

Legal Framework: Family Separation Rights and Obligations under International and Israeli Law

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In its exercise of control over freedom of movement in the Occupied Palestinian Territory, Israel has an obligation to ensure the proper functioning of public life and public institutions in the Palestinian territory. Israel owes special obligations under international human rights law and Israeli law to protect families, which are the natural and fundamental group unit of society, and to protect the welfare of children, whose well-being depends on a healthy, intact family¹. These obligations accrue whether, as Gisha and others believe, Israel continues to owe obligations to Palestinian residents of Gaza and the West Bank under the law of occupation or whether, as Israel's Supreme Court has found, these obligations in Gaza stem from the fact of Israeli control over Gaza's borders and dependence created by decades of direct military control² and in the West Bank, under the law of occupation.

In the internationally brokered **Oslo Accords**, which were incorporated into the internal law of the Occupied Territory via military **orders**, Israel committed to view the Gaza Strip and the West Bank as a **single territorial unit** in which freedom of movement³ was to be permitted, notably through a **safe passage**⁴ in which Palestinians would be permitted to travel between the West Bank and the Gaza Strip in private cars or buses that traveled via Israel. The safe passage provisions required permits for the entrance into Israel but did not limit the ability of Palestinians to remain in either part of the "single territorial unit", Gaza or the West Bank.

¹ International Convention on Economic, Social and Cultural Rights (1966), art. 10(1).

² HJC 9132/07 *Al-Bassiouni v. Prime Minister* (unpublished) (judgment given Jan. 30. 2008), para. 12.

³ Israeli-Palestinian Interim Agreement, Sept. 28, 1995, Annex 3, art. 28(10)(a).

⁴ *Ibid*, Annex 1, art. 10.

Israeli military regulations

Israeli military regulations have separated family members and in many cases, created inducements for families to move to the Gaza Strip by making it impossible for them to be together in the West Bank. First, family visits, including between married couples, to Gaza from the West Bank are not allowed except under "exceptional humanitarian circumstances, whereas family ties alone to a resident of Gaza do not, by themselves, constitute a sufficient humanitarian justification for permitting the visit to Gaza"⁵. Second, Israel has begun a policy of arresting people in the West Bank, based on the fact that their addresses are registered in Gaza, and removing them to the Gaza Strip by force⁶. Third, Israel has instituted extremely restrictive criteria for permitting people from Gaza to travel to the West Bank in order to reunite with their family members – including in cases in which the family member was forcibly removed to Gaza and seeks to return to the West Bank⁷.

Understanding this policy requires understanding control over the Palestinian population registry. Indeed, the Oslo Accords ostensibly gave the Palestinian Authority control over changes in the details of Palestinian residents already listed in the population registry (i.e. those already recognized by Israel as residents of Gaza and the West Bank); under the agreement, the Palestinian Authority was to "inform Israel of every change in its population registry, including, inter alia, any change in the place of residence of any resident"⁸. However, despite the terms of the Oslo Agreement, as a matter of practice, Israel retained control over address changes within the Palestinian population registry, treating "notification" by the PA of an address change as a request which it approved or refused.

Since 2000, Israel has refused to register any changes in address for people who had moved from Gaza to the West Bank⁹. Thousands of people who traveled to the West Bank from Gaza either via the safe passage or through individual permits issued by Israel – had no ability to record the changes in their addresses. At the same time, Israel began to declare those living in the West Bank but whose addresses were registered in Gaza – as illegally present in the West Bank¹⁰. Beginning in December 2007, Israel began to require Palestinian residents whose addresses are registered in Gaza to obtain "staying permits" in order to remain in the West Bank. The extremely restrictive criteria are outlined in a letter sent to the Israeli human rights group HaMoked by the military: the applicant must have entered the West Bank prior to 2000; be married to a Palestinian resident whose

⁵ Letter from Maj. Matan Solomosh, IDF Legal Adviser's Office in the West Bank, to Adv. Yadin Elam, Gisha (Aug. 17, 2009) regarding Ms. Kawther Abu Yusef.

⁶ Gisha, "Restrictions and Removal: Israel's Double-Bind Policy for Palestinian Holders of Gaza IDs in the West Bank", November 2009, available at www.gisha.org.

⁷ HaMoked and Gisha, New Procedure: Israel Bars Palestinians in Gaza from Moving to West Bank, June 2009, available at www.gisha.org.

⁸ Ibid, Annex 3, art. 28(10)(b).

⁹ Letter from Lt. Col. Avi Biton, COGAT to [...] [name withheld by Gisha] (Nov. 17, 2004).

¹⁰ Letter from Roni Cohen, Legal Adviser of Gaza DCO, to Adv. Yadin Elam, Gisha (Jan. 5, 2009), regarding Mr. Samir Abu Yusef.

address is registered in the West Bank AND have children; and demonstrate exceptional humanitarian circumstances¹¹.

Having divided Palestinian residents by their registered addresses, Israel then instituted a policy forbidding those with Gaza addresses from traveling to the West Bank for purposes of family reunification, except under extraordinarily restrictive circumstances. This policy was revealed following petitions submitted by HaMoked to the Israeli Supreme Court in cases seeking family reunification. The policy declares that separation of families is not considered a "humanitarian" reason to justify granting residence in the West Bank. Essentially, Israel has banned family reunification even for parents and children, married couples, and siblings, unless the person seeking to travel from Gaza to the West Bank fits into one of three categories:

1. Orphans under the age of 16 seeking to reunite with their surviving parent in the West Bank;
2. Elderly invalids needing assistance from a first degree relative in the West Bank;
3. Chronically ill persons needing assistance from a first degree relative in the West Bank.

Even then, applicants in these categories must prove that they have no relatives of any degree who can care for them in the Gaza Strip. Only then would the applicant receive temporary permits for up to seven years, before being able to request a change in address. If the humanitarian need for the permit expires at any point during those seven years – the permit would be revoked. Once these conditions are met, Israel would then conduct a security evaluation to determine whether it objects to granting the permit on security grounds.

The result is that family reunification is nearly impossible. For example:

- An 11-year old girl orphaned of her father in Gaza would be barred from reuniting with her mother in the West Bank, if a relative of any degree is available to care for her in Gaza. And even if the child has no relative of any degree who can care for her in Gaza, the military will evaluate the quality of her relationship with the West Bank parent before granting temporary permission (6-month or 1-year permits) for the orphan to stay in the West Bank.
- An elderly person seeking to travel to the West Bank to be cared for by a niece would be refused – because requests will be considered only if the family member in question is a first-degree relative. Even if the West Bank family member is a first-degree relative – the applicant must show that no one can care for him or her in the Gaza Strip.
- Even if a chronically-ill person proves that no one can care for her in the Gaza Strip, and that a first-degree relative wishes to care for her in the West Bank, and is granted permission to travel – she would be returned to the Gaza Strip if and when

¹¹ Letter from Maj. Peter Lerner, COGAT to Adv. Abeer Jubran, HaMoked-Center for the Defence of the Individual (May 18, 2008), available at www.hamoked.org.il

she recovers from her ailment, because of the necessity that the humanitarian "reason" justifying presence in the West Bank be continuous.

These conditions are threshold requirements before security officials will even conduct an individual security evaluation, which is a condition of passage. An additional condition is that the request be transmitted to the military by the Director-General of the Palestinian Civil Affairs Office personally.

In addition to making it nearly impossible for Palestinian families to reunite in the West Bank, the policy induces Palestinian families to move to the Gaza Strip. In cases in which a family is split between Gaza and the West Bank, the military refuses to allow family members in the West Bank to visit Gaza, unless they change their address to the Gaza Strip, thus waiving their right to return to the West Bank¹².

Additional sources

- HaMoked and Gisha, New Procedure: Israel Bars Palestinians in Gaza from Moving to West Bank, June 2009, available at www.gisha.org
- Gisha, Restrictions and Removal: Israel's Doublebind Policy for Palestinian Holders of Gaza ID's in the West Bank, November 2009, available at www.gisha.org
- B'Tselem, Divide and Rule: Prohibition on Passage between Gaza and the West Bank, May 1998, available at www.btselem.org

¹² See the August 17, 2009 letter regarding Ms. Kawther Abu Yusef, referenced above.