Articles 23 and 24 of the International Covenant on Civil and Political Rights. Specifically, how are the obligations of Articles 23 and 24 met when: (1) Israel intends to incorporate the Temporary Order into permanent immigration law; (2) the State posits that the Temporary Order does not even require the granting of permanent residency to children under 14; (3) the Temporary Order orders that children age 14 and over are eligible to receive military permits only (with no access to social benefits); (4) the Humanitarian Committee, established under section 3A1 of the Temporary Order, has recommended the granting of military permits to petitioners in 33 cases alone (and has not recommend the granting of temporary residency in a single case); and (5) the Executive Order 1379 places an absolute bar on family unification with residents of Gaza, age 14 and over?

²⁴ Adm. App. 5718/09, *Minister of Interior v. Srar*, Notice of Appeal, available in Hebrew at: <http://www.hamoked.org.il/items/111633.pdf>. The underlying decision of the Jerusalem Administrative Court is available in Hebrew at: <http://www.hamoked.org.il/items/111632.pdf>.

²⁵ Executive Order 3598, available in Hebrew at:

<http://www.pmo.gov.il/PMO/Archive/Decisions/2008/06/des3598150608.htm>.

²⁶ The Temporary Order in its current form is valid until 31 July 2010.

²⁷ HCJ 5030/07, *State's Supplemental Response*, 13 April 2010.

ANNEX I:

Statistics on Revocation of Residency Rights

Year	No. of Palestinians whose residency was revoked
2008	4,577
2007	229* (the original figure provided was 289)
2006	1,363
2005	222
2004	16
2003	272
2002	No Data
Till End of April 2001	15
2000	207
1999	411
1998	788
1997	1,067
1996	739
1995	91
1994	45
1993	32
1992	41
1991	20
1990	36
1989	32
1988	2
1987	23
1986	84
1985	99
1984	161
1983	616
1982	74
1981	51
1980	158
1979	91

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1978	36
1977	35
1976	42
1975	54
1974	45
1973	77
1972	93
1971	126
1970	327
1969	178
1968	395
1967	105
Total	13,005

See:

http://www.btselem.org/english/Jerusalem/Revocation_Statistics.asp

<http://www.hamoked.org.il/items/110582.pdf>

<http://www.hamoked.org.il/items/110584.pdf>

http://www.hamoked.org/items/110587_eng.pdf

<http://www.hamoked.org.il/files/2010/112360.pdf>