HAMOKED
CENTER FOR THE DEFENCE OF THE INDIVIDUAL
המוקד להגנת הפרט
مركز الدفاع عن الفرد

4 Abu Obeidah St.
Jerusalem 97200
Tel. +972.2.6283555
Fax. +972.2.6276317

شارع أبو عبيده ٤
ألقدس ٩٧٢٠٠
هاتف. ٠٢. ٦٢٨٣٥٥٥
فاكس. ٠٢. ٦٢٧٦٣١٧

mail@hamoked.org.il
www.hamoked.org.il

Date: December 25, 2014
In your response please note: 85503

To **Through the State Attorney's Office**
Minister of the Interior, Mr. Gilad Erdan
2 Kaplan
Jerusalem

Dear Sir,

Re: **Written Arguments in the matter of Mrs. _____ Abu Jamal, ID No. _____ HCJ 8134/14**

1. Following the decision of the Supreme Court, dated December 16, 2014, in HCJ 8134/14 (hereinafter: the **petition**), the arguments of the petitioner, our client, Mrs. _____ Abu Jamal, are hereby submitted concerning your decision to revoke her residency permit in Israel.

Background

2. Mrs. Abu Jamal married _____ Abu Jamal (hereinafter: the **husband**) on September 23, 2001. The spouses had three children. All three children are registered in the Population Registry as permanent residents: _____ was born on December 20, 2008, _____ was born on September 30, 2010 and _____ was born on January 21, 2012.

   A marriage certificate is attached hereto and marked **A**.

   The birth certificates are attached hereto and marked **B**.

3. In 2009, the husband submitted a family unification application which was approved in 2010.

   The first referral for the receipt of a DCO permit is attached hereto and marked **C**.

4. As things became known only in retrospect, on November 19, 2014, one day after the husband committed the terror attack in the Har Nof synagogue, a letter was sent to the petitioner by the Population Authority Bureau in East Jerusalem, which notified her that following the husband's death the graduated procedure was severed, and that the authority was considering to revoke the entry permits into Israel which were given to Mrs. Abu Jamal by virtue of the family unification application. "For this purpose" the letter stated, Mrs. Abu Jamal's case was transferred for the recommendation of the Minister of the Interior's professional advisory committee according to the temporary order (a committee which is also known, but in this case its name was not mentioned, and apparently not without reason, as the "**humanitarian committee**").

5. Again, as it was also became known in retrospect, on November 23, 2014, a "meeting" of the humanitarian committee was held. According to the minutes of said "meeting", which was transferred to the undersigned on December 23, 2014, **all members of the committee gave their position by telephone**. On that very same day, the recommendation of the advisory committee was signed by its chair, Advocate Miriam Rosenthal. The recommendation of the committee was to reject the "application" for residency permits. On November 25, 2014, as is known, the decision of the Minister of the Interior was made, which adopted the recommendations of the committee.

   The minutes of the "meeting" of the committee, dated December *[sic]* 23, 2014, is attached hereto and marked **D**.

6. Meanwhile, developments occurred in connection with the national medical insurance of petitioner's children. It should be emphasized that although this was an NII decision rather than a decision of the Ministry of the Interior, it is obvious that the basis for all decisions is the same and that one decision depends on the other, and therefore we are of the opinion that it is important to also refer in these arguments to the NII's conduct in the matter of the children, which demonstrates the conduct of the various arms of the executive authority in the matter of the petitioner and her children. Hence, as was specified in the petition, on November 26, 2014, the family realized that petitioner's children were no longer insured under the national medical insurance. An inquiry conducted by HaMoked with the relevant parties indicated that the residency of the children with the NII has already been revoked on November 19, 2014, namely, one day after the terror attack and on the same day on which the "warning letter" was sent to the petitioner concerning the possibility to revoke her residency permits in Israel. It should be noted, that the revocation of residency by the NII results in the revocation of all social benefits granted by the National Insurance Institute, including medical insurance.

7. According to the National Insurance Institute, a letter concerning the revocation of the residency was sent to the family on November 23, 2014. The family has never received said letter.

8. Only following letters sent by HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**) to the NII, on December 9, 2014, an NII letter dated December 3, 2014, was received by HaMoked, at its offices, which stated that the children were no insured by the NII due to the revocation of their residency. The letter stated as follows:

   > A person will be considered a resident if his center of life is in Israel, and most of his ties should be in Israel. In addition, a minor cannot be considered an Israeli resident if neither one of his parents is a resident. It should be emphasized that according to the law, each minor should be assigned to an adult and the latter is obligated to pay the health insurance contributions. Your client does not comply with these requirements.

> It should be further noted, that with respect to a minor, the presumption is that his center of life is identical to the center of life of his guardian. **For this purpose, there is no dispute that your client is neither a resident nor maintains her center of life in Israel from the moment her residency visa in Israel was revoked**.
>
> (Emphasis added, B.A., N.D.).

The NII letter dated December 3, 2014, is attached hereto and marked **E**.

9. It should already be noted, that on the date on which the children's residency with the NII was revoked, the petitioner was still holding a permit (since the Ministry of the Interior only "considered" to revoke the permits at that time, November 19, 2014) whereas on the date on which the above NII letter was written, the petitioner already held a temporary order of the Supreme Court, within the framework of the petition.

10. Hence, on December 23, 2014, an NII letter dated December 18, 2014, was received by HaMoked, which stated that "for the time being" it was decided to renew the national medical insurance of the children. The petitioners assume that said decision was made following HaMoked's letters in this regard.

    HaMoked's letter dated December 3, 2014, is attached hereto and marked **F**.

    The NII's letter dated December 18, 2014, is attached hereto and marked **G**.

11. To complete the picture it should also be noted, that two of petitioner's children suffer from chronic medical problems. _____ suffers from a congenital heart deficiency and he also suffers from a gradual hear loss. He needs the supervision of a cardiologist and an otorhinolaryngologist.

    A copy of a medical report of Dr. Karim Hassan dated December 3, 2014, is attached hereto and marked **H**.

    A copy of an echocardiography report of Prof. Yoram Glazer from the Mor Branch, Jerusalem dated October 21, 2014, is attached hereto and marked **I.**

12. _____, the youngest son, suffers from extensive vomiting and very low weight for his age (percentile 15). The physicians have not yet found the reason for the vomiting but there is a concern that he may be suffering from Epilepsy. Muhammad should be under the supervision of a pediatric gastroenterologist.

    A copy of the medical report of Dr. Karim Hasin dated December 3, 2014, is attached hereto and marked **J**.

A copy of a referral to a pediatric gastroenterologist dated October 12, 2014, is attached hereto and marked **K**.

A copy of a request for a sleep EEG test dated October 12, 2014, is attached hereto and marked **L**.

13. It should be further noted that the respondents have never addressed the medical condition of the children in the recommendation and final decision in petitioner's matter. And how could they? They have never given the petitioner an opportunity to present her arguments before them before the petition in her matter was filed, but only thereafter.

Petitioner's Arguments

14. Before we present petitioner's arguments, it should be noted that the proceeding which took place in her case was not an "ordinary" proceeding for the cessation of a graduated procedure. Usually, an **application** of the applicant himself is submitted to the humanitarian committee, which, according to HaMoked vast experience, deliberates over the issue for a long time, usually over a year, before its recommendation is submitted to the Minister of Interior. In the case at hand, not only that no "application" has been submitted – but the petitioner did not know that her matter was transferred to the humanitarian committee. The proceeding was carried out at lightning speed by the committee, and was transferred for the Minister of Interior's decision within less than a week.

15. It is clear that the petitioner is currently in an inferior position, when her arguments are presented before the Minister of Interior in retrospect, after a decision in her matter has already been made. In such a case, the arguments should be considered with an open heart and mind. (see HCJ 2911/94 **Baki v. Director General of the Ministry of Interior**, IsrSC 48(5) 291).

The procedure for the cessation of a procedure for the arrangement of status of Israeli spouses

16. Procedure 5.2.0017 of the Ministry of Interior, entitled "Procedure for the cessation of a procedure for the arrangement of status of Israeli spouses" (updated on May 11, 2009, regulates the handling of the status of the foreign spouse in the event that the marriage were terminated as a result of the death of the Israel spouse (hereinafter: the **procedure**).

17. The procedure establishes criteria "which are mainly intended to examine the connection of the foreign spouse to Israel."(see HCJ 4711/02 **Hillel v. Minister of Interior** (interim decision dated October 12, 2008)(hereinafter: **Hillel**).

18. According to the procedure, if the spouses had children, the case is transferred to the inter-ministerial committee for humanitarian affairs provided that the following conditions are met:

a. The spouse was sincerely married, his/her marriage was registered in the Population Registry and he/she received an A/5 residency status in Israel within the framework of the gradual procedure.

b. The spouse has commenced the graduated procedure (received a temporary A/5 residency status).[1]

c. The spouses have children under the custody of the foreign spouse. If the children are not under the custody of the the foreign spouse, the social service would be addressed to receive relevant information concerning the placement and custody of the children.

19. It is clear that Mrs. Abu Jamal meets all material provisions of the procedure. There is no dispute that prior to the husband's death the spouses conducted a sincere marriage. Ever since they were married, the spouses lived together, conducted a common household, and had three children together.

20. The argument that the petitioner meets the conditions of the procedure being a widow of an Israeli, is supported by the words of Advocate Yochi Genesin, director of administrative affairs division at the HCJ department with the State Attorney's Office, which were said in a meeting of the Knesset's Interior and Environmental Protection Committee dated January 8, 2007 (Protocol No. 89):

> **The Ministry of Interior has a procedure which pertains to a widow with children. The procedure which pertains to a widow with children, whether or not she is a resident of the Palestinian Authority**, enables her to receive status. To the extent a widow without children is concerned, the examination is made along a timeline, whether from the outset the spousal relations were valid or not.
>
> (*Ibid*, page 22, emphases were added, B.A., N.D.)

21. A review of the relevant procedure, which is procedure 5.1.0017, indicates that the authority did not act according to its provisions in petitioner's case. Thus, the petitioner was not summoned for a hearing prior to the cessation of the graduated procedure (section C of the procedure). The recommendation of the committee also seems to indicate that it did not regard the Israeli children as a special humanitarian consideration in petitioner's case, despite the fact that the existence of children constitutes an indication for humanitarian reasons according to the procedure (section D.2 of the procedure).

22. Furthermore, specifically in petitioner's case, in which her children are permanent Israeli residents, the children may suffer an even greater injury.

---

[1] The current version of the procedure omitted the previous condition which required that more than a half of the entire period of the graduated procedure has elapsed.

In view of the provisions of Entry into Israel Law, should the minors be forced to leave Israel with their mother, they may lose their status in Israel, and remain stateless, with no status and with no rights in the world. In such a case, the children will be prohibited from even visiting Israel, let alone to live therein, contrary to children with citizenship, whose departure with their mother or father to the parent's state of origin, does not affect their solid civilian status, which will remain in force and will enable them to relocate to Israel when they grow up, at any time, to the extent they wish to do so. **Hence, the statement made by the humanitarian committee within the context of its recommendation, that the status of the children "will not be affected if they join their mother, a resident of the Area" is an erroneous and misleading statement**.

23. Therefore, when the case concerns children who are permanent residents, the petitioners are of the opinion that there is a heightened reason for the arrangement of the stay of the foreign spouse in Israel, together with them. We shall now address this issue.

Arrangement of status of parent to Israeli children

24. The principle of the child's best interest is a well rooted and fundamental principle in Israeli jurisprudence. In CA 2266/93 **A. v. A.,** IsSC 49(1) 221, Justice Shamgar ruled that the state should intervene for the purpose of protecting a child against a violation of his rights.

25. In HCJFH 8916/02 **Dimitrov v. Ministry of Interior – Population Administration** (July 6, 2003), it was held that the principle of the child's best interest may justify the arrangement of the status of his parent, even contrary to the general presumption that a child follows his parents and not *vise versa*:

> The principle of the child's best interest has long been recognized as a substantial value of our legal system, and the importance of which cannot be overstated. Indeed, as a general rule "It is impossible to examine the matter of minors without examining their best interest" (CA 7206/93 **Gabay v. Gabay**, IsrSC 51(2) 241, 251). Thus, in the formulation of his decision, which determines the status in Israel of a foreign parent, the Minister of Interior must consider, *inter alia*, the best interest of the child of that parent and the effect such decision may have on him. Respondent's position, as aforesaid, is that despite the fact that as a general rule, parenthood to an Israeli citizen, cannot, in and of itself, grant permanent status in Israel, he also agrees that each case should be examined on its merits, to ascertain whether there are special humanitarian needs which justify a deviation from the general rule. Taking into consideration special needs may also include the needs of the child of the foreign spouse.

> The child's best interest, therefore, constitutes a consideration which should be taken into account by the respondent within the examination process." See also: AAA 10993/08 A. v. State of Israel (not reported, March 10, 2010) paragraph 4 to the judgment of Justice Hendel).
>
> (*Ibid*, paragraph 8 of the judgment of Justice E. Mazza).

26. AP (Beer Sheba) 313/06 "**Physicians for Human Rights" Association v. Ministry of Interior**, concerned the application for the arrangement of the status of a mother, who divorced the father of her children and even previously has never participated in a family unification procedure, due to polygamy. The humanitarian committee decided to deny the application notwithstanding the injury which would be inflicted on the minor girls. In that case, the inter-ministerial committee denied the mother's application to arrange her status, due to the proliferation of polygamy, due to the fact that an application to arrange her status in Israel was not submitted during her marriage (despite the fact that it was not possible), due to the fact that ever since her marriage she stayed in Israel unlawfully and due to the fact that two children remained with the husband. Judge Y. Alon accepted the petition, and ordered to remit the case to the committee. The court's ruling in that case is therefore also relevant to our case:

> The denial of petitioner's application immediately raises the question of the fate of her four young daughters (the youngest of whom is five years old) who are under her custody. The removal of the mother of the four girls from Israel will leave the four minor and young girls without a parent to look after them and raise them. Neither the decision to deny nor respondents' arguments in their response, do not clarify what will happen with these four young girls, who are all, as aforesaid, Israeli citizens. Is their father willing to raise them? And if this is the case – is he qualified and capable of raising them? And if the father of the girls is not willing or is incapable of same – is there an organized setting which can do it? Is it at all appropriate to decide of the removal of the mother from Israel, placing the four minor girls in out-of-home settings? **Shouldn't the authority which examines petitioner's application for residency status, examine along with this decision, the ramifications and immediate implications of this decision on the life of her four young daughters, their fate, souls and future? Or maybe, as respondents' counsel in her oral arguments suggested, the proposed solution in this case is that the four young girls – Israeli citizens – would join their mother who is expelled from Israel to her home town Hebron in the Palestinian Authority? The uniqueness of the situation at hand is the close and inevitable**

> **connection between the decision of the authority in the application of the petitioner herself and its far reaching consequences on the fate, souls and best interest of her four minor and young daughters.** Had the petitioner been alone, there would have been no room to doubt the legitimacy of the authority's decision to deny her application, based on each one of the reasons which were given by the respondents in their response. However, in view of the fact that the decision has so far reaching ramifications on the future and wellbeing of petitioner's four young daughters, it is my opinion that the decision of the committee as is cannot stand, without an examination of the ramifications of the application which was submitted to it on the girl's future, where will they grow-up, who will take care of them and how will they live when their mother-the petitioner is expelled from Israel.
>
> (*Ibid*., emphases added, B.A., N.D.).

27. The honorable court did not only remand the case to the committee, but has also heavily criticized the manner by which the committee examined the issue, and outlined the conduct expected of the committee in humanitarian cases having ramifications on minors:

> "… showing the proper sensitivity to the special situation of the case at hand, the respondents decided to enable the petitioner to submit her application to the inter-ministerial committee, *ex gratia*. In their said decision the respondents acted properly. However, once the respondents opened before the petitioner the gates of the inter-ministerial committee – the committee's decision making process in petitioner's application should have been guided by the examination of the extremely harsh consequences of said decision on the wellbeing of the four young girls, their fate, future and souls. **The committee should enable the petitioner, or her legal counsels, to appear before it and present to it the required opinion of the social and welfare authorities which are responsible for the fate and wellbeing of minor boys and girls, Israeli citizens. The committee is encouraged to examine the possibility to initiate the receipt of such an opinion from the competent authorities. And more than anything – the committee should specify the grounds for its decision in a manner which would reflect the examination of the above aspects of said special and unique application which was submitted to it.**
>
> (*Ibid.*, emphases added, B.A., N.D.).

28. In AP (Tel Aviv) 39084-09-10 **(Minor) et al. v. Ministry of Interior**, a petition of an Israeli girl who requested to grant status to her mother was accepted. It was held that the mother would be given temporary status which would be renewed and upgraded later on into a permanent status:

> "This case concerns a girl who was born in Israel, and who has been living all her life until this day only in Israel, from her birth in 2002 until this day. She attends the Israeli education system. There neither is, nor can there be any dispute concerning the girl's right to stay in Israel, and it is clear that under these circumstances she has the right that her mother, the only parent who raises her, stays with her in Israel. Therefore I accept the petition as requested."
>
> (*Ibid*., sections 18-20, emphasis added, B.A., N.D.).

29. Also relevant to our case are the words of the Honorable Judge Dr. Marzel, in his judgment in AP (Jerusalem) 37903-03-11 **A. v. Ministry of Interior**:

> It is clear that under such circumstances considerations of the child's best interests as well as considerations of the right to family life, should be taken into account. Although the child's status does not grant, in and of itself, status to his parent, case law recognized the principle according to which certain humanitarian cases may justify, and even require, a deviation from the rule that a child does not create status for his parents (see for instance, HCJ 4156/01 **Dimitrov v. Ministry of Interior**, IsrSC 56(6) 289, 294 (2002); also see HCJFH 8916/02 **Dimitrov v. Ministry of Interior** (not reported, [reported in Nevo], July 6, 2003); AAA 10993/08 **A. v. State of Israel** (not reported, [reported in Nevo], March 10, 2010); see also, AP (Jerusalem) 529/02 **Burna v. Minister of Interior** [reported in Nevo] (August 26, 2002); AP (Tel Aviv) 1295/03 **Shabasof v. Minister of Interior** [reported in Nevo] (March 8, 2005)). Furthermore, the separation of a minor who is an Israeli citizen from his parent, involves, at least ostensibly, a certain violation of the minor's right to family life (see and compare, **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Interior** (not reported, [reported in Nevo], May 14, 2006); see also, AP (Tel Aviv) 3111/08 **Salamovah v. State of Israel** [reported in Nevo] (June 4, 2010)). Hence, before making a decision concerning a status or a lack of status of a foreign parent of a minor who is an Israeli citizen, the entire circumstances of the case should be thoroughly examined, including the possible consequences of the minor's separation from his parent. This examination should be based on a professional and exhaustive

> factual inquiry (compare, AP (Jerusalem) 705/07 **Muskara v. Minister of Interior** [reported in Nevo] (December 21, 2009); AP (Tel Aviv) 3143/04 **Mariano v. Minister of Interior** [reported in Nevo] (May 22, 2005)).

Violation of the children's best interest

30. The failure to arrange the status of the petitioner will inevitably cause a severe and irreversible violation of the rights of her minor children, who already live a life full of tension, uncertainty and instability, in view of the concern that their mother and they, together with her – will be expelled from their home. Such a decision will result in the forcible transfer of the children from the only place known to them, and from their home.

31. Article 3(1) of the Convention on the Rights of the Child, which was ratified by Israel, states:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

32. Article 9(1) of the Convention states:

> States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

33. The provisions of the Convention on the Rights of the Child are increasingly recognized as a complementary source for the rights of the child and as a guide for the interpretation of the "child's best interest" as a superior consideration in our jurisprudence: see CA 3077/90 **A. et al., v. A.,** IsrSC 49(2) 578, 593 (Honorable Justice Cheshin); CA 2266/93 **A. Minor et al., v. A.,** IsrSC 49(1) 221, pages 232-233, 249, 251-252 (the Honorable President *emeritus* Shamgar); CFH 7015/94 **Attorney General v. A.,** IsrSC 50(1) 48, 66 (Honorable Justice Dorner); HCJ 5227/97 **David v. Supreme Rabbinical Court** (TakSC 98(3) 443), paragraph 10 of the judgment of the Honorable Justice Cheshin).

34. The expulsion of the mother will lead to the expulsion of the children from their homeland and from their home. The children did nothing wrong and they are not responsible, in any way or manner whatsoever, to their father's deeds. Regretfully, it seems that the children are used by the authorities as pawns to revenge the death of the victims who were killed in the terror attack and to deter potential perpetrators. All of the above, when very

young children are concerned, who cannot understand the occurrences, let alone to be responsible for them.

35. **The injury suffered by the children is a multiple injury**. Along the decision to expel their mother from Israel – and send them away from their home together with her, or alternatively, to separate the children from their mother - the authority which is responsible for the social rights of the residents of Israel - the National Insurance Institute (NII) – decided to revoke, in one stroke, the rights of the children, based on grounds which are peculiar, unsubstantiated, factually erroneous and which are contrary to the law and case law. Only following repeated requests of HaMoked, the NII retracted its decision. However, the petitioners are concerned – and not without reason – that the NII's intention, by using the expression "for the time being" in its letter dated December 18, 2014, is that should petitioner's stay permit be revoked, the NII will revoke once again the social rights of the children based on the same grounds which were originally specified by it.

36. Hence, the committee's statement in the recommendation which was transferred to the Minister of Interior, according to which the children would not be harmed by the decision to expel their mother from Israel, is an erroneous statement on several levels. The expulsion of the mother from Israel, is a *de facto* expulsion of the children from Israel, which puts at risk their status in Israel. The NII revoked their residency even before the mother's permit was actually canceled, and did not retract said revocation even after her stay in Israel was validated by an HCJ interim injunction – based on the argument that their connections to Israel were severed. Moreover. Even when the NII decided to retract its mistake, and reinstate the registration of the children in the health insurance register, it declared that the decision was only a temporary one. It seems that it is a "provisional" decision, and that should petitioner's permit be revoked, the NII shall immediately violate the rights of the children once again.

37. Hence, and contrary to the statements made by the committee in its recommendation, the revocation of petitioner's stay permit would definitely have far reaching ramification on the children. It is clear that the Minister of Interior made a decision based on erroneous and misleading information, and he should therefore reconsider it.

38. In this context it should be noted that in other cases, in which the Israeli spouse passed away, and the spouses had children together, the Minister of Interior has consistently decided that the mother would continue to receive stay permits in Israel, even in the absence of other humanitarian reasons, such as illness of one of the children – contrary to the case at hand, in which two children are ill. To set the record straight, the petitioners wish to refer to the matters of Mrs. ____ Gasawi, ID No. _____, a mother of one three years old Israeli girl upon the husband's death; Mrs. _____ Mansour, ID No. _____, a mother of four Israeli minor girls upon the husband's death (Mrs. Mansour even received an A/5 residency status after a petition was filed with the HCJ); Mrs. _____ Abu Katish, ID No. _____, a mother of two Israeli children upon the husband's death. In

the above cases it has never been argued – and rightly so – that they could relocate with the children to the West Bank, and that the status of the children would not be jeopardized. It has never been argued that the mothers would be able to separate from their children and relocate to the West Bank, and conduct mutual visits of the children in view of the geographic proximity between the West Bank and Jerusalem. The pertinent response which was received in the above mentioned cases only emphasizes the arbitrariness of the decision in the matter of the petitioner and her children, including the procedure which preceded said decision, and the fact that this case concerns a futile procedure, the sole purpose of which is to validate petitioner's expulsion from her home, in line with the declarations made by the Minister of Interior on the media during the days which preceded the decision and which will be specified below.

To conclude this part

39. In the previous pages we have specified the arguments which would have been presented by the petitioner before the Minister of Interior had she been given the opportunity to do so. Petitioners' position is that an administrative authority which acts fairly, based on pertinent and reasonable considerations rather than on extraneous motivations, should have taken these considerations into account **without regard to the reason** as a result of which the petitioner became a widow and which caused the children to lose their father, and reach the conclusion that petitioner's stay in Israel should be permitted. As is known, the authority did not act as aforesaid, and therefore we shall now turn to examine the decision of the Minister of Interior dated November 25, 2014.

The recommendation of the humanitarian committee and the decision of the Minister of Interior: extraneous considerations and disregard of humanitarian reasons

40. In this part the petitioners will raise their arguments concerning the decision made by the Minister of Interior on November 25, 2014, based on the recommendation of the committee dated November 23, 2014. The recommendation of the committee was based, *inter alia*, on the recommendation of the ministerial committee dated November 19, 2014.

41. Firstly, the ministerial committee and the humanitarian committee determined that there were no special humanitarian reasons in petitioner's matter, and that the children could relocate with her to the Area, without having their status prejudiced. However, as described above, in other cases handled by HaMoked, the Ministry of Interior decided to continue to permit mothers of resident children to stay in Israel under a permit, even after the death of the resident father. The difference between the above cases and the case at hand requires a detailed and reasoned explanation by the respondents; otherwise, the impression which is received is of a decision which was made based on extraneous considerations and prohibited discrimination.

42. Secondly, the committees (the ministerial and the humanitarian committees), and the Minister of Interior failed to consider the

humanitarian circumstances of this specific case, and mainly, the medical condition of two of the three children. In addition, it was stated with respect to petitioner's family that "almost the entire [family] was a resident of the Area which resided in As-Sawahira", completely disregarding the fact that petitioner's father resides in Israel and undergoes a family unification procedure with his second wife, that the petitioner has three brothers from her father's second marriage who are Israeli citizens who reside in Israel, and that the petitioner has a sister who has been holding stay permits since 2005.

43. Thirdly, the humanitarian committee conducted a speedy proceeding. The speedy proceeding, as aforesaid, is a-typical, to say the least, to the normal pace of work of the committee. Moreover, the committee has neither convened nor conducted a substantial discussion among its members, but rather, as the minutes attached above indicates, the members of the committee delivered their positions over the telephone. The committee "discussed" the "application" without hearing petitioner's arguments, and without a proper examination of the matter of the children, two of whom are not healthy, as would have been expected of a committee which bears the title "Committee for Humanitarian Affairs". The attached indicates that the committee acted as a "rubber stamp" with respect to a decision that was made in advance, before petitioner's matter was transferred to the committee, for its recommendation, and nothing more than this. **The committee has therefore failed to fulfill its duties according to the law. Moreover, the deficiencies in the conduct of the committee go down to the root of the mater and therefore – its recommendations and the decision which was made based thereon – should be nullified**.

44. Fourthly, the difference between the recommendation of the humanitarian committee and the final decision of the Minister of Interior in petitioner's matter is conspicuous. In its recommendation, the committee mentions the children and states that their status is affected by the status of the mother, "the sponsored mother can take them away from Israel and raise them in the Area, and their status in Israel will not be jeopardized as a result thereof."

45. On the other hand, the children are entirely absent from the decision of the Minister of Interior in petitioner' matter. Said absence is particularly irritating in view of the statement that "the family unit does no longer exist after the death of your husband" as if the children do not constitute part of the family unit. The minister also fails to address the ramifications of his decision on the status of the children and on his fate in general.[2] Indeed, a decision in a humanitarian "application", makes no reference to the humanitarian aspects which may arise there-from.

46. Fifthly, the position of the Israel Security Agency (ISA) as quoted in the recommendation of the humanitarian committee, as well as various statements to the media of the Minister of Interior himself which will be specified below, expose the real motive for the revocation of petitioner's

[2] These ramifications, as specified above, pertain both to the status of the children in the Ministry of Interior as well as to their residency for NII purposes.

permit: "deterrence". It was so written in the recommendation of the humanitarian committee (grammar mistakes appear in the original):

> "That the handling of the murderers' families, the purpose of which is to create deterrence and transfer a message to the public that such terror attacks will not be tolerated without a complete and comprehensive response".

47. It is clear that within the framework of deliberations of a humanitarian committee, which was appointed to examine and consider whether humanitarian reasons existed for the grant of a permit, considerations of deterrence and collective punishment are not in place, and constitute extraneous considerations:

> An administrative authority is limited in the exercise of its discretion by the general rules of administrative law. It must act within the framework of its legal authority; it must take into account all relevant considerations to attain the objective of the law and refrain from taking into account extraneous considerations; it must exercise its discretion equally and refrain from discrimination; it must act fairly and honestly; and it must according to a standard of conduct which is within the realm of reasonableness. This standard reflects, *inter alia*, the proper balance between the different relevant considerations. These general directives apply to all cases in which the administrative authorities should exercise the discretion vested in them.
>
> (HCJ 4422/92 **Ofran v. Israel Land Administration**, reported in Nevo).

48. The extraneous considerations which were taken into account prior to the recommendation of the committee constitute part of the general purpose in our matter, which is to use the committee's deliberations for the attainment of improper objectives. We shall now turn to discuss this issue.

The administrative authority uses its power to attain improper objectives

49. The administrative authority must not use the power vested in it by the legislator for any purpose other than the purpose for which it was granted (see, for instance, HCJ 620/85 **Miari v. Chairperson of the Knesset**, published in Nevo).

50. Relevant to our case are the words of the court in HCJ 98/54 **Lazarovitch v. Food Controller** (IsrSC 10 40, 47):

> … this court has the power to examine and review governmental acts not only from the aspect which pertains to the formal legal authority, but also on their merits, **whether the power was exercised properly**, namely, whether it was exercised – *inter alia* – **in good faith based on proper considerations and for the purpose for which the power was granted**… and will not validate actions **which formally seem to be valid but which are not as they seem**."
> (emphases added, B.A., N.D.).

And see also HCJ 491/86 **Tel Aviv Jaffa Municipality v. Minister of Interior** (published in Nevo).

51. In other words, there are situations in which formally, the administrative authority is vested with the power to take the actions that it takes, but a closer examination of the decision making process indicates that in fact, the actions were taken in bad faith and not for the purpose for which the power was granted to the authority.

52. Petitioners' position which will be specified in detail below, is that the decision making process in petitioner's matter, including the referral of her matter by the bureau of the Minister of Interior for the examination of the humanitarian committee ,which gave the Minister its recommendation, are, jointly and severally, actions which amount to exercise of power for extraneous purposes and excess of power. We shall explain.

53. On March 20, 2007, and prior to the second amendment of the Temporary Order, the Interior and Environmental Protection Committee of the Knesset held a meeting in which it discussed, *inter alia*, the establishment of a humanitarian committee according to the Temporary Order. As indicated by the minutes of said meeting – as well as by the explanatory comments of the bill as published in the official Gazette – the only rational underlying the establishment of the humanitarian committee was a more proportionate balance of the rigid arrangements set forth in the Temporary Order, arrangements which would reflect humanitarian aspects which were not included therein until that time:

> The committee is authorized to give temporary residency status or a stay permit in Israel to two categories of persons. The considerations are humanitarian considerations which should be examined by the committee. **In fact, it concerns the possibility to grant a stay permit in Israel which will be issued by the IDF Commander in the Area, to a person who, according to the other provisions, would not have been entitled to it. The second possibility, is to grant a temporary residency status according to the Entry into Israel Law, which is accompanied by social rights to a person who already holds a permit, and the humanitarian circumstances are**

> **such that require the grant of said status by the Minister of Interior. These are the two categories which can receive status for humanitarian reason**s.
>
> (from the words of the legal of advisor of the Population and Immigration Authority, Advocate Daniel Salomon, in the meeting of the committee).

In response to the question of the chairperson of the Interior and Environmental Protection Committee of the Knesset, what were the humanitarian circumstances based on which status in Israel may be received and whether there was an intention to specify them within the framework of the proposed law, the deputy to the Attorney General, Advocate Mike Blass said:

> We are of the opinion that a specification limits the discretion. **Once we have left it open we strengthened the humanitarian direction**.
>
> (emphases added, B.A., N.D.).

54. Hence, there is no doubt that the underlying rational for the establishment of the humanitarian mechanism under the Temporary Order, was not to prohibit, limit and expel residents of the Area from Israel, but rather to the contrary. The purpose of the legislator in the establishment of the humanitarian mechanism under the Temporary Order, was to **expand and enable** persons with special humanitarian circumstances to receive a permit or residency status in Israel, a possibility which did not exist until such mechanism was established.

55. As aforesaid, the explanatory comments of the bill dated December 18, 2006, which also concerns the establishment of the humanitarian committee, explicitly specify the underlying reasons for the establishment of the humanitarian mechanism of the humanitarian committee:

> On Iyar 16, 5766 (May 14, 2006), a judgment was given by the High Court of Justice in the above mentioned petitions concerning the Temporary Order in its amended version… the court addressed the need to establish other arrangements which would balance, in a more proportionate manner, the arrangements set forth in the Temporary Order in its amended version and which would reflect humanitarian aspects.

56. Hence, similar to the spirit of the statements which appear in the minutes of the meeting of the Interior and Environmental Protection Committee of the Knesset, the explanatory comments of the bill also unequivocally indicate that the mechanism of the humanitarian committee was established for one purpose only: to **balance** the severe limitations which were then entrenched in the arrangements set forth in the Temporary Order and **enable** persons having humanitarian reasons to stay in Israel lawfully. In other words, it is not a mechanism which was established for the purpose of expelling people

from Israel, but rather, a mechanism the purpose of which is to enable more people to receive a permit or residency status in Israel.

57. However, as will be specified below, whereas the above indicates that the humanitarian mechanism was established by the legislator for the purpose of enabling more people to receive a permit or residency status in Israel, in petitioner's matter said mechanism was used for the purpose of expelling her from Israel.

58. On November 22, 2014, three days prior to the date on which a decision was made in petitioner's matter, it was broadly published on the media that the Minister of Interior directed the Ministry's personnel to examine and recommend of ways to broaden his powers as Minister of Interior to enable him to revoke the permanent residency and ancillary social rights of Arabs residing in East Jerusalem, who promote terror and incitement to violence. The following are some links to said publications:

http://glz.co.il/1064-53812-he/Galatz.aspx

http://www.iba.org.l/bet/?type=1&entity=1056399

http://www.maariv.co.il/news/new.aspx?pn6Vq=E&0r9VQ=GJFGH

http://news.walla.co.il/item/2804002

Printouts of the above publications are attached hereto and marked **M.**

59. Four days later, it was published again on the media that following the declaration of the Minister of Interior dated November 22, 2014, a decision in petitioner's matter was made by him. The following are several links concerning this matter:

http://www.haaretz.co.il/news/politics/1.2496566

http://www.maariv.co.il/landedpages/printarticle.aspx?id=455127

http://news.walla.co.il/item/2805280

http://glz.co.il/1087-54048-HE/Galatz.aspx

Printouts of the above publications are attached hereto and marked **N.**

60. The above publications clearly indicate that the decision of the Minister of Interior in petitioner's matter constitutes an integral part of the deterring and punitive policy referred to by the Minister of Interior a few days earlier, when he publicly declared that he had directed his subordinates to examine and recommend of ways to broaden his powers so that he would be able to take punitive and deterring steps against residents of East Jerusalem. The publications further indicate that the decision in petitioner's matter was given so that anyone involved in terror would realize that it may also affect his family members.

61. However, in the process of formulating and making the decision in petitioner's matter, and for the purpose of achieving his declared objectives, the Minister of Interior has cynically and improperly used the mechanism of the humanitarian committee, a mechanism the sole purpose of which is to enable – rather than to prevent – people to stay in Israel. A humanitarian mechanism which was established by the legislator in a Temporary Order – may not – and must not – be used by the Minister of Interior as a vehicle within the framework of his efforts to expel a person from Israel for deterrence and punitive purposes which he wishes to apply to the residents of East Jerusalem.

62. In other words, in petitioner's matter, the Minister of Interior used the power vested in him by the legislator – the humanitarian mechanism in the Temporary Order – for a purpose completely different and even extraneous to the purpose originally intended to by the legislator when such mechanism was established by it. In doing so, the Minister of Interior acted improperly and in complete contradiction to one of the basic principles of administrative law, which prohibits the use of power for an extraneous purpose.

Conclusion

> The state of Israel is state of law; the state of Israel is a democracy which respects human rights, and seriously considers humanitarian considerations. We take such considerations into account, because compassion and humanity are enshrined in our nature as a Jewish and democratic state; we take these considerations into account, because we cherish the dignity of every person, even he is our enemy (compare HCJ 320/80 **Qawasmeh v. Minister of Defense**, IsrSC 35(3), page 113, 132).

63. Had petitioners' matter been brought before the Minister of Interior without its details and circumstances, the petitioners have no doubt that the Minister would have continued to renew petitioner's stay permits in Israel, with the recommendation of the humanitarian committee. However, in this case, the authorities chose to use the petitioner and her children, and the administrative proceedings which are available to them, as pawns in a campaign of deterrence and even – and it should be explicitly stated – punishment and revenge.

64. Petitioner's husband, the children's father, did a horrible thing. But the petitioner and her children are not responsible for his actions. Regretfully, so to speak "humanitarian" proceedings were cynically and improperly used, to impose on the petitioner and her children the responsibility for such deeds, by expelling the petitioner from Israel, together with her minor children, Israeli residents, from their home.

65. The petitioners request the Minister of Interior to retract his decision and permit the petitioner to stay in Israel.

Sincerely,

_____	_____
Benjamin Agsteribbe , Advocate	Noa Diamond, Advocate