The State of Israel
Ministry of the Interior
Office of the Legal Advisor

Jerusalem
19 Adar Alef, 5768
25 February 2008

MS 1930-2008

To:

Mr. Yotam Ben Hillel, Att. – HaMoked: Center for the Defence of the Individual 4 Abu Obeida St. Jerusalem 97200	By fax: 02-6276317 And by registered mail

Re: **Government resolution no. 2492 – temporary permits for residents of Judea and Samaria present in East Jerusalem for an extended period of time without a permit as required by law**

Your appeal cited in the title was brought to my attention, and I hereby respond as follows:

1. First, I wish to emphasize that the resolution cited in the title was approved by the government of Israel, and authorized by the prime minister and the attorney general, and it is not the Interior Ministry's resolution.

2. To the point, the decision that residency permits will not be granted to persons claiming that their center of life was in East Jerusalem prior to June 1967, although they were not enumerated in the 1967 census as residents of East Jerusalem (article A of the government resolution), is based on several arguments, as detailed below.

3. Applications for status pursuant to a claim of residency within Jerusalem's municipal limits (hereinafter- Jerusalem) in 1967 include factual claims referring to events which took place almost 40 years ago. The requirement is to establish, today, that the applicants' (or their parents') center of life was in Jerusalem at the time, although the applicants (or their parents) were not enumerated in the census conducted in Jerusalem at the time as residents of Jerusalem, but were rather enumerated as residents of the Judea and Samaria Area, in a census conducted within the territories of Judea and Samaria. Furthermore, these applicants did not appeal to the Ministry of the Interior to amend the "error" over the decades which have passed since 1967. As stated, all of the appeals concern persons who were enumerated prior to 1967 in the population census conducted in the Area, and by force of this census the family members were registered in the population registry of the Area, were given Area ID certificates, and received services from the population administration of the Area for many years, so that all of the documentation issued after 1967 was issued at their request, in the Area. Therefore, this is not a singular error, but a completely different factual and legal reality, which, over the decades that have passed since the census, was repeatedly given legal validity by the authorities of the Area, at the request of individuals who registered as residents of the Area. Now, after almost 40 years, a claim is being made for the first time, according to which applicants are entitled to status pursuant to a claim of residency in Jerusalem in 1967. This is the background for the government resolution.

4. Accordingly, the first reason for the decision (article A) is that the option given immediately after the Six Days War and soon thereafter, to persons who had lived in Jerusalem on a permanent basis, to obtain permanent status in Israel, has long since been exhausted, and today, the State of Israel is not obligated to grant permanent residency on

the basis of claims of residency dating back 40 years under the circumstances detailed above. Accordingly, these applicants must be considered as having waived the option to obtain residency in Israel, and in any case, today, the State of Israel is not obligated, under the circumstances detailed above, to grant them residency.

5. The second reason for the decision is the very extensive delay which is a characteristic defect of such applications, and the great difficulty - to the point of impossibility - of examining these claims today – i.e., the evidentiary damage caused to the State due to the delay and the passage of time, as we shall detail below.

6. First, it must be said that the extreme delay on the part of the applicants is enough to justify a decision that applications for permanent status on the grounds of a claim of residency in Jerusalem dating back 40 years – will no longer be processed, and a permit for residency in Israel will no longer be granted on the basis of such claims.

7. Furthermore, the extreme delay of these applications has caused a real and objective difficulty in verifying factual claims, as these rely on a factual situation which dates back 40 years, and this is particularly true since some of the documents concerning that period are no longer in the State's possession due to the passing of time, and since the physical conditions on the ground are no longer as they were then. To all of the above we must add the fact, which also stems from the great delay, that in recent years every investigation carried out on the ground, which is required in many cases, necessitates coordination with security forces and arrangement of a security escort. At times it is not possible to conduct these investigations at all due to the current security situation, and in any case, consideration of an application based on a full factual foundation is impossible.

8. In light of the above, there is no room to state, as you did in your appeal, that article A of the government resolution lacks " reasonable grounds" and of course there is no room for the claim that the resolution will not "spare" the Ministry of the Interior from having to conduct the many center of life tests, as the resolution is not based on a need to "economize" but rather on substantive grounds, as specified above.

9. Concomitantly with this resolution and as an accompanying measure, the government of Israel decided to allow the granting of temporary permits to persons who have lived in Jerusalem continuously since 1987. By doing so, the resolution established, on a one time basis and for a limited period of time, a humanitarian expansion of the humanitarian arrangement that was established at the governmental level in 1998, which stipulated continuous residency in Jerusalem since 1972 as a precondition for the granting of temporary permits. The arrangement from 1998 was also a humanitarian arrangement, meant to resolve the issue by making an exception on a one time basis, in order to conclude the handling of this issue, which, when the 1998 resolution was made, already related to events that took place over 30 years prior. The current government resolution aims to expand this arrangement, and accordingly it creates "a humanitarian arrangement atop a humanitarian arrangement". It establishes a significant mitigation in the terms required for its own implementation, as continuous residency in Jerusalem since 1987, i.e. for 20 years (and not 35 years as previously required), is sufficient. Accordingly, it was established that this arrangement will apply on a one time basis and for a limited period of time.

10. Concerning the decision to apply the government resolution to applications that were submitted to the Ministry of the Interior prior to the resolution, in light of the reasons specified above regarding the reasons that are at the basis of the resolution, there is no room to continue processing these applications, although they were submitted prior to the date of the government resolution. Concerning applications which are pending before the courts, indeed, individual responses will be given for each petition.

11. An additional claim raised in your letter concerns the setting of a deadline for submission of applications under the government resolution. You claim that there is very little time to gather the necessary documents, and that it would be impossible to meet this deadline. This claim must be answered both from the substantive and the factual aspect.

12. From a factual aspect, this claim is bewildering, as according to the contents of these applications, the applicants have ostensibly lived in Jerusalem for many years, continuously. Therefore, it is not clear why they should have to gather documents which they were supposed to have in their possession long before the date set in this resolution, and why gathering the documents should take a long time. Moreover, the fact that most applicants claim residency since 1967 raises the question of why they did not appeal earlier, and why the new government resolution was necessary in order for them to submit an application for temporary permits, and therefore the matter is now time-limited.

13. From a substantive perspective, as specified above, this resolution is "a humanitarian arrangement atop a humanitarian arrangement". The original resolution established at the governmental level in 1998 was designed to apply on a one time basis and for a brief period of time, in order to conclude the treatment of this issue. Accordingly, in light of the passage of time, and particularly considering the arguments concerning the delay and the evidentiary damage caused to the State, there is room to establish a deadline for submission of applications. Additionally, the restriction is necessary in order to avoid having to again encounter the problems that ensue when applications are submitted after a great deal of time has elapsed, and it becomes impossible to properly examine them. To this we add the fact that the State needs to estimate the total number of applications, in order to assess the scope of the phenomenon.

14. To all of the above we add that almost four months were allotted for submission of applications, starting from the date of the announcement of the resolution, and it cannot be claimed that this is too brief a period.

15. Additionally, you claimed that "too many" documents are required, "and the demand that applicants provide every contract to rent or purchase an apartment over such a long period of time is overly burdensome" and is not proportionate.

16. First, it must be noted that the government resolution does not add to the previous list of required documents for applications for status pursuant to residency in Jerusalem in 1967 or for permits pursuant to residency since 1972. The documents previously required are also required today, and a significant mitigation has been introduced in terms of the number of years for which documentation is required. Of course, there is no room for the claim that there is a lack of proportionality in the demand that applicants provide all of the documents necessary to prove their claim, in accordance with the substantive outline established in the government resolution.

17. To this we must add the fact that the burden of proof lies with the applicant, and that a person who chooses to appeal only after such an extended period of time must take into account the possibility that he will be required to produce documents pertaining to the distant past, even if this is not a simple matter due to the passage of time. These issues are naturally added to the evidentiary damage caused to the State.

18. Concerning the demand to provide an areal photograph, this demand is essentially relevant to any application in this regard, as the areal photograph indicates both the location of the house during the relevant period of time and the fact of the existence of the house and its suitability for residency at the time, and therefore it cannot be claimed that

this document is expendable. Even when the State followed the arrangement from 1998, (and, of course, in applications pursuant to a claim of residency in Jerusalem since 1967), it insisted on the inclusion of an areal photograph with each application, and this was reasonable in the eyes of the Court (as was the approval of the entire arrangement by the Court).

19. Furthermore, these applications do not entail a fee, and therefore the demand to provide an areal photograph, beyond being relevant and essential, constitutes almost the only expense imposed on applicants under this resolution, despite the substantial costs involved in the examination of the applications by the State. It must be noted in this context that currently, the fee for a regular family unification application – which certainly requires as many examinations as applications under the government resolution – is 2,400 NIS.

20. Finally, I wish to address the manner in which the resolution was published. In accordance with the government resolution, it was established that within 45 days of the approval of the resolution, the Ministry of the Interior would publish, in at least two widely circulated Arab newspapers, **an announcement regarding the methods for filing applications under this resolution.** The Ministry of the Interior acted in accordance with the resolution, and even went beyond the call of duty. First, announcements were duly published in Arabic – on 13 December 2007 in Al-Quds, and on 15 December 2007 in Panorama (in accordance with the publication dates of these newspapers), and in Hebrew on 12 December 2007, in Yedi'ot Aharonot. At the same time, the government resolution, directives for submission of applications and the relevant forms were published on the Ministry of the Interior's website. It must be noted that all of the relevant forms and directives were translated to Arabic and published thus. Additionally, the Ministry of the Interior translated the government resolution into Arabic, and the translation was published on the Interior Ministry's website. Furthermore, and although this was not required by the government resolution, two more announcements regarding the resolution were printed in Al-Sinara (on 15 February 2008) and in Kul al-'Arab (on 22 February 2008). Both publications were in Arabic.

Respectfully,

Naama Palei, Att.
Legal Office

Copies:
MK Meir Shitrit, Minister of the Interior
Mr. Meni Mazuz, Attorney General
Mr. Malkiel Balas, Deputy Attorney General (consultant)
Ms. Yochi Gnesin, Director of Administrative Matters at the State Attorney's Office
Mr. Yaakov Ganot, Head of the Population Administration, Ministry of the Interior
Mr. Yossi Adelstein, Chair of Migrant Workers' Enforcement Unit, Ministry of the Interior
Att. Daniel Solomon, Deputy Legal Advisor, Ministry of the Interior

Ms. Hagit Weiss, Head of the Population Administration Bureau in East Jerusalem, Ministry of the Interior