

**REVEALING REALITIES BEYOND THE FORMAL LAW:  
UNTOLD STORIES OF ISRAELI SINGLE MOTHERS LIVING ON WELFARE**

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## ABSTRACT

*This research examines the phenomenon that single mothers living on welfare are cut-off from their Income Maintenance Allowance because they have a relationship with a man. I explore this phenomenon from two new perspectives: by investigating the law in action and by presenting single mothers' viewpoints. First, I reveal the legal regime that regulates the welfare allowances of single mothers in a relationship with a man by examining the actual court interpretation of the legal definition as well as the ways in which it has been implemented by the National Insurance Institute (NII). I analyze the evidence presented in the court; interviews with NII officials and NII internal investigations' documentation. Second, I unveil the ways in which single mothers living on welfare and being investigated by the NII view the legal regime, by analyzing the in-depth interviews I conducted with 13 single mothers.*

*It is clear that one major problem with the legal regime is the fact that single mothers are disentitled from their allowance due to a partner, even though they are often left without any other means of support. This problem is partly due to a serious gap between the formal legal definition of a "couple" and the ways in which the legal definition is actually implemented by the courts and by the NII. Another reason that women and children are left without other means of support resides in the fact that the law on the books itself fails to address the need for single mothers to provide for their children from previous relationships. This research suggests that within the complex nature of single mothers' relationships, constructed upon differences in power between the man and the women, the partner—who has no legal obligation to support the single mother's own children—will often refuse to do so. However, the formal law disregards this fact and ties the children's entitlement to the mother's entitlement. Another important implication of the legal regime is the fact that single mothers are deprived of their basic human rights, while their lives are being totally controlled by the NII.*

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## INTRODUCTION

The relationship between poverty and law and the role of law in the everyday lives of poor people is the subject of an extensive socio-legal literature in the United States.<sup>1</sup> However, such academic research is still in its infancy in Israel.<sup>2</sup> This research represents a contribution to recent efforts by scholars to address this “lacuna” in Israeli scholarship, by examining the role of law from the perspective of the poor. By describing the experiences of women living on a welfare allowance in their brushes with the law,<sup>3</sup> I hope to shed some light on the practices of legal domination and resistance<sup>4</sup> in the everyday lives of poor women in Israel.

Two years ago, Sharon<sup>5</sup> asked if I would represent her in a claim against the Israeli National Insurance Institute (hereinafter NII). She complained that she had been cut off from her Income Maintenance allowance<sup>6</sup> (the equivalent of the American TANF, formerly AFDC benefits) because of allegations that she lived with a male partner who was supporting her and her children. Sharon told me honestly that she did have a relationship with a man, but that he was married and the relationship was unstable. They had two children together but did not have a shared household. He came and left as he wished, sometimes leaving her and the children for long periods of time. He never supported her or their children, but rather supported his wife and other children. I could hear in Sharon voice that she had a real need, but knowing the law and the ways in which

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<sup>1</sup> See, e.g., PATRICIA EWICK & SUSAN SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERY DAY LIFE* (1998); LAW IN EVERYDAY LIFE (Austin Sarat & Thomas R. Kearns eds., 1993); Austin Sarat, *The Law is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343 (1990); JOHN GILLIOM, *OVERSEERS OF THE POOR: SURVEILLANCE, RESISTANCE, AND THE LIMITS OF PRIVACY* (2001).

<sup>2</sup> See, Chapter I (A) of this paper for a detailed description of the Israeli literature on the issue. See, e.g., John Gal & Avraham Doron, *Dealing with the Elusive Welfare-to-Work Issue: the Case of Poverty Traps in Israel*, 34(3) SOC. POL'Y & ADMINISTRATION 253 (2000); Mimi Ajzenstadt & John gal, *Appearances can be Deceptive: Gender in the Israeli Welfare state* SOC. POLITICS 292 (Fall 2001); Einat Albin, *Income Maintenance Law and its impact on poor women's right to equality in the work market* 11 AVODA, CHEVRA & MISHPAT [Lab., Soc'y & L.] 155 (2005)(Hebrew).

<sup>3</sup> PT<sup>3</sup> TPLucie E. White, *Subordination, rhetorical Survival Skills, and Sundays Shoes: Notes on the Hearing of Mrs. G.* 38 BUFF. L. REV. 1 (1990).

<sup>4</sup> Sarat, *supra*\_note 1; John Gilliom, *supra* note 1.

<sup>5</sup> PT<sup>5</sup> TPTTo protect the interests of the interviewees “Sharon” and the rest of the names in this paper are aliases.

<sup>6</sup> PT<sup>6</sup> TPIIn Hebrew: “Havtachat Hacnasa”.

it is interpreted by the NII and the courts, I had no doubt that there was no way to change the Bureau's decision; therefore, I told Sharon that I could not help her. Her story has bothered me ever since.

When I decided to research the reality of single mothers living on welfare in Israel, I immediately contacted Sharon hoping to interview her. It was only in our third telephone conversation that she realized that she was talking to the same woman who had previously refused to take her case. She demanded "How come you didn't help me then? I was desperate. Didn't you hear that I was desperate?!"<sup>7</sup>

Sharon's story is representative of a phenomenon I have encountered in my work as a poverty lawyer in Israel, in which poor women are disentitled from their Income Maintenance allowance if they have a sexual relationship with a man. In this paper I analyze this phenomenon by addressing the following questions: (1) what is the legal regime that regulates welfare allowances of single mothers who have a relationship with a man? (2) How do single mothers who live on welfare and who were investigated by the NII due to a relationship with a man perceive the legal regime, and (3) how does the legal regime impact them?

The initial objective of this research is to reveal the importance of examining the role of law from the perspective of the poor and the value of exploring the law in action and not merely the law on the books. Chapter I demonstrates the fact that the current Israeli research of poverty has overlooked both of these perspectives. Moreover, it presents the theoretical framework for this paper, which is based on feminist research and socio-legal research in the U.S. Derived from this approach is the need for an empirical analysis of the role of the law from the perspective of the poor. As a result, I use the qualitative methods described in Chapter II of this paper.

After establishing the need for a new perspective and a different methodological approach, this paper aims to present an accurate and complete picture of an Israeli single mother's reality when faced with a NII investigation due to her having a relationship with a man. Hence, in this research I plan to create a "thick description"<sup>8</sup> of single mothers' reality under such a legal regime. With this purpose in mind, Chapter III exposes the

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PT<sup>7</sup> TP Telephone interview with Sharon (May 2005).

PT<sup>8</sup> TPCLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 6 (1973).

legal regime, which regulates the lives of single mothers on welfare. I begin by exploring the formal law and the courts' formal rhetoric in its interpretation of the legal definition of a "couple." Moreover, I continue by unveiling the ways in which the legal regime has been actually implemented by the courts and the NII. After defining the legal regime, the second goal of this research is to define some of the problems the legal regime conveys and to explore its characteristics. Therefore, Chapter IV focuses primarily on revealing the perception of single mothers who live on welfare and have been investigated by the NII due to a partner; i.e., women who have already experienced some difficulties due to the extant legal regime. It explores how these single mothers perceive the legal regime, what problems they see with the legal regime, and how it influences them. Thus, this paper examines the phenomenon of single mothers who are disentitled from their *Income Maintenance Allowance* from three different angles: the formal law, the implementation of the law and the single mothers' point of view.

Finally, this paper offers some important practical implications. After revealing some of the problems which the legal regime imposes, I suggest both legislative and judicial channels for action that legal activists who aspire to social change might find valuable. In addition, this research opens up a number of questions for further research that will explore the role of the law in the everyday lives of the poor more deeply to enable the courts and policy makers to incorporate the perspective of the poor in their discourse on the welfare state.

## **CHAPTER I**

### **LITERATURE REVIEW**

#### **A. Poverty Research in Israel**

Traditionally, the majority of Israeli research on welfare is conducted by researchers from Social Work faculties and the NII's Research Department. Among these papers, a few articles address the development and the changes the Israeli welfare state

has undergone since its establishment.<sup>9</sup> Other articles address the historical developments of a specific benefit.<sup>10</sup> Among the various social benefits, the Income Maintenance Act drew many scholars' interest.<sup>11</sup> In particular, many articles address the issue of "welfare to work," that is, the ability of Income Maintenance recipients to join the workforce.<sup>12</sup> For example, Doron and Gal analyze the Income Maintenance Law to investigate whether it creates "poverty traps" for Income Maintenance's recipients.<sup>13</sup>

As apparent from the description above, traditional research on welfare is top-down research, which analyzes the progress of the welfare state and its influence on the poor in general. Moreover, it is evident that such research does not address the issue of "law in action" at all, i.e. it solely addresses the statutes themselves and does not address the ways in which the statutes are implemented by the courts or by the NII. This focus might be explained by the fact that most of the research is conducted by the NII Research Department or published in a NII periodical.

In addition, it appears that there are only a handful of *legal* articles regarding the welfare state.<sup>14</sup> These papers primarily document the legal developments and delineate

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PT<sup>9</sup> TPSee, e.g., Orly Ins-King, Yigal Ben-Shalom & Yitzchak Sabto, *Social Changes and Social Security in Israel* 67 BITACHON SOTZIALI [Soc. Security] 9 (2004) (Hebrew); Abraham Doron, *Social Welfare Policy in Israel: Developments in the 1980s and 1990s* 7(4) ISRAEL AFF. 153 (1999-2001); Abraham DORON & RALPH M. KRAMER, *THE WELFARE STATE IN ISRAEL, THE EVOLUTION OF SOCIAL SECURITY POLICY AND PRACTICE* (1991) (Hebrew).

PT<sup>10</sup> TPSee, e.g., John Gal, *The Pendulum of the Unemployment Insurance in Israel 1972-2003* 67 BITACHON SOTZIALI [Soc. Security] 109 (2004)(Hebrew); John Gal & Michael Bar, *The needed and the Needy: The Policy Legacies of Benefits for Disabled War Veterans in Israel* 29(4) J. SOC. POL'Y 577 (2000); John Gal, *Categorical Benefits in Welfare States: findings from Great Britian and Israel* 51(1) INT'L SOC. SECURITY REV. 73 (1998); LEA ACHDOT & DAVID BIGMAN *THE PERFORMANCE OF THE OLD AGE BENEFIT SCHEME IN ISRAEL UNDER RAPID INFLATION: 1979-1984* (1987), available at:

[http://www.btl.gov.il/pirsumim/mechkar\\_39.pdf](http://www.btl.gov.il/pirsumim/mechkar_39.pdf); ESTHER SHARON, *THE CHILD ALLOWANCE SYSTEM IN ISRAEL: 1959-1987* (1987), available at: [http://www.btl.gov.il/pirsumim/mechkar\\_38a.pdf](http://www.btl.gov.il/pirsumim/mechkar_38a.pdf) (Hebrew).

PT<sup>11</sup> TP See, e.g., Abraham Doron & John Gal, *Income Support Systems in a Comparative Perspective* 58 BITACHON SOTZIALI [Soc. Security] 5 (2000)(Hebrew); Michal Bar, *Bureaucracy, Politics and Income Support: The Policy Making of the Israeli Income Maintenance Act* 58 BITACHON SOTZIALI [Soc. Security] 54 (2000)(Hebrew); Brenda Morgenshtein & Meriam Shmeltzer *The Developments in the Characteristics of Income Maintenance Recipients in the Last Decade: The Potential for Work* 58 BITACHON SOTZIALI [Soc. Security] 28 (2000)(Hebrew).

PT<sup>12</sup> TP Gal & Doron, *supra* note 2; Yoseph Katan, *From Receiving Income Maintenance to Entering the Workforce: Easy and Secure Transformation or a Very Narrow Bridge* 58 BITACHON SOTZIALI [Soc. Security] 151 (2000)(Hebrew); Judith King, *Obstacles and Resources for the Integration of Income Maintenance Recipients in the Workforce* 66 BITACHON SOTZIALI [Soc. Security] 9 (2004)(Hebrew), available at: <http://www.btl.gov.il/pirsumim/btchnszali/Number66/article2.pdf>.

<sup>13</sup> Gal & Doron, *id.*

<sup>14</sup> Yitzchak Eliasuf, *The National Insurance in Israel- Allowances and Social Benefits* 4 SHNATON MISHPAT HAAVODA [Ann. Lab. L.] 7 (1994)(Hebrew); Arye Lieb Miller, *Income Maintenance Laws in Comparison to West-Germany Laws* 1 SHNATON MISHPAT HAAVODA [Ann. Lab. L.] 89 (1990)(Hebrew);

the legal doctrine. The lack of legal research might be explained by the fact that, until recently, the legal system played only a limited role in the welfare state. Accordingly, the legal discourse in the courts was essentially a factual and legal discussion regarding how to apply the statutes to the circumstances in a specific case.<sup>15</sup> However, it seems that in recent years the role of the courts in the welfare state has changed, and the welfare issues have undergone “juridification.”<sup>16</sup> The courts no longer play the limited role of applying the social consensus with regard to economic welfare issues. Rather, the courts have become a central instrument for resolving social and economical disagreements and conflicts.<sup>17</sup> The changing role of the courts has, in turn, possibly influenced the legal scholars, who have gradually begun to address the relationship between law and poverty. Ever since the late 90’s, legal research has begun to address the question of whether social and economic rights could be regarded as “constitutional rights.”<sup>18</sup> Moreover, the increasing importance of the courts with regard to social and economic rights has raised the issue of the courts’ accessibility to the poor<sup>19</sup> and the role of lawyers who represent them.<sup>20</sup>

It appears that among *legal* and *social work* scholars only three articles have addressed the relationship between the welfare state and women. For example, Ajzenstadt and Gal analyze the role of the Israeli welfare state in promoting gender equality.<sup>21</sup> Analyzing three social policies which aim to decrease gender inequality, they conclude

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Arye Lieb Miller, *Seniority in Social Security Laws* 13 EYUNEI MISHPAT 101 (1988)(Hebrew); Arye Lieb Miller, *The Notion of Guilt in the Social Security Laws* 14 MISHPATIM 460 (1985)(Hebrew).

PT<sup>15</sup> TP Guy Mundlak, *Fifty Years to the National Insurance Act: The Celebrations will be Held in the Court* 67 BITACHON SOTZIALI [Soc. Security] 83, 84-85 (2004)(Hebrew).

PT<sup>16</sup> TP*Id.*, at 96-97.

PT<sup>17</sup> TP*Id.*, at 85.

PT<sup>18</sup> TP YORAM RABIN & YUVAL SHANI, *ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ISRAEL* (2004) (Hebrew); MICHAEL ATLAN, *THE ISRAELI ACCOUNT: APPLYING THE INTERNATIONAL TREATY REGARDING ECONOMIC, SOCIAL AND CULTURAL RIGHTS* (2001)(Hebrew); Ruth Ben-Israel, *Social Security in the year 2000* 5 SHNATON MISHPAT HAAVODA [Ann. Lab. L.] 15 (1995)(Hebrew); Guy Mundlak, *Social and Economic Rights in the New Constitutional Discourse: From Social Rights to the Social Aspect of Human Rights* 7 SHNATON MISHPAT HAAVODA [Ann. Lab. L.] 65 (1999)(Hebrew).

PT<sup>19</sup> TP Yuval Elbasha, *The Accessibility of the Poor to the Israeli Legal System* 3 ALEY MISHPAT 497 (2004) (Hebrew), available at: [http://www.rg-law.ac.il/journal/aly\\_mishpat/2003b/497-530.pdf](http://www.rg-law.ac.il/journal/aly_mishpat/2003b/497-530.pdf).

<sup>20</sup> Neta Ziv, *Law and Poverty- What is on the Agenda? A Proposal for a Legal Agenda to Representatives of People that live in Poverty* 4 ALEY MISHPAT 17 (2005)(Hebrew), available at:

[http://www.rg-law.ac.il/journal/aly\\_mishpat/feb05/017-034.pdf](http://www.rg-law.ac.il/journal/aly_mishpat/feb05/017-034.pdf); Neta Ziv, *Lawyers Talking Rights and Clients Breaking Rules: Between Legal Positivism and Distributive Justice in Israeli Poverty Lawyering* 11 CLINICAL L. REV. 209 (2004).

<sup>21</sup> Ajzenstadt & gal, *supra* note 2.

that although it may seem that the Israeli welfare system promotes gender equality, in fact, it plays a very limited role.<sup>22</sup> Albin analyzes the ways in which the Income Maintenance Act in Israel influences the integration of women into the workforce.<sup>23</sup> Albin argues that the definition of “suitable work” in the Income Maintenance Act and the ways in which it is interpreted by the courts, do not take the fact that in the Israeli society women largely remain primary caretakers of the children and that women suffer from underestimation in the workforce into account. She claims that such an interpretation creates substantial obstacles for women who desire to enter the workforce and promote their career.<sup>24</sup> She argues that the Income Maintenance Act obstructs women’s rights to equal opportunity in the labor force.

Paz-Fuchs also explores the relationship between the welfare state and women by examining how the welfare “reform” that took place in 2003 affects single mothers.<sup>25</sup> Paz-Fuchs argues that this welfare “reform” is designed to increase the dependency of single mothers on two patriarchal systems: the family and the workforce.<sup>26</sup> First, it is intended to create economic incentives for the single mother to marry her children’s father, regardless of the emotional or physical costs she must pay. If this goal is not achieved, the reform aims to force the single mother to join the workforce, despite the fact that it might leave her in a worse economic situation than in her previous status as a welfare recipient. Paz-Fuchs argues that this ideology of encouraging a “normative” family unit, on the one hand, and preserving the low status of single mothers in the workforce, on the other hand, plays well to the capitalist state interests.<sup>27</sup>

It seems that in contrast to the social work research literature, legal scholars emphasize the role of the legal system. Therefore, such papers address issues such as the courts’ accessibility to the poor, the role of lawyers, and regularly assess courts’ rulings on the issues. Even so, similar to traditional social work research, recent legal scholars also do not address the ways in which the legal rules are actually enforced by the NII.

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PT<sup>22</sup> TP *Id.*, at 314.

<sup>23</sup> Albin, *supra* note 2.

PT<sup>24</sup> TP *Id.*, at 180.

PT<sup>25</sup> TP Amir Paz-Fuchs, *Welfare Reform, Between Capitalism to Patriarchy: Appropriation Act, and the cut in the Income Maintenance Allowance to Young Unemployed and Single Mothers* 10 AVODA, CHEVRA & MISHPAT [Lab., Soc’y & L.] 339 (2004).

PT<sup>26</sup> TP *Id.*, at 355.

PT<sup>27</sup> TP *Id.*, at 350-352.

Moreover, such research also analyzes the relationship between welfare and the poor from top to bottom.<sup>28</sup> Hence, these papers focus primarily on analyzing the legal rules (and their interpretation by the courts) to estimate their impact on the poor. However, none of the papers described above reveal or address the poor's view of the welfare state and the legal system in any way.

A different approach to the study of poor women's lives was taken by Michal Krumer-Nevo. In her research, Krumer-Nevo has called to incorporate the "life knowledge" of people who live in poverty, into the policy-making arena.<sup>29</sup> She argues that although "life knowledge" is different from "academic knowledge," it should also be recognized as valid information for policy design, because such knowledge reflects a different and important perspective that is unique. Such "life knowledge" is commonly ignored, and the voice of people who live in poverty is silenced, because they are usually regarded as uneducated, weak, defeated, and obtuse, hence, unable to contribute any substantial knowledge.<sup>30</sup> However, only the poor know what their needs are. Only they know ways in which the allowance fulfills their needs and in what ways it fails to do so. Only they know how the welfare regime affects their lives. Only they know how things work in the real world and how to cope with the system.<sup>31</sup> Using this approach in a case study, Krumer-Nevo has introduced a feminist interpretation for a single mother's life story. In this research, she reveals that in contrast to the common view that sees the poor as "defeated" by deficiency and hardship, the woman's life involves a continuous struggle.<sup>32</sup> As I will describe, this unique approach and perspective is consistent with the approach taken by the American socio-legal research on the role of the law in the daily lives of the poor. Nevertheless, Krumer-Nevo did not relate her research to the role of law.

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PT<sup>28</sup> TP It should be noted that a bottom-up research approach is beginning to be seen with respect to other areas of legal scholarship. For example, regarding family law see: Dafna Hacker, 'Motherhood', 'Fatherhood' and the Law: Sociological Analysis of the Context of Custody and Visiting Agreements in Divorces (2003) (unpublished Ph.D. dissertation, Tel-Aviv University) (on file with Tel-Aviv University Library)(Hebrew).

<sup>29</sup> Michal Krumer-Nevo, 'Life Knowledge' Versus 'Academic Knowledge': The Case of Income Maintenance Recipients 58 BITACHON SOTZIALI [Soc. Security] 132 (2000)(Hebrew).

PT<sup>30</sup> TP<sup>Id.</sup>

PT<sup>31</sup> TP *Id.*, at 135.

<sup>32</sup> Michal Krumer-Nevo, *From Penelope to Miriam: The Feminist paradigm and women in economic and social deprivation* 22(4) CHEVRA V'REVACHA [Soc'y and Welfare] 433 (2002)(Hebrew).

Indeed, there are a few analyzes of the impact of the Israeli welfare laws on the poor. However, none of them analyze the ways in which the laws on the books are actually mobilized in reality. In addition, none of them utilizes bottom-up type research. Thus, none has included the perspective of the welfare recipients in their analysis. Therefore, current research of poverty in Israel seems to lie on the notion that the formal law accurately reflects reality. However, this research reveals two other realities that exist beyond the formal law: the implementation of the law and the reality of single mothers daily experiencing the law. These two perspectives are derived from feminist and socio-legal research that was conducted in the U.S. as I will discuss in the following sections.

## **B. Feminist Literature**

My research is deeply embedded in feminist literature. However, it is not feminist research in its more conventional meaning. For example, it does not deal with sexuality as such, sex discrimination per se, abortion rights, rape, or sexual harassment. However, my project is feminist in the sense that it aims to reveal women's points of view on their experience with the law.<sup>33</sup> As Catherine MacKinnon notes, women often feel that "the law is not about them, has no idea who they are or what they face or how they think or feel, has nothing to say to them and can do nothing for them. When the law and their life collide, it is their life that gets the worst of it."<sup>34</sup> Therefore, feminist research aims to grasp women's experiences, women's points of view of the reality with all its messiness and complexity to reveal the everyday forms of male dominance.<sup>35</sup>

Nevertheless, this research does not claim to voice the experiences of all women, and, thus, does not stumble into the pitfall of "gender essentialism."<sup>36</sup> Rather, it aims to give voice and reveal the specific standpoint of Israeli women who are situated in poverty and suffer from a combination of both gender and class oppression.<sup>37</sup> This focus is due to

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<sup>33</sup> CATHERINE A. MACKINNON, TOWARDS A FEMINIST THEORY OF THE STATE 120 (1989).

<sup>34</sup> Catherine A. MacKinnon, *Reflections on Law in the Everyday Life of Women*, in *LAW IN EVERYDAY LIFE* *supra* note 1, at 109- 122.

<sup>35</sup> Mackinnon, *supra* note 33, at 242.

<sup>36</sup> TP Angela P. Harris, *Race and Essentialism in Feminist Legal Theory* 42 *STAN. L. REV.* 590 (1990).

<sup>37</sup> TP See, e.g., Virginia L. Olesen, *Feminisms and Qualitative research at and Into the Millennium*, in *THE LANDSCAPE OF QUALITATIVE RESEARCH: THEORIES AND ISSUES* 332, 343-347 (Norman K. Denzin & Yvonna S. Lincoln eds., 2003).

the belief that their specific circumstances and experiences generate specific knowledge that illuminates women's oppression and resistance.<sup>38</sup> Moreover, the disclosure of such knowledge has practical implications since it can provide the basis for turning the disadvantaged position of Israeli women living in poverty into a powerful intellectual and political resource.<sup>39</sup> Thus, this research study intends to join other attempts at achieving the larger feminist goal of reconstructing "the relation between life and the law on the basis of the experience of the subordinated, the disadvantaged, the dispossessed, the silenced—in other words, to create a jurisprudence of change."<sup>40</sup>

### C. Socio-Legal Literature

My approach is consistent with the socio-legal literature regarding the role of law in everyday life.<sup>41</sup> Such research aims at revealing the "legal consciousness" of ordinary people, i.e. how they think about the law, how they use legal ideas and how they respond to legal problems.<sup>42</sup> Moreover, exploring the reality from the bottom-up enables us to unshackle ourselves from the language of rights and the classifications and categories we are accustomed to. For the complex reality to fit into the defined categories of the language of rights, it is necessary to omit much of the real "messiness" of everyday life. Such limited discourse "can work to exclude marginal perspectives and undercut creative analysis as our language classifies around fixed terms and categories....we now seek to explore the 'messiness' of everyday conversations as part of a quest for new perspectives and ideas."<sup>43</sup>

One segment of this literature has focused on the role of the law in the everyday lives of the poor.<sup>44</sup> Austin Sarat has demonstrated how people on welfare perceive and

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PT<sup>38</sup> TP NANCY HARTSOCK, *THE FEMINIST STANDPOINT REVISITED AND OTHER ESSAYS* 105-132 (1998).

PT<sup>39</sup> TP Sandra Harding and Kathryn Norberg, *New Feminist Approaches to Social Science Methodologies: An Introduction* 30(4) *SIGNS* 2009 (2004).

<sup>40</sup> Mackinnon, *supra* note 33, preface at xiii- xiv.

<sup>41</sup> See, e.g., LAURA BETH NIELSEN, *LICENSE TO HARASS: LAW, HIERARCHY AND OFFENSIVE PUBLIC SPEECH* (2004); Gilliom, *supra* note 1; Ewick & Silbey, *supra* note 1; *EVERYDAY PRACTICES AND TROUBLE CASES* (Austin Sarat, et al. eds., 1998); *LAW IN EVERYDAY LIFE* *supra* note 1; Sarat, *supra* note 1; JAMES C. SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANTS RESISTANCE* (1985).

<sup>42</sup> Sarat, *supra* note 1.

<sup>43</sup> Gilliom, *supra* note 1, at 79.

<sup>44</sup> Sarat, *supra* note 1; Gilliom, *supra* note 1; White, *supra* note 3.

use the law.<sup>45</sup> Gilliom in his research on the surveillance of welfare mothers aims to reveal the perspective of the surveilled to discover whether the legal framework of “rights” grasps people’s concerns and experiences in this regard.<sup>46</sup>

Moreover, such research has emphasized the dynamics of power and domination.<sup>47</sup> Piven and Cloward analyze relief-giving as a regulating system of the political and economic behavior of the poor.<sup>48</sup> Sarat has illuminated the notion that the welfare poor regard the law as a very powerful control system, which dominates their everyday lives, piercing any notion of a private life by controlling their personal and basic choices and decisions.<sup>49</sup> Sarat describes the experience of the domination of the welfare poor as being caught inside a web of legal rules, but having no part in its creation or interpretation.<sup>50</sup> Sarat argues that the welfare poor are not passive recipients of the ideology of law, but rather have few illusions of the meaning of law and its capacity to assist them. In accordance, concomitant to the power and domination they experience, the welfare poor resist and struggle the system in their limited ways.<sup>51</sup> Gilliom also perceives the system as a form of control over human beings; as such, he seeks to reveal practices of resistance and forms of struggle.<sup>52</sup> Examining this system from the perspective of welfare mothers had shed light on the fact that such struggles over power do not take place within the formal institutions of the legal system, but rather, how these women struggle and resist using quiet practices of evasion.<sup>53</sup>

Research on the poor and their relationship to the law has included a large portion of research on women in general and women living on welfare in particular.<sup>54</sup> Feminist studies on the welfare system have argued that this system rests on a gender-biased perception of the family roles, and functions in ways that reinforce women dependence

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<sup>45</sup> Sarat, *id.*

<sup>46</sup> Gilliom *supra* note 1, at 4.

<sup>47</sup> Gilliom, *id.*, at 2-3.

<sup>48</sup> FRANCES FOX PIVEN & RICHARD A CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* preface xv (Second Edition, 1993)

<sup>49</sup> Sarat, *supra* note 1, at 344.

<sup>50</sup> Sarat, *id.*, at 345.

<sup>51</sup> Sarat, *id.*, at 346-347.

<sup>52</sup> Gilliom, *supra* note 1, at 3.

<sup>53</sup> Gilliom, *id.*, at 6.

<sup>54</sup> TPSee, e.g., Gilliom, *supra* note 1; Frank Munger, *Dependency by Law: Welfare and Identity in the Lives of Poor Women in LIVES IN THE LAW* 83 (Austin Sarat et al eds., 2002).

on men.<sup>55</sup> For example, Abramovitz explores the ways in which the welfare programs in American history have consistently favored the normative family model, and penalized women that did not conform to the traditional family ethic.<sup>56</sup> This focus represents an ethic that perceives women's primary role as the caretakers of the family and home.<sup>57</sup> A specific issue that has received scholars' attention<sup>58</sup> was the Supreme Court ruling of *King v. Smith*,<sup>59</sup> which struck down the "man in the house rule" that was used in the State of Alabama. The Warren court held there that denying AFDC payments to children of a mother who "cohabits" with a man is invalid because it was based on the state's illegitimate interest in discouraging illicit sexual behavior and because it disentitled an allowance for the children although the alleged "substitute father" was not legally responsible for supporting them.<sup>60</sup> Following this landmark ruling, scholars discussed the origins of the statute. One article discusses the administrative reasons for the presumption that a man's attributed income to the single mother household is actually available for her use.<sup>61</sup> Other scholars have emphasized the moral judgment basis of these rules, in particular, against black single mothers.<sup>62</sup>

As apparent, the issue I analyze in this research has similarities to the matter discussed in the *King* case described above. Although this issue has received vast attention in the US, in Israel there is no public, legal or academic discussion of the issue. Nevertheless, based on my experience as a poverty lawyer it seems that the specified legal regime has harsh consequences for single mothers' lives. I believe that this lack of discussion is due to the fact that there is a lack of knowledge regarding the ways in which the regime is actually carried out; thus, apart from the law on the books—which at least

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<sup>55</sup> See, e.g., LINDA GORDON, *WOMEN, THE STATE, AND WELFARE* (1990); MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* (1988); Sylvia A. Law, *Women, Work, Welfare, and the Preservation of Patriarchy* 131 U. PA. L. REV. 1249 (1983); ELIZABETH WILSON, *WOMEN AND THE WELFARE STATE* (1977).

PT<sup>56</sup> TPAbramovitz, *id.*, at 3.

PT<sup>57</sup> TP *Id.*, at 9.

<sup>58</sup> See, e.g., John Berrett, *The New Role of the Courts in Developing Public Welfare law* 1 DUKE L. J. 1 (1970); Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship* 105 YALE L. J. 1563 (1996)(reviewing LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890-1935* (1995)).

<sup>59</sup> *King v. Smith* 392 U.S. 309 (1968).

PT<sup>60</sup> TP *Id.*

PT<sup>61</sup> TPNote, *AFDC Income Attribution: The-Man-In-The-House and welfare Grant Reductions* 83 HARV. L. REV. 1370 (1970).

<sup>62</sup> Roberts, *supra* note 58, at 1563.

on the surface does not reveal any inherent problem in itself—there is no academic research of the ways in which the legal regime is actually implemented. Moreover, I believe that this issue is impalpable in the public discourse, because the voice of Israeli women living in poverty is continually silenced. As a result, such problems are not recognized because women living in poverty have never had the opportunity to voice their problems and difficulties with regard to the welfare laws. Unfortunately, these voices were not acknowledged even in the academic world of poverty research. As described above, none of the Israeli scholars have included the perspective of the welfare recipients in their analysis of the welfare state and its influence on the poor. In this research I attempt to fill this void. By describing the experiences of women living on welfare who were investigated by the NII due to a partner and by revealing the ways in which the legal regime is actually enforced, I introduce a fresh perspective which illuminates some of the problems that the legal regime conveys to the lives of poor single mothers in Israel.

## **CHAPTER II METHODOLOGY**

As discussed above, these research goals require a distinctive methodological approach. First, it requires an empirical study of the role of law; second, it entails bottom-up research. Within this methodological framework, there are many different tools that can be used; each tool has its strengths and weaknesses. In the subsequent paragraphs, I discuss the particular methods I have chosen to use and delineate their limitations.

This paper is designed to be an exploratory research study, in which I will reveal some preliminary notions about the impact of the specified legal regime on Israeli single mothers living on welfare. The primary objective of the research is to describe the legal regime and to obtain some first indications of the legal regime's impact on single mothers' lives. The research includes the following sources of information:

To define the **legal regime** that regulates Israeli single mothers' lives, I explore the formal law and the ways in which the formal law is implemented. To define the **formal law**, I analyze three sources of information: (1) the language of the *Income*

*Maintenance Act*, describing the historic changes in the law; (2) the interpretation of the category of a “publicly known partner” in family law cases, which constitutes the legal context of the definition of a “couple” as enacted in the *Income Maintenance Act*; (3) court rhetoric regarding the legal definition of a “couple” in cases dealing with the *Income Maintenance Law*. However, the formal law alone does not encompass the full meaning of the legal regime. Therefore, there was also need for a meticulous analysis, exposing the ways in which the legal regime is actually **implemented** by the courts and by the NII. To assess the ways in which the courts implement the definition I examine the evidence of which the courts base its ruling upon. Although I explore both the appellate and lower level courts, this method of examining the evidential basis of the ruling emphasizes the importance of exploring the decisions of lower instances as part of the unearthing journey of the law in action. Not only the vast majority of cases and the vast majority of women reach only the lower level courts, but also most of the factual examination is conducted in the first instance. As I describe in Chapter III (B) the courts’ decisions regarding what evidence is sufficient to prove that the plaintiff and his partner constitute a “couple” is, in fact, based on two different interpretations of the same legal definition. Therefore, examining the decisions of the lower courts can expose the fact that the law in action can be quite different than the law on the books. In addition, to reveal the ways in which the NII implements the definition of a “couple” I rely on three sources of information: (2) interviews I conducted with four senior officials in the NII, as described in **Appendix A**; (3) an analysis of evidence presented by the NII in court cases; (4) a review of NII internal documentation of four investigations.

In order to reveal **single mother’s perceptions of the legal regime**, I relied on 13 transcripts of in-depth interviews I conducted with single mothers. My analysis was conducted in accordance with the grounded theory method.<sup>63</sup> Thus, first, I identified recurrent themes throughout the interviews. Second, I defined a few categorical units for

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PT<sup>63</sup> TP See, e.g., Norman K. Denzin, *The Art and Politics of Interpretation*, in COLLECTING AND INTERPRETING QUALITATIVE MATERIALS (Norman K. Denzin & Yvonna S. Lincoln eds., 1998); NORMAN K. DENZIN & YVONNA S. LINCOLN, *THE LANDSCAPE OF QUALITATIVE RESEARCH: THEORIES AND ISSUES* (1998).

analysis and then coded the interviews based on these categories. Finally, I interpreted these categories by combining the interviewees' perspective with my own.<sup>64</sup>

The starting point of this research was to approach single mothers who live on welfare who had been investigated by the NII due to a relationship with a man, i.e., women who had already experienced some difficulties with the legal regime under discussion. This research focuses on these particular interviewees, because the main goal of this research is to define some of the problems the legal regime conveys in single mothers' lives and to explore its characteristics. I found interviews to be an appropriate method to gain a deeper understanding of the complex situation of being a single mother in a relationship with a man within the context of the Israeli welfare system.<sup>65</sup> In conducting the interviews, I prepared a list of questions that I planned to explore during the interview, as specified in **Appendix B** (Interview Guide). But it is important to point out that the interviews were more of a conversation, giving us leeway to take the conversation down unexpected paths.<sup>66</sup> However, in general, the interview guide served as a useful tool for structuring the conversation and framing the boundaries of the interview. All thirteen interviews were taped.

As explained above, I chose the interviewees for the exploratory research non-randomly, selecting poor single mothers, all of whom had been investigated by the NII for having some kind of a personal relationship with a man. All but one lived on welfare. The single mothers selected for this research lived in different parts of Israel (South, Center and Jerusalem). They live in urban as well as rural and suburban regions. The interviewees differed in their ethnic background. Three of the interviewees had immigrated to Israel in the previous decade from the Soviet Union; seven interviewees regarded themselves as "Mizrachi" women (origins in North Africa).<sup>67</sup> I had known most

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PT<sup>64</sup> TP Dan Gaveton, *Grounded Theory: The Meaning of Data Interpretation and Theory Construction in Qualitative Research*, in TENDENCIES AND TRADITIONS IN QUALITATIVE RESEARCH 195 (Naama Zabbar-Ben Yehushua ed., 2001)(Hebrew).

PT<sup>65</sup> TPSharan B. Merriam, *Introduction to Qualitative Research*, in QUALITATIVE RESEARCH IN PRACTICE 5 (Sharan Merriam ed., 2002); Alan Peshkin *The Goodness of Qualitative Research* 22(2) EDUC. RESEARCHER 24 (1993).

<sup>66</sup> MICHAEL QUINN PATTON, *QUALITATIVE EVALUATION AND RESEARCH METHODS* 293 (1990).

PT<sup>67</sup> TP Three interviewees did not identify themselves as either Mizrach or Ashkenazi.

of the interviewees through my work as a poverty lawyer in a feminist NGO in Israel.<sup>68</sup> Six interviewees had been direct clients of mine over the past three years; five interviewees were referred to me by an associate lawyer (thus, they were familiar with the NGO I was working for), and two others were referred to me by the interviewees themselves using the “snowball” method.

One of the limitations of my study is my unique position in the field of research. I commenced this research after having engaged in advocacy work for women living in poverty for three years. Therefore, I did not begin the research study oblivious to the reality of single mothers and the impact of the legal regime on their lives. Nevertheless, from the very start, I was fully aware of this limitation. Therefore, I was constantly conscious of the need to “distance” myself from the interviewees to ensure that I was not imposing my own preconceived viewpoint of the phenomenon on the interviewees, but rather listening to the interviewees’ perspective.<sup>69</sup> Consequently, I was especially sensitive to the ways in which I framed my questions during the interviews and to the necessity of entering each interview with an open mind. This technique enabled me to hear information I was not expecting or was unwilling to hear in my previous role as an advocate.

Moreover, due to my employment in the field research, most of my interviewees, both single mothers and NII officials, were acquainted with my previous work and with my general standing. As such, I was concerned with the fact that the NII officials I interviewed would proscribe themselves from voicing their real views, if they suspected that I might criticize them for such opinions, or interpret them incorrectly due to my perceived bias. I have tried to mitigate this difficulty by opening the interview explaining my departure for extended academic research and emphasizing my desire to examine the phenomenon discussed from all angles.

This difficulty was also surfaced with regard to the single mothers I have interviewed, since most of them were direct former clients of mine. I was apprehensive that my previous relationship with them as a lawyer might affect the content of the

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PT<sup>68</sup> TP“Itach- Women Lawyers for Social Justice:” a non-profit organization that aims to create social change by using the law to address the needs and rights of women from the social, economic and geographic periphery of Israel.

PT<sup>69</sup> TPPatton, *supra* note 66, at 278.

information I would receive. For example, I was concerned that because they saw me as a “player” in the system, they might fear losing my esteem, trust, support, and be reluctant to disclose secrets or previous lies they had told me in the past in order to get my help. Therefore, I tried to reach out to interviewees outside my work interaction. On the other hand, I should note here that it was very difficult to interview single mothers living on welfare in a relationship with a man without them knowing me or having heard about the NGO I worked for. There is an enormous lack of trust that is hard to overcome in dealing with single mothers who live on welfare, especially when they have already had negative experiences with the welfare system. However, it may well be that there was some advantage to having had previous acquaintance with my interviewees from my work with them. This enabled the interview to reach a certain level of depth and sincerity that I could not have achieved with interviewees I was not acquainted with in some way beforehand. Therefore, the vast majority of the interviews were conducted in the interviewees’ private homes, allowing me to form a more comprehensive picture of their lives. Moreover, to mitigate the difficulties stated above, I emphasized the fact that I was leaving my position as a lawyer and would be leaving Israel for a long period of time; therefore, I would not be representing them in the future.

Furthermore, my unique position in the field of study presented me with some ethical dilemmas that I wish to acknowledge. First, I had to address the ethical problem of using information which I have received through my position as a lawyer during a client-lawyer relationship. To resolve this problem, I have not included any information I attained through my role as a lawyer, unless I received the specific authorization of my clients to use the information for this research. In addition, I was confronted with the need to protect the privacy of my interviewees, especially the single mothers who are living on welfare and might be significantly harmed if their identities were disclosed. For this reason, I did not include any information in this research that might lead to their identification; in some cases, I slightly modified some minor personal information.

Another limitation of my study was the fact that under the time and resource constraints of the exploratory research, it was possible to interview only 13 single mothers in-depth. In addition, in general, qualitative research which thrives on a deep understanding of an issue is necessarily more limited in its scope; therefore, it is more

difficult to make generalizations. Hence, the ability to generalize or to extract policy recommendations regarding the legal regime's impact on Israeli single mothers from this research is limited.

Nevertheless, I believe that this research will provide a few important observations regarding the legal regime and its impact on the lives of single mothers living on welfare. But most importantly, this research reveals two new perspectives on the meaning of the legal regime: the perspective of the law in action and the perspective of the poor. Moreover, it provides some first indications of how illuminating such new perspectives can be in examining the role and impact of the law on a specific group of individuals. These perspectives have largely been unrecognized in the legal discourse of the courts and policy makers in Israel. Therefore, despite all of its limitations, this research provides a clear notion that it is crucial to examine the law in action as well as the perspective of the poor with respect to welfare programs to understand the true meaning of the law in the everyday lives of the poor.

### **CHAPTER III DEFINING THE LEGAL REGIME**

#### **A. The Formal Law**

##### **1. The Income Maintenance Act**

The *Income Maintenance Allowance Act* was enacted in 1980 to integrate different welfare programs that were dispersed among the different local municipalities, the Ministry of Work and Welfare and the NII.<sup>70</sup> Today, the Israeli *Income Maintenance Act* serves as a basic and major part of Israel's social security legislation. The statute's purpose is:

To ensure that every man<sup>71</sup> and family in Israel, who cannot provide for themselves the minimum income necessary for subsistence, will have the necessary means to fulfill their essential needs for continued existence.<sup>72</sup>

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<sup>70</sup> Draft Bill Income Maintenance Act, 1979 Hatzat'ot Hok [H.H.], 1417.

PT<sup>71</sup> TP The masculine and feminine objects are as denoted in Hebrew.

<sup>72</sup> *Supra* note 70.

In order to receive the allowance, certain criteria must be satisfied. To receive an allowance, one must qualify both for a means test and an employment test. If the plaintiff's<sup>73</sup> total income, including income from work, NII allowances, child support and assets, does not amount to a fixed figure, the plaintiff qualifies for the means test and must take the employment test. The employment test requires that the plaintiff accept any job offered to her by the employment agency that lies within her physical abilities (some exemptions apply, such as in case of pregnancy or in the case of single parents of children younger than two years of age). After passing both the means test and the employment test, there are still more disqualifying parameters to consider: if the plaintiff owns or uses a car; if she studies at an academic institution; if a corporation is responsible for all of her needs (such as a Kibbutz); if she lives in an institution that is responsible for all of her needs (for example, jail), she will be disqualified. Once eligible for the allowance, the rate must be determined. The allowance rates<sup>74</sup> range from 1373 NIS [about \$305] to 2677 NIS [about \$595] per month as follows: singles \$305, families with two adults \$420, two adults with one child \$457 and two adults with two or more children \$510. Moreover, the rate differs for two-parent households and single parents. Thus, a single parent with one child is eligible for \$510, whereas a single parent with two or more children will receive the amount of \$595.<sup>75</sup>

The eligibility tests are applied to the **household unit as a whole**, rather than to each person individually. For example, if the plaintiff has a spouse or a domestic partner, both need to qualify for assistance before any member of the household can receive the Income Maintenance allowance. Therefore, a key issue in the eligibility for an allowance is whether the plaintiff's claim is on behalf of a "couple," or whether the plaintiff is a single parent.

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<sup>73</sup> I am using the word "plaintiff," although its meaning here is not necessarily with regard to a dispute, but rather a formal application for an allowance, because this is the most accurate translation of the wording the Income Maintenance Act uses.

<sup>74</sup> TP These rates are only applicable to recipients under the age of 55.

<sup>75</sup> For some reference between the allowance rates to the standard of living in Israel, it should be noted that the average income in Israel for August 2005 was 7,277 NIS [about \$1620]; the minimum wage in August 2005 was 3335 NIS [about \$740].

The *Income Maintenance Act* enacted in 1980 did not fully address this issue and merely defined “single” as a person who is not married. In 1987, the *Income Maintenance Act* was amended and incorporated a definition of a “couple” as follows:

‘Couple’ / ‘partners’—includes a man and a woman who live a family life and share a household, but who are not married, if they meet one of the following conditions:

1. The woman is a mother of a child, whose father is the partner
2. One of them is getting paid, or has been paid an additional dependant allowance, according to the NII Act, for the other.

‘Single’—a person who does not have a partner.<sup>76</sup>

The amendment was explained in the commentary to the draft bill stating that:

A man and a woman who are living together, and are not married, do not constitute as a couple in regards to this act [the *Income Maintenance Act*]. In the case of Income Maintenance it seems that usually such circumstances should not be recognized as a couple, because it might harm the rights of the ‘publicly known partner.’ However, there are circumstances in which this legal arrangement is problematic, for example, in cases in which the couple have joint children. It is unreasonable not to condition the entitlement of the woman in the entitlement of the man of whom she is living with, the father of her child. Because in such a case the woman receives Income Maintenance Allowance regardless of whether the man she is living with is wealthy and actually supports the woman and his child.<sup>77</sup>

Moreover, during the discussion in the parliament [the Knesset], Knesset members emphasized that the amendment is guided by the principle of equality between married and unmarried couples, both in rights and in obligations.<sup>78</sup>

In 1992, with the enactment of the *Single Parent Family Act*, the Income Maintenance Act was amended, and a definition of a “single parent” was added:

**‘Single Parent’**- as defined in Section 1 of the Single Parents Family Act- 1992.<sup>79</sup>

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PT<sup>76</sup> TPIncome Maintenance Act (Amendment no. 5), 1987, 1219 Sefer HaHukim [S.H.] 136.

PT<sup>77</sup> TPDraft Bill amending the Income Maintenance Act (no. 2), 1985, 1731 H.H.

PT<sup>78</sup> TP Divrei Knesset [D.K.], (1985) 2554.

PT<sup>79</sup> TPIncome Maintenance Act (amendment no. 7), sec. 1, 1992, 1390 S.H. 148.

The Single Parents Family Act-1992, defines a **single parent** as follows:<sup>80</sup>

1. Resident of the Israeli state, who has a child in his custody, and who has one of the following:
  - (1) He is not married, and there is no one who is ‘publicly known’ as his partner
  - (2) He is married and has one of the following, and there is no one ‘publicly known’ to be his partner:
    - a. He lives separately from his spouse for a period of at least two years, and has acted by law to free himself from the marriage.
    - b. She is ‘Aguna,’<sup>81</sup> as defined in Section 1 to the National Insurance Institute Act, 1995.
    - c. She lives separately from her partner, and was living for at least 90 days out of 12 months in a shelter for battered women...
    - d. He is a new immigrant, who has been in Israel for more than a year, and less than two years, and his partner did not immigrate to Israel and does not live in Israel, and he does not have another partner.

In 2002, the definition of a “couple” was once again changed through the *Budget Arrangements Act*.<sup>82</sup> Accordingly, today, the *Income Maintenance Law* definition of a “couple” is as follows:

**‘Couple’**- Includes a man and a woman who are ‘publicly known’<sup>83</sup> as a couple, and who live together.<sup>84</sup>

In the commentary to the *Budget Arrangements Proposal*, the change in the definition was not explained and merely stated, “To clarify that a couple includes partners

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PT<sup>80</sup> TP The masculine and feminine objects are as denoted in Hebrew.

PT<sup>81</sup> TP “Aguna” is a status in the Jewish religion of a woman whose husband did not give his consent to divorce her.

PT<sup>82</sup> TP Budget Appropriations Act to the Fiscal Year of 2003, sec. 17, 2002, 1882 S.H., 165.

<sup>83</sup> The concept of a “publicly known partner” is parallel to the concept of cohabitation, which is regularly addressed in the literature. However, I have decided not to use the word cohabitation, and instead to literally translate the Hebrew concept “yedua betzibur” into English. I believe that such a translation helps to better understand the ways in which the concept has been interpreted.

PT<sup>84</sup> TP Income Maintenance Act, sec. 1, 2003, 1882 S.H., 165.

who are ‘publicly known’ as a couple and who live together.”<sup>85</sup> Although it was not overtly stated, actually, the new definition broadened the scope of individuals who were recognized as couples to include people who do not have a joint child. However, the change was perceived as being aligned with the courts’ interpretation of the definition of a “couple” regarding other statutes, as I will describe. Accordingly, it seems that the change did not substantially alter the definition, but only broadened it to include couples who do not have joint children. Therefore, the amendment did not draw any special legal attention or debate. However, the number of cases litigated regarding the definition of a “couple,” might suggest that the 2003 amendment created a substantial change. Subsequently, in the Regional Labor Courts, in contrast to a minimal number of cases regarding this issue in 2001 and 2002 (6 and 8, respectively), in 2003 and 2004, I found a sharp increase in the cases regarding the definition of a couple (24 and 34, respectively). One explanation of this increase in the number of cases could be that it is due to the number of cases of couples without joint children, which are now included under the new definition; this undoubtedly explains the increase to some extent. However, another explanation could be that the 2003 amendment had modified the formal definition of a “couple;” thus, that the concept of a “publicly known partner” does not necessarily mean a “family life” and a “shared household.” Therefore, the elimination of these concepts from the formal definition might be interpreted in such a way individuals can constitute a “couple,” although they do not have a “shared household”, but instead simply have a somewhat stable relationship. It is clear that such an interpretation substantially broadens the scope of cases and, therefore, might also explain the increase in litigation.

In the following section, I will examine whether this change in wording should be considered a change in the formal meaning by exploring the broader context of the legal definition of a “publicly known partner” as it derived from the Israeli family law context.

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<sup>85</sup> Draft bill of the Budget Appropriations Act to the Fiscal Year of 2003, sec. 19, 2002, 4 Hazta’ot Hok Government (H.H.G.), 18.

## 2. Courts' interpretation of a "Publicly Known Partner" in the Israeli Family Law

As described in Section (A)(1) above, the *Income Maintenance Act* only addressed the issue of couples who are not formally married in 1987. It appears that this amendment was another development in a broader inclination in the Israeli legal system to address the rights and obligations of a man and a woman who live together as a couple but are not formally married. Since 1949, the Israeli legislation has incorporated the definition of a "publicly known partner" in a variety of legislative acts, which address a range of different issues: for example, the *People with Disabilities Act* (1949), *Families of Slain Soldiers* (1950), the *National Insurance Institute Act* (1953), the *Names Act* (1956), and the *Inheritance Act* (1965).<sup>86</sup> Nevertheless the definition for a "publicly known partner" was inconsistent and varied from statute to statute. In some statutes the definition was "a couple that is publicly known as husband and wife." In other statutes the definition was "a man and a woman who live a family life and share a household."<sup>87</sup> Some cases did not explicitly address the words "publicly known partner," but rather emphasized the fact that the definition of a couple refers also to a man and a woman who meet the definition above but who are not formally married. Moreover, it was explicitly stated that the interpretation of the term should depend on the purpose of the specific statute in which the definition occurs.<sup>88</sup>

However, the basic elements of the legal definition of a "couple" in the *Income Maintenance Act*—"family life" and a "shared household"—were derived from the interpretation of the definition in the context of family law which preceded the change of definition in the *Income Maintenance Act* in 1987. Therefore, to fully understand the interpretation of a "publicly known partner" in the *Income Maintenance Act*, one should understand the broader context of this definition in the Israeli family law. For that reason, in subsequent paragraphs I will briefly describe the ways in which the courts have interpreted a "publicly known partner" in the family law context. This context will give us another indication as to whether the concept of a "publicly known partner" is

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PT<sup>86</sup> TP Daniel Friedman, *The Publicly Known Wife in the Israeli Legislation* 3 IYUNE MISHPAT [Tel-Aviv U. L. J.] 459, 459(1973)(Hebrew). Also see, Shachar Lifshitz, *Married against Their Will? A Liberal Analysis of the 'Publicly Known'* 25 IYUNE MISHPAT [Tel Aviv U. L. J.] 741, 744 (2001)(Hebrew).

PT<sup>87</sup> TP Friedman, *id.*, at 460.

PT<sup>88</sup> TP Appeal National Insurance, 04-136/89 Elabid Aziza v. NII (Hebrew).

equivalent to the concepts of a “family life” and a “shared household” or whether it might carry other interpretations.

In the family law context the general interpretation of the concept of a “publicly known partner,” was based on the existence of two elements: (1) marital relations as a husband and a wife, (2) a shared household.<sup>89</sup> For example, in a case in which the court had recognized a “publicly known partner” the court stated that “the man and the woman lived in a **shared household**, with full partnership, for 28 years, having a loving relationship between them, and they were happy with one another [emphasize added].”<sup>90</sup> In another case, the court recognized a “publicly known partner” stating that the man and the woman lived peacefully together for 40 years, and the woman’s children believed their mother’s partner to be their father.<sup>91</sup> In another case, the court recognized the plaintiff as a “publicly known partner,” stating that the man and woman lived **as if they were a husband and wife** for two and a half years, **sharing a household** and did not get married due to a religious ban.<sup>92</sup> In a more recent case regarding a tort provision, the court recognized the right of the plaintiff to receive tort compensation as the “publicly known partner” of the deceased, stating that the couple lived **as if they were a married couple** for six years, **sharing a household** and having a joint child.<sup>93</sup>

In summary, the context of the legal definition of a “publicly known partner” in family law strongly supports the argument that the 2003 amendment of the *Income Maintenance Act* did not alter its *formal* meaning; hence, the concept of a “publicly known partner” is the same as the previous concepts of “family life” and a “shared household.” In the following section, I further support my argument that the formal definition of a “couple” did not change in the 2003 amendment by exploring the courts’ rhetoric regarding the definition of a “publicly known partner” in the context of the *Income Maintenance Act*.

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PT<sup>89</sup> TP H CJ 673/69 Meshulam v. The Supreme Rabbinic Court (Hebrew). Also see, Menashe Shawa, *The Publicly Known Wife- The Definition, The Status and The Rights* 3 IYUNE MISHPAT [Tel Aviv U. L. J.] 484, 495 (1973) (Hebrew).

PT<sup>90</sup> TP Civil Appeal 749/82 Moston Moshe v. Viderman Lenny (Hebrew).

PT<sup>91</sup> TP Civil Appeal 52/80 Shachar Yesayhu v. Friedman Mendel (Hebrew).

PT<sup>92</sup> TP Civil Appeal 805/82 Verasano Zimbol v. Cohen Itzchak (Hebrew).

PT<sup>93</sup> TP Civil Appeal 2000/97 Lindoren v. Karnit—Foundation for the Compensation of Accident Wounded (Hebrew).

### 3. Court's Rhetoric Regarding the Definition of a "Couple" in Income Maintenance Cases<sup>94</sup>

In the subsequent paragraphs I examine the choice of words the courts use with regard to the definition of a "couple" and whether it addresses the concept of a "shared household" in its rulings. I examine both the rulings of the National Labor Court, which is the appellate court and the rulings of the Regional Labor Courts which include the majority of cases as they are the first instance court. Prior to the 2003 amendment, the elements of a "family life" and of a "shared household" were explicitly included in the definition; therefore, the rulings that discuss the definition of a "couple," obviously address these concepts in all of their rulings. As a result, in this section I examine only the courts' rhetoric in rulings after 2003.

There are only two rulings in the appellate level of the National Labor Court after the 2003 amendment.<sup>95</sup> However, the case of *Amos Anat v. NII*,<sup>96</sup> solely states that it upholds the decision of the Regional Labor Court that the relationship between the appellant and the father of the appellant's youngest child does not constitute a "couple," without any elaboration. In a ruling rendered in February, 2006, *Baranes Ilanit v. NII*,<sup>97</sup> the court briefly discusses the issue of whether the appellant and the "claimed" partner actually constitute a "couple." Although the court is addressing the definition after its amendment in 2003—with the term "publicly known partner" instead of the words "family life and a shared household"—the court states that two elements constitute a "publicly known partner": (1) marital relations as husband and wife and, (2) a shared household. Hence, according to the National Labor Court the 2003 amendment did not alter the formal definition of a "couple" by replacing the two elements with the term "publicly known partner," but rather, it was solely a choice of different wording that carried the same substantive meaning.

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PT<sup>94</sup> TP This section is based on the analysis of the rulings published in a fairly large and reliable Israeli legal database: [www.nevo.co.il](http://www.nevo.co.il), nevertheless, this data base does not include all the rulings issued regarding this issue. Unfortunately, with the resources used in this research I cannot determine the total number of rulings.

PT<sup>95</sup> TP Appeal National Insurance 94/03 *Amos Anat v. NII*; Appeal National Insurance 280/05 *Baranes Ilanit v. NII*.

PT<sup>96</sup> TP *Amos Anat v. NII*, *id.*

PT<sup>97</sup> TP *Baranes Ilanit v. NII*, *supra* note 95.

Similar to the National Labor Court, the concept of a shared household also seems to be central in the rulings of the Regional Labor Courts. Among the 40 rulings regarding the definition of a “couple,” in the *Income Maintenance Act*, which have been rendered since 2004 until today, only three rulings failed to address the concept of a shared household with regard to the proper interpretation of the definition of a “couple.” Hence, although all the cases were rendered after the 2003 amendment, in the vast majority of cases the courts’ rhetoric and the use of the concept of a “shared household” has remained the same.

In conclusion, it seems that the history of the Income Maintenance Act, the interpretation of the definition of a “publicly known partner” in the family law context, and the court’s rhetoric in this regard all support my argument that the *formal* definition of a “couple” in the Income Maintenance Act requires that the couple fulfill the two elements - a “family life” and a “shared household;” moreover, I show that this formal definition did not change as a result of the 2003 amendment. However, in Section B I will show that the ways in which the formal definition is actually implemented is quite different.

## **B. Implementing the Definition of a “Couple”**

To explore the ways in which the legal definition of a “couple” is implemented, I examine the courts’ actual interpretation to the legal definition as well as the NII implementation policy.

### **1. Court’s Interpretation of the Legal Definition of a “Couple” in the *Income Maintenance Act***

In this section I analyze the ways in which the courts determine whether the plaintiff and the alleged partner constitute a “couple” under the *Income Maintenance Act*. I study the general guidelines that the courts have developed and the actual evidence they based their rulings upon. Thus, I investigate whether the evidence on which the ruling is based can be considered to be sufficient evidence of a “shared household,” as required by the formal law. For the purpose of this research, I am interested in the court’s interpretation under the current legal regime, i.e., subsequent to the 2003 amendment.

Therefore, with regard to the Regional Labor Courts I have decided to focus only on 40 rulings<sup>98</sup> rendered from 2004 until today. However, many of the Regional rulings rely on precedents given by the National Labor Courts in its rulings on appeals. Therefore, with regard to the National Labor Courts I examined eight of the most important precedents<sup>99</sup> regarding the definition of “couple” between 1989 and 2005.

**a. National Labor Courts Interpretation**

Among the eight rulings of the National Labor Court,<sup>100</sup> six were submitted by women; two were submitted by men. Among these rulings, 5 rulings upheld the NII decision to disentitle an allowance due to the existence of a “publicly known partner,” and only 3 rulings overruled the NII decision.<sup>101</sup> Among these appeals, I have identified two typical cases:<sup>102</sup> (1) a monogamous relationship that was not formally recognized through marriage, (2) polygamous families in the Bedouin sector. The case distribution was as follows:

Table #1

	Polygenic family	Monogamous family
Number of cases	2	6
Ruling upheld NII	2	3
Ruling overruled NII	--	3

As discussed in Section A, the courts clearly use the formal definition as if it requires a “family life” and a “shared household.” In this section I analyze the actual

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PT<sup>98</sup> TP Unfortunately, I could not select the rulings randomly, but rather I am addressing all the rulings that are available in a well-known Israeli legal database [www.nevo.co.il](http://www.nevo.co.il).

PT<sup>99</sup> TP I cannot guarantee that these include all the National Labor Court rulings on this issue. Again, I am assessing all the rulings that are available in a well-known Israeli legal database [www.nevo.co.il](http://www.nevo.co.il). However, it seems reliable to claim that these eight rulings are the most important precedents.

PT<sup>100</sup> TP Elabid Aziza v. NII, *supra* note 88; Appeal National Insurance 04-7/98 Chaim Amit v. NII (Hebrew); Appeal National Insurance 04-450/97 NII v. Hasan Muhamad (Hebrew); Appeal National Insurance 378/99 Slvodkin Raisa v. NII (Hebrew); Appeal National Insurance 1206/00 Abu Abed Hadera v. NII (Hebrew); Appeal National Insurance 1381/01 Olchovok Violeta v. NII (Hebrew); Amos Anat v. NII, *supra* note 95; Baranes Ilanit v. NII, *supra* note 95.

PT<sup>101</sup> TP In one of the cases there was no ruling; therefore, the plaintiff requested dismissal of the case.

PT<sup>102</sup> TP Only one case did not fit this typology. That case concerned a formally married couple with a property agreement.

circumstances and the guidelines the National Labor Courts developed to decide whether the circumstances of the case constitute a “family life” and a “shared household.”

Among the eight appeals, only four rulings<sup>103</sup> actually discuss the proper interpretation of the definition of a “couple,” and what should constitute a “shared household.” In a 1989 case, *Elabid Aziza v. NII*,<sup>104</sup> the court addressed the definition of a “couple” with regard to polygamous families in the Bedouin<sup>105</sup> sector. It should be noted that polygamous marriage constitutes a criminal offense in Israel. Therefore, usually the man formally marries one woman and lives with his other wives without a formal marriage ceremony. The man might also formally divorce his first wife in order to marry the second wife. In spite of the special circumstances of the polygenic family, the court emphasized that the same analysis also applies to other populations. In the ruling, the court mentions a list of indications for determining whether a man and a woman share a household:

Whether the man and the woman live in the same house or close to each other; whether they live in separate houses and what is the distance between the house of the first wife and the houses of the other wives whom which the man lives with; whether the woman is kept in the family circle or kept out; whether the woman has undergone a change of status in the family due to the divorce or another event; whether the couple had joint kids after the ‘divorce’; whether the father of the kids visits, eats, sleeps, keeps his clothes in the woman’s house; who owns the house and the furniture in which the woman lives; whether the father of the children pays the electricity bills, phone bills etc. for the house in which the woman lives; who receives the Children Allowance; does the woman have a separate bank account from the man’s; does the woman have separate means of support than the ones the man provides her with.<sup>106</sup>

In the case discussed, all of the appellants had four to ten joint children with the man and all lived near the home of the “formal” wife. The courts declared all appellants to be sharing a household with the father of their children, and, hence, upheld the NII

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PT<sup>103</sup> TPElabid Aziza v. NII, *supra* note 88; Chaim Amit v. NII, *supra* note 100; NII v. Hasan Muhamad, *supra* note 100; Abu Abed Hadera v. NII, *supra* note 100.

PT<sup>104</sup> TP Elabid Aziza v. NII, *supra* note 88.

PT<sup>105</sup> TP An Arab of any of the nomadic tribes of the Arabian, Syrian, Nubian, Israeli or Sahara deserts.

PT<sup>106</sup> TP *Id.*

decision that they were not entitled to receive an Income Maintenance Allowance separately from their partner.

In a case of *Abu Abed Hadera v. NII*,<sup>107</sup> which also relates to a polygamous family, the court again seems to interpret the definition of a “shared household” in a broad way. In this case, the court ruled that the woman is sharing a household with the father of her children, although based on the appellant’s claims, it seemed that her situation starkly contrasted with the situation of the “new” wives, and reasonably suggested that the ex-husband does not support her financially. Even so, the court relied on the fact that her youngest daughter was born 9 years after the divorce and on the fact that although the appellant stated that her husband only rarely supports her, she had chosen not to sue him for Child Support and preferred to be supported by her mother and brother. Moreover, the court noted a few contradictions in the appellant’s testimony and evidence. Therefore, the court ruled that the appellant and her ex-husband are sharing a household.<sup>108</sup>

Applying the precedent above to a case of a monogamous family in the Jewish sector, the court emphasizes that the indications above do not constitute a closed list and that every case should be considered according to the specific circumstances.<sup>109</sup> Regarding the actual application of the definition to the specific facts of the case, it seems that the court continues to interpret the concept of a “shared household” broadly. It ruled that the appellant and his ex-wife were sharing a household, although they were living in separate bedrooms; the ex-wife did not support her ex-husband directly, but only bought items for the house, because her ex-husband was out of a job and without any means of support.

However, in the case of *NII v. Hasan Muhamad*, the court overruled the NII decision to disentitle the appellant due to a partner and seemed to indicate an inclination towards a narrower interpretation of the definition of a “couple.” The court emphasized

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PT<sup>107</sup> TPAbu Abed Hadera v. NII, *supra* note 100.

PT<sup>108</sup> TPIt is interesting to note that in another case which concerned Children’s Allowance, the appellant—the husband of two wives and the father of 15 children together—asked to recognize all the children as living in the same household in order to receive a higher Children Allowance payment (which increases with the number of the children), the NII claimed that the appellant was not sharing the household with his two wives. Appeal National Insurance 1155/02 Uda Abu Asiva v. NII (Hebrew).

PT<sup>109</sup> TPChaim Amit v. NII, *supra* note 100.

that the proper interpretation of the elements of a “family life” and a “shared household” should be in accordance with the purpose of the statute:

If we examine the Income Maintenance Act according to its purpose, it is clear that the statute did not intend to combine income of individuals who have not yet become partners economically and family wise. In other words, the purpose of the statute was not to impose on partners who do not share income and expenses, and before they become a family living under one roof the same requirements as on a man and a woman, regardless of whether married or not, who live a family life in a shared household.<sup>110</sup>

Based on the purpose of the Act, the court interpreted the definition of a “couple” in a narrow way. It ruled that although the appellant was formally married, they did not constitute as a “couple” under the *Income Maintenance Act* because they did not share a household at the time but were merely engaged as was the custom of their religion.

In summary, based on these cases it is difficult to infer any general conclusion as to whether the National Labor Court tends to interpret the concept of a shared household in a narrow or a broad way. It might seem that the tendency is toward a broad interpretation, because in three out of the four cases that discuss the matter, the court upheld the NII decision and was inclined towards a broad interpretation. Nevertheless, if one distinguishes between the cases related to polygamous families—which are embedded in a unique and complex context—one is left with only one case which interprets the definition of a couple in a broad way.<sup>111</sup> To attain a better understanding of the court’s interpretation of the concept of a shared household in the *Income Maintenance Act*, in the next section I analyze the interpretation of the Regional Labor Courts.

### **b. Regional Labor Courts Interpretation**

Among 40 rulings from 2004 until today, 31 were submitted by women; nine were submitted by men. Among these rulings, 26 rulings upheld the NII decision to disentitle an allowance due to the existence of a “publicly known partner,” whereas only

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PT<sup>110</sup> TP *Id.*

PT<sup>111</sup> TP Baranes Ilanit v. NII, *supra* note 95; Olchovok Violeta v. NII, *supra* note 100; Chaim Amit v. NII, *supra* note 100.

14 rulings overruled the NII decision. Among the two typical cases<sup>112</sup> the case distribution was as follows:

Table #2

	Polygenic family	Monogamous families
Number of cases	3	37
Ruling upheld NII	2	24
Ruling overruled NII	1	13

As is readily apparent, the vast majority of cases concern monogamous relationships that were not formally recognized through marriage. Only a small minority of the rulings apply to polygenic families. Moreover, the circumstances of polygenic families are complex and involve other factors that extend beyond the scope of this research. Therefore, in the subsequent sections I will only focus on the 37 cases regarding monogamous relationships.

As I argued in Section A, the vast majority of cases addressed the concept of a “shared household” with regard to the definition of a “couple.” However, there were large differences in the actual meaning given to the concept of a “shared household.” I could not find any coherent factor or factors that can explain the different rulings on the question of when a relationship between a man and a woman constitutes a “couple” for the purpose of the *Income Maintenance Act*. Most of the rulings address a list of facts, such as whether the appellant and the partner have a joint child; the duration of their relationship; whether the appellant and her partner have sexual relations; whether the partner sleeps in the appellant’s house, and how often; whether the partner participates in paying the expenses of the household; whether the NII finds clothes or other possessions of the partner; whether the appellant and her partner eat together, shop together and do their laundry together. Thus, the rulings were apparently based on a factual assessment of the evidence presented to the court; usually, the decision has been based on a combination of a few factors. I must acknowledge the fact that it is difficult to accurately evaluate the judgments of the court factually without seeing and reviewing such

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PT<sup>112</sup> TP Only one case (National Insurance (Nz.) 1246/04 Elkobi Meir v. NII (Hebrew)) did not fit this typology. That case concerned a formally married couple with a property agreement.

evidence. Many of the rulings were clearly decided one way or another due to the credibility of the witnesses and the evidence they presented. Nonetheless, by examining the rulings in the subsequent paragraphs, I will show that even by taking the facts as presented in the rulings into account, there is disturbing inconsistency in the interpretation of the Regional Courts of the definition of a “couple.”

Although it might seem that the courts are consistent in their interpretation of “couple” by virtue of the fact that the vast majority address the concept of a “shared household,” I argue that this is solely a consistency in the rhetoric. Actually there are two competing interpretations of the definition of a “couple.” One interpretation perceives the definition of a “couple” to be a relationship that closely resembles marriage, but lacks the formal ceremony. The second interpretation merely seeks to document a somewhat stable relationship between the man and the woman. Moreover, the different interpretations have an enormous impact on the final ruling because they are closely correlated to the level of proof that the court requires the NII to establish before disentitling the recipient from an allowance. According to the first interpretation, the emphasis is on evidence of economic and emotional commitment in the relationship and requires the NII to provide evidence of a shared household. The second approach actually finds it to be sufficient that the NII provides evidence regarding the mere presence of a man in the house, for the burden of proof to shift to the plaintiff, who now must prove that she and the alleged “publicly known partner” do not share a household. I now will present the ways in which each of the different interpretations is apparent in the rulings of the Regional Labor Court.

The first interpretation was apparent in eleven out of the 37 cases. For example, in the case of *Abu Amar Yosef v. NII*, the court states that evidence of a long relationship does not suffice to disentitle a recipient from his *Income Maintenance Allowance* due to the existence of a partner. Rather, there should be evidence that the public regard the man and the woman to be husband and wife, and that the man and woman regard each other as such.<sup>113</sup> Moreover, the court concludes by saying that the fact that the plaintiff lived with his partner for three months is not sufficient to disentitle him from the Income Maintenance Allowance due to being a “publicly known partner.” This decision was

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PT<sup>113</sup> TP National Insurance (B.S.) 2612/04 Abu Amar Yosef v. NII (Hebrew).

made despite the fact that it was alleged, but not proven, that the plaintiff had a joint child with his partner.

In the case of *Galon Tzvia v. NII*, the court also emphasizes the need for the relationship to be similar to a relationship between a husband and wife. In this case, the court overruled the NII decision regarding a man and woman divorcees, although it was clear that the man and the woman were living together, the woman was helping in the house somewhat, the man was paying for all the expenses and even giving the plaintiff pocket money once in a while.<sup>114</sup> The court stated that the relationship—after the divorce—was not one of mutual life commitment, but rather a relationship that is based on the mercy and compassion of the partner to the plaintiff, due to her circumstances and need.

This narrow approach is also evident in the case of *Davidov Irena v. NII*. Here, the court overruled the NII decision to disentitle the plaintiff from her allowance due to the existence of a “publicly known partner,” even though the plaintiff had a joint child with her partner; the plaintiff admitted in her investigation that the father of her child slept at her apartment three to four times a week, and helped her financially by 200- 300 NIS [between \$45- \$65 USD] a month.<sup>115</sup> The court emphasized that the NII had found no evidence for the claim that the partner was living with the plaintiff, such as clothes or other personal belongings. Moreover, the court concluded by saying that the burden of proof is on the NII, and that because it was a case of social welfare, in the case of doubt, the ruling should be in favor of the plaintiff’s.

This narrow interpretation of the concept of a “shared household” was also apparent in five other cases.<sup>116</sup> In the case of *Panker Geola v. NII*, the court decided that the plaintiff and her partner did not constitute a “couple,” although the relationship was seven years long; there was evidence that the partner slept at her apartment; that they ate together sometimes during the week and every weekend; the plaintiff did her laundry together with her partner’s laundry; his personal things were found in the plaintiff’s

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PT<sup>114</sup> TP National Insurance (Jm.) 10916/04 Galon Tzvia v. NII (Hebrew).

PT<sup>115</sup> TP National Insurance (B.S.) 1808/04 Davidov Irena v. NII (Hebrew).

PT<sup>116</sup> TP National Insurance (B.S.) 1992/04 Panker Geola v. NII (Hebrew); National Insurance (T.A.) 5299/05 Lalo Eilat v. NII(Hebrew); National Insurance (Nz.) 1841/04 Astfeiv Ana v. NII (Hebrew); National Insurance (Nz.) 2746/04 Shifrin Ella v. NII (Hebrew); National Insurance (Jm.) 11991/04 Dahan Rivka v. NII (Hebrew).

apartment, including his medicine.<sup>117</sup> The court ruling was based on the fact that there was no evidence of financial support or that the plaintiff's partner participated in paying the expenses of the plaintiff's apartment. In the three other cases,<sup>118</sup> there was also evidence of the fact that the partner used to regularly sleep at the plaintiff's apartment two to four times a week; the relationships were relatively long (more than a year), and there was evidence of some form of financial support from the partner. In two of these cases, personal belongings of the partner were found in the plaintiff's apartment.<sup>119</sup>

On the other hand, a majority of rulings actually interpret a "shared household" as being the need to prove a somewhat stable relationship. In the case of *Dyomnuko Victoria v. NII*, living together for three months was sufficient to disentitle the plaintiff from an allowance, even when there was no joint child and the plaintiff had a child of her own, for whom the partner was not legally responsible.<sup>120</sup> Moreover, based on the ruling it seems that the plaintiff was living with the man as a temporary arrangement while looking for another solution, primarily because she was not receiving her allowance during that period and had no other means of support. It is clear that although the man had supported her and her child in limited ways, it was not a shared household, even close or similar to the kind of relationship a husband and wife would have.

In *Adano Trakai v. NII* the court also interpreted the definition of a "publicly known partner" in a very broad way. The court upheld the decision of the NII to disentitle the plaintiff from her allowance due to the existence of a "publicly known partner" although there was clear evidence that the partner did not participate in paying the expenses of the house, and the plaintiff had her own bank account.<sup>121</sup> Moreover, based on the plaintiff's statement in her investigation, it was clear that the partner did not support her financially, came and went as he wished, and intentionally avoided marriage. In addition, the social worker supported the plaintiff's statement, explaining that in the Ethiopian ethnic group single mothers are regularly exploited by men. This explanation was also supported by the fact that the plaintiff's partner was involved with three other

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PT<sup>117</sup> TPPanker Geola v. NII, *id.*

PT<sup>118</sup> TP Lalo Eilat v. NII, *supra* note 116; Shifrin Ella v. NII, *supra* note 116; Dahan Rivka v. NII, *supra* note 116.

PT<sup>119</sup> TP Shifrin Ella v. NII, *id.*; Dahan Rivka v. NII, *id.*

PT<sup>120</sup> TP National Insurance (T.A.) 2060/04 *Dyomnuko Victoria v. NII* (Hebrew).

PT<sup>121</sup> TP National Insurance (B.S.) 2843/04 *Adano Trakai v. NII* (Hebrew).

women (in different cities) with whom he had children, although he did not marry any of them. The court based its ruling on the fact that there was evidence that the plaintiff and her partner were living together, because the partner's clothes were found in the plaintiff's house; that the plaintiff stated in her investigation that her partner ate in her home and washed in her home when he came; there was no evidence that the partner lived at an alternative address; that the plaintiff had two joint children with her partner. The court disregarded the fact that the plaintiff had a child of her own, whom, in any case, the partner was not responsible for. Moreover, the ruling against the plaintiff was despite the fact that the court explicitly stated that there is no evidence of a shared household.

In the case of *Adhanni Aharon v. NII*, the court also ruled that the plaintiff and her partner constituted a "couple" although there was no evidence of a shared household. The only basis for the disentanglement was a statement given by the plaintiff during an investigation, stating that he had moved in with his partner a month before.<sup>122</sup> Even though there was no further evidence, the oral testimony of the plaintiff that he merely came to support his partner due to her disability after she gave birth, was disregarded. In addition, the fact that his partner had three children of her own was also disregarded although that might explain why the plaintiff would not share a household with his partner so rapidly.

In *Vainstein Raisa v. NII* the court seems to continue with its broad interpretation of the definition of a "couple." The ruling was also based on the Plaintiff's partner's statement that the plaintiff had paid him rent once every other month and explained that they were friends, so he did not care.<sup>123</sup> He also stated that the plaintiff came to visit him every day and sometimes stayed the night. In addition, some of her personal belongings were found in the apartment. The fact that the partner stated that the plaintiff paid him rent every other month did not seem peculiar in a relationship between those who are considered to have a shared household. The court ruled that this evidence showed *explicitly* that the plaintiff and her partner share a household.

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PT<sup>122</sup> TP National Insurance (B.S.) 2298/04 Adhanni Aharon v. NII (Hebrew).  
PT<sup>123</sup> TP National Insurance (Hi.) 1952/04 Vainstein Raisa v. NII (Hebrew).

In *Dinbordski Vadim v. NII*, although it was clearly proven that the plaintiff paid rent to his alleged partner, his claim that he was solely a friend renting a room in the alleged partner's apartment was rejected by the court.<sup>124</sup> The court primarily based its ruling on the testimony of a NII clerk who claimed that when the plaintiff came to the branch with the alleged partner they "acted like a couple." The plaintiff's explanation that the alleged partner escorted him in order to help him with the translations was also rejected.

In the case of *Itzik Edna Eden v. NII*, the court upheld the NII decision to disentitle the plaintiff from her allowance based on her statement during an investigation.<sup>125</sup> Based on this statement, one might infer only that some kind of a long-term relationship between the plaintiff and her partner was in place; the partner regularly visited the plaintiff and his joint children; sometimes the partner stayed overnight, and they do have sexual relations. Apart from the plaintiff's statement and a neighbor's statement, no evidence was found in the plaintiff's house. There were no clothes or other personal belongings. In her statement during the investigation, the plaintiff clearly repeated her claim that she and her partner did not share a household, and that she alone was responsible for all the expenses of the house. Even so, the court found this statement to be sufficient evidence of the existence of a shared household and shifted the burden of proof to the plaintiff. The court found the plaintiff unreliable and ruled that she had not disproved the NII claims.

The inclination towards a broad interpretation of the definition of a "couple" which does not require evidence of a "shared household" is also apparent in *Edri Sholamit v. NII*. Here, the court ruled that the plaintiff and her partner constituted a "couple," although the man had kept an apartment of his own through all the years of their relationship, and there was no evidence of a shared household.<sup>126</sup> On the contrary, the plaintiff consistently claimed that she shopped and paid the bills by herself. Moreover, there were only a few of his clothes in her apartment, without underwear or personal objects that might suggest a permanent presence in the house. The ruling was

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PT<sup>124</sup> TP National Insurance (B.S.) 1391/05 *Dinbordski Vadim v. NII* (Hebrew).

PT<sup>125</sup> TP National Insurance (B.S.) 2586/04 *Itzik Edna Eden v. NII* (Hebrew).

PT<sup>126</sup> TP National Insurance (B.S.) 1633/05 *Edri Sholamit v. NII* (Hebrew).

based merely on the plaintiff's statement during the investigation that her partner slept at her apartment during the week and went to his apartment on the weekends.

In addition to these findings, it is interesting to note that in 17 out of the 37 cases (of monogamous relationships) there were non-joint children involved. Nevertheless, this fact was not directly addressed by the courts, although it could be a good indicator to the existence of a shared household. Only in the case of *Lalo Eilat v. NII* did the court address this issue. The court ruled that the plaintiff—a mother of four children, three of whom are her own and the fourth of whom is a joint child with her current partner—should not be disentitled from her allowance although there was clear evidence that the father of her youngest child was regularly in the house, helping with the child, and financially supporting the needs of the youngest child. The court clearly states that the fact that financial support was limited to the youngest daughter is part of the evidence for the lack of a “shared household” between the plaintiff and her partner.

In summary, it is apparent that although most of the rulings use the rhetoric of a “shared household,” in actuality this concept is interpreted in two very different ways: a narrow interpretation which requires evidence of a “shared household” and a broad interpretation which finds that it suffices if a somewhat stable relationship exists. It is evident that the different approaches influence the chances of the plaintiff winning the case. There is no doubt that according to the broader approach, the plaintiff's chances of winning the case decrease significantly. However, what is more problematic about this approach is the fact that the NII can easily disentitle the allowance of vast numbers of women, because all they need is limited proof of a man's regular presence in the house. Hence, even in cases in which such a relationship does not reach the level of a “publicly known partner” as required by the statute; the woman will be left without any means of support for a long period of time until she is able to win her day in court. Moreover, it is reasonable to assume that many women will never reach the court, even if they were disentitled unjustly, due to lack of resources, lack of knowledge regarding their rights, and lack of the ability to “fight the system” when they need to find ways of surviving

without any means of support.<sup>127</sup> These problems are alarming because it seems that the courts' inclination is towards the broad interpretation of the definition of a "couple." The majority of rulings examined have interpreted the definition of a "couple" in this broad way.

Nonetheless, one can claim that this tendency towards a broad interpretation of a "publicly known partner" is consistent with the inclination of the Israeli judiciary to expand both the definition and the extent of the rights and obligations of a "publicly known partner" in other statutes, specifically, in the family law context.<sup>128</sup> Thus, similar to the inclination described above, also within the family law context, the courts have made it easier throughout the years to enter the factual status of a "publicly known partner."<sup>129</sup> For example, Lifshitz argues that the courts recognized the factual status of a "publicly known partner" even when the couple lived in the man's apartment from time to time and at other times in the woman's apartment; even when there was some evidence of separate economic assets; even when the man or the woman had concurrent intimate relations; even when the relationship was characterized by frequent fights and violence; even when the man and woman had no marital relationship and slept in different bedrooms; and in one case even when the couple had lived together for only several months before the man died.<sup>130</sup>

However, it is commonly agreed that the Israeli legal acknowledgment of the factual status of a "publicly known partner" in the family law context is unique.<sup>131</sup> This legal acknowledgment was predominantly shaped by the fact that marriage in Israel is governed solely by religious law.<sup>132</sup> Hence, a man and a woman who are forbidden to marry according to their religious law,<sup>133</sup> have no other way of getting married in Israel. Therefore, in many cases living as a "publicly known partner" is actually forced upon the

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PT<sup>127</sup> TP For example, see: William L.F. Felstiner, Richard L. Abel, & Austin Sarat, *The Emergence and Transformation of Disputes: Naming Blaming Claiming...* 15 LAW & SOC'Y REV. 631(1980); Elbasha, *supra* note 19.

PT<sup>128</sup> TP Lifshitz, *supra* note 86, at 745-746.

PT<sup>129</sup> TPLifshitz, *id.*, at 784-785.

PT<sup>130</sup> TPLifshitz, *id.*, at 784-785.

PT<sup>131</sup> TP Lifshitz, *id.*, at 772- 780; Shawa, *supra* note 89, at 484.

<sup>132</sup> Lifshitz, *id.*, at 788; Friedman, *supra* note 86, at 460; Shawa, *supra* note 89, at 492.

PT<sup>133</sup> TP For example, according to the Jewish religion there are many restrictions on marriage as: a Cohen cannot marry a divorcee; a woman whose husband refuses to give her a divorce cannot get married; a woman who was married according to the Jewish religion but was divorced through a civil procedure abroad cannot get married.

couple who cannot get married in Israel. In other cases, the couple chooses it as a form of secular marriage that would otherwise be forbidden.<sup>134</sup> For these reasons, the legislation and the court's tendency to equalize the status of married and unmarried couples is logical. It is reasonable to acknowledge the rights of a woman—who lives her life as if she were married—to inherit from her “publicly known partner,” even though she was not formally married to her partner, because she could not marry him or simply rejected marriage in its religious form. Therefore, in such cases the broad interpretation of the definition of a “publicly known partner” was based on principles of equality, protection of the weaker partner in the relationship (usually the woman) from economic exploitation, and protecting the interest of the children involved.

However, there are other reasons for people choosing to live as a “publicly known partners” rather than getting married.<sup>135</sup> As will be evident in Chapter IV, it is clear that none of the interviewees chose to live as “publicly known partners” due to religious law limitations or the rejection of marriage in its religious form. All interviewees have had “publicly known partners” because their relationship did not reach the level of economic and emotional commitment that marriage requires. This might suggest that the tendency to broaden the definition of a “publicly known partner” should not necessarily apply to the context of the *Income Maintenance Act*. Moreover, the tendency to broaden the interpretation of a “publicly known partner” has been justified in the context of family law primarily by considerations, such as equality, justice, and the protection of minors.<sup>136</sup> However, as I will argue in Chapter IV these exact arguments in the context of the *Income Maintenance Act* require precisely the opposite approach, thus, a narrow interpretation of the definition of a “couple.”

After revealing the ways in which the courts interpret the legal definition, in the next section, I will examine how the NII implements the legal definition in its daily conduct.

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PT<sup>134</sup> TP Lifshitz, *supra* note 86, at 788-789.

PT<sup>135</sup> TP Lifshitz, *id.*, at 790; Friedman, *supra* note 86, at 461; Shawa, *supra* note 89, at 493.

PT<sup>136</sup> TPLifshitz, *id.*, at 823.

## 2. NII Implementation Policy

To receive an Income Maintenance Allowance one needs to submit a formal application for an allowance which details all the relevant personal information including a declaration of the family status. Thus, the “plaintiff” declares whether she is married, single, divorced, separated and whether she has a partner. Usually, the local branch’s clerk makes the initial decision as to whether to open an investigation. There are no published procedures regarding the circumstances under which a clerk should initiate an investigation. Ms. Hofman, a senior official in the NII, stated<sup>137</sup> that the NII might initiate an investigation if the clerk feels that something is improper. Sometimes the NII initiates an investigation just because the recipients has been receiving welfare for many years; sometimes the investigation is called for because the NII has received some specific information. For example, the NII may receive a letter from a neighbor, information of a contradictory claim in a different NII department, or the fact that a single mother gave birth to a child. Moreover, today the NII also considers opening investigations randomly. After the investigation takes place, the report serves as a basis for the clerk’s decision to disentitle, or allow the allowance. When the clerk decides to disentitle an allowance, the decision is re-examined by the Head of the Allowances Department branch before a final decision is made. Complex cases are also regularly reviewed by officials at the national main branch of the NII. If after this internal review the NII decides to disentitle the allowance, the plaintiff is immediately cut-off from the allowance and a notification is sent by mail.<sup>138</sup>

As might be apparent from the aforementioned descriptions, the enforcement of the legal regime requires an elaborate system of surveillance and the deployment of investigators, throughout the NII’s 74 branches. In 2003, the NII employs a total of 98 investigators.<sup>139</sup> In 2003, 33% of their investigations focused on Income Maintenance

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PT<sup>137</sup> TP Telephone interview with Ms. Hofman (May 5, 2005).

PT<sup>138</sup> TP Itach- Women Lawyers for Social Justice have submitted a petition to the Supreme Court challenging this process claiming of the lack of due process (High Court of Justice 1512/04 Chanuka Eti v. NII). Although the parties reached a settlement in which the NII declared to provide a fair hearing before disentitling an allowance, until today the process had not been changed.

PT<sup>139</sup> TPAVNER SHEREF, NATIONAL INSURANCE INSTITUTE, MAIN FINDINGS IN REGARDS TO THE CONDUCT OF THE INVESTIGATIONS DEPARTMENT 6 (May 2004)(Hebrew). It should be noted that as an observation it seems that most of the investigators are men, although there are also some women investigators.

recipients.<sup>140</sup> It should be noted, that this figure does not necessarily relate to investigations due to a partner, but rather to the total number of investigations of Income Maintenance recipients.<sup>141</sup> In addition, in 2003 a special fraud unit was established that includes 32 additional investigators.<sup>142</sup> In 2003 almost 65% of the activities of this special unit were dedicated to the investigation of Income Maintenance recipients. In general, an investigation includes home visits, surveillance, observations posts and neighborhood's investigation.<sup>143</sup> In 2003, 39% of all investigations activities were conducted with regard to Income Maintenance recipients.<sup>144</sup> Among the investigations conducted among Income Maintenance recipients, only a minuscule number of the investigations were conducted in NII offices.<sup>145</sup> In comparison to 67% of investigations conducted with respect to workers' compensation allowances, only 3.5% of Income Maintenance investigations were conducted in the NII offices.

These figures illustrate the enormous role that investigations play for Income Maintenance recipients. However, these figures do not explain the actual ways in which the investigations are deployed in general and specifically with regard to investigations of a partner. What is the NII policy behind the deployment of investigations? How does the NII perceive their role? What is the rationale for the investigations from the perspective of the NII? What kind of evidence are the investigators looking for?

In the subsequent sections, I will reveal the ways in which the NII actually implements the legal definition of a "couple." I will do so by analyzing an interview and two additional informal conversations I held with high-level officials in the NII. Moreover, I will extract the NII claims and evidence presented from court cases that have been filed from 2004 until today, and thoroughly review the NII internal documentation of four investigations.

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PT<sup>140</sup> TP *Id.*, at 1.

PT<sup>141</sup> TP The NII has no data regarding the distribution of the investigations according to the different reasons for initiating and investigation. Therefore, there is no way to know how many investigations take place due to a partner.

PT<sup>142</sup> TPSheref, *supra* note 139, at 6.

PT<sup>143</sup> TP *Id.*, at 1.

PT<sup>144</sup> TP*Id.*, at 3.

PT<sup>145</sup> TP*Id.*, at 14.

### **a. Interviews with Senior Officials in the NII<sup>146</sup>**

In the subsequent paragraphs, I analyze a formal interview and two informal conversations I conducted with senior officials in the NII. Ms. Cohen and Mr. Levi were directly involved in the decision-making process regarding Income Maintenance allowance and the investigations of its recipients. Ms. Shwartz is a high-level official who is not directly involved in the decision-making process but is highly knowledgeable about the issue and its difficulties. I believe that these interviews indicate of the ways in which the NII actually implements the definition of a “couple.”

After I had only presented the topic of my research, Ms. Cohen immediately stated, “My job is to apply the law. You need to amend the statute.”<sup>147</sup> At least based on this opening, it seemed that she partially admits that there is some kind of a problem. Later in the interview, she explicitly says that the issue of who constitutes a “partner” is a very tough one, because it is never a “black or white” decision. The two other officials also acknowledged the difficulties of the issue. Mrs. Shwartz acknowledged that this is a very complex issue because of the inability to actually know whether someone is a partner or not. She gave the example of a woman she knows whose ex-husband is always around the house, lives there for a period of time, and spends a lot of time with their joint children. She knows that during investigations he was found in the house a couple of times. But then she adds:

If you ask me if he supports her financially? No. I don't think so. But how can you really know? This is a very complex issue. The NII ponders this issue a lot.

Moreover, she states that the investigations themselves are very problematic and are very much dependant on the specific investigator--“the kind of man he is.”<sup>148</sup> She continues by saying that the investigations can be “just horrible.”

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<sup>146</sup> It should be noted that I conducted the interviews without audio taping it, because I had the strong impression that taking out a tape recorder would ruin any chance of receiving meaningful answers. One interview was by phone, and I took notes while the conversation took place. Another interview was during a personal meeting, and I took the note immediately after the meeting was over.

PT<sup>147</sup> TP Interview with Ms. Cohen (July 7, 2005).

PT<sup>148</sup> TP Interview with Ms. Shwartz (April 5, 2005). The use of masculine language is as the interviewee used it.

Mr. Levi, who was directly involved in the investigations' process also partially acknowledged the problems regarding the issue. He says:

Look, investigation is an unpleasant thing, especially when you need to check a shared household. Unpleasant. The questions are unpleasant; to look for another toothbrush, a man's slippers. No one enjoys rummaging into personal belongings, but this is the law this is what we need to check.

He later states that the investigators are very sensitive and are aware that this is a very delicate situation. Moreover, he states that the Income Maintenance investigations are the most "disgusting cases" they deal with, that investigators hate it and wish someone would take it from them.<sup>149</sup>

Although, Ms. Cohen acknowledges that there are some problematic elements in the legal regime, she is very much convinced that the legal regime is strongly justified. She repeats the notion that the NII is obligated to the general public, because the allowance is paid out of public funds. At one point she stated, "It is hard to prove; it isn't easy, but it is problematic to totally leave it open. I don't think it is right. I think the public expects us to check the veracity of a plaintiff's declaration." Moreover, her view is strongly related to her perception of the Income Allowance as a form of public charity, rather than as a recipient's right. She says, "It [the Income Maintenance Allowance] is not by virtue of rights that she has acquired herself through her life. It is an allowance paid out of public funding." When I protested the harsh intrusion into the privacy of the recipients, she replied, "I agree that the investigation invades the privacy [of the recipients], but if a woman who reaches her hand into the public treasury, doesn't the public have a right to reach into her life?"

Ms. Cohen's approach was also closely connected to her perception of the Income Maintenance's recipients. She states that some of the recipients are "addicted to welfare," and that some find it very comfortable to get welfare instead of going to work. She also stated that many women cheat. Moreover she puts a lot of emphasis on the personal responsibility of the woman to her situation and states that the NII needs to help women on welfare to escape the poverty they live in, but first the women need to help

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PT<sup>149</sup> TPTelephone interview with Mr. Levi (May 5, 2005).

themselves. After I presented her with one of the interviewee's harsh story, she replied by saying that a woman needs to get her life together. However, at the end of the interview she admitted that the allowance is insufficient and is very difficult to survive on. She says she knows that all these women are living under very harsh circumstances.

Moreover, it was interesting to hear the ways in which the NII officials actually interpret the legal definition of a "couple." Ms. Cohen distinguished between the concept of a "shared household" and the concept of a "publicly known partner" as if they carried a totally different meaning. She actually opened the statute book and showed me that the words "shared household" are not mentioned. She then clearly stated that the NII does not investigate whether there is a shared household. Instead, she states that the NII checks to ascertain whether the man and woman are "perceived as a couple in public." She said that such a decision is never based on one thing, but rather they check if the plaintiff and her partner spend time together; whether the partner takes the kids from the daycare; whether the partner participates as a parent; whether both their names are written on the plaintiff's mailbox; whether they have a joint bank account, and other findings from observations by investigators. Later in the interview, she states that they search for some kind of a stable relationship and the fact that the plaintiff and her partner "do share." She does not elaborate what she means by "sharing," but it seems that she means "sharing a life," not necessarily in its financial sense. She says, "We check whether they jointly manage the house, whether he participates in the chores of the house." She clearly states that "a man who lives in the plaintiff's home will always be considered as her [publicly known] partner." She explains it by saying that the situation of such a plaintiff is necessarily better than a plaintiff who does not have a relationship with a man, because he necessarily helps her financially, even if only in limited ways. When I confronted her with the fact that the NII is assuming that in every relationship between a man and a woman the man necessarily supports the woman, she replied, "We do not assume. We investigate, [we] check. The decision needs to be founded [in evidence]. He [the investigator] needs to justify [his conclusion]."

It seems that according to Ms. Cohen, the NII searches for evidence of a regular and stable relationship and for some indication of the fact that the man and the woman are sharing their lives. However, the NII is not concerned about whether the alleged

partner financially supports the plaintiff. Instead, the NII automatically assumes that the man necessarily supports the woman to some extent, even if they acknowledge that this support can be very limited. In contrast, as described above, Ms. Shwartz was explicitly concerned about whether the man financially supports the woman and it seemed as if she understood the definition of a “couple” to be a question of financial support. Moreover, Mr. Levi also seemed to understand the issue to be a question of whether there is a shared household, stating that investigations can be especially “unpleasant when there is need to investigate whether there is a shared household.” It should be emphasized that the words “shared household” were the interviewee’s choice of words.

Another interesting observation is the different perspectives regarding the element of a sexual relationship. Ms. Shwartz emphasizes that it is not relevant whether the man and the woman are sexually involved. She explicitly says that whatever happens in the bedroom is never the issue. In contrast, Ms. Cohen explicitly admits that the fact that the woman is having sex with the man a few times a week is one indication of the fact that the partner constitutes as a “publicly known partner.” However, she emphasizes that it is never the sole basis of a decision in this regard.

Due to Ms. Cohen position and seniority, I believe that her approach most accurately describes the actual implementation policy of the NII. However, these different views illuminate the fact that the legal definition is far from being clear, even to the officials who actually participate in its implementation on a daily basis. Even so, I argue that in general the NII distinguishes between the concept of a “shared household” and the concept of a “publicly known partner,” in ways that enable it to solely bring evidence for a somewhat stable relationship, rather than evidence for a shared household. To further support this argument, in the following section I will examine the evidence the NII based its decision before disentitling an allowance, as presented in cases which have reached the courts.

#### **b. NII’s Evidence in Cases that Reached the Courts**

In the following paragraphs I will examine the evidence presented by the NII in cases that have reached the courts. In the scope of this research I can only rely on the evidence discussed in the court’s ruling. Therefore, I will address rulings of the Regional Labor Courts that usually discuss in detail the evidence presented before them. In this

section I will not address the ways in which the court viewed the evidence or the value it gave to it. Instead, I will examine the kinds of evidence the NII provided. Based on the examination, I will infer what the NII found to be sufficient evidence to disentitle an allowance. Accordingly, I am not looking at evidence that was presented during the testimony given in the court, because such evidence was unknown to the NII prior deciding whether to disentitle the allowance.

I have summarized the evidence presented by the NII in 35 cases of the Regional Labor Courts (see **Appendix C** for Table #4). The cases are from 2004 until today and all relate to monogamous families.<sup>150</sup> From this summary, one can get a sense of the kinds of evidence the NII is looking for and the kind of evidence on which they base their decision to disentitle an allowance. I have distinguished between several kinds of evidence: (1) circumstances in which the fact that the plaintiff had joint children with her partner was used as evidence to the case at issue; (2) statements of the plaintiff regarding regular visits of her partner; (3) statements of the plaintiff that the partner sleeps in the apartment; (4) statements of the plaintiff that she is living with her partner; (5) physical evidence that suggests that the plaintiff and her partner live in the same apartment; (6) the fact that the plaintiff and her alleged partner are living in the same apartment is not contested; (7) statements of the plaintiff that she is receiving minor financial support from her partner; (8) statements of the plaintiff that she is receiving major financial support from her partner; (9) the presence of the partner during the investigation; (10) personal belongings of the partner in the plaintiff's apartment; (11) investigator or NII clerk's observations; (12) statements of partner (13) statements of third parties.

Matching the different pieces of evidence into these general categories was a difficult and problematic process that I need to clarify. First, I should note that "a statement" can refer to a statement during an investigation or a statement given in the plaintiff initial application for an allowance. Moreover, most of the categories include a range of circumstances. For example, a statement of regular visits can include, on the one hand, a statement that the partner comes only to visit the joint children, and, on the other

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PT<sup>150</sup> TPI excluded two cases (National Insurance (B.S.) 1044/04 Rosenberg Giyora v. NII (Hebrew); Elkobi Meir v. NII, *supra* note 112) from this table although it relates to a monogamous family because the circumstances it dealt with were significantly different from the other cases.

hand, it can also include a statement that the partner comes every day. The same is applicable to the category of a “statement that partner sleeps in the apartment.”

In addition, many statements of the plaintiffs during an investigation include some kind of evidence regarding financial support from their alleged partners. For example, it can mean that the plaintiff stated in a sentence or two that the father of her child brings some food for the child or gives her 200-300 NIS [\$45-\$65 USD] per month. However, a statement regarding financial support can also include cases in which the plaintiff lives in a family apartment of the partner and does not pay rent or does not pay some of the bills. At the other end of the spectrum, there can also be cases in which there is evidence (usually the statement of the plaintiff) that the plaintiff and her partner share the income and expenses in ways that are very much similar to having a shared household typical for a husband and wife. Due to this enormous range of circumstances, I distinguished between the category of “minor financial support,” which includes financial support that is more random and unstable, or support that is designated for specific purposes and does not relate to the household as a whole. “Major financial support” refers to financial support that is more similar to having a shared household as a husband and wife.

Another clarification is needed regarding the category of “physical evidence for living in the same apartment,” which refers, for example, to some kind of document that states that the plaintiff’s address is the same as that of her partner’s or the fact that the partner was found with a key to the plaintiff’s apartment. This is unlike the category of “living in the same apartment not contested,” in which the plaintiff acknowledges that she lives in the same apartment, such as in some of the cases of divorcees, or plaintiffs who claim to be solely roommates. It also differs from the cases in which there is a statement of the plaintiff that he is living with his partner, because it refers to “living together” with the partner and acknowledging some kind of an intimate relationship with the partner.

Apart from the kind of evidence upon which the NII bases its decisions, it is also apparent that in the vast majority of the cases the NII disentitles an allowance based on a few combined factors. However, as I explained above, because each category includes an wide spectrum of evidence, one cannot infer anything specific from the amount of evidence in each case. One case could be based on five pieces of minor and indirect evidence, and another case could be based on two major and direct pieces of evidence.

Nevertheless, the analysis presents us with another indication of the NII implementation policy, thus, the ways in which the NII interprets the legal definition of a “publicly known partner.” Among the 35 cases, only four cases had included evidence of “major financial support,” i.e., evidence of the fact that the couple shares the household similarly to the way a husband and wife would. Therefore, it seems that the concept of a “shared household” is almost irrelevant to the NII implementation policy. Moreover, in most cases the NII does not present evidence of even minor financial support from the partner. In only 14 out of 35 cases was there evidence of minor financial support. Hence, it seems that the issue of financial support is at best marginal to the NII implementation policy.

However, it seems that this implementation policy is not totally coherent and consistent, a fact that was apparent in the inconsistencies between Ms. Cohen, Mr. Levi’s and Ms. Schwartz’s statements. This is also evident in the fact that the NII is inconsistent in its use of words in letters notifying recipients that they are disentitled from their allowance. From the rulings it seems that most of the letters of notification do address the words “shared household.” For example, in the case of *Dyomanko v. NII* the letter of notification is quoted as follows, “...your allowance is disentitled due to the fact that you are living with a publicly known partner and sharing a household.”<sup>151</sup> Nonetheless, in 13 out of the 35 rulings examined, the NII used different wording. For example, in the case of *Dahan v. NII*, the NII was said to state in its letter that the plaintiff was disentitled due to the fact that “she is living with a partner.”<sup>152</sup> Moreover, it seems that the judge is answering this claim in his judgment emphasizing that although the legislator has replaced the words “living a family life” and “shared household” with the words “living together,” it also included the words “publicly known as a partner.” Therefore, the condition of solely living together is not sufficient to constitute a couple. In other cases the NII uses different variations of this wording, for example stating that the plaintiff is “disentitled due to a partner as defined in Section 1 of the *Income Maintenance Act*.”<sup>153</sup>

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PT<sup>151</sup> TP Dyomnuko Victoria v. NII *supra* note 120.

PT<sup>152</sup> TP Dahan v. NII, *supra* note 116.

PT<sup>153</sup> TP National Insurance (T.A.) 5224/04 Albalsi Orna v. NII (Hebrew).

However, in the case of *Lalo Eilat v. NII*, the NII was bluntly explicit in its approach, stating in the letter notifying the plaintiff that she was disentitled from her allowance:

According to an investigation we conducted you are living with the father of your child, and therefore your partner *should* support you and provide for you.<sup>154</sup>

It should be noted that in this case, the plaintiff had three children of her own, and the plaintiff explicitly stated in her investigation that the father of her youngest child does not support her or her children in any way. Moreover, the father of her youngest child ensured himself with a written agreement that he would not be obligated to support her or her other children. In addition, during the trial there was also evidence regarding the complex and problematic relationship—which included violence and emotional distress—between the plaintiff and her partner. However, it is not clear that this aspect of the relationship was evident to the NII before the trial.

These empirical findings support my conclusion above, that Ms. Cohen’s interpretation of the legal definition most accurately describes the actual way in which the NII implements the legal definition, although there are some inconsistencies in the rhetoric the NII uses in its notifications letters. It seems that, in general, NII assumes that in a relationship that seems somewhat stable, the partner necessarily supports the woman financially. Consequently, there is no need to search for evidence of financial support and it is usually adequate to bring evidence of a somewhat stable relationship. To further support this conclusion, in the next section, I will analyze NII’s internal documentation of four investigations.

### **c. Analysis of Internal Documentation of investigations**

It is first important to note that, although these documentations were not initially made public, the NII discloses them upon the plaintiff’s request. With the consent of four of my former clients, I have obtained the documentation of four investigations for the purpose of this research.

Rachel<sup>155</sup>

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PT<sup>154</sup> TP Lalo Eilat v. NII, *supra* note 116.

I have obtained the internal documentation of an investigation that took place in Rachel's home on December 13, 2004. The documentation includes the questions of the investigator, and Rachel's answers. In the documentation Rachel clearly states that she is in a somewhat stable relationship with Chaim. Chaim's clothes were also found in her apartment to support her statement. The documentation states the following:

*Question: From the visit investigator Dani and I had in your house today, we found clothes and belongings of a man. Who do they belong to?*

Answer: They belong to my boyfriend who comes here once in a while. Once he lived with me, but he does not like the life in the "Moshav,"<sup>156</sup> so he left.

*Question: for how long was he living with you?*

Answer: It depends. Once he lived here for a half a year, left for three months and comes back once in a while. Sometimes twice a week and sometimes for the weekend....

*Question: When was the last time Chaim was here?*

Answer: [last] Friday and Saturday, and he left Saturday night....

*Question: If he moved out, why do you have all his belongings here?*

Answer: There are only clothes. Half are at my place and half at his place, so he'll have clothes when he comes here.

At the end of the investigation the investigator once again asks Rachel about her relationship with Chaim:

*Question: Last week, how often was Chaim in your apartment?*

Answer: He was here on Sunday and on Friday and Saturday.

*Question: Chaim stays the night when he comes?*

Answer: Yes.

During the investigation, the investigator asks Rachel questions regarding Chaim, such as where does he live today, what kind of car does he have, where does he work. Rachel knows how to answer these questions only vaguely. For example, she knows that he rented an apartment until two months ago and that now he lives with his sister in

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PT<sup>155</sup> TPIt should be noted that unlike the other interviewees, Rachel is not receiving Income Maintenance Allowance, but rather a special allowance that is given to widows. However, with regard to the issue of a partner, the legal regime was implemented similarly.

PT<sup>156</sup> TP A small settlement.

Jerusalem, but she has no idea which sister or, what the address is. It should be emphasized that from the documentation it seems that Rachel was very cooperative with the investigators, and it does not appear that she was merely concealing the information.

Rachel was also very clear in her statement regarding her means of support. The documentations states:

*Question: Who does this house belong to?*

Answer: to me, and it's registered in my name.

*Question: Who pays the bills in the house, water, electricity, gas?*

Answer: All I pay, with standing orders. Guests don't pay.

*Question: Does Chaim support you in any way?*

Answer: No. Certainly not.

*Question: Who does the Dahoo car belong to?*

Answer: to me.

...

*Question: What are your means of support?*

Answer: Twice a week I work in housekeeping and an allowance from the NII.

*Question: Who pays for the car insurance?*

Answer: I alone. Also all the handling of the car, registrations tests—everything I do.

In summary, from this documentation it appears that the evidence the NII had obtained was her clear statement that she is having a somewhat stable relationship with a man, who comes to visit regularly and stays the night when he comes. Moreover, for a short period of time, the partner lived with Rachel in her apartment. This was also supported by the existence of his clothes in her apartment. As Rachel's lawyer, I had asked for all the documentation and evidence relevant to their decision. This documentation was all I got. Hence, it seems that based on the evidence described above the NII disentitled Rachel from her allowance retroactively for a year and half. However, it should be noted that Rachel believes that their decision was also based on an investigation that took place a year and a half before the investigation above. She recalls that at the time of that investigation Chaim was present, and she introduced him as her boyfriend. They did not search the house. Therefore, even if we include this evidence, it does change the picture described above. A month after the second investigation, Rachel received a letter congratulating her on her marriage and notifying

her that she was disentitled from her allowance from this point on and a year and half retroactively.

It should also be noted, that immediately after receiving the notice from the NII, Rachel wrote a letter to the NII, providing her partner's rental contract as evidence that he was living at a different address during the relevant period of time. She received a reply three months later, rejecting her claims and leaving the decision unchanged. Even after she was represented by a lawyer,<sup>157</sup> it took another nine months until the NII withdrew their position and reinstated Rachel's allowance, admitting that with regard to widows, the plain language of the law states that only in a case of *formal marriage*, one can be disentitled from her allowance.

In a nutshell, the internal documentations of Rachel's investigation support my argument that the policy implementation of the NII finds evidence of a somewhat stable relationship sufficient to disentitle an allowance, regardless of whether there is evidence of a shared household. Accordingly, although Rachel clearly stated in her investigation that she was not sharing a household with Chaim, and there was no evidence suggesting otherwise, Rachel was disentitled from her allowance. Moreover, the fact that it took the NII nine months to reverse their decision, suggests that the conduct in this case was not a mere mistake that when noticed was quickly mended.

### Sima

The documentation of Sima's investigation from October 10, 2003 is very short, and Sima refused to sign it. The documentation also states the questions asked and Sima's answers. The documentation states the following:

Answer: I'm nine months pregnant.

*Question: Who is the father of the baby [you're carrying]?*

Answer: You or the Divine Spirit.

*Question: Who is in the house right now?*

Answer: me and my daughters.

*Question: Is there a man in the house now?*

Answer: Yes. I don't want to give his name.

*Question: Can you call him here?*

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PT<sup>157</sup> TP Only at the very beginning did I personally represent Rachel; then, she was represented by another lawyer from the NGO I was working with.

Answer: He is not here. He left. I asked him to leave.

*Question: Why aren't you suing him for child support?*

Answer: He does not acknowledge them [her kids] as his.

*Question: What is he doing here [in your home]?*

Answer: He is a friend. I'm allowed to be with someone at night.

*Question: Why did you ask him to leave?*

Answer: He left to go to work.

*Question: What does he do?*

Answer: He is a prostitute.

The quotation above is the entire investigation. There is no record of any physical evidence of a man's regular presence in the house. Sima says that the investigator looked through the house and even went through her laundry, but he did not find anything. This investigation was the evidence on which the NII based its decision to disentitle Sima from her allowance from this point.

It is clear that Sima was uncooperative and resisted the investigation. However, the NII decision was not based on her uncooperative behavior, but rather on their conclusion that she was living with a partner. Sima had turned to the NII twice, requesting them to reconsider their decision. The NII was firm in its position that their decision was sound based on the investigation above. After she was represented by lawyers, the NII reconsidered their position once again and changed the reason for the disentanglement from a partner to Sima's uncooperative behavior during her investigation. Only after a suit was brought to the Regional Labor Court, but before any hearing was conducted, the NII withdrew from its position and reinstated Sima's allowance, also returning her the allowance retroactively. Nevertheless, during the ten months of these legal struggles, Sima was left without any means of support.

Sima's case is an extreme example to my argument. Not only was there no evidence of a shared household, but there was also no evidence for a long and stable relationship, apart from the fact that Sima was pregnant at the time of the investigation, and I assume that there were some vague statements from neighbors in this regard. Nevertheless, the NII disentitled Sima from her allowance, insisting for a couple of months that their decision was sound. This, again, suggests that the NII's conduct in this case was not a clerk's error, but rather represents, to some extent, the implementation policy of the NII.

## Yelena

I have obtained documentations of four investigations that took place in Yelena's apartment from 2001 to 2003. The first investigation was shortly after Yelena gave birth to her younger child. In all three investigations that took place in 2001 and 2002, Yelena stated that she was living in the apartment with her father and her two kids. She also stated that the father of her younger child was her ex-boyfriend, who had left Israel a few months earlier and returned to Russia. In the second and third investigations Yelena was asked who Boris was, and in both cases she replied that Boris was the owner of the apartment she and her father are renting. In all three investigation documentations, there is no reference to any physical evidence that was found in the apartment that suggests that Yelena was living with a partner. It should also be noted that two of the four documents state that the investigation and the documentations were conducted with translation into Yelena's mother tongue. Moreover, Yelena says that the third investigation was also translated to her, but informally, by her older son.

During the fourth investigation Yelena starts by repeating her story and then suddenly departs from her former version and gives a full statement that she was living with Boris, who is the father of her younger child and that he has been supporting the family for three and a half years. It should be noted that the document does not include the investigator's questions, but rather is written as a long statement by Yelena. The documentation states as follows:

I'm renting this apartment together with my father for \$500 USD a month. The apartment belongs to Boris. Boris is not the father of Yosi [her older son]....The father of my younger child is Boris. He is the owner of this apartment and I live here with him. Boris is the father of my younger child and he buys food enough for me and the kids.... My father sleeps on the sofa in the living room.... Boris lives with me all these years, and we live together for three and half years.... I know I haven't told investigator Dina the truth, and I am very sorry for that. I ask the NII to forgive me for telling lies, for saying untruthful things. The truth is that Boris is the father of my son. He takes care of the family. He works in "Tadiran" for a year and provides for me and the children. He owns a green Hyundai car.

It seems clear that Yelena had concealed her relationship with Boris. Moreover, in the apartment there were man's clothes that also support the claims of the NII. In addition, from the documentation it seems that the NII probably also had supporting evidence from neighbors. However, it should be noted that this investigation was the only one among the four investigations that was conducted without any translation. Moreover, immediately after the investigation took place Yelena repeatedly wrote letters to the NII accusing the investigator of extremely harsh and humiliating treatment and claiming that she has no idea what was the content of the documentation she had signed and repeating her claim that she is not living with Boris. Her allegations were not addressed in any way. In addition, although the investigations took place at different hours of the day—including early mornings—Boris was never found at any of the investigations. Based on this statement the NII disentitled Yelena from her allowance from this point on and disentitled her retroactively for three and a half years.

These documentations also support my argument regarding the implementation policy of the NII, although it could be placed at the opposite extreme to Sima's case. It is apparent that in contrast to Sima's case, the NII decision is not totally without evidence. There is a clear statement from Yelena, and there is also limited supporting evidence to the fact that Yelena is living with a partner. However, there are reasons to suspect the credibility of Yelena's confession during her fourth investigation, and this is the main evidence to the claim that Yelena and Boris are sharing a household. There were no efforts made to provide additional evidence in this regard, such as asking for a report of activities in her bank account, evidence of bills payments or giving Yelena the opportunity to provide other evidence she believes would disprove their claim. It seems that the fact that the statement was not particularly strong evidence did not preclude the NII from heavily relying on it, without even attempting to provide additional evidence. I believe that this is consistent with the implementation policy of the NII that views evidence regarding a shared household as unnecessary, and definitely not crucial to the case.

Dalia

I obtained documentation regarding two investigations of Dalia that took place in 2003. The first investigation is very short and seems to end abruptly. At the end of the document, it is written that Dalia refused to sign the document, without any explanation. The information that is included in the document includes Dalia's statement that the father of her child is Yakov, who lives with his father. She also states that she has always been living with her mother and her younger sisters. The investigator confronts Dalia, stating that her younger sister, Eden, told him that Dalia is not living with them, but rather she lives with Yakov and their joint son. Dalia replied that her sister has hearing problems [she was born without one ear], so she probably did not understand him correctly. Afterwards, the investigator starts asking Dalia about her Grandmother's apartment, and the investigation suddenly ends. Three months later, another investigator submits a summary of investigation stating that he had tried to find Dalia's alleged partner in his address twice without any success. He also stated that he twice asked neighbors regarding Dalia and her alleged partner, and "it was said that Dalia, Yakov and their son live in apartment 4." On his third visit, the investigator states that he called the Dalia's cellular phone, while standing outside her partner's apartment's door. He heard the phone ring from inside the apartment. After he continued to knock on the door, Yakov had opened the door and threatened the investigator to leave him alone. The investigator concludes this summary of investigation as follows: "In summation, Dalia is living with Yakov in his apartment on 108 Ben Gurion St. apartment 4, Rehovot."

Based on these investigations reports Dalia was immediately disentitled from her allowance from here on and she was also disentitled retroactively, although it was unclear for what period of time. In addition, at first Dalia received a letter of notification stating that she was disentitled from her allowance because she was not found at her address (her mother's home). Later, she received another letter notifying her that her allowance was disentitled from her because, "based on an investigation we had conducted you are living with a partner." Dalia got her allowance back due to a Supreme Court immediate order. However, it took seven months, during which she had no means of support to provide for her son and herself.

Again, these documentations support my argument regarding the implementation policy of the NII. It is clear that there was no evidence whatsoever to the fact that Dalia is

sharing a household with the father of her child. The only apparent pieces of evidence were the statement of her younger sister, who has a hearing disability, and vague statements by neighbors that Dalia is living with her partner. However, even if such evidence might suggest that Dalia is living with the father of her child it definitely does not imply anything about whether she is sharing a household with him and whether he supports her financially.

Finally, it is apparent that the internal documentation of investigation, the evidence presented by the NII in court cases and the interviews conducted with NII officials all support my argument that the NII implementation policy is not concerned with providing evidence of a shared household or evidence of some financial support. Instead, the NII searches for evidence that the woman is having some kind of a stable relationship with a man. Sometimes, even such evidence is based on very shaky grounds. Moreover, it is also apparent that the courts are also inclined, in most cases, to cooperate with this implementation policy and do not require the NII to bring evidence of a “shared household.” Based on this analysis, it is clear that the ways in which the definition of a “couple” is implemented are inconsistent with the formal law, which definitely requires the existence of a “shared household” for two people to constitute a “couple.”

After having established the legal regime, by exploring both the formal law and the ways in which it are implemented, in Chapter IV, I examine the ways in which single mothers who have been investigated by the NII due to a partner experience the legal regime and the ways in which it impacts their lives.

## **CHAPTER IV**

### **THE PERSPECTIVE OF SINGLE MOTHERS LIVING ON WELFARE AND WHO HAVE A RELATIONSHIP WITH A MAN**

#### **A. Stories and Needs**

To gather some first notions regarding the perspective of single mothers of the legal regime, I conducted 13 interviews. All my interviewees were poor single mothers, who all had (in their past or present) some kind of a relationship with a man. All but

one,<sup>158</sup> lived on welfare, and all had been investigated by the NII. Despite these similarities, each of the 13 interviewees had her own unique background and experiences that explained her current situation. Among the 13 interviewees, some are divorced; some never got married; some have kids of their own; some have children with their current partner; some live in the house with their partner, and, in other cases, the partner only comes to visit. Even so, all 13 interviewees defined themselves as “single mothers.”

Representing a spectrum of circumstances, on the one extreme, I had Esther, who had a joint child with her partner and had actually been living with the father of her youngest child for seven years; on the other extreme, I had Hana who does not have a joint child with her partner, who was not actually living with her partner, but who had notified the NII of her relationship two weeks after the relationship started. In between, there were interviewees who were having a long relationship with joint children, and their partners lived with them for different periods of time; there were relationships of less than a year without any joint children, but the partner actually lived in the interviewee’s apartment; there were relationships in which the interviewee lived with her partner for a very short time, but they did have a joint child; there were relationships that were relatively long, with joint children, but the partner never actually lived together with the interviewee; and there were relationships that were relatively long without any joint children and the partner never actually lived with the interviewee.

In Section (1) I present the stories of the two extreme cases of Esther and Hana as personalized examples of such different stories and needs. Nevertheless, these stories do not represent two typical stories; on the contrary, my objective is to show that there is no such thing as a “typical” story. Moreover, I will show that although each woman has her own special circumstances, they do share concepts regarding the legal regime that governs the lives of single mothers on welfare in Israel.

### Esther

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<sup>158</sup> Avital is the only interviewee who is not living on welfare, but she did go through an investigation due to a partner, apparently, because she was receiving a yearly grant of around \$300 U.S. as a “Study Grant” for single mothers, which is granted for school supplies for her children at the beginning of each school year.

Esther has four children: three of her children are the product of her marriage to her ex-husband, who is a drug addict; her youngest child is from the man she is currently involved with.<sup>159</sup> Esther married her husband when she was 17 and had her first child when she was 18. She knew that her husband was a drug addict, but she said she preferred to “be raped by her husband, than by her stepfather.” All she wanted was to run away from home and have someone to protect her. When she returned from the hospital after giving birth to her third child, she found a totally empty house. Her husband had even sold the door of the house to purchase his drugs. She then understood that nothing was going to change even if “I will have three more kids,” and that she wanted to give her children a “different education, values, different culture.”

Even so, it seems that throughout all these years, Esther had been unable to pull herself and her family out of poverty, but only managed to keep her head above water. She is still on welfare. She describes herself as a “third-generation” of poverty and hardship. She speaks in an offhand, nearly routine manner of going to sleep without eating, living without electricity, and untreated illnesses.

After a few years of continuous struggles, she met a man who she thought to be “a sure thing;” in contrast to her drug addicted ex-husband, this man had a stable job in the military. By the time she discovered that although he was not a drug-addict, he was not treating her and her children any better, she was already pregnant with her fourth child. Since then, for almost seven years he has been living in her apartment (in a public housing apartment). Even so, she does not describe him as her partner. She explains that she, and she alone, is responsible for her three older children. She alone pays the rent, the electricity, water, food, clothing and everything else. Today she supports her four children (who are under 18) from a total allowance of around 3200 NIS [about \$700] a month. She thinks it is totally reasonable that he does not support her children; they are not his responsibility. She plainly states: “Even if in another life I will go out with a normal man, no one would take a woman with four children and raise them for me. I wouldn’t do that.” Moreover, she has no illusions regarding his perception of her children:

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<sup>159</sup> Interview with Esther (June 1, 2005).

This man will never love my children [her children from previous relationships]. Maybe he will love them in order to get something from me; to exploit me physically and mentally; to use me, no matter how, no matter for what purpose. He has a target, and when he'll receive it, my children will be thrown aside.

Throughout the interview I had tried to comprehend why she would agree to “host” him under such conditions. It is not only the fact she cannot afford to “host” another person in her apartment, but she is actually risking her NII allowance, because there is no doubt that if the NII discovers that he is living in the house, she will be immediately cut off. Even worse, her loss of benefits will be retroactive for the entire period of her relationship with him, and she may even have to repay the state for the benefits she received during those years. At the end of the interview the answer was very clear. In Esther's view, the key concept to understanding men and the relationship between men and women is very simple: exploitation.

Esther: If someone would be willing to put the money, I will agree to become a man. Do an operation, and fix me with a man's genitals. I don't want to be a woman! I don't see myself as a woman. I am not a woman. I am a woman only in my outside appearance. There is nothing besides that. I don't have sexual relations in years, and it doesn't bother me at all. Don't see myself as a woman.

*Question: But you are a mother.*

Esther: That's a given. But if you'll change my sexual organs and it will change my life, I agree.

*Question: Do you think it will change your life if you'll become a man?*

Esther: So men won't fuck me anymore. Yes. Yes. Yes. I won't give my body to a man that will promise me castles and after I'll give birth to his child will change his skin....I don't think I deserve that....So I won't let any man exploit me anymore. I gave them my body and they did whatever they wanted with it.

Only after we formally finished the interview did I understand how deep this perception of men goes. Esther was asking her daughter to request a cigarette from someone we met in the mall. When her daughter refused, she said:

Esther: [I see] only men smoking. If I see a woman that smokes, I'll ask her. I won't ask a man even if I'll die. Shame [to ask from a man].

*Question: Why won't you ask from a man?*

Esther: No. Let it go. They are all the same. I don't trust anybody. What do I know how he will react? Then, I will need to answer him. It's not worth it.

But we would be mistaken to view Esther as totally conceding this reality. On the contrary, Esther is fighting back with what she has; she also exploits him for her own interests.

However, it is not only because of the car. I realized that her relationship with her little daughter's father is a complex bundle of interests, which at its core is her need and desire that at least her youngest child would grow up with a father. She said that "at least he will fulfill her needs, and I will need to struggle only for the other three". But it is not only about material needs, but rather her strong belief that growing with a father makes a huge difference on the way a child grows up.

She [her little child] is truly unique. You can see that a child that grows up with a father is different. She communicates differently. It gives her different ambitions, a different perception of the world. When she brings an exam with an A, he goes and buys her a doll or a stroller. It encourages her.

Off the record, Esther confessed that today she wants to kick him out of her apartment and sue him for Child Support. But it's not really in her control any more. He explicitly threatened to go to the NII and report that he has been living with her all these years. She knew that if he reports her, she will be thousands of dollars in debt and might be prosecuted for committing a criminal offense. I could not offer her any way out; it seems she will stay trapped until he decides he has used her enough.

Esther's story represents one extreme of the spectrum of circumstances I encountered during my interviews. She was having a long and stable relationship with the father of her youngest child, who was actually living in her apartment every weekend, while during the week he was sleeping in his workplace in the South of Israel. However, Esther is one of the few interviewees who has managed to conceal her relationship from the

NII, and, therefore, is still receiving the Income Maintenance Allowance. In the next section, I will present the story of Hana, who in many ways signifies the other extreme of the spectrum.

### Hana

In Hana's house one cannot escape the sight of poverty. There was no possible way to even try to make things look normal. I entered the mid-size living room, which looked pretty big because it was completely empty. There was not even a ragged couch to sit on. Instead, there were three worn cushions and an old table with three chairs. Hana is a new immigrant from Russia, and her Hebrew is still rough, but to sense her pain, even her broken Hebrew was more than enough. Hana has three children, ages nine, six, and three.<sup>160</sup> She was divorced from her husband three years ago. She explains that she decided to leave him after he left with another woman for the fourth time, as usual, immediately after she gave birth. Moreover, after she left him, he did not leave her alone and would stalk her, bang on the door of the house. She called the police a few times, but he continued, so she decided to run away from her husband and moved to another city.

After she left her husband, he refused to pay her child support for six months. She went to the NII to ask for support, but there she was told, incorrectly, that she first needed to file a child support suit against her husband; only then can she receive Child Support and Income Maintenance Allowance through the NII. For six months all she had was a 400 NIS [about \$90] Children Allowance per month to support her three small children. She supplemented her income by doing tailoring. She directly tells me, without even a tone of complaining, that during that period she literally had nothing to eat. She would eat once a week, in order to give food to her children. Her greatest fear was that the welfare institutions will take her children from her:

A social worker came to the house, and you can see that there aren't many things in the house. I have a friend who told me that I must say that I have food. Thank God that they don't check the refrigerator....I didn't tell them that I wasn't eating and that I got stomach problems because I'm not eating.

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<sup>160</sup> Interview with Hana (July 17, 2005).

After filing a child support suit her situation improved. Now, in addition to the 400 NIS [\$90] Children Allowance, she receives 2000 NIS [about \$450] Child Support, which is paid through the NII, and another 670 NIS [about \$150] Income Maintenance Allowance. When I asked her how she manages to support three children on \$700 a month, she plainly states, “I don’t manage.” She explains that she paid the electricity bill, but cannot pay the water bill, although she heard that they are planning to shut her water off. She has a large debt to the local municipality, because she failed to pay taxes for the past year (since she moved to this city).

Recently, she met a man and a relationship started to develop between them. He rents an apartment in a different city, and like her, he has a child of his own, whom he is obligated to support and, accordingly, pays almost one-third of his salary to his ex-wife. He invites her to come to sleep at his place, but she recognizes that she cannot leave her small children at night, and, therefore, when they meet, he always comes to sleep at her apartment. She admits that she wishes he would be her partner, but “what he wants and what he decides are different things.” She says he might come today or might not come. She does not know. He calls and says “I’m coming” and that is it. She is responsible for all the payments of rent, bills and things for her children; likewise, he is responsible for the payments for his apartment and to support his child. Similar to Esther, Hana also has no illusions or big expectations regarding her boyfriend as a means of support for her children:

Even if today I have a boyfriend, suddenly he has other things in his mind, and that is it; he isn’t coming anymore. But I have children; I need to raise them; how is that related to the fact that I have a boyfriend?

She heard that the NII comes to check the house looking for a man. She did not want to conceal things, and lie, so two weeks after she met him, she went to the NII and reported that she was having a relationship with a man. She told them that he occasionally comes to sleep at her apartment. She also immediately admitted that there are a few of his clothes in her apartment, so when he comes over he can wash up and feel comfortable.

Following her report, an investigator arrived at her house. She never really understood why he came, because she had already reported that she had a relationship with a man, and that he has some of his clothes at her apartment. Even so, she cooperated and replied to his questions. He asked her why there was a man's shirt in her bedroom, and she replied that it belonged to her boyfriend. He opened the closet and looked for more evidence. When he asked her again if she was sure that he is not living here, she asked him, "Would you want a woman with three children??" after he replied "no!" she continued: "so why do you think anyone would like that?" Even so, after the investigation, Hana was disentitled from her Income Maintenance Allowance and now has to manage on only \$550 a month.

Obviously, Hana represents the other extreme of the types of relationships I encountered during the interviews. The relationship was just in its initial phase; she did not have joint children with her partner, and she did not live with her partner. Moreover, Hana was the only interviewee who initiated going to the NII and notifying them of her relationship. However, Hana was disentitled from her Income Maintenance Allowance due having to a partner.

The stories of Esther and Hana illustrate the enormous range of circumstances to which the legal regime applies. Moreover, they demonstrate how each woman has her own unique character and different experiences in life and with the NII. Precisely due to this range of cases, it was interesting to discover common threads regarding the ways in which single mothers perceive the legal regime. I will examine these themes in Section B.

## **B. Shared Concepts of the Legal Regime**

Although each woman had unique experiences and a different character, it was amazing to discover that a few common themes were repeated in almost every interview. I will describe these shared concepts regarding their understanding of the following: what is allowed under the legal regime; who the legal regime should apply to; what their definition of a "single mother" is; how they view their relationships with men; the impact of the legal regime; and in what ways they view the legal regime as being legitimate or illegitimate.

## 1. Can I Have A Relationship With A Man?

Each woman had a slightly different understanding of exactly how the legal regime functions and what is actually allowed under the legal regime. Only one [Avital] of the 13 interviewees had no idea about the legal regime whatsoever.<sup>161</sup> Among the others, most of the interviewees understood the legal regime as forbidding them from having sexual relations with man and resisted the legal regime as such. Shlomit said that she understood from her investigation that if she receives an Income Maintenance Allowance, she cannot have a “partner.”<sup>162</sup> When I asked what it meant, she replied:

I understood that I can see him but ...[sic] this is so insulting. We can be together, but he can't sleep over and can't live here. We can go out, be friends but not...[sic].

Sara says, “Why can't I have a boyfriend? I don't have anything now, but I'm not Saint Mary; I want to start over. I'm only 23.”<sup>163</sup> Ilana, understands the legal regime forbidding her from having sexual relations in her home.<sup>164</sup> She says, “I told them [the NII investigators]: ‘do I look like an old lady? ... Do I need to go to a hotel? I have a home.’” Rina protests this same idea saying:

Who says I can't spend the night with a man? Where is it written? I want to see it in the laws. Who said so? He has a few of his things here. He does not live here. Let's talk, you and me- he doesn't live here.... But he is my man for the night. Why can't I? Am I not a woman? Truly, I don't live with him, but why can't he come for the weekend? Who says that he lives here, because they found a toothbrush, a razor, his underwear and a few clothes?<sup>165</sup>

This view of the legal regime as a mechanism that forbids any sexual relations with a man is strengthened by the interviewees' clear sense of the fact that the NII is looking for evidence of the mere presence of a man in the house, i.e. evidence that they are having a sexual relationship with a man. Hana says she went to notify the NII that she had a boyfriend, because she heard that they come to check the house to see whether

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PT<sup>161</sup> TPInterview with Avital (May 6, 2005).

PT<sup>162</sup> TP Interview with Shlomit (July 5, 2005).

PT<sup>163</sup> TPInterview with Sara (June 1, 2005).

PT<sup>164</sup> TP Interview with Ilana (July 6, 2005).

PT<sup>165</sup> TPInterview with Rina (May 15, 2005).

there are “[man’s] clothes, extra toothbrush, everything.” Ilana was also aware of what the NII was looking for, stating, “They didn’t find one [man’s] underwear, no toothpaste, no brush, and not a single hair.” Although Dina did not directly address the issue, it seems that she is very much aware of what she can and cannot do under the legal regime. When I asked about the relationship between her daughter and her father, she immediately clarifies that “he doesn’t sleep here, he doesn’t eat here. If he wants a cup of coffee, I’ll make him one. He sees her [his daughter] at the door. Nothing more than that.”<sup>166</sup>

As a result, based on their experiences with the NII, the vast majority of the interviewees viewed the legal regime as a mechanism that forbids them from having sexual relations with a man. Their experience with the legal regime is in sharp contrast to the formal legal definition, which at least formally speaks of a “shared household.” This disparity between the perception of single mothers who experience the legal regime and its formal interpretation strengthens my argument that there is a gap between the law on the books and the law in action. This gap is even more evident with regard to single mothers’ perception of the formal legal definition, as I will describe in greater detail in the next section.

## **2. The Legal Definition of a “Publicly Known Partner”**

All the interviewees were unaware of the formal definition of a “couple” as it exists in the law on the books. Moreover, they were not aware of the concept of “publicly known partner,” or of the ways in which the courts have interpreted it as one that requires a “shared household.” When I inquired what her interpretation was of a “shared household,” Rachel says “[it’s] to live together and provide for me, help me; [it means] to go with me to events, to take me everywhere.”<sup>167</sup> Shlomit says that it is readily seen if a couple is having a shared household, “you can see that regularly he comes back at 5 p.m., parks his car, together they go out in the morning to work.”

It was interesting to discover that none of the 13 women contested the interpretation of a “publicly known partner.” All 13 interviewees thought that in a case in

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PT<sup>166</sup> TPI interview with Dina (May 23, 2005).

PT<sup>167</sup> TP Interview with Rachel (July 1, 2005).

which the man and a woman share a household, the woman should not be recognized as a single mother. Dina says:

If I live with him and he is my partner for all intents and purposes, I'm not entitled to receive anything [from the NII]. He provides; there is a man in the house, so why should I receive [an allowance] from the NII?

The fact that all 13 women justified the *formal* legal definition of a “couple” reinforces the notion that from the perspective of single mothers, the problem with the legal regime is the ways in which the law is enforced. The gap between the legal definition and its implementation was emphasized by the fact that all 13 women believed that the definition of a “shared household” did not fit their circumstances. Hence, the law should not apply to them, because they and their partner do not share a household. This was in contrast to the reality that all 13 women experienced with regard to legal regime and were living daily with its consequences.

Esther says that although she lives with the father of her youngest child, the law should not apply to her, because

He is not a partner that provides you and buys you [stuff]; a partner that subsidizes you. He is just the father of my child, and for good relationship, and so that this child would not grow up without a father [he lives in the house].

Esther knows that the NII does not agree with her; when they inquire whether she lives with someone, she lies. Rina says that she and David do not have a shared household. “He can buy me some fruits and vegetables, but we don't share a household. He sleeps here because I desire him at night—let's be explicit.” Shlomit had no doubt that she did not have a “shared household” with her boyfriend. She says, “No. Definitely not. I wish. That would have helped me.” Deborah also emphasizes that the law should not apply to her, because the relationship is not going anywhere; his presence in the house is only because of the kids.<sup>168</sup> She says:

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PT<sup>168</sup> TP Interview with Deborah (July 3, 2005).

If you want—stay here, if you don't want—don't.... When he sleeps here he sleeps on the sofa. Nothing is for me; everything is for the kids. When they will grow up, there is no reason for him to come here at all.

In summary, all 13 interviewees did not view their current relationship as one that should constitute having a “publicly known partner” under the legal regime. The other side of the coin was that all 13 interviewees identified themselves as “single mothers.” However, under the legal regime they are not defined as such. To fully understand this gap between the way in which they define themselves and the way in which the legal regime perceives them, I will delve more deeply into the ways in which the interviewees define a “single mother.”

### **3. A “Single Mother”?**

Interviewees'<sup>169</sup> definition of being a single mother centered primarily on their responsibility for their children. When I asked why she identified herself as a single mother, Dina's initial answer was: “Because I'm alone with my child. I don't have any support. Not from her [the child's] father, and not from anyone else.” Esther replied that “I alone am the mother of my children.” Deborah answered “I raise them [her children] alone.” Shlomit replied that a single parent is a “mother who takes care of her children by herself.”

In general, the definition of a single mother focused on their obligation to provide their children with their needs. Esther says:

I am actually dealing with this reality everyday. I need to deal with it; I need to provide my children their needs. So I made a mistake, but what can I do now? The solution is suicide; to die and not hear and not see anything. But I don't want to die. I want to raise my children, educate them, and furnish them with values.

If it only harmed me, you wouldn't hear from me even one word of complaint. But as soon as it concerns my children, I can burn the State of Israel. Burn the State of Israel. Go with a bottle of explosives and blow myself up. I'm not afraid. I'm not afraid.

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<sup>169</sup> All interviewees, except Rachel whose children are grown.

This perception of their role as single mothers was closely related to the way in which they perceived the Income Maintenance Allowance. It was clear to all of them that the allowance is actually for the kids and not for them. Rina stated: “It is not that the woman who gets the money; it is for the children.” Deborah explained me that the Income Maintenance Allowance that she has been receiving substitutes for the Child Support that the court did not order for her because her ex-husband was a recovering drug-addict. Yelena says:

Whatever I received [the allowance], I used to pay for the rent, food and clothes for the kid. Many clothes. It’s for the kid. When I didn’t work, I didn’t buy anything for myself. If I had money, I would buy something for the kid.<sup>170</sup>

When I tried to fully understand what they meant by saying that they alone provide for their children’s needs, even when some of them are living with a partner in the house, most of them emphasized the lack of economic support, resulting in the need to provide for their children’s needs, pay the bills, pay the rent—all by themselves. Avital who had been living with her partner for more than three years still defines herself as a single mother. She explains:

I do consider myself to be a single mother. Because I do everything by myself...I need food, I buy it. Things for the house I buy them. He won’t come and say, ‘Avital I bought you a curtain.’ ... I buy everything. I need a dining table—he says he doesn’t have money. At the end I go, take loans and buy the dining table. So it is not relevant if he is in the house or isn’t in the house.

When I asked Hana about whether she thinks that in Sharon’s circumstances she should be regarded as a single mother, she concluded by saying “if he helps [financially] she isn’t [a single mother].” Yelena also used the same criterion, i.e., whether the man supports the woman financially. When I asked Rivka if she saw herself as a single mother during the time she lived with the father of her child she replied:

“Of course, I saw myself as a single mother. I was taking care of everything. I felt like a single mother. He did not support me

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PT<sup>170</sup> TPI interview with (June 16, 2005).

financially; did not support me emotionally. Nothing. He wasn't a partner. If he were I wouldn't have gone to the NII."

The lack or very limited financial support of the partners was evident in all the cases. For example, Esther who had been living with the father of her youngest child for seven years told me how upset she is that she cannot pay 300 NIS [about \$65] to send her youngest daughter to be identified as a gifted child. When I asked whether the father would not pay for such an expense, she replied:

Can I tell him what to do?? If he was my husband or my partner for all intents and purposes, I could tell him. I don't have the right. He works. He did not take anything from me, and he can't tell me what to give my children to eat.

Yelena says that during the times she did not live with the father of her younger child, he did visit his son, and they also had some kind of a relationship. During those visits, he would bring some diapers and some food to his son, but she never felt she could ask him to bring something specific that they needed. "He brought what he thought [they needed]." Today, Yelena defines him as her partner because she says that in contrast to the past, she feels "secure." She feels she can rely on his help. Today she feels comfortable asking him to buy something for the house; however, things she needs for her oldest son or items that she needs for herself, she will buy with her money. Dina describes the fact that the support of the father of her child depends on the state of their relationship. She tells me that once after they fought he deprived her of the 400 NIS [about \$85] he usually gives her for the child, although he knew that she did not even have money to buy diapers at the time.

The interviewees' emphasis on the lack of financial support as a central factor in the definition of a "single mother" strengthens the notion that there is a gap between the experiences of the interviewees as single mothers and the ways in which the legal regime is implemented. In contrast to the interviewees' interpretation, the NII implementation policy is not centered on the issue of financial support, but rather solely on whether there is a somewhat stable relationship. As described in Chapter III (B), the NII implementation policy is based on the assumption that if there is a somewhat stable

relationship between a man and a woman, the man necessarily supports the woman, even if this is only done in limited ways. Moreover, it seems that the courts are generally inclined to accept this interpretation. Due to the way in which interviewees define single mothers, it seems that there is no strong foundation for this assumption. In the next section, I will examine this gap in perceptions more deeply, by looking into the ways in which single mothers view their relationships with their partners and the financial implications of these relationships for their lives.

#### **4. The Significance of Having a Relationship with a Man**

All my interviewees agreed that one cannot survive with the Income Maintenance Allowance at its current level.<sup>171</sup> All talked about debts, unpaid bills, living in scarcity, and not providing their children with all their needs. From some I understood that even providing enough basic food was an issue at some point. Their main concern was how to increase their means of support, without being disintitiled from their allowance. The most dominant way to survive was through some kind of a relationship with a man. Nine out of the 13 interviewees [Dina, Yelena, Rivka, Deborah, Esther, Sophia,<sup>172</sup> Ilana, Rina, and Avital], were getting some kind of financial support from the man they were involved with. In this sense, NII assumption is related to the experiences of single mothers. The vast majority of interviewees explicitly said that their relationship with a man slightly helps them in their struggle to survive.

Dina says that the father of her child gives her 400 NIS [About \$80] per month for their child, and she knows, from experience, that if they have a fight he can withhold the money even when he knows that she does not have a penny. Yelena explicitly said that she could never rely on Boris's support, which would amount to bringing diapers and something to eat for his child when he came to visit. She never asked him to bring anything. Rivka stated that the father of her child paid for all the basic expenditures, while she was living at his place, but she didn't have any money for herself or for the child. Moreover, all in all it lasted only for four months, until she couldn't take the emotional abuse and left his house. Deborah, Esther and Avital were clearly also using

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<sup>171</sup> All of them raised the issue that the welfare reform that took place in 2003, drastically reducing the Income Maintenance Allowance, was a turning point in this regard.  
PT<sup>172</sup> TP Interview with Sophia (May 9, 2005).

their partners to help them support at least their joint children, leaving them to take care of only their other children. Rina actually told me that she stole money from the father of her children because he would not give her any support. She admits that this money was how she later survived in times when she was disentitled from the allowance because of a “partner” and was left without anything.

As is apparent from the examples above, in all cases the support was minimal at best, scarce, unstable and depended heavily on the current state of the relationship. It seems that the limited nature of this financial support is not accidental, but rather is deeply entrenched in the type and nature of the relationships the interviewees maintained. In other words, the nature of the relationships necessarily leads to the fact that the financial support that the women receive from their partners is extremely limited. In the subsequent paragraphs, I will examine the ways in which the interviewees view their relationships and their ability to be financially supported by their partners.

The main theme that emerged from the interviews with regard to the nature and the meaning of such relationships is that all the relationships can be characterized as being very complex and “messy.” In general, it seems that two major factors shape these relationships: (1) the existence of non-joint children from previous relationships, coupled with (2) the existence of joint children. It seems that a combination of these two factors is responsible for the peculiar forms of these relationships that are best characterized as relationships in which there is an imbalance of power between the man and the woman, which leads to exploitation on the one hand and struggles to balance the power on the other hand. Most interviewees were not explicitly aware of, or willing to admit, the fact that their relationship is about exploitation and power, but rather used the term “unstable.” All 13 interviewees described their relationships as being unstable. However, it is apparent that the man was the one who controlled the relationship. He decides when to come and when to leave; when to support and when to disappear.

For example, Rina says: “David is also like that. He can also just disappear....he doesn’t even contact the kids by phone. Nothing. Nothing. For five months we didn’t hear from him and didn’t see him.” Later, she comments:

Today we are together and he gives me some money....Today he gives me, tomorrow he won’t give me. Today he gives me, and

then for a year he won't give me. A year he will give me....it is unstable.

Hana repeated the fact that she can't rely in any way on her boyfriend three times, because he can just take his clothes and leave any minute. Deborah describes her relationship with the father of her three younger children as "I live here; I don't live here. I'm here; I'm not here." She later explains that he was afraid because she has three children of her own, and he was a single man. She also tells me that he was under a lot of pressure from his family who did not accept his relationship with her.

Deborah: This was my relationship with him, and he stressed it all the time: 'I don't owe you anything. Today I'm here, tomorrow I might not come.' The day after tomorrow he might come again, and then not come for a week; go out with another woman in between, and then come again and then go again....

*Question: Also, in the period you had children together?*

Deborah: Yes. And there were times when it really upset me. I felt like a whore. You come here when you want to sleep with me; we have children together and then you aren't willing to take responsibility and say o.k. we have kids together so let get married.

Rivka also describes an unstable relationship that has been off and on for three years already.<sup>173</sup> She says that the relationship was on wobbly grounds from the beginning because Moshe was in the process of getting a divorce (and had three children of his own). Therefore, already at the beginning of their relationship, they broke up and got back together a few times. At one of those times, she got pregnant. She discovered she was pregnant when they were, once again, separated. Even so, she decided she wanted to keep the baby. She describes that period as a period of great emotional distress; her family was not willing to accept the fact that she was having a baby outside of wedlock; she had just been fired from her job as a security guard, because, as a matter of procedure they fire her every ten months (to avoid paying dismissal compensation); the baby was expected soon; she panicked.

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PT<sup>173</sup> TPI interview with Rivka (June 20, 2005).

Moshe asked her to move in with him, and she says she felt “that although she did not want him, she didn’t have a choice, so she moved in.” Even during the period they lived together, she defined herself as a single mother. She explains that they slept in separate beds. He paid for the rent, all the bills, and bought the food, but he did not give her money to buy anything at all, not even clothes for the baby. He spent the nights with another woman. They would have terrible fights. A few times, she found herself running with her stuff to her grandmother’s apartment. She did not have any money, and she was ashamed of her pregnancy, so she practically did not leave the apartment for four months. She was all alone when she gave birth to her child. When talking about her relationship with him, she talks about fear, stress, and emotional abuse. During the final two months she was living with him, she received Income Maintenance Allowance as a single mother. A month after her child was born, she left his apartment. It was exactly then that the NII disentitled her from her allowance because she was living with a “partner.” She says she literally did not have anything in her new apartment. She says: “I didn’t have a refrigerator, no gas, no food. Nothing.” In her desperation, she returned to his apartment once again; after three weeks she left. After that she found some jobs and things improved. She is still in an ongoing relationship with the father of her child and was just planning to move to his place once again at the end of the summer. This time, she says, “I’m not afraid anymore,” and I plan to “live with him as a ‘partner’ and not as a ‘single mother.’”

One factor that seems to be strongly related to the creation of such complex relations is the existence of children from previous relationships.<sup>174</sup> In all thirteen cases non-joint children were involved; in five cases both the man and the woman had children from previous relationships [Avital, Sophia, Esther, Shlomit, and Hana]; in four cases only the woman had children from previous relationships [Ilana, Deborah, Rachel, and Yelena]; and in three cases only the man had children from previous relationships [Rina, Rivka and Dina].

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<sup>174</sup> Rachel’s case was the only clear exception; Rachel’s kids did not seem to have an impact on the relationship, but three of her children were already out of the home. In other two cases, the interviewees mentioned the fact that the man had other children of his own, but its influence was not clear.

Avital's initial answer to whether she defines herself as a single mother, while living with the father of her two youngest children for almost three years, was related to the fact that he had a daughter from a previous marriage:

Avital: Yes! First of all, I don't want to marry him. Secondly, we hardly get along.

*Question: Why? What do you mean?*

Avital: We argue a lot. He has a 17-year-old child...Well, I won't tell you the whole story, but she lives with her grandmother, and she is a difficult kid.

Yelena was also very clear about the fact that the main factor which made her relationship with Boris so complex was the fact that she had an older child from previous marriage. A few times she emphasized the fact that Boris and her oldest child do not get along; she says that today it is better than what it had been in the past. Even today, when Yelena does define Boris as her "partner," it is apparent that this is still a bleeding blister in their relationship. She cries telling me that there is a big difference between Boris's attitude towards their joint son and towards her older son. She knows that Boris does not substitute as a father for her older son in any way; she also knows that her son feels it.

Deborah pinned down the reason for her unstable and complex relationship with the father of her three younger children immediately at the beginning of the interview. She says, "He was single, and [his] family did not accept the fact that I had three kids [of my own]." Moreover, it seems that the fact that he demanded that she give her three older kids to their father had created a lot of tension in their relationship. She actually gave them to their father once, but two and a half weeks later, she brought them back; he left her afterwards for a while.

The fact that children from previous relationships were involved directly influenced the extent of financial support from the partner. For example, in the case of Avital it was clear that they consider their financial expenses separately, because Avital has three children of her own. She explains: "He gives me 1500 NIS [about \$300] per month to buy food, but it clearly does not cover food for five children." In the case of Yelena, the separate financial responsibility for each of the children is readily noticed. Yelena and Boris still have separate bank accounts, and Yelena uses her own money to buy her oldest child whatever he needs. This financial accounting in their relationship is

even more apparent due to the fact that before Boris has moved in with Yelena, she was living with her father. She says, “With my father I had a joint account.” This was also apparent in the case of Deborah. Deborah explains that her partner supports her financially only with regard to items that are specifically for *his* children; clothes, payments to the school, payments for trips. She says that once in a while he might bring some food, and that, in that case, it is not only for his kids. Shlomit addressing the same issue says:

*Question: Does he help you at all financially?*

Shlomit: No. Not really. When we go out he pays, but he does not pay the rent, the local taxes, and certainly does not pay for Sivan’s [her daughter] day care and Sivan’s activities. He has his own kid, and he is an amazing divorcee....he gives [his kid] whatever he needs.

Another interesting theme was the fact that the women were not expecting any financial support from their partners for the non-joint children. It might well be that at some point they were hoping that their current partner would “save them all” and provide for the family as a whole, but their experiences have led them to understand otherwise. Ilana was very explicit in this regard. She says:

Today, I think there is no chance that a man who will live here will love them [her children] like their father. It does not happen. You take it into account when it is a third relationship, with a person who is a stranger. He also has his own baggage. It always comes out in conflicts. .... Always in the end, the woman is the one who stays with all the mess. The woman lets the man inside her home, hoping to receive some support, or even just emotional support, but in the end it never turns out like that. It can’t; only in exceptional cases.

As described in Section (1) of this chapter, Esther and Hana were both very explicit about the fact that they have no expectations of their current partner to support their own children. They both also addressed the fact that their partners have their own children from previous relationships whom they were responsible for caring for. Similar to Esther and Hana, Deborah does not expect her partner to support her own children. She says:

Let's say Rami [the father of her three youngest children]—he has three children and he needs to support them. But even if I live with him, is he responsible to support my own three kids??? They are not his children. So, what if he is with me? Someone needs to provide for them, and that is me! ....There is no doubt that he needs to support his own children. But someone needs to support the other three. He does not owe me a thing in this regard.

The formal law does not address this complexity in relationships. According to the formal law, the Income Maintenance Allowance is an allowance aimed at supporting the family as a whole. Therefore, the allowance does not include a separate portion of an allowance that is designated for children. As a result, when the single mother is cut off from the Income Maintenance Allowance due to a partner, her children are also cut off from the allowance, regardless of whether the mother's partner is legally obligated to provide for them, if they are not his own. The fact that the formal law does not address this complexity is a difficulty in itself. In spite of whether these women expect their partners to provide for their own children, it is problematic that the formal law expects a man—who has no legal obligation to provide for the children—to do so.

Moreover, the fact that the implementation policy of the NII does not investigate whether there is an actual “shared household,” hence, whether the partner actually provides for the family as a whole, markedly exacerbates this difficulty. Accordingly, the NII necessarily disentitles allowances in cases in which the partner supports only his own children, but also the allowance is disentitled from the family as a whole; as a result, the other children are left without any means of support. In addition, it seems that the courts do not counterbalance this problem, and also do not address the question of non-joint children in such cases. Therefore, with regard to cases involving non-joint children, there is a gap between the formal law and the reality and experiences of single mothers. This gap is widened by the ways in which the definition is implemented by the NII and the courts.

Another factor that usually made the relationship even more “messy” and complicated was the fact that besides non-joint children, there were also joint children. In nine out of the thirteen cases the woman had a child with her current partner. In this regard, it was evident from the interviews that a major force shaping the relationship and

the nature of financial support they receive from their partners is the women's desire to provide their children with a "father figure." Yelena stressed that after raising her older child by herself, she knows what it means to raise a kid alone. "Because of that, I wanted Ron to grow up with a father." Although Rivka is aware of the fact that her relationship with Moshe was saturated with emotional abuse, she was willing to try to fix things between them over and over again. She says:

I kept trying to fix things between us all the time. My son is connected to his father. Although all the things I went through, I want them [her son and his father] to be in contact.

The desire to ensure a father figure for a child was always intertwined with the huge sacrifices the women had to make—physically, emotionally, and financially. It was clear that they all were using their bodies to offer their partners sex—the only resource they have to trade—to ensure that the fathers would continue to come visit their children. However, by maintaining such relationships, they were also risking losing their allowance and being left without any means of support. Deborah was very explicit in this regard, saying at one point that she felt "like a whore," prostituting her body to her partner, although he came and went as he wished and spent nights with another woman. Moreover, it seems that growing up in foster families and raising her three older children, without their father being involved, eliminated any need to conceal her interest in providing her children with a father. It was clear that she is maneuvering and manipulating the father of her three younger children to ensure that he would be involved in their lives. She says:

Deborah: First of all, I think of my children. Financially, I'm driven by my interests.

*Question: What do you mean?*

Deborah: I will suck up to him so he will be nice to the children. Not only money-wise. So that he will take them; that they will feel [they have a] father. It is easier for him to give up than to be with them. The easiest thing for him is to say 'go to hell, I don't want to recognize them as mine.' And he will do it. It is easier for him than for me to give up on his fatherhood. I don't have any feelings for him.

Rivka was also sacrificing her personal needs. It is clear that she is planning to go back and live with him once again for this reason. As described in Section 1 of this chapter, Esther was also consciously sacrificing herself to ensure that her youngest daughter would grow up with her father. It was apparent that she is continuing the relationship with the father of her youngest daughter although there was no doubt that she despised him. She was also aware that unfortunately she was also sacrificing the unity of her family, thereby harming her other children. She says:

It rips my family in two. Rips the family. Rips it. ‘go to your father’ [points to one direction] ‘go to your father’ [points to another direction]. ‘my father is not a drug addict, and your father is a drug addict’.

In regard to the purpose of this research, the interesting point is the financial sacrifices these women are making to preserve the connection between their current partner and their joint children. To provide their children with a father figure, not only were they accepting the fact that their partner is not supporting their other children, but many times they were even sacrificing the partner’s support of their joint kids. For example, Rina maintained her relationship with the father of her children for years, although she admitted he was willing “to let her and the kids die rather than to give us a hand.” It seems that she decided to finally break up with him when she realized that he was not even fulfilling this purpose.

If he didn’t give me anything, but at least he was a good father, I would have found the balance. Today I’m finished with him. I know he isn’t going to be in contact with the kids at all.

Deborah explained the fact that she is not suing the father of her 3 younger children for child support by saying:

If I can squeeze fatherhood out of him, not money, but fatherhood—the thing I didn’t have—so why not?? All the money in the world isn’t worth a hug of a child [sic], so why not? Why aren’t they [the NII] thinking about this? If I can prevent my children from the trauma of growing up without a father, so why not? ....

*Question: If you sue him for Child Support, do you think he'll disappear?*

Deborah: He won't disappear financially; he will pay. But he will [disappear] as a father. Yes. He will fight me like hell. And he would give them the amount ordered and not a dime more. It will clearly be that way.

Rivka was also sacrificing her financial interest for this purpose. Although Moshe did not support his child until half a year ago, she did not sue him for Child Support. She says:

I was really distressed by the fact that Dan [her child] does not have a father. I didn't want to sue the father; it was important for me to keep good relations with Dan's father.

Therefore, it seems that the NII implementation policy that assumes financial support is even less related to the experiences of single mothers. Not only do the partners not support children who are not their own, but many times they do not even support their own children, or support them only in limited ways, but the women still prefer to maintain their relationship with them to ensure that at least some of their children have a father figure.

In conclusion, it is apparent that the complex relationships between the interviewees and their partners are based on differences in power between the man and the woman. This imbalance of power is initially due to the existence of children from previous relationships. When joint children are also involved, the power disparity is enhanced due to the woman's strong desire to provide at least some of her children with a father figure. These differences in power are realized primarily through the total lack of or limited financial support from the partner. Hence, the man controls the relationship by coming and going as he wishes, but usually by avoiding financial support of the woman's other children, and sometimes even avoiding the financial support of even his own children. The woman struggles against this disparity with the only means she has—her body—to try to attract the partner, if not to provide for her family, then at least to provide her children with a father figure. Therefore, although on the surface these relationships might appear to constitute a stable partnership, they actually are very different, and

usually do not contain the elements of a “family life” and a “shared household” as regularly viewed in a formal marriage.

In the context of such relationships, the ways in which the definition of a couple is implemented by the NII and by the courts is very problematic. The fact that the NII assumes financial support without even looking for evidence of what might look like a “shared household,” necessarily means that many women and children are cut off from their allowance although they do not have any other means of support. Moreover, I argue that in the context of the *Income Maintenance Act*, the entry conditions to the factual status of a “publicly known partner” should be even harder than in the family law context, because the right for minimum means of existence in dignity is at stake. This is in accordance to Lifshitz’ argument that there should be a balance between the entry conditions to the factual basis of a “publicly known partner” and the right that the entrance to this status will provide.<sup>175</sup> Accordingly, I argue that when the state is inclined to cut-off a person’s right due to a “publicly known partner,” rather than rendering him one, the conditions to enter such a factual status should be harder; however, much more so when the entrance to such a status involves cutting off an allowance which ensures the minimum means to live in dignity. Therefore, in contrast to the NII and the courts’ inclination to broaden the definition of a “publicly known partner,” in the context of the *Income Maintenance Act* it is particularly justified to strengthen the entry conditions to the factual status of a “publicly known partner.” In addition, the justice considerations that Lifshitz presents, such as protecting the weak party of a relationship<sup>176</sup> and the interest to protect minors also suggest that in the context of the *Income Maintenance Act* the courts should be inclined to interpret the concept of a “publicly known partner” in a narrower way. As a result, in order to protect women who are usually caught in an exploitive relationship without being financially supported, and most importantly to protect their children, the NII and the courts should interpret the definition of a “couple” in ways that will ensure that the women and children have other means of support before disentiing their allowance.

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PT<sup>175</sup> TP Lifshitz, *supra* note 86, at 823

PT<sup>176</sup> TP *Id.*, at 824.

Moreover, it is apparent that with regard to non-joint children, the formal law is problematic overlooking the need of single mothers to provide for their own children, while having a relationship with a man. The formal law does not distinguish between the mother's allowance and that of her children. Therefore, if the mother is having a relationship with a man, the allowance of the entire family is cut off, regardless of whether the children are actually supported by the partner. This gap between the legal regime and the needs of single mothers suggests that the legal regime has harsh consequences for their lives. In the next section, I examine the impact of the legal regime on the lives of single mothers in more detail.

## **5. The Impact of the Legal Regime**

The legal regime impacts single mothers' lives in two major ways: (1) living under a regime of investigations and surveillance, and (2) living with the consequences of the legal regime in cases in which the Income Maintenance Allowance has been disentitled. In the following paragraphs I will examine the ways in which single mothers experience and view these consequences.

### **a. Impact of Investigations and Surveillance**

It seems that there are general implications to living under the legal regime. Interviewees described a regime of constant fear. Sara says that, "my life is guided by fear. That if I do—I don't know what—they'll disentitle me." Esther says:

You live in constant fear.... For example, yesterday there was a knock on the door at 9:45pm—the neighbor's daughter—do you know how scare we were?

Esther's daughter: We all jumped.

Esther: He [the NII's investigator] told me that he will surprise me at unexpected hours.

Esther's daughter: We didn't have any reason to be scared.

*Question: So why were you scared?*

Esther: Again, he'll ask how many children I have; again, my daughter will start crying.

Esther's daughter: It's unpleasant. It's unpleasant. It's not fear because we have something to hide.

Rachel also has tremendous anxiety about the NII and its investigators. In the middle of the interview, she insists on giving me a tour of the house, opening the closet,

showing me that there are none of her boyfriend's clothes in it; she then opened a drawer showing me that she still has a few of his clothes that she hides under a towel.

It seems that fear is also a major factor that shapes Dina's life. She uses the word "fear" a few times. She says she is afraid to start working, because she will be disintitiled from her allowance; she is afraid to try to live with the father of her child, because she knows she will immediately be disintitiled from her allowance. Ilana also states that the legal regime prevents her from having a normal relationship, because she is under constant fear that she will be disintitiled from her allowance. Rachel was crystal clear about the fact that the NII decides for her whether she will continue her relationship with Chaim. At that point, all she wanted was to know whether Chaim could come over once a week, or not. She was very clear that if "they" tell her that he cannot come, she will tell him to stop coming; she wanted her allowance back. A few times she repeated the fact that if she had to choose between Chaim and the allowance, she would choose the allowance. She was constantly worried whether she needs to tell him to stop coming. She repeated this fear eight times throughout the interview.

Rachel: I wish, I wish that they would return my allowance to me, and tell me he can continue to come. If they say [that he can come] only on the weekends, that's fine.

*Question: Do you think it is o.k. that they tell you that he can come only on the weekends?*

Rachel: Yes! Because, otherwise, if he comes when they said it's not fine, they will disintitle me once again.

Taking into account the ways in which she described her relationship with Chaim and the fact that she described him as the only "bright spot of happiness" in her life, makes it clear that her willingness to accept this harsh decree marks the boundaries of her desperation.

There is also the continuous fear of constantly being watched and followed. Sara says that during the time she appealed their decision to disintitle her they came to her house once a month. She says "they told me, 'We'll be on the roof; we'll be in the tree; we'll be near your son's daycare.'" She later states: "They came at 5:00 or 6:00 a.m., telling us that they are watching us." It is also very clear that Rachel believes that the NII are constantly watching her. She says:

Rachel: Many times I go to sleep, and I hope I won't wake up in the morning. I take sleeping pills, because I have too many worries that I can't sleep. Maybe I'll take ten pills and I won't wake up in the morning and that's it.

*Question: What are you worried about?*

Rachel: The allowance and the fact that the NII are following me all the time. That if he comes here once, they'll think that he is living here....

*Question: Do you feel the NII are still following you?*

Rachel: Yes! I'm sure they are following me all the time. I'm sure, because if they will decide to give me back my allowance they will come to check and see. His clothes aren't here anymore. There is nothing here. The closet is empty. Of course, they will come to check. Without checking, they won't give me back the allowance.

Later in the interview, she says, "They [NII] really get inside your veins." Ilana speaks about "giving them [the NII] a report on every minuscule move you make." She describes the legal regime as a collar that is tied around your neck and says, "If once the collar was a bit loose, today, they hang you from the neck tight, tight." Rina addressed the legal regime as a "guillotine that is about to descend."

Apart from these general implications of living under the legal regime, there is also the very concrete impact of going through an investigation. It should be first noted that all 13 interviewees went through at least one NII investigation regarding a "partner." Ten out of the 13 women were disentitled from their allowance following the investigation. Only Shlomit, Dina and Esther were not disentitled; Esther and Shlomit admitted that it was "pure luck."

All described the investigation as a harsh experience. Deborah said that it is as if they had taken her clothes off. Shlomit described the investigation as "all this touching and patting," and continued by saying that it made her feel "ugh, disgusting, not good. I don't know-- I felt like 'les miserables.' Ugh! Really." Hana said she felt she is treated "like garbage." Ilana says she felt "humiliated. There is no other word." Yelena said she felt as if the investigator were beating her: "the way he talked, it was as if he were beating me." She later says she felt as if "I'm not a human being." Moreover, she says she was terrified when she understood that the investigator had other details from a letter he was holding. She knew it was not true, but, she heard it was enough for the NII to

disentitle an allowance when they get information from other sources. After the investigation she said she felt as though she were dead. Yelena saw the investigator in court for the first time after the investigation took place. Asking her about that meeting she says, “I went to the bathroom and I saw him. All my inside organs were turning inside-out.” Rivka describes her behavior during the investigation as someone who was in a panic. She says:

I was really strained. All I saw was black. I didn't see anything. I didn't understand what I was saying. I didn't understand who I was talking with, what was going on. I was all shaking. I spoke fast, and stuttered. I was in a panic. After they left, I knew it was the end.

Avital, who is not living on welfare, says she was totally in shock when the investigator came to her house. Until I interviewed her, she had no idea why the NII investigator came to her house.<sup>177</sup> She let him in after he said he was from the NII. Although she was not living, on welfare her immediate reaction was fear, so she told the father of her child to stay in the bathroom. At the beginning he asked her many questions regarding her apartment and her mortgage. She thought it was related to the Child Support suit she had filed against her ex-husband (although it was totally unrelated to the NII). But then he started going into the rooms of the house, opening the drawers containing her bras and underwear. She says she did not kick him out of the house because she was so astonished that she could not react. She only asked him: “Why are you opening my drawers?” She recalls, he answered, “I need to check something.”

Esther, who has been living on welfare for a few years already, seems to be used to the idea that investigators of the NII come to her house. Even so, her last investigation crossed the line, even for a woman who goes through investigations regularly. She recalls that a few minutes after she came back home after putting her daughter in daycare, the investigators knocked on the door. She was already in her robe, so she asked for a few minutes to get dressed, so the investigator said: “You're wearing a striped shirt and bourdeaux pants—so open up.” After coming into the house, he immediately searched the rooms and opened the closets. She recalls,

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<sup>177</sup> Only at the end of the interview did we figure it out together: they came because as a single mother she was receiving a yearly allowance of about \$300 for school supplies for her kids.

*Investigator: Who do those clothes belong to?*

Esther: those belong to the father of my youngest child. He doesn't have an apartment. Those are his clothes. It doesn't bother me [that they are here]. He doesn't live here. He goes Sunday and comes back on Thursday, so sometimes he falls asleep on the sofa, sometimes [he sleeps] in Shira's room [their joint daughter]. Between him and me there is no relationship.

*Investigator: and If I check if you were having sex? Your bed is set for two.*

Esther: I slept with Shira and he slept at her bed.

*Investigator: And if Il take you for an examination?*

Esther: If it's part of the law, and it will save my skin I will agree to be examined. I don't have a problem. But let me ask you: 'did you have sex with your wife yesterday? Answer me! Why are you lowering your head? Answer me. Why am I supposed to answer you and you are not answering me? I'm a human being just like you. I'm a human being just like you!

Deborah had a similar experience. She says that they started inquiring whether she was having sex with Rami. She admits it "pissed her off." She answered:

Listen very carefully. I can fuck whoever I want, whenever I want and however I want. And if I want to have sex with the same person, because I respect my children, and don't want to invite to the house a different man each time [it is my business]. I have my needs as a woman...so don't try catching me with this stuff, because yes I do have sex with him.

She says that the only thing they found in the house was phylacteries,<sup>178</sup> which did not belong to Rami at all, a pair of man's sneakers, and two pairs of men's pants. That was enough to disentitle her from her allowance seven years retroactively (since she had her first child with Rami).

Based on these experiences, the harsh consequences of living under a system of surveillance and investigations are very clear. All the women experienced constant intrusion in every aspect of their private lives, feelings of degradation, of powerlessness, of being undeserving of humane treatment, living in constant fear, and relinquishing control of their lives, because even their most intimate activities are being surveilled and controlled by the NII.

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<sup>178</sup> A Jewish ritual article that is used only by men.

**b. Impact of Disentitlement**

The most immediate impact of the legal regime on the interviewees was the fact that ten out of the 13 interviewees ha been disentitled from their allowance due to a partner, after an investigation took place. Thus, all ten women were suddenly faced with a reality in which they need to survive and to continue to provide for their children without any means of support. Moreover, in nine out of the ten cases, the women were disentitled retroactively, usually for a few years, therefore confronting the women not only with how to deal with their day to day survival but also with a debt of thousands of dollars to the NII.

Table #3  
Disentitlement Periods and Retroactive Debts

	Between 6-12 months	Between 1-2 years	Between 2-3 years	More than 3 years	Permanently	Case pending
Period of disentitlement	Sara, Rina, Yelena, Ilana, Rivka.	Rachel	Deborah (until now)		Avital, Hana.	Deborah, Yelena, Sophia.
Period of retroactively disentitlement	Sara, Rivka	Rachel, Avital, Ilana.	Yelena	Deborah		

The NII has convenient system of collecting debts—it deducts the debt from the children’s allowances that the women receive.<sup>179</sup> Therefore, on top of being cut off from their allowance, even the little income that they still receive was cut in half.<sup>180</sup> Moreover, the fact that the women were disentitled from their Income Maintenance Allowance has other economic ramifications. For example, Hana, who was disentitled from her Income Maintenance Allowance of \$150, was even more worried because she was now also

<sup>179</sup> The Children Allowance is a universal allowance that is given to every parent regardless of economic need.

<sup>180</sup> Regarding children that were born before May 2003, the Children Allowance increased sharply with each child. Hence for the first child one would receive 148 NIS [about \$30]; for the second child one would receive 296 NIS [about \$65] For the third child 474 NIS [about \$100] and for the forth child 800 NIS [about \$180] fifth child 1132 NIS [about \$250] Six child 1461 NIS [about \$325] Therefore, cutting the Children allowance in half could amount to a very substantial amount of money, to single mothers who had three or more children.

disentitled from a yearly Study Grant of 1300 NIS [about \$300] per child,<sup>181</sup> and she was not entitled to apply for “rent assistance” from the Ministry of Housing. Yelena had a similar problem that in addition to her tens of thousands of dollars debt owed to the NII she was now automatically disentitled from receiving “rent assistance,” and owed more than \$10,000 to the Ministry of Housing.

Sara, Rina, Yelena, Deborah, Rachel, Rivka and Sophia all decided to appeal the NII decision; Sara, Rina and Rachel got their allowance back after about a year of legal struggles; Ilana got her allowance back after three months, but she is still in debt; Rivka decided to let it go; the other cases are still pending. Thus, even when the woman eventually gets her allowances back, she still needs to survive for a long period of time without any means of support. After living for a half a year without her allowance, Rachel says: “My life is already difficult. If they make it even harder, I will break.” I noted the big silence that followed this sentence. After living for three months with no means of support Ilana says, “Do you know at what condition we were? Where they led me to? [We had no] ...milk and bread. For three months they stop the only money you have. It is not that you have some money on the side.” Sara was also in a similar situation after she was disentitled from her allowance. All she had was about 60 NIS [\$13 USD] a month—half of the Children Allowance she was entitled to receive. To survive she lived at her mother’s home, but she did not have money for basic materials for her baby, such as diapers and food; moreover, she had no money for the bus fare to the hospital to take her son to an examination he had to go through. It took her seven months before she got her allowance back. In those seven months all she had was \$13 a month.

In summary, it is apparent that the legal regime has extremely harsh consequences for the lives of single mothers. The mere fact that they are single mothers who receive an Income Maintenance Allowance immediately exposes them to experience regular instances of intrusion and humiliation under the legal regime. Moreover, if they are found to be disentitled under the legal regime—even if it is later recognized as being unjustly—they are bound to a long period of deprivation and need, being left without any means of support for months in the interim.

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<sup>181</sup> The School Grant is given to the children of single mothers, between the ages of six and 14.

## **6. Justification and Resistance to the Legal Regime**

All of the interviewees were to some extent resisting the legal regime by their noncompliance with the law. All were having a sexual relationship with a man, although they understood the legal regimes to forbid such a relationship. Moreover, their resistance to the legal regime was despite the fact that they faced a highly intrusive system of surveillance and investigations that clearly made it extremely probable that they would be caught and disentitled from their allowances. This phenomenon requires deeper explanation, but it might suggest that the interviewees are vigorously opposed to the legal regime and find it to be totally illegitimate.

However, it was surprising to discover that none of the 13 interviewees viewed the legal regime as being completely unjustified. Instead, it appears that all interviewees have a multifaceted understanding of the legal regime, which involves, to some extent, both the justification of and resistance to the legal regime. This complex understanding can be seen as based on the distinction between the law on the books and the law in action. Thus, most of the interviewees find the law on the books to be justified, but at the same time find the ways in which the law is actually implemented as illegitimate. In subsequent paragraphs I will present this distinction as perceived by the interviewees.

Although I never asked directly, at some point, all 13 interviewees addressed the “known fact” that there are many women who cheat, i.e., who live with a partner who supports them and still receive Income Maintenance Allowance. Deborah says that “[there] will always be people who will cheat, because it [the Income maintenance Allowance] involves benefits.” Shlomit also addressed the benefits, saying that without the “evils” of the legal regime, people will have the inclination to cheat. Moreover, trying to assess whether it is merely a myth, I was confronted with stories that they all claimed to know personally. I heard stories that, at least as presented, seem totally unjustified, Sara told me of a woman who works in her ex-husband’s shop, lives with him, drives a new BMW, and still goes to the NII to receive Income Maintenance Allowance as a single mother. But I also heard more complex examples; for example, a woman whom Dina described as “very well-off, living with her partner who is a house constructor, and earns 30,000 NIS per month [about \$6600].” Dina did not fully explain why she thinks

her friend would bother to go and ask the NII for an extra relatively small amount of money, but, she gave some clue saying:

She also suffers violence at his hands and such. ... I wouldn't live with a man. I will know that my refrigerator is empty and won't accept getting beaten. This isn't life. But again, he provides her with everything. You open the refrigerator and groceries will fall on you, because, it's so stuffed. So, to me, she is well-off.

Therefore, to some extent, they all agreed that the legal regime—in some form—is a “necessary evil.” This justification of the legal regime was supported by their perception of the formal legal definition as legitimate. However, these justifications for the legal regime did not conflict with their resistance to the ways in which the legal regime is implemented. As stated above, most of the interviewees understood the legal regime as forbidding them from having sexual relations with a man and resisted the legal regime as such. Rivka expressed this distinction very clearly:

Rivka: I don't think the State needs to distribute money freely. If the NII operates by laws, it means that there is something normal about it.

*Response: I'm not sure.*

Rivka: I think so, because I know women who do live with a man. So, O.K. if you [the State] give me money, you can come and check, but don't deviate from reality...that you can't have any relationship with a man. And if I feel like having sex with someone, can't I? To become celibate? To have sex in the car or elsewhere?

Shlomit was also, on the one hand, justifying the formal legal regime and yet resisting the ways in which it is implemented. She said:

I understand that the State does not want to throw money [away].... This money should go to the people who are in real need. So, they need to check. On the other hand, the fact that my boyfriend sleeps over in my house doesn't mean that he pays for Sivan's [her daughter] daycare. That's for sure!

Rina was also unwilling to accept the ways in which the legal regime is implemented. She thought that the current form of the legal regime was totally

illegitimate. She emphasized throughout the interview a few times that the NII are not looking for a “partner,” but rather they are looking for any evidence of the presence of a man in the house. She says:

Why can't there be a man here [in her home]? I want to understand. I don't understand. You're not from the NII O.K.—so why can't I have here a man? Do I need to abstain from life because I'm a single mother?

Moreover, Rina's emphasis on the fact that there is no relationship between the current legal regime and its original intent—of finding a “partner”—leads her to dismiss any justification for the legal regime, because it is purely a theoretical construct. Therefore, although Rina also recognized the fact that women “cheat” the system, she insisted that the current legal regime does not offer any other choice.

Apart from resisting the legal regime as a mechanism that forbids them from having sexual relations with a man, all women resisted, to some extent, the ways in which investigations are conducted. A minority was willing to accept the current form of investigations, asking only that, to avoid mistakes, the NII should better investigate the specific case before making a decision. For example, Rachel thinks it is legitimate for the NII to come to her home to investigate. She says, “They come regularly. They pay me an allowance and want to know what's up with me.” It also did not bother her that they opened the closets; she was only bothered by the fact that they did not investigate thoroughly enough and made a mistake. When I confronted her about whether it was truly legitimate, she replied:

What? [Do you mean] the fact that they [the NII] manage my life? What can I do? They provide me, so they manage my life. What do you want me to tell you? This is how it comes out, although it might not be alright.

Esther was also accepting of the legal regime to some extent. Regarding the fact that the investigations were conducted in her home, she said, “It doesn't bother me. If I violate the law, they need to get in; nothing can be done [about it].” Although, in general, she accepts the notion of investigation, it seems she feels that they crossed the line in their last investigation. She says:

Esther: Last time they hurt my children. Come [to the investigator] in hours when the children are not [home]. ...

Esther's daughter: He tells them [to her children] to go to their room.

Esther: My youngest child started crying, and the older child was really upset. If you are following me—then, follow me. This is your job; it's your right. I accept that.

*Question: Do you think it is acceptable?*

Esther: No. I don't like to live in fear. No.

Esther's daughter: No. I don't think it is right what they do. Are we murderers?

Esther: It's terrible. It's not acceptable, but again if it is legally acceptable, so it is acceptable. I don't have a problem with it.

Besides her resentment towards the investigator involving her children, Esther also regards the intimate questions regarding her sexual life as illegitimate. She says: "I had sex with him; I didn't have sex with him; who are you [to ask me such questions]?" Ilana was also accepting the fact that some form of investigation is necessary, but clearly stated that she believes the current form of the legal regime to be illegitimate:

If I'm living on welfare—because this is the status I reached—they can do whatever they want? Certainly not. Certainly not! It's absurd. You can't go [anywhere]. You are followed....you can't do anything, because maybe a neighbor will tell on you....I think it is a disgrace to invade into a woman's home; to know that she has economic problems and to disentitle her from the allowance, and only later to check the case...'first of all suffer a bit more; let's step on you a bit more. Are you dying? A bit more...[sic] Totally not legitimate, and I don't think this is the way [to do it].

Hana thought that it was a legitimate interest of the state to check, but resisted the idea that the NII comes to the woman's home to investigate. She says that a visit in the woman's home cannot indicate whether there is a shared household. On the other hand, she thinks there are other ways, such as checking the bank account, checking standing bills that are paid regularly, and inquiring about the payment of rent, and other bills. Avital also contested the entrance of investigators into the women's homes. She started the interview by telling me that, retroactively, she thought it was her mistake to let the investigator into her house without a court warrant and asked me what she should have

done. After I told her that, according to the law, the investigator does not need to have a court warrant, she protested, “Why not? What right does he have to come into my home, search in my things? What do you mean he does not need [a warrant]?”

In conclusion, all the interviewees appear to have a complex understanding of the legal regime, which involves, to some extent, both a justification of and resistance to the legal regime. This multifaceted understanding of the legal regime is based on the interviewees’ distinction between the formal legal regime—the theoretical one—and the actual legal regime they are experiencing in their daily lives. This view emphasizes, once again, that there is a gap between the statute, its formal interpretation by the courts and the ways in which single mothers experience the legal regime.

## CONCLUSIONS

In this research study I have revealed some initial notions regarding the realities of single mothers who are living on welfare in Israel and who have a relationship with a man. Specifically, I examined the phenomenon in which poor women are disentitled from their Income Maintenance allowance if they are found to have a relationship with a man.

First, I explained the legal regime that regulates their lives. Based on this research it is evident that the *formal* definition of a “couple” in the *Income Maintenance Act* requires that the man and a woman relationship be characterized by a “family life” and a “shared household.” This formal interpretation is based on the history of the Income Maintenance Act itself, the interpretation of the definition of a “publicly known partner” in the family law context, and the courts rhetoric with regard to the definition of a “couple” in the context of the *Income Maintenance Act*. Moreover, it is apparent from this research that this *formal* interpretation of a “couple” did not substantially change with the 2003 amendment to the Act that replaced the concepts of a “family life” and a “shared household” with the concept of a “publicly known partner.”

However, this research also reveals a gap between the formal law and the ways in which the definition is implemented by the courts and by the NII. Although in the vast majority of the cases the courts rhetorically address the concept of a “shared household,” their *actual* interpretation of this concept is inconsistent; in fact, there are two competing

interpretations of a “shared household: some cases define the term in ways that have very little to do with the concept of a “shared household;” rather, they interpret the definition of a “couple” as meaning a “somewhat stable” relationship. On the other hand, other cases interpret the legal definition of a “couple” as one that requires a “shared household,” which is very similar to the kind of partnership a husband and a wife would normally have. It is apparent that the courts’ inclination is toward a broader interpretation of the definition of a “couple,” in which the entry conditions to the factual status of a “publicly known partner” are easily met. Moreover, I have shown that, the courts’ tendency towards a broad interpretation is supported by the NII implementation policy. As a result, it is evident that, in general, the NII finds it sufficient to disentitle an allowance based on evidence which merely proves a “somewhat stable” relationship, without bothering to provide evidence of a shared household. The combination of the courts’ interpretation and the NII implementation policy leads to the fact that in reality many women are deprived of their Income Maintenance Allowance because they have a relationship with a man, even if they do not constitute a “couple” according to the formal interpretation of the law, which requires a “shared household.”

Based on this research, it is clear that, from the perspective of single mothers, the legal regime conveys two main problems to their lives. One major problem with the legal regime is the fact that both they and their children are disentitled from their allowance due to a partner, even though they are left without any means of support. Another difficulty with the legal regime is the fact that single mothers are deprived of any dignity, privacy, and personal autonomy while their lives are being totally controlled by the NII.

This research reveals that one reason for the problem, of women and children being disentitled from their allowance, although they do not have any other means of support, is that there is a gap between the law on the books and the law in action. Thus, although the formal law requires that an allowance be disentitled only when a “shared household” exists—when the partner provides for the women and her children—in reality, the allowance is disentitled when there is evidence of a “somewhat stable” relationship, regardless of financial support from the partner. The experiences of single mothers and their perceptions of the legal regime also indicate that in their view, the

problem with the legal regime is, at least, partially due to the ways in which it is enforced.

Moreover, this research also discloses the fact that women and children are left without any means of support is because the law on the books fails to address the need for single mother to provide for their children from previous relationships. The formal law ignores the complex relationships that poor single mother maintain, which are often constructed upon differences in power between the man and the woman. This imbalance of power is usually due to the existence of children from previous relationships, or when joint children are also involved, the disparity of power is enhanced due to the woman's strong desire to provide at least some of her children with a father figure. These differences in power are realized first and foremost by avoiding the financial support of the woman's other children, whom the man has no legal obligation to support. However, the formal law disregards this fact and continues to tie the children's entitlement to the mother's entitlement. As a result, in many cases children are left without any means of support because their mother is having a relationship with a man.

I believe that these initial findings can already plot a route for social activists who desire to initiate social change with regard to women who live on welfare. Based on this research it is clear that one path should be trying to clarify the formal legal definition in ways that will explicitly state that the definition of a "couple" necessarily requires the existence of a "shared household." The initial step in this regard can be to reinstate the concept of a "shared household" in the legal definition. Although formally, the definition did not change with the replacement of the words "family life" and a "shared household" with the concept of a "publicly known partner," it seems to leave too much room for different interpretation. Such different interpretations were explicitly stated by NII officials and were also evident in the ways in which the NII and the courts actually implemented the legal definition. However, if one chooses legislative change, one should consider clarifying the concept of a "shared household" itself in ways which will ensure that the women and children are disentitled from their allowance **only** when they actually have other means of support. By clarifying the definition of a "shared household" one can indirectly ensure that the rights of non-joint children will not be infringed; clarifying that a "shared household" is in place **only** when the partner provides for the family as a

whole, including children who are not his own. Another legislative option would be to disconnect the entitlements of the children from the entitlement of the mother. However, I am aware that this is a fundamental change in the Income Maintenance Allowance and as such might be more difficult to accomplish.

Another possible path for change should be directed at the courts. Through litigation, one should emphasize the unsuitability between the law on the books and the ways in which it is implemented by the NII. Moreover, the voice of women on welfare whose basic human rights are daily infringed upon should be heard “load and clear” in all instances. It is plausible that the combination of these two claims will serve as an important basis for a judicial remedy for these women; moreover, it will influence the legal discourse in the long run in ways that will bring about the necessary fundamental change.

What is more, these findings have two more general implications for the academic research on poverty in Israel. In my opinion, these findings reveal the importance of researching the law in action as well as the need to address the perspective of the poor in relation to the welfare state. In examining the role and impact of the law on the poor, I found these new perspectives on the law to be illuminating. This research indicates that these new perspectives are crucial to understanding the true meaning of the law in the daily lives of the poor.

However, I recognize the constraints of this research, the two most significant of which are the number of interviews I conducted for this research and the fact that I focused only on women who were experiencing problems with the NII due to their relationship with a partner, and did not examine the perception of single mothers living on welfare in general. Accordingly, I acknowledge the fact that generalizing or extracting policy recommendations from this research regarding the legal regime’s impact on Israeli single mothers’ lives is limited. Nevertheless, I believe that this research provides a few important observations regarding the legal regime that could now be used as a basis for further research. In addition to strengthening the notions that emerged from this exploratory research, it is essential to further explore the full context of the phenomenon I have defined. For this purpose, it is important to ascertain the perceptions of other main stakeholders, such as: single mothers who live on welfare and don’t have a relationship

with a man, NII administrators, and lawyers. Moreover, there is also a need to investigate the extent to which the problems identified in this exploratory research are relatively common among other Israeli single mothers living on welfare. Another interesting issue that might be worth exploring is whether the problems discussed in this research are related to gender-discriminatory patterns in the conduct of the NII.

In addition, the findings of this research also call for research delving more deeply into the legal consciousness of women who live on welfare and their perception of the law in general and their perception of obedience to the law in particular. One interesting question which has emerged from this paper is the sociological or psychological explanations for the women's noncompliance with the legal regime. It seems that due to the highly intrusive NII mechanisms of surveillance and investigation, and the fact that these women are risking all their financial means of support, this phenomenon cannot be explained by rational choice theories alone. There is no doubt that this research opens the door for much more work to be done both in research and in practice.

## **APPENDIX A**

### **INTERVIEW QUESTIONS FOR NII OFFICIAL**

#### Introduction

I am leaving my position at Itach (the NGO I worked for), and going abroad to pursue my studies in law, in which I will conduct research regarding the Income Maintenance Law, and specifically the issue of a “partner.” I wish to reveal the complexity of the issue. I’m conducting interviews with single mothers who had problems with the NII due to partner issues, and I also wanted to get input from the NII, so I could present the complexity from all sides.

#### Questions

- (1) How do you decide on requesting an investigation?
- (2) Are there any formal procedures?
- (3) Approximately, how many investigations are conducted per month? How many investigations are conducted because of “partner” issues?
- (4) How many people are disentitled from their Income Maintenance allowance due to partner issues?
- (5) What leads you to disentitle an allowance due to a partner? Are there formal procedures?
- (6) What is the rationale in deciding to disentitle an allowance due to a partner?
- (7) Does it matter whether the man and the woman are having a sexual relationship?
- (8) Do you check whether roommates share a household?
- (9) What is the policy regarding gay couples?
- (10) From the interviews I have conducted I got the impression that these women live under a regime of fear. For example, one interviewee was willing to let the NII decide how many times she will see her boyfriend, and all she wanted was to know what is allowed, in order to get her allowance back. Can you comment on this?
- (11) I had a very hard time hearing the women talk about how their privacy is blatantly disregarded. Aren’t there other ways to check whether the woman is sharing a household with a man?

(12) Another thing I have encountered is the fact that many of the women I interviewed were in their second or third relationships, while raising children that are not of the man they are currently in a relationship with. One had four children from another father and then a fifth child from the man they are now in relationship with. Obviously that this man doesn't support the four children that aren't his. How is she expected to support her other children?

(13) Through these interviews I realized that these women have very unstable relationships. The woman may have a sexual relationship with a man but it doesn't imply that they share a household. I thought about myself, it took my spouse and I two years of living together before we decided to share a household. How do you view this logic? Is the duration of the relationship taken into account? Is it enough that I have a boyfriend for two weeks to disentitle me from my allowance?

(14) Does the NII see any problem with the definition of a problem?

(15) If so, does it have a solution?

## **APPENDIX B**

### **INTERVIEW QUESTIONS OF SINGLE MOTHERS**

#### Introduction-

Introducing myself as a lawyer who has in previous years dispensed legal advices to many single mothers, In a period of continuous public discourse regarding single mothers and welfare. In this discourse I feel that the voice of single mothers isn't heard. This is why I thought of conducting research to hear single mothers' stories, the way they perceive matters. I'm actually asking you to let me glance into your life, I want to learn about you, and to hear your story. There are no correct or incorrect answers, and there are no specific answers that I'm looking for. In this research I interview women who live on welfare, and I also intend to interview NII administrative agents. In order for me to study and analyze the information I gather in these interviews, I need to tape our conversation. The taped conversations are confidential, and no identifying information will be shared with the public. Of course, if you have any questions that you feel uncomfortable answering you don't need to answer, and you can always ask me to turn off the tape recorder.

#### Questions

- (1) How many children do you have? How old are they?
- (2) Are you raising them by yourself?
- (3) What did you think of Viki Knafo's (a famous single mother) public protest? What instigated her protest?
- (4) How do you manage financially? What are your sources of income?
- (5) Do you have debts? How do you cope?
- (6) Do you define yourself as a "single mother"? Why?
- (7) I want to tell you a story of another woman that came to ask for my legal advice, and I want to hear your opinion: This woman had a relationship with a man, but he was married and the relationship was unstable. They had two children together, but did not live together. He came and left as he pleased, sometimes abandoning her and the children for long periods of time (half a year), and sometime staying at her place for

two to three months. He never supported her or their children but rather supported his wife and legitimate family.

- a. Do you think she is a single mother?
- b. Due to this relationship she was disentitled from her Income maintenance allowance, and when she came to ask for my legal advice I told her I couldn't help her. What do you think about that?

(8) [After interviewing a few women I realized that the fact that the woman in my story was having an affair with a married man had a harsh influence on the women opinion, so I changed the story a bit]: This woman had an unstable relationship with a man. They did not live together, but had two children together. The man came and left as he pleased, sometimes abandoning her and the children for long periods of time (half a year), and sometime staying at her place for two to three months. He never supported her or their children in any way.

- a. Do you think she is a single mother?
- b. Due to this relationship she was disentitled from her Income maintenance allowance, and when she came to ask for my legal advice I told her I couldn't help her. What do you think about that?

(9) Do you have a relationship with the father of your children? Do you have a relationship with another man? What kind of a relationship? What does this relationship mean? Does he help you in the house? Does he help you with the kids? Does he support you financially? Can you give me examples of things he does? What does he buy? Does he pay the rent/ bills etc?

(10) Do you define him as your "partner"?

(11) How would you define a partner?

(12) Do you know how a "partner" is defined in the Income Maintenance Law? How?

(13) In the Income Maintenance Law a couple is defined as a man and a woman who share a household.

- a. What do you think about this definition?
- b. Are you and X a couple according to this definition? Why?

(14) How would you describe a woman that lives with a man that doesn't support her financially? Is she a single mother?

(15) When did you encounter the definition of a “partner” in the Income Maintenance Law?

(16) Can you describe your encounter with the NII? How was the investigation conducted? When did their investigators arrive? What were you doing at that time? How did you respond to the investigators? What did they say? What did they ask? What did they look for? Did they find anything?

(17) How did you feel during the investigation, and after?

(18) How did you act afterwards? Did it influence your relations with X?

(19) If you were the NII, and you need to distinguish between women who need welfare support, and women who are supported by a partner, what would you do? What do you think is the solution?

(20) Is there anything else you wish to tell me?

(21) Would it be possible to meet you again, need be?

(22) Do you know another single mother that I should talk to in this regard?

Give Itach’s assistance hotline, in case she needs legal advice or representation.

## APPENDIX C NII EVIDENCE

Table #4

	Joint kids	Statement of regular visits	Statement that partner sleeps in the apartment	Statement that living together with relationship	Statement of minor financial support	Statement of major financial support	Physical evidence living in the same apartment	living in the same apartment not contested	Presence of partner during investigation	personal belongings	Investigator/ clerk observation	Statement of partner	Statement of third party
508/04	Y	Y							Y			Y	
1391/05											Y	Y	
1952/04									Y	Y		Y	
2298/04	Y			Y					Y				
2843/04	Y	Y	Y							Y		Y	
2060/04				Y	Y		Y						
2586/04	Y	Y	Y				Y						Y
1633/05		Y	Y				Y		Y	Y			
1301/05				Y									
1190/04	Y		Y		Y					Y			
2477/04	Y		Y					Y					
1788/04	Y				Y		Y			Y			Y
4487/04	Y												Y
7216/04	Y				Y					Y		Y	
1568/04							Y			Y			Y
2644/04				Y			Y						Y

	Joint kids	Statement of regular visits	Statement that partner sleeps in the apartment	Statement that living together	Statement of minor financial support	Statement of major financial support	Physical evidence living in the same apartment	living in the same apartment not contested	Presence of partner during investigation	personal belongings	Investigator observations	Statement of partner	Statement of third party
3348/05				Y		Y						Y	
2148/04		Y	Y		Y					Y			
2807/04				Y		Y							
1299/05	Y	Y	Y		Y					Y			
5224/04	Y	Y	Y		Y		Y			Y (car)		Y	
1253/04	Y				Y				Y	Y	Y	Y	
1732/04	Y	Y								Y	Y		Y
5299/05	Y	Y	Y		Y								
2746/04		Y	Y		Y					Y			
11991/04		Y	Y		Y					Y			
1841/04		Y	Y										
1992/04		Y								Y		Y	
1808/04	Y	Y	Y		Y								
2612/04	Y			Y								Y	
2950/04					Y			Y		Y	Y		
1696/04			Y					Y				Y	
10196/04					Y			Y					
1474/04										Y (car)			Y
1303/05								Y		Y			

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