

NGO Report by HaMoked and Gisha

Procedure separating parents from children in the occupied Palestinian territory

Submitted for consideration together with Israel's 2nd Periodic
Report on implementation of the Convention on the Rights of
the Child

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The Israeli human rights organizations HaMoked and Gisha are pleased to present the following NGO report on the State of Israel's implementation of the Convention on the Rights of the Child. We wish to call the Committee's attention to a military procedure whose implementation, we believe, violates Israel's obligations under the Convention. We do not purport to address in a comprehensive way Israel's implementation of the Convention in its territory and in the Palestinian territory subject to its control but rather to focus on one aspect of the Convention's violation, a **military procedure that effectively separates children from their parents by preventing family reunification between the Gaza Strip and the West Bank except in extraordinary circumstances**. We believe that this procedure, recently approved by Israel's Supreme Court, violates Israel's obligations under Articles 3, 8, 9, 10 and 16 of the Convention.

Procedure preventing family reunification

In March 2009, in response to petitions submitted to the Israeli Supreme Court by HaMoked, the Israeli military revealed the existence of a military procedure that effectively bans family members living in the Gaza Strip from reuniting with family members in the West Bank, except under extraordinary circumstances. The procedure, titled "Procedure for handling applications by Gaza Strip residents for settlement in the Judea and Samaria area" (March 8, 2009) (hereinafter: "the procedure") was upheld by Israel's Supreme Court in a decision given on May 24, 2012.¹ **An unofficial English translation of the procedure is attached to this NGO report.**

The procedure stipulates that family members living in Gaza who wish to join their relatives in the West Bank may do so under the following circumstances only:

1. The family member wishing to move to the West Bank is a chronically ill patient or an elderly invalid seeking care from a first degree relative in the West Bank or an orphan under the age of 16 wishing to join his/her surviving parent in the West Bank;
AND
2. There is no relative in Gaza, of any degree of relation who can care for the patient, invalid or orphan;
AND
3. There is no security claim raised against either the person wishing to travel from Gaza to the West Bank or the family member in the West Bank who is to provide the care.

If these conditions are met, the person seeking to move from Gaza to the West Bank will receive temporary permits to stay in the West Bank. These permits will be revoked or will not be renewed if one of the above-conditions ceases to exist, if security claims are raised against the person seeking to move from Gaza or her family members, if the person leaves

¹ HCJ 2088/10 HaMoked v. West Bank Military Commander (not published, Hebrew language decision available at www.court.gov.il).

the West Bank for an extended period of time or returns to the Gaza Strip. After seven years, the person from Gaza is eligible to request to have her address permanently changed to the West Bank.

The procedure explicitly notes that family ties in and of themselves do not constitute a humanitarian reason for allowing relocation to the West Bank, even in the absence of any security claim against the individual.

Convention Applicability

This Committee has determined that Israel's obligations under the Convention are applicable to Gaza and the West Bank, which have been recognized as a single territorial unit², in which Palestinian residents have extensive family and other ties. The Israeli government's 2nd Periodic Report to the Committee does not include information about implementation of the Convention in Gaza and the West Bank.

Family life in Gaza and the West Bank

Palestinian families live throughout Gaza and the West Bank, which have been recognized as a single territorial unit. Israel controls all crossings into the West Bank, including the crossing between the West Bank and Jordan. All persons wishing to enter the West Bank, from any border crossing, must receive Israeli permission. The Palestinian population registry is common to the West Bank and Israel, but Israel restricts the ability of Palestinians whose addresses are listed in Gaza to live in the West Bank.

Implications of the procedure: separation of children from parents

The effect of this procedure is to separate children from their parents and from other family members, including siblings.

In cases in which one parent lives in the West Bank and one parent lives in Gaza, the parent from Gaza is not allowed to move to the West Bank to join his or her spouse. In these cases, the child will be separated from one of her parents and in some cases, her siblings, where some children are with the father and some children are with the mother.

Even if a child living in Gaza is orphaned of her parent in Gaza, she will not be permitted to join her surviving parent in the West Bank unless she is under 16 and has no other relative who can care for her in Gaza. So, for example, if a child and her mother live in Gaza, and the

²Article 11 of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed Sept. 28, 1995, Washington, D.C (hereinafter: "Interim Agreement"); Israel's High Court has affirmed the integrity of Gaza and the West Bank as a single territorial unit. *See* H.C. 7015/02 Ajuri v. West Bank Military Commander, P.D. 56(6) 352 (*available in English at www.court.gov.il*).

mother dies, if the child has an aunt living in Gaza who can care for her – she will not be permitted to join her father living in the West Bank. If the child is 16 years old, she will not be permitted to join her surviving parent.

Even if a child is given temporary permits to join her parent in the West Bank, upon reaching the age of 16, if fewer than seven years have passed since she moved to the West Bank, she would be required to leave her surviving parent and return to Gaza, because she would no longer meet the age requirement for eligibility.

While families from the West Bank are generally permitted to move to Gaza for reunification, in many cases, the family's home, lands, livelihood, and/other family members are in the West Bank, making a move to Gaza unrealistic and certainly not commensurate with the best interests of the child, whose social and physical development require stability and access to resources. We do not have figures on the number of children who are separated from their parents due to the procedure, but from our legal assistance, we know that the phenomenon is widespread. HaMoked and Gisha represent families who are separated by this procedure, while other families simply give up on trying to reunite, because the terms of the procedure explicitly exclude them from even applying.

This year's affirmation of the procedure by Israel's Supreme Court essentially affirms the practice of separating children from their parents. We note that these restrictions are not grounded in security: they apply even to Palestinians against whom Israel makes no security claim, and they apply even if the child in Gaza wishes to travel to the West Bank via Egypt and Jordan, meaning to enter the West Bank without asking for passage through Israel. Israel does not allow family members to reunite, even if they make the trip through Egypt and Jordan and seek to enter the West Bank via crossings between Jordan and the West Bank, controlled by Israel.

We note that while the Israeli Supreme Court declined to strike down the procedure, it did recommend that the State consider requests for family reunification that go beyond the narrow criteria, as opposed to following the terms of the procedure, which provide that only requests fitting the criteria will even be considered. That recommendation, not binding as a matter of law, has yet to be implemented, although of course the court ruling is recent.

Violation of Convention Provisions

Best interest of the child

By categorically preventing children from reuniting with their parents between the two parts of the Palestinian territory, Gaza and the West Bank, Israel is violating its obligations to consider the best interests of the child as a primary consideration (Article 3). We raise questions about the appropriateness of the requirement that children of all ages pass a security check in order to join their parents in the West Bank or have their parents join them in the West Bank; disqualifying a child based on undisclosed security claims is incompatible with attaching primary importance to the best interests of the child.

Interference with family relations

The determination that a child who has lost a parent will not be permitted to join the surviving parent in the West Bank, if a relative of any degree of closeness can care for the child in Gaza, interferes with the ability of the child to preserve her family relations (Articles 8 and 16) and violates Israel's commitment to ensure that children will not be separated from their parents (Article 9). It should be noted that the military procedure provides for *military personnel* to evaluate a child's relationship with her surviving parent in the West Bank, as a criteria for approving the travel, even though the military personnel lack the competence to make determinations based on the best interests of a child (Article 9, sec. 1). Indeed, the best interests of the child are not part of the criteria that security personnel are mandated to consider as part of the procedure. The determination that family ties, including the ties between a parent and child, do not, in and of themselves justify allowing a child to reunite with her parent in the West Bank violates Israel's obligations under the Convention to facilitate entry and exit into the West Bank for purposes of reuniting children with their parents (Article 10).

Recommendations

We recommend that the "exceptions" to the prohibition on allowing people to move to the West Bank from Gaza for purposes of family reunification be expanded to include all cases in which parents are separated from children. This includes cases in which children living in Gaza seek to join their parents in the West Bank and cases in which parents living in Gaza seek to join their children in the West Bank. Israel may conduct security checks when passage is request via Israel (as opposed to cases in which the parent or child seeks to enter the West Bank via the Israeli-controlled border between the West Bank and Jordan), but Israel should in any case fulfill its obligations under the Convention, especially to prevent separation of children from their parents and to maintain the best interests of the child as a primary consideration.

HaMoked: Center for the Defence of the Individual (<http://www.hamoked.org/Home.aspx>) founded by Dr. Lotte Salzberger, is a human rights organization which was established in order to assist Palestinians subjected to the Israeli occupation which causes severe and ongoing violation of their rights. **HaMoked** works for the enforcement of the standards and values of international human rights and humanitarian law.

Gisha (www.gisha.org) is an Israeli human rights organization, founded in 2005, whose goal is to protect the freedom of movement of Palestinians, especially Gaza residents. Gisha promotes rights guaranteed by international and Israeli law.