



## Health: a Right, not a Favor

Hadas Ziv

*This paper was originally delivered at a conference entitled "Culture and Community in Jerusalem: Strategies to Protect and Promote Human Rights" sponsored by the Law Society and held in July 2000.*

The universal right to health is anchored in a number of international conventions, the most detailed being Article 12 in the International Covenant on Economic,

Social and Cultural Rights.<sup>1</sup> In addition, the Fourth Geneva Convention highlights the duty of an occupying power in relation to health (which includes the obligation to protect freedom of movement for both medical personnel and patients in need, to protect hospitals, and to supply medical services at the same level as to one's own citizens).<sup>2</sup>

Israel has taken an important step toward assuming the State's responsibility for health care by instituting the National Health Insurance Law. The law clearly differentiates between the obligation to pay health care taxes according to ability, and the right to health care services according to need, thus guaranteeing equality and universality in the provision of basic health care services. However, Israel also provides health care services according to rules of eligibility that are based on residency, which for the purpose of social and economic rights is investigated by the National Insurance Institute (NII). As a result, three groups are deprived of their health rights: Palestinian residents of East Jerusalem, Palestinians in the occupied territories, and foreign workers. This occurs despite the fact that all three groups are under the direct influence of the State of Israel regarding their right to health.

The need to devote a separate discussion to the subject of residents from East Jerusalem stems from the different attitude that Israel has adopted towards these residents

compared to those from the rest of the occupied territories. The health rights of East Jerusalem residents can be analyzed on two levels: first, with regard to the local law, that is, the National Health Insurance Law; and second, with regard to the international provisions of the Fourth Geneva Convention regarding the occupied territories. Traditionally, any demand for the health rights of Palestinians residents in the rest of the occupied territories would solely rely on international tools. I would like to suggest that such a dichotomy is not necessary, but first I will describe the current situation in Jerusalem.

Following the 1967 war, and in opposition to international law, Israel annexed East Jerusalem, applying Israeli law to its residents. Following a census, Israel then applied the status of "permanent residents" to the Palestinians in East Jerusalem. This definition suffers from instability-as recent years have proved. This status does not offer safety to Palestinian residents or acknowledge their inherent right to live in the city. As a consequence, their economic, social and cultural rights are negated at the authority's will (always with the interest of keeping a certain Jewish majority in the city).

While the interior ministry has recently taken upon itself to change a policy known as "quiet deportation," the NII continues to violate the right to health of Palestinian residents under the guise of "saving public money," that is, not spending it on people who are not "truly" residents. Investigations by the NII often commence when an Arab resident applies for social services to which he or she is entitled. In the course of the investigation (the nature of which is in

<sup>1</sup> "The States party to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

<sup>2</sup> Article 38(2) - Non repatriated Persons: "They shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned."

itself dubious), residents must demonstrate, to the satisfaction of the investigators, that they are indeed residents. In this manner, an investigation can lead to revocation of residency before due process. Even more disturbing is the fact that the NII withholds provision of additional social rights and services from the resident until the completion of an investigation. This policy has a detrimental effect on all East Jerusalem residents, including children and new-born infants, who may be left without health insurance for the first year of their lives and beyond; the chronically and terminally ill; and pregnant women.

Let me describe Physicians for Human Rights (PHR)-Israel's struggle for a child's right to health as this demonstrates what success can be achieved and why it is so limited. We must remember that when we speak of children's right to health, it is also based on the Convention on the Rights of the Child, ratified and instituted by the state of Israel in 1991. The policies and laws of the state should be interpreted according to these international legal norms (to which Israel has committed herself) and the guiding principle of the child's best interest.

PHR-Israel uncovered the systematic negation of the right to health beyond individual cases. Although direct contacts with high officials in the Ministry of Health led nowhere, policy reviews at the professional level clearly indicated the need for a change. In her annual report for 1997, the ombudsman for the National Health Insurance Law, Dr. Karni Rubin, stresses the threat this policy poses to the lives of the Palestinian residents of East Jerusalem. She concludes that "it is unrea-

sonable that medical treatment is not provided until the completion of the NII investigation, and particularly so in the case of children and newborn infants," adding that "medical treatment should not be terminated or denied to people who are in need of it, and especially to critically ill patients, while an NII investigation is being conducted for the purpose of determining their right to residency, since the result of termination of treatment or its denial may be irreversible."<sup>3</sup> Despite this, the recommendations of the ombudsman were not implemented by the Health Ministry, which continues to regard the lives of Palestinians in East Jerusalem and their medical needs as a political issue.

Following an appeal to the labor court-which granted individual insurance to thirteen children, but refused to pass judgment on the policy itself-Physicians for Human Rights, together with 'HaMoked' Center for the Defense of the Individual and the Association for Civil Rights in Israel, appealed to the Israeli High Court of Justice against the minister of Health and the NII. We demanded that the procedure be cancelled whereby minor residents of East Jerusalem-at least one of whose parents is a member of a National Health Fund and an identity-card-bearing resident of Israel-must undergo prolonged bureaucratic procedures in order to receive health care services. The judges have not yet given their ruling, and we are still negotiating, with some progress indicated by the NII suggestions.

The question of why we had to go to court is raised with particular urgency

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<sup>3</sup> Report of the ombudsman for the National Health Insurance Law, 1997, p. 44

when we compare this struggle to the struggle we faced in securing the rights for children of foreign workers in Israel. Following three years of lobbying for these children, the Health Ministry offered to insure them through a special arrangement, and legislation is already in the pipeline. Why not with Jerusalemites? In fact, why not special arrangements for all Palestinians? Doesn't the legacy of occupation and the great gap between the two health systems oblige Israel to do so?

Indeed in the transfer of responsibilities in the Oslo accords, social rights-and health rights in particular-were not given attention. Both authorities share an interest in not insisting on the social rights that Israel owes to the Palestinians. The Palestinian Authority seems to be preoccupied with building a state and acquiring national characteristics. Therefore, it aims to be the supplier of all services, not asking Israel for what might be seen as a "favor." At the same time, Israel's different governments have emphasized the need for separation to protect Israel's security. By posing as a victim in this way, they can avoid responsibility for the harsh results of the occupation. Both the Israeli and Palestinian leaderships prefer to see, and present, the Israeli-Palestinian conflict as a purely national one, and to neglect its class characteristics. Therefore, they present separation as the only way for a settlement, leaving no place for the demands of social and economic rights.

The issue of Jerusalem involves a clash between two kinds of discourse-that of national struggle and that of class struggle-with the demand for social rights playing a different role in each discourse. The nego-

tiations over Jerusalem represent an opportunity to re-articulate the discourse of national struggle with that of class struggle. Because of its importance to both people, Jerusalem demands creativity of this sort in seeking a settlement. In any final agreement national aspirations should be met without sacrificing equality for all residents in terms of social and economic rights. Meanwhile, as long as Israel continues to occupy East Jerusalem, it should continue to be responsible for all services, among them health services. Demanding these services is by no means admitting Israel's right over the land or the people. But even when some or all of the Arab neighborhoods are transferred to the Palestinian Authority, we believe that social and economic rights should be part of the arrangement. Since there is no chance that Israel will introduce such demands into the negotiation of its own accord, the Palestinians should do so whenever possible. They should do so on the basis of a class analysis, without feeling that in making such demands, they are in any way conceding their right to national independence. This strategy should be strongly supported by human rights NGOs.

Both the authorities and community and human rights organizations should demand respect for the following rights: continuation of Israeli health insurance; free passage to all parts of the city for work, medical treatment, and worship; a system without permits; continuation of social payments; and special arrangements for those who are born after the transfer of responsibilities is made.

The issue of Jerusalem suggests the need to introduce class analysis into a discourse

that has for political reasons remained purely national. Such analysis should inform any final agreement and shape its provisions. This will ensure that it addresses the reality of people's daily life. For example, insisting on the right to proper food and nutrition can strengthen the demand for the provision of fair trade and for an end to land confiscations. For without fair trade a future Palestinian state will not be able to free itself from its economic dependence on Israel and provide welfare services to its citizens comparable to those now enjoyed in Israel; and without access to land Palestinians will not be able to develop their own agricultural

resources as a sustainable source of food.<sup>4</sup> In this way class analysis can help ensure the implementation of social and economic rights as well as national rights. Guaranteeing the former is no less crucial than ensuring the latter. For only if the final settlement respects all three rights can it contribute towards a future of real trust and bring a just and lasting peace.

Hadas Ziv is the director of projects for the Physicians for Human Rights

<sup>4</sup> Brigit C. A. Toebes - 3rd Abraham Horwitz Lecture, "Human Rights, Health and Nutrition," April 1999.

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Revue trimestrielle publiée par l'Institut des études palestiniennes

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