At the Jerusalem District Court **AdmA 2392/08**

Set for: 24 December, 2008

Re: **Hatham Siag**
Represented by attorneys T. Kotav and/or S. Hori and/or M. Hana
2 Abu Ovadiah Street, Jerusalem
Tel: 02-6273723; Fax: 02-6281218

Appellant
- Versus -

Minister of the Interior
Represented by the State Attorneys
29 Salah a- Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

Respondent

1. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger - registered non profit organization**
Represented by attorneys Yotam Ben Hillel (lic. No. 35418) and/or Yossi Wolfson (Lic. No. 26174) and/or Hava Matras-Iron (lic. no 35174) and/or Sigi Ben-Ari (lic. no. 37566) and/or Abir Joubran-Dekoar (lic. No. 44346) and/or Ido Blum (lic. no. 44538) and/or Nirit Haim (lic. No. 48782)

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2. **The Association for Civil Rights in Israel**
Represented by attorneys Oded Feller (lic. no. 36085) and/or Dan Yakir and/or Dana Alexander and/or Avner Pinchuk and/or Michal Pinchuk and/or Aouni Kana and/or Lila Margalit and/or Limor Yehuda and/or Tali Nir and/or Gil Gan-Mor and/or Nasrath Dakoar and/or Nasrin Alian

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Applicants

Application to Join as Amicus Curiae

The honorable court is requested to join the applicants to the court proceeding as *amicus curiae.*

I. Introduction

1. This appeal is concerned with the revocation of the permanent residence permit from the appellant, a native of eastern Jerusalem. The respondent revoked the status of the appellant, and the honorable court of first instance did not deem it correct to intervene with this decision. The honorable court of first instance based its determination on a judgment that was given two decades ago in the Awad case (HCJ 282/88 **Awad v. The prime Minister and Minister of the Interior** *Piskei Din* 42(2) 424 (1988) (hereinafter: the "**Awad case**").

2. The **Awad** rule, according to its language and its purpose, was meant to "reflect the realities of life". Ever since it was decided and until today, not only has it not reflected today's realities, but according to the interpretation given to it by the respondent it has became an aggressive and devastating bureaucratic administrative tool, for altering the realities of life. Over the past twenty years the interpretation given by the respondent to the **Awad** rule has been used as a device for revoking the statuses of thousands and for the "dilution" of the Palestinian population in eastern Jerusalem. This policy is consistent with the general abusive policy towards these residents.

3. In the years that have elapsed since the judgment in the **Awad** case was decided, it has become apparent that the price for the simplistic implementation of this law has been paid by those people for whom Jerusalem has been the home to which to return. The implementation of this law by the respondent has placed the Palestinian residents of eastern Jerusalem between a rock and a hard place: their right to leave their home for a limited period for self realization, education, livelihood, and participation in the life of modern society has been pitted against the right to a home and homeland. The **Awad** law has become a legal cage that imprisons the residents of eastern Jerusalem, does not allow them to be mobile like everyone else, and binds them to a narrow and abandoned space in which they were born. 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.

4. Indeed, ever since the **Awad** rule was decided and up until today, the honorable court has not examined the harsh **results** that have ensued for the respondent's interpretation of the **Awad** rule**.** The honorable court has not tested the abstract analysis that was made in the judgment in the **Awad** case against the backdrop of the real world and against the backdrop of the norms that apply to eastern Jerusalem, has not modified it to the realities of life and consequently has failed to prevent the harsh result that flow from this type of interpretation of the rule by the respondent.

5. From the perspective of the reality of life it has become clear that the respondent gave the broadest interpretation to the **Awad** rule, and used it in order to revoke the status of thousands of eastern Jerusalem residents. The severe results have yet to be discussed. The normative aspects concerning eastern Jerusalem and its residents have also not been discussed in depth. Up until now these have not been tested against the provisions of international law – international human rights law and international humanitarian law – which states that the residents of eastern Jerusalem are not merely "residents of Israel" but are "protected persons", who are entitled to continue living in the region. There has been no reference to the provisions of international human rights law, which states that every person is entitled to return to his country. These provisions of international law should be interpreted together with the **changes within the last twenty years to internal Israeli law with respect to eastern Jerusalem,** which apply in the wake of political agreements to which Israel has committed itself. All of these shed light on the special status of eastern Jerusalem residents. Even if the status of eastern Jerusalem residents is derived from the Entry into Israel Law, 5712-1952 (hereinafter: the "**Entry into Israel Law**"), as was held in the **Awad** case, their status is not like the status of any other resident, and most certainly their status is not like those immigrants who came into Israel. Their special circumstances, as persons whose mothers and fathers lived in Jerusalem before its annexation to Israel, has an impact upon the law that applies to them.

6. The appellant's case raises these aspects. The applicants humbly request to join the proceedings and to shed light on them.

II. Amicus Curiae – the Normative Framework

7. Applicant 1, HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (hereinafter also – "**HaMoked** : **Center for the Defence of the Individual** " or "**HaMoked**"), is an organization that already, for two decades, has been active in the promotion of human rights in the Gaza Strip and West Bank regions, including eastern Jerusalem. HaMoked assists eastern Jerusalem residents to fight against a wide range of human rights violations, which pertain to their civilian status and their rights to a family life. HaMoked handles, in this context, cases of eastern Jerusalem residents whose statuses have been revoked; family unification applications, which are filed by eastern Jerusalem residents for their spouses; applications for the registration of the children of those residents, and cases of those who have no status and who live in the city. As a rule, HaMoked deals with families. This involves the families of eastern Jerusalem residents, who, quite frequently, encounter some of the difficulties noted above. At the outset, HaMoked tries to resolve the cases of those families by applying to the Ministry of the Interior, however, to its great distress, in many cases this handling reaches a dead end, which then requires an application to the courts. Thus far, the Center for the Defence of the Individual has filed more than 200 petitions with the HCJ and the Courts for Administrative Affairs on these issues that were mentioned above. In many of these cases the particular cases involve issues that take on a universal dimension – issues that may broadly impact the whole issue of the status of eastern Jerusalem residents.

8. Applicant 2, The Association for Civil Rights in Israel, is the oldest and largest human rights organization in Israel. Its purpose is to protect the whole spectrum of human rights in Israel, in the occupied territories and any other place in which human rights are violated by the Israeli authorities. Among other things this applicant is active in the protection of human rights in aspects related to Israeli citizenship and residency. The applicant's activities directly impact the wide spectrum of disadvantaged persons and populations, including: eastern Jerusalem residents; migrant workers; the spouses, parents, and children of Israeli citizens and residents; refuges and asylum seekers; stateless persons; etc. The applicant acquired expertise and is active in the legal arena as it pertains to aspects of human rights in these fields (among others, in legal proceedings in which the applicant was involved in human rights cases in the context of Israeli citizenship and residency, see: HCJ 4702/94 **El Tai v. Minister of the Interior**, *Piskei Din* 49(3) 843 (1995) (the right to political asylum); HCJ 7139/02 **Abbas-Beza v. Minister of the Interior**, *Piskei Din* 57(3) 481 (2004) (naturalization proceeding for spouses of citizens) AdmAR 173/03 **The State of Israel – Ministry of the Interior v. Salamah** (judgment dated 9 May, 2005) (conditions for the release of illegal detainees from custody after 60 days) AdmA 4614/05 **The State of Israel v. Oren** (judgment dated 16 March, 2006) (illegality of the requirement that a common law spouse of an Israeli citizen leave Israel as a condition for examining an application for status resolution); HCJ 4542/02 **Kav LaOved (Worker's Hotline) v. The Government of Israel** (judgment dated 30 March, 2006) (annulment of the arrangement binding migrant workers to their employers) HCJ 7052/03 **Adalah - Legal Center for Arab Minority Rights in Israel v. Minister of the Interior** (judgment dated 14 May, 2006) (the constitutionality of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003)).

9. The applicants have on more than one occasion served as "public petitioners" "on various issues of general public importance, related to the rule of law in its broadest sense and to other matters of a constitutional nature" (HCJ 651/03 **The Association for Civil Rights in Israel v. the Chairman of the Elections Committee for the Sixteenth Knesset** *Piskei Din* 57(2) 62, 69 (2003). As stated the concrete dispute in this appeal also has public attributes, which at its core is related to the rule of law.

10. Indeed on more than one occasion within the framework of a specific proceeding a fundamental issue arises, which has ramification that are much broader than the individual case in question. In these cases a third party with relevant expertise – such as the applicants – can make their contribution towards consolidating the rule by means of assisting the court by providing a full and clear presentation of their knowledge in the filed of their expertise, which has ramifications upon the fundamental issues. For this purpose the court has recognized the importance of joining a proceeding as an "amicus curiae" in the appropriate cases. As may be seen in the dicta of Chief Justice Barak:

> "The "amicus curiae" institution has been recognized in various legal theories for hundreds of years… its main

> point is to assist the court on any issue whatsoever, by someone who is not a direct party to the dispute in question. Originally this institution was a tool for presenting an exclusively neutral position vis-à-vis the proceedings, while rendering objective assistance to the court. Later on, however the "amicus curiae" institution developed into a party to the proceedings, which was not necessarily neutral or objective, but he presents – by virtue of his job or occupation – an interest or expertise that should appropriately be heard before the court in the specific dispute". (*Retrial* 7929/96 **Kozli v. The State of Israel**, *Piskei Din* 53(1) 529, 533 (1999) (hereinafter: the "**Kozli case**")

11. The guiding principle, therefore, is that the knowledge and expertise, which the prospective applicant for joining the proceedings as *amicus curiae* provides, is an appropriate presentation and articulation of the main aspects of the particular dispute. As in the dicta of Chief Justice Barak:

> "In those cases where there is a third party – who is not himself involved in the dispute – it may be possible to join him as an "amicus curiae", if his presence at the proceedings contributes towards the consolidation of a rule in a specific case, and on the basis of a full presentation of the relevant positions in the case in question provides eloquent representation and knowledge to the representative and professional bodies." (**Kozli case** ibid.).

12. The **Kozli case** provides a list of the tests that are required in order for any organization to receive the status of an "amicus curiae":

> "Indeed, before giving an organization or person the right to express its position in a proceeding to which it is not an original party one must test the potential contribution of the proposed position. One must test the nature of the organization that applies to join. One must investigate its expertise, its experience and the way in which it articulates the interest, for the sake of which it has applied to join the proceedings. One should clarify the class of proceeding and the procedure followed therein. One must take into account the parties to the proceeding itself and the stage at which the joinder application was filed. One must be alert to the nature of the issue that is to be decided. All of these are not exhaustive criteria. They are insufficient to determine in advance when, as a matter of law, one may join a party to the proceeding in the capacity of an "amicus curiae", and when this is inappropriate. At the same time one must consider these criteria, amongst others, before

making a decision on the aforementioned joinder' (*Ibid*. 555)

13. The rule that the Supreme Court established with respect to "amicus curiae" in the **Kozli** case, by virtue of which joinder as an amicus curiae was allowed, has been implemented in various types of proceedings, that are conducted in various courts (**In constitutional and administrative proceedings** see for example: HCJ 1119/01 **Zaritskiya v. Ministry of the Interior** (decision dated 15 April, 2001); HCJ 2531/05 **"Recovery and Recuperation" Management and Services Netanya Ltd. v. the state of Israel – Ministry of Health** (decision dated 26 June, 2005); HCJ 2056/04 **Beit Surik Village Council v. The Government of Israel** *Piskei Din* 58(5) 807, 824-826 (2004); HCJ 7803/06 **Abu Erpah v. Minister of the Interior** (decision dated 25 December, 2006); Adm.Pet (Tel Aviv) 1464/07 **Perah Hashaked Ltd. v. Bat Yam Municipality** (decision dated 9 July, 2007). **In civil proceedings** see for example: CA 11152/04 **Pardo v. Migdal Insurance Company Ltd**. (decision dated 4 April 2005); CA 9165/02 **Clalit Health Services v. Minister of Health** (decision dated 29 September, 2006); **In the Labor Courts** see for example: LA 1233/01 **Orielli – Herzlyia Municipality** *Piskei Din Avodah* 37 508, 519 (2001); *Misc.App* 3415/00 **Na`amat - Clal Insurance Company Ltd.** (decision dated 11 September, 2001); Nat. Lab 1245/00 **Diwis – National Insurance Institute** (judgment dated 3 November, 2005).

14. As stated, the court is prepared under suitable circumstances to allow the joining of an amicus curiae, if knowledge, within its field of expertise, is liable to assist the determination of the case in question in an efficient and compete manner (see also in this matter: Michal Aharoni "The American Friend – A Sketch of the Amicus Curiae" [in Hebrew] *HaMishpat* 10 (5765) 255; Israel Doron, Manal Totry-Jubran "Too Little, Too Late? An American Amicus In An Israeli Court" 19 *Temple Int'l.&Comp. L. J.* 105 (2005)).

15. In light of the fundamental nature of this issue, which this appeal raises, the relevant considerations for joining as an "amicus curiae", and in light of the special expertise and experience of the applicants, the honorable court is requested to order the joinder of applicants as "amicus curiae".

16. The joinder of the applicants is not expected to overburden the judicial hearing. Firstly, the applicants wish to join as "amicus curiae" solely for the purpose of filing an opinion on their behalf, and in order to argue the issues that appear in the said opinion. Moreover, the position and degree of involvement in the proceedings shall be established by the court, as it deems necessary. Because the applicants shall not intervene in the clarification of the factual questions between the parties, in the event that there are such, and because their involvement will be confined to an opinion on substantive questions that it addresses, their joinder, then, will not harm the efficiency of the hearing. In addition, the application is being filed at the preliminary phases, before there has been a hearing on the merits, and before the respondent's heads of argument have been filed, in order not to cause damage or delay to any of the parties in conducting the hearing.

III Details of the Applicants' Arguments

Introduction

17. Two decades ago the Supreme Court laid down the first layer with regard to the position of east Jerusalem residents. This was in the **Awad** case. The judgment in the **Awad** case was given against the special and exclusive factual backdrop – both in connection with the facts that pertain to the nature of the petitioner's emigration from Israel in that case and in relation to his activities during the first intifada. The judgment instituted several guidelines regarding the nature of the status of eastern Jerusalem residency and the criteria according to which residency would be revoked.

With the passing of twenty years, we need to test the abstract analysis in the **Awad** judgment against the backdrop of the real world and the reality of life. One must also examine the rulings in the **Awad** case against the backdrop of other norms in the legal arena, especially the norms that apply to eastern Jerusalem.

From the perspective of the reality of life it has become clear that the respondent has given the **Awad** rule the broadest interpretation, and has turned it into a tool for denying the status of thousands and thereby "diluting" the Palestinian population of eastern Jerusalem. This policy is integral to its general policy of abuse towards these residents.

From the perspective of the law, which for our purposes include the provisions of international law – international human rights law and international humanitarian law – eastern Jerusalem residents are not merely "Israeli residents" (as has been held in domestic Israeli law) but are also "protected persons" who are entitled to continue to live in the territories. We are also dealing with the norms of international human rights law, in terms of which every person has a right to return to his country. These provisions should be interpreted together with the amendments made to domestic Israeli law with respect to eastern Jerusalem, and which apply as the result of political treaties to which Israel has committed itself. All this sheds light upon the special status of eastern Jerusalem residents. Even if the status of eastern Jerusalem residents is derived from the Entry into Israel Law, as was held in the **Awad** case their status is still not the same as the status of any other residents, and most certainly their status is not the same as immigrants who came to Israel. The special circumstances of those whose fathers and mothers lived in eastern Jerusalem before its annexation to Israel, impacts the law that applies to them.

Below we shall deal with each thing in order

The Judgment in the Awad case

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

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

> …During the petitioner's period of stay in Israel, and especially in the most recent period, in which, in the opinion of the Minister of the Interior, he resided unlawfully in Israel, the petitioner openly and intensively worked against Israeli rule over the regions of Judea and Samaria and the Gaza Strip… in 1983 the petitioner published a book in Arabic and in English titled *Non-Violent Resistance: A Strategy for the Occupied Territories*. In January 1985 the petitioner established an institute in Jerusalem which he heads, and which is called the 'Center for the Study of Non-Violence'. There are differing reports as to the nature and outlook of this Center. The petitioner argues that he is opposed to Israeli rule in the occupied "territories" but that his calls for actions against it are only through nonviolent means. Inter alia the petitioner pointed to various nonviolent resistance methods, such as boycotting goods, refusal to work within Israeli frameworks, refusal to pay taxes or to fill in forms, however all the aforesaid measures of resistance should be done, according to the petitioner's outlook, on one condition: no physically violent action should be carried out. The petitioner supports the sovereign existence of the State of Israel alongside the existence of a sovereign Palestinian political entity. And these two states, according to his teachings and his opinions, are liable in the future to exist side by side in peace and harmony. The petitioner even went as far as to suggest on Israeli television (at the beginning of April) that "we should strive for full reconciliation including negotiations with the Palestinians with regard to granting compensation for their abandoned property and opening a new page in relations between the Jewish and Palestinian peoples."
>
> The petitioner considers himself one of the most moderate thinkers among the Palestinian leadership.

> According to his principles "one must condemn the violent response – even the throwing of stones and Molotov cocktails – which is happening right now in the 'held territories', and even more so actions that are more violent than these. In contrast to these statements, it has been noted by 'Yossi' – who serves in the Israeli Security Agency in the Division for Countering Sabotage and Hostile Terror Activities in the Jerusalem and Judea and Samaria regions, and whose affidavit is attached to the respondent's reply – that the "apparently moderate image that the petitioner has attempted to project for himself is merely a ruse that is incompatible with his true goals". The petitioner's political aims, according to 'Yossi' are the "liberation of the territories from Israeli rule and after that the establishment of a bi-national Israeli-Palestinian State which is liable to bear Palestinian features". According to 'Yossi's account, the petitioner is advocating civilian rebellion, and is calling for and advocating, among other things, the boycotting of Israeli goods and services, refusal to pay taxes, organized desertion of Israeli workplaces, and the failure to carry an identity certificate, the excommunication of collaborators, and similar forms of action. At first the petitioner's activities failed to gain a following in the Arab street. But as soon as the uprising began in the territories, in December 1987, his ideas began to be given tangible expression in proclamations that were issued by the uprising's headquarters, and which resulted in practical activity, which was carried out on the ground by the residents of the territories. These activities included, amongst others, workers from the territories abstaining from going out to work in Israel, non-payment of taxes, resignations of policemen, injuring collaborators, calls to mayors to resign, etc. 'Yossi' points out that the "petitioner himself took part in the publishing of the proclamations which contained, among other things, a call to take up violent and hostile action against the State on the part of residents of the territories". In 'Yossi's opinion "the petitioner's activities at the height of that period are sufficient to cause real harm to security and public order, and his ideas and goals have immediate consequences for what is happening in the territories. The petitioner's continued residence in Israel constitutes real harm to security and public order". 'Yossi' s expert opinion was before the respondent, when it ordered the deportation of the petitioner from Israel (**Awad** case, 427-428).

19. We need to repeat this once more: this was back in the days of the first Intifada, a time that predated the Oslo accords and predated the establishment

of the Palestinian Authority. This was a time when Israel had yet to recognize the right of the Palestinian People in the West Bank and the Gaza Strip to govern itself (as stated in Oslo Accords A and B). Against the background of this reality we shall examine the decision by the Minister of the Interior in the **Awad** case.

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

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

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

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

In this context the court held:

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

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

> As is well known, for reasons related to the interests of east Jerusalem residents, Israeli citizenship was not granted to them without their consent, but each one of them was granted the opportunity of applying for and receiving Israeli citizenship, if he so desired. There

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

23. After declaring the above the court went on to determine whether the Minister of the Interior was authorized to deport Awad from Israel. The court ruled that the minister was authorized to deport Awad because his permanent residence permit had expired:

> The Entry into Israel Law does not contain within it any explicit provision that says that a permanent residence permit shall expire if the permit holder leaves Israel and settles in a country outside of Israel. Provisions in this matter may be found in the Entry into Israel Regulations (hereinafter "Entry Regulations"), which were instituted by virtue of the Entry into Israel Law. Regulation 11(c) of the Entry Regulations states that "the validity of a permanent residence permit shall expire… if the permit holder leaves Israel and settles in a country outside of Israel".
>
> Regulation 11A determines:
>
> "… a person shall be considered as one who has left Israel and has settled in a country outside of Israel if one of the following pertains to him:
>
> (1)He resided outside of Israel for a period of at least seven years…;
>
> (2)He has received a permanent residence permit of that country;
>
> (3)He received citizenship of that country through naturalization".

There can be no doubt that the appellant falls within the framework of regulation 11A of the Entry Regulations, since he has satisfied each one of the three prescribed conditions; each one of which on their own is sufficient to ensure the expropriation of his permanent residence permit…

The Entry into Israel law explicitly authorizes the Minister of the Interior to "prescribe in the visa or in the residence permit conditions the fulfillment of which shall be the condition for the validity of the visa or of the residence permit" (section 6(2)). These "terminating" conditions may be of an individual nature, but may also be of a more general nature. Regulations 11(c) and 11A may be viewed as prescribing suspensive conditions of a general nature…

In my opinion it is possible to arrive at this conclusion with respect to the expiry of the validity of the permanent residence permit even without the Regulations and by virtue of an interpretation of the Entry into Israel Law. As stated, the Entry into Israel Law authorizes the Minister of the Interior to grant a resident's permit. This permit may be valid for the period prescribed in it (up to a period of five days, three months, three years) and may be for permanent residence.

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

> longer has any meaning, and it is *ipso facto* annulled. (*Ibid.* 431-433).

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

> A person who has left the country for a very long period of time (in our case since 1970) and has acquired for himself the status of permanent residence in another country… and has even, willingly, acquired for himself citizenship, undergoing all the steps that are required in the United States for receiving American citizenship – cannot be said to permanently reside in this country. This new reality shows that the petitioner has uprooted himself from the country and has replanted himself in the United States. The center of his life is no longer this country but is the United Sates. It goes without say that it is oftentimes difficult to point to the exact moment when a person ceases to permanently reside in a country, and there is certainly a period of time when the center of a person's life hovers between his previous abode and his new one. This is not the situation before us. Through his conduct the petitioner has demonstrated a willingness to sever his bond of permanent residence with the state and has a created a new and bold link – permanent residence at first, and then eventually citizenship – with the United States. It may very well be true that the motive for wanting this has to do with the gaining some or other relief from the United States. It is possible that deep in his heart he has always aspired to return to this country. But the decisive test is the reality of life, as it happens in practice. According to this test at some stage the petitioner relocated the center of his life to the United States, and one can no longer view him as someone who permanently resides in Israel (*Ibid*. 433).

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

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

> and is acting against a state interest – it is befitting that he be deported from Israel (Ibid. 434).

26. As we shall see, over the years, the respondent extracted an abstract, mathematic-like formula from the **Awad** judgment. Rather than having case law develop while taking changes over time the test of practicality into consideration, it was reduced to a rigid calculation to be followed no matter the circumstances. The judgment, which is merely an attempt to anchor law in reality, was turned into a tool for changing the reality of life in East Jerusalem.

The Authorities' alienation of eastern Jerusalem Residents

27. The law that the respondent deduced from the **Awad** case resulted in consequences that are too harsh to bear. The implementation of the **Awad** case showed yet another facet of a transparent policy by the governments of Israel throughout the years, which primarily is concerned with attaining a Jewish majority in Jerusalem and pushing the Palestinian residents of the city outwards. In order to attain this goal, Israel has, for years, adopted both in its policy of denying citizenship rights to residents of eastern Jerusalem (for example by imposing many restrictions on the family unification process and on registering the children, and also – as in the issue dealt with in this petition – denying the status of residency to residents of the city) and in its deliberate discriminatory policy in various areas. Thus, the residents of the eastern part of the city are discriminated against in anything related to building and planning policy, land expropriation policy, investment in physical infrastructure and in government and municipal services that are provided to them. Indeed, the policy which the respondent derives from the **Awad** rule does not exist in a vacuum. For this reason, before turning to the consequences of the implementation of the **Awad**_rule, as the respondent interpret it, we request that we may preface our presentation by painting a picture of the reality in which these things take place – a reality that has turned the lives of eastern Jerusalem residents into an intolerable existence and has pushed them outside of Jerusalem.

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

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

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

31. **The poverty rate in eastern Jerusalem** is at a rate of two and half times that of the poverty rate in the rest of Jerusalem. According to data published by the Central Bureau of Statistics in 2003, **64% of the Palestinian families in Jerusalem lived below the poverty line,** as opposed to 24% of Jewish families from Jerusalem. The incidence of poverty amongst the Palestinian population in Jerusalem is also noticeably higher than the incidence of poverty amongst the general Arab population in Israel, in which the poverty index stands at 48% of all families.

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

Demolitions" (http://icahd.org/eng/) the total number of administrative and judicial house demolitions that were issued by the Jerusalem Municipality and the Ministry of the Interior in 2005, reached approximately 1,000. The consequences of these actions have been given expression to in the living conditions in the Palestinian neighborhoods.

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

34. Another example is the discrimination and neglect in the **field of education.** Because of a serious shortage of classrooms, there are some schools in which teaching takes place in shifts. Other schools are run in overcrowded residential buildings. In some of the schools there are no computers, no library, no laboratories, no exercise hall, and even no teachers' staff room. Approximately ninety percent of the 15,000 children aged 3 and 4 are not integrated into kindergarten (in practice, only 55 children are integrated into the municipal kindergartens, about 1900 are integrated into private frameworks, and the remainder are not integrated into any framework). According to the data released by the office of the Central Bureau of Statistics, 79,000 children in eastern Jerusalem are of school age. According to data released by the municipal education administration and the Ministry of Education only 64,536 of them are enrolled in a public or private educational institute. This means that more than 14,000 children, almost 20% of school age children are not studying. From data released by the Ministry of Education in 2006 it transpires that only 13.7% of Palestinian school pupils in eastern Jerusalem received a matriculation certificate, and they are placed at the lower end of the national list.

The **Compulsory Education Law 5709-1949** applies to every school age child who lives in Israel, without any regard to his status in the Populations registry of the Ministry of the Interior (Ministry of Education, **Circular of Director General 5760/10 (a): The Application of the Education Law on Children of Foreign Workers,** dated 1 June, 2000). In other words, the Law does not distinguish between the status of citizens and that of children with a permanent resident status or any other status, and states that compulsory free education applies to every child or youth aged 5-16. Despite this, and despite a HCJ ruling, that held that children of compulsory school age in eastern Jerusalem should be allowed to be registered for compulsory studies, as stated in the **Compulsory Education Law** (HCJ 3834/01 **Hamdan v. Jerusalem Municipality and HCJ 5185/01 Baria v. Jerusalem Municipality** (partial

judgment dated 29 August, 2001)) the right of thousands of Palestinian children in eastern Jerusalem to education has currently been implemented only partially, and the education system in the eastern part of the city suffers from grave problems, which require immediate and special handling. At the center of the current problems in this field is the problem of a **serious shortage of classrooms.** In the 5766 academic year the shortage of classrooms in eastern Jerusalem stood at 1,354 and in 2010 it is anticipated that the shortage of classrooms will rise to 1,883 classrooms. Despite a ruling by the HCJ in 2001 that required the Ministry of Education and the Jerusalem Municipality to build within four years 245 new classrooms, as of today only about 40 new classrooms were built. The result has been that every year more and more children seeking to study in a school in eastern Jerusalem have been rejected and the **dropout rate in the eastern Jerusalem secondary education system stands at around 50% of all pupils.**

35. **Much of the infrastructure in eastern Jerusalem is in a very bad state and it suffers from many deficiencies** for example **the water and sewage infrastructure as well as the road infrastructure**. The eastern part of the city also suffers from **serious sanitation problems**. The **planning and building division** suffers from constant budgetary constraints, which has created a huge gap between the needs of the population and the solution provided therefore. In an inspection carried out by the *Btselem* organization it was found that in the 1999 Jerusalem Municipality's Development Budget less than 10% was earmarked for the Palestinian neighborhoods, despite the fact that the residents of those neighborhoods constitute approximately a third of the residents of the city. As a result of this lack of investment, the situation of the infrastructures in eastern Jerusalem is grave: entire Palestinian neighborhoods are not connected to the sewage system, and they contain no paved roads or sidewalks. This callous discrimination cries out: almost 90% of the sewage pipes, roads and sidewalks in Jerusalem are found in the western part of the city, the west of the city contains 1,000 public parks whereas eastern Jerusalem contains only 45; in the western part of the city there are 34 swimming pools, whereas eastern Jerusalem has three swimming pools, in western Jerusalem there are 26 libraries, while eastern Jerusalem contains two; in the western part of the city there are 531 sporting facilities, eastern Jerusalem has 33 facilities.

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

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

young age; a slide into criminality and drugs; health and nutritional problems, and more.

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

The alienation in the field of the Population Administration services

39. To all the above must be added the attitude that views residents of east Jerusalem as aliens, whose status may be routinely revoked. The State of Israel established a special office for the Population Administration to handle eastern Jerusalem residents. This is the only city in the country in which there are two population administration offices. "Eastern Jerusalem" includes neighborhoods that are in the northern parts of the city, the eastern parts as well as the southern parts. Jewish residents who live in the area that was annexed by Israel receive their services from the population administration office in central Jerusalem. Only Palestinian residents of eastern Jerusalem – from the north, east and south – are referred to the east Jerusalem office. This inaccessible office has become notorious for its inferior and insufferable service, that flouts the basic ideas of sound administration (see HCJ 2783/03 **Jabra v. Minister of the Interior**, *Piskei Din* 58(2) 437 (2003); Adm. Pet. (Jerusalem) 754/04 **Bedewi v. Director of the District Office of the Population Administration**, (Judgment dated 10 October, 2004)).

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

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

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

Eastern Jerusalem residents like the rest of the residents of the territories: The Open Bridges Policy

42. Over the course of the few decades following the annexation of eastern Jerusalem, Israel was scrupulous in applying the same arrangements to both eastern Jerusalem residents and to the rest of the residents of the West Bank with respect to their departures abroad, their return to Israel and to the West bank and their civilian status upon their return. Underlying these arrangements was the "**open bridges policy"** which the Government of Israel implemented from 1967. The "open bridges policy" was designed to encourage the free passage of eastern Jerusalem residents and residents of the territories via the Jordanian bridges, subject to security considerations. This policy recognized the needs of eastern Jerusalem residents and residents of the territories to stay in Jordan and other Arab countries, not only for temporary or for short term needs, such as visits or business trips, but also for needs which required continuous residence abroad, including for study purposes, work, and family ties.

43. The departure of these residents was conditional on obtaining an exit permit. Any resident who fulfilled the exit permit condition (exit card, which also constituted a return visa) was permitted to return, and immediately upon his return he would receive rights as a resident. Upon the return of the resident to eastern Jerusalem (or to the territories, as the case may be), he was permitted to once again go abroad equipped with a new exit card. The exit card was not a travel document like a passport or *laissez-passer*, but rather it entailed documentary proof of having exited via the Jordanian bridges, and of permitting the return via the same route so long as it was still valid. This was a special document which served the residents of the territories, which were conquered in 1967 (including eastern Jerusalem) within the framework of the open bridges policy.

44. This policy allowed thousands of Palestinians – residents of eastern Jerusalem and the West Bank – who worked in the Gulf States and in Saudi Arabia, and who studied in Arab countries and conducted their lives there, to leave and to return without harming their rights. The Israeli authorities recognized, as stated, the many pressures, which caused eastern Jerusalem residents to seek their livelihood in Arab countries, to complete their education there and also to conduct their family lives over there.

    See, in this matter, for example, the speech of the then Minister of the Interior, Mr. Moshe Dayan to the Knesset (*Knesset Speeches*, volume 12, 5730, 697-699).

45. The application of the open bridges policy to eastern Jerusalem residents, without distinguishing them from the residents of the rest of the occupied territories, reflected an Israeli recognition of the dual nature of their status: on the one hand permanent residents of Israel, where Israeli law applies to their

place of residence, and on the other hand protected residents in territory where control was transferred into the hands of Israel after 1967.

46. This policy did not only take into account the needs and connections of the residents. It also served Israeli interests, because it compensated for the lack of infrastructure in eastern Jerusalem and for the restrictions with regard to building and family unification in the city. The respondent's policy, which allowed residents to maintain their status in the city if they lived in the territories, and even if they went abroad, so long as they extended the period of validity on the exit card in their possession, eased this trend and even encouraged it.

Implementing the Awad rule as of the mid- nineties: wholesale revocation of status

47. From the second half of the nineties, the respondent embarked upon its strict policy, which meant the blocking of the path of return to the city from eastern Jerusalem residents and the virtual expulsion of the latter from their home, even if they returned to it in the meantime. This policy was based on a broad interpretation of the **Awad** rule – an interpretation that introduces elements into the formula established in the **Awad** case that makes it absurd.

48. Beginning from the second half of the 1990s, many of the residents of eastern Jerusalem, who applied to the Ministry of the Interior with various requests were met with refusals to provide the requested service, and were handed a brief standard letter, informing them that their permanent residence licenses had expired, and this, so claimed Ministry of the Interior, was because they had relocated the center of their lives outside of Israel. This "expiry of residency" included, for the most part, the residency of the resident's children. The notice ended by instructing the resident and his family members to return their identity document and to leave the country, generally speaking within 15 days.

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

50. Despite the fact that this involved a radical change in policy and a wide-ranging interference in a lifestyle that the residents had maintained for many

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

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

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

> In accordance with the aforesaid and likewise in our case, the reality of life has taught that the petitioner's permanent residence in Israel for all practical purposes terminated at the end of the 1970s… and the residence permit that she had for Israel, and which relied on the reality of her being a permanent resident in Israel, had lost all meaning and as such had expired and had become nullified of its own accord (Section 14 in State's Reply in HCJ 9499/96 **Najwa Atarash v. Minister of the Interior**).

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

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

54. Indeed, and rently in light of the understanding that a reading such as this of the judgment does not comply with general legal norms, the respondent ordered that a disciplinary hearing be conducted (see in this matter, for example: the respondent's reply in HCJ 3122/97 **Darwish v. Minister of the Interior**; judgment in HCJ 3120/97 **McCarry v. Minister of the Interior** (judgment dated 10 June, 1997). Nonetheless, in practice on many occasions the respondent has revoked the license permits without a disciplinary hearing.

55. In opposition to the "silent deportation" policy, petitioners 1 and 2, along with other human rights organizations and with eastern Jerusalem residents that were harmed by the policy, filed a petition to the HCJ in 1998 (HCJ 2227/98 HaMoked - Center for the Defence of the Individual v. Minister of the Interior). During the proceedings in this petition the then Minister of the Interior, Natan Sharansky gave his declaration which alleviated the aforementioned policy to some degree. Pursuant to what is stated in the declaration, some of those whose residency was revoked would be able to reacquire their residency if they satisfied certain conditions.

56. The "Sharansky Declaration" softened, then, the harsh consequences of the **Awad** rule. The absurd outcome in which residency was revoked from thousands of people who acted in accordance with the procedures laid out by the Ministry of the Interior and who maintained a connection with Israel was overturned by the fact that the Minister of the Interior now viewed them as persons who maintained their status. The need to reverse this policy of revoking residency, and the way in which it was done by the Declaration issued by minister Sharansky, indicates a need to insert essential modifications to the respondent's interpretation of the **Awad** rule in order to avoid the absurd reading that underlay the "silent deportation' policy.

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

not apply to those who acquired a permit for permanent residence in another country or received foreign citizenship.

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

Year	**Number of Palestinian Residents whose residencies was revoked**
1967	105
1968	395
1969	178
1970	327
1971	126
1972	93
1973	77
1974	45
1975	54
1976	42
1977	35
1978	36
1979	91
1980	158
1981	51
1982	74
1983	616
1984	161
1985	99
1986	84

1987	23
1988	2
1989	32
1990	36
1991	20
1992	41
1993	32
1994	45
1995	91
1996	739
1997	1,067
1998	788
1999	411
2000	207
2001	15
2002	No data
2003	272
2004	16
2005	222
2006	1,363
Total	**8,269**

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

59. When the *Btselem* organization applied to the person in charge of freedom of information at the Ministry of the Interior in order to investigate the reason behind the extremely steep rise in the scope of residency revocations (over a 600% increase from the figure in 2005), it received the following answer:

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

60. If any further proof was necessary of the Ministry of the Interior' relating to the permanent residents of eastern Jerusalem as foreigners - the above quote is once again a prime example. In a government ministry that is charged with the provision of services to the citizens and residents of the country, the purpose

of an "improvement in the work and control procedures", or "streamlining" is normally directed at the welfare of the applicants and at providing better service. According to the Ministry of Interior's understanding, when the beneficiaries of the service are residents of eastern Jerusalem, "streamlining" means trapping as many people as possible and placing them within the network of its policy of residency revocation.

61. We shall note, that on 4 February, 2008 HaMoked - Center for the Defence of the Individual applied to the respondent with a request to receive the data on residency revocation in 2006 and 2007. On 12 June 2008, when the respondent's reply failed to arrive, HaMoked filed a petition to the Court of Administrative Affairs in Jerusalem. The petition is still pending. (Adm. Pet. 8476/08 **HaMoked: The Center for the Defence of the Individual v. Minister of the Interior.**)

The gender aspect in the current implementation of the Awad rule

62. Added to the policy of revoking the status of eastern Jerusalem residents is the aspect of gender. This policy mortally harms women.

63. The absolute majority of eastern Jerusalem residents establish a family with Arab spouses; many of these spouses are eastern Jerusalem residents or Israeli residents, however many of them are residents of the occupied territories or residents of Arab countries.

As is well known, up until the mid nineties Israel did not at all handle family unification applications that were filed by female eastern Jerusalem **residents** for their spouses. This was the direct result of discriminatory policy practiced by the respondent, in terms of which only family unification applications filed by male eastern Jerusalem **residents** were handled. This policy was justified on the grounds that in Arab society the prevailing custom is that the "woman follows her husband" and therefore there is no reason to grant Israeli status to the male spouse who is a resident of the territories or is a foreign resident. As a result of this, women were forced to contend with the predicament, where if they wished to live together with their husbands and children, they would have to risk the loss of status and the severance of ties with their families in Jerusalem. And indeed, many women thereby lost their status, because of a continuous period of stay "outside of Israel". In 1994 in the wake of a petition to the HCJ which was filed by applicant 2 (HCJ 2797/93 **Gerbit v. Minister of the Interior**) this discriminatory policy was rescinded and female residents could thereafter filed family unification applications for their spouse.

64. However the harm to permanent female residents – in their capacity as women – was not confined to this aspect. In a traditional society (and it is definitely possible to describe male eastern Jerusalem residents, generally speaking, as living in a society with traditional values), most of the woman's world, in her capacity as a wife, is concentrated around her family. If the ties between the spouses are rent asunder then the whole family unit disintegrates, and the wife has no real choice, but to return to her family – her parents' home or within the proximity of her brothers and sisters – in her hometown, eastern Jerusalem. The status of the wife is tenuous from the outset, and it is made all the worse if

her security net of being able to return to her home and town is also snatched away from her. So that in effect, her dependence upon her husband and his family becomes absolute. For in the case where the marital bond has become disentangled a woman whose status has been revoked from her has no real escape, and many times she is forced to stay with a battering or abusive husband. Revoking the status of Jerusalem female residents is comparable to removing the anchor to a life in which she has some type of dignity, stability and support.

65. Discrimination against women may take the form of a Law, regulation, custom, and the like, whose **goal** it is to discriminate against women, in creating a situation where the **de facto** results are discriminatory towards women. This position is clearly reflected in both Israeli Law – section B of the Equal Rights of Woman Law, 5711-1951 establishes that "[…] there is no difference if the underlying action which resulted in discrimination contained a discriminatory intent, or did not" – and in International Law, especially the Convention on the Elimination of All Forms of Discrimination against Women (1971) (*Conventions* 1035, volume 31, 179), which was signed and ratified by Israel. As stated, Israel is obligated to prevent the promotion of the direct or indirect discrimination against women and to examine the degree of harm to women, as this has taken form in practice.

66. Therefore the respondent's policy does not only improperly discriminate between eastern Jerusalem permanent residents and general Israeli society. It also creates a distinction amongst the permanent residents, so that the primary "targets" of the policy of revoking residency are female residents – who from the outset constitute the weaker group. And so, in the guise of a policy which the respondent decreed in the wake of the **Awad** case, Israel has intensified the harm against women, and has perpetuated their subjugation.

Revoking residency – the people behind the numbers

67. Below we will cite a number of cases which illustrate the severe harm that is latent in the revocation of residency. This involves cases that were handled in recent years by the Center for the Defence of the Individual.

Mrs. Nagah Abu Heikhal

68. An especially heart rending example, which illustrates the harsh impact inherent in the act of revocation of residency, is the case of Mrs. Nagah Abu Heikhal. Mrs. Abu Heikhal, a permanent resident of eastern Jerusalem, married a Jordanian resident in 1978. In 1979 Mrs. Abu Heikhal left Israel, and returned to eastern Jerusalem in 1994. Throughout the years that she resided abroad, Mrs. Abu Heikhal was scrupulous in maintaining a very close connection with eastern Jerusalem, where she also gave birth to three of her children. Throughout the entire period Mrs. Abu Heikhal acted in accordance with the rules practiced by the respondent at that time: i.e. that the residency of a person remains with him so long as he is scrupulous in returning to the country while his exit card is still valid. And indeed, throughout those years, the respondent considered her a resident for all intents and purposes, and did not revoke her status.

69. At a certain stage fierce disputes erupted between Mrs. Abu Heikhal and her spouse. Mrs. Abu Heikhal wanted to return to her hometown. In the summer of 1994, after she had returned to eastern Jerusalem and even managed to register her children in the local school, Mrs. Abu Heikhal went with her children for a visit to Jordan. Her spouse, who derived no pleasure from her decision to return to eastern Jerusalem, prevented her return there until 1997. Eventually Mrs. Abu Heikhal succeeded in freeing herself from his yoke and returned to eastern Jerusalem with her children. She received an official divorce from her husband in 2000. As of 1997 Mrs. Abu Heikhal lived in the city, and only left Israel for a few days. From then on, eastern Jerusalem constituted for her, in every possible sense, the center of her life – here was her home, it was here that she worked as a kindergarten teacher and even studied towards a degree in order to become a fully qualified kindergarten teacher, and it was here where her children resided together with her.

70. It was only in 1999 that Mrs. Abu Heikhal was informed of the fact that the respondent had revoked her residency. At the time of the decision to revoke her status, on 19 December, 1994, Mrs. Abu Heikhal was living in Jordan, having no possibility of returning to eastern Jerusalem, and without it ever entering her mind that her status, which she had so scrupulously maintained throughout the years would be taken away from her. She even left Israel and reentered it during the years 1997 and 1998, in her capacity as resident for all intents and purposes. Ever since she was informed of the respondent's decision in her case, she has tried everything to have her status and that of her children reinstated. She applied to the respondent on numerous occasions – in her own capacity and through various attorneys – however the respondent refused to give her back her residency. The respondent repeated its claim that her status had been lawfully revoked, and refused to relate to the circumstances in the life of Mrs. Abu Heikhal ever since her return to eastern Jerusalem.

71. The respondent's decision in the case of Mrs. Abu Heikhal flows from a simplistic application of the **Awad** rule, as if the life of a human being was a set of mathematical formulae: the residency of this woman automatically expired "without human contact" at some time between 1978 and 1994. This "fact" was not the result of any action by the respondent but was, so to speak forced upon it against its will. From the time she ceased to be a resident she was defined as an alien. The fact that the respondent allowed her entry as a resident during the years that followed is of no relevance. The respondent "did not notice" that the residency had automatically expired. In fact, her entry into Israel (from the perspective of this simplistic analysis) was unapproved. The change in circumstances that took place thereafter is also irrelevant, since the respondent is unable to revive a permanent residence permit that was taken away, so to speak by a higher power. At the same time Mrs. Abu Heikhal was not entitled to a "new" residence permit, since she does not fall within the criteria that would allow her to immigrate to Israel.

72. We should note that according to the "Sharansky Declaration", it is possible to reinstate the status of a resident, if it was revoked from him from 1995 onwards. We are dealing with a date that was arbitrarily selected, and which

approximately marked the commencement of the policy of wholesale revocation of residency. It was clear that Mrs. Abu Heikhal, **whose status was revoked a mere 12 days before the beginning of the year of 1995,** was harmed as a result of that very policy. The Center for the Defence of the Individual claimed in that case, that even if the respondent relied, for the purpose of setting its policy, on a date which has a very arbitrary dimension, it is not possible to implement a policy that is so radically at odds with the norm, in such a "black and white" fashion, when it comes to cases that are on either side of the set date. However the respondent was equally unimpressed with this claim.

73. After exhausting all possibilities, Mrs. Abu Heikhal petitioned the Court for Administrative Affairs (Adm.Pet. (Jerusalem) 186/07). In the wake of the petition, the respondent indeed agreed to transfer the case for examination by the Inter-Ministerial Committee for Humanitarian Affairs, but lying in wait was yet another bitter disappointment. The committee members refused to relate to the main arguments of Mrs. Abu Heikhal and again dismissed her with an argument no longer than a few written lines. Even after all those years in which she set up her home in eastern Jerusalem, the respondents still maintains the claim that her residency lawfully expired. Her arguments with respect to the application of the "Sharansky Declaration" to her case were ignored by the respondent as if it was meaningless.

74. At this stage Mrs. Abu Heikhal's mental energies were completely drained. At that time Mrs. Abu Heikhal worked in Jerusalem, but her house was situated in Kfar Akab – a neighborhood, which despite being part of Jerusalem is on the other side of the separation barrier, and passage from it into the city requires, at the very least, a permit of stay. As a result, Mrs. Abu Heikhal stopped working and her economic situation gradually worsened.

Desperate, Mrs. Abu Heikhal decided to pack her belongings and to move to Jordan with her children.

75. Mrs. Abu Heikhal returned to her former spouses' home, the father of her children. In her desperation, she tried to convince herself that it would be possible to heal the deep wounds between herself and her spouse. This was the case even though aside from her former spouse she had no real connection to Jordan. However this was a fruitless attempt. Mrs. Abu Heikhal has been left with no salvation. Her status was revoked from her, and without it she cannot return to Jerusalem, the city of her birth.

The administrative petition which was filed by the Center for the Defence of the Individual in the case of Mrs. Abu Heikhal and her children is still pending before the court (Adm.Pet. (Jerusalem) 8612/08 **Abu Heikhal v. Minister of the Interior**).

Mr. Khaled Redwan

76. Mr. Khaled Redwan was born in Jerusalem in 1960, and later on received the status of permanent resident. Mr. Redwan left the country for the first time in 1981, for the purpose of acquiring a higher education in the United States. In

order to make it easier for himself to stay in the USA and to study there, Mr. Redwan applied to receive a "green card", and after that also requested American citizenship. During the years 1991 - 1992 he returned for a specified period to Jerusalem, where he married Mrs. Ahalem Redwan, who was also a permanent resident. Over the course of his stay in Jerusalem, Mr. Redwan sought employment, with the aim of staying in the city with his spouse, but he never found any. Therefore, and because of the couple's wish to become financially established so that they would be able to set up a family and earn a living with dignity, the couple left for the United States for a restricted period in order to realize their ambitions. During the period of stay in the United States, the couple continued to maintain close ties with eastern Jerusalem. Mrs. Redwan was scrupulous almost every year to visit Jerusalem for a few months. After about five years with the improvement in their financial situation and with their firstborn child, Walid, reaching the age of compulsory nursery school education, the couple returned to Jerusalem in order to establish their home there. This followed the custom of many young spouses. Mrs. Redwan and the couple's children returned to Jerusalem in July 1997. Mr. Redwan joined them in January 1998.

77. It should be noted that Mr. Redwan entered Israel not as a tourist but on the basis of his status as a permanent resident of Israel. His American passport was not stamped with visitor's permit, but rather a regular entry stamp (the same type of stamp used on travel documents of Israeli residents who enter the country) and this was done after an investigation by the computer terminus revealed that Mr. Redwan was a resident of the country. Alongside the stamp, they wrote down his identity number as it appeared in the population registry. Mr. Redwan was not even referred to any type of clarification with respect to his status or anything similar to this.

78. It is therefore clear that on that date the authorities were aware of Mr. Redman's periods of stay abroad (which emerged from data provided by the Border Police) as well as the fact of his being an American. While they were completely aware of these data, the authorities still allowed his entry into Israel as a resident, while marking down his identifying number in his American passport. Nothing was hinted to him then about the different perspective through which the authorities wished to view things two years later.

79. And indeed on 16 May 2000 Mr. Redwan was sent a letter on behalf of the Ministry of the Interior, informing him that his residency and the residency of his family were being revoked. This was on the grounds that he had acquired American citizenship and that the center of his life and the life of his wife and children, was, up until 1998, in the United States. Therefore, even his application that he filed to register his daughter Arin in the population registry was dismissed, and he was informed that they viewed him and his family as persons who have ceased to be residents.

80. From the day he was informed of the decision, Mr. Redwan tried using all means to remedy this injustice. He applied on numerous occasions to the office of the eastern Jerusalem Population Administration. Each time he was asked to produce additional documents which attest to the fact that the center

of his life is in Jerusalem, but ultimately his request was left unanswered. It should be noted that over the course of these applications it became clear to Mr. Redwan that the Ministry of the Interior had changed its mind with respect to revoking the status of residency from his wife and from his family. Nonetheless, when it came to him personally the Ministry of the Interior continued in its refusal to reconsider the matter.

81. In 2005 the Ministry of the Interior allowed Mr. Redwan to file an application to reinstate his residency, which was termed by the Ministry of the Interior as an "independent family unification". These applications necessitated payment of a fee. As expected, this application was also dismissed, with the claim that the revocation of residency was lawfully executed. In his distress, Mr. Redwan petitioned the Jerusalem Court for Administrative Affairs (Adm.Pet. (Jerusalem) 751/06). In his petition, Mr. Redwan claimed that when dealing with him, not only did the Ministry of the Interior not send him warning signs that he was residing in Israel illegally, but they acted in an exact opposite manner: the message that was conveyed to him was that there was no problem with his American citizenship, and nor was there any problem with his continuous residence in the United States. This was the case upon his arrival, and likewise every day since he had landed in Israel. Through its conduct the Ministry of the Interior had allowed Mr. Redwan to rely upon the fact that his residence in Jerusalem was legal, and there was nothing remiss in reestablishing himself in his city.

82. In his petition all the circumstances of Mr. Redwan's life were detailed from the day that he returned to Jerusalem until today. It was noted that from 1998 until today Mr. Redwan has been living with his family members in Jerusalem. It was noted that Mr. Redwan works in Jerusalem, and it is there where his children study. In fact, it is difficult to imagine a more intimate link of any person to any place. Mr. Redwan attached to his applications to the Ministry of the Interior all the documents that attest to the center of his life having been in Jerusalem. The Ministry of the Interior did not relate to this fact in its decision. The Ministry of the Interior's decision, which prima facie justifies the refusal to reinstate his residency with the same reason for the revocation of his status, proves that the respondent did not exercise his discretion with respect to the circumstances of his life and the overall connections of Mr. Redwan from the day of his return.

83. Even at court Mr. Redwan was unable to find any relief. His claims were not accepted, and the petition was dismissed. Fortunately for Mr. Redwan, his wife's status was not revoked from her, so that it was possible for her to file a family unification application for him. And so it was. The family unification application was approved and in December 2007, Mr. Redwan began to take part in the "phased proceedings" to acquire status in his capacity as spouse of a permanent resident.

84. From the aforesaid it emerges that the policy of the Ministry of the Interior was not only arbitrary with regard to the manner in which the decision was made to revoke the status of a person – blindly relying upon the "establishing permanent residence presumptions" that are in the Regulations, it also did not exercise discretion with respect to the circumstances behind his temporary

departure abroad, and with respect to his desire to return to Jerusalem and to set down his roots there. The Ministry of the Interior outdoes itself, in that after it allows those residents to return and settle in Jerusalem – it ignores the circumstances of their lives and bases its decision exclusively on the claim that the residency, originally, was prima facie lawfully revoked.

Mrs. Nejowa Mustafa

85. In many cases the decision to revoke the status of residency does not only harm the resident himself, but also his family members. So it was the case with Mrs. Nejowa Mustafa. Mrs. Mustafa and her spouse married in 1978 and until 1995 they lived in Jordan and Saudi Arabia for work related reasons of the spouse. In 1995 the couple returned with their children to Jerusalem, where they lived for around one year. For the next three years they lived in Kalandia and from the year 2000 they set up their home in Jerusalem.

86. In 1996 Mrs. Mustafa was informed that despite being careful to confine her stay abroad within the valid dates that were stamped in her travel documents, as she was instructed to do so in order to maintain her status, her Israeli status was nonetheless revoked. Mrs. Mustafa applied to the Ministry of the Interior to reinstate her residency. In the wake of its handling by HaMoked, the Center for the Defence of the Individual, her status was reinstated in 2003.

87. After her status was returned to her Mrs. Mustafa filed a family unification application for her spouse and an application to register her children in the Israeli Population Registry. The catch was that during that period some of her children were already adults, and therefore the applications with respect to the cases of the latter was classified as "not meeting the criteria". The applications however were only filed for Mrs. Mustafa's spouse and her minor children. The Ministry of the Interior did not rush to handle these applications, and they were only approved at the end of 2006, and only in the wake of a petition to the Court for Administrative Affairs (Adm.Pet. (Jerusalem) 917/06).

88. The Ministry of the Interior's position was that if an application is made for adult children, it would be dismissed for "not meeting the criteria". Despite this the Ministry of the Interior allowed Mrs. Mustafa to file her application, in such a way that it would be handled through the same avenue of those applications filed for "humanitarian reasons". In the application that was filed the special circumstances in the cases of her adult children were emphasized. It was noted that they fell victim to a tragic and variable chain of events from their perspective, upon which they had no control – the date of the reinstatement of their mother's status and their age at the time of the filing of the application to be registered – sealed their fate. In the application it was further claimed that blocking any possibility of receiving any type of status in Israel practically splits the family into two, and the adult children have no connection to any other place aside from Jerusalem. The applicants also noted their family's enormous dependence on the adult children's income and the assistance that they were giving the family. This, especially in light of the fact that their parents were chronically ill, and because of this they were unable to financially support themselves and also required medication on a regular basis.

89. The Ministry of the Interior refused to view this case, in which three of the family member would in the future have to separate from their parents and siblings, as a humanitarian case. The Ministry of the Interior refused to relate to the fact that Mrs. Mustafa's children had nowhere to go, since they did not have a connection to any other place in the world, aside from Jerusalem. The Ministry of the Interior refused to relate to an entire family's dependence on their adult children. In its reply to the application, the Ministry of the Interior determined that "no humanitarian reasons were found to justify the granting of status in these cases", and it refused to transfer the cases of Mrs. Mustafa's children for examination by the Inter Ministerial Committee for humanitarian matters, which is entrusted with the granting of status in cases such as these. In light of this, they also filed a petition in this case with the Court for Administrative Affairs (Adm.Pet. (Jerusalem) 1028/07 **Herbatawi v. Minister of the Interior**). The court, which did not see any purpose in intervening with the "wide range of discretion that is available to the respondent", dismissed the petition by the family members and made a costs order against them (judgment of Judge Y. Adiel dated 18 June, 2008). An appeal was filed against this judgment with the Supreme Court on 17 July, 2008 (AdmA 6410/08) which is still pending.

90. Therefore the decision to revoke status from a permanent resident also has an "environmental" impact, an impact which affects more than just the case of the resident himself. Even after the Ministry of the Interior reversed its decision, and decided to reinstate Mrs. Mustafa with her status, the past decision to revoke her residency continued to pursue her and her children. Mrs. Mustafa's children – who without doubt had no part in the decision to go and live abroad for a significant period – are now paying the price of the sweeping policy of revoking residency. They are now paying the price for the fact that their mother dared to want to return and live together with her family in Jerusalem – her hometown.

An interim summary

91. The judgment in the **Awad** case was given two decades ago. The judgment was given against the backdrop of the outbreak of the first Intifada, and the decision of the Minister of the Interior to deport from Israel an eastern Jerusalem resident, who over the course of the years lived in the United States, where he acquired status, and where he organized political activity for the termination of Israeli occupation in the territories. The court established that the annexation of eastern Jerusalem to Israel turned eastern Jerusalem residents into Israeli permanent residents. This residency, according to the judgment, expires upon the relocation of the center of one's life. Because of this, it was ruled that the Minister of the Interior was permitted to deport Awad, who was residing in Israel without a permit and was "acting against the interests of the State".

92. The respondent, who throughout the years allowed eastern Jerusalem residents to leave the city and to return to it for reasons of work, studies and family, changed its policy in the wake of the judgment and began its policy of massive revocations of eastern Jerusalem residence permits. This policy is consistent with the State Authorities' alienation from eastern Jerusalem residents. The

respondent revokes the statuses of eastern Jerusalem residents as a matter of "efficiency". All eastern Jerusalem residents, whoever they may be, may be exposed to this policy and its outcome; however the harm to female residents is especially severe.

93. Two decades after the judgment in the **Awad** case, we must reexamine the judgment against the backdrop of its overall results. One must also examine the rulings in the **Awad** case against the backdrop of other norms in the legal world, especially the norms which apply to eastern Jerusalem.

94. The "synchronization" which the court requested to chart between the laws which apply to eastern Jerusalem and between its residents shut its eyes from other normative strata that apply to eastern Jerusalem. Moreover over the course of the past years since this judgment was given other normative strata have been added, which it is impossible to continue to ignore. Eastern Jerusalem is not just another region of Israel and its residents are not like all the rest of the residents.

95. Before the applicants elaborate upon the normative framework in its entirety, they wish to circumscribe the dispute and to clarify their position with respect to the judgment in the **Awad** case and to the position of eastern Jerusalem residents:

The applicants are prepared to assume that according to Israeli law, ever since eastern Jerusalem was annexed, eastern Jerusalem residents are permanent residents who hold permanent residence permits that were given to them according to the Entry into Israel Law. Indeed, as has been determined in the **Awad** case, their position is one that is given them under the law and not as an act of grace. However, the position of eastern Jerusalem residents is a special status, which includes by its very nature a condition that their permits never expire. In other words, one must read into the granting of permanent residence to eastern Jerusalem residents a condition, in terms of which the residency does not expire because of a departure from the country or because of relocating the center of one's life.

The applicants are willing to accept that the tests with respect to the expiry of residency that were established in the **Awad** case, and the provisions of the Entry into Israel Regulations with regard to the expiry of residency, could apply to **immigrants** who voluntarily entered Israel and acquired permanent residence permits there in accordance with their request, and for our present purposes: **to anyone who acquired permanent residence permits <u>not through</u> the annexation of his place of residence to Israel in the wake of a military occupation.**

The application of identical rules with regard to the expiry of residency to immigrants, who voluntarily acquired their status, and to eastern Jerusalem residents, who received their status in the wake of the annexation of eastern Jerusalem after its occupation, unlawfully ignores the special situation of eastern Jerusalem residents. It forces upon eastern Jerusalem residents the life of a ghetto, from which it is prohibited to leave, in order to ensure that their statuses will not be lost, or alternatively unlawfully pressurizes them to

become a naturalized Israeli. It was not in vain that eastern Jerusalem residents did not become Israeli citizens whose status would be protected from arbitrary expiries. The State of Israel may not force citizenship upon them, and may not propel them to naturalize and to become loyal to it.

We are not dealing with the overturning of the **Awad** rule but rather with its essential expansion. The **Awad** rule itself recognized the possibility that Israeli residence permits would include general conditions, and that these conditions, like the permits themselves, would not be explicitly specified in the permit, but would be derived from the general rule. The **Awad** rule itself required that the features of the Israeli residence permit would conform to the reality of life and would not distort it.

Below we shall prove our position in detail.

The special status of eastern Jerusalem residents and the prohibition to revoke their residency

Introduction

96. East Jerusalem's normative status and the status of its residents is composed of various strata. International law views the area as occupied territory, which is held under belligerent occupation. For this reason, according to international law, the Palestinian residents of eastern Jerusalem are protected persons who are entitled to protection by virtue of international humanitarian law. Israel, on its part, unilaterally applied the "law, jurisdiction and administration of the State" to the area and established in its domestic law that that it is part of the city of Jerusalem. Palestinian residents were given Israeli permanent residence permits.

97. Residence permits grants Palestinian residents, prima facie, protections that are similar in many aspects to those enjoyed by Israeli citizens. In practice Israel has reduced the provisions of these protections, and in fact – has alienated itself from Palestinian residents of eastern Jerusalem and has encouraged their connections to the territories. Over the course of the years Israel has, in many aspects, acted towards eastern Jerusalem residents as it has towards residents of the West Bank. From the time it signed the Oslo Accords Israel has recognized the fact that eastern Jerusalem is a region which is located at the heart of the dispute, and that the Palestinian residents of eastern Jerusalem are part and parcel of the Palestinian Nation in the West Bank and Gaza Strip. Israeli legislation was drafted in such a way to enable this connection between eastern Jerusalem residents on the one hand and the Palestinian Nation and the territories, on the other.

98. Because of the importance of the normative arrangements and political treaties to an understanding of the special status of eastern Jerusalem residents; to the definition of their system of rights; to the definition of the obligations of the State of Israel towards them – we would like to elaborate further on the legal status of eastern Jerusalem; on the status of eastern Jerusalem residents; and on the purpose of residency, that was granted to eastern Jerusalem residents.

The legal status of eastern Jerusalem

99. June 1967 the State of Israel conquered the West Bank. Immediately after the war the Government of Israel decided to annex to Israel about 70,500 dunam from the occupied territory north, east and south of Jerusalem ("**eastern Jerusalem**"). Pursuant to a Government Resolution passed in the Knesset on 27 June, 1967 an amendment was made to the **Law and Administration Arrangements Ordinance** and within its framework a new clause was added to section 11b that states: "The law, jurisdiction and administration of the State shall apply to all the area of the Land of Israel which the government has determined by Order." The next day on 28 June, 1967 the government instituted the **Law and Administration Arrangements Order (No. 1), 5767-1967,** which applies the "law, jurisdiction and administration of the State", to eastern Jerusalem. That day by proclamation made under the Municipalities Ordinance, the annexed territory was included in the boundaries of the Jerusalem Municipality.

100. **Basic Law: Jerusalem, Capital of Israel,** which was enacted in 1980, added and established in section 1 thereof that "Jerusalem, complete and united, is the capital of Israel". In 2000 the Basic Law was amended so that a section 5 was added which stated that the "borders of Jerusalem include, for the purposes of this Basic Law, among other things, the entire territory described in the annexure to the Proclamation on the Expansion of the Jerusalem Municipal Area which was dated 3 Sivan 5727 (28 June, 1967) and which was enacted pursuant to the Municipalities Ordinance". In section 6 of the Basic Law it was established that "there shall not be transferred to any foreign agent, political or governmental, or to any other similar foreign agent, whether permanently or for a defined period, any authority that relates to the border of Jerusalem and which was lawfully granted to the State of Israel or to the Jerusalem Municipality." In section 7 of the Basic Law it states that "the provisions of sections 5 and 6 may only be amended by a Basic Law that is passed by a majority of the members of Knesset. (See also Amnon Rubenstein and Barak Medina, *The Constitutional Law of the State of Israel* (sixth edition, Schoken, 5765) 926-927, 932 -935 (hereinafter: **Rubenstein and Medina)).**

101. According to **Israeli domestic law**, therefore, Israeli law applies to the territory of eastern Jerusalem. However, "the territory of a State, or its sovereign borders, are a matter to be decided by International Law", and not according to the domestic law of the state (Rubenstein and Medina, 924). According to international law sovereignty is acquired in two ways: through brokering an agreement with the bordering states, or through acquiring sovereignty over territory in which there is no political sovereignty of any kind (*Ibid.*). The unilateral application of the "law, jurisdiction, and administration" upon a territory that has been occupied is not recognized by international law as a way of applying sovereignty.

102. Moreover, the rule that states that the use of force cannot lead to or cause any transfer or change of sovereignty constitutes one of the basic principles of international humanitarian law:

> "The foundation upon which the entire law of occupation is based is the principle of inalienability of sovereignty through the actual or threatened use of force. Effective control by foreign military force can never bring about by itself a valid transfer of sovereignty." (Eyal Benvenisti The International Law of Occupation (Princeton University Press, 1993) pp. 5-6)

Furthermore:

> "An occupation, thus, suspends sovereignty insofar as it severs its ordinary link with effective control; but it does not, indeed it cannot, alter sovereignty." (Orna Ben-Naftali, Aeyal M. Gross & Keren Michaeli "Illegal Occupation: Framing the Occupied Palestinian Terrority", *23 Berkeley Journal Of International Law* 551, 574 (2005)) (**hereinafter: Ben-Naftali, Gross & Michaeli**)

103. This principle is also included in the following three fundamental principles, a combination of which guides the laws of occupation: A. The principle which states that use of force or occupation do not acquire sovereignty and cannot lead to or case any kind of transfer or change to sovereignty over a specified territory; B. the occupying power is charged with administering civilian and public life in the occupied territory; C. occupation must be temporary:

> "[A]n occupation that cannot be regarded as temporary defies both the principle of trust and of self-determination. The violation of any one of these [fundamental legal] principles [of the phenomenon of occupation], therefore, unlike the violation of a specific norm that reflects them, renders an occupation illegal per se." (Ben-Naftali, Gross & Michaeli, pp. 554-555)

104. And indeed, **international law** does not recognize the unilateral annexation of eastern Jerusalem or the legal validity of the normative steps that Israel adopted to apply sovereignty over eastern Jerusalem. In a long series of pointed decisions the international community and the international institutions have repeatedly stressed that the practical and normative steps adopted by Israel in its annexation of eastern Jerusalem is in contravention to the rules of international law, and eastern Jerusalem is occupied territory (see, *inter alia*: United Nations General Assembly Resolution 2253 (ES-V) and 2254 (ES-V) (both of July, 1967); United Nations General Assembly Resolution 35/169E (December 1980), United Nations General Assembly Resolution A/61/408 (December 2006); United Nations Security Council Resolution No. 252 (May 1968); No. 267 (July 1969); No. 271 (September 1969); No. 298 (September 1971); No. 478 (August 1980); and No. 673 (October 1990)).

105. The International Court of Justice (hereinafter: the "**ICJ")** adopted the Security Council Resolutions of the United Nations and held in their Advisory Opinion to the General Assembly of the United Nations in 2004 with respect to the Separation Barrier that eastern Jerusalem is occupied territory like the rest of West Bank territory and the Gaza Strip, and the steps that Israel adopted has no validity under international law [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (International Court of Justice, July 9, 2004), 43 IL M 1009 (2004) (paragraphs 75-78 of the Opinion) hereinafter: the "**ICJ Opinion"**)). The court held:

> "The territories situated between the Green Line… and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories… have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power." (Paragraph 78 of the opinion)

106. This position of international law is one shared by all the world's states. Israel has 72 foreign embassies in Israel. All the States that conduct diplomatic relations with Israel on the ambassadorial level do not recognize the annexation and therefore they are not prepared to house their embassies in Jerusalem (in recent years the embassies of Costa Rica and el Salvador, the last embassies to be housed in Jerusalem, have left Jerusalem).

See also: Rubenstein and Medina 924-927, and 933; Yoram Dinstein, "Zion Shall be Redeemed by International Law' (in Hebrew) *HaPraklit* 27 (5731) 5; **Ben-Naftali, Gross & Michaeli**, p. 573, David Herling "The Court, the Ministry and the Law: Awad and the Withdrawal of East Jerusalem Residence Rights", 33 *Israel Law Review* 67, 69-70 (1999).

The Status of eastern Jerusalem's Residents according to International Law

107. A longstanding rule before the honorable court has held that residents of the territories, which were occupied by Israel in 1967 have the status of being "protected" according to the Fourth Geneva Convention, and are entitled to protections that international law grants protected persons (see in this regard, for example: HCJ 1661/05 **The District Council of the Gaza Beach et al. v. The prime Minister - Ariel Sharon et al.**, *Piskei Din* 59(2), 481, 514-515 (2005); HCJ 606/78 **Iyyov v. Minister of Defense**, *Piskei Din* 33(2), 113, 119-120 (1979); HCJ 785/87 **Apu v. Commander of the IDF Forces**, *Piskei Din* 42 (2), 4, 77-78 (1988)).

108. The powers of the military commander, whom the state appointed over the territories, even when those powers are enshrined in army legislation, are also subject to the rules of international law which enshrines the rights of protected persons (see: HCJ 393/82 **Jimayat Ascan Almalmon v. Commander of the IDF Forces**, *Piskei Din* 37 (4), 785, 790-791) (hereinafter the Almasuliya **case**'). And what is the law that pertains to eastern Jerusalem residents? This honorable court has never examined the question of whether or not they enjoy the "protected" status alongside their status as Israeli residents. The answer to this question may be derived from the provisions of international humanitarian law.

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

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

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

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

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

110. Obviously, the court is required to rule in accordance with Israeli law. This includes both Knesset legislation as well as customary international law, which has been absorbed into domestic law. While the provisions of Israeli law hinge on the interpretation of Knesset legislation – and indeed the **Awad** rule is based entirely on legislative interpretation in the absence of special legislative provisions with respect to the status of eastern Jerusalem (**Awad**

case, 429-430) – this interpretation should as much as is possible be consistent with the provisions of international law.

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

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

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

112. **According to international law**, the law that applies to territory that was occupied and annexed to Jerusalem is that of belligerent occupation. The residents of the occupied region, according to international law, are protected persons. Since they are protected persons, the occupying power is saddled with the duty of protecting their rights both by virtue of the detailed obligations that are enshrined in international humanitarian law (**The 1949 Fourth Geneva Convention and the Hague Regulations),** and by virtue of the general obligation of the occupying power to preserve public life and order, which is enshrined in Regulation 43 of the Regulations Appended to the Hague Convention Respecting the Laws of War on Land 1907).

113. Case law has extended the positive obligation that is imposed on the Occupying Power to the point that it must be concerned with the rights and quality of life of residents of the occupied territory (see **Almasulyia** case at 797-798; HCJ 202/81 **Tabib v. Minister of Defence**, *Piskei Din* 36(2) 622, 629 (1981); HCJ 3933/92 **Barakat v. Commanding Officer, Central Command**, *Piskei Din* 46(5) 1, 6 (1992); HCJ 69/81, 493 **Abu Aita v. The Regional Commander of Judea and Samaria**, *Piskei Din* 37(2) 197, 309-310 (1983))

114. In addition to the rules of international law the State as an Occupying Power, must also abide by the basic principles of Administrative Law (**Almasuliya** case, at 810; HCJ 5627/02 **Sayef v. Government Press Office**, *Piskei Din* 58(5) 70, 75 (1994); HCJ 10536/02 **Hass v. Commander of the IDF Forces in the West Bank**, *Piskei Din* 58(3) 443, 455 (2004); **Mara'abe** case, paragraph 14 of the judgment). Likewise there are certain undertakings by the State to international human rights law which also apply (see **the ICJ opinion,** paragraphs 102-113).

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

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

116. **Article 49 of the Geneva Convention prohibits the Occupying Power from carrying out any type of "forcible transfer" on the protected persons.** This prohibition is absolute, and is in force regardless of the motive that underlies the intention to carry out a forcible transfer. Paragraph 78 of the Geneva Convention recognizes, however, the authority of the Occupying Power to adopt the step of "special residences" with respect to protected persons within the borders of the occupied territory, but only as an exceptional and necessary step for security considerations. According to case law, it is not possible to adopt such a step, unless the security risk, which is foreseen to emanate from a person against whom it is adopted, may only be removed by means of adopting this step. In any event this step should not be adopted as a means of punishment but only as a deterrent (see HCJ 7015/02 **Ajouri v. IDF Commander in the West Bank**, *Piskei Din* 74(6) 352 (2002)).

117. The **application** of **Israeli law** to the eastern Jerusalem area and to its residents does not diminish those protections that international humanitarian law grants them. So long as the State of Israel seeks to view eastern Jerusalem and its residents as part of Israel, it is choosing to apply to eastern Jerusalem and its residents extra strata of normative protections, whose force is no lesser than that of international humanitarian law. Israeli law carries its own baggage of constitutional protections, as well as Israel's undertakings in accordance with the provisions of international human rights law. Thus the application of Israeli law to eastern Jerusalem, provided that the State of Israel stands by this application to eastern Jerusalem and its residents, means that Israel by its own admission is thus applying the basic rights that are enshrined in Israeli law, as well as Israel's undertakings to International Human Rights Law.

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

119. However the additional step that the court adopted in **Awad** – when it held that eastern Jerusalem residents are like all other residents, so that should they desire they may become naturalized citizens, but if they do not so they are at risk of losing their status – subverts that special status. Although eastern Jerusalem residents may request to become naturalized citizens of Israel (provided they are able to overcome the bureaucratic hurdles) very few of them actually do so. Though the majority of them satisfy the conditions of naturalization that are laid out in section 5 of the **Citizenship Law 5712-1952** (excluding, perhaps some knowledge of the Hebrew language), they see themselves, and this is perfectly justified in terms of international law, as residents of occupied territory, whose status in Israel has been forced upon them. They feel connected to the West Bank, and therefore have no desire for Israeli citizenship. Moreover, the acquisition of Israeli citizenship through naturalization requires swearing allegiance to the State of Israel (section 5(c) of the Law), and very few are comfortable with this. **The State of Israel, as aforesaid is disallowed from forcing this upon them**.

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

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

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

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

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

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

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

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

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

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

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

Also the United Nations Human Rights Committee, the authorized interpreter of the Convention, held that the right to return to one's country per Article 12(4) to the Convention is not available exclusively to those who are citizens of that country. It most certainly also applies, so the Committee held, to those who because of their special ties to that country, cannot be considered a mere

"alien". As an example, the Committee points out that this right shall also be available to residents of territories whose rule has been transferred to a foreign country of which they are not citizens:

> The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country". **The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence**. Since other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country, States parties should include in their reports information on the rights of permanent residents to return to their country of residence. (General Comment 27, para. 20). (Emphasis added)

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

> There was no intention here to address the claims of masses of people who have been displaced as a by product of war or by political transfers of territory or population, such as the relocation of ethnic Germans from Eastern Europe during and after the Second World War, the flight of the Palestinians from what became Israel, or the movement of Jews from Arab countries… The covenant does not deal with those issues and

> cannot be invoked to support a right to 'return'. These claims will require international political solutions on a large scale. (S. A. F. Jagerskiold, The Freedom of Movement, in L. Henkin (ed.) The International Bill **of** Rights, New York, Colombia University Press, 1981, p. 180).

See also Hannum, 59.

The special status of eastern Jerusalem residents since the Oslo Accords

125. The judgment in the **Awad** case closed its eyes, as stated, to the normative aspects that apply to eastern Jerusalem. These aspects require us to reexamine the rule as it relates to eastern Jerusalem residents. Moreover – over the course of the years that have elapsed since the judgment in the **Awad** case was decided other normative strata have been added with regard to eastern Jerusalem residents, which also demonstrate the need to reexamine the rule as it applies to eastern Jerusalem residents and which prompt us to ask how it is that Israeli law would still be able to request "synchronization" of their civilian status in such a way that shuts its eyes from the special situation that pertains to eastern Jerusalem.

126. The State of Israel does not want the Palestinians in eastern Jerusalem to be residents, and even more so – its citizens. Israel thereby recognizes that the residents of eastern Jerusalem are no different than the residents of the West Bank, and even encourages the former's link to the territories and to the Palestinian Authority. They in turn generally do not view themselves at all as Israelis, but Palestinians, who are connected to the territories. Despite the fact that eastern Jerusalem residents number a third of all the residents of Jerusalem, and despite the fact that they are entitled to participate in elections for the Jerusalem Municipal Council and for mayor (see Section 13 **Local Authorities (Elections) Law 5725-1965),** as a general rule they do not participate in elections. In the Jerusalem Municipal Council there is not even one Palestinian representative.

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

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

129. In the **Oslo Accords A**, dated 13 September, 1993 Israel undertook to discuss the status of eastern Jerusalem within the framework of negotiations for a final settlement, and it agreed that the "Palestinians from Jerusalem who live there shall have the right to participate in the election process" to the Palestinian Council, and all this "pursuant to the Agreement between the two sides". In **Oslo Accords B** dated 28 September, 1995 general rules for organizing elections to the Palestinian Legislative Council and its Executive Chairman were agreed upon. It was agreed that "Palestinians from Jerusalem who live there shall be permitted to participate in the election process" (to elect and to be elected), provided that they are not citizens of Israel. In Appendix II to the Agreement arrangements for voting in eastern Jerusalem were established. After signing these agreements two laws were enacted for their implementation: The **Implementation of the Interim Agreement with Respect to the West Bank and the Gaza Strip (Restriction of Activities) Law 5755-1994,** and the **Implementation of the Interim Agreement with Respect to the West Bank and the Gaza Strip (Jurisdictional Authority and other provisions) (Legislative Regulations) Law, 5756-1996.** Israel's undertaking to hold elections in eastern Jerusalem and to enable the participation of eastern Jerusalem residents in the elections was enshrined in legislation. The legislation establishes that these provisions would be implemented according to the government's discretion, with its consent and notwithstanding anything stated in any other law.

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

131. As stated, even the most recent elections, that took place at the beginning of 2006, saw the participation of eastern Jerusalem residents. On 17 January the then Acting Prime Minister, Ehud Olmert clarified the decision to allow eastern Jerusalem residents to participate in the elections. Below is a verbatim

transcript of his words, as they were published on the Internet website of the Office of the Prime Minister:

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

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

From the General to the Specific: the Development of the Awad Rule in Light of the Reality of Life

133. One cannot see the policy of residency revocation without considering the normative and factual aspects which we have illustrated. We have seen that we need to expand the **Awad** rule so that it may be reconciled with other norms of Israeli law, which imbibes the principles of human rights and international humanitarian law. The expansion of the **Awad** rule is also required within the

framework of drawing lessons from its implementation until today and within the framework of tailoring it to the lifestyles of the modern world.

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

As we have seen from the examples that have been cited above, a woman in traditional society who goes to live with her spouse in another country has not severed her relations with the country of her birth. This is the natural and only place of refuge for her if the ties between the spouses have hit rock bottom.

We have also seen other examples, how leaving abroad for study and livelihood purposes, even if it is for an extended period, comes to an end generally speaking when the children are born and reach the age of formal education The bond with the country of origin, even if it has wavered over the course of the years, is revealed in all its splendor when one has to send one's child to the educational system.

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

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

136. And perhaps even more serious than this; the **Awad** rule contained within it dangerous ramifications for the future. Already as early as 1967 Israel recognized, within the framework of the open bridges policy, that it was necessary for eastern Jerusalem residents to stay abroad for an extended period of time in order to acquire an education and a livelihood that were not available in Jerusalem, and to preserve their societal and familial links with Arab States. Israel also saw the possibility of these residents actualizing themselves abroad as a powerful Israeli interest. Nowadays, when the entire world is like one global village, the self actualization of human beings is more and more dependent on their mobility across international borders.

137. The implementation of the **Awad** rule by the respondent places eastern Jerusalem resident between a rock and a hard place: their right to leave their homes for a limited time for the purpose of self realization, education, a livelihood and participation in the life of modern society clashes with their rights to a home and to a homeland. The **Awad** rule turns into a quasi judicial

cage that prevents eastern Jerusalem residents from being mobile like everyone else, and which confines them to the narrow and deserted space in which they born. The sanction for leaving the city for a limited time, as well as for acquiring status in other places means losing one's home and the possibility of returning to the homeland.

138. In light of the harsh results that flow from the **Awad** rule, and in order to tailor it to the legal rules that apply to eastern Jerusalem residents, it needs to be expanded. There is no need to amend the ruling that eastern Jerusalem residents live in Israel by virtue of the permits for permanent residency that were granted to them as a whole, in accordance with the Entry into Israel law. There is no need to amend the ruling that Israeli permanent residence permits, in the event that they are granted to an immigrant from a foreign country, include a general stipulation that the validity of the permit is dependent upon the reality of being a permanent resident. However so long as we are dealing with eastern Jerusalem residents, for whom this piece of earth is their first home, and who enjoy the status of protected persons according to international humanitarian law, it must be established that their residence permits in Israel include a general stipulation that the permit does not expire even in the wake of continuous living abroad or the acquisition of status in another country. That is, as stated in the judgment in the **Awad** case, the respondent is permitted to stipulate conditions for granting residency permits (Section 6 of the Entry into Israel Law). However, the condition that must be read into the residency permits which the respondent granted eastern Jerusalem residents is that those may not be revoked as a result of continuous living abroad or the acquisition of status in another country.

139. This is the case in general, and also in the case of the appellant. The appellant is an eastern Jerusalem resident. His status was given to him in the wake of the annexation of eastern Jerusalem. Because of this his status is a special status. Latent within it is his immunity from forced deportation. The State of Israel may not demand from the appellant - and likewise from any other eastern Jerusalem resident - to become its citizen, and to swear allegiance to it, in order not to be deported, and it may not force him – or any other eastern Jerusalem resident for that matter – to stay in eastern Jerusalem in order not to lose his status. The appellant is entitled to leave the country, to go out of eastern Jerusalem and to return to his homeland without any fear that his status will expire and he will be deported.

The litigants' position with regard to the applicants' application to join as amicus curiae.

140. Counsel for the appellant, Adv. Sunny Hori, gave his consent to the joinder of the applicants.

141. Counsel for the respondent, Adv. Ro`i Shwika, requested to reply to the application within 10 days from the date of its filing.

20 November 2008

(signed)

Yotam Ben Hillel, Attorney

Counsel for applicant 1

Oded Feller, Attorney

Counsel for applicant 2

[T.S. 31490]