



**המוקד להגנה הפרטית**  
**HAMOKED** Center for the Defence of the Individual  
هموكيد - مركز الدفاع عن الفرد

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**בִּיְצֵלֵם**

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# THE QUIET DEPORTATION CONTINUES

## REVOCATION OF RESIDENCY AND DENIAL OF SOCIAL RIGHTS OF EAST JERUSALEM PALESTINIANS

עצרו את  
הטרנספר  
השקיט

STOP THE  
QUIET  
DEPORTATION

أوقفوا  
الترانسفير  
الكامت

Jerusalem, September 1998

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# INTRODUCTION

In April 1997, B'Tselem and HaMoked: Center for the Defence of the Individual published a report under the title *The Quiet Deportation: Revocation of Residency of Palestinians in East Jerusalem*. The report described the policy of the Ministry of the Interior since December 1995, pursuant to which the Ministry revoked the residency of hundreds of East Jerusalem Palestinian residents. In implementing this policy, the Ministry made cynical use of the law and totally disregarded procedures it had implemented since Israel illegally annexed East Jerusalem in 1967.

Since publication of the report, the Ministry has continued to implement this policy. During the past year, hundreds of East Jerusalem families have been required to leave the city of their birth and have lost their inherent rights as residents, including their social entitlements.

East Jerusalem residents are liable to lose their social entitlements even without losing their residency rights. This occurs when the National Insurance Institute [NII] determines that they do not live in the city. The NII, which is responsible for implementing social policy

protecting Israel's disadvantaged, applies residency standards rigidly against East Jerusalem residents, so that many of them do not receive their entitlements, including health insurance.

The first part of the report examines the policy of the Ministry of the Interior regarding revocation of residency status and the developments of the past twelve months. This part also includes information that has become available since publication of the earlier report and describes in detail subjects that were not previously reviewed, such as registration of children and family unification.

The second part of the report examines how the NII operates in East Jerusalem. This part includes legal background, an examination of how the NII determines which East Jerusalem residents are entitled to allotments, and the consequences of NII policy. The report contains a special section on health insurance, which has been the responsibility of the NII since the State Health Insurance Law went into effect in early 1995.

# ISRAELI GOVERNMENT POLICY IN EAST JERUSALEM

Since Israel's illegal annexation of East Jerusalem in 1967,<sup>1</sup> the various Israeli governments have implemented a policy intended to strengthen Israeli sovereignty over East Jerusalem by creating a decisive majority of Jews in the city. The declared purpose of Israel is to preserve what is called the "demographic balance" in East Jerusalem, that is, maintaining a permanent and conclusive Jewish majority in Jerusalem.<sup>2</sup>

To achieve this objective, Israel has acted to increase the number of Jews in East Jerusalem, on the one hand, and to encourage Palestinian residents of East Jerusalem to leave the city, on the other hand. The methods used by Israel include:

- Systematic and deliberate discrimination against Palestinians in land expropriation, planning, and building, while building and investing extensively in the Jewish neighborhoods of East Jerusalem. The result is a shortage of thousands of apartments for the Palestinians, leaving many residents no option but to leave the city to solve their housing problems.<sup>3</sup>
- Minimal investment in infrastructure and municipal services in East Jerusalem. On this subject, Jerusalem Mayor Ehud Olmert acknowledged that, "The main problem in East Jerusalem is the vast gap in

infrastructure between the East and West. The condition of infrastructure in most neighborhoods of East Jerusalem is terrible, and for the past thirty years, Israeli governments have done too little about it."<sup>4</sup>

- The refusal, prior to 1994, to process family unification requests submitted by female Jerusalem residents for their non-resident husbands. As a result, and in order to live with their husbands, many women have been compelled to leave the city.<sup>5</sup>

Israel's ambition to expand its control over East Jerusalem and perpetuate its sovereignty over all parts of the city continues. For example, after publication of the 1997 annual report of the Jerusalem Institute for Israel Studies, Mayor Olmert stated: "The report contains things I don't like, such as the increase of the city's non-Jewish population."<sup>6</sup>

In January 1998, it was reported that, "On Friday, the Prime Minister, Benjamin Netanyahu, the Mayor of Jerusalem, Ehud Olmert, and the Finance Minister, Ya'akov Ne'eman, will discuss the revolutionary proposal of Ehud Olmert to grant Jerusalem exceptional national priority as part of a demographic battle to prevent reduction of the [number of] Jewish residents in the city."<sup>7</sup>

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1. Regarding the illegality of the annexation, see B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem* (Jerusalem, January 1995) 20-23 (hereafter: *A Policy of Discrimination*).

2. As set by the Inter-ministerial Committee to Examine the Rate of Development for Jerusalem (Gafni Committee), which determined that a "demographic balance of Jews and Arabs must be maintained as it was at the end of 1972," that is, 73.5 percent Jews and 26.5 percent Palestinians. See Inter-ministerial Committee to Examine the Rate of Development for Jerusalem, *Recommendation for a Coordinated and Consolidated Rate of Development* (Jerusalem, August 1973).

3. See *A Policy of Discrimination*.

4. *Ha'aretz*, 9 April 1998.

5. See B'Tselem and HaMoked, *The Quiet Deportation: Revocation of Residency of Palestinians in East Jerusalem* (Jerusalem, April 1997) (hereafter: *The Quiet Deportation*).

6. *Ma'ariv*, 27 May 1997.

7. *Ma'ariv*, 22 January 1998.

In May 1998, the Ministerial Committee for Jerusalem Affairs recommended extending the city's borders westward, the primary reason being "the demographic reason and the desire to preserve the demographic

balance between Jews and Arabs currently existing in Jerusalem."<sup>8</sup>

This report describes an additional means to implement this policy and reduce the number of Palestinians living in Jerusalem.

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8. *Ha'aretz*, 20 May 1998.

## **PART ONE: THE MINISTRY OF THE INTERIOR'S IMPLEMENTATION OF THE GOVERNMENT'S POLICY**

Since December 1995, the Ministry of the Interior (hereafter: the Ministry) in East Jerusalem has acted to realize the overall policy of Israel and reduce the number of Palestinians living in the city. To obtain this objective, the Ministry employs several measures:

1. Revocation of residency status of East Jerusalem residents who have lived outside the city for several years. This action is contrary to the policy the Ministry implemented for twenty-eight years. As a result, thousands of residents of East Jerusalem have been compelled to leave their homes.
2. Revocation of residency is accomplished without giving the resident a meaningful opportunity to appeal the decision. The right to be heard granted by the Ministry is only a formality.
3. Repeated demand to prove to the Ministry clerk in East Jerusalem that the applicant lives in East Jerusalem. The standard of proof required is extremely high, and persons who have lived their entire life in Jerusalem have difficulty meeting it. The Ministry requires proof even where the resident had submitted proof to it a short time earlier concerning another request.
4. Refusal to register in the Population Registry children born to parents only one of whom is an East Jerusalem resident. The Ministry also refuses to issue identity numbers, even where the Ministry had already recognized that the family lives in Jerusalem.
5. Refusal to approve requests for family unification. As a result, the Palestinian population in the city is unable to

increase beyond the rate of natural growth. Petitioning the High Court of Justice is the only way currently available to obtain approval of a request for family unification.

The legal and bureaucratic red-tape and lofty demands imposed on Palestinian residents of East Jerusalem create a situation in which it is almost impossible to submit a request without the assistance of an organization or attorney. A system based on reliance on outside assistance is unfair and violates principles of proper administration.

In a speech given to members of the Professors Forum for Political and Economic Power, Minister of the Interior Eliahu Suissa explained that the policy of revoking identity cards of residents of East Jerusalem is part of Israel's overall policy in the city. The Minister of the Interior said in this speech that, "The Jewish majority in Jerusalem should be increased to more than eighty percent." Concerning the policy on identity cards, the Minister stated:

The flow of Arabs from the West Bank into Jerusalem is part of the struggle the Palestinians are conducting against Israel regarding the future of the city, and taking the Jerusalem identity cards of Palestinians who hold them illegally is our response to this act instigated by the Palestinians.<sup>9</sup>

This policy contravenes a long list of provisions of international law that Israel undertook to comply with.<sup>10</sup> These provisions include the right of persons to exit and return to their country, and the prohibition on arbitrarily revoking the freedom of movement.<sup>11</sup>

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9. *Ha'aretz*, 17 April 1997.

10. See *The Quiet Deportation*, 20.

11. See article 13(B) of the Universal Declaration of Human Rights, of 1948, and article 12 of the International Covenant on Civil and Political Rights, of 1966.

## 1. Revocation of Residency Status

Since December 1995, the Ministry has implemented a new policy according to which Palestinian residents of East Jerusalem who are unable to prove to the Ministry that they currently live in the city and have lived there continuously are liable to lose their right to live in their native city, and consequently lose all their rights as Israeli residents. They are compelled to leave their home, are unable to stay in Israel without special permits, are not allowed to work in Israel, and all their social entitlements are revoked.

From the time of Israel's annexation of East Jerusalem, in 1967, to the implementation of this new policy, residents of East Jerusalem could leave the city and live elsewhere, even for prolonged periods, provided that they returned to Jerusalem every few years to renew the exit permits issued to them before they left the city. The Ministry regularly renewed their exit permits and identity cards, and registered changes in their family status. Only a continuous stay of more than seven years outside Jerusalem, without having renewed the exit permits, could result in revocation of the status of permanent resident. East Palestinian residents who moved elsewhere in the Occupied Territories were not required to have permits to exit and enter Jerusalem, and some even continued to receive allotments from the National Insurance Institute that they had received prior to leaving the city.

In December 1995, the Israeli government changed this policy. Since then, the Ministry revokes the residency status of East Jerusalem Palestinians who have lived several years outside the city's borders, alleging that their "center of life" was no longer in Jerusalem, and that their permanent residency permits had "expired." The return of these persons to Jerusalem over the years and the Ministry's renewal of their exit permits and provision of other services became irrelevant. The Ministry now demands proof of continuous stay in the city.

Jerusalem residents living in Jordan who come to the city to visit their family and renew their exit permits are required to sign a declaration stating that they forego their Israeli identity cards. Only when they sign such a declaration does the Ministry enable them to leave Jerusalem and return to their house and family in Jordan. Having no option, these residents sign the declaration, which results in their losing their right to return and live in Jerusalem.

The case of 'Atar Kamal is illustrative. In 1979, Kamal, a resident of East Jerusalem, married a Jordanian resident and went to Jordan to live with her husband. She returned to Jerusalem to renew her exit permits, and obtained identity card numbers for her children. In August 1998, she came to Jerusalem to visit her family. Her son, who was already eighteen, went to the Ministry to receive an identity card. In her testimony to B'Tselem, Kamal stated:

My son went to the Interior Ministry with a photocopy of my identity card. The clerks refused to speak with him and told him to come back with me, and that if he didn't, he would not receive an identity card. I went [there] with him the following day. The clerk checked the computer and then said, "The problem is not with your son, but with you. You live in Jordan, your husband is Jordanian. You are not entitled to have an identity card." "But we return every two years and renew the permits, and my children are recorded in my identity card, and everything is in order," I told her. The clerk said, "Under the Law, if you live more than seven years outside Jerusalem, you lose your identity card, and you have been living in Jordan for more than seven years." I said, "Then what do I do now?" She told me to give her my identity card. I asked, "How will I go back to Jordan without a card?" "We'll give you a paper that permits you to cross the bridge," she said. "And if I don't hand over the card?" "You won't be able to exit," she responded.

I did not know what to do. We had to get back to Jordan because my son had to

register for university. I had no choice but to go to the office located below the Interior Ministry to type out a declaration that I forego my identity card. I went back to the same clerk, who gave me a document in Hebrew that I couldn't understand. Later I learned that it stated that I must leave within thirty days. Now I am in Jordan.<sup>12</sup>

A similar incident occurred to Sana Abu Zanet, a resident of East Jerusalem. At the end of July 1998, she arrived from Jordan to visit her mother. On 4 August she went to the Allenby Bridge on her way back to Jordan. At the bridge, she was told that she had to go to the Ministry to renew her identity card. In her testimony to B'Tselem, Abu Zanet related what happened when she got to the Ministry office:

The clerk told me that if I want to leave Jerusalem, I would have to sign a declaration that I give up my identity card, because according to my documents, I no longer live in Jerusalem. I told her that I return every year, but she said, "That makes no difference, now you are not entitled to keep your permanent residency, and you have to hand over your identity card. If you don't, you won't be able to cross over the bridge." I said, "But I have three children waiting for me in Jordan." She said, "If you want to go back there, you will have to bring a declaration that you give up your identity card." I said, "And if I don't?" She said, "Prove to us that you live here, bring electricity, water, and *arnona* [municipal taxes] bills, and documents that indicate that your children study in schools in Jerusalem." I said, "And if I bring documents, how long will it take before you give me an answer?" She said, "It can take months and even years." I said, "But I have to return to Amman because I left my children there." Then she said, "You

have to give up your identity card. Otherwise, you can't leave."

I cried and begged but nothing helped. I went and made the declaration in the office below the Interior Ministry. After I gave her my declaration, she gave me a letter written in Hebrew that I could not understand, and she told me that I have to leave within thirty days. I went home with this letter. My parents cried and I cried, but nothing helped. I returned to Jordan the next day.<sup>13</sup>

The authorities never warned Palestinian residents of East Jerusalem that living outside the city jeopardizes in any way their status in the city or their right to return. The policy's details remain unknown, and the Ministry does not bother to inform persons leaving for abroad about the rules they must comply with to ensure continuation of their residency status.

The Ministry claims that there is no new policy, but rather that it is only implementing provisions of law that have been in existence for many years. The State has made this argument in response to petitions to the High Court of Justice opposing the Ministry's policy of revoking residency. In their answers, the State argues that:

... the policy of the Ministry of the Interior is not at all new. Clearly, since the judgment in *Mubarak Awad*, given back in 1988, which established the binding judicial rule as regards the matter of expiration of residency of East Jerusalem residents, there is an existing policy that is in force, according to which the Respondents act. That there are residents of East Jerusalem who elected to settle in other districts, based on a faulty assumption of one type or another, and now, with the passage of time, want to establish a new reality of life, does not indicate that the Respondents' policy is new.<sup>14</sup>

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12. The testimony was given by telephone to B'Tselem researcher Marwah J'bara-Tibi on 13 August 1998.

13. The testimony was given by telephone to B'Tselem researcher Marwah J'bara-Tibi on 13 August 1998

14. Answer of the State in HCI 7952/96, *Fares Samil Fares Bustani v. Minister of the Interior et al.*



However, the State Comptroller's Annual Report for 1996 indicates otherwise. The report states, in part:

In December 1995, a discussion was held in the Attorney General's office over whether the areas of Judea and Samaria and the Gaza Strip (hereafter – the region) should be considered "outside Israel" for the purposes of expiration of a permanent-residency permit under the Entry into Israel Regulations. Following the discussions, the legal advisor of the Ministry issued a directive to the East Jerusalem office, according to which "outside Israel" also includes the region, and that, therefore, where persons who have resided in the region for more than seven years, their permanent-residency permit has expired and they should no longer be registered in the Population Registry as a resident. The directive further stated that short visits to Israel during the seven years do not break continuity in counting the period.<sup>15</sup>

These comments clearly indicate that residency of East Jerusalem residents is being revoked as a result of a change of policy. Firstly, East Jerusalem residents moving to the Occupied Territories are considered to have moved "outside Israel," and their residency is liable to be revoked, whereas in the past, such a move had no such consequences. Secondly, contrary to the earlier policy, under which the counting of the seven years began anew after each visit to Jerusalem and renewal of the exit permit, the new directive provides that renewal of the permit does not restart the clock and does not preserve the individual's residency status.

The authorities did not inform the residents of East Jerusalem about the new directive and denied its existence to the High Court of Justice. The claims contending existence of a new directive were rejected outright, and the

Ministry refused to relate to these claims, other than making the perfunctory statement that, "The reason that the issue only recently arose is that since the peace agreements, persons who had left Israel many years ago have been streaming back ..."<sup>16</sup>

The State Comptroller also relates to the earlier policy of the Ministry and criticizes it for having regularly extended permanent-residency permits without checking whether the permits were in force:

The Entry into Israel Law stipulates that the Minister of the Interior may permit the return of a person who is entitled to reside in Israel as a permanent resident. The Entry into Israel Regulations stipulate that the validity of the return permit expires if the holder of the permit left Israel and settled in a state outside Israel. It was found that the office in East Jerusalem extended the validity of permits to return without checking whether these permits were still in force. Even when the returnees returned, no check was made to determine whether the permanent-residency permit's validity had expired as a result of their having settled abroad.<sup>17</sup>

The State Comptroller disregards the meaning inherent in extension of the return permits over the course of several years. In extending these permits, the Ministry validated East Jerusalem residents stay outside the city. The State Comptroller maintains that the retroactive change of policy should not be censured, holding that "it is better late than never." In her view, the Ministry's repeated renewal of the return permits does not bind the Ministry, and it must "act systematically to locate those whose permanent-residency permits have expired, update accordingly the particulars of their registration, and take away their identity cards."<sup>18</sup>

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15. State Comptroller, *Annual Report No. 47 (1996)* (hereafter: *State Comptroller's Report*), 576.

16. Response of the spokesperson of the Ministry of the Interior, Tova Ellinson, to the report *The Quiet Deportation*.

17. *State Comptroller's Report*, 577.

18. *Ibid.*, 580.

The change in Ministry policy is also clearly evident from the number of residents of East Jerusalem whose residency has been revoked. When the earlier report was written, in April 1997, the Ministry refused to divulge these

figures. However, following a petition to the High Court of Justice, the Ministry provided the data.<sup>19</sup> The following table is based on those data:

Year	Number of Residents whose Residency "Expired" <sup>20</sup>
1987	23
1988	2
1989	32
1990	36
1991	20
1992	41
1993	32
1994	45
1995	96
1996	689
1997	606 and some 500 files are still under review*
1998 (January to August)	346

\* B'Tselem does not know in how many of these files the investigation has been completed and how many are included within the figures for 1998.

Notification of revocation of residency also generally includes revocation of the residency of the children of the individual receiving the notice. The Ministry's figures apparently relate only to persons who received notification of the decision, so the number of Jerusalem residents required to leave the city is many times higher.

In early May 1997, after publication of the B'Tselem-HaMoked report, there was a feeling that the policy was about to change. On 4 May, *Ha'aretz* reported that, "Benjamin Netanyahu intends to change the law to ensure that Palestinians with the status of permanent resident of Jerusalem do not lose their rights." On 5 May, *The Jerusalem Post* reported that the government intends to

ease the policy of revocation of residency. David Bar-Ilan, media advisor to the Prime Minister, stated that there is a difference between East Jerusalem Arabs and other permanent residents of Israel: "The residents are not exactly immigrants, but people who were born here and whose roots are deep in the city, and we would like to remove what seems to be a very irritating bureaucratic procedure." However, *Ha'aretz* reported the same day that the Minister of the Interior, Eli Suissa, intends to continue the policy.

The Ministry continues to maintain its policy almost without change. Because the policy is unclear, many residents of East Jerusalem do not go to the Ministry's offices, fearing that the Ministry will revoke their identity cards.

19. HCJ 7316/95, *Menuhin et al v. Minister of the Interior*. The petition was filed by The Association for Civil Rights in Israel, the Alternative Information Center, and the Freedom of Information Coalition. The figures were provided to The Association for Civil Rights in Israel on 7 July 1997 after the petitioners paid NIS 1000 to the Ministry for their preparation.

20. The figures prior to 1996 (inclusive) were stated in the letter of attorney Moriah Bakshi, of the Ministry's legal department, to Malhiel Balas, of the State Attorney's Office. The figures for 1997 were stated in a letter of 17 December 1997 from Raphael Cohen, director of the Population Administration, to the Alternative Information Center. The figures for 1998 were provided to B'Tselem on 22 October 1998 in a telephone call from the office of the Ministry's spokesperson.

However, the Ministry intends to replace soon the identity cards of all Israeli citizens and residents, each person receiving a magnetic card. This will require every resident of East Jerusalem to go to the Ministry's offices, where the Ministry can check where they have been living throughout their lives. Because of the many difficulties the Ministry imposes on Palestinian residents of the city, thousands of them live outside Jerusalem, and the Ministry is liable to revoke the residency status of all those persons.

In April 1998, HaMoked, The Association for Civil Rights in Israel, Physicians for Human Rights, Defense of Children International, and the Alternative Information Center petitioned the High Court of Justice on behalf of fourteen Jerusalem residents whom the Ministry had determined were not residents.<sup>21</sup> The petition objects to the overall policy of the Ministry. The State has not yet filed its answer.

MK 'Azmi B'shara proposed a law amending the Entry into Israel Law, which enables the Minister of the Interior to revoke permanent residency. Pursuant to the proposed law, the Minister's power would be limited, and he would not have the power to revoke the permanent residency of a person born in Jerusalem or that of his or her immediate family.<sup>22</sup> The proposed bill passed preliminary reading in the Knesset in July 1997 and was forwarded to the Knesset's Committee for Interior Affairs.

## 2. Right to be Heard

In June 1997, the Ministry announced that every resident may appeal the decision by

providing the Ministry with information rebutting its conclusion. The announcement followed several petitions to the High Court of Justice objecting to the denial of the right to appeal revocation of residency of East Jerusalem Palestinians. The High Court of Justice accepted the State's contention that the Ministry grants the right to be heard, and rejected the petitions.<sup>23</sup>

According to the Ministry, residents of East Jerusalem have always had the right to contest expiration of their residency. A letter from attorney Yochi Jensen, of the HCJ Department of the State Attorney's Office, is illustrative:

As we have explained in the past to you and others, the notification of expiration of residency is not final, and never was so. Persons contending that the data and facts leading to issuance of the notification are inaccurate have the absolute right to present their own data.<sup>24</sup>

This statement is not precise. Until the middle of 1997, Ministry officials sent a letter of notification to East Jerusalem residents whose residency the Ministry contended had expired. The letter of notification indicated that they must leave the country, together with their family members, within fifteen days. The Ministry explicitly refused to allow these residents to appeal the decision, arguing that the residency "expires automatically," and that the Ministry official does not have, therefore, any discretion in the matter. For example, a letter sent in September 1996 by the assistant to the State Attorney stated:

In circumstances of expiration of residency, contrary to that of revocation of residency, it is clear that no right to object to the action has to be given to a

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21. HCJ 2227/98, *HaMoked: Center for the Defence of the Individual et al v. Minister of the Interior*.

22. Proposed Law 1441/P. The text of the proposed law is as follows: "... The Minister of the interior shall not revoke the permanent residency of a person born in Jerusalem, his [or her] spouse, and a person one of whose parents was born in Jerusalem."

23. See HCJ 3125/97, *Ablasa Yusuf et al v. Minister of the Interior, Takdin Elyon 97(2) 681*; HCJ 3120/97, *Maqari Oliver v. Minister of the Interior et al, Takdin Elyon 97(2) 262*; HCJ 3124/97, *Iabber Aymen et al v. Minister of the Interior et al, Takdin Elyon 97(2) 360*.

24. In a letter of 22 June 1997 to attorney Eliahu Abrams, of HaMoked.

permanent resident whose residency has expired, insofar as the Ministry of the Interior performs no active action to rescind the residency permit. What is involved is a residency that expires automatically.<sup>25</sup>

After granting the right to appeal, the Ministry changed the text of the notification sent to persons whose residency has been revoked. In the new formulation, written only in Hebrew, the Ministry informs the resident as follows:

Our information indicates that the validity of the permit entitling you to permanent residency in Israel has expired, and that you have ceased to be a resident... You may provide us, within forty-five days, any contention or proof rebutting our information and which shows that the permit has not expired. If the aforementioned contentions and proofs are not provided within forty-five days, you will no longer be considered a resident and you must leave Israel within thirty days, and you must also return the identity card/*laissez passer* in your possession.

The Ministry does, in fact, currently grant residents the right to be heard. However, the manner in which the Ministry handles appeals indicates that the procedure is merely a formality:

- In many cases, the Ministry does not allow the resident to appeal the decision, and the Ministry's clerk takes the resident's identity card when presenting the notification of revocation of residency. The clerk does not even mention to the resident that appeal is possible.

- The Ministry prevents residents from reviewing the material on which the Ministry bases its decision. As a result, the resident is unable to prepare properly to rebut the grounds relied on by the Ministry to revoke the residency.
- The person who made the initial decision to revoke the residency also decides the appeal, rather than another official at a different level.
- At no stage is the resident allowed to present arguments orally before any Ministry official.
- In many instances, the Ministry does not even respond to letters appealing the decision. Where a response is sent, the appeal is rejected without giving reasons and without relating to the contentions raised in the appeal.

The denial of a person's residency status, which severely affects the life of the individual and his or her family, violates principles set by the Supreme Court, according to which the right to be heard is an essential element of natural justice, and even where there is no explicit provision of law, a person must be allowed to plead his or her case.<sup>26</sup> The Supreme Court accepted the State's argument that it grants the right to be heard in cases of revocation of residency, without examining the candor of the Ministry in making this contention.

The following are two examples of how the Ministry relates to the right to be heard in cases of revocation of residency.

### ***Failure to Relate Seriously to the Appeal***

On 17 October 1996, Ahmad Sa'id, a resident of East Jerusalem who had turned sixteen,

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25. Letter of 26 September 1996 from Ener Helmann, assistant to the State Attorney, to attorney Majid Ghanim. In response to an interpellation of MK Amnon Rubinstein, of 29 January 1997, the Minister of the Interior argued that, "Since the Law stipulates and the High Court of Justice ruled that the residency expires automatically, I do not think it is appropriate from a legal perspective to let the person be heard." The State presented a similar formulation in numerous answers to High Court of Justice petitions filed concerning the revocation of permanent-residency permits. See, for example, HCI 9499/96, *Najawa 'Atrash v. Minister of the Interior*; HCI 8827/96, *Sahar 'Amirah v. Minister of the Interior*; *Bustani*, cited above in footnote 14.

26. See, for example, HCI 654/78, *Gingold v. National Labor Court*, *Piskei Din* 35(2) 649; HCI 358/88, *The Association for Civil Rights in Israel v. OC Central Command*, *Piskei Din* 43(3) 529.

went to the Ministry offices to request an identity card. On 8 January 1997, he returned to the office to ask about the status of his application. The clerk gave him a form signed by the head of the Ministry's East Jerusalem office. The form indicated that his and his parents' residency had been revoked. On 25 November 1997, HaMoked submitted a letter of appeal to the head of the office. Attached to the appeal were proofs of family life in Jerusalem, including NII recognition of their residency, and registration of children in Jerusalem schools. The appeal also stated that even between the summer of 1985 and June 1994, when the family was living in Jordan most of the time, it had maintained contact with the city, and each summer the wife and children had spent three months at their home in Jerusalem. When they returned to live in Jerusalem in June 1994, the Ministry renewed the mother's identity card and issued new identity cards to two of their children, leaving no doubt about their residency status. On 8 December 1997, the head of the East Jerusalem office responded to the appeal, stating that, "The request of your client has been examined, and unfortunately, there is no change in the decision."

### ***Denial of Right to be Heard***

Samira Jamil Rashid 'Aliyan, 42, a resident of Sur Baher, in Jerusalem, and mother of ten children, returned to Jerusalem with her family in September 1994 after having lived for several years in Kuwait and Jordan. During these years, the family returned to Jerusalem every year to renew their exit permits. On 28 September 1994, after returning to the city, she filed a request for family unification on behalf of her husband, a Jordanian citizen. Because such requests take a lot of time to resolve, her husband stayed in Jerusalem pursuant to a permit granted by the Ministry and renewed periodically. In her testimony to B'Tselem, 'Aliyan described what occurred one of the times she went to the Ministry offices to renew her husband's permit to stay:

When I went to renew my husband's permit to stay, they told me, "In fifteen days you will be granted family unification, but first you have to bring in all the documents that show where you were and when, and you have to bring *arnona* [municipal taxes], water, and electric bills, and your children's birth certificates." They also said, "You have to bring everything, and if you lie, you will lose any chance of obtaining family unification." I did what they said, and returned a couple of days later.

I sat with the clerk in booth no. 1. He asked for my identity card - a request they generally make. I gave him my identity card, of course, together with all the other documents he requested, and then he gave me a paper and said, "You shouldn't be here; you should go back to where you were. You have two weeks to sell your furniture and leave."

I started to scream. I told him that I have to see the person in charge. "All right," he told me. On the way there, another clerk saw me. She asked me, "Why are you crying?" "They took my identity card," I said. She said, "Apparently you shouldn't be here." I continued to cry and went into the office of the person in charge. Sobbing, I told him what had happened. He said, "Why are you crying? If you continue to act in this manner, we'll take all the money you received from NII for two years. So you should behave properly, because if you don't, we shall also take Muhammad's (my eldest son's) identity card. You have two weeks to settle your affairs and go back to where you came from."<sup>27</sup>

### **3. Proving "Center of Life"**

Pursuant to Regulation 11(C) of the Entry into Israel Regulations, "The validity of a

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27. The testimony was given to B'Tselem researcher Marwah J'bara-Tibi on 24 June 1998.

permanent-residency permit will expire... if the holder of the permit left Israel and settled outside Israel." Regulation 11A stipulates that a person will be considered "to have settled in a country outside Israel" if he or she stayed outside Israel for a period of at least seven years, or obtained permanent residency or citizenship in another country. The Supreme Court has ruled that a permanent-residency permit can also expire in other circumstances, where the permit no longer reflects permanent residency, and the resident's "center of life" moved to another location.<sup>28</sup>

The Ministry requires that residents of East Jerusalem making requests provide proof that their "center of life" has not changed and that they still live in the city. The standard of proof demanded by the Ministry is extremely high, and even persons who have lived their entire lives in Jerusalem have difficulty meeting it. Among the requirements are confirmation of places of employment; *arnona*, electricity, water, and telephone bills during the period of marriage; a residential lease; and confirmation from the NII on allotments. Where the person lives with his or her parents and does not have a rental contract, the Ministry requires an attorney's affidavit indicating that the individual indeed lives there.

The Ministry demands these documents each time the individual submits a request, whatever the type. Even where all the proofs had been submitted in another matter, family unification for example, the Ministry requires the family to again provide proofs in order to record a child on an identity card, receive an identity card at age sixteen, replace a lost identity card, change an address, and the like.

The case of Ra'ida Narar, a resident of East Jerusalem, is representative. In 1990, Narar married Khalil Narar, a resident of Rafah, in the Gaza Strip. In March 1997, after receiving

proof that the center of life of the mother and the children is in Jerusalem, the Ministry permitted registration of the two eldest children. In December 1997, after a third child was born, HaMoked requested that the Ministry register the child in the Population Registry. The Ministry granted the request. Approximately six months later, Narar went to the Ministry offices to change her identity card because a soldier at a checkpoint had torn it. She was again requested to present all the documents that prove that the center of her life is in Jerusalem.

These repeated demands may be viewed as a bureaucratic problem resulting from inefficiency. However, insofar as these demands are only directed toward Palestinian residents, and in view of the overall policy taken by the Ministry, a suspicion arises that the Ministry's actions are another attempt to impose difficulties on residents of East Jerusalem.

The determination as to where the center of the person's life lies is complex, dependent on numerous circumstances. As Justice A. Barak explained:

It is superfluous to add that it is frequently difficult to indicate the specific point in time in which the individual ceased to be permanently residing in the country, and there is certainly an expanse of time in which the center of the individual's life seemingly hovers between the previous location and the new location.<sup>29</sup>

The Ministry ignores this perception. By demanding proof regarding one's "center of life," it attempts to turn life into an orderly and arranged existence. It ignores that life is not execution of a plan, and that other circumstances should also be considered. Only one list of documents is sent to every resident who submits a request to the Ministry, indicating that the Ministry ignores

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28. Justice Goldberg held: "Settling in a country outside Israel can also be found from other circumstances, which are not listed among the facts included in Regulation 11A of the aforementioned Regulations." HC 7023/94, *Fathiyyeh Shkaki et al v. Minister of the Interior, Takdin Elyon* 95(2) 1614, 1615  
29. HC 282/88, *Mubarak 'Awad v. Yitzhak Shamir et al, Piskei Din* 42(2) 426, 434.

exceptional circumstances and lacks the requisite flexibility in determining where an individual's "center of life" lies.

The case of Muhammad Abu Kanfer is illustrative of the problematic nature of the Ministry's demands. Abu Kanfer was born in Jerusalem in 1949. In 1984, he married Nariyat 'Atras, a resident of Silat a-Daher, Nablus District. The couple has lived in Jerusalem continuously since their marriage, except for the years 1991-1994, when they lived in a-Ram, a Jerusalem suburb. Since 1994, they have lived in a rented house in the 'Issawiyeh neighborhood of East Jerusalem. His mother is listed as the tenant on the lease. Abu Kanfer works in the family shop, in Jerusalem's Old City. The shop's lease lists his brother as the tenant. He does not receive a pay slip, as the shop is a family enterprise. Abu Kanfer has never requested family unification for his wife. He does not receive an allotment from the NII because he owes

them money, which he contends he is unable to pay.

On 13 May 1996, the couple had their first child, a daughter. Two months after the birth, Abu Kanfer went to the Ministry and obtained her birth certificate with an identity number. When he requested that his daughter also be recorded on his identity card, the Ministry clerk instructed him to return a month later. He returned several times. During one of these visits, the clerk requested documents proving that Jerusalem is the center of his life. Abu Kanfer attached the rental contract of his mother, with a letter explaining that he and his family live in that house. When he came to the Ministry office on 13 February 1997, the clerk took his identity card and gave him a form indicating that his residency had expired. HaMoked filed an appeal on his behalf. Two weeks later, the Ministry rejected the appeal without giving any reasons.<sup>30</sup>

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30. Abu Kanfer gave his affidavit to HaMoked on 11 March 1997. It was annexed to his petition in HCJ 2227/98.

### ***Change of Registration of Personal Status on Identity Card***

In recent months, Palestinians who go to Ministry offices to record a change in their personal status from single to married face a problem. Rather than change the personal status to "married," the registration clerk records "unknown" or "under review," and refuses to make the change. The clerk also refuses to record the name of the spouse in the identity card.

Sana Roob, 21, a resident of the Old City, went to the Ministry on 14 October 1997 to renew her identity card and change her status to "married." She brought a copy of her marriage contract and a copy of a residential lease, and received a new identity card. About a month later, she noticed that the personal status space was marked "unknown." She went to HaMoked, which wrote to the Ministry asking why her status had not been changed and why her husband had not been recorded in the identity card. HaMoked sent its letter on 17 March 1998 but has not yet received a response. As long as the identity card does not indicate that the resident is married, the holder is not entitled to request an entry permit for a non-resident spouse or apply for family unification on behalf of the spouse.

The Registry clerk's tasks do not include making opinions relating to the validity of marriage, and the clerk must change the personal status in accordance with the marriage certificate presented. The High Court of Justice has so ruled, Justice Y. Zusman writing for the Court:

In registering the family status of the resident, the Registry clerk's task is not to give an opinion relating to the validity of the marriage. The assumption is that the legislature did not impose on a public authority an obligation it is unable to fulfill. It is sufficient for the clerk, for the purpose of performing his functions and recording the family status, to be presented with proof that the resident underwent a marriage ceremony. As regards the question of the validity of the ceremony that was performed, it can at times be perceived in one way or another, and review of its validity lies outside the confines of the registry of residents.<sup>31</sup>

The personal status recorded in the identity card is only prima facie proof of its accuracy,<sup>32</sup> and is not, therefore binding. The rigidity of the Ministry in refusing to change the personal status listed in the identity card is purely a nuisance and another way to create difficulties for East Jerusalem Palestinians.

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31. HCJ 143/62, *Poonk Shelinzeger v. Minister of the Interior*, Piskei Din 17, 225, 242. See also HCJ 230/86, *Shoshana Miller v. Minister of the Interior*, Piskei Din 40(4) 436.

32. Section 2 of the Population Registry Law, 5725-1965.



## 4. Identity Numbers for Children

An identity card is necessary for almost every matter of daily life - receiving a driver's license, opening a bank account, taking the matriculation exams, and the like. For residents of East Jerusalem, an identity card is even more important. Without it they can expect confrontations with soldiers and Border Police.

Receipt of an identity number from the Ministry is a pre-condition to obtaining an identity card, and for some residents of East Jerusalem, obtaining a number is a long and complex process.

A child born to parents who are Israeli citizens or residents receives an identity number at the hospital at birth. The child's parents then go to the Ministry, where the clerk issues a birth certificate with the identity number and records the child's name on the parents' identity cards.

Where only one of the parents is a resident of East Jerusalem, the procedure is different. After birth, the parents receive a form titled "Notification of Live Birth," which contains no identity number. When the parents go to the Ministry to obtain a birth certificate, the birth certificate also does not contain an identity number. To receive an identity number, the parents must submit a "Request to Register a Birth" and annex to the request proof that the family's center of life is in Jerusalem.

Parents going to the Ministry to obtain a birth certificate and record the child's name in their identity cards are not always aware that the child does not have an identity number. Ministry clerks do not inform them that they must initiate the process of registering the child, but rather issue a birth certificate without an identity number for the child. Only parents who themselves note that the child does not have an identity number submit a request to register the child.

Furthermore, under section 30(A) of the Population Registry Law, "A person born in Israel who is registered in the Registry is entitled to receive a birth certificate." By issuing birth certificates, Ministry clerks give the false impression to the parents that the child is registered in the Population Registry. The attempts of HaMoked to record children from East Jerusalem on the basis of section 30(A) have failed, the Ministry demanding that the family provide proof that it lives in Jerusalem.

An illustrative case is that of Nadia Darawi, a resident of East Jerusalem, who married, in 1981, a resident of the Occupied Territories. On 28 August 1996, the couple had a baby, Muhammad, and the Ministry issued the parents a birth certificate without an identity number. In November 1996, HaMoked requested the Ministry to issue Muhammad an identity number, basing its request on section 30 of the Population Registry Law. HaMoked received no response. HaMoked contacted the Ministry three more times on this matter. Finally, in December, the Ministry responded that, "As regards registration of Muhammad in the Population Registry, your aforementioned client must complete a request to register children and annex all the proofs on the center of life being in Israel."<sup>33</sup>

Where only one of the parents is a resident of East Jerusalem, the Ministry routinely provides a birth certificate without an identity number to parents who come to register their child. The Ministry does not issue an identity number even where it is clear that it has already recognized that the family's center of life is in Jerusalem.

Lulu Shalalkeh, a resident of the a-Tur neighborhood of Jerusalem, is married to a resident of Sa'ir village, Hebron District. On 29 January 1998, following a petition to the High Court of Justice filed by HaMoked, her request for family unification on behalf of her husband was approved. This approval indicates that the Ministry recognizes that the

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33. Letter of 15 December 1997 to HaMoked.

family lives in Jerusalem. On 4 April, some two months after approval of the request, the couple had a baby. When the mother went to the Ministry to register her newborn son, she received a birth certificate without an identity number. The clerk did not request her to

complete a form requesting registration of the child, and did not review the mother's file, which showed that proof had recently been made that the center of her life is in Jerusalem.

### ***Forced to Abandon her Infant***

A particularly serious, though unusual, case illustrating the possible effects of the Ministry's policy not to issue identity numbers to children is that of Haleh 'Odeh.

On 19 September 1996, 'Odeh married Ahmad 'Odeh, a Jordanian citizen. On 20 May 1997, she submitted a request for family unification on his behalf. Four days after the wedding, her husband had been caught in Jerusalem without a permit to stay in Israel, and had been deported to Jordan. On 22 June 1997, the couple had a daughter, for whom the Ministry did not issue an identity number.

On 6 July 1997, Mrs. 'Odeh traveled to Jordan with her infant daughter so that her husband could see his baby daughter for the first time. She obtained from the Ministry a permit to exit to Jordan, and at the Allenby Bridge, the soldiers recorded her daughter in the exit permit. Three days later, her husband went to Abu Dhabi to work, and Mrs. 'Odeh intended to return to her home in Jerusalem.

The IDF soldiers at the Allenby Bridge refused to let her enter with her daughter. They explained that her daughter could pass only on a Jordanian passport. Mrs. 'Odeh returned to Jordan and attempted to obtain a Jordanian passport for her daughter, but the Jordanians refused to accept her application because she is a resident of Jerusalem. Two months later, during which she stayed with neighbors of her husband, and after coming to the realization that she had no other solution, she returned to the Allenby Bridge, hoping to be able to get to her home in Jerusalem.

However, the soldiers again refused to let her enter with her daughter, though they told her there was no problem in entering by herself. Having no choice, the next day Mrs. 'Odeh left her two and a half month old daughter with her husband's neighbors and went to Jerusalem alone. When she arrived in Jerusalem, she went to the Ministry offices, where she was informed that the soldiers had acted contrary to instructions. Despite this, the Ministry denied her request to receive an entry permit for her daughter, and she was forcibly removed from the office.

Mrs. 'Odeh went to HaMoked for assistance. HaMoked contacted the HCJ Department of the State Attorney's Office. Two days later, the Ministry's approval to return the infant to Jerusalem was received. On 11 September 1997, Mrs. 'Odeh traveled to Jordan and returned to Jerusalem with her daughter.

## 5. Family Unification in Jerusalem

To be allowed to live together in Jerusalem, East Jerusalem residents married to non-residents must submit a request to the Ministry for family unification on behalf of their spouse. The Ministry views granting of these applications as a benevolent act, so it grants requests only "in exceptional cases, where special circumstances exist."<sup>34</sup>

This policy severely affects family life, the right of a couple to live together, and the right of children to live with their parents.

In general, requests for family unification submitted by residents of East Jerusalem are not processed. At the end of 1997, the Ministry had a backlog of 7,470 requests for family unification.<sup>35</sup> The high number of requests results, in part, from the Ministry's change in policy in 1994. Until then, the Ministry rejected outright requests submitted by female East Jerusalem residents on behalf of their non-resident husbands, and the Ministry only processed requests submitted by male residents of Jerusalem on behalf of their wives. In March 1994, following a petition to the High Court of Justice, the

Ministry changed its discriminatory policy and decided to process also requests for family unification filed by female residents of Jerusalem on behalf of their husbands.<sup>36</sup> As a result, thousands of female residents of Jerusalem, who could not submit applications previously, submitted their requests, but the Ministry did not process them.<sup>37</sup>

Where the spouse is a resident of a foreign country, while the family unification request is pending, the spouse is generally allowed to stay in Jerusalem pursuant to permits issued by the Ministry. The situation is different for residents of the Occupied Territories.

Until March 1993, when Israel imposed a closure on the Occupied Territories, residents of the Occupied Territories married to Jerusalem residents were allowed to enter and stay in Jerusalem.<sup>38</sup> After imposition of the closure, the Civil Administration in the Occupied Territories established a "Procedure for Divided Families," according to which Jerusalem residents' spouses living in the Occupied Territories would be granted periodic permits to stay in Jerusalem after submission of a request for family unification. In most cases, the permits were issued for three months and included a permit to stay overnight in Israel.

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34. Letter of 11 January 1998 from attorney Moriah Bakshi, of the legal department of the Ministry, to The Association for Civil rights in Israel.

35. Letter of 17 December 1997 from Raphael Cohen, director of the Population Administration, to Ingrid Gassner, of the Alternative Information Center. On 23 June 1998, B'Tselem requested updated data, but has not yet received a response to its inquiry.

36. Letter of 23 June 1994 from Yochi Jensen, senior deputy to the State Attorney, to The Association for Civil Rights in Israel following HCI 2797/93, *Garbit v. Minister of the Interior*. On this matter, see *The Quiet Deportation*, 9.

37. In this matter, the State Comptroller determined as follows: "As a rule, requests for a permanent permit in the framework of family unification submitted since the change of policy in April 1994 were not processed. The few requests that were approved were those where petitions to the High Court of Justice had been filed, or where other special circumstances existed... Only in June 1996 was a procedure developed to process requests for permanent residency and family unification... At the time of the completion of the review, November 1996, reference had not yet been made to all those who had submitted requests, and in general, granting of a permanent-residency permit within the framework of family unification had not yet begun for requests that had been submitted to the Population Administration in East Jerusalem from April 1994 onward." (*State Comptroller's Report*, 578-579). On 5 May 1998, B'Tselem requested the Ministry to send it a copy of the procedure for approving family unification, but received no response to its request.

38. As early as February 1991, residents of the Occupied Territories were required to obtain personal exit permits in order to leave the Occupied Territories, but until the closure in 1993, it was not particularly difficult to obtain such a permit. Concerning the closure policy of Israel, see B'Tselem, *Divide and Rule: The Prohibition on Movement between the Gaza Strip and the West Bank* (Jerusalem, May 1998) 5-6.

Implementation of the "Procedure for Divided Families" was very problematic. Persons entitled to the periodic permits did not always receive them, and in some instances, the permits did not include a permit to stay overnight in Israel. Obtaining the permit entailed numerous bureaucratic problems for the resident of the Occupied Territories each time the permit expired. The main problem was that each time Israel imposed a total closure on the Occupied Territories, all the permits were revoked, and the spouses were required to submit a new request when the closure ended. However, the procedure did provide these families with a certain measure of family life.

In early 1996, following the bomb attacks in Israel, the authorities revoked this procedure. In January 1996, the Ministry proposed, following the filing of a petition to the High Court of Justice relating to family unification in Jerusalem, an alternative arrangement in which the spouses would be issued permits to stay and work in Jerusalem. After a specific period of time, the Ministry would issue a temporary-resident permit until the granting of the request for family unification.<sup>39</sup> HaMoked's experience indicates that the Ministry never implemented this arrangement for spouses residing in the Occupied Territories, but applied it only for residents of other countries. In no case did the Ministry approve a request of HaMoked on behalf of a resident of the Occupied Territories for a permit to stay in Israel within the context of this arrangement.<sup>40</sup>

The Ministry canceled this arrangement some twelve months after its inception. In an affidavit to the High Court of Justice, Yosef Tov, then-director of the Ministry's Population Administration, stated that, "The

policy of the Minister of the Interior is, as a rule, that a person should not be allowed to stay in Israel if a request for family unification in Israel has been submitted on his behalf, until such time that a decision is reached on the request..."<sup>41</sup> Tov did not relate at all to the Ministry's notice to the High Court of Justice of about a year before, under which the spouse for whom a request for family unification has been filed could stay lawfully in Israel while the request is pending.

A resident of the Occupied Territories married to a resident of Jerusalem is currently unable to obtain a permit to stay in Israel, even temporarily, until the request for family unification is granted. These families must live separately for many years, unable to conduct a normal family life. If Jerusalem-resident spouses move to live outside the city, the Ministry is liable to revoke their Jerusalem residency.

In June 1997, HaMoked petitioned the High Court of Justice on behalf of seven families in which the wife is a resident of Jerusalem and the husband a resident of the West Bank or the Gaza Strip, who are unable to live together because of the Ministry's policy.<sup>42</sup> Following filing of the petition, the Ministry approved the requests for family unification of six of the families. The parties are now seeking to find a solution for the problem as a whole.

In early 1997, the Ministry announced a "graded arrangement," pursuant to which it would grant permanent-residency status only five years and three months after approval of the request for family unification. During this period, the spouse would be allowed to stay in Israel pursuant to temporary permits issued by the Ministry.<sup>43</sup> HaMoked's experience indicates that the Ministry does

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39. Notice of the State to the High Court of Justice, dated 19 January 1996, in HCJ 7930/95, *Mahfuz v. Minister of the Interior*.

40. The then-head of the Minorities Department of the Ministry, Shlomo Matnyah, informed HaMoked on 10 March 1997 that these permits had never been granted to residents of the Occupied Territories.

41. Affidavit dated 2 April 1997, in response to HCJ 463/97, *Saham Mahmud Muhammad Hazmeh et al v. Minister of the Interior*, filed by HaMoked.

42. HCJ 3677/97, *Goa'her Hassan 'abd al-Hafez Rasheq et al v. Minister of the Interior et al*.

43. This policy was presented to the High Court of Justice in HCJ 2950/96, *Haneh Musa et al v. Minister of the Interior et al*, and was approved.

not approve requests for family unification even under this arrangement, and those requests are likely to be approved, if at all, only after a petition is filed with the High Court of Justice.

The following are a few illustrations of the difficulties faced by families compelled to live apart.

### ***Giving Birth and Raising a Child Alone***

Four years ago, Rihab 'Ali Issawi, 50, married a resident of Jenin [Occupied Territories]. Her request for family unification on behalf of her husband was not approved. Six months ago the couple had their first son. In her testimony to B'Tselem, she stated:

My husband was not allowed to live with me in Jerusalem. He has a permit to enter Israel because he is a merchant, but the permit only covers the hours from 5:00 A.M. to 10:00 P.M. Sometimes he spends the night with me, but then he is staying illegally, because Israel does not grant him a permit to live in Jerusalem.

When there is a total closure of the Occupied Territories, his permit to enter Israel is revoked. That happened, for example, at the end of my pregnancy. That was a very tough time for me because I was in the hospital the entire last month [of the pregnancy] because I had to be under constant medical supervision. During that month, he managed to be with me only twice. I always heard that one of the best periods of married life is the last part of pregnancy, with both the husband and wife waiting for the newborn child. That experience was taken from me. Why? Because my husband is not a Jerusalemite, he does not have a blue [identity] card, and he needs a permit from Israel to live with me.

Furthermore, the first child is always very hard for a couple. I do not know when his temperature is too high, and when he

should be taken to the hospital. At the beginning, I also did not understand what the infant's crying meant, or what he wanted. There was nobody with me who would tell me what to do. I often ran to my neighbor in the middle of the night, and many times I took the baby to the hospital, even though it was unnecessary. Think what it's like for a woman going out at three o'clock in the morning alone to take her baby to the hospital, without the baby's father because he is in the Occupied Territories. When I gave birth, I received a shot in an improper manner, and it injured my veins. Because of that, I am unable to do many things. It is occasionally hard for me to pick up the baby, and there were many times I had to do that in spite of the pain. I cried a lot, but not only because of the pain. I also cried because my baby's father was far away, and he could not help me in my condition.<sup>44</sup>

### ***Prohibiting the Husband to Work***

In June 1994, Hashem Abu Tir married Haisham Abu Tir, a Jordanian citizen. On 29 June 1994, she submitted a family unification request on his behalf. The husband stayed in Jerusalem on a tourist visa, which did not enable him to work in Israel.

In response to HaMoked's request to issue him a permit enabling him to work in Israel, Shlomo Matnyah, then-head of the Ministry's Minorities Department, stated that, "I wish to inform you that we do not approve work permits for husbands. He is, therefore, forbidden to work." Despite several more requests submitted by HaMoked, and although the husband had a letter from an employer interested in hiring him, the Ministry refused to grant the husband a work permit. The Ministry provided no response to seven additional letters from HaMoked, other than to indicate that "the matter is being handled."

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44. The testimony was given to B'Tselem researcher Marwah J'bara-Tibi on 21 July 1998.

On 7 August 1996, HaMoked received a request to prove that the wife's center of life is in Jerusalem, the documents requested including confirmation of her husband's place of employment. Only on 24 June 1997 did he receive a work permit, and it was only for six months. The request for family unification has not yet been approved.

### **Living Separately**

Two years ago, Doa'a 'Abdallah Ashnati, 28, married a resident of Qalqilya [Occupied Territories]. The Ministry has not yet approved her request for family unification. In her testimony to B'Tselem, she stated:

My husband does not have a permit to live with me. The Israelis give him a work permit for every day from 5:00 A.M. to 10:00 P.M. Sometimes he spends the

night with me, but he does that without a permit. Many nights I remained alone because there was a closure, and the authorities canceled all the permits. He also cannot stay at the house in Jerusalem because he must travel between Ramallah and Jerusalem for his job.

I live with my parents. If I were living alone, it would be much more difficult. Especially after I gave birth, my parents helped me a lot. We do not live like a family in that we cannot live in an apartment alone because the prices are very high, and my husband is not allowed to live with me in any case. We also can't live in Ramallah, because then the authorities would take my identity card.<sup>45</sup>

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45. The testimony was given to B'Tselem researcher Marwah J'bara-Tibi on 17 August 1998.

## PART TWO: THE NATIONAL INSURANCE INSTITUTE'S IMPLEMENTATION OF THE GOVERNMENT'S POLICY

The National Insurance Institute's (NII) implementation of governmental policy in East Jerusalem seriously prejudices the residents, denying their basic rights, including the right to health insurance.

The NII forwards the findings of its investigations to the Ministry, which uses them as a basis for revoking the residency of East Jerusalem residents. The relationship between the NII and the Ministry, which was unclear in the past, has recently been clarified:

In April 1995, the Ministry and the NII agreed that the NII would forward to the Population Administration investigation findings on those persons who have settled outside Israel. Relying on these findings, the Population Administration would notify the individual that his permanent-residency permit has expired, take the necessary measures to delete him from the registry records, and take his identity card from him. The details of the work procedures between the two bodies were agreed on in another document, of March 1996.<sup>46</sup>

In this way, the NII became an integral part of the "quiet deportation" policy the Ministry implements in East Jerusalem and assists the Ministry in effecting this policy.

Several major problems characterize the NII's activity in East Jerusalem:

1. The NII is predisposed to suspect that every resident of East Jerusalem applying for an allotment does not actually reside in the city, and is, therefore, not entitled

to allotments or health insurance. As a result, in order to determine where the claimant lives, the NII investigates the vast majority of cases where East Jerusalem residents submit claims. The claimant does not receive the requested allotment or health insurance until the NII completes its investigation, which takes many months. The NII employs this procedure even though the data indicate a high percentage of approval after completion of the investigation, and the claimant's right to the entitlement is recognized retroactively.

2. The NII does not conduct the investigations in accordance with proper administration, making only a shallow investigation, and totally disregarding the complexity inherent in the definition of an individual's "center of life."
3. The NII also investigates cases where an individual applies for health insurance, even though the law does not authorize it to do so. As a result, thousands of children in East Jerusalem are currently not covered by health insurance.

The NII's rigid policy in East Jerusalem creates financial problems for the residents, who need the allotments provided by the NII. The data on the poverty level in Israel does not include East Jerusalem.<sup>47</sup> According to the 1996 data, 27.4 percent of Jerusalem's residents, not including residents of East Jerusalem, live under the poverty line,<sup>48</sup> and according to estimates, inclusion of East Jerusalem residents in these figures would raise the percentage even more. For example,

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46. *State Comptroller's Report*, 577. B'Tselem requested a copy of the procedure from the NII on 6 May 1998. In response, the NII indicated that it does not have a copy of the procedure.

47. National Insurance Institute, Research and Planning Administration, *Annual Survey for 1996/1997*, 70-71: "Before 1995, the non-Jewish population was surveyed only in towns of 10,000 or more residents, but since 1995, the survey also covers towns of 2,000 and more persons (except East Jerusalem)."

48. *Jerusalem Yearbook for 1997*, Table VI/1.

a publication of the Municipality's Welfare Department states:

Jerusalem is characterized by a high percentage of poor residents. Some 27.4 percent of the Jewish residents live under the poverty line and some forty percent of the children lie under the poverty line. Estimates of poverty in eastern Jerusalem indicate that the percentage of residents [under the poverty line] is even higher as a result of the low income of the family's breadwinner and the large number of children. It is known that most of the wives are not part of the work force, except as housewives.<sup>49</sup>

The manner in which the NII operates in East Jerusalem grossly violates rights secured under international law that Israel undertook to comply with. Among these rights are the right to social security and the right to health.<sup>50</sup>

## 1. Legal Background for NII Activity

The objective of the National Insurance Law is to ensure that Israeli residents who have left the workforce, whether temporarily or permanently, receive an income. The Law stipulates the types of allotments provided, among them old-age and survivors benefits, worker's compensation, allotments for disability, children, mothers, unemployment, and health-related support.<sup>51</sup> The NII is

charged with executing this law and the other laws with a similar objective. Since the institution of the State Health Insurance Law, in 1995, the NII has also been responsible for executing that law.<sup>52</sup>

Pursuant to the National Insurance Law, allotments are paid only to Israeli residents. The Law does not define "resident," and the labor courts have intentionally refrained from establishing a precise definition for this term.<sup>53</sup>

It would not be appropriate to set an inclusive formulation and comprehensive formula that would meet all the situations in which the question arises as to whether a particular individual is a resident of Israel, whether he acquired such a status, or lost that status. The answer will be found in the entirety of the circumstances, as are indicated from all of the above. We shall only emphasize that, in the final analysis, the connection will be determined; a connection that is not temporary or provisional, and a connection that proves a location within Israel as the place "in which he lives," where "this is his home."<sup>54</sup>

The labor courts interpreted the term "resident of Israel" as being linked to the factual situation indicating a stable connection between the individual and Israel, and "on Israel being the home of the resident."<sup>55</sup>

Determining the "connection," the place "in which he lives" and which "is his home" is made according to the factual

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49. Nadim Shiban, *Major Characteristics and Trends in the Development of East Jerusalem*, Welfare Department, Jerusalem Municipality, 1998.

50. See articles 22 and 25 of the Universal Declaration of Human Rights, of 1948, and articles 9 and 12 of the Covenant on Economic, Social, and Cultural Rights, of 1966.

51. National Insurance Law, 5755-1995 [Consolidated Version] (hereafter: the National Insurance Law).

52. On this matter, see p. 39.

53. Under section 391 of the National Insurance Law, suits under this law are to be filed in the labor courts. The labor courts are, therefore, responsible for interpreting the Law.

54. Natl. Labor Ct. 04-73/MH, *Iyada Sanuqa v. National Insurance Institute*, 17 Labor Ct. Judgments 79, 84 (hereafter: *Sanuqa* judgment). See also Dist. Labor Ct. (Beersheva) NH/0-479, *Shagibova Tamra v. National Insurance Institute*, *Takdin Avodah* 97(2), 543; Natl. Labor Ct. 0-38.49/MZ *Shweiki et al v. National Insurance Institute*, 19 Labor Ct. Judgments 111, 115 (hereafter: *Shweiki* judgment).

55. Natl. Labor Ct. 0-10/MD, *National Insurance Institute v. Aqdas Rahim*, 15 Labor Ct. Judgments 417, 421.



basis and evaluation of the facts, giving attention to the entirety of the circumstances. Where an Israeli resident acquires a place of residence abroad, receives a permanent work permit, works at a fixed location for a significant period of time, a break of any economic tie with Israel, all these, among other things, can show, in certain circumstances, the lack of a connection to Israel, and movement of the center of life and the home to another location abroad.<sup>56</sup>

It is clear, therefore, that the definition of the term "resident of Israel" by the NII differs from that of the Ministry. According to the Ministry, a "resident of Israel" is a person who has been granted the legal right to stay in Israel pursuant to a permit to stay issued by the Ministry. On the other hand, to be recognized as a "resident of Israel" by the NII, an individual must actually be staying in Israel, in addition to having a lawful residency status in Israel. Even Israel citizens who stay for long periods abroad will not be recognized as residents by the NII, and will not receive NII allotments.<sup>57</sup> Consequently, a person can be a resident of Israel according to the Ministry, but if he or she does not live within Israel, the NII will not recognize him or her as a resident and grant an NII allotment.

In claims currently filed by residents of East Jerusalem against the NII in the labor courts, the NII demands confirmation by the Ministry that the residency status of the claimant has not been revoked.<sup>58</sup> Furthermore, in cases where the NII's investigation shows that the claimant stayed outside Jerusalem for more than seven years [in which case the Ministry often revokes the individual's residency

status] the NII delays handling of the claim,<sup>59</sup> even though the Ministry did not revoke the claimant's residency, and the claimant is staying in Israel lawfully. The NII acts in this manner though the Entry into Israel Law provides no such authorization to it. As long as the Ministry has not revoked the individual's residency, the NII is unauthorized to determine otherwise. The fact that the NII refrains from making decisions in these cases prevents persons whose claims are delayed for this reason from appealing to the labor court against the contention that they have resided outside Jerusalem for more than seven years.

Because of the different definition of "resident of Israel," the consequences of revocation of residency by the two bodies differ. Revocation of residency status by the Ministry is irrevocable, and it is almost impossible to obtain again the status of permanent resident. On the other hand, a person whom the NII determined was not a resident of Israel may subsequently attain this status by again residing within Israel, provided that the Ministry has not revoked this status.

Israel's annexation of East Jerusalem separated it from the rest of the West Bank and created a situation whereby East Jerusalem residents moving to other parts of the West Bank lost their social rights, which are granted only within Israel. The labor courts recognized the problems inherent in this situation:

The movement from one area to another is not movement from one country to another. A person coming from the second area to the first does not need an

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56. Natl. Labor Ct. 0-286/NV, *Zafirir Abhuc v. National Insurance Institute* (unpublished) 8.

57. Section 324 of the National Insurance Law stipulates that, "A person located outside Israel for more than six months will not be paid an allotment for the period exceeding the first six months, except upon the consent of the Institute."

58. This occurred, for example, in the answer of the NII in Dist. Labor Ct. (Jerusalem) 7-20/NV: "The Respondent proposes that the claimant arrange her matter with the Ministry of the Interior, and then the procedures in this file will be determined."

59. Stated by Uri Shaharbany, deputy director for insurance and collection, NII's Jerusalem subsidiary branch office, in a telephone conversation on 30 March 1998 with HaMoked.

entry permit, neither as a tourist nor as a temporary resident. It occurs that the residence lies in one area and the source of livelihood – work or business – lies in the second area. For family reasons, there is often movement from house to house. In such situations, it is not possible that the result will be that residency changes from day to day.<sup>60</sup>

In this spirit, the Ministerial Committee for Jerusalem Affairs decided, in the early 1970s, that:

A person who has an Israeli identity card based on his being a resident of Jerusalem and continued to make his payments to the NII on a regular basis would continue to benefit from national insurance rights even where he moved outside the municipal borders of Jerusalem.<sup>61</sup>

Interpretation of this decision changed over the years, until, in 1987, the Minister of Labor and Social Welfare enacted regulations dealing with the rights of residents of East Jerusalem who move to the Occupied Territories.<sup>62</sup> These regulations stipulated that the NII continue to pay East Jerusalem residents who move to the Occupied Territories all the allotments they had received prior to moving, but not for events that occurred after the move, such as the birth of additional children.<sup>63</sup>

The regulations also stipulated that a resident of East Jerusalem who moved to the Occupied Territories and later returned to

live in Jerusalem can again receive allotments from the NII, but only two years after returning to the city.<sup>64</sup> This provision distinguishes them from residents who moved to other countries, whose entitlements are renewed immediately upon their return to Israel. The labor court explained the logic behind this regulation:

The possible change of site of residence from time to time, and as a consequence thereof, in certain cases, even change of "residency" of that person, justifies relating to that person as one who is not a resident of Israel until time proves the stability of his habitation, indicating that he is indeed a resident of Israel... The period of time set in the Regulations is two years, and on the background of the circumstances and reality mentioned above, this period is indeed reasonable.<sup>65</sup>

The court ignored the fact that movement to the Occupied Territories turns individuals immediately into non-residents. A resident of Jerusalem who moved to the Occupied Territories for six months, during which a child is born, would not be entitled to a child allotment for that child. Consideration of "special circumstances," therefore, is one-way, and works against residents of East Jerusalem.

In early 1988, the special regulations relating to East Jerusalem residents were revoked, and beginning on 1 February 1998, the NII stopped all allotments to residents of East

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60. *Sanuqa* judgment, 85.

61. Decision 15/YM, of 13 February 1973.

62. National Insurance (Rights and Obligations under the National Insurance Law for Non-Residents of Israel) Regulations, 5747-1987, *Kovetz Takannot* 5022, 5747, p. 747 (hereafter: 1987 Regulations).

63. *Ibid.*, sections 2 and 3. In 1993, additional regulations relating to East Jerusalem residents who moved to the Occupied Territories were enacted. Their objective was to regulate the payments to East Jerusalem residents who moved to the Occupied Territories prior to 1987 and for some reason the NII stopped paying them allotments. These regulations stipulated that payments to these persons should be renewed. National Insurance (Payments to Jerusalem Residents who moved their Residence to Judea, Samaria, and the Gaza Strip) Regulations, 5753-1993, *Kovetz Takannot* 5753, p. 767.

64. Section 15(D) of the 1987 Regulations. This section was revoked on 1 February 1998, upon amendment of the National Insurance Law. See footnote 66.

65. Natl. Labor Ct. 0-43/NA, *Fawzi Khaldiyeh et al v. National Insurance Institute, Takdin Artzi* 91(1) 238, 241 (hereafter: *Khaldiyeh* judgment).

Jerusalem who moved to the Occupied Territories.<sup>66</sup> Under the current situation, if the NII determines that a resident of East Jerusalem lives outside the city, it stops paying benefits.

Contrary to Palestinian residents of East Jerusalem, Israeli citizens or Jews moving to the Occupied Territories do not lose their rights under the Law, and continue to receive allotments from the NII.<sup>67</sup> Consequently, Israel blatantly discriminates between Palestinian and Jewish residents, even where the Jews are not Israeli citizens.

The claim of discrimination between Jewish settlers and residents of East Jerusalem has been raised often in the labor courts but has been consistently rejected.<sup>68</sup> The labor courts held that in any event, prohibited discrimination is not involved, since the discrimination is between two different populations – citizens and residents – and discrimination between different groups is permissible.<sup>69</sup>

This argument is unsustainable. Discrimination between different groups is permissible only when the difference between the groups is relevant in conducting different policies:

The principle is that relevant difference can justify distinguishing [between groups]; it is here, as is known, where the

root of the distinction between prohibited and allowable discrimination lies... Where relevant difference does not exist, imposing a different law on persons whose needs are the same constitutes prohibited discrimination; and prohibited discrimination harms the human dignity of the persons discriminated against. This is, as I see it, required from the view that I accept, that equality is also part of human dignity.<sup>70</sup>

As regards the granting of allotments under the National Insurance Law, there is no distinction between a resident of Israel and a citizen of the State. Under the Law, the function of the NII is to provide social security to Israeli residents, and the question as to whether the individual is a citizen or resident is meaningless.

In January 1998, the National Insurance Law was amended, to provide that Israeli citizens moving to the Occupied Territories would continue to receive NII allotments and be covered by health insurance only if they moved to Jewish settlements. Even Jews who are not citizens, who are entitled to immigrate to Israel, and live in the Occupied Territories are insured.<sup>71</sup> Non-Jewish Israeli citizens almost never move to the Jewish settlements, and they would not, therefore, be entitled to allotments from the NII if they move to the Occupied Territories.

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66. The amendment to the Law was adopted as part of the Increasing Growth and Employment and Achieving Objectives of the Budget for the 1998 Fiscal Year (Legislative Amendments) Law, 5758-1998, *Sefer HaChukkim* 5758, of 15 January 1998. These Regulations were revoked, as regards residents of Gaza and Jericho, after signing of the Cairo Agreement, which transferred control over these areas to the Palestinian Authority, and beginning on 21 December 1994, they do not apply to them (the amendment to the Law was adopted as part of the Implementation of the Agreement on the Gaza Strip and the Jericho Region (Economic Arrangements and Miscellaneous Provisions) (Legislative Amendments) Law, 5755-1994, *Sefer HaChukkim* 5755, p. 79.

67. Section 26(A) of the Amendment and Extension of the Validity of the Emergency Regulations (Judea, Samaria, and the Gaza Strip, Jurisdiction over Offenses and Legal Assistance) Law, 5738-1977.

68. See, for example, *Shweiki* judgment, 118.

69. *Khaldiyeh* judgment, 244. See also, Natl. Labor Ct 0-162/NV, *Masra 'Abadan v. National Insurance Institute, Takdin Artzi* 97(2) 32,34.

70. HCl 205/94, *Akiva Nof v. State of Israel - Ministry of Defense, Takdin Elyon* 97(1)100, 106. See also HCl 200/83, *Muhammad Wattlad v. Minister of Finance et al, Piskei Din* 38(3) 113, 119; HCl 4541/94, *Alice Miller v. Minister of Defense et al, Piskei Din* 49(4) 94.

71. Section 378 of the National Insurance Law.

In this way, the Law distinguishes between entitlements for Jews – citizens and non-citizens – and that of non-Jewish citizens. This amendment also constitutes discrimination according to the labor court, since discrimination between citizens is involved. The claim of discrimination under this law has not yet been reviewed in the regular court system.

## 2. Investigating Residency in East Jerusalem

Being defined as a "resident of Israel" is a precondition to obtaining social benefits from the NII. The NII is, therefore, authorized by law to conduct investigations to verify that the individual claiming an allotment lives in Israel and meets the conditions set forth in court rulings.<sup>72</sup> The burden of proof that the claimant is not a resident rests with the NII, but once it determines that the claimant is not a resident, the claimant has the burden of proving otherwise if appeal is made to the labor court.<sup>73</sup>

According to judgments of the labor courts, an investigation must be initiated to check the residency of an individual claiming an allotment only "when the Institute has a doubt that the person continues to be a resident of Israel (it should be emphasized that an actual basis for such doubt is

required, and not conjecture or trivial information)."<sup>74</sup>

Contrary to this judgment, the NII suspects that every Palestinian resident of East Jerusalem does not reside in the city until proven otherwise. The NII does not distinguish between different types of claims, and investigates residency in Jerusalem in almost every case where a claim for an allotment of any kind or for health insurance is made.<sup>75</sup> The NII conducts an additional investigation each time the East Jerusalem resident submits a new claim, even if it conducted a residency check a few months earlier and found that the claimant is entitled to the allotment.<sup>76</sup>

For example, Avraham Mena, head of the NII's insurance division, argued:

As regards residents of East Jerusalem, a special problem exists concerning residents living outside the municipal boundaries of Jerusalem and having Israeli identity cards. In such cases, the NII conducts a special investigation case-by-case, and based on the findings can confirm that the holder of the identity card is a "resident of Israel." If the individual lives outside Jerusalem, like in a-Ram, Ramallah, 'Izariyyeh, or Bethlehem, the NII rejects the request of the insured ... Only on the basis of an in-depth investigation by reliable investigators of the NII do we decide to approve or reject such applications.<sup>77</sup>

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72. Section 383 of the National Insurance Law.

73. See Natl. Labor Ct. 0-100, *National Insurance Institute v. Amaneh A'arar*, 25 Labor Ct. Judgments 107, 112 (hereafter: *Amaneh A'arar* judgment).

74. *Ibid.*, 112.

75. According to a letter of 19 May 1998 from Haim Pitosi, NII spokesperson, to B'Tselem, "The estimation is that, in the vast majority of cases of new claims submitted to the NII, residency is checked."

76. In his letter referred to in the previous footnote, Pitosi stated: "A reexamination is conducted when the NII receives information that a person receiving an allotment lives outside Israel, or when another claim for an allotment requiring residency in Israel is submitted." Me'ir Ohana, head of the pension division of the NII's Jerusalem subsidiary branch office, indicated to HaMoked on 16 August 1998 that, "Another investigation is also made when a person whom the NII recognizes as a resident informs the NII that he moved to another address within Jerusalem. In such a case, the NII immediately ceases to recognize the individual as a resident of Israel, and again recognizes the Israeli residency of the person when it verifies that the person moved to the location indicated. Only then does the NII renew the resident's insurance."

77. From a letter of 14 August 1996 from Mena to Physicians for Human Rights.

The NII has made similar arguments concerning entitlement to State Health Insurance. In its answer to the claim filed against it in a matter dealing with health insurance for children, the NII argued:

Since the State Health Insurance Law went into effect [1 January 1995], residents of the Occupied Territories and Arab countries have streamed into Israel to take advantage of the health services. This flow of people has led to a "flood" of requests for health services...

The cost of financing the health services is extremely high... Therefore, the legislature intends what the Law itself states, that health services would be funded only for residents of the State. The legislature wanted to prevent a situation in which non-residents of Israel improperly benefit from the expensive health services like those "getting something for nothing," while the burden of the payments and funding falls on residents of Israel and the State treasury. For this reason, and on the background of the aforementioned circumstances, it is essential and vital that a detailed examination be made of the residency of those wanting to benefit from the health services.<sup>78</sup>

The general suspicion held against all residents of East Jerusalem is inconsistent with the requirement that there be "an actual basis" for the doubt. The perception covering an entire sector of the population indicates the bad faith of the NII in its activity in East Jerusalem and raises doubts about its ability to examine fairly and earnestly each case on its merits. The NII's belief that residents of East Jerusalem only want to exploit Israel and benefit from services to which they are not entitled is directed toward preventing the

social security of an entire sector of the population. The NII's contentions in this regard are baseless and it is improper for a public body to operate on such biased assumptions.

Figures provided to B'Tselem by the NII on claims it received indicate that, after investigation, the NII approves a large majority of the claims. During the period of the investigation, claimants do not receive the allotments and health insurance to which they are entitled. According to these figures, in 1996, the NII approved seventy-two percent of the claims; in 1997, seventy-five percent; and in 1998, as of the end of June, sixty-nine percent.<sup>79</sup>

This high percentage of approvals is inconsistent with the NII's suspicions against residents of East Jerusalem, and questions the NII's policy of conducting an investigation in every case.

An example of the manner in which the NII handles claims submitted by residents of East Jerusalem is the handling of claims for a hospitalization grant and a birth grant submitted by residents of East Jerusalem who give birth.

Under the National Insurance Law, every woman giving birth who is a resident of Israel or the wife of a resident of Israel is entitled to a hospitalization grant, which is intended to cover the cost of hospital treatment, and a birth grant.<sup>80</sup> The normal procedure for a woman giving birth who is a resident of Israel is short and simple. The woman arrives at the hospital, presents her identity card, in which her address in Israel is recorded, and the hospital registers her for treatment. After the birth, the NII reimburses the hospital the costs of the hospitalization and grants the mother a birth grant.

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78. Natl. Labor Ct. 1591/98, *Ahmad Faras Hadad et al v. National Insurance Institute et al*, pars. 3(D) and 3(E) of the State's answer (hereafter: the *Children's Suit*).

79. From a letter of 19 July 1998 from Haim Pitosi, NII spokesperson, to B'Tselem. The figures relate to the following divisions: income security, old-age and survivors, disabled children, children, general disability, special services.

80. Sections 43 and 44 of the Law.

The procedure for residents of East Jerusalem who are giving birth is different. The NII refuses to recognize their entitlement for these grants until an investigation has shown that they are residents of Israel. In most cases, the investigation ends after the birth. Therefore, many women arrive at the hospital without authorization from the NII regarding their residency and do not, therefore, receive the hospitalization and birth grants. They must, therefore, pay the cost of the hospitalization themselves, which amounts to thousands of shekels. Where medical complications arise for the mother or the newborn, the costs are even higher. When the patient has difficulty paying, the hospital resorts to threats such as refusing to discharge the newborn child unless the bill is paid or not providing the parents with a "Notice of Live Birth," a document required to register the child in the Population Registry.

The NII implements this procedure even though here, too, a large percentage of the claims are approved following the investigation. Figures annexed to the NII's answer to a petition on this matter indicate that, between February and April 1997, 818 claims for hospitalization and birth grants had been submitted by East Jerusalem residents. Of them, 492 were approved, 312 rejected, and 14 are still being processed. Of the rejected claims, "The reason for the denial is either because of residency or lack of cooperation with the collection

department (not arranging continuation of their insurance as residents of East Jerusalem). Ninety-six claims were rejected outright on residency grounds."<sup>81</sup> These figures indicate that sixty percent of the claims are approved. Only some eleven percent are rejected because of the claimant's non-residency, and the others are rejected because of debts to the NII and other matters that do not require a lengthy investigation.<sup>82</sup>

In November 1997, HaMoked, Physicians for Human Rights, and The Association for Civil Rights in Israel petitioned the High Court of Justice against the Ministry of Health and the NII opposing this policy of the NII.<sup>83</sup> In its answer, the NII indicated that it would cancel the procedure for couples where each has an Israeli identity card,<sup>84</sup> but refused to change its policy regarding East Jerusalem women residents married to non-residents of the city, arguing that an Israeli identity card often does not necessarily indicate residence in Jerusalem.<sup>85</sup> Despite this, the NII undertook to conclude the investigation before the birth if the woman informs the NII of her pregnancy prior to the third month. Where the NII concludes the investigation, even if the woman did not inform the NII on time, the woman would be granted the entitlement.<sup>86</sup>

This arrangement is implemented today for East Jerusalem residents giving birth. The arrangement discriminates between residents of East Jerusalem and other residents of Israel

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81. The figures were provided in a letter of 22 December 1997 from Instar Daher, of the Children's Department of the East Jerusalem branch of the NII, to Shuila Zeltzer, of the Mothers Department of the NII, and was annexed to the State's answer in HCl 6565/97, *HaMoked: Center for the Defence of the Individual v. Ministry of Health et al.*

82. The NII's attorney subsequently explained that, "It is not a matter of non-payment of debts, but rather failure to arrange continuation of their insurance, that is, failure to arrange matters related to the insurance itself, the first condition for which is Israeli residence" (letter of 11 March 1998 from attorney Irit Altschuler, first senior deputy to the legal advisor of NII, to attorney Yehuda Goldberg). These comments are inconsistent with the figures submitted to the High Court of Justice. If the facts were as stated, it is unclear why distinction is made between those whose claims are rejected "on the grounds of residency" and those "who did not arrange continuation of their insurance."

83. *Children's Suit*. Attorney Yehuda Goldberg filed the petition on behalf of the petitioners.

84. Answer of the NII to the *Children's Suit*, par. 1

85. *Ibid.*, pars. 5-6.

86. Letter of 25 January 1998 from attorney Irit Altschuler, of the NII, to attorney Yehuda Goldberg.

giving birth. The requirement that a woman inform the NII prior to her third month of pregnancy that she is pregnant violates her right to privacy. The NII does not impose this requirement on other women in Israel, including those whose spouse is not a resident of Israel. The National Insurance Law grants women the right to receive the hospitalization and birth grants. This right may be denied only if the NII has proof that the woman is not a resident of Israel.

Two illustrations of the difficulties faced by East Jerusalem women giving birth follow.

### ***Threatening Refusal to Discharge the Newborn Infant until the Bill is Paid***

Haleh 'Odeh, a resident of East Jerusalem, is married to a Jordanian citizen. In her affidavit to HaMoked, she described what she had to undergo at the hospital after her daughter was born.

I arrived at Sha'arei Tsedek hospital at 9:00 A.M., and at 8:00 P.M. I gave birth to my daughter. I stayed in the hospital for three nights and four days after the birth. After I arrived at the hospital, my mother was given a document that the NII had to sign, and it stated that in the event that the NII does not sign the document, I would bear the expenses of the delivery. The day after the delivery, at 3:00 A.M., a nurse checked my blood pressure. She told me that if the NII does not sign the document given to my mother or I do not pay the cost of the hospitalization, I would not be allowed to take my daughter from the hospital when the treatment is completed. That same day, at 10:00 A.M., the doctor who examined me told me the same thing, and noted that I would also have to pay the costs for keeping my daughter in the hospital's nursery.

The following day, my father went to the collection department of the NII to show them the document my mother had received, so that the NII would sign it. The NII clerk demanded that my father

prove that the center of [my] life is in Jerusalem by presenting bills paid in Jerusalem and a rental agreement on my apartment. The clerk said that if those documents were provided, the NII would respond within seven months. If it is found that I am a resident of Jerusalem, I would be reimbursed the sum paid to the hospital. According to the clerk, I would have to pay the hospitalization costs to the hospital until the NII makes a decision on the matter.

On 25 June 1997, my father went to the hospital and tried to make an arrangement that would enable my discharge from the hospital in exchange for his undertaking to arrange future payment. The clerk at the hospital's reception office, after consulting with the hospital physician, refused my father's request, and said that no arrangement was possible, and that the entire sum had to be paid in cash. After my father argued with the clerk, he reached an agreement whereby the sum of NIS 4,806 would be paid in two equal payments by checks postdated to 15 July 1997 and 31 July 1997. After the agreement was reached, my father received a piece of paper, which he gave to the nurse in charge, and that enabled me to be discharged from the hospital.<sup>87</sup>

### ***Threatening not to Issue a "Notice of Live Birth"***

Mona Qandil, a resident of Jerusalem from birth, lives in Shu'afat refugee camp. On 6 January 1997, she gave birth to her third son, 'Ala, and was discharged from the hospital two days later. In her affidavit to HaMoked, she stated:

During discharge from the hospital, the clerks in the hospital's accounts department told my father-in-law, Naji Qandil, that I have to pay privately for the delivery, a sum of NIS 4,806. They claimed, after checking with the head of the unit, that there is a new "law" requiring a

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87. The affidavit was given to HaMoked on 25 September 1997.

woman with my status to pay privately for the delivery and hospitalization charges...

The demand startled me. We are unable to pay such a large sum. I told the hospital officials that I would not pay the amount they demand, because I am a resident of Israel who is insured by State Health Insurance and the NII, and I am a member of a health fund, and that to the best of my knowledge I am entitled to have all the costs of the delivery paid as part of maternity insurance. The clerks responded that until I pay the mentioned amount, the hospital would not issue me a "Notice of Live Birth" for my newborn son. I knew that without that document I would not be able to register him as a resident of Israel. The hospital clerks informed us again upon discharge that if I do not pay the hospital bill within seven days, the hospital's attorney would sue me.

I was unable to register my son in the Population Registry without the "Notice of Live Birth," which the hospital refused to give me until the hospital bill was paid. Only in early April, after my attorney contacted Hadassah's legal advisor on 19 March 1997, did the hospital agree to send the notice. Along with the "Notice of Live Birth," they sent me a demand for payment of the debt in the amount of NIS 4,806.<sup>88</sup>

### 3. The Investigation

#### Conduct of the Investigation

NII investigations in East Jerusalem breach the principles of proper administration and grossly violate the rights of the residents.

Investigation of a claim takes many months. During this period, the claimant does not receive allotments or health insurance. In most instances, the claim is approved and the claimant recognized retroactively as a resident of Israel; in these cases, at least, the NII improperly denies the claimant his or her rights.

Only five investigators work in the NII's East Jerusalem branch office.<sup>89</sup> Considering the number of investigations they must conduct, the backlog is substantial. In response to a claim relating to children who are not covered by health insurance, the State argued that, "The East Jerusalem branch now has five hundred files waiting for decision, and some three thousand files where investigations have to be conducted."<sup>90</sup> At the end of December 1997, the NII informed HaMoked that only then had the NII begun to investigate claims that had been submitted in March.<sup>91</sup>

The NII argues that the only way it can verify that a person lives in Israel is by conducting a field investigation, which takes much time. According to the NII:

Contrary to checking residency in Israel of most Israeli residents, which is usually done by border checks, since what is involved is people who leave Israel at the border stations as mentioned in the Entry into Israel Law, checking the residency of residents of East Jerusalem raises practical problems, since generally the matter involves movement to the Occupied Territories or to territory under the control of the Palestinian Authority, movement which entails no formal recording.<sup>92</sup>

This argument might be true only for residents of East Jerusalem who move to the Occupied Territories, but not for those who move to other countries. The NII does not

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88. The affidavit was given to HaMoked on 23 September 1997.

89. Letter of 19 July 1998 from Haim Pitosi, NII spokesperson, to B'Tselem.

90. Par. 3(D) of the State's answer in the *Children's Suit*.

91. Uri Sharabany, deputy director for insurance and collection at the East Jerusalem branch of the NII, so informed HaMoked on 29 December 1997.

92. Par. 5 of the State's answer in the *Children's Suit*.



distinguish between them and conducts a lengthy investigation of every claim submitted by residents of East Jerusalem. Since it takes so long to complete the investigation, the residents of East Jerusalem awaiting the results suffer financially. Until June 1998, the Law stipulated that where the allotment or grant was paid late, the amount paid would be based on the date of payment, and not the date of filing of the claim.<sup>93</sup> As of 1 June 1998, this Law did not apply to allotments granted under the National Insurance Law,<sup>94</sup> and no compensation is provided, therefore, on late payments of allotments and grants.

The NII did not establish procedures relating to what the investigation of residency should entail and how it should be conducted. In response to a question from B'Tselem on this point, the NII spokesperson stated that, "Investigation of residency is performed in accordance with the circumstances of the case and in light of the relevant guidelines set by labor court rulings."<sup>95</sup> The proper investigation procedure was described by the labor court, as follows:

The Institute should first of all check whether the insured lives at the address stated in his claim or at another address in Israel indicated in the Population Registry, to which the insured moved his residence. Where the Institute finds that the insured does not live at the said address, and upon reasonable diligence, after checking and investigating, also does not find that the insured lives at another address in Israel, and based on this fact and the entirety of the other proofs in its possession, is of the opinion that the insured has ceased to be a resident of Israel, it meets its duty in presenting these proofs to the court.<sup>96</sup>

In practice, NII conducts its investigations in violation of these principles. The investigations deny the right to due process, violate the privacy of the individual, and are motivated by a pre-conceived notion about behavior in Palestinian society. Based on these investigations, the NII denies rights of claimants and their children.

The material of the investigation is generally composed of two or three questioning sessions, which in most cases are very short and superficial. The investigator does not record each step of the investigation but rather selects, at his discretion, which matters to document. The investigators conduct the questioning in Arabic, but record it in Hebrew. At the end of the questioning, the investigator orally translates the written statement for the interviewee, and the interviewee signs. Where interviewees do not know how to read Hebrew, which is generally the case, they are unable to verify that what the investigator said was written was actually written on the paper. In these cases, the interviewees must trust the NII investigator. This makes it difficult to question the results of the investigation, since if, at a later stage, interviewees state that they made a statement that had not been recorded, or did not make the statements attributed to them, there is no way to clarify these points.

As mentioned previously, the center of life of a person is composed of numerous circumstances, among them residence, studies, and work. For couples where one of the spouses is not allowed to live in Jerusalem, the situation is likely to be even more complex: their place of residence is likely to be temporary for prolonged periods, where for certain days or weeks the couple lives in one location, and other days and weeks in another location, and sometimes

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93. Allotments (Compensation for Late Payment) Law, 5744-1984, sections 2 and 5.

94. National Insurance (Amendment No. 19) Law, 5758-1998, section 10.

95. Letter of 19 May 1998 from Haim Pitosi, NII spokesperson, to B'Tselem.

96. *Amaneh 'A'arar* judgment, 112-113.

they live separately. The desire to protect a person living in Jerusalem illegally may lead to answers indicating that the couple does not live in Jerusalem, and intensive investigation is necessary to verify the accuracy of these responses. The brief and superficial manner in which the answers of the interviewees are presented enables the investigator, by selecting the facts to be recorded and the formulation in which the witness's statement is summarized, to present a tendentious picture of a complex factual situation.

Conducting the questioning in the manner described above is particularly grave because the labor courts tend to place substantial weight on statements taken by the investigators. According to the judicial principles customarily applying in these courts, statements made to NII investigators are given greater significance than statements made in testimony before the court. For example, a judge of the Jerusalem District Labor Court held:

The court will generally prefer the statements of a witness made to a NII investigator, when they are spontaneous and free-flowing, without the person giving the statement knowing the objective of the questions, and he answers them freely, as opposed to the amended and improved testimony, as given on the witness stand after the witness knows the objective of the questions and can compare them with the questions that had been asked when his statement was taken.<sup>97</sup>

In addition to the questioning of the claimant and his or her family, the investigators also conduct what is called an "environs investigation." The nature of this investigation is unclear, but apparently involves questioning of persons in the locality where the claimant contends he or

she lives in order to determine if that is the case. The environs investigation is not included in the investigation material provided to the claimant if the claimant requests a copy of the material obtained during the investigation. Furthermore, the material involves hearsay testimony, which the claimant is unable to attack because it is impossible to summon for cross-examination the person who supplied the information

The environs investigation is problematic for another reason. NII investigators working in East Jerusalem are accompanied by police officers. In many cases, the investigators do not introduce themselves to the residents who are requested to answer their questions. In these circumstances, the fear of residents to cooperate with NII investigators is understandable, and the assumption that residents of East Jerusalem will fully cooperate with NII investigators, who represent the Israeli authorities, when questioned about a resident who had filed a claim, remains to be proven.

### **Determining the Results of the Investigation**

The NII forwards to the claimant the decision reached after the investigation. No reasons are given for the decision. It is possible, however, to learn how the NII determines who is an Israeli resident by reviewing the minutes of the labor court hearings on appeals dealing with NII decisions on residency.

One of the NII's considerations in determining the date on which a claimant will be recognized as a resident of Israel is when the request for family unification is filed. Women who submitted a request after 1994 are suspected of not having resided in Jerusalem prior to that date, even though the

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97. Dist. Labor Ct. (Jerusalem) 0-87/NA, *Taban Madlin v. National Insurance Institute*, *Takdin Avodah* 93(1) 953. See also Dist. Labor Ct. (Jerusalem) 0-382/SN, *Abu Zeina Galeb v. National Insurance Institute*, *Takdin Avodah* 91(3) 92.

Ministry had previously refused to accept such requests from wives residing in Jerusalem.<sup>98</sup> The NII has forgotten this history. For example, in the appeal of Kipah Jabri, the NII's attorney, Hadas Zabiri, states in her summation that, "The fact that the plaintiff only submitted in May 1994 her application for family unification clearly indicates that, after the plaintiff married, she lived, in accordance with a widespread and accepted phenomenon in the society to which the plaintiff belongs, in the house of her father-in-law – her husband's house – and her center of life was there."<sup>99</sup>

The NII bases its decision on preconceived assumptions on existing customs in Palestinian society. A claimant who does not act in accordance with these customs has the burden of proving residence in Jerusalem. Even if these assumptions are true, the fact that the claimant acts contrary to them, at times having no other choice, does not indicate that the plaintiff does not live in the city. A few examples follow:

- In every case, the NII checks whether the husband of the complainant has a permit to enter Jerusalem. The lack of a permit is liable to lead the NII to conclude that the husband and wife do not live in Jerusalem, because it is inconceivable, in the perception of the NII, that a wife would live alone in Jerusalem. At the hearing on the appeal of 'Abla Zohara, for example, the NII's attorney stated in her summation that, "The situation in which a young wife lives apart [from her husband] seems artificial."<sup>100</sup> As a result, the NII totally ignores the difficulties the Ministry and the military administration in the Occupied Territories create for couples where one of the spouses is not a resident

of Jerusalem and are compelled to live separately for prolonged periods.<sup>101</sup> On this point, Judge Y. Neugeborn, Chief Judge of the Jerusalem District Labor Court, stated:

It is true that her husband was not a resident of Israel. But in reality, as the court also knows, many residents of the Occupied Territories often succeed in evading the checkpoints, and as a result, nothing prevents her husband from living with her in Jerusalem at least an appreciable amount of the time. This does not mean that her husband obtained Israeli residency, but rather that her husband's residency in the Occupied Territories does not prevent a determination that the plaintiff herself lived permanently in Jerusalem.<sup>102</sup>

- The NII has a clear perception of the wife's place in Palestinian society. According to this perception, the wife is modest and remains at home, and her duty is to live in her husband's home. Any deviation from this perception raises a suspicion. For example, in her summation in *Kipah Jabri*, the NII's attorney, Hadas Zabiri, argued that, "It is especially inconceivable in Palestinian society that the plaintiff's husband would sleep in a house with her where her single sisters were living, particularly since there is one bedroom and a small living room."<sup>103</sup>
- The NII assumes that every Palestinian couple purchases bedroom furniture immediately upon marriage. Therefore, upon finding no furnished bedroom in Jerusalem, the investigator at once suspects that the couple's bedroom lies outside the city. For example, NII attorney Hana Mendelssohn asked the mother of

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98. On this matter, see *The Quiet Deportation*, 9.

99. Dist. Lab. Ct., (Jerusalem) 0-428/NV, *Kipah Jabri v. National Insurance Institute*, p. 5 of the summation of the NII (hereafter: *Kipah Jabri*).

100. Dist. Labor Ct. (Jerusalem) 0-503/ND, *'Abla Zohara v. National Insurance Institute*, p. 7 of the minutes of the hearing on 23 November 1994.

101. See p. 20.

102. Natl. Labor Ct. 0-147/NV, *Izdihar Qeresh v. National Insurance Institute* (unpublished) 3.

103. *Kipah Jabri*, p. 11 of the NII's summation.

Kafiyeh Radyadeh, the plaintiff, whether her daughter had bought bedroom furniture when she married. When the mother responded negatively, the questioning continued as follows:

Q: How is it that she didn't buy [the bedroom furniture]?

A: Because of our financial condition, we are a family of ten persons, and one is retarded and did not study.

Q: Is it possible that the daughter got married and did not buy her own set?

A: Everyone according to his ability. She bought a used bedroom-set. It cost her NIS 400.<sup>104</sup>

In her summation in this file, the attorney argued, in support of her contention that the plaintiff does not live in Jerusalem, that, "It is known that, in the Arab sector, purchase of a bedroom set for a newly married couple is very important, and that they do not readily forego purchasing such a bedroom set for the couple."<sup>105</sup>

## Illustrative Cases

### "Environ's Investigation"

Kipah Jabri was born in Jerusalem in 1975. In 1992, at the age of seventeen, she married 'Emad Jabri, a resident of Hebron. The couple could not live together in Jerusalem because at that time women residing in Jerusalem were not allowed to submit requests for family unification on behalf of their non-resident husband. Therefore, the couple lived mostly in Hebron. However, Mrs. Jabri often came to her home in 'Issawiyeh, a neighborhood of Jerusalem, and would spend the night there at least one week a month. In May 1994, she requested family unification for her husband, and since then has lived permanently in her house in

Jerusalem, without her husband, who visited her when the Civil Administration granted him a permit to stay in Israel.

In September 1994, she gave birth to her daughter Nur. A short time after the birth, Nur was diagnosed as having serious digestive tract and lung problems. The health fund refused to treat her daughter, claiming that her father is a resident of Hebron. Because of Nur's serious medical problems, the family did not have the time to clarify the matter and Mrs. Jabri admitted her daughter to a hospital in Hebron. Mrs. Jabri remained at her daughter's bedside, and stayed, therefore, in Hebron for several months, from October 1994 to April 1995. In April 1995, following the intervention of Deputy Minister of Health Nawwaf Masalha, Nur was hospitalized at Hadassah Hospital, Mount Scopus. Since then, Mrs. Jabri has lived at the family home in 'Issawiyeh. She makes short visits to her husband and his family from time to time, and her husband comes to Jerusalem weekly.

In May 1996, Hadassah Hospital demanded that Mrs. Jabri obtain a commitment of the health fund to pay the bill for a visit to the head of the hospital's Pediatrics Department. The health fund referred her to the NII, where she was told for the first time that the NII does not recognize her daughter as being insured by the NII.

The determination that Mrs. Jabri does not live in Jerusalem was based on two investigations conducted by the NII investigator in July 1995. On 2 July, an NII investigator, 'Abd Hamami, visited 'Issawiyeh, apparently for the purpose of conducting an environs investigation. He spoke with Fadwa Jabri, who contended that she does not know Kipah Jabri. Fadwa Jabri is not a relative of Kipah Jabri, and the two women are not acquaintances. The next day, Hamami questioned Kipah Jabri's brother, Wadya. He asked the brother whether Mrs. Jabri lives with

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104. Dist. Labor Ct. (Jerusalem) 2-7/NV, *Kafiyeh Radyadeh v. National Insurance Institute*, p. 11 of the minutes of the hearing on 30 May 1996.

105. *Ibid.*, p. 21 of the minutes of the hearing on 11 July 1996.

them. At the end of the record Hamami made of the interview, he wrote that Wadya said that she is married to a resident of Hebron and lives with him permanently in Hebron. He visits the family from time to time in Jerusalem, but all the couple's goods are located in Hebron. Wadya later stated that he had not make those comments, and that he had signed the investigator's form only after the investigator had explained that the statement benefited his sister.

HaMoked filed suit in the labor court on her behalf. The court has taken the evidence but has not yet given its judgment.

### ***Claim for Disability Benefits***

Eyman al-Orabi was born in Jerusalem and her husband is a resident of Jerusalem. Her family and her husband's family have lived in the city for generations. In September 1997, her husband was diagnosed as having cancer. His condition worsened and he was unable to work. As a result, the family submitted, in November 1997, a claim for disability benefits. The NII determined that he was entitled to one hundred percent disability. The following month, Mrs. al-Orabi contacted the NII to inquire about the status of the claim. The NII informed her that the claim had been denied for the reason that they live outside Jerusalem. In her testimony to B'Tselem, Mrs. al-Orabi stated:

Before we received the decision, two NII investigators came to our home. They asked me, "Where is your husband?" I told them that he is in the hospital. They asked me, "Where did you live between 1993 and 1995?" I said, "In the same place." They said to me, "It would be worth your while not to lie, and to cooperate with us, otherwise we'll cut off your husband's medical insurance. Tell us where you live." I said to them that, "We lived in 'Anata for two years, because that was the only place where we could live. We did not have any money. After 1995, I lived in this house." They asked,

"Where are your arnona [municipal taxes] bills?" I brought them the arnona. They said, "There are no numbers." I did not understand the meaning of "there are no numbers." Apparently their visit to my home did not convince them, and they decided that we do not live in Jerusalem.

Our financial condition is very bad. I need about NIS 1,000 per month to care for my husband. In the past, the NII paid half of this. Now I pay this and live on my family's generosity, because nobody in the house is working. Also, my husband does not receive the treatment he needs because we do not have the money. It is clear that he is about to die. And why? Because he lived in 'Anata for two years. Two years.<sup>106</sup>

### ***Claim for Burial Grant and Survivor's Benefits***

Mustafa Qarqi was born in East Jerusalem and married a resident of Jerusalem. In 1994, he became seriously ill with a lung disease. In her testimony to B'Tselem, Sumia Qarqi, his wife, described the events that followed:

For the past four years, my husband was ill, and the condition worsened over the last two years. He had lung problems. During these years, my son got married, which gave us an opportunity to move into a larger apartment in an open area, because our small room only made my husband's condition worse. When my son moved from the Old City [of Jerusalem] to a-Ram, my husband lived with him part of the time, because our house was not healthy and was damp, and had no sunlight. But the rest of the family continued to live in the Old City.

In the middle of 1996, my husband's condition worsened. His doctor decided that he needed a transplant. When a suitable lung was available, we went to Hadassah Hospital, Ein Kerem, where they prepared my husband for the operation. We went home, and about an hour later, the hospital called to say that

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106. The testimony was given to B'Tselem researcher Marwah J'bara-Tibi on 1 June 1998 in Shu'afat.

the lung was not suitable. We returned to the hospital and brought him home. At the hospital, they requested that I bring the health fund's commitment to pay the hospital bill. The next day, I went to our health fund and obtained the document.

Three weeks later, my husband needed further hospital treatment. I went to the health fund, and the clerk told me that my husband does not have medical insurance. I told her, "That is impossible. He is always being treated, and I always obtained a commitment from you, and there never was a problem." She said, "It is impossible to print out a commitment from the computer. Go to the NII." I went to the NII, and they told me that my husband does not have medical insurance. I asked why, and they told me to file suit.

My husband died on 22 December 1997. Forty days later, I went to the Ministry and replaced my identity card, and they wrote "widow" instead of "married." I went to the NII with my new identity card and requested that they give me the amount of money that they give for burial, and I also requested the allotment that I am supposed to receive as a widow. Three weeks later, the NII responded in writing, indicating that I am not entitled to the payments. I asked why, and the reason they gave was that we live in a-Ram. I have never lived in a-Ram, but they weren't interested in that.<sup>107</sup>

The determination that Mr. Qarqi had resided in a-Ram was based on several investigations. The first investigation was conducted in November 1990, when the NII investigator spoke with Mr. Qarqi's father. The father stated that his son had moved to a-Ram three years earlier. Based on that, the NII determined that he had not been a resident since 1987. In October 1995, the NII conducted another investigation. Its

investigator spoke with a person who had been Mr. Qarqi's landlord in a-Ram. The landlord indicated that Mr. Qarqi left his home in a-Ram in 1990 and that he had not seen him since then and did not know where he was living. An additional investigation was conducted a month later, when Mr. Qarqi's son, Hazem, who lives in a-Ram, was questioned. Hazem stated that he [Hazem] lives alone in his home in a-Ram. On the basis of these investigations, it was determined that Mr. Qarqi does not live in Jerusalem, even though the NII had no positive proof of this fact.

#### 4. Health Insurance

The State Health Insurance Law, which took effect on 1 January 1995, changed the method of providing health services in Israel and established that the NII would be responsible for collecting payments for these services. The objective of the law was to provide health insurance to every Israeli resident and to prevent a situation in which a resident of Israel would not be able, for financial reasons, to obtain medical care. The Law also provided, therefore, an explicit provision stipulating that medical treatment was not to be conditioned on the payment of sums owed.<sup>108</sup> The Law is particularly intended to assist the financially-disadvantaged, who had not been obtaining health insurance voluntarily.

The manner in which the NII performs the functions imposed upon it under the Law is problematic and violates, in part, the Law and its purpose. As a result, many residents do not have State Health Insurance and are dependent on private medical services, whose cost far exceeds the economic means of many residents of East Jerusalem. The main group of persons harmed by this policy is the

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107. The testimony was given to B'Tselem researcher Marwah J'bara-Tibi on 1 June 1998 in Shu'afat.

108. Section 21(B) of the State Health Insurance Law, 5754-1994 (hereafter: the Health Insurance Law).

children of residents of East Jerusalem whom the Ministry did not give identity numbers and the non-resident spouses of East Jerusalem residents.

In May 1997, HaMoked filed suit in the labor court on behalf of eleven children whom the NII did not insure with health insurance.<sup>109</sup> The plaintiffs argued in principle against the NII's policy in East Jerusalem as it relates to health insurance. When, just before the hearing, the NII announced that the children were insured, the judge refused to hear these claims.

### **Examining Entitlement to Health Insurance**

Under section 3(A) of the Health Insurance Law, "Every resident is entitled to health services." The Law defines "resident" as "a person who is a resident under the National Insurance Law."<sup>110</sup> The NII does not distinguish between conducting investigations to determine entitlement under the National Insurance Law and an investigation for the purposes of the Health Insurance Law, and investigates every claim for health insurance. Until the end of the investigation, which takes many months, the claimant is not insured. Since most claims are approved, claimants are denied their entitlement to receive health insurance for lengthy periods of time during which they were entitled to it. Denial of health insurance to residents of Israel violates the Law.

The NII also investigates cases where the claimant already receives allotments from the NII and health insurance coverage and wants to register their young children with a health fund. Under the Law, "A resident who has attained eighteen years of age must be registered as a member of the health fund of his choice, and must register his minor children in it [the health fund]."<sup>111</sup> There exists, therefore, an assumption in the Law that in cases where the parent is already recognized as a resident of Israel, his or her children are recognized as residents. Conducting an additional investigation in these cases results in many children being uninsured until the investigation is completed. Physicians for Human Rights estimates that there are some ten thousand Palestinian children in East Jerusalem who are not covered by health insurance.

The authority of the NII to conduct investigations to determine entitlement under the Health Insurance Law is questionable. Contrary to the National Insurance Law, the Health Insurance Law does not empower the NII to investigate, and its function under that law is limited to collecting the insurance payments from the insured and distributing them to the health funds.

The Knesset deliberations on the Health Insurance Law support the above analysis. In those deliberations, it was stated that the objective in giving the NII the responsibility for collection is to remove insurance-payment collection from the health funds

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109. *The Children's Suit*. Attorney Leah Glicksman-Kochavi represented the plaintiffs.

110. Section 2 of the Health Insurance Law.

111. *Ibid.*, section A(4).

and transfer it to a governmental body. The NII was chosen to perform this function because its collection system had been proven to be especially efficient.<sup>112</sup>

The NII argues that Regulations enacted pursuant to the Health Insurance Law empower it to investigate in matters dealing with health insurance.<sup>113</sup> The Regulations state that a resident wanting to register at a health fund, register his or her minor child at a health fund, or switch to another health fund, must submit a "Registration and Transfer Form" at the Postal Bank, which is forwarded to the NII. Section 8 of the Regulations provides:

- A. Where the Institute received a Registration and Transfer Form or a Revocation Form and the details contained in the magnetic tape pursuant to the provisions of section 7A, it shall check the details, including verification of the information in its possession.
- B. Where the Institute saw that the details provided to it on the Registration and Transfer Form or the Revocation Form are complete and consistent with the information in its possession, and that the conditions have been met under the law for registering at health funds,

transferring from one fund to another, or canceling a transfer (hereafter - registering and changing registration), it shall notify the receiving fund...

- C. Where the Institute saw that details stated on the Registration and Transfer Form or the Revocation Form are lacking, are inconsistent with the information in its possession, or that according to information in its possession or details on the form, the conditions under the law for registering and changing registration have not been met, the form will be considered as if it had not been submitted...

According to the NII's interpretation, these regulations establish that, "Examining the conditions for receiving health services and primary examination of the residency of the applicant to receive the services, which are conditions to receiving the health services, are imposed on Respondent 1 [the NII]."<sup>114</sup>

This interpretation is not precise. Under section 8(A), the NII is only empowered to check the details provided to it on the request form and to compare it with the information on its records. The Regulations do not suggest in any way that the NII is empowered to conduct an additional investigation to clarify further details.

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112. In the Knesset deliberations, MK Amir Peretz, Chairman of the Committee on the State Health Insurance Law, presented the Law and explained, as regards collection, that, "Many years ago, the Parallel Levy [health insurance premium] had been collected by the Levy Offices [of the health funds]. When they transferred collection of the Parallel Levy to the NII, revenues rose by hundreds of millions of shekels. Today, when the NII begins collection, 1.3 million shekels will be added to the total revenues for health... There is now broad national agreement, total consensus of the Knesset, from side to side, that all the collections will be performed through the NII" (*Knesset Records*, session of 13 June 1994, Booklet 34, Meeting 228). After the Law was enacted, responsibility for collecting the insurance premiums was transferred from the Ministry of Health to the Ministry of Labor and Social Welfare, which is responsible for the NII. When the Law was amended, the Minister of Health explained the reason for this: "This amendment, as it relates to collection and distribution, transfers responsibility from the Ministry of Health to the Ministry of Labor and Social Welfare, with the NII being involved primarily in collection and then distribution. The registration remains the responsibility of the Ministry of Health" (*Knesset Records*, session of 1 November 1994, Booklet 5, Meeting 215).

113. State Health Insurance Regulations (Registration at Health Funds and Transfer Procedures), 5755-1995, *Kovetz Takannot* 5755, p. 490, and their amendment of 1998, *Kovetz Takannot* 5758, p. 328.

114. Par. 4(D) of the State's answer in the *Children's Suit*.



According to section 8(B), where the details provided are consistent with the information in its possession, the NII must register the applicant or his or her minor child with the health fund. Only where there is an inconsistency between the details provided and those in its possession may the NII, under section 8(C), deny the request.

The NII relies on the provisions of section 8(B), which state that it must verify that "the conditions of the Law have been met." The NII argues that residency in Israel is a condition for the granting of health insurance and that it is authorized, therefore, to investigate in order to verify that the person resides in Israel. However, section 8(C) clarifies the precise meaning of checking that the "conditions of the Law have been met." This provision stipulates that, "Where the Institute saw... that, according to information in its possession or details in the form, the conditions under the law for registering and changing registration have not been met, the form will be considered as if it had not been submitted..." Therefore, examination of whether the conditions under the Law are met may be made only on the basis of the information already in the NII's possession or on details provided by the applicant.

If the NII insists on also conducting investigations to determine entitlement under the Health Insurance Law, it should at least grant health insurance to the claimant until it completes the investigation. This was the determination of the annual report of the ombudsman under the Health Insurance Law, Dr. Karni Rubin, which she submitted to the Minister of Health in early August 1998.<sup>115</sup>

Medical care is expensive and can reach tens of thousands of shekels and more. The implications of delaying health insurance differ from that of a delay in payment of allotments under the National Insurance Law, since in most cases the allotment amounts to a few hundred shekels a month. A person is usually able to cover these few hundred shekels or obtain them from other sources until the investigation is completed. For medical treatment, however, there is usually no feasible alternative.

As regards non-resident spouses of Jerusalem residents, the NII determined that they will be covered by health insurance only after receiving a temporary-resident or permanent-resident permit from the Ministry.<sup>116</sup> Such approval can be obtained only after approval of the request for family unification, which takes many years and in most cases is obtained only after the applicant petitions the High Court of Justice.<sup>117</sup>

In the past, the NII considered continuous and lawful stay in Israel to be sufficient. In May 1997, the head of the Population Administration of the NII informed Physicians for Human Rights that the NII will recognize the entitlement of persons who are in Israel pursuant to a lawful permit to stay in the country – whether issued by the Ministry or the Civil Administration.<sup>118</sup> Since July 1997, the NII requires a permit to stay issued by the Ministry, and does not recognize visitor's permits or permits of the Civil Administration in the Occupied Territories, even if they are issued for an extended period that constitutes continuous and lawful stay in Israel. As a result, non-resident spouses

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115. *Ha'aretz*, 6 August 1998.

116. In the first half of 1997, the NII argued that only a permanent-residency permit, and not a temporary-residency permit, entitles its holder to health insurance. This determination was changed in the context of the suit in the Jerusalem District Labor Court filed by the Jerusalem Human Rights Center, after which it was determined that a temporary resident is eligible for health insurance. In a letter of 25 December 1997, Dr. Karni Rubin, ombudsman under the Health Insurance Law, wrote to Physicians for Human Rights that approval of temporary residency grants "the right to health insurance and health services."

117. On this matter, see p. 2C.

118. The comments were made in a telephone conversation on 19 May 1997.

staying in Jerusalem for a prolonged period of time are not able to obtain the health insurance.

As a result of the requirement that the Ministry issue the permit, which is a near impossibility, many persons staying in Israel do not benefit from health insurance. Furthermore, conditioning insurance coverage on lawful status granted by the Ministry defeats the objective of the Law.

## Temporary Numbers

Even after completion of the investigation determining entitlement to health insurance, individuals who do not have an identity number must undergo another lengthy bureaucratic procedure. Only upon completion of the procedure are they entitled to receive medical services.

As a result of the Ministry's policies, many East Jerusalem residents, primarily children and non-resident spouses of Jerusalem residents, do not have identity numbers.<sup>119</sup> The NII's computers use identity numbers to identify insured persons. A person who does not have an identity number must submit a special request to the NII for a temporary number to cover the period until the Ministry issues a permanent number.

The procedure for issuing these numbers is long and grueling. In response to a question whether arrangements had been made for

eligible persons to obtain medical services prior to issuance of the temporary numbers, the NII's spokesperson responded:

When a person's residency is determined, that individual is entitled to health services. The NII gives the person an authorization of residency without an identifying number, before an identifying number has been issued, to enable him to obtain health services.<sup>120</sup>

What actually occurs, however, is different. A comprehensive examination by Physicians for Human Rights indicates that the Histadrut Health Fund and the Leumit Health Fund refuse to provide medical treatment to residents of East Jerusalem recognized by the NII unless they have a temporary number. Furthermore, transfer to a different health fund entails another NII investigation, taking many months, during which the individual does not receive health insurance.

The health funds argue that the NII delays issuing the identifying numbers to residents of East Jerusalem, causing the funds financial loss because they do not receive payment for services provided to persons without a number.<sup>121</sup> The NII argues that the health funds violate the Law by refusing to treat persons who have been recognized as residents but have not yet received a number. The residents of East Jerusalem are caught in the middle, with no entity willing to take responsibility for their treatment.

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119. See p. 18.

120. Letter of 19 May 1998 from Haim Pitosi, NII spokesperson, to B'Tselem. Avraham Mena, head of the NII's insurance division, sent a similar letter to the deputy director general of the Ministry of Health, Dr. Boaz Lev (on 18 February 1997), to Yaron Kanfu, head of the Jerusalem branch office of the NII's insurance and collection division (on 11 November 1996), and to Physicians for Human Rights (on 19 December 1996.)

121. For example, Ya'akov Katz, director general of Leumit Health Fund explained: "The NII authorization to Leumit Health Fund that the individuals are Israeli residents is insufficient, and the NII must confirm that the residents are registered with Leumit Health Fund" (letter to Physicians for Human Rights, dated 18 February 1997). In a conversation with HaMoked, held on 29 April 1997, Dina Korman, of the member's rights department of the Histadrut Health Fund, indicated that it is impossible to insure children until the NII issues temporary numbers, because the fund is not paid for treatment provided to children without a number.

## **Illustrative Cases**

The following are some examples of the difficulties faced by residents of East Jerusalem attempting to obtain health insurance for their children. It should be noted that these problems were resolved only as a result of the intervention of human rights organizations and pressure placed on the NII and the health funds. In many other cases, where assistance is not sought, the persons are unable to receive medical treatment.

### ***Year-old Infant suffering from Pneumonia***

Jamila Dari, a resident of Jerusalem, is married to a resident of the West Bank. The NII recognizes her as a resident of Israel, and she receives a children's allotment and is insured with health insurance. In October 1996, she requested temporary numbers for her five children, none of whom had an identity number.

In April 1997, her daughter Fatma, who was then twenty-one months old, fell ill. Since Fatma did not yet have a temporary number, her parents took her to Mokassad Hospital, in East Jerusalem, where the physicians diagnosed a severe case of pneumonia. She was hospitalized, but after one night in the hospital, the family had to discharge her because it could not afford the costs of hospitalization. Mrs. Dari requested the NII to issue a commitment to pay the costs of medical treatment. The NII clerk informed her that it was impossible to issue the commitment because Mr. Dari is a resident of the West Bank and her daughter does not have an identity number.

Mrs. Dari requested the assistance of HaMoked, which referred the matter to Physicians for Human Rights (PHR). PHR covered the hospitalization costs of Fatma, even though, under the Law, she is entitled to health insurance. On 4 May 1997, following pressure from HaMoked and PHR, Mrs. Dari received confirmation that she had been recognized as a resident since 31 March 1990, and that her children are, therefore, entitled

to health insurance. The next day, her husband went to the health fund, but the fund's clerk refused to register the children, claiming that the NII had not given them temporary numbers. Only on 25 May 1997, after the children had received temporary numbers, did the health fund provide health services to Fatma.

PHR has not been reimbursed the money it paid to cover the hospitalization costs.

### ***Three-month old Infant with Heart Problems***

Hand al-'Ali, a resident of Beit Safafa [a neighborhood in Jerusalem], is married to Mahmud al-'Ali, a Jordanian citizen. In February 1998, the couple had a son, Sufiyan, and the NII covered the costs of the hospitalization and provided Mrs. al-'Ali with the birth grant. The Ministry did not issue an identity number to Sufiyan.

In May, Sufiyan was diagnosed as having heart problems, requiring an urgent heart operation. On 10 May 1998, her father requested the NII to issue a temporary number to Sufiyan. He annexed to his request a medical document indicating his daughter's serious medical condition. The NII clerk instructed him to return in a week, and explained that he would then have to wait about twenty days for the number.

On 12 May 1998, the couple contacted HaMoked, which referred them to PHR. The latter referred them to the NII to receive confirmation of their entitlement to health insurance. After receiving the confirmation, they went to the Histadrut Health Fund, which refused to treat Sufiyan on the grounds that she does not have a temporary number. PHR contacted the NII and demanded that, because of her serious condition, it urgently issue a temporary number to Sufiyan.

On 17 May, Mr. al-'Ali returned to the NII, where Uri Shaharbany, deputy director for insurance and collection at the East Jerusalem branch, informed him that his request would not be handled because his wife owed the NII NIS 4,300. As mentioned

previously, the Law explicitly prohibits conditioning health insurance on payment of money owed to the NII.

The NII rejected the father's request to pay the debt in installments. Having no choice, Mr. al-'Ali borrowed the money. After making the payment, he was told that his request would be handled in two to three months. He tried to explain that his son was very ill and might die, but the answer was the same.

On 19 May, PHR received a letter from Dr. Karni Rubin, ombudsman under the Health Insurance Law, stating that, "After a comprehensive investigation we conducted with the NII, Hand's son was issued an identity number... I enrolled him in the Histadrut Health Fund retroactively from his date of birth, 2 February 1998."

### ***Prematurely-born Infant***

Jamila Haruat, a resident of East Jerusalem, is married to 'Afif Haruat, a Jordanian citizen. In March 1997, Mrs. Haruat delivered a stillborn child. The NII recognized her as a resident of Israel and paid the hospitalization costs to the hospital.

On 5 November 1997, Mrs. Haruat gave birth prematurely to a daughter, who was born with a serious infectious disease. The hospital indicated that upon discharge, the infant would require neurology, neurosurgery, and immunology follow-up and developmental

monitoring. Without the follow-up treatment, her discharge from the hospital would be life-threatening. Since the NII again investigated her residency, it did not cover the cost of the hospitalization and did not insure the child with health insurance. The hospital charged the family NIS 5,400.

Two months later, the child required urgent medical treatment. On 21 January 1998, PHR requested the ombudsman under the Health Insurance Law to handle the matter urgently. On 26 February, PHR was informed that Mrs. Haruat should go to the collection department of the NII, pay her debt for 1987-1993, and "that her daughter would receive the medical insurance after her matter is arranged." Only on 15 March, following repeated requests by PHR, did Mrs. Haruat receive confirmation that her daughter is recognized as a resident of Israel.

Mrs. Haruat took the confirmation to the health fund to register her daughter, but the fund refused to treat her until the NII had issued her a temporary number. On 16 March, the NII issued her daughter a temporary number. In a letter of 7 April from Avraham Mena, head of the insurance division of NII, to PHR, Mena stated: "Mrs. Haruat Jamila has been properly insured since 1984. All she has to do to receive confirmation of her insurance is to go to Mr. Shaharbany at our branch in East Jerusalem."

# CONCLUSIONS

The Ministry of the Interior and the National Insurance Institute have served an identical objective of Israeli governments since the illegal annexation of East Jerusalem in 1967: reducing the number of Palestinians residing in the city and preserving a conclusive Jewish majority so that it will be impossible to preempt Israel's sovereignty over all parts of the city. The activities described in this report join a long list of actions taken by the authorities to achieve this objective, among them restrictions on building in East Jerusalem, insufficient allocation of resources to the eastern part of the city, and the poor quality of municipal services provided there.

The consequences of the manner in which the Ministry and the NII act severely harms residents of East Jerusalem. In a single day, these residents are liable to lose their basic rights without forewarning.

The Ministry's policy is based on the assumption that residents of East Jerusalem are immigrants in their homes, who live in their city as a result of the benevolence of the State of Israel. Consequently, the Minister of the Interior is able to revoke their residency status in the city at his almost total discretion. Thousands of residents of East Jerusalem have been required to leave their homes on the grounds that they are no longer residents of the city. The complex bureaucratic procedures and the high standard of proof of residency required of every resident of East Jerusalem cannot be explained by the lack of efficiency. They are also intended to serve the same objective: to cause residents of East Jerusalem to leave their home.

The NII also acts to achieve this objective and create as many difficulties as possible for the residents. The NII's attitude – that East

Jerusalem residents do not live in their homes unless proven otherwise - indicates bad faith and reliance on extraneous considerations. As a result, many residents do not receive allotments and health insurance, even though in a high percentage of cases, their entitlement is recognized after the investigation. The NII conducts investigations in violation of the principles of due process and proper administration, causing residents and their children to lose all their social rights and health insurance. In this way, the NII has changed from an entity intended to advance social policy and ensure that individuals are covered with health insurance to an entity serving an illegitimate political goal.

Both the policy of the Ministry and that of the NII discriminate blatantly between Palestinian residents of East Jerusalem and Jews. All Jews, even those who are not Israeli citizens, are entitled to move to the Jewish settlements in the Occupied Territories, without the move affecting their status. They continue to receive allotments and health insurance through the NII, and may, at any time, return to live in Israel. On the other hand, residents of East Jerusalem immediately lose their Israeli-resident status and all their social rights when they move to the Occupied Territories.

B'Tselem and HaMoked urge the Israeli government:

1. To guarantee East Jerusalem residents a permanent status that may not be revoked even if they remain outside Jerusalem for many years. This status must be guaranteed also to their spouses and children.
2. To return residency status to residents of East Jerusalem whose rights in the city have been revoked, together with all the

rights to which they are entitled as a result of having been born and having lived in the city.

3. To approve requests for family unification submitted by residents of East Jerusalem. At least, the authorities should establish an arrangement for family unification in Jerusalem for couples where one of the spouses is a resident of Jerusalem, to enable the couple to stay together in the city even while the request for family unification is pending.
4. To stop conducting investigations in every case where a resident of East Jerusalem submits a request for benefits from the NII, and to establish procedures for conducting investigations in accordance with the principles of proper administration.
5. To stop investigating for the purpose of determining entitlement under the State Health Insurance Law and to act in accordance with that Law.

# RESPONSE OF THE MINISTRY OF THE INTERIOR\*

STATE OF ISRAEL  
MINISTRY OF THE INTERIOR  
Office of the Press Officer and Public Relations

8 September 1998

Ms. Yael Stein  
B'Tselem

Re: Response of the Ministry of the Interior to B'Tselem's report

## **1 . Data**

A. The data indicating that requests for family unification have not been approved in recent years are not correct:

Between 1995 to 1998, many hundreds of requests for family unification have been approved. It should be pointed out that each request involves a spouse and generally also some of the couple's children.

B. The calculations made by the report's authors regarding the number of residency expirations *are not correct*. The figures provided to The Association for Civil Rights [in Israel], mentioned in the report, include *everyone who was registered in the Population Registry* whose residency had expired, and not families; therefore, multiplying the figures by the number of family members is erroneous, and provides a distorted picture. Every holder of an identity number (and not an identity card!) is included in the figures separately, and in many cases [the figures] relate to parents and their children.

## **2 . Expiration of Residency**

A. Expiration of residency of a person who moved his or her center of life to another country or to the region of Judea and Samaria and Gaza (hereafter: the Region) has not been re-instituted in recent years. The deliberations held at the office of the attorney general in December 1995 related to a case in which under the then-existing procedure of the Ministry of the Interior, which was based on the Entry into Israel Law and the Entry into Israel Regulations, the residency of a person was revoked after he or she stayed in the Region for a period of seven years.

Following a petition to the High Court of Justice, discussions were held at the office of the attorney general, where the existing policy was examined from a legal perspective, and it was determined that the policy complies with the Law and the Regulations, and results from them.

*Despite this, we want to point out that the Minister of the Interior recently directed that cases of East Jerusalem residents who move to neighborhoods near Jerusalem be examined flexibly, and that all aspects of the connection of those residents to Jerusalem be considered.*

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\* Translated by B'Tselem.

B. Although the determination regarding expiration of residency is a factual determination, unlike an administrative decision on revocation of residency, the right to be heard currently granted is general, and is provided in every case where the facts in possession of the Ministry of the Interior show that the residency expired. The right to appeal is not a formality, and the cases in which allegations are made that there were defects in the appeal will be examined.

### **3 . Proof of Center of Life**

A. The Ministry of the Interior established a list of documents to be provided, both in cases of requests for family unification - to prove that the center of life of the summoning individual is in Israel - and to prove the center of life of a person suspected of no longer being a resident.

The list of documents is designed for the convenience of the residents, is meant to serve as a guide, and includes documents that are generally not hard to obtain. But a resident may also provide other evidence showing that the center of his or her life is in Israel, or may explain the inability to provide the requested documents.

B. The Ministry of the Interior will examine ways to prevent repeated residency checks over a short period of time.

### **4 . Registration of Family Status**

The rules pertaining to suspension of registration of family status of persons married to non-residents of Israel apply to everyone in Israel - residents and citizens of Israel, Jews and non-Jews - who are married to foreigners. The objective of these rules is to prevent the registration of marriages that are found to be fictitious.

### **5 . Identity Numbers for Children**

Under the existing practice in Israel, notices of birth and birth certificates are issued for every child born in Israel, including children of tourists, even though the existing law only requires that they be provided for persons registered in the Population Registry.

The notices of birth given at the hospitals testify to the birth having occurred in the hospital, and do not themselves establish the status in Israel of the newborn.

Under section 12 of the Entry into Israel Regulations, 5734-1974 (as construed in H CJ 48/89, *Reinhold 'Issa v. Regional Office Administration of the Population Administration*), the status of a child born to parents one of whom is a resident and the other is not, is determined according to the center of life of the child. Examining the center of life requires the use of discretion, which is granted to the Ministry of the Interior official, and, therefore, the identity number may be granted in such cases only at the Ministry of the Interior and not at the hospital.



# RESPONSE OF THE NATIONAL INSURANCE INSTITUTE\*

The National Insurance Institute  
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20 August 1998

Ms. Yael Stein, Esq.  
B'Tselem  
43 Emek Refaim Street  
Jerusalem 93141

Dear Madam:

Re: Report of HaMoked: Center for the Defence of the Individual August 1998 on the subject of revocation of residency status and social rights from Jerusalem residents  
Your letter of 11 August to the NII's Spokesperson

## A. Introductory Comments

- (1) The report ignores the special circumstances created in Jerusalem and the region, as described in the National Labor Court file Natl. Labor Ct. 04-73/MH, *Sanuqa v. National Insurance Institute* (Labor Court Judgments 17, p. 85) (hereafter: *Sanuqa*).
- (2) The report mentions that, "the definition of the term 'resident of Israel' by the NII differs from that of the Ministry. According to the Ministry, a 'resident of Israel' is a person who has been granted the legal right to stay in Israel pursuant to a permit to stay issued by the Ministry. On the other hand, to be recognized as a 'resident of Israel' by the NII, an individual must actually be staying in Israel, in addition to having a lawful residency status in Israel."

On this point, the judgment of the court in *Sanuqa* stated, at pp. 83-84, that,

The term "resident" can and will have a different meaning under different laws... The Income Security Law, like every law in the area of social security, is intended to express the obligation of society to ensure a source of livelihood to those whom society considers itself responsible for it..

"Resident" is a person situated in Israel not as a tourist and not temporarily...

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\* Translated by B'Tselem.

Later in the judgment, the court stated,

...in the final analysis, the connection will be determined; a connection that is not temporary or provisional, and a connection that proves a location within Israel as the place "in which he lives" and which "is his home."

- (3) The report ignores the provision of the State Health Insurance Law, 5754-1994, that a "resident" insured under this law is "a person who resides for the purposes of the National Insurance Law, including a resident of Israel in the region as defined..." That is, a person who is recognized as a resident under the National Insurance Law is also insured for the purposes of State Health Insurance.

#### **B . Comments on the Report**

- (1) As regards the report's contention relating to investigations conducted by the NII to determine the status of a person claiming to be a resident of East Jerusalem and to be living within the municipal borders of Jerusalem, I refer you to the Natl. Labor Ct. 0-38/MZ, (19 Labor Court Judgments 111 ,116), where the court states, in part:

For legal and other reasons, families move from house to house where a move of dozens of meters is liable to deny a family their status as residents of Israel, or to obtain for them the status of Israeli resident. In this way, it may be that a family living in Shu'afat refugee camp decided to move to another part of the neighborhood, and if it does so, it will lose its accumulated national insurance rights.

For this reason, it is necessary to conduct investigations to determine residency.

It should be remembered that, in a significant number of cases, the investigation carries on for an extended period of time because of difficulties that the claimant creates for the NII investigators, such as providing an address at which the claimant does not actually live, or failing to cooperate, and inability to locate the claimant in Jerusalem.

- (2) To the best of our knowledge, the arrangement accepted in the "Children's Suit" filed by HaMoked: Center for the Defence of the Individual, Physicians for Human Rights, and The Association for Civil Rights in Israel was made with the agreement of HaMoked, in whose name the report is published.
- (3) The attempt to defend residing in Israel illegally as a basis for acquiring national insurance rights and to accuse the NII's investigators of making brief and superficial investigations when the objective of the persons questioned (!) is as stated in the report, "The desire to protect a person living in Jerusalem illegally."

On this point, it should be mentioned that the National Labor Court has often held that illegally residing in Israel does not create "residency."

- (4) Residency is determined for the purpose of receiving allotments from the NII and for the purpose of recognizing entitlement to State Health Insurance.

**As for urging the government of Israel to act, presented at the end of the report**

The call to grant residents of East Jerusalem excessive rights and to prefer them over residents of Israel in other areas is unjustified.

Sincerely,

s/

S. Britzman, Esq.

Legal Advisor

cc: Prof. Yohanan Shatsman, Director General  
Mr. Yigal Barazani, Accountant, Deputy Director General for Insurance and Collection  
Mr. Shlomo Cohen, Deputy Director General for Research and Planning  
Mr. Shlomo Arad, Deputy General for Allotments  
Ms. Tova Yedidiyah, Director, Population Division  
Mr. Avraham Mena, Senior Department Director  
Ms. Ruth Horn, Esq., Deputy Legal Advisor  
Mr. Haim Pitosi, Spokesperson