

## Temporary Order? Life in East Jerusalem under the Shadow of the Citizenship and Entry into Israel Law

### Executive summary

For more than a decade, Israel's law books have been marred by a particularly racist law – the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003. This law prohibits the grant of Israeli status to Palestinians from the Occupied Palestinian Territories (OPT) who marry Israeli residents or citizens, in blatant violation of fundamental constitutional rights, primarily the rights to equality and family life. The Law also denies many children who have one parent who is a permanent Israeli resident and another who is an OPT resident the possibility of receiving status in Israel, in grave breach of the principle of the child's best interests.

Until 2002, family unification applications filed by Israelis for their spouses from the OPT were reviewed on their merits and decided upon – formally at least – based on objective criteria relating to personal circumstances. If the applicants met all the terms and conditions demanded by the Ministry of Interior, they could begin the graduated family-unification procedure, at the end of which, the OPT spouse received the status of permanent Israeli resident. However, on May 12, 2002, following the second intifada, the Government of Israel decided to freeze all processing of family unification applications filed for Palestinian residents of the OPT. The Citizenship and Entry into Israel Law, enacted a year later, enshrined this moratorium in Israeli law and effectively prohibited family unification between Israelis and Palestinians from the OPT **inside Israel**, including the 1967 annexed areas.

Israel justifies the Law on security grounds, claiming it serves to reduce the threat of terrorist attacks by OPT residents inside Israel. But the main purpose of the Law is demographic – as clearly indicated by the Law's draconian provisions, statements by Knesset members and public declarations by cabinet ministers. In this sense, the Law is simply another aspect of Israel's long-pursued racist policy to ensure a Jewish majority in the country, especially in Jerusalem.

The Israeli High Court of Justice (HCJ) has twice considered the constitutionality of the Law; both times, the HCJ legitimized this reprehensible law by a majority vote of six to five of the justices: in 2006, the HCJ rejected the petitions that sought the Law's repeal. Although a majority of the justices agreed that the Law violated the constitutional rights to equality and family life, the HCJ did not invalidate it and gave the state the option to replace it with another arrangement within a set period of time. In 2007, after the Law was extended yet



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again, more petitions were filed against it to the HCJ, including one by HaMoked which focused on the severe harm the Law inflicted on children of East Jerusalem residents. In January 2012, in a majority ruling, the HCJ rejected these petitions and determined that even if the Law violated constitutional rights, its harm was proportionate and therefore it should not be repealed.

Following the first round of HCJ petitions, the government had to amend the Law. Thus, in 2005, when the Law was extended for the fourth time, it introduced a few exceptions to the family-unification ban based on age and gender. In 2007, the Law was amended again, ostensibly, to reduce the harm it caused and implement the justices' comments in the 2006 judgement; but in effect, the amendment extended the Law's application also to Israeli residents' spouses and other family members from Iran, Lebanon, Syria and Iraq, or other "risk regions" the government may decree by order. Moreover, in June 2008, the government decreed that Gaza residents would no longer be allowed under any circumstances to live with their Israeli spouses in Israel.

The Palestinian population of East Jerusalem was given permanent Israeli residency status following Israel's annexation of the Jordanian part of the city and neighboring villages and refugee camps in 1967; with the annexation, Israeli law was applied to East Jerusalem, separating the city from the rest of the West Bank. But the mutual connections between the Palestinian population in East Jerusalem and Palestinian population in the rest of the OPT have survived; and marital and other family ties between the two communities have remained common.

This report illustrates the Law's dire consequences for the lives of Palestinian residents of East Jerusalem, their spouses from the OPT and their shared children, focussing on the daily bureaucratic burden imposed on these families by the Israeli authorities.

### **The Ramifications of the Citizenship and Entry into Israel Law**

Since the enactment of the Citizenship and Entry into Israel Law, the process of family unification for East Jerusalem residents and their spouses from the OPT does not end with permanent status in Israel, and in fact, does not end at all. Under the Law, OPT residents who wish to live in Israel with their spouses from East Jerusalem, may do so lawfully only through temporary stay permits, and this too, only if they meet the minimum age requirement – 25 for women and 35 for men. As a result, many couples are forced to live apart; in other cases, the spouses from the OPT live in Israel with nothing but periodic stay permits issued by the military, in constant uncertainty about their future. Each year anew, they must undergo center-of-life and security background checks, with no end in

sight. Without civil status, not even temporary, they are left without social security rights or access to state health and welfare services.

The Law's harm is by far greater in the case of women living in traditional Palestinian society, who are disempowered as it is. Under the Law, it is the Israeli resident spouse who must annually apply to renew the stay permit given to the OPT spouse. Thus, when the latter is a woman, she is rendered utterly dependent on her husband's goodwill, as he holds the "key" to her continued lawful presence in her own home. This requirement amplifies unbalanced gender power relationships and reinforces the dominant position of male spouses. By condemning women to live without status for years on end, Israel bolsters and anchors patriarchal practices, while betraying its obligation to prevent direct or indirect discrimination against women and monitor the extent of the actual harm caused to women.

The Law also precludes granting Israeli status to children with only one Israeli resident parent who are age 14 and up and are considered by Israel to be "residents of the OPT". Such children may live in Israel pursuant to stay permits only; thus, Israel denies them social security rights and national health insurance. Should they fall ill and require medical treatment or hospitalization, they would not be entitled to receive state support, even though they regularly live in Israel – or Israeli annexed areas – with their Israeli-resident parent. Moreover, the future of these children is uncertain: the Law does not provide for their continued stay in Israel past age 18, leaving them at the mercy of the Ministry of Interior. The Law's provisions sometimes result in the absurd situation where in a single family unit, some of the children receive Israeli status while others don't, which undermines the stability of the entire family.

### **The Ministry of Interior's Implementation of the Law**

The Ministry of Interior's conduct over the years regarding residency in East Jerusalem suggests that the ministry strives relentlessly to further restrict the limited status procedures still available to Palestinian residents of East Jerusalem. The ministry practices extreme foot-dragging, rejects as many applications as possible, and institutes diverse internal procedures expressly intended to further expand the Law's reach. Thus, bureaucracy serves as a weapon in Israel's demographic war against the Palestinian population of East Jerusalem, a population forced to maintain continual contact with the Ministry of Interior – encounters which always involve feelings of anguish, humiliation, and constant uncertainty. Residents who manage to withstand all this must wait for months and years for a response to their application; the Ministry of Interior

issues such responses at an outrageously slow pace, without any regard to the applicants' dignity and time.

Families in which one spouse is an OPT resident often have to battle for a decade or more in order to obtain legal approval for the spouse or child to live in Jerusalem. HaMoked's experience shows that in many cases, a long string of bureaucratic and legal proceedings are required before the Ministry of Interior agrees to grant the spouse or child the visa or permit s/he is entitled to.

### **Recommendations**

**The Citizenship and Entry into Israel Law was passed as a provisional, temporary order, ostensibly necessitated by the security situation in Israel at that time, but it has since been extended no less than 15 times. In view of the ongoing violation of the rights of thousands of East Jerusalem residents, their spouses from the OPT and their shared children, HaMoked again calls on the Government of Israel to repeal both the Citizenship and Entry into Israel Law and Government Resolution 3598 prohibiting all family unification between Israelis and Gaza residents. The state must ensure that applications for family unification with OPT residents are reviewed on their merits, in a fair, efficient and professional manner, in recognition of the rights of all Israeli residents and citizens to marry whomever they choose and live with their spouses and children in the place of their choice.**