At the Supreme Court **HCJ 1472/14**
Sitting as the High Court of Justice

In the matter of:

1. **_____ _____ _____ Khalil, ID No. _____**

2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Noa Diamond (Lic. No. 54665) and/or Sigi Ben Ari (Lic. No. 37566) and/or Abir Jubran-Dakawar (Lic. No. 44346) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Bilal Sbihat (Lic. No. 49838) and/or Tal Steiner (Lic. No. 62448)

Of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **State of Israel**
2. **Minister of Interior**
3. **Committee for Special Humanitarian Affairs**

All represented by the State Attorney's Office
29 Salah-a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6466713

The Respondents

Petition for *Order Nisi*

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause:

1. Why they should not arrange the status in Israel of petitioner 1, a widow, resident of the Occupied Palestinian Territories (OPT), who has been living in Israel lawfully for many years, under renewable stay permits since 2001, by virtue of a family unification procedure underwent by her together with her deceased husband, by approving petitioner 1's registration with the population registry as having a temporary residency status in Israel.

2. Why they should not adopt in petitioner 1's case a broad interpretation, which would comply with the humanitarian rationale underlying section 3A(1) of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003 (hereinafter: the **Temporary Order**), and would enable to give her status in Israel for humanitarian reasons.

3. Why the discriminating condition, stipulated in section 3A(1) of the Temporary Order, which limits the power of the Minister to approve, with the recommendation of a Professional Committee for Humanitarian Affairs established pursuant to the Temporary Order, solely applications of applicants having family members lawfully residing in Israel, should not be revoked.

Filing a petition with the High Court of Justice

4. On March 2, 2008, the Courts for Administrative Affairs Order (Change of the First Addendum of the Law) 5768-2007 (published on December 6, 2007, collection 6626)(hereinafter: the **Order**) entered into effect. The Order stipulates that petitions concerning decisions of authorities according to the Entry into Israel Law, 5712-1952 and the Temporary Order, **other than decisions according to sections 3A1** (decisions of the Humanitarian Committee) and 3C (people who made a special contribution to Israel), will be heard as of that date by the Court for Administrative Affairs. Hence, petitions concerning decisions pursuant to sections 3A1 and 3C of the Temporary Order will be heard by the High Court of Justice.

5. This petition concerns a denial, by the Committee for Humanitarian Affairs, of an application which was submitted according to section 3A1 of the Temporary Order, and therefore the authority to hear it is vested with this honorable court.

Request for Interim Order

6. The honorable court is hereby requested to issue an interim order, prohibiting the respondents from removing petitioner 1 from Jerusalem to the West Bank, based on her registered address in the Palestinian Population Registry, for the following reasons.

7. Petitioner 1, originally a West Bank resident, was born in 1960. She has been living in Jerusalem since 1995, when she married a permanent Israeli resident. Petitioner 1 and her late husband did not have any children.

8. On March 12, 1996, petitioner 1 and her husband submitted for her a family unification application with the Ministry of Interior East Jerusalem branch office. Four years later, petitioner 1 received the first referral for the receipt of a stay permit in Israel. From then on, petitioner 1 has been staying in Israel under stay permits, by virtue of the family unification procedure she has been undergoing.

9. On March 17, 2011, petitioner 1's husband passed away. Upon her death petitioner 1 was left without status, exposed to the risk of being deported from her home. In view of her condition, petitioner 2 submitted on her behalf to respondent 3, on August 15, 2011, an application for the arrangement of her status in Israel, based on the Procedure for Cessation of the Procedure for the Arrangement of Status of Spouses of Israelis. At the same time, petitioner 2 submitted to

respondent 2 an application for the continued issue of stay permits to petitioner 1 for as long as her application would be pending before respondent 3.

10. However, whereas the application for the continued issue of stay permits to petitioner 1 for as long as her application would be pending before respondent 3, was approved, on June 25, 2013, the petitioners received respondent 2's decision which rejected her application to receive status in Israel for humanitarian reasons, on the grounds that petitioner 1 did not have a sponsor who lawfully resided in Israel.

11. As will be broadly described in this petition below, shortly after respondent 2's decision was received, judgment was given by this honorable court in HCJ 1924/13 of which petitioner 2 was also a party. Said judgment also concerned a widow from the OPT, who was married to a permanent resident, and whose application for status was rejected for the same reasons as the application of petitioner 1 in the case at hand. In view of the fact that the petition in said case was deleted following respondents' notice that petitioner's case would be transferred to the Inter-Ministerial Committee for the Grant of Status for Humanitarian Reasons (hereinafter: the **inter-ministerial committee**), petitioner 2 turned to respondents' counsel, before this petition was filed, and asked whether, in view of the similarity between the two cases, petitioner 1's case would also be referred to the inter-ministerial committee or whether a petition should be filed by her with this court?

12. Following petitioners' letter to respondents' counsel, and the subsequent correspondence between the parties, respondent's counsel made it clear to the petitioners on 28, 2014, *[sic]* that the application for the arrangement of petitioner 2's status – which was submitted based on criteria customarily applied to widows – was lawfully rejected, but that petitioner 2 could resubmit to the Population Authority a new application, which would be examined according to the criteria customarily applied to widows in such cases. Hence, the petitioners had no alternative but to file this petition.

13. Thus, the application and the petition concern a woman who maintains a center of life in Israel for about twenty years, and who continues to reside in the only house she has in the entire world, the house she shared with her husband until he passed away. The deportation of petitioner 1 from Israel, where she has been lawfully living for so many years, to the West Bank, without any assurance that she would have a roof over head, and for the sole reason that she was left without a family member who was lawfully residing in Israel, is an unbearable severe and cruel step. It is clear that each day that passes, in which petitioner 1 must face, at no fault of her own, the risk of deportation which hovers above her head, is a day of anxiety and fear which causes her severe damage and also exposes her to the risks of detention, arrest and deportation.

14. The respondents, on the other hand, will not suffer any damage as a result of the issue of an interim order at this time. Not only that no criminal or security claim has ever been raised against petitioner 1, rather, respondent 2 continued to extend the stay permit referrals for petitioner 1.

15. As to the legal tests for the issue of an interim order, the honorable court is hereby particularly referred to HCJ 3330/97 **Or Yehuda Municipality v. State of Israel et al.**, IsrSC 51(3) 472.

16. To complete the grounds for the petition, the honorable court is referred to the petition below.

17. In view of the above, the honorable court is requested to remove said risks which hover above petitioner 1's head, until the all remedies in the petition are exhausted.

The parties to the petition

18. Petitioner 1 (hereinafter: the **petitioner**), resident of the OPT who was born in Jerusalem, was married to the deceased, the late Mr. _____ _____ _____ Khalil, a permanent Israeli resident (I.D. No. _____). Ever since she married her husband in 1995, the petitioner has been living in Jerusalem and since 2001 she has been holding renewable stay permits.

19. Following the passing away of her husband and to enable her to continue to lawfully stay in Israel after his death as well, petitioner 2 submitted on petitioner's behalf an application to respondent 3. It should be noted that the petitioner, a widow of an Israeli resident, is a sick woman who suffers from diabetes, and whose economic condition is very difficult. It should also be emphasized that her family in the West Bank ignores her and all of her acquaintances and social environment which supports the petitioner since the passing away of her husband are located in Jerusalem.

20. On June 25, 2013, petitioner 2 was informed that the application to allow the petitioner to continue to lawfully live in Jerusalem was rejected, on the grounds that she did not have a family member who was lawfully residing in Israel, and on January 28, 2014 it was further informed that the above application was lawfully rejected, and that it could resubmit an identical application to the one which has just been denied.

21. Petitioner 2 is an not-for-profit association which has taken upon itself to promote human rights and which, *inter alia*, protects the rights of residents of the West Bank and East Jerusalem *vis-a-vis* state authorities.

22. Respondent 2 is the Minister empowered by respondent 1 to accept or reject the recommendations of respondent 3, subject to a discriminating condition, according to which the applicant must have a family member who lawfully resides in Israel.

23. Respondent 3 is the chair of the humanitarian committee, which was established pursuant to section 3A1 of the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003.

Exhaustion of remedies

24. The petitioner, originally an OPT resident, married in 1995, a permanent Israeli resident, Mr. _____ Khalil (hereinafter also: the **husband**). Whereas it was petitioner's first marriage, it was her husband's second marriage. It should be further noted that whereas from his marriage to his first wife, who passed away, the husband had nine children, from his marriage to the petitioner the spouses did not have any children.

    An Israeli marriage contract dated November 12, 1995, between the petitioner and her deceased husband, is attached and marked **P/1**.

25. Since their marriage in 1995, the petitioner and her husband have been living in Al-Toor Sheik neighborhood, Jerusalem, in a house owned by the husband.

26. On March 12, 1996, the petitioner and her husband turned to the population registry bureau of the Ministry of Interior in East Jerusalem, for the purpose of arranging her status in Israel and submitted for her a family unification application No. 286/96. It should be emphasized that there was an inconsistency between the instructions which were given to the spouses and which appeared on the confirmation of submission of the application from 1996, in Hebrew and in Arabic. Whereas the instructions in Arabic stated that the applicant "is **requested** to wait for **3-5**" before he turns to the bureau to inquire about his application, in the Hebrew instructions the word **months** was scrawled by hand at the end of the sentence "is requested to wait for 3-5".

A confirmation of the submission of application 286/96 with the instructions in Hebrew and Arabic is attached and marked **P/2**.

27. The spouses, who were not fluent in Hebrew, acted according to the instructions in Arabic, as they were required, and did not think that they had to go to resident 2's bureau, which is anyway heavily congested, and bother its clerks with questions, before several years passed from the submission date of the application. In fact, the spouses were confident that their application was properly processed. Only after the passage of several years, the spouses decided to act according to their understanding of the instructions of the Ministry of Interior, and went to the bureau to find out what happened with their application. Following the spouses' inquiry with respondent 2' bureau, it turned out that the application, in which no decision was made **for almost four years** was approved, and on February 10, 2000, the petitioner received a first referral for the receipt of a stay permit in Israel.

    A copy of the first referral which was given to the petitioner is attached and marked **P/3**.

28. Shortly before the date on which the spouses had to go to respondent 2's bureau to submit an application for the renewal of petitioner's stay permit for an additional year, the decease unfortunately broke his leg in a manner which required a long recovery period. In view of the condition of her husband, who was confined to his home for a long time, the petitioner went by herself to respondent 2's bureau in an attempt to renew the stay permit she had in her possession. However, in respondent 2's bureau the petitioner was told that despite the medical condition of her husband, she would not be able to submit the application for the renewal of the permit alone, without the presence of her husband. And indeed, when petitioner's husband recovered, the spouses returned together to respondent 2's bureau and submitted an application for the petitioner. The application was approved without any problem for an additional period of fifteen months.

29. Since then, the petitioner received permit on a regular basis, until the current referral, inclusive. The referrals were given to Mrs. Khalil on the following dates:

    - On November 1, 2001, a referral for fifteen months until February 1, 2003.
    - On September 8, 2003, a referral for one year.
    - On September 23, 2004, a referral for one year.
    - On November 14, 2005, a referral for one year.
    - On November 12, 2006, a referral for one year.
    - On October 23, 2007, a referral for one year.
    - On September 17, 2008, a referral for one year.
    - On August 30, 2009, a referral for one year.
    - On August 26, 2010, a referral for one year.

    The referrals are attached in chronological order and marked **P/4**.

30. On March 17, 2011, petitioner's husband passed away.

    A copy of petitioner's husband death certificate is attached and marked **P/5**.

31. In view of the fact that the petitioner has been living lawfully in Israel for so many years, and in view of the impossible situation encountered by her following the death of her husband, petitioner 2 submitted on her behalf, on August 15, 2011, an application to respondent 3. Among other things, the petitioners referred to petitioner's medical, economic and social condition.

    A copy of the application submitted to respondent 3 without exhibits, is attached and marked **P/6**.

32. The application submitted to respondent 3 argued, *inter alia*, that in view of the fact that the petitioner has been living lawfully in Israel for so many years, in the framework of the graduated process she was undergoing by virtue of her marriage with her late husband, the "Procedure for Cessation of the Procedure for the Arrangement of Status of Spouses of Israelis" (hereinafter: the **procedure**) should be applied to her. The procedure regulates, *inter alia*, the handling of cases in which the marital connection expired as a result of the death of the Israeli spouse as happened to the petitioner, who, in fact, complies with all the substantial requirements of the procedure.

33. The application argues further that respondent 3 should take into consideration petitioner's medical condition, who suffers from diabetes, and her difficult economic condition. In addition, the application emphasized that while her family in the OPT ignores the petitioner, she has been supported, since her husband passed away, almost absolutely by the social-family network which nurtures her and which is located, in its entirety, in Jerusalem. Said social-family network which nurtures and supports her consists of her aunt, who also lives in Jerusalem, several neighbors she became friendly with during the many years she has been living in Jerusalem and who stand by her at this time of need, as well as some of the children of her late husband, mainly the youngest son of her husband, Jum'ah, who uses his best efforts to visit her and assist her. It should be emphasized that the application to the humanitarian committee was submitted along with affidavits including an affidavit of the petitioner, all of which describe what happened to the petitioner and attest to her relations with her aunt, the children of her late husband and other acquaintances.

    The affidavits of the petitioner and two additional women are attached and marked **P/7**.

34. Eventually, the petitioners noted in paragraphs 41-50 of the humanitarian application that the committee should also take into consideration the long delay which occurred in respondent 2's processing of the family unification application of the petitioner and her husband prior to its initial approval, in the absence of which the petitioner would have probably been received a temporary residency status in Israel nine years before the death of her husband.

35. On August 25, 2011, and on September 26, 2011, petitioner 2wrote again to petitioner 2's bureau and requested to continue to extend petitioner's stay permits for as long as her application to the humanitarian committee was pending. On October 11, 2011, respondent 2's bureau extended the referral for receipt of stay permits in Israel in petitioner's possession for an additional year.

    Petitioners' request to extend the stay permits in petitioner's possession and the response of petitioner 2's bureau on this issue, are attached and marked **P/8**.

36. On September 15, 2011, October 23, 2011 and November 15, 2011, petitioner 2 wrote to respondent 3 in an attempt to understand what was the status of the application. On November 8, 2011, the secretariat of respondent 3 notified petitioner 2 that the application was received in its office, and that after the application would be brought before the committee, according to the order of its submission date, petitioner 2 would be updated.

Petitioner 2's letters to respondent 3 and the response received on this issue are attached and marked **P/9**.

37. On December 15, 2011, January 15, 2012, February 16, 2012, March 18, 2012, April 11, 2012, May 15, 2012, June 18, 2012 and July 16, 2012, the petitioners wrote to respondent 3 in an attempt to find out what was the status of their application. On July 23, 2012, the secretariat of respondent 3 notified the petitioners that their matter would be discussed by the committee on that very same day, and that respondent 3's secretariat would update the petitioners of any decision made in petitioner's matter.

    Petitioners' letters and the response given them are attached and marked **P/10**.

38. On August 20, 201, September 11, 2012, October 16, 2012, November 18, 2012 and January 20, 2013, the petitioners wrote again to respondent 3 in an attempt to understand what was the status of the application, which ostensibly had already been discussed by the humanitarian committee, as they were notified by respondent 3 – in its response letter which was attached hereinabove and marked P/10. On February 5, 2013, a letter was received from respondent 3, which advised the petitioners that the application in petitioner's matter would be discussed by the committee on February 18, 2013, and that the petitioners would be informed of any decision made in their matter.

    Petitioners' letters to respondent 3 and the response given them are attached and marked **P/11,** respectively.

39. On October 2, 2012, the petitioners turned again to respondent 2's bureau and requested to extend the stay permits in petitioner's possession, and on October 15, 2012, the petitioner received a new referral from respondent 2 for six months.

40. On March 11, 2013, the petitioners turned again to respondent 2's bureau and requested to extend the stay permits in petitioner's possession, which were about to expire. On April 1, 2013, the request was approved and the petitioner received a referral for the receipt of a District Coordination Office (DCO) permit for one more year, until April 1, 2014.

    The approval of the request and a valid permit until April 1, 2014, are attached and marked **P/12**.

41. On February 20, 2013, March 20, 2013, April 22, 2013 and May 23, 2013, the petitioners wrote again to petitioner 3 in an attempt to find out what was the status of the application. On May 25, 2013, notice was sent by respondent 3 to the petitioners, that respondent 3 discussed the application on February 18, 2013, and that its recommendation was forwarded to respondent 2.

    Petitioners' letters to respondent 1 and the answer thereto are attached and marked **P/13**.

42. On June 24, 2013, as no decision in the application has been received, the petitioners turned again to respondent 3's secretariat in an attempt to find out what happened with their application.

    A copy of petitioners' letter to respondent 3 is attached and marked **P/14**.

Respondent 1's decision in petitioner's application

43. On June 25, 2013, the decision of respondent 2 dated June 16, 2013, in petitioner's matter was received at the offices of petitioner 2, which rejected the application. A review of the decision indicates that the application was summarily rejected on the grounds that in petitioner's application there was no sponsor who was lawfully residing in Israel as required by section

3A1(a) of the Temporary Order. The decision stipulated that therefore, among other things, respondents 2-3 were not authorized to discuss the application. In addition, and despite respondent 2's determination that neither he nor respondent 3 had the authority to discuss her application, he determined that in view of the fact that the petitioner had brothers in the West Bank, most of her ties were to the West Bank. Said determination was made despite the fact that it was explicitly stated in the application that petitioner's family ignored her and that her aunt, friends and the children of her husband were, in fact, her family.

A copy of respondent 2's decision to reject petitioner's application is attached and marked **P/15**.

44. On July 11, 2013, July 21, 2013 and August 4, 2013, the petitioners wrote to respondent 3's secretariat and requested to receive the transcript of the committee's meeting in which the decision in petitioner's matter was made, to enable them to examine the possibility to file a petition against the decision to reject the application. In the requests to receive the transcript, the petitioners advised respondent 3 that in view of the fact that they needed the committee's transcript to decide whether there was room to file a petition against the decision, the 45 day period for filing a petition against the decision would commence upon their receipt of the requested transcript.

    A copy of petitioners' requests to receive the transcript of respondent 3 dated July 11, 2013, July 21, 2013 and August 4, 2013, are attached and marked **P/16**.

45. On August 6, 2013, the transcript of respondent 3 was received at the offices of petitioner 2. The transcript indicated that the petitioner lived lawfully in Israel for many years, and that her application was summarily rejected on the grounds that it did not have a sponsor, as required by the discriminatory provision of the Temporary Order.

    A copy of the transcript of the humanitarian committee's meeting in petitioner's matter is attached and marked **P/17**.

46. On August 7, 2013, judgment was given by this honorable court in a proceeding in HCJ 1924/13 **Taha v. State of Israel**. The petition in said proceeding also concerned a widow, resident of the West Bank, whose case is very similar to the case at hand, and who also resided lawfully for many years in Jerusalem by virtue of a family unification procedure she was undergoing together with her late husband. Following respondents' notice submitted in the context of their preliminary response to said petition, according to which they were willing to examine petitioner's matter according to the Procedure for Cessation of the Graduated Procedure for Spouses of Israelis, the petition was deleted without prejudice to the parties' rights and arguments.

47. Copies of respondents' response in HCJ 1924/13 and of the judgment in said petition are attached and marked **P/18**.

48. In view of petitioners' notice in HCJ 1924/13, the petitioners decided on August 11, 2013, to turn to the respondents before they turn to the court in petitioner's matter, and ask whether or not they intended to act in the matter at hand in the same manner, thus making an application to instances redundant.

    A copy of petitioners' letter dated August 11, 2013, for the purpose of receiving respondents' position in their matter is attached and marked **P/19**.

49. On August 14, 2013, in a telephone conversation between respondents' counsel, Advocate Freiman from the State Attorney's Office and petitioners' counsel, the petitioners were informed that their matter was transferred to the relevant agencies and they were requested not to file the

petition until the response of such agencies was received. Following said conversation a confirmation was received on August 21, 2013, from respondents' counsel, regarding the transfer of Mrs. Khalil's matter to the Population Authority.

A copy of the notice of respondents' counsel dated August 21, 2013 is attached and marked **P/20**.

50. As one month passed and no response has been received to their request, the petitioners turned again to respondents' counsel in an attempt to find out what was the status of their request. Following an examination of the matter, the petitioners were informed that respondents' counsel was on maternity leave, and that the matter was transferred to Advocate Rosenberg from the State Attorneys Office. On September 30, 2013, respondents' counsel informed the petitioners that a meeting concerning the petitioner and other applicants in her condition was scheduled to take place in October, and that the petitioners would receive the decision when made. On November 13, 2013, November 17, 2013, November 26, 2013, December 23, 2013, January 5, 2014, and January 12, 2014, petitioners' counsel turned again to respondents' counsel by telephone, electronic mail and through the mail, in an attempt to find out what was the status of petitioners' request and on January 16, 2014, an initial response to their request was received.

51. In the response, and after respondents' counsel specified in detail why the respondents were of the opinion that petitioner's application was lawfully denied, he stated in paragraph 4 that:

> Along the above said, please be advised that the applicant can submit a new application to the Population and Immigration Authority, which would be examined according to the criteria customarily applied to widows.

A copy of the written requests for response and of respondents' response dated January 16, 2014, is attached and marked **P/21**.

52. In view of the vague drafting of respondents' response to petitioners' request, along the fact that in the same letter in which they justify the denial of petitioner's application, which was submitted based on the Procedure for Cessation of the Graduated Procedure for Spouses of Israelis, they advise her to submit a new identical application, the petitioners turned again, on January 19, 2014, to respondents' counsel and requested to receive a clarification of the response.

A copy of petitioners' request for clarification dated January 19, 2014, is attached and marked **P/22**.

53. On January 28, 2014, respondents' counsel responded to petitioners' request for clarification. The response emphasized that the application would not be transferred to the inter-ministerial committee, but rather to the Population Authority's headquarters and that it would be examined according to the criteria customarily applied to widows.

A copy of respondents' clarification letter dated January 28, 2014, is attached and marked **P/23**.

54. Hence, as the petitioners realized that the respondents did not intend to act according to their notice to the court, which was given in their preliminary response in HCJ 1924/13, and that in addition, after two and-a-half years during which an application was pending which was based on the fact that the petitioner was a widow of an Israeli, they even stipulated that she could resubmit a new application, which "will be examined according to the criteria customarily applied to widows", the petitioners had no alternative but to turn to this court with respect to matter at hand.

The legal framework

55. In this part, the petitioners will, first and foremost, discuss the narrow interpretation given by the respondents to section 3A(1) of the Temporary Order, which incorporates a humanitarian mechanism in the context of the Temporary Order. Petitioners' argument is that the respondents preferred to deny petitioner's application based on a narrow and injurious interpretation, instead of applying to the petitioner, who has lawfully stayed in Israel even before the Temporary Order was enacted, the humanitarian mechanism in a broad and considerate manner, as the court had suggested more than once. According to said interpretation, it is precisely the passing away of petitioner's spouse, with whom she has been lawfully living so many years in Israel and as a result of which her matter became humanitarian, which ironically, serves as the grounds for the denial of her application.

56. In the second stage the petitioners would like to focus on respondent 2's policy concerning the grant of status to widows of Israeli citizens and residents, who, upon the passing away of their spouses, remained alone, without having any children who were born from said marriage. By this review, the petitioners wish to emphasize the severity of the injustice inflicted on the petitioner, and other applicants in her condition, whose applications are denied for the sole reason that they do not have, on the application's submission date, a sponsor who lawfully resides in Israel.

57. By clarifying respondents' policy concerning widows, the petitioners wish to demonstrate the severity of the discrimination applied by the respondents against OPT residents when decisions are made in their regard. Said discrimination is the basis for the third remedy requested in this petition, that the condition which appears in section 3A1(a) of the Temporary Order, and upon which the severe decision in petitioner's matter is based, be revoked. As will be specified below, said condition violates the right of additional applicants in petitioner's condition, to equality and dignity, as compared to other applicants having the same humanitarian circumstance, who are not subject to the Temporary Order, while there is no logical and relevant difference between the humanitarian applications of the different applicants, which can justify respondents' discriminatory conduct.

58. Finally, the petitioners wish to emphasize that the discriminatory condition entrenched in the Temporary Order discriminates many time over women in whose matter humanitarian applications were submitted as opposed to applicants who are not women. We shall now discuss the above arguments in an orderly manner.

Narrow and injurious interpretation of the humanitarian mechanism established in the Temporary Order

59. Section 3A1(a) of the Temporary Order provides as follows:

> Notwithstanding the provisions of section 2, the Minister of Interior, for special humanitarian reasons, and upon the recommendation of a professional committee appointed for this purpose (in this section – the "committee") may –
>
> (1) grant temporary residence staus in Israel to a resident of the Area or to a citizen or to a resident of a country listed in the schedule, **whose family member lawfully resides in Israel**;

(2) approve an application for a stay permit in Israel to be granted by the commander of the Area to a resident of the Area **whose family member lawfully resides in Israel**.

(Emphases added, B.A).

60. As is known, the Temporary Order extremely limits the possibility to grant status in Israel to individuals who are defined by it as residents of the "Area", even if they married Israeli residents or citizens. As has been argued by respondent 2 more than once, the Temporary Order, including the extreme limitation included therein, was enacted for security reasons only. Therefore, precisely due to the severe impingement which derives from the sweeping limitation imposed on the grant of status, entrenched in the Temporary Order - it is only reasonable that in exceptional humanitarian cases, such as the case of the petitioner at hand, in which the law does not limit the grant of status, but rather empowers respondent 2 to grant status to applicants with humanitarian circumstances, such power would be used by the respondents more fairly and in a more rational manner.

61. Relevant to our case are the words of the honorable court in its judgment in HCJ 4541/94 **Alice Miller v. Minister of Defense**:

> **Legislation that violates a basic human right must be construed narrowly**, 'with the aim of giving said right maximum viability rather than limiting it in any way beyond what is clearly and expressly stipulated by the legislator' (the comments of Justice Shamgar in CA 732/74 *HaAretz Newspaper Publishing Ltd v. Israel Electric Co. Ltd* [26], p. 295).
>
> (Emphasis added. B.A.)

62. Petitioners' position is therefore that respondent 2 and the committee headed by respondent 1, with whose recommendation the miserable decision in petitioner's matter was given, had to use their best efforts to apply to the petitioner the provisions of section 3A(1), which incorporates the humanitarian mechanism of the Temporary Order.

63. The importance of a broad and considerate implementation of the humanitarian mechanism entrenched in the Temporary Order, and the problematic functioning of the humanitarian committee and the manner by which it has exercised its authority thus far, was also expressed by this honorable court in its judgment dated January 11, 2012 in HCJ 466/07 **Gal-On v. State of Israel** (hereinafter: **Gal-On**).

64. Accordingly, *inter alia*, commenting that the conduct of the committee raises "queries about the criteria according to which the humanitarian committee operates", the Honorable Justice Arbel stipulates in paragraph 26 of her judgment as follows:

> From the date of its enactment as a temporary order, the law was extended twice by the Knesset and ten additional times by government resolutions which were ratified by the Knesset plenum. Twelve extensions. These and other changes occurred in the security arena, some of which are more significant than the others, but a significant change in the law – none whatsoever. **An examination of the changes which were made in the law during the years which passed from its enactment raises, at least, a concern, that they were intended to entrench the**

> **severe impingement embedded in the law, rather than to mitigate it… The above stems from the fact that despite the established possibility to grant a temporary residency visa or a stay permit in Israel in special humanitarian cases (section 3A1 of the law), the data presented by the state raise, at least, queries concerning the criteria according to which the humanitarian committee operates and the manner of their application.** All of the above cast a shadow on the argument that the law and the necessity thereof are examined periodically. To date, more than eight years after the enactment of the law, it seems that the temporary arrangement turned, *de facto*, into a permanent arrangement. (Paragraph 26 of the judgment of the Honorable Justice Arbel, who was one of the minority Justices)
>
> (Emphasis added – B.A.).

65. The Honorable Justice Rubinstein also noted in paragraph 48 of his judgment that the humanitarian committee was making a limited use of the humanitarian mechanism established in the Temporary Order :

> The authorities should always be "on the alert" both with respect to the security needs as with respect to the possibility to create effective measures which are less injurious. **They must also make an effort and examine ways to improve the handling of exceptional cases: both within the framework of the humanitarian committee**, as by thinking of additional mechanisms which may assist those couples, who were deprived, for the time being, of the opportunity to jointly establish their home in Israel…
>
> (Emphasis added – B.A.)

66. The Honorable Justice Handel, also emphasized, in paragraph 5 of his judgment, the importance of the humanitarian committee for the purpose of reducing the injury caused to the applicants, and ruled as follows:

> **I am of the opinion, without setting limits, that there is room to interpret the powers of the Committee more broadly than it is currently done**. The amended law provides in section E(1) that:
>
> > "The fact that the family member of the applicant who applies for a permit or license, who lawfully resides in Israel, is his spouse, or that the spouses share common children, will not, in and of itself, constitute a special humanitarian reason;"
>
> **This provision, like almost any provision, may be interpreted narrowly or broadly. I am of the opinion that it should be interpreted somewhat narrowly, in a manner which would**

nevertheless expand the discretion of the humanitarian committee

(Emphases added – B.A.)

67. The Honorable Justice Levy, referred, in paragraph 7 of his judgment, to the fact that, in practice, the limitations established by the law were expanded, and to the humanitarian committee's failure to fulfill its obligations:

> **A thorough examination is not required to realize that if any changes were made in the law following the examination of its constitutionality, then, such were mostly made in the expansion of the limitations imposed by it, and in the deepening of the violation of protected rights**. The last two changes specified above speak for themselves and both of them add to the sweeping purpose of the law and distance it further from the individual approach. **With respect to the humanitarian exception, the state representatives testified before us that, in practice, it covered a very limited number of cases. From its establishment, in the first quarter of 2008, it was so declared by the state, about 600 applications were submitted to the Humanitarian Committee. Thus far, the Committee has managed to handle less than half of said applications. Only 33 applications – about one percent of about 3,000 applications for permits which were submitted, on the average, each year, before the law entered into effect, were approved and the applicants were granted stay permits there-under**
>
> (Emphases added – B.A.)

The Honorable President *emeritus*, Justice Beinisch, also refers, in paragraph 2 of her judgment, to the activity of the humanitarian committee as follows:

> **Although it was argued before us that an attempt was made to limit the applicability of the law by the establishment of a committee for the examination of special humanitarian cases, in fact, the limited number of permits which were granted thus far by the committee, shows that its establishment did not manage to shift the center of gravity towards the execution of an examination on an individual basis as opposed to a sweeping examination – as, in the first judgment, we thought should have been appropriate.**
>
> (Emphasis added – B.A.).

The Honorable President Beinisch adds in paragraph 16 of her judgment:

> **The injury should, and may be mitigated by making a change in the arrangement** – either by making an individual examination of the family unification applicants; by giving the opportunity to refute the presumption of dangerousness; or by the **expansion of the possibility to obtain status in Israel for humanitarian reasons. All of the above**

> **should be reflected in the legislation – in a comprehensive immigration arrangement or in interim arrangements until an immigration law is enacted.**
> (Emphases added – B.A.).

68. Hence, both the legislator and the honorable court gave respondent 2 and the committee headed by respondent 1, the power and the tools required to implement the humanitarian mechanism established in the Temporary Order, in the broadest and most optimal manner. Therefore, also in the case of the petitioner at hand, the respondents should have exercised their discretion and interpret the Temporary Order broadly, in a manner which would enable the unfortunate widow to continue to live in her house, where she has been living for many years. And indeed, had the respondents acted according to power vested in them and the comments of the honorable court in **Gal-On**, they could have interpreted, *inter alia*, the severe condition established in the Temporary Ordinary, **in a manner that regarded petitioner's late husband as the required family member**, as opposed to other applicants, who do not have and never had a family member who has lawfully resided in Israel.

69. However, the respondents, as aforesaid, preferred to do nothing more than fulfill their obligation, and interpreted the Temporary Order very narrowly, in a manner which runs contrary to the underlying rational upon which the humanitarian mechanism established in the Temporary Order is premised. In so doing, they have justified the deportation of a widow who has been lawfully living in Israel for many years, and in whose matter there is no criminal or security preclusion.

70. To pin point the severity of the injustice caused to the petitioner, whose application was denied solely on the grounds that the application was not supported by a sponsor who currently resided lawfully in Israel, the petitioners will describe below respondent 2's policy concerning widows, without children, of citizens and permanent residents, who lived in Israel together with their spouses, and who had, upon the passing away of the Israeli spouse, a temporary status only.

Granting status to widows of Israeli citizens and permanent residents

71. The procedure for the arrangement of the status of widows of Israeli citizens was established in a judgment dated August 2, 2009' given in HCJ 4711/02 **Daniela Hillel et al., v. Minister of Interior et al.,** (hereinafter: **Hillel**) (reported in Nevo) and several other legal proceedings which were joined thereto.

72. All of the above proceedings concerned applications for status to widows of Israeli citizens. Following the explicit guidelines and criticism of the Supreme Court, revisions were made in procedure 5.2.0017, "**Procedure for Cessation of the Procedure for the Arrangement of Status of Spouses of Israelis**" (hereinafter: the **procedure**), which dealt with the dissolution of the family unit both as a result of the spouses' divorce and as a result of the passing away of the Israeli spouse.

73. In section 4 of the **Hillel** judgment, the honorable court, guides, *inter alia*, respondent 2 how to handle applications submitted to him concerning widows, including widows who do not share common children with their deceased spouses:

> **We have further added that "<u>beyond the criteria specified in the procedure, there is room to enable an individual examination which will include different parameters such as the duration of the marriage and of the period during which the spouses lived together before the marriage, the duration of the presence in Israel, the sincerity of the marriage and the center of life in Israel according to relevant ties</u>." We noted that "such parameters may be more compatible with the underlying objective of the procedure than certain parameters which appear in the current procedure. <u>Thus, for instance, the place of residence of immediate family members abroad does not necessarily indicate of a stronger connection to the foreign country rather than to the state of Israel, particularly when Israel is where the Israeli spouse is buried, where common friends and relatives reside and where other aspects exist which give the term "center of life" its substance</u>."** In the previous decisions we clarified that the examination of the criteria should be made subject to the spouse's right to be heard and that "in adequate cases, the graduated procedure should be continued despite the passing away of the foreign spouse *[sic]*. **This means that when the competent authorities are convinced of the sincerity of the marital connection, of the existence of the foreign spouse's center of life in Israel and when the parameters established as aforesaid are met, a procedure will be established which will enable the foreign spouse to continue to stay in Israel so that the ties to Israel and the absence of security or criminal preclusion may be examined over time."**
>
> (Emphases added, B.A.)

74. Hence, in **Hillel**, the court ordered the respondent to revise the procedure so that, *inter alia*, in cases which concern spouses without children, where there is no doubt as to the sincerity of the marriage, and as to the fact that the center of life of the non-Israeli spouse is maintained in Israel and where the other parameters established as aforesaid are met, **a procedure would be established which would enable the non-Israeli spouse to continue to reside in Israel so that his/her ties to Israel and the absence of security or criminal preclusion may be examined over time**.

75. And indeed, following the **Hillel** judgment, that part of the procedure which concerned the expiration of the marriage as a result of the death of the Israeli spouse, of spouses who did not share common children, was revised to include the following conditions:

    a. The spouse was engaged in a sincere marriage which was registered in the Population Registry and who received an A/5 residency status in Israel under the graduated procedure (section D.1.1 of the procedure).

    b. The spouse underwent a period exceeding half of the duration of the graduated procedure before the death of the Israeli spouse (section D.b.2 of the procedure).

    c. There was no doubt as to the sincerity of the connection between the spouses throughout the graduated procedure (section D.b.3. of the procedure).

d. The examination of the entire circumstances pointed at the existence of a weightier and stronger connection of the applicant to Israel than to the foreign country (for this purpose, the place of residence of family members, and the duration of the period during which the foreign spouse lived in Israel will be examined, among other things)(section 1.b.4 of the procedure).

The procedure is attached and marked **P/24**.

76. The outline established in **Hillel** was implemented in several petitions which were heard together with said matter, including, *inter alia*, in HCJ 2269/06 in which the petitioner, who shared no common children with her Israeli husband, and who had been living in Israel for over six years under an A/5 residency status when her husband passed away, received Israeli citizenship.

Respondent's notice to the petitioner in HCJ 2269/06 is attached and marked **P/25**.

77. It should be noted that although the Hillel judgment concerned widows of Israeli citizens, whose status applications derived from section 7 of the Citizenship Law, rather than widows of permanent residents whose status applications were submitted according to the Entry into Israel Law, 5712-1952, for humanitarian reasons, the underlying rational applies equally to widows of permanent residents.

78. The applicability of the underlying rational of the procedure to spouses of permanent residents in Israel is expressed in the judgment given in AP (Jerusalem) 8799/08 **Yamana Abu Lama v. Minister of Interior** (February 15, 2009), which referred to the application of the procedure to a non-Israeli spouse who was married to a **permanent resident** rather than to a **citizen**:

> With respect to a family unification procedure of a permanent resident in Israel with his non-Israeli spouse, there is a discrepancy between this provision and the requirement of the procedure that a non-Israeli spouse receive an A/5 temporary residency status. Such status is given to the non-Israeli spouse only after twenty seven months of the graduated procedure whereas the requirements of the procedure are satisfied if the non-Israeli spouse took part in the graduated procedure during a period of one year only. Since the A/5 status requirement does not apply only to spouses who share common children, but also to spouses who do not share common children, (in which case the requirement is for half of the duration of the graduated procedure), the specific provision requiring one year only may possibly be regarded as superseding the general provision requiring receipt of an A/5 residency status.

79. Another judgment relevant to our case is the judgment given by the court for administrative affairs in AP 503/05, **Bakri v. Minister of Interior** (February 21, 2006). In the petition, which concerned respondent's refusal to enable a Jordanian woman to continue the graduated procedure in Israel which she has been undergoing for two years, after her husband, a permanent resident in Israel passed away, because the spouses did not have children, the court held as follows:

> **Indeed, there is no dispute that the humanitarian consideration underlying the family unification procedure is the prevention of the dissolution of the family unit. However, it does not mean that in any case in which the family unit ceases to exist, the necessary conclusion is that the graduated procedure should be immediately severed, in view of the fact that also when the family unit is dissolved, there is still room for the exercise of administrative discretion and for the examination of the circumstances of each case on its merits**. Thus, for instance, the case of a young couple that divorced shortly after they were married, before they had children and before the sponsored spouse settled down in Israel, cannot be compared to a case of an older couple that divorced, after years of joint life in Israel, and the woman (for instance) must take care of the spouses' children who remained in her custody. **Similarly, there is room to distinguish between a case in which the sponsoring spouse passed away, and the remaining spouse is young in the beginning of his way, and a case such as the case at hand, where the widow is already 57 years old and has been living in Israel for about ten years**.
>
> (Emphases added, B.A.)

80. It should also be noted that according to the procedure widow's cases should be transferred for the examination of the inter-ministerial committee. This is not possible when widows, residents of the OPT are concerned, since the inter-ministerial committee has no authority to discuss status matters of OPT residents. Therefore, accordingly and as per the same rational, the matters of widows, OPT residents, to the extent justified, are transferred to and examined by the humanitarian committee – respondent 3 in the case at hand.

81. In its decision in HCJ 10041/08 **Hijaz v. Minister of Interior** (still pending), this honorable court applied the parameters established in **Hillel** to widows of permanent residents, originally OPT residents. In said case, which concerns a widow of a permanent resident, originally from the OPT, who, prior to the passing away of her husband, **did not undergo a family unification procedure** being the second wife of her late husband, the honorable court held, in a decision dated February 10, 2011, that when the humanitarian committee reconsiders the matter, it should take into account the "**duration of her presence in Israel, the fact that the petitioner is a widow** as well as the fact that all of her children live in Israel", and referred to the guiding considerations which were established in **Hillel**. All of the above, despite the fact that contrary to the case of the petitioner at hand, who has been living in Israel lawfully for many years, the status of the petitioner in **Hijaz** has never been arranged.

82. The argument that despite the fact that the petitioner and her husband did not share common children, nevertheless, in view of the long period of time she has been lawfully living in Israel, she should be regarded as complying with the conditions of the procedure, is also supported by the words of Advocate Yochi Genesin, director of administrative affairs division at the HCJ department with the State Attorney's Office, which were said in a meeting of the Knesset's Interior and Environmental Protection Committee dated January 8, 2007 (Protocol No. 89):

> The Ministry of Interior has a procedure which pertains to a widow with children. The procedure which pertains to a widow with children,

whether or not she is a resident of the Palestinian Authority, enables her to receive status. **To the extent a widow without children is concerned, the examination is made along a timeline, whether from the outset the spousal relations were valid or not**.

(Emphases were added, B.A.)

A copy of page 22 of the above Protocol is attached and marked **P/26**.

The entire Protocol of the Knesset's committee dated January 8, 2007 may be downloaded from the Knesset's website at the following link:

http://www.knesset.gov.il/protocols/heb/protocol_search.aspx

83. Hence, there is no doubt that the petitioner in the case at hand, who has been living lawfully in Israel for many years with her late husband, satisfies all parameters established by the Supreme Court in **Hillel**. As indicated by the above judgments, the underlying rational of the procedure, which was prescribed for widows of citizens, is applied, in practice, also to widows of permanent residents, including widows who are OPT residents. Therefore, it is only reasonable that to the extent there is no difference between the humanitarian circumstances of a widow who is an OPT resident and a widow who is not an OPT resident, there should also be no difference in the manner by which their applications are handled.

84. From the general to the particular. There is no dispute in our case that petitioner's application for family unification with her late husband was submitted in 1995. Since then her matter was examined by all agencies for seventeen years. No security or criminal argument has ever been raised against the petitioner, as indicated by the transcript of the meeting of the humanitarian committee in which petitioner's matter was discussed. **Hence, there is no dispute that but for the Temporary Order, the petitioner would have completed the graduated procedure and would have received a permanent status a long time ago. It is important to note that the period of time during which the petitioner has been living lawfully in Israel, in the framework of the graduated process, equals and even exceeds the period which is required to complete two whole examination cycles of the graduated procedure in Israel**.

85. Furthermore. In a number of recent judgments this honorable court commented on the need to find a solution for individuals who commenced the graduated procedure before Government Resolution 1813, dated May 12, 2002, which lead to the enactment of the Temporary Order, but whose status is not upgraded despite the fact that they have commenced the graduated procedure so long ago, as a result of the Temporary Order.

See on this issue paragraphs 17-19 of the judgment of Justice Vogelman and paragraph 6 of the judgment of the Honorable Justice Naor in AAA 6407/11 **Dejani v. Minister of Interior** (reported in Nevo), paragraph 23 of the judgment of the Honorable Justice Silbertal in AAA 9168/11 **A. v. Ministry of Interior** (reported in Nevo) and paragraph 38 of the judgment of the Honorable Justice Barak-Erez in AAA **Abu Eid v. Ministry of Interior** (reported in Nevo).

86. Finally, the petitioners wish to draw the court's attention to a judgment which was given only recently by the Court for Administrative Affairs in Jerusalem, in AP 31942-09-13 **Podloznia v. Population, Immigration and Border Authority – Ministry of Interior** (reported in Nevo). In

said judgment, which concerned a decision to deny the application of the petitioner, a widow of an Israeli citizen, for the arrangement of her status in Israel, after her husband passed away shortly before the conclusion of the graduated procedure, the court referred, *inter alia*, to respondents' delay in the processing of petitioner's matter. Referring to the **Dufash** ruling established in AAA 8849/03 **Dufash v. Director of the East Jerusalem Population Administration** the court held as follows:

> The logic behind said ruling is that if an unexpected event occurs (in that case – the adoption of the Government Resolution) there is justification to take into account an unreasonable delay on the part of the authority, if as a result of said delay the event had an injurious effect on the individual. Under such circumstances, if, other than for the delay, the individual would have "escaped" the injurious effect of said event, the responsibility for the delay should be impose on the authority. And as the fact that the respondent has unreasonably delayed the processing of the matter of a resident of the Area in the passage from one stage to the other in the graduated procedure, and at times (on more exceptional occasions) has even delayed the mere approval of his application to commence this procedure, was taken into account to the extent that the status of said individual on the effective date was not "frozen", the same applies to our case. The respondent procrastinated without any explanation on the approval of the application of petitioner's late husband to enable her to enter Israel after their marriage. Had the application been handled within reasonable time, as it should have been handled, the graduated procedure would have commenced and concluded successfully. In view of the fact that there can be no dispute that but for the delay, the petitioner would have completed the procedure before the expiration of the marriage and would have received status, then, under such circumstances, there is no justification that the unexpected death of the husband, three and a half years after the petitioner has received, for the first time, an A/5 visa, would cause the cessation of the graduated procedure, and she should be considered as if she had completed the procedure on time.
>
> The petition is therefore accepted, in the sense that the respondent should examine petitioner's application for status in Israel according to the rules applicable to individuals who have successfully completed the graduated procedure.

87. The conclusion which arises from all of the above is that an unbearable injustice was inflicted on the petitioner. As described in the factual part of the petition, before it was approved, petitioner's application has been gathering dust for almost four years. Despite the long delay which occurred in the processing of the application prior to its approval, and despite the fact that the petitioner has been living lawfully in Israel for so many years, the humanitarian committee was not requested to give her citizenship or permanent residency status, as was the case in Hillel or in petitioner's matter in AP 31942-09-13, but rather temporary residency status only. Status which would enable the petitioner in the case at hand, to grow older under reasonable threshold conditions, and have some safety net, which any person who lives lawfully in a modern country for a duration of time, is entitled to have.

Violation of the right to equality and dignity
Arrangement of the status in Israel of widows of Israelis

88. As was specified in detail above, the procedure for the arrangement of the status in Israel of widows who were married to Israelis, was established in Hillel and other proceedings and was published in the procedure which was attached above and marked **P/24**.

89. Section C d.2 of the procedure stipulates that matters of widows that meet the conditions established in the procedure, would be transferred for the examination of the inter-ministerial committee, which is authorized to give such widows status in Israel for humanitarian reasons, if the committee decided that they were entitled to same. In addition, it was explained above that in view of the fact that the inter-ministerial committee is not authorized to discuss the matters of OPT residents, the cases of widows, OPT residents, is examined, according to the same rational, by a committee which was established pursuant to the Temporary Order.

Discrimination between widows from the Area and other widows

90. As aforesaid, despite the fact that applications of widows of Israelis are handled according to the same rational and despite the fact that any widow whatsoever of an Israeli must meet exactly the same conditions, there is a material difference in the manner by which widows, residents of the OPT, are handled, as compared to other widows. Whereas a widow who is not an OPT resident is required to meet the conditions stipulated in section C d.2 of the procedure, widows from the OPT, by virtue of the Temporary Order which applies to them, are required to meet another condition, namely, that they have "a family member who resides lawfully in Israel". This condition was established in section 3A(1) of the Temporary Order, and requires that an applicant of a humanitarian application originating from the OPT, has **a family member who resides lawfully in Israel**.

91. According to the petitioners, not only that said difference cannot and should not be disregarded, but rather that the condition established in section 3A(1) of the Temporary Order, according to which the applicant must have a family member who resides lawfully in Israel, is a discriminating and inappropriate condition, which violates the fundamental right of the petitioner and other OPT residents in her condition, for equality and dignity, and as such – it should be revoked. We shall specify.

The right to equality

92. The question whether the right to equality constitutes part of the basic constitutional right to human dignity has already been examined and resolved by the honorable court. The issue was, *inter alia*, resolved in HCJ 6427/02 **The Movement for Quality Government in Israel v. The Knesset**, TakSC 2006(2). In paragraph 25 of the judgment of the Honorable President (as then titled) Barak, the following was determined:

> **The right to equality was recognized as a human right in Israel.** It has already been stipulated in the Declaration of Independence that the state of Israel "will ensure complete equality of social and political rights to all

its inhabitants irrespective of religion, race or sex." According to several laws equality must be maintained in certain defined areas (such as the Equal Rights for Women Law, 5711-1951; Employment (Equal Opportunities) Law, 5748-1988; Equal Rights for Persons with Disabilities Law, 5758-1998). The right to equality is mainly recognized by Israeli customary law. In a host of judgments the Supreme Court held that equality is a right afforded to any person in Israel (See Zamir and Sobel "Equality before the Law", *Mishpat Umimshal* 5 165 (1999); Radai, "On Equality", *Mishpatim* 24 241 (1994); Bendor "Equality and Governmental Discretion – on Constitutional Equality and Administrative Equality", *Shamgar Book*: Articles 287 (part A, 2003)). The Supreme Court regarded it as the most important right of human rights. It constitutes "the breath and soul of our entire constitutional regime" (Justice M. Landau in HCJ 98/69 **Bergman v. Minister of Finance**, IsrSC 23(1) 693' 698). It is "a fundamental constitutional principle, entwined and interwoven in our basic juridical concepts and constitutes an integral part thereof" (Justice M. Shamgar in HCJ 114/79 **Burkan v. Minister of Finance**, IsrSC 32(2) 800, 806). "Equality is one of the fundamental value of the state of Israel… It is dictated by the Jewish and Democratic nature of the state; it derives from the principle of the rule of law in the state. Equality lies at the very foundation of social co-existence… it is one of the central pillars of the democratic regime. (HCJ 6698/95 **Ka'adan v. Israel Land Administration**, IsrSC 54(1) 258, 272; hereinafter – **Ka'adan**; See also HCJ 4112/99 **Adalah Legal Centre for Arab Minority Rights in Israel v. Municipality of Tel Aviv Jaffa**, IsrSC 56(5) 393, 414; See also **Adalah**, page 39). The opposite of equality is discrimination (See FH 10/69 **Boronovsky v. Chief Rabbis of Israel** , IsrSC 25(1) 7, 35; hereinafter – **Boronovsky**). Discrimination is the "worst of the worst" (Justice M. Cheshin in HCJ 7111/95 **Centre for Local Government v. The Knesset**, IsrSC 50(3) 485, 502; hereinafter – the **Centre for Local Government**). Discrimination "is an affliction which creates a feeling of deprivation and frustration. It infringes on the sense of belonging and on the positive motivation to take part in the life of society and contribute to it." (Justice G. Bach in HCJ 104/87 **Nevo v. National Labor Court**, IsrSC 44(4) 749, 760).

(Emphases were added, B.A.)

93. In paragraph 35 of his judgment the Honorable President (as then titled) Barak continues and holds as follows:

> The right to human dignity is premised on the recognition that a man is a free being, who develops his body and spirit as he wishes in the society in which he lives; At the center of human dignity lies the sanctity of his life and his liberty. Human dignity is premised on the autonomy of free will, freedom of choice and freedom of action of man as a free being. Human dignity is based on the recognition in a person's physical and mental integrity, his humanity, his value as a human being, and all of the above regardless of the benefit arising there-from to others (See

Wikselbaum, page 827; HCJ 205/94 **Nof v. Ministry of Defense**, IsrSC 50(5) 449, 457` hereinafter – **Nof**; CA 2781/93 **Da'aka v. "Carmel" Hospital, Haifa**, IsrSC 53(4) 526, 570; LCA 4905/98 **Gamzo v. Yeha'ayahu,** IsrSC 55(3) 360, 375; HCJ 7357/95 **Barki Feta Humphries (Israel) Ltd v. State of Israel**, IsrSC 50(2) 769, 783; **Adam Teva V'Din,** paragraph 17; CFH 7015/94 **Attorney General v. A**., IsrSC 50(1) 48, 95; HCJ 4330/93 **Ghnam v. Tel Aviv District Committee of the Israel Bar Association**, IsrSC 50(4) 221, 233; CA 5942/92 **A. v. A**., IsrSC 48(3) 837, 842; HCJ 3512/04 **Shezifi v. National Labor Court** (not yet reported); **Hof Aza Regional Council**, pages 561-562 of the majority opinion; **Commitment Association**, paragraphs 14 and 15 of my judgment and paragraph 3 of the judgment of Justice E. Levy).

(Emphases were added by the undersigned – B.A.)

94. The Honorable Justice Levy also discussed, in paragraphs 4-5 of his said judgment, the connection between the right to equality and the right to dignity:

> Autonomy is therefore, relation dependant ("relational autonomy"). Proper social foundations are essential condition for its existence. They require people to be considerate. They require an atmosphere in which a person does not feel unjustifiably injured due to his choices. They do not tolerate arbitrariness, unfairness and unreasonableness. **They refuse to accept discrimination between equal choices of people with similar attributes. They reflect a proper understanding of basic rights. They reflect the dignity of the right holder as an individual among individuals.** And see J. Feinberg "The Nature and Value of Rights" in *Rights, Justice and bounds of Liberty: Essays in Social Philosophy* (Princeton, 1980) 143; N. Fraser & A. Honneth *Redistribution or Recognition? A Political-Philosophy Exchange* (London, 2003, 36).
>
> **Indeed, there is a direct connection between the principle of autonomy and the concept of dignity. A person who discovers that his choices and the choices of his colleagues are not given equal weight, who finds out that there is no rational basis for the fact that the other, as opposed to his own self, realizes his preferences, who feels that he does not receive recognition,** particularly when his choices also serve the interests of others, **and who feels injured due to his choices for no cause, is, undoubtedly, a person whose dignity was violated**.
>
> (Emphases added, B.A.)

95. In view of the fact that the right to equality is closely related to the basic right to dignity, the petitioners will prove below that the injury inflicted by the condition established in section 3A(1) of the Temporary Order on the petitioner and other applicants in her condition, constitutes a violation of their constitutional right to equality and dignity.

The applicability of the right to equality

96. In its judgment in HCJ 11437/05 **Kav La'Oved v. Ministry of Interior** (reported in Nevo) the court held that the principles and rights established in the Basic Law: Human Dignity and Liberty also apply to foreigners who are neither Israeli citizens nor Israeli residents, like the petitioner in the case at hand:

> A foreigner wishing to enter Israel and stay therein for employment or other purposes, does not have an inherent right to do so, and he needs an entry permit and residency status in Israel, subject to the applicable policy in this matter […] **However, as a general rule, once the state enables a person to enter its gates, and allows him to stay here**, *inter alia*, for employment purposes, **he comes under the umbrella of basic legal principles which apply to any person in its territory**.
>
> At the center of the Basic Law: Human Dignity and Liberty stands the individual. The Basic Law stipulates that the fundamental rights of the "person in Israel" are premised on the recognition of human value, the sanctity of a person's life and his existence as a free man, and that they will honored in the spirit of the principles of the declaration of the erection of the state of Israel (section 1). It enshrines the right of a "person" to dignity and liberty, according to the values of the state of Israel as a Jewish and democratic state (section 1A). According to the law, "there shall be no violation of the life, body or dignity of any person as such"; "there shall be no violation of the property of a person"; and "all persons are entitled to protection of their life, body and dignity." (sections 2-4; emphases do not appear in the original). Other than section 6(b) of the Basic Law, which limits the right to enter Israel only to Israeli nationals staying abroad, all other sections of the law protect the "person". Hence, the Basic Law applies, in general, to any person who stays in Israel, regardless of his civil status, religion, acts, views etc. President Barak emphasized this issue in his book regarding constitutional interpretation:
>
> > "At the center of the Basic Law: Human Dignity and Liberty stands the "person". … The rights granted by the Basic Law are human rights, and they are granted to a person…. Therefore, the rights are granted to the adult person and to the minor person; to a citizen, resident, visitor and a tourist. Any person "as such" is entitled to the protections established in the Basic Law, regardless of his sex, religion and views. Even a person who does not recognize the dignity of others is entitled to have his dignity protected. … Hence, it is not accurate to describe these rights as civil rights. **They are not limited to the citizen or to the resident. They are granted to any person…**" (Aharon Barak *Interpretation in Law – Constitutional Interpretation* 435-436 (Third Volume,

1994) The emphasis does not appear in the original (hereinafter: **Barak**)).

(Emphases added, B.A.)

97. To conclude the application of the right to equality and dignity to the petitioner and other OPT residents, the petitioners wish to remind that it has already been held by the majority opinion, in the judgments given in HCJ 7052/03 **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Interior** (reported in Nevo) and in **Gal-On** mentioned above, which also concerned the Temporary Order – although in a different scope and from a different angle – that the results arising from the Temporary Order were not premised on a relevant difference and that the Temporary Order indeed discriminated against Arab Israeli residents and citizens as compared to other citizens and residents, and violated their rights to equality and dignity.

98. As it was proved that the right to equality also applies to non-Israeli residents and citizens and that the Temporary Order indeed violates the right to equality and dignity, the petitioners wish to examine whether the violation of the right of the petitioner and other applicants to equality and dignity inflicted by the condition stipulated in section 3A(1) of the Temporary Order, is a permitted or prohibited violation.

99. Petitioners' position on this issue is clear. The condition stipulated in section 3A(1) of the Temporary Order, establishes and perpetuates a brazen discrimination and blatant inequality between the conditions for the acceptance of applications of non-OPT widows and applications of widows who are originally OPT residents. It is an irrelevant discrimination between two groups among which no substantial or relevant difference exists from a humanitarian perspective, with no justification or any other logical basis for such distinction. In petitioner's specific case, where there is no dispute as to her humanitarian circumstances, as to the fact that she resides lawfully in Israel and as to the fact that there is no pertinent preclusion in her matter which may justify the denial of the application, the petitioners are confident that were it not for the fact that the petitioner is an OPT widow, her application would have been accepted unchallenged. This is attested to by applications which were approved by the inter-ministerial committee in the matter of widows from the reference group for the equality variable, namely, non-OPT widows. The applications of said widows were approved even if arrived from a-far and despite the fact that they stayed in Israel for much shorter periods than the period during which the petitioner in the case at hand resided lawfully in Israel. It is sufficient to refer on this issue to respondent's notice in HCJ 2269/06, which was attached above and marked P/25.

100. Having specified in detail the manner by which the discriminatory condition established in section 3A(1) of the Temporary Order violates the fundamental right of the petitioner and other applicants in her condition to equality and dignity, the question which should now be examined is whether the violation meets the criteria established in the limitation clause and is therefore permitted, or whether it deviates there-from and should therefore be revoked.

Human dignity and liberty

101. Section 8 of the Basic Law: Human Dignity and Liberty 5752-1992, provides that in the event that four cumulative conditions are met, the fundamental rights protected by said Basic Law may be violated:

> There shall be no violation of rights under this Basic Law except by a **law befitting the values of the State of Israel**, enacted for **a proper purpose**, and **to an extent no greater than is required**, or pursuant to such law by virtue of an explicit authorization included therein.

Hence, the conditions under which violation of the rights protected by the Basic Law may occur are as follows:

1. The violation of the fundamental right is effected by law or pursuant to a law by virtue of an explicit authorization;
2. The infringing law befits the values of the state of Israel;
3. The infringing law was enacted for a proper purpose;
4. The violation of the rights is to an extent no greater than required.

In view of the fact that the violation of the right of the petitioner and other applicants whose cases are governed by the Temporary Order, is effected by section 3A(1) of the Temporary Order, the petitioners will not dwell on the first condition. However, and as will be specified in detail below, the violation fails to even remotely satisfy the remaining conditions established in the limitation provision.

A condition which does not befit the values of the state of Israel

102. The condition established in section 3A(1) of the Temporary Order, which brings about the discriminating and injurious result according to which only applicants from the OPT, having humanitarian circumstances, must also have a family member who resides lawfully in Israel, is a condition which does not befit the values of the state of Israel, neither as a Jewish state nor as a democratic state.

103. In his judgment in CA 506/88 **Shefer v. State of Israel** (reported in Nevo), while referring to the manner according to which the values of the state of Israel should be interpreted, the late Honorable Justice Elon held as follows:

> The value of the state of Israel as a Jewish state is therefore interpreted according to the values of Israel heritage and Jewish heritage, namely, according to the manner by which the fundamental values are interpreted in the sources of Israel heritage and Jewish heritage. By the implementation of said interpretive method, we shall comply with the words of the legislator concerning the proper interpretation of the value of the state of Israel as a Jewish state (and see also my said article, page 663-670; 684-688).
>
> (Emphasis added, B.A.)

The late Honorable Justice Elon continues to warn as follows:

> **Moral values such as liberty, justice, human life and dignity, may be interpreted in a very distorted manner, under given social circumstances**; Human history does not fall short of examples to that effect, and in our generation, the holocaust generation, the atrocities of the Third Reich and the horrors of the regimes of the "brotherhood of nations", reached a peak that a human mind cannot contain. **The values of a Jewish state, rooted in the fundamental values of the dignity of man who was created in the image of God, the sanctity of his life and the prevention of his pain and suffering, roots which were upheld for many generations and from which the entire world learnt and imbibes, are the proper assurances and guarantees for the correct and proper implementation of the synthesis of Jewish and democratic values** (and see HCJ 1635/90 **Jarjevsky v. Prime Minister et al**., [23], pages 783-784 and the article of the late Prof. G. Procaccia, "Comments on the changing content of fundamental values under the law" *Iyunei Mishpat* 15 (5750) 377, 378).
>
> (Emphases added, B.A.)

Referring to human dignity and to the meaning of the term "created man in the image of God" the court holds:

> This fundamental right to the a person's physical and mental wholeness and safety carry a special nature in Jewish law, which derives from its basic view concerning the source of a person's right to his life, body and dignity:
>
> "**A basic concept in the Judaic world is the idea that man was created in the image of God (Genesis 1, 27). The torah of Israel is premised on this idea from which basic principles are derived by the *Halacha* concerning the value of man – any man as such – his equality and love**. 'He (=Rabbi Akiva) said: likeable is the man who was created in his image, he is especially likeable as he was created in his image, as it stated (Genesis 9, 6): "for in the image of God made He man' (Mishna, Avot, 3, 14), which is the reason given in this last verse to the prohibition imposed on Noa's sons to shed blood, even before the Torah was given" (Neiman [12], page 298).
>
> The value of life of each and every person is premised on the creation of man in the image of God:
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> "Therefore man was created single in the world to teach you that he, who kills one soul in the world is deemed to have destroyed the entire world; and he, who saves one soul in the world is deemed to have saved the entire world" (Mishna Sanhedrin 4, 5 [44]; According to the Rambam, Sanhedrin 12, 3 [45]; and see my above book, Hebraic Law – history, sources, principles, page 1426 and foot note 303).
>
> And we have so said elsewhere (LCA 698/86, 151/87, 184 Attorney General v. A. at al.; A – Protégé v. B et al. [16], page 676):

"**The major rule by which this court should be guided is that we are neither authorized nor entitled to differentiate in any way between the value of man** – between the rich and the poor, between the healthy and the disabled, between the sane and insane. **All men, were created in the image of God, and are therefore equal in their value and quality**."

The creation of man in the image of God is the basis on which the value of the life of each and every person is premised, and is the source for the fundamental rights of human dignity and liberty (See CrimApp 2145/92 [3], page 724).

(Emphases added, B.A.)

104. Hence, there is no doubt that the protection of human dignity and image and the obligation to treat him fairly and equally are very basic values of Israel heritage. These values have an even greater importance when they pertain to the weakest and most depressed in society:

- Do not mistreat an alien or oppress him, for you were aliens in Egypt; Do not take advantage of a widow or an orphan; If you do and they cry out to me I will certainly hear their cry. (Exodus 22: 21-23).
- He defends the cause of the fatherless and the widow, and loves the foreigner residing among you, giving them food and clothing (Deuteronomy 10: 18).
- Cursed is anyone who withholds justice from the foreigner, the fatherless or the widow; Then all the people shall say, "Amen!" (Deuteronomy 27: 19).
- If you do not oppress the foreigner, the fatherless or the widow and do not shed innocent blood in this place, and if you do not follow other gods to your own harm; (Jeremiah 7: 6).
- Do not oppress the widow or the fatherless, the foreigner or the poor. Do not plot evil against each other (Zechariah 7: 10).
- The Lord tears down the house of the proud, but he sets the widow's boundary stones in place (Proverbs 15: 25).

105. The above verses are only some examples of many more which may be found in the Bible concerning the great importance attributed by Israel heritage to the manner by which the weak and depressed in society should be treated. And there is no doubt that they clearly indicate how a foreigner who just came from a-far, the orphan and the widow should be treated.

106. It is important to note that the petitioner, as a foreigner and a widow, satisfies the full description of two of the three main figures that Israel heritage chose to depict as the model for the weak and depressed in society, who should not be mistreated, oppressed or abused and as such should be treated fairly, while fully protecting his rights and dignity.

107. The above said thus far indicates that section 3A(1) of the Temporary Order, in its current version, which consists of a condition that discriminates the petitioner at hand who is a foreigner and a widow, and others in her condition, as opposed to other applicants, whose humanitarian circumstances are identical to those of the petitioner, does not reconcile with the values of the state of Israel as a Jewish state.

108. In addition, it is clear that section 3A(1) of the Temporary Order, in its current version, does not reconcile with the values of the state of Israel as a democratic state.

109. The right to equality became a democratic value throughout the world and particularly in Israel many years ago. Clear examples to that effect may be found in the United Nations Universal Declaration of Human Rights of December 10, 1948, which commences with said right, and in the words of this honorable court in FH 10/69 **Boronovsky v. Chief Rabbi of Israel**:

> The principle of equality, which is the other side of the coin of discrimination and which the law of any democratic state wishes to exemplify, for reasons of justice and fairness, means that for the above purpose, all men between whom there are no real differences which are relevant for said purpose, should be treated equally.

110. In view of the above, and in view of the fact that the legislator of the Temporary Order himself determined that despite its security purpose, a humanitarian mechanism should be established which would give solution to applicants whose cases should be handled for humanitarian reasons, said unfortunate applicants should not be discriminated against as compared to other applicants, only because they are originally OPT residents, and the acceptance of their applications should not be conditioned upon the existence of a family member lawfully residing in Israel. Hence, section 3A(1) of the Temporary Order, in its current version, is a section which consists of a discriminatory and inappropriate condition, which does not befit the values of the state of Israel not only as a Jewish state but also as a democratic state.

A condition enacted for an inappropriate purpose

111. In addition, and despite the fact that the purpose of the Temporary Order as a whole was examined by the court in the past and was found appropriate - in the **Gal-On** judgments, there is no doubt that the discriminatory condition included in section 3A(1) of the Temporary Order, is an inappropriate condition regardless of the specific circumstances of the applicants and regardless of the purpose of the Temporary Order.

112. The case of the petitioner at hand clearly demonstrates that it is a discriminatory condition which was not enacted for a proper purpose, but rather, for mere discrimination of OPT residents, and nothing more than that. As there is no dispute concerning petitioner's humanitarian circumstances, the fact that she lawfully resided in Israel with her late husband, and the fact that there is no preclusion in her matter which prevents the approval of her application. Moreover. As specified above and particularly in paragraphs 84-85, were it not for the Temporary Order which prevented the upgrade of petitioner's status throughout the years she was lawfully living with her late husband in Israel, she would have had a permanent status a long time ago.

113. Hence, the conclusion necessarily arising from the above is that the discriminatory condition established in section 3A(1) of the Temporary Order, which requires the presence of a family member in Israel only from applicants who are originally from the OPT, was not enacted for a proper purpose.

Disproportionate condition which injures to an extent greater than required

114. In addition to its failure to meet the previous conditions, the discriminatory condition and the injury inflicted by it on the petitioner and others, does not meet the last condition established in the limitation clause, as it injures the petitioner and other applicants from the OPT to an extent greater than required. In order to draw the line between an injury which is within the required limits and an injury which is greater than required, the proportionality tests should be applied.

115. Said tests were outlined by the court in HCJ 5016/96 **Lior Horev et al., v. Minister of Transportation**:

> **Human rights may be infringed only for a proper purpose and if the infringement does not exceed the necessary. While the "proper purpose" test examines the objective, the "least injurious means" test examines the means employed for achieving the purpose. It is a proportionality test**, employed in Israel for examining administrative and constitutional discretion. See HCJ 5510/92 **Turkeman v. Minister of Defense**, IsrSC 48(1) 217; HCJ 987/94 **Euronet Kavie Zahav (1992) Ltd. v. Minister of Communications**, IsrSC 48(5) 412; HCJ 3477/95 **Ben-Attiyah v. Minister of Education, Culture, and Sport**, IsrSC 49(5) 1; See also Segal, Grounds for Disproportionality in Administrative Law, 39 HaPraklit 507 (5751); Zamir, "Israeli Administrative Law as Compared to German Administrative Law", 2 Mishpat U'Memshal 109 (1994)). In one of the cases, I noted that the issue raised by the "proportionality" test is:
>
> > Whether the means employed correspond to the objective they seek to realize. Proportionality implies that the governmental means need to befit the goal, and must not exceed what is required for the realization of the goal. The principle of proportionality comes to protect the individual from the regime. It is intended to prevent excessive infringement on the individual's liberty. It requires that the governmental means be carefully selected to befit the realization of the objective. This is the expression of the principle of the rule of law and of the lawfulness of the regime" (HCJ 3477/95 above, page 11).
>
> The proportionality test is three-pronged, as is customarily indicated by comparative law. It is also the case in Israel (see HCJ 3477/95 above, page 12; CA 6821/93 above, page 436). **The first sub-test** requires a connection of compatibility between the means and the objective (fit; geeingnat). The governmental means must befit the fulfillment of the objective sought for by the government. The means taken by the government must rationally lead to the fulfillment of said objective ("the rational connection test.") **The second sub-test** requires that the governmental means infringe on the individual to the least extent possible. The governmental means are proper only if the objective may not be achieved by different means, the infringement of which on human rights is lesser ("the least injurious means test.") **The third sub-test** provides that the means selected by the government are inappropriate if the infringement on human rights does not stand in proper proportion to the benefit arising from the realization of the desired objective ("the proportionality test in the narrow sense").
>
> (Emphases added, B.A.)

116. According to the first sub-test, the objective ostensibly sought for by the respondent in the context of the Temporary Order as a whole - protecting state security – is indeed proper, but there is no rational connection between the discriminatory condition of section 3A(1) of the Temporary Order – refusal to arrange the temporary status of the petitioner due to the absence of a family member in Israel – and the attainment of said security objective. It should be reminded that along the many years during which petitioner's matter was examined no security or criminal claim had ever been raised against her. In addition, subject to the limitations of the Temporary Order, under which a temporary status may not be upgraded to a permanent status – the petitioner will anyway be subordinated in the future to an ongoing examination by the respondent, who will examine her from the criminal and security aspects, on an annual basis.

117. According to the second sub-test, the authority must choose the least injurious means. There is no doubt that the discriminatory and sweeping condition which was established in section 3A(1), is not the least injurious means, as the petitioner, who has been living lawfully in Israel for so many years, is prevented from arranging her status at least as a temporary resident. Had it been the least injurious measure, the respondents would have taken into consideration petitioner's circumstances and would have given her temporary residency status. With respect to this sub-test we would like to remind the statements of the justices in **Gal-On** which were quoted above, regarding the need to widen the circle of those who can benefit from the humanitarian mechanism established in the Temporary Order. The above statements strengthen petitioners' argument that in its current version, section 3A(1) of the Temporary Order does not meet the above sub-test.

118. Finally, the petitioners will emphasize that section 3A(1) of the Temporary Order, including the discriminatory condition established therein, also fails to meet the third sub-test, the proportionality test in the narrow sense, in view of the fact that the respondent does not find any solution for petitioner's problem and cruelly chooses to deny her application. Hence, there is no proper proportion – more or less – between the injury caused to the petitioner, whose humanitarian circumstances are clear, and the benefit arising from the realization of the underling objective of the Temporary Order.

119. In view of the above, there is no doubt that the discriminatory condition established in section 3A(1) of the Temporary Order is inappropriate. It is a condition which violates the right of many to equality and dignity and discriminates based on national origin. As such, it has no romm amongst the laws of a Jewish and democratic state and it should be removed from the Temporary Order.

120. The above discriminatory and inappropriate condition is coupled by other severe failures, pointed at by the petitioners above, which arise from a narrow interpretation applied by the respondents and which were referred to by the justices of the honorable court in **Gal-On**. It should be noted that despite the court's comments in **Gal-On** concerning the humanitarian committee, said failures have not yet been rectified and nothing has changed. Consequently, applications which are based on undisputed humanitarian circumstances which justify the intervention of the humanitarian committee, are cruelly and unequally discriminated against as compared to other humanitarian applications of applicants who are not OPT residents, despite the fact that there is no relevant difference between the entire applications which can justify such discriminatory treatment.

121. From the general to the particular. In petitioner's matter the absurd is much greater, in view of the fact that precisely the death of her husband, as a result of which the circumstances of her case became humanitarian and justified the acceptance of her application, is used by the respondents to justify their outrageous denial of her application, arguing that following his death the petitioner was left with no one in Israel, and therefore her application should be denied.

The impingement on the petitioner as a woman

122. Towards the end of this petition the petitioners wish to refer to the gender aspect of respondents' decision to deny petitioner's application. Discrimination against women can be effected by law, regulation or custom the **objective** of which is to discriminate women, or the application of which, **de-facto**, constitutes discrimination against women. Israel is obligated to prevent direct or indirect discrimination against women, and to examine the scope of the injury inflicted on women, in practice.

    See on this issue, inter alia, section B of the Equal Rights for Women Law, 5711-1951 and the Convention on the Elimination of All Forms of Discrimination against Women (1971), which was signed and ratified by Israel.

123. However, despite the above obligation of the state, it seems that respondents' denial of petitioner's application constitutes, in addition to everything which was said heretofore, an action the direct result of which is discrimination against women. We shall specify.

124. In traditional societies such as the one to which the petitioner at hand belongs, the world of the woman, the wife, is almost entirely devoted to the family's home. Therefore, and as is customary in a traditional patriarchic society, the petitioner, following her marriage with her spouse the late Mr. Khalil, left her parents' home, her family and her natural environment, and moved the center of her life, in 1995, to Jerusalem, where her late husband was living.

125. Hence, by denying the application of the petitioner, who has been living as a woman in the traditional Muslim society for so many years, lawfully in her home in Jerusalem, and by deporting her to the West Bank, where no one expects her, the respondents drop the safety net – as thin as it may be – which protected her until now.

Conclusion

126. The petitioner at hand has been living lawfully in Israel for many years. After the death of her husband she was about to be deported from her home, at which time a humanitarian application was submitted on her behalf. To date, even her humanitarian application, that she would be permitted to continue to live in her only home in the world, where she has been living for so many years, was denied by the respondents.

127. A cruel denial, which is premised on a narrow interpretation which runs contrary to the underlying rational of the humanitarian mechanism entrenched in the Temporary Order, and to the comments of the honorable court concerning applicants who lawfully reside in Israel for so many years, is in contrary to all logic and is immoral. The requirement that the petitioner will have a family member in Israel is nothing but improper and irrelevant discrimination, contrary to the fundamental rights of the petitioner and other applicants in her condition, whose humanitarian circumstances are not in dispute, as compared to other applicants who are not subject to the Temporary Order. In addition, as aforesaid, the denial disregards the inferior status of a solitary woman in a traditional society, which puts her in an inferior position not only *vis-à-vis* applicants who are not subject to the Temporary Order, but also *vis-à-vis* applicants who are subject to its provisions but who are not in her condition.

128. In view of all of the above, the honorable court is requested to issue an *order nisi* as requested, which will consist of all remedies requested in the beginning of this petition, and after hearing respondents' response, make it absolute. In addition the court is requested to order the respondents to pay petitioners' costs and legal fees.

February 26, 2014

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Benjamin Agsteribbe, Advocate
Counsel to the petitioners

[file No. 68983]