At the District Court in Jerusalem **Adm. Pet. 952/02**
Sitting as the Court for Administrative Matters

In the matter of:

1. **M. Abu Gwella**
2. **A minor girl**
3. **A minor boy**
4. **A minor boy**
5. **A minor boy**

Petitioners 1-5 are all from Kafr Aqeb, East Jerusalem

6. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (Reg. Assoc.)**

all represented by attorneys Adi Landau (Lic. No. 29189) and/or Yossi Wolfson (Lic. No. 26174) and/or Tamir Blank (Lic. No. 30016), of HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeideh Street, Jerusalem 97200
Tel. 02-6283555; Fax. 02-6276317

The Petitioners

v.

The State of Israel – Ministry of the Interior:

1. **Minister of the Interior**
2. **Director, Population Administration**
3. **Director, Population Administration Office, East Jerusalem**

all represented by the Jerusalem District Attorney's Office
4 Uzi Hasson Street, Jerusalem
Tel. 02-6208177; Fax. 02-6222385

The Respondents

Petition for Order Nisi

A petition is hereby filed for an order nisi directing the Respondents to show cause:

A. Why the request made by Petitioner 1 – to register in the Population Registry her four minor children who were born in Ramallah – was not granted.

B. Why they do not act in accordance with High Court of Justice decisions, whereby a request to register a child will be considered on the merits, and separately from the application for family unification submitted by the child's parents, and retract their notification that the children of Petitioner 1 are not allowed to be registered in Israel's Population Registry because their request necessitates implementation of the family unification procedure, which has been frozen following the government's decision of 12 May 2002.

C. If the Respondents contend that the government's decision freezing the family unification proceeding includes the freezing of the registration of minor children born outside of Israel who are living in Israel together with their Israeli parent, why they do not publish this decision in accordance with proper administration.

D. Why they do not state that every child, one of whose parents is a permanent resident of Israel, and who resides in Israel permanently with that parent, will be registered in Israel's Population Registry.

E. Why they do not incorporate into statute or regulations the registration of children born outside of Israel to residents of the state, whereby children who live with a parent who is a resident of Israel receives the status of that parent.

F. Why clear procedures and criteria are not set stating the requirements and manner in which persons may request that a child of a resident, who is living is Israel, be registered in the Population Registry until such time that the matter is incorporated into statute or regulations.

G. Why they do not announce, in Arabic, these procedures and criteria to the entire public.

The grounds of the petition are as follows:

1. This petition involves the Respondents' decision to freeze the handling of requests to register in Israel's Population Registry children only one of whose parents is a resident, and who was born outside of Israel. The Respondents recently decided that requests to register children born outside Israel, which until now were handled as requests to register children, and in accordance with High Court of Justice decisions the handling and granting of which would be separate from the application filed by the parents for family unification, will be handled in the course of family unification applications. Whereas it was decided in May 2002 to freeze family unification applications of persons of Palestinian nationality, it was decided not to handle at all the requests to register residents' children who were born abroad. It goes without

saying that this decision has never been published; Petitioner 6 learned of it by chance, during its handling of the request of Petitioners 1-5.

2. Following the Respondents' decision, the Petitioners were informed that the two children of Petitioner 1 who were born in Israel would be allowed to be registered in the Population Registry and appear on the identity card of the Petitioner, who is a permanent resident of Israel, while her four children who were born in the West Bank will be registered in the framework of an application for family unification, which application the office is unwilling to accept in light of the government's decision to freeze the handling of applications of this kind.

3. The absurd decision in the matter of Petitioner 1 illustrates the unfortunate situation created by the Respondents, who failed to announce their decision to the public – whereby a child one of whose parents (or possibly both) is an Israeli resident and who is born outside of Israel – will not be registered in the Population Registry until further announcement.

4. The Respondents' decision infringes the fundamental right of the child to receive a status in the world, and to hold the same status as the parent with whom he lives. Infants and children are left without a status in their country, and residents of the State of Israel are not given the elementary right to provide their children with a status identical to theirs. As long as the freezing of the family unification procedure continues, infants and children living with their resident mothers or fathers in Israel are prevented from "uniting" with the resident parent and remain unregistered and unrecognized.

5. The Respondents' decision to freeze the registration of children who were born outside of Israel but are living with the resident parent in Jerusalem is a further stage in the policy changes on this subject. The Respondents change their policy again and again on registration of children in such circumstances, as will be shown below in sections 22-41, because this fundamental right of the resident parent and his child is not set forth in statute, regulations, or even in a clear procedure divulged to the public.

The Petitioners

6. Petitioner 1 (hereinafter – the Petitioner) was born in Jerusalem and is a resident of the State of Israel living in East Jerusalem. She has seven children, the eldest of them is 13 years old and the youngest is two months old. The registration of two of her younger children, her daughters who are two and three years old (the youngest was born afterwards and was not included in the application), was approved by Respondent 3, whereas the registration in the Population Registry of the four older

children (whose ages are 7, 11, 12, and 13) was refused by Respondent 3, who did not consider the request on the merits because they were born outside of Israel.

7. Petitioners 2-5 are the Petitioner's four minor children. They live with their parents in East Jerusalem, but have a West Bank identity number. Their mother's request to register them in Israel's Population Registry was refused.

8. Petitioner 6, a registered nonprofit society whose offices are in East Jerusalem, assists persons who fall victim to the abuse and oppression of state authorities. Its activities include the protection of their rights in court proceedings, whether in its name as a public petitioner or as a representative of persons whose rights have been violated.

The Facts

9. The Petitioner married a resident of Ramallah in 1988. After marrying, she lived in her spouse's parents' home in the Qalandiya refugee camp, then in rented apartments in the camp, and later in her parents' home in Abu Tor [in East Jerusalem]. In 1997, the Petitioner's parents moved to a larger house, in the Silwan neighborhood, and the Petitioner and her family moved in with them. The Petitioner and her family were allotted a separate dwelling housing unit, with a separate kitchen and bathroom, in the house in Silwan.

10. In 2000, the Petitioner and her family moved to a rented apartment in Kafr Aqeb. After moving there, the Petitioner and her spouse found work in the neighborhood: she as a caregiver for an elderly person and he as a maintenance worker in the al-Muatadi Obstetrics Hospital.

11. As the years passed, the Petitioner and her husband had seven children: the four eldest children were born between 1989 and 1995 in Ramallah, and the three youngest children were born in 1999, 2000, and 2002 in Jerusalem.

12. In 2000, the Petitioner filed a request at the office of Respondent 2 to register her children and an application for family unification on behalf of her husband, to which she attached documents indicating that the center of the family's life was in Jerusalem. In February 2001, the family unification petition was denied. In May 2001, the appeal of the refusal to grant family unification was denied, and, in August 2001, the request to register the children was refused. The two requests were denied for the reason that "center of life was not proven."

> The letters of refusal from Respondent 3 are attached hereto and marked P/1, A-C. The Petitioners refer the Honorable Court to the heading of Appendix

P/1 C and its contents, in which Respondent 3 relates to the *registration of children* and not the application for family unification.

13. The Petitioner again appealed Respondent 3's refusal of the application for family unification that she submitted. The clerk at the office directed the Petitioner to write a letter indicating that she appeals the decision and to attach updated proofs indicating that Jerusalem is the center of her life. She did as he directed. Because the Petitioner submitted the documents to the office, she does not have a copy of the appeal. The Petitioner has not received a response to her appeal from the office of Respondent 3.

14. It should be mentioned that the application for family unification and the request to register the children were not submitted before 2000, the reason being a dispute with the Petitioner's husband's family regarding request for an Israeli identity card for him. Because of this dispute, the Petitioner and her children lived for a certain period in the Petitioner's parents' home in Abu Tor, while her husband, the father of the children, lived in the Qalandiya refugee camp. Also, the Petitioner at times went to Ramallah, and there were times when her husband tried to live with her in Jerusalem, but because of family pressure, the couple did not have a permanent residence until 1997. In any event, the dispute was resolved and, in 1997, the Petitioner and her family moved to live permanently and continuously in East Jerusalem.

15. Following proceedings in the district labor court regarding the National Insurance Institute's recognition of the Petitioner's residence in Jerusalem, the Petitioner's counsel at the time, attorney Abu Ahmad, agreed to a compromise with the National Insurance institute, whereby the Petitioner and her children would be recognized as residents of the State of Israel from June 2000, the time that the family signed a lease on their apartment in Kafr Aqeb. The consent agreement between the Petitioner and the National Insurance Institute was given the effect of a court judgment. The labor court ordered the National Insurance Institute to pay court costs in the matter.

The consent judgment, of 25 February 2002, in the matter of the residency of the Petitioner and her children is attached hereto and marked P/2.

16. On 30 July 2002, Petitioner 6 sent to Respondent 3 a request to register the Petitioner's children in the Population Registry. Attached to the request were extensive proofs indicating that the family's center of life was in Jerusalem.

A copy of the request is attached hereto and marked P/3.

17. On 11 August 2002, Ms. Natzra, on behalf of Respondent 3, informed Petitioner 6 by letter that the request to register the Petitioner's four eldest children will be considered

in the context of family unification, while the matter of the registration of the two small daughters was being handled.

The letter on behalf of Respondent 3 is attached hereto and marked P/4.

Exhaustion of remedies

18. On 4 August 2002, Ms. Filmus, on behalf of Petitioner 6, sent a letter to the office of Respondent 3 requesting review of the decision to hear separately the request of the children born in Israel from the request of the children who were born in el-Bireh, and to review the recent decision on the application for family unification. Ms. Filmus attached a letter that she had sent to Respondent 3 on another occasion, in which she requested that Respondent explain the meaning of his new requirements.

The letter of Petitioner 6 of 14 August 2002 and the letter of Petitioner 6 on this matter, which was sent regarding another request and was attached to the said letter, are attached hereto and marked P/5, A-B, respectively.

19. In a letter dated 3 September 2002, Ms. Amadi, a deputy of Respondent 3, stated that decision had been made to approve the registration of the Petitioner's two small daughters. Ms. Amadi further stated, as follows:

Note: Regarding the four children who were born in el-Bireh and are registered in the region, the matter of their registration requires a family unification procedure, *therefore,* their registration will be discussed in the context of an application for family unification, which at this stage and in light of the government's decision of 12 May 2002, we do not accept applications of this kind. (emphases in original).

The letter of Ms. Amadi is attached hereto and marked P/6.

Ms. Amadi ignored Petitioner 6's request for an explanation why the name of the registration of children procedure was changed. Despite the similarity to the family unification procedure, until then it had been recognized as a different procedure and was called by a different name (Request for Registration of Children).

20. On 29 September 2002, Ms. Filmus, on behalf of Petitioner 6, sent another letter to Respondent 3 to learn the legal basis for the decision not to register four of the Petitioner's children. She also asked if and where procedures were published whereby children will not be registered in the Israeli Population Registry following the freeze.

The letter of Petitioner 6 is attached hereto and marked P/6.

21. To date, no response has been received regarding any of the said inquiries of Petitioner 6 or any other reply whatsoever.

Instability of the Respondents' policy

22. Examination of the changes made in the Respondents' policy on the registration of children one of whose parents is a permanent resident sheds further light on the nature of the Respondents' decision that is the subject of the present petition.

The Respondents' policy from the late 1980s to 1996

23. The Respondents have never publicly announced orderly procedures for the registration of residents' children who were born outside of Israel, and for years have constantly refused to respond in orderly manner to requests of Petitioner 6 to obtain the relevant procedure. Thus, the policy that the Respondents have adopted over the years has been learned from the experience of Petitioner 6 and other organizations that deal with the matter and from numerous conversations and letters sporadically received from the Respondents.

24. During the years preceding 1996, to register a child only one of whose parents is a resident of Jerusalem and regardless of the place of his birth, it was necessary to file an application for family unification, and to attach extensive evidence that Jerusalem was the center of their life. According to the said Section 12 of the regulations, in legal terms, a child is to be registered in the Population Registry if he is born in Israel and his father is a resident. Therefore, the application for family unification in cases where the applicant father is a resident is to be approved after the bureaucratic complications are unraveled. Applications that fathers submitted for their children born abroad were handled in a similar manner.

Contrarily, the situation during those years was different when the applications were submitted on behalf of children by their mothers who were residents married to foreigners. In these cases, the Respondents approved registration of the children only in very limited circumstances. This approach resulted from the discriminatory policy that the Respondents applied until 1994, whereby only Jerusalem males were allowed to submit applications for family unification for their spouses. The Respondents assumed that women residents, who were not allowed unification with their spouses, would leave with their children to go live with the foreign spouse. Therefore, the applications in these cases were refused on the assumption that the mothers and children do not reside in Israel, regardless of the place where the children were born.

Notwithstanding the decision of the Supreme Court in HCJ 48/89, *Issa v. Civil Administration Office et al., Piskei Din* 43 (4), in which the court held that the Respondent must exercise his discretion in every application submitted by a resident to register his child and decide the matter on the merits, the Respondents continued to

act as they wished – to link the application for family unification of the foreign parent with the request for registration of the children.

25. Furthermore, when an Israeli female resident married to a foreigner from the Occupied Territories gives birth to a child in Israel, hospitals are instructed to send notice of the birth of the infant born in Israel to the Ministry of the Interior in the Occupied Territories so that the infant is registered there. The Palestinian identity number that infants receive in such cases, which is given without the mother's knowledge, provided the Respondents with a comfortable basis for refusing to register "the Palestinian infant" in Israel.

26. During these years, the Respondents did not distinguish between a child of a resident born abroad and a child born in Israel. The request of a male resident to register his child was generally granted, regardless of the child's place of birth, whereas an identical request of a female resident was generally denied, whether or not the child was born in Israel.

27. In 1994, the Respondents' discriminatory policy changed, and female residents were allowed to submit an application for family unification with their spouses. This policy change, which followed a High Court ruling, led to change in the policy on requests to register the children of female residents. Since 1994, the Respondent has approved requests to register children of female residents, subject to proof that the center of life is in Jerusalem, and again, regardless of the place where the children are born.

28. During this period, contrary to the court's ruling requiring that each case be considered on its merits, officials in the office of Respondent 3 continued to consider requests to register children of women by linking these requests to applications for family unification that were submitted on behalf of their spouses. Accordingly, the time taken by Respondent 3 to consider these requests was comparable to the time necessary to examine applications for family unification, i.e., from three to five years. Following the inquiry of Petitioner 6 regarding the linking of the registration of children of female residents with the approval for family unification, the Respondents stated that the two applications would be considered separately.

    See Section E of the letter of 29 November 1995 from Ms. Kerstein, executive director of Petitioner 6, to the Minister of the Interior, attached hereto and marked P/8.

29. Regarding children one of whose parents is a resident and who is born outside of Israel, the procedure and time required for the procedure to be completed were identical, except for the requirement in this case that the parent complete the form

titled "Request for Permanent Residency," in addition to providing the other documents. The Respondents undertook to handle this request rapidly, and in fact handled such requests in the very same manner as a request regarding a child who was born in Israel. Another difference was that, when registering a child who was born outside of Israel, the parents were required to pay a fee.

Respondents' policy since 1996

30. In response to the inquiries of Petitioner 6, human rights organizations, and attorneys who objected to the manner in which the Respondent was handling requests to register children, Attorney Bakshi, of the Respondents' legal department, wrote on 18 March 1996 to Attorney Andre Rosenthal [attorney for HaMoked]. In the letter, the Respondents recognized the mistake in linking requests to register children with applications for family unification, and explained that the application for family unification for a spouse would be handled separately from requests for registration of children. Attorney Bakshi mentioned that, from that time forward, a parent who was interested in registering his child would be able to do so – by completing a form requesting registration of a child – without regard to the application for family unification on behalf of the spouse. Regarding the registration of children, Attorney Bakshi did not distinguish between children born abroad and children born in Israel. As a result, since 1996, requests to register children were no longer referred to officially as an application for family unification, and the request to register a child was submitted on a Request to Register Child form.

> The letter of Attorney Bakshi and the Request to Register Child form, the form that continues to be used for registering a children, are attached hereto and marked P/9, A-B, respectively.

31. Over the years, the Respondents refused to grant the requests of Petitioner 6 to obtain official instructions regarding the procedure for registering children and the manner in which the registration was to be done. The most that Respondent 3 and the officials operating on his behalf were willing to do was to explain to Petitioner 6 the procedure that was applicable at the time.

A number of examples of Petitioner's requests to obtain the procedures and criteria used by the Respondents in registering a child in the Population Registry are attached hereto and marked P/10, A-C, respectively. Like other requests of Petitioner 6 to obtain written procedures, these requests were not answered.

The years 1998 to 2000

32. During the course of 1998, Petitioner 6 noticed an increasing tendency of the Respondents to grant the children of female residents who are spouses of foreign residents temporary-resident status for one year only, rather than register them in the normal manner in the Population Registry. The temporary-resident status was granted to children in these cases regardless of whether they were born in or outside Israel.

Letters sent by Petitioner 6 to the Respondents are attached hereto and marked, respectively, P/11, A-C.

33. Petitioner 6 corresponded with the Respondents regarding this matter until 13 May 1999, when Ms. Sharon, then in charge of registration and passports in the office of the Respondents, informed it that:

Children are entitled to be registered in the Population Registry in Israel even if the father does not have a status in Israel, provided that, following examination of *center of life,* it is found that the wife lives in Israel, and that the child lives with her, in which case the child will receive the mother's status… (emphasis in original)

In her letter, Ms. Sharon did not distinguish between children born in Israel and children born abroad; rather, she emphasized that the relevant information regarding the registration of a child in the Population Registry was that the child's center of life was with the parent who was a resident of Israel.

The exchange of correspondence between Petitioner 6 and the Respondents is attached hereto and marked P/12, A-D.

34. Even following this statement, a pre-High Court request to the State Attorney's Office was necessary to change the status of children who were registered with a non-permanent status. Following this request, the registration of children was allowed *whether they were born in Israel or abroad*, and they were given a permanent status rather than a temporary status.

The request sent by Petitioner 6 to the State Attorney's Office is attached hereto and marked P/13.

35. Even though the Respondents subsequently undertook to publish an announcement in their office whereby a child whose mother proved center of life in Israel (regardless of the place where the child was born), and nevertheless was given a temporary status, could correct the registration, it is not yet possible to determine the effect of the registration of many children in which they were given a temporary status rather than a permanent status: it is unclear how many children were registered with a temporary

status and did not go to Petitioner 6's office or to the Respondents' office shortly after the directive. For this reason, the children continued to have a temporary status until it "expired" at the end of a year. Apparently, these children will likely discover that they are, in effect, not residents only when, at age sixteen, they go to the Respondents' office to obtain an identity card.

The years 2000 to 2002

36. Until 2000, the Respondents' office treated requests to register children of residents born outside of Israel in identical manner to its handling of requests to register children born in Israel. In mid-2000, Petitioner 6 discovered that once again the Ministry of the Interior was registering children, only one of whose parents was a resident, as temporary residents for two years. The undersigned immediately contacted Respondent 3, the director of the office in East Jerusalem, and Ms. Sharon, who had handled the matter one year earlier. The two promised to respond in an orderly manner.

The undersigned's said letter is attached to the petition and marked P/14.

37. After several telephone calls to Respondent 3, the undersigned was informed verbally that there was, indeed, a new policy. Because it was not possible to implement such a policy regarding children born in Israel – Section 12 of the Entry into Israel Regulations did not permit it – Respondent 3 finally indicated by telephone that the new policy is intended only for children only one of whose parents is a resident and who is born outside of Israel, to whom the section or other enactment does not apply. According to this directive, these children are to be registered in the registry as holding the status of temporary resident for a period of two years.

38. The Respondents' standard letter approving the registration of these children mentioned that the children would be registered with temporary-resident status for two years, but it does not mention any instruction regarding how the child's status would become permanent after the two-year period has passed. Therefore, residents whose children were given a temporary status do not know what will happen at the end of the period, and how the child's status can be made permanent.

39. It should be noted that, this time, too, Petitioner 6 discovered the change on Respondent's policy while it was providing normal assistance to families in registering their children in the Population Registry. The Respondents, in accordance with their customary practice, did not take the trouble to announce the change in policy. Several times, Petitioner 6 wrote to and spoke with the Respondents in an attempt to clarify the legal or administrative basis for this decision. Other than

obtaining a verbal reply from the Respondents, whereby the said children would be registered with a different status, no written reply was made to Petitioner 6's letters, including its request to obtain a copy of the new procedure.

Insofar as two years have not passed since this decision was adopted, it has not yet clear what actually will take place. Therefore, it is no known whether the children given a temporary status for two years will be registered as permanent residents when the two-year period ends, and which bureaucratic difficulties they can expect to face in obtaining a permanent status.

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40. During the course of its activity in 2002, Petitioner 6 discovered that the Respondent was refusing to register children born abroad. At first, the Respondent gave a curt refusal, without explanation, in refusing requests to register children born abroad. Only after he received a further inquiry from Petitioner 6 did he explain that, in his opinion, the government decision freezing the family unification procedure also included requests to register children.

41. The Petitioner has yet to receive a copy of the official procedure on registering children of residents and, as stated, the Respondents have not responded to its questions on the subject. The Respondents operate a web site on which it is supposed to publish the procedures that incorporate its powers and functions. On the web site, too, no mention is made of the way to register children who are in the same situation as the children who are the subject of this petition, nor is there mention of the government decision in this matter.

Procedure for submitting request to register a child

42. The Respondent contends that registration of a child born abroad is actually a request for family unification. The Petitioners will argue that this contention is raised for extraneous reasons, apparently with the objective of maintaining the demographic balance by not adding additional Arab residents to the Population Registry. The Petitioners will argue that, despite its procedural similarity to an application for family unification, a request to register children, born in Israel or born abroad, is totally different from an application for family unification. The purpose of a request to register a child is to grant the child the identical status held by the parent with whom he lives, so that the parent can take responsibility for his child, raise him where he [the parent] chooses, and provide him with security and protection. The right of a parent to enable his minor child to stay lawfully in his country is such a natural right that it would be strange to have to explain this right in words.

We shall describe below the procedure for submitting a request to register a child in two cases: where the child is born in Israel, and where the child is born abroad. This description is important to enable us to understand the artificiality and tendentiousness in referring to requests of the latter kind as "applications for family unification," and that the semantic change was made for extraneous reasons as continuation of an arbitrary and cruel policy.

Unlike the procedure for registering a child of a citizen, which is done automatically shortly after the child's birth (the child's identity number is on the birth certificate given at the hospital), registration of children of residents is not done automatically, but requires submission of a request to the Ministry of the Interior.

The procedure for infants under one year old is different from the procedure for infants and children over one year old. In the former case, the parents must go to the Ministry of the Interior with the notice of birth and documents indicating that their center of life is in Israel. If the documents satisfy the Respondents' clerks, it is possible that the child will be registered at that moment. In the latter case, when the child is one year or older, registration in the Population Registry is achieved by completing a formal request form, especially drafted for this purpose, that is sent by mail. In addition to the completed request for registration form, the parents must attach documents proving their "center of life" for the past two years, as stated on a requirements form identical to the form that a couple seeking family unification must complete. These proofs include, inter alia, notice of birth, immunization booklets, rental agreement, water, electricity, telephone, and municipal property tax bills regarding the residence. If the couple lives with the parents or another relative, the parents [or other relative] must present an attorney's affidavit explaining where they live, how many people live in the house and who they are, and how many floors and rooms are in the house. If all the bills relating to the house are not registered on the couple's name, an affidavit must be provided that explains on whose name the bill is listed and why; confirmation of work and pay slips or, if there are none, an attorney's affidavit explaining the applicant's employment; confirmation of registration of the children in school or semi-annual and annual certification from the school indicting that the children are studying there, printouts from a health fund with the names of the family members, and a printout from the bank indicting the receipt of child allotments, and thus recognition of the National Insurance Institute of the family's residence rights. These are only some of the documents that the family must provide to arrange the status of their children in the Population Registry.

The said procedure is identical for children born in Israel or children born abroad. The form that the parents must complete – titled "Request to Register Child" – is the same in the two cases. The Respondents have done nothing to give the couple reason to believe that they are filing a request for family unification with their children and are not requesting to register them. However, as stated, in accordance with the (unpublished) decision of about eighteen months go, pursuant to which a child born in Israel will be granted permanent residency when the request is granted, while a child born abroad will be given temporary residency for two consecutive years and his registration entails payment of a fee. At the end of the two-year period, the temporary-resident status is supposed to be exchanged for permanent residency. The Entry into Israel Regulations have recently been amended, and the fee for registering a child born abroad is now NIS 2,325. Previously, the fee was NIS 535.

43. It should be emphasized that Respondent 3 explained (in a telephone conversation with the undersigned) the reason for the decision made a year and a half ago to grant a child born abroad temporary residency for two years, before granting permanent residency: it was to check that the family, which apparently had previously been living abroad, was indeed continuing to maintain their center of life in Israel. Respondent 3 did not contend that a family unification procedure, and not a child registration procedure, was involved.

44. There is, to be sure, strong similarity between a request to register the child of a resident, in the two cases, and a request for family unification, as regards the requirement for many documents and the bureaucratic demands. However, looked at from this perspective, all requests submitted by residents are similar, because residents always face the demand to prove their residency in order to obtain a service from the office.

    The procedural difference between the procedure for registering a child (in the two cases: for a child born abroad and for a child born in Israel) and the family unification procedure lies in the length of the procedure and the manner in which it is checked. The annual check in cases of family unification are intended to examine the candor of the couple's married life, the amount of time that their center of life has been in Israel, and criminal and security checks of the person on whose behalf the application was submitted. It goes without saying that minor children do not need to undergo these checks, or checks that prove their genuine ties to their parents.

45. We see from the above that, until eighteen months ago, the Respondents treated requests to register children born in Israel and children born abroad in an identical

manner, except for the amount of the fee. Since the change, children who were born abroad have been granted a temporary status for two years, according to Respondent 3, to ensure that they indeed live with their family in Israel prior to the granting of the permanent registration. The Respondents now contend that applications for family unification for children born abroad are frozen and will not be considered until further notice, on the grounds that they constitute applications for family unification and fall within the government decision in this matter. The Petitioners believe that the Respondents changed the name of the request for the registration of children who were born abroad and called it by a new name – application for family unification – notwithstanding the substantive difference between the two subjects, *following the government's decision,* for extraneous reasons and in direct continuation of the consistent and arbitrary policy toward permanent residents of Israel. The results of the change are extremely harsh and harmful.

The Legal Framework

Every child is entitled to be registered as a human being recognized by the authorities.

46. The status of permanent residents in the State of Israel is arranged in the Entry into Israel Law, 5712 – 1952 (hereinafter: the Law or the Entry into Israel Law) and in the Population Registration Law, 5725 – 1965 (hereinafter: the Registration Law).

The Registration Law

47. Section 2 of the Population Registration Law provides that the identity card of a citizen or permanent resident shall state the individual's personal particulars, among them the names of his minor children, their sex, and their dates of birth (Section 2 (9) of the Registration Law).

48. Section 3 of the Registration Law states:

> ***The entry in the Registry and any copy thereof or extract therefrom, and any certificate issued under this Law, shall be prima facie*** **evidence of the correctness of the particulars of registration referred to in paragraphs (1) to (4) and (9) to (13) of section 2.** (emphasis added)

That is, the registry must accurately reflect the reality that it documents.

49. Section 5 of the Registration Law states:

> ***Every resident shall notify*** **a registration officer, within thirty days from the day on which he first entered Israel or, if he became a resident after entering Israel, from the day on which he became a resident,** ***of his particulars of registration, within the meaning of section 2*****;** ***and if at the time of entering or becoming a resident he had charge of a minor or of a person of full age incapable of fulfilling his duty under this section, he shall notify also the particulars of registration of such minor or person of full age.*** (emphasis added)

50. Section 11 of the Registration Law states:

> **A resident to whom a child is born abroad shall within thirty days make notification to the registration officer of the particulars of registration of the child.** (emphasis added)

A resident whose child is born abroad is required to notify the Population Administration about the birth of his child. This requirement is identical to that of a resident whose child is born in Israel, although the execution differs in the case of late registrations.

Thus, it is clear from the above that the resident has the right to register his children in the Population Registry whether the children were born abroad or in Israel. Furthermore, the Law indicates that every resident has a legal obligation to do so.

The Entry into Israel Law and the Entry into Israel Regulations

51. The registration of children in accordance with the Entry into Israel Law is enshrined in the Entry into Israel Regulations, 5734 – 1974. Section 12 of the Entry into Israel Regulations regulates the registration of children born in Israel when only one of the child's parents is a resident. The section states:

> **A child born in Israel as to whom Section 4 of the Law of Return, 5710 – 1950, does not apply shall have the same status in Israel as that of his parents. Where his parents did not have the same status, the child will receive the status of his father or his guardian, unless the other spouse opposes in writing such action; where the other parent objects, the**

child shall receive the status of one of his parents, as the Minister shall decide.

There is no comparable regulation of statutory provision that establishes the registration of a child who is born abroad and only one of his parents is a resident; thus, the treatment of such cases must be learned from this section by analogy.

52. The Petitioners will argue that there is good reason why the registration of children of residents is not arranged in the Law or in the regulations, except for Section 12 of the Entry into Israel Regulations. As will be explained below, the absence of orderly procedures on this subject enabled the Respondents to change their policy at frequent intervals. As a result, residents of the state cannot know what they must do to provide their children with a status in their country. At the present time, if their children are born abroad, they can do nothing to provide them with a status.

Legal Argument

The Petitioners will argue that:

A. The Respondents exceed their authority, in which they are required to consider on its merits a request to register a child whose parent is a resident of the state;

B. The Respondents employ collective sanctions against Petitioners 1-5 and many other residents and children in their situation;

C. The Respondents did not have the authority to make the decision;

D. The Respondents' decision contravenes the Basic Law: Human Dignity and Liberty;

E. The Respondents made their decision based on extraneous considerations and in an arbitrary manner;

F. In failing to publish their decision not to register children in the situation of Petitioners 2-5, the Respondents are acting contrary to the rules of proper administration;

G. The harm caused to the Petitioners contravenes Israeli law and international law, which require the State of Israel to safeguard the welfare of the child and protect his rights;

H. The Respondents' decision is not pragmatic, and is extremely unreasonable.

We shall now examine each of these points from the perspective of their legal significance and personal significance for the Petitioners.

Importance of the family unit and rights of the child – harm to Petitioners 2-5

53. The Petitioner, a resident of the State of Israel, has the right to live securely with her children in Israel, with their legal status being orderly arranged. This right results form the Petitioner's right, as a permanent resident of the State of Israel, and pursuant to her basic right as a mother, not to be prevented by her country from protecting her children and providing for them to the best of her ability. The state has the clear and natural duty not only to prevent such harm, but to actively protect individuals against impairment of their capability to provide their children with the protection that they need.

54. The Respondents ignore the welfare of the child, which is the fundamental principle in exercising administrative or judicial discretion related to minors. As long as the child is a minor and as long as his parent is functioning properly, the child's welfare requires that he be allowed to grow up in a supportive family unit. The refusal to register the child as a resident of Israel, when his parent is an Israeli resident and his place of residence is in Israel, results in forced separation of the child from his parent, impairment of his development, and interference with the family unit contrary to the child's welfare. Rather, having no option, the child will remain with his parent in Israel, but without a stable and clear status, as long as the difficulties of life without a status do not overwhelm the family.

55. For the Petitioner's children, lacking a status is equivalent, in many aspects, to not existing at all. As time passes and the Respondents continue to change the procedures, it is not clear whether they will allow her children to be registered or how complicated the procedure – which already requires significant resources, in money to pay the fee, which increased last month to NIS 2,325, and to retain an attorney to meet the demand for affidavits, and due to the failure to publish the procedures on how to register a child – will become.

56. The longer the span of time from the birth of the child to the day of his registration, the greater the complexity and expense of the procedure. Many residents are unable to meet the Respondents' changing demands. As a result, children, and later adults, find themselves living in Israel without documentation and without rights. The severe ramifications of such a situation are clear, but it should be mentioned that the situation is also extremely problematic for the state because the Population Registry does not reflect the actual population living in the state.

57. The best interest of the child is a fundamental and firmly established principle in Israeli law. On the importance of the family unit and the statutory limitation on interference by the state, see the comments of the Honorable President Shamgar in Civ. App. 2266/93, *John Doe v. John Roe, Piskei Din* 49 (1) 221, 235-236:

> **The right of parents to custody of their children and to raise them, with all that entails, is a natural, primary, constitutional right, as an expression of the natural connection between parents and their children (Civ. App. 577/83, *Attorney General v. John Doe, Piskei Din* 38 (1) 461). This right is expressed in the privacy and autonomy of the family: the parents are autonomous in making decisions regarding their children – education, lifestyle, place of residence, and so on – and interference by society and the state in these decisions is an exception that requires justification (see Civ. App. 577/83, cited above, at pp. 468, 285). This approach is grounded in the recognition that the family is "the most basic and ancient family cell in human history, which was, is, and will be the foundation that serves and ensures the existence of human society."** (Justice (as his title was at the time) Elon in Civ. App. 488/77, *John Doe et al. v. Attorney General, Piskei Din* 32 (3) 421, 434)

The right of minor children to live with their parents is recognized as an elementary and constitutional right by the Supreme Court. See the comments of Justice Goldberg in HCJ 1689/94, *Harari et al. v. Minister of the Interior, Piskei Din* 51 (1) 15, at page 20, opposite letter B.

58. The International Convention on the Rights of the Child, which the State of Israel ratified along with almost all other countries in the world, contains several provisions that require protection of the child's family unit

For example, in the preamble to the Convention:

> **[The States Parties to this Convention being] convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can**

> **fully assume its responsibilities within the community.**
>
> **… that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.**

Article 3(1) of the Convention 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.**

Article 9(a) 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.**

59. The provisions of the Convention on the Rights of the Child has been increasingly recognized as a complementary source for the rights of the child and as a guide for interpreting the "best interests of the child" as a consideration in our law: see Civ. App. 3077/90, *Jane Roe et al. v. John Doe, Piskei Din* 49 (2) 578, 593 (the Honorable Justice Heshin); Civ. App. *John Doe, a Minor, et al. v. John Roe, Piskei Din* 49 (1) 221, 232, 233, 249, 251-252 (the Honorable President Shamgar); Reh. Civ. 7015/94, *Attorney General v. Jane Roe, Piskei Din* 50 (1) 48, 66 (the Honorable Justice Dorner). The Respondents should exercise their powers in accordance with the best interest of the child as interpreted in the Convention's provisions.

60. The Petitioners will argue that the Respondent must show that its decision to refuse the Petitioners request to register their children was made in accordance with its authority and in the exercise of proper discretion that thereby justifies the grave harm to the Petitioners' fundamental rights.

The obligation to exercise discretion in deciding on registration of a child

61. The lack of a specific duty in the Entry into Israel Law to grant a status in the case under review does not exempt the Respondents from their obligation to exercise their authority to grant a status to children of permanent residents of Israel. This obligation exists regardless of the child's place of birth, as long as the resident parent makes such a request in light of the child's residence in the state. See HCJ 48/89, *Issa v. Civil Administration Office et al.*, above.

62. The Petitioners will argue that denial of the request to register children must be based on concrete reasons, supported by proof, that the child is not entitled to a status in Israel.

63. Respondent 3 recognized that the center of life of the Petitioners' family is in Israel when it approved the registration the family's other two children, thereby recognizing the substantive right of the children to be given the status of their mother, as was the case for their small siblings.

Thus, the Respondents' decision to refuse to register Petitioners 2-5 was taken without exercising discretion in their specific case, as stated in their letter of 3 September 2002, as follows: "In light of the government's decision, we are unable to accept requests of this kind."

64. An administrative authority must consider substantively whether to exercise its authority as regards a request, and to act reasonably, proportionately, in good faith, in a non-arbitrary manner, without taking into account extraneous considerations, while giving proper weight to the fundamental rights and principles of our legal system (see Ra'anan Har Zahav, *Israeli Administrative Law* [in Hebrew], published in 1966, at pages 103-109, 435-440, and the references provided there; HCJ 3648/97, *Bijlavhan Petel and 31 others v. Minister of the Interior and three others, Piskei Din* 53 (2) 728, 770). Furthermore, this exercise of discretion must conform to the objectives underlying the legislation that is the source of the authority. In the present case, we must examine the objectives of the Entry into Israel Law, which the Respondents relied on until recently in this matter; the Population Registration Law which deals, inter alia, with registration of children of residents; and in light of the Basic Law: Human Dignity and Liberty. The Respondent ignores his obligation to act in light of the legislative purpose, Israeli common law, and Israel's commitment to international conventions that it has ratified.

65. In HCJ 48/89, *Issa v. Civil Administration Office et al.*, *Piskei Din* 43 (4) 573, the Honorable Justice (as his title was at the time) Barak expressed his astonishment at the refusal of the Minister of the Interior to exercise discretion regarding the registration

of the Petitioner's children, a permanent resident of Jerusalem who is married to a foreigner:

> **The declarant explained his conception of the law as it currently exists. This does not explain the considerations that motivated the Minister of the Interior not to exercise his discretion, and to hold that the daughter will receive the status held by her mother.**

The Honorable Justice Barak rejected the Respondents' arguments whereby their policy dictated that children of female residents would be registered in the region because of the assumption that, in Arab culture, "women follow their husbands," and required the Minister of the Interior to consider on its merits the request to register the children.

Failure to publish the decision

66. The great importance inherent in the authorities publishing their decisions and procedures is obvious. We see from the description of events above that the Respondents constantly failed over the years to publish their changing policy. As a result, the residents learned about the changes relating to their rights and most basic needs, with which the Respondents are entrusted, only after their periodic visits to the Ministry of the Interior's office or by publications of human rights organizations.

67. The public has a right to know and to receive information from the government regarding its actions. This right has been expressly recognized in Israeli legislation and common law. The right of the public to know is a necessary foundation for public review of the actions taken by the governing authorities; publication is important to ensure public trust in the authorities' actions, for secrecy cannot form a basis for public trust. The public's right to know also includes the right of every person to independent access to information possessed by the governing authorities in carrying out their functions. The corollary of the public's right to know is the "duty of public officials to provide information to members of the public" (HCJ 1601-1604/90, *Shalit et al. v. Peres et al., Piskei Din* 41 (3) 365).

68. The Respondent's decision, made without giving any notice, to change superficially the name of the registration of child procedure to "family unification," and thereby include this fundamental right (of a child to be registered) in the decision to freeze the unification procedure between a citizen spouse or resident and his or her foreign spouse is extremely grave and dangerous. In effect, the Respondents allow themselves

to treat residents of East Jerusalem as they wish, without troubling themselves to inform the public about their decisions.

> On the obligation to publish criteria and procedures, see HCJ 5537/91, *Efrati v. Ostfeld et al., Piskei Din* 46 (3) 501; HCJ 3648/97, *Stemkeh et al. v. Minister of the Interior et al., Piskei Din* 53 (2) 728, 767-768.

69. As described in Sections 17-21 above, the Petitioners only learned about the refusal of the Respondent to register children in their situation after corresponding with clerks in the Respondents' office. The Respondents' answer was received only following repeated requests by Petitioner 6. The questions raised by Petitioner 6 in its letters of 14 August 2002 and 29 September 2002 were not answered.

70. The Petitioners contend that, in the absence of publication of the Respondents' decisions, many families, who are not represented, continue to wait in vain to register their children, and it is doubtful if residents in the Petitioners' situation, without being represented by counsel, would have received any response from the Respondent. To date, the Respondents have not responded to the Petitioner's questions regarding the legal foundation for the decision to include the registration of children of residents in the government's decision on the freeze. It is doubtful whether a written, orderly decision exists on this subject. Also, publication of a written decision would provide further guarantee that discretion was exercised in making the decision.

Collective sanction

71. When the Respondents decided to include requests to register children born abroad in the category of applications for family unification – in order to create a comprehensive freeze of the handling of these requests – and without exercising discretion, the Respondents imposed a collective sanction on hundreds and possibly thousands of blameless children.

These children are prevented from obtaining a status in the place in which they live. Their parents, residents of the state, are not granted the right to provide their children with a status in their country.

72. The Respondents' policy indiscriminately punishes children and parents. The Respondents do not even take the trouble to explain the purpose of the harsh sanction – denial of a fundamental right. In the past, the Supreme Court has prohibited, on grounds of lack of proportionality, collective punishment. For example, in its decision in *Ben Atiya,* which involved denial of the right of a school to hold an examination

after the it was found that there had been many cases of copying during previous examinations, the court held:

> **The occurrence of a relatively large number of cases that harmed the integrity of the examinations is indicative of lax supervision, and the way to cope with the phenomenon is by increasing the efficiency of supervision and by properly punishing the persons involved, and not by harming the "following year's" students and the educational institution and its teachers.** (See HCJ 3477/95, *Ben-Atiya v. Minister of Education, Culture and Sport, Piskei Din* 49 (5) 1, at page 8.)

In the present matter, the position of the Honorable Court is reinforced: the cessation of the handling does not result from the acts or omissions of any of the Petitioners or other persons in their situation, and is unrelated to them in any manner whatsoever.

Lack of authority

73. The Petitioners will argue that the decision to refrain, until further notice, from registering children in the Population Registry is unlawful. The Respondents' action infringes the right granted to the children of residents living in Israel to obtain the status of their parents. This action violates the law and exceeds their authority.

74. The late Justice Haim Cohen explained the rationale for the principle of the legality of exercising authority over individuals, in Elec. App. 1/65, *Yardor v. Chairman, Elections Committee for the Sixth Knesset, Piskei Din* 19 (3) 365:

> **In a state under the rule of law, a person's rights are not denied, even in the case of a dangerous criminal and the most abominable traitor, except in accordance with law. The Knesset is the legislative authority, and it is the body that empowers and grants authority to the person empowered, if it so wishes, to act toward a person based on his actions and as a result of his misdeeds. Where such authority is not given by the legislature, neither logic nor necessity nor love of country nor other consideration, whatever it be, justifies taking the law into one's own hands and denying a right of another.**

In his treatise *Israeli Administrative Law,* R. Har Zahav adds to Justice Cohen's comments, as follows:

> **Every administrative decision or act requires a foundation in a norm enacted by the Knesset or pursuant thereto; an act that does not originate in such norm is done without authority.** (at page 29)

75. The Respondents argue that the source of their power to refuse to register children in the situation of Petitioners 2-5 lies in the government's decision of May, which deals, they contend, also with requests to register children. We shall examine, therefore, the language of the government's decision and the rationale set forth within it.

The government's decision of 12 May 2002

76. The title of the government's decision is "The treatment of persons staying illegally and policy of family unification relating to residents of the Palestinian Authority and to foreigners of Palestinian descent."

In the first part of the government's decision, which is titled "It is decided," the decision states:

> **Enforcement – to direct the Israel Police Force and the Ministry of the Interior, together with security officials and other relevant government ministries: to enforce the prevention of staying and settling in Israel of persons staying illegally in Israel who come from the Palestinian Authority or are foreigners of Palestinian descent. These actions are to be taken in the framework of the overall policy in matters related to foreigners.**

Regarding family unification, which the Respondents contend also includes the registration of children born abroad, the decision states:

> **In light of the security situation, and due to the ramifications of the immigration and settling processes in Israel of foreigners of Palestinian descent, including through family unification, the Ministry of the Interior, together with the relevant government ministries, shall**

formulate a new policy for the handling of family unification applications.

The decision provides that, until formulation of a new procedure "that will be set forth in procedures and new legislation, as necessary":

A. New applications by residents of the Palestinian Authority for the status of resident or for another status will not be accepted; an application that is submitted will not be approved, *and the foreign spouse will be required to stay outside of Israel until further decision is reached.* (emphasis added)

B. Other – the application will be heard while taking into account the descent of the person invited.

77. The government's decision does not mention the registration of residents' children. Furthermore, the request defines the object of its treatment by implication and explicitly as appears in Section A quoted above, as spouses of residents and other foreigners of Palestinian extraction wanting to settle in Israel. Clearly, it cannot be said that minor children of residents of the country, whose residence in Israel has been completely proven to the Respondents, are included in this decision. Children of residents of Israel are not immigrants and no contention is made that they endanger state security.

78. The Petitioners will further argue that, even if the Respondents were able to base their decision on the government' decision regarding family unification, their decision should be deemed null and void because it was given without authority, is unreasonable, disproportionate, and unfair, and contravenes the Basic Law: Human Dignity and Liberty.

On this matter, Prof. Yitzhak Shamir wrote in his treatise *Administrative Authority*, as follows:

As the common law provides, it [the limitation clause] applies also to administrative authorities in everything related to infringement of rights under the Basic Laws… An administrative authority, regardless of the power given it by the original source and by complementary sources, must exercise the authority, as regards these rights, in accordance with the limitation clause. (Vol. 1, at page 154)

The government's decision of 12 May 2002 is attached hereto and marked P/15.

The decision is unconstitutional because it violates human dignity

79. The right to family life entails and is entwined in the basic rights of the individual to dignity, liberty, and privacy. Impairing the integrity of the family unit – "this primary unit of human society" (the Honorable Justice Heshin in Civ. App. 238/53, *Cohen and Boslik v. Attorney General, Piskei Din* 8, 53) – violates human dignity.

80. The right of a human being to recognition in the world entails and is linked to the individual's right to dignity and liberty that are enshrined in the Basic Law: Human Dignity and Liberty. As an integral part of the right to human dignity, minor children have the right to live with their parents in a unified family, and the parents have the right to live with their children:

> **In an era in which "human dignity" is a protected fundamental constitutional right, effect should be given to the desire of a person to fulfill his personal being, for which reason his desire to belong to the family unit to which he deems himself part should be respected.** (Civ. App. 7155/96, *John Doe v. Attorney General, Piskei Din* 51 (1) 160, 175)

81. Thus, every infringement of these rights must comply with the limitation clause in Section 8 of the Basic Law: it must be consistent with the values of the State of Israel, it must be for a proper purpose, it must be proportionate, and it must done pursuant to statute or pursuant to explicit authority set forth in statute.

82. Because the right to a status in the world is a fundamental human right, any infringement of the right must be examined in accordance with the limitation clause:

> **Indeed, since the Knesset established the Basic Laws in the matter of human rights, we use the criteria set forth therein to interpret the governmental powers that were legislatively granted (in primary and secondary legislation), whether the legislation was enacted prior to these Basic Laws or subsequent to them; whether the infringement of the human rights are "covered" in the two Basic Laws, and whether the infringement of the human rights are not "covered" by these Basic Laws.** (HCJ 5016/96, *Horev et al. v. Minister of Transportation et al., Piskei Din* 51 (4) 1, 43)

Extraneous and arbitrary considerations

83. The Respondents did not indicate any purpose underlying the decision to freeze requests to register children of Israeli residents. The reason that appears in the government's decision of May is the need to be wary of the entry of foreigners into Israel because of the security threat involved. Clearly, this reason is not available to the Respondents when minor children of residents are concerned, for neither they nor their parents are alleged to be security risks. In their sweeping decision, the Respondents do not even investigate whether any threat exists from registering the child; they simply refrain from registering children, without limiting their decision.

> On the prohibition against an administrative agency exercising authority after taking into account extraneous considerations, see, for example, Elec. App. 2/84, *Neiman v. Chairperson, Central Elections Committee for the Eleventh Knesset, Piskei Din* 39 (2) 225.

In exercising discretion, the Respondents are not allowed to act solely according to the authority given them. In HCJ 246/81, *Lugasi v. Minister of Communications, Piskei Din* 36 (2) 449, 460, Justice Shamgar discussed the meaning of arbitrariness:

> **The simple and basic meaning of this term, in my opinion, relates to an act done by an authority without considering the data and reasons before it, in reliance on the authoritative power and nothing more…**

The Honorable Justice (as his title was at the time) Barak also discussed this point. In *Amitai – Citizens for Proper Government and Integrity v. Prime Minister, Piskei Din* 37 (5) 441, 462, he wrote:

> **Indeed, the Prime Minister, the government, and every one of its ministers are not allowed to say: "The law grants us power to terminate the tenure of a deputy minister, at our pleasure we shall cease his tenure, and at our pleasure we shall refrain from doing that. We have the discretion and shall exercise it as we wish."**

84. The Respondents have the authority to infringe the fundamental right of the Petitioner to register her children as residents of the State of Israel only when they seek to attain a proper purpose that prevails over the right of the Petitioner to register her children in

the Population Registry and over the right of the children to obtain the status of their mother. It is unclear what purpose is attained by the state from the failure to register the children in the Population Registry, while infringing the mother's and children's rights and by splitting the children as regards the granting of status. The only possibility that comes to Petitioners' mind is that the Respondents want to preserve the demographic balance of a Jewish majority. This desire is seen in the many newspaper articles and public statements, which Respondents 1 and 2 did not attempt to conceal.

It is inconceivable that this consideration allows infringement of the Petitioners' fundamental rights to arrange the status of their children.

In *Lugasi,* Justice Shamgar describes a state authority's conduct that lacks good faith:

> **… when the authority that gives a reason that disguises or conceals another hidden intention, knows that it is incorrect, that the statement it makes is not comparable to that which it feels is the truth. In our case we have a characteristic example of the lack of honesty or of deceit.** (at page 459)

85. As appears from the frequent changes in policy made by the Respondents, and from their current sweeping decision as to which they have not paid heed, the Respondents are exercising their authority as they wish, without any obligation to state what lay behind their decisions and acts and to justify them. However, the extraneous objective underlying the Respondents' decision is apparent on its face, and they seemingly have made no attempt to conceal it.

Lack of proper purpose and reasonableness

86. The administrative authority is obligated to act with reasonableness, in proportion, and to achieve a proper purpose. These are principles with which the Respondents must comply in exercising discretion. This is true in general, and particularly when they harm persons who have done nothing wrong.

87. The failure to exercise discretion in reviewing the substance of the requests made by the Petitioners raises the concern that extraneous considerations were taken into account, thereby violating the criteria of reasonableness and fairness, which an administrative authority must exercise.

The Petitioners will argue that the Respondents do not have a proper purpose that underlies the measures they have taken, and that these measures have decisively

affected every aspect of the Petitioners' lives. Their decision is, therefore, extremely unreasonable.

> On this point, see HCJ 1689/94, *Harari et al. v. Minister of the Interior, Piskei Din* 51 (1) 15; HCJ 840/79, *The Contractors Center v. Government of Israel and Builders in Israel, Piskei Din* 34 (3) 729, esp. 745-746.

88. In addition, there is no logical or necessary connection between the benefit that will result from the refusal to register children of residents in the Population Registry, if such benefit exists, and the extent of the infringement of fundamental rights. The harm to residents and their children exceeds the degree necessary to achieve any proper purpose.

89. It is inconceivable that in a properly functioning and democratic state, the government decides in its innermost chambers on a policy whereby children of a resident are not be registered in the Population Registry, and simultaneously recognizes the residence of the family and its center of life in Israel, and decides to register the other children in the family because they were born in Israel.

Conclusion

90. The Respondents change their policy repeatedly: residents do not know the rules according to which they are supposed to act: in a certain period, only males are allowed to register their children, after that, children are registered with a temporary status, and now children born in Israel are registered while children born abroad remain without a status. As a result, the state has created a ridiculous situation in which two children of a family are not able to be registered while the registration of their siblings is allowed, even though it is proven that they are the children of a resident of the State of Israel and live in one place – Jerusalem. A request to register children changes its name in accordance with the changing desires of the Respondents: today it is called a request for family unification, tomorrow registration of children, and the day after, again family unification – all to maintain the desired demographic balance. The Respondents must exercise their authority in accordance with administrative law, which entails the constitutional limitation on exercising authority that infringes fundamental rights.

91. Petitioners 2-5, being children of a permanent resident of the state, who live with their mother in Israel, are entitled to be registered as permanent residents. The Respondents are flagrantly violating fundamental rights of the Petitioners and of other residents in their situation: the right to grant a status to minors, to protection of the family unit, to safeguard the best interest of minors, the right of minors to maintain relations with

their parents, and the right of parents to maintain relations with their minor children. The Respondents' decision forces the children to be separated from their parents or, alternatively, to live in Israel without a status and identity. Petitioners 2, the Petitioner's first-born daughter, has already encountered – because she appears older than her age of 13 – problems with security forces in Jerusalem. These problems arise because she is not registered in her mothers ID card.

The court is requested, therefore, to order the Respondents to act in accordance with the rule of law and in a reasonable and fair manner, one that safeguards the welfare and rights of residents of the state and their children.

For all the aforesaid reasons, the Honorable Court is requested to issue an order nisi as requested in the beginning of the petition, and after receiving the Respondents' response thereto, to make the order absolute, and to order the Respondents to pay the costs of suit.

Jerusalem, today, 2 December 2002

[signed]

Adi Landau, Attorney

Counsel for Petitioners