Jerusalem Residency

"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."

Universal Declaration of Human Rights, Article 16 (1)

In 1967, Israel annexed East Jerusalem , in violation of international law. Those who were living there during the census that was carried out immediately after annexation were granted the status of permanent residents. Permanent residents may live and work in Israel, enjoy freedom of movement inside its territory and receive all social benefits to which citizens are entitled, but their status is different from that of citizens. The status of permanent residency can be revoked by the Minister of the Interior. Permanent residents are barred from voting or being elected for the Knesset (but may vote in municipal elections); they may not hold any positions in the administration; if they leave the country, they might not be allowed back in, and if they stay away for more than seven years or become residents or citizens of another state, their status as permanent residents may be revoked.

Ever since the illegal annexation of East Jerusalem, Israel has continually worked to entrench its hold on the city by creating a clear Jewish majority. The inferior legal status of the residents of East Jerusalem is one of the tools for doing so. The Interior Ministry frequently exercises its authority to revoke the residency of persons who spend a long time outside of Israel. These persons are then stripped of the rights that the residency status awarded them. Yet, even residents of Jerusalem who have not lost their status cannot take these rights for granted. In order to exercise them, they have to jump through endless bureaucratic hoops.[109]

In addition to harming those who are

already residents, Israel goes to great lengths to minimize the number of Palestinians who become residents of Jerusalem. One of the methods employed for doing so is foot-dragging by the Interior Ministry branch in East Jerusalem. Another is the obfuscation, by the same bureau, of the procedures for registering children of residents and granting legal status to adults.

The effort to maintain a Jewish majority in the city reached new heights with the Law of Nationality and Entry into Israel, which stopped the unification of residents with their spouses from the West Bank and Gaza Strip. This law also injures Israeli citizens who marry residents of the Territories, but because of their fragile status, residents, and especially their children, are hit harder.

The Law of Nationality and Entry into Israel[110]

At the end of July 2004, the Knesset extended the 2003 Law of Nationality and Entry into Israel (Temporary Order) by another six months. The Law, which became effective in August 2003, revoked the family unification procedure between Israelis and their Palestinian spouses. The procedure, which allows foreign nationals who are married to Israelis to live in the country is still in effect for non-Palestinians. The law was challenged by numerous petitioners, including HaMoked, but the High Court of Justice (HCJ) has not yet handed down a decision on this matter.

The Law in effect fixed a practice that started in May 2002, when the Israeli government decided to freeze the processing of applications for family unification. Since then, no new applications can be filed. Also, persons whose applications were approved prior to the freeze, cannot go on climbing the status ladder as part of the "graduated procedure" that leads to residency in Israel. They are now living in Israel under temporary permits or holding temporary status that they are required to constantly renew. As long as the Law is effective, they will not get permanent status and many will not receive any social benefits, primarily health insurance. HaMoked's routine work includes assistance to hundreds of families from East Jerusalem that are in the various stages of family unification.[111]

The Interior Ministry Branch in East Jerusalem

The family unification procedure and whatever remains of it after the Law, involves countless visits to the Interior Ministry branch in East Jerusalem. Residents of East Jerusalem and their spouses are

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[109] See: HaMoked and B'Tselem, **The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians**, April 1997; **The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of Residents of East Jerusalem**, September 1998.

[110] See: HaMoked and B'Tselem, **Forbidden Families: Family Unification and Child Registration in East Jerusalem**, January 2004.

[111] While this chapter focuses on HaMoked's activity relative to Jerusalem residents who are married to residents of the Territories. HaMoked also helps residents who are married to foreign nationals.

allowed access only to the East Jerusalem branch of the Interior Ministry. Israeli citizens, on the other hand, are entitled to receive service at any branch in Israel. Despite slight improvements in 2004, the performance of the East Jerusalem branch remains unacceptable.

In the past, the branch was infamous for its endless waiting lines. Residents of East Jerusalem had to wait for hours and even days, literally outside the building to meet with officials and file applications. In this respect, the service has somewhat improved. While appointments can now be scheduled over the phone, HaMoked's experience is that sometimes it takes hours or even days for the staff to pick up the phone and make such appointments. Even then, the appointments are scheduled for months ahead.

In addition to the above, the branch continues to mistreat and disrespect the residents of East Jerusalem in all other aspects as well. Its working procedures are frequently changed but these changes are never publicized. Residents have no way of telling in advance which documents they might be required to produce and they are often sent back and forth by the ministry staff in order to bring more and more documents.Each statement a resident makes must be certified by an attorney, which adds to the costs.The forms are not available in Arabic. HaMoked's experience shows that the criteria are not uniform: different officials ask for different documents for the same type of application. Often, conflicting information is provided to different applicants. At times it seems the branch has no defined procedures and the fate of East Jerusalem's residents is entirely in the hands of the bureau's clerks.

Family Unification: the Graduated Procedure

Under the graduated procedure,[112] once the application for family unification is approved, the spouse from the Territories is granted permission to stay and work in Israel for a period of 27-month (the District Coordination Office (DCO) -permit stage). This status does not award holders any social benefits. After this period, the spouse from the Territories is entitled to temporary residency (A/5). Temporary residents are entitled to the same social benefits as permanent residents, but must renew their status annually. After three years of temporary residency, they become permanent residents.

In actuality, even when the Ministry still processed new applications and moved those in the process up the ladder as described, the procedure took much longer than defined and the Ministry imposed endless hurdles at each stage.

The Application Stage

In the past, when applying for family unification, a couple was required to prove that their center of life was in Jerusalem for at least two years prior to the application. "Center of Life" means not only is their residence within the municipal boundaries but also their place of work and/or study is within Jerusalem. To do so, they had to present numerous documents and affidavits, subject to the bureau's demands and conduct, as described above. The Palestinian spouse was thoroughly screened by the Interior Ministry and other government agencies. If the agencies decreed there were criminal or state security issues which barred the applicant from entering Israel, the application was denied. The process

generally took around five years, and only then, if the application was approved, did the Palestinian partner enter the graduated procedure.

New applications for family unification can no longer be filed, but in May 2003 the Interior Ministry announced it would resume the processing of applications that were filed before the May 2002 freeze. This notice gained binding legal status in the 2003 Nationality Law, which expressly provided that anyone whose application had been approved, could move on to the DCO-permit stage – but no further. The Ministry has never publicized the fact that the freeze on approved applications had been lifted and resumes processing applications only upon request by the couple. In 2004, three applications of HaMoked clients were revived and approved.

In January 2002, B.Z., a resident of Jerusalem, filed a family unification application for his wife, M.Z. Three months later, the government halted the family unification procedure and the Interior Ministry notified the couple that their application had been denied.

In June 2003, after the Ministry announced it would resume treatment of applications filed before the freeze, HaMoked contacted the Ministry, asking to address the case of B.Z. and M.Z.

Only in November 2004, nearly a year and a half after this request, did the Ministry summon the couple for a hearing. Around three weeks after the hearing, the Ministry approved their application. M.Z. was referred to the DCO, where she received her first permit to stay in Israel after around four years in which Israel's policy left her no choice but to be an illegal alien in her own home. **(Case 26666)**

The Permit to Stay Stage

After the application for family unification is approved, the Interior Ministry issues a one-year certificate stating the approval of the request. This document allows the Palestinian spouse to receive a permit to stay in Israel from the DCO in his or her area of residence. A DCO permit is valid for three to six months. Renewal of such permits requires reporting to the DCO in person.

Applications to renew the Ministry's certificate may only be filed three months or less before it expires. New certificates are issued only after security clearance and after it is reestablished that the couple's center of life is in Jerusalem. The couple is again required to submit documents and affidavits, and is again screened for security-related and criminal affiliations. This process can sometimes take more than a year, creating long gaps between Ministry certificates. During these gaps, the Palestinian spouse cannot get a permit to stay in Israel.

Under such circumstances, he or she has two options: staying in Jerusalem illegally, exposed to the danger of detention, arrest or deportation back to the Territories, or returning to the Territories and thus risking rejection of the application on the grounds that the applicant's center of life is not in Jerusalem. As noted, throughout this waiting

[112] The graduated procedure described in this chapter only relates to family unification applications filed by Israeli residents for their spouses. A similar procedure also exists for citizens. For a description of this procedure, see: The Association for Civil Rights in Israel, **The Ministry,** 2004, pp. 31-32 [Hebrew].

period, the Palestinian spouse is not entitled to social benefits. Nowadays, many applicants are forced to report to the DCO every three months, obtain a renewed Ministry certificate every year and spend unlimited lengths of time as aliens in their own homes, without any foreseeable solution.

R.A., a resident of the Gaza Strip, married Z.A., a resident of Jerusalem, in the summer of 1999. Their application for family unification was approved in October 2000, and since then R.A. has stayed in Israel legally with Interior Ministry certificates and DCO permits. The second certificate she received from the Ministry was valid through November 17, 2003.

Around two months before the expiration date, HaMoked applied to the Ministry for a new certificate. An appointment at the Ministry was scheduled for R.A. and her husband on November 30, 2003, but when the time came, the Ministry was on strike. When the strike ended, in January 2004, the Ministry rescheduled the appointment for March. It was not until August that year, five months after the appointment, that the Ministry approved the application and referred R.A. to the DCO to obtain a permit to stay in Israel In early September 2004, R.A. went to the "Office for Israelis" at Erez Crossing with the Ministry's certificate, in order to get a new three-month permit from the DCO. The attending soldier refused to issue a permit and ordered her to enter the Gaza Strip. HaMoked contacted the commander of the "Office for Israelis" directly, to receive an explanation for the refusal. The commander said that because of the time lag between the Ministry's certificates, R.A. had been staying in Israel unlawfully and a permit could therefore not be issued. The commander said that her request would be forwarded for processing, and that she had to wait at the DCO. R.A. waited there until at the end of the day, the soldier returned her papers and sent her back to Jerusalem without any further explanation and without a permit.

HaMoked therefore asked the State Attorney's Office to intervene. Despite repeated reminders, this yielded no results. At the time this report was compiled, nine months after the Ministry renewed the certificate authorizing R.A.'s stay in Israel, she still does not have a DCO permit. The Erez DCO is the only DCO that refuses to grant permits because of the long time lags between Ministry certificates. **(Case 14587)**

Temporary Residency

Those who made it through to the second stage of the graduated procedure before the freeze on family unification, received the status of temporary residency (A/5 visa). Temporary residents are entitled to social benefits such as health insurance and national insurance allowances. They are required to renew their status every year. Every year, they have to prove to the Ministry, once more that their center of life is in Jerusalem, and once more they are screened for criminal and security-related affiliations. Here too there are long time lags between the expiration of one A/5 visa and the next, leaving the Palestinian spouse without any legal status in Israel and without any social benefits. As of now, temporary residency cannot be upgraded to

permanent residency. The Interior Ministry refuses to make any exception or exercise discretion even in special circumstances.

H.G. was born in 1922. In 1974 he married W.J., a resident of Jerusalem, and moved there. The couple applied for family unification 20 years later, because until then Israel did not allow women to make such applications for their husbands. The application was approved only in 1997, after HaMoked petitioned the HCJ on their behalf.[113] Following the petition, the Ministry agreed to grant H.J. temporary residency for five years and three months. During this period, he would be required to renew his status annually. After that, and subject to the usual screening, he would receive the status of permanent residency. According to this timeline, H.J. was to become a permanent resident in February 2002.

If the Ministry had lived up to the arrangement, H.J. would have been able to become a permanent resident back in February 2002, before the freeze on family unification. Yet, each time H.J. applied to renew his temporary resident's visa, the Ministry dallied with the response for anywhere between seven and nine months. In addition to these delays, there were times when H.J was unable to submit a request for renewal of his temporary status on time due to the Ministry's ever changing policies on scheduling appointments and its inaccessibility. H.J. was supposed to renew his temporary status for the last time in February 2001, but because of these delays, this last renewal occurred only in October of that year. At the appointment he finally managed to schedule in October, he asked to upgrade his status to permanent residency. The clerk explained it was not possible because not enough time had passed and that he would be able to do so at his next appointment, namely, in September 2002. Four months before that date, Israel halted the family unification process.

In September 2002, HaMoked contacted the Ministry of the Interior, demanding that H.J. be granted permanent residency, as promised. The Ministry's response arrived eight months later, in May 2003. H.J. received another one-year temporary resident visa.

In May 2004, HaMoked filed another application for permanent residency on H.J.'s behalf. After four months of silence, HaMoked petitioned the Administrative Court. In November 2004, around two months after the application was filed, the Ministry renewed his temporary residency once again, completely ignoring the application for permanent residency.

In November 2004, when H.J was again granted temporary residency he had already been living in Jerusalem for 30 years. Of the seven years since his original application for family unification was approved, H.J. spent a total of more than two and a half years as an illegal alien, devoid of any legal status, strictly because of the Ministry's procrastinations.

Since he has no legal status, 82-year-old H.J. is not eligible for national health insurance or an old-age allowance.

The State holds it stopped family unification because of security needs. In its petition, HaMoked argued that it is hard to

[113] HCJ Petition 7464/96 **Jabbarin v. Interior Ministry**.

see what kind of threat an elderly man like H.J. can represent if granted permanent residency. The Ministry still refused to grant H.J. permanent residency, but following the petition agreed to approve two years of temporary residency in his case instead of just one. **(Case 7272)**

In May 2005, an amended bill was put before the Knesset. The press said these amendments relaxed the government's policy, but in fact they were little more than symbolic gestures. One of the amendments provided that a resident or citizen whose husband or wife from the Territories were over 35 or 25, respectively, could apply for family unification. If the application is approved, at the end of the five-year process, the spouse would be eligible for a permit to stay in Israel. But the Knesset rejected even this gesture. The bill was returned to the Knesset's Internal Affairs and Environment Committee for further discussion, and the 2003 Law of Nationality and Entry into Israel was extended by another three months. At the time this report was written the law was in effect through to the end of August 2005.

Registration of Children

Under Israeli law, a child born in Israel to parents who are permanent residents, is entitled to the same legal status. If only one parent is a resident and the other has no legal status in Israel, the child is still entitled to residency. In the past, the child was entitled to residency only if the father was the resident. Israeli law is silent as to the status of children born to Israeli residents outside of Israel, which is often the case with residents of East Jerusalem.

Over the years, the Interior Ministry kept changing its policies on registering children of East Jerusalem residents. It manipulated every possible loophole to avoid registering them in the Israeli Population Registry and constantly revised its procedures without prior notice or publication after the fact. HaMoked could only infer these policy changes from the responses the Ministry gave in cases it was handling.

At present, the Ministry is directing its policy against children of East Jerusalem residents who were born outside of Israel, although it is hardly eager to register children who are born inside Israel either.

In order to register a child, an Israeli resident must go to the Interior Ministry and have the child entered in the Population Registry. In the case of residents of East Jerusalem, the process is likely to be long and arduous. If the parents register their child before he or she is one year old, registration usually goes through swiftly and the parents are not required to present proof that their center of life is in Jerusalem. But if for any reason they have not registered the child before his or her first birthday, they are required to submit numerous documents and affidavits certified by an attorney, proving that their center of life is in Jerusalem. The Ministry takes months and sometimes even more

than a year to process these applications. During this interval, the children have no legal status. If at the end of the process the Ministry is not convinced that the family's center of life is in Jerusalem, it refuses to enter the child in Israel's Population Registry.

Registration is almost impossible if the child was born outside of Israel. As noted, Israeli law is silent on this subject, and registration in such cases depends on the Ministry's procedures, which change frequently. In 2001, HaMoked noticed that the Ministry had started to distinguish between children born inside and outside Israel (similar attempts had been made before but abandoned after being challenged in court). At first, the Ministry charged a fee for registering children born abroad to residents of East Jerusalem. Next, it announced that instead of receiving permanent residency, these children would get two years of temporary residency. In May 2002, before the outcome of this new policy could be fully assessed, the cabinet halted family unification and the Ministry gave child registration a new and outrageous interpretation.

Registration of Children after the Freeze on Family Unification

After the cabinet resolution freezing family unification, the Interior Ministry started turning down HaMoked's applications to register children who were born in the Territories and only one of their parents was a resident of Jerusalem. The Ministry claimed these applications were effectively family unification requests, and because of the cabinet resolution, applications of this nature could not be processed. The Ministry also applied this policy to children who were born inside Israel but were registered in the Territories.

The August 2003 Nationality law which entrenched the freeze on family unification included a qualification under which children under 12 may receive a permit to stay or reside in Israel in order not to separate between them and their parents, if the latter are staying in Israel legally. This qualification left many unanswered questions: Would these children be given residency or temporary permits? Would they be forced to separate from their parents and leave their homes once they turned 12? Would they enter the graduated procedure?

HaMoked did not wait for these questions to be answered and immediately petitioned the High Court of Justice against applying the Law in the case of children.[114] The Court consolidated this action with others that were filed against the Law, and has yet to hand down a decision. In the meantime, to stop children from being severed from their families, and despite the objection to applying the Law in the case of children and classifying their registration as family unification, HaMoked has advised its clients to file family unification applications for their children.

The answers to the questions regarding children's status started coming in mid 2004. In June that year, as part of an administrative petition HaMoked had filed in the case of a child whose father is a resident of Jerusalem and mother is a Jordanian citizen, the Interior Ministry announced that children born abroad to parents who are residents

[114] HCJ Petition 10650/03, **Abu Gweila v. Minister of the Interior**.

of Israel would be registered under a graduated family unification procedure. This procedure would be different from the one for spouses; children would be granted temporary residency upon approval of the application. This status will be valid for two years, after which, subject to the center-of-life test and security clearance, the children would be recognized as permanent residents.[115] This announcement was validated as a Court judgment in October 2004.[116]

In the time between the Ministry's announcement and it being sustained as a Court decision, it became clear that the Ministry had no intention of implementing this policy in the case of children who were born or registered in the West Bank and Gaza Strip. In September 2004, HaMoked received the Ministry's first response to a "family unification" application made for children. The Ministry stated the application had been approved and the children would be allowed to stay in Israel for a year by force of District Coordination Office (DCO) permits. HaMoked's client was informed that as long as the Nationality Law was in force, her children would not be registered in Israel or receive legal status in it.

HaMoked asked the director of the Population Registry Bureau for explanations. The director said a procedure on the subject existed, and promised to publish it soon. While the procedure was never published, in November 2004 HaMoked petitioned the Administrative Court to cancel it. In the least, HaMoked asked to apply the policy for children born in foreign countries to children born in the Occupied Territories and grant them temporary residency for two years. Since then, HaMoked has filed six more petitions in cases where parents were instructed to obtain DCO permits for their children.

In March 2005, following these petitions, the Ministry of the Interior announced that its procedures had been changed. Children of mixed couples (a resident of East Jerusalem married to a resident of the Territories) who are less than 12 years old and appear in the Palestinian Population Registry, would receive temporary residency for two years, and would subsequently be entitled to permanent residency, subject to the center-of-life test and security clearance. The Ministry even gave HaMoked a document describing the new procedure. However, it steadfastly objected to granting any status or permits to children over 12, even if all their siblings have received such status or if other humanitarian reasons justify doing so.

In 1988, H.G., a resident of Jerusalem, married T.G., a resident of Beit Sahur in the Bethlehem region. By the year 2002, the couple had seven children and moved between the home of T.G.'s parents, where they lived, and Jerusalem, where T.G. worked. Their eldest daughter was born in Jerusalem, and the couple spent long periods of time at the home of H.G.'s parents in the city. All seven children were entered in the Population Registry in the West Bank.

In 2002, the family permanently moved to Jerusalem and a year later asked HaMoked to help them enter their children in Israel's Population Registry. In December 2003, HaMoked applied to the Interior Ministry to register the children according to the Ministry's new procedure, although at the time, the procedure was yet unknown. HaMoked

asked that the two elder daughters be granted legal status, even though they were over 12, so they would have the same status as their siblings.

Before an answer was received, the couple had another baby girl. Since she was born in Jerusalem, she was entered in the Population Registry and received permanent residency. In September 2004, H.G. was referred by the Interior Ministry to obtain DCO permits for five of her children, two of whom are as young as four and five. When she asked about her two older daughters, the clerk at the Ministry told her to take their case to court, which H.G. then did, through HaMoked.

Following her petition, the Ministry said it would grant five of the younger children temporary residency, but adamantly refused to grant any status to the older girls, because they were over 12. HaMoked again explained that by law, the Ministry had to register the eldest and grant her permanent residency because she was born in Jerusalem, and that the younger girl should be registered because of humanitarian reasons, since all her family was living in Jerusalem and all her siblings were residents or eligible to become ones. As at May 2005, the two eldest daughters still do not have any legal status in Israel. **(Case 27781)**

In 1984, A.M., a resident of Jerusalem, married a resident of Hebron and moved there to live with him. Their eldest daughter was born in Jerusalem and their four other children in Hebron. All five children were entered in the Population Registry of the West Bank.

In 1997, A.M.'s husband died and two years later the widow returned to Jerusalem with her children. In October 2004 she applied, through HaMoked, to have her five children entered in Israel's Population Registry. At the time, her children were 7, 11, 13, 16 and 17 years of age.

In the application, HaMoked stressed that by law, the eldest daughter had to be registered, since she was born in Jerusalem. HaMoked emphasized that the children who were born and registered in the Territories and were over 12 should also be registered, because their father had died. If the Ministry refused to register them, they would be torn away from the only parent they still had.

In February 2005, the Ministry replied that the only application that would be considered was for the two youngest children who were not yet 12. HaMoked reapplied, underscoring that the other children, who were past the age limit, should also be registered, because of humanitarian reasons, and that the eldest was entitled to permanent residency in any case, because she was born in Jerusalem.

A.M.'s application for her two youngest children is being processed. HaMoked's applications to grant legal status to her other children have not yet been answered. **(Case 25704)**

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115 Motion for Agreed Judgment, Administrative Petition 402/03, **Juda v. Minister of the Interior**, June 6, 2004.

116 Decision, Administrative Petition 402/03, **Juda v. Minister of the Interior**, delivered on October 24, 2004.