THE RIGHT TO UNITE

The Family Reunification Question in the Palestinian Occupied Territories: Law and Practice

by

Candy Whittome

with a preface by Adama Dieng,
Secretary-General of the
International Commission of Jurists

The author is a barrister and a volunteer researcher with al-Haq.

Al-Haq
1990

TABLE OF CONTENTS

PREFACE

Human rights violations in the Israeli-occupied Arab lands are well-known. Hardly a day passes without new injuries and fatalities among the inhabitants of these territories. Numerous accounts of witnesses reported by the press and in diplomatic documents attest to the cruel, inhuman and degrading treatment suffered by the Palestinian population. Certain aspects of this treatment are less prominent and remain hidden in the shadows, yet they are of no less importance than those which are most vehemently denounced since they relate to the fundamental rights of human beings. Among these is the denial of the right to family reunification.

It is to the credit of al-Haq that it has devoted the present work - which I have been privileged with the task of prefacing - to the study of this tragic phenomenon of the violation of the right of thousands of Palestinians to reunite with their families. Written in clear and easy language and having the additional merit of brevity, thus making the study more accessible to the general public, the work is supported by the results of an extensive, in-depth survey conducted by al-Haq fieldworkers. A total of 1609 completed questionnaires substantiate the testimony embodied in this work, which also has another outstanding feature - its approach. After unravelling the sophisticated legal, legislative and judicial machinery which, since the end of the Arab-Israeli War of 1967, has been used to hinder the Palestinian people's exercise of its right to family reunification, the work goes on to distinguish several categories of victims denied this right. It mentions, *inter alia*, persons who were resident outside the Occupied Territories prior to the establishment of this repressive machinery by the occupying authorities, persons who simply mislaid their identity cards, as well as persons who were temporarily absent from these territories on legitimate grounds, such as work or study abroad, who, for skillfully trumped-up "technical" or "bureaucratic" reasons, lost their right of return and residence.

The major importance of the work is that it demonstrates that the apparent existence of rules for authorizing family reunification in certain cases is no more than an ideological smokescreen to mask the reality. And the facts

are precise in illustrating this reality: cumbersome administrative procedures for such authorizations, exorbitant costs, and the Palestinan applicants' ignorance of the relevant (unpublished) rules and regulations which makes recourse to them problematical. This is borne out by the very small number of authorizations issued to date, discounting those which may have been granted, as is often the case, as a reward for collaboration with the occupying power.

The work correctly refers to the complicity of the Israeli High Court of Justice in the perpetration of these violations which betray the lofty purpose for which it was created. Lastly, the work underscores that by violating the right to family reunification of the Palestinians in the Occupied Territories, the Israeli authorities also infringe the elementary rights recognised for civilians under occupation: the right of the family unit to protection, the right of children to an education, etc ... The consequences of this are well-known, and the work does not omit them: the cost of maintaining two homes for those who have been separated, loss of jobs or unemployment for persons required to obtain temporary and provisional permits for short-term visits, not to mention psychological trauma, particularly among children.

Lucidly prepared and well-documented, the work published here by al-Haq adds valuable evidence in support of the international condemnation of Israel's policies in the occupied Arab territories. It brings to light a practice unfamiliar to world public opinion - a practice that it has probably, and wrongly, underestimated, as compared with other aspects of human rights violations in these territories.

Adama Dieng, Secretary-General
International Commission of Jurists
Geneva

December 1990

> The policy [of the Israeli government] is to grant the *minimum possible number* of applications for family reunification, and to grant them only in the most exceptional circumstances (or when it is in the interests of the authorities).*(Emphasis added.)*
>
> *- Judgment of the Israeli High Court of Justice (unofficial translation).*[1]

INTRODUCTION[A]

The right to live together with your spouse and children, in your homeland, is fundamental. But for Palestinians living in the West Bank, the Gaza Strip, and East Jerusalem[2] there is no such right. At best, Palestinians are granted permanent residence in the Occupied Territories as a privilege, but not as a right. At worst, they are compelled either to live illegally with their families in the Occupied Territories, to live apart from their spouse, or to leave the country of their birth and childhood.

This is no accident. On the contrary, it is the result of a calculated policy, systematically implemented by the Israeli military authorities. This policy is the subject of this paper. In particular, the paper examines the plight of

---

A. This paper is a revised and extended version of a Briefing Paper released by al-Haq in 1987. In this paper the term "Occupied Territories" is used to refer to the West Bank, the Gaza Strip, and East Jerusalem. The discussion primarily focusses on the law as it applies to the West Bank. The legal situation in the Gaza Strip is broadly similar, although where significant differences exist, these are clearly referred to. East Jerusalem, which was illegally annexed by Israel after the 1967 war, is administered according to Israeli law. It is generally easier for Palestinian residents of East Jerusalem to obtain family reunification than for other Palestinians. Where the situation in East Jerusalem is referred to, this is clearly noted.

those who, while enjoying the status of being residents (i.e., carriers of Israeli-issued identity cards), have been prevented from exercising their right to live with their family. Broadly, there are three categories of cases in which Palestinian families find themselves separated, and where the only remedy available is to apply to the Israeli authorities for "family reunification." These are: (i) where Palestinians fled their homes during the June 1967 war, and were subsequently prevented from returning; (ii) where Palestinian residents of the Occupied Territories marry non-residents, and want to live with their spouse in the Occupied Territories; and (iii) where former residents of the Occupied Territories lost their rights to residency under laws and regulations introduced by the Israeli authorities since 1967.

The paper explains the background to this relatively unknown and unpublicised subject of separated Palestinian families, by providing a historical and legal framework to the problem. In addition, the paper tries to illustrate the nature and scope of the problem as it affects Palestinians today, by drawing on a sample of 1609 Palestinians interviewed by al-Haq fieldworkers. Each person interviewed had applied for family reunification, and had his/her applications rejected. Questionnaires were filled out on each case.[3] The situation of those people who were not included in the September 1967 census, and who do not have close relatives who were, is not discussed here.

1. HISTORICAL BACKGROUND: 1948 - PRESENT

During the Mandate period, Britain, as the Mandatory Power, issued a Citizenship Order giving Palestinian nationality to all residents of Palestine, irrespective of race or religion. (See below, Section 3B.) Between 1948 and 1967, Palestinian residents of the Gaza Strip were under Egyptian administration, but retained their Palestinian nationality; Palestinians in the West Bank, including East Jerusalem, were given Jordanian citizenship. Their rights to residency, and to leave and return to their homeland, were guaranteed.

This situation changed following the 1967 Israeli occupation of the West Bank, Gaza Strip, and East Jerusalem, during which hundreds of thousands of Palestinians fled from their homes as a direct result of the war. A census of the population in these areas was conducted, under curfew, by the new Israeli administration in September 1967. In the census, the total population of the West Bank, the Gaza Strip, and Jerusalem was put at 1,022,000. This figure represented a drop of about 325,000 from the figures available for the period before June 1967, i.e., over 25% of the entire Palestinian population of these areas prior to the war.[4]

After the census, new military orders made possession of an identity card (Arabic: *hawiyye*) a condition for permanent residency in the Occupied Territories.[5] Only those people aged 16 or over, who were counted in the census and registered by the Israeli authorities, were given the right to obtain an identity card. Children under the age of 16 were also counted and entered, and could thus obtain an identity card when they turned 16. Although possession of an identity card carries with it the right to live in the Occupied Territories, as well as the right to work, it is <u>not</u> proof of nationality or citizenship, and cannot be used for travel abroad.[6] Further measures to control the make-up of the local population were taken in the immediate aftermath of the 1967 war. Military Order No. 5 (West Bank), issued in June 1967, declared the West Bank a closed military zone and made entry and exit subject to permission by the military Regional Commander.[7]

Thus, approximately one quarter of the Palestinian population who had been resident in the Occupied Territories up until the outbreak of war; and afterwards found themselves living outside the West Bank, Gaza Strip or East Jerusalem, lost the right to return to their homes. Shortly after the war, the Israeli authorities introduced the "family reunification" procedure. Through this, residents of the Occupied Territories registered in the census could apply for the return of family members who, under the newly-introduced military orders, had lost their residency rights.

Al-Haq is not aware of any statistics showing exactly how many applications have been submitted, and ap-

proved.[8] However, in reply to a letter of 6 November 1989 from MK Yossi Sarid, former Defense Minister Yitzhak Rabin indicated that over 85,000 applications had been submitted between 1967 and 1987.[9] Only partial statistics, concerning nearly 38,500 of these applications, were available; less than 13,000 of this number had been approved. Further, according to Meron Benvenisti, by 1979 there were still 150,000 unprocessed applications.[10] Israeli sources have generally cited figures of between 45,000 and 50,000 successful applications.[11] Thus, although accurate statistics are unavailable, it is apparent that out of a total of around 325,000 Palestinians separated from their families, many thousands have been denied the right to return to their homeland.

However, the problem of denial of family reunification today is not confined to cases directly resulting from the impact of the 1967 war. In particular, there are many cases where a resident of the Occupied Territories has married a non-resident. In the majority of these cases, an application for permanent residency by family reunification is refused. In addition, the Israeli authorities have denied numerous Palestinians the right to return to their homeland as permanent residents, either because they have overstayed the period for which they were permitted to travel abroad, or because they have made the "centre of their life" in another country. [See further Section (2).]

At the end of 1983, the Israeli authorities decided to introduce a policy specifically designed to bring about a significant reduction in the number of successful applications for family reunification. The official reason given for the new policy was:

> ... the change in the original character and purposes of the phenomena of requests for family reunification, and its becoming a complex problem with security and political implications ... *(Unofficial translation.)*[12]

The details of the new policy have been stated by the office of the Attorney-General as follows:

> ... the policy in practice since 1984 in the Judea and Samaria and Gaza Strip areas is that *only in exceptional and extremely special cases*, for humanitarian or administrative reasons, are requests for family reunification granted.
>
> It should be stressed that the great majority of requests for family reunification submitted every year in both areas are requests for reunification between couples. It is thus clear that the very fact that the people in question are couples cannot, in and of itself, render a request exceptional and special in the said manner. *(Emphasis added - unofficial translation.)*[13]

As a result of this new policy, the prospect of obtaining family reunification for most Palestinians is now bleak. In May 1987 the Association for Civil Rights in Israel (ACRI) said that, after a "noticeable stiffening" of the policy in 1983, only a few requests for family reunification had been confirmed. They added that there had been a subsequent small improvement, and, in 1986, 1238 applications were accepted.[14] In the letter to MK Yossi Sarid referred to above, former Defense Minister Rabin indicated that, between 1987-1989, 3266 applications had been submitted, out of which 695 had been approved. Figures obtained by B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories) from the Coordinator of Activities in the Territories in November 1990 show that in 1989, out of 1053 applications submitted in the West Bank, 250 were approved; in Gaza the figures were 305 submitted, and 192 approved. Statistics available for the first seven months of 1990 show that 334 applications were submitted in the West Bank and 139 approved; in the Gaza Strip, 261 applications were submitted and 187 approved.

It should be noted that figures cited by the Israeli authorities for the number of successful applications include those cases where people have lost their rights to residency for technical or bureaucratic reasons, as a result of arbitrarily imposed conditions. Although such cases do not fall under the definition of "family reunification" as usually understood, because they concern people whose right to live and work in the area cannot sensibly be refuted, in the particular circumstances of the Occupied Territories, the family reunification procedure is one way for people to "regain" the right which has been "lost." Moreover, the number of applications submitted is rela-

tively low. In al-Haq's experience, it appears that many people who have applied for family reunification, and had their application rejected, have simply stopped applying.

The problem of family reunification briefly attracted worldwide attention in 1989, when about 250 women were forcibly expelled from the West Bank by the Israeli authorities. These women were non-residents, married to residents, and had overstayed their visitor's permits in order to be able to live a normal family life with their husband and children. Visitor's permits are usually valid for only one month at a time, renewable for a maximum period of two more months. After this, a compulsory period of at least three months must be spent out of the country before another visit is permitted. Not only is this costly, effectively requiring a family to maintain two homes, but it also prevents one spouse from holding down a job and places a great psychological and emotional burden on the family, in particular the children.

In 1989, these women were typically rounded up during nighttime military raids on their villages, given only minutes to pack their belongings, and then made to pay for the taxi ride to the border-crossing with Jordan, where they were expelled.[15] At the border they were often compelled to pay a fine of around NIS 150 ($US 75) for having overstayed their permits.[16] In a number of cases, children who were themselves lawfully resident, were forced to leave with their expelled mother.

When some of the mothers and children were denied permission to re-enter the West Bank or Gaza Strip on visitor's permits, ACRI filed a petition in the Israeli High Court of Justice, asking for the women *either* to be granted family reunification, *or* to be allowed entry on a visitor's permit, and not be required to leave after a three-month period. The Attorney-General's office presented written and oral statements to the Court guaranteeing that these women could return on visitor's permits, which would be renewed on their expiry so that the wife and children would not be obliged to leave the area. On the basis of these guarantees, the High Court rejected the petition, on 5 June 1990. Although it is too early to assess the extent to which this policy is being put into effect, al-Haq is aware of cases where visitor's permits have been issued for periods shorter than the six months which was subsequently

agreed with representatives of ACRI, as well as other cases where permits issued were later not renewed, thus requiring the "visitor" to leave the country for three months, as before.

In summary, Palestinians in the West Bank and Gaza Strip have no absolute right to live permanently in the place where they were born. There is no redress for this and no means to acquire such a right. Only those living in the West Bank or Gaza Strip after the 1967 war were granted permission to live permanently in their birthplace, where their families had often been living for generations, and even this "privilege" can be revoked by the military authorities. Moreover, non-resident spouses of Palestinians who live permanently in the West Bank or Gaza Strip are, in the great majority of cases, denied permission to join their wife or husband.

2. FAMILY REUNIFICATION: ISRAELI PRACTICE

The following sections examine the situation of those people who are granted residency, those who are denied residency rights, and the options available to those who do not have residency.

A. Palestinians Granted Residency[17]

Palestinians in the West Bank are holders of Jordanian passports, which, under Israeli military law, do not bestow the right of permanent residency in the West Bank.[18] Palestinians from Gaza are considered by the Israeli authorities to be stateless. Only those Palestinians who hold an identity card, or who are under 16 and registered on one of their parents' identity cards, have the right to permanent residence in the West Bank and Gaza Strip. The issuance of identity cards is subject to (frequently amended) military orders relating to the registra-

tion of the population.[A]

The most important requirements of current military orders concerning registration of children can be summarized as follows:

* An announcement of the birth of a child born in the West Bank must be lodged with the appropriate authority within 10 days.[19] If a child is born to parents who are both registered, registration in the population register is possible until the child reaches the age of 16.[20]

A. The military orders governing the registration of new-born children in effect determine the status of these children and this, in turn, governs whether or not they will be allowed to live permanently in the Occupied Territories. These orders are issued by the military commanders of the West Bank and the Gaza Strip. The orders are periodically amended, but these amendments are not brought to the attention of ordinary Palestinians; as a rule, only lawyers receive copies of new military orders, and then irregularly, and only after a delay of several months. It is important to note that these military orders are supplemented by regulations which are not published or otherwise distributed to the Palestinian population. However, through interviews conducted by al-Haq with lawyers working in the field, it has become clear that regulations do exist governing the procedures which must be followed for an application to be submitted. (See below, Section 2.C.)

Further, the precise criteria applied by the authorities are nowhere made public. Recent enquiries made by the Geneva-based International Commission of Jurists to the Israeli authorities to ascertain the criteria employed in deciding on applications have, to date, met with no success. Even apart from the stated official policy (see below, Section 4) there are strong indications that these criteria are extremely rigorous. For example, in *The West Bank Handbook*, at p. 89 (cited earlier), Meron Benvenisti states that no male aged between 16 and 60 is eligible for family reunification.

* If a child is born outside the Occupied Territories, and both his parents are residents, he should be registered before he is five years old.[21]

* If a child is born to a couple where only the mother is a resident, the child can be registered up until the age of five, irrespective of the place of birth.[22]

Most of these rules were introduced by Military Order No. 1208, on 13 September 1987. Prior to this order, a child could be registered if either parent held an identity card although, in practice, registration depended on the father holding an identity card. Since 1987, if a child is born in the West Bank, and the father, but not the mother, is a legal resident, the child cannot be registered and does not have the right to remain as a permanent resident. The dramatic impact of this change in the military legislation can be seen by the fact that out of 1609 cases documented by al-Haq, 907 (56%) involved couples where the father was a resident but not the mother, compared with only 308 cases (19%) where a wife applied for her husband. It is worth noting that no reason was given for this change in the military orders. Since the only effect it has is to restrict a greater number of people from obtaining residency than before, it may be surmised that the new order was intended to effect a change in the demographic make-up of the area.

The effect of these rules is to give Palestinians born in the Occupied Territories a legal status akin to that of foreigners in the United States who are granted "alien resident" status, insofar as Palestinians are given the right of permanent residence, are allowed to work, and obliged to pay taxes. However, unlike alien residents, Palestinians do not have the right to apply for citizenship giving them an irrevocable right to remain in the Occupied Territories; instead, they remain subject to unilateral withdrawal of this status, without appeal.

B. Palestinians Denied Residency

The US 1988 Country Report on Human Rights Practices summed up the problem as follows:

> Requests for family reunification are granted only on a restricted basis. Persons who marry Palestinians in the Occupied Territories generally are not allowed to take up residence there ... Israeli officials acknowledge that family reunification is limited for demographic and political reasons ... [23]

The cases in which families apply for family reunification fall into a number of different categories, some of which have already been referred to. The most frequent types of cases are mentioned here.

1. Residents separated from their family members as a result of the 1967 war

This category includes cases where a resident of the Occupied Territories was outside at the time of, or just after, the 1967 war and has family still residing in the Occupied Territories. It is the one category of cases where the Israeli authorities say they have tried, for humanitarian reasons, to see that applications are accepted. As noted before, it is not certain how many applications for family reunification falling into this category were submitted, and how many approved. It is clear the policy was changed, in order to restrict the number of successful applications, at the end of 1983. In the absence of reliable figures it is impossible to make further comment.

2. Other residents applying to be united with their spouses and/or children

This type of case is very common, since almost all Palestinians in the Occupied Territories have very close links through family and friends with Palestinians in the diaspora, and marriage within the same family is traditional. From al-Haq's documentation, it appears that around 75% of cases where applications have failed fall into this category. Indeed, as noted above, it is now official Israeli policy to refuse such applications unless there are "exceptional and special" humanitarian or administrative reasons for doing so. The mere fact that a couple are married, and

even have children, is not deemed sufficiently "humanitarian" to warrant reunification.[A]

Lawyers contacted by al-Haq were unable to discern any significant difference between cases where husbands applied for wives and *vice-versa*, although in the past it seems that it was easier to obtain permanent residence for a woman than for a man.

3. Residents who lost their right to return due to the loss of their identity card

Many people, especially men, leave the Occupied Territories for extended periods to work or to study. (This has been particularly true for students during the uprising, since all universities have been closed for almost three years, and only one - Bethlehem - has been reopened.) However, the Israeli authorities have placed upper limits on the length of time a person is permitted to stay abroad. This length of time varies. Those who overstay the period, for whatever reason, lose the right to return as a permanent resident. Their only remedy is to apply for the return of their identity card, or for family reunification. In this way, Palestinians born in the West Bank or Gaza Strip, who have lived there all their lives, can be denied the opportunity to return from travel abroad to live in their homeland. In al-Haq's survey, 7% of unsuccessful applications for family reunification fell into this category.

The regulations as to the period of time which may be spent abroad differ, according to the exit-point:-

(i) If a person leaves on a *laissez-passer* (valid for travel through Ben-Gurion airport or other points of exit inside Israel), s/he hands in the identity card to the Population Registration department before departure. (Jerusalem resi-

---

A. Lawyers al-Haq spoke to on this issue suggested that the situation was somewhat easier in East Jerusalem; in particular, it is easier for a woman to gain entry than for a man. Al-Haq fieldworkers found few cases of families from East Jerusalem seeking family reunification.

dents do not have to hand in their identity card on leaving the country.) The *laissez-passer* contains a quasi-receipt for the identity card. It also has a return visa for entry into Israel, valid for one year, and written in Hebrew and English on the *laissez-passer*, but not in Arabic. After the expiry of this period, the person is unable to return and regain his/her identity card. It is usually possible to apply for a *laissez-passer* to be renewed at the Israeli Embassy or Consulate, in the country of residence, for up to one (or sometimes two) more years. However, al-Haq is aware of cases in which false or misleading information has been given to the applicant by staff at the Consulate, resulting in the refusal of the authorities in Israel to renew the document after the expiry period.[24] In such cases, one of the most frequently-used means of retrieving the card is to apply through family reunification.

(ii) if a person travels over the Bridges to Jordan, or through Rafah to Egypt, he must apply for an exit permit, valid for three years. (This is written in Arabic and Hebrew on the receipt which the traveller carries with him abroad.) The identity card is handed in to the Bridge authorities, where it must be collected before it expires. An extension can often be obtained for up to three more years, but after this the resident must return to the Territories or else lose his right to regain his identity card. If an extension is not obtained and the person does not return, (even if this is because of sickness, or work or study commitments), then s/he ceases to be considered a resident by the Israeli military authorities and his or her identity card is forfeited.

4. Loss of residency through acquisition of foreign citizenship or residency elsewhere

Individuals who acquire citizenship or the right to permanent residency in another country, while out of the Occupied Territories, are deemed to have settled abroad and abandoned their residency in the Occupied Territories, thus forfeiting their identity card. Lawyers interviewed by al-Haq indicated that, in their experience, Palestinians who obtain, for example, a green card from the United States (which gives residency and work rights, though not citizenship), in practice often forfeit their identity. It appears **that this policy is not applied systematically.**

C. Application Procedure for Family Reunification

For Palestinians who find themselves in any of the situations described above, there are few available options. One such option is to apply for family reunification, in the hope of gaining permission to reside permanently in the Occupied Territories; another is to enter on a visitor's permit and leave, on its expiry, for a period of three months (as required by the Israeli authorities) before returning. The bureaucratic procedures required for either process are both time-consuming and expensive. They are described in this and the following section.

There are no published regulations governing applications for family reunification. Since the start of the uprising it has become much more difficult than before even to submit an application to the Civil Administration of the area in which the applicant lives. (Applicants from Jerusalem submit their applications directly to the Ministry of Interior.) The applicant must obtain clearance from a number of different departments including the Income Tax and Value Added Tax departments, the municipality, the police, and the local *mukhtar* (village elder), before the military government will even accept the application for family reunification. The applicant must also obtain clearance from the security forces before the application will be considered. Only after completion of all these procedures will the application be formally accepted. The total cost is around NIS 300 ($US 150),[25] including the cost of the application and the cost of obtaining all the necessary clearances.

Most applicants are asked at this stage if the person for whom they are requesting reunification is in the country at the time. If the answer is "yes," the application will not be accepted, until the person leaves the country. However, al-Haq is aware of at least one case where an applicant was told that the other person should be in the country at the time of the application. Since there are no published regulations, it is therefore impossible to be certain of the correct procedure. Each application usually consists of a request for more than one individual to be allowed to return, since children under the age of 16 are included in the application of the parent.

A military committee sits irregularly and decides on applications for family reunification. For applications from Jerusalem, a Committee headed by a representative of the Ministry of the Interior sits whenever there are enough applications to justify this. Representatives of the Prime Minister's Office, the Religious Affairs Ministry, the Defence Ministry, and the Police are also members of the Committee.[26] There is no hearing on the application and the applicant is not given an opportunity to present or argue the case, nor are applicants even interviewed. It is not generally known by the Palestinian population on what criteria the decisions are based, other than the broad outline mentioned above - "exceptional humanitarian or administrative reasons." Over five years ago, one of al-Haq's lawyers asked the Legal Advisor to the Civil Administration of the Military Government of the West Bank what constituted an "exceptional humanitarian" case; he was informed that this only included "extreme hardship cases," which did not cover the separation of spouses. Moreover, the answer to the application may not be given for as long as a year or more.

If, as is most often the case, the application is refused, the official response is always short, usually oral not written, and, in the great majority of cases (97% of the cases documented by al-Haq), no reasons are given for the refusal. In addition, in many cases no further application can be submitted for a year following a refusal. (In East Jerusalem, this restriction does not apply.) In al-Haq's experience, many families apply more than once after they receive a rejection of their request. Of those interviewed by al-Haq, 57% had submitted more than one application, and 16% had applied four times or more. In some cases a family will reapply virtually every year.

In the experience of lawyers dealing with these cases, the majority of the few successful applications are granted to those who agree to collaborate with the Israeli authorities, or to those who were registered in the census, but did not apply for identity cards because they did not understand the new regulations.

When an application is refused, there is no appeal, only a "review" procedure in the Israeli High Court of Justice. The High Court, however, has refused to look at the merits of official Israeli policy, thereby effectively

sanctioning it, and has rejected many petitions on this issue. In particular, the Court has voiced no concern over the lack of published criteria in the consideration of applications for family reunification.

D. Entry into the Occupied Territories on Visitor's Permits

If the application fails, the non-resident will usually enter the Occupied Territories on a "visitor's permit" (or a tourist visa). Such a permit is granted by the military authorities after approval of an application from a member of the non-resident's family living in the Occupied Territories; the permit is valid for one month and renewable for a total period of up to three months.[A] Each permit costs

---

A. It should be noted that following the most recent application in 1990 to the High Court on the question of family reunification, senior military authorities have indicated to representatives of the Association for Civil Rights in Israel (ACRI), one of the petitioners in the case, that they are ready to implement a new policy concerning visitor's permits. Despite sending a letter dated 2 July 1990, requesting confirmation and clarification of the details, ACRI has received no written response at the time of writing. The new policy would enable residents to apply for six-month-long visitor's permits, costing approximately half the old price, for their non-resident wives and children. Such permits would be granted in all cases unless there were "security" reasons preventing this. At the expiry of the six months, the resident husband could reapply for a visitor's permit, without his wife and children being forced to leave the Occupied Territories in the interim. In this way, a sort of "permanent visit" would be permissible.

Al-Haq is monitoring developments to see if this new policy is being put into effect, although it is too early yet to draw any conclusions. Even if it <u>is</u> put into practice, many difficulties will remain. Firstly, this is only a policy, not legislation, and can thus be changed at any time. Secondly, it does not address the issue of people who have unjustly lost their right to an identity card by overstaying the length of time they

around NIS 360 ($US 180), and each renewal a further NIS 150 ($US 75).[27] When the three-month period is over, the non-resident has to leave the country for at least six months before he or she is allowed to re-enter on another visitor's permit.

...Continued...

were permitted to be abroad. Thirdly, it leaves unresolved many issues which depend on the status of "residency" - military orders often refer to "residents" and it is unclear whether individuals permitted to stay on this new basis would be counted as "residents." Transactions which require the approval of the Civil Administration are, in practice, not even processed if the applicant does not give his identity card number on the relevant form. Moreover, a number of military orders specifically refer to the rights or duties of "residents," for example, M.O. No. 973 Concerning the Entry of Monies into the Area, where resident is defined (by reference to M.O. 297) as "a person legally present in the area, and whose permanent place of residence is in the area." M.O. 271 (concerning the presentation of claims against the I.D.F. for damage caused to "inhabitants" of the Region) defines an "inhabitant" as a person whose "permanent place of residence is in the Region." Fourthly, it is not clear to whom the "security" check will be applied - the person requesting family reunification, or the person(s) seeking to enter. Fifthly, the position of children who are staying as "long-term" visitors, who have reached the age of 16, is extremely unclear. In short, the scheme leaves many unanswered questions and loopholes. Crucially it fails to change the status of the non-residents, whose right to remain in the West Bank or Gaza Strip, even on the terms of those with identity cards, is still being denied.

3. LEGAL ISSUES

A. Introduction

In a belligerent occupation, such as the Israeli occupation of the West Bank and Gaza Strip, international law becomes the guiding set of norms. The legality of all the acts of the occupant can, and should, be judged by reference to the rules laid down in international law. The relevant international law can be found in customary international law, and a number of treaties such as the 1907 Hague Regulations Annexed to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, and various human rights treaties.

Article 43 of the 1907 Hague Regulations states that an occupant:

> shall take all the measures in his possession to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

This, and the other relevant articles, have been consistently interpreted to mean that Israel must apply the Jordanian law of 1967 in the West Bank, and the law of Palestine (as amended by the 1948-1967 Egyptian administration) in the Gaza Strip, unless it is absolutely necessary to amend these laws for one of two reasons:

> (i) the benefit of the local population;
> (ii) the military needs of the occupying force.[28]

The legality of Israel's policy towards family reunification for Palestinians living in the West Bank and Gaza Strip should therefore be judged by reference to the law in force at the time of the occupation, unless any amendments can be justified on one of these two grounds. Moreover, all changes made by Israel must be consistent with the provisions of applicable customary and conventional international law. This section will review the local laws in force at the time of the 1967 occupation. It will then

examine the relevant international law relating to the right of families to live together.

B. Local Law [29]

The relevant local laws which were applicable in the West Bank and the Gaza Strip are primarily those concerning nationality, since it is the status of citizen which confers the rights of permanent residence and of leaving and returning to the country of one's citizenship freely. It is these laws which are discussed below.

In 1925, Great Britain, as the Mandatory Power responsible for Palestine, issued a Citizenship Order which, for the first time, defined the nature of "Palestinian" citizenship. A Palestinian was "any inhabitant residing and living in Palestine, regardless of sex, colour, religion or race." After the 1948 War, Jordan gained control of the West Bank, including East Jerusalem, and subsequently annexed them, while Egypt became the administering power for the Gaza Strip. Subsequently, different laws came into effect concerning the nationality and residency rights of Palestinians living in these areas. These differences explain the different citizenship status of Palestinians living in the the West Bank and Gaza Strip today.

The significance of this is that, prior to 1948, Palestinians had Palestinian nationality and all the rights and security consequent upon citizenship, yet today these people and their direct descendants are being denied the right of permanent and inalienable residency in their homeland.

1. The West Bank and East Jerusalem

The relevant Jordanian law in 1967 consisted of the 1928 Jordanian Law Relating to Nationality (as amended) and the 1954 Law on Nationality.[30] Under this legislation, all children born to a Jordanian father are granted Jordanian nationality, as are all children born in Jordan to a Jordanian mother, where the father is of unknown nationality or has no nationality. The wife of a Jordanian is also considered to be Jordanian.[31]

Moreover, the Jordanian Family Rights Law (no. 92) of 1951 states:

> The wife must, after payment of the dowry, live in the residence of her legal husband and move with him to any place where the husband wishes, if there is no obstacle to this. An obstacle in this paragraph means the husband's intention of harming or hurting her, or the husband's failure to be faithful to her. *(Unofficial translation.)*[32]

This provision reflects the custom of Palestinian society, whereby, on marriage, a wife will move to live with her husband, instead of the husband moving to live with his wife or the couple moving to a new place. This custom accounts for the fact that, as shown by al-Haq's fieldwork sample, over 74% (907 out of 1215) of the cases where a husband and wife are separated, unable to obtain family reunification, are cases where husbands are applying for the entry of their wives, rather than the other way around.

2. The Gaza Strip

In 1967, the relevant law in force in the Gaza Strip gave Palestinian citizenship to residents of the Gaza Strip; this entailed the right of permanent residency and the freedom to travel abroad and return at will. Subsequent to the 1925 Citizenship Order (mentioned above), a 1962 Constitutional Order was passed by the Egyptians, stating that the Gaza Strip was part of Palestine, and Palestinians living there constituted part of the Palestinian national entity.

Further, the Egyptian Basic Law No. 255, issued on 11 May 1955, ensured that the 1922 Palestine Order-in-Council would stay in effect unless it contravened any provisions in the Basic Law. Significantly, there is nothing in this 1922 Order-in-Council which gives administrative authority to any body to refuse entry to a Palestinian wishing to return to his homeland. Further, there is nothing in the Egyptian amendments to the Order-in-Council giving this right. Thus, in 1967 any Palestinian who left the Gaza Strip to work or study abroad, or for any other reason, had the right to return freely. Moreover, Article 3 of the 1955

Basic Law guaranteed the right of Palestinians to reside in Gaza within the limits of the law.

C. International Law

The international law relevant to the question of the right of families to live together under one roof can be divided into three categories. First, the right of the family unit to protection; second, the right of anyone to leave and enter his homeland at will; third, the rights of the child to have a nationality and to live with his/her parents.

1. Right of the Family Unit to Protection

The right of familes to be united under one roof is not explicitly stated in international conventions or treaties applicable to occupied territories. However, many articles guaranteeing the right of families to protection generally, can be found in international humanitarian law (the "laws of war"). For example:

Hague Regulations of 1907, Annexed to the Fourth Hague Convention IV Respecting the Laws and Customs of War on Land

> [Article 46] ... Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War

> [Article 27] Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious conviction and practices, and their manners and customs.
>
> ... However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war. (Emphasis added.)
>
> [Article 26] Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of the organisations engaged on this task provided they are acceptable to it and conform to its security regulations.

Protocol 1 of 1977 Additional to the Geneva Conventions of 1949[A]

> [Article 74] The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organisations engaged in this task in accordance with the provisions of this Protocol and in conformity with their respective security regulations.

Further, international human rights law provides some useful guidelines indicating the commitment of the international community to a legal order which provides protection for the right of families to live together. Some examples are provided in Appendix 1.

Israel accepts that the principles laid down in the Hague Regulations represent customary international law, and thus apply to the West Bank and Gaza Strip. However, it denies the *de jure* applicability of the Fourth Geneva Convention. While claiming that it applies the humanitarian provisions of the Convention *de facto*, it has never specified which provisions these are.

A. The Protocol has not been signed or ratified by Israel, which can therefore not be considered bound by its provisions. However, many of its provisions, including, in al-Haq's view, Article 74 represent positive developments in international law which should be encouraged and adopted wherever possible, so that they attain the status of customary international law as rapidly as possible.

Aside from the question of applicability, the right of the Palestinians to family reunification has been denied by Israel on two broad grounds.

(i) Israel claims that there is no such *right*, and that granting family reunification is an act of compassion, based on what the authorities consider to be humanitarian grounds, rather than a legal obligation. Moreover, the Israeli authorities argue that a family can live together if the entire family unites outside the Occupied Territories.[33]

In al-Haq's view, the right of a family to live together is a fundamental human right protected by international humanitarian and human rights law. Although this is not explicitly stated, it is explicit that "family rights" are to be protected. This raises the question of the nature of the family unit which is to be protected and how it is to be protected. In the official commentary to the Fourth Geneva Convention on Article 27, it is stated that this obligation is "intended to safeguard the marriage ties and that community of parents and children which constitutes a family ... Respect for family rights implies not only that family ties must be maintained but further that they must be restored should they have been broken as a result of wartime events."[34] This makes it clear that it is the basic family unit, consisting of husbands, wives, parents and children, which is intended to benefit from the protections afforded by this article.

Although the nature of the respect required to be shown for family rights is not defined, it seems self-evident that the most basic right - without which the others are meaningless - is for a family to be together. Moreover, to assert that this right can be enjoyed simply by the whole of the family leaving the Occupied Territories, is absurd. As protected persons, Palestinians are entitled to have their rights under the Convention respected within the occupied territory. It is also a right of Palestinians from the Occupied Territories to remain there.[35] To say that someone can live with his family, he only has to move out of the Occupied Territories, is analagous to saying that a person has a right to a fair trial, but not in this country.

(ii) Israel further claims that to allow family reunification as a right would be a threat to "security", and has political, economic, and other implications. In particular, Israel emphasizes the right of an occupant to take appropriate measures to guarantee its security. It states that there is no obligation to allow anyone to enter the Occupied Territories, since they are closed military areas, entry into which requires specific permission. Further, the possibility of mass immigration into the Occupied Territories is alluded to as a justification for restricting the number of successful applications.[36]

In al-Haq's view, such references to "security" and other rationales cannot justify the current policy. In particular, the use of imprecise and general reasons to justify the refusal of an application are unacceptable. If proper consideration is to be given to a case, it must be judged on its own individual merits. The only legitimate "security" dimension relates to the individual activities of the person for whom the application is made, not, as appears sometimes to be the case, the alleged security record of the applicant. (See below.) It appears that, as an occupying power, Israel is encouraging the transfer the population of the Palestinian population, contrary to international law.

Above all, the use of political and other considerations to justify the policy is improper. An occupant is not entitled to take measures which have far-reaching demographic impact and thus attempt to influence the outcome of any future settlement. On the contrary, under the special conditions imposed by belligerent occupation, an occupant is bound at all times to maintain a balance between the interests of the local population and the military needs of the occupying forces. In view of the immense suffering it causes to tens of thousands of Palestinian families, refusing most applications for family reunification could only conceivably be justified if it was imperative for the needs of the occupying forces. (It is clearly not in the interests of the occupied population.) No such justification has been produced.

Consistent with the requirements of international law, a reasonable policy would be for applications for family reunification to be approved automatically, *unless* the authorities could prove that there was a genuine, serious security risk in allowing permanent residence to the individual for whom this was requested.

2. Right to Leave and Return to One's Country

Israel's policy towards family reunification has to be viewed in light of the right, guaranteed by international law, of every person to leave their homeland and return to it at will. This is particularly relevant for Palestinians, since there are many cases where a person who had the right of permanent residency in the Occupied Territories has had this right withdrawn because s/he has overstayed the period for which he was permitted to remain outside the country. In particular, the Universal Declaration of Human Rights states:

> [Article 13(2)] Everyone has the right to leave any country, including his own, and to return to his country.

Israel argues that it has a right to designate the West Bank and Gaza Strip "closed military areas" to safeguard its own security and to keep a check on all persons leaving and entering the areas. (In practice, these restrictions are not applied to Jewish settlers living in the West Bank or Gaza Strip.) However, in al-Haq's view, this has nothing to do with the question of family reunification. In al-Haq's experience, it appears that in the great majority of cases, individuals who are denied family reunification are allowed entry on visitor's permits for limited periods of time. Moreover, from al-Haq's survey, it appears that 98% of those people wanting to enter as residents had never been arrested. It is thus clear that the refusal of residency to such people is not, except in a very few instances, an issue of security, but one of politics and demography: If they were considered a threat to security, they would undoubtedly not be allowed in even as visitors. However, by withholding residency, the military authorities ensure that they will not count as part of the population in any future settlement, and, meanwhile, the hardship caused by the policy encourages more and more Palestinians to leave the area.

3. Rights of the Child

The new UN Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989 without a vote, affords further potential protection to

families. Although not binding on Israel, the treaty indicates the standards expected by the international legal community:

> 7. (i) The child shall be registered immediately after birth and shall have the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.
>
> (ii) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless ...
>
> 10. (i) In accordance with the obligations of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

Of particular note is the requirement that children shall be given a nationality. As mentioned above, since September 1987, children born inside the Occupied Territories to fathers who are legal residents, but whose mothers are non-resident, are denied the possibility of obtaining an Identity card when they reach 16 and are thus allowed to stay only as "visitors."

4. Summary

These different provisions of international law set out the standards for treatment of families which are now widely regarded by the international legal community as being appropriate standards to observe and to uphold. In particular, the 1907 Hague Regulations and the 1949 Fourth Geneva Convention are, in the view of the international legal community (including the United Nations and the International Committee of the Red Cross), binding on Israel. The other provisions represent standards accepted by other nations.

Israel has deliberately flouted international human rights and humanitarian law by implementing the existing

policy on family reunification. In particular, it has openly admitted the "political" and demographic element to its policy.[37] The demographic element is based on concern for the state of Israel itself. However, under international law, such a consideration is irrelevant. The only legitimate concerns which could justify such a policy are the military needs of the occupying forces or the welfare of the local population in the occupied territories. The needs of the occupying power itself are wholly irrelevant and inadmissible as reasons justifying the policy.

Israel also attempts to justify the policy by claiming that, so far as populations under occupation are concerned, family reunification is not a right, only a privilege. However, although not explicitly stated as such, it is hard to see how "family rights" could be protected unless the unity of the family is first guaranteed.

Moreover, in introducing this policy, which inevitably has long-term demographic impact on the Occupied Territories, Israel is exceeding its authority by acting not as a temporary occupant, but as a sovereign. It is a *sine qua non* that an occupant does not have any sovereignty whatsoever over an occupied territory; all the rules of international humanitarian law governing belligerent occupations are based on this premise.[38] Any act which contravenes this basic principle is, under international law, without validity.

4. ISRAELI POLICY AND THE ISRAELI HIGH COURT OF JUSTICE

The Israeli High Court of Justice has heard numerous cases about family reunification since 1983. However, the Court does not sit as a Court of Appeal, it only examines whether the decision of the Military Commmander is proper within the existing legal framework. Thus, the Court has decided that it can only intervene if, on the face of it, a decison taken by the Military Commander was taken on the basis of improper considerations, or was unreasonable or arbitrary.[39] It is not clear how the Court considers itself in a position to judge whether a decision was taken on any of these grounds, when the precise criteria applied by the Israeli governemnt have not been made public. Further, the Court has taken the view that since the Occupied Territories are till this day declared closed, entry and exit to and from them is a matter purely at the discretion of the Military Commander.[40] In particular, the Court has noted that:

> Since the grant of a residence permit requires the existence of exceptional humanitarian reasons, only such reasons can turn the respondent's refusal to enable the reunion of families into an unreasonable and arbitrary one, justifying the Court's interference. *(Unofficial translation.)*[41]

Significantly, petitions to the High Court asking for confirmation of the right of an identity card-holder to be reunited with his/her immediate family have resulted in the High Court accepting the principle that holders of identity cards have no basic right to family reunification.

> Family reunification is not a granted right. Granting such a request is, as stated, a special act of compassion on the part of the authorities, supported by humanitarian considerations. *(Unofficial translation.)*[42]

As stated above, the criteria for what is "humanitarian" is not defined, published, or publicized and is only known to the military authorities.

Nonetheless, the Court has seen fit to examine the legality of the official policy in light of the requirements of international law. In the leading case on the subject, the High Court considered the reasons behind the policy of the military authorities. It held that there was no specific duty on an occupant to permit family reunification and concluded:

> The respondent [the IDF Commander of the West Bank] ... does not ignore the fact that there are serious humanitarian problems and he is not renouncing the willingness to examine each case in its context, but he was entitled to conclude that when a particular phenomenon becomes a mass phenomenon, encompassing many thousands each year, it is not possible to continue to apply standards which are strictly individual; rather, the above

> defendant has a duty, on the basis of his considerations in accordance with the laws of warfare and in light of the nature of his position, to attach importance to the *security, political, economic and general significance of the phenomenon* and its consequences ... *(Unofficial translation.)*[43]

The consequence is that:

> the burden is on the petitioners to demonstrate the exceptional character of their request for family reunification and not on the authorities to demonstrate special considerations for a refusal to deviate from established policy. *(Unofficial translation.)*[44]

In summary, the High Court has been an ineffective remedy for Palestinians who have been denied family reunification. Crucially, it has denied that family reunification is a right, as opposed to a privilege for Palestinians: it has asserted that families can be reunited if the resident leaves the Occupied Territories and settles outside with his family and has approved the openly political nature of the policy. In so doing, the High Court has given legal sanction to a policy of the Israeli authorities designed, first and foremost, to further Israel's demographic interests by preventing entry of Palestinians into the area and simultaneously encouraging them to leave.

CONCLUSION

Palestinians resident in the West Bank and Gaza Strip do not have the rights or security which ordinarily pertain to nationality. Their right to reside in the place in which they, their parents, and grandparents were born can be withdrawn unilaterally, and without appeal, by the Israeli authorities. In practice, they have a similar, although less favourable, status to foreigners in the United States who are granted "alien resident" status. Moroever, many Palestinian families have become divided over the years: this has been due, in particular, to the mass flight of Palestinians caused by the 1967 war, and the use of the census conducted in its immediate aftermath to exclude

those who fled; to marriages between residents and non-residents; and to the loss of residency rights resulting from temporary travel abroad for work or study purposes.

Since the beginning of 1984, official Israeli policy has been to deny applications for family reunification made by Palestinians, except in "exceptional" humanitarian and administrative circumstances. As a result of this policy, tens of thousands of Palestinians are separated from their closest family members. Allowing people to visit on visitor's permits, whereby partners have to leave the family home every three months, disrupts schooling and normal family life, causes great expense to the family, and imposes a major psychological burden on all involved. If non-resident spouses and children are permitted to stay on indefinitely renewable visitor's permits, this will alleviate some of the most immediate hardships. However, it does nothing to resolve the fundamental problem. The refusal of the Israeli authorities to accept the right of Palestinians to permanent residence in the Occupied Territories renders the victims vulnerable to any change in the rules, and with no available legal remedy.

Moreover, the procedures which are applied to deal with family reunification applications are indicative of the intent behind the policy. Applicants are not interviewed, there is no appeal, and the criteria applied are unpublished and unavailable. In particular, changes in the policy introduced in 1983 were made for apparently illegitimate reasons.

Israel has attempted to justify its policy on, *inter alia*, political grounds. That an occupying power should thus abuse its role, preventing the permanent residence of such individuals in the occupied territories in order to further its own political goal of altering the demographic nature of the territories, strikes at the heart of the protections afforded by international humanitarian law. Moreover, while almost all countries exercise control over immigration of aliens and their families, here we are not talking about aliens, but about, on the one hand, people who simply want to live in their own land and that of their forebears, and, on the other hand, the right of any person to marry and live with his or her spouse in his or her homeland. The discriminatory aspect of this policy becomes more glaring in light of Israel's advocacy of the right of Soviet Jews

to leave the Soviet Union and be accepted into Israel as Israeli citizens. This is facilitated by the 1950 Law of Return, which states categorically that any Jew has the right to immigrate to Israel.[45]

In preventing Palestinian families from being united, the Israeli military authorities are not only violating international law and principles: they are also violating the fundamental and natural right of individuals to live with members of their families under one roof in their own homeland.

ENDNOTES

(1) H.C. 106/86, Al-Safiri vs. The Head of the Civil Administration of the Gaza District (unpublished).

(2) The legal status of Palestinian residents of East Jerusalem is unclear; see H.C. 282/88., Awad v. Yitzhak Shamir et al. However, in practice, more applications from East Jerusalem for family reunification are approved than applications submitted from other parts of the Occupied Territories.

(3) In addition to personal details about the applicant and the person(s) for whom family reunification was sought, the questionnaire included questions concerning the number of requests each applicant had made, the dates of the applications, whether any reason had been given for the refusal, whether either the applicant, or the person applied for had ever been arrested, and the reason why family reunification was requested.

(4) Statistics taken from Janet L. Abu-Lughod, "The Demographic Consequences of the Occupation," in Naseer Aruri (ed.), *Occupation: Israel over Palestine* (London: Zed Books Ltd, 1984). In Abu-Lughod's article, the figures for the period before the June war are taken (and adjusted) from the 1961 census of Jordan and the Egyptian registered population of Gaza. See also Esther Cohen, *Human Rights in the Israeli-Occupied Territories, 1967-1982* (Manchester: Manchester University Press, 1985), pp. 207-208. Ms. Cohen estimates that 200,000 persons fled from the West Bank alone, during the Six-Day War. See also Meron Benvenisti, *The West Bank Handbook* (Jerusalem: Jerusalem Post, 1986), p. 52, who states that 215,000 Palestinians left the West Bank as a direct result of the war - one fifth of the West Bank population.

(5) See M.O. (West Bank), Order Concerning I.D. Cards; this was superceded by M.O. 297 of 1969 (West Bank), Order Concerning I.D. Cards and Population registration.

The legal situation of Palestinians in East Jerusalem differs from that of Palestinians in other

parts of the Occupied Territories, as it was formally annexed by Israel in 1967, in contravention of international law. The unlawfulness of the annexation has been stated repeatedly by the international legal community in the United Nations. See U.N. Security Council Resolution No. 252 (1968) of 21 May 1968, passed by 13 votes in favour, none against, and 2 abstentions, stating that the legislative and administrative measures taken by Israel to change the status of Jerusalem were invalid. See also U.N. General Assembly Resolution No. 2253 of 4 July 1957 calling on Israel to rescind measures taken to change the status of Jerusalem. Nevertheless, since 1967, Israel has insisted on applying Israeli law to the residents of East Jerusalem.

(6) The identity card has subsequently become a crucial method for the Israeli authorities of controlling the Palestinian population. See Al-Haq, *Nation Under Siege* (Ramallah: al-Haq, 1990), Chapter Nine, "Administrative Methods of Control."

(7) Military Order No. 34 (Order Concerning Closed Areas) subsequently replaced M.O. No. 5. Similarly, in the Gaza Strip, M.O. No. 144 (Order Concerning Closure of the Areas - Gaza Strip, Northern Sinai) was enacted. See H.C. 1979/90: *Statement by the Attorney-General*. A subsequent statement issued by the Israeli authorities in 1971 (General Exit Permit No. 5) gave general permission for the residents of the West Bank and Gaza Strip to enter Israel. This general permission can, and has been, withdrawn for specific periods or persons or groups of persons.

(8) On 31 October 1990 al-Haq wrote to the Department of Human Rights and International Relations of the Ministry of Justice requesting these figures; on 13 November 1990 we received a reply, stating that our letter had been forwarded to the office of the Coordinator of Operations in the Administered Areas. At the time of going to print, we had received no further communication.

(9) A copy of this letter is in al-Haq's files.

(10) Benvenisti, *op. cit.*, p. 89.

(11) Chaim Herzog, in a speech to the UN General Assembly, 26 October 1977, gave the number as around 48,000: Esther Cohen, *op. cit.*, p. 208. Meron Benvenisti gave a figure of around 45,000 successful applications between 1967 and 1972; Benvenisti, *op. cit.*, p. 89. In *The Rule of Law in the Areas Administered by Israel* (Tel Aviv: Israel National Section of the International Commission of Jurists, 1981), p. 86, the figure of "about 50,000" successful applications was given. Professor Yoram Dinstein gives an unusually high figure of 75,000 persons in his article "The Israel Supreme Court and the Law of Belligerent Occupation: Reunification of Families," *Israel Yearbook of Human Rights, Vol (18), 1988.*

(12) H.C. 1979/90: *Statement by the Attorney-General*, para. 9.

(13) *Ibid.*, para. 10.

(14) Joshua Schoffman *"Reunification of Families - Policy Without a Heart,"* (ACRI, May 1987). Professor Yoram Dinstein states that after 1983: "the [family reunification] permits granted dwindled to several hundred *per annum*. At the present time the annual rate seems to hover around 1200." *Op. cit.*, at p. 177.

(15) See Ronit Matalon, "To The Bridge in a Taxi," *Ha'aretz*, 10 October 1989, translated in *The Shahak Papers*, 1990-4.

(16) See Al-Haq, *Nation Under Siege* (Ramallah: Al-Haq, 1990), Chapter 15, p. 524.

(17) This section does not deal with the situation in East Jerusalem where, since its annexation in 1967, Israeli law has been applied. Residents of East Jerusalem are thus subject to the 1952 Entry into Israel Law (as amended), Article 1(b), under which the residence of a person who is not a citizen or holder of the visa or certificate of an immigrant is regulated by a permit. See H.C. 282/88, Awad v. Yitzhak Shamir et al.

(18) The citizenship is stated as Jordanian in the *laissez-passer* which Palestinians are obliged to use to travel abroad if they leave through an exit point in

Israel such as Ben-Gurion airport, or Haifa port.

(19) M.O. 297 (Order Concerning I.D. Cards and Population Registration), 8 January 1969, para. 17 (a).

(20) M.O 1208 (Amendment No. 17 to M.O. 297), 13 September 1987, para. 2 (a).

(21) *Ibid.*, para. 2 (b).

(22) *Ibid.*, para. 2(c).

(23) US Country Report on Human Rights Practices for 1988, at p. 1384.

(24) See forthcoming Al-Haq publication, containing fifteen case-studies on family reunification, for examples illustrating this.

(25) Since the agreement between ACRI and the Israeli authorities (see Section 3.C.2., below), it appears that in many cases the total cost has been reduced to around NIS 140.

(26) Interview with Jerusalem attorney Advocate Isaac Toeg, Jerusalem, 28 October 1990.

(27) Information obtained from Ramallah Post Office, November 1990.

(28) Gerhard von Glahn, *The Occupation of Enemy Territory* (Minnesota: University of Minnesota Press, 1957), pp. 94-97.

(29) See Anis Kassim, "Legal Systems and Developments in Palestine," in A. Kassim (ed.), *The Palestine Yearbook of International Law, Vol. I.* (Nicosia: Al-Shaybani Society of International Law Ltd., 1984), pp. 21-29.

(30) See, in particular, Article 3 of the 1954 Law of Nationality, and Article 8 of the same law, both amended by the 1967 Amendment Law No. 7.

(31) For more on this, see al-Haq, Know Your Rights on Family Reunification, 1990, (Arabic).

(32) Article 33.

(33) H.C. 1979/90, Statement by the Attorney-General.

(34) Jean S. Pictet (ed.), Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva: ICRC, 1958), pp. 202 - 203.

(35) Article 49, Fourth Geneva Convention.

(36) See H.C. 13/86 & 58/86, Shahin v. The Commander of IDF Forces in the Judea and Samaria Region; Arbia v. the Commander of IDF Forces in the Judea and Samaria Region; verdict given by Chief Justice Meir Shamgar; see especially para. 9. See also H.C. 1979/90 Awashra et. al. v. The Regional Commander of I.D.F. Forces in Judea and Samaria at the Central Headquarters, I.D.F., statement by the Attorney-General.

(37) H.C. 1979/90; Petition, paras. 41-42.

(38) G. Schwarzenberger, *International Law as Applied by International Courts and Tribunals, Vol. II - The Law of Armed Conflict* (London: Stevens & Sons Ltd, 1968), p. 179. See also L. Oppenheim, *The Legal Relations Between an Occupying Power and the Inhabitants*, pp. 363-384, cited in H.C. 1979/90, petition, para. 43.

(39) H.C. 11/86, Hatib v. The Minister of the Interior et al (unpublished), referred to in H.C. 1979/90, Statement of the Attorney-General, para. 17.

(40) H.C. 1979/90, Statement by the Attorney-General, para. 9.

(41) H.C. 31/87, Sharab v. The Head of the Civil Administration on the Gaza Strip.

(42) H.C. 209/86, Al-Atrash v. the Head of the Civil Administration (unpublished), mentioned in H.C. 1979/90, Statement of the Attorney-General, para. 17(d).

(43) H.C. 13/86, 58/86, Shahin et al. v. The Commander of Judea and Samaria, et al.

(44) H.C. 106/86, al-Safiri v. the Head of the Civil Administration in Gaza.

(45) Law of Return, 5710-1950, Article 1. Laws of the State of Israel.

APPENDIX

The following provisions of human rights treaties and declarations indicate the consensus in the international legal community for the fullest protection of the rights of the family:

Universal Declaration of Human Rights, 1948[1]

> The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.[2]
>
> Everyone has the right to leave any country, including his own, and to return to his country.[3]

International Covenant on Civil And Political Rights, 1966[4]

> The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.[5]
>
> Every child has the right to acquire a nationality.[6]

International Covenant on Economic, Social and Cultural Rights, 1966

> The States Parties to the present Covenant recognise that:
>
> (i) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.[7]

Final Act of the Helsinki Conference, 1975 - Co-operation in humanitarian and other fields[8]

> The participating States will deal in a positive and humanitarian spirit with the applications of persons

who wish to be reunited with members of their family, with special attention being given to requests of an urgent character - such as requests submitted by persons who are ill or old.

They will deal with applications in this field as expeditiously as possible.

They will lower where necessary the fees charged in connexion with these applications to ensure that they are at a moderate level.

Notes to Appendix

(1) Adopted by consensus without a vote by the UN General Assembly, on 10 December 1948, the Universal Declaration of Human Rights is now accepted as containing many provisions which represent customary international law and are thus binding on all states (unless a state has specifically and openly voiced its consistent rejection of a particular provision).

(2) Article 16 (3): the same article appears in the International Covenant on Civil and Political Rights 1966, Article 23 (1).

(3) Article 13(2).

(4) Israel has signed, but not ratified, the two International Covenants mentioned here. Although it is therefore not formally bound by the provisions of the Covenants, signature of an international treaty obliges the signatory state to refrain from acts which would defeat the object and purpose of a treaty. See Article 18 of the Vienna Convention on the Law of Treaties, 27 January 1980.

(5) Article 23(1).

(6) Article 24(3).

(7) Article 10.

(8) Israel did not participate in the Conference on Security and Co-operation in Europe, and the citation of the Final Act is not intended to imply that Israel is in any sense formally bound by its provisions. However, the Final Act is important for the serious statement of intent which it represents, and for the standards which it lays down as appropriate for European nations, the USA, and the USSR. It is cited here in view of Israel's frequent claims to be the only "western-style" democracy in the Middle East.