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: May 30, 2016
In your response please note: 37230

To:
The Members of the Inter-Ministerial Committee For the Extension of the Validity of the Citizenship and Entry into Israel Law
Israeli Knesset

By Fax and Email

Dear Sir,

Re: **Revocation of the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003**

> Indeed, as it became evident that not only due to its content, but also from the aspect of the duration of its applicability, the Citizenship and Entry into Israel Law does not leave proper living space for the violated rights, it can no longer be said that it is sensitive to human rights. One cannot say that its objective, including its specific purpose, is proper.
>
> (From the words of the late Honorable Justice Levy, in HCJ 466/07 **MK Zehava Gal-On et al., v. Attorney General et al**.).

I hereby turn to the members of the honorable committee on behalf of HaMoked Center for the Defence of the Individual (hereinafter: **HaMoked**) – a human rights organization located in Jerusalem, which has been engaged for many years, among other things, in the arrangement of the status in Israel of East Jerusalem residents and their family members – and wish to draw your attention to the following.

Firstly, we regret the fact that the meeting regarding such an important issue which concerns the continued violation of fundamental rights of thousands of Israeli residents and citizens, was brought to our attention only now, a few days before the meeting regarding the extension of the validity of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the **Temporary Order**).

This manner of conduct, and particularly the fact that the representatives of the organizations were invited only a few days prior to the date of the meeting, to transfer to the honorable committee data regarding this complex issue, makes no contribution, to say the least, for the removal of the heavy concern that this meeting

is held in order to fulfill one's obligation, and nothing more. We shall turn now to discuss things in an orderly manner.

Background

1. For thirteen years the Temporary Order limits – and even prevents – the ability of Israeli residents and citizens, spouses of residents of the Occupied Palestinian Territories (OPT), to undergo family unification procedures and to receive status in Israel, unlike other foreign spouses of Israeli citizens and residents, who do not originate from the OPT. Thus, thousands of Israeli residents and citizens and their family members are forced, in part, to live outside Israel, in part, to live separately, and in part, to live together in Israel while the family members originating from the OPT, including children of Israeli residents, live here by virtue of stay permits only, without any social rights and with an unclear and obscure future.

2. When in the summer of 2003 the government decided to entrench by law – on a temporary basis – the sweeping freeze policy of family unification procedures for OPT residents which had been announced by it a year earlier, it notified the Knesset that the purpose of the Temporary Order was only to obtain a temporary freeze which would enable it to examine other long term solutions.[1] The above presentation of the Law as an arrangement for a very limited period of time caused, *inter alia*, the approval thereof.[2]

3. Nevertheless, as aforesaid, as of its enactment, the Temporary Order has already been extended sixteen times – and only in two of said extensions, in 2005 and in 2007, substantial discussions were conducted before its validity had been extended; and as attested to by the outcome, with the exception of some relaxation, said discussions led precisely to the expansion and substantiation of the severe harm embedded in the Temporary Order.[3]

4. Acting as it did the legislator disregarded the judgments which were given in petitions which had been filed with the High Court of Justice against the non-constitutionality of the Temporary Order – *inter alia* by HaMoked. In these judgments a considerable number of the Justices of the panels criticized the Temporary Order. Accordingly, for instance, in the judgment which was given in HCJ 466/07 **MK Zehava Gal-On et al. v. The Attorney General et al.,** (hereinafter: **Gal-On**) alongside the ratification of the Temporary Order, the court expressed its dismay of its injurious content and of the fact that an ostensible temporary arrangement turned, in fact, into a permanent one.[4] In addition, in said judgment the court made a comment directed at the state regarding the severe harm inflicted on children to whose

---

1 The words of the Deputy Attorney General, Mr. Manny Mazuz, in the meeting of the Internal Affairs Committee of the Knesset dated July 14, 2003.

2 Government resolution dated May 12, 2002, may be viewed on HaMoked's website at: http://www.hamoked.org.il/items/2960.pdf.

3 On this issue see the words of the Honorable Justice Arbel in paragraph 26 of her judgment in Gal-On.

4 On this issue see, inter alia, paragraphs 33 and 45 of the judgment of the late Honorable Justice Levy; paragraph 26 of the judgment of the Honorable Justice Arbel; and paragraph 7 of the judgment of the Honorable Justice Hendel in Gal-On.

matter the Temporary Order applied and regarding the limited authority of the humanitarian committee.[5]

5. However, ever since the **Gal-On** judgment had been given several additional years passed and nothing has changed – the validity of the Temporary Order is extended time and time again as always. **Therefore, now, on the eve of the meeting of the inter-ministerial committee for the extension of the Temporary Order, HaMoked wishes to emphasize once again its position according to which the Temporary Order is unconstitutional and should be revoked**.

The Temporary Order as a Permanent Arrangement

6. As aforesaid, in the judgments given by it in the petitions which had been filed against the non-constitutionality of the Temporary Order the HCJ emphasized the fact that it was a temporary arrangement, for a defined and limited period of time, which was meant to periodically stop and examine whether it was justified to leave the Temporary Order in force. The temporary nature of the Temporary Order and its periodic examination are therefore the elements which should have mitigated the severe injuries embedded therein and make it proportionate, and they formed the basis for the court's decision at the time to approve the Temporary Order.[6]

7. Currently it can be said that the presentation of the Law as an ostensible temporary order was nothing but a sham and the argument that it is a temporary arrangement which is meant to examine the need and justification of its periodic extension, while giving the legislator the opportunity to arrange the entire issue of immigration in an orderly manner, becomes more and more frivolous with each passing day.

Thirteen Years of Frozen Family Unification Procedures as Reflected in the Court's Judgments

8. As a result of the repeated extensions of the Temporary Order the Supreme Court, in its recent judgments, has started to make comments and to instruct the legislator to revoke the sweeping freeze policy. Accordingly, *inter alia*, in a judgment dated June 2, 2008, it was held that despite the sweeping freeze policy entrenched in the Temporary Order, an upgraded status should be given to an individual whose family unification application had been submitted before the freeze policy entered into force and whose status was not upgraded due to a mistake or unjustified delay on the Ministry of Interior's part.[7] In other judgments said exception was interpreted broadly and was also applied to cases in which the delay in the handling by the Ministry of Interior of family unification applications occurred prior to the initial approval of the application.[8]

---

5 On this issue see, inter alia, the last part of paragraph 7 of the judgment of the Honorable President (retired) Beinisch, and paragraph 1(d) of the judgment of the Honorable Justice Hendel in Gal-On.

6 See, inter alia, paragraphs 25 and 27 26 of the judgment of the Honorable Justice Arbel; paragraph 8 of the judgment of the Honorable President (retired) Beinisch, paragraph 47 of the judgment of Justice Rubinstein and paragraph 7 of the judgment of the Honorable Justice Hendel in Gal-On.

7 AAA 8849/03 **Dufash v. Director of Population Administration** in East Jerusalem (reported in Nevo).

8 The broad interpretation of the exception was based, inter alia, on the judgment in HCJ 5315/02 **Khatu v. Minister of Interior** (reported in Nevo) which was given

In addition, in a host of judgments the Supreme Court Justices made unequivocal comments to the effect that the legislator should arrange the status of individuals who have been staying in Israel for a protracted period of time in the framework of a family unification procedure, in view the fact that they undergo a security examination on an annual basis and therefore the restriction imposed on the upgrade of their status is no longer required in view of the security purpose on which the Temporary Order is ostensibly based. [9]

9. Moreover. Recently, in the framework of pending proceedings in a series of petitions which were filed by HaMoked and additional counsels – including, *inter alia*, in HCJ 5135/14 – and directly following the court's comments on this issue, the Minister of Interior notified the Supreme Court that he had decided to grant temporary residency status to more than 2000 OPT residents who were currently living in Israel and who were undergoing family unification procedures.

The Harm inflicted by the Temporary Order on Children

10. The sweeping harm inflicted by the Temporary Order on the population of the children of East Jerusalem residents is particularly severe, including, **among other things, due to the fact that the Temporary Order prevents children whose applications were submitted to the Ministry of Interior after they have reached the age of fourteen, from receiving status in Israel**. Namely, despite the fact that children of Israeli residents and their siblings are concerned whose only home is Israel, they are not granted any status in Israel but only temporary stay permits in Israel together with their family members. Hence, these children are not entitled to national health insurance and education and their parents are not entitled to receive for them child benefits from the National Insurance Institute. Over the years, these children whose stay is regulated by permits grew up in a city which constitutes their home, with no rights, with no ability to study in education institutions in a regulated manner, and with limited employment and marital prospects due to the fact that they lack status in Israel and due to their inferior civilian status. In addition – and despite the remarks of the court in **Gal-On** regarding this painful issue – to date, the promise which was given at the time to the court according to which these children, upon reaching eighteen years of age, would not be separated from their families and would not be expelled from Israel, had not yet been entrenched in the Temporary Order. Moreover. No data have ever been presented which could justify the application of the sweeping restrictions of the Law to the children of residents of East Jerusalem.

The Harm inflicted by the Temporary Order on Individuals having Humanitarian Circumstances

11. Another issue which reveals the true face of the Temporary Order and strengthens the argument that it should be revoked is the implementation of

---

even before the judgment in AAA 8849/03 **Dufash v. Director of Population Administration** in East Jerusalem.

9 See on this issue paragraphs 17-19 of the judgment of Justice Vogelman and paragraph 6 of the judgment of the Deputy President Justice Naor in AAA 6407/11 **Dejani v. Ministry of Interior**, paragraph 23 of the judgment of Justice Zylbertal in AAA 9168/11 **A v. Ministry of Interior**, paragraph 1 of the judgment of Justice Amit and paragraph 38 of the judgment of Justice Daphna Barak Erez in AAA 4014/11 **Abu Eid v. Ministry of Interior**.

the humanitarian aspect, namely, the activities of the humanitarian committee which was established pursuant to paragraph 3A1(a) of the Temporary Order. Said committee was established in the context of the amendment to the Temporary Order of 2007 in order to exclude from the sweeping freeze which was imposed by the Temporary Order, such OPT residents who had humanitarian circumstances which justify the grant of status in Israel.

12. Years earlier, in **Gal-On**, the court has already referred the state to the fact that the number of applications which in fact received remedy from the committee was very limited.[10] In addition, the court raised queries regarding the criteria according to which said committee operated and of the need to interpret its powers in a very broad and flexible manner which would make it possible for more people to receive remedy.[11]

13. However, nothing has changed: an examination of the humanitarian committee's operations from the date of its establishment in 2008 until this day indicates that the average processing time of applications submitted to the committee amounts to more than one year while the Law allocates for this purpose six months only. Moreover. From the entire applications which had been submitted to the committee until 2013, the members of the committee recommended granting status in Israel only in 4% of the applications; to additional 7% stay permits in Israel were approved – leaving them without any basic social rights whatsoever.[12] It should be reminded that naturally, many of the applications submitted to the humanitarian committee concern the difficult situation of individuals coming from the weakest population groups – women who suffer violence in the family, widows, young children, handicapped persons, etc. Worse than that, not only that the duration of handling such a humanitarian application is extremely long, all these long months the committee's applicants remain with no protection against expulsion, despite the fact that their cases have not yet been determined by the committee. Hence, the weakest not only remain without fundamental rights and basic protection, but rather they are also exposed to an immediate expulsion from their home.

14. Moreover. With respect to the applicants to the humanitarian committee the Temporary Order sets a severe and discriminatory threshold condition which is not required of individuals who apply to the humanitarian committee and who are not OPT residents. According to the Temporary Order the applications of OPT applicants will be handled only if they have a first of kin relative lawfully residing in Israel. Consequently, the humanitarian committee rejects *in limine* applications of applicants having extremely severe humanitarian circumstances, although the obligation to provide them assistance is not in dispute. Accordingly, for instance, a childless widow of a permanent resident who has been residing lawfully in Israel with her late husband for over twenty years will be expelled from her home due to the fact that upon her husband's death she has no longer a family

---

10 See on this issue paragraph 33 of the judgment of Justice (retired) Levy in Gal-On

11 See on this issue paragraph 26 of the judgment of Justice Arbel and paragraph 5 of the judgment of Justice Hendel in Gal-On.

12 See on this issue the reply of the Population Authority to the request according to the Freedom of Information Act in the website of HaMoked: Center for the Defence of the Individual at: http://www.hamoked.org.il/Document.aspx?dID=Documents2219

member lawfully residing in Israel. Whereas on the other hand, any other applicant having similar circumstances, regardless of his origin in the world, may submit a humanitarian application which will be considered on its merits by the inter-ministerial committee even when he does not have a first of kin relative lawfully residing in Israel.

Discriminatory and Injurious Conduct under the Cover of the Temporary Order

15. The Population Authority refrains, in an injurious and discriminatory manner, not only from giving basic protection against expulsion in cases pending before the humanitarian committee, but rather from giving such protection to all applicants submitting family unification applications to whom the Temporary Order applies. The Authority sweepingly refuses to provide said basic protection to any person to whom the Temporary Order applies, whoever he may be, and leaves him completely exposed to expulsion from his home to the OPT during the entire period in which his family unification application is pending in Israel. On the other hand, such protection is given to all other foreigners to whom the Temporary Order does not apply, for as long as their family unification applications are pending. It should be emphasized that like the humanitarian committee, the Authority itself also dawdles on its decisions in family unification applications of OPT residents for many months. Hence, under the pretense of a security purpose which is ostensibly the underlying purpose of the Temporary Order, the extension of which is currently discussed by this honorable committee, the Temporary Order excludes OPT residents and discriminates against them regardless of said purpose and without any justification or logic.

Conclusion

16. The Temporary Order, including its humanitarian exception, is a discriminatory order which severely violates the fundamental rights of a large population, and particularly the weakest groups thereof. Moreover. The validity of the Temporary Order is extended time and time again, without a serious consideration of the court's comments concerning the fact that it is a temporary order the justification of which should be re-examined; without a comprehensive examination of updated data and without a proper consideration of the possibility to revise it in a manner which would alleviate, even slightly, the harm caused by it. Therefore, HaMoked's position is that the Temporary Order has long lost any lawful or moral basis which could have justified its existence and that it should be revoked.

Recommendations

17. As aforesaid, the decisive position of HaMoked is that the Temporary Order should be revoked; however, since it currently seems that the legislator intends to extend its validity again, HaMoked is of the opinion that at a minimum, the honorable members of the committee should not approve the extension of the Temporary Order, unless the following revisions are made therein:

    - **In capital paragraph 3A of the Temporary Order which concerns children** – it should be stipulated that children of an East Jerusalem resident the arrangement of whose status was requested **after they reached the age of fourteen**, will be entitled to **status** in Israel;

Accordingly they will be excluded from the current provisions of the above paragraph according to which an individual the arrangement of whose status was requested after the age of fourteen **is not entitled to status but rather to a military stay permit only**. Said exclusion is extremely required since children to whom such military permit is granted **are not entitled to the basic social rights that any child in Israel is entitled to and first and foremost the right to health and education**. At a minimum, it should be stipulated that these children will be entitled to **temporary status** in Israel – namely, to **temporary residency status in Israel**, status which would grant them **the basic social rights that any child needs, without interfering in any manner whatsoever with the security purpose of the Temporary Order,** in view of the fact that said status is renewed once annually, subject, *inter alia*, to meticulous and comprehensive security examinations.

- **In addition, said paragraph should also provide** that subject to the absence of security preclusion, children who achieved adulthood **will continue to hold the same status** which was previously held by them.

- **In addition, said paragraph should also provide** that following a period which will be determined, subject to the absence of security preclusion, **said children may** – also after they have achieved adulthood – **submit a status upgrade application for permanent status, and that any such application shall be considered on its merits**.

- In capital paragraph 3A1 of the Temporary Order **which concerns the humanitarian committee** – the discriminating condition established in this paragraph according to which only individuals having a family member who lawfully resides in Israel may apply to the committee and request relief - should be revoked.

- **In addition, said paragraph should provide** that any person who applied to the humanitarian committee is protected against expulsion for as long as his matter is pending before the committee.

- **With respect to capital paragraph 3** of the Temporary Order in connection with OPT sponsored **spouses** in family unification applications - a comprehensive examination should be conducted of the possibility to reduce the qualifying age of OPT spouses which is currently 25 and 35 for women and men, respectively, and its adjustment, to the maximum extent possible, to the actual circumstances of life of the population which is harmed by the Temporary Order, where, in general, men and women marry in their early twenties, particularly women, and men typically marry in their twenties. The high qualifying age currently established in the above paragraph forces thousands of spouses and their children to live either outside Israel or separately.

- **In addition, said paragraph should provide** that any individual whose family unification application is pending will be protected against expulsion until a final decision on his application has been given.

Attached:

Reply letter of the Population Authority dated April 5, 2016, which includes data regarding the number of children residing in Israel by virtue of stay permits only – paragraph B7B of the letter – attached and marked **A**.

Work Procedure of the Inter-Ministerial Committee which handles humanitarian applications of non-OPT residents, which does not include the requirement of a family member lawfully residing in Israel – paragraph D of the procedure – attached and marked **B**.

Procedure for the grant of status to foreign spouses married to permanent residents, which discriminates against OPT sponsored spouses who are not entitled to protection against expulsion from Israel while their application is pending as opposed to foreign sponsored spouses who are protected by the procedure – compare paragraph B4-B7 of the procedure and paragraph B8D of the procedure – attached and marked **C**.

Very truly yours,

(Signed)
Benjamin Agsteribbe,
Advocate

CC: Mrs. Miri Frankel Schor, Advocate, legal advisor of the inter-ministerial committee