

A Series of Working Papers

FORCED POPULATION TRANSFER: THE CASE OF PALESTINE

DENIAL OF RESIDENCY

Working Paper No. 16

Editors: Amjad Alqasis and Nidal al Azza

Editorial and Research Team: Manar Makhoul, Simon Reynolds, Thayer Hastings, Wassim Ghantous, Halimeh Al-Ubeidiya and Ambica Bathia

Design and Layout: Fidaa Ikhlayel

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Denial of residency

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Credit and Notations

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BADIL Resource Center working papers research durable solutions for Palestinian refugees and internally displaced persons as well as strategies of ending impunity for human rights abuses as part of a just and permanent solution to the Palestinian/Arab-Israeli conflict. Working papers do not necessarily reflect the views of BADIL.

BADIL Resource Center for Palestinian Residency and Refugee Rights

Karkafa St. (down the street from Bethlehem Hotel)

PO Box 728, Bethlehem, West Bank; Palestine

Tel.: +970-2-277-7086; Fax: +970-2-274-7346

Website: www.badil.org



BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, community-based non-profit organization works to defend and promote the rights of Palestinian refugees and internally displaced persons. Our vision, missions, programs and relationships are defined by our Palestinian identity and the principles of international law, in particular international human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

Table of Contents

Introducing the Series.....	5
Introduction.....	9
Revocation of Residency Status.....	17
Denial of Family Unification	29
The Precarious Citizenship Status of Palestinian Citizens of Israel	45
Recommendations	57

Introducing the Series¹

This Series of Working Papers on forced population transfer constitutes a digestible overview of the forced displacement of Palestinians as an historic, yet ongoing, process, and one which detrimentally affects the daily life of Palestinians and threatens their national existence.

This Series is intended to encourage debate, and to stimulate discussion and critical comment. Since Israeli policies comprising forced population transfer are not static, but ever-changing in intensity, form and area of application, this Series will require periodic updates. The ultimate aim of the Series is to unpick the complex web of legislation and policies which comprise Israel's overall system of forced population transfer. It is not intended to produce a comprehensive indictment against the State of Israel, but to illustrate how each policy fulfills its goal in the overall objective of forcibly displacing the Palestinian people while implanting Israeli Jewish settlers (colonizer) throughout Mandate Palestine (Israel and the occupied Palestinian territory).

Despite its urgency, the forced displacement of Palestinians rarely receives an appropriate response from the international community. While many individuals and organizations have discussed the triggers of forced population transfer, civil society lacks an overall analysis of the system of forced displacement that continues to oppress and disenfranchise Palestinians today. BADIL, therefore, spearheads targeted research on forced population transfer and produces critical advocacy and scholarly materials to help bridge this analytical gap.

BADIL seeks to present this Series of Working Papers in a concise and accessible manner to its designated audiences: from academics and policy makers, to activists and the general public. Generally, the Series contributes to improving the understanding of the human rights situation in Palestine among local, regional and international actors. We hope that the Series will inform stakeholders, and ultimately enable advocacy which will contribute to the dismantling of a framework that systematically violates Palestinian rights on a daily basis.

1 Extract from BADIL, Introduction to Forced Population Transfer: The Case of Palestine (Bethlehem, Palestine: BADIL Resource Center for Residency and Refugee Rights, March 2014). Available at: http://www.badil.org/phocadownload/Badil_docs/publications/wp15-introduction.pdf.

The Series of Working Papers will address nine main Israeli policies aiming at forced population transfer of Palestinians. They are:

- Denial of residency
- Installment of a permit regime
- Land confiscation and denial of use
- Discriminatory zoning and planning
- Segregation
- Denial of natural resources and access to services
- Denial of refugee return
- Suppression of resistance
- Non-state actions (with the implicit consent of the Israeli state)

Forced Population Transfer

The concept of forced population transfer – and recognition of the need to tackle its inherent injustice – is by no means a new phenomenon, nor is it unique to Palestine. Concerted efforts to colonize foreign soil have underpinned displacement for millennia, and the “unacceptability of the acquisition of territory by force and the often concomitant practice of population transfer”² was identified by the Persian Emperor Cyrus the Great, and subsequently codified in the Cyrus Cylinder in 539 B.C.; the first known human rights charter. Almost two thousand years later, during the Christian epoch, European powers employed population transfer as a means of conquest, with pertinent examples including the Anglo-Saxon displacement of indigenous Celtic peoples, and the Spanish Inquisition forcing the transfer of religious minorities from their homes in the early 16th century.

Today, forced population transfer is considered one of the gravest breaches of international law. According to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the former Commission on Human Rights:

The essence of population transfer remains a systematic coercive and deliberate [...] movement of population into or out of an area [...] with the effect or purpose of altering the demographic composition

2 Joseph Schechla, “Prohibition, Prosecution and Impunity for the Crime of Population Transfer” (BADIL Resource Center for Palestinian Residency & Refugee Rights, Spring-Summer 2012), <http://www.badil.org/en/al-majdal/item/1764-art4>.

of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another.³

International law sets clear rules to prohibit forced population transfer, including in the United Nations Charter, through the specific branches of international humanitarian law, international human rights law, international criminal law and international refugee law. Both internal (within an internationally recognized border) and external displacement are regulated.

Further Reading

This is a brief summary of the Introduction paper to this Series. For a detailed overview on forced population transfer please see Working Paper No. 15 (March 2014). Available at: http://www.badil.org/phocadownload/Badil_docs/publications/wp15-introduction.pdf.

Historical Context: The Case of Palestine

At the beginning of the 20th century, most Palestinians lived inside the borders of Palestine, now divided into the state of Israel, and the occupied Palestinian territory (The West Bank, including East Jerusalem, and the Gaza Strip). Five major periods or episodes of forcible displacement transformed Palestinians into the largest and longest-standing unresolved refugee case in the world today. By the end of 2013, an estimated 7.4 million (66 percent) of the global Palestinian population of 11.2 million are forcibly displaced persons.⁴

Methodology

All papers will consist of both field and desk research. Field research will consist of case studies drawn from individual and group interviews with Palestinians affected by forced population transfer, or professionals (such as lawyers or employees of organizations) working on the issue. The geographic focus of the Series will include Israel, the occupied Palestinian territory and Palestinian refugees living in forced exile. Most of the data used will be qualitative in nature, although where quantitative data is available – or can be collected – it will be included in the research.

3 A.S. Al-Khawasneh and R. Hatano, *The Human Rights Dimensions of Population Transfer Including the Implantation of Settlers*, Preliminary Report Prepared for Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-Fifth Session (Bethlehem, Palestine: BADIL- Resource Center for Palestinian Residency and Refugee Rights, August 2, 1993).

4 Palestinian Central Bureau of Statistics, “Special Statistical Bulletin On the 64th Anniversary of the Palestinian Nakba” (Palestinian Central Bureau of Statistics, 2012), http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/nakba_64E.pdf.

Desk research will contextualize policies of forced population transfer by factoring in historical, social, political and legal conditions in order to delineate the violations of the Palestinian people's human rights. International human rights law and international humanitarian law will play pivotal roles, and analysis will be supplemented with secondary sources such as scholarly articles and reports.

Disclaimer

The names of the individuals who provide testimonies will be changed, as in each case the participant fears that their involvement in this project may draw negative reprisals on behalf of the Israeli authorities. We thank each one for their courage.

Introduction

The Universal Declaration of Human Rights guarantees the right to freedom of movement and residence within the borders of every state. The International Covenant on Civil and Political Rights echoes that individuals have the freedom to choose their residence.

All Palestinians are subject to Israeli rules and regulations that determine their residency status, even those who do not live under Israeli jurisdiction. Violating the basic human rights for Palestinians and their families, these rules and regulations encompass almost every aspect of Palestinian life from freedom of movement, family unification, restrictions on building, and access to services and other basic rights.

Historically, the territory of mandate Palestine was under a single jurisdiction, allowing the forging of family and communal ties across the regions of the country, as well as the Middle East. Today, these ties are disrupted or completely severed due to physical barriers, but also as a result of the effective differentiation of residency cards imposed by Israel. Legally sanctioned residential statuses established by Israel distinguish between different areas: Israel, Jerusalem, and the West Bank or the Gaza Strip. It is important to note that Palestinian residency is defined positively and negatively, with Israeli categorizations serving to determine who is excluded; namely Palestinians who live outside of these areas (Palestinian refugees). This point will be elaborated below.

Recent reports of human rights groups highlight the following issues that frame the contemporary landscape of residency rights for Palestinians:⁵

- The impact of revocation (and risk of revocation) of residency permit(s).
- The rejection of applications for family unification between those in Jerusalem or Israel, and in the remainder of the West Bank and the Gaza Strip. Since 2000, Israel suspended at least 120,000 applications for family unification.⁶ As a result, many families are forced to either live apart, or live ‘illegally’ together and under constant risk of arrest.
- Child registration across the occupied Palestinian territory (including East Jerusalem). The number of unregistered children is currently unknown, but estimates place the number at around 10,000. The impact, though, remains high since children are unable to access basic services and social benefits.
- The precarious residency status of Palestinian citizens of Israel.

This problematic landscape is the result of numerous legal regulations and formulations, and it is very easy to become lost in the details, statistics and terminologies. However, there is an underlying ideological structure that regulates the Israeli policies in this regard. Whereas *Nationality* and *Citizenship* are usually used interchangeably (e.g. a citizen of Italy is an Italian national), Israel makes a clear legal distinction between the two.

There is no Israeli Nationality, a stance that has been legally grounded in the decisions of the Israeli Supreme Court.⁷ Jewish nationality, however, is recognized and is governed by the *Law of Return (1950)*,⁸ which automatically assigns the right for “Jewish nationality” to every Jewish individual anywhere in the world. According to the Law of Return, a Jewish national is born to a Jewish mother – or has converted to Judaism – and is not a member of any

5 Human Rights Watch, “Forget About Him, He’s Not Here’: Israel’s Control of Palestinian Residency in the West Bank and Gaza (Jerusalem: Human Rights Watch, February 2012), <http://www.hrw.org/sites/default/files/reports/ipt0212webwcover.pdf>; Noga Kadman and Beth Pearson, *Families Torn Apart, Separation of Palestinian Families in the Occupied Territory* (Jerusalem: B’Tselem - HAMOKED, July 1999), http://www.hamoked.org/items/10700_eng.pdf; OCHA, *Special Focus: East Jerusalem Key Humanitarian Concerns* (Jerusalem: OCHA - United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory, March 2011), <http://unispal.un.org/UNISPAL.NSF/0/0D90191FBC1DDBC88525785C004DF7A5>; Yael Stein, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians* (Jerusalem: B’Tselem - HAMOKED, April 1997), <http://www.btselem.org/printpdf/65978>.

6 B’Tselem, *Perpetual Limbo: Israel’s Freeze on Unification of Palestinian Families in the Occupied Territories* (B’Tselem- The Israeli Information Center for Human Rights in the Occupied Territories, July 2006).

7 *George Raphael Tamarin v. State of Israel* (HCJ 1972); *Ouzi Arnan et al v. State of Israel* (HCJ 2013).

8 The State of Israel, *The Law of Return*, 5710, 1950, <http://www.refworld.org/docid/3ae6b4ea1b.html>.

other religion. Jewish nationals have the right to enter Israel at any time, obtain Israeli citizenship at any time, and settle wherever they wish under Israeli jurisdiction (inside Israel as well as within the 1967 occupied Palestinian territory). Jewish nationals have full civil and political rights, including the right to bring their spouses into Israel.

Israeli citizenship, by contrast, is available to all Jewish Nationals, even those holding citizenship of another state. Israeli citizenship is available to non-Jews and their descendants who were present in Israel between 1948 and 1952. Citizenship for non-Jews is governed by the *Nationality Law (1952)* – sometimes also referred to as Citizenship Law.⁹

Israeli citizenship was not available for Palestinians who were present in what Israel defined as ‘enemy territory’ between 1948 and 1952 (the timeframe according to the *Nationality Law*). This includes those who live under Israeli military occupation in the West Bank and Gaza Strip, as well as 6.6 million Palestinian refugees living in forced exile. Israel refuses the return of Palestinian refugees on the grounds of them lacking Jewish Nationality.

To summarize, Israel divides Palestinian residency status by means of a hierarchical system:

- **Palestinian citizens of Israel:**

This group consists of those Palestinians permanently residing within Israel with Israeli citizenship, yet possess no ties to Judaism and thus cannot be considered ‘Jewish nationals’. Although they are citizens of the state, in practice individuals in this sub-category are in an inferior position to Jewish Nationals. Palestinian citizens are prohibited from moving to Palestinian cities in the occupied Palestinian territory (excluding Jerusalem). Moreover, a temporary amendment to the *Citizenship and Entry into Israel Law (2003)* – sometimes also referred to *Nationality and Entry into Israel Law*¹⁰ – prevents residents of

9 Book of Laws 5712 [1952], p. 146. The 1952 Nationality Law (for non-Jews) imposes strict requirements that persons applying for nationality (or citizenship) status based upon this law need to have been physically present inside the 1949 armistice lines between certain dates. The vast majority of 1948 Palestinian refugees were factually incapable of meeting these strict physical presence requirements of Israel’s 1952 Nationality Law. Hence this entire large group of persons was effectively denationalized by that law. It is on the basis of this purported denationalization that Israel asserts having a purported basis for obstructing the right of return of virtually the entire class of persons comprising the 1948 Palestinian refugees. For more information, see: BADIL, *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis* (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2007).

10 TheStateofIsrael,TheCitizenshipandEntryLaw(TemporaryProvision)5763-2003,2003,<http://www.mfa.gov.il/MFA/Government/Law/Selected+legislation/Citizenship+and+Entry+into+Israel+Law+2003.htm>.

the occupied Palestinian territory who are married to Palestinian citizens of Israel from acquiring Israeli citizenship or even permanent residence permits. This does not apply to spouses of Jewish Nationals who are also Israeli Citizens – whether they are Jewish settlers in the occupied Palestinian territory, or even Jewish foreigners. Palestinian citizens of Israel are subject to institutionalized discrimination in housing, property rights, residency, etc.

- **Palestinian permanent residents of Jerusalem:**

This group consists of those Palestinians who are registered as being permanent residents of East Jerusalem after the 1967 occupation and annexation by Israel. Although citizenship is *available* to these individuals, they exist in a difficult legal setting, being subject to Israeli law which is highly discriminatory. They have no permanent right to reside in the West Bank or the Gaza Strip, and their residency in Jerusalem is subject to arbitrary revocation at the whim of Israel (14,000 revocations since 1967).

- **Palestinians with West Bank identity card:**

This group consists of those Palestinians who are registered as being permanent residents of the West Bank after the 1967 occupation by Israel. Palestinians living under Israeli occupation in the West Bank are subject to military law, and have no right to freely enter Israel or the Gaza Strip.

- **Palestinians with Gaza Strip identity card:**

This group consists of those Palestinians who are registered as being permanent members of the Gaza Strip after the 1967 occupation by Israel. Palestinians living under Israeli occupation in the Gaza Strip are subject to Israeli military law. They have no right to freely leave the Gaza Strip, or to enter Israel or the West Bank. In effect, Israel treats them as “prisoners”.

- **Palestinians living in forced exile without any legal affiliation to Palestine:**

This group consists of those Palestinians (with their descendants) who have been forcibly displaced from their homeland since the establishment of Israel. This group of refugees numbers in the millions, and we include them in this paper because denying them rights and residency was – and continues to be - a *deliberate* act of

Israel. *The Land Acquisition for Public Ordinance (1943)*¹¹ precludes their legal claims for private lands. In addition, the *Prevention of Infiltration Law (1954)*¹² and *Military Orders 1649 and 1650*¹³ provide that those Palestinians are prohibited from legally returning to Israel or the 1967 occupied Palestinian territory. Many Palestinian refugees remain stateless and/or lack protection.

The differences between the two main pillars of residency in Israel—*Jewish Nationality* and *Israeli Citizenship* – reflect the two strata of the Israeli racial hierarchy: Jews and non-Jews. To this end, it can be argued that *Jewish Nationality* is supranational, since it surmounts the technical definitions of citizenship. *Jewish Nationality*, then, is above the state, probably the only case where such a superior status is attributed to individuals (rather than supranational organizations).

11 Full text available at: http://mykamar-law.com/pdf_laws/landEn.pdf [accessed 14.04.14].

12 Amended 10.01.2012. Israel: Amend “Anti-Infiltration” Law (Human Rights Watch, June 10, 2012), <http://www.refworld.org/docid/4fd73deb2.html>.

13 Order regarding Prevention of Infiltration (Amendment No. 2) and the Order regarding Security Provisions (Amendment No. 112). Available at: http://www.hamoked.org.il/news_main_en.asp?id=904.

NATIONALITY AND CITIZENSHIP:

Nationality

- There is no such thing as «Israeli» nationality.
- Jewish Nationality, however, is recognized. It is governed by the Law of Return (1950) which automatically assigns «Jewish nationality» to every Jewish person in the world.
- The Law of Return (1950) states a Jewish national is:
 - born of Jewish mother or has become converted to Judaism and is not a member of any other religion.
- Rights of nationality are also vested in:
 - a child/grandchild of a Jew,
 - the spouse of a Jew,
 - the spouse of a child of a Jew,
 - or the spouse of a grandchild of a Jew
 - unless they have been a Jew and voluntarily changed their religion.

Rights of Jewish Nationals

- Enter Israel at any time.
- Obtain citizenship at any time.
- Can live in Israel or in settlements in the West Bank.

No need to be born in Israel, reside in Israel or have any connection with Israel in order to enjoy these rights.

Jewish Nationals living in Israel

- ▶ Full civil and political rights, including the right to bring spouses into Israel
- ▶ Subject to Israeli civil and criminal law.
- ▶ Can bring spouses to settle in Israel, either from abroad or from settlements in the OPT.

Jewish Nationals living in the OPT

- ▶ Full civil and political rights, including the right to bring spouses into OPT
- ▶ Subject to Israeli civil and criminal law.
- ▶ Can bring spouses to settle in Israel, either from abroad or from settlements in the OPT.

Jewish Nationals living abroad

- ▶ Right to enter to Israel, including the right to bring spouses into Israel.
- ▶ Obtain citizenship.

In most countries both terms are synonymous.
Israel, however, separates the two into distinct legal statuses.

Citizenship

- 'Israeli' citizenship is available to all Jewish Nationals, even those who hold citizenship of another state. **There is no such thing as 'Jewish' citizenship.**
- Citizenship for non-Jews is governed by the Citizenship Law (1952).
- This law removed Palestinian nationality from all who remained inside Israel at the time of enactment.
- Israeli citizenship is available to non-Jews and their descendants present in Israel between 1948 – 1952.

Citizenship obtained: Palestinian Citizens of Israel

In practice Palestinian citizens of Israel are in an inferior position to their Jewish National counterparts

- ▶ Prevented from bringing spouses from either the OPT or Israeli-defined enemy states into Israel to live with them.
- ▶ Rights are more limited compared to the rights of Jewish Nationals.
- ▶ Subject to institutionalized discrimination
E.g. Temporary Amendment to the Citizenship and Entry into Israel Law 2003 prevents residents of the OPT, who are married to Israeli citizens, from acquiring Israeli citizenship and residence permits. This does not apply to spouses of Jewish National-Israeli citizens – whether they are foreign or Jewish settler spouses from the OPT.

Citizenship Not Available

Those not within Israel or those present in territory controlled by Israeli-defined 'enemy forces' between those dates were precluded from obtaining citizenship.

1. **This has resulted in approximately 5.7 million Palestinians being ineligible for citizenship becoming stateless.**
2. Israel has refused to allow their return.
3. In addition the Prevention of Infiltration Law 1954 and Military Orders 1649 and 1650 provide that those Palestinians are prohibited from legally returning to Israel or the OPT.

Palestinian Gaza Strip ID holders

- ▶ No right to enter Israel or West Bank.
- ▶ Treated in Israel as Security Prisoners, subject to Israeli criminal law.

Palestinian West Bank ID holders

- ▶ No right to enter Israel or Gaza.
- ▶ Subject to Israeli military law.

Palestinian East Jerusalem ID holders (permanent residents)

- ▶ Limited right to reside in the West Bank or Gaza.
- ▶ Very limited civil and political rights.

Palestinian Refugees

- ▶ Israel denies their absolute right to return to homes in breach of international law.
- ▶ Many remain stateless and/or lack protection.

Revocation of Residency Status

The policy of residency revocation is part of Israel's wider strategy of silent transfer, which seeks to avoid international attention by forcibly displacing small numbers of people every month. Between 1967 and 1994, Israel revoked the residency of a quarter of a million Palestinian residents of the occupied Palestinian territory.¹⁴

After the occupation of the West Bank and Gaza Strip in 1967, Israel annexed 70.5 square kilometers of the occupied West Bank (including East Jerusalem) in violation of international law.¹⁵ Israel placed Palestinian Jerusalemites under Israeli domestic law and legal jurisdiction¹⁶ – specifically the *Law and Administration Ordinance (Amendment No. 11)* applied Israeli law, jurisdiction and administrative powers to the newly expanded municipal borders of Jerusalem – while the rest of the inhabitants of the occupied Palestinian territory were subjected to military rule. This situation continues until this day.¹⁷ Moreover, Israel seized exclusive control over the movement of people to and from the occupied Palestinian territory, as well as the power to grant residency status there. Neither the Oslo peace process which was launched in 1993, nor the 2005 unilateral military withdrawal of Israel from the Gaza

14 HaMoked, "Ceased Residency: Between 1967 and 1994 Israel Revoked the Residency of Some Quarter Million Palestinians from the West Bank and the Gaza Strip" (HaMoked, June 12, 2012), <http://www.hamoked.org/Document.aspx?dID=Updates1175>.

15 The United Nations Security Council declared the annexation decree illegal and in flagrant violation of international law in 1968. See: UN Security Council resolution 252, 1968.

16 In response, the United Nations Security Council unanimously adopted Resolution 242, which emphasizes the "inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace, [...including] withdrawal of Israel armed forces from territories occupied in the recent conflict;" United Nations Security Council, Resolution 242, 22 November 1967. The United Nations Security Council issued resolution No. 478 condemning Israel's annexation of East Jerusalem. Furthermore, the United Kingdom Secretary of State for Foreign Affairs said to the General Assembly: "war should not lead to territorial aggrandizement ... I call upon the State of Israel not to take any steps in relation to Jerusalem which would conflict with this principle. I say very solemnly to the Government of Israel that, if they purport to annex the Old City or legislate for its annexation, they will be taking a step which will isolate them not only from world opinion but will also lose them the support that they have;" United Nations, General Assembly, Official Records, Fifth Emergency Special Session, 17 June – 8 September 1967, 1529th Plenary Meeting, A/A/PV, p.2 via the Civic Coalition for Defending the Palestinians' Rights in Jerusalem, *Israel's Violations of the Palestinians' Rights to Residency in Jerusalem*, 2008, 14.

17 Israel passed the Law and Administration Ordinance (Amendment No. 11) Law in 1967 and 'constitutionalized' the annexation of Jerusalem in 1980 with the Basic Law: Jerusalem, Capital of Israel.

Strip, resulted in a transfer of powers over movement and residency to the Palestinian National Authority.¹⁸

Almost immediately after the 1967 War, Israel conducted a census in annexed East Jerusalem and the rest of the occupied Palestinian territory. The 1967 census counted nearly 1 million Palestinians living in the West Bank and the Gaza Strip.¹⁹ 66,000 Palestinians were recorded in East Jerusalem.²⁰ Not included in the census were the hundreds of thousands of Palestinians displaced during the war and those who were outside of the country for personal reasons such as studies, work, or travel.²¹

Those registered in the census were granted color-coded Israeli residency cards: blue for residents of annexed East Jerusalem, green for residents of the rest of the West Bank, and orange for residents of the Gaza Strip. This administrative system²² was also paired with a set of “prevention of infiltration” military orders that function exactly like the *1954 Prevention of Infiltration Law* (introduced to prevent 1948 Palestinian refugees returning to their homes and villages) which criminalized the movement of displaced Palestinians to their places of origin.²³

Both versions of the residency system – that in place in Jerusalem under Israeli civil law and that in the rest of the West Bank and the Gaza Strip under Israeli military law – include mechanisms for revoking residency statuses. Residents require exit permits (subject to the complete discretion of the Israeli Minister of the Interior) to travel abroad. Between 1967 and 1994, Israel regarded Palestinians in the occupied Palestinian territory as “resident aliens”. If a resident failed to return before the expiry of their permit they risk being deleted from the Population Registry, thereby losing their residency status.²⁴ In practice, during those 27 years Israel stripped the residency rights

18 BADIL, “Revocation of Residency Rights,” Article 74, January 19, 2010, <http://www.badil.org/en/article74/item/1367-revocation-of-residency-rights/1367-revocation-of-residency-rights>.

19 Human Rights Watch, *Forget About Him*; Also see: BADIL and COHRE, *Ruling Palestine – A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine* (Geneva, Switzerland; Bethlehem, Palestine: COHRE - Centre on Housing Rights and Evictions; BADIL Resource Centre for Palestinian Rights and Refugee Rights, 2005), 125.

20 Yael Stein, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*.

21 BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons, 2010-2012*, vol. VII (Bethlehem, Palestine, 2012).

22 John Quigley, “Family Reunion and the Rights to Return to Occupied Territory,” *Georgetown Immigration Law Journal* 6 (1992): 6 Israel could do so, because it is in control of the population registry; only those Palestinians (and their offspring) registered in Israel’s September 1967 census are registered as legal residents of the occupied Palestinian Territory. Also see: Kadman and Pearson, *Families Torn Apart, Separation of Palestinian Families in the Occupied Territory*, 17.

23 Munir Nuseibah, “Decades of Displacing Palestinians: How Israel Does It,” *Al-Shabaka*, accessed March 28, 2014, <http://al-shabaka.org/node/624>.

24 *Ibid.*

of some 140,000 Palestinians living in the West Bank, representing over 10 percent of the population, and another 108,878 living in the Gaza Strip, thus dramatically shifting the demographic composition of the territory.²⁵

Interview with Munir, Berlin²⁶

In 1962, I left my village near Bethlehem and went to search for work in Germany. I have been living in Germany since, and today I have German citizenship. After the Israeli occupation of the West Bank in 1967, Israel conducted a census of the Palestinian population therein. Since I was in Germany at the time I was unable to register, and for this reason I was stripped of my residency rights in my own homeland.

In 1968, I visited my parents in Beit Sahour. I was about to get married and go back to Germany with my wife. On my way in I was told by the Israeli authorities that I had no right to live in Beit Sahour anymore. No one knew that the census would entail such dramatic consequences for me and the others who were not in their country at that time. In 1969, my wife and I went to Palestine for a visit, and while crossing the border from Jordan to the West Bank we were told that my wife's Palestinian residency had also been revoked, as she had left permanently for another country. We were completely shocked and were not given any explanation by the Israeli authorities for this act. Today we only enter our homeland as German tourists with a tourist visa.

The idea of only being allowed to enter Palestine as a tourist makes me sad. Israel has stolen our natural right to live and reside in our homeland with our family and friends. Even though today, after spending all these years in Germany, we are not planning to re-settle in Palestine. I still believe that my family and I should have the right to do so anytime we choose. Israel should not be allowed to deny us residency in our own homeland.

In a request filed by HaMoked Center for the Defence of the Individual via the Freedom of Information Act, the Israeli Defense Ministry's Coordinator of Government Activities in the Territories was compelled to release documentation for the period between 1967 and 1994 which showed that 44,730 Palestinian with Gaza ID lost their residency rights because they were absent from Gaza Strip for seven years or more; 54,730 because they did not respond to the 1981 census; and 7,249 because they did not respond to the 1988 census.²⁷ As of 2013, between 40,000 and 50,000 Palestinians live in the Gaza Strip without residency recognized by Israel.²⁸

25 Akiva Eldar, "Israel Admits It Revoked Residency Rights of a Quarter Million Palestinians," Haaretz, June 2, 2012, <http://www.haaretz.com/news/diplomacy-defense/israel-admits-it-revoked-residency-rights-of-a-quarter-million-palestinians-1.435778>.

26 Munir Mara (69), Berlin, Germany, interview by BADIL, September 2013.

27 "'Ceased Residency': Between 1967 and 1994 Israel Revoked the Residency of Some Quarter Million Palestinians from the West Bank and the Gaza Strip" (HAMOKED Center for the Defence of the Individual, June 12, 2012), <http://www.hamoked.org/Document.aspx?dID=Updates1175>.

28 B'Tselem, Israel Must Take Action to Regulate the Status of Tens of Thousands of Gazans Living without IDs (B'Tselem- The Israeli Information Center for Human Rights in the Occupied Territories, July 24, 2013), <http://www.btselem.org/printpdf/137639>.

Israel employed a more stringent and opaque policy in the West Bank. Unlike those leaving from Gaza Strip who were allowed outside of the territory for seven years (by way of an exit permit to travel abroad), Palestinians leaving the West Bank received exit documents which were valid for three years, and renewable for the same period again. Additionally, an individual's stay abroad exceeding the expiration date of his card by six months was grounds for revoking his residency without notice.²⁹

Residency revocation in Jerusalem

Israel conferred permanent Israeli residency status on Palestinians registered in the East Jerusalem census. Effectively, it functions as an *alien* resident status for the *natives* of the city.

Laissez-Passer

Palestinian residents of occupied East-Jerusalem require an Israeli travel document (*Laissez-Passer*) in case they want to travel abroad. These travel documents do not guarantee the right to re-enter the country, unless accompanied by a valid Israeli-issued re-entry permit. Such re-entry permits must be renewed annually.



In the census Israel conducted in annexed Jerusalem immediately following the 1967 War, Palestinian Jerusalemites physically present were registered in the Israeli population registry and granted Israeli identity cards. Under the *Passports Law of 1952*, a permanent resident is entitled to a *laissez passer* (travel document), but not to Israeli passport. Additionally, residency status enables its holder to work in Israel, to receive medical insurance and socio-economic benefits.³⁰ However, permanent residency is contingent on a set of factors, making their permanence contentious at best.

29 Harriet Sherwood, "Israel Stripped 140,000 Palestinians of Residency Rights, Document Reveals," *The Guardian*, May 11, 2011, <http://www.theguardian.com/world/2011/may/11/israel-palestinians-residency-rights>.

30 Yotam Ben-Hillel, "The Legal Status of East Jerusalem" (Norwegian Refugee Council, December 2013), 24.

Israeli Citizenship for Jerusalem Residents

International law considers East Jerusalem a part of the occupied Palestinian territory governed by the laws of war, and that Israel is the occupying power. Consequently, Israel cannot require Palestinians in East Jerusalem to become Israeli citizens since they are protected persons under international humanitarian law.³¹ However, permanent residents are permitted to apply for Israeli citizenship if they swear allegiance to the State of Israel, are not citizens of another country and demonstrate a certain level of proficiency in Hebrew.³² Most Palestinian Jerusalemites have not applied for naturalization for political reasons, considering themselves indigenous to territory occupied by Israel and refusing to facilitate Israel's illegal annexation of that territory by accepting citizenship. However, according to reports, the applications for Israeli citizenship have increased in the 2000s, with 7,000 Palestinian Jerusalemites applying for citizenship between 2001 and 2010, two-thirds of them between 2008 and 2010 alone. The upsurge in applications may be a response to increased residency revocations.³³

More than 14,000 Palestinians have lost their residency status and right to live in East Jerusalem since 1967.³⁴ The law governing the status of Palestinian residents of East Jerusalem is the *Entry into Israel Law of 1952*.³⁵ The law stipulates that permanent residency status is automatically revoked when a holder of the status leaves Israel to live elsewhere. However, before 1995, Israel usually implemented revocations only when persons were granted citizenship or residency in other countries, or when they lived outside of East Jerusalem for more than seven years without extending their exit permits. Equivalent to immigrant status, Israel undermines the basic right of Palestinians to live in their homes by treating it as a revocable privilege, rather than a human right.

The ruling of the Israeli High Court in the 1988 *Mubarak Awad* case reinforced the tenuousness of permanent residency status and served as a

31 United Nations Security Council Resolution 242 of 22 November 1967 affirmed the illegality of acquiring territory through military conquest (<http://unispal.un.org/unispal.nsf/0/7D35E1F729DF491C85256EE700686136>) and is contravenes the Fourth Geneva Convention. The International Court of Justice reaffirmed the illegality of Israeli annexation, Palestinian Jerusalemites' status as protected persons and Israel's status as occupying Power in its 9 July 2004 advisory opinion: <http://www.icj-cij.org/docket/?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>.

32 State parties, The Hague Regulations: Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex, 1907, <http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=2659EF8E9C6AA778C12563CD005168B2> Article 45, "[I]t is forbidden to compel residents of occupied territory to swear allegiance to the hostile power,."

33 IRIN Humanitarian News and Analysis, "Palestinians from East Jerusalem Seek Safety in Israeli Citizenship," May 30, 2013, <http://www.irinnews.org/fr/report/98132/palestinians-from-east-jerusalem-seek-safety-in-israeli-citizenship>.

34 B'Tselem, "Statistics on Revocation of Residency in East Jerusalem" (B'Tselem- The Israeli Information Center for Human Rights in the Occupied Territories, August 7, 2013), http://www.btselem.org/jerusalem/revocation_statistics.

35 Ben-Hillel, "The Legal Status of East Jerusalem."

basis for the period of increased residency revocation that would begin in the 1990s.³⁶ In the *Awad* case, Israel revoked the residency of a Palestinian permanent resident of Jerusalem, Dr. Mubarak Awad, for pursuing his studies in the United States, marrying and, thereby, obtaining American citizenship. The reason provided by the Court, headed by former Supreme Court Justice Aharon Barak, was that Awad's residency expired when he relocated his "center of life," effectively treating him as a foreigner.³⁷ The State did not inform Awad of his expiring residency or his revoked status, and the Court's decision reinforced the ability of the State to deny the residency of Palestinian Jerusalemites if they lived abroad for seven years or more, or if they hold another citizenship or residency.

Revoked residency is equivalent to expulsion, as it is in the case of Awad,³⁸ and exemplifies the way in which residency status of Palestinians from Jerusalem can be rescinded without notice. The High Court further affirmed this position in March 2012 when it recommended that two legal aid organizations drop their petition against the policy of residency revocation.³⁹ HaMoked subsequently described the decision of the Court as "a brutal and destructive bureaucratic tool used to alter the reality of life in Jerusalem."⁴⁰

In occupied East Jerusalem, revocation of residency rights was pursued in accordance with the express intention of limiting the ratio of Palestinians to no more than 28 percent of the population of the city.⁴¹ The 'demographic balance' of Jerusalem is designed to expand the Jewish majority while undermining Palestinian inhabitation. Based on the precedence of the *Awad* case, the policy of revoking residency for Palestinian Jerusalemites was amplified in the mid-1990s.

36 *Awad v. Yitzhak Shamir, Prime Minister and Minister of Interior et al* Judgment (HCJ 1988).

37 OCHA, Special Focus: East Jerusalem Key Humanitarian Concerns, 14.

38 Amira Hass, "Reason for Panic in Jerusalem," Haaretz, July 29, 2013, <http://www.haaretz.com/news/features/.premium-1.538510>.

39 HaMoked - Center for the Defence of the Individual.

40 HaMoked, "The HCJ Legitimizes the 'Quiet Deportation' Policy: Following the Justices' Advice, HaMoked and the Association for Civil Rights in Israel Withdrew Their Petition to Halt the Policy of Revoking the Status of East Jerusalem Residents" (HaMoked - Center for the Defence of the Individual, March 22, 2012), <http://www.hamoked.org/Document.aspx?dID=Updates1178>.

41 In 1993, Jerusalem city engineer Elinoar Barzacchi expressed state policy: "There is a government decision to maintain the proportion between the Arab and Jewish populations in the city at 28 percent Arab and 72 percent Jew. The only way to cope with that ration is through the housing potential." Eyal Weizman, "Demographic Architecture," *Jerusalem Quarterly*, no. Summer 39 (2009), <http://www.jerusalemquarterly.org/ViewArticle.aspx?id=299>.

Interview with Sahar, Jerusalem⁴²

My family is from Jerusalem. My husband and I got married there in 1984. My husband was born and raised in Jerusalem, and it's the city where two of our three children were born. Recently, Israel revoked our right to reside in Jerusalem, preventing us from our basic right to the city simply because we moved to France for work purposes. When we left in 2001, my son and two daughters were 14, 12 and 8 years old respectively. Since then, we returned to Palestine almost every year. All of us were required to renew our travel documents (*laissez-passer*) annually. We returned to Palestine often, and consistently renewed the *laissez-passer*. A few times we renewed our documents at the Israeli Embassy in Paris instead of travelling to Palestine.

In 2010, my husband was granted French nationality and since our youngest daughter was still under 18 years of age, she received it with him. A few months ago I received a French "*carte de residence*" (long-term residency permit), which my other children also have. I applied for this type of French residency in order to avoid the annual renewal of my French residency permit and the associated bureaucratic procedures.

Revocation

In July 2013, while in Palestine for vacation, my husband and our two daughters went to the Israeli Ministry of Interior for a standard renewal of our daughter's *laissez-passer*. There, he was told that our family's IDs were revoked. The explanation they provided us was that my husband and youngest daughter hold French passports and the rest of us hold "permanent" residence cards in France, and that Israel is no longer the 'center of our lives.'

Fifteen days remained before our scheduled flight back to France and we were in deep shock and terror. We began to think about how to handle our problem, spoke to media and human rights organizations, and hired a lawyer to represent us.

Appeal

Currently, we are asking for an extension of the appeal deadline and we are required to bring all the relevant documents to prove that my daughter is a student abroad and that our residence in France is not permanent but temporary. Additionally, we need to translate all documents into Hebrew. Later on, if our appeal is rejected by the Israeli Ministry of Interior, we will appeal through the courts, although we are aware that an Israeli court's decision won't be in our favor as the laws regarding residency rights are blatantly discriminatory against Palestinians.

This procedure is costing us a lot of money, and we have already spent a large amount on other issues relating to our residence status, such as the yearly renewal of the *laissez-passer* for our family members and legal fees.

It is important to increase awareness about revocation of residency in general. Ours should not be viewed as an individual case but as an issue which Palestinians in Jerusalem are facing on a daily basis. We are interested in confronting the whole issue of residency in Jerusalem. Simply speaking, it is our home.

42 Sahar Awwad (50), East Jerusalem, interview by BADIL, August 2013.

Center of Life

Israel's treatment of Jerusalemites with regards to their permanent residency intensified in conjunction with the Oslo Agreement between the Palestine Liberation Organization and Israel. In 1995, and without prior notice to the public, Israel's Ministry of Interior initiated a "center of life" policy whereby residency became a matter to be maintained by its holder through daily practice. The policy gave the Ministry of Interior the power to invalidate the status of a permanent resident if it determined that their "center of life" had moved "outside of Israel" – this includes Palestinian-controlled areas of the West Bank and the Gaza Strip. The policy made residency revocation easier by establishing more stringent criteria than the previous *Entry into Israel Regulations*.

To implement this policy, the Ministry of Interior began to demand that permanent residents prove that Jerusalem was their "center of life" by submitting a high standard of proof, including home ownership papers or rent contracts, bills for municipal services like water and electricity, payment of municipal taxes, telephone bills, salary slips, proof of receiving medical care in the city and certification of any children's school registration in the city. Because of the stringency and often non-transparent processes of the policy, the "center of life" was – and still remains – an impediment even to a person who had never lived outside of the city.

All Palestinian Jerusalemites who could not meet the severe criteria for seven years or more lost their right to live in the city and were forced to leave their homes, their families and their jobs. Palestinians with revoked residency were denied the right to live and work in Jerusalem as well as in Israel. Furthermore, they and their families were deprived of social benefits. The status of their children was also revoked, except for cases in which the second parent had valid residency status.⁴³ The Center of Life policy was often implemented retroactively and individuals who had not previously met the new, stricter definition also came under the risk of revocation.⁴⁴ In addition to confiscated identification cards, those who do not fulfill the requirements of the authorities to their satisfaction face denial of family unification and denial of child registration in the Population Registry.

At particular risk are families with mixed residencies where some members held West Bank-only residency, or the thousands of Jerusalem families who moved to the Palestinian areas outside the municipal boundaries of Jerusalem, often in response to restrictive planning and residential development targeting Palestinian areas of Jerusalem. Estimates during the

43 B'Tselem, "Revocation of Residency in East Jerusalem" (B'Tselem- The Israeli Information Center for Human Rights in the Occupied Territories, May 6, 2010), <http://www.btselem.org/printpdf/51824>.

44 Ben-Hillel, "The Legal Status of East Jerusalem," 25.

1990s suggest between 50,000 to 80,000 of the 180,000 East Jerusalem Palestinian inhabitants had moved to suburbs outside of the municipal boundaries.⁴⁵ Conversely, Jewish Israelis face no such complication, with those living illegally under international law in the numerous settlements deemed to be residing within the suburbs of Jerusalem. In contrast to the precarious status of Palestinians with Jerusalem residency, the Foundation for Middle East Peace reports that a large number of Jewish Israelis have dual nationality, including an estimated 500,000 Israelis holding US passports.⁴⁶

As a result of a petition to the Israeli High Court by several human rights organizations in the 2000s, the then Minister of Interior, Natan Sharansky, announced that he would cancel the Center of Life policy and resume the more 'relaxed' pre-1995 policy.⁴⁷ Initially, residency revocations in Jerusalem dropped, however data shows that the policy of revoking residency never stopped. Rather, the rate of residency revocation increased dramatically in 2006 with 1,363 cases of East Jerusalem individuals having their residency revoked, and in 2008 with 4,577 revocations, including 99 children. Half of the revocations between 1967 and 2008 occurred between 2006 and 2008 alone.⁴⁸

Palestinian citizens of Israel

The *Nationality Law (Amendment No. 9) (Authority for Revoking Citizenship)* allows Israel to revoke citizenship on the grounds of a breach of allegiance to the State.⁴⁹ Over the years, Israel launched proceedings to revoke the citizenship of several Palestinian citizens whose residence in states defined as "enemies" was considered to constitute a "breach of trust."⁵⁰ While Israel

45 ARIJ, Environmental Profile for the West Bank (Jerusalem: ARIJ - Applied Research Institute - Jerusalem, October 1996), http://www.arij.org/files/admin/1996-3_Environment_Profile_for_the_West_Bank_Volume_6_Jerusalem_District.pdf.

46 Franklin Lamb, "Israelis Rush for Second Passports," Counter Punch, June 3, 2011, <http://www.counterpunch.org/2011/06/03/israelis-rush-for-second-passports/>.

47 OCHA, Special Focus: East Jerusalem Key Humanitarian Concerns, 15.

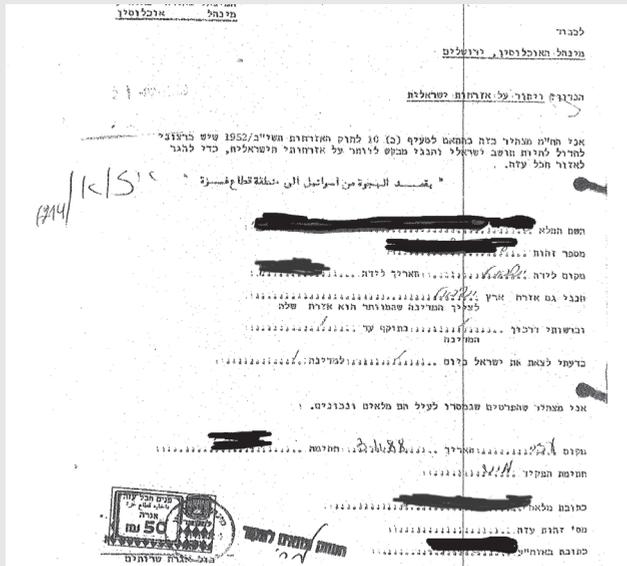
48 HaMoked, Written Submission for Consideration Regarding Israel's Third Periodic Report to the UN Human Rights Committee (HaMoked - Center for the Defence of the Individual, July 2010), 3, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Hamoked_Israel99.pdf.

49 "Breach of trust" is defined very broadly and includes the act of residing in one of nine Arab and Muslim states or Gaza. The law allows for the revocation of citizenship for breach of trust without requiring a criminal conviction for this action. The law also allows for a discussion of a request to revoke citizenship in the absence of the citizen who is the subject of this revocation request as well as allowing for the use of secret evidence in proceedings. Haneen Na'amnih, "New Anti-Arab Legislation," Adalah Newsletter, July 2008.

50 Jack Khoury, "State Begins to Revoke Four Israeli Arabs' Citizenship," Haaretz, accessed March 31, 2014, <http://www.haaretz.com/print-edition/news/state-begins-to-revoke-four-israeli-arabs-citizenship-1.275448>; Also see: Rebecca Anna Stoil, "Arab MKs Slam Yishai for Seeking Power to Cancel Citizenship," Jerusalem Post, June 6, 2009, <http://www.jpost.com/Israel/Arab-MKs-slam-Yishai-for-seeking-power-to-cancel-citizenship>.

revoked the citizenship of Palestinian citizens, it never done so for Jewish Israelis. In recent years, Israel and its right-wing coalition governments have increasingly eased the revocation of citizenship and used new laws such as the *Nationality Law* to target Palestinians.⁵¹

Palestinian citizens of Israel living in the Gaza Strip



Palestinian citizens of Israel who married Palestinian residents of the Gaza Strip during the 1980s and 1990s, and wanted to reside in the Gaza Strip and be eligible for municipal services were asked to sign a document in Hebrew, unknowingly declaring their renunciation of their Israeli citizenship.⁵² Some women who requested to move back to Israel with their children, for reasons such as divorce or becoming widowed etc., found out that they had lost any legal status in Israel, and that their citizenships were revoked. Thus, their presence in Israel is considered 'illegal', and they are not eligible to any social security services (health care, education, pensions etc.).⁵³

The Association for Civil Rights in Israel (ACRI) appealed to the Israeli Supreme Court against the revocation of the Israeli citizenship on behalf of seven women. The Association asked for the return of their citizenship, and argued that the Israeli Civil Administration did not inform the women about the actual content of the

51 Allyn Fisher-Ilan, "Israel Eases Steps to Revoke Citizenship," Reuters, March 28, 2011, <http://www.reuters.com/article/2011/03/28/us-israel-parliament-arabs-idUSTRE72R6OH20110328>.

52 This document was given to a Palestinian citizen of Israel at the Gaza municipality in 1988. The document had one sentence in Arabic saying "with intention to immigrate to the Gaza Strip area".

53 "Citizenship Reinstated for Arab Israeli Women Who Were Married to Residents of the OPT" (HAMOKED Center for the Defence of the Individual), accessed March 31, 2014, <http://www.acri.org.il/he/108>.

document they signed. The majority of the women did not read Hebrew, or even Arabic, therefore they were unaware of the severe consequences of signing the document. The Israeli Court accepted the petitioner's arguments and ruled in favor of a "procedure to return their citizenship" for the seven women, but rejected the broader appeal by ACRI, to retroactively reinstate all citizenships for Palestinians affected by the same policy.⁵⁴

This policy is in clear contradiction to the Convention of Reduction of Statelessness which posits that a state should not permit renunciation of nationality in a situation where no other nationality is possessed or acquired, and that a national shall not lose his nationality, so as to become stateless, on the basis of departure from that state.⁵⁵ In addition, the policy also contradicts the Convention on the Nationality of Married Woman, which protects women's nationality in the event of their getting married or divorced.⁵⁶

Conclusion

The right to residency status is the condition for accessing many other rights. Since 1967, more than 14,000 Palestinians lost their residency status and right to live in East Jerusalem.⁵⁷ The great numbers of people who hold no status under Israeli law are not eligible for health services, cannot enroll in schools, open bank accounts, work legally, own property, obtain a driving license or travel documents. This policy of residency revocation has significantly altered the demographic composition of Jerusalem and indicates a broader ongoing forced population transfer policy.

The attempts of the Israeli authorities to alter the legal status of Jerusalem and its Palestinian residents are in breach of the 1949 Fourth Geneva Convention.⁵⁸ In particular, the demographically-motivated policies breach Article 49 – prohibiting individual or mass forcible transfers – and Article 50, requiring the registration, care and education of children. The Israeli policy of residency revocation is evident discrimination against thousands of Palestinian residents of Jerusalem, and in clear contravention of the

54 Dunya 'Abed v. Minister of the Interior, 55(5) 778 (HCJ 2000).

55 UNHCR - United Nations High Commissioner for Refugees, Convention of Reduction of Statelessness, 1961, <http://www.unhcr.org/3bbb286d8.html>.

56 United Nations, Convention on the Nationality of Married Women, 1957, https://treaties.un.org/doc/Treaties/1958/08/19580811%2001-34%20AM/Ch_XVI_2p.pdf.

57 B'Tselem, "Statistics on Revocation of Residency in East Jerusalem."

58 On 30 July 1980 the Israeli government issued the Basic Law: Jerusalem, Capital of Israel, where article 1 stipulates that, "Jerusalem, eternal and indivisible, is the capital of the state of Israel," which was condemned by the United Nations Security Council resolution 478 stating that, "all legislative and administrative measures and actions taken by Israel, the occupying power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent 'basic law' on Jerusalem, are null and void and must be rescinded forthwith."

1966 *International Covenant on Civil and Political Rights*, which states that, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”⁵⁹

In his latest report to the United Nations Human Rights Council, Richard Falk says that residency revocation, paired with the demolition of residential structures and forced evictions of Palestinian families, is in violation of the basic right to adequate housing enshrined within the International Covenant on Economic, Social and Cultural Rights. Between 2004 and 2013, excluding “self-inflicted” demolitions⁶⁰, 492 housing units were demolished in East Jerusalem, displacing 1,943 Palestinians. The situation is desperate, and Falk refers to the case of Palestinian Jerusalemites as “a gradual and bureaucratic process of ethnic cleansing”.⁶¹ As this paper will go on to demonstrate, however, the findings of Falk and a variety of other individuals and organizations in relation to the discriminatory practices of Israel reveal not a series of isolated incidents, but rather a comprehensive patchwork of legislation and judicial decisions which systematically targets the Palestinian ‘other’, driving a steady and relentless process of forced population transfer. Here it is important to note that according to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the former Commission on Human Rights, forced population transfer:

[...] remains a systematic coercive and deliberate [...] movement of population into or out of an area [...] with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another.⁶²

As such, this represents a clear and direct contravention of Israel’s obligations as occupying power under international humanitarian law, and it is a breach which demands a swift and decisive response.

59 United Nations, *International Covenant on Economic, Social and Cultural Rights*, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

60 This term relates to instances where the Israeli authorities demand homeowners demolish their own property. Failure to do so will result in the property being demolished by the State, with the homeowner invoiced for this expense at an inflated rate. The homeowner is therefore coerced into demolishing their own property so as a means of mitigating the financial impact upon them and their family.

61 Richard Falk, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967* (UNHRC, January 13, 2014), <http://richardfalk.wordpress.com/2011/02/14/report-of-special-rapporteur-to-the-un-human-rights-council-on-occupied-palestinian-territories/>.

62 Al-Khawasneh and Hatano, *The Human Rights Dimensions of Population Transfer Including the Implantation of Settlers*, Preliminary Report Prepared for Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-Fifth Session, 27–32.

Denial of Family Unification

As recognized within Article 16 of the *Universal Declaration of Human Rights*,⁶³ the family unit is the fundamental societal group, and as such is entitled to protection by States. In the context of refugees, family unification is crucial in restoring the dignity to the life of the individual and laying secure foundations for the integration, or reintegration, of displaced communities.⁶⁴ To this end, human rights law acknowledges the need to strengthen the family unit, and this is reflected in specific State obligations to keep families together, as well as to reunify them if separated.⁶⁵ In direct contravention of these legal obligations, from its occupation of the Gaza Strip, the West Bank including East Jerusalem in 1967, Israel has consistently and deliberately enforced an arbitrary separation of Palestinian family members. This chapter will consider Israel's approach to family unification, exploring both the historical background to Israeli policy and the contemporary legislative landscape which affects thousands of Palestinians within both Israel and the occupied Palestinian territory.

Family Unification in the West Bank and the Gaza Strip

Israel introduced a family unification procedure immediately after the 1967 War, theoretically entitling registered Palestinians to apply for residency on behalf of first-degree relatives who had been "permanent residents" within the now occupied territory before their forcible displacement by Israel. However, applications under this procedure were subject to stringent restrictions, including the outright exclusion of all males between the ages of sixteen and sixty,⁶⁶ whilst the approval of any application was dependent on "security considerations and needs of the governing administration in the

63 Torsten Heinemann and Ursula Naue, "Immigration and Family Reunification: The International Legal Framework," *Immigene*, November 8, 2008, <http://immigene.eu/immigration-and-family-reunification-the-international-legal-framework>.

64 UNHCR, "Family Reunification in the Context of Resettlement and Integration" (UNHCR - United Nations High Commissioner for Refugees, June 21, 2001), <http://www.unhcr.org/3b30baa04.pdf>.

65 Heinemann and Naue, "Immigration and Family Reunification: The International Legal Framework."

66 B'Tselem, *Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories*, 8.

Occupied Territories [*sic.*].⁶⁷ It is estimated that out of 140,000 unification requests submitted, only 45,000 were successful.⁶⁸ In 1973, this policy was tightened further, with the introduction of new criteria which the military government refused to disclose, but which resulted in a fall of successful applications, down to an average of 1,000 per year.⁶⁹

In 1983, Israel claimed that this procedure had deviated from its original purpose – ostensibly to address the displacement created by the 1967 War⁷⁰ – and was now being used in relation to families formed after 1967. In response, two new criteria were introduced: an administrative parameter, which favored collaborators and Palestinians willing to invest in the territory;⁷¹ and a humanitarian one, the precise definition of which has never been stipulated.⁷² The intent of the new policy was simple: to “reduce, as much as possible, the approval of family unification applications”.⁷³ If approved, the resident was required to apply for a visitor’s permit for their spouse in order to enable them to enter the area and arrange their status, with a fee of 479 Shekels (approximately \$140) payable upon filing of the request.⁷⁴

During the often lengthy period prior to approval of the application, the non-resident spouse was permitted to live “legally” within the occupied Palestinian territory only if in possession of a short-term visitor’s permit, which were extremely difficult to gain. Upon leaving the occupied Palestinian territory, the non-resident spouse had to wait at least three months before being able to re-enter the West Bank, and at least six months to re-access the Gaza Strip. For those affected, Israel now exerted full control over family life, again downgrading a human right into a “privilege” bestowed by an occupying power.

In 1980, Israel decreed that those seeking residency under the family unification process would not be permitted to visit the occupied Palestinian territory until a decision on the application was reached. As a result, families were left with four options: to live apart; to relocate together to another

67 Kadman and Pearson, *Families Torn Apart, Separation of Palestinian Families in the Occupied Territory*, 30.

68 *Ibid.*

69 B’Tselem, *Perpetual Limbo: Israel’s Freeze on Unification of Palestinian Families in the Occupied Territories*, 8.

70 *Families Torn Apart*, 29.

71 B’Tselem, *Perpetual Limbo: Israel’s Freeze on Unification of Palestinian Families in the Occupied Territories*, 9.

72 Israel did not publish any case in which a resident of the Territories have obtained family unification for special humanitarian cases.

73 Kadman and Pearson, *Families Torn Apart, Separation of Palestinian Families in the Occupied Territory*, 31.

74 B’Tselem, *Perpetual Limbo: Israel’s Freeze on Unification of Palestinian Families in the Occupied Territories*, 9.

country with the consequence that the resident spouse could lose their residency status; to abandon the family unification process and instead seek renewable short-term visitor permits; or, lastly, the non-resident spouse could remain “illegally” in the occupied Palestinian territory after the expiration of their permit. Many chose the last option, subsequently living their lives in constant fear of arrest and deportation.

In August 1993, the family unification procedure was again changed. In the context of the peace talks, Israel announced that a more benevolent policy would be implemented towards family unification and the granting of visitor permits. The new measures decreed that an annual quota of approvals for family unification applications would be established.⁷⁵ With the introduction of this quota, for the first time Israel recognized marriage *per se* as a basis for the acquirement of permanent residency status without demanding satisfaction of other additional administrative or “humanitarian” conditions. However, the State Attorney’s Office was quick to emphasize that this change of policy did not represent a relaxation of the State’s belief that family unification was a benevolent act granted by Israel, rather than an entrenched human right.⁷⁶

The initial quota was set at 2,000 persons per year, with assertions from Israel that the size of this quota would be reviewed periodically, with adjustments made according to necessity. This quota was divided into 1,200 applications for the West Bank and 800 for the Gaza Strip. Though no official data was provided as to the number of family unification applications submitted following the introduction of this system, Israel admitted that the annual quota was insufficient to meet demand, with applications being forwarded for handling the following year, and sometimes two years after initial submission.⁷⁷

The result was thousands of Palestinians unable to obtain family unification, and with non-resident spouses still required to reside outside of the occupied Palestinian territory until a final decision was made on their application, these individuals were left in limbo, once more facing impossible decisions as to their future. The application process was long and opaque, and in the event of the application being rejected, no explanation was given, nor any indication as to the criteria upon which an application was considered.

With the signing of the Interim Agreement on the West Bank and the Gaza Strip commonly known as *Oslo II* in 1995, control of the population of the occupied Palestinian territory register was transferred to the newly-formed Palestinian

75 Family unification requests filed by those included within the High Court of Justice Population were not included in the annual quota.

76 Sarhan et al v. Commander of IDF Forces in Judea and Samaria et al (HCJ 1992).

77 Yael Stein, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*, 10.

National Authority (hereafter: Palestinian Authority). Any changes to an individual's residency status would be processed by the Palestinian Authority, and recorded on a master copy of the register. In turn, Israel would be notified of all changes, and would update their own copy of the register accordingly. In practice, however, given Israel's control of movement across the borders of the occupied Palestinian territory, as well as internally, it was Israel's copy of the register which came to be used as the *de facto* master copy. Furthermore, under the terms of the Oslo Accords, Israel also retained "prior approval" of applicants, and these factors – in conjunction with the aforementioned quota system – ensured that the positive potential of this transfer of control was never realized, rendering the exercise entirely superficial in practice. From that point of view, the Interim Agreement, did not alter the effective control of Israel of the civil registry of the occupied population.

With the outbreak of the Second Intifada in September 2000, the situation for Palestinian families significantly worsened, with the Israeli Civil Administration freezing all changes to the population registry, with the sole exception of registration of children under the age of sixteen born to a Palestinian parent already registered as a resident, and provided the child was physically present within the occupied Palestinian territory at the time of application. The 'freeze' remains in place to this day, leaving thousands of Palestinians of the occupied Palestinian territory without the possibility to legally and permanently reside with their families. The Palestinian Authority Ministry of Civil Affairs states that from the beginning of the Second Intifada to August 2005, it forwarded more than 120,000 family unification requests on to Israel, all of which remain unprocessed. Attempts by human rights organizations to seek redress at Israeli High Court, demanding the cancellation of the freezing policy, have failed. Each time Israel argued that the freeze is underpinned by security concerns, and provides no further elaboration. In addition, the State Attorney has repeatedly urged domestic courts not to interfere in what it considers to be a political matter between the Israeli Government and the Palestinian Authority,⁷⁸ a position which was supported by the Israeli judiciary.⁷⁹

However, in 2007, following concerted petitioning from NGOs, the Israeli High Court gave the State 60 days to reconsider its policy on family unification. In response, Israel pledged – as a political gesture – to process 50,000 family unification requests. It has so far processed 33,000,⁸⁰ whilst this gesture only extended to applications whereby both the spouses – the resident and the non resident – were physically present within the occupied Palestinian territory.⁸¹

78 Human Rights Watch, *Forget About Him*.

79 *Gazuna v. the Civil Administration in the Judea and Samaria Region* (HCJ 2007).

80 Human Rights Watch, "Forget About Him", 10.

81 *Ibid.*

This condition was extremely difficult to satisfy, given the complete freeze on visitor permits, introduced with the outbreak of the Second Intifada and which shows no signs of being eased.

Though the family life of the Palestinian population has come to be used by Israel as a political bargaining chip and a means to put political pressure on the Palestinian Authority, its wider impact is to make life so difficult for Palestinians within the West Bank and Gaza Strip that many feel they have little option but to abandon their ancestral homeland.

Interview with Adnan, Beit Sahour⁸²

I was born in Germany 32 years ago to Palestinian parents. My father moved from Palestine to Germany in the late 1950s searching for work, but as he was not present in the West Bank during the occupation in 1967 and had not been counted in the population census, he was prevented from obtaining a Palestinian National number or ID card. In 1968, my parents married and my mother joined my father in Germany. Unlike my father she used to have a Palestinian ID card, but a few years later while she was on her way to visit the family in Palestine she was informed by the Israeli border control that her Palestinian ID card was revoked, because she had left the country for too long. As a result both of my parents were deprived of residency rights in their own homeland. Instead they applied for German citizenship.

In the early 1970s, my parents came back to their hometown of Beit Sahour on a tourist visa and applied for family reunification in order to be able to stay and live there, but their application was rejected by Israel and they returned to Germany. When I was born in 1982, my parents attempted to settle in Palestine again. They applied for family reunification for a second time. This time, surprisingly, my mother and my older sister were granted the Palestinian ID, but the rest of the family was refused. However, after living in Palestine for about one year, my parents decided that it was impossible to continue our life in Palestine without residency rights for the whole family and we went back to Germany. Still, almost every summer my parents used to take us for vacation in Palestine. Consequently we developed close relationships toward our family there and these warm relationships came to feel, over the years, as if we had created a parallel life. For my parents, it was vital to come here, to ensure that their children will have relations with family and, mostly, they wanted us to speak Arabic, in which they succeeded.

During my studies in Germany, I met my wife to be, and our relationship became stronger with time, as well as the idea of living in Palestine. In 2008, we got married – a Palestinian woman from Bethlehem and after two years of marriage, in September 2010, we decided to settle there. In 2011 we had our first son. Since we moved to live in Palestine, I have been denied family unification rights and consequently face many obstacles on a daily basis.

After a year of marriage I applied for family unification at the District Coordinating Office of Bethlehem and I am yet to receive any official response or update concerning my application.

82 Adnan Qaisi (32), Beit Sahour, Bethlehem, interview by BADIL, August 2013.

Freedom of movement

Since I applied for family reunification, I was able to stay in the country through a three month tourist visa, which I receive from the Israeli border control each time I cross the borders to Palestine. This means that every three months I have to leave the country and cross the border between Jordan and the West Bank, which is controlled by Israel. However, while I'm in the West Bank, as a foreigner, I can apply also for a one year visa. This visa, if accepted by Israel, is a single-entry visa that will be canceled if one were to exit the borders of the West Bank. It also strictly forbids employment in the West Bank. I first applied for the one year visa in 2010, again in 2011 and in 2013.

At the Borders

Each time I cross the border, the Israeli's make me wait for hours and I have to go through interrogations. On average it takes me about 6 hours to cross. Although they have all the information about me, my wife and son, they always ask me, absurdly, for my marriage agreement and for the submission receipt for family reunification, but I never give it to them. I always tell them it's an important document that I don't carry with me while traveling. It seems they are just trying to annoy me with these questions and requests, and I have heard similar stories from other foreigners in a similar situation. However, in my case, they usually give me a three month visa while highlighting the fact I cannot live in the West Bank with my family – I have only the right to visit.

It's never clear whether the Israelis will let me pass the borders. It's also not clear whether they will grant me a three month visa. One time when I left Palestine in order to renew my visa in 2011, I was granted only a one month visa upon my return. I didn't know why and the border control employee gave no explanation.

Impact on life

It is not so much the logistical and financial implications of having to leave the country every three months which affects me and my family, but rather the uncertainty in which we live and the anxious state of mind which my wife and I constantly feel. After the birth of our son things become harder as we do not want our child to feel that his father is away. Moreover, I'm becoming more nervous each time I have to leave the country, as I'm not sure how the Israelis will treat me on the way back, and what will happen if they forbid me from entering.

My wife and I try to live our lives as if nothing is wrong. We try not to take the visa issue too much into our considerations and decisions for the future. For instance, we decided to build our own house here in Beit Sahour, and in which we are investing most of our money. But it can happen that one day Israel won't grant me another visa. Consequently, everything we have created here would be destroyed in a moment: our house, work, family and friends. We are determined to live our life normally, but this issue is like a haunting ghost. It is always somewhere out there. I try not to think about it, but I am still obliged to renew my visa.

My story is just one example of Israel's policy putting thousands of Palestinians under the threat of forcible displacement in various ways.

I'm not asking much. I hope for a normal and simple life with my family, nothing more and nothing less.

Family Unification in Israel and Jerusalem

Increasingly restrictive policies have been adopted that make it extremely difficult, and often even impossible, for citizens and residents of Israel married to Palestinians from the occupied Palestinian territory to obtain family unification. Following the 1967 War, human movement between the occupied Palestinian territory and Israel was largely unrestricted. As a result, couples consisting of Palestinian residents of Gaza or the West Bank and Palestinian residents of East Jerusalem or citizens of Israel did not typically apply for family unification. However, in 1991 Israel imposed new requirements demanding Palestinians from the occupied Palestinian territory be in possession of a permit in order to enter Israel, including occupied and annexed East Jerusalem. With the introduction of closures and checkpoints, Palestinians found it increasingly difficult to travel to East Jerusalem and Israel, prompting an exponential rise in the number of family unification applications. The ongoing construction of the Israeli Annexation Wall compounds this issue further, making it virtually impossible for Palestinian residents of the West Bank to visit family members who live in East Jerusalem or Israel without the necessary permit.

Therefore, Israeli-administered family unification procedures are the only available avenue for Palestinians who find themselves separated from their families, and the current legislative basis for these procedures is provided by the *Citizenship and Entry into Israel Law (Temporary Provision)*. This law – passed by the Knesset (the Israeli parliament) in July 2003 and renewed annually up to the present day⁸³ – prevents Palestinians with West Bank or Gaza Strip IDs, or residents of “enemy states” (Lebanon, Syria, Iran, and Iraq)⁸⁴ from gaining Israeli citizenship or permanent residency by way of marriage to an Israeli citizen. The law only allows for the granting of permits to reside or stay in Israel for purposes of medical treatment or fixed-term employment for a period which cannot cumulatively exceed six months.

The motivation underpinning this policy is revealed through consideration of statements made by Israeli officials. In May 2002 – just months before the new law was unveiled – the then Minister of Interior, Eli Yishai, declared that between 1993 and 2002, roughly 140,000 Palestinians had moved to Israel or East Jerusalem by way of family unification permits. Yishai went on to stress the need for legislation which would “help to halt the phenomenon and maintain

83 On March 19, 2014, the Israeli government decided to extend the validity of the Temporary Order for another year.

84 Mossawa Centre, “Policy Paper: Nationality and Entry into Israel Law (Temporary Order)” (Mossawa Centre, 2012), http://www.mossawacenter.org/my_documents/publication2/2012%20Citizenship%20and%20Entry%20into%20Israel%20Law.pdf.

Israel's nature as a Jewish and democratic state in the long run".⁸⁵ Following the implementation of the law, human rights organizations petitioned the Israel High Court to have the legislation overturned. In rejecting this petition, Justice Asher Grunis commented that "human rights are not a prescription for national suicide". This reasoning is instructive, demonstrating that the driving force behind this ethnicity-focused policy is rooted not in security concerns, but in demographic sensitivities. Tragically, family unification has become yet another tool deployed by the State of Israel to protect the Jewish majority within its borders, with the result that thousands of Palestinians face a deeply troubled and uncertain future.

Prevented from acquiring permanent residency status with their families in Israel or East Jerusalem, Palestinians from Gaza and the West Bank must make impossible choices between living separately from their spouses and children, living illegally with their spouse in Israel or East Jerusalem – in constant fear of arrest and deportation – or to have their spouse move to live with them, which is also illegal on account of a military order prohibiting Israelis from entering the occupied Palestinian territory.⁸⁶ This latter option is also likely to result in the revocation of the individual's Jerusalem residency status and the numerous social benefits which accompany it. Moreover, the provision acts retroactively, applying also to couples who had submitted applications prior to the bill's ratification by the Knesset. Those applications approved, but not yet authorized for permanent residency status, remain frozen. This has left those applicants hanging in limbo, at the stage of short-term temporary residency permits but with little prospect of attaining residency despite Israel already deeming them suitable candidates. According to Ha'aretz, between 16,000 and 21,000 Palestinian families are affected in this way.⁸⁷

As it currently stands, the only way in which Palestinians of the occupied Palestinian territory can acquire Israeli citizenship or permanent residency status in Israel or East Jerusalem is through collaboration with the State.⁸⁸ At the discretion of the Minister of the Interior, temporary-stay permits can be issued to Palestinians, affording short-term visitation rights, though these permits do not entitle the holder to any social right or health insurance, and are conditional on their ability to satisfy both "center of life" and security

85 B'Tselem, "Family Separation in East Jerusalem" (B'Tselem- The Israeli Information Center for Human Rights in the Occupied Territories, May 6, 2010), <http://www.btselem.org/printpdf/51840>.

86 Commander of IDF forces, Order 378 - Regarding Defense Regulations (Judea and Samaria), 5730 Proclamation Regarding Closure of Area (Prohibition on Entry and Stay) (Israelis) (Area A), 5 October 2000.

87 Gideon Alon and Yair Ettinger, "Cabinet Extends 'Unsoftened' Nationality Law by Six Months," Haaretz, July 19, 2004, <http://www.haaretz.com/print-edition/news/cabinet-extends-unsoftened-citizenship-law-by-six-months-1.128828>.

88 The State of Israel, The Citizenship and Entry Law (Temporary Provision) 5763-2003 Section 1.

requirements. In addition, though permits are also available to children under 14 years old,⁸⁹ these merely allow a child to remain within Israel or East Jerusalem until they reach the age of eighteen, with the provision failing to specify which legal status is to be accorded at that juncture.

The legislation's Second Amendment provides for permits to be granted to otherwise ineligible persons in the event of special humanitarian reasons⁹⁰ with such decisions being made by a committee consisting of individuals from bodies including the Judiciary, Security Services and Ministry of Defense. However, the amendment specifies that being married to – or having children with – a person who is lawfully present in Israel does not constitute a special humanitarian condition. Moreover, the provision also states that permission to stay or reside in Israel or in East Jerusalem may be denied by the Minister of Interior if activities liable to endanger the State have been carried out within the applicant's area of residence. Following this amendment, in 2008 the Israeli government passed a resolution according to which persons registered as residents of the Gaza Strip or who have been living in the area are no longer eligible to apply for family unification. The 'justification' for this decision was that the Gaza Strip is considered to be a region where actions against the State of Israel are perpetrated, and its result is that Palestinians with Gaza ID spouses have been completely denied of their right to live with their family in Israel or in East Jerusalem.⁹¹

Interview with Taiseer, 'Akka⁹²

I am a Palestinian citizen of Israel; I was born and raised in 'Akka (Acre). I first met my wife to be in government offices in Jenin, where she used to work. We fell in love at first sight, and dated for a period before deciding to get married. Our families were concerned due to the Israeli denial of family unification rights, but nonetheless, we got married in 2005 and established our family in 'Akka.

My wife had to apply for a tourist permit in order to go to 'Akka for our marriage. Her request was rejected, so she applied again, but this time for permission to visit my sick mother in hospital. Fortunately her application was accepted and she was granted a one-day permit, with which we were able to get married.

Family unification process

I submitted the application to the Israeli Ministry of Interior and two months later I received a letter stating that my request was refused according to the Nationality Law. Despite this, my wife kept coming to 'Akka through short-term permits and then staying here illegally. Every time she wanted to visit her family in Jenin, she used to apply for a short-term permit in order to be sure that she would be able to return.

89 The State of Israel, Nationality Law, 1952, <http://www.israelawresourcecenter.org/israelaws/fulltext/nationalitylaw.htm>.

90 State of Israel, "The Citizenship and Entry Law."

91 Citizenship and Entry into Israel Law (Temporary Order) 5763- 2003 – Validity Extension.

92 Taiseer Al-Khatib (40), 'Akka (Acre), interview by BADIL, September 2013.

Impact on daily life

This law negatively affects almost all aspects of our family's life. It's very difficult, especially for my wife. Sometimes she is very tired and desperate. Although we try not to speak about this issue and let it control our life, it's impossible to avoid. She feels as if she's a prisoner. Her whole life revolves around the house and the children. She is denied work, social security and health insurance, and prevented from driving a car. She does not leave the house often, and stays at home for long periods and this makes her feel very limited and, thus, frustrated. She also became very nervous, especially when we pass by any kind of authority personnel or vehicle.

Once, while we were on our way to Haifa to have coffee with friends, we were stopped by traffic police officers. They just wanted to check my driving license and other documents, but my wife was absolutely terrified. When the officers were gone she started crying because she was very nervous and afraid of being caught and deported, so we went back home as we didn't feel like going out anymore.

The Future

Israel managed to design this law in a masterful way that succeeded to create instability for a family's quality of life and make it unbearable in various aspects, mainly on the psychological level. The effect can lead spouses to thinking of leaving the country or even to divorce. I do not see any good prospective for the future. What Israel is doing to me and to my family is one part of their policy to create circumstances which eventually will lead to our deportation. Despite this, we have never thought to move to Jenin or to live overseas. I will never give in to these Israeli policies. We will move from 'Akka in one single situation: if they forcibly and physically deport us. In my opinion, it's not only a personal cause but a national one.

Whilst Israeli policy takes an entirely discriminatory line towards Palestinians seeking unification with their family members within Israel and the occupied Palestinian territory, the stance towards those who can demonstrate Jewish heritage – no matter how tenuous – is altogether more sympathetic.

Dedicated systems and organizations provide a global reach, positively seeking the recruitment of individuals whom Israel deems desirable to have within its borders; namely those who can be broadly described as Jewish, and this loose interpretation significantly widens the catchment population from which Israel can draw upon to satisfy its own demographic objectives.

Interview with Querido, Jerusalem⁹³

I was born in Monte Caseros, Argentina. My father's parents are originally from Poland but emigrated to Argentina in the early 1900s, while my mother is an Argentinean of many generations. As such, I do not have any ties to Israel/Palestine at all. My father is Jewish and my mother is Christian, therefore, according to Jewish law I cannot be Jewish, but instead merely a son of a Jewish man.

93 Querido Gonzales (32), Jerusalem, interview by BADIL, September 2013.

In 2006, I finished my studies at the National University of La Plata, and wanted to travel around South America. My math professor suggested I move to Israel and do “Aliyah” (the migration of Jews to Israel, accompanied by citizenship). He told me that the Jewish Agency will take care of everything: paying my flight ticket, grant me monthly payments, teach me Hebrew and possibly even grant me a scholarship to study at university. At the beginning, I thought that I would not be eligible to apply for “Aliyah”, as I am not Jewish, but my professor knew the procedures and encouraged me by saying “They want me, you and everyone else”.

So in August 2006 I went to the Jewish Community Center (AMIA) in Buenos Aires for the first time, and the first question I was asked was “When do you want to go to Israel”? I told them that I might not be eligible due to the fact that only my father is Jewish, but they did not care and told me that my surname is Jewish and that I only needed to submit a document proving my connection to Judaism. I discovered that the father of my grandmother was buried in a Jewish cemetery in Argentina, so I went to the cemetery received a document stating that my great grandfather was buried in a Jewish cemetery. With that document I went to a synagogue in Buenos Aires, where the Rabbi automatically gave me another document to prove that my father is Jewish. So I went to AMIA with that document and that was it; I was automatically eligible to do Aliyah in Israel, even though I am not Jewish. It is a kind of family unification, because of the theoretical possibility that my father who is Jewish and therefore eligible for Israeli citizenship could move to Israel. And consequently as his son, I too received the “right” to live there. Even though, I do not have any real connection to Israel, yet I am allowed to live here, and be given full citizenship and the rights which come with it.

Child Registration in East Jerusalem

Over the years Israel imposed increasingly restrictive procedures for the registration of children of couples where one or both spouses are Palestinian residents of Jerusalem. The legal framework governing child registration is Section 12 of the *Entry into Israel Regulations*, and lacks any real clarity on issues relating to Palestinians. Three main scenarios can be described:

1. Israeli citizenship/ Permanent residents

A child who is born in Israel, including occupied and annexed East Jerusalem, to an Israeli citizen; or to two parents who are permanent residents, will receive an identity number at the hospital and is subsequently registered in the Israeli Population Registry. The parents need to go to the Ministry of Interior, where the child’s name, date of birth and identity number are recorded in the parents’ identity cards, and therefore granted the Israeli citizenship or permanent residency status.

2. Only one parent with Permanent residency status

A child born to parents only one of whom is a resident of East Jerusalem does not receive an identity number at the hospital

like other children. After birth, the parents receive only a form titled “notification of live birth”. To receive an identity number, the parents must submit a “request to register a birth” to the Ministry of Interior and include to this request proof that the “centre of life” is in Jerusalem. For example, parents need to provide evidence such as a rental lease agreement, home ownership documents, water and electricity bills, or payment of the municipal tax (*Arnona*) proving that the permanent resident has been living in Jerusalem for the past two years. It is important to note that parents going to the Ministry of Interior to obtain a birth certificate and register the child’s name in their identity cards are not always aware that the child does not have an identity number. Clerks at the Ministry do not inform them that they must initiate the process of registering the child, but rather issue a birth certificate without an identity number for the child.

Interview with Ellen, Jerusalem⁹⁴

I am a 31 year old woman from Jerusalem, married to a Jerusalemite: We went to Australia for my studies in August 2010, and there I became pregnant. In July 2011, a month before I was due to give birth, I came back alone to Jerusalem as I knew it would be nearly impossible to get an ID for my child if I delivered her in Australia. In August 2011, I gave birth. One week after the delivery I went to the Israeli Ministry of Interior to get her a birth certificate but things did not go well. They asked me about my husband and I told them he was currently in Australia for his studies. The clerk said that he could not complete the registration as we both lived outside of Jerusalem, and that I spent most of my pregnancy overseas. I told him that we went to Australia for 2 years to continue our studies and that we would return to Jerusalem immediately afterwards. He asked me to come back with the necessary documents proving my centre of life to be in Jerusalem. I gathered all the documents needed and gave them to a lawyer. The lawyer managed only to get us a temporary number for my child and told me that my child has to stay in Jerusalem for 2 years to get her actual residency.

3. Child born ‘abroad’

Children born abroad (including the occupied Palestinian territory) to parents where one or both are permanent residents of Jerusalem (and neither of whom is an Israeli citizen) are no longer registered in the Israeli Population Registry through a Child Registration Form, as used to be the case. The current policy demands that parents wanting to register children born outside of Israel submit a request for family unification, rather than for registration of the child, as was

94 Ellen Abed (31), Jerusalem, interview by BADIL, August 2013.

previously stipulated by the Interior Ministry⁹⁵. HaMoked, the Israeli human rights organization, sought clarification on the legal basis for these procedures, as well as copies of the procedures and information of where they were to be published, but received no response.⁹⁶ Currently, there is no relevant provision of law and the registration is done in accordance with an internal procedure of the Ministry of Interior:

- If the child is younger than 14 years old; the parents must apply for family unification including proving their center of life in Jerusalem;
- If the child is older than 14 years old, the only status the Ministry of Interior would grant is a temporary permit that allows the child to remain in Israel or Jerusalem. The permit is similar to a tourist visa. However, the child is permitted to remain in the country with his parents, although he is not registered in the Population Registry, therefore has no state health insurance, and is not covered by the National Insurance Institute.⁹⁷

Israeli statistics on the processing of applications for child registration have been consistently scarce, vague and/or contradictory. This dearth of statistics is deliberate, designed to obscure the degree to which the impact of Israeli policy on family unification, consequently on child registration, has been disproportionate and irrelevant to the reasons Israel officially invokes to justify it. Nonetheless, since 2004 the Ministry of Interior received 17,616 applications for child registration; of them 12,247 were approved, while 3,933 were rejected. Of those rejected, 44 were on the basis of the 'center of life' policy, whilst 12 were on the basis of 'security' concerns, even though they are related to minors younger than 14 years.⁹⁸ According to data of Physicians for Human Rights, there exist now some 10,000 children who are not registered with the Ministry of Interior.⁹⁹

95 Yael Stein, 30.

96 Ibid.

97 HaMoked, "The Regional Labor Court Rules: Children with Only One Israeli-Resident Parent Are Not Entitled to Health Insurance While Their Residency Status Is Still Unresolved" (HaMoked - Center for the Defence of the Individual, July 2, 2013), <http://www.hamoked.org/Document.aspx?dID=Updates1231>.

98 "Press Release: Ministry of Interior: 43% of the Family Unification Applications Rejected between 2000 and 2013" (Society of St. Yves - Catholic Center for Human Rights, September 16, 2013), http://saintyves.org/index.php?option=com_content&view=article&id=198%3Aministry-of-interior-43-of-the-family-unification-applications-rejected-between-2000-and-2013&catid=49%3Apress-release&Itemid=18&lang=en.

99 OCHA, "Special Focus: East Jerusalem".

The above practices constitute a stark violation of basic human rights. Article 7 of the *Convention on the Rights of the Child* grants every child the right to be registered at birth by the State within which jurisdiction the child is born. This means that states must make birth registration accessible and available to all children. However, the state of Israel makes a clear distinction between a newborn of Israeli citizens, who immediately receives an identification number at the hospital, and a Palestinian newborn of permanent residents, who face obstacles to register their child, leaving them in a vulnerable situation. This effectively deprives large numbers of Palestinian children of the right to live permanently in the place where they were born, or where their parent is a legal resident.

Interview with Yara, Ramallah¹⁰⁰

I was born in 1996 in Ramallah. My father is a Palestinian resident of Beit Hanina, a village near Jerusalem. He holds a Jerusalem ID, while my mother is from Ramallah, and hence holds a West Bank ID. Unlike my two brothers, who were born in Jerusalem, I was born in Ramallah, and I was not automatically registered against my father's ID. It took two years of legal battle to insure that Israel would grant me a Jerusalem identification number and register me against my Father's ID.

My mother decided to deliver me in the hospital of Ramallah, due to the bad experience she had had in the Israeli hospital when she gave birth to my older brother. They treated her badly, and did not even speak English to her. In addition to that, since 1994, Israel introduced new control policies such as checkpoints and entry permits to limit the movement of Palestinians, and because she carries the West Bank ID she would have had to apply for a permit to be able to deliver in Jerusalem, which was not easily obtained.

Withdrawal of ID

In 2010, we decided to go on a family trip to Jordan. My father went to the Israeli Ministry of Interior in Jerusalem to obtain the exit permit for him and me and my siblings. He was surprised to discover that my ID number was withdrawn. The ministry employee claimed that there were some unclear issues on my file and ID number. At that moment I lost my identification and proof of identity. My parents decided to appoint a lawyer to solve the problem but we still do not know the reason for the withdrawal. We went into the process of family unification but so far without success. For the past three years our lawyer was unable to solve our problem. Nothing changed, we are still waiting.

Impact on daily life

When I think about my future I feel bad because I hope to study journalism or political science but I know I cannot. I am unable to take the final high school exams because in order to do so I would need to present my ID card. Because I do not have any identification documents I cannot get my high school diploma, or move on to higher education. Also, because I do not have an ID card I cannot travel abroad. In the past few years my classmates and church group went to ten different trips abroad, but I could not participate in any of them. I still hope that one day I will receive my ID card because otherwise I will be imprisoned forever in my small hometown here in the West Bank.

100 Yara 'Assaf (17), Ramallah, interview by BADIL, October 2013.

Child registration in West Bank/Gaza Strip

The Israeli Civil Administration is the sole authority in charge of governing the population registry, and therefore all child registrations, in the occupied Palestinian territory, excluding East-Jerusalem. Since 1995 Palestinian District Coordination Office is responsible for primary registration, while the final approval and allocation of a registry number is done by the Israeli District Coordination Office. Israeli regulations stipulate that the child should be physically present in the occupied territory for registration in the Population Registry. This might be problematic for children born abroad. Israel has randomly prevented Palestinian children born abroad from entering the West Bank, thus impeding them from exercising their right to be properly registered. Upon turning 16, Palestinian children can no longer be registered according to Israeli military orders. Moreover, in 2006 Israel completely stopped the child registration process for Palestinian children born in the Gaza Strip.

Conclusion

A holistic consideration of Israel's approach to family unification – both for Palestinians residing in Israel and those residing within the occupied Palestinian territory – and child registration reveals a clear and highly discriminatory pattern of behavior, underpinned by the motivation to reduce Palestinian presence within this territory. Israel's practical delivery of family unification and child registration frameworks in respect to Palestinians falls woefully short of what is required to address the central issue of the separation of Palestinian families, paying mere lip service to its obligations under international law.

Indeed, review of the historical background and contemporary reality surrounding family unification and child registration paints a picture of ever-tightening restrictions on the ability of Palestinians to enjoy the most basic of human rights, that of a family life. This steady erosion of democratic principles has ultimately resulted in many thousands of Palestinians suffering great hardship and emotional distress which intrudes on all aspects of life.

Moreover, the effects of such policy are also felt beyond the confines of individual family units, as legislation such as the Citizenship and Entry into Israel Law damages the social and cultural bonds which hold societies together. Israel's family unification policy can be seen as a blatant attempt to reduce the Palestinian population in Israel and the occupied Palestinian territory in order to secure a Jewish demographic majority, and this is made even more apparent by the ease with which individuals possessing only a loose familial connection to Judaism can obtain full Israeli citizenship. It is important to note that forced population transfer is not restricted to physical force:

[...] but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.¹⁰¹

As such, Israel is turning family unification into a tool for forced population transfer, and all Palestinian victims of this practice (a group comprising of individuals still present in the occupied Palestinian territory, citizens of Israel and exiled refugees) hold a legal entitlement to reparation, i.e. return, housing and property restitution, compensation, satisfaction (guarantees of non-repetition, prosecution) and rehabilitation.¹⁰²

101 International Criminal Court, 'Rome Statute of the International Criminal Court: Elements of Crimes' (International Criminal Court, 2011), Article 6(e) <<http://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf>>.

102 United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

The Precarious Citizenship Status of Palestinian Citizens of Israel

Israel defines itself as a 'Jewish and democratic state' by decree in its Basic Laws,¹⁰³ and also publicly touts itself as 'the only democracy in the Middle East'. However, its democratic credentials are severely undermined by its discriminatory treatment of the non-Jewish Palestinians who constitute roughly 20 percent of the population (1.6 million).¹⁰⁴ The State of Israel was created on the ruins of Palestine during the 1947-1949 *Nakba*, when three-quarters of the nearly one-and-a-half million indigenous Palestinians were forcibly displaced from their homes and communities, subsequently prevented from returning and thus creating the longest-standing global refugee population.¹⁰⁵ Around 160,000 Palestinians remained within the newly created state.¹⁰⁶

Placed under near-immediate military rule, the remaining indigenous Palestinian population within Israel was regarded as a demographic and security threat.

In 1950, Israel declared military rule to control the Palestinian population within its borders, continuing the military control of Palestinian territories held during the 1948 War. For nearly two decades, the sole means of communication between Israel and the Palestinian population would remain the army or the police. To encompass all aspects of the administration, military officials were granted extensive powers, both executive and judicial:

These regulations give the authorities extensive and extremely rigorous powers, and their enforcement can destroy individual freedom and individual rights to property almost completely. They cover every aspect of life, from control over the freedom of speech, movement, and the press, to the regulation of the possession of arms, the expropriation of property, and the control of means of transportation.¹⁰⁷

103 Basic Law: Human Dignity and Liberty, 5752, http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm "The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state."

104 The State of Israel, "Central Bureau of Statistics" (Central Bureau of Statistics, 2013), <http://www.cbs.gov.il/publications14/yarhon1213/pdf/b1.pdf>.

105 BADIL, 2010-2012 Survey.

106 Ibid.

107 Sabri Jiryis, *The Arabs in Israel* (New: Monthly Review Press, 1976).

The origins of the military rule can be found in the British Mandatory Defence (Emergency) Regulations of 1945 (which reached back to the 1936–39 revolt) and the Israeli Emergency (Security Zones) Regulations, 5707 of 1949.¹⁰⁸ The military rule was enforced in all areas populated by Palestinians and it served various objectives beyond the declared ‘security’ justification. It was essentially a tool to control the Palestinian population inside Israel, to take over the remainder of their lands and villages. The military rule also aimed to prevent the return of any Palestinian refugees to their homes. Short-term uses of military rule included the regulation of the Palestinian labor force according to the needs of the Israeli market (as in the present case of the Palestinians of the West Bank and Gaza Strip), and a political tool in the hands of the ruling party, Mapai, on election days.¹⁰⁹

Early discussions by ruling Knesset (Israeli parliament) and political factions reveal government strategies ranging from implementation of mass expulsions to the carrying out of systematic harassment policies, designed to ‘encourage’ Palestinians to ‘migrate’. While mass displacement was deemed impossible to implement ‘in times of peace’, the latter and incremental proposition was perceived as more practical and acceptable. Moshe Sharett,¹¹⁰ a signatory to Israel’s Declaration of Independence, summarized the principle by encouraging Palestinians who were willing to migrate and suggesting that “a policy based on minimal fairness should be adopted toward Arabs who were not inclined to leave”.¹¹¹

The “minimal fairness” framework for achieving Palestinian displacement was adopted into Israeli governmental policy through various laws, regulations and practices.¹¹² The result of this is that, today, more than 50 Israeli laws discriminate against Palestinian citizens of Israel.¹¹³ Moreover, the notion

108 Ibid., 9.

109 Manar Makhoul, “Seismography of Identities: Literary Reflections of Palestinian Identity Evolution in Israel between 1948 and 2010” (University of Cambridge, 2013).

110 In addition to one of the signatories to Israel’s Declaration of Independence, Moshe Sharett was the first Foreign Minister and the second Prime Minister of Israel.

111 Nur Massalha, *A Land without a People: Israel, Transfer and the Palestinians 1949-96* (Faber and Farber Limited, 1997), 3.

112 Other policies included a system of control that limited and manipulated the Palestinians inside Israel. Lustick suggests that Israel’s control over its Palestinian citizens is maintained through a three-fold system of segmentation, dependence and co-optation. The cooptation system meant that the government will adopt and encourage the ‘positive’ elements among the Palestinians, and isolating and marginalizing the ‘negative’ elements in the society (Jiryis, S. *The Arabs in Israel*. Monthly Review Press, New York (1976), 63-64).

113 For more information see: BADIL, Occasional Bulletin No.26: *Israel’s Discriminatory Laws* (Bethlehem, Palestine: BADIL Resource Center for Residency and Refugee Rights, 2012), <http://www.badil.org/en/press-releases/142-2012/3609-press-eng-42>; And Adalah, “Discriminatory Laws Database” (Adalah – The Legal Center for Arab Minority Rights in Israel), accessed March 10, 2014, <http://adalah.org/eng/Israeli-Discriminatory-Law-Database>.

of equality is not mentioned as a constitutional right in Israel's *Basic Law: Human Dignity and Liberty* (1992)¹¹⁴, which acts as Israel's Bill of Rights in absence of a constitution. In the absence of a constitutional right to equality, it is relegated to a secondary-level right, and is only considered if it can be derived from other rights granted by the Basic Law. Moreover, paragraph 10 of the Law, provides that, "[t]his Basic Law shall not affect the validity of any law in force prior to the commencement of the Basic Law." A series of discriminatory laws adopted in the 1950s and 1960s thus continue to violate the fundamental right to equality of Palestinians.

In order to facilitate the policy of "minimal fairness", during the first 18 years after the creation of Israel, Palestinian citizenry was restricted to security zones and had military rule imposed on them. During the military rule period, Israel imposed strict means of control on Palestinian citizens, restricting the freedom of movement, assembly, work, press and speech, in addition to mass confiscation of land and property. This was possible because of the *Emergency Regulations (Absentees' Property) Law-1948*, and the *Absentees' Property Law-1950*.¹¹⁵ These laws serve to expropriate individually and communally-owned Palestinian land.¹¹⁶ Palestinian citizens of Israel and refugees have thereby been deprived of title, access and use of their land, and even of compensation.

Today, 93 percent of the land in Israel is owned either by the state or by quasi-governmental agencies (such as the Jewish National Fund) and administered by the Israel Land Authority, whose managerial council is composed of representatives from the government and the Jewish National Fund.¹¹⁷ The purpose of the Jewish National Fund, according to its Memorandum of Association is to systematically acquire land in Palestine "for the purpose of settling Jews on such lands".¹¹⁸ This goal is reflected in a resolution that passed at the Seventh Zionist Congress, putting the latter on record as rejecting "unplanned, unsystematic, and philanthropic small-scale colonization" by the Jewish National Fund.¹¹⁹ Its Memorandum also stipulated that it could only lease land to Jews and prohibited it from selling any land it acquired.¹²⁰

114 Basic Law: Human Dignity and Liberty.

115 *The Absentees' Property Law*, 5710

<http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>.

116 For more information see: BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians, A Handbook for Vulnerable Individuals and Communities* (Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, 2013), <http://www.badil.org/en/badil-news/1454-story-3>.

117 For more information see: BADIL, "The Jewish National Fund: A Para-State Institution in the Service of Colonialism and Apartheid," *Al-Majdal*, Winter - Spring 2010, http://www.badil.org/phocadownload/Badil_docs/publications/al-majdal-43.pdf.

118 Walter Lehn, "The Jewish National Fund" 3, no. 4 (Summer 1974): 94.

119 *Ibid*.

120 See: Lehn and Davis, note 13 *supra*, pp. 31-32.

Israeli Nationality vs. Jewish Nationality

The end of military rule in 1966 did not end the legal and institutional discrimination towards Palestinian citizens of Israel.¹²¹ In order to maintain a system of oppression and exploitation, there are more than 50 Israeli laws that discriminate against Palestinian citizens of Israel or privilege Jewish citizens affecting all areas of life, including Palestinian citizens' rights to political participation, access to land, education, state budget resources and criminal procedures.¹²²

The pairing of "Jewish" with "democratic" elements in Israel's self-definition codifies discrimination against non-Jewish citizens and impedes the realization of full equality.¹²³ The Jewish character of the state is defined by three inter-related components: (1) that Jews form the majority of the state; (2) that Jews are entitled to preferential treatment; and (3) that a reciprocal relationship exists between the state and Jews outside of Israel.¹²⁴

Interview with Wadi, Haifa¹²⁵

I am a Palestinian citizen of Israel. I was born in Haifa, although both my grandparents and parents were from the destroyed village of Kofur Bir'im, from which they were forcibly expelled in 1948. Since I was a little child my grandparents always told me stories about our village, the lands, the properties that they sadly lost, how they were forcibly displaced and about the effects of the expulsion that they still carry until these days. I began to be aware of, and understand, the racial discrimination towards us, Palestinian citizens of Israel, since I was a little boy. When any argument erupted while playing in the courtyard, the Israeli Jewish kids would say: "*Aravim Miluchlachim*," which means 'dirty Arabs' or sometimes they would shout: "go to Gaza and the West-Bank." There was always the feeling of "us versus them" and that we were different from each other.

Daily Life

Daily life, even in the Israeli-called ethnically-mixed cities like Haifa, is segregated in practice. "We" go to Palestinian schools, we buy goods from Palestinian shops and our friends are mostly, if not only, Palestinians. Our neighborhoods can be described as a kind of ghetto. Most contact with Jewish-Israelis occurs in public places and institutions such as hospitals, governmental offices, etc.

121 Pax Christi International, "The Status of Palestinian Citizens of Israel, Written Statement for the UN Human Rights Commission," 2004, <http://electronicinfada.net/content/status-palestinian-citizens-israel/341>.

122 Adalah, "Discriminatory Laws Database.

123 "Adalah, The Inequality Report: The Palestinian Arab Minority in Israel (Adalah – The Legal Center for Arab Minority Rights in Israel, 2011), http://adalah.org/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf.

124 Ben Shalom v. Central Election Committee, P.D. (HC 1988).

125 Wadi' Ghazi (29), Haifa, interview by BADIL, November 2013.

Israeli policies and practices aim to limit Palestinians' basic rights, whether to housing, economic development or by granting privileges to Jewish-Israelis. These policies and practices create an unbearable atmosphere, which pressures many Palestinians to leave the country, some permanently, others temporarily.

Since I am a Palestinian, I know that I am considered inferior by the legal and political systems and, at the same time, a threat to the Jewishness of Israel. This creates a feeling of unrest and alienation, like being a foreigner in your own country! This feeling becomes more and more tangible when listening to officials speak about Palestinians in Israel as a "demographic threat" or the option of transferring us. Moreover, "price tag" attacks against Palestinians are becoming more common and increasingly targeting Palestinian citizens of Israel such as in villages of the Galilee the triangle are and the "mixed cities" such as Haifa and Yaffa. These acts are never taken seriously by the Israeli state. Those who commit these crimes usually aren't prosecuted.

Political Participation

Israel uses the Palestinian right to vote as a propaganda tool in order to claim that Palestinians are politically represented and, thus, that Israel is a democratic state. But practically, the Palestinian Members of Parliament have never achieved any changes to the main obstacles concerning equality such as in the areas of land, economy, education and so forth. Therefore, even if all the Palestinians vote, we will never be able to exert any form of pressure or change of laws that the Knesset amends.

Jewish Nationality

Because Israel considers itself the home of the Jewish nation, not the Israeli people, the non-Jewish Palestinians in Israel can never be part of this nation. Thus we will remain inferior. Even if both Palestinians and Jews hold Israeli citizenship, Palestinians receive different treatments and rights. According to the Israeli Declaration of Independence, Israel defines itself both as Jewish and democratic. Politically speaking, it is not possible for a state to simultaneously define itself as democratic and ethnocratic. Everything in Israel is built in the favor of the Jewish-Israelis at the expense of Palestinian citizens who are being pushed aside in various areas of life.

The 1952 Israeli *Nationality Law* repealed the *Palestinian Citizenship Order* of 24 July 1925 under which Palestinians were granted the status of citizens *and* nationals in their country. The repeal resulted in the *de facto* 'denationalization' of this entire population. It is important to note that the official English language version of the *Nationality Law* carries the incorrectly translated title "The Nationality Law", as if it were the legal basis for a nationality right, which it is not.¹²⁶ Since 1952 and the denationalization of all Palestinians, Israeli law proceeded on the basis that citizenship and nationality would be two separate and distinct statuses.

¹²⁶ Joseph Schechla, "The Consequences of Conflating Religion, Race, Nationality, and Citizenship," *Al-Majdal Quarterly Magazine of BADIL*, Winter - Spring 2010, <http://www.badil.org/en/al-majdal/item/1401-schechla-conflating-race-and-nationality>.

Israeli laws thus distinguish between citizenship and nationality. Jewish people are “nationals and citizens” of Israel, whereas Palestinians can only attain the status of “citizen” of Israel. In practice, Jewish people all over the world are given “the automatic right, by virtue of being Jewish, to immigrate to Israel and acquire Israeli citizenship [but] Arab Palestinians, on the other hand, face restrictions in acquiring such citizenship”.¹²⁷ Thus, under Israel’s legal regime, *only* “Jewish nationals and citizens of Israel” constitute the privileged group of Israeli citizens who have full access to human rights.

Palestinians who meet the criteria of the 1952 *Nationality Law* are accorded the status of “citizens of Israel” Citizenship is only available to them and their descendants if they were present in Israel between 1948 and 1952, which effectively excluded all the refugees who were expelled during the 1948 Nakba. Palestinians could not, and cannot, become “nationals” of Israel because they are not Jewish and because “Israeli nationality” is not recognized by Israeli law.¹²⁸ The status of “citizen of Israel” is a second-class citizenship status with limited protection of an individual’s human rights.

Palestinians who did not meet the criteria of the 1952 *Nationality Law* because they were outside the country or in territory controlled by Israeli-defined ‘enemy forces’ at certain cutoff dates, are excluded from Israeli citizenship and consequently made stateless by the law.¹²⁹ Today, the descendants of the 750,000 Palestinian refugees of 1948 suffer from statelessness and/or a lack of nationality.¹³⁰

The 1992 *Israeli Basic Law: Human Dignity and Liberty* states that Israeli laws should serve the protection of “human dignity and liberty, in order to establish in a Basic Law the values of the state of Israel as a Jewish and democratic state”.¹³¹ Thus, the right to dignity must be interpreted within the context of Israel as a ‘Jewish and democratic state’, bringing with it all that such an interpretation implies – namely the privileged status of Jewish citizens.¹³² Moreover, the recently proposed *Basic Law: Israel the National State of the Jewish People* (2011), aims to constitutionally enshrine the principle that the Jewish character of the state is superior to its democratic character.¹³³

127 BADIL and COHRE, “Ruling Palestine”.

128 BADIL and COHRE, “Ruling Palestine”, 57.

129 See: Jacky Khoury, “Israel Begins Revoking Citizenship of Four Arabs,” Haaretz, May 5, 2009, <http://www.haaretz.com/news/israel-begins-revoking-citizenship-of-four-arabs-1.275419>; John Quigley, “Family Reunion and the Rights to Return to Occupied Territory.”

130 BADIL, Survey of Palestinian Refugees and Internally Displaced Persons, 2010-2012.

131 Basic Law: Human Dignity and Liberty.

132 BADIL, Occasional Bulletin No.26: Israel’s Discriminatory Laws.

133 Ibid.

Nationality

Nationality was ethnically defined by two Israeli Supreme Court decisions. In his 1972 decision Israeli Supreme Court, Justice Shimon Agranat affirmed that, “there is no Israeli nation separate from the Jewish people. The Jewish people are composed not only of those residing in Israel but of Diaspora Jewry”.¹³⁴ Justice Agranat affirmed the distinction of ‘Jewish nationality’ and ‘Israeli citizenship’ and maintained that there is no Israeli nationality but only Jewish nationality.¹³⁵ 41 years later, in October 2013, the same Supreme Court rejected a request by a group of

Israeli citizens called “I am Israeli” to declare that they were members of the Israeli people and to allow them to change the ethnic registration on their identity card from “Jewish” to “Israeli”.¹³⁶ In 2013, Justice Hanan Melcer remarked that uniting national distinctions between Jewish, Arab or Druze, “was against both the Jewish nature and the democratic nature of the State”.¹³⁷



Jewish migration

The *Law of Return* (1950) and the *Nationality Law* (1952), privilege Jews and Jewish immigration. Any Jewish person can immigrate to the State of Israel and receive automatic citizenship. The law also applies to the children and grandchildren of Jews, as well as their spouses and the spouses of their children and grandchildren.¹³⁸

134 George Raphael Tamarin v. State of Israel (HCJ 1972).

135 Ibid.

136 Revital Hovel, “Supreme Court Rejects Citizens’ Request to Change Nationality from ‘Jewish’ to ‘Israeli,’” Haaretz, October 3, 2013, <http://www.haaretz.com/news/national/.premium-1.550241>.

137 Neve Gordon, “High Court Rules: It Is Impossible to Be Israeli,” Aljazeera, October 21, 2013, <http://www.aljazeera.com/indepth/opinion/2013/10/high-court-rules-it-impossible-be-israeli-201310201360824801.html>.

138 Nadeem Shehadeh, “The Legal Framework of Second Class Citizenship” (BADIL Resource Center for Palestinian Residency & Refugee Rights), accessed March 10, 2014, <http://www.badil.org/en/al-majdal/item/1874-the-legal-framework-of-second-class-citizenship?tmpl=component&print=1>.

The Law of Return (1950) provides that every Jewish person in the world is automatically entitled to “Jewish nationality” in Israel. Under the Law of Return, a Jewish national is “born of a Jewish mother or has become converted to Judaism and who is not a member of another religion”.¹³⁹ Article 4(a) of the Law of Return provides that:

The rights of a Jew under this Law and the rights of an *oleh*¹⁴⁰ under the *Nationality Law*, (Nationality 5712-1952), as well as the rights of an *oleh* under any other enactment, are also vested in a child and a 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.

Thus, on the one hand, Jewish nationals enjoy the right to enter Israel even if they were not born in Israel and have no connection whatsoever to it. On the other hand, Palestinians – the indigenous population of the territory – are excluded from the Law of Return on the grounds that they are not of Jewish national origin, do not enjoy the legal status of nationals under any other Israeli law, and have no automatic right to enter the country.

139 Schechla, “The Consequences of Conflating Religion, Race, Nationality, and Citizenship.”

140 An *Oleh* is a Jewish term referring to a Jew who is immigrating to Israel.

Interview with Querido¹⁴¹

I was born in Monte Caseros, Argentina. My father's parents are originally from Poland and they immigrated to Argentina in the early 1900s, while my mother's family lived in Argentina for many generations. My father is Jewish and my mother is Christian, but I grew up in a secular environment; we as a family never practiced either of the two religions.

In August 2006, I was 26 years old, I had just completed my university studies, could not find a proper employment and my financial situation was bad. A mentor introduced me to the idea of traveling to Israel and applying for Aliyah.¹⁴² Even though I am not myself Jewish, I inherited eligibility through my father.

In December of the same year, I arrived at Ben-Gurion Airport in Tel Aviv where a representative from the Jewish Agency welcomed me. The representative took me to a bureaucratic office and they issued me a legal document entitling me to Israeli citizenship and the residency card. The procedure was very quick and I received my Identity Card a few days later.

I was housed in the Ulpan, an educational institute/residential school for the first month of my stay. There I took three Hebrew courses and after that I enrolled in a Master degree in Security Systems at the University of Bar Ilan. All these resources were free of charge.

The Ulpan

The Ulpan wasn't only a place to study Hebrew, but to meet and interact with others. There were roughly 150 young guys and girls from all over the world, and we lived together for five months. All our needs were taken care of. We had many parties and social activities. It was a significant experience for me since it was the first time that I crossed the ocean and met people from different places and origins. As I came here with only 300 US Dollars it was a great economic opportunity where most of the experience was paid for, including a monthly stipend which I received for two years.

The primary purpose of the Ulpan is to assist new citizens to be integrated as quickly as possible into the social, cultural and economic life of their new "home", by providing education on Hebrew language, Israeli culture, history and geography. Most of the people there didn't know anything about the conflict or occupation. We believed whatever we were told. For example, we were told that Palestinians are terrorists and that we should not get in contact with them. We were told that the Israelis are innocent victims who seek peace, but there is no partner from the other side. We were taught these doctrines through lectures, discussions, reading materials, music and other cultural events or excursions. This consumed a considerably huge amount of time of the actual schedule in the Ulpan.

141 Querido Gonzales (32), Jerusalem, interview by BADIL, September 2013.

142 Aliyah is the immigration of Jews to Israel.

No citizenship without loyalty

In recent years, Israel's concerns about challenges to the state's Jewishness are intensifying, and these concerns have become manifested in new discriminatory laws which enact exclusive nationality, as well as uninhibited governmental and public debate about the benefits of forcibly transferring "Arabs". In 2010, influential Israeli ministers spoke openly about transferring the Palestinians, rescinding their citizenship and ethnically gentrifying their towns as the strategy for the Jewish state in the next decade.¹⁴³

The Yisrael Beiteinu party, led by Minister of Foreign Affairs Avigdor Lieberman, has lobbied for loyalty laws to restrict the Palestinian minority's political activities. In the past two general elections, Lieberman campaigned under the slogan "No citizenship without loyalty".¹⁴⁴ This mantra is becoming more dominant in the Israeli governmental mentality, visible in the various proposed bills for legislative change. For example, a proposed amendment to the *Nationality Law* requires all persons seeking to naturalize, as well as Israeli citizens applying for their first identity cards (obligatory at the age of 16), to declare an oath of loyalty to Israel as a "Jewish, Zionist, and democratic state." This bill seeks to further marginalize the Palestinian citizens' status by forcing them to affirm and accept their institutionalized legal and political inferiority by contractually delegitimizing their cultural and political identity.¹⁴⁵

Conclusion

As a result of a sustained policy of discrimination and exclusion – in place since the creation of the State of Israel – citizenship status does not protect Palestinians from undermined rights in their homeland.

Since 1948, Israel created and maintained a complex matrix of discriminatory land, planning and military laws and regulations which aim to seize control of Palestinian land and legalize displacement of hundreds of thousands of its inhabitants. The Israeli legal system's targeting of Palestinians through the land is paired, necessarily, with a citizenship, residency and population registration system that is manifestly discriminatory.

Palestinian citizens of Israel hold constitutional rights derived from Israel's Basic Laws and are not protected by international humanitarian law,

143 Ilan Pappé, *The Forgotten Palestinians: A History of Palestinians in Israel* (Yale University Press: New Haven, 2011), 7.

144 Jonathan Cook, "Court Nixes Push for Israeli Nationality," *Aljazeera*, October 18, 2013, <http://www.aljazeera.com/indepth/features/2013/10/court-nixes-push-israeli-nationality-20131017115755321289.html>.

145 BADIL, Occasional Bulletin No.26: Israel's Discriminatory Laws.

whilst Palestinians living under occupation are protected by international humanitarian law, prohibiting forcible population transfer. International human rights law protects the rights of all persons (including Palestinian citizens of Israel) and includes the rights to adequate housing, property rights, a decent standard of living and non-discrimination which have direct or indirect implications for the issue of preventing displacement.

According to Principle Six of the Guiding Principles on Internal Displacement – the framework which identifies those rules of international law applicable to internally displaced persons – every human being has the right to protection against arbitrary displacement from their home. Yet, Israel continues to violate the rights of Palestinians, leaving them without protection or access to effective remedy.¹⁴⁶

Specifically, Israel's residency policies towards its Palestinian citizenry constitute or contribute to the following violations of international law:

- Forced population transfer¹⁴⁷ of Palestinian citizens is a violation of the ICESCR¹⁴⁸ and the ICERD.¹⁴⁹
- The systematic infringement of civil, political, social, economic and cultural rights (such as equality and citizenship, family and property rights) is a violation of the ICESCR, ICERD and the CRC.¹⁵⁰
- The institutionalized racial discrimination, segregation and apartheid practiced by Israel are in violation of the ICERD, Article 3 and the ICESCR.¹⁵¹

Palestinian citizens of Israel can be described as *stateless citizens*, and in this regard any questioning or challenging of the multifaceted racism and exclusion faced by Palestinian citizens of Israel must include a genuine questioning of the Israeli regime, and in particular, its principles and practices regarding Jewish domination through Jewish nationality.¹⁵²

146 Adalah, "Position Paper – From Al-Araqib to Susiya: The Forced Displacement of Palestinians on Both Sides of the Green Line" (Adalah – The Legal Center for Arab Minority Rights in Israel, April 2013).

147 Also see: Crimes against humanity and war crimes under the Rome Statute of the International Criminal Court.

148 United Nations, International Covenant on Economic, Social and Cultural Rights.

149 United Nations, International Convention on the Elimination of All Forms of Racial Discrimination, 1965, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

150 United Nations, Convention on the Rights of the Child, 1989, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

151 United Nations, Convention on the Suppression and Punishment of the Crime of Apartheid, 1973, <http://legal.un.org/avl/ha/cspca/cspca.html>.

152 Shourideh C. Molavi, *Stateless Citizenship; the Palestinian-Arab Citizens of Israel* (BRILL, 2013).

The legal and political mechanisms of systematic exclusion goes hand in hand with the public rhetoric of Israeli official and their stated desire to further exclude Palestinian citizens of Israel. Palestinian citizens of Israel became stateless citizens or 'Present-Absentees'. Although the latter was originally bureaucratically coined to refer to Palestinian internal refugees within Israel, it is an accurate representation of wider Palestinian existence in Israel whereby "the land on which they live is their homeland, but the dominant culture is not their culture and the country is not their country".¹⁵³ The result is that citizenship becomes the only form of belonging that Palestinians can hold onto, allowing a sense of fake equality based on the simple, almost lexical definition of 'citizens' as being the 'members of the same country'. Palestinian citizenship is thus devoid of any symbolic or ideological identification with Israel.¹⁵⁴

Israel applies a policy of minimal fairness towards the Palestinians who are not inclined to leave voluntarily in parallel with privileging Jewish migration into Israel. In other words, a policy with the purpose of altering the demographic composition of Israel. According to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the former Commission on Human Rights, "... the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another,"¹⁵⁵ constitutes a crucial element of forced population transfer.

153 Yasir Suleiman and Ibrahim Muhawi, eds., *Literature and Nation in the Middle East* (Edinburgh University Press, 2006), 34.

154 Makhoul, "Seismography of Identities: Literary Reflections of Palestinian Identity Evolution in Israel between 1948 and 2010."

157 Al-Khawasneh and Hatano, *The Human Rights Dimensions of Population Transfer Including the Implantation of Settlers*, Preliminary Report Prepared for Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-Fifth Session, 27–32.

Recommendations

The BADIL Resource Center urges the state of Israel to:

- Unfreeze family unifications, process them without limitations (including quotas) and expedite the processing of backlogged requests;
- Cancel the freeze on child registration. Further impetus for this requirement arises from Israel's status as a party to the Convention of the Rights of the Child;
- End State practice of the "center of life" policy;
- Reinstate residency status to all whose residency was arbitrarily revoked, and allow them and their families to return to their homes in the West Bank, including East Jerusalem, the Gaza Strip and Israel proper;
- Recognize the rights of individuals not registered in the 1967 census of the occupied Palestinian territory on account of their flight or displacement during the fighting, or were abroad for any other reason at that time;
- Establish procedures to ensure that new residency applications are processed expeditiously, rather than adding to the large existing backlog, and that applicants are informed in writing of specific reasons for the denial of applications;
- Relinquish control of the Population Registry in the occupied Palestinian territory.

To the Palestine Liberation Organization:

- Promote a rights-based durable solution for displaced persons;
- Ratify the Rome Statute and immediately engage the International Criminal Court with the task of examining Israeli war crimes and crimes against humanity;
- Reject the fragmentation of Palestine and Palestinian communities by establishing a register for all Palestinians worldwide.

To Member States of the United Nations:

- Ensure that state policies do not support or recognize Israeli practices that violate international humanitarian and human rights law;
- Downgrade diplomatic relations with states committing and abetting these offenses;
- Freeze the assets of legal and natural persons responsible for violations of international law, namely forced population transfer;
- Ensure that United Nations organizations and programs conform to these remedial measures.

To the United Nations Human Rights Council (and relevant bodies):

- Clarify the mandates of agencies and bodies responsible for developing and implementing durable solutions. The UN Relief and Works Agency for Palestine Refugees (UNRWA), UN Refugee Agency (UNHCR), UN Conciliation Commission for Palestine (UNCCP), UN Committee on the Exercise of the Inalienable Rights of the Palestinian People and other relevant bodies should clarify mandates in order to coordinate effective protection for all Palestinian refugees;
- Find that Israel's policies in Israel proper and the occupied Palestinian territory constitute forced population transfer;
- Condemn Israel's policies for violating the prohibition of forced population transfer pursuant to the Fourth Geneva Convention;
- Call upon Israel to cease its policy of denying residency rights to Palestinian inhabitants of East Jerusalem, the remainder of the West Bank, the Gaza Strip and Israel proper;
- Urge the Special Rapporteur on the Human Rights of Internally Displaced Persons to conduct an investigation within the occupied Palestinian territory as well as in Israel proper;
- Develop and implement effective measures to bring Israel into compliance with its obligations to international humanitarian and human rights law, and particularly address Israel's policies of arbitrary residency restrictions;
- Thoroughly examine Israel's institutionalized discrimination that distinguishes between Jews and Palestinians in a multi-tiered system of rights encompassing Israel proper and the occupied Palestinian territory;

- Find that Israel's residency policy towards the Palestinian population of East Jerusalem (aimed at displacing them from their homes), along with its residency policy towards the Palestinian populations of the remaining occupied Palestinian territory, amounts to forced population transfer;
- Find that Israel's policies aimed at denying Palestinian refugees the right to return to their homes of habitual residence, coupled with laws and policies aimed at disinherit Palestinians from their applications for legitimate residency, amounts to forced population transfer;
- Reaffirm the fundamental rights of refugees and internally displaced persons to repatriation of their homes, lands and properties, and compensation for losses and damages;
- Establish a comprehensive registration system for Palestinian refugees and internally displaced persons. The UN should coordinate a comprehensive registration system for protecting, crafting durable solutions, and fulfilling reparations. Such a system should include all categories of Palestinian refugees and internally displaced persons, and recognize instances of multiple displacement.

To International and National Civil Society:

- Update documentation on regulations and procedures for residency revocation, family unification and child registration, and distribute them widely;
- Expand and develop research and workshops to inform Palestinians at risk of forced population transfer of their rights to residency and Israel's tactics for undermining those rights;
- Expand and develop campaigns and research relating to the abolition of Israel's discriminatory residency policies;
- Lobby governments to cease diplomatic, military and economic support of and cooperation with the State of Israel;
- Study and address the root causes of the ongoing forcible displacement of Palestinians by Israel;
- Develop mechanisms and take effective measures to bring Israel into compliance with international law.

This Series of Working Papers on forced population transfer constitutes a digestible overview of the forced displacement of Palestinians as a historic, yet ongoing process, which detrimentally affects the daily life of Palestinians and threatens their national existence. The Series will utilize an inclusive interpretation of the human rights-based approach, emphasizing that obligations under international law must supersede political considerations. Outlining the nuances and the broader implications of forced population transfer requires careful scrutiny of Israeli policies aimed at forcibly transferring Palestinians, and their role in the overall system of oppression in Palestine.