



HUMAN  
RIGHTS  
WATCH

# “FORGET ABOUT HIM, HE’S NOT HERE”

Israel’s Control of Palestinian Residency in the West Bank and Gaza



## **“Forget About Him, He’s Not Here”**

**Israel’s Control of Palestinian Residency in the West Bank and Gaza**

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## Map: The West Bank and Gaza Strip



## Summary

Muhammad N. was born in Gaza, where his parents and extended family live. But for more than 30 years the 66-year-old was able to visit the coastal strip—which Israel occupied in the 1967 Middle East war—for only three months at a time, and was not able to gain residency until four years ago.

Muhammad’s effective exclusion from his birthplace was rooted in a population census of Palestinians that Israel conducted in September 1967, shortly after capturing the Gaza Strip from Egypt and the West Bank from Jordan. The census counted the 954,898 Palestinians physically present in the West Bank and Gaza at the time, but did not include at least 270,000 Palestinians who were absent, either because they had fled during the conflict or were abroad for study, work, or other reasons.

At the time Israel conducted the census in Gaza, Muhammad was attending university in Cairo. “My father told me that when the [Israeli] soldiers came, he said that I was studying in Egypt ... the soldier said, ‘So forget about him, he’s not here.’”

Israel subsequently recorded the names and demographic data gleaned from the 1967 census in a newly created registry of the Palestinian population. It refused to recognize the right of most of the absent individuals whom it did not register—including all men then aged 16 to 60—to return to their homes in the occupied territory.

From that time, Muhammad could only gain an entry permit for a maximum of three months. He eventually found work as an accountant in Abu Dhabi, married, and had a family. He applied for residency in the occupied Palestinian territory in 2000, but Israel stopped processing applications later that year, amid an escalation in Israeli-Palestinian violence. Israeli authorities eventually entered him, his daughter, and one of his sons in the population registry in 2007, but not his wife and another son. “It made no sense,” he said.

Since 1967, the population registry has been central to Israel’s administrative efforts to control the demographic composition of the occupied Palestinian territory, where

Palestinians want to establish a state.<sup>1</sup> Israel has used Palestinians' residency status as a tool to control their ability to reside in, move within, and travel abroad from the West Bank, as well as to travel from Gaza to Israel and the West Bank. A 2005 survey conducted on behalf of B'Tselem, an Israeli rights group, estimated that 17.2 percent of the Palestinians registered in the West Bank and Gaza, around 640,000 people, had a parent, child, sibling, or spouse whom Israeli military authorities had not registered as a resident.<sup>2</sup>

This report documents Israel's exclusion of Palestinians from the population registry, and the restrictions it imposes on Palestinians who are registered. It finds that the Israeli measures vastly exceed what could be justified under international law as needed to address legitimate security concerns, and have dire consequences for Palestinians' ability to enjoy such basic rights as the right to family life and access to health care and education facilities.<sup>3</sup>

Today, Palestinians must be included in the population registry to get identification cards and passports. In the West Bank, Palestinians need identification cards to travel internally, including to schools, jobs, hospitals, and to visit family, because Israeli security forces manning checkpoints demand to see such cards before allowing passage.<sup>4</sup> Israeli border officials, who control all entry and exit to the West Bank, also require Palestinians seeking to travel abroad to present an identification card or passport.

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<sup>1</sup> Around 2.5 million Palestinians and 500,000 Jewish settlers live in the West Bank, including East Jerusalem, which Israel captured from Jordan in the 1967 Middle East War; Palestinians want East Jerusalem as the capital of a future state. Around 1.5 million Palestinians live in Gaza.

<sup>2</sup> B'Tselem and Hamoked, "Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories," July 2006, p. 20 (of the 1,300 adult Palestinian residents of the occupied territory surveyed, 17.2 percent reported that a first-degree relative was unregistered; the total estimated population of the West Bank and Gaza in 2005 was 3,762,500, according to the Palestinian Bureau of Statistics).

<sup>3</sup> The 1995 Palestinian-Israeli Interim Agreement, known as the second Oslo Accord, purportedly transferred authority over "the sphere of population registry and documentation in the West Bank and the Gaza Strip" from Israel to "the Palestinian side." The Palestinian Authority, according to the agreement, would "inform Israel of every change in its population registry, including, inter alia, any change in the place of residence of any resident." In practice, however, Israel retained exclusive power to grant permanent residency in the West Bank and Gaza Strip. Although the Palestinian Authority physically produces Palestinians' identification cards, Israeli soldiers and border officials only recognize these cards if the information on them corresponds to data in the Israeli population registry. The PA does not issue ID cards without prior Israeli approval because they would be effectively useless.

<sup>4</sup> Palestinians also need Israeli identification cards to apply for the special military permits required to enter restricted areas, such as East Jerusalem, where major Palestinian hospitals and important religious sites are located; areas of the West Bank between the "Green Line" and the Israeli separation barrier; settlements, where some Palestinians work; and Israel proper.



Since the outbreak of the second Palestinian *intifada*, or uprising, in September 2000, Israel has denied entry to the Palestinian territory to non-registered Palestinians and to non-registered spouses and other family members of Palestinian residents; for example, the number of entry permits to the West Bank and Gaza dropped from around 64,000 in 1999 to 192 in the 10 months after November 2000.<sup>5</sup> Israel has also effectively frozen the ability of most Palestinians who are registered as Gaza residents to move to, or even temporarily visit the West Bank, where many have relatives, own property, have business ties, or want to attend university.<sup>6</sup> Palestinians registered as Gaza residents who are already living in the West Bank face problems because Israel does not recognize their right to live there; unless they have special permits, it classifies them as criminal “infiltrators.”

Israeli authorities have sought to explain and justify these policies by referring to “the breakdown that occurred in the relationship between Israel and the Palestinian Authority” after “the outbreak of hostilities in September 2000.”<sup>7</sup> During the *intifada*, attacks by Palestinian armed groups killed hundreds of Israeli civilians. However, since 2000 Israel has continued to coordinate with the Palestinian Authority (PA), for example, by registering the births of children to registered Palestinian parents. Further, the Israeli rights group B’Tselem found that after September 2000, Israeli authorities frequently rejected Palestinians’ applications for residency without specifying any security threat.

Israeli authorities have argued that both these blanket restrictions on adding Palestinians to the population registry, and the partial, limited easing of those restrictions are political issues related to Israel’s relations with the Palestinian Authority, indicating that Israel views control over the population registry as a bargaining chip in negotiations. Israel’s control over the population registry has also significantly lowered the registered Palestinian population in the West Bank and Gaza, probably by hundreds of thousands of people.<sup>8</sup> Given that Israel has continuously increased the number of settlers in the West

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<sup>5</sup> High Court of Justice (HCJ) 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi, April 11, 2007, para. 76, available at [http://www.hamoked.org/items/8870\\_eng.pdf](http://www.hamoked.org/items/8870_eng.pdf). Israel controlled all entry and exit to Gaza prior to 2005.

<sup>6</sup> There are five universities in Gaza and nine in the West Bank. According to the Israeli rights group Gisha, West Bank universities offer many degree programs that are unavailable in Gaza, including occupational therapy, medical engineering, veterinary medicine, and democracy and human rights. “We don’t have a problem with you, we have a problem with students,” Gisha press release, December 14, 2011.

<sup>7</sup> HCJ 5875/07, “Application on behalf of the Respondents for Summary Dismissal of the Petition in Response to the Application for a Temporary Injunction,” September 2, 2007, available at [http://www.hamoked.org/items/9073\\_eng.pdf](http://www.hamoked.org/items/9073_eng.pdf).

<sup>8</sup> B’Tselem and Hamoked, as noted, estimated that 640,000 people had been excluded from residency (“Perpetual Limbo,” p. 20). Similarly, a rough, conservative estimate based on available figures would indicate that since 1994, Israeli restrictions have artificially lowered the registered Palestinian population of the West Bank and Gaza by around 600,000 people. This

Bank, its reduction in the Palestinian population there, as Israeli rights groups have noted, is consistent with a policy based on “improper demographic objectives.”<sup>9</sup>

While security concerns could legally justify some restrictions on Palestinians’ rights, under international law such restrictions must be necessary and narrowly tailored to address specific threats. In contrast, in residency-related cases where Israeli military and judicial authorities have cited security concerns, they have often done so to justify restrictions that are so broad and general as to be arbitrary. For instance, Israel’s high court upheld the military’s blanket ban on all registered Gaza residents studying in West Bank universities because “it is not unreasonable to assume” that replacing the ban with a system of individually-screening applicants “will likely lead to an increase in terrorist activity.”<sup>10</sup> Such an approach, of allowing a complete ban on a basic right (education) on only the vaguest grounds of security, without individual determinations, violates human rights law.

Israel also claims that its human rights obligations, such as respecting the right to family life, do not extend to Palestinian territory, where it says international humanitarian law (the laws of war) applies exclusively. Therefore, Israel argues, it bears no responsibility under human rights law for harms inflicted on Palestinians by its policies relating to the population registry—even as it insists on maintaining its control over the registry.

Israel’s arguments have been repeatedly rejected by numerous legal authorities, including the International Court of Justice, which have confirmed that human rights law applies at the same time as international humanitarian law, including during military occupations. Israel is obliged to respect Palestinians’ human rights to freedom of movement, including the rights to move freely within and to leave and return to the West Bank and Gaza; the right to family unity; and other rights, including access to education.

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estimate is probably too low, because it assumes that only people excluded during the 1967 census have subsequently applied for residency (Israel excluded a minimum of 270,000 Palestinians from residency in 1967, and subsequently approved approximately 70,000 “family reunification” requests for residency between 1967 and 2000, and another 32,900 since 2007), and that Israel did not unfairly exclude any Palestinians after 1994, by which point, as noted below, it had permanently stripped 130,000 West Bank residents of their status. The World Bank estimates population growth rates of 3.8 percent per year in the West Bank and Gaza from 1994 until 2009 and 2.8 percent annually from 2009 to 2011. World Bank, “World Development Indicators,” 2011, p. 38 (“West Bank and Gaza”), [http://data.worldbank.org/data-catalog/world-development-indicators?cid=GPD\\_WDI](http://data.worldbank.org/data-catalog/world-development-indicators?cid=GPD_WDI) (accessed January 2, 2012).

<sup>9</sup> “Perpetual Limbo,” p. 56.

<sup>10</sup> HCJ 11120/05, *Hamdan v Major General, GOC Southern Command*.

### **Denial of Residency and Right to a Family Life**

Even before the outbreak of Israeli-Palestinian violence in September 2000—in addition to the Palestinians it excluded from the population registry in 1967—Israel had for years denied or failed to process tens of thousands of applications for residency from the relatives, children, or spouses of registered Palestinians, on the basis of changing, arbitrary criteria.

After 1967, for instance, Israel granted residency to children under 16 who were born in the West Bank and Gaza, or who were born abroad if one parent was a registered resident. In 1987, with the outbreak of the first Palestinian *intifada*, the military ordered that children under 16 who were born in the occupied territory could only be registered if their mother was a resident, and that children born abroad could not be registered after the age of five, regardless of either parent's residency status. As Israeli rights groups pointed out, in some Palestinian families, Israel thus considered that the older children were residents of the occupied territory but that their younger siblings born after 1987 were living there illegally. In 1995, Israel changed its policy and began to register Palestinian children who were born abroad to a registered parent, if the child was physically present in the West Bank or Gaza. However, in 2000 Israel stopped granting entry to all unregistered Palestinians more than five years old. In 2006 Israel began to grant entry permits to Palestinian children for the purpose allowing them to apply for registration, but it has refused to register children who turned 16 during the period from 2000 to 2006, when Israeli policies had made their entry and registration impossible.

Between 1967 and 1994, Israel also permanently cancelled the residency status of 130,000 registered Palestinian residents of the West Bank, in many cases on the basis that they had remained outside the West Bank for too long (in most cases, more than three years). Human Rights Watch interviewed Palestinians who said Israel cancelled their residency due to their failure to renew “exit permits” but who do not have foreign citizenship. The Israeli military does not allow Palestinians to appeal in such cases.

Until 2000, Israel allowed Palestinians who married non-registered foreigners or had a non-registered parent or child, to apply for “family reunification” with them; if approved, Israel would register the relative as a resident of the West Bank or Gaza. Israeli authorities granted far fewer requests than were submitted. By the late 1970s, Israel had granted around 50,000 family reunification applications, with 150,000 requests pending. Between

1973 and 1983, Israel granted approximately 1,000 requests annually, and only a few hundred per year subsequently.<sup>11</sup> In 1993 it instituted a quota of 2,000 requests per year, which it increased in 2000 to 4,000 per year.

As noted, after September 2000 Israel largely froze the “family reunification” procedure. It continued to register children who had at least one registered Palestinian parent and were born in the West Bank or Gaza, but stopped allowing most others to register, including the spouses and parents of registered Palestinians, even if they had lived in the occupied territory for years. The Palestinian Authority, which receives applications from Palestinians and transfers them to Israel for approval, estimated that from 2000 to 2005, it had relayed more than 120,000 applications for family reunification that Israel did not process.

From 2007 to 2009, Israel allowed a limited quota of Palestinians to register and to change their addresses, but set the quota in the context of political negotiations rather than on the basis of any obligation to respect Palestinians’ rights, such as the right to live with their families. These measures were inadequate even to clear the backlog of cases since 2000, and have created stark disparities within the same families among family members who have received very different treatment.

### **Restrictions on Gaza Residents**

Although Israel withdrew civilian settlers and ground forces from Gaza in 2005, after 38 years, it continues to control the population registry there, and policies based on this control can severely affect Gazans’ lives.<sup>12</sup>

It is almost impossible for non-registered Palestinians in Gaza to enter Israel for medical treatments that are unavailable in Gaza’s lower-quality hospitals.<sup>13</sup> Since May 2011, when Egypt eased restrictions on the movement of people through the southern Rafah border it shares with Gaza, most registered Gaza residents have been eligible to travel abroad via

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<sup>11</sup> Meron Benvenisti, *Judea and Samaria Lexicon* (Jerusalem: Cana, 1987), p. 21, and *The Rule of Law in Areas Administered by Israel* (Tel Aviv: International Commission of Jurists, Israel National Section, 1981), p. 86, cited in B’Tselem and Hamoked, “Families Torn Apart: Separation of Palestinian Families in the Occupied Territories,” July 1999, pp. 29-30.

<sup>12</sup> Israel continues to control Gaza’s airspace and all points on its land and sea borders, except for the southern border with Egypt, and imposes a “no-go” zone up to one kilometer from Gaza’s land borders.

<sup>13</sup> Several hundred Palestinians per month enter Israel from Gaza for medical treatment, paid for by the PA, in Israel and the West Bank.

Egypt.<sup>14</sup> However, non-registered Palestinians continue to face restrictions because Egyptian border officials still require Palestinians to present the identification cards that are linked to the Israeli-controlled population registry.

Since 2000, Israel has also prevented Palestinians who are registered as Gaza residents, but who live in the West Bank, from updating their addresses accordingly. Approximately 35,000 Palestinians from Gaza who entered the West Bank remain there without valid permits, according to Israeli military records; Israel has allowed around 2,800 people to change their addresses from Gaza to the West Bank. Under Israeli military orders in force since 2010, Gaza-registered Palestinians are not lawful residents of the West Bank but criminal “infiltrators,” although Israeli military authorities are not known to have prosecuted any Palestinians under these military orders.

In one case, Israeli military authorities registered Abdullah Alsaafin, 50, as a resident of Gaza, where he was born. His wife was registered as a West Bank resident. Alsaafin, his wife, and their four children are also naturalized British citizens. In 2009, while the family was living in the West Bank, Alsaafin’s oldest son left the West Bank to seek work abroad. Israeli border officials told him he would not be allowed to return because he was registered as a Gaza resident. Israel also unexpectedly changed the registered address of Alsaafin’s wife from the West Bank to Gaza. Israel considered her to be unlawfully present in the West Bank, and she was afraid to travel through checkpoints or to leave the West Bank for fear that Israel would bar her return. In August 2009, Alsaafin, who was working as a journalist, traveled to Gaza with his UK passport. Israeli officials at the Gaza crossing confiscated his press credentials, stamped his UK passport to indicate he was a Gaza resident, and refused to let him to return to his family in the West Bank. He could not leave Gaza for four months, when he was finally able to travel to Egypt.

In June 2011, following interventions by an Israeli rights organization, the Israel authorities re-registered Alsaafin’s wife and oldest son as West Bank residents, but then in November 2011 reversed this decision regarding his oldest son’s status and listed him again as a Gaza resident. Israel has refused Alsaafin’s requests to change his address or to let him visit or return to his family in the West Bank. He has found work training journalists in Beirut,

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<sup>14</sup> Israel maintained indirect control over the Egyptian border crossing (in the city of Rafah) with Gaza until Hamas took over the territory in 2007.

Amman, and Abu Dhabi. “I communicate with my family through Skype and the internet,” Alsaafin said. “On paper, I am married, but in reality it’s as if I have no wife and children.”

Some Palestinians registered as Gaza residents can obtain temporary “permits to remain” from Israeli authorities in the West Bank, which enable them to pass checkpoints and in some cases to travel abroad. However, permit-holders said that Israeli authorities did not renew their expired permits quickly or predictably, and that they were afraid to travel while waiting for their permits to be renewed, because soldiers at checkpoints would consider them to be present unlawfully in the West Bank.<sup>15</sup>

Gaza residents without permits who are stopped at any of the scores of Israeli military checkpoints in the West Bank risk being forcibly transferred back to Gaza, even if they have lived in the West Bank for years and have family and professional ties there. Israel forcibly transferred at least 94 Gazans from the West Bank to Gaza between 2004 and 2010.

In many cases, the military has not provided specific security justifications for forcibly transferring Palestinians to Gaza. In 2010, Israel revised military orders to define all persons present in the West Bank without a valid permit—excluding Israeli settlers—as “infiltrators” subject to criminal penalties, including deportation. The military says the order applies to thousands of Palestinians from Gaza whom Israel previously allowed to travel to and reside in the West Bank. Israel has generally refused to issue permits to Gaza residents for entry to the West Bank since 2000, while Israeli restrictions make it virtually impossible for Palestinians from the West Bank to visit Gaza and return.

After September 2000 and subsequently, amid attacks on Israeli civilians by Palestinian armed groups, Israel also stopped allowing non-registered Palestinians to enter the occupied West Bank and Gaza.<sup>16</sup> (Israel retained direct control over all Gaza’s borders until

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<sup>15</sup> Israel has total control of all the West Bank’s borders as well as of 62 percent of the territory, known as Area C under the 1995 interim peace accords. Area C is also the only contiguous area in the West Bank, effectively isolating cities and towns that fall outside it into disconnected enclaves. As a result, Israel effectively controls movement and access between Palestinian population centers, and between Area A (where there is ostensibly full Palestinian control), and Area B (where the Palestinian Authority controls civil matters, and Israel controls security).

<sup>16</sup> Hamas and other armed groups launched suicide bombing attacks against Israeli civilians, emanating from both the West Bank and Gaza. Human Rights Watch, *Erased in a Moment: Suicide Bombing Attacks against Israeli Civilians*, October 2002, <http://www.hrw.org/reports/2002/10/15/erased-moment>. Since 2001, armed groups in Gaza launched thousands of rockets, some fatal, against Israeli population centers. Human Rights Watch, *Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups’ Rocket Attacks*, August 2009, <http://www.hrw.org/reports/2009/08/06/rockets-gaza-o>.

2005, and indirect control over the southern border with Egypt until Hamas took over in 2007).<sup>17</sup> Israel's policy of denying entry made it virtually impossible for non-registered Palestinians outside the West Bank and Gaza to visit, much less live with their families. In most cases Israel continues to prevent non-registered Palestinians and Palestinians registered as Gaza residents from entering the West Bank.

### **A Bargaining Chip**

Israel appears to view its control of the population registry as a political bargaining chip.

Israeli authorities have argued that Israel's High Court lacks jurisdiction to address its control of the population registry because it is a political matter. The court subsequently dismissed petitions regarding the registry without considering the individual rights at stake, accepting the state's argument that the court should not "interfere with policy that has been adopted by government with regard to the security situation and the development of relations between the Palestinian Authority and the State of Israel."<sup>18</sup>

In 2007 Israel said it would consider up to 50,000 family reunification requests meeting specific criteria as part of a political "gesture" to the PA, in the context of peace negotiations. It processed a backlog of around 33,000 requests from November 2007 until March 2009, after which point it has not granted any further family reunification applications.

Moreover, the "gesture" applied only to Palestinians who met criteria based on other unlawfully restrictive Israeli policies; it excludes, for example, Palestinians who entered and remained in the West Bank and Gaza without Israeli permits, which Israel generally stopped granting after September 2000. More recently, Israel has taken positive but limited steps to address Palestinians registered as Gaza residents who live "illegally" in the West Bank. In February 2011, Israel agreed with the Quartet (the United States, European Union, Russia, and the United Nations) to process 5,000 address-change applications submitted by registered residents of Gaza who had moved to the West Bank. By October 2011 it had processed around 2,800 of 3,700 applications submitted.

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<sup>17</sup> For abuses committed during Hamas's takeover of Gaza in 2007, see Human Rights Watch, *Internal Fight: Palestinian Abuses in Gaza and the West Bank*, July 2008, <http://www.hrw.org/reports/2008/07/29/internal-fight-o>.

<sup>18</sup> HCJ 8881/06, *Gazuna v. The Civil Administration in the Judea and Samaria Region*.

Although the quotas cleared part of the backlog of recent applications, Israel is not processing Palestinian applications for family reunification or address changes on an ongoing basis. Nor do the quotas solve the core problem that Israel refuses to acknowledge its obligation to respect Palestinians' rights to live with their families and to move within and travel abroad from occupied Palestinian territory. They also do not resolve the rights violations created by Israeli policies related to the population registry, such as criminalizing Palestinians who live in the West Bank but whose registered address is Gaza.

### **Legal Obligations**

Rather than issuing post-hoc quotas that only partly repair the damage caused by its arbitrary policies, Israel should revise those policies to comply with its obligation to respect Palestinians' human rights. As noted, all states are obligated to respect international human rights law as codified in the various human rights treaties to which that state is a signatory regardless of the parallel application of international humanitarian law.

In addition, as the occupying military power, Israel must respect international humanitarian law regarding the Palestinian population under its effective control. Israel has sought to justify its violations of protections of family rights under the law of occupation, including the Hague Regulations of 1907 and the Geneva Conventions, based on claims regarding its security.

While international human rights law and humanitarian law permits Israeli military authorities to restrict certain rights for security reasons, these restrictions must be narrowly tailored to a specific threat. Israel's blanket restrictions on all Palestinians' rights to freedom of movement, a home, and family life, which have separated families and destroyed livelihoods in cases where the authorities have not claimed that the people affected posed any security risk, greatly exceed this limitation.

The same restrictions on Israeli conduct exist in the portion of international humanitarian law governing Israel's role as an occupying power. That law allows Israel to introduce laws and regulations in Palestinian territory that it occupies only as necessary to ensure security and to promote the welfare of the local Palestinian population, by enabling Palestinians to go about their normal daily lives. This necessarily entails living with one's family and the



ability to move freely for personal and professional reasons, for example to visit family, pursue higher education, or travel for a job.

Furthermore, Israel's justification of aspects of its ongoing "freeze" on changes to the population registry by reference to the second *intifada*, and to Hamas's control of the Gaza Strip, appears to collectively punish affected Palestinians for the acts of others, which applicable international humanitarian law and human rights law prohibits.

Given these obligations, Israel should abrogate all arbitrary restrictions on the recognition of Palestinians' residency rights, including its continuing denial of residency to persons excluded from the 1967 census. It should also actively encourage Palestinians who claim to have been unfairly excluded from residency and whose family rights have been violated to apply or re-apply for residency and compensation for past violations.

## Recommendations

### To the Government of Israel

- Consistent with Israel’s obligations under international human rights and humanitarian law applicable to the West Bank and Gaza, recognize and respect the residency rights of Palestinians and their family members, including the rights to reside and travel where they choose and to freely enter and leave the territory;
- Immediately cancel arbitrary restrictions on these rights, including by:
  - Ending the freeze on family reunification applications and beginning to process them immediately, and further,
    - ▶ Ending the requirement that only Palestinians who entered the territory “lawfully” are eligible to apply for family reunification, in recognition of the arbitrary nature of Israel’s denial of entry permits to all non-registered Palestinians after September 2000;
    - ▶ Ending any quotas on family reunification requests, and processing both backlogged requests and new requests expeditiously, notwithstanding applications that have already been considered as part of the 2007 “political gesture” to the PA, due to the arbitrariness of former restrictions on eligibility;
  - Allowing registered Palestinian residents of Gaza to change their registered addresses to the West Bank, move from Gaza to the West Bank, and travel between the two, except for narrowly tailored security reasons, and ending the freeze on changes to addresses;
  - Ending the freeze on granting “entry” or “visitor” permits to non-resident Palestinians, residents’ non-registered spouses, children, and family members who seek to enter Palestinian territory;
  - Cancelling any policy and any orders, regulations, or laws that deem Palestinians in the West Bank to be “illegally present” there on the basis that their registered address is Gaza;

- Amending or cancelling as necessary current military orders, regulations, or procedures that limit the categories of Palestinians registered as residents of Gaza who may apply to change their residency to the West Bank;
- Amending or cancelling as necessary any military orders, regulations, or procedures that limit the ability of Palestinians to leave and re-enter Palestinian territory as they wish, except for narrowly tailored security reasons.
- Open for consideration, based on criteria consistent with human rights law and IHL, applications for residency by persons who were previously excluded from eligibility for residency in possible violation of Israel’s international legal obligations, including:
  - ▶ Palestinians who were not registered in the 1967 census of the recently-occupied Palestinian territory because they had fled or were displaced during fighting or were abroad for any other reason at the time;
  - ▶ Palestinians whose residency status was cancelled on the basis of unlawfully restrictive criteria, such as that they remained outside the West Bank or Gaza for periods that exceeded “exit visas” that were of short duration;
  - ▶ Palestinians whose applications for family reunification were denied on the basis that they failed to meet various other arbitrary criteria, such as the requirement that a child’s mother be a registered resident of the West Bank or Gaza.
- Proactively seek to ensure that such persons are notified of their eligibility to apply or reapply for residency, including persons living outside the West Bank and Gaza, such as by publishing notifications, sharing relevant information with other governments and international agencies, and through any other means.
- Establish procedures to ensure that new 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.

## **To the Government of Egypt**

Revise policies at the Rafah border crossing with Gaza to ensure respect for the rights of Palestinians, including by ending the de facto requirement that Palestinians present Israeli-approved identity documents in order to enter Gaza.

## **To the Palestinian Authority**

Resume accepting and processing all applications related to population registry issues, including applications for residency through family reunification, and address changes, without regard to the Israeli freeze on the population registry, such that an up-to-date file of applications will be immediately available when the Israeli side assumes its international legal obligations in this regard.

## **To the Quartet**

Continue to encourage the Israeli side to meet its international legal obligations, including by allowing Gaza-registered residents to change their registered address to the West Bank.

## **To Third Party States**

Consistent with their obligations as third parties under international law including the Geneva Conventions, ensure that their policies do not have the effect of recognizing or supporting Israeli actions or policies that violate its international legal obligations as the occupying power, such as by imposing differing restrictions on the entry of Palestinians depending on whether Israel considers them to be residents of the West Bank or Gaza, or with regard to unlawful Israeli restrictions against their citizens on the basis of their Palestinian origin.

## Methodology

This report is based on interviews, conducted primarily in the spring of 2011, with 32 Palestinians who were unable to register as residents of the West Bank and Gaza, unable to change their residency from Gaza to the West Bank, or experienced other difficulties related to Israel's restrictions on changes to the Palestinian population registry. All but three of the interviews were conducted in Arabic; all but one of the interviews were conducted in-person in the West Bank and Gaza.

Human Rights Watch initially identified these interviewees by contacting nongovernmental groups and journalists who had worked on or written about the issue of Israel's population registry, as well as by asking individuals in Gaza and the West Bank if they were aware of the issue and anyone affected by it. Human Rights Watch did not seek to identify or interview people who did not have residency-related problems.

Most interviews lasted from an hour to several hours, except for two conversations which were briefer. In most cases Human Rights Watch had access to additional corroborating documentation such as passports, travel documents, visas, entry permits, photographs, and letters.

Human Rights Watch also interviewed or corresponded with Palestinian and Israeli officials responsible for population registry issues in the West Bank and Gaza. The report further draws on Israeli court rulings, government documents, and records, and information provided by Israeli authorities in the course of court proceedings or in response to requests by Israeli nongovernmental organizations. Human Rights Watch also interviewed Israeli lawyers who represented Palestinian clients in several of the cases discussed.

This report does not include research or interviews regarding the situation of Palestinian residents of East Jerusalem. East Jerusalem is considered part of the occupied West Bank under international humanitarian law.<sup>19</sup> However, Israeli authorities do not include East Jerusalem residents in the Palestinian population registry, the subject of this report.

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<sup>19</sup> Israeli forces occupied East Jerusalem in 1967 and Israel subsequently annexed 70 square kilometers of the West Bank to the Jerusalem municipality. Israel considers the Jerusalem municipality to be part of Israel proper and that Palestinian East

## I. Background to Current Israeli Policies

### Control of the Registry from the Occupation to the Oslo Accords (1967- 1994)

Israel seized control of the West Bank and Gaza from Jordan and Egypt, respectively, in June 1967.<sup>20</sup> That year, Israeli military authorities declared the occupied Palestinian territory to be “closed areas” and required Palestinian residents to obtain permits from the military authorities in order to enter or leave.<sup>21</sup> In August and September 1967, the Israeli military conducted a census of Palestinians who were physically present in the occupied Palestinian territory, which became the basis for an Israeli registry of the Palestinian population there. The population of the West Bank (including East Jerusalem) and Gaza, as recorded by the 1967 census, was 954,898.<sup>22</sup> Following the census, Israel issued identification documents (ID cards) to Palestinians registered in the population registry. Under Israeli military orders, bearers of these ID cards were not granted Israeli citizenship but were allowed to reside, work, and own and inherit property in the occupied territory.<sup>23</sup> Non-registered Palestinians had to obtain temporary visitor permits in order to enter the occupied Palestinian territory, and could not permanently reside there. Among the Palestinians whom the 1967 Israeli census did not register were Palestinians from the West Bank and Gaza who were displaced during the fighting in 1967 and had not returned by the time of the census, as well as Palestinians who were residing abroad at the time for work,

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Jerusalemites are “permanent residents” of Israel. Israeli authorities have stripped more than 10,000 people of their East Jerusalem residency, according to official figures.

<sup>20</sup> Israeli forces had previously briefly occupied Gaza from late October 1956 through March 1957.

<sup>21</sup> Military Order Closing Area (Gaza Strip and Northern Sinai), No. 1, 1967; Military Order Regarding Closure of Areas (West Bank Area), No. 34, 1967; Order Relating to Closed Areas (West bank Region), No. 5, 1967, June 8, 1967.

<sup>22</sup> The Israeli census recorded the population of the West Bank, including East Jerusalem, as 598,637, and the population of the Gaza Strip as 356,261. Joel Perlmann, *The 1967 Census of the West Bank and Gaza Strip: A Digitized Version*. (Annandale-on-Hudson, N.Y.: Levy Economics Institute of Bard College: 2011). Volume 1, Table A, “Population, Area and Population Density in the West Bank by District,” and Table J, “Gaza Strip Population According to 1967 Census and Egyptian Estimate for 1966,” [http://www.levyinstitute.org/pubs/1967\\_census/vol\\_1\\_intro\\_tab\\_a.pdf](http://www.levyinstitute.org/pubs/1967_census/vol_1_intro_tab_a.pdf) and [http://www.levyinstitute.org/pubs/1967\\_census/vol\\_1\\_intro\\_tab\\_j.pdf](http://www.levyinstitute.org/pubs/1967_census/vol_1_intro_tab_j.pdf) (accessed January 2, 2012). [Digitized from: Israel Central Bureau of Statistics, “Census of Population and Housing, 1967 Conducted in the Areas Administered by the IDF,” Vols. 1–5 (1967–70), and “Census of Population and Housing: East Jerusalem, Parts 1 and 2” (1968–70).] See also Wael R. Ennab, “Population and Demographic Developments in the West Bank and Gaza Strip until 1990,” UN Conference on Trade and Development, U.N. Doc. UNCTAD/ECDC/SEU/1, June 28, 1994, available at <http://www.unctad.org/en/docs/poecdcseu1.en.pdf> (accessed December 20, 2011), pp. 73, 75.

<sup>23</sup> See, for example, Israeli military orders as discussed in B’Tselem and Hamoked, “Families Torn Apart”, p. 17; and Tom Segev, “The June 1967 War and the Refugee Problem,” *Journal of Palestine Studies*, Spring 2007 (v. 36 n.3), available at <http://prn.mcgill.ca/research/papers/segev.pdf>.

study, or any other reason. For example, one man, Muhammad N., who was born in Gaza told Human Rights Watch,

My father told me that when the soldiers came [to conduct the census], he told them that I was studying in Egypt, and the soldier said, “So forget about him, he’s not here.” Since that time, every time I wanted to enter to visit my parents here from Egypt, my father would have to ask the Israelis for a permit for me. I could stay for maximum of three months.<sup>24</sup>

The 1967 conflict displaced at least 270,000 Palestinians from the West Bank and Gaza.<sup>25</sup> Other estimates are significantly higher: for example, the UN Relief and Works Agency for Palestine Refugees (UNRWA) estimated that the 1967 conflict displaced about 390,000 Palestinians from the occupied Palestinian territory.<sup>26</sup>

The Israeli military’s control of the Palestinian population registry also affected the hundreds of thousands of Palestinians who left Gaza and the West Bank shortly after Israel occupied the territory.<sup>27</sup> Israeli officials encouraged Palestinians to emigrate after June 1967.<sup>28</sup> The Israeli military required Palestinians who left the occupied Palestinian territory

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<sup>24</sup> Human Rights Watch interview with Muhammad N., Gaza, May 20, 2011.

<sup>25</sup> Yehuda Lukacs, *Israel, Jordan and the Peace Process* (Syracuse, NY: Syracuse University Press, 1997), note 4, p. 218, citing two UNRWA reports from October and December 1967, and Daniel Dishon, ed., *Middle East Record, 1967* (Tel Aviv: Israeli Univ. Press, 1968), p. 311.

<sup>26</sup> The UNRWA total includes 240,000 people who were displaced for the first time and an additional 150,000 people who were displaced a second time, after having fled to the West Bank and Gaza during the 1948 conflict. United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), “Guide to UNRWA,” June 1995, “West Bank,” p. 9, available at [http://repository.forcedmigration.org/show\\_metadata.jsp?pid=fmo:3193](http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:3193) (accessed December 23, 2011). During negotiations in 1995, Israel estimated the 1967 refugee population at 250,000, whereas the Palestine Liberation Organization claimed it was 875,000. In August of 1967, Israel allowed 14,000 Palestinians to return to the West Bank from Jordan during “Operation Refugee”; it is not clear whether the UNRWA figures cited above take this into account. Lukacs, *Israel, Jordan and the Peace Process*, pp. 64-70; Tom Segev, “The June 1967 War and the Refugee Problem.” In the case of Gaza, the Israeli census recorded the population as 356,261 in 1967, whereas Egyptian authorities estimated the population there at 454,960 in 1966. See Perlmann, 1967 Census, Volume 1, Table J.

<sup>27</sup> Israeli historian Tom Segev cites official Israeli, US, and UK estimates, from July 1967 to June 1968, that 220,000 to 250,000 Palestinian emigrants left via bridges from the West Bank to Jordan after the war, in addition to 50,000 Palestinians who left Gaza during the first six months of 1968; it is not clear whether these figures are included in the UNRWA estimates that 390,000 Palestinians fled to Jordan due to the 1967 conflict. Nine out of ten Palestinian post-war emigrants were young men, many of whom left due to unemployment or to reunite with their families, according to “six different [Israeli] studies” from the time. Segev, “The June 1967 War and the Refugee Problem,” pp. 8 - 10.

<sup>28</sup> For example, the Israeli military government obtained lists from local Palestinian leaders (mukhtars) in Gaza of families that had been separated, and offered to pay the remaining family members to leave Gaza. According to US diplomatic records from 1968, a teenage boy whose father had already left Gaza reported to the International Committee of the Red Cross that Israeli military agents offered to pay 500 liras if he left with his mother and siblings. In addition, the Israeli military “authoriz[ed] the policy of imposing local curfews, searches, and arrests following every act of terrorism, as one means of

to leave behind the ID cards they had received from the military government, and sign or thumbprint a form declaring, in Hebrew and Arabic, that they were leaving willingly and understood that they would not be able to return without a special permit; husbands signed for their wives.<sup>29</sup> Israel deleted from the population registry Palestinians who left and remained outside the occupied Palestinian territory for periods that exceeded the duration of the “exit permits” that the Israeli military issued to them upon their departure.<sup>30</sup> In such cases, Israel subsequently refused to allow them to reside permanently in the occupied Palestinian territory. For instance, Khadija, the wife of Muhammad N., quoted above, told Human Rights Watch that she left her home in Gaza after she was initially counted in the 1967 census:

It turned out that I was supposed to come back and renew my exit permission within six months. I missed the appointment and they cancelled me, but I didn’t know about the requirement. There was nothing I could do about it. Every time I came back to Gaza after that, I had to get a visitor’s permit beforehand.<sup>31</sup>

In total, the Israeli military has stated that between 1967 and 1994 it cancelled the residency of some 140,000 Palestinians; of this total, it re-registered about 10,000 people after 1995.<sup>32</sup> Currently, there is no procedure by which Palestinians can contest or overturn what the military refers to as “ceased residency” status.

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encouraging departures” from the West Bank, according to notes from an Israeli military meeting; and encouraged emigration from Gaza by deciding that the standard of living in Gaza should be “reasonable” but only “close to that which existed before the occupation”; according to one document, this meant that Israel would not create new sources of income for refugees living in camps. The government did, however, decide to attract some refugees from Gaza to construction and agricultural jobs in the West Bank. Segev, *ibid.*

<sup>29</sup> Segev, *ibid.*, citing Israeli documents from October 1967 and U.S. diplomatic records from July and August 1968.

<sup>30</sup> See “Case Studies,” below; and see Segev, *ibid.* In some cases, Palestinians were not aware that the military had cancelled their residency.

<sup>31</sup> Human Rights Watch interview with Khadija N., Gaza City, May 20, 2011. It was not clear why Khadija N. was unaware of the need to renew her exit permit within 6 months.

<sup>32</sup> After the Palestinian Authority (PA) was established in 1994, Israel re-registered 10,000 Palestinians who had close links to the Palestinian Authority or whose cases were upheld by a joint PA-Israeli committee that operated from early 2000 until September of that year. Letter from Lt. Omer Knobler, Population Registry Department, Office of the Legal Advisor, Israeli Civil Administration, Judea and Samaria Area [West Bank], to Ido Bloom, advocate, Hamoked, March 30, 2011; see also Akiva Eldar, “Israel admits it covertly cancelled residency status of 140,000 Palestinians,” *Haaretz*, May 11, 2011, <http://www.haaretz.com/print-edition/news/israel-admits-it-covertly-cancelled-residency-status-of-140-000-palestinians-1.360935> (accessed December 23, 2011).



In September 1967, the Israeli military established a “family reunification” process by which registered Palestinians could apply for residency in the occupied Palestinian territory on behalf of first-degree relatives who had been “permanent residents” before becoming refugees abroad.<sup>33</sup> This was the only process by which Palestinians could obtain permanent residency status in the occupied Palestinian territory, including those who sought to return to their homes. However, Israel severely and apparently arbitrarily restricted eligibility for “family reunification”. For example, it excluded all men between the ages of 16 and 60 who had left from being able to return and obtain residency status.<sup>34</sup> According to one Israeli source, Israeli authorities granted around 45,000 out of 140,000 family reunification requests submitted from 1967 to 1973.<sup>35</sup>

In 1973, Israel introduced stricter criteria for family reunification, and argued—as it continues to do—that it is not obliged to uphold family reunification as a human right for Palestinians in the OPT; rather, Israel argues that family reunification is a discretionary “special benevolent act of the Israeli authorities.”<sup>36</sup> Israel has also maintained that, in deciding whether to grant family reunification requests, the authorities may take into account “security considerations,” which it defined broadly to include “political considerations relating to the international relations of the state.”<sup>37</sup> By 1979, according to one estimate, 150,000 family reunification requests were pending, but the Israeli authorities granted approximately 1,000 requests annually from 1973 to 1983.<sup>38</sup>

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<sup>33</sup> A first-degree relative is defined as a spouse, parent, child, or sibling. The “permanent residents” must have lived in Jerusalem, the West Bank, or Gaza before June 5, 1967 and left no later than July 4, 1967, according to a cabinet decision on September 10, 1967. A government decision from September 13, 1967 granted the Ministry of Interior the power to deal with the requests. The Ministry of Interior could grant reunification if a resident requested it for his or her spouse, unmarried children, or orphaned grandchildren under 16 years old, unmarried sisters, or parents over 60 with no other relatives. See B’Tselem and Hamoked, “Families Torn Apart,” p. 29.

<sup>34</sup> B’Tselem and Hamoked, “Perpetual Limbo,” p. 8.

<sup>35</sup> Meron Benvenisti estimates that Israeli authorities allowed 45,000 Palestinians to return to the occupied Palestinian territory between 1967 and 1972. The Israeli National Section of the International Commission of Jurists found that Israel granted around 50,000 requests for family reunification from 1967-1977. Benvenisti, *Judea and Samaria Lexicon* (Jerusalem: Cana, 1987), p. 21, and ICJ, *The Rule of Law in Areas Administered by Israel* (Tel Aviv: ICJ, Israel National Section, 1981), p. 86, cited in B’Tselem and Hamoked, “Families Torn Apart,” pp. 29-30.

<sup>36</sup> See, for example, HCJ 4494/91, *Sarhan et al. v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State Attorney’s Office of 18 November 1992, Section 7.

<sup>37</sup> See HCJ 263/85, *Awad et al v Head of the Civil Administration, Ramallah District, et al, Piskei Din* 40(2) 281, 283; and the State Attorney’s Office’s response in HCJ 802/79, *Samara et al. v. Commander of the Judea and Samaria Region, Piskei Din* 34(4), 1-3.

<sup>38</sup> Benvenisti, *Judea and Samaria Lexicon*, p. 21, cited in B’Tselem and Hamoked, “Perpetual Limbo,” p. 9.

Israeli authorities restricted the family reunification policy again in 1983, for the stated reason that, by that point, most “requests for family reunification [had] deviated from the original objectives of the said policy, dealing instead with families that had been created after the war.”<sup>39</sup> Israel limited family reunification to cases that met “highly exceptional and unique” humanitarian or administrative criteria. According to the Israeli human rights group B’Tselem, “figures published by various sources indicate that only a few hundred requests were approved annually after 1984.”<sup>40</sup>

The Israeli Civil Administration, the branch of the military, established in 1981, that is responsible for the Palestinian population registry, set a new hurdle for Palestinians in 1985: it began to deny visitor permits to the spouses, living outside the OPT, of registered Palestinian residents who had filed family reunification applications on their spouses’ behalf.<sup>41</sup> The Civil Administration also deemed spouses and other relatives to be illegally present in the OPT if they had overstayed their visitor permits while their family reunification requests were pending. On this basis, in 1989 Israel deported around 200 Palestinian women and children with pending family reunification applications from the occupied Palestinian territory. After these deportations of Palestinian civilians attracted international condemnation, and Israeli human rights organizations petitioned the High Court of Justice on their behalf, Israel allowed the women and children to return in June 1990 and granted them the status of “long-term visitors,” with renewable, six-month residency permits.<sup>42</sup> (The offer was also valid for similarly-situated applicants for family reunification.) Israel refused to extend that status to people who entered after June 1990, and again deported at least 10 women and children for overstaying their visitor permits in 1991.<sup>43</sup> Following fresh petitions by the Israeli rights group Hamoked, the Israeli military

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<sup>39</sup> HCJ 4494/91, *Sarhan et al. v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State Attorney’s Office of November 18, 1992, Section 6, cited in B’Tselem and Hamoked, “Perpetual Limbo,” p. 8.

<sup>40</sup> B’Tselem and Hamoked, “Perpetual Limbo,” p. 9.

<sup>41</sup> See HCJ 683/85, *Mishtaheh v. Military Commander in the Gaza Strip*, *Piskei Din* 40 (1) 309, 310 (authorizing the Civil Administration’s practice), cited in B’Tselem and Hamoked, “Perpetual Limbo,” p. 11. The Israeli military established the Civil Administration in 1981, after Israel’s peace treaty with Egypt, as part of the office for the Coordination of Government Activity in the Territory (COGAT). Israel Defense Forces, “Five facts about the Civil Administration,” May 19, 2011, <http://dover.idf.il/IDF/English/News/today/2011/05/1902.htm> (accessed December 20, 2011).

<sup>42</sup> HCJ 1979/90, *Uashra et al v. Commander of IDF Forces in Judea and Samaria* (submitted by ACRI and the National Council for the Child). See also, for example, UN Security Council Resolution 799, December 18, 1992 (which reaffirmed numerous previous resolutions and “Strongly condemns the action taken by Israel, the occupying Power, to deport hundreds of Palestinian civilians”), available at <http://www.yale.edu/lawweb/avalon/un/un799.htm> (accessed January 23, 2012).

<sup>43</sup> B’Tselem documented the deportation of 10 women and children and deportation orders against 49 others. See B’Tselem, “Renewal of Deportation of Women and Children from the West Bank on Account of ‘Illegal Residency,’” October 1991, p. 16.

stated in 1992, and again in 1994, that it would grant long-term visitor permits to people who entered the occupied Palestinian territory during later time periods.<sup>44</sup>

The Israeli military has not always implemented its stated policies regarding these so-called “High Court populations” of Palestinians (those who entered during time periods specified in court proceedings). In some cases the Civil Administration issued members of these groups visitor permits valid for only one month rather than six months; from November 1995 to August 1996 it refused to extend the visitor permits at all, and stopped processing some family reunification requests.<sup>45</sup> In 2004, the Civil Administration, which was still processing the family reunification applications of some members of these groups, altered its policy and introduced a contrary, retroactive requirement that the person being sponsored for residency must have been physically present and had their “center of life” in the occupied Palestinian territory for an unspecified prior period. Previously, as noted, the Civil Administration had deported these Palestinians from the occupied Palestinian territory, and had refused to process family reunification applications on behalf of any person who was present in the territory.<sup>46</sup> Israel has not clearly defined its “center of life” criteria.<sup>47</sup>

## The Oslo Period Prior to the Second *Intifada* (1995 -2000)

In 1995, Israel and Palestinian representatives signed an Interim Agreement, commonly referred to as the second “Oslo accord,” that formally transferred “powers and responsibilities in the sphere of population registry and documentation in the West Bank and Gaza Strip ... to the Palestinian side.”<sup>48</sup> Under the Agreement, “the Palestinian side shall maintain and administer a population registry and issue certificates and documents of all types” (Article 2), and is obliged to “provide Israel, on a regular basis,” with information regarding the residents to whom it granted passports and identification cards.

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<sup>44</sup> In November 1992, Israel granted long-term visitor permits to spouses of Palestinian residents who entered the occupied Palestinian territory between January 1, 1990, and August 31, 1992. In August 1993, Israel granted their family reunification applications. In February 1994, Israel announced that it would grant long-term visitor permits to foreigners who married Palestinian residents and were present in or had permits to enter the occupied Palestinian territory between September 1, 1992, and August 31, 1993. See B’Tselem and Hamoked, “Perpetual Limbo,” p. 12.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., pp. 24-27.

<sup>47</sup> In one case, Israeli authorities determined that a Palestinian’s “center of life” was outside the occupied Palestinian territory by checking “the period that the aforementioned person’s stay was continuous and prolonged together with their spouses in the area, from the beginning of the 1970s” to 2006. Letter to Hamoked from the office of the legal advisor for the West Bank, March 2, 2006, cited in B’Tselem and Hamoked, “Perpetual Limbo,” p. 26.

<sup>48</sup> Interim Agreement, Annex III, Appendix I, Article 28 (1).

The Palestinian side must also “inform Israel of every change in its population registry, including, inter alia, any change in the place of residence of any resident” (Article 10 a-b). Pursuant to the agreement, the Palestinian side could exercise these rights regarding persons whom Israel had already registered as residents. With regard to the registration of new residents, according to the agreement, “the Palestinian side has the right, with the prior approval of Israel, to grant permanent residency” to foreign investors, spouses, children of Palestinian residents, and other persons, for humanitarian reasons, in order to promote and upgrade family reunification (article 11 a-c).

The agreement also granted to the Palestinian side “the right to register in the population registry all persons who were born abroad or in the Gaza Strip and West Bank, if under the age of sixteen years and either of their parents is a resident of the Gaza Strip and West Bank” (Article 12). Previously, from the first *intifada* in 1987 until January 1995, the Israeli military stopped registering all children (under 16) whose mother was not a resident of the OPT, even if the child was born there, and all children born abroad who were more than five years old, regardless of either parent’s residency status.<sup>49</sup>

The Interim Agreement thus provided, in general, that Israel was to maintain a copy of the population registry, which it would update with information provided to it by the Palestinian side, which would maintain the master document. However, Israel’s version of the registry continued to function as the original, because Israeli soldiers on the ground would act based on Israel’s version of the registry. In practice, the Israeli military authorities retained control of the population registry after signing the Interim Agreement. In the case of family reunification requests, for example, Israeli authorities cited the clause of the agreement that granted them the power of “prior approval” over the registration of new residents. Israel also capped the number of new residents whom the Palestinian Authority would be allowed to register at an annual quota; Israel announced a first quota of 2,000 family unification approvals in August 1993 as a positive political “gesture” in the context of ongoing peace talks. According to Khalil Faraj, deputy director of the PA’s Civil Affairs Ministry in Gaza, “the PA started in 1994 by asking Israel for 800 ID cards [i.e.

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<sup>49</sup> Order Regarding Identity Cards and Population Registry (Judea and Samaria), No. 297, 1969, Section 11A, as amended by Order No. 1208, of September 13, 1987. The order was cancelled in 1995 by the Order Regarding Identity Cards and Population Registry (Amendment No. 23) (Judea and Samaria), Order No. 1421, 1995. The 1995 order required that at least one parent was a resident and that the child could prove that their permanent residence was in the occupied Palestinian territory; it was supplanted in turn by the Interim Agreement.

newly-registered residents] for Gaza per year, and 1,200 for the West Bank. The quota request got bigger each year.”<sup>50</sup> In 1995, Israel refused the PA’s demand to end or increase the quota; from 1996 to 1998, the PA protested by not forwarding family reunification requests to Israel for approval.<sup>51</sup>

By mid-1998, there was a backlog of more than 17,500 requests for family reunification.<sup>52</sup> Israel raised the quota to 3,000 a year in October 1998, and to 4,000 a year in early 2000.<sup>53</sup> This higher quota remained in effect for less than a year, as Israel suspended processing requests after the outbreak of the second *intifada* in late September 2000.

Ayman Qandil, a West Bank-based official with the Palestinian Authority Ministry of Civil Affairs responsible for dealing with the population registry, described relations between the Palestinian and Israeli sides from 1995 to 2000:

We submitted lists of names to the Israelis to include in the registry, which was more practical than asking them to deal with applications on an individual basis. Under the Oslo agreement, the PA Ministry of Interior was supposed to get the file, but our Civil Affairs Ministry took it over at the beginning of 2000, because we were the ones charged with liaison with the Israeli authorities, and they had maintained control over the registry. The process [for Palestinians was that] you’d go to the Interior Ministry with your application, and they’d pass it to us at Civil Affairs, and we’d tell the Israelis, and they’d reply only if there was a security objection.<sup>54</sup>

The PA’s nominal authority to issue new ID cards (with prior Israeli approval) was limited in practice by Israel’s actual control over Palestinian movement to, from, and within the occupied Palestinian territory (Israel withdrew its settlers and ground forces from Gaza in 2005 but subsequently continued to control movement in and out of Gaza, including on

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<sup>50</sup> The PA has continued to process requests related to the population registry after Hamas violently took control of Gaza in 2007; Israel refuses to deal with the Hamas authorities. Human Rights Watch interview with Khalil Faraj, Deputy Director, PA Ministry of Civil Affairs in Gaza, Gaza City, May 25, 2011.

<sup>51</sup> B’Tselem and Hamoked, “Families Torn Apart,” pp. 51-58.

<sup>52</sup> Amira Hass, “Families by Quota,” *Haaretz*, June 15, 1998.

<sup>53</sup> B’Tselem and Hamoked, “Perpetual Limbo,” p. 13, citing information from the Palestinian Authority’s Civil Affairs Ministry.

<sup>54</sup> Human Rights Watch interview with Ayman Qandil, PA Ministry of Civil Affairs, Ramallah, May 26, 2011.

the Egyptian border, until 2007).<sup>55</sup> Amira Hass, writing in the Israeli daily *Haaretz*, described the situation:

The PA cannot act unilaterally and issue Palestinian identity cards to people without Israel's consent, because [Israel's] control over the PA population registry is rooted in its control over the international border crossings and Palestinian movement within the West Bank: the minute an Israeli soldier at a checkpoint or border crossing checked such a card [issued by the PA without Israeli approval], he would discover that its holder does not appear in Israel's computers, and treat the card as invalid.<sup>56</sup>

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<sup>55</sup> See "Continuing Effects of the Permit Freeze in Gaza," below.

<sup>56</sup> Amira Hass, "Gaza after the pullout / Israeli control over the population registry means continued control over Gaza Strip," *Haaretz*, September 26, 2005, <http://www.haaretz.com/print-edition/news/gaza-after-the-pullout-israeli-control-over-the-population-registry-means-continued-control-over-gaza-strip-1.170716> (accessed January 23, 2012).

## II. Israel’s “Freeze” of the Population Registry

Following the outbreak of the second *intifada* on September 29, 2000, the Israeli Civil Administration “froze” most changes to the population registry and this freeze remains in effect. The only changes it regularly continues to process are requests to register children under 16 years old who were born to a Palestinian parent who was a registered resident, and where the child is physically present in the territory at the time of application for residency.<sup>57</sup> It has ceased processing other requests.

According to Ayman Qandil, the Palestinian official at the Palestinian Authority Ministry of Civil Affairs responsible for dealing with the population registry, Israel did not provide the PA or affected individuals with prior notification of its freeze policy, but stopped accepting or acknowledging receipt of cases presented to it by the PA for family reunification, changes of address for Palestinians who had moved from Gaza to the West Bank, and other categories that were included in the Interim Agreement, such as “visas for foreigners who were working in the West Bank for NGOs or the PA, and requests from investors from other countries who were supposed to get visas because they were going to do business here.”<sup>58</sup>

Israel in 2007 pledged, as a political gesture, to process a quota of 50,000 applications for residency filed by registered Palestinians on behalf of unregistered parents, children, or spouses (called the “family reunification” procedure); it has processed around 33,000 applications. Israel similarly pledged in 2011 to process 5,000 applications by Palestinians to change their registered addresses from Gaza to the West Bank, because Israel considers them to be living in the West Bank illegally.

These positive steps fall short of what is needed to remedy the situation of Palestinians affected by Israel’s refusal, for more than 11 years, to change or update the population registry on an ongoing basis. By ending the family reunification procedure, the “freeze” ended the only available means for registered Palestinians to live with their families on

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<sup>57</sup> In cases where Palestinians petitioned Israeli authorities to process family reunification requests, according to B’Tselem (based on a review of “dozens of files”), the Israeli authorities took “more than a year and sometimes a number of years” to provide any substantive response. If the case involved a child who turned 16 during the procedure, as a rule, the child could not “be registered in the population registry by the normal procedure, and had to turn to the frozen family reunification procedure.” B’Tselem and Hamoked, “Perpetual Limbo,” p. 19.

<sup>58</sup> Human Rights Watch interview with Ayman Qandil, Palestinian Authority Ministry of Civil Affairs, Ramallah, May 26, 2011.

terms that Israel considers lawful. The “freeze” also closed off the only avenue for Palestinians who were living in the West Bank but are registered as residents of Gaza to change their addresses. Whenever they seek to cross a West Bank checkpoint or to travel abroad, both “Gazans” and unregistered Palestinians or their families are at risk of harassment by Israeli security forces, detention, deportation abroad, forcible transfer to Gaza, or a ban on reentry. Israel’s “freeze” policy has separated families and unlawfully restricted Palestinians’ freedom of movement and their movement-dependent rights to work, study, seek medical care, and many other rights.

## Freeze on Address Changes and “Illegal Presence” in the West Bank

Israel registers the addresses of Palestinian residents of the occupied territory, and ID cards indicate whether the bearer is a resident of the West Bank or Gaza. Military Order 297 of 1969, which remained valid until 1995, required residents of the occupied Palestinian territory to notify the Israeli military of a change of address within 30 days.<sup>59</sup> The 1995 Interim Agreement granted the Palestinian side the right to change the registered addresses of Palestinian residents.<sup>60</sup> Since 2000, however, Israel has refused to reflect most changes of address in the population registry. As a result, Israel has prevented Palestinians who had moved from Gaza to the West Bank from changing their addresses and thereby making their presence in the West Bank legal.<sup>61</sup> Israeli authorities have subsequently claimed that Palestinians who are registered as Gaza residents, but who are living in the West Bank, are there illegally.

The Israeli military estimates that around 35,000 Palestinians whose registered address is Gaza may now be present in the West Bank “illegally.”<sup>62</sup> Prior to the second *intifada*,

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<sup>59</sup> Order Regarding Identity Cards and the Population Registry (Judea and Samaria), No. 297, 1969, Section 13 (“Where a change or amendment occurred in one of the particulars detailed in Section 11, a resident who has received an identification card must notify the population registry bureau in the jurisdiction of his place of residency as established by the competent authority, thereof within 30 days.”)

<sup>60</sup> Unlike the case of registering new residents such as the foreign spouses of registered Palestinians, where Israel retained the right of prior approval, with regard to address changes, the Interim Agreement requires only that “the Palestinian side shall inform Israel of every change in its population registry, including, inter alia, any change in the place of residence of any resident.” Interim Agreement Annex III, Appendix I, Article 28 (10b).

<sup>61</sup> Gisha, “Disengagement Danger: Israeli Attempts to Separate Gaza from the West Bank,” February 2006, [http://www.gisha.org/UserFiles/File/publications\\_english/Disengagement\\_Danger\\_6feb\\_06.pdf](http://www.gisha.org/UserFiles/File/publications_english/Disengagement_Danger_6feb_06.pdf) (accessed January 23, 2012), citing a letter from Avi Biton, Office of the Coordinator of Operations in the Territory, November 17, 2004, and HCJ 5504/03, *Kachlut v. West Bank Military Commander*, State’s Response, February 25, 2004, para. 4.

<sup>62</sup> This figure reflects the total number of cases described in a letter from Col. Uri Mendes, Israeli military Coordination of Government Activities in the Territory office, to Hamoked, June 2, 2010; the details are discussed below.



Israeli military records show, 935 residents of Gaza traveled to the West Bank using individual permits to enter, and remained there, and another 7,919 Gaza residents entered the West Bank according to the “safe passage” procedure and remained there subsequently.<sup>63</sup> In addition, between late 2000 and April 2010, according to the Israeli military, 23,348 residents of Gaza used individual transit permits to travel to the West Bank, and have remained there.<sup>64</sup> Even Palestinians who were born in the West Bank are considered to be there illegally if their parents are registered as Gaza residents: according to the military, “2,479 Palestinians who were born in Judea and Samaria [Israel’s term for the West Bank] are registered as residents of the Gaza Strip.”<sup>65</sup>

Beginning in 2003, Israeli authorities arrested and forcibly transferred some Palestinians from the West Bank, including people who had homes, families, and jobs there, to Gaza on the basis that their registered address was there.<sup>66</sup> Israeli authorities stated that the deportations were conducted because Palestinians registered as Gaza residents were prohibited from being present in the West Bank, unless they had special permits (for example, temporary permits allowing for treatment in hospitals). Israeli rights groups have argued that Israeli policy since 2000 has created a “one-way street” from the West Bank to Gaza, citing offers by Israeli military authorities in various cases to grant West Bank residents a “single, one way permit to travel to Gaza” if they promise to remain there or sign undertakings not to seek to return to the West Bank in exchange for permission to travel to Gaza; in such cases Israeli authorities were willing to change the applicant’s address from the West Bank to Gaza.<sup>67</sup> Between 2004 and 2010, Israel deported 94 Palestinians from the West Bank to Gaza, but apparently transferred none in the other direction.<sup>68</sup> Israeli rights groups have noted a similar trend in the small minority of cases

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<sup>63</sup> The military cautioned that these figures “do not reliably reflect reality” because of partial records and other problems. Letter from Col. Uri Mendes, Israeli military Coordination of Government Activities in the Territory office, to Hamoked, June 2, 2010.

<sup>64</sup> Palestinian residents of Gaza who meet certain criteria, for whom the Palestinian Authority guarantees to pay, and who pass a security screening process may apply for individual medical permits to travel through Israel in order to seek medical treatment in Israel, East Jerusalem, and the West Bank.

<sup>65</sup> Letter from Col. Uri Mendes, Israeli military Coordination of Government Activities in the Territory office, to Hamoked, June 2, 2010.

<sup>66</sup> Gisha, “Disengagement Danger,” citing HCJ 5504/03, *Kachlut v. IDF Commander in the West Bank*; HCJ 4465/05 *Gdili v. IDF Commander in the West Bank*.

<sup>67</sup> See cases cited by B’Tselem and Hamoked, “Separated Entities: Israel Divides Palestinian Population of West bank and Gaza Strip,” September 2008, p. 4, [http://www.btselem.org/sites/default/files/publication/200809\\_separated\\_entities\\_eng.pdf](http://www.btselem.org/sites/default/files/publication/200809_separated_entities_eng.pdf) (accessed December 20, 2011).

<sup>68</sup> Letter from Col. Uri Mendes, Israeli military Coordination of Government Activities in the Territory office, to Hamoked, June 2, 2010. It is not clear if this number includes around 30 persons whom Israel expelled to Gaza but allowed to return to the

where Israeli authorities processed Palestinian requests for changes of address between Gaza and the West Bank since imposing a general “freeze” on such changes in 2000. Between 2002 and May 2010, Israel approved 388 requests by residents of Gaza to change their registered address to the West Bank, and 629 requests of West Bank residents to change their address to Gaza.<sup>69</sup>

Israel’s position is that it has always required military permission for any Palestinian to enter or be present in the West Bank—before as well as after the outbreak of the second *intifada* in 2000—on the basis of a 1967 military order declaring the West Bank to be a closed area for which all persons required military permits to enter and stay.<sup>70</sup> According to the state attorney, “Israel retained this power even after the transfer of civil powers to the Palestinians” under the 1995 Interim Agreement, and simply agreed to process Palestinian requests for address changes until September 2000, when “it was decided that as a rule, requests to permanently move from one region to the other would not be handled.”<sup>71</sup> The Israeli state attorney has repeatedly urged domestic courts not to adjudicate issues regarding Gazans’ residency in the West Bank on the basis that it is a political question relating to foreign relations between Israel and the PA.<sup>72</sup>

As discussed above, the Interim Agreement states that the Palestinian side need only notify the Israeli side of changes of address after the fact; Israeli military orders that incorporated the Interim Agreement contained no provision authorizing the military to expel a Palestinian from the West Bank to Gaza for failing to update his or her “place of residence.” Israeli rights groups have thus argued that subsequent military orders authorizing such expulsions are arbitrary within the framework of Israeli domestic law, in

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West Bank after the Sharm el-Sheikh summit (in February 2005). B’Tselem and Hamoked, “One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan,” March 2005, [http://www.btselem.org/publications/summaries/200503\\_gaza\\_prison](http://www.btselem.org/publications/summaries/200503_gaza_prison) (accessed January 23, 2012), p. 20.

<sup>69</sup> Letter from Col. Uri Mendes, Israeli military Coordination of Government Activities in the Territory office, to Hamoked, June 2, 2010.

<sup>70</sup> HCJ 4487/08, *Physicians for Human Rights v. IDF Commander in Gaza* (not published), Sept. 4, 2008, para. 5.

<sup>71</sup> B’Tselem, “One Big Prison,” citing HCJ 5504/03, *Kahalot et al. v. IDF Commander in the West Bank et al.*, Preliminary Response on behalf of the Respondents, Section 4.

<sup>72</sup> See for example the state’s preliminary response to HCJ 6685/09, *Kahouji v. IDF Commander in the West Bank*; and HCJ 3519/05, *Ward v. IDF Commander in the West Bank*, paragraph 3 (“the issue of changing the place of residency from the Gaza Strip to the West Bank is a political issue concerning the relationship between Israel and the Palestinian Authority and it was also discussed in the talks held between the parties until recently”—the ruling was issued in 2006, before Hamas took over the government of Gaza in 2007), cited in p. 26, Alon Margalit and Sarah Hibbin, “Unlawful presence of Protected Persons in Occupied Territory? An Analysis of Israel’s Permit Regime and Expulsions from the West Bank under the Law of Occupation,” *Yearbook of International Humanitarian Law*, Vol. 13, (2010).

addition to violating Israel's obligations under the law of occupation to respect Palestinians' human rights.

Israeli human rights NGOs challenged the change in Israeli policy before the High Court, arguing that the military does not have the authority to exclude Palestinians residing in Gaza from residency rights in the West Bank or to "deport" Palestinians, whose registered address is in Gaza, from the West Bank to the Gaza Strip.<sup>73</sup> The groups argued that the policy would retroactively render large numbers of Palestinians "illegally present" even though they had entered the West Bank lawfully, such as the thousands of people who used the "safe passage" process in 1999 and 2000, when the Israeli military gave them permits to cross through Israel but did not provide or require a separate permit to reside in the West Bank. According to the military, "Gaza residents are not 'exempt' from the duty to obtain permits to enter and stay in Judea and Samaria. [...] Anyone having entered the area prior to the year 2000 is required to return to his home in Gaza upon cancellation of the safe passage."<sup>74</sup>

The Israeli High Court has held that under certain circumstances, and if accompanied by procedural protections such as a hearing, the military can "assign the residence" of a Palestinian from the West Bank to the Gaza Strip, forcing that person to move to Gaza, as a "preventive" measure needed for security reasons.<sup>75</sup> According to this procedure, the military commander of the West Bank must issue a "Designation of Residence Order" notifying those designated for expulsion of the intent to remove them, in order to enable the individual to appeal the decision before a military appeals committee and to petition the court.<sup>76</sup>

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<sup>73</sup> H.C.J. 11595/05, *Najar v. IDF Commander in the West Bank*, Dec. 17, 2006 (the Court upheld the military's refusal, on security grounds, to grant a permit that would allow the petitioner, a medical student, to practice at a hospital in Jerusalem; the military said it would consider his request to change his address from Gaza to the West Bank; the petitioner, who had resided in Abu Dis since 1999, requested a permit to work in Jerusalem and not to be deported from Abu Dis to Gaza), see summary at <http://www.icrc.org/ihl-nat.nsf/39a82e2ca42b52974125673e00508144/ff99d7631d518e14c12575bc0034f9d4!OpenDocument> accessed December 20, 2011).

<sup>74</sup> Letter from Judea and Samaria Area, Office of the Legal Advisor (Civil Administration), to Dalia Kerstein, Executive Director, Hamoked, May 3, 2010, available at [http://www.hamoked.org/files/2010/112305\\_eng.pdf](http://www.hamoked.org/files/2010/112305_eng.pdf) (accessed December 20, 2011).

<sup>75</sup> H.C.J. 7015/02, *Ajuri et al. v. IDF Commander in the West Bank et al.*, P.D. 56(6) 352.

<sup>76</sup> Security Provisions Order (Judea and Samaria), No. 387, 1970, Article 86; the Security Provisions Order was replaced by Security Provisions Order (Judea and Samaria), No. 1651, 2009 in April 2010. Article 86 from Order No. 387 was replaced by article No. 296 in Order No. 1651, but with no substantive change.

In contrast to expulsion for security reasons, however, the military did not issue a “Designation of Residence Order” or otherwise give prior notice to any of the Palestinians whom it deported on the grounds of being illegally present in the West Bank.<sup>77</sup> Unlike individuals designated as security threats, Palestinians who were unable to change their addresses from Gaza to the West Bank were deported without a hearing.<sup>78</sup> In response, the High Court ruled that the military “ought to” create a procedure that granted military judicial review to detained Palestinians pending their deportation, “according to clear and defined rules.”<sup>79</sup>

As a result, according to the state attorney, the Israeli military issued two orders that came into effect in April 2010. Order No. 1649 creates a military judicial committee to review the cases of Palestinians who are subject to deportation, a form of judicial process that did not exist under previous military orders.<sup>80</sup> The order provides that the military must bring the detainee’s case before a committee of military judges within eight days, but that the military could deport the detainee within 72 hours. The military has stated that it “intends” to inform the person slated for deportation of his rights within those 72 hours, including to have a person notified of his detention and to request the military committee to review his deportation order.<sup>81</sup> Before the military order came into force, Israel had deported some Palestinians to Gaza immediately upon arrest without detaining them for 72 hours.<sup>82</sup>

While Order No. 1649 creates a hearing, its companion, Order No. 1650, appears to dramatically increase the number of Palestinians who could be subject to deportation.<sup>83</sup> According to Order No. 1650, any person who entered the West Bank “unlawfully” or “who is present in the [West Bank] and does not lawfully hold a permit” is considered an “infiltrator” who may be imprisoned and deported.<sup>84</sup> The military subsequently stated that

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<sup>77</sup> The military instituted a new procedure in 2011, discussed below, with Order No. 1649.

<sup>78</sup> See B’Tselem, “One Big Prison,” p. 20.

<sup>79</sup> HCJ 2737/04, *Kafarneh v. the IDF Commander in Gaza*.

<sup>80</sup> Order on Security Provisions, No. 1649, Amendment No. 112 (Judea and Samaria), 2009. See also Security Provisions Order (Judea and Samaria), No. 1651, 2009, articles 305-315.

<sup>81</sup> Letter from Judea and Samaria Area, Office of the Legal Advisor (Civil Administration), to Dalia Kerstein, Executive Director, Hamoked, May 3, 2010.

<sup>82</sup> See the discussion of the Berlanty Azzam case, below.

<sup>83</sup> See also Security Provisions Order (Judea and Samaria), No. 1651, 2009, articles 300-304.

<sup>84</sup> Order Regarding Prevention of Infiltration, No. 1650, Amendment No. 2; the order revises the definition of an “infiltrator” as a person who entered the West Bank from Jordan, Syria, Lebanon, or Egypt without an Israeli military permit, or who stayed in the area after the permit expired in Order Regarding Prevention of Infiltration (Judea and Samaria), No. 329, 1969.

any person who lacks a military permit to reside in the West Bank would be considered “illegally” present.<sup>85</sup> As discussed, the military estimates that around 35,000 Gazan Palestinians currently live in the West Bank; the new military order renders them criminal infiltrators even though they are registered as residents of the occupied Palestinian territory.<sup>86</sup> Human Rights Watch is not aware that the Israeli military has criminally prosecuted or forcibly removed any Palestinians on the basis of Military Order No. 1650. Before the order came into force, Israel’s state attorney informed the High Court of Justice that the state had the authority to deport anyone “illegally” present in the West Bank, but that the general policy was not to deport “Gazans” who had moved to the West Bank before 2000.<sup>87</sup>

In prior cases, Israel had justified its forcible transfer of Palestinians from the West Bank to Gaza on the grounds that the occupied Palestinian territory is a “single territorial unit” and that their forcible transfer to Gaza amounted to “assigning their residence” within an occupied territory for security reasons, which the Geneva Conventions permit, rather than “deporting” them, which the Geneva Conventions prohibit as a war crime.<sup>88</sup>

Forcibly transferring Palestinians from the West Bank to Gaza would be consistent with Israel’s human rights obligations only in cases where Israeli authorities could show evidence that the person presented a clear security threat, that forcible transfer to Gaza would remove the threat, that forcible transfer was absolutely necessary, and where the authorities balanced the necessity of the transfer against the harm to the person’s rights, such as the right to a family. Israel would be obliged to allow the person to see and challenge the evidence against them and to present their own evidence.

The High Court has failed to overturn the military’s deportation of persons from the West Bank to Gaza for whom the military did not claim to present any security threat and whom it deported without granting them a hearing or any other process. For example, in 2009 the

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<sup>85</sup> Letter from Judea and Samaria Area, Office of the Legal Advisor (Civil Administration), to Dalia Kerstein, Executive Director, Hamoked, May 3, 2010.

<sup>86</sup> Letter from Col. Uri Mendes, Israeli military Coordination of Government Activities in the Territory office, to Hamoked, June 2, 2010.

<sup>87</sup> The state’s preliminary response in HCJ 6685/09, Kahouji v. IDF Commander for the West Bank, November 2009, (Hamoked requested the Court to prevent the forcible transfer of a Palestinian from Hebron to the Gaza Strip on the basis of his registered address).

<sup>88</sup> HCJ. 7015/02, *Ajuri et al. v. West Bank Military Commander et al*, P.D. 56(6) 352.

Israeli military blindfolded, handcuffed, and deported Berlanty Azzam, a student at Bethlehem University, two months before her final exams on the sole basis that she was “illegally present” in the West Bank. The state attorney did not present any evidence that she constituted a security threat, and argued rather that she was “illegally present” in the West Bank because she did not possess a valid “permit to remain” in the West Bank. Israeli authorities had denied her request for permission to study at a West Bank university, and she had entered lawfully in 2005 on a permit issued for religious worship; the military subsequently had denied her repeated applications to change her address from Gaza to the West Bank. The court rejected her petition to be allowed to return to the West Bank to complete her studies on the grounds that she had misused her permit in 2005.<sup>89</sup>

The military first began to issue “permits to remain” in the West Bank to Palestinian residents of Gaza in November 2007.<sup>90</sup> As the Azzam case indicates, Israel does not consider education to be a right that obliges it to grant permits to Palestinians from Gaza to remain in the West Bank in order to study. The Israeli military has argued, and the High Court has accepted, that “the universities [of the West Bank] are ‘hothouses’ for breeding terrorists,” where students from Gaza could become dangerous even if they have never taken hostile actions in the past.<sup>91</sup> The court, while acknowledging that “in an ideal world individualized investigations would be the best way to achieve a just outcome”, nonetheless accepted the argument that more attacks against Israelis would likely result if the military individually screened Palestinian applicants seeking to travel for educational reasons from Gaza to the West Bank, rather than their current policy of a blanket refusal to issue permits for education.<sup>92</sup> Similarly, according to Israeli policy as determined by the deputy minister of defense, “a family relationship, in and of itself, does not qualify as a

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<sup>89</sup> “Israel’s High Court Decides: Berlanty Azzam Not Allowed to Finish Her BA at Bethlehem University,” Gisha press release, December 9, 2009, [http://www.gisha.org/item.asp?lang\\_id=en&p\\_id=586](http://www.gisha.org/item.asp?lang_id=en&p_id=586) (accessed November 25, 2011).

<sup>90</sup> Letter from the spokesperson for the Coordinator of Government Activities in the Territory to Hamoked in response to an appeal under the Freedom of Information Law, May 21, 2008, cited in Hamoked and B’Tselem, “Separated Entities,” p. 2.

<sup>91</sup> According to the High Court, “...the universities of Judea and Samaria serve as ‘hothouses’ for breeding terrorists, and even a person who only comes to study, and does not arrive with terrorist intentions, is likely to be influenced by this environment.” HCJ 11120/05, *Hamdan v Major General, GOC Southern Command* (not published), August 7, 2007, paras. 8, 16, available at [http://spg.org.il/docs\\_html/eng/Eng\\_students/Eng\\_student\\_legal/doc%20ofull\\_eng%20stu\\_legal\\_06.pdf](http://spg.org.il/docs_html/eng/Eng_students/Eng_student_legal/doc%20ofull_eng%20stu_legal_06.pdf) (accessed November 25, 2011).

<sup>92</sup> According to the High Court, “...the 16-35 age group is central to terrorist activities, with students playing a prominent role among this group. [...] There is no denying that in an ideal world, individualized investigations would be the best way to achieve a just outcome [...]. However, such investigations arouse many difficulties in practice. [...] in terms of an individualized investigation system, it is not unreasonable to assume that it will likely lead to an increase in terrorist activity in Israel...”. HCJ 11120/05, *Hamdan v Major General, GOC Southern Command*, *ibid.*

humanitarian reason that would justify settlement by Gaza residents” in the West Bank.<sup>93</sup> The extraordinarily broad security rationale for denying Gaza residents the right to travel to the West Bank to study or even to visit family violates Israel’s human rights obligations, which permit infringing these rights only according to narrowly-tailored security requirements applicable on an individual basis.

Currently, according to the Israeli military, only Palestinians who are married with children, who can prove that they were present in the West Bank for the past eight years continuously, who pass security and police clearances, and who provide “humanitarian” grounds are eligible to apply for a temporary “permit to remain” in the West Bank.<sup>94</sup> Palestinians who obtain “permits to remain” must obtain advance permission, known as “coordination,” from Israel and a “non-objection certificate” from Jordanian authorities before being allowed to leave the West Bank (see below).

Israeli military policy is extremely restrictive regarding exceptions to the freeze on changes of address from Gaza to the West Bank. Under Israeli policy, three types of Palestinians are eligible to change their address from Gaza to the West Bank:

- a) A resident of Gaza who suffers from an ongoing (chronic) medical condition which requires assistance by a family member who is a resident of the Judea and Samaria Area, and who has no other family member (not necessarily of the first degree) who is a resident of Gaza who is able to assist the patient.
  
- b) A minor resident of Gaza who is under 16 years of age, where one of the parents, a Gaza resident, died and the other parent is a resident of the Judea and Samaria area, and there is no other relative who is a Gaza resident who can take care of the minor. If need be, the quality and extent of the existing relationship with the parent who is a Judea and Samaria area

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<sup>93</sup> Office of the Coordinator of Government Activities in the Territory, submission to the High Court, March 8, 2009, para. 3, available at [http://spg.org.il/docs\\_html/eng/Eng\\_family/military/doc%20full\\_eng%20family\\_military\\_02.pdf](http://spg.org.il/docs_html/eng/Eng_family/military/doc%20full_eng%20family_military_02.pdf) (accessed November 25, 2011).

<sup>94</sup> Letter from the Spokesperson for the Coordinator of Government Activities in the Territory to Hamoked in response to an appeal under the Freedom of Information Law, May 21, 2008.

resident will be evaluated in relation to the degree, quality and extent of the relationship with other relatives in Gaza.

c) An elderly person (above the age of 65) who is a resident of Gaza and who is in a needy situation, which requires the handling and supervision of family relative who is a resident of the Judea and Samaria Area, who can assist him. In the event that it is necessary, the nature and scope of the existing relationship with the family relative who is a resident of the Judea and Samaria Area shall be examined in relation to the nature and scope of the relationship with other family relatives in Gaza.<sup>95</sup>

On February 4, Quartet Representative Tony Blair and the Government of Israel announced, as part of a package of measures for Gaza, the West Bank, and East Jerusalem, that Israel “has agreed to authorize 5,000 West Bank residents who currently hold Gazan IDs to change their address for ID purposes to the West Bank.”<sup>96</sup>

Ayman Qandil, the official from the PA Civil Affairs Ministry, told Human Rights Watch:

We tried to inform people as much as possible about this move, but we received slightly less than 4,000 names, not 5,000. All of the names on our list were older than 16 years, of course. So Civil Affairs submitted all the roughly 4,000 names to the Israelis, and then on April 6 they told us that they’d approved the address changes for 298 names.<sup>97</sup>

There were no apparent criteria for the names approved, and the Israeli side did not communicate any objections to any names, Qandil said. On August 2, the Palestinian daily *Ma’an* published the names of another 1,956 Palestinians whose address changes from

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<sup>95</sup> Ibid., para. 10.

<sup>96</sup> Office of the Quartet Representative, “Package of measures agreed between the Government of Israel and the Quartet Representative,” February 4, 2011, <http://www.quartetrep.org/quartet/news-entry/package-of-measures-agreed-between-the-government-of-israel-and-the-quartet/> (accessed November 25, 2011).

<sup>97</sup> Human Rights Watch interview with Ayman Qandil, Palestinian Authority Ministry of Civil Affairs, Ramallah, May 26, 2011.



Gaza to the West Bank had been approved.<sup>98</sup> The criteria for choosing the names to be approved were not stated.

By the end of October 2011, Israel had processed around 2,775 applications, from a total of 3,700 submitted by the Palestinian side, according to Gisha, the Israeli rights group that has tracked the process.<sup>99</sup>

Some Palestinians whose registered address is in Gaza have obtained renewable, three- or six-month “permits to remain” in the West Bank. With the permits, which the Israeli military began to issue in 2007, they can pass through the scores of checkpoints within the West Bank.<sup>100</sup> (The Israeli military maintains permanent checkpoints at crossing points from the West Bank into Israel, as well as within the West Bank, notably at crossing points in the separation barrier around East Jerusalem and elsewhere in the barrier, on roads leading to settlements, and elsewhere in “Area C”, in which Israel maintains total control. Area C is contiguous, and Palestinians must pass through it in order to travel between any two cities in the territory as well as between many towns and villages. Israeli settlements are located in Area C.) Nonetheless, many Palestinians said that they still limit their travel as much as possible. As one Palestinian man put it, “In general I don’t move around much in order to avoid any friction with soldiers at the checkpoints, who can detain you for half an hour or longer when they see you’re from Gaza, checking their records or just giving you a hard time.”<sup>101</sup> Permit-holders can also leave and re-enter the West Bank, via the Allenby Bridge border crossing with Jordan, if they obtain advance permission from the Israeli military, known as “coordination,” described below.

Several Palestinians living in the West Bank described different occasions when Israeli authorities temporarily stopped renewing “permits to remain” altogether—for four months

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<sup>98</sup> “Second List of Gazans who Obtained Approval to Change their Address to the West Bank [القائمة الثانية من أبناء غزة [الحاصلين على موافقة لتغيير عنوانهم للضفة],” Ma’an, August 2, 2011, linking to [http://www.maannews.net/Files/Change\\_Address\\_List.pdf](http://www.maannews.net/Files/Change_Address_List.pdf) (accessed August 10, 2011).

<sup>99</sup> Email from Gisha to Human Rights Watch, December 2, 2011; on file with Human Rights Watch.

<sup>100</sup> According to the United Nations Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory, as of September 2011 there were 522 permanently staffed Israeli checkpoints, partial checkpoints (staffed on an ad-hoc basis), and unstaffed obstacles, including roadblocks, earth mounds, earth walls, road gates, road barriers, and trenches in the West Bank. OCHA, “West Bank Movement and Access Fact Sheet,” September 2011, [http://www.ochaopt.org/documents/ocha\\_opt\\_MovementandAccess\\_FactSheet\\_September\\_2011.pdf](http://www.ochaopt.org/documents/ocha_opt_MovementandAccess_FactSheet_September_2011.pdf) (accessed December 20, 2011).

<sup>101</sup> Human Rights Watch interview with Dr. Omar Awad Allah, Ramallah, May 26, 2011.

in 2008, according to one man, a six-month period for another.<sup>102</sup> During these periods, they said, they refrained from traveling within the West Bank or attempting to leave.

For permit-holders wishing to cross to Jordan, the PA Civil Affairs office contacts the Israeli Civil Administration office located at the Erez crossing on Gaza's northern perimeter, to request "coordination" for them to leave the West Bank via the Allenby Bridge.<sup>103</sup>

Gazans living in the West Bank described consistent problems with the coordination process. For example, Rina Ajrami, a registered Gaza resident who has lived in the West Bank since 2001, said:

The problem is that we don't know whether or not we received the coordination until the day before or even the same day that we plan to travel. We apply for coordination first, then we arrange to get the necessary visa [to the intended foreign destination], and then we buy the plane ticket, but whether or not we can actually leave always depends on whether we get coordination. With coordination there's nothing written down, no piece of paper. The PA liaison just tells you over the phone what the Israelis told them, and if your coordination is denied there's no explanation. They just say there were "security reasons."<sup>104</sup>

In cases where Israel refuses to grant coordination, according to the individuals Human Rights Watch interviewed, Palestinians are notified only days or hours before they are due to depart, by which point it is often too late to change their travel plans. Many said they had missed business meetings or other appointments abroad, as well as losing the cost of their airplane tickets, due to Israeli authorities' denial of permission. One man said he had applied to leave the West Bank ten times, and received permission only once.<sup>105</sup>

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<sup>102</sup> Human Rights Watch interviews with Abd el-Salam Abu Askar, Ramallah, May 24, 2011, and Dr. Omar Awad Allah, Ramallah, May 26, 2011.

<sup>103</sup> The Israeli Civil Administration has separate offices for Gaza and the West Bank. The office in the West Bank military base of Beit Il (which is contiguous with a civilian Israeli settlement) does not process requests for "coordination" from Palestinians who are registered as Gaza residents, even if they are living in the West Bank. Human Rights Watch interview with Dr. Adham Zein al-Din, Ramallah, May 26, 2011.

<sup>104</sup> Human Rights Watch interview with Rima Ajrami, Ramallah, December 28, 2010.

<sup>105</sup> Human Rights Watch interview with Wafaa Abd al-Rahman, Ramallah, April 24, 2011.

Palestinians registered as Gaza residents must also obtain a “certificate of no objection” from the Jordanian authorities in order to enter Jordan.<sup>106</sup> Wafaa Abd al-Rahman is a registered Gaza resident who has not been able to change her address to reflect the fact that she lives in Ramallah. “In addition to coordination, you have to get a no-objection permit a month in advance from the Jordanian side,” she told Human Rights Watch.

At Allenby, the Jordanians sometimes take your passport and tell you to go to meet with the *mukhabarat* [intelligence agency]. When you return from your trip, they usually take your passport at the airport in Amman and tell you that you need to retrieve it at the intelligence headquarters.<sup>107</sup>

The same restrictions apply to Palestinians seeking to return to the West Bank from elsewhere via Jordan: they must receive a no-objection certificate from the Jordanian authorities in order to enter Jordan (usually via Amman airport) and travel to the Allenby Bridge, and the Israeli military must grant them “coordination” to enter the West Bank. Omar Awad Allah, a Gaza-born employee of the PA Foreign Affairs Ministry, returned from abroad in order to take up a post in the West Bank in June 2009, but had to remain in Jordan for four months while waiting for Israel to coordinate his re-entry.<sup>108</sup>

Israeli Civil Administration procedures introduce an additional difficulty in cases where one parent is a registered resident of the West Bank but the other is a resident of Gaza or is not a resident of the occupied Palestinian territory. In such cases the Israeli authorities

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<sup>106</sup> Jordan, which had incorporated the West Bank in April 1950, granted citizenship to Palestinian residents of the West Bank under its 1954 nationality law. Jordan continued to claim sovereignty over the West Bank after Israel occupied the territory in 1967. In 1983 Jordan introduced color-coded travel cards for Jordanians of Palestinian origin in the West Bank to facilitate their travel between Jordan’s East and West Bank: a green card for West Bank residents and a yellow card for West Bankers who had moved to the East Bank. Jordan also issued blue cards to Palestinians living in the West Bank whom it did not consider to be citizens and whom Israel had registered as residents of Gaza. In July 1988, Jordanians of Palestinian origin residing in the West Bank lost their Jordanian nationality, when Jordan withdrew its claims to sovereignty there. (Jordanians of Palestinian origin living elsewhere generally maintained their nationality.) Since then, Jordan has arbitrarily withdrawn nationality from thousands of Palestinians; Jordanian officials have stated that Jordanians of Palestinian origin must renew their West Bank residency permit, issued by the Israeli Civil Administration, in order to maintain their Jordanian nationality. Human Rights Watch, *Stateless Again: Palestinian-Origin Jordanians Deprived of Their Nationality*, January 2010, <http://www.hrw.org/node/87906>. Palestinians registered as Gaza residents may apply for no-objection certificates from the Jordanian embassy in Ramallah. See, e.g., Al Haq Affidavit 5159/2009, November 9, 2009 (a medical patient from Gaza describes his application to the Embassy for a no-objection certificate in order to travel to Jordan for medical care); available at [alhaq.ps/documentation/mdd-reports/item/download/224](http://alhaq.ps/documentation/mdd-reports/item/download/224) (accessed December 20, 2011)

<sup>107</sup> Human Rights Watch interview with Wafaa Abd el-Rahman, Ramallah, April 24, 2011. Palestinians sometimes refer to the Jordanian no-objection certificate as the “Rashad al-Shawa permit,” named after the official who was originally responsible for coordinating with the Jordanian authorities on behalf of Palestinians registered as Gaza residents.

<sup>108</sup> Human Rights Watch interview with Dr. Omar Awad Allah, Ramallah, May 26, 2011.

“list” some of the couple’s children on one parent’s ID documents and other children with the other parent’s file. For instance, Hossam Maghari, 45, from the al-Rimal neighborhood of Gaza City, moved with his family to Ramallah immediately after Hamas took control in Gaza on June 14, 2007.<sup>109</sup> His employer finally obtained a “permit to remain” in the West Bank for Maghari in late 2010. “They applied for permits for my family, too, but they were rejected,” he said. As a result Maghari’s wife and children are considered by the Israeli authorities as illegal residents within the West Bank, and refrain from travel that would require them to cross checkpoints due to fears that Israeli soldiers would detain them on the basis that they could not produce evidence of their lawful presence there.

The rest of my family doesn’t travel [within the West Bank] because they don’t have permits. We have cousins in Hebron and in Jericho, but we rarely visit them. We’re aliens in our own country. I can’t let my 17-year-old boy go on any trips that require him to pass through checkpoints.

At some point, apparently after 2005, the PA stopped accepting applications from Palestinians and stopped sending registry updates and requests to the Israeli Civil Administration altogether, because the Civil Administration refused to acknowledge them. Human Rights Watch spoke with several Palestinians who criticized the PA’s handling of the issue. A PA official with the Civil Affairs office, who himself resides in the West Bank although he is registered as a Gaza resident, confirmed that for a period of time the Civil Affairs office refused to accept applications, but gave preferential treatment to PA employees by keeping their applications on file, in the event that Israel would “unfreeze” the population registry.<sup>110</sup>

In December 2010, the Palestinian Supreme Court ordered the PA to resume receiving and notifying the Israeli side of applications by Palestinians registered as Gaza residents but living in the West Bank to update their addresses; the PA has done so.<sup>111</sup> The court’s verdict found in favor of Ihab al-Ashkar, a Palestinian living in the West Bank who is registered as

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<sup>109</sup> Human Rights Watch interview with Hossam Maghari, Ramallah, May 24, 2011. Maghari, who works for the PA’s General Intelligence Service, a security agency, said that he and 300 other PA employees received permission to leave Gaza immediately, he said. His wife and five children followed 13 months later, on July 17, 2008.

<sup>110</sup> Human Rights Watch interview with N. N., Civil Affairs official, Ramallah, May 8, 2011.

<sup>111</sup> Human Rights Watch interview with Ihab al-Ashkar, see “Case Studies,” Below. Copy of court verdict on file with Human Rights Watch.

a Gaza resident. Al-Ashkar told Human Rights Watch that he had previously hired Israeli lawyers in six unsuccessful attempts to persuade the Israeli Civil Administration to change his address to the West Bank. Although he was aware the process was “frozen,” in 2009 he attempted to submit an application for an address change to the PA Interior Ministry, but the ministry “refused even to let me apply.”<sup>112</sup>

Additionally, according to Palestinian rights groups, the PA is responsible for delaying and denying Palestinian passport applications from Gaza, including for unjustified “security reasons.”<sup>113</sup> After Hamas took over Gaza in June 2007, the Palestinian Authority transferred its offices relating to the population registry from Gaza to the West Bank, including responsibility for printing passports. According to the Independent Commission for Human Rights, the official Palestinian rights ombudsman with offices in both the West Bank and Gaza, the PA has not sent any blank passports to Gaza since November 2008, a policy that harms Palestinians who need medical treatment abroad, “students who are studying outside the country,” and “thousands of people” whose passports have expired.<sup>114</sup> It is not possible to print passports in Gaza, and passport renewal applications are processed in Ramallah.<sup>115</sup>

## Freeze on Family Reunification

For the majority of Palestinians who are not registered residents of the West Bank or Gaza—including all Palestinians over 16 years old, their foreign spouses, and others—the only possibility to obtain residency rights recognized by Israel is if a first-degree relative (a spouse, parent, child, or sibling) applies on their behalf, in what is called the “family reunification” process.

When Israel “froze” the population registry after September 2000, it also refused to accept Palestinian applications for family reunification. As a result, many Palestinians with first-

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<sup>112</sup> Ibid.

<sup>113</sup> Aldameer Association for Human Rights, “After Signing the National Reconciliation Agreement Al Dameer Calls for Tracking Procedures to Ensure that Palestinians in Gaza Obtain their Passports,” May 22, 2011, <http://englishweb.aldameer.org/?p=1192>.

<sup>114</sup> Independent Commission for Human Rights, “Monthly report on violations of human rights and freedoms in areas under the jurisdiction of the Palestinian National Authority,” September 2011, pp. 9-10; available under “Monthly Reports” at [www.ichr.ps](http://www.ichr.ps).

<sup>115</sup> Amira Hass, “Passports are the latest weapon in the struggle between Fatah and Hamas”, *Ha'aretz*, July 25, 2010. According to *Haaretz*, the PA sent 5,000 blank passports to Gaza in November 2007, and another 2,000 by the summer of 2008, but none thereafter.

degree relatives outside of the occupied Palestinian territory have been unable to gain recognized residency status for them for more than a decade.<sup>116</sup>

Israeli authorities have not cited specific security concerns in rejecting applications for family reunification according to the freeze policy; they have simply stopped processing such applications. The policy violates Palestinians' rights to a family life; in cases where Israel arbitrarily excluded Palestinians from the population registry or cancelled their registration, the policy violates their rights to be able to enter and leave the occupied territory.<sup>117</sup>

Shortly after enacting the freeze, Israel agreed to process a small number of family reunification requests that were classified as "exceptional humanitarian cases." According to B'Tselem's review of relevant cases, however, Israeli authorities "consistently refrained from stating the relevant criteria in determining whether a case comes within this category."<sup>118</sup>

The PA Civil Affairs Ministry estimated that from the outbreak of the second *intifada* to August 2005, it relayed to Israel more than 120,000 requests for family reunification that Israeli authorities did not process.<sup>119</sup> An October 2005 survey, commissioned by B'Tselem, found that 17.2 percent of Palestinian residents of the West Bank and Gaza had at least one first-degree relative who was not registered in the population registry; in 78.4 percent of those cases, a family reunification request had been filed with the Israeli authorities but had not yet been processed.<sup>120</sup>

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<sup>116</sup> In July 2003, the Israeli Knesset enacted the Citizenship and Entry into Israel Law (Temporary Order) 2003, which prohibits the granting of any family reunification requests, and therefore any citizenship or residency status, filed by citizens of Israel on behalf of spouses from the occupied Palestinian territory. The Knesset enacted the law for a one year period, but has since extended it continuously, most recently on July 17, 2011; in 2005 the temporary order was extended to also apply to spouses from an "enemy state"; the Israeli Supreme Court upheld the order in 2006. Such a blanket prohibition on family reunification violates Israel's international legal obligations. See, e.g., "Israel: Family Reunification Ruling is Discriminatory," Human Rights Watch news release, May 17, 2006, <http://www.hrw.org/news/2006/05/17/israel-family-reunification-ruling-discriminatory>.

<sup>117</sup> See "International Legal Obligations," below.

<sup>118</sup> B'Tselem and Hamoked, "Perpetual Limbo," p. 18.

<sup>119</sup> *Ibid.*, p. 13, citing information provided by the PA Civil Affairs Ministry on August 14, 2005.

<sup>120</sup> According to B'Tselem and Hamoked, "the survey included a representative sample of 1,300 persons over age eighteen" and was conducted by the Palestinian Center for Policy and Survey Research, based in Ramallah.

Israeli human rights groups petitioned the Israeli High Court of Justice to order an end to the freeze on family reunifications on the basis that it violated the right to a family. In a 2006 High Court of Justice case that dealt with a similar prohibition that froze the ability of Palestinian citizens of Israel to apply for family reunification with spouses from the OPT, the majority of judges opined that every person has the constitutional right to a family life “from the perspective of the geographic location of the family unit, which they have chosen for themselves,” but rejected the petition against the prohibition on the basis of security considerations.<sup>121</sup>

Based on a review of “dozens of requests involving residency in the West Bank” since Israel imposed the freeze of the population registry, the Israeli rights group B’Tselem found that Israeli authorities “refused in specific cases to delineate the threat to security if the request [for family reunification] were approved.”<sup>122</sup> Instead, the state attorney’s office has cited “the outbreak of hostilities in September 2000” and “the breakdown that occurred in the relationship between Israel and the Palestinian Authority” as sufficient justifications for the policy according to which “applications for family unification are not being handled by the Israeli side.”<sup>123</sup> However, according to the Israeli military, relations had significantly improved by June 2007, after Fatah formed an emergency Palestinian government in the West Bank in response to Hamas’s takeover of Gaza.

With the establishment of the new Palestinian government, the relations between the Civil Administration in Judea and Samaria and the local Palestinian security forces were renewed and reinforced, both in the civilian and security spheres, and working relations continue to exist for the benefit of regional development, addressing the needs of local citizens in various

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<sup>121</sup> In the verdict, six justices rejected the petition against the ban on Palestinian residents of the OPT marrying citizens of Israel, for various reasons: three held that Israeli law does not recognize the right of Palestinian citizens to have foreign relatives join them in Israel, and that in the context of the second *intifada*, Palestinians living in the OPT were presumptively enemy nationals; two held the law violated Israeli citizens’ rights but was proportionate to the threat posed by the *intifada*; the sixth held the law was unconstitutional but rejected the petition, since overturning the law would create a security void. HCJ 7052/03, Adalah: The Legal Center for Arab Minority Rights in Israel v. Minister of the Interior (Judgment), May 14, 2006, available at [http://hamoked.org/files/2011/4489\\_eng.pdf](http://hamoked.org/files/2011/4489_eng.pdf) (accessed November 10, 2011).

<sup>122</sup> B’Tselem and Hamoked, “Perpetual Limbo,” p. 18.

<sup>123</sup> HCJ 5875/07, “Application on behalf of the Respondents for Summary Dismissal of the Petition in Response to the Application for a Temporary Injunction,” September 2, 2007, available at [http://www.hamoked.org/items/9073\\_eng.pdf](http://www.hamoked.org/items/9073_eng.pdf) (accessed November 10, 2011). See also letter of April 24, 2001 from the office of the Civil Administration legal advisor for the West Bank to Hamoked (“... because of recent incidents [the outbreak of the second *intifada*], the handling of requests for family reunification in Judea and Samaria has stopped...”). B’Tselem and Hamoked, “Perpetual Limbo,” p. 4.

civilian matters and also for coordinating between the Palestinian security forces and the I.D.F.<sup>124</sup>

As discussed below, with the exception of a quota of family reunification requests granted between 2007 and 2008, and a quota of address change requests processed in 2011, Israel has continued to refuse to make changes to the population registry after 2007.

The state has also argued that the issue was a political matter relating to Israel's ties with the PA, over which the court lacked jurisdiction. The state later adduced, as further support for this argument, Israel's decision to sever all ties with the Palestinian Authority after elections in 2006 brought Hamas to power in the Palestinian government, which at that time administered parts of both the West Bank and Gaza.<sup>125</sup> Israel's High Court of Justice has ruled that the Israeli military has limited authority to take political considerations into account with regard to the Palestinian population in the occupied Palestinian territory.<sup>126</sup> However, the High Court dismissed several petitions subsequently filed by human rights groups against the freeze by citing "the political/security situation that prevails in our region since September 2000" as a sufficient justification for the military's policy.<sup>127</sup> The High Court has declined to exercise its jurisdiction in such cases without considering the question of the individual rights at stake:

It is not the practice of this court to interfere with policy that has been adopted by government with regard to the security situation and the development of relations between the Palestinian Authority and the State of Israel with respect to the return of residence or applications for family reunification that pertain to the region.<sup>128</sup>

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<sup>124</sup> Office for the Coordination of Government Activity in the Territories (COGAT), "Civil Administration: History," (no date), <http://www.cogat.idf.il/1280-en/Cogat.aspx> (accessed January 2, 2012).

<sup>125</sup> Government Resolution No. 4780 of April 11, 2006.

<sup>126</sup> "The army commander is not permitted to consider national, economic, and social interests of his state, inasmuch as this has no ramification on its security interest in the region, or on the interest of the local population." H CJ 393/82, *Jim`aith Aska'n v. Commander of the IDF Forces in the Judea and Samaria Region, Piskei Din* 37(4) 785, 794-795.

<sup>127</sup> H CJ 4332/04, *Odeh v. Commander of IDF Forces*, available at [http://www.takdin.co.il/searchg/העוידה%20אנס%20מפקד%20תחוקה%20לצהל\\_hd\\_2L38rE3opN3GpCp9VM4T2BZoqBcXqRMmo.html](http://www.takdin.co.il/searchg/העוידה%20אנס%20מפקד%20תחוקה%20לצהל_hd_2L38rE3opN3GpCp9VM4T2BZoqBcXqRMmo.html) (accessed November 10, 2011).

<sup>128</sup> H CJ 8881/06, *Gazuna v. The Civil Administration in the Judea and Samaria Region* (unreported), March 1, 2007.



Israeli rights groups continued to contest the freeze policy in court. Ido Blum, a lawyer at Hamoked, told Human Rights Watch:

Between April and July of 2007 we filed 46 petitions on behalf of Palestinian couples living in the West Bank where one partner was registered and the other was not. In most cases the spouse had entered in the 1990s and had been living in the West Bank for years, but after the freeze, they had no chance to renew their visitor's permit.

The court, after joining the first four petitions as principal cases, in September 2007 gave the state 60 days “to address the question of the possibility of a change in the policy with respect to establishing contact with the Palestinian authorities in matters dealing with the Population Registry,” specifically by processing applications for family reunification for married couples.<sup>129</sup>

The state replied that “the political leadership level” had decided to provide “relief” on the issue of the petition, as “a political gesture to Palestinian Authority Chairman Abu Mazen.”<sup>130</sup> Israeli authorities announced that they would set a quota of family reunification applications for approval.<sup>131</sup> According to Blum, the “gesture” applied only in cases where both the sponsored and sponsoring relatives were currently living in the occupied Palestinian territory and not in cases where the sponsored spouse, child, or other relative lived abroad.<sup>132</sup> Further, as discussed below, in order to be eligible for family reunification, Palestinians who lacked foreign passports must have lawfully entered the occupied Palestinian territory on Israeli-issued permits, which Israel had stopped issuing in 2000.<sup>133</sup>

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<sup>129</sup> HCJ 3170/07, *Dweikat et. al. v. The State of Israel et. al.*, September 24, 2007, available at [http://www.Hamoked.org/items/9076\\_eng.pdf](http://www.Hamoked.org/items/9076_eng.pdf) (accessed November 10, 2011).

<sup>130</sup> HCJ 3170/07, “Respondents’ supplemental statement, and request of revocation of the petitions,” presented to the High Court of Justice by the state attorney, January 29, 2008, available at <http://www.Hamoked.org.il/items/9077.pdf> (Hebrew).

<sup>131</sup> Hamoked argued against the quota on the principled basis that the Israeli military commander was obliged to consider all applications for family reunification on an individual basis, and that the quota system derived from political considerations whereas the only valid criteria were security and the benefit of the occupied population. The Court dismissed the petition on the basis that all of Hamoked’s cases had been resolved by the quota, such that the issue was moot. HCJ 3170/07, *Dweikat et al v. The State of Israel et al.*, (judgment), October 5, 2008, <http://www.Hamoked.org.il/items/9079.pdf> (Hebrew) (accessed January 2, 2012).

<sup>132</sup> Human Rights Watch interview with Ido Blum, Hamoked, Jerusalem, October 7, 2010.

<sup>133</sup> According to the 1995 Interim Agreement, Palestinians could enter the occupied Palestinian territory if relatives in the territory applied on their behalf for “visitor permits,” which were valid for three months. Annex III, Appendix I, Article 28 (13 -14).

The number of family reunification requests that Israel subsequently granted is unclear.<sup>134</sup> In October 2008, the Israeli authorities announced a quota of 50,000 family reunifications. At that time, according to the Israeli state attorney, the Palestinian Authority had already forwarded 32,000 applications, of which Israel had already approved 23,000.<sup>135</sup> However, the Israeli military later stated that as of March 30, 2011, it had offered to process 23,000 requests, “but to date only 21,000 individuals have been [submitted] by the Palestinian side.”<sup>136</sup>

The Palestinian Authority provided Human Rights Watch with different figures, which may indicate that the figures cited above relate only to the West Bank. According to the PA Ministry of Civil Affairs office in Gaza, from November 2007 to March 2009, Israel approved 20,597 family reunification requests for West Bank residents and 12,308 for Gaza residents, issuing a total of 32,905 ID cards, but none thereafter.<sup>137</sup> As of May 2011, Israel had not responded to 5,061 applications from people in Gaza that the PA had submitted to Israel, according to the PA’s database.

As noted, only Palestinians and their family members who entered the occupied Palestinian territory “legally” are eligible to be included in Israel’s quota of family reunification cases. As discussed in the following section, Israel stopped issuing “visitor

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<sup>134</sup> A complicating factor in determining the number of persons to whom Israel has and has not granted residency through the family reunification process is the possibility that some “applications” could actually involve more than one person. Because Israel does not issue separate identification cards for Palestinian children under 16, a single family reunification application from a registered spouse could include both his or her unregistered partner as well as their unregistered children under 16.

<sup>135</sup> HCJ 3170/07, “Pre-hearing notice filed on behalf of the Respondents,” October 2, 2008, available at <http://www.Hamoked.org.il/items/9078.pdf> (Hebrew) (accessed December 20, 2011).

<sup>136</sup> Letter from Lt. Omer Knobler, Population Registry Department, Office of the Legal Advisor, Civil Administration, Judea and Samaria Area [West Bank], to Ido Bloom, advocate, Hamoked, March 30, 2011.

<sup>137</sup> Human Rights Watch interview with Khalil Faraj, Deputy Director of the PA Ministry of Civil Affairs in Gaza, Gaza City, May 25, 2011. Faraj provided a printout from a computer database that specified the dates on which the Israeli approvals were granted:

November 10, 2007: 3,468 (West Bank)  
December 9, 2007: 1,500 (Gaza)  
February 17, 2008: 2,489 (Gaza)  
February 19, 2008: 4,495 (West Bank)  
May 6, 2008: 3,487 (Gaza), 6,518 (West Bank)  
July 24, 2008: 4,706 (Gaza)  
July 28, 2008: 2,830 (West Bank)  
August 14, 2008: 144 (West Bank)  
August 28, 2008: 126 (Gaza)  
March 2, 2009: 3,142 (West Bank)

permits” to non-registered Palestinians seeking to enter the territory after September 2000. Khalil Faraj, the PA Civil Affairs official in Gaza, told Human Rights Watch:

Israel reopened the reunification file only for people who had entered the territory lawfully with visitor permits and who then applied for [registration] through family reunification. Israel has so far only accepted requests from these people, and there are another 5,061 requests of people who entered on visitor permits that Israel hasn’t granted yet. But there are many more people than this who have no ID cards. Israel stopped letting people into [the occupied Palestinian territory] in 2000, when they stopped issuing visitor permits. And in Gaza, thousands of people entered after that, through tunnels under the border with Egypt, or when the wall on the Egyptian border was broken in 2006 and again in 2008. And there are also people who are still outside Gaza but family members applied for them. But Israel won’t grant any of them, so we don’t process them.

Human Rights Watch interviewed several un-registered Palestinians who entered the occupied Palestinian territory without permits, in order, they say, to rejoin their families, because Israel had banned all entry to non-registered Palestinians. (The details of their cases are described later in this report.<sup>138</sup>) Due to their irregular, un-permitted entry, they are ineligible to apply for registration, and cannot obtain ID cards or passports. Without such documents, as discussed below, they cannot lawfully leave and re-enter the occupied Palestinian territory, via either Israel or Egypt. Under Israel’s international legal obligations, it should respect the right to family life, and should consider all cases on their individual merits. Israel’s blanket refusal to grant residency status or even entry permits to close family members violates Palestinians’ rights to family unity, as well as to freedom of movement.

## Freeze on Entry Permits to the West Bank and Gaza

At the same time that Israel stopped processing requests related to the population registry in 2000, it also stopped issuing almost any “visitor permits” to non-registered Palestinians, meaning that they could not enter the West Bank or Gaza from abroad.<sup>139</sup> According to a

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<sup>138</sup> See “Case Studies,” below.

<sup>139</sup> The Israeli Civil Administration, located in the military base of Beit Il, near Ramallah, prints visitor permits that are valid in the West Bank, and transfers them to the Palestinian Authority, which formally “issues” them. The forms are stamped with

lawyer at Hamoked, Israel also stopped issuing visitor permits to foreign spouses of resident Palestinians in cases where the spouses were born in Jordan or other Arab countries, although some Western-born spouses received visitor permits.<sup>140</sup> In 1998, Israel granted 46,887 visitor permits to enter the West Bank and 19,352 to enter Gaza; in the first 11 months of 1999, Israel granted 64,000 such permits in total. In the 10 months after November 2000, Israel granted a total of 192 entry permits; from October 2001 to October 2002, it issued 255 permits.<sup>141</sup>

After occupying the West Bank and Gaza in 1967 and declaring them to be “closed military areas,” the Israeli military in 1972 issued a “general exit permit” that allowed Palestinians to leave the occupied Palestinian territory—including to enter Israel and to travel through Israel between Gaza and the West Bank—after obtaining prior permission.<sup>142</sup> After the first *intifada* began, in 1987, Israel increasingly restricted Palestinians’ movement, and in 1991 cancelled the general exit permit, such that in order to leave the occupied Palestinian territory, Palestinians had to cite in their permit applications a reason for leaving that Israeli authorities considered legitimate.<sup>143</sup> In October 1999, Israeli policy changed again. Pursuant to a promise in the 1995 Interim Agreement, Israel began to grant Palestinians “safe passage” through Israel in order to leave Gaza and the West Bank for the purpose of traveling between them.<sup>144</sup> In the first nine months of 2000, the Israeli military issued 110,884 safe passage permits (as distinct from the “visitor permits” discussed above).<sup>145</sup>

With the outbreak of the second *intifada*, Israel closed the “safe passage” on October 6, 2000, and also prohibited Palestinians whose registered address is in Gaza from entering

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the Palestinian Authority’s symbol. Human Rights Watch interviews with Ayman Qandil, *ibid.*; Human Rights Watch interview with Ido Blum, attorney with Hamoked, Jerusalem, October 7, 2010. See “Case Studies,” below.

<sup>140</sup> Human Rights Watch interviews with Ido Blum, lawyer, Hamoked, Jerusalem, October 7, 2011.

<sup>141</sup> HCJ 3216/07, *Hamdan v. State of Israel*, “Petition for Order Nisi,” April 11, 2007, para. 76.

<sup>142</sup> General Exit Permit (No. 5) (Judea and Samaria), 1972; corresponding order for the Gaza Strip.

<sup>143</sup> Order Regarding Suspension of the General Exit Permit (No.5) (Temporary Order) (Judea and Samaria), 1991; corresponding order for the Gaza Strip.

<sup>144</sup> Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, September 28, 1995, Annex I, Article X. According to the Interim Agreement, Israel recognized the West Bank and Gaza as a single territorial unit. Interim Agreement, Article XI. The Israeli military issued orders implementing the Interim Agreement, including Order Regarding Implementation of Interim Agreement (Judea and Samaria) (No. 7) 1995 [West Bank]; Order Regarding Implementation of Interim Agreement (Gaza Area) (No. 5), 1995. See Gisha, “Disengagement Danger,” February 2006.

<sup>145</sup> B’Tselem and Hamoked, “One Big Prison: Freedom of Movement To and From the Gaza Strip on the eve of the Disengagement Plan.”

the West Bank through the Allenby Bridge crossing with Jordan, thereby severely limiting any possibility for Gazans to enter the West Bank.<sup>146</sup>

In some cases, Israeli authorities also refused to grant entry permits to Palestinians who used to live in the West Bank and who sought to return there, due to concerns that they would file suit to reclaim private property that the Israeli military had confiscated in 1967, property the Israeli “Custodian of Absentee Property” had granted to Israeli settlements in the West Bank.<sup>147</sup> The Israeli military maintained a “blacklist” that grew to around 2,000 Palestinians who had fled the OPT during the 1967 conflict, to whom it denied entry to the West Bank; in 2004, the military commander ordered that no new names be added to the list. However, most are still presumably unable to return, due to Israel’s blanket prohibition on granting entry permits to non-registered Palestinians.

Israel’s freeze on allowing non-registered Palestinians to enter the occupied Palestinian territory has limited the ability of Palestinian children born abroad, including to registered parents, to be registered as residents themselves. Notwithstanding the language of the 1995 Interim Agreement, which places no conditions on the PA’s authority to register the children (under 16 years old) of Palestinian residents, Israel in fact restricted registration to children who are present in the occupied Palestinian territory. However, non-registered minors over five years old cannot enter the West Bank without Israeli permits, which Israel stopped issuing in 2000.<sup>148</sup> Ido Blum, a lawyer with Hamoked, told Human Rights Watch:

After the second *intifada*, notwithstanding the language of the Interim Agreement, Israel started to claim in court cases that there was an implied condition that the child had to be physically present in the West Bank. In the meantime, Israel had stopped issuing visitor permits to Palestinians, so

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<sup>146</sup> Gisha, “Disengagement Danger,” February 2006, citing letter to Gisha from Avi Biton, Office of the Coordination of Operations in the Territory, Defense Ministry, Nov. 25, 2004.

<sup>147</sup> Akiva Eldar, “Ministry admits ‘blacklist’ of Palestinians who left West Bank,” Haaretz, July 5, 2006, <http://www.haaretz.com/news/ministry-admits-blacklist-of-palestinians-who-left-w-bank-1.192198> (accessed November 10, 2011).

<sup>148</sup> Children under five enter the occupied Palestinian territory as the accompanying dependant of their parent. See, e.g., Hamoked, “The Supreme Court orders the state to pay NIS 7,500 in trial costs: the military permitted a 16 year old Palestinian to enter the West Bank for her registration in the population registry only after HaMoked’s petition,” May 16, 2011, <http://www.hamoked.org/Document.aspx?dID=Updates1101> (accessed November 10, 2011).

there was no way for children who were outside the West Bank to enter the territory in order to register.<sup>149</sup>

In September 2005 Israel exempted some children from the freeze on visitor permits to the West Bank, if the child had not yet turned 16 as of the date of the decision and had one parent who was a registered West Bank resident.<sup>150</sup> Blum told Human Rights Watch:

[Under the new policy] Israel began to allow children under 16 to enter the West Bank for the purpose of registering as residents. The problem here is that despite this improvement, the new policy still excludes those children who turned 16 during the total freeze, from 2000 to 2005.

In several cases pending before Israel's High Court of Justice, Palestinians are challenging Israel's denial of residency rights to children over the age of 16 who were born and remained in the West Bank to registered parents, but who were never registered, and to children born elsewhere and who turned 16 after 2000, when Israel refused to approve visitor permits.

Some foreigners and Palestinians who had obtained foreign citizenship could enter the occupied Palestinian territory by obtaining Israeli tourist visas in their foreign passports.<sup>151</sup> However, since at least 2006 Israel has repeatedly denied entry to people of Palestinian origin seeking to enter Israel and the West Bank using their foreign passports.<sup>152</sup> The US State Department complained in 2006 that the Israeli policy treated Arab-Americans "as second-class citizens," but Palestinians told Human Rights Watch that the problem has persisted.<sup>153</sup> Palestinians complained of a different problem in cases where Palestinian ID card holders seek to enter Israel or the occupied Palestinian territory by using their foreign

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<sup>149</sup> Human Rights Watch interviews with Ido Blum, lawyer at Hamoked, Jerusalem, October 7 and 10, 2010.

<sup>150</sup> Letter of September 6, 2005, from the Israeli Civil Administration Office of the Legal Advisor for the West Bank to Hamoked.

<sup>151</sup> Human Rights Watch interview with Ido Blum, October 7, 2011.

<sup>152</sup> Human Rights Watch interview with Somaida Abbas, Ramallah, June 23, 2011.

<sup>153</sup> According to CNN, "During her recent trip to Israel, U.S. Secretary of State Condoleezza Rice raised the issue with Foreign Minister Tzipi Livni, and U.S. diplomats have also recently complained to the Israeli Embassy in Washington, officials said. 'They are being treated as Arabs and not Americans,' one senior official said." "U.S. to Israel: Ease up on Arab-Americans," CNN, October 19, 2006 <http://edition.cnn.com/2006/WORLD/meast/10/19/rice.rights/index.html> (accessed January 15, 2012).

travel documents. Sam Bahour, a US citizen living in the West Bank told Human Rights Watch:

I have a US passport, but it's stamped in my passport that I have a Palestinian ID, which means that the Israeli authorities limit my ability to travel to Jerusalem and to Israel and to enter the country via the Ben Gurion airport, as they do for Palestinian residents of the West Bank, because for Israeli purposes I am only a Palestinian and not an American. So in a way they're invalidating my other citizenship, they're trespassing another country's sovereignty, defacing its citizenship documents.<sup>154</sup>

Palestinians also face obstacles when they seek to travel outside the occupied Palestinian territory. The case of Palestinians living in Gaza who lack ID cards is discussed below (see “Continuing Effects of the Permit ‘Freeze’ in Gaza”). Palestinians registered as Gaza residents who live in the West Bank cannot, in most cases, leave the West Bank for Israel, and cannot exit through the Israeli-controlled border crossing to Jordan unless they receive special advance permission from the Israeli military, a process known as “coordination,” described above. In most cases, only Gaza-registered Palestinians who obtain “permits to remain” in the West Bank are eligible to apply for coordination. The procedure is complex: the person wishing to travel notifies the PA Civil Affairs authority, which transfers the request to the Israeli Civil Administration office located at the Erez crossing on Gaza’s northern perimeter.<sup>155</sup> If the Erez office grants coordination, it notifies the PA Civil Affairs authority orally, which in turn calls the applicant; the Erez office must also notify the Israeli border-control officials at the Allenby Bridge crossing between the West Bank and Jordan. In cases where Israeli authorities refused to grant “coordination,” they do not supply a written reason. As discussed above, Israeli authorities frequently deny coordination, and notify Palestinian applicants only days or hours before the latter are due to travel.

## Continuing Effects of the Permit Freeze in Gaza

Israel’s policy since 2000 has been to stop granting “visitor permits” to non-registered Palestinians seeking to visit relatives in both the West Bank and Gaza. This policy has prevented families with members living inside and outside Gaza from seeing one another

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<sup>154</sup> Human Rights Watch interview with Sam Bahour, Ramallah, July 4, 2011.

<sup>155</sup> Human Rights Watch interview with Dr. Adham Zein al-Din, Ramallah, May 26, 2011.

or living together. In order to rejoin their families, some Palestinians entered Gaza irregularly after 2000, whether during occasions when Egypt's border wall with Gaza was breached or through tunnels operating beneath the Gaza. However, in general, Israel also considers Palestinians who entered Gaza without "visitor permits" to be ineligible for inclusion in the limited quota of "family unification" applications it agreed to process as a political gesture in 2007. Some Palestinians in Gaza lack any internationally recognized identification documents and are essentially unable to travel abroad.

Although Israel withdrew its military forces from the Gaza Strip in 2005, it continues to control the population registry for Gaza residents. In combination with Israel's freeze on visitor permits to Gaza during its period of effective control over all of Gaza's border crossings until 2007, and with Egypt's cooperation at the Rafah southern border crossing until May 2011, Israel's control of the population registry rendered non-registered Palestinians in Gaza ineligible for family reunification and therefore unable to obtain the ID cards needed to leave the territory.<sup>156</sup> In addition, Israel continues to control the northern Erez crossing with Gaza. Each month it grants hundreds of Palestinians permits to enter Israel to access hospitals in Israel or the West Bank for necessary medical treatments, mostly paid for by the PA Ministry of Health, that are unavailable in Gaza's lower-quality hospitals.<sup>157</sup> Non-registered Palestinians in Gaza are generally ineligible for such permits, and may thus be denied access to necessary medical care that is otherwise unavailable if they are unable to leave Gaza for treatment elsewhere. Such care includes cardiovascular, oncology, urology, orthopedics, ophthalmology, and neurosurgery procedures, according to the World Health Organization.

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<sup>156</sup> Egyptian border officials allow Palestinians in Gaza who are not registered but who have foreign passports or travel documents to leave Gaza via the Rafah crossing; however, as discussed below, at this writing in most cases Egypt continued to prevent un-registered Palestinians from re-entering Gaza, including on foreign travel documents. Israel controls Gaza's territorial waters and has never allowed free entrance or exit to the territory by sea, and built an electronic fence and concrete wall around Gaza in 1995. The Palestinian Authority had inaugurated an international airport near Rafah in November 1998; according to the Israeli rights group Gisha, there were as many as 30 flights per week. Israel bombed the runways and control tower in December 2001 and January 2002, and the airport ceased functioning in February 2002. Gisha, "Rafah Crossing: Who Holds the Keys?," March 2009, available at [http://www.gisha.org/UserFiles/File/publications/Rafah\\_Report\\_Eng.pdf](http://www.gisha.org/UserFiles/File/publications/Rafah_Report_Eng.pdf) (accessed November 10, 2011), pp. 30-1.

<sup>157</sup> Israel approved 790 permit requests for Gazan medical patients to travel through the Erez crossing in October 2011; 724 patients actually crossed the border. World Health Organization, "Monthly Report: Referral of Palestinian Patients from the Gaza Strip," October 2011, available at [http://issuu.com/who-opt/docs/update\\_rad\\_october\\_2011](http://issuu.com/who-opt/docs/update_rad_october_2011) (accessed December 20, 2011).



It is not clear how many Palestinians in Gaza are not registered in the population registry, and lack identification cards and passports. The Hamas Interior Ministry has issued more than 12,500 identity documents to Gazans since 2007; these documents are not recognized by any other government, but are issued to individuals who lack any other form of identification in order for them to be able to open bank accounts, obtain local government services, and generally conduct business inside Gaza.<sup>158</sup> The number of people in Gaza who lack any form of identification is probably significantly higher than 12,500, including, for example, the children of parents who hold Hamas-issued identification documents.

Israel exercised exclusive control over the Rafah border crossing with Egypt from 1967 to 1994, and shared control with the Palestinian Authority from 1994 to 2001, after which it reasserted exclusive control until 2005.<sup>159</sup> Israel completed its withdrawal of its civilian settlements, army bases, and ground troops from Gaza on September 12, 2005.<sup>160</sup>

It maintained control of the Erez pedestrian border crossing to Israel, in northeastern Gaza, and exercised indirect control over the Rafah border crossing with Egypt, according to the terms of the Agreement on Movement and Access, signed with the PA on November 15, 2005.<sup>161</sup> The agreement stated that a PA security force was to operate on the Palestinian side of the Rafah crossing under the supervision of EU monitors; Israel monitored the

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<sup>158</sup> Information from Riad Zeituniya, General Director, Directorate of Civil Affairs – Gaza, June 2011; figures on file with Human Rights Watch.

<sup>159</sup> Israel occupied Gaza and the Egyptian Sinai peninsula in 1967; Israel withdrew its armed forces and settlements from the Sinai in 1982. Israel and Egypt then agreed that the Israeli Airports Authority would operate the border crossing in the town of Rafah, between Egyptian Sinai and Israeli-occupied Gaza. In 1994, Israel agreed to share control of the Rafah border crossing with PA officers, according to the Gaza-Jericho Agreement. Israeli forces refused to allow PA officials access to the Rafah crossing in January 2001, and thereafter imposed increasing restrictions on movement during the second Palestinian *intifada*. For example, during 2003 and 2004, Israel barred all people aged 16 to 35 from using the crossing, even in medical cases, for almost 15 months. OCHA, “Situation Report: Rafah Terminal,” January 19, 2005; and “The Gaza Strip: Access report,” March 2005.

<sup>160</sup> Prior to 2005, the Israeli Ministry of Defense had the authority to grant permits to Gaza residents to enter Israel. Since September 2005, Israel’s official position has been that Gazans must enter Israel (including en route to the West Bank) as if they were foreign citizens: by displaying a passport or laissez passer and receiving a visa. In practice, the Israeli Interior Ministry continues to issue entrance permits rather than visas, and the Israeli military decides which Gazans may receive them. See Gisha, “Disengagement Danger,” citing Entrance to Israel Order (Border Stations) (amendment), September 20, 2005; Entrance to Israel Order (Exemption for Residents of the Gaza Strip) (Interim Order), September 21, 2005; Letter from Director of Population Registry Sasi Katzir to Gisha, Sept. 28, 2005; Protocol of Knesset Interior Committee hearing of Nov. 16, 2005.

<sup>161</sup> The Rafah border crossing re-opened on November 25. See “Agreed documents on movement and access from and to Gaza,” November 15, 2005, <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Agreed+documents+on+movement+and+access+from+and+to+Gaza+15-Nov-2005.htm> (accessed October 5, 2011).

terminal by live video.<sup>162</sup> Because the Europeans' presence was required for the border to operate under the agreement, Israel could and did close down the crossing by refusing to provide the European monitors, who were based inside Israel, access to Rafah. The agreement barred foreigners, including Palestinians who were not registered in the population registry, from use of the crossing unless they obtained Israeli military permits and visas.<sup>163</sup>

Israel closed the Rafah crossing immediately after Palestinian armed groups captured Israeli Cpl. Gilad Shalit on June 25, 2006. Israel also suspended the Agreement on Movement and Access, and maintained the closure for 86 percent of the time until Hamas seized control in Gaza from Fatah in June 15, 2007.<sup>164</sup> In June 2007, Hamas forced out the PA Presidential Guard, which had operated the Gaza side of the Rafah crossing. The Egyptian government suspended the operation of the crossing in the absence of the PA, and subsequently limited use of the Rafah crossing to foreign passport and visa-holders and to urgent medical cases.<sup>165</sup> In practice, after 2007 Egyptian authorities supported Israel's policy of closure against Hamas-governed Gaza—which amounted to collective punishment—and often denied entry even to people of Palestinian origin who had foreign but not Palestinian passports.<sup>166</sup>

After Israeli forces killed nine members of an international flotilla that was attempting to breach Israel's naval blockade of Gaza in May 2010, both Egypt and Israel eased their closure of Gaza; Egypt subsequently allowed a maximum of 300 persons per day (on days when the crossing was open) to exit the territory. In May 2011, three months after the overthrow of President Hosni Mubarak, Egypt declared that it would open the border to all registered Palestinian residents except men aged 18 to 40. Hamas authorities opened an online registration service for residents to schedule departures through the crossing, but

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<sup>162</sup> Gisha, "Rafah Crossing: Who Holds the Keys?," March 2009, p. 25.

<sup>163</sup> According to the Israeli officer for the Coordination of Government Activities in the Territory, "Requests for passage of foreigners who do not carry Palestinian documents are subject to approval by the Israeli side after being approved by the Palestinian side." Letter from COGAT to Sari Bashi, attorney, Gisha, October 9, 2006, cited in Gisha, "Rafah Crossing: Who Holds the Keys?," pp. 24-25.

<sup>164</sup> Gisha, "Rafah Crossing: Who Holds the Keys?," pp. 27-9.

<sup>165</sup> *Ibid.*, p. 38.

<sup>166</sup> Human Rights Watch interview with Khalil Faraj, May 25, 2011; Faraj's statement was consistent with Human Rights Watch's observations and conversations with people of Palestinian origin denied entry at the Rafah border crossing in May 2010 and May 2011.

have repeatedly imposed restrictions due to overwhelming demand by residents to cross into Egypt.<sup>167</sup>

Egypt continues to require Palestinians to have Palestinian identity documents, such as ID cards or passports (which include the bearer's ID number), to pass through the Rafah crossing. (The PA as a rule does not issue passports to persons who are not registered residents of the occupied Palestinian territory, because Israel and the previous Egyptian government would not recognize them.<sup>168</sup>) Egypt generally allows non-Palestinian foreigners to enter Gaza with advance coordination from the Foreign Ministry. Human Rights Watch spoke with four Palestinians with foreign passports but without Israeli identification documents, who were themselves born in Gaza or whose parents were Palestinians born in the occupied Palestinian territory or in areas that became part of Israel in 1948.<sup>169</sup> The four consistently described similar treatment by Egyptian border authorities: the authorities interrogated them extensively regarding their origins and reasons for seeking to travel to Gaza and refused them entry, said that they could enter only if they produced Palestinian ID cards or ID numbers in addition to their foreign passports, and refused them entry when they could not.<sup>170</sup> Two of the foreign passport holders, German and British citizens, respectively, said that they had traveled back to Cairo from Rafah and sought authorization from Egyptian intelligence and interior ministry officials to enter Gaza. One of the four foreign passport holders interviewed by Human Rights Watch, who held a British passport, described the same experience at the Rafah border.<sup>171</sup> Due to Egyptian policies that, at this writing, required persons of Palestinian origin to produce Israeli

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<sup>167</sup> International Crisis Group, "Palestinian Reconciliation: Plus Ça Change...", July 20, 2011, <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Israel%20Palestine/110%20Palestinian%20Reconciliation%20Plus%20Ca%20Change.pdf> (accessed August 12, 2011), p.2. On August 1, Hamas announced that it would limit the crossing to students, medical cases, and foreign visa or passport holders. "Travelers resorting to bribes to exit Gaza," Al Jazeera, August 1, 2011, <http://www.aljazeera.com/video/middleeast/2011/08/20118112515107727.html> (accessed September 15, 2011).

<sup>168</sup> According to Faraj, the PA Civil Affairs Ministry could issue passports to Palestinians who lacked ID numbers in exceptional cases such as "external travel" not involving the OPT; the person would receive a passport with the ID number field left blank. Israeli authorities in control of crossings at Erez and in the West Bank would not recognize such a passport as valid. Egyptian authorities would allow a person holding such a passport to leave Gaza and enter Egypt if he had obtained a foreign visa, but would not allow him to re-enter Egypt en route to Gaza again.

<sup>169</sup> Human Rights Watch discussions, Egyptian Rafah border crossing, May 2010 (German citizen) and May 2011 (two British citizens), and phone conversation (British citizen), August 2011.

<sup>170</sup> In May 2010, Human Rights Watch spoke to two people of Palestinian origin repeatedly on three consecutive days on the Egyptian side of the Rafah border, but did not ask for their consent to publish their names. In May 2011, Human Rights Watch spoke to a German citizen, of Palestinian origin, who said he had been unable to enter Gaza for eight days, but did not ask for his consent to publish his name.

<sup>171</sup> Human Rights Watch telephone interview with Abdullah Assafin, Amman, Jordan, August 15, 2011.

identification documents in order to enter Gaza, Israel continues to exert indirect control over Palestinians' ability to enter Gaza. Similarly, although Palestinians living in Gaza who lack Israeli-approved ID documents could leave Gaza via the Rafah crossing using foreign passports, they are reluctant to do so given the likelihood that Egyptian authorities would deny their reentry to Gaza.<sup>172</sup>

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<sup>172</sup> Egyptian authorities allow un-registered Palestinians living in Gaza who have foreign passports to exit to Egypt through the Rafah crossing.

### III. Case Studies

#### Palestinians Denied Registration Due to Absence During the 1967 Census

Human Rights Watch interviewed Palestinians who were born in the occupied Palestinian territory, traveled abroad, and later returned and now live there “illegally” because they happened to be absent during the months in 1967 when Israel conducted a census and created the population registry, and who have been unable to obtain residency through other procedures since then. They were separated from family members for years, in some cases decades, by being unable to return to Gaza. In several cases, they have been ineligible to apply for residency status even after returning because they returned to Gaza without obtaining temporary Israeli “visitor permits,” which Israel stopped granting after September 2000. They are also unable or unwilling to risk traveling abroad via the Egyptian-controlled border crossing at Rafah for fear that Egypt will not allow them to return to Gaza, a policy that continues to separate families. In most cases, Israel does not allow even Palestinians who are registered as Gaza residents to visit their families in the West Bank.

#### Muhammad N.

Muhammad N. was born in Gaza in 1945, but was a university student in Egypt when Israel conducted the census in 1967. “My father told me that when the soldiers came, he said that I was studying in Egypt, and the soldier said ‘So forget about him, he’s not here.’ Since that time, every time I wanted to enter to visit my parents here from Egypt, my father would have to ask the Israelis for a permit for me. I could stay for maximum of three months.”<sup>173</sup>

Muhammad N. left Gaza in 1970 when he found work as an accountant in Abu Dhabi, where he married Khadija N. (whose case is described below). They did not apply for residency in Gaza during that time. In 1999, Muhammad lost his job and returned to Gaza with his wife and family, entering on a visitor permit that his mother had applied for on their behalf. “We flew back to the airport in Gaza [which Israeli authorities bombed in December 2001 and January 2002 and which closed in February 2002]. We felt there was a hope for peace and we came.”

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<sup>173</sup> Human Rights Watch interview with Muhammad N., Gaza City, May 20, 2011.

Muhammad N. prepared an application for residency in 2000, but “then nothing happened, because after the *intifada* started there were no relations between the Palestinian Authority and Israel, and this file was frozen.” In 2005, Muhammad Dahlan, who was then the PA Minister of Civil Affairs, “asked people to go bring their visitor permits to Civil Affairs so they could pressure the Israelis to convert them into ID cards,” said Muhammad.

Me and my family all went and applied together. Then in 2007, me, my son, and my daughter received ID cards [i.e. were registered as residents]. But my wife and my other son did not. It made no sense. We had all come back to Gaza together, and we applied together. My wife entered Gaza on a visitor permit that Israel had issued to her and that also listed our son and daughter on it. They all applied for residency using that permit. And yet the daughter who was listed on my wife’s entry permit received an ID card in 2007, but my wife and son did not.<sup>174</sup>

Muhammad N. continued, “I asked the [Palestinian] Authority Civil Affairs about this, and they told me that we were not the first case that this had happened to, but they had no explanation. All we could do was to renew the application for my wife and son.”

Muhammad N. said that his brother, Zeid, who lives in the Gulf Emirate of Ras al-Khaima, was also born in Gaza but lacks an ID card. Muhammad has not seen Zeid since 1999. Zeid, in turn, had not seen his mother in Gaza for 14 years. When interviewed by Human Rights Watch in late May 2011, Muhammad N. said his brother believed Egyptian officials would prevent him from entering Gaza.

### **Abd al-Jawad and Amna H.**

Israel’s control over the Gaza population registry, combined with Egyptian restrictions on Palestinian movement, separated Abd al-Jawad H. and his wife Amna from each other and their children for nine years. Ultimately, with no end in sight to their separation, in April 2009 Amna H., who was then in her mid-60s, crawled to Gaza through a tunnel under the Egypt/Gaza border in order to rejoin her family.

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<sup>174</sup> Human Rights Watch viewed Khadija N.’s visitor permit, written in Hebrew and issued in the name of the Palestinian Authority, which was valid from August to November 1999 and lists the names of her son and daughter, who were 14 and 8 years old at the time. In most cases, Israeli authorities do not issue visitor permits or ID cards to Palestinian children under 16, but later add the child’s name to one parent’s document.

Abd al-Jawad and Amna H. both lived in Gaza until 1966, when they left the territory, one year before Israel occupied Gaza and conducted its census of Gaza's residents. Because they were outside of Gaza in 1967, both were not counted in the census and excluded from the population registry. The couple raised a family in Kuwait and Iraq for several decades until they decided to return to Gaza.<sup>175</sup> In September 2000, just before the outbreak of the second *intifada*, Israeli authorities granted Abd al-Jawad and two of the couple's children entry permits, but denied permits to Amna and three other children. "We applied for permits for all of us but the Israelis only approved them for me and [my children] Wisam and Ruba to come in," Abd al-Jawad said.

I don't know why they only gave them to three of us, there was no explanation. So I had to leave my wife in Iraq with our three other children, Amani, Muhammad, and Samar. I came back to Gaza on September 19, 2000. We expected to get permits for the others in time, but then the *intifada* started [on September 29, 2000] and they stopped giving out permits. The years went on and we were still apart. My wife, back in Iraq, missed her daughter's wedding in Gaza. And Amani got married in Iraq, and none of us could be together.

In 2006, Amna said, she decided to flee Iraq due to security threats.<sup>176</sup> Her children Amani and Muhammad, who were both doctors in an Iraqi hospital, received a letter containing two bullets that said that they would be killed. The family, including Amna's youngest daughter, Samar, traveled to Yemen.

In the meantime, Abd al-Jawad said, in 2005 the Palestinian Authority called for unregistered Gazans to apply for inclusion in the population registry. The Israeli authorities had ceased the regular processing of residency applications in 2000, but from 2007 to 2009 they processed thousands of backlogged applications as a "humanitarian gesture" following peace negotiations between Israeli Prime Minister Ehud Olmert and Palestinian President Mahmoud Abbas. Abd al-Jawad H. finally received his ID card in 2008.

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<sup>175</sup> Abd al-Jawad left Gaza to study in Syria in 1966. In 1968 he went to work in Kuwait as a history teacher, where he and Amna raised their family. Kuwaitis believed Palestinians were sympathetic to the Iraqi invasion of their country in 1990, and due to local hostility he left for Iraq in 1992. Rana, the couple's oldest daughter, moved back to Gaza in 1993 after marrying a Gazan in Iraq.

<sup>176</sup> See, for example, "Iraq: Palestinians Under Attack, But Unable to Flee," Human Rights Watch news release, September 9, 2006, <http://www.hrw.org/news/2006/09/09/iraq-palestinians-under-attack-unable-flee>.

However, only Palestinians who had lawfully entered Gaza on “visitor permits” were eligible to apply for residency, and Israel had ceased issuing such visitor permits in 2000. With their family divided between Gaza and Yemen, the H.’s could see no way to reunite the family. “By April 2009, we realized that we were just wasting time, that we might have to wait forever,” Amna said.

So I decided to come to Gaza with my youngest daughter, Samar. Either we would convince the Egyptians to let us through the Rafah border crossing, or we’d come through the tunnels. We left Muhammad and Amani behind in Yemen. I can’t describe how it felt to leave my children behind when I didn’t know if I’d ever see them again. But Amani was working in a hospital, and Muhammad had a job in a private clinic. Yemen wasn’t as bad then as it is now, there was no war going on. Today, Muhammad says he is the only person left in his whole neighborhood, because of the fighting.

To avoid Egyptian restrictions on Palestinian entry to Egypt, Amna and her daughter bought round-trip tickets from Yemen to Cairo and provided Egyptian authorities evidence of their permanent residence in Yemen.<sup>177</sup> The family traveled using renewable Egyptian travel documents (not passports), which the Egyptian government began issuing to Palestinian refugees after 1948. They traveled from Cairo to the northern Sinai city of al-Arish, roughly an hour’s drive from Rafah, Amna said.

Every day for three weeks, we would go from al-Arish to the Egyptian border crossing at Rafah, to ask them to let us into Gaza. We tried to pay the Egyptian guards to let us enter. Many times they told us to put a little money inside our passports and pass them through the gate. They raised our hopes, but they did nothing. Time was passing and it was almost the date for our return flight to Yemen, when we’d have to leave Egypt. So I called my husband and asked him to find a way for us to enter Gaza through a tunnel.

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<sup>177</sup> From 2006 to 2010, Egyptian authorities sharply restricted Palestinians from leaving Gaza or re-entering it. In addition, Palestinians told Human Rights Watch, Egyptian authorities detained Palestinians from Gaza – including those who were transiting through Cairo en route to third countries and those who were returning to Gaza from abroad – in a facility located beneath the old Cairo Airport.



Within a few days, Amna said, she and her daughter entered a tunnel, descending a series of ledges to a depth of around 10 meters underground.

There were three of us, me and my daughter and another woman ahead of us. At some points we could walk, but most of the time we were crawling. We were moving as fast as we could. One time my hand touched the wall of the tunnel and it was just loose sand. I didn't touch the walls after that. When we got to the other end, there was a little handmade elevator with cables that could only take one person at a time. As it raised me up out of the tunnel I saw my husband standing there, for the first time in nine years, but all I could think about was that little elevator, and I said, "Look, I came back to you by cable car."

When Human Rights Watch interviewed the H.'s in Gaza in May 2011, they said the family intended to bring their remaining children, Amani and Muhammad, from Yemen to Gaza. After the fall of the Mubarak government in February 2011, the interim Egyptian authorities announced they would ease restrictions on Palestinian movement at the Rafah border crossing with Gaza.

### **Nazima and Abu Osama H.**

Abd al-Jawad H.'s brother, Abu Osama, and Abu Osama's wife Nazima, experienced similar restrictions on movement and family separation as a result of being effectively stripped of their Gaza residency in 1967.

In the 1948 war that led to the creation of Israel, Nazima H.'s family fled with her from Ashdod, in what is now Israel, to Gaza. She later married, and in 1966, one year before Israel occupied Gaza and conducted a census there, she traveled to Kuwait with her husband, Abu Osama, who had found work there.<sup>178</sup> When Iraqi forces invaded Kuwait in August 1990, Palestine Liberation Organization leader Yasir Arafat made statements supporting Iraq's move, and many Kuwaitis believed that Palestinians supported Iraq's leader Saddam Hussein. Nazima said that her family had received threats while in Kuwait, and they moved to Iraq.

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<sup>178</sup> Human Rights Watch interview with Nazima H., Gaza City, May 21, 2011.

From Iraq, Nazima's oldest daughter and two oldest sons moved back to Gaza in 1993 and 1995, and Israel later registered them as residents of the territory.<sup>179</sup> In the mid-1990s, Nazima's husband, Abu Osama, lost his job in Iraq, and moved to Gaza in late 2000. Nazima remained behind, planning to join him later.

"I entered Gaza on a visitor's permit, and one of my brothers, who was a resident here, sponsored me for residency by the family reunification process," Abu Osama said. "And Nazima's family sponsored her the same way. But then Israel froze the process, and we still don't have ID cards."

Nazima, who remained behind in Iraq, said she had planned to join Abu Osama later. Soon after Abu Osama returned to Gaza, Israel stopped issuing entry permits for Gaza, making it impossible for Nazima to join her husband.

"My son Isam and my daughter Suzan and I were still all in Iraq when the next war started," Nazima said, referring to the US-led military invasion of Iraq in 2003. The invasion led to a period of worsening violence and insecurity, and in November 2005 she and Isam left Iraq for Yemen. "There was so much danger, and no work in Iraq, no nothing," she said. "It was a hard decision, leaving Suzan behind, but her husband and his family were in Baghdad."

On several occasions in June and July 2006, Palestinians led by Hamas breached the Israeli-built steel wall along the territory's southern border with Egypt to protest the increasingly harsh closure policy imposed by Israel and Egypt following Hamas's January 2006 electoral victory and the July 2006 capture by Palestinian armed groups of Israeli soldier Gilad Shalit. By this point, Nazima had not seen her husband and children in Gaza for six years. "My husband called me in Yemen the moment the wall was breached, and told me to come," Nazima said.<sup>180</sup>

It all happened within 24 hours. I heard the wall was destroyed and immediately I had to prepare myself to travel, even though I knew I wouldn't

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<sup>179</sup> Nazima H.'s older daughter Suheir moved to Gaza in 1993 to marry. The Israeli military later registered her as a resident because her husband, a resident, sponsored her for family reunification. Nazima's two older sons, who had studied engineering in the US and medicine in Syria, respectively, moved to Gaza in 1995 after the Palestinian Authority was established. They entered the territory with "visitor permits" granted by the Israeli military and applied for residency in Gaza, which was eventually granted in 2008.

<sup>180</sup> It was not clear which of the several border breaches that summer the family exploited.

be able to leave Gaza again for a very long time. Everyone in the family decided together. It was hard to leave my son Isam in Yemen, like I had left Suzan in Baghdad. But he was working at the time, he couldn't throw his job away. My husband arranged with a relative in Cairo for me to be driven straight to Rafah, and we crossed the [breached border] fence.<sup>181</sup>

Nazima and Abu Osama said they were sending financial support, from their savings, to their children abroad. They hoped that less-stringent Egyptian travel restrictions on Palestinians would allow them to bring their children to join them in Gaza. According to Nazima, in 2010 her daughter Suzan's husband lost his job in Iraq, and the couple sold their house and borrowed money to bribe an Iraqi official to allow them to leave the country and travel to Gaza via Egypt. In total, including the cost of plane tickets for the couple, their six children, and Suzan's sisters in law, the couple paid \$15,000. Upon arrival in Cairo, the Egyptian authorities detained them, and deported them to Baghdad two days later. Nazima H. has never met her granddaughter, who was born in Baghdad in 2007.

## Palestinians Deleted from the Population Registry

After 1967, Israeli authorities required Palestinians whom the authorities had registered as residents of the occupied Palestinian territory to surrender their ID cards if they wished to travel abroad, in exchange for an exit permit. Israel required them to return periodically – usually within one year, although the maximum time period allowed varied with different Israeli military orders – and request to renew the exit permit; if they failed to do so, the military cancelled their residency.<sup>182</sup> The Palestinians whom Human Rights Watch interviewed said that Israeli authorities had not notified them or their families before cancelling their residency permits. Human Rights Watch interviewed two Palestinians who had failed to renew their exit permits within the required time period, after which the

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<sup>181</sup> The family traveled on Egyptian travel documents, which the Egyptian government issued to Palestinian refugees and their descendents. The documents resemble a passport and are renewable.

<sup>182</sup> An Israeli officer in the Population Registry Department told an Israeli rights organization that until 1994, a Palestinian resident of the West Bank who wished to travel abroad via Jordan would deposit his or her identification card at the border crossing and leave with an "exit card" valid for three years, which he or she would exchange for his or her ID card upon return. The exit card could be renewed three times for one-year periods. If a person did not return within six months of the expiration of the exit card, the Israeli military would cancel his or her registration and identification card, "since he was viewed as a person who had transferred his center of life abroad." Letter from Lt. Omer Knobler, Population Registry Department, Office of the Legal Advisor, Civil Administration, Judea and Samaria Area [West Bank], to Ido Bloom, advocate, Hamoked, March 30, 2011, [http://www.hamoked.org/files/2011/114221\\_eng.pdf](http://www.hamoked.org/files/2011/114221_eng.pdf) (accessed January 26, 2012). Hamoked directed Human Rights Watch's attention to the letter.

military cancelled their status as registered residents. Without identification cards and Palestinian passports, they are unable or unwilling to travel abroad via Egypt, for reasons described above. Palestinians living in Gaza who are not registered residents are not eligible to travel to Israel or the West Bank for medical treatments unavailable in Gaza. As well, if both members of a Palestinian couple are not registered as residents, their children are also ineligible for residency, such that Israeli control over the population registry has separated families over multiple generations.

### **Khadija N.**

The Israeli military counted Khadija N., who was born in Gaza and is married to Muhammad N. (see his case above), in the Gaza census in 1967, “but then I left, and it turned out that I was supposed to come back and renew my exit permission within six months,” she told Human Rights Watch.<sup>183</sup> “I missed the appointment and they cancelled me, but I didn’t know about the requirement. There was nothing I could do about it. Every time I came back to Gaza after that, I had to get a visitor permit beforehand.” The Israeli military authorities’ requirement of an exit permit would appear to violate the human right of Palestinians to leave any country, including their own.<sup>184</sup>

As a result, Khadija N. said, she has been unable to leave Gaza to visit their daughter, L., who moved to Greece and is married there.

Without an ID I can’t get a [Palestinian] passport, so I can’t leave. And my daughter in Greece doesn’t have a permit, and she can’t enter Gaza on her Jordanian travel document. I feel like a bird in a cage. I haven’t seen my daughter in 12 years. She’s had three children and I’ve never seen them. Her last pregnancy was difficult, the doctors said it was serious, and I couldn’t be with her. I felt it was such an injustice. Why can’t I go and see my daughter when I want to? Why should I be prevented from doing that?

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<sup>183</sup> Human Rights Watch interview with Khadija N., Gaza City, May 20, 2011.

<sup>184</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.

171, entered into force March 23, 1976, art. 12. Israel’s limitations on Palestinians’ freedom of movement violate its obligations under Article 12, “including the right to return to one’s country.” United National Human Rights Committee, Concluding Observations, Israel, CCPR/C/79/Add.93 (August 18, 1998), para. 22,. See “International Legal Obligations,” below.

Israel retained complete control over the Gaza side of the Rafah border crossing until 2005, when it withdrew military forces from Gaza, and retained indirect control until June 2007, when Hamas ousted Fatah from Gaza.<sup>185</sup>

On May 28, 2011, following the fall of the Mubarak government, Egyptian authorities eased restrictions on Palestinian travel. The new Egyptian policy makes it possible that Khadija N.'s daughter will now be able to visit her mother. However, Egypt continues to restrict Palestinian men aged 18 to 40 from leaving Gaza. Khadija said her son Ahmad is 27 and has been unemployed for three years. "He had a scholarship in Turkey but he couldn't leave [Gaza to take up the offer], so he studied business administration and English at the Islamic University in Gaza City. Our relatives in the Emirates promised him a job if he could go there, but he can't," Khadija said.

Other members of Khadija N.'s family also lack identity documents. In one case, the family's lack of identity documents threatened to prevent a young relative from obtaining medical care. Khadija's sister, who asked not to be identified, told Human Rights Watch that her young grandnephew, E., needed to travel through Israel for eye surgery.

The doctors in Gaza said E. was going to go blind if he didn't get surgery soon, but they couldn't perform it here. There was a visiting professor of ophthalmology in Jerusalem at the time, but E. couldn't leave Gaza. You need an ID card or a relative to escort you out, or the Israelis won't let you out unless you're about to die. He didn't have his own ID card because he's under 16, and his parents don't have ID cards either. But I have an ID card, and I look like his grandmother, so I took him to Erez [the Israeli-controlled pedestrian crossing in northern Gaza]. It was a rainy day. The Israeli soldier came and took my ID card and E's birth certificate, and we stood there for an hour and a half as they checked their records. The soldier came back and said I was lying. And he was right. He had identified E's grandmother, he told me her name. But he gave me the name of the grandmother on the father's side. So I claimed to be from the mother's side. And they let us out.<sup>186</sup>

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<sup>185</sup> See "Continuing Effects of the Permit Freeze in Gaza," Background, above.

<sup>186</sup> Human Rights Watch interview with S.N., Gaza City, May 20, 2011.

Khadija N. said that her two brothers, who live in Dubai, were born in Gaza but lack ID cards, and have not seen their relatives in Gaza for 25 years.

### **R.M.**

R. M., who asked Human Rights Watch not to identify him for fear of damaging his pending application for residency with the Israeli authorities, was born in Ramallah in 1952 and obtained an ID card from the Israeli Civil Administration in 1968. In 1970, in order to leave to study in the United States, he applied for an exit permit that was valid for one year. In exchange, he surrendered his Israeli-issued ID card to the military authorities upon departure. “I didn’t return within the year to renew my permit, and so I lost my ID card,” he said. “I didn’t seriously think about it at the time, and then after that, it was too late.”<sup>187</sup>

While in the US, R.M. married a woman of Palestinian origin, and the couple had a daughter. In 1997, when the family returned to the West Bank, all three were US citizens. Both parents became professors at Birzeit University. Until 2009, they were able to continue their employment and to raise their daughter in Ramallah by obtaining and renewing temporary tourist visas and work permits that Israeli authorities granted them as US citizens.<sup>188</sup>

Beginning in mid-2009, Israeli authorities repeatedly denied R.M.’s daughter entry to the West Bank. That year, the daughter learned that she had been admitted to a university in the United Kingdom. The UK consulate instructed the family that she had to apply for a UK student visa at the embassy in Amman, Jordan.

My daughter and I went to Amman and we tried to come back to Ramallah via the Allenby Bridge. The Israelis denied our entry. There was no explanation. The soldier just said, “You have a problem with the Ministry of Interior.” My wife was in the West Bank, but my daughter and I had to go

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<sup>187</sup> Human Rights Watch interview with R.M., Ramallah, July 11, 2011.

<sup>188</sup> In 1997, R.M. and his family entered Israel on tourist visas, valid for three months, which Israeli authorities stamped in their US passports, and traveled to the West Bank. R.M. and his wife began working at Birzeit University in 1998, and then obtained renewable, six-month work permits valid for the West Bank until 2000, when the second *intifada* began at the end of September. The authorities did not contact R.M. about his renewal application, and he and his family worked in the West Bank without permits until 2002, when the Civil Administration told R.M. by phone that they had a record of his application but would not grant it. From 2002, M. and his family were able to leave the West Bank and to return on tourist visas, which required them to travel abroad every three months, but they were unable to secure work visas.

back to Amman for two weeks. Then my Israeli lawyer sent me a document from the Israeli Justice Ministry that said we could come back. We spent the whole day on the bridge. Then they separated me from my daughter. I was not even allowed to talk to her. They raised guns in my face. They let me in, but she had to return to Amman at midnight. She was the only one on the bus. I felt awful, coming back alone, but I couldn't do anything. She was only coming back to get her things before going off to university in London, but she couldn't say good bye to her mother. And her mother was afraid that if she went to see her in Jordan, she wouldn't be able to come back, either.

In April 2011, R.M. said, his daughter tried to return but was denied entry again at both the Allenby Bridge and at Ben Gurion airport. "The Israelis said that she was denied before and the reasons hadn't changed, so we would have to apply to the Israeli embassy in London to reverse that decision."

Israeli authorities also denied R.M. entry on one occasion. In 2009, when Israeli authorities allowed him to enter via the Allenby Bridge but without his daughter, they had required him to sign a document stating that he would travel "in Palestinian Authority areas only," i.e. the West Bank, not including East Jerusalem as well as Israel. In 2010, after R.M. obtained a renewable work permit that the Israeli authorities began granting to international academics working in the West Bank, he entered Israel in order to fly to the US via Ben Gurion airport.

I flew out without any problems. But they detained me at the airport on my return [in early July]. They said, "You signed a PA areas-only document," and told me to go back to the US. They let me talk to someone from Interior Ministry, named Rami, who told me, "You will not be allowed in via the airport, but I won't report it. So go back home and then fly to Amman, and you can enter the West Bank by Allenby Bridge." I called my lawyer and tried to buy time, but eventually they started shouting, and they got physical. Two armed men came and put me in a van and drove me to a detention center, where I stayed for a few hours in a room with steel bunk beds and a toilet.

Israeli authorities gave R.M.'s passport directly to the airline that he had flown on, which flew him out the next day, and returned his passport to him upon arrival in London, where he had stopped-over during his return trip from the US. On the following day, he flew to Amman. "By July 9, I was back at the Allenby Bridge crossing," he said.

For six hours on the bridge, they said they were going to deny me entry. They were extremely rude. When I asked why I was being denied and that I live with my family in the West Bank and work at Birzeit University, they said, "This is precisely why we're denying you entry, because you work there when you're not allowed to." My wife was making calls, I was calling my lawyer, and all the time we had no idea about our future. I almost gave up. Then suddenly they allowed me in. I'm scared ever to leave again. My work visa expires in August [2011]. I don't know what I'm going to do. If I stay, I'm illegal, but if I leave, they might keep me from coming back.

R.M. said that since 1997, his family had paid around \$800 to \$1,000 in travel costs each time they left the West Bank to renew their tourist visas, in addition to \$4,500 in lawyers' fees for his case and \$600 for his daughter's case.

Both R.M. and his wife lack Palestinian ID cards, though both have first-degree relatives who are registered by Israel as West Bank residents. In 2008, after Israel began to "un-freeze" the family reunification process as a "humanitarian gesture," their relatives applied on their behalf for residency via the family reunification process. According to R.M., "we gave our information to the PA, but we found that the PA didn't submit our names to the Israelis because they had other priorities, like people who'd violated their stay in the West Bank for a long time and were in danger of deportation. There was a backlog. They finally reactivated our application in late 2010."

## **Palestinians Denied Residency after Moving from Gaza to the West Bank**

In September 2000, Israel stopped accepting requests from Palestinians seeking to change their registered address. In practice, most Palestinian applicants request to change their address from Gaza to the West Bank; few West Bank residents seek to move to Gaza, which is governed by Hamas and against which Israel imposes a closure regime including restrictions that ban most people in Gaza from traveling to the West Bank. In



February 2011 Israel agreed to change as many as 5,000 addresses. The Palestinian Authority presented around 3,700 cases, of which Israel had processed around 2,775 requests for changes of address by October. Israeli military records indicate that around 35,000 Palestinians registered as residents of Gaza entered the West Bank but do not have valid permits.

These Palestinians are prevented from traveling freely within the West Bank and from leaving the West Bank, owing to their credible fear that soldiers at internal checkpoints will arrest them and forcibly remove them to Gaza, and that soldiers at border crossings will prevent them either from leaving or from re-entering the West Bank. Israeli military orders that came into force in April 2010 define such Palestinians as foreign “infiltrators,” subject to criminal penalties including deportation.

#### **H. M.**

H.M., 35, from Gaza, asked Human Rights Watch not to identify him out of concern that doing so could prejudice his pending application to change his address to the West Bank.<sup>189</sup>

He first moved to the West Bank in 1993 to attend al-Najah University in Nablus, using a renewable, two-month student permit that he had received from the Israeli Civil Administration in Gaza. He returned to Gaza to visit his family in 1994, “but then I wasn’t able to return to the West Bank because I couldn’t get another permit, so I missed a year of school,” he said. He was able to return in 1995, “using a permit that said it was for students but was valid for only one week, and after that I didn’t go to Gaza at all, because I was worried I wouldn’t be able to return.”

His last visit to Gaza was in 1999, when he received a one-month visitor permit. He last saw his mother in 2004, when she came to the West Bank for medical treatment for two weeks. His wife and two daughters live in Gaza.

M. said he has not been able to obtain a permit to reside in the West Bank. “I also applied, without results so far, for an address change. Without that, I haven’t been allowed to travel,” he said, and described a number of lost opportunities abroad.

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<sup>189</sup> Human Rights Watch interview with H.M., Hebron, May 30, 2011.

In 2004, I applied for a job as a financial manager at a center for disabled people, and they said they would have hired me except that they needed me to be able to travel. Later in 2004, I was offered a job in Abu Dhabi, and the same offer was extended again in 2006, but I couldn't leave the West Bank to accept it. In 2008, I wanted to work on my Ph.D. in Arab and Middle Eastern Studies at a research center where I was admitted in Egypt. It's the same story. Currently, I work as a financial manager at a company and I really ought to travel for my work, but I can't. Most recently I was denied in October and December 2010 and again in February 2011. The only reason my boss hasn't fired me is because he's from Gaza as well, and understands my problem.

H.M. has also faced difficulties traveling inside the West Bank. "In 2003, I was working for an NGO that assigned me to work on a project in Salfit," he recalled.

On my way back home, in December 2003, soldiers at Halamish checkpoint refused to allow me to go through the checkpoint towards Salfit. They detained me, and insulted me, and sent me back home. I had to resign after that. I was doing a different job in 2009 when I had a similar problem. My company went on a retreat, and when we were coming back to Ramallah, we crossed a checkpoint where they took me aside for two hours. It was humiliating, and the soldier told me, 'stay away from checkpoints.' What am I supposed to do? I can't even participate in social events outside Ramallah.

### **Abd al-Salam Abu Askar**

Abd al-Salam Abu Askar, 46, works in television production and advertising in Ramallah, where he moved from Gaza in May 2007. "I traveled on my businessman card," he said, referring to a magnetic card, known as a "BMC" and valid for six-month periods, that Israeli authorities give to a limited number of Palestinian business executives that enables them to leave Gaza via the Israeli-controlled Erez crossing point.<sup>190</sup> His wife and five children, all of whom are also registered as Gaza residents, followed in December 2008, using one-day permits.

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<sup>190</sup> Human Rights Watch interview with Abd el-Salam Abu Askar, Ramallah, May 24, 2011.

His BMC was cancelled in 2008; since then he has applied for and received six-month “permits to remain” in the West Bank. On two occasions, including for four months in 2008, Abu Askar said, Israel stopped processing applications for such permits. During those periods, he avoided traveling within the West Bank because he feared that Israeli soldiers at checkpoints could detain or deport him.

Abu Askar said he has not been able to return to Gaza, where he has a home and his company is based, and where his mother, three brothers, and four sisters live, since he left in 2007. “They can’t come here easily, and we can’t go there,” he said. “My wife is also from Gaza, and her father died there in October 2009, but she couldn’t go to his funeral because she didn’t get a permit. She kept applying but she didn’t get one until August 2010.”

Abu Askar has been able to travel abroad, most recently in April 2011, but Israeli authorities refused to grant him “coordination” to leave to Jordan twice, in February and June 2009. “The other problem with coordination is that you have to get it both for leaving and for coming back,” he said. “In April, on my way back to the West Bank, I had paid an extra fee for what they call VIP processing, but somehow the Israelis never informed the people actually at the border crossing about my coordination. I had to wait for seven hours on the Jordanian side, it gave me a lot of anxiety.”

Abu Askar said he applied to the PA Civil Affairs Ministry to change his address in December 2009, with no result, and also hired a lawyer to change his address. “I was trying for about a month, it cost me \$3,000, and then they rejected my application,” he said.

### **Rima Ajrami**

Rima Ajrami, registered as a Gaza resident, entered the West Bank in 2001 for her wedding, and continues to live there. She has been able to leave the West Bank four times since then – once to Gaza, three times to Jordan – but she said that on other occasions Israel has repeatedly refused to grant her “coordination” to leave; she said she was not provided with any written explanations. Although all four of her children were born in the West Bank, and although her husband is a registered resident of the West Bank, Israeli authorities registered all her children as Gaza residents, and have prevented the children from leaving the West Bank with their father. In Ajrami’s and some other cases where one parent is registered as a West Bank resident and the other as a Gaza resident, such as that of

Abdullah Alsaafin (see below), it appears that Israeli authorities arbitrarily assigned the couple's children as West Bank or Gaza residents.

Ajrami said that her parents fled from Beer Sheba, in Israel, to Gaza in 1967, and were married in Jabalya, Gaza, in 1970. "They went on their honeymoon to Cyprus and were prevented from coming back to Gaza," she said, "so they went to Syria. I was born there."<sup>191</sup> She came to Gaza when her parents returned in 1996. The Israeli military authorities entered the family into the population registry then, and the family received ID documents from the newly-formed PA.

Later, while traveling in Egypt, Ajrami met and married a man from the West Bank. "We wrote the marriage contract there in Egypt, and then he returned to the West Bank while I returned to Gaza in order to apply to go visit him," she said. She, her parents and siblings applied through the PA's Civil Affairs Ministry for Israeli permits in order to travel to the West Bank to have a formal wedding ceremony. The Israeli authorities rejected her father's and brother's applications without explanation, she said, but granted permits to her, her mother, and sister. The permits were valid for three days; the women traveled from Gaza via the Erez crossing to the West Bank on September 27, 2001.

"From then until now, I was able to get a permit to go back to Gaza once," Ajrami said. "I was very lucky. I returned to the West Bank the day before the Hamas takeover." Israel and Egypt closed their borders with Gaza completely after Hamas took power in Gaza in June 2007. Ajrami, who works at the Center for Continuing Education at Birzeit University, has received "coordination" from the Israeli military to leave the West Bank through Jordan three times, but Israel also denied her "coordination" requests on several occasions:

One time I needed to go to the UK for work, but I couldn't. Another time, I was trying to get coordination to travel to my sister's wedding in Dubai, but the [PA] Civil Affairs office told me that I had been rejected for security reasons. That was the first time this had happened, but they didn't know why, they said, "That's what the Israelis told us." I asked them to get an answer. I said that if they wouldn't contact the Israelis, I would, but they warned me not to get the Israelis "interested" in my case.

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<sup>191</sup> Human Rights Watch interview with Rima Ajrami, Ramallah, December 28, 2010.

On another occasion when she was denied “coordination,” Ajrami said, “We found out by accident that [our] kids are registered as Gazans.”

I had been refused coordination, so my husband was taking the kids to Jordan on a vacation, to visit his family. But at the [Allenby] bridge the Israelis told him that he could pass but the children could not, that the children needed coordination because they are registered as Gaza residents. My daughter was very upset with me when she came home. She blamed me, she said I was the reason they couldn’t travel.

Ajrami first applied to change her address two days after she moved to the West Bank. “When we went to the PA Ministry of Interior to follow up on our case, they would say, ‘There’s no process, the Israelis are not accepting these applications.’” She re-applied on her own and her children’s behalf within days of the December 2010 ruling by the Palestinian Supreme Court that ordered the PA Interior Ministry to again accept address-change applications.

There’s a specific form you can get, you pay someone around 80 shekels [US \$ 23] to fill it in for you in Hebrew, and they attach a photocopy of your ID card. The Ministry of Interior staff told us that they would accept our application but that we should not expect anything, because the Israelis were still not accepting them. When we followed up, they told us the Israelis never took our forms. They told my husband that they might be able to change the address of our kids, but not mine.

Although in the past she could occasionally obtain Israeli permission to travel, Ajrami said, all her recent applications have been turned down.

For the last few years I am supposed to have a permit to stay here [in the West Bank] at all. My kids and I are all here illegally, we can all be arrested. Under the new military order [No. 1650], it seems I’m a criminal now. I have applied for permits through the Civil Affairs Ministry, but they always tell me no. Once, I bypassed Civil Affairs and applied straight to [the Israeli Civil Administration office in] Beit Il. I met with an Israeli officer, Captain Khaled,

who told me that he knows I'm here illegally but he refused to help with changing my address or with getting a permit.

Ajrami said she strictly limits her and her children's travel within the West Bank due to fear of being arrested at a checkpoint.

My kids do not know the West Bank apart from Ramallah. Their schools do not take them on field trips to other places. I have not seen Nablus or Bethlehem or anywhere else, because I worry that they will stop me at the checkpoint and take me to Gaza or put me in prison. I don't leave Ramallah, except to go to Jericho, because you can take the winding road [*al-moarrajat*], and avoid the main road that the Israelis take, where the checkpoints are. I do not take my ID card with me.

The need to avoid checkpoints limits her ability to do fieldwork for her job, Ajrami said, and causes her to lose other financial opportunities. "I'm a simultaneous translator, but I can't travel to some of the meetings where they want to hire me." In 2010, she had to decline 12 days of translation jobs, which would have paid her \$350 per day, Ajrami said.

### **Rania al-Ashkar**

Rania Al-Ashkar, a 37-year-old insurance company executive, is registered as a resident of Gaza, and moved from Gaza to the West Bank in 1992 to study at Birzeit University.<sup>192</sup> "I used to visit Gaza frequently, with no need for special coordination, and no trouble," she said. She married her husband, from Jenin in the northern West Bank, in 1999. The couple settled in Ramallah, where they are raising an eight-year-old son and a five-year-old daughter. She did not apply for a change in her address before Israel stopped processing such requests because the fact that she was registered as a Gaza resident had never caused a problem, she said.

In 2004, al-Ashkar, her husband, and their child planned to travel to Jordan. Because her ID card identified her as a Gaza resident, she had to apply in advance for "coordination" to leave the West Bank from the Israeli authorities, as well as for a "certificate of no

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<sup>192</sup> Human Rights Watch interview with Rania al-Ashka, Ramallah, May 8, 2011.

objection” from the Jordanian authorities. She received a phone call from the designated Palestinian official responsible for liaison with the Israeli military, who said the Israeli side had approved her request to leave, and the family drove to the Allenby Bridge crossing to Jordan. “But when we got there,” al-Ashkar said, “it turned out that my husband could leave, but I couldn’t.”

They wouldn’t let me leave. And on top of that, we learned that my son Khaled was included only on my ID documents as a Gaza resident, even though he was born in the West Bank. That meant that he could leave the West Bank only with me, not with my husband. The Israelis allowed my husband to leave, alone, but I had to go back home with my son.

Al-Ashkar said she made a similar discovery in April 2010, when she tried to leave the West Bank with her five-year-old daughter. “When we reached the bridge, I took my son with me to stand at the Gaza window, and my husband took my daughter with him, to stand at the other window [for West Bank residents]. But then the Israelis said my daughter had to go with me at the Gaza window, because she was registered with me as a resident of Gaza.”

Her Gaza registration also causes problems in terms of traveling within the West Bank, al-Ashkar said. To live legally in the West Bank she needs to obtain and renew a special “permit to remain.” Al-Ashkar said that Israeli authorities sometimes delayed renewing her permit after it had expired, and in some instances had stopped processing permit renewal applications for all Palestinians for months at a time, leaving her without proof of her lawful residency in the West Bank. “The delays have created gaps in the periods when I have a permit. In those periods I can’t travel at all.”

Although she is technically allowed to remain and travel in the West Bank with a valid temporary residency permit, al-Ashkar tries to avoid informing soldiers at checkpoints that she is registered as a Gaza resident.

When they find out, they stop you for a long time while they check your documents. I’m always nervous, every time I travel. I try never to drive a car, because usually the soldier at the checkpoint talks more to the driver than to the person in the passenger seat. And I try not to carry my ID card with

me because it says “Gaza.” Instead I carry my passport. It wouldn’t help me if the soldier took an interest and checked my passport in his system, but usually he doesn’t. In general I just don’t travel if I can help it.

The last time she was able to see her family in Gaza was in 2007, when the Israeli military granted her permission to visit for one month.<sup>193</sup> Al-Ashkar said she has applied with the Palestinian Authority’s Civil Affairs Ministry to change her address, without success, as the Israeli Civil Administration will not receive the file.

### **Ihab al-Ashkar**

Rania al-Ashkar’s brother, Ihab al-Ashkar, is the CEO of the Trust Insurance Company, where Rania also works. Al-Ashkar, 47, was born in the Shati (Beach) Refugee camp in the Gaza Strip, after his parents were displaced in 1948. Al-Ashkar is a registered resident of Gaza and has an ID card listing Gaza as his address. He began traveling between Gaza and the West Bank in 1985, and has lived in the West Bank since 2006.<sup>194</sup> He was initially able to enter and leave Gaza and to remain in the West Bank by using a “businessman card” (known as BMC), valid for six months and renewable. He also has a renewable, six-month “permit to remain” that the Israel military began to issue in 2007. “Now I need to have a different permit to stay here,” he said, as his BMC is no longer valid as an equivalent to an entry permit to the West Bank. While it is possible for holders of a “permit to remain” to travel abroad, al-Ashkar said, “you have to coordinate with the Israeli side before you travel.”

I usually get a non-written response at the last minute, and in the majority of cases I got no coordination at all. I have missed literally dozens of meetings and conferences that I was supposed to attend.

Al-Ashkar’s four children are all under 16 years of age and thus do not have their own ID cards, but are recorded on their parents’ ID cards. Because both he and his wife are

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<sup>193</sup> According to Rania al-Ashkar and numerous other persons interviewed, different branches of the Israeli military’s office for the coordination of government affairs in the territory (COGAT) deal with Palestinians, depending on their request and on whether they are registered as residents of the West Bank or of Gaza. In the case of a request to visit Gaza, the COGAT office in the West Bank military base of Beit Il (which adjoins a civilian settlement) may grant a permit to exit the West Bank and go to the COGAT office at Erez, the Israeli-controlled pedestrian crossing into the Gaza Strip. Officers at Erez will then decide whether to permit entry to Gaza and the duration of the permitted period. The Israeli military conveys permission to enter Gaza orally rather than in writing, as is also the case with military “coordination” required to leave the West Bank for Jordan.

<sup>194</sup> Human Rights Watch interview with Ihab al-Ashkar, Ramallah, May 8, 2011.



registered as Gaza residents, his children are as well, which has caused them to miss educational opportunities by preventing their ability to travel, al-Ashkar said.

My oldest girl is 14. She's registered in my ID card, so she can't leave the West Bank without me. And she needs to get coordination to leave the West Bank, which the Israeli military often denies. She wanted to go to the Seeds of Peace camp [a US-based program for children from Asia and the Middle East] and she was not able to travel. She tried twice. She was admitted to school in Jordan, but we decided not to send her because we were worried she would be unable to return. My other kids have also had problems because their schools couldn't include them in class trips outside the West Bank. My fear is what will happen to them when they turn 16 and need to get their own ID cards. We don't know if they'll be allowed to continue to live in the West Bank.

Al-Ashkar said that because of the freeze on changes to the population registry, he hired Israeli lawyers on six different occasions in an attempt to change his address to the West Bank. The lawyers took his case to the offices of the Civil Administration at the military base in Beit Il, near Ramallah. "They would take my file to the Interior Affairs Officer in Beit Il, but every time they would bring me back oral replies that it was rejected. One lawyer charged me [US] \$2,000, another \$8,000, and another said it would cost me \$50,000, which I refused to pay."

Although al-Ashkar was aware that the process was frozen, he decided in 2009 to submit an application for a change of address through the Palestinian Authority Interior Ministry. "They refused even to let me apply to change it. I insisted I was going to apply and they refused to accept my application, and this made me choose to go to the Supreme Court."

On October 13, 2010, al-Ashkar won his case. The Palestinian Supreme Court rejected the Interior Ministry's justification for refusing to accept applications for address changes – because the Israeli Civil Administration continued to refuse to process them.<sup>195</sup> As noted, in February 2011 Israel announced that it would process 5,000 change of address

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<sup>195</sup> Case 309/2009, *Ihab al-Ashkar et al. vs. Director of the Civil Affairs Committee in the Interior Ministry*, copy of the verdict on file with Human Rights Watch.

applications by Gaza residents who had moved to the West Bank, by September, and had processed around 2,775 of the 3,700 applications received by October 2011.

### **Zaher Isma'il Bassiouni**

Zaher Bassiouni, 28, was born in Lebanon; his father was born in the Jabalya refugee camp in Gaza and his mother was from the Palestinian refugee camp of Burj al-Barajneh in Lebanon.<sup>196</sup> His father was a member of the Palestine Liberation Organization (PLO) and was killed in clashes with Israeli forces in the 1982 invasion of Beirut. He then left Lebanon, along with his mother and older sister, for Syria and subsequently Yemen, Algeria, and Egypt. “We traveled on fake documents from Yemen to Algeria, and used more fake documents in Algeria, and I missed a year of school in Egypt because I didn’t have proper documents,” Bassiouni told Human Rights Watch. “Then we entered Gaza when the PLO returned, in 1993.” Bassiouni stayed in Gaza until 2000, when he was accepted to Birzeit University. “I got a magnetic card for the ‘safe passage’ between Gaza and the West Bank; I had applied for it to the PA administration of the Jabalya refugee camp. It was valid for a year. I was the only student who got a magnetic card, normally only workers got them and students got permits that were valid for a few months.” He traveled to Tarqumiya, in the Hebron governorate, from Gaza in July 2000. “But within a few months, the *intifada* broke out and the ‘safe passage’ was closed, and I stayed in the West Bank.”

He was able to travel within the West Bank until the autumn of 2002:

I was coming back from Birzeit to Ramallah, where I lived, and Israeli soldiers stopped me at the Surda checkpoint. They asked me for my ID card, which was bad, because my card said that I was born in Lebanon and that my address was Jabalya. The soldier detained me and said I was there illegally. That’s when I gave them my magnetic card, but the soldier broke it and threw it away. He said he did not have orders to arrest me, but that I was illegal and that the next time I would be arrested and deported to Gaza.

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<sup>196</sup> Human Rights Watch interview with Zaher Isma'il al-Bassiouni, Ramallah, December 28, 2010. See, for example, UNRWA, “Burj Barajneh,” <http://www.unrwa.org/etemplate.php?id=134> (accessed November 15, 2011).

Bassiouni said he had applied in 2001 and 2002 for permits to stay in the West Bank, through the public relations office at Birzeit University, but the office told him Israeli authorities had denied his application.

[In 2003] I tried to change my address at the PA Interior Ministry, I got an application form and got a service to fill it out for 70 shekels [US \$20], but the ministry refused to accept it. They said there was no process, the Israelis weren't talking to them, so they couldn't take the form. Then I got to know a guy who works at the office there, and I kept an application on file with him. I would call him every once in a while to check if there are any developments, but the answer was always negative.

In late 2004, Bassiouni said, Israeli soldiers entered a student residence at the university and checked the ID cards of several friends of his from Gaza.

The Israelis came to their building looking for something else, but caught my friends after they checked their ID cards. They arrested Bashar Abu Salim, Bashar Abu Shahla, and Muhammad Matar, and within 48 hours they deported them all back to Gaza. They were all about to graduate, so their graduation projects were done at the Islamic University in Gaza in coordination with Birzeit.<sup>197</sup>

In late 2008, Bassiouni said, "I heard about a new process and I filled out a form called 'permit to stay in Judea and Samaria,' which I handed in to the [PA ministry of] Civil Affairs. But I didn't succeed."

Bassiouni said he had several "close calls" while traveling within the West Bank in 2007 and 2008.

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<sup>197</sup> According to a press statement by the university, on November 21, 2004, in addition to the three students Bassiouni mentioned, Israeli authorities also deported a fourth student, Walid Muhanna, to Gaza. According to the university, the number of students from Gaza fell from "over 300" in 2000, when Israel severely restricted their movement to the West Bank, to 39 students in 2004. Birzeit University, "Four Birzeit University Students Illegally Deported to Gaza," November 2004, <http://www.birzeit.edu/news/16446/news> (accessed November 10, 2011).

For instance, on Valentine’s Day in 2007, I was taking my girlfriend on a date, we were going to Bethlehem. I was stopped at the “Container” checkpoint.<sup>198</sup> My girlfriend had a Jerusalem ID card and I was from Gaza, and I guess the soldiers hadn’t seen that before, and they interrogated me and slapped me and said I was kidnapping her, before letting us go. Another time, in 2008, I was trying to go with friends to Jericho, and the soldiers didn’t let me pass because of my Gaza ID. So we tried to drive on the winding roads, but they caught us again, and they gave us a lot of trouble – they slapped us around, they searched us and turned us back to Ramallah.

In April 2009, Bassiouni married a West Bank resident; the couple has since had a daughter. In December 2010, after the Palestinian Supreme Court ruling that the PA Interior Ministry was obliged to accept applications related to the population registry, Bassiouni said he submitted a new application to change his address. “I didn’t hear anything back about it. I also called a lawyer to ask if my wife could try to apply for family reunification for me, but he told me that it was impossible.”

In mid-2009, Bassiouni obtained a renewable, six-month permit to reside in the West Bank through his employer, a PA medical service provider that is dedicated to the PA’s security services. Notwithstanding the freeze, Israel continues to grant the PA a small number of discretionary permits for members of its security apparatus. “I am able to renew the permit through the medical services of the security agencies,” Bassiouni said. “The medical services apply for it on my behalf to the Civil Affairs Ministry, which gets the permit for me from Beit Il [the Israeli Civil Administration].” As a permit-holder, since 2009 Bassiouni has been able to travel within the West Bank and to leave if he obtains advance permission from the Israeli and Jordanian authorities.

### **Wafaa Abd al-Rahman**

Wafaa Abd al-Rahman, 39, traveled from Gaza to study at Birzeit University in 1990, and went abroad in 1999 to study for a master’s degree before returning to the West Bank in 2001.<sup>199</sup> She applied to the PA Civil Affairs Ministry to change her address from Gaza to the

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<sup>198</sup> The “Container” checkpoint is located to the north-east of Bethlehem on the road used by Palestinians for travel between the southern and northern West Bank.

<sup>199</sup> Human Rights Watch interview with Wafaa Abd al-Rahman, Ramallah, April 24, 2011.

West Bank in 2002, and again in 2003. “Before, I didn’t want to be in the West Bank permanently, but now I have a house here, and my job, my friends, and three of my sisters are here now. I want to be able to visit my mother and father and the rest of my family in Gaza, but it wouldn’t make sense to move back.”

In 2003, Abd al-Rahman said, she first learned that she needed to apply for a permit to live in the West Bank. “I didn’t apply for it at first, but then it became the prerequisite to being able to travel outside the West Bank, so I applied.” As the director of Filisteeniyat, an organization that “helps build media capacity,” Abd al-Rahman said, she needed to travel for her work.

I applied for coordination to leave the West Bank ten times, and received it only once. From 2003 to 2005, I couldn’t travel abroad at all. In 2006, I got a permit for two days to visit my family in Gaza. The Israelis gave me one day to leave the West Bank and travel to [the] Erez [crossing with Gaza], and then at Erez they gave me a permit for one more day to enter and leave Gaza. At least I got to meet my young nieces and nephews, whom I’d never seen.

In the West Bank, Abd al-Rahman said, “The soldiers always give me a lot of extra attention because I’m from Gaza. The easiest place to go [from Ramallah] is Jericho, because the checkpoint there isn’t too bad, but I won’t go to Nablus, it’s too dangerous. They threaten to deport you.”

You limit your travel because you are basically living in fear of being detained or deported. I love Gaza, but I want to be the one who decides when and how I go there. As it is, I can’t hold meetings with the workers of my own organization except in Ramallah. For instance, we’ve done trainings for women journalists in Hebron, to teach them how to blog, but I couldn’t go there. I had to do it all from Ramallah.

Abd al-Rahman described a movement called the Harakeh Campaign, launched in 2009 by Palestinians registered as Gaza residents in order to pressure the PA to prioritize the issue of address changes in negotiations with Israel. “We’re pushing the Interior Ministry to accept its responsibility for changing addresses under the Oslo agreements, instead of

handing the file to the Civil Affairs office, which works things out by liaising with Israel,” Abd al-Rahman said. “We want to ensure the PA is collecting and maintaining information about people who live here without residency permits, and who are married to non-resident spouses.”

## **Palestinians and Foreigners Denied the Ability to Live With Their Families**

Human Rights Watch interviewed Palestinians who were separated for long periods from their spouses, parents, children, and other family members because of Israeli authorities’ refusal to grant residency status or entry permits. In 2000, Israel “froze” the process of family reunification applications, whereby a first-degree relative who is a registered resident of Gaza or the West Bank sponsors another Palestinian’s application to live in the same area (Gaza residents cannot sponsor applicants for West Bank residency). At the same time, Israel stopped granting entry permits to non-registered Palestinians, including, in some cases, Palestinians seeking to enter the occupied Palestinian territory using a foreign passport. Egyptian authorities who control one side of the Rafah border crossing with Gaza continue to insist, according to Palestinians who spoke with Human Rights Watch, that Palestinians present Israeli-approved ID documents in order to enter Gaza.

### **Abdullah Alsaafin**

Abdullah Alsaafin, a journalist, was born in Gaza in 1962. His parents, two brothers, and two sisters still live there; like him, they are registered as Gaza residents. Alsaafin’s wife Manal was born in Saudi Arabia and raised by her family in the West Bank, where Israel registered her as a resident when she was a child. The couple had their oldest child in Gaza in 1988. They traveled to the UK in 1990, where Alsaafin pursued his Ph.D. at the University of Bradford, and the couple had three more children. Each family member obtained British citizenship. The family returned to Ramallah in 2004, where Alsaafin joined the Jerusalem bureau of the Al-Hurra television network. Israeli immigration authorities granted him status as a foreign journalist and a one-year visa, which he renewed four times.<sup>200</sup>

In 2005, Israeli border control officers refused to allow Alsaafin’s oldest son, Muhammad, to leave the West Bank to visit a relative in Jordan on the basis that he was registered as a

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<sup>200</sup> Alsaafin sent a letter to Quartet Representative Tony Blair on October 22, 2009, providing details of his case.

Gaza resident and did not have the proper permission; they did not recognize his right to travel on his British passport. According to Alsaafin, Muhammad was frequently anxious that he would be arrested during the next four years, while he studied at Birzeit University. When Muhammad left the West Bank in 2009 to look for work abroad, Israeli officials told him that he would not be allowed to return, Alsaafin said.<sup>201</sup>

In August 2009, Alsaafin traveled on assignment from the West Bank to Gaza. Israeli officials at the Erez crossing with Gaza detained him and stripped him of his press credentials, stamped his UK passport with his Palestinian ID number, and refused to allow him to enter Israel in order to return to the West Bank.

I stayed for four months in Gaza. The Rafah crossing was still closed at the time. A vice-consul at the British consulate managed to reach a compromise with the Israelis, where I would be transferred directly from Erez to Ben Gurion airport without being able to go to my home in the West Bank and get my clothes, but I refused being deported like that. Finally I was picked to be part of an envoy to the Egyptians to mediate between Hamas and Egypt, so I was able to leave that way.

He later traveled to Beirut, where he lived for a year, and then divided his time between Beirut and Jordan, working as a trainer of journalists. He stayed in Jordan on tourist visas that were valid for one month and must be renewed by leaving the country. In November 2011, he found work teaching journalists at a college in Abu Dhabi.<sup>202</sup> Israel has repeatedly refused to allow him to enter the West Bank, where his wife and two daughters live.

In 2009, Alsaafin said, Israeli authorities also stamped the British passports of his wife Manal and his other children. Although Manal was a West Bank resident, by an administrative error Israel re-registered her as a Gaza resident – despite the fact that she retained a copy of her original West Bank residency documents, Alsaafin said. At the same time, Israeli authorities notified Alsaafin’s three younger children that they were West Bank residents. At the time, therefore, Israel considered Alsaafin, his wife, and their oldest

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<sup>201</sup> Human Rights Watch telephone interviews with Abdullah Alsaafin, Amman, Jordan, August 16 and September 6, 2011.

<sup>202</sup> Human Rights Watch telephone interview and email correspondence with Abdullah Alsaafin, Abu Dhabi, January 3 and 6, 2012.

son to be Gaza residents, but his three younger children to be West Bank residents, and would not grant any of them residency or tourist visas in their UK passports. He and his son Muhammad were barred from returning to the West Bank, while his wife and other children lived in Ramallah. His wife was afraid to leave the West Bank for fear that Israel would bar her from returning, Alsaafin said, although she was able to leave and return to the West Bank in January 2011, to attend their son Muhammad's wedding abroad. "That was the first time we were able to meet for two years," Alsaafin said.

In June 2011, Alsaafin said, lawyers from the Israeli rights organization Gisha succeeded in having Israel reverse their error and change his wife's registered address from Gaza to the West Bank. "My wife was finally able to leave the West Bank without fearing that she would be banned from going back," Alsaafin said. Gisha lawyers were also able to have Israel change his oldest son Muhammad's address from Gaza to the West Bank. However, in late November 2011, Palestinian Authority officials informed Alsaafin's family that Israel had reversed its decision regarding his oldest son, and had again registered him as a Gaza resident. It is therefore unlikely that Israeli border officials would allow Alsaafin's oldest son, who is currently working in Qatar, to return to the West Bank.

Israel has however refused to change Alsaafin's address or allow him to enter the West Bank.

I tried many times to get a permit to enter the West Bank. I wanted to attend my older daughter's graduation ceremony from Birzeit, and to help my younger daughter settle in when she starts there this fall. But I'm unable to visit my home at all. My house is in Ramallah, but my son says, 'Dad, you live in the airport.' I'm approaching the third year of this instability, of living alone, eating alone. I communicate with my family through Skype and the internet. On paper, I am married, but in reality it's as if I have no wife and children.

### **Somaida Abbas**

Somaida Abbas, born in Jerusalem in 1959, works as a financial consultant in Ramallah. "I attended the Brahimiya School in Jerusalem, my name used to be on the wall on the honor's list," Abbas said.<sup>203</sup> He then studied engineering at a university in Baghdad, briefly

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<sup>203</sup> Human Rights Watch interview with Somaida Abbas, Ramallah, June 23, 2011.



returned to work in the West Bank in 1982, and then worked in Saudi Arabia, Iraq, and, in 1985, moved to Sweden. “I became a citizen and got my MBA in Sweden,” Abbas said. He returned to Jerusalem in 1988 to renew his “exit permit,” as Israel required of Palestinian permanent residents of Jerusalem, and returned to work on Swedish engineering projects. In 1994, the PLO leadership asked Abbas to work on a joint Israeli project to create industrial zones in the West Bank. “So I came back through Ben Gurion airport with my Swedish passport,” Abbas said. “They took my Jerusalem ID card and didn’t give it back.”

He hired a lawyer. In March 1995 the Israeli Interior Ministry informed them that Palestinians who acquired foreign citizenship lost their status as permanent residents of Jerusalem. (The category of “permanent residents” is unique to East Jerusalem Palestinians, who are neither full Israeli citizens nor registered in the Palestinian population registry. The Interior Ministry does not strip Jewish Israelis of their ability to reside in East Jerusalem if they have or acquire foreign citizenship.)<sup>204</sup> “Eventually, after hiring more lawyers, and fighting the case again 2007, I gave up on this issue,” Abbas said. In 2009, Abbas decided to stop fighting the legal battle to regain his status as a permanent resident of Jerusalem. “I am now fighting to be recognized as a resident of the West Bank,” he said. In March of that year, his wife, a registered West Bank resident, sponsored an application for family reunification with Abbas, which the couple submitted to the PA Civil Affairs office. “I haven’t heard anything back yet,” he said.

The couple’s three children, all under 16 years old, are listed on his wife’s ID documents. From 1996 to 2000, Abbas was able to obtain renewable, six-month work visas from the Israeli Civil Administration, which allowed him to enter the West Bank. “The Civil Administration officers advised me to apply for residency by using my wife’s ID card,” Abbas said. After September 2000, the Civil Administration stopped issuing the work permits, but Abbas was able to obtain three-month tourist visas on his Swedish passport until February 6, 2006, when Israeli passport control officers denied him entry at the Ben Gurion Airport when he was returning from a trip during which, according to Haaretz, “he took part in an initiative to advance economic cooperation between Palestinian, Israeli and

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<sup>204</sup> See, for example, B’Tselem and Hamoked, “The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians,” April 1997, [http://www.btselem.org/publications/summaries/199704\\_quiet\\_deportation](http://www.btselem.org/publications/summaries/199704_quiet_deportation) (accessed October 12, 2011).

Swedish business people [and ...] talked with officials from the Turkish Foreign Ministry about re-opening the Erez industrial zone” in Gaza.<sup>205</sup>

Abbas said he was astounded at the decision to deny him entry, “even though I had been appointed to lead the creation of border industrial zones, which was [Israeli Prime Minister Yitzhak] Rabin’s idea in the first place.” Abbas had established the PA Commission for Industrial Zones and held senior offices at the PA Ministry of Industry before it was merged into the Ministry of Economy.

After being deported to Turkey, Abbas traveled to Jordan, where in March 2006 he received a diplomatic “service visa” from the Israeli Embassy in Amman. Nonetheless, later that month Israeli border-control officials refused to allow him to enter the West Bank via the Allenby Bridge, reportedly stating that the Interior Ministry did not recognize the Foreign Ministry’s diplomatic visa.<sup>206</sup>

Abbas told Human Rights Watch that he tried repeatedly to enter Israel and the West Bank that year.

I tried to go through the King Hussein Bridge three times during 2006. My family and I were completely separated, and I became depressed. You could count the number of times I left the house. I lost 26 kilograms. I smoked a lot.

On June 10, 2006, his wife and children moved from the West Bank to join him in Jordan, Abbas said. “It cost me \$70,000 from my savings to put my three children in school, move the family, rent a house, and so on.” His wife had taken a half-year’s leave from the Palestinian Ministry of Economy in order to join him.<sup>207</sup> Israeli border authorities denied his entry again in August 2006. “Then on February 8, 2007, I tried to enter and was initially denied entry again, but finally I got in. Officers from the Civil Administration came and

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<sup>205</sup> Amira Hass, “Doors of re-entry shut to Palestinians: A Swedish citizen describes what he calls insulting treatment at the airport,” Haaretz, October 1, 2006, <http://www.haaretz.com/print-edition/news/doors-of-re-entry-shut-to-palestinians-1.200282> (accessed November 10, 2011).

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

actually escorted me in, crossed out the ‘denied entry’ stamp and gave me a visa in my Swedish passport.”

Abbas must leave the West Bank every three months to renew his visa. “I am very worried about not being allowed back in,” he said. “And although I’ve started a consultancy company, I did so mainly because I can’t take more interesting work. I had to reject a job with the World Bank because it required traveling abroad.”

### **Zeina Soudi**

Zeina Soudi and her two siblings were born in Lebanon, where her parents married in the mid-1970s; her father left his native Jerusalem in the 1960s and her mother left Nablus in the early 1970s.<sup>208</sup> Her father, a former PLO official, currently lives in Tunis, with no passport. “I haven’t seen him in years,” Soudi said. Her mother repeatedly brought her to the West Bank in order to register Soudi as a West Bank resident, but these attempts failed.

In 1981, when I was two, my mom brought me from Lebanon to be registered in her West Bank ID card under the Civil Administration. They wouldn’t register me, although they had already registered my older sister. The reason was that I had to be registered with my father. Then we came back in 1985 to register my little brother, and they did, but rejected me again, because my father wasn’t in the registry.

“Of my mom and my siblings, I’m the only one who has a problem with registration,” Soudi said. Her mother made a third attempt to register her, Soudi said, “just before I turned 16, since after that the only option [to be registered] was family reunification,” a much more uncertain and difficult process.

It didn’t work, but we kept trying to get me in. I moved to Jordan, and I was accepted to Birzeit University in 1997, but I was denied entry [to the West Bank] that fall. Then I managed to get in, in 1998. I came in on a permit valid for PA areas only, for three months, and that I could renew for four months at a time. But the last time I entered was in 2000, and in 2001, my

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<sup>208</sup> Human Rights Watch interview with Zeina Soudi, Ramallah, July 10, 2011.

permit expired. I sent it to the PA to be renewed, but then there was the [Israeli military] siege of al-Muqata'a [the PA administrative headquarters following the outbreak of the second *intifada*], and my permit was there, and they either destroyed or lost my permit. I appealed to the governor of Ramallah, but he told me there was no way to renew it. So from 2001 to 2007 I was here illegally.

By this time, Soudi's siblings had moved to Jordan. Soudi could not travel abroad during that period, and missed her brother's graduation in 2001, her sister's wedding in 2005, and the birth of her sister's baby in 2006, all in Amman. She also avoided travel within the West Bank as much as possible, she said, but was often stopped at the Surda checkpoint between her home in Ramallah and Birzeit University.

At one point, there were so many students having problems that the university started organizing lectures at the checkpoint. I was detained by a soldier only once, although I missed an exam before he let me go. But I couldn't go to my grandmother's funeral in Nablus in 2004 because the Huwwara checkpoint was too dangerous at the time.

In August 2007, Soudi's mother learned that Israel had agreed to process a number of family reunification applications, and applied for an ID card on her daughter's behalf. "I got the card at the end of the year," Soudi said,

But they sent it to Nablus, because that's where my mother is registered. The Civil Affairs here told me to go get it in Nablus, but the final problem was that I couldn't travel to Nablus because I didn't have an ID card so I couldn't cross the checkpoints, and for a while Civil Affairs refused to let a relative of mine pick it up.

### **Arwa Muhammad al-Saleh**

Arwa al-Saleh was born to Palestinian parents in Saudi Arabia, where she lived until 1996; she then moved to Jordan, and traveled to Gaza in July 1999 with her parents and one

sister for her own wedding with a Gaza man.<sup>209</sup> “The rest of the family stayed in Jordan,” she said, “because they couldn’t get permits and they aren’t residents. I got a three month visitor permit based on my wedding invitation.” She flew to Gaza via the then-functioning PA-controlled Gaza Airport, which Israeli forces subsequently bombed and which closed in 2002. “I came back again [to Gaza] in early 2000, and I stayed,” she said. “My husband applied for family reunification, but then this process was frozen. In 2008, some people started to get their ID cards this way, but I’m still waiting.”

Since she is “illegally” present in Gaza, al-Saleh could not obtain Israeli permission to leave as long as Israel controlled all of Gaza’s border crossings (effectively until 2007), which prevented her from seeing her family abroad.<sup>210</sup> “My father was very ill in 2003 in Jordan, and I thought I should go see him, but it would have meant sacrificing everything, because the Israelis wouldn’t have let me back in again,” she said. “My parents refused to allow me to do it, and my children are in Gaza.”

Al-Saleh’s inability to travel also prevented her from seeing her brother, who had traveled to the US in 1987.

In 2007, before Hamas took over [Gaza], he came to the Erez border on his US passport. But he was not allowed to enter. He and I were calling each other at Erez, just meters away from each other, but we couldn’t meet. My husband worked in the PA president’s office, and he knew people at Erez, so my brother arranged that the Israelis would let us meet each other and just hug and kiss and say hello in a room at the Israeli border crossing. But when I was getting ready to cross the Palestinian checkpoint, Hamsa Hamsa, en route to Erez, the Palestinian security people told me that I had to show my *huwwiya* [identification card]. I said I didn’t have one. They said that if the Israelis saw that they’d expel me from the country and that they’d ban my brother from ever coming back, so I had to take my stuff and leave immediately. I did. I didn’t eat for two days after that.

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<sup>209</sup> Human Rights Watch interview with Arwa Muhammad al-Saleh, Gaza, May 24, 2011.

<sup>210</sup> See “Continuing Effects of the Permit Freeze in Gaza,” above.

Al-Saleh has not been able to see her father since 2000, or her mother since 2005, when she visited Gaza on her Jordanian passport. “I also have a Jordanian passport, which is expired, and I could have used it to leave, but the Israelis would not have let me back in because I am not registered,” al-Saleh said. “My sisters got married and I couldn’t attend the weddings, and my sister has cancer now and I can’t go see her.”

### **Safa’a Sulaiman Breik**

Safa’a Breik, 38, was born in Saudi Arabia and first traveled to Gaza in 1997 on an Israeli military permit that her sister “sponsored” on her behalf.<sup>211</sup> “I came to study here, then I got married, and in 1998 I had a baby,” Breik said. “I haven’t left Gaza since 1999. My relatives sponsored me for family reunification, but I still don’t have an ID card.” Breik said she was unable to leave Gaza to visit her mother, who was living in Egypt, when she was ill or to attend her funeral when she died two years ago. Breik was also unable to attend her brother’s wedding in Saudi Arabia.

Breik has an Egyptian travel document (not a passport), and in 2010 she contacted a lawyer in Cairo who renewed it for her. “Then I got a Syrian visa, so that I would meet the criteria for the Egyptians to allow me to leave.” But, she said, the Egyptian authorities refused to let her cross.

It was a shock. They let my husband leave, and my children, but they wouldn’t let me out. I still don’t know what the problem was. I had wanted to get out of Gaza for a while, after what the children experienced during the war [Israel-Hamas fighting in December 2008 and January 2009]. But instead I made it harder on them.

### **Muhammad al-Sirsawi**

Muhammad al-Sirsawi was born to Palestinian parents in Saudi Arabia, and lived in Libya and Egypt before entering Gaza in 1997, on a permit, issued by the Israeli military, to visit relatives there.<sup>212</sup> As an employee of the PA, he requested the Israeli authorities in 1998 to register him as a Gaza resident on the basis of his valid entry permit. “I have received no information about my request since,” he said.

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<sup>211</sup> Human Rights Watch interview with Safa’a Sulaiman Breik, Gaza, May 22, 2011.

<sup>212</sup> Human Rights Watch interview with Muhammad al-Sirsawi, Shaja’iya, Gaza, May 23, 2011.

I used to have a residency permit for Egypt, but it's expired. I have a house in Helwan, Egypt, that my brother is taking care of. He doesn't have an ID card either, and from the moment I came to Gaza I haven't been able to see my house or my brother.

Al-Sirsawi showed Human Rights Watch an Egyptian travel document that expired in 1999. "I can't renew it now because it had to be renewed within 3 years of expiration, but I couldn't go back to renew it within those three years because I couldn't get out without an ID card, or [if I could] the Israelis wouldn't have let me back in," he said. "Now, Egypt has opened the Rafah border, but they still require that you have some kind of travel document. So it doesn't make me optimistic because the whole Gaza Strip could leave, but not me. I feel like Egypt is my home too, not just Gaza, I have so many memories of going to college there and living there."

## **Palestinian Children Denied Residency**

From 1987 to 1995, Israel refused to register children unless their mother was a registered Palestinian resident (regardless of where they were born and their father's registration status). In the 1995 Interim Agreement, the Israeli government agreed that the PA could register all children under 16 years old who were born abroad or in the Gaza Strip or the West Bank as long as either parent was a registered resident of the Gaza Strip or the West Bank.<sup>213</sup> The agreement does not require the Palestinian side to obtain Israel's prior authorization or consent or grant to Israel the right to impose conditions or restrictions on which children are given residency.

Israel has generally exempted children who were born to at least one registered parent inside the occupied Palestinian territory from its general freeze of the population registry since September 2000, provided the children are registered before they turn 16 years old. However, children born in the occupied Palestinian territory who were not registered for some reason before they turned 16, regardless of their parents' registration status, have had to use the (now frozen) family reunification procedure to become registered in the population registry and obtain an Israeli identification card. Until and unless Israel agrees to register them, it considers these children to be "illegally present" in the occupied

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<sup>213</sup> Interim Agreement, Annex III, Appendix I, Article 28 (12).

Palestinian territory, whether or not they have ever lived anywhere else or have anywhere else to live abroad.<sup>214</sup>

From 2000 to 2005, Israel refused to register children who were born abroad unless they were physically present in the occupied Palestinian territory, regardless of the registration status of their parents. However, minors over five years old cannot enter the West Bank without an Israeli permit, which Israel stopped issuing in 2000.<sup>215</sup> The freeze on entry permits thus made it impossible for many Palestinian children who were living abroad to register; further, Israeli authorities considered in many cases that children who turned 16 years old after 2000 and were outside the West Bank had become ineligible for registration. In 2005 Israel exempted some children from the freeze on visitor permits to the West Bank if their case met certain criteria: the child had not yet turned 16, or had requested an Israeli military visitor's permit to the OPT before having turned 16 (even though the freeze on permits made such requests seemingly futile), and had at least one parent who was a registered West Bank resident.<sup>216</sup> In some cases though, such as that of Dr. Adham Zein al-Din, described below, Israel continues to refuse to register the child of a Palestinian whose registered address is Gaza, and his foreign wife, where the child was born abroad.

### **Dr. Adham Zein al-Din**

Adham Zein al-Din, an employee of the PA Ministry of Foreign Affairs, was born in Gaza City in 1970. He married a Ukrainian woman in Gaza in 1999.<sup>217</sup> That year, Zein al-Din, a registered Gaza resident, applied for residency for his wife by sponsoring her for "family reunification." "I remember, I handed in an application and it cost me 200 shekels [US \$57], but it has never been approved," he said. In 2002 the Israeli military allowed his wife to enter Gaza on a visitor permit, which she was able to renew twice. The couple has a daughter, now ten years old, who is registered as a Gaza resident and listed on Zein al-Din's ID card.

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<sup>214</sup> B'Tselem and Hamoked, "Perpetual Limbo," pg. 32.

<sup>215</sup> See, for example, Hamoked, "The Supreme Court orders the state to pay NIS 7,500 in trial costs: the military permitted a 16 year old Palestinian to enter the West Bank for her registration in the population registry only after HaMoked's petition," May 16, 2011, <http://www.hamoked.org/Document.aspx?dID=Updates1101> (accessed August 15, 2011).

<sup>216</sup> Letter from the Israeli Civil Administration Office of the Legal Advisor for the West Bank to Hamoked, September 6, 2005.

<sup>217</sup> Human Rights Watch interview with Adham Zein al-Din, Ramallah, May 26, 2011.



Zein al-Din left to work as a diplomat for the PA in the Ukraine in 2003. His wife remained in Gaza until 2005, when she moved back to the Ukraine with their daughter. Zein al-Din returned to Gaza in May 2007. A month later, Hamas took over Gaza, and Israel granted Zein al-Din and other PA employees permits to leave for the West Bank. But he was unable to obtain permission from Israel to allow his family to come to the West Bank.

With the PA's help, he was subsequently able to exit the West Bank to visit his family in the Ukraine in 2009. On his return, he said, his status as a Gaza resident caused problems when his "coordination" was denied for a month.

When I came back to West Bank, via Jordan, I was informed that I had coordination from the Israeli side to return. But then I arrived at Allenby [bridge], and the Israelis told me it didn't exist. I had to wait for a month in Jordan for the coordination.

Although the Israeli authorities had granted him a "permit to remain" in the West Bank after allowing his return there after June 2007, "there was a period in 2009 and 2010 when they didn't renew it. So I couldn't travel within the West Bank or leave to visit my family again, because there was a possibility that I'd be arrested or fined, or even deported to Gaza," al-Din said.

The couple had a second daughter later in 2009, who is a Ukrainian citizen. Zein al-Din sponsored her for "family reunification," but the application has also not been approved.

After receiving another "permit to remain" in the West Bank in late 2010, Zein al-Din was able to travel and visit his family in Ukraine again in 2011, after which the entire family traveled to the West Bank. His wife and younger daughter entered the West Bank on tourist visas, valid for three months, using their Ukrainian passports. "But in the Israeli database, my younger daughter does not exist as a Palestinian," Zein al-Din said, since the Israeli authorities have not changed the population registry to reflect her relationship with her father. As a result, she can only leave the West Bank by traveling with her mother.

Zein al-Din said he is now able to renew his “permit to remain” without much difficulty through the PA General Intelligence Service, to which Israel grants a number of discretionary permits. “I am one of the lucky ones,” he said.

But what I want is to be able to live in my home without fear that I’ll be separated from my family. There’s a big problem with family reunification, and it needs a radical solution. I love Gaza and I’m proud of having a Gaza ID card, but having to get all these permits and coordinations forces you to want to leave. I hope, but I don’t know if my wife and [younger] daughter are going to be able to renew their tourist visas.

If they cannot renew their visas, he said, they will face the choice of remaining in the West Bank illegally, or leaving despite the possibility that Israel may not permit them to return.

## IV. Israel's International Legal Obligations

International humanitarian law and human rights law are complementary bodies of international law; both apply to Israel's conduct in the occupied Palestinian territory.<sup>218</sup>

International courts and human rights treaty bodies have applied international humanitarian law, which governs situations of occupation and armed conflict, to the West Bank, including East Jerusalem, and Gaza.<sup>219</sup> As an occupying power, Israel is obligated to respect international humanitarian law in all of its dealings with the Palestinian population under its effective control, including both customary international humanitarian law and that treaty law codified by the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War (1949) and the Hague Regulations (1907).

Israel is obligated to respect international human rights law, as codified in the various human rights treaties to which it is a state party. Israel ratified the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") in 1979 and the International Covenant on Civil and Political Rights ("ICCPR"), the International Covenant on Social, Economic and Cultural Rights ("ICESCR") and the Convention on the Rights of the Child ("CRC") in 1991.<sup>220</sup> Numerous international bodies, including the International Court of Justice, have determined that these treaty obligations exist both

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<sup>218</sup> See UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21?Rev.1/Add.13 (2004), para. 11; see also International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, July 9, 2004, p. 136, paragraphs 111 (applicability of ICCPR in occupied territory), 112 (applicability of ICESCR in occupied territory), 113 (applicability of Convention on the Rights of the Child in occupied territory); The Human Rights Committee's concluding observations in 2003 ("in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the occupied Palestinian territory, for all conduct by the State party's authorities or agents in those territory that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law,") CCPR/Co/78/1SR, para. 11; and the Committee on the Elimination of Racial Discrimination's concluding observations in 1998 ("Israel is accountable for implementation of the Convention, including the reporting obligation, in all areas over which it exercises effective control,") March 1998, CERD/C/304/Add.45.

<sup>219</sup> See, for example, CCPR, "Concluding observations of the Human Rights Committee: Israel," July 29, 2010, CCPR/C/ISR/CO/3, para. 5 (Israel should "ensure the full application of the [ICCPR] in Israel as well as in [...] the West Bank, East Jerusalem, the Gaza Strip and the occupied Syrian Golan Heights"); International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, July 9, 2004, p. 136, para. 78.

<sup>220</sup> Israel's ratification of the CERD was subject to a reservation concerning Article 22 (governing referral of disputes under the convention to the International Court of Justice); Israel's ratification of the ICCPR was subject to the following reservation: "With reference to Article 23 of the Covenant, and any other provision thereof to which the present reservation may be relevant, matters of personal status are governed in Israel by the religious law of the parties concerned ... To the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law."

inside Israel's territory and in relation to persons under its control, including in the occupied Palestinian territory.

Israel's control over the demographic composition of the West Bank and Gaza, and its arbitrary refusal to recognize the kinds of ordinary demographic changes that are incidental to normal life and to any economic or social development in the territory, violate many of Israel's international legal obligations.

## **Right to Freedom of Movement**

Palestinians' right to freedom of movement is protected by both international humanitarian law and human rights law. Included within this general right to freedom of movement are Palestinians' rights to (1) to exit and return to the West Bank and Gaza, (2) to move freely within the territory and (3) to be safe from forcible transfer from one part of the territory to another. The Israeli practices documented in this report violate each of these rights.

### **(1) The Right to Exit and Return to the West Bank and Gaza**

Article 12 of the ICCPR states that no one shall be arbitrary deprived of the right to enter his own country and that everyone has the right to leave any country, including his own. International bodies consider that this provision applies to Palestinian residents of the West Bank (including East Jerusalem) and Gaza. The Human Rights Committee, which monitors compliance of States Parties to the ICCPR, has acknowledged the security concerns that have led Israel to restrict Palestinian movement, but "notes with regret the continued impediments imposed on movement, which affect mostly Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank, and which have grave consequences affecting nearly all areas of Palestinian life."

The Committee considers this to raise serious issues under article 12. In regard to persons in these areas, the Committee urges Israel to respect the right to freedom of movement provided for under article 12, including the right to return to one's country.<sup>221</sup>

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<sup>221</sup> United National Human Rights Committee, Concluding Observations, Israel, CCPR/C/79/Add.93 (August 18, 1998), para. 22.

As the Human Rights Committee has observed, “there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.”<sup>222</sup> The Committee found that the phrase “his own country” should be interpreted broadly, and protected not only citizens of internationally recognized states, but also individuals who, “because of [their] special ties to or claims in relation to a given country, cannot be considered a mere alien”; the right also applies to individuals “whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them.”<sup>223</sup> “Special ties” can be derived from the criteria relating to a “genuine and effective link” set out by the International Court of Justice in the *Nottebohm* case and, therefore, can be composed of various elements including habitual residence, cultural identity, and family ties.<sup>224</sup>

Article 10(2) of the CRC provides that “States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.” The Convention on the Elimination of Racial Discrimination (CERD) Article 5(d) also guarantees everyone the right to freedom of movement and residence within the border of the State and the right to leave any country, including one’s own, and to return to one’s country, in all cases without distinction as to race, color, or national or ethnic origin, to equality before the law.

Therefore, international law would grant Palestinians who resided in the West Bank and Gaza before Israel’s 1967 occupation the right to leave and return to that territory, given their “genuine and effective link” to it, irrespective of whether or not they were included in the Israeli military’s 1967 census.

Israel violated this right when it refused to address the situation of the 270,000 Palestinians who were outside the West Bank and Gaza when its census was taken, simply banning them from returning to the occupied territory. Israel also violated this right in

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<sup>222</sup> United National Human Rights Committee, General Comment No. 27, CCPR/C/21/Rev.a/Add.9 (November 2, 1999), para. 21.

<sup>223</sup> *Ibid.*, para. 20.

<sup>224</sup> International Court of Justice, *Nottebohm* Case (Liechtenstein v. Guatemala) Second Phase, Judgment, I.C.J. reports 1955, Rep 4.

cases where it cancelled the residency status of Palestinians on the sole basis that they had over-stayed one-year-validity exit permits, with the effect that they were permanently exiled from their homeland, even though they had no other nationality and had ties to Palestinian territory, such as family members. As noted, Israel cancelled the residency of approximately 140,000 Palestinians prior to 1994, later reinstating residency in 10,000 of these cases, although it is not clear in how many of these cases it arbitrarily cancelled their residency.

Moreover, Israel continues to violate this right when it continues to arbitrarily impose a blanket ban that denies all of those Palestinians forcibly exiled from Palestinian territory the right to enter the territory without considering their individual cases.

## **(2) The Right to Move Freely Within Occupied Palestinian Territory**

Article 27 of the Fourth Geneva Convention provides that all those who find themselves living under foreign military occupation are entitled “to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.” Implicit in this general requirement that an occupying power respect the fundamental rights and personal freedoms of protected persons is those persons’ freedom of movement.<sup>225</sup> As such, the right to move freely may be restricted only if such restriction is “necessary as a result of the war”, provided, in all cases, that any such restrictions are both necessary and proportional. The ICRC Commentary on Article 27 states that the occupying power may not restrict freedom of movement in a “general manner.”<sup>226</sup>

Article 12 of the ICCPR states that everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and the freedom to choose his residence without any restrictions except those necessary to protect national security, public order, public health or morals, or the rights and freedoms of others.

Israel violates its obligations under international law when it arbitrarily refuses, as the result of blanket policies, to grant ID cards to residents of occupied Palestinian territory, insofar as it requires residents to present these ID cards in order to reside, move freely

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<sup>225</sup> See ICRC, Commentary on Convention (IV) relative to the Protection of Civilian Persons in Time of War, Article 27, <http://www.icrc.org/ihl.nsf/COM/380-600032?OpenDocument> (accessed November 25, 2011).

<sup>226</sup> *Ibid.*

within, and leave and enter the West Bank. Israel's blanket ban on Palestinians registered as residents of Gaza from moving to and residing in the West Bank, to which it grants exceptions only for people who meet extraordinarily restrictive criteria (such as orphaned children with no relatives in Gaza and family members in the West Bank), is disproportionate to any claimed security threat.

### **(3) The Right to Be Free From Forced Transfer**

Israel's forcible transfer of Palestinians from the West Bank to Gaza on the stated basis that Gaza is their registered place of residence also violates international humanitarian law's prohibition on forced transfers of civilians in situations of occupation.

The prohibition against forced transfer is reinforced by the human right to reside in the place of one's choice.<sup>227</sup> It is also codified in Article 49 of the Fourth Geneva Convention which prohibits "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory [outside that territory] ... regardless of their motive." Total or partial evacuation of a given area is permitted only if "the security of the population or imperative military reasons so demand" and the persons displaced must be transferred back to their homes as soon as hostilities in the area in question have ceased.

According to the ICRC's Commentary, the principle that parties to an armed conflict "may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand" is also a norm of customary international humanitarian law. Article 147 of the Fourth Geneva Convention prohibits forcible transfer as a "grave breach" that entails criminal responsibility. The Rome Statute of the International Criminal Court, which Israel has signed but not ratified, considers "the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory" to be a war crime.<sup>228</sup>

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<sup>227</sup> See, for example, United National Human Rights Committee, General Comment No. 27, CCPR/C/21/Rev.a/Add.9 (November 2, 1999) para. 7 ("the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory.").

<sup>228</sup> ICRC, Customary IHL, Rule 129, The Act of Displacement, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule129](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule129) (accessed August 1, 2011)

As defined by the International Criminal Tribunal for the Former Yugoslavia (the “ICTY”), forced transfer is “the movement of individuals under duress from where they reside to a place that is not of their choosing”.<sup>229</sup> The prohibition applies both to the use of physical force and to indirect factors other than physical force which “may render an act involuntary, such as taking advantage of coercive circumstances”.<sup>230</sup> For example, in one decision, the ICTY found that prohibited forced transfer had taken place when the cumulative effect of various Serb practices, including house searches, arrests, and physical harassment, as well as cutting off water, electricity, and telephone services, “created severe living conditions ... making it practically impossible for most of them to remain.”<sup>231</sup>

Israel violates these prohibitions against the forcible transfer of protected persons when it forcibly transfers Palestinians from the West Bank to Gaza on the stated basis that Gaza is their registered place of residence, even as it refuses to update the population registry to reflect movement between the two areas. Israel also violates this prohibition to the extent that its refusal to make changes to the population registry, combined with its tight physical control of all entry and exit to and from the West Bank and its extensive network of military checkpoints throughout the West Bank, separates families from one another and creates such severe living conditions that Palestinians are unable to remain in their homes.

## Right to Family Unity

International law views family as the natural and fundamental group unit of society. As a result, Palestinians’ right to family unity is clearly protected by both international humanitarian law and human rights law.

Article 46 of the 1907 Hague Regulations states that an occupier must respect “family honor and rights.” Article 27 of the Fourth Geneva Convention builds on this protection and entitles protected persons, such as Palestinians in occupied territory, to respect for their family rights, manners and customs without distinction based on race, religion, or political

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<sup>229</sup> *The Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34, Trial Chamber, March 31, 2003, para. 519-521, cited in Human Rights Watch, *Genocide, War Crimes and Crimes Against Humanity: Topical Digests of the Case Law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia* (New York: Human Rights Watch, 1994),

[http://www.hrw.org/reports/2004/ij/icty/2.htm#\\_Toc62882623](http://www.hrw.org/reports/2004/ij/icty/2.htm#_Toc62882623).

<sup>230</sup> *The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Appeals Chamber, Judgment, 22.

<sup>231</sup> *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Trial Chamber I, Judgement, September 27, 2006, para. 729, 732.



opinion. Further recognition of the importance of the right to family life can be found in the requirement under international humanitarian law that parties to a conflict shall work with families to reunite relatives who become separated as a result of war.<sup>232</sup>

Human rights law is similarly emphatic. Article 23 of the ICCPR reaffirms family's central role in society and further recognizes and protects the right to marry and found a family. Article 17 of the ICCPR also protects all people from arbitrary or unlawful interference with their privacy, family, home, or correspondence.

The CRC and ICESCR also protect family unity. Article 10 of the CRC requires that states respond to applications for family reunification "in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family." It also affords children whose parents reside in different states the right "to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents" and requires that states "respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country." Article 10 of the ICSECR also affords "the widest possible protection and assistance" to the family "which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children."

These protections of the right to family include the right to marry and live with one's spouse and children. The Human Rights Committee's general comment on the right to a family specifically highlighted that "the right to found a family implies, in principle, the possibility to procreate and live together."<sup>233</sup>

The rights to family unity may only be derogated from under limited circumstances. The ICCPR, for example, permits states to place restrictions on the rights enshrined in that treaty only "in time of public emergency which threatens the life of the nation and the

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<sup>232</sup> See GC IV, Art. 26 ("Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible."), AP 1, Art. 74 ("The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organizations engaged in this task in accordance with the provisions of the Conventions and of this Protocol and in conformity with their respective security regulations.")

<sup>233</sup> UN Human Rights Committee, General Comment No. 19, Protection of the family, the right to marriage and equality of the spouses (1990), art. 23, para 5.

existence of which is officially proclaimed” and only “to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”<sup>234</sup> It specifies that interference with the right to family must not be arbitrary.<sup>235</sup>

Israel has consistently refused to either articulate a specific security threat or explain how its policy on this issue and blanket denial of Palestinians’ right to family reunification is proportional to that threat. As the Israeli human rights group B’Tselem has observed, “[the] extreme lack of transparency regarding the motives for the [freeze] policy raises a strong suspicion that there is no real connection between the infringement of the right and the security objective the infringement ostensibly seeks to achieve.”<sup>236</sup>

Israel’s on-going refusal to recognize Palestinians’ right to family unity, and its insistence that its discretionary family reunification procedure is merely a “special benevolent act of the Israeli authorities” contravenes basic principles of human rights and international humanitarian law. Israel violates its international legal obligations when it refuses as a matter of course to register and grant recognized residency to the foreign-born spouses and other family members of Palestinian residents of the occupied Palestinian territory and when it forcibly transfers or departs those family members who are not registered by Israel without considering their family life, including how long they have lived in the occupied territory and whether they have children or other ties there. Israel also violates Palestinians’ right to family unity when it imposes arbitrary blanket prohibitions on Palestinians from Gaza living with their families in the West Bank.

## Other International Legal Obligations

### (1) The Right to be Free from Collective Punishment

Collective punishment, defined as the imposition of sanctions or harassment of any sort on the basis of collective rather than individual responsibility, is prohibited by customary international law, international humanitarian law, and human rights law.

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<sup>234</sup> ICCPR, art. 4.

<sup>235</sup> ICCPR, art. 17.

<sup>236</sup> B’Tselem, “Perpetual Limbo,” p. 54.

Article 50 of the Hague Regulations states that no general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible. Article 33 of the Fourth Geneva Convention also states that no protected person may be punished for an offense that he or she has not personally committed. Moreover, reflecting the customary international law norm against collective punishment, Protocol I to the Geneva Conventions, to which Israel is not a signatory, also prohibits collective punishment “at any time and in any place whatsoever.” The ICRC Commentary explains that this prohibition “must be understood in the broadest sense: it covers not only legal sentences but sanctions and harassment of any sort, administrative, by police action or otherwise.”

The prohibition against collective punishment is implicit in the UN Human Rights Committee’s general commentary on article 4 of the ICCPR, which advises that states may not invoke ICCPR article 4 of the Covenant (regarding public emergencies) as justification for imposing collective punishments.<sup>237</sup>

Israel violates this principle when it imposes blanket restrictions on Palestinian movement, including when it arbitrarily and unilaterally “froze” all changes to the population registry in response to the Palestinian uprising against the occupation in September 2000, and when it instituted other restrictions on movement after Hamas’ electoral victory in 2006.

## **(2)The Right to Nationality and an Identity before the Law**

The CRC states that all children have the right to be registered and acquire a nationality after birth (article 7) and to preserve his or her identity, including nationality, name, and family relations as recognized by law without unlawful interference (article 8). Article 24 of the ICCPR further requires that every child has the right to be registered at birth and the right to acquire a nationality.

Israel violates these principles when it imposes arbitrary restrictions that prevent the registration of Palestinian children who have no other recognized identity, including cases of children born to a Palestinian parent and who should be eligible for registration, but who have turned 16 already, because Israel requires such children to apply for registration only through the lengthy, uncertain and currently “frozen” family reunification procedure.

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<sup>237</sup> Human Rights Committee, General Comment No. 29, States of Emergency (2001), para 11.

## Israel's Authority under the Law of Occupation

As a military occupier, Israel's authority is generally limited to acts necessary for its security, or for the benefit of the occupied population. As the ICRC's Commentary to the Fourth Geneva Convention notes, the rules of international humanitarian law relating to conduct by an occupying power during a military occupation "are based on the idea of the personal freedom of civilians [in the occupied territory] remaining in general unimpaired." Article 43 of the Hague Regulations require that an occupying power "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." Article 64 of the Fourth Geneva Convention elaborates that the occupying power may promulgate laws necessary to protect the security of its forces and administration, to "maintain the orderly government of the territory," and fulfill its obligations under the Convention toward the local population. In general, "in respect of occupied territory this means that the military commander is limited to making orders which relate to security on the one hand, and to the welfare of the local population on the other hand."<sup>238</sup> The US Army Field Manual, for example, allows the occupying power to alter, repeal, or suspend laws in occupied territory only when they constitute a threat to its security, such as laws relating to recruitment and bearing arms; relate to political processes such as assembly and suffrage; and that would be inconsistent with the occupant's duties towards the welfare of the local population, such as laws establishing racial discrimination.<sup>239</sup>

International jurists have further elaborated the limitations imposed by the law of occupation on the occupying power. According to Sir Michael Wood, former chief legal advisor to the UK Foreign and Commonwealth Office, "while some changes to the legislative and administrative structure may be permissible if they are necessary for public order and safety, more wide-reaching reforms of governmental and administrative structures are not lawful."<sup>240</sup> One scholar notes that article 64 of Geneva Convention IV recognizes "the power of the occupant to modify the existing laws in order ... to guarantee, in the role of a

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<sup>238</sup> Alon Margalit and Sarah Hibbin, "Unlawful Presence of Protected Persons in Occupied Territory?", *Yearbook of International Humanitarian Law*, vol 13 (2010), p. 21, citing HCJ 393/82, *Gamiyat el-Iskan v. IDF Commander*, 1983.

<sup>239</sup> US FM 27-10, para. 371, cited in Yutaka Arai-Takahashi, *The Law of Occupation* (Leiden, The Netherlands: Koninklijke Brill NV, 2009), p. 123.

<sup>240</sup> Sir Michael Wood, "The Rights and Responsibilities of Occupying Powers," second statement to the Chilcot Inquiry, January 28, 2010, available at <http://www.iraqinquiry.org.uk/media/44055/wood-statement-occupying-powers.pdf> (accessed August 12, 2011).

temporary administrator, normal life for the occupied civilian population.”<sup>241</sup> Another jurist has argued that “the litmus test for distinguishing between legitimate and illegitimate concern for the welfare of the civilian population [under the law of occupation] should hinge on whether the Occupying Power shows similar concern for the welfare of its own population. Differently put, if the Occupying Power enacts a law ... the crux of the issue is whether a parallel ... law exists back home. If the answer is negative, the ostensible concern for the welfare of the civilian population deserves being disbelieved.”<sup>242</sup>

Israeli military orders that severely limit the ability of Palestinians to have families, to enter and leave and move within and between occupied Palestinian territory, and that have no conceivable security justification, exceed its authority as the occupying power to introduce laws affecting the occupied population.

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<sup>241</sup> Marco Sassoli, “Legislation and Maintenance of Public Order and Civil Life by Occupying Powers,” *European Journal of International Law*, vol. 16 (4) (September 2005): 661-694, available from <http://ejil.oxfordjournals.org/content/16/4/661> (accessed August 12, 2011).

<sup>242</sup> Yoram Dinstein, “The Israel Supreme Court and the Law of Belligerent Occupation: Article 43 of the Hague Regulations,” *Israel Yearbook of Human Rights Law*, vol. 25 (1995), p. 10.

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## Correspondence with Israeli Authorities

[www.hrw.org](http://www.hrw.org)

January 4, 2012

Ehud Barak,  
Minister of Defense,  
Israel

Dear Minister Barak,

I am writing to request your response to the preliminary findings of research that Human Rights Watch has conducted on the population registry Israel maintains of Palestinian residents of the West Bank and Gaza. Human Rights Watch is a nongovernmental organization that covers human rights issues in more than 80 countries and territories around the world, including violations by all parties in the West Bank, Gaza and Israel. In order for us to be able to reflect your responses in our forthcoming report on the population registry, we would appreciate it if you could reply by January 31, 2012.

### Family Reunification

1. We understand that Israeli authorities did not record in the census carried out in August and September 1967 around 270,000 Palestinians who were not then physically present in the West Bank and Gaza, and did not include those Palestinians in the population registry. Subsequently Israeli authorities deemed that Palestinian males aged 16 to 60 who were outside the territories at that time were not eligible to return to the West Bank and Gaza. Israeli authorities created in 1967 a “family reunification” process through which Palestinians could apply for residency on behalf of their spouses and first degree relatives, including those who had been excluded from

the census and the registry. We understand that in 2000, Israel stopped processing, in most cases, applications for family reunification, and that in 2007, Israel offered to process up to 50,000 applications as a political “gesture” to the Palestinian Authority.

From the creation of the population registry until today, how many applications for “family reunification” submitted by Palestinians living in the West Bank and Gaza have the Israeli authorities:

- a. Received?
- b. Approved?
- c. Denied?

We would appreciate if you could provide the number of applications received, approved, and denied on an annual basis, for each year since 1967. If only partial records are available, we would still appreciate any information you can provide.

Address Changes and Permits to Remain

2. We understand that after September 2000, Israel stopped, in most cases, processing Palestinians’ applications to change their addresses. On February 4, 2011, Prime Minister Netanyahu announced that Israel would process a quota of up to 5,000 address-change applications for registered residents of Gaza who were living in the West Bank.

From the establishment of the population registry in 1967 until today, how many applications by Palestinians to change their registered addresses from Gaza to the West Bank, and from the West Bank to Gaza, have the Israeli authorities:

- a. Received?
- b. Approved?
- c. Denied?

We would appreciate if you could provide separate numbers of address-changes approved from the West Bank to Gaza, and from Gaza to the West Bank, and if you could provide the number of applications received, approved and denied on an annual basis, each year

since 1967. If only partial records are available, we would still appreciate any information you can provide.

3. We understand that after September 2000, Israeli authorities stopped, in most cases, granting entry permits to the West Bank to Palestinians registered as residents of Gaza, as well as to many non-registered persons of Palestinian origin seeking to enter the West Bank and Gaza.
  - a. How many entry permits have Israeli authorities granted to Palestinians registered as residents of Gaza seeking to enter the West Bank?
  - b. How many entry permits have Israeli authorities granted to Palestinians registered as residents of the West Bank seeking to enter Gaza?

We would appreciate if you could provide the number of entry permits granted on an annual basis, each year since 1967. If only partial records are available, we would still appreciate any information you can provide.

4. We understand that as of November 2007, the Israeli military considers that Palestinians who are registered as residents of Gaza may not lawfully reside in the West Bank unless they have “permits to remain” there. Since November 2007, how many applications for “permits to remain” in the West Bank has the Civil Administration:
  - a. Received?
  - b. Approved?
  - c. Denied?

#### Cancellation of Residency

5. We understand that from 1967 to 1994, Israeli military authorities, including the Civil Administration, cancelled the registration in the population registry of 140,000 Palestinians who had been residents of the West Bank and Gaza, and later reinstated 10,000 of them into the registry. Our understanding is that many Palestinians’ residency was cancelled on the basis that they had remained outside the West Bank or Gaza for periods exceeding the validity of “exit permits” issued to them by Israeli



military authorities. The periods of these permits, we understand, ranged from six months to three years.

- a. From 1994 until today, in how many cases has the Civil Administration cancelled the registration in the population registry of Palestinians formerly registered as residents of the West Bank and Gaza?

We would appreciate it if you could provide the numbers of cancelled West Bank and Gaza residents separately, and if you could provide the number of applications received, approved and denied on an annual basis, each year since 1967. If only partial records are available, we would still appreciate any information you can provide.

#### Changes in Policy after September 2000

6. As discussed above, we understand that after September 2000, as a general policy, the Israeli authorities stopped accepting and processing applications for “family reunification” and for address changes by Palestinians living in the West Bank and Gaza. Our understanding is that the Israeli authorities explained these policy changes by reference to the “political/security situation that prevails in our region since September 2000” (HCJ 4332/04).
  - a. Did Israeli authorities specifically determine, after September 2000, that continuing to process applications for family reunification and address changes would harm Israeli security; that there was no alternative to the blanket termination of these processes; and that harms caused to Palestinians by ending these processes would be proportionate? If so, we would appreciate if you could describe these conclusions in as much detail as possible, or refer us to any official documents that describe such determinations.
  - b. Do Israeli authorities continue to review this decision, and if so, how often and on what basis?
  - c. Why do Israeli authorities continue not to process such applications on an ongoing basis, with the exception of the quotas for family reunification applications announced in 2007 and for address changes announced in 2011?

- d. Under what conditions would the Civil Administration resume processing, on a regular basis, Palestinian applications for family reunification and address changes?

#### General Questions

7. Given Israel's position that it no longer occupies the Gaza Strip, why does Israel continue to control the population registry for residents of Gaza?
8. In the context of its operation of the population registry, to what extent does the Israeli military consider itself obliged to respect, protect and fulfill Palestinians' freedom of movement, right to a family life, and other human rights as enumerated in international human rights law?

We look forward to your responses to these questions.

Sincerely,



Sarah Leah Whitson  
Executive Director  
Middle East and North Africa Division

cc. Brigadier General Motti Elmoz,  
Head of Civil Administration,  
Israel Defense Forces

cc. Legal Advisor,  
Samaria and Judea Civil Administration,  
Israel Defense Forces

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# “FORGET ABOUT HIM, HE’S NOT HERE”

## Israel’s Control of Palestinian Residency in the West Bank and Gaza

When Israel occupied the West Bank and Gaza Strip in 1967 it created a registry of Palestinians it considered to be lawful residents there. This report describes Israel’s arbitrary exclusion of hundreds of thousands of Palestinians from the registry since then, and documents the impact this continues to have on individuals and families. The unregistered include Palestinians who had been living in the West Bank and Gaza Strip during the 1960s but happened not to be present in September 1967 when Israel conducted the census for the registry, as well as Palestinians whom Israel later de-registered because they had resided abroad.

Based on interviews with affected Palestinians, official Israeli records, and other sources, the report describes how the population registry serves as a basis for control of Palestinian movement and residency in the West Bank. Since 2000, for instance, Israel has refused to grant residency to the foreign-born spouses of Palestinians, and has denied entry and residency in the West Bank to Palestinians whom it considers to be residents of the Gaza Strip, regardless of their close family members or other ties to the West Bank.

Israel should stop arbitrarily denying or cancelling residency registration and other changes to the population registry for Palestinians and close family members with family or other deep ties to the West Bank and Gaza, and restrict registration processes only when strictly necessary for security reasons, and on an individual rather than blanket basis. Israel should take prompt measures to end the arbitrary policies that have split thousands of families and deprived Palestinians of their right to move freely.



*Manal Alsaafin holds a photograph of her and her husband, Abdullah, whom Israeli authorities have prevented from returning to his home in the West Bank since 2009 on the basis that they have “registered” him as a resident of the Gaza Strip, not the West Bank.*

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