

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 1967,¹ 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.²

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.³
- 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."⁴

- 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.⁵

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."⁶

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."⁷

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."⁸

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

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.⁹

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

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.¹²

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.¹³

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.¹⁴

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 HCl 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.¹⁵

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 ..."¹⁶

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.¹⁷

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."¹⁸

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.¹⁹ The following table is based on those data:

Year	Number of Residents whose Residency "Expired" ²⁰
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.²¹ 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.²² 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.²³

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 HCl 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.²⁴

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

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, *Abtasa 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.²⁵

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.²⁶ 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,

25. Letter of 26 September 1996 from Ezer 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, HCl 9499/96, *Najawa 'Atrash v. Minister of the Interior*; HCl 8827/96, *Sahar 'Amirah v. Minister of the Interior*; *Bustani*, cited above in footnote 14.

26. See, for example, HCl 654/78, *Gingold v. National Labor Court*, *Piskei Din* 35(2) 649; HCl 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."²⁷

3. Proving "Center of Life"

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

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.²⁸

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.²⁹

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

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.³⁰

30. Abu Kanfer gave his affidavit to HaMoked on 11 March 1997. It was annexed to his petition in HCl 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.³¹

The personal status recorded in the identity card is only prima facie proof of its accuracy,³² 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.

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.

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 1996.⁴⁶

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.⁴⁷ According to the 1996 data, 27.4 percent of Jerusalem's residents, not including residents of East Jerusalem, live under the poverty line,⁴⁸ and according to estimates, inclusion of East Jerusalem residents in these figures would raise the percentage even more. For example,

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.⁴⁹

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.⁵⁰

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.⁵¹ 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.⁵²

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:⁵³

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."⁵⁴

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:"⁵⁵

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

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.⁵⁶

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.⁵⁷ 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.⁵⁸ 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,⁵⁹ 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

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.⁶⁰

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.⁶¹

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.⁶² 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.⁶³

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.⁶⁴ 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.⁶⁵

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

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.⁶⁶ 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.⁶⁷ 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.⁶⁸ 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.⁶⁹

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.⁷⁰

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.⁷¹ 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.

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 Wattad 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.⁷² 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.⁷³

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)."⁷⁴

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.⁷⁵ 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.⁷⁶

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.⁷⁷

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.⁷⁸

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.⁷⁹

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.⁸⁰ 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.

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."⁸¹ 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.⁸²

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.⁸³ In its answer, the NII indicated that it would cancel the procedure for couples where each has an Israeli identity card,⁸⁴ 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.⁸⁵ 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.⁸⁶

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

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 Shuia Zeltzer, of the Mothers Department of the NII, and was annexed to the State's answer in HCJ 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.⁸⁷

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

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 4,806.⁸⁸

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.⁸⁹ 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."⁹⁰ 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.⁹¹

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.⁹²

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

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.⁹³ As of 1 June 1998, this Law did not apply to allotments granted under the National Insurance Law,⁹⁴ 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."⁹⁵ 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.⁹⁶

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

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.⁹⁷

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

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.⁹⁸ 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."⁹⁹

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 'Abila 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."¹⁰⁰ 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.¹⁰¹ 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.¹⁰²

- 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."¹⁰³
- 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

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, *'Abila 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 Oeresh 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 400.¹⁰⁴

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."¹⁰⁵

Illustrative Cases

"Environs 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

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.¹⁰⁶

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

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.¹⁰⁷

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.¹⁰⁸ 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

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).