



המוקד להגנת הפרט

**HAMOKED** Center for the Defence of the Individual  
**HaMoked: Center for the Defence of the Individual**



**B'Tselem - The Israeli Information  
Center for Human Rights in the  
Occupied Territories**

## **THE QUIET DEPORTATION**

**REVOCAION OF RESIDENCY OF EAST JERUSALEM PALESTINIANS**

A Joint Report, April 1997

Written by Yael Stein

Fieldwork: Fuad Abu-Hamed, Najib Abu-Rokaya, Mazen Dandis

Translation: Zvi Shulman

Graphic design: Dina Sher

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## **INTRODUCTION**

During the past eighteen months, following implementation of Israel's new policy on residency, hundreds, if not thousands, of Palestinian residents of East Jerusalem have lost their right to live in the city. Tens of thousands more are also liable to lose this right, and live in uncertainty about their future.

Since the annexation of East Jerusalem by Israel in 1967, all Israeli governments have made great efforts to reduce significantly the number of Palestinians residing in East Jerusalem. These efforts include harsh restrictions on Palestinian construction in the eastern part of the city, a rigid policy on family unification, and minimal investment in infrastructure, and are part of a policy to strengthen Israeli sovereignty in East Jerusalem so that it cannot be challenged in the future.

Since the beginning of 1996, Israel has been using an additional method to attain this goal. The method is implemented by the Interior Ministry and deals with the residency status of East Jerusalem's Palestinian residents. Palestinians who are unable to prove that they had lived in Jerusalem in the past and continue to live there are compelled to leave their homes forever. They cannot work in Israel or visit their family members residing in Jerusalem, and they and their families lose their social benefits. The Israeli authorities never published this policy of the need to prove past and present residence and the effects on those who fail to provide the necessary proof, and never warned the Palestinians that by leaving Jerusalem, they jeopardize their status and their right to return to live in their homes in the city.

Most Palestinian residents of East Jerusalem hold the status of permanent residents, and their Israeli identity card constitutes the permanent residency permit that grants them the right to live in their homes. "Permanent residency" is the same status granted to foreign citizens who have freely chosen to come to Israel and want to live in the country. Because Israel treats Palestinians like immigrants, they, too, live in their homes at the beneficence of the authorities, and not by right. The authorities maintain this policy although these Palestinians were born in Jerusalem, lived in the city, and have no other home.

The report deals with the new policy of the Interior Ministry and compares it to the ministry's previous policy. The report also addresses the legal aspects of this policy and the main reasons Palestinians leave Jerusalem. The report presents testimonies of residents of East Jerusalem who lost their status as permanent residents and their social benefits, and were forced to leave the city.

## THE LAW AND THE SUPREME COURT

In June 1967, following the Six-Day War, Israel annexed some seventy square kilometers to West Jerusalem and applied Israeli law to this area. However, under international law, East Jerusalem is occupied territory, its status is the same as the rest of the West Bank, and Israel had no right to unilaterally annex the area.<sup>1</sup>

After application of Israeli law, Israel conducted a census in the annexed areas and granted Israeli identity cards to residents present at the time of the census. Some 66,000 Palestinians were recorded during the census. Residents of the annexed territory who, for one reason or another, were not there when the census was conducted lost their right to an Israeli identity card. To live in the city, their families had to submit a request for family unification on their behalf.<sup>2</sup>

Israel declared that any East Jerusalem resident wanting Israeli citizenship was entitled to it, provided that he or she met certain conditions stipulated by law, including relinquishing citizenship of another country and demonstrating some knowledge of Hebrew. Persons granted citizenship were required to swear allegiance to the state.<sup>3</sup> For political reasons, most East Jerusalem residents did not request Israeli citizenship.

The legal significance of the Israel identity card granted to East Jerusalem Palestinians became apparent only in 1988, in the Supreme Court's decision in the case of Mubarak 'Awad, head of the Center for the Study of Non-Violence. 'Awad was a resident of Jerusalem who had gone to the United States to study, married there, and received United States citizenship. During one of his visits to Jerusalem, 'Awad applied to replace his identity card. The Interior Ministry denied his request on the grounds that he was no longer a resident of Israel.

'Awad petitioned the Supreme Court. He argued that the state must grant residents of East Jerusalem "a type of citizenship" or "constitutional citizenship," which the Minister of Interior may not revoke at his or her discretion.

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<sup>1</sup> For a detailed discussion, see "Palestinian Residency and East Jerusalem," lectures given during a seminar, held in Jerusalem on 28 July 1994, sponsored by **HaMoked: Center for the Defence of the Individual**, December 1994, pp. 8-13 (hereafter: "Palestinian Residency and East Jerusalem"); **B'Tselem**, *A Policy of Discrimination: Land Expropriation, Planning and Building in Jerusalem* (Jerusalem, 1997), pp. 20-24 (hereafter: *A Policy of Discrimination*).

<sup>2</sup> See Meron Benvenisti, *The Torn City* (Jerusalem: Weidenfeld and Nicolson, 1973), pp. 163-164.

<sup>3</sup> Paragraph 5 of the Citizenship Law, 1952.

Justice A. Barak, writing for the court, held that the status demanded by 'Awad does not exist under Israeli law, and no such status can, therefore, be granted. However, Barak found another legal solution: that the status of East Jerusalem's Palestinian residents could be determined pursuant to the Entry into Israel Law. In this way, they would be considered permanent residents, holding the right to reside permanently in Israel. Justice Barak wrote:

As we saw, the legislation's intent is to synchronize the state's law, jurisdiction, and administration with East Jerusalem and its residents. The goal of the interpreter is to effectuate this intention to enable its incorporation within the language of the law. This incorporation is not difficult in that residents of East Jerusalem may be considered to have received a permanent residency permit.<sup>4</sup>

Barak added that granting special status to East Jerusalem residents would discriminate against other permanent residents in Israel, those who are not Palestinian. Were this to occur, the principle of equality would be violated.

Permanent residency differs substantially from citizenship. The main right granted to permanent residents is to live and work in Israel without the necessity of special permits. Permanent residents are also entitled to social benefits provided by the National Insurance Institute (NII). Permanent residents have the right to vote in local elections, but not in Knesset [Parliament] elections. Unlike citizenship, permanent residency is only passed on to the holder's children where the holder meets certain conditions. A permanent resident with a non-resident spouse must submit, on behalf of the spouse, a request for family unification. Only citizens are granted the right to return to Israel.<sup>5</sup> In addition, the law stipulates the specific instances in which the Minister of Interior may revoke citizenship; as regards revocation of permanent residency, the law grants the Minister of Interior absolute discretion, and in certain circumstances, the permit to reside permanently in Israel expires without the necessity of any action by the minister.<sup>6</sup>

In *'Awad*, Justice Barak rejected the petitioner's fear that under the status granted, the Minister of Interior could deport all residents of East Jerusalem by revoking their permanent residency permits. Barak held that "the Minister of Interior may only act pursuant to substantive considerations," and that the minister's authority is subject to judicial scrutiny.<sup>7</sup>

Justice Barak ignored that the Entry into Israel Regulations, which establish conditions under which permanent residency automatically expires, without the minister being required to take

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<sup>4</sup> HCJ 282/88, *Mubarak 'Awad v. Yitzhak Shamir et al*, Piskei Din 42(2) 426, 430 (hereafter: *'Awad*).

<sup>5</sup> See Paragraph 6 of the Basic Law: Human Dignity and Liberty.

<sup>6</sup> See Paragraph 11 of the Citizenship Law, 1952, paragraph 11 of the Entry into Israel Law, 1952, and regulation 11 of the Entry into Israel Regulations, 1974.

<sup>7</sup> *'Awad*, p. 431.

any action or to exercise authority. This automatic revocation eliminates meaningful judicial scrutiny.<sup>8</sup>

Regulation 11(c) of the Entry into Israel Regulations provides that a permanent residency permit expires if the holder leaves Israel and settles in another country. Regulation 11A stipulates that “a person will be considered to have settled in a foreign country if he or she: (1) lived for more than seven years in a foreign country, (2) received the status of permanent resident in a foreign country, or (3) became a citizen of a foreign country.”

Although 'Awad met all three conditions of the regulation, Justice Barak preferred to rely on interpretation of the primary legislation. In his opinion, permanent residency status can also expire under other circumstances because the permanent residency permit must reflect the reality of permanent residency. Where this reality is not found, the entitlement to permanent residency no longer exists:

A permanent residency permit - in contrast to citizenship - is a mixture of things. On the one hand, it has a constitutional aspect that establishes the right to permanent residency; on the other hand, it has a declarative aspect, which expresses the reality of the permanent residency. When this reality disappears, there is no longer anything to which the permit can adhere, and it is automatically revoked, without any necessity for formal revocation.<sup>9</sup>

Justice Barak refrained from stating what must occur to terminate permanent residency, but rather found it sufficient to state that “permanent residency” is an expression that is “unclear, whose scope must be determined in accordance with the goals and purposes of the legislation.”

The High Court of Justice relied on Barak's interpretation when it decided the matter of Fathiya Shqaqi, wife of Fathi Shqaqi, head of the Islamic Jihad, who had been deported to Lebanon. The court expanded even further the circumstances in which permanent residency permits become invalid.

The High Court held that the permanent residency permit held by Shqaqi expired even though she had remained outside of Israel less than seven years and had not received citizenship or permanent residency status in a foreign country. In his opinion, Justice A. Goldberg wrote:

It cannot be said that only where one of the enumerated facts apply can settlement in a foreign country under regulation 11(c) be proved. Settling in a foreign country can also be found in ways other than those enumerated in 11A of the aforementioned regulations. The appearance of a new reality, changing the reality

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<sup>8</sup> The regulations concerning expiration of permanent residency were only enacted in 1985. The Entry into Israel Regulations of 1974 did not contain such a provision.

<sup>9</sup> 'Awad, p. 434.

of permanent residency in Israel, is clearly indicated by circumstances other than those mentioned in regulation 11A of the said regulations.<sup>10</sup>

The Entry into Israel Law is an immigration law, and is based on the assumption that the state has the absolute power to determine who is entitled to enter its territory. International law also grants a state this right. Consequently, a state does not have the duty to grant a permanent residency permit, but rather does so as a favor. The Minister of Interior agrees with this position:

The Minister of Interior is of the opinion that granting a permit to reside in Israel is not to be taken lightly, as if it grants rights and creates a type of status, and it is known that in any case, foreigners have no inherent right to receive it, as is customary throughout the world, as this honorable court has frequently held.<sup>11</sup>

Viewing East Jerusalem residents as foreigners who entered Israel is perplexing since it was Israel that entered East Jerusalem in 1967. The perception of East Jerusalem residents as immigrants residing in their homes pursuant to the beneficence of Israel and not by right is the “original sin” that currently enables the authorities to deport them from their homes.

Justice Barak's fear of discrimination between East Jerusalem's Palestinian permanent residents and other permanent residents in Israel is unfounded. From the start, the situations of the two groups are different, and the status of Jerusalem's residents, who were born there and for whom Jerusalem is their sole home, is not comparable to foreign citizens who decided, of their free will, to live in Israel.

Applying the Entry into Israel Law to residents of East Jerusalem may have solved Justice Barak's legal problem, but it created serious difficulties for those residents. The purpose of the judicial system is to provide persons with security and order in their lives. Justice Barak's solution creates an opposite reality, for it imposes on East Jerusalem Palestinians a defective status and a life of uncertainty, making them dependant on Israel's political considerations and goals.

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<sup>10</sup> HCJ 7023,94, *Fathiya Shqaqi et al v. Minister of Interior*, Takdin Elyon 95(2), 1614, 1615.

<sup>11</sup> Paragraph 3 of the State's answer in HCJ 7930/95, *Nariman Mahfuz and thirty-nine others v. Minister of the Interior et al.*

## WHY PALESTINIANS LEAVE EAST JERUSALEM

Under the legal situation described above, the best way for East Jerusalem Palestinians to preserve their permanent residency status is to live continuously within the borders of Jerusalem. For East Jerusalem Palestinians who do not travel abroad to study or work, who do not become citizens of another country, who do not marry non-Jerusalemites and move to the city's suburbs, their status in Jerusalem and their rights as residents remain secure.

Clearly no one can be expected to live according to these rules. Moving from one place of residence to another is part of life, whether the move is related to work, studies, or any other reason. Furthermore, Israel's policy of "open bridges" enabled residents of East Jerusalem and other Occupied Territories to maintain their contacts with Jordan and other Arab countries, without those contacts affecting their status. Indeed, many Palestinians went to Arab countries to work and study.

Moreover, even Palestinians who are willing to live according to these rigid rules are not ensured the ability to do so. Since the annexation of East Jerusalem, Israeli governments' policy has clearly been to reduce the number of Palestinians living in Jerusalem and increase the number of Jews living there in order to strengthen Israeli control of the city.<sup>12</sup> This policy contained several measures that left many Palestinians who wanted to remain in Jerusalem with no alternative other than to leave the city.

### a. Restrictions on building<sup>13</sup>

Since the annexation of East Jerusalem in 1967, the Israeli government has adopted a policy of systematic and deliberate discrimination against the Palestinian population in Jerusalem in all matters relating to land expropriation, planning, and building. Municipal documents and statements made by city policymakers indicate that Jerusalem's urban development is based, first and foremost, on national-political considerations, and not on the needs of the Palestinian residents.

Most of the lands expropriated since 1967 were privately owned by Arabs. Some 38,500 housing units were built on this land for the Jewish population, but not one housing unit for Palestinians. In comparison with the massive construction for the Jewish population, few buildings were constructed for the Palestinians. Some 64,870 dwellings, constituting some 88

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<sup>12</sup> This policy is based on the decision of the Interministerial Committee to Examine the Rate of Development for Jerusalem (Gafni Committee), which determined that the ratio between "Jews and Arabs would be as it was at the end of 1972," that is, 73.5% Jews and 26.5% Palestinians. See the *Recommendations for Coordinated and Consolidated Rate of Growth*, Jerusalem, August 1973, p. 3. This ratio is called the "demographic balance," which means preserving the demographic superiority of Jews in Jerusalem. For an extended discussion on this matter, see **B'Tselem**, *A Policy of Discrimination*, pp. 45-48.

<sup>13</sup> For an extended discussion on this subject, see **B'Tselem**, *A Policy of Discrimination*.



percent of all housing units, were built for the Jewish population (about one-half of them by public construction), while only some 8,890 dwellings, constituting some 12 percent of all the housing units, were built for the Palestinian population (the large majority by private construction).

The planning authorities utilized town planning schemes to restrict development of Palestinian neighborhoods. These schemes limited the area designated for Palestinian construction, and marked large sections of land as “green areas,” on which construction is prohibited.

Municipal and governmental policy created severe housing distress among the city's Palestinians. At the end of 1994, the average housing density of the Jewish population was 1.1 persons per room, whereas the average housing density for the Palestinian population was double - 2.2 persons per room. Furthermore, in 30 percent of Palestinian households, the housing density exceeded three persons per room, in comparison to 1.7 percent of Jewish households. Planning experts estimate that the housing shortage among the Palestinian population currently exceeds 20,000 housing units.

The Israeli authorities' planning and building policy in East Jerusalem leaves Palestinian residents no alternative other than to move outside the municipal borders. Only now, however, do Palestinians realize that such a move is liable to result in the loss of their status as Jerusalem residents and their right to return to live in the city.

#### **b. Family unification**

Jerusalem residents married to persons who are not Israeli residents or citizens must apply for family unification. The Jerusalemite spouse applies to the Interior Ministry, which has the discretion to grant or deny the request.

In the past, the Interior Ministry automatically denied applications of Palestinian women residing in Jerusalem; only requests submitted by Jerusalemite men were granted. The justification for this policy was that in Palestinian society, the woman customarily goes to live in her husband's house.<sup>14</sup> The policy compelled many women to leave Jerusalem so that they could live with their husbands and conduct a normal family life.

Following the petition of The Association for Civil Rights in Israel, the policy changed, and since March 1994, East Jerusalem's Palestinian women residents have been allowed to file requests for family unification on behalf of their spouses, and the requests were to be approved in instances where the couple live in Israel and no criminal or security basis exists

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<sup>14</sup> See, for example, HCJ 48/89, *Reynald 'Issa v. District Population Administration Office et al*, Piskei Din 43(4) 574, 577.

to deny the application.<sup>15</sup> The change in policy led to thousands of requests for family unification.<sup>16</sup> However, several years can pass before a decision is reached, during which time the couple are unable to live together in Jerusalem.

Spouses who are not residents of the Occupied Territories receive temporary permits to stay in Jerusalem until the request is granted or rejected. For spouses who reside in the Occupied Territories, various arrangements were made over the years that enabled the spouse to live and work in Jerusalem until the Interior Ministry made its decision on the request. But these permits only solved part of the problem because they were revoked whenever the authorities tightened the closure, and the Civil Administration often refused to issue them. Since the tightening of the closure in February 1996, no permits have been granted on the basis of divided families, even for short visits.<sup>17</sup>

This policy left the family with two alternatives: one, to live separately with the hope that the request for family unification would be swiftly granted, or two, leave the city so that they can live together.

Families that chose to live together and left Jerusalem lost any chance to have their request approved, since they do not meet the criterion of living in Jerusalem. Furthermore, these families now realize that the resident spouse, including women who left Jerusalem because they had been unable to submit applications for family unification prior to 1994, lost his or her resident status. .

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<sup>15</sup> Yocheved Gensin, senior deputy to the State Attorney, stated this policy in her letter of 23 June 1994 to attorney Eliahu Abrams, of ACRI, following H CJ 2797, *Gharbit v. Minister of Interior*. The petition was withdrawn following the State's agreement to change the policy.

<sup>16</sup> East Jerusalem women submitted 650 requests in 1993, 2,550 in 1994, and 1,800 in 1995. These data are taken from a letter of 31 March 1996 from attorney Moriah Bakshi, of the legal department of the Interior Ministry, to attorney Malchiel Balas, of the State Attorney's Office, following H CJ 7316/95, *Menuhin et al v. Minister of the Interior*.

<sup>17</sup> Major Yehuda Cohen, assistant to the legal advisor of the Coordinator of Government Activities in the West Bank, wrote in a letter of 14 August 1996 to attorney Leah Tsemel: "The closure on Judea, Samaria, and the Gaza Strip was imposed for purely security reasons, the purpose being to reduce significantly the number of persons entering Israel from the region. After it was decided to ease the closure, it was determined that marriage to an Israeli is not a criterion to exit the area during closure, and as regards your contention concerning the sanctity of family life, no one prevented your client *from maintaining this sanctity within the region*" (emphasis in the original).

### *Revocation of Social Benefits*<sup>18</sup>

Under the National Insurance Law, only residents of Israel living in Israel and citizens of Israel living in Israel or the Occupied Territories are entitled to NII allotments and state health insurance.

The NII's definition of "resident" differs from the Interior Ministry's definition. Persons who return to Israel are entitled, under the National Insurance Law, to allotments. By contrast, once resident status is revoked, the Interior Ministry refuses to reinstate it. East Jerusalem Palestinians who moved elsewhere in the Occupied Territories and later returned to the city face the restriction stipulating that they are entitled to renewal of allotments only two years after their return. Palestinians who lived in a foreign country are entitled to the allotments immediately upon their return.<sup>19</sup> The National Insurance Institute (NII) employs investigators who conduct rigid inspections to verify that those claiming entitlement actually live within Jerusalem. Whenever the NII rejects an application for an allotment, the individual may appeal to the Labor Court.

Pursuant to the Interior Ministry's policy, children born to a Jerusalemite mother and a non-resident father do not receive an Israeli identity card immediately upon birth. The NII and the Health Funds generally refuse to provide these children with allotments or medical insurance. This refusal is illegal. According to the letter of 19 December 1996 from Avraham Mena, Senior Department Director of the NII, to Physicians for Human Rights, "if the NII recognized the mother's residency, her children under 18 are automatically within the category of 'Israeli resident' for health insurance purposes," even where the Interior Ministry does not consider the children to be residents. The NII tried to solve the problem of children without identity cards by issuing fictitious identity card numbers. In practice, however, this procedure met numerous obstacles and is rarely implemented.

The NII investigators apparently forward the information they collect to the Interior Ministry. The degree to which the ministry relies on the information, and whether such reliance is lawful, is unclear. The NII also frequently directs Palestinians to the Interior Ministry to obtain confirmation of their status as residents of Jerusalem, providing the ministry with the opportunity to check their status.

Because of the numerous checks, the lengthy period of time required by the NII to approve

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<sup>18</sup> For an extended discussion on this matter, see **HaMoked**, "Palestinian Residency and East Jerusalem," pp. 30-34.

<sup>19</sup> Regulation 15(d) of the National Insurance (Rights and Obligations under the National Insurance Law for Non-Residents of Israel) Regulations, 1987.

requests for allotments greatly prejudices the families. The child allotment is often almost the family's sole income, and without health insurance, the children do not receive treatment at the Health Funds, and the families must go to private physicians, which requires expenditures they have difficulty meeting.

## **REVOCAION OF RESIDENCY STATUS**

Some eighteen months ago, the Interior Ministry began to revoke the residency status of persons who moved outside the municipal borders of Jerusalem. The ministry accomplishes this through enforcing the Entry into Israel Law by broadly expanding the law's interpretation by the Supreme Court and contrary to the interpretation the ministry had implemented for twenty-eight years.

The new policy took East Jerusalem Palestinians by surprise. The ministry did not publish any notice about the change in policy, and exercised the policy retroactively against persons who had left the city when the ministry had a different policy. Consequently, East Jerusalem Palestinians do not know who is liable to revocation of residency status, and live in uncertainty concerning their permanent resident status.

The Interior Ministry has not informed the public of the number of persons whose residency status has been revoked. In response to an interpellation of MK 'Azmi Bisharah to Minister of Interior Eliahu Suissa as to how many identity cards had been revoked over the previous six months, the minister replied, on 11 December 1996, that his ministry does not keep records on this matter, but "our estimate is that some 600 cases are involved." When MK Amnon Rubinstein asked the minister how many identity cards had been revoked in 1995-1996, the minister responded, on 29 January 1997, that "my answer is the same as I gave to the interpellation of MK Bisharah... Our ministry does not keep statistics on this. The estimate is some 600 cases."

These answers indicate either that the Interior Ministry does not know the results of its policy, or, more seriously, the ministry is hiding the information from the public.

The bulk of Interior Ministry policy in East Jerusalem is conducted on the basis of unwritten criteria and unclear procedures. Attempts by human rights organizations and attorneys to determine these criteria have failed.<sup>20</sup>

Various estimates indicate that some 170,000 Palestinians hold Israeli identity cards. Among them, approximately 70,000 live in the Occupied Territories, mostly in the suburbs surrounding Jerusalem. Others live in Jordan, other Arab countries, and in the West.

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<sup>20</sup> Attorney Moriah Bakshi, of the ministry's legal department, wrote, in a letter of 5 June 1994 to attorney Badirah Khuri, of **HaMoked**, that "the Minister of Interior has broad discretion in granting approvals/permits, and he is not required to state reasons for his decision... Because he has no duty to state reasons, there is also no cause to issue internal directives to assist in exercising the said discretion."

Consequently, if the ministry continues its current policy, tens of thousands of persons are liable to lose their resident status and entitlement.

**a. Previous policy of the Interior Ministry**

Palestinians residing in East Jerusalem are allowed to leave Israel via the bridge crossings into Jordan or via Ben Gurion airport. To leave via the bridges, Palestinians obtain an “exit card” issued by the Interior Ministry. The card states that it constitutes an “exit permit” and a “return permit.” Section 3 of the card states that “The [return] permit is valid for three years from the date of exit.”

Exit via Ben Gurion airport is accomplished by means of a *laissez passer*, valid for one year, which is also issued by the Interior Ministry. After the year expires, it may be extended for an additional year, and then the document must be renewed.<sup>21</sup>

Since 1967, East Jerusalem Palestinians who lived in other countries customarily returned and renewed their exit permits before it expired. Prior to eighteen months ago, according to the Interior Ministry's policy, as long as the persons renewed their permits before expiration, the ministry renewed the permits, ensuring their right to return to Jerusalem. Family members were customarily allowed to extend the exit card for a relative outside of Jerusalem, each time for a period of twelve months and for a total period of five to six years. Only a stay of seven consecutive years abroad, without visits to Israel, was liable to result in the revocation of residency status. Obtaining citizenship or permanent resident status in a foreign country never led to revocation of their residency status in Israel.

Palestinian residents of East Jerusalem who moved to other locations in the Occupied Territories did not require permits to exit and enter Jerusalem. They even continued to receive entitlement they had received as residents of Israel, primarily the child allotment they had received from the National Insurance Institute prior to their moving from Jerusalem.

The Interior Ministry never warned East Jerusalem Palestinians that their residency status was in jeopardy if they move outside the city, and that they could lose their entitlement. Indeed, the Interior Ministry's conduct over twenty-eight years gave the opposite impression - that they could live outside the city and retain their status as a permanent resident.

Implementation of this previous policy of the Interior Ministry is also evident in the testimonies of Palestinians who acted in conformity with it.

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<sup>21</sup> For more information about the exit card, see the Exit Procedure to the East Bank for Residents of the Occupied Territories and East Jerusalem, 1977, issued by the Israel Defense Forces. Concerning the *laissez passer*, see paragraph 5 of the Passports Law, 1952.

Al-Mu'taz bi-Llah Mahmud Abu Lafi, a resident of A-Tur, who travelled to Cairo to study medicine and is currently doing his specialty training in England, stated:

I used to go to Cairo via the bridge. Since 1985, I have been leaving via Ben Gurion airport with a *laissez passer*. I return a few times each year. They used to give me a *laissez passer* for a year, and then they would extend it for another year. After two years, they would renew it.<sup>22</sup>

Hussein Muhammad Qara'in 47, whose family lives in Silwan [within Jerusalem], described the situation similarly:

In 1976, I traveled to Jordan to work there. I have family in Amman. My father, mother, and brothers remained in Silwan. In Jordan, I met Amal, my cousin, whom I married that year. We rented a place in Amman and most of our children were born there. I returned an average of two times a year to visit the family. Sometimes I returned alone, and sometimes with my wife and children. We generally spent the summer in Jerusalem. Each time, I exited from Israel with permits I had received from the Interior Ministry.<sup>23</sup>

Badr Musbah Jamjum, 48, lived in the emirate of Dubai, in the Persian Gulf, and then moved to Jordan. In his testimony, he stated:

I was born in the Old City of Jerusalem. In 1972, I bought a house in the Nusseibeh housing project, in Beit Hanina [within Jerusalem], and I have the contract of purchase. In April of 1976, I married Kamila Muhammad, who was born in Gaza, and we lived in the house I had bought. I submitted a request for family unification on behalf of my wife, and within a month she received an Israeli identity card. At the end of 1976, I received an offer to work in Dubai. I received an exit permit, and in December 1976, I travelled to Dubai. My wife joined me in March of 1977. In July 1980, our daughter Dana was born. We have other children. As time passed, we also were in Jordan. During the time we were away, my sister Siham, who is single, lived in my house in Beit Hanina. We used to return every summer for a short visit, and we lived in that house. While here, we would renew our permits, and we never had any problem with that.<sup>24</sup>

#### **b. The Interior Ministry's new policy**

Palestinians who now go to the Interior Ministry's office in East Jerusalem for whatever purpose are liable to receive notification that their permanent residency permit has expired. They must then return their identity card and leave Israel within fifteen days. Other family

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<sup>22</sup> The testimony was given to Fuad Abu-Hamed on 20 February 1997.

<sup>23</sup> The testimony was given to Fuad Abu-Hamed on 24 February 1997.

<sup>24</sup> The testimony was given to Najib Abu-Rokaya on 24 February 1997.

members (children and spouse) whose residency rights depended on the person are also expelled.<sup>25</sup>

The ministry applies this policy to every person who had lived or is currently living outside of Jerusalem, whether in the United States, Jordan, or the Occupied Territories. As far as residency is concerned, the authorities consider the West Bank to be “outside of Israel,”<sup>26</sup> and the same is true as regards those who live in a Jerusalem suburb, a distance of a few kilometers from the city’s borders. There are also instances where even Palestinians who have lived their entire lives in Jerusalem have been required to prove that their “center of life” is in Jerusalem.

Since imposition of the closure in 1991, the status of East Jerusalem residents has gained special importance. Contrary to other residents of the Occupied Territories, who are subject to military rule, East Jerusalem residents are free to exit and enter Jerusalem for work, medical treatment, family visits, or any other reason. Those whose identity cards and right to live in Jerusalem have been revoked are no longer able to enjoy this benefit.

The basis for the ministry's decision to revoke residency status is that the individual's “center of life” moved “outside of Israel.” The ministry contends that persons who lived several years outside Jerusalem, even those who had returned to renew their exit permits, had moved their “center of life” elsewhere and that their right to live in Jerusalem “automatically expired.” This is the case even if the stay outside of Jerusalem was less than seven years and the person had not become a citizen or permanent resident of another country.

The ministry implements this policy in various ways. The burden of proof that the individual's “center of life” is in Jerusalem is placed on the Palestinian and not on the Interior Ministry, which seeks to revoke the person’s residency status. Consequently, the ministry requires most Palestinians to prove that they have lived and currently live in Jerusalem. Some receive a standard form listing the documents they must bring to the ministry to prove that they live in Jerusalem. The documents include past years’ bills in the name of the applicant, an apartment or house lease since marriage, confirmation that the children study in Jerusalem schools, confirmation of payments from the National Insurance Institute, and the like.<sup>27</sup>

In early February 1997, the ministry instituted a new way to check the “center of life” of East Jerusalem residents. In the past, as soon as a request for family unification was granted, the spouse received an Israeli identity card within a short span of time. That policy has changed. Now, the ministry issues an Israeli identity card to the spouse more than five years after approval of the family unification request. During this five-year period, the spouse receives a

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<sup>25</sup> See Appendix 1.

<sup>26</sup> In response to an interpellation of MK Nomi Hazan, Minister of Interior Suissa stated, on 7 October 1996, that “regulation 11(a) and regulation 11(c) also apply to persons who have settled in Judea and Samaria.”

<sup>27</sup> See Appendix 2.

temporary permit, and “during the test period, at least once a year the spouse's entitlement to an extension will be examined.”<sup>28</sup> In this way, the ministry can check the couple's “center of life” at least once a year.

Palestinians who do not satisfy the ministry's onerous demands are liable to receive written or verbal notification that their residency status in Jerusalem has been revoked. In some cases, the ministry delivers such notification without even requesting any documents proving that the person lives in Jerusalem.

Interior Ministry clerks often do not inform Palestinians that their residency has expired, but rather compel them to return time after time, contending that there was still no decision. In this way, a simple request like renewing an identity card can take a year. Since the ministry takes the identity card when the application is made, the individual is left with no identity card for a lengthy period of time.

The ministry revokes residency status without explaining the particular reasons for revocation and without giving individuals an opportunity to argue their case. In addition, the person cannot appeal the decision. The procedure concludes when the Interior Ministry clerk notifies them that their permanent resident status has expired.

The ministry currently applies this policy only to persons who had submitted one of a litany of possible requests to the ministry. Because the policy concerning revocation of residency status is unclear, Palestinians do not go to the Interior Ministry offices. On occasion, however, the NII directs Palestinians to go to the Interior Ministry to obtain proof that the ministry recognizes them as residents. Similarly, soldiers and officials at the bridge-crossings often tell Palestinians that they need to go to the ministry offices to replace their identity card, even where the law does not require replacement. When the persons arrive at the ministry's offices, ministry officials examine whether they are entitled to residency, and their status is in jeopardy.

Furthermore, the Interior Ministry intends to replace the identity cards of all Israeli citizens and residents. According to the ministry's spokesperson, the replacement will take place between June and August of 1997.<sup>29</sup> Tens of thousands of East Jerusalem's Palestinian residents who have refrained from going to the ministry's office will be required to participate. The ministry will then be able to examine meticulously their past and present, and their status and entitlement as residents of Jerusalem may be revoked.

Testimonies given to **B'Tselem** by East Jerusalem residents confirm this new policy of the Interior Ministry.

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<sup>28</sup> This procedure was explained in a letter of 4 February 1997 from Aner Hellmann, of the State Attorney's Office, to attorney Usama Halabi.

<sup>29</sup> In a letter of 27 January 1997 from Tova Ellinson, spokesperson and head of public relations in the Interior Ministry, to **B'Tselem**.



In 1978, Siham Hana Yusuf Musharbash, 41, resident of Jerusalem, married Zuheir Jereis 'Aqil Musharbash, a resident of Jordan. She moved to Jordan to live with him, and returned every summer to Jerusalem to visit her family and renew her exit permit. In August of 1995, she returned with her children to Jerusalem to live. Her husband joined her four months later. In her testimony, Siham Musharbash stated:

At first, we lived with my parents and looked for a place to rent. We found a house on 1 August 1996... On 19 October 1995, I submitted, on behalf of my husband, an application for family unification. They told me to bring arnona [municipal property tax], electricity, and water bills. I gave them bills from my parent's home, and when I rented a house, I submitted the bills for the new place, and showed them the rental lease. I submitted an application for a visitor's permit for my husband, and he entered Israel on 25 December 1995. I renewed his residency permit twice, until 14 October 1996. At some time prior to that date, I went to the Interior Ministry to renew the residency permits for my husband and two children, 'Arij and Johnny. They told me, "Come back in two weeks." I came back five or six times, I don't remember. On 26 December 1996, I went to the same clerk and submitted the slips of the requests I had submitted. He took them, asked for my identity card, and gathered together all the papers. Then he gave me a form that stated that my permanent residency permit was no longer valid, and that I must leave the country within fifteen days.<sup>30</sup>

'Abd al-Hamid 'Adel 'Abd al-Hamid Samarah, 19, was born in Jordan to parents with Jerusalem residency. In 1994, Samarah came with his father to live in Kafr Aqb, in his grandfather's home, in the section of the village that is within Jerusalem's borders.

Since we returned, my father has been working for a construction company in Jerusalem, and he receives pay slips. In 1994, I went to the Interior Ministry and obtained my own identity card for the first time. Then I obtained an exit permit to Jordan and went to Amman to complete my studies. That was in August 1994. I stayed there until June of 1995. When I returned, I registered at ORT [technical training school] in East Jerusalem to continue my academic studies. A year before that I had started to study driving at the Amjad Driving School in East Jerusalem. It took a long time, and in October 1996, I took the road test. The examiner looked at my identity card and told me it was torn, and that I had to go to the director of the Licensing Department. The director looked at my identity card and told me I had to replace it, otherwise I could not take the test. In November 1996, I went to the Interior Ministry's office in East Jerusalem to replace my identity card. They took the card and gave me a slip confirming that I had submitted the request. They told me to come back in a week. When I returned, they told me to bring documents like receipts for arnona and telephone bills. I went back a week later with all the documents, and they told me to come back in another week. On 23 December 1996, I returned to find out what was happening with my identity card. The clerk gave me a form signed by the head of the

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<sup>30</sup> The testimony was given to Najib Abu-Rokaya on 25 February 1997.

office, Aharon Luzon. The form stated that I was no longer a resident, that my identity card had been revoked, and that I had to leave the country.<sup>31</sup>

Najah Khaled Hasan Ghibn was born in Wadi Joz, which is in East Jerusalem. In 1985, she married Mazen Da'ud Hussein Ghibn, a resident of Ramallah. Three years later, the couple moved to Ramallah:

In October of 1994, I lost my identity card. I went to the Police at the Russian Compound [Jerusalem] and informed them what had happened. I received confirmation from the Police that I had lost my identity card, and with this confirmation I went to the Interior Ministry and submitted a request for a new identity card. I received a slip confirming the application. They told me, "Come back in another week." I came back a week later, and then the clerk told me, "You have problems because you are married to someone with an identity card of the Occupied Territories. Bring us proof that you live in Jerusalem, like receipts for arnona and electricity." I brought them receipts for arnona, electricity, and a rental lease belonging to my father, who lives in Jerusalem. The clerk told me that it was not enough, because they are not my documents, and that I would not be issued a new identity card.<sup>32</sup>

### **c. Position taken by the Interior Ministry**

#### **1. No change in policy**

The Interior Ministry vociferously claims that its policy is not new, and that it has been in effect for many years. In its answer to the petition of Najwa Atrash, a resident of Jerusalem who has lived in Jordan with her husband since 1978 and returned to live in Jerusalem in 1995, the State argued:

The policy of the Interior Ministry is not at all new... It is clear that since the court's opinion in the Mubarak 'Awad case, which was given in 1988, which stated the law as regards expiration of residency of East Jerusalem residents, the Respondents are applying an existing and valid policy. That the residents of East Jerusalem include some who chose to take root elsewhere, based on one faulty assumption or another, and now, with the changing times, want to create a new life, cannot lead to the understanding that the Respondents' policy is new.<sup>33</sup>

This policy, the ministry contends, is based on the High Court's opinion in *'Awad*, which holds that residency in Israel no longer exists where a person has moved his or her "center of

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<sup>31</sup> The testimony was given to Fuad Abu-Hamed on 24 February 1997.

<sup>32</sup> The testimony was given to Najib Abu-Rokaya on 5 March 1997.

<sup>33</sup> H CJ 9499/96, *Najwa Atrash v. Minister of Interior*.

life” to a place outside of Israel. Interior Minister Suissa responded similarly, on 27 November 1996, to the interpellation of MK Hashem Mahmid:

The High Court of Justice held more than once that residency is a question of reality, and when a person moves his or her "center of life" outside of Israel, that person's residency expires automatically. The law provided that one who remains outside of Israel for a period of at least seven years, or who became a permanent resident of a foreign country, automatically loses residency. You are essentially asking me to change the law. I do not think the time has come to change the law. In the meantime, until it is changed, I act according to the provisions of the law.

## **2. Right to appeal**

Relying on the court's opinion in *'Awad*, the Interior Ministry contends that since residency “automatically expires,” persons whose resident status has been revoked have no right to argue their case. In his interpellation to the Minister of Interior, MK Amnon Rubinstein wanted to clarify how the ministry ensures that “such revocation of an identity card will be done lawfully, following a right to be heard, and safeguarding the natural laws of justice.” On 29 January 1997, the Minister of Interior responded: “Since the law and the High Court of Justice hold that the residency automatically expires, I do not think that the law requires a right to be heard.”

The Interior Ministry's legal advisor even argued that the clerk who informs the person that his or her residency expired has no discretion, and is required to revoke the residency status:

In all the cases where identity cards were taken, if indeed they were taken, the card was taken as a result of the fact that the clerk who examined documents in handling another matter, as the clerk is required to do, realized that the law's provisions were met and that residency expired, and the clerk has no discretion in this matter. The clerk must do the act that indicates that the conditions of the law were met, and the residency expired.<sup>34</sup>

The contention that the permit “expires automatically” enables the Interior Ministry to revoke residency without stating that reason. According to the Amendment of Administrative Procedures (Decisions and Statement of Reasons) Law, 1958, every administrative authority must state the grounds for its decisions. Paragraph 9 of the law stipulates that the law shall not apply to the decisions of the Minister of Interior pursuant to the Entry into Israel Law, “except the decision to revoke a residency permit of a person who is lawfully in Israel.” Since the Interior Ministry contends that revocation of a residency permit is not involved, but rather that the permit “automatically expires,” the exception found in paragraph 9 does not apply, and the ministry considers itself exempt from the obligation to explain the decision.

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<sup>34</sup> Comments of the legal advisor of the Interior Ministry, Sarit Dana, at a meeting of the Interior Affairs Committee of the Knesset, 11 December 1996, at page fifteen of the minutes.

### **3. “An unjust pretext shall not generate a right of action”**

Another contention of the Interior Ministry is based on paragraph 14 of the Population Registry Law, which stipulates that “an adult resident who leaves the country to settle abroad shall so notify the registry clerk.” This argument was made in the State's answer to the petition of Fares Bustani, a Palestinian resident of Qalandiya, who had lived in Jordan for twenty years. The ministry rejected his application to replace a worn identity card, and advised him that “his right to permanent residency in Israel expired.” As with other Palestinians, Bustani meticulously requested renewal of his exit permits prior to their date of expiration, and the Interior Ministry renewed them routinely. In 1988, he even received a new identity card. The Interior Ministry argued:

Every resident of East Jerusalem who left Israel to settle abroad, and certainly after settling abroad, was required to so inform the registry clerk... In light of the fictitious situation intentionally created by the Petitioner, his “exit card” was extended, and we now contend that he is not allowed to argue that he received a “return permit” as part of the exit card, as it is said that “an unjust pretext shall not generate a right of action.”<sup>35</sup>

### **4. Equality of treatment**

According to the Interior Ministry, its policy is not defective in any way because the ministry implements it vis-a-vis every permanent resident in Israel, and East Jerusalem Palestinians are not treated differently:

The policy is also applied to other permanent residents - Americans, Europeans, and the like.<sup>36</sup>

The High Court of Justice accepted the ministry's arguments and held that its policy is not new, but rather a lawful policy that the ministry has the power, even the duty, to implement. In its opinion in *Bustani*, given on 31 December 1996, Justice Matza wrote on behalf of the court:

The Petitioner's claim is unfounded in that as long as he had an exit card and complied with its provisions he had the right to permanent residency in Israel. Even his argument that the decision of the Respondents in his case results from a “change of policy” is baseless... Indeed, as a rule, an exit card is issued to one who is a permanent resident and has a permanent residency permit. However, where the

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<sup>35</sup> Paragraph 40 of the States's answer in H CJ 7952/96, *Fares Salim Fares Bustani v. Minister of Interior et al* (not yet published) (hereafter: *Bustani*).

<sup>36</sup> Comments of Tova Ellinson, spokesperson of the Interior Ministry, *Ha'aretz*, 17 March 1997.

residency ceases, and the permanent residency permit expires, the existence of a valid exit card also is insignificant. The exit card held by the Petitioner enabled him to leave and enter Israel's border with Jordan over many years. The assumption was that he is a resident of Jerusalem, as appeared from the registry that the Petitioner, it will be recalled, made sure to update with all the necessary data. But when it became apparent to Respondent 2 that the reality was different than it appeared to be, the registry was corrected. The Respondent was allowed (and even obligated) to do that, and there was no defect in the Respondent's act.<sup>37</sup>

#### **d. Criticism**

##### **1. New policy**

The Interior Ministry's current policy is totally different from the policy it had implemented over the years. In the twenty-eight years since 1967, the ministry *de facto* recognized East Jerusalem's Palestinian residents who had moved to other areas in the Occupied Territories as residents of the city. The same policy was implemented concerning East Jerusalem Palestinians who resided abroad for many years, as long as they returned to Jerusalem to renew their permits on time. Today the ministry revokes the residency of such persons and applies this new policy retroactively to those who had innocently planned their lives according to the previous policy. The Interior Ministry never warned East Jerusalem Palestinians that their routine renewal of exit permits was insufficient to ensure their status and rights. Consequently, they could not, nor need to, have supposed that their moving outside the municipal borders of Jerusalem would jeopardize their status.

The current policy is particularly grave because East Jerusalem Palestinians have left the city in large part because of the government's policy towards East Jerusalem. This policy compelled Palestinians to move elsewhere so that they could develop and maintain a normal family life.

The Minister of Interior's contention that he has no alternative other than to apply the law is not precise. The ministry acts according to regulations, and the minister has the discretion to apply them and the power to change them.

In only two types of cases prior to institution of the new policy did the ministry demand that East Jerusalem Palestinians prove that their "center of life" is in Jerusalem. One type of case related to registering a child in the identity card of the mother where the mother is a Jerusalem resident and the father is not.<sup>38</sup> The second type of case related to requests for

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<sup>37</sup> *Bustani*, p. 5 of the Court's opinion.

<sup>38</sup> In his letter of 10 December 1988 from Binyamin Ya'ari, deputy legal advisor of the Interior Ministry, to attorney Netta Goldman, of The Association for Civil Rights in Israel, Ya'ari wrote that where the father is not a resident, the Minister of Interior will determine the status of the child "after conducting a detailed examination of all the facts from which the center of life of the child can be determined."

family unification following the change of family-unification policy, instituted in March of 1994. Under that new policy, women residents of Jerusalem were allowed to submit family unification requests on behalf of their husbands. In these two types of cases, the ministry denied the requests of those who were unable to prove, upon demand, that they live in Jerusalem. However, these cases never resulted in the revocation of Jerusalem residency.

The ministry never demanded Palestinians prove that they live in Jerusalem every time they submitted a request to the ministry, and never did the ministry set such a high standard of proof of residency in the city.

## 2. “Center of life” as a pretext for deportation

The Interior Ministry's use of “center of life” as the basic criterion has two serious weaknesses.

One problem is that the ministry checks “center of life” in the past as well as in the present, and the criterion was employed in only one direction: “center of life” in Jerusalem in the past does not grant rights to the applicant if the current “center of life” is not within the city, and a current “center of life” in Jerusalem does not grant rights if for any period of time in the past, the “center of life” was elsewhere. The criterion does not, therefore, provide legal effect to the reality of the situation, but rather is used as a tool to deport Palestinians from the city.

The second problem is that the arbitrarily-determined standard required to meet the “center of life” test is so high that few succeed. The “center of life” of persons who moved to Jerusalem’s suburbs certainly continues to be Jerusalem. They continue to work in the city, attend city schools, and receive medical treatment there. In spite of this, these Palestinians are unable to prove to ministry officials that they reside in Jerusalem.

The requirements are so detailed that even persons who never left the city would have difficulty meeting them. It is clear, therefore, that the examination of “center of life” is not intended to check whether the resident is exercising his or her right to live in the city, the exercise of which is a condition to maintaining the right in the present and future. The process is intended to achieve the preordained goal of revoking the right to residency, on one pretext or another, because of the failure to meet the high standard of proof.

Furthermore, Jerusalem’s borders occasionally pass through adjoining homes, and even through the middle of a house. Indeed, neither East Jerusalem Palestinians nor the authorities know the precise location of the city's borders.<sup>39</sup> This lack of clarity makes it especially startling that the Interior Ministry places such great weight on crossing the municipal border, claiming that those who do so have moved their “center of life” to outside the city and may no longer reside in Jerusalem.

## 3. The right to appeal must not be denied

The revocation of residency status without granting a right to be heard is particularly problematic. As with every decision of a state authority, and certainly concerning decisions that affect so gravely the life of the individuals and their families, the right of those affected persons to present their case must be granted. The Supreme Court has often emphasized that

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<sup>39</sup> **HaMoked** contacted the Israel Mapping Center, of the Building and Housing Ministry, to determine whether a particular house in Kafr Aqb is located within the city or whether the authorities consider it to be part of the West Bank. Yehoshua Carmeli, head of the Jerusalem region, responded on 2 February 1997 that “the map of Block 11 of Kafr Aqb is a Jordanian and not Israeli map, and we are unable, therefore, to obtain a copy. If you are able to obtain a copy, we shall do our best to help you. We apologize, but that is the true situation.”

the right to be heard is a basic principle of natural justice, and that it should be granted even where the law does not specifically require it.<sup>40</sup> Justice A. Barak stated this principle explicitly:

A basic right of a person in Israel is that a public authority that harms the status of a person shall not do so unless it grants that person the opportunity to state his or her case... In every instance in which a public authority seeks to change a person's status, it must act fairly towards that person, and this obligation imposes on the authority the duty to grant that person the opportunity to be heard.<sup>41</sup>

The right to be heard is necessary in order to examine the material and evidence available to the Interior Ministry in making the decision. The right to be heard is crucial in revocation of residency cases since the ministry has at times revoked residency on the basis of unclear evidence unknown to the person involved. The inability to review the decision precludes any chance to reveal errors during the decision-making process.

The Interior Ministry's contention that residency status "expires automatically" and that ministry officials have no discretion in the matter is insupportable. Regulation 11A of the Entry into Israel Regulations stipulates the circumstances in which the permit expires. However, the ministry adopted the interpretation of the Supreme Court, according to which the circumstances in which a permit expires can be deduced through interpretation of the Entry into Israel Law, without relying on these regulations. From the moment that the subject of "permanent residency" became a matter to be interpreted, it could no longer be argued that the ministry was exercising its authority as a technical matter and had no discretion.

In addition to non-disclosure of the criteria on which the decisions are based and the refusal to provide reasons or an explanation, denial of the right to appeal makes public supervision of the ministry's activities impossible. This secrecy makes proper decision-making impossible, in blatant contravention of the principles of public administration, and increases the likelihood of irregularities in decision-making. This fear was realized when, at the end of 1995, serious cases of corruption erupted in the ministry's office in East Jerusalem, and its head, Haim Ben-Atar, was suspended from his position.<sup>42</sup>

#### **4. "Unjust pretext?"**

The claim that the responsibility for revoking residency status lies with the Palestinians, who did not report their change of address to the Interior Ministry, is at best a pretense. Palestinians were never told that they had to provide notification that they had moved from

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<sup>40</sup> The High Court of Justice has held that the right to be heard must be granted before house demolition pursuant to the Emergency Regulations even though the regulations do not require it. See HCJ 358/88, *The Association for Civil Rights in Israel v. OC Central Command*, Piskei Din 43 (3) 529.

<sup>41</sup> HCJ 654/878, *Gingold v. National Labor Court*, Piskei Din 35 (2) 649, 654.

<sup>42</sup> See the reports in *Yediot Aharonot* on 17 November 1995 and 24 November 1995.



Jerusalem, and the ministry knew they no longer were living in the city. The ministry's computer lists each time a person exited or entered Israel since it issues the exit permits to Palestinians, and it is the government agency that renewed them dozens of times. Movement to other areas in the Occupied Territories was never considered movement to a foreign country, and in these instances at least there was no need to report.

Placing the blame for the ministry's policy on the Palestinians is clearly refuted by the fact that had the ministry initially explained the implications of moving elsewhere, it is likely that many would not have done so.

## **5. Discrimination**

The Interior Ministry contends that since it applies the law without discrimination and without regard to nationality to all permanent residents, no changes are necessary. As mentioned previously, applying the Entry into Israel Law to East Jerusalem's Palestinian residents, and relating to them as immigrants, is the source of the problem.

A more appropriate comparison would be between Israeli citizens and residents of East Jerusalem. In both cases, their basic right to live in their home, where they were raised, and where their families reside, should be respected, and may not be terminated. However, the authorities discriminate between Israeli citizens and Palestinian residents of East Jerusalem.

The right of Israeli citizens to return is guaranteed always, even where they have lived elsewhere for long periods. East Jerusalem Palestinians who act similarly, on the other hand, are liable to lose their status, and the right to return to Jerusalem to live is not ensured.

This discrimination is particularly blatant as far as the West Bank is involved. A non-Palestinian permanent resident who moves to a Jewish settlement in the Occupied Territories maintains his status and rights pursuant to a number of regulations enacted by Israel to ensure that Israeli law applies to the settlements. A Palestinian permanent resident who moves to the West Bank, even only a few meters from the city's borders, is liable to lose all rights as a resident. Inherent in this policy is that Israel considers the West Bank to be part of Israel when Israelis are involved and as "outside of Israel" when the persons are Palestinians.

In *'Awad*, Justice Barak stated that when East Jerusalem Palestinians refrained from requesting Israeli citizenship, which was offered to them, they lost the right to request a special status.<sup>43</sup> To become an Israeli citizen, East Jerusalem Palestinians must swear allegiance to the State of Israel. Conditioning basic rights on the swearing of allegiance to the state that occupies them is not only contrary to basic principles of justice, but also contravenes international law. The right of East Jerusalem Palestinians to live in the city and return there when they wish is a fundamental right that is not dependent on the beneficence of Israel nor on its will.

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<sup>43</sup> *'Awad*, p. 430. The Interior Ministry rejects numerous applications of East Jerusalem Palestinians for Israeli citizenship, and this path is not always available to them.



## ISRAELI POLICY AND INTERNATIONAL LAW

Denial of social benefits, the right to housing, work, family life, and freedom of movement of residents of East Jerusalem violates numerous international declarations and agreements concerning human rights and humanitarian law. The main international instruments dealing with these matters are the following:

The right of persons to leave and return to their country is secured in the Universal Declaration of Human Rights (Article 13.2) and the International Covenant on Civil and Political Rights, which Israel has signed (Articles 12.2 and 12.4). This covenant also stipulates that all persons lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose their place of residence within that territory (Article 21.1). Israel, which views residents of East Jerusalem as foreigners, is obligated to also act in accordance with the provisions of Article 13, which stipulates that aliens may only be expelled in pursuance of a decision reached in accordance with law.

Under international law, East Jerusalem is occupied territory, and Israel must respect the rights granted to the residents by international humanitarian law. During a situation of war and occupation, the Fourth Geneva Convention, to which Israel is party, permits the occupying power to restrict the freedom of movement and housing of residents of the occupied territory only to protect them or for military necessity.<sup>44</sup> The parties to this convention also undertake to assist as far as possible to reunify families separated by war (Article 26) and to respect family rights in all circumstances (Article 27), including, of course, the right to live together.<sup>45</sup> Under Article 47, annexation of occupied territory does not deny its residents any of the benefits provided by the convention.

Israel discriminates between Palestinian residents and Jews who settled in East Jerusalem, a settlement which violates international law. An example of the discrimination is that Jewish residents of East Jerusalem may leave the city and return whenever they wish, even after residing abroad for scores of years, and even if they moved to the Occupied Territories. Palestinians, on the other hand, lose their social benefits if they move to other areas in the West Bank, and after several years lose even their right to residency. This treatment is blatant discrimination, and violates the principle of equality, which is the foundation of all international human rights law (e.g., Article 2 of the Universal Declaration of Human Rights, Article 26 of the Covenant on Civil and Political Rights) and the laws of war (e.g., Article 1, which is common to all the Geneva Conventions).

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<sup>44</sup> See Articles 27 and 49 of the Convention, and the commentary of the International Committee of the Red Cross: Jean Pictet (ed.), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), esp. pp. 280-283.

<sup>45</sup> *Ibid.*, pp. 202-203.

Some East Jerusalem Palestinians can, however, better their situation and ensure their right to live in the city by requesting Israeli citizenship. But to do this, they must swear allegiance to the State of Israel. Conditioning fundamental rights on swearing allegiance to the occupying power contravenes the provisions of Article 45 of the Hague Regulations, which stipulates that “it is forbidden to compel residents of occupied territory to swear allegiance to the hostile power.”

## **REPRESENTATIVE CASES<sup>46</sup>**

### **Testimony of Olga Matri Hana Joachim, aged 63, married with seven children<sup>47</sup>**

I was born in Bethlehem. My husband, Jereis Kalyuba Joachim, was born in Ein Karem [Jerusalem] in 1927. In 1948, he moved to East Jerusalem because of the war. We married in 1952, and our seven children were born in Jerusalem. All of our family, including my husband, have Israeli identity cards.

All of our children are married. Six of them are now living in the United States. Only our oldest son, Anton, who is married with five children, lives in Jerusalem, in Khan a-Zeit. My husband and I live with him and his family.

In October 1989, I traveled to the United States to visit my sons William and Samir, who were already living there. I stayed in California for three years and returned to Jerusalem in 1992. A year-and-a-half later, at the end of 1993, I traveled to the United States again. I went to receive medical treatment because I was having heart problems. I underwent heart surgery at a hospital in California. In 1995, I returned to Jerusalem.

In September of 1995, I went to replace my identity card at the Interior Ministry office in East Jerusalem. My husband came with me because he also wanted to replace his identity card. They replaced my husband's card on the spot, and he received a new card. I submitted an application and the pictures to the clerk. He also took my old identity card and cut it up with scissors. He gave me a form confirming that I had submitted an application, and told me, "Come back in two weeks." I returned two weeks later, and the clerks told me, "You don't have an identity card. Go to the West Bank." They told me to submit a request for family unification. I did not submit the request because I am a resident of Jerusalem, and have an identity card and only have to renew it.

Since then, my husband and Anton went to the Interior Ministry office about twenty times, and each time they told them that I am not entitled to an identity card because I am a resident of the Territories. Several days ago I went myself to the Interior Ministry. A clerk named Rima received me, and she told me to submit an application for family unification. I told her that I wanted to meet with the supervisor. She did not let me.

I have health insurance through the Histadrut Health Fund and receive an allotment from the National Insurance Institute. I suffer from diabetes and have kidney problems. Whenever I go to a clinic or hospital, they want to see my identity card. Because I have none, I can't receive treatment.

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<sup>46</sup> The testimonies are presented almost in their entirety.

<sup>47</sup> The testimony was given to Najib Abu-Rokaya on 12 March 1997.

### **Testimony of Samirah Mustafa ‘Abd al-Magid Qassem, aged 40<sup>48</sup>**

I was born in the Jewish Quarter of the Old City, and we lived in a rented house. In 1969, my parents bought a house near the Damascus Gate and rented it to people who continue to live there. In 1970, we moved to a house my parents owned in Dahiyat al-Barid [outside of Jerusalem], and we have lived there ever since.

My six sisters are married and have Israeli identity cards. I am the only one with a problem. In 1977, I married Ghareb Fares Qassem, a resident of Bir Naballah, who has an identity card of the Occupied Territories. I went to live with him in Bir Naballah, not far from the A-Ram junction.

In December, 1995, I traveled to Amman via the Allenby Bridge. At the bridge, the soldier who checked my documents told me that I have to change my identity card when I return because the picture on my identity card was old and is not compatible with the computer. I was in Amman for about ten days. After I returned, on 6 March 1996, I went to the Interior Ministry office in East Jerusalem to replace my identity card.

One of the clerks, I don't know her name, started to take care of me when suddenly another clerk appeared. Those next to me knew her and told me her name is Rima Dakidak. She told the clerk who was handling my case, “Don't give her an identity card, her husband is from the Territories.” The clerk who was taking care of me gathered my papers together, put them on the side, and told me to go.

The next day, Rawiyah ‘Aqluq, from the Interior Ministry, called me and told me to come to the ministry office to discuss my identity card. I went immediately because I thought they wanted to give me a new identity card.

When I arrived, the two clerks, Rawiyah and Rima, told me “Don't worry. It's all very simple. Bring us arnona [municipal property tax] bills, an apartment lease, electric and water bills and everything will be okay.”

I went and rented an apartment in East Jerusalem and paid the arnona. I obtained documents from the school in East Jerusalem where I had studied and from the Leumit Health Fund. I brought these documents, together with my Israeli driver's license, to the Interior Ministry. A clerk told me they were not good enough, that the lease was new, and that they need proof that I had been living in Jerusalem since 1988.

I told him, “You never told me this is what would happen. Radio listeners in the Occupied Territories regularly asked questions on a program in Arabic on the Voice of Israel about marriages between someone from Jerusalem and a spouse from the Occupied Territories, and

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<sup>48</sup> The testimony was given to Najib Abu-Rokaya on 24 February 1997.

the answer always given was that everyone can keep his or her identity card without regard to the identity of the spouse.”

The clerk said that this is the policy dictated by Netanyahu and Interior Minister Suissa, and nothing can be done about it. He told me that I would not receive an identity card.

**Testimony of ‘Abd al-Jabbar Samur Hammad Salhab, aged 59, married with 14 children<sup>49</sup>**

I was born in 1937 in Hebron. In 1940, the entire family moved to Jerusalem. We lived in the Jewish Quarter. In 1956, I married for the first time, and we rented a house in the Jewish Quarter. In 1972, the authorities evacuated all the Arab residents in the Jewish Quarter and demolished all the houses surrounding the house where we lived. They pressured me to leave. That same year, I succumbed to the pressure and moved to a house my brother and I had built in Dahiyat al-Barid [outside Jerusalem].

In April of 1994, I moved to Kafr Aqb with my second wife and our children. We married in October 1967 and have eight children. The house where we live in Kafr Aqb is within the Jerusalem boundaries, and I have arnona bills from Jerusalem in my name.

On 9 July 1996, I went to the Interior Ministry office on Nablus Road to replace my identity card. The clerk took the card and gave me a document, valid until 23 February 1997, confirming that I had applied for an identity card. He told me that I have to bring him numerous documents. Because I don't read and write well, I asked someone standing on line to list everything the clerk requested, and I still have the list. The paper states that I have to bring a lease, arnona receipts, electric, water, and telephone bills, certifications from the schools where my children study, documents from the National Insurance Institute, and proof of health insurance.

I brought all the documents to the clerk within two weeks.

I have gone back to the Interior Ministry office some ten times since then, and each time, the clerk at window number one told me that my application is being processed. I asked to speak with the supervisor, but he did not let me. He said, “What would the supervisor tell you? Nothing different from what I said.”

All of my children over sixteen have Israeli identity cards. My daughter Fida' reached sixteen and went to the Interior Ministry office to get her own identity card. They still have not given it to her, and are waiting to see what happens with my identity card.

I receive the child allotment from the National Insurance Institute for my three daughters under eighteen. We are members of the Histadrut Health Fund.

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<sup>49</sup> The testimony was given to Najib Abu-Rokaya on 19 February 1997.

I want to make the pilgrimage to Mecca, but without an identity card, I am unable to perform this obligation. I have brothers in Jordan, and I can't leave Israel to visit them as long as I don't have an identity card. At the checkpoints, soldiers sometimes don't accept the confirmation that I have applied for an identity card. On my way home from Hebron one time, the soldier at the Bethlehem checkpoint refused to let me enter Jerusalem. I requested that the army officer at the checkpoint look at the document I had. When he saw it, he let me pass.

### ***Registering children***

Regulation 12 of the Entry into Israel Regulations stipulates:

“A child born in Israel... shall have in Israel the status of his or her parents. Where the parents do not have the same status, the child will receive the father's or guardian's status unless the other parent objects in writing; where the second parent objects, the child will receive the status of one of the parents, as the minister shall decide.”

A central condition for registering a child with the Interior Ministry is that the child is born in Israel. When the father is a resident, the child is registered immediately. The problem arises when the child is born to a mother who is a resident of East Jerusalem, and the father is not. In this case, the ministry's declared policy is to register the child if the father does not object, and if it is proven that the mother and the child live in Jerusalem.

When the child is born outside of Israel, the parents must submit a request for family unification, which entails payment and an extended wait. This applies even when both parents are residents of Jerusalem.

As in other matters, the Interior Ministry operates according to procedures unknown to the applicant. For example, the Interior Ministry requires that Palestinians who apply to register a child prove that their “center of life” is in Jerusalem. However, it appears that proving “center of life” when registering a child entails even stricter criteria. In response to its requests to the Interior Ministry concerning registration of children of Palestinian women residents of Jerusalem, **HaMoked** received a standard reply that the registration of the child was approved based on the assumption that “from June 1967 to the present time, her or her parents’ place of permanent residence was and is the same part of the neighborhood or area located within Jerusalem.”<sup>50</sup> Women whose children's registration was authorized were also required to sign, at the time of registration, a declaration that they have lived in Jerusalem since they were married.

Another unclear point relates to the manner in which the application is decided. In 1994, when the policy concerning family unification changed, the authorities demanded that

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<sup>50</sup> Letter of 30 October 1996 from Aharon Luzon, head of the Population Administration Office in East Jerusalem, to **HaMoked**.



registration of children be made together with the application for family unification on behalf of their father. This demand is problematic because while the father is subject to security considerations, these considerations are irrelevant to his children. Also, decisions on requests for family unification are made slowly, and while the family is waiting, the children cannot receive identity card numbers and the birth certificate necessary to receive various services. In January 1996, the Interior Ministry stated that it would review requests separately; however, it has not implemented this policy. Many women who have gone to the ministry to register their children are required to annex their application to that of the application for family unification on behalf of their husbands.

According to data of Physicians for Human Rights, there are now some 10,000 children who are not registered at the Interior Ministry.

As long as a child is not registered, he or she does not receive an identity card number, and the authorities do not recognize the child as a resident of Jerusalem. By law, if the National Insurance Institute recognizes the mother to be a resident, her children are entitled to allotments and health insurance even if they are not registered. In most instances, the NII ignores its obligation to provide these benefits.

**Testimony of Maysar Muhammed Ramadan Abu Imhamid, aged 41, married with seven children<sup>51</sup>**

I married Muhammad Abu Imhamid in 1975. He resides in Sur Baher [within Jerusalem]. My husband's family is originally from the Occupied Territories, from Za'tarah village, near Bethlehem, and they have lived in Sur Baher since 1968. They have a house and land there. They have West Bank identity cards, but they receive permits to stay in Sur Baher. Three of my husband's brothers married women from Sur Baher and received Israeli identity cards. They continue to live there.

My family always lived in Sur Baher, and we all have Israeli identity cards.

My first three children - Raniyah, Mervat, and Ayman - were born in Sur Baher and received, at birth, [Israeli] identity card numbers without a problem, and we even received the child allotment from the National Insurance Institute for them. The children who were born subsequently received West Bank identity card numbers.

From 1975 to 1987, we lived in Sur Baher. Then we moved to my husband's family's house in Za'tarah. In June of 1993, we returned to Sur Baher. All of our children study at schools in Sur Baher, and we can prove it.

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<sup>51</sup> The testimony was given to Fuad Abu-Hamed on 27 February 1997.

Twice I filed a family unification application for my husband. The first application was in 1975, and it was denied. I submitted the second application in 1993. Two years later, they told me that it, too, had been denied.

In 1993, I filed an application for family unification on behalf of my children who do not have Jerusalem identity cards. It also was denied. I also applied to the NII for child allotment for my children who do not have Jerusalem identity cards. NII people came to my home and told me to submit a new application in 1995, after I will have lived in Jerusalem for two years.

On 30 December 1995, I went to the Interior Ministry. The clerk completed the form for me and then she checked the computer. She told me that my identity card had been revoked on 21 November 1995, as had those of Mervat and Ayman.

### **Testimony of Jihad Muhammad Ibrahim Lafi, aged 48, married with four children<sup>52</sup>**

I was born in this house in Bet Safafa [within Jerusalem]. In 1948, after the war, my entire family moved to Jordan.

In 1964, I married `Uthman Muhammad `Uthman Lafi, who was then working in Kuwait. I went to live with him there. He was also born in Bet Safafa, but he did not have an Israeli identity card. In 1969, we moved to Saudi Arabia, where my husband had found work. We lived there until October of 1991. Then we moved to Jordan, where we lived until August 1996. We have four children.

My father-in-law filed an application for family unification on our behalf, which was approved on 27 December 1973. We then came to Bet Safafa, where we stayed for about two months. In January 1974, my husband and I received identity cards, and our children were recorded in them. When they turned sixteen, our three eldest children received their own identity cards.

On 19 August 1996, my daughter Dali and I came from Jordan to Jerusalem so she could get an identity card, because she had reached sixteen. I received a document confirming submission of the application. The clerk told us to come back in a month. I told him that Dali studies in Jordan, and that she has to go back to Jordan, and requested that she be issued the card on the spot. The clerk told me, "Prove to us that she is studying in Jordan." I called my husband, who was in Amman, and told him to send me a document from the school in Amman confirming that Dali studies there. The next day, my husband sent me by fax the confirmation and other certification documents concerning Dali.

On 22 August 1996, I returned, with the documents my husband had sent, to the Interior Ministry office. I gave the documents to the clerk. He told me to go to the supervisor. I told

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<sup>52</sup> The testimony was given to Najib Abu-Rokaya on 12 March 1997.

the supervisor what I needed. He listened and then said, “You and your daughter live in Jordan, so you don't need our identity cards.” He took my identity card and gave me another document in its stead. The document stated that the identity card is at their office [Interior Ministry] because they need to clarify my status.

My daughter Dali and I stayed at our home in Bet Safafa. I called my husband and told him that they took my identity card and did not want to issue an identity card to Dali. He returned to Jerusalem on 8 September 1996, and since then we have been living in Bet Safafa, in the house my father-in-law, who died in 1982, bequeathed to us.

The last time I went to the Interior Ministry office was on 26 January 1997. They told me there was no news. My daughter and I continue to live here without identity cards.

***Receiving an identity card for the first time at sixteen***

The law stipulates that “Residents who have attained the age of sixteen shall carry with them an official certificate indicating their identity and bearing their photograph ...”<sup>53</sup> A person over sixteen who fails to carry an identity card violates the law.

For Israeli citizens who have reached sixteen, the procedure is simple, short, and even exciting, but sixteen-year-old residents of East Jerusalem are compelled to undergo a meticulous examination of their “center of life,” which is a lengthy process. Because of this, applicants are forced to violate the law because they do not have an identity card in their possession.

Palestinians without identity cards are subject to being harassed by soldiers and Border Police. In addition, without an identity card showing residence in Jerusalem, the individual cannot pass through the checkpoints at the entrances to the city.

**Testimony of Maryam Jabber Musa Nafe`, aged 34, married with five children<sup>54</sup>**

I was born in East Jerusalem in 1963, and studied at the Ras el-Ammud school. In 1980, at seventeen, I received an identity card. Two years later, I completed my studies at the Al-Ittihad high school, and then I took typing and secretarial courses.

In 1984, I married a resident of Ramallah whom I had met at school. A few months later, we moved to Jordan because my husband wanted to continue his studies there. He studied at the university and the Jordanian government paid the fees. After he completed his studies, he was obligated to work for the government in Jordan.

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<sup>53</sup> Maintaining and Presenting an Identity Card Law, 1982 (paragraph 2).

<sup>54</sup> The testimony was given to Mazen Dandis on 23 February 1997.

Between 1984-1996 I would come to Jerusalem once or twice a year because my entire family lives in Jerusalem and to renew my exit permit.

Our five children were born in the Red Crescent Hospital in East Jerusalem. The Interior Ministry did not give them identity card numbers because their father was from Ramallah, and they were registered in my identity card as accompanying persons.

Twice I applied for family unification on behalf of my husband and children. The first time was in 1989. They told me the application had been destroyed in a fire at the Interior Ministry. In July 1994, I applied again.

To shorten the family unification application process, and because my father was very sick, I returned with my children to Ras el-Ammud in May of 1996. My children study at the school there. My husband stayed in Jordan to work, and there is another year remaining on the contract he signed.

When I returned from Jordan, they told me to go to the Interior Ministry office in East Jerusalem to renew my identity card because the picture on my card was in black and white, and it has to be in color. On 24 June 1996, I went to the Interior Ministry. I took color pictures just as they told me to. When I applied, the clerk told me that according to the computer, I was living in Jordan and not in Jerusalem, and that she has to take my identity card.

I told her, "I am waiting for an answer to my application for family unification, and instead you tell me I can't live here?" She told me that was the decision of the Interior Ministry and went to get a letter in Hebrew, which she gave to me. The letter said I had to leave the country.

I am currently living with my children in Ras el-Ammud. My husband is in Jordan. This decision makes things very difficult for me. All my brothers and sisters live in Jerusalem, and I can't lose connection with them. My husband sends us 150 Jordanian dinars every month. I use fifty of them to pay rent. That leaves me with some JD 100 (NIS 450) per month.

### **Testimony of Mardus Sihaj Mardus Sajayan, aged 39, married with four children<sup>55</sup>**

I was born in Jerusalem in 1958. I studied at the Freres College school for twelve years, and in 1982, I received a bachelor's degree in hotel management from Bethlehem University. In 1984, I got married at the Armenian Monastery. We have three children - Sihaj, Kevorak, and Jacques. Another daughter was born while we were in Australia.

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<sup>55</sup> The testimony was given to Mazen Dandis on 7 february 1997.

From 1982 to 1988, I worked at the Notre Dame Hotel, in Jerusalem. I paid all the taxes and made regularly payments to the National Insurance Institute. I also paid arnona on my house, even while I was abroad.

In 1988, tourism dropped and lots of employees were fired. I was among them. I decided to look for work abroad, partially because the intifada had escalated, and all the time there were curfews, strikes, the schools were closed, and things like that.

I went to Australia with my husband and children, and worked there. Once every two years I returned to Israel to visit the family and renew my exit permit.

When I entered the last time, in August of 1996, they told me at the bridge to go to the Interior Ministry to renew my identity card. On 15 October, I went to the Interior Ministry office in East Jerusalem, completed the form, and the clerk gave me a document confirming that I had applied for an identity card. She told me to come back in two weeks to get my new card. Three weeks later I returned. They told me that they want confirmations that I pay arnona, water, and electricity. I returned when they told me to, and brought everything they requested. They told me to come back in a month to get my new identity card.

In the middle of January 1997, I returned to the Interior Ministry office to get my new identity card. The clerk told me that a few items are still missing, and she gave me a form with a list of all the documents I had to bring. I did not have some of them, like confirmation from schools my children attended between 1990-1995, because we were abroad during those years. I brought them a document confirming that they are studying in Jerusalem schools this year.

At the end of January, I returned with all my documents. The clerk told me to go to the supervisor, and he told me that according to the law, I was not entitled to an identity card, and that he would not renew the card. He gave me a letter that indicates that my children and I have fifteen days to leave.

I have both a religious and personal connection with Jerusalem. My family and my wife's family live in Jerusalem. We were born in the city, and it pains us greatly not to be among its residents.

### ***Replacing identity cards***

Under paragraph 28 of the Population Registry Law, an identity card must be replaced only when the card is tattered or the picture is misleading.

However, many Palestinians are also required to replace their identity cards at other times. For example, they are told that they need a color photo, that the card is old even though they had replaced it not long before, or that the card is not compatible with the computer.

When they arrive at the Interior Ministry office, the officials demand that they prove that their “center of life” is in Jerusalem. This demand makes them liable to loss of residency status.

### **Testimony of Samirah Jamil Rashid ‘Affaneh, aged 39, married with ten children<sup>56</sup>**

I married twenty-four years ago. My husband was born in Sur Baher [within Jerusalem], but he was not here in 1967, and consequently did not receive an identity card. His entire family lives in Kuwait. He entered on a visitor’s permit in order to get married, and then I went with him to Kuwait.

My entire family lives in Bet Safafa, and they all have Jerusalem identity cards. I would visit my family about once a year, staying at our home in Bet Safafa. My sons Muhammad, 22, and Jamil, nine-months old, were born here. My other eight children were born in Kuwait. I received identity card numbers for five of my children. Muhammad, the eldest, has a Jerusalem identity card, but they also demanded that he return it.

Two years ago, I returned with my family to live here. Last year, I went to Jordan for a few days.

Around September of 1994, I submitted a request for family unification on behalf of my husband and children. By making the application, I would receive approval for my husband to stay in Jerusalem. Last month I went to the Interior Ministry, where they told me, “Come back in fifteen days and you will receive the approval for family unification.” I paid NIS 300 to extend my husband's visitor's permit. Fifteen days later, I returned to receive the approval for family unification and to renew my husband's permit, and they told me to come back in another week.

When I came back, the Interior Ministry clerk told me, “Give me your identity card, and I'll check your application.” I gave him the card, and then he requested the document I had received that confirmed my request for family unification. I gave that to him as well. Then he told me that my request for family unification had been denied, that he was not going to

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<sup>56</sup> The testimony was given to Fuad Abu-Hamed on 12 January 1997.

return my identity card, and that it is revoked. He told me, "I'll give you a paper, take it and go immediately to Jordan."

He then told me that my son Muhammad also has to return his identity card. He had received an identity card in Jerusalem when he turned sixteen, and since then he has lived with my family in Bet Safafa. When the whole family returned to live in Sur Baher, he came to live with us. The clerk told me that my son had to come to the Interior Ministry office to hand over his identity card, and then to leave the country.

I pleaded and cried. He told me to write an affidavit and send it to the head of the Interior Ministry. I met the head that same day. He smoked while I was there and asked me lots of questions. He then requested my file. He told me that it was natural, and that I shouldn't get upset. I pleaded and cried, and then he said that he would not help me, and that I had to go to Jordan.

I am currently living with my family in Sur Baher, and I have all the documents required to prove that I live there.

I receive a child allotment from the National Insurance Institute for all of my children, even those who do not have identity card numbers. I also received NIS 8,400 for the period that I wasn't here. My lawyer told me that the NII had transferred money to the bank. I went to the bank, but they told me that I can't withdraw the money unless I show them an identity card. I told them that they had taken it from me, and I showed them my Health Fund book. They told me that was insufficient, and that I had to show them an identity card. Now I can't withdraw the money.

### **Testimony of Suheilah Da'ud Musa 'Aweis, 45, widow with five children<sup>57</sup>**

I was born in Silwan [within Jerusalem]. My parents had East Jerusalem identity cards. When I was about eighteen, I obtained my own identity card. In 1973, I married Jamil Ahmad Mustafa Awis. He and his family lived in Iraq, and on 15 July 1973 I went with my husband to Iraq. In 1979, my husband opened an automotive parts business. My husband's family is originally from Jerusalem, but they were not here when the census was taken, and they did not receive Israeli identity cards. My husband had a Jordanian passport.

While I was living in Iraq, I returned to Jerusalem to visit and to renew my exit permit. I used to come once, twice a year.

On 7 June 1995, I returned to Jerusalem with my husband, who had cancer. My three small children - Muhammad, Da'ud, and Muhannad - came with me. My daughter Assil arrived about two weeks later. My son Ahmad had returned about a year earlier, in August of 1994.

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<sup>57</sup> The testimony was given to Najib Abu-Rokaya on 23 February 1997.

On 7 August 1995, I applied for family unification on behalf of my husband and my son Muhammad, who had reached sixteen, and was required to obtain an identity card. My husband received a permit to stay in Jerusalem for six months. He died on 12 December 1995. I went to the Interior Ministry and told the clerk that he had died. She told me to bring a death certificate.

Muhammad went to the Interior Ministry office to find out what was happening with our applications. One of the clerks there, I think her name is Nariman, told my son, "Next time, come here with your mother."

On 16 January 1996, I went to the Interior Ministry office with Muhammad. I brought the death certificate to the same clerk, Nariman. She told me, "We closed the family unification file of your husband. The request on behalf of your son was denied, and your identity card is staying with us." I asked why, and she said, "Because you and your family live outside of Israel."

She called to the office head, I think his name is Shlomo. I told him, "I am a widow and must live here with my brothers and sisters. I cannot live in a foreign country. I have small children. How can I, a widow, support us in Jordan?" Shlomo said, "Your grown children will support you."

I am still living here, in Ras el-Ammud, with my children in a rented house. I have a lease from 1 June 1995, I pay arnona to the Jerusalem Municipality, and pay electricity bills. I do not receive a child allotment from the National Insurance Institute. I belong to the Histadrut Health Fund.

I was born in Jerusalem, and I have no place to go or live. My father's family and my husband's family are from Jerusalem, and I want to be with my children and with my family, and that is my right.



## CONCLUSIONS

For some eighteen months, a quiet deportation of East Jerusalem Palestinians has been taking place. Using laws, regulations, court judgments, and administrative tactics, Israeli authorities are expelling thousands of persons from the city. Not only are these Palestinians compelled to leave their homes, but they also lose their social benefits and connection with their families. They must start life anew in another location. Tens of thousands of others live in uncertainty about their future.

The new policy of the Interior Ministry denies East Jerusalem's Palestinian residents the fundamental right to live in their homes. The Interior Ministry denies this right when the residents are unable to meet the ministry's high standard of proof required to show that they have lived and continue to live in the city.

This quiet deportation is a direct continuation of Israel's overall policy in East Jerusalem since 1967, whose goal is to preserve a permanent majority of Jews in the city so that Israel's sovereignty in East Jerusalem cannot be challenged. Over the years, Israel took various measures to cause East Jerusalem Palestinians to leave the city. Indeed, the numerous restrictions on building in East Jerusalem and the refusal to approve family unification compelled many Palestinians to leave Jerusalem and establish homes elsewhere. Now they realize that they have lost forever their right to return to live in the city where they were born and raised.

This policy blatantly discriminates between Palestinian residents of East Jerusalem and Israeli citizens. Israeli citizens can leave the country for as long as they like, and always have the right to return. Moving to settlements in the Occupied Territories does not prejudice these rights. Because of the special status of the settlements, even the rights of non-Palestinian permanent residents who move to the Occupied Territories are not prejudiced.

The new policy of the Interior Ministry is based on the premise that East Jerusalem's Palestinian residents are immigrants, whose status and rights are dependent on political considerations and the beneficence of Israel. It is this attitude that enables the Interior Ministry to revoke their status.

Palestinian residents of East Jerusalem are not immigrants who preferred to live in Jerusalem rather than elsewhere. They were born in Jerusalem, grew up there, their families live in the city, and it is their only home. Their right to reside and live in Jerusalem or to return to the city whenever they want is their basic right and must not be revoked.

## RECOMMENDATIONS

The issue of Jerusalem is scheduled to be decided by political means in the near future, and among the matters included is the permanent status of East Jerusalem Palestinians. Until such decision has been reached, Israel must not unilaterally prejudice the status of East Jerusalem's Palestinian residents.

**B'Tselem** and **HaMoked** urge the Israeli government to:

1. Grant East Jerusalem's Palestinian residents a status that cannot be terminated, so that their future in Jerusalem is ensured; this status must also be provided to their spouses and children.
2. Reinstate to all Palestinian residents of Jerusalem whose status in the city had been revoked the rights to which they are entitled because they were born and live in the city.
3. Ensure that all residents of East Jerusalem receive the National Insurance Institute social benefits to which they are entitled, including health insurance, and reinstate these benefits to those from whom they have been revoked.
4. Eliminate all the methods of discrimination against Palestinians in East Jerusalem, first and foremost the existing discrimination in housing.
5. Enable spouses of Jerusalem residents to remain in the city with their spouse until approval of the application for family unification, and ensure that their children receive all the benefits to which they are entitled.

**APPENDIX 1\***

**STATE OF ISRAEL  
MINISTRY OF THE INTERIOR**

**Population Administration Office**  
East Jerusalem  
17 Nablus Road, Jerusalem  
Telephone 02-285406

Dated: 5 February 1997

[Name]  
[Address]  
Jerusalem

Dear Sir,

Re: [Name], identity number \_\_\_\_\_

Expiration of Permanent Residency Permit

I hereby notify you that your permanent residency permit expired pursuant to the Entry into Israel Law, 1952, and the Entry into Israel Regulations, 1974 because you moved your center of life to outside of Israel.

The residency permit of your family members listed below also expired:

[name and identity card number]

[name and identity card number]

[name and identity card number]

[name and identity card number]

In light of the above, you are required to return your identity card and the *laissez passer* in your possession to the Population Administration Office in Jerusalem and to exit Israel.

Sincerely,

s/  
Aharon Luzon

\* Translated by **B'Tselem**.

**APPENDIX 2\***

**STATE OF ISRAEL  
MINISTRY OF THE INTERIOR**

Population Administration District Office  
17 Nablus Road, East Jerusalem

27 January 1997

To: [name]

Dear Sir/Madam:

Re: Identity Card

Applicant \_\_\_\_\_

Person summoned \_\_\_\_\_

1. I hereby inform you that your request for family unification has been examined, and it was not found that your center of life is in Israel
  
  2. To prove that your center of life is in Israel, you must provide the following documents
- X Contract of purchase/lease of apartment in the name of the applicant since the date of marriage
- X Bills in the name of the applicant related to the residential apartment, since the date of marriage
- Notice/certificate of birth of the children

- Certification that the children study in the various educational frameworks, beginning from age six at least
  - Confirmation that the applicant and his or her children received medical services
  - Confirmation of receipt of National Insurance payments
  - Confirmation concerning the place of work of the applicant and the person summoned
  - Marriage certificate
  - Details of the time the applicant and the person summoned spent in Israel and outside of Israel
3. We are unable to continue handling your application until you provide the documents and details requested above. If you do not provide the documents to us within three months from the date of this letter, your request will be considered cancelled.

Sincerely,

s/

Baruch Cohen  
Professional Clerk

\* Translated by **B'Tselem**.

## RESPONSE OF THE INTERIOR MINISTRY\*

### STATE OF ISRAEL MINISTRY OF THE INTERIOR

Spokesperson and Public Relations Office

2 April 1997

Ms. Yael Stein  
B'Tselem

Dear Ms. Stein:

Re: Report on revocation of residency status of East Jerusalem residents  
Ref. - Your letter of 26 March 1997

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Firstly, we protest the manner in which the matter is presented.

The report is called *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*. **The truth is that neither deportation nor revocation of their rights is involved.**

Deportation means uprooting people from their permanent place of residence and transferring them to another place, and when this term is combined with "revocation of rights," one gets the impression that forced transfer is involved.

**The truth is entirely different.** Residents of East Jerusalem are permanent residents of Israel, each of whom is entitled to become a citizen. Those who decide not to become citizens maintain the status of permanent resident. Permanent residency is a matter of the reality of life, and as the Supreme Court held, when this reality no longer exists, the permit provided pursuant to that status expires. When permanent residents sever their connection with Israel - maintain their center of life in another location, where they work, maintain their family life - their free choice causes the expiration of their permanent residency (**it is emphasized that this is not an act of revoking the permanent residency permit, but rather its expiration**), and creates a new relationship of permanent residency outside of Israel.

The Supreme Court recently confirmed the above in two additional judgments: H CJ 7952/96, *Bustani*, mentioned in your report, which concerned a resident of East Jerusalem who had settled in Jordan; and H CJ 8827/96, *Sahar 'Amirah*, which concerned a resident of East Jerusalem who had married a resident of Jordan and settled there (for ten years). The same arguments mentioned on page seven of the report, concerning the policy on family unification, were raised by the petitioner and rejected.

**In light of the above, it is surprising that the report criticizes the Interior Ministry, as if a policy were involved, when its attacks are aimed, in fact, against Israeli law, Supreme Court rulings, and international law.**

We further emphasize that these rules apply equally to all permanent residents of Israel, and not only to residents of East Jerusalem. Moreover, it is necessary to reiterate that these rules have been in force for many years, and they have not been changed recently.

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, a phenomenon that had not existed prior to these agreements.

The rules explained above concerning expiration of residency are not secret, **as stated in the report**. The rules appear in the Entry into Israel Regulations (it is common knowledge that the regulations can be obtained by everyone) and have been affirmed time after time by the Supreme Court, as mentioned in the report. It is unclear, therefore, why you write, and I quote, "that the Interior Ministry refuses to state what the rules are for revoking residency status."

Because of the short time we were given to respond, we are unable to relate to each of the cases mentioned in the report. We can only emphasize that the Interior Ministry relates, and responds, to every appeal submitted by those who received notification of expiration of residency.

**We wish to reiterate and emphasize that the policy of the present Minister of Interior, like previous ministers, is that going abroad only to study, even for more than seven years, does not lead to expiration of residency.**

Sincerely,

Tova Ellinson  
Spokesperson and Head of Public Relations

\* Translated by **B'Tselem**.