



Engineering Community:

Family Unification, Entry Restrictions and other Israeli Policies of
Fragmenting Palestinians



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Al-Haq
P.O. Box 1413
54 Main Street 2nd & 3rd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
Ramallah - West Bank – Palestine

Tel: + 970 (0)2 2954646/7/9

Fax: + 970 (0)2 2954903

Website: www.alhaq.org

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I. Introduction

Palestinians, an occupied population, have been subject to arbitrary access and movement restrictions throughout Palestine, which impact virtually all aspects of life. Although checkpoints, the Annexation Wall, and other physical barriers are graphic representations of Israel's fragmentation of the occupied Palestinian territory (OPT), less visible measures taken by Israel to dominate the most basic aspects of Palestinian individual, family, and societal life include its control of the population registry, its implementation of a tiered ID system, and its control over who enters and resides in the OPT.

Israel has historically treated the provision of any ID to Palestinians under their jurisdiction as a privilege and not as an inherent right of individuals. This includes Palestinians who hold Israeli citizenship, and Palestinians in the OPT, who are subdivided into the categories of Jerusalem (permanent residents), West Bank, and Gaza Strip ID holders. The ID status of a Palestinian not only narrows where they may live, but also defines the array of rights they have access to.¹ While the issue of IDs and freedom of movement of Palestinians are foremost and stand in violation of their rights under international law,² obstruction of access and entry of foreigners, including Palestinians living abroad with no Israel-issued ID, have also had an impact on Palestinian life.

This paper broadly examines how Israel has defined belonging to mandate Palestine, and has sought to diminish Palestinian presence through an array of targeted, systematic policies and practices. A special focus will be given to the issue of family unification, as well as the barriers that foreigners, including those of Palestinian descent, face in entering and residing in the OPT due to Israeli policies. While Palestinian citizens of Israel face numerous obstacles under law in regards to family unification, and are part and parcel of Israel's historic targeting of Palestinians, and although Palestinians in Gaza and foreign national spouses therein face extreme hardships due to Israel's prolonged closure of the area,³ the scope of the paper has been limited to issues faced by Palestinians and foreigners in the West Bank, including Jerusalem. However, for comparison, and to highlight the discriminatory nature of Israel's policies, this paper first examines entry, naturalization, and citizenship in Israel. Through illustrating some of the policies used in controlling the presence of foreign nationals in the OPT, the paper seeks to also underscore Israel's unjust administration as Occupying Power, which obstructs life in the OPT, creating uncertainty and instability.

¹ Visualizing Palestine, 'Identity Crisis: The Israeli ID System', 7 June 2014, available at <https://visualizingpalestine.org/visuals/identity-crisis-the-israeli-id-system>

² Al-Haq, 'Gaza Closure Enters its Tenth Year', 20 June 2017, available at <http://www.alhaq.org/publications/papers/GazaClosureJune2017.pdf>

³ For some testimonies by foreign spouses in Gaza, who face difficulty leaving, *see*: Liza Rozovsky, 'The Russian and Ukrainian Women Who Left Their Lives Behind to Raise Families in Gaza', Haaretz, 30 July 2017, available at <https://www.haaretz.com/middle-east-news/palestinians/MAGAZINE-the-women-who-left-their-lives-to-follow-their-husbands-to-gaza-1.5435351>

A. Background

Israel's current practices related to entry and stay in the OPT must be examined in light of actions taken prior to and in the years after the establishment of Israel. Such a view not only sheds light on decades-long efforts to empty the land of Palestinians, but also serves to highlight how Palestinians are rendered as foreigners within their own country.

Countless Palestinians, who were born in mandate Palestine, and their offspring have had their right to live in Palestine denied through a myriad of direct and indirect policies. During the Nakba of 1948, 750,000 – 900,000 Palestinians became refugees.⁴ While it has been estimated that Israel granted some “8,000 cases of Palestinians seeking reunification with relatives inside Israel,”⁵ the return of Palestinian refugees has been prohibited in contravention to international law. In 1967, 400,000 Palestinians were displaced, with half of these individuals already refugees displaced from 1948.⁶ Today, these individuals and their offspring are estimated to include 990,544 Palestinian refugees that live in Lebanon, Syria, and Iraq, two million Palestinian refugees registered in Jordan, and 50,000 in Egypt.⁷

Immediately following the start of the occupation in 1967, Israel conducted a census in the OPT. At the time, it did not include at least 270,000 Palestinians who were not in the territory “either because they had fled during the conflict or were abroad for study, work, or other reasons.”⁸ These individuals were thus excluded from receiving IDs. In addition, according to Human Rights Watch, “Between 1967 and 1994, Israel also permanently cancelled the residency status of 130,000 registered Palestinian residents of the West Bank, in many cases on the basis that they had remained outside the West Bank for too long (in most cases, more than three years).”⁹ Moreover, between 1994-2014 alone, 11,448 Palestinians from East Jerusalem had their IDs revoked by Israel.¹⁰

While it is unclear how many of these individuals have been able to attain a foreign passport, the outcome has been that hundreds of thousands of Palestinians who were born in Palestine are now considered “foreigners” with no immediate right of entry or stay by Israel.

⁴ IRIN News, ‘Palestine refugees: locations and numbers’, 16 January 2010, available at <http://www.irinnews.org/report/89571/middle-east-palestinian-refugee-numberswhereabouts>

⁵ Badil Resource Center for Palestinian Residency and Refugee Rights, ‘From the 1948 Nakba to the 1967 Naksa’, June 2004, available at http://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/Bulletin-18.pdf

⁶ Id.

⁷ There are approximately 453,000 registered and non-registered Palestinians in Lebanon, 526,000 in Syria, and 11,544 in Iraq. Supra note 4.

⁸ Human Rights Watch, ‘“Forget About Him, He’s Not Here” Israel’s Control of Palestinian Residency in the West Bank and Gaza’, 5 February 2012, available at <https://www.hrw.org/report/2012/02/05/forget-about-him-hes-not-here/israels-control-palestinian-residency-west-bank-and>

⁹ Id. According to the Israeli military, residency status was revoked in cases where Palestinians for seven years, or more, “transferred their center of life” from the West Bank abroad. See: Response of the Coordination of the Office for Coordination of Government Activities in the Territories on the issue of deportation and revocation of residency in the Judea and Samaria Area and in the Gaza Strip, available at: http://www.hamoked.org/files/2012/155760_eng.pdf. However, despite the seven year rule, in practice most people have had their residencies cancelled after three years absence.

¹⁰ B’tselem, ‘Statistics on Revocation of Residency in East Jerusalem’, 27 May 2015, available at https://www.btselem.org/jerusalem/revocation_statistics

B. Citizenship and Entry into Israel and the Treatment of Palestinian Citizens

Contrary to the strict restrictions placed on Palestinians, Israel has implemented domestic laws that facilitate both Jewish immigration into Israel and the ability of Israeli Jews to live with their foreign spouses. The Law of Return 1950, the Law of Entry into Israel 1952, and the Citizenship Law 1952 are the foundation for foreigners seeking immigration or residence within the Green Line (in Israel proper). These laws differentiate between Jewish and non-Jewish foreign nationals and provide the former with “stronger” claims to attaining citizenship and residency. Under the Law of Return, “every Jew has the right to come to” Israel as an “oleh” (a Jew immigrating to Israel) unless the Minister for Immigration determines that the individual is “engaged in an activity directed against the Jewish people;” is “likely to endanger public health or the security of the State;” or “is a person with a criminal past, likely to endanger public welfare.”¹¹ Citizenship becomes effective when the individual arrives in Israel or when they receive their “oleh’s” certificate – whichever occurs later.¹² The Law of Return further grants extensive rights of nationality to relatives of Jews, including “a child and grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.”¹³ The relative that the right is being claimed under neither has to be alive, nor had to have immigrated to Israel.¹⁴ It was reported that over half of the individuals that immigrated under the Law of Return were not Jewish, with many coming from Russia and Ukraine.¹⁵



In contrast, the rights of Palestinian citizens in Israel, and those of their spouses and their children are curtailed. For example, as noted above, a grandchild of a Jew (who never immigrated) may be granted nationality, while the grandchild of a Palestinian citizen may only receive citizenship if their parents were born in the country; if they themselves were; or were naturalized.¹⁶ Moreover, under the Citizenship and Entry Law (Temporary Order) 2003,

¹¹ The Law of Return, 5710-1950, The Law of Return, 5714-1955: 1st Amendment, available at <http://www.mfa.gov.il/mfa/mfa-archive/1950-1959/pages/law%20of%20return%205710-1950.aspx>

¹² Ministry of Foreign Affairs, Acquisition of Nationality, 1 January 2010, available at <http://www.mfa.gov.il/mfa/aboutisrael/state/pages/acquisition%20of%20israeli%20nationality.aspx>

¹³ The Law of Return, 5730-1970, 2nd Amendment, available at <http://www.mfa.gov.il/mfa/mfa-archive/1950-1959/pages/law%20of%20return%205710-1950.aspx>

¹⁴ Id. at 4A(b).

¹⁵ Jeremy Sharon, ‘Non-Jewish Olim? 59% of New Immigrants Don’t Meet Strict Religious Rules’, Jerusalem Post, 2 January 2019, available at: <https://www.jpost.com/Israel-News/Non-Jewish-Olim-54-percent-of-new-immigrants-not-Jewish-according-to-Jewish-law-576121>

¹⁶ Supra at note 12.

Palestinian spouses of Israeli citizens, who are “residents of the West Bank and the Gaza Strip,” would not be granted “legal status in Israel, including through family unification.”¹⁷ This order has been renewed every year since 2003. A 2007 amendment to the Law also prohibited the granting of citizenship or a ‘license to reside in Israel’ for individuals who are citizens or residents of Iran, Lebanon, Syria or Iraq.¹⁸ In principle, this would mean that even a Palestinian refugee in one of these countries would be unable to live with their Palestinian “citizen” spouse, in stark contradiction to the Law of Return for individuals of Jewish-origin. These discriminatory prohibitions target Palestinian citizens in Israel, and their right to live with the partner of their choice. Although some exceptions were introduced in 2005 to allow for some sort of temporary residency, including for male spouses over the age of 35 and female spouses over the age of 25, the granting of such exceptions remains at the discretion of the Israeli Minister of Interior.¹⁹ Other exceptions, which are also discretionary, may apply to minor children whose parents lawfully reside in Israel, and in special humanitarian cases.²⁰

Israeli leadership has publicly acknowledged the comprehensive Israeli policy of prohibiting family unifications for its Palestinian citizens. In July 2018, then-Israeli Minister of Defense Avigdor Liberman stated, “As long as I am Defense Minister, there will not be any reunification of Palestinian families. If they want, they can unite in Gaza.”²¹ Israeli Prime Minister Benjamin Netanyahu also noted that ending family unification for Palestinians was a motivation behind the Nation-State Law, “The Nation-State Law, for example, prevents the exploitation of the family reunification clause under which very, very many Palestinians have been absorbed into the country since the Oslo agreement, and this law helps prevent the continued uncontrolled entry into Israel of Palestinians.”²²

II. Entry, Stay, and Family Unification in the OPT

Israel, as Occupying Power, is required to maintain the laws in force at the start of the occupation unless absolutely required under military necessity or to meet the minimum humanitarian guarantees of the occupied population. Instead, Israel has amended Ottoman and Jordanian laws and implemented countless military orders with the aim of deepening its control over the OPT. Part of this control has been asserted through restrictions on where Palestinian-ID holders may live, as well as restrictions on entry and stay for foreigners.

Individuals who travel out of or attempt to enter into the OPT must cross Israeli military and security controlled areas, including Ben Gurion Airport and the Allenby Bridge. Notably, the area used for the Qalandiya Airport in the West Bank is now slated for settlement construction, while the Gaza Airport was shut down after being severely damaged by Israeli

¹⁷ The Citizenship and Entry Law (Temporary Order), 2003, Ministry of Justice statement, 23 March 2005, available at: <http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/Citizenship%20and%20Entry%20Law%20Temporary%20Order-%202003.aspx>

¹⁸ The Nationality and Entry into Israel Law (Temporary Order), 5763-2003, Amendment No. 2 5767-2007, available at: http://www.hamoked.org/files/2010/5727_eng_new.pdf

¹⁹ Id. at Amendment No. 1, 5765-2005.

²⁰ Id.

²¹ Jerusalem Post, ‘Liberman Yells at Shin Bet: I Won’t Allow Palestinian Families to Reunite’, 4 July 2018, available at <https://www.jpost.com/Arab-Israeli-Conflict/Liberman-yells-at-Shabak-I-wont-allow-Palestinian-families-to-reunite-561653>

²² Michael Schaeffer Omer-Man, ‘Israel’s Family Separation Law’, +972 Magazine, 6 August 2018, available at <https://972mag.com/israels-family-separation-law/137097/>

airstrikes. As a result, Israel has full discretion over who to let into Israel, and the OPT, and for how long individuals can stay. Israel's application of Israeli domestic law to the OPT, is an annexationist measure aimed at altering demography and erasing Palestinian presence.

This is demonstrated by Israel's policy of family unification. Between 2000 and January 2005 alone, 120,000 requests for family unification had not been considered by Israel.²³ The below sections examine the treatment of Palestinian and foreign national spouses by Israel who seek to live with their families in the OPT, and details the applicable legal framework. As noted by United Nations (UN) Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard in January 2007:

*"Israeli law and practice shows little respect for family life. Israeli Palestinians married to Palestinians from the Occupied Palestinian Territory cannot live together in Israel. Palestinians from the OPT cannot live together with foreign spouses... Jerusalemites with Jerusalem identity cards cannot live together with their spouses who hold West Bank identity cards."*²⁴

A. Family Unification for Palestinian Spouses in the OPT



Israel has implemented various policies and practices that have prevented Palestinians from living with their spouses, including through the continued denial of family unification. By doing so, Israel has used marriage and the desire to build a family as a tool to obstruct the natural development and growth of society. Palestinian residents in the OPT predominantly face the hurdle of family unification when a Palestinian from the West Bank or the Gaza Strip marries a Palestinian from East Jerusalem. This is due to Israel's unlawful annexation and implementation of its domestic legislation, the

physical isolation of Jerusalem, and the imposed status of "permanent residents" on Palestinians from East Jerusalem.

²³ B'Tselem, 'Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories', July 2006, *see* Footnote 29 of report.

²⁴ Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council," Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, 29 January 2007, A/HRC/4/17, para. 48, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/1ce874ab1832a53e852570bb006dfaf6/b59fe224d4a4587d8525728b00697daa?OpenDocument>.

Accordingly, the aforementioned 2003 Citizenship and Entry into Israel Law (Temporary Order) also impacts and clearly targets Palestinians living in East Jerusalem, who hold permanent residency status. As “permanent residents,” Palestinians from East Jerusalem have to continually prove that their “center of life” is in the [city](#), or they could have their ID revoked by Israel.²⁵ Since 1967, Israel has revoked at least 14,000 residency permits of Palestinians from East Jerusalem for purported administrative reasons. Palestinians from East Jerusalem who choose to marry a spouse with a West Bank or Gaza ID are likely only able to live with them and maintain their ID by living in Jerusalem neighborhoods on the eastern side of the Wall, i.e. separated from city center. Where a couple in the process of family unification acquires a permit that allows the spouse to be in East Jerusalem, the permit would not allow the spouse to drive, and risks the residency status of their children.²⁶

Over one third of family unification applications coming from East Jerusalem residents were denied between 2000 and 2013.²⁷ Such policies not only create an environment of instability and fear for Palestinians from East Jerusalem and their families, but also serve Israel’s demographic aims for Jerusalem through forcible transfer.

B. Family Unification for Palestinians and Spouses of Foreign Nationality

Following the 1967 war, the occupying authorities only allowed for the reunification of 19,000 families in the OPT out of the 140,000 families who were divided as a result of the war and the laws that had applied.²⁸ Throughout its 52-year occupation, Israel continued to tighten the criteria for family unification, and granted far fewer requests for family unification by non-registered foreigners and their Palestinian spouses than were submitted.²⁹ In many instances, applications were refused merely for not constituting ‘exceptional humanitarian cases.’ In the *Awad et al v. Commander of Civil Administration* case, the Israeli High Court held that family unification was not a right, but rather a discretionary matter that could be changed by the military government according to the general circumstances at the time.³⁰ Israeli authorities often refrain from informing individuals in regard to such changes

²⁵ For more information on the “center of life” policy, see Al-Haq, ‘The Jerusalem Trap’, 2010, available at <http://www.alhaq.org/publications/publications-index/item/the-jerusalem-trap>

²⁶ The Society of St. Yves, ‘Palestinian Families Under Threat – 10 Years of Family Unification Freeze in Jerusalem’, December 2013, p.25, available at <http://www.saintyves.org/uploads/d450c02766ff53363d7e583c00c7c5de.pdf>

²⁷ Al-Haq, ‘Living Under Israeli Policies of Colonisation in Jerusalem’, 4 February 2017, available at <http://www.alhaq.org/advocacy/topics/wall-and-jerusalem/1099-living-under-israeli-policies-of-colonization-in-jerusalem>; Official Israeli papers specifically relate to the “demographic balance” in Jerusalem (see for instance: Jerusalem Local Outline Plan 2000, Report No.4 - The Suggested Plan and the Planning Policy, August 2004, p.202).

²⁸ Al-Haq, ‘Annual Report on Human Rights in the Occupied Palestinian Territories – A Nation Under Siege’, 1989, p. 523 – 526.

²⁹ “By the late 1970s, Israel had granted around 50,000 family reunification applications, with 150,000 requests pending. Between 1973 and 1983, Israel granted approximately 1,000 requests annually, and only a few hundred per year subsequently. In 1993 it instituted a quota of 2,000 requests per year, which it increased in 2000 to 4,000 per year.” Supra at note 8.

³⁰ Yoram Dinstein, ‘The International Law of Belligerent Occupation’, p.262.; *Awad et al. v. Commander of Civil Administration*, HCJ Case No. 263/85.

in policies, including by not publishing such changes, leaving families in even greater uncertainty.³¹

In the late 1980s, and in the context of the First Intifada, Israel carried out numerous military raids on Palestinian neighbourhoods and towns to expel the spouses of Palestinian residents in the OPT who did not hold residency permits and who had overstayed their visas or visitor permits.³² The majority of these spouses were of Palestinian origin. At the time, Israel routinely rejected family unification applications, forcing these individuals and their families to choose between overstaying their visas or leaving their established homes. Following international pressure and petitions submitted to the Israeli High Court, some individuals were allowed to return.

As a retaliatory act to the Second Intifada beginning in 2000, Israel suspended family unification applications for Palestinian residents in the OPT and their foreign spouses.³³ In 2008, and in what was dubbed as a “political gesture” by former Israeli Prime Minister Ehud Olmert, Israel announced that it would approve 50,000 family unification applications.³⁴ Ultimately, 32,905 were approved, provided that the individuals had entered legally and submitted their application before the Second Intifada.³⁵ However, family unifications processes were again suspended in 2009, including for the aforementioned group of individuals, following the election of Netanyahu and are now only granted under “rare humanitarian circumstances”.³⁶

Thousands of applications have neither been rejected nor considered by the Israeli authorities. Since March 2007, spouses holding foreign citizenships have been issued a B/2 visitor’s visa that may be renewed for a maximum of 27 months; upon expiring and without family unification, an individual may then become ‘illegally’ present in the OPT.³⁷ When these visas are granted, the time period for them appears to be arbitrary.³⁸ The B/2 visitor’s visa is

³¹ This was a common complaint by individuals interviewed by Al-Haq.

³² More than 100 non-resident women who overstayed their visitor’s permit were forcibly expelled to Jordan with their children. *Supra* at note 28.

³³ About 25,000 out of 65,000 applications submitted since the 1990s are still pending. *See*: The Palestine Liberation Organisation – Department of Public Diplomacy & Policy, ‘The Associated Press: Foreigners Linked to Palestinians Face Israeli Visa Troubles’, 24 January 2018, available at: [http://www.dci.plo.ps/en/article/7867/January-24,-2018---The-Associated-Press-Foreigners-linked-to-Palestinians-face-Israeli-visa-troubles-\(By-Karin-Laub-and-Mohammed-Daraghmeih\)](http://www.dci.plo.ps/en/article/7867/January-24,-2018---The-Associated-Press-Foreigners-linked-to-Palestinians-face-Israeli-visa-troubles-(By-Karin-Laub-and-Mohammed-Daraghmeih))

³⁴ Norwegian Refugee Council, ‘Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip’, January 2012, p.26, available at: <https://www.nrc.no/globalassets/pdf/reports/undocumented-and-stateless.pdf>

³⁵ *Id.* at p.26-27.

³⁶ *Id.* at p.27.

³⁷ Information gathered from meetings with Right to Enter Campaign and Civil Affairs.

³⁸ “Another woman, Dora, says that after years of being issued visas (officially called “visitor permits”) that were valid for a year, suddenly, with no explanation, she received a visa that was only good for a few weeks. Other women, who not long ago received visas valid for six or seven months, have recently been given visas valid for just over two weeks and which must be renewed over and over.” Amira Hass, ‘Israel Makes It Increasingly Difficult for Palestinians’ Foreign Spouses to Stay in West Bank’, *Haaretz*, 13 September 2017, available at: <https://www.haaretz.com/middle-east-news/palestinians/.premium-israel-makes-it-hard-for-palestinians-foreign-spouses-to-stay-in-w-bank-1.5449374>

granted to those wishing to stay in Israel (and thus the OPT) for a short time, including for tourism, and does not allow the recipient the right to work.³⁹

According to the Palestinian Civil Affairs Committee, which receives approximately 300-400 family unification applications each month, there are currently at least 30,000 applications for family unification pending, 25,000 of whom involve foreign nationals, with at least 5,000 who have overstayed their visas to remain with their spouses and families in the OPT. The Committee further states that in 2014, they referred 2,000 family unification applications to the Israeli authorities and have not referred applications since then (except for a few cases) as the Israeli authorities have stopped processing them.⁴⁰ In total, it is estimated that more than half a million people are impacted by Israel's policy of refusing to process family unifications, and may be forced to leave the OPT.⁴¹

C. Love Denied: Testimonies



³⁹ Ministry of Foreign Affairs, Visas, available at: <http://mfa.gov.il/MFA/ConsularServices/Pages/Visas.aspx>

⁴⁰ Interviews with Muhannad Anati from the Palestinian Civil Affairs Committee on 18 February 2018 and 10 March 2018.

⁴¹ Right to Enter Campaign, 'Background on Israeli Policy of Entry Denial to Occupied Palestinian Territory', 2013, available at: http://www.righttoenter.ps/wp-content/uploads/2013/11/Background_on_Israeli_Policy_of_Entry_denial_to_Occupied_Palestinian_Territory.pdf

“After more than 20 years, this is my home now. I really made this my home.”⁴²

S. and H. met in Puerto Rico and married there in 1992. They returned to Palestine, H.’s home country, in 1997, and have lived in Ramallah since. For more than 10 years, S. has not received a final decision on her family unification application. S. had instead relied on extending her visa to allow her to remain in the OPT with her husband and children. The last visa extension that S. received was towards the end of 1998; she then decided to overstay to remain with her family. Since then, S.’s movement has been restricted within the OPT and puts her at risk of deportation. In 2015, S.’s husband died, requiring her to amend the family unification application to file under her daughter’s name. However, S. has yet to receive an update on her family unification application. S. has been facing more challenges since her husband’s death, including trying to cope with her increased responsibilities as a single mother of six children, while faced with movement restrictions due to her continued lack of documentation. S.’s situation makes her constantly worried about being deported and losing the home that she built over 20 years ago with her late husband and children in Ramallah.

“We want to make sure that you do not live here and that you do not come back.”⁴³

K., from the U.S., and H., from Palestine, met in the U.S. and got married in 2008. They have four children: two boys and two girls. K. and H. are now at a crossroads: they have to choose between her family and his. In 2017, the family moved to the West Bank so their children can live in their paternal ancestral home and improve their Arabic. Upon arrival at the Allenby Bridge, K., who does not have a West Bank ID, unlike her husband and three of her four children, was given a three-month visa. In September 2017, upon returning to Palestine from a visit to Jordan, K. was held at the Allenby Bridge for a few hours. There, she was told by one of the officers: “we want to make sure that you do not live here, and that you do not come back.” On that day, K. was given a West Bank-only visa for one month. Since then, K. has applied for two visa renewals, which were both rejected. The family hired a lawyer to follow up on their case, which has proven costly. As of now, K. remains in Palestine without a visa, and at risk of being deported.

“I am a mother. I have to do everything that I can, or think I can, to fight for my right to family unification, my right to enter to my home, my right to stay in my home, and my right to keep my family together.”⁴⁴

M. is from the U.S. and H. is from Palestine. M. moved to Palestine in 2008 for work. She was on a B/2 visitor’s visa that she would renew every three months by leaving the country. At the end of 2009, M.’s visa expired and she was forced to leave. M. met H during this period; they married in Palestine in 2012. M. then applied for a spousal visa to live in Palestine. The Israeli authorities gave her a B/2 visitor’s visa for one year. In 2013, M. applied for a spousal visa extension and was given a “Judea and Samaria” only visa, restricting her to the West Bank and preventing her from accessing Jerusalem and the US Consulate therein. In August 2016, M. applied for family unification so she, her husband, and their newborn child could all have the same legal status. In October 2017, upon her return

⁴² Interview on 13 March 2018.

⁴³ Interview on 25 January 2018.

⁴⁴ Discussion and consent obtained 18 February 2018.

through Ben Gurion Airport, M. was held for about an hour, along with her one-year-old. She was questioned, and was then told that she can only be given a visitor's visa for six months per year. She was told that she exceeded the time she is allowed, and was initially denied entry. She asked for a three-day visa so she can go to her home in the West Bank and apply for a visa extension, but this was refused. An hour later, she was given a one-month visa, and told that she needs to renew it in *Beit El* and that if she traveled again, she would be denied entry. Ten days later, M. submitted her application to the Palestinian Ministry of Interior for a visa extension. She was given a two-month extension and a letter informing her of an interview appointment at *Beit El* six weeks later. She stated that this has been the case since: a visa for two months, six months, ten days.

*"I often have to miss out on trips with my daughters and husband."*⁴⁵

T., from the U.S., and H., from Palestine, met in Memphis, in the United States. They have been married since 1997, and have three girls. In 2009, T. and H. decided to move to Palestine. Since then, T. has had to renew her visa regularly in order to be able to stay with her family in Palestine. She was granted short-term and longer term visas of up to 6 months. However, in August 2017, T. was denied a visa. According to the paper given by Israeli authorities, the reason was that she had used the Ben Gurion Airport. Following an interview later that month, she was given a six-month visa. T.'s process for an extension on her visa was delayed, leaving her in a constant state of uncertainty. For a while, her movement was limited, often having to miss trips and other events with her daughters and husband. Recently, T. has received a six-month visa extension, allowing her to resume life as normally as possible – until the next visa extension process begins again.

III. Restrictions on Entry and Access of Foreigners into the OPT

According to the Israeli *Transit Policy to the West Bank via Israel* from July 2008,⁴⁶ foreign citizens who are not registered in the West Bank's Population Registry are permitted to enter Israel via Ben Gurion Airport and/or the Allenby Bridge.⁴⁷ The provisions of this Transit Policy are not well advertised, meanwhile, practice differs from this stated policy, with foreign nationals subjected to delays, visa restrictions, and denials upon arriving.

A. Bonds

In August 2017, M.,⁴⁸ a foreign national arrived at Ben Gurion Airport to join his Palestinian spouse in the West Bank. M. was held at the airport for hours, interrogated, denied entry, and sent back to his home state. After communications with the Palestinian Authority, M. was instructed to use the Allenby Bridge instead – where he was later also denied entry. It was only when M. paid a bond deposit of 20,000 NIS (approximately USD 5,700) to the Coordination of Government Activities in the Territories (COGAT), Israel's Civil Administration, that he was allowed entry and granted a B/2 visitor's visa for one month. To

⁴⁵ Interview on 19 February 2018.

⁴⁶ Transit Policy to the West Bank via Israel, 31 July 2008, available at: <http://www.hamoked.org/Document.aspx?dID=Documents1743>.

⁴⁷ Individuals with a foreign citizenship and who are registered in the West Bank Population Registry, i.e. holding a Palestinian Passport or identity, are only allowed to only enter via the Allenby Bridge.

⁴⁸ M. is a pseudonym used to protect the identity of the person in question.

renew the visa, M. had to do a ‘visa-run’ of exiting and re-entering. M. was never given the deposit back upon return and faced an additional bond deposit of 40,000 NIS (approximately USD 11,400) in order to be able to re-enter. After paying the deposit, M. was granted a B/2 visitor’s visa for three months and a ‘promise’ of a B/2 visa extension for up to 27 months without having to leave the OPT. M. recently received a three-month extension for their B/2 visa; the bond deposits remain in Israeli custody.⁴⁹

M’s case is not unusual; it has become common practice for Israel to condition the entry of foreign nationals into and their stay in the OPT on the payment of bond deposits ranging between 20,000 – 80,000 NIS (approximately USD 5,700 – 22,700).⁵⁰ There is currently a petition in front of the Israeli High Court challenging the bond policy.⁵¹

B. Imposing Fragmentation on Foreigners: West Bank Only Visas



Foreign nationals have been issued visas for “Judea and Samaria only” or “Palestinian Authority only” by Israeli authorities at the Ben Gurion Airport and the Allenby Border Crossing.⁵² Such visas have been issued to foreigners both with and without Palestinian or Arab ancestry. According to the US Consulate General in Jerusalem, individuals arriving at

⁴⁹ Case retrieved from the Right to Enter Campaign: RTE Situation Update – January 2018, by Al-Haq in February 2018.

⁵⁰ See for example: Right to Enter, ‘Families as Pawns: Israel Pressures Palestinians into Exile through Foreign Spouse Visas’, 17 November 2017, available at: <http://www.righttoenter.ps/media-articles/families-as-pawns-israel-pressures-palestinians-into-exile-through-foreign-spouse-visas-israel-palestine/>

⁵¹ Israeli High Court 3853/18 (judgment unpublished)

⁵² Gov.UK, ‘Foreign Travel Advice’, available at: <https://www.gov.uk/foreign-travel-advice/the-occupied-palestinian-territories/entry-requirements>

the Allenby Border Crossing who indicate a connection to the West Bank or plans to travel there may be likely to receive such a stamp.⁵³ Although such decisions may be appealed, they are rarely reversed.⁵⁴ Receiving a limited visa may come in addition to “significant difficulties and unequal and hostile treatment” for individuals of Palestinian, Arab or Muslim origin, as described by the US State Department.⁵⁵

C. Denial of Entry and Access

The aforementioned discriminatory treatment of individuals, especially those with Palestinian ancestry, also includes the denial of entry of individuals to Israel and the OPT. The targeting of individuals of Palestinian origin reached a climax in 2006, when even the US State Department reportedly complained about the treatment and denial of entry of Arab Americans.⁵⁶ Although Israeli officials at the time allegedly made assurances that denials would only be based on security considerations,⁵⁷ denials of entry against individuals, especially those of Palestinian descent, remain an on-going reality and uncertainty for visitors.

Israel also routinely does not cooperate with UN experts or bodies seeking access to the OPT for fact-finding and other missions.⁵⁸ For example, in 2015, the UN Special Rapporteur on violence against women was denied permission to visit the OPT, because according to an Israeli spokesperson:

*“The special investigator asked to visit ‘Palestine.’ We explained to her that there is no such country. Should she wish to visit the Palestinian Authority as part of a visit to Israel, that would be no problem.”*⁵⁹

In 2016, the UN Special Rapporteur on the situation of human rights in the Palestinian territories, Makarim Wibisono, resigned due to his denial of access to the OPT.⁶⁰

⁵³ U.S. Consulate General in Jerusalem, ‘Entering and Exiting Jerusalem, the West Bank, and Gaza’, available at: <https://jru.usconsulate.gov/u-s-citizen-services/local-resources-of-u-s-citizens/entering-exiting/>

⁵⁴ Id.

⁵⁵ US Department of State, ‘Israel, the West Bank and Gaza – Travel Information’, available at: <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/IsraeltheWestBankandGaza.html?wcmode=disabled>

⁵⁶ CNN, ‘U.S. to Israel: Ease up on Arab-Americans’, 19 October 2006, available at: <http://edition.cnn.com/2006/WORLD/meast/10/19/rice.rights/index.html>

⁵⁷ Right to Enter, ‘Monthly Situation Update on the Issue of Entry / Re-entry of Foreign Passport Holders to the OPT’, 28 March 2007, available at: http://www.righttoenter.ps/wp-content/uploads/2013/11/monthly_update_3_2007.pdf

⁵⁸ Al-Haq, ‘Israel’s Deliberate Denial of Entry of United Nations Special Rapporteur Mr. Michael Lynk Intended to Frustrate United Nations Human Rights Monitoring’, available at: <http://www.alhaq.org/advocacy/targets/united-nations/1267-israels-deliberate-denial-of-entry-to-united-nations-special-rapporteur-mr-michael-lynk-intended-to-frustrate-united-nations-human-rights-monitoring>; Palestinian Human Rights Organisations Council (PHROC), ‘The Resignation of the Special Rapporteur on the human rights situation inside the occupied Palestinian territory highlights the necessity of ending Israel’s impunity for grievous rights abuses’, 6 January 2016, available at: <http://www.alhaq.org/advocacy/targets/palestinian-human-rights-organizations/1005-the-resignation-of-the-special-rapporteur-on-the-human-rights-situation-inside-the-occupied-palestinian-territory-highlights-the-necessity-of-ending-israels-impunity-for-grievous-rights-abuses>

⁵⁹ Tovah Lazaroff, ‘Because She Asked to Visit ‘Palestine,’ Israel Bars Entry of UN Official to West Bank’, Jerusalem Post, 20 January 2015, available at: <https://www.jpost.com/Arab-Israeli-Conflict/Because-she-asked-to-visit-Palestine-Israel-bars-entry-of-UN-official-to-West-Bank-388283>

This practice of denying access has expanded to include other individuals travelling independently or as representatives of organizations that are perceived to be critical of Israel's human rights record. This has included individuals working or interning for Palestinian human rights organizations or foreign organizations based abroad, including those with alleged links to the Boycott, Sanctions and Divestment (BDS) Movement. In early 2018, Israel imposed a travel ban on members of 20 foreign NGOs for their alleged affiliation with and/or support of the BDS Movement.⁶¹ In July 2018 for example, Israel denied entry to a Dutch human rights defender alleging that she supported BDS. The [case](#) was especially notable as there appeared to be a coordinated action between Israeli media and the Israeli government.⁶² Israel reportedly denied entry to 19,000 individuals, a record number, in 2018 for a variety of alleged reasons.⁶³

D. Obstacles to Obtaining Visas for Foreign Workers

Foreigners, including foreign spouses, and the respective organizations, businesses, and other entities in the OPT that seek to hire them, face an array of obstacles in securing work permits from Israeli authorities. For example, 15 foreign faculty members at Birzeit University have had their visa renewal requests refused or significantly delayed.⁶⁴ Likewise, the Edward Said National Conservatory of Music reported in January 2018 that it has had two foreign teachers denied re-entry by Israel, while six others were facing visa-related issues, threatening the whole education system at the Conservatory.⁶⁵ The Conservatory operates in five branches across the OPT: in Jerusalem, Ramallah, Nablus, Gaza and Bethlehem, where more than 1,000 students currently study music and thousands of others have benefited from other activities and programs.

Israel has also routinely changed visa policies for international organizations, oscillating between issuing B1 worker visas to B2 tourist visas,⁶⁶ to stalling application procedures that leave individuals in legal limbo.⁶⁷ From August-December 2016, for example, no new aid

⁶⁰ UN OHCHR, 'Special Rapporteur on Occupied Palestinian Territory resigns due to continued lack of access to OPT', 4 January 2016, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16922>

⁶¹ Peter Beaumont, 'Israel Imposes Travel Ban on 20 Foreign NGOs over Boycott Movement', The Guardian, 7 January 2018, available at: <https://www.theguardian.com/world/2018/jan/07/israel-imposes-travel-ban-on-20-foreign-ngos-over-boycott-movement>

⁶² Al-Haq, 'PHROC Condemns Israel's Latest Deportation of Eminent Dutch Human Rights Defenders, Lydia de Leeuw and Pauline Overeem', 24 July 2018, available at: <http://www.alhaq.org/advocacy/targets/palestinian-human-rights-organizations/1292-phroc-condemns-israels-latest-deportation-of-eminent-dutch-human-rights-defenders-lydia-de-leeuw-and-pauline-overeem>

⁶³ Jewish Telegraphic Agency, 'Israel turned away a record 19,000 visitors in 2018', 27 December 2018, available at: <https://www.jta.org/quick-reads/19000-potential-visitors-turned-away-from-israel-in-2018>

⁶⁴ It should be noted that many of these faculty members are of Palestinian origin. Bir Zeit University, 'Birzeit University Condemns Breach of Academic Freedom after Academics Forced to Leave Palestine', 21 July 2018, available at: <https://www.birzeit.edu/en/news/birzeit-university-condemns-breach-academic-freedom-after-academics-forced-leave-palestine>

⁶⁵ Supra at note 33.

⁶⁶ According to Israel's Ministry of Foreign Affairs, a B/1 Work visa is "for a person whose stay in Israel is approved for a limited period of time for the purpose of work", whereas a B/2 Visitor's visa is "granted to someone who wishes to stay in Israel for only a short time (for a visit, tourism, a business meeting or study in a Hebrew ulpan). A person who enters Israel on a B/2 visa is not allowed to work in the State of Israel." Ministry of Foreign Affairs, 'Visas', available at: <https://mfa.gov.il/MFA/ConsularServices/Pages/Visas.aspx>

⁶⁷ Right to Enter, 'Israel's Refusal to Issue Work Permits to International NGOs', January 2010, available at: <http://www.righttoenter.ps/rte-documents/rte-on-b1b2-visas/israels-refusal-to-issue-work-permits-to->

workers were able to secure a B1 work visa.⁶⁸ Previously, in 2010, one country director of an international NGO highlighted the difficulty of recruitment for finding his replacement, explaining that: “the post is advertised as a family/dependent post, but unless it is clear that B1 visas will be issued regularly again, the organization will be unable to guarantee that family members will be allowed to come, thus reducing the pool of qualified candidates.”⁶⁹ Recently, and in an apparent linking of varying policies on entry and stay, Israel ordered the deportation of Human Rights Watch Israel/Palestine director due to his alleged support of boycott of Israel.⁷⁰

Foreign nationals who have been able to secure a visa are often also subjected to an implicit five-year limitation policy imposed by Israel, after which they would no longer be granted visa extensions or renewals.⁷¹ This policy aligns with Israeli domestic regulations concerning foreign workers who are granted a B/1 work visa,⁷² which can be extended for a maximum in Israel of usually five years and three months.⁷³ Notably, some foreign workers who have attained visas have had the aforementioned access limitation of “Palestinian Authority only”. Israel prohibits foreign workers in Palestine from applying for permanent residencies or citizenships after a number of years, a process which is usually standard practice in most States.

The limitations on the entry and stay of foreign workers serves to deny Palestinian institutions valuable human resources, and has an impact on the services and quality of life available to Palestinians in the OPT.⁷⁴ In 2009, for example, the World Health Organization noted a deterioration in the quality of medical education in Gaza, stating “The younger generation lacks both specialization possibilities and continuing education, since – due to the blockade – it has been very difficult indeed to travel abroad for study or to import guest lecturers from abroad.”⁷⁵ In 2014, Irish medical students seeking to volunteer in a West Bank hospital in coordination with the Palestine Children’s Relief Fund were given a one-week

[international-ngos/](#); UN OCHA - OPT, ‘Impeding Assistance: Challenges to Meeting the Humanitarian Needs of Palestinians’, May 2010, available at:

https://www.ochaopt.org/sites/default/files/ocha_opt_special_focus_2010_05_27_english.pdf; Times of Israel, ‘Aid workers: Israel not granting work visas for new employees’, 5 September 2017, available at:

<https://www.timesofisrael.com/aid-workers-israel-not-granting-work-visas-for-new-employees/>

⁶⁸ Times of Israel, ‘Aid workers: Israel not granting work visas for new employees’, 5 September 2017,

available at: <https://www.timesofisrael.com/aid-workers-israel-not-granting-work-visas-for-new-employees/>

⁶⁹ UN OCHA - OPT, ‘Impeding Assistance: Challenges to Meeting the Humanitarian Needs of Palestinians’, May 2010, available at:

https://www.ochaopt.org/sites/default/files/ocha_opt_special_focus_2010_05_27_english.pdf

⁷⁰ Human Rights Watch, ‘Israel Orders Human Rights Watch Official Deported’, 8 May 2018, available at:

<https://www.hrw.org/news/2018/05/08/israel-orders-human-rights-watch-official-deported>

⁷¹ This information was derived from cases monitored; it is unclear as to whether it is an official written policy.

⁷² Supra at note 41.

⁷³ Dotan Cohen Law Offices, ‘A B/1 Work Visa for Foreign Workers in Israel’, available at: <http://www.visa-law.co.il/work-visa-in-israel/>

⁷⁴ See also, Yotam Ben-Hillel, ‘Israel is making it impossible for foreign nationals to live in the West Bank’, 17 August 2018, available at: <https://972mag.com/a-new-policy-in-israel-is-making-it-impossible-for-foreign-nationals-to-live-in-the-west-bank/137316/>

⁷⁵ World Health Organization, ‘WHO Specialized Health Mission to the Gaza Strip’, 21 May 2009, p.17, available at:

http://www.who.int/hac/crises/international/wbgs/gaza_specialized_mission_extendedrep_21may09.pdf

visa, even after explaining their planned one-month placement.⁷⁶ Further, Birzeit University noted that the aforementioned faculty members “play a critical role not only in the ongoing provision of quality education at Birzeit University but also in the long-term development of Palestinian higher education,” including by contributing to a “global academic environment.”⁷⁷

An Israeli lawyer who works on such cases relayed to Al-Haq, how Israel imposes arduous and unpublished procedures to deny the extension of visas, listing reasons for visa denial as including, “People submitting extension applications ‘too late’ (although Israel has never set clear rules in this regard); people using Ben-Gurion airport; people having a Jordanian passport in addition to their other foreign passport, etc.” He explained, that a court petition would be submitted to challenge and “amend the current procedure regarding visas”.

As will be discussed below, in regards to the employment of foreigners, the 1995 Israeli-Palestinian Interim Agreement ultimately left the issue of entry of foreign workers under Israel’s purview.⁷⁸ According to the Palestinian Labour Law No. 7 of 2000, the Palestinian Ministry of Labour is the authority concerned with granting work permits to non-Palestinians, and to set regulations surrounding the work permits in this context.⁷⁹ Meanwhile, Order No. (45) of 2004 regarding the conditions for granting work permits to non-Palestinian workers stipulates that a work permit can be issued for up to a year, renewable, without setting any limitations on duration.⁸⁰ It should be noted that, according to the Palestinian Civil Affairs Committee, Israel may soon start employing a new system regulating the entry and exit of workers and volunteers coming into the OPT by requiring them to apply for a permit before entering through the Palestinian Authority, and to be approved by Israel.⁸¹

IV. Applicable Legal Framework

Israel, the Occupying Power in the OPT, is bound by obligations enshrined under international human rights law and international humanitarian law. The applicability of international human rights law, in its *lex generalis* nature, and its complementarity to international humanitarian law, as a specialized law, in a situation of armed conflict and military occupation is well recognized. Human rights treaties are not suspended in times of conflict. Moreover, the territorial scope of these treaties encompasses areas under the jurisdiction of a State party. This has been reaffirmed in regards to Israel’s obligations in the

⁷⁶ Lia Flattery, ‘Medical Students Denied Entry into West Bank’, Trinity News, 17 September 2014, available at: <http://trinitynews.ie/medical-students-denied-entry-into-west-bank/>

⁷⁷ Bir Zeit University, ‘Birzeit University Condemns Breach of Academic Freedom after Academics Forced to Leave Palestine’, 21 July 2018, available at: <https://www.birzeit.edu/en/news/birzeit-university-condemns-breach-academic-freedom-after-academics-forced-leave-palestine>

⁷⁸ Article 28 (13) of the Interim Agreement states the “Palestinian side may, upon clearance by Israel, issue visitors’ permits for the purpose of study or work, for a period of one year which may be extended by agreement with Israel. In any event, the duration of such visitors’ permits shall not exceed the period of validity of the said visitors’ passports or travel documents. The Palestinian side may grant permanent residency to the employees upon agreement with Israel.”

⁷⁹ The Palestinian Labour Law No. 7 of 2000, Article 14 and 15.

⁸⁰ Order No. (45) of 2004 regarding the conditions for granting work permits to non-Palestinian workers, Article 5.

⁸¹ Interview with Muhannad Anati, Palestinian Civil Affairs Committee.

International Court of Justice (ICJ), Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory in 2004.⁸²

Under international humanitarian law, the Occupying Power does not acquire sovereignty over the territory it occupies.⁸³ Article 43 of the Hague Regulations gives the Occupying Power authority to administer the occupied territory in order to restore and ensure “public order and safety, while respecting, unless absolutely prevented, the laws in force” in the territory at the start of the occupation. The Occupying Power is thus prohibited from introducing any significant and permanent changes “to the social, demographic, geographical, political and economic structure of the occupied territory.”⁸⁴ In addition, the Occupying Power must administer the occupied territory and carry out its responsibilities for the benefit of the occupied population and not for its own benefit and interests. Even in cases of annexation, such as in Jerusalem, protected persons should not be deprived of the rights protected under the Fourth Geneva Convention.⁸⁵

It should be noted that foreign nationals residing in occupied territory may also receive certain protections. In line with the Fourth Geneva Convention, foreign nationals present in occupied territory are not afforded the protected persons status if they are: “1) Nationals of a State which is not party to the Convention; 2) Nationals of a co-belligerent State, so long as the State in question has normal diplomatic representation in the occupying State; 3) Persons...who enjoy protection under one of the three other Geneva Conventions of August 12, 1949,”⁸⁶ or nationals of the occupying State.⁸⁷ More broadly, excluding the aforementioned cases, foreign nationals residing in the OPT may be afforded protected persons status.⁸⁸ This includes individuals who find themselves in the territory “as a result of circumstances: travellers, tourists, people who have been shipwrecked” amongst others.⁸⁹ Accordingly, individuals who are in the OPT due to family ties and marriage may be considered there due to ‘circumstances’ which require their protection.⁹⁰ As noted in the Commentary to Article 4 of the Fourth Geneva Convention, the complicated nature of such

⁸² The ICJ affirmed that State obligations under the ICCPR, for example, “apply to all territories and populations under its effective control.” *See* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 112.

⁸³ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907, (hereinafter the Hague Regulations), Article 43; *See also*: Y Arai-Takahashi, ‘The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law’ (Martinus Nijhoff Publishers, Leiden and Boston, 2009), pp. 138.

⁸⁴ Nils Melzer, ‘International Humanitarian Law – A Comprehensive Introduction’, ICRC August 2016, p 238.

⁸⁵ Fourth Geneva Convention, Article 47

⁸⁶ Commentary to Article 4 of the Fourth Geneva Convention.

⁸⁷ *Id.*

⁸⁸ On the territory of the belligerent state (Israel proper), protection is accorded to all foreign nationals and stateless people, unless they are: nationals of a State that is not bound by the Fourth Geneva Convention thus not considered protected persons; are nationals of a neutral state which holds diplomatic representation with the State they are in; are persons who enjoy protection under the other Geneva Conventions. Notwithstanding, foreign nationals of an enemy state are assumed to be protected persons in a situation of armed conflict and in a context of occupation. *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

situations “gave rise to the idea of granting neutral nationals in occupied territory the status of protected persons within the meaning of the Convention.”⁹¹

A. Interim Agreement

The Interim Agreement⁹² ultimately left control over entry and exit, immigration, and the issuance of IDs under Israel’s authority for what should have been a five-year transition period. First, the reissuance of identity cards to residents who had “lost” their IDs would be in the hands of a Joint Committee. Palestinians would “maintain and administer the population registry and issue certificates and documents of all types,”⁹³ but would inform Israel of every change to the population registry including “the place of residence of any resident.” Further, Palestinians could grant permanent residency to (i) investors, (ii) the spouses and children of Palestinian residents, and (iii) others for humanitarian reasons only with the prior approval by Israel.⁹⁴ The Interim Agreement also held that visitors to the OPT could attain three-month permits to remain in the area after clearance from Israel.⁹⁵ Palestinians could also only issue visitors one-year permits for work or study after approval by Israel; they further could only extend such permits with Israeli approval.⁹⁶

This framework, imposed and set to practice by the Occupying Power, has undoubtedly enabled the situation at hand, in violation of Article 47 of the Fourth Geneva Convention, which affirms that the protected occupied population should not be affected or deprived of rights and guarantees of the Convention by any change introduced by the Occupying Power – along with other rights and guarantees provided for under international law.

B. Right to Equality and Non-Discrimination

The principles of equality and non-discrimination are integral to international human rights law. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) both call on States parties to ensure the rights within each Covenant are guaranteed without distinction or discrimination of any kind.⁹⁷ While the ICCPR does permit the restriction of certain rights during states of emergency, a State may not do so on a discriminatory basis “solely on the ground of race, color, sex, language, religion or social origin.”⁹⁸ More specifically, according to the Human

⁹¹ Id.

⁹² Statements were made by the Palestine Liberation Organisation’s Central Council in January 2018 about the invalidity of the Oslo agreements. *See for example*: Wafa, ‘Update: PLO Central Council Decides to Suspend Oslo Agreement’, 15 January 2018, available at: <http://english.wafa.ps/page.aspx?id=zbyLEda96057575031azbyLEd>). However, it remains questionable whether this is actually implemented on the ground, especially given the continued Israeli-Palestinian security coordination.

⁹³ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, (hereinafter Interim Agreement), Annex III, Article 28(2).

⁹⁴ Id. at Article 28 (11)

⁹⁵ Id. at. Article 28(13)(b)

⁹⁶ Id. at Article 28(13)(b)

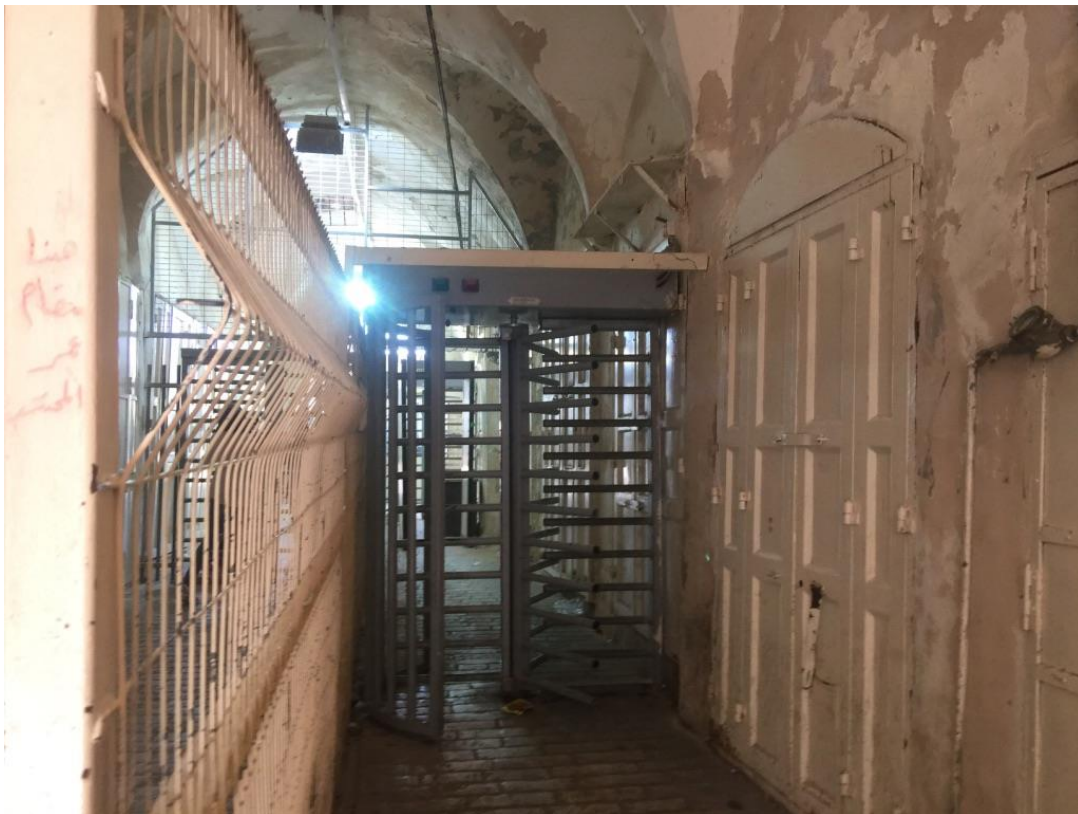
⁹⁷ International Covenant on Civil and Political Rights, entry into force 23 March 1976, (hereinafter ICCPR), Article 2; International Covenant on Economic, Social and Cultural Rights, entry into force 3 January 1976, (hereinafter ICESCR), Article 2.

⁹⁸ ICCPR, Article 4.

Rights Committee, the term “discrimination” in the ICCPR “should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”⁹⁹

The ICCPR further affirms “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law....the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground [...]”¹⁰⁰ In order to ensure rights enshrined in the Covenant, States parties are required to “take all necessary steps to enable every person to enjoy those rights.”¹⁰¹ This includes the “removal of obstacles to the equal enjoyment of such rights...and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant.”¹⁰² It is clear that Israel’s policies target and discriminate against Palestinians, as well as affiliated foreign nationals, and serve to undermine a variety of basic human rights.

C. Right to Freedom of Movement



Article 12 of the ICCPR affirms that everyone lawfully within a territory has “the right to liberty of movement and freedom to choose his residence;” individuals should also be “free to

⁹⁹ General Comment No. 18 Non-Discrimination, Human Rights Committee, 10 November 1989, para. 7.

¹⁰⁰ ICCPR, Article 26.

¹⁰¹ General Comment No. 28 Article 3 The Equality of Rights Between Men and Women, Human Rights Committee, 29 March 2000, para. 3.

¹⁰² Id.

leave any country, including their own.”¹⁰³ Moreover, individuals cannot be arbitrarily deprived from entering their own country.¹⁰⁴ These rights can only be restricted when “necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”¹⁰⁵ When imposing restrictions, States must ensure that the restrictions do “not impair the essence of the right...the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.”¹⁰⁶

It should be further noted that in relation to Article 12(4) of the ICCPR, which prohibits the arbitrary deprivation of an individual to “enter his own country,” the UN Human Rights Committee (HRC) broadly interpreted the phrase. The HRC asserted “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 to them.”¹⁰⁷ The HRC noted that the interpretation may also include “long-term residents, including but not limited to stateless persons” and other factors which “result in the establishment of close and enduring connections between a person and a country.”¹⁰⁸

Although the ICCPR does not provide for the general “right of aliens to enter or reside in the territory of a State party,” it does provide for situations of protection of aliens “in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.”¹⁰⁹ Once within a territory, aliens “have the right to liberty of movement and free choice of residence; they shall be free to leave the country.”¹¹⁰ Further, once an alien is lawfully within a territory, their freedom of movement and right to leave a territory may only be restricted in cases laid out in ICCPR Art. 12(3): “to protect national security, public order (*ordre public*, public health or morals or the rights and freedoms of others” when consistent with the other rights of the Covenant.

In the case of Israel’s administration, restrictions on Palestinians, especially in regards to freedom of movement and access, have become the norm rather than the exception. First, Israel’s historic and persistent revocation of Palestinian IDs and transfer of Palestinians since 1948 facilitates the violation of the right of Palestinians to enter their own country, as protected under the Covenant. Moreover, because the right to move freely applies to movement within an entire territory, Israel’s restrictions on Palestinian entry to Jerusalem are in violation of this right. Individuals lawfully within a territory also have the freedom to

¹⁰³ ICCPR, Article 12.

¹⁰⁴ ICCPR, Article 12(4).

¹⁰⁵ ICCPR, Article 12(3).

¹⁰⁶ General Comment No. 27 Freedom of movement (Art.12), Human Rights Committee, 2 November 1999, para 13.

¹⁰⁷ Id. at para. 21.

¹⁰⁸ Id.

¹⁰⁹ General Comment No. 15 The Position of Aliens Under the Covenant, Human Rights Committee, 11 April 1986, para. 5 .

¹¹⁰ Id. at para. 7.

choose their residence.¹¹¹ Palestinians are primarily prohibited from exercising this right due to Israel's ID-system and imposed fragmentation, and must also alter their residency due to Israel's refusal to grant family unification.

Foreign nationals who are in the OPT should also have the right to liberty of movement and choice of residence. As noted by the CCPR General Comment, an alien's right to entry and choice of residence should be protected in order to respect family life.¹¹² Further, these rights may only be restricted on a non-discriminatory basis. This is palpably not the case for foreign nationals wanting to enter or reside in the OPT, including those that marry Palestinians. In 2014, the Human Rights Committee called on Israel to revoke its Citizenship and Entry into Israel Law (Temporary Order) and bring their laws, practices and policies in regards to Article 23 (on protection of the family) and Article 26 (on equal protection before the law) in line with the Covenant.¹¹³ As further noted by the Committee, protections should be afforded to an alien's right to enter a territory in light of general considerations of non-discrimination.

D. Right to Family Life



The ICCPR prohibits arbitrary attacks and unlawful interference with an individual's privacy, family, home or correspondence.¹¹⁴ This right also applies to aliens within a territory.¹¹⁵

¹¹¹ ICCPR, Article 12.

¹¹² Supra at note 106, para. 5.

¹¹³ Concluding observations on the fourth periodic report of Israel, Human Rights Committee, 21 November 2014, CCPR/C/ISR/CO/4, para. 22.

¹¹⁴ ICCPR, Article 17.

¹¹⁵ Supra at note 106, para. 7

Individuals should have the protection of the law against such interferences or attacks.¹¹⁶ Further, the ICCPR holds the family as the natural and fundamental unit of society, and affirms the right to marry and found a family.¹¹⁷ In interpreting these rights under the ICCPR, the Human Rights Committee affirmed that states have a duty to ensure that a family is able to live together by means of adopting appropriate measures, to ensure their unity or reunification, especially where they are separated for political and economic reasons.¹¹⁸ The ICESCR also grants protection and assistance to the family.¹¹⁹

The protection of the family is further considered essential in protecting the rights of the child. The preamble of the Convention on the Rights of the Child (CRC) affirms “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.” Accordingly, states should respect the responsibilities, rights and duties of parents towards their children.¹²⁰ The CRC also affirms that children should not be separated from their parents against their will,¹²¹ and that “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.”¹²²

Family life is also protected under international humanitarian law. Article 46 of the Hague Regulations of 1907 provides that family honour and rights must be respected.¹²³ This is further stipulated under Article 27 of the Fourth Geneva Convention, where respect for family life “is intended to safeguard the marriage ties and community of parents and children which constitute a family.”¹²⁴ The Fourth Geneva Convention also more generally provides for the duty to avoid the separation of families in the contexts of transfers or evacuations of civilians by an occupying power; there is further “significant practice relating to the obligation to facilitate the reunion of dispersed families.”¹²⁵

Given these protections under international human rights law and international humanitarian law, Palestinians in the OPT should be able to live with their spouses and other members of their family without constant threat of interference or disruption by Israel. Instead, Israeli policies and practices towards the Palestinian population serve to violate their right to family life.

¹¹⁶ ICCPR, Article 17(2).

¹¹⁷ ICCPR, Article 23.

¹¹⁸ General Comment No. 19 Article 23 (Protection of the family, the right to marriage and equality of the spouses), Human Rights Committee, 27 July 1990, para. 5.

¹¹⁹ ICESCR, Article 10(1).

¹²⁰ ICESCR, Article 5.

¹²¹ Convention on the Rights of the Child, entry into force 2 September 1990, (hereinafter CRC), Article 9 (1).

¹²² CRC, Article 10(1).

¹²³ The Hague Regulations, Article 46.

¹²⁴ Commentary to Article 27 of the Fourth Geneva Convention.

¹²⁵ Rule 105. Respect for Family Life. Customary IHL, ICRC, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule105#Fn_2751A971_00002

E. Unlawful Transfer

Article 49 of the Fourth Geneva Convention states in part “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.” Forcible transfer can be either direct or indirect, where individuals do not have “real choice.”¹²⁶ Unlawful transfer is a grave breach of the Fourth Geneva Convention, and a war crime under the Rome Statute of the International Criminal Court.

Israel’s obstruction of the right to equality, freedom of movement, and family, amongst countless other rights, creates a coercive environment for Palestinians in the OPT. Palestinians are forced to make life choices – ranging from their personal relationships to the location of their residence – based on the constraints of Israeli policies and practices that not only target them, but are ultimately aimed at their transfer.

V. Conclusion and Recommendations

Israel’s deliberate fragmentation of Palestinian society is comprised of countless policies and practices, such as extreme limitations on movement and family unification, which aim to obstruct the natural development of Palestinian individual and communal life and limit Palestinian presence. Israel’s total control over the OPT, and the right of entry and exit, have also aimed to sever Palestinians from the outside world, through restricting access and stay for foreigners who seek to work, live, and visit the OPT. Israel, as the Occupying Power, has flagrantly violated its obligations and unlawfully administered its duties prescribed under international law, contrary to the welfare and benefit of the occupied population.

In light of the above, Israel, the Occupying Power, must:

- End all policies and practices that fragment the OPT and that create a coercive environment aimed at the forcible transfer of Palestinians.
- Refrain from extending its sovereignty over the OPT by means of applying its domestic laws and regulations in the OPT.
- Reinstate the IDs of all Palestinians that have been revoked by Israel.
- Provide family unification permits for foreign spouses in the OPT, and put an end to all policies and practices which seek to obstruct the right to family life of Palestinians.
- Ensure that entities in the OPT, including NGOs, academic institutions, and others, can employ and retain foreign staff.

Given the terms of the Interim Agreement, and its grave impact on Palestinian society, the Palestinian Authority must:

¹²⁶ Naletilić and Martinović, (ICTY) IT-98-34-T, Judgment, 31 March 2003, para. 519, available at: http://www.icty.org/x/cases/naletilic_martinovic/tjug/en/nal-tj030331-e.pdf

- Ensure that the Palestinian Civilian Affairs Office operates with transparency and ensures that all applications are transferred promptly and in good faith to the Coordinator of Government Activities in the Territories at Beit-El.
- Ensure that any future agreements signed with Israel conform to international law, and fully respect the rights of Palestinians, including refugees and those in the Diaspora, and those who have had their IDs revoked by Israel.
- Act in line with declarations made regarding the invalidity of Oslo, given its role in the deterioration of Palestinians rights.

Furthermore, Third States are also under an obligation to:

- Respect and ensure respect for the Fourth Geneva Convention, in line with Common Article 1. In light of the above, Third States should ensure that Israel's relevant policies and measures do not harm and are in the best interest of the protected population.
- Publicly condemn Israel's unlawful policies and practices in the OPT, including those that target freedom of movement, family life, and the broader development of Palestinian society. Third States should recognize that Israel's discriminatory measures not only impact Palestinians in the OPT, but also often their own nationals, entailing obligations to both.
- Implement all necessary and legal measures, including sanctions, to ensure an end to Israel's prolonged occupation.