

SEPARATED ENTITIES

Israel Divides Palestinian Population of West Bank and Gaza Strip

Position Paper

Israel is implementing unilateral measures with the purpose of institutionalizing and perpetuating a new factual and legal reality of separation between Palestinians living in the Gaza Strip and the West Bank, while tearing the interdependent social, economic and cultural ties between the two groups,¹ infringing the rights of residents of the Palestinian Territories and impeding the possibility of the Palestinian people's realizing its right to self determination.

Since the beginning of the current intifada, Israel has taken various measures designed to separate the West Bank and Gaza Strip, split the Palestinian population into two separate entities and cut them off from one another. This policy reached new heights in the past year with a new requirement imposed on residents of the Territories whose registered address is in the Gaza Strip to hold a permit to be present in the West Bank and with the removal of such persons from the West Bank as "illegal aliens" therein. The new permit regime is an unprecedented, legally unfounded move, by which Israel is turning Palestinians from the Territories into "illegal aliens" in their own homes.

Israel demands Palestinians hold a permit in order to be present in their homes and with their families

"As of November 2007, a resident of the Gaza Strip who is present in the West Bank is required to hold a 'permit to remain in Judea and Samaria' and the

¹ The Gaza Strip and West Bank form a single integral territorial unit. This was acknowledged in international agreements between the Palestinians and the State of Israel signed under international patronage (e.g., Article XXXI(8) and 11(1) of the Israeli Palestinian Interim Agreement of 28 September 1995; Article 5 of the "Declaration of Principles" of 13 September 1993, signed by Israel and the PLO; Article 23(6) of the Cairo Agreement on the Gaza Strip and Jericho Area, signed by Israel on 4 May 1994; The Interim Agreement was enshrined in the internal military legislation in the Territories: see Military Proclamation regarding the application of the interim agreement, Minshar Zeva'i [military proclamation] no. 7. The Supreme Court has also recognized the integrality of the Territories in H CJ 7015/02 'Ajuri v. IDF Commander in the West Bank; *Piskei Din* (52)3 352.

permit is designed for this purpose only." This was stated in an official letter from the Spokesperson for the Coordinator of Government Activities in the Territories.² The permit must be obtained from the military and is valid for three months only. Receiving such a permit is conditional upon the applicant's proving that he or she had been present in the West Bank for the past eight years continuously; the applicant must also be married and have children; he or she must have security and police clearance; and must provide "humanitarian" grounds for granting the application.³ Even if an applicant meets all the abovementioned conditions, the military may still refuse the application.⁴

Israel's new permit regime denies Palestinians the right to choose where they live

As part of its effort to separate between the Gaza Strip and West Bank, Israel has ceased updating the addresses of Palestinians who had moved from Gaza to the West Bank, while abusing the control it has ceased over the Palestinian population registry.⁵ According to Article 28 of Annex III of the Interim Agreement (the Oslo Accord), the Palestinian Authority (PA) is empowered to update the registered addresses of its residents in the Palestinian population registry. The Israeli side is obligated to update its copy of the registry in accordance with the PA's notifications of change of address. Following the outbreak of the second intifada, Israel froze the procedure for updating addresses from Gaza to the West Bank in its copy of the registry. With the new requirement for a permit to be present in the West Bank being based on a person's registered address, Israel is barring Palestinians whose registered address is Gaza from moving to the West Bank. It is also retroactively turning many Palestinians who already live in the West Bank into criminals. The new permit regime effectively cancels Palestinians' right to choose where they live – a right enshrined both in international law and in Israeli case law.⁶

² Letter from the Spokesperson for the Coordinator of Government Activities in the Territories to HaMoked in response to an appeal under the Freedom of Information Law, 21 May 2008.

³ Ibid, section 13.

⁴ The letter also states that family ties (including marriage) to Palestinians whose registered address is in the West Bank, do not constitute, in and of themselves, humanitarian grounds justifying approval of the application.

⁵ The Palestinian population registry is a single registry for the Gaza Strip and West Bank alike.

⁶ **International Covenant on Civil and Political Rights** (1966), Article 12(1); **Universal Declaration of Human Rights** (1948), Article 13; HCJ 7015/02 '**Ajuri v. IDF Commander in the West Bank**, judgment, 3 September 2002; HCJ 1661/05 **Hof Aza Regional Council v. Prime Minister**, judgment, 9 June 2005.

Marriage is allowed – but only upon immediate separation

Israel does not consider marriage between residents of the Gaza Strip and West Bank a criteria for issuing a permit to remain in the West Bank. In essence, it is preventing couples from the West Bank and Gaza Strip from living together. Israel requires Palestinian women requesting travel from the Gaza Strip to the West Bank to get married to deposit a substantial amount of money as a guarantee that they would return to the Gaza Strip after the wedding ceremony. HaMoked has begun petitioning the High Court of Justice (HCJ) on behalf of Palestinian women from the Gaza Strip wishing to travel to the West Bank to attend their own weddings and begin their lives with their partners who live in the West Bank.⁷ In one of these petitions, the State notified, in an unprecedented move, that the bride and her parents would be able to transit for the wedding ceremony on condition that they deposit a NIS 20,000 guarantee that they would return to the Gaza Strip. The State referred to all three Petitioners, including the new bride.⁸

One way, single passage from the West Bank to the Gaza Strip

Because of the policy of separation between the West Bank and Gaza Strip, many families are forced to live separately with one of the partners living in the West Bank and the other in the Gaza Strip. These families have thus far been able to meet subject to permits scantily provided by Israel. Israel has now eliminated the possibility of entering the Gaza Strip for a visit and returning to the West Bank. In doing so, it left these families with one option only – in order to live together, they must move the Gaza Strip with no possibility of returning to the West Bank. This, as long as Israel upholds the unacceptable separation policy. In response to an application submitted by a woman from the West Bank who wished to enter the Gaza Strip to visit her ailing husband, the military wrote to HaMoked: "... the applicant is a resident of Qalqiliya who is married to a resident of the Gaza Strip and wishes to enter in order to visit him because of his condition. Due to lack of permission for this purpose, her

⁷ HCJ 3592/08 **Hmeidat et. al v. Military Commander in the West Bank et. al** (for more information on this petition visit http://hamoked.org/news_main_en.asp?id=553); HCJ 2430/08 **Abu Ghali et. al v. Military Commander in the West Bank et. al**; HCJ 2905/08 **Abu Snar et. al v. Military Commander in the West Bank et. al** (for more information on this petition visit http://hamoked.org/news_main_en.asp?id=523).

⁸ HCJ 3592/08 **Hmeidat et. al v. Military Commander in the West Bank et. al**, Preliminary response by the Respondents, 5 August 2008, section 5 (for more information on this petition visit http://hamoked.org/news_main_en.asp?id=553).

application will not be approved. **A single, one way permit to the Gaza Strip may be approved**, should she decide to remain to live with her husband in the Gaza Strip. In order to do so, she must change her address to Gaza and/or present a Palestinian undertaking that she wishes to return to Gaza, live there and not return to the Judea and Samaria Area."⁹

Another method Israel employs to force Palestinians to leave the West Bank permanently is to have them sign an undertaking that they would not return to it as a condition for letting them transit to the Gaza Strip.¹⁰ In such cases, as in those mentioned above, Israel is willing to change the applicant's address from the West Bank to the Gaza Strip.¹¹ In a case handled by HaMoked, a Palestinian who is originally from Hebron but lives in the Gaza Strip with his wife and children, traveled to the West Bank with his son to visit his family and be at his mother's bedside as she underwent a leg amputation. When he requested to return to Gaza, the military refused. The military also refused to allow his wife and baby daughter to transit from the Gaza Strip to the West Bank. After a year during which the family was torn in half, the military notified that the man would be allowed to cross to the Gaza Strip if he signed an undertaking never to return to the West Bank.¹²

Such demands are an attempt to forcibly remove residents of the West Bank to the Gaza Strip as, under Israeli policy, changing an address to the Gaza Strip means never being able to return home to the West Bank. Israel is abusing the powers of the Military Commander and uses these families' hardship in order to remove Palestinians from the West Bank permanently.

Forcible transfer from the West Bank to the Gaza Strip

Israel has recently taken active measures to locate and forcibly remove Palestinians from the West Bank to the Gaza Strip on the claim that they were "illegal aliens" in the West Bank, since their registered address was in the Gaza Strip and they did not

⁹ From a document entitled "Report on Refusals" given by the Qalqiliya DCO to HaMoked's client (emphasis added).

¹⁰ Two petitions filed by HaMoked on behalf of Palestinians who have been unable to update their registered address from the Gaza Strip to the West Bank – where they actually live - are currently pending before the Court. The petitions raise questions of principal regarding the power and the legal basis for updating Palestinians' addresses in the Palestinian population registry: HJC 660/08 '**Amer et. al v. Military Commander in the West Bank et. al**'; HJC 2387/08 Sabah **et. al v. Military Commander in the West Bank et. al** (for more information on this petition visit http://hamoked.org/news_main_en.asp?id=507).

¹¹ See letter from HaMoked to the Military Legal Advisor for the West Bank, 22 May 2008.

¹² HJC 6180/08, Imam **et. al v. Military Commander in the Occupied Territories**.

have a "permit to remain" in the West Bank. In May 2008, Israeli soldiers went door to door in Qalqiliya in the middle of the night, searching for residents whose registered address was "Gaza." Two men were detained for being "illegal aliens" and the military decided to remove them to the Gaza Strip. One of the detainees had been living in the West Bank since the 1980s and the other for some nine years. Both are married, parents and provide for their families in the West Bank. Their removal to the Gaza Strip was prevented, for the time being, only following rapid intervention by HaMoked: "Following your appeal, to which various documents were attached, it was decided, exceptionally and beyond the line of strict justice, not to initiate his removal from the Area, despite his being an illegal alien. We would like to point out that the above does not constitute a permit by the Commander for the abovementioned to remain in the area."¹³

The new reality of permits – note: these are temporary permits – makes life unbearable for Palestinians living in the West Bank. Once every three month, one of the spouses gets up in the morning without knowing whether at the end of the day he will return home or find himself removed to Gaza. Should the couple then wish to preserve their family unit, those left behind would have to follow the person who had been removed to Gaza. As noted, in cases such as these, Israel makes passage conditional on officially changing the address and updates the change in the registry. This, despite the freeze it had imposed. This is a "forcible transfer"¹⁴ for all intents and purposes, since, considering Israel's policy – a registered address in Gaza effectively means a prohibition to enter the West Bank and the loss of the right to live there.

Palestinians need a permit to live in the West Bank. Settlers do not.

Israel's new permit regime applies only to Palestinians – the original population of the occupied territory - and not to settlers, despite the fact that the latter's presence in the West Bank is entirely contrary to international humanitarian law.

Israel does not recognize the right of Palestinians to live on their lands with their families and uses the population registry in a cynical manner in order to deny them basic human rights, while simultaneously continuing to support, fund and protect the

¹³ Letter from Lieutenant Matan Solomosh of the Office of the Military Legal Advisor to the West Bank to HaMoked, 29 May 2008.

¹⁴ **Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949**, Article 49.

settlements. Settlers are not required to prove that they are married and have children or that there are humanitarian reasons for their wish to live in the West Bank. Their children do not have to live in fear that the military might take one of their parents away and remove him or her from their home.

The Supreme Court approves Israel's unacceptable policy

Since April 2007, the HCJ appears to have adopted a policy of not recognizing the basic rights of Palestinians to choose where they live, live with their families and travel between the two parts of the occupied territory: the Gaza Strip and the West Bank. The Court has avoided ruling on the matter of limiting movement between the two parts in the past and accepted the army imposed restrictions on freedom of movement of residents of the Territories. However, in cases that did reach the Court, while refraining from issuing judgments, it did use its power to promote compromises between the parties and allow passage where security clearance was given. This policy has now changed – in its recent judgments; the HCJ backs the decisions of the army, which on its part, blocks movement entirely.

In judgments given in HaMoked's petitions, the HCJ postponed discussing and ruling on issues of principal regarding changes of address from the Gaza Strip to the West Bank, but accepted the State's positions as an interim stage. In doing so, the Court effectively gave a legal seal of approval for these positions.¹⁵ For example, in the first case in which the State demanded a bride from Gaza deposit a NIS 20,000 guarantee for going to her own wedding ceremony in the West Bank, the Court did not use its power and approved the State's demand.¹⁶ The Court's approval sanctions the State's demand to deposit a guarantee, a demand which resurfaced in other petitions filed on this matter.¹⁷ In a different case, the Court gave legitimacy to the State's use of four children left alone in Gaza as a guarantee and a means to put pressure on their mother to return to Gaza. The mother had been in the West Bank for essential medical treatment. The Court acceded to the State's demand and had the children go and stay with their mother in the West Bank subject to her signing an undertaking to return to

¹⁵ The Supreme Court has consolidated the hearings on matters of principals in four petitions filed by HaMoked regarding transit between the Gaza Strip and the West Bank and change of address. The joint hearing is scheduled for 24 September 2008. The petitions that will be heard are: HCJ 660/08, HCJ 2387 (see supranote 10), HCJ 2905/08 (see supranote 7).

¹⁶ HCJ 3592/08 **Hmeidat et. al v. Military Commander in the West Bank et. al**; decision, 11 June 2008.

¹⁷ HCJ 2430/08, HCJ 2905/08, (see supranote 7).

the Gaza Strip upon completion of the medical treatment.¹⁸ In another case, when a Palestinian woman from Gaza requested to visit her three adult children who live in the West Bank after she had not seen them for several years, the Court accepted the State's position and refused to allow the mother to cross. It went as far as ruling that Palestinians **"do not have a vested right to enter Israel for any purpose whatsoever, including transit to the Judea and Samaria Area."**¹⁹ In these judgments, the Court sentences many Palestinians to a life away from their families, friends and loved ones and allows the policy of dividing the West Bank and Gaza Strip to continue without providing explanations or legal reasoning.

HaMoked and B'Tselem caution against the severe harm to human rights resulting from Israel's unilateral measures and demand they be cancelled. Any forcible removal from the West Bank to the Gaza Strip must be prevented and the liberties of every Palestinian living in the West Bank must be guaranteed, regardless of one's registered address. Freedom of movement between the West Bank and Gaza Strip must be renewed immediately and any arrangement whereby the presence of a resident of the Territories anywhere therein is made conditional on a permit must be avoided.

The international community must protest the violation of the rights of Palestinians to freedom of movement, family life and to choose where they wish to live anywhere inside the Occupied Territories, and take action to secure these rights.

¹⁸ HCJ 726/08 **Al-'Adluni et. al v. Military Commander in the West Bank et. al**; judgment, 21 February 2008 (for more information on this petition visit http://hamoked.org/news_main_en.asp?id=491).

¹⁹ HCJ 9657/07 **Jarbu'a et al v. Commander of the Military Forces in the West Bank**, judgment, 24 July 2008 (emphasis added).