At the Supreme Court **HCJ 6615/11**

Sitting as the High Court of Justice

In the matter of:

1. **_____ Salhab, ID. No. _____**
2. **_____ Agha, ID. No. _____**
3. **_____ Hamidat, ID. No. _____**
4. **_____ Murar, ID. No. _____**
5. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel Adv. Sigi Ben Ari (Lic. No. 37566) and/or Noa Diamond (Lic. No. 54665) and/or Ido Bloom (Lic. No. 44538) and/or Hava Matras-Irron (Lic. No. 35174) and/or Daniel Shenhar (Lic. No. 41065) and/or Elad Cahana (Lic. No. 49009) and/or Nimrod Avigal (Lic. No. 51583) and/or Benjamin Agsteribbe (Lic. No. 58088)
Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
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The Petitioners

v.

1. **Minister of Interior**
2. **Military Commander of the West Bank**

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:

a. Why it should not be determined that a Palestinian whose family unification application was approved by the Minister of Interior and whose presence in Israel during the graduated procedure is regulated via DCO issued permits (hereinafter: **stay permits**), may be able to work and earn a living in Israel without any additional procedure or limitation;

b. Alternatively, why a work permit should not be issued concurrently with and for the same period as the stay permit as a matter of routine and without any additional procedure;

c. Why the Respondents should not disclose all the normative arrangements pertaining to employment in Israel by Palestinians whose family unification applications have been approved by the Minister of Interior, if such exist, including the arrangement stipulating that a stay permit does not constitute a work permit and that individuals who receive stay permits must follow the procedure applicable to Palestinians living in the West Bank for the purpose of employment.

The Facts

The petition in brief

1. This petition concerns the severe and disproportionate harm caused to Palestinians from the West Bank whose application for family unification with their Israeli spouses has been approved by the Minister of Interior and who lawfully reside in Israel, yet must endure a complicated and unreasonable procedure in order to lawfully work in Israel. This procedure is inappropriate for their situation and quite literally prevents them from working and providing for their families.

2. The issue concerns Palestinians who reside in Israel with their families, often for many years, pursuant to renewable stay-permits issued by the military commander. Yet, when they seek to work and provide for their families, they encounter great difficulty finding employment as the permit they are granted read “this permit does not constitute a permit for employment in Israel”. The result is that potential employers are unwilling to hire them or take action toward arranging for their lawful employment for reasons that will be discussed below. This situation clearly has far reaching ramifications for their Israeli spouses and children.

Family unification in Jerusalem

3. In 1996, Israel introduced a graduated family unification process for foreign spouses of Israeli residents, including East Jerusalem residents. At the end of this process, the foreign spouse receives permanent residency status in Israel. During the first stage, upon approval of the couple's family unification application by the Minister of Interior, the foreign spouse is given **a temporary permit to remain and work in Israel**. These permits allow their holders to enter, work and live in Israel lawfully. They do not confer status or social rights. The duration of this stage is set at 27 months. During the second stage, the foreign spouse is given temporary residency status (A/5 visa). This status must be renewed annually and it does confer the rights granted to permanent residents including national health insurance and social security pensions. This stage is set to last three years and be followed by an upgrade to permanent residency. The procedure is anchored in Ministry of Interior Procedure 5.2.0011: http://www.piba.gov.il/Regulations/74.pdf [in Hebrew].

4. In order to have their family unification application approved and the foreign spouse enter the graduated procedure the couple are required to meet two conditions: The sponsoring spouse, the East Jerusalem resident, must prove his center-of-life is in Israel and the foreign spouse must undergo a thorough background check by security agencies to obtain security and criminal clearance. The couple must undergo these two tests every year as a condition for remaining in the graduated procedure.

5. It is common knowledge that the Ministry of Interior made the family unification process very difficult by imposing bureaucratic obstacles, delaying processing of applications and causing the graduated procedure to take much longer than its official duration.

6. In May 2002, the Government of Israel halted all family unification procedures between Israeli residents and their spouses who are residents of the Occupied Palestinian Territories (OPT). Following this government resolution, the Ministry of Interior ceased admitting new family unification applications and halted processing of pending family unification applications. In addition, all status upgrades for OPT residents whose family unification application had been approved were halted.

7. In August 2003, the freeze on family unification procedures with spouses from the OPT was enshrined in the Citizenship and Entry into Israel Law, enacted as a temporary order which has been periodically extended. The Law blocks all possibility of OPT spouses' being granted status in Israel and forces them to continue meeting the test of center-of-life and obtaining security clearance indefinitely.

The Temporary Order

8. Sec. 2 of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: **the Temporary Order**), stipulates that the Minister of Interior shall not grant a resident of the Area a permit for residency in Israel under the Entry into Israel Law and the commander of the Area shall not grant a resident of the Area a temporary permit to remain in Israel [stay permit] under security legislation in the Area.

   Sec. 3 of the Temporary Order stipulates that notwithstanding the provision of Sec. 2, the Minister of Interior may, at his discretion, approve an application filed by a resident of the Area for a stay permit in Israel issued by the commander of the Area. Sec. 3b stipulates that notwithstanding the provision of Sec. 2, the commander of the Area may grant a resident of the Area a stay permit for Israel for the purpose of medical treatment, employment or any other temporary purpose.

9. The family unification applications by Palestinians which are the subject matter of this petition, were approved by the Minister of Interior. The military commander issued the foreign spouses with a stay-permit under Sec. 3 of the Temporary Order pursuant to this approval. Under Sec. 2 of the Temporary Order, the status of such permit holders will not be upgraded and they will remain without status in Israel.

10. This has led to a situation in which a Palestinian whose applications for family unification with his Israeli spouse who resides in Jerusalem has been approved by the Minister of Interior, lives in Jerusalem, maintains his center-of-life in the city and has his children there, yet holds a temporary stay permit which is renewed every year with no possibility of ever having his status upgraded and obtaining social rights. This on going reality is the fate of many who live without personal, social or family security as “present absentees”.

11. In addition, the policy practiced by the Minister of Interior and the military commander prevents such Palestinians from working lawfully and providing for themselves and their families.

12. At this point, it is important to note the difference between Palestinian and non-Palestinian spouses of permanent residents. Spouses who are not Palestinian and whose family unification application have been approved by the Minister of Interior enter the graduated procedure with a temporary visa to remain and work in Israel (B/1 visa). Their status is upgraded after 27 months. In contrast, Palestinian spouses whose family unification applications have been approved by the Minister of Interior receive a stay permit (in the form of DCO permits), which do not constitute a work permit and their status is not upgraded.

A stay permit does not constitute a permit for employment in Israel

13. For some reason, the Respondents have decided that a Palestinian whose family unification application has been approved and whose presence in Israel has been legalized, cannot work in the framework of the permit he receives. The stay permits issued to Palestinians living in Israel as part of the family unification procedure do not constitute work permits. The words "this permit does not constitute a permit for employment in Israel" are printed on each of these permits.

14. In view of this restriction, permit holders have great difficulty finding work. Employers are unwilling to hire them, or take the necessary measures to arrange for their lawful employment, for reasons detailed below.

15. In order to obtain a work permit in Israel, a Palestinian who lawfully resides in Israel by way of a stay permit issued in the context of the family unification process, must undergo a complicated process of obtaining a permit to enter Israel (!) for the purpose of employment, which was initially devised for Palestinian workers who reside in the West Bank and return home after a day's work in Israel.

16. Under this procedure, a Palestinian who lives in the West Bank and wishes to work in Israel on a daily basis, must first find an employer who is interested in hiring him. The employer must then file an application to employ him and other individuals. The application is filed by way of opening an employer file in the payment division of the Ministry of Interior in the district where the employer lives or conducts his business. The application is considered, *inter alia*, according to quotas determined for the employer and for the line of work.

17. If the employer's application for employing Palestinian workers is approved, a list of names of Palestinian workers whom the employer requests is transferred to the employment staff officer at the civil administration (whose offices are located in the West Bank – at the Tulkarem, Ramallah and Bethlehem DCOs). The list includes only Palestinians who have received security clearance, that is, who have undergone thorough security screening and were not precluded from entering Israel. The employment staff officer conducts additional examinations and issues work permits which are valid for three or six months. He transfers them to the Palestinian employment bureaus, where the employee collects them.

18. This procedure is enshrined, in principle, in the Foreign Workers' Law, 5751-1991 (hereinafter: **the Foreign Workers Law**), particularly Title D2 of the Law which specifically refers to workers from

the Area. This title defines "worker" as **a person whose permanent place of residence is within the Area** or the areas of Gaza and Jericho and is not registered in [the Israeli] population registry.

19. However, the Palestinians whose cases are the subject of this petition, do not reside in the West Bank on a permanent basis, but rather in Israel, and the procedure for issuing work permits stipulated in the Law does not apply to them, and rightfully so as we elucidate below. Despite this, the procedure is irrationally and unreasonably imposed upon them.

The parties

20. **Petitioners 1-4** have resided in Israel for many years. The Minister of Interior has approved their family unification procedure and their presence in Israel is made possible by stay permits. Their status cannot be upgraded in view of the Temporary Order and their ability to work and earn a living in dignity is limited to the point of being impossible.

Petitioner 1

21. Petitioner 1, Mr. _____ Salhab was born in Jerusalem in 1962. He was raised in Al 'Eizariya and married _____ Salhab, a resident of Jerusalem, in 1987. The couple has lived together in Jerusalem since their marriage. They have six children, all Israeli residents.

22. Until 1994, women were not allowed to file for family unification with their spouses. This prohibition was revoked following a petition to the HCJ and the couple filed their family unification application in 1995. Processing of the application was delayed and was approved only in 1999. Upon the Minister of Interior's approval of the application, Mr. Salhab received a renewable stay permit for Israel.

23. According to the graduated procedure, Mr. Salhab was to receive temporary residency status in 2002. However, in view of the Government Resolution and the Temporary Order, his status was not upgraded. Thus, for the past 12 years, Mr. Salhab has been living in Jerusalem with his family, all residents of the city, without status and without rights, while his presence is regulated by stay permits (with the exception of a period in which Respondent 1 denied approval, which he later retracted).

24. Until 2001, Petitioner 1 worked for Oran Heating Equipment LTD. in Jerusalem. This is a family owned factory that employed some 30 workers from the OPT. The employer arranged for the employees' work permits. Petitioner 1 was included in this group and worked in the factory carrying out various tasks.

25. Over the years, Mr. Salhab carried out the same tasks and worked the same number of hours as other employees who were not residents of the OPT, yet his pay was significantly lower. According to Mr. Salhab, employees from the OPT were unable to ask for a raise or to have the terms of their employment brought on par with those of the other employees as they feared they would be fired and would then be unable to find another employer willing to ask for work permits for them.

26. In 2001, Mr. Salhab was fired and has since been unemployed. The family relies on National Insurance Institute pensions for its livelihood. Mr. Salhab repeatedly attempts to find work and provide for his family in dignity, but faces many difficulties as the stay permit he possesses does not constitute a work permit.

27. Employers whom he contacted have refused to take the actions necessary for obtaining work permits for him and agreed to hire him only if he arranges for the work permit by himself, which is impossible.

28. Other employers have agreed to hire him without a work permit, yet Mr. Salhab has refused for two reasons: First, due to his sensitive status in Israel and the tests he must pass every year in order to receive a stay permit, he fears being caught working in Israel without a permit. The second reason is that these employers attempted to take advantage of his situation and offered him low pay, unreasonable work hours and non-payment of National Insurance benefits.

29. Mr. Salhab notes that his only wish is to lead a normal life, to work and provide for his family with dignity. Being unemployed for many years has hurt his dignity, family and social standing.

Petitioner 2

30. Petitioner 2, Mr. _____ Agha, was born in Hebron in 1965. He has been living with his family on Mt. Olives in Jerusalem since he was a child. In 1993, he married _____ Salhab, a resident of Jerusalem. The couple lives in Jerusalem with their four daughters, all residents.

31. As aforesaid, until 1994, female residents were barred from filing applications for family unification with their spouses. This prohibition was cancelled following an HCJ petition. The couple filed their family unification application in 1994. The application went unanswered until 2002, at which time it was approved by the Minister of Interior. Mr. Agha has since received renewable stay permits.

32. Until 1999, Mr. Agha worked as a construction worker for an employer who had many OPT employees. The employer obtained work permits for the employees. In 1999, Mr. Agha was fired and began working for a different contractor who refused to obtain a work permit for him. He worked for him for six months.

33. In 2000, Mr. Agha began working at the Yoni Gal woodshop, a family owned furniture company, in Maaleh Edomim. In the first four months of his employment there, Mr. Agha worked without a work permit. He was caught. His employer was cautioned and has since taken the necessary measures for arranging work permits for him.

34. Mr. Agha works six days a week, nine hours a day and earns only 3,000 shekels. He has no vacation days. He has been asking for a raise for years but has been refused.

35. Mr. Agha knows that his employer is taking advantage of his sensitive situation as a person without a work permit. He has tried to find other work unsuccessfully. Other employers in Israel whom he contacted refused to hire him without a work permit, yet refused to take the necessary measures for obtaining such a permit. Working in the OPT is out of the question as it would jeopardize his family unification process due to lack of center-of-life in Israel. Thus, Mr. Agha is chained to an employer who will obtain a work permit for him but employs him under harsh and unfair conditions.

36. In addition, Mr. Agha is suffering from severe back pain, a condition which is deteriorating over time, and yet still has to carry on doing difficult manual labor. His wife does not work and he is the sole provider for the family.

37. Mr. Agha is currently in a state of uncertainty and he is very concerned about his and his family's future. His employer has notified him that the factory would shut down after Ramadan and all employees let go. Mr. Agha is concerned that in view of the fact that as he has no work permit he would remain unemployed and unable to provide for his family.

Petitioner 3

38. Petitioner 3, _____ Hamidat was born in Jerusalem in 1991. His mother is a resident of Jerusalem and his father is a resident of the West Bank. He has been living with his mother and siblings in Jerusalem since 1999.

39. In 2006, _____'s mother filed an application to have _____ and his younger siblings entered into the population registry. The application remained unanswered for many months. Only

after an administrative petition was filed, Respondent 1 decided that _____'s five siblings would receive status and be entered into the population registry, whereas he came under the Temporary Order, and would only receive stay permits. Since then, _____ has received stay permits for Israel.

40. Since finishing high school in 2009, _____ has been trying to find work unsuccessfully. Employers are wary of hiring him since the stay permit he has does not constitute a work permit. They are also unwilling to take the measures necessary for obtaining a work permit for him. He refrains from looking for work in the West Bank as he is concerned that this would be interpreted as giving up a center-of-life in Jerusalem, following which his stay-permits would be revoked.

41. _____ continues to live with his mother and younger siblings. His mother works as a teacher and provides for all her children. All _____wishes is to lead a normal life, to help his mother provide for the family and begin thinking of starting his own family. Many of his friends are married or engaged and have begun building their financial future with their families.

42. _____ is concerned that if the present situation continues and he remains unable to find work, his future will be at risk and he will not be able to build a home and start a family.

Petitioner 4

43. Petitioner 4, _____ Murar, was born in the OPT in 1991. His mother was a resident of Israel and his father was a resident of the OPT. His father passed away in 1997 and about a year later, in 1999, his mother returned to live in Jerusalem with her children. _____ was then eight years old. He has lived in Jerusalem continuously ever since.

44. In 2005, when the Petitioner was 15 years old, his mother filed an application for status for him. It was refused by Respondent 1. Following a petition filed in 2006, the Ministry of Interior reviewed the issue of _____'s status and approved the mother's application for family unification. Since 2007, Petitioner 4 has lived in Israel with stay permits. An application to have his status upgraded was denied due to the Temporary Order.

45. _____ finished high school after successfully completing his matriculation exams. He has since worked as a temporary laborer on construction sites in various parts of the country. He heard of these jobs from friends and acquaintances. He did not receive pay stubs from the employers and they, in turn, did not ask for work permits.

46. As a laborer, _____ felt he was being taken advantage of due to his precarious status. He was paid less money for harder work compared to laborers who had ID cards or work permits. The employers knew that his options were limited, unlike laborers with ID cards who are able to find work elsewhere.

47. Petitioner 4 looked for work in other places – banquet halls, restaurants etc. – yet employers would not hire him without a work permit. Given the great number of potential employees who have ID cards, they refused to obtain a work permit for him. He was forced to continue working in construction for low pay and without any benefits

48. In 2007, the Petitioner studied to be a hairdresser and obtained a diploma in the profession. His wants to open his own barbershop but cannot do so without an ID card or work permit. He is forced to limit himself to giving occasional haircuts on the roof of a house in the neighborhood.

49. _____ feels he is being robbed of his future. His friends and peers have studied a profession and have begun developing professionally and building their financial future. Some are academics. He, on the other hand, does occasional work in order to provide for his mother and siblings.

50. **Petitioner 5** (hereinafter: **HaMoked**) is a registered non-profit organization located in Jerusalem. The organization promotes the human rights of Palestinians in the OPT and East Jerusalem.

51. **Respondent 1** is the Minister of Interior, the minister empowered under the Entry into Israel Law 5712-1952 and the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, to approve applications for family unification and stay-permits for Israel.

52. **Respondent 2** is the military commander, in charge of the West Bank on behalf of the State of Israel, which holds the West Bank under belligerent occupation.

Exhaustion of remedies

53. On September 21, 2010, HaMoked contacted Mr. Avi Lekah, Senior Division Director, Population Administration Bureau, Ministry of Interior, with a detailed request to see to it that stay permits are issued in the framework of a family unification process would explicitly constitute work permits as well.

    A copy of HaMoked's communication to the Population Administration Director dated September 21, 2010 is attached hereto as **Exhibit P/1**.

54. On November 7, 2010 and January 9, 2011, HaMoked sent reminders to the Population Administration Director.

    Copies of the reminders are attached hereto as **Exhibit P/2a-b**.

55. Mr. Avi Lekah's response was received on January 26, 2011. According to the response, a stay permit does not automatically constitute a permit for employment in Israel and a resident of the Area may work in Israel if an employer interested in hiring him contacts the payment division at the civil administration in order to obtain a work permit for him. The response also stated that individuals who are in the process of family unification are given preference when it comes to issuing work permits, but did not indicate how this preference is manifested. The general arguments raised in HaMoked's communication were not addressed.

    A copy of the response of the Population Administration Director dated January 26, 2011 is attached hereto as **Exhibit P/3**.

56. On February 10, 2011, HaMoked sent a similar communication to the public requests officer of the civil administration.

    A copy of HaMoked's communication to the civil administration dated February 10, 2011 is attached hereto as **Exhibit P/4**.

57. On February 24, 2011, HaMoked received the response of the public requests officer of the civil administration. The response repeated the statement that Palestinians are permitted to work in Israel subject to a work permit obtained through an employer, including Palestinians who hold a stay permit as part of a family unification process. The official claimed that the [work] permits are required for security and social purposes – namely, safeguarding the resident's labor rights.

    A copy of the civil administration's response dated February 24, 2011 is attached hereto as **Exhibit P/5**.

58. On April 4, 2011, HaMoked contacted the Minister of Interior requesting that he reconsider the requirement that holders of stay permits given in the context of family unification obtain a work permit and allow them to work in Israel without any further procedures or conditions. HaMoked also requested a detailed explanation of all the normative procedures that apply to Palestinian holders of this status with respect to employment in Israel.

A copy of HaMoked's communication to the Minister of Interior dated April 4, 2011 is attached hereto as **Exhibit P/6**.

59. On May 23, 2011 and July 27, 2011, HaMoked sent reminders to the Minister of Interior.

Copies of the reminders are attached hereto as **Exhibit P/7a-b**.

60. No response has been forthcoming. As such, the Petitioners have had no recourse but to take legal action.

The Legal Argument

> **An administrative authority may use its discretion subject to the general case law on administrative law. It must act within the confines of its lawful powers; it must weigh all the relevant considerations for achieving the purpose of the law and refrain from extraneous considerations; it must exercise its discretion equitably and refrain from discrimination; it must be fair and honest; it must act in accordance with the standard of conduct considered reasonable. This standard reflects, *inter alia*, the appropriate balance between the various relevant considerations. These general guidelines apply to all cases in which administrative authorities have discretion** (HCJ 4422/92 **Shlomo Ofran v. Israel Land Administration**, IsrSC 47(3) 853, para. 8 of the judgment of Hon. Jus. Dorner).

Unreasonable and arbitrary policy

61. The procedure for issuing permits for employment in Israel to West Bank residents was designed for Palestinians who live in the West Bank and return to their homes at the end of the work day. Imposing this procedure on Palestinians who lawfully reside in Israel with their families is unreasonable and arbitrary. We explain.

62. The process of issuing work permits was primarily designed to meet a security need. It is meant to ensure that Palestinians who work in Israel undergo thorough security checks, that they leave Israel every evening to return to their homes in the West Bank, that they are registered with a specific employer and that their whereabouts are known. Security forces can thus control their entry into and presence in Israel without difficulty.

63. This logic does not apply to Palestinians who reside in Israel in the context of family unification. First, the Israeli stay permit given in the context of the family unification process is issued only following extensive and thorough security checks indicating that there is no impediment to allowing the individual to enter and live in Israel. These checks are performed every time a stay permit is about to be renewed and they are much stricter than the security checks performed for the purpose of work in Israel only. Second, stay permits allow people to travel freely throughout Israel and there is no security advantage to having such individuals registered with a specific employer in a specific place. It is therefore clear that there is no, nor can there be, a security-based objection to allowing such persons to work in Israel and there is no logic in imposing a difficult and complicated process whose purpose is not achieved in any event.

64. Some might say that the process of issuing work permits for Palestinians is also meant to serve as a way of monitoring labor rights. This argument cannot stand. First, it is well known that despite the procedure and despite the payment division's attempts at monitoring, many employers easily evade their responsibilities toward their employees. Therefore, imposing the procedure does not serve the purported intent of enforcing labor laws. Second, Palestinians who have not found an employer willing to obtain work permits for them or who do not wish to work in one of the approved sectors can work in Israel for an employer who is willing to hire them without a work permit. In this situation, they are vulnerable to even worse abuse and discrimination.

65. Not only are the rationales and aims underlying the process of issuing work permits inapplicable to individuals who hold family unification stay permits, but the process itself, which presumes the existence of an employer and good will on his part as a condition for getting a work permit, creates a situation where a family unification stay permit holder has great difficulty finding work and providing for his family.

66. Work permits are limited to specific sectors (construction, agriculture, industry and service). A person who does not wish to work in one of these sectors cannot lawfully work in Israel. This restriction may be reasonable when it comes to Palestinian workers who live in the West Bank or migrant workers who choose to enter Israel in order to work in these sectors in the first place; however, it is not reasonable when it comes to Palestinians who live in Israel permanently. For example, a teacher who is in the process of family unification cannot work in Israel in his profession as the designated sectors do not include teaching.

67. Moreover, even if a stay permit holder wished to work in those restricted sectors, he would have great difficulty finding an employer willing to ask for a work permit for him. The reason is that an employers who obtain permits for employing Palestinians work with Palestinian labor contractors. The contractors provide the Israeli employers with lists of names of workers in the requested sector. For example, a building contractor from Netanya who receives a permit to hire 50 Palestinian construction workers would contact a labor contractor from the Tulkarem area who would provide him with a list of 50 Palestinian laborers from the area who have security clearance to enter Israel. The Israeli employer would then give this list to the employment staff officer at the civil administration. This officer would issue the permits and they would be handed to the employees at the Tulkarem DCO. There is no reason for an Israeli employer who obtains a permit to hire Palestinians to ask for a single work permit for a Palestinian who resides in Israel as part of the family unification process when there is a Palestinian contractor who locates suitable employees on a wholesale scale.

68. Even in situations when an employer wishes to hire a single employee (an unusual situation as permits for employing foreign workers are given only in specific sectors which usually require a large number of employees), there is no reason for him to bother with the complicated procedure for procuring a work permit once every few months only in order to employ a Palestinian who has a family unification stay permit. He can hire anyone else with no need for procedures and no need to renew the work permit every few months.

69. Another difficulty is that a person who has a family unification stay permit and wishes to open his own business – a barbershop, a grocery shop etc. – cannot do so as the only way to be lawfully employed is to have an employer contact the authorities.

70. Thus, by imposing a procedure which does not serve the security purpose for which it was intended in the first place, or any other purpose, the Respondents have created a situation in which people who lawfully reside in Israel and wish to provide for their families, all Israeli residents, are unable to work regularly and cannot take advantage of available employment opportunities.

71. The absurdity is that this reality entirely contradicts Israel's interests. When stay permit holders are able to work and earn a dignified living in Israel, their families are less likely to slip into poverty and become dependent on social services. Moreover, Palestinians who have regular jobs in Israel are less likely to make frequent trips to the OPT where they might meet individuals with questionable security backgrounds. It seems that the authority has not weighed these considerations.

72. The reality described above forces many family unification permit holders to leave Jerusalem and work in the OPT to provide for their families. Thus, imposing a procedure which is anchored in the Foreign Workers' Law was designed for workers whose center-of-life is not in Israel on Palestinians who live in Israel as part of the graduated family unification procedure defies the logic behind the family unification process. This process is based on the foreign spouse's proving that his center-of-life is in Israel. Pushing foreign spouses into working in the OPT makes it difficult for them to prove that their center-of-life is in Israel and to show that they intend to settle in the country. This, in turn, may prevent their family unification from continuing.

73. The result is an absurd situation in which by not considering family unification permits to be work permits, the Respondents are forcing permit holders to seek employment outside Israel in order to provide for their families thereby breaching Respondent 1's condition of proving a center-of-life in Israel in order to renew the permits allowing them to remain in Jerusalem with their families.

74. This raises a suspicion that Respondent 1, the Minister of Interior, employs extraneous considerations: in denying family unification applicants the possibility of working in Israel, the Respondent sets a trap that makes it difficult for them to continue meeting the conditions for the family unification process.

75. To conclude this section, the Respondents, as administrative authorities, subject Palestinians who live in Israel as part of the family unification process and wish to work in Israel for their living to a procedure which was never meant for them or their situation in an arbitrary and unreasonable manner and without taking the relevant considerations into account.

Human rights violations

> **The lawfulness of a governmental act depends on whether the governmental measure which has been employed – and which (logically) corresponds to the fulfillment of an appropriate purpose – does not excessively infringe on values and principles which are worthy of protection. The governmental act – which corresponds to achieving the appropriate purpose – must infringe on principles and values which are worthy of protection to the minimal extent and the infringement must be appropriately proportional to the advantage gained by achieving the appropriate purpose. This gives rise to the need to examine the principles and values which are worthy of protection. Only by**

> **addressing these, is it possible to establish whether the measure that has been employed is proportionate. Human rights are at the epicenter of these principles and values.** (HCJ 4330/93 **Ghanem v. Bar Association Tel Aviv District Committee**, IsrSC 50(4), 221, para. 12 of the judgment of Hon. President (as was his title then) Barak).

Violation of the right to dignity

76. Sec. 2 of Basic Law: Human Dignity and Liberty sets forth "**[t]here shall be no violation of the life, body or dignity of any person as such**". This means no violation of the dignity of any person: not just a citizen, not just a resident, but even a person who is unlawfully present in Israel.

77. President (emeritus) Aharon Barak explains what comes under the right to human dignity:

> **First, human dignity is the dignity of a person 'as such', hence my view that a person's dignity is a person's equality. Discrimination against an individual violates his dignity… Second, a person's dignity is a person's free will. It is the freedom he is given to develop his personality and be the master of his fate… Third, a person's dignity is injured if his life or integrity (physical or mental) are harmed. Human dignity presupposes a guarantee for minimal human existence (material and spiritual)… Fourth, human dignity presupposes an individual who is not a means for satisfying the needs of another** (Aharon Barak, **A Judge in a Democratic Society**, First Edition 2004, pp 137-138).

> **The right to human dignity is a collection of rights which must be upheld in order to have dignity. The right to human dignity is founded on the recognition that humans are free creatures who develop their bodies and minds as they wish in the society in which they live. The epicenter of human dignity is the sanctity of human life and liberty. Human dignity is founded on the autonomy of the individual's will, freedom of choice and freedom of action as a free being. Human dignity is founded on the recognition of the individual's physical and mental integrity, his humanity, his value as a person, all irrespective of the benefit he might be to others** (HCJ 6427/02 **Movement for Quality**

> **Government v. Knesset**, IsrSC 61(1) 619, para. 35 of the judgment of Hon. President (as was his title then) Aharon Barak).

Violation of the right to a livelihood and a dignified living

78. Violation of the right to work and to earn a dignified living breaches Basic Law: Human Dignity and Liberty. The Supreme Court acknowledges the right for minimal dignified existence as part of the right to dignity:

> **Human dignity includes… protecting minimal human existence… a person who lives on the street and has no home is a person whose human dignity has been injured; a person who goes hungry is a person whose human dignity has been injured; a person who has no access to basic medical treatment is a person whose human dignity has been injured; a person who is forced to live in demeaning material conditions is a person whose human dignity has been injured** (LCA 4905/98 **Gamzu v. Yisha'ayahu**, IsrSC 55(3) 360, sec. 20 of the judgment of Hon. President (as was his title then) Aharon Barak)

> **… the provision of Basic Law: Human Dignity and Liberty, … is meant to ensure basic human existence for each individual in society…. The Basic Law includes the right to work, and this right includes the right for minimal human existence, and the right not to be supported by welfare. Denying a person minimal means of subsistence and minimal income violates his dignity. In the words of Prophet Isaiah: 'Is it not to share your food with the hungry and to provide the poor wanderer with shelter - when you see the naked, to clothe them, and not to turn away from your own flesh and blood?' (Isaiah 58:7).** (HCJ 3512/04 **Shezifi v. National Labor Court**, IsrSC 59(4) 70, para. 3 of the judgment of Hon. Jus. Arbel).

79. The situation in which people who possess stay permits for Israel and wish to provide for themselves and their children but are unable work because of the many impediments placed in their way is a violation of their right to a livelihood and their families' and children's right for a minimal

dignified existence. In view of the provision of the Temporary Order, this situation is now permanent and continuous – a fact which exacerbates the infringement on the rights.

80. This violation also breaches the International Covenant on Economic, Social and Cultural Rights of 1966, signed and ratified by Israel, including Art. 61 thereof which stipulates:

> **The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right**.

81. Additionally, a person's inability to provide for his family is an impediment to fulfilling his parental duties toward his child. These duties are recognized both in Israeli and international law. So, for example, Sec. 15 of the Legal Competency and Guardianship Law 5722-1962, entitled "parental duties" stipulates as follows:

> **Parental guardianship includes the right and the duty to care for the needs of a minor, including his education, studies, employment and professional training as well as to oversee, manage and develop his assets.**

82. Art. 5 of the Convention on the Rights of the Child stipulates that a state must respect the rights of the guardian:

> **States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention**.

Restrictive employment

83. Subjecting family unification stay permit holders to the procedure for issuing work permits creates a situation in which an employee who lives in Israel is chained to his employer and remains at his mercy. Even if a stay permit holder finds an employer who takes the necessary measures for

obtaining a work permit, the permit he receives is valid for a few months and lists the sector in which he is allowed to work, as well as the name and address of the employer. His continued employment and ability to provide for his family is forever dependant on the employer's good will. This situation creates complete dependence of employees on their employers and provides fertile ground for exploiting them and violating their basic rights.

84. In some situations restricting an employee to one employer serves security or state interests. So, for example, in the case of migrant workers, allowing an employee to work for only one employer is a response to the need to battle illegal immigration. In the case of Palestinian workers from the West Bank, it serves a security need. However, restricting Palestinians who have family unification stay permits to specific employers serves no purpose as there are no concerns of illegal immigration or a security threat. In this case, restrictive employment serves only the employers' interests and paves the way for taking advantage of employees. For this reason, it is entirely unacceptable.

85. It should be noted that even where restrictive employment serves some interest, such as in the case of migrant workers, where restrictive employment is meant to allow monitoring of their presence in Israel, the Supreme Court has ruled that legal measures used by the government for restricting workers to their employers were disproportionate and violated human dignity and liberty in their most basic sense, including autonomous free will and freedom of choice as the basis of a person's liberty to shape his life, develop his personality according to his wishes, freedom of occupation, freedom to make decisions and bargaining rights:

> **The restrictive employment arrangement violates the basic right of the foreign workers. It violates the inherent right to liberty. It violates human freedom of action. It denies the autonomy of the free will. It tramples upon the basic right to be released from a work contract. It takes away a basic economic bargaining power from a party to employment relations who is already weak. By doing all this, the restrictive employment arrangement violates his human dignity and liberty in the most basic sense.** (HCJ 4542/02 **Kav LaOved Worker's Hotline v. Government of Israel**, IsrSC 61(1) 346 (hereinafter: **Kav LaOved**), para. 29 of the judgment of Hon. Jus. Levy)

And in para. 39 of his judgment:

> **My conclusion is therefore that the restrictive employment arrangement violates the human right to dignity and the human right to liberty, which are enshrined in Basic Law: Human Dignity and Liberty. Human dignity is not satisfied because the restrictive employment arrangement violates the freedom of action of the individual and his autonomy of will.**

Presence in Israel with no permit for employment

86. In many cases concerning the question of issuing work permits to foreign nationals who have a residency visa for Israel, the court has held that a situation which leaves foreign nationals to remain in Israel with no ability to work for their basic subsistence is inconceivable and unreasonable. If the state decides that a person is not to be removed from the country, it is incumbent upon it to provide a solution allowing the basic human subsistence of said person.

87. Hon. Jus. Amir, of the Central District Court, sitting as the Court for Administrative Affairs, has held that no one should go hungry in the State of Israel whatever visa they hold and that it is impossible for the state to put people in a situation that compels them to break the law in order to make a living, in the most basic sense of the term (AP 35858-06-01 **Seiko v. Ministry of Interior** and other petitions, not yet reported, judgment dated July 13, 2010). These remarks, *mutatis mutandis*, are relevant to the case at bar.

88. The foregoing is all the stronger when the person remains in Israel for a long period of time. In the same judgment, Hon. Jus. Amir added:

> **I have seen fit to comment further that I do not believe that anyone who is permitted to remain in Israel is also entitled to work in the country. Tourists are clearly not entitled to work. It is also clear to me that when individuals remain in Israel for a short time or when their matter is still under review, for example, it has yet to be determined whether they are nationals of a country which entitles them to collective protection – indeed, this is a short term affair, and there is no place to allow employment in such a case. However, when the issue is a long-term arrangement, albeit temporary rather than permanent, one cannot ignore the problem and say that a person may live here for many years unable to provide for himself on a basic level**.

89. As stated, in view of the Temporary Order, the status of Palestinian stay permit holders will not be upgraded and they are destined to live in Israel for many years with to these permits only.

90. The justices of the Supreme Court have expressed their opinion on a similar issue in their judgment in the petition seeking that driving permits be granted to individuals who have stay permits for Israel:

> **… [w]e were troubled by the question of whether to give weight to how long a person has had a DCO permit. The question is more troubling considering the fact that the possibility that the Petitioners and others in a similar position would be able to upgrade their status is significantly diminished at the present time due to the provisions of the Temporary Order Law**. (HCJ 5539/05 **'Atallah v. Minister of Defense** (published in Nevo), para. 11 of the judgment of Hon. Jus. Grunis).

Violation of the principle of equality

91. The principle of equality is part of the constitutional right to human dignity:

> **The right to human dignity includes the right to equality, in so far as this right is closely and objectively connected with human dignity (see *ibid* [51], at para. 33). It should be noted that the right to equality is not an 'implied' constitutional right: it is not recognized outside the rights expressly provided in the Basic Law. The right to equality is an integral part of the right to human dignity. Recognition of the constitutional aspect of equality derives from the constitutional interpretation of the right to human dignity. This right to human dignity is expressly recognized in the Basic Law. Notwithstanding, not all aspects of equality that would have been included, had it been recognized as an independent right that stands on its own, are included within the framework of human dignity. Only those aspects of equality that are closely and objectively connected to human dignity are included within the framework of the right to human dignity**. (HCJ 7052/03 **Adalah v. Minister of Interior** (hereinafter: **Adalah**), IsrSC 61(2), para. 39 of the judgment of Hon. President (as was his title then) Barak.)

92. In this context, the Supreme Court adopted the median model for interpreting the right to dignity.

> **The median model does not limit human dignity to humiliation and contempt, yet does not expand it to include all human rights. According to this interpretation, human dignity encompasses all the aspects of human dignity which are expressed in various constitutions as special human rights, but are characterized by being inextricably linked (according to our conceptualization) to human dignity. According to this approach, human dignity includes discrimination which does not involve humiliation, provided that it is inextricably connected to human dignity as an expression of autonomous individual will, freedom of choice, freedom of action and other such aspects of human dignity as a constitutional right**. (HCJ 6427/02 **Movement for Quality Government v. Knesset**, IsrSC 61(1) 619, para. 38 of the judgment of Hon. President (as was his title then) Aharon Barak)

93. In the matter at hand, discrimination with respect to people's ability to provide for themselves and their ability to choose their profession and pursue it, clearly violates their human dignity.

94. Imposing so many restrictions as to preventing people from working for their living constitutes discrimination against the group which is the subject herein as compared to another similar group. Respondent 1 makes an improper distinction between Palestinians who have family unification permits, who are permitted to work only subject to severe limitations, and foreign nationals who are not Palestinian and who are also undergoing family unification and receive B/1 visas which also serve as work permits and are not limited to specific sectors.

95. Members of both groups are married to permanent residents; the Minister of Interior has approved their family unification and they live in Israel with their spouses and families. Yet, members of one group, of various nationalities, are permitted to work in Israel under the family unification permit granted to them. They may provide for their families, choose their field of employment and realize their skills and talents. Members of the other group, who belong to a specific nationality, Palestinian, are not permitted to work in Israel under the permits given to them and they must undergo a complicated process which, at worst, frustrates their ability to work and earn a living and, at best, allows them to work in a limited number of sectors while restricting them to an employer without the possibility of developing and realizing their skills. This is clearly wrongful

discrimination given the lack of a relevant distinction between the groups and the severe violation of human dignity.

96. In addition, we reiterate that this is a particularly weak and vulnerable group which has been denied the possibility of upgrading its status due to the Temporary Order. Its members remain without status in Israel indefinitely, subject to constant monitoring and examination by the Ministry of Interior. Their family unification permits may be revoked at any given moment. The fact that it is such a vulnerable group, which suffers discrimination indefinitely, exacerbates the violation.

97. It should be noted that both the court and the Ministry of Interior generally view the two types of visas – a family unification stay permits and B/1 visas as essentially parallel. So, for example, in AP (Jerusalem) 430/04 **'Abd al-Malek al-Jaber v. Minister of Interior** (published in Nevo), judgment of Hon. Jus. Adiel dated March 18, 2004 as well as in Ministry of Interior procedures regarding processing status for foreign nationals married to Israeli citizens (procedure no. 5.2.2008 http://www.piba.gov.il/Regulations/71.pdf [in Hebrew]). Considering these two visas as parallel demonstrates a lack of relevant difference between the two groups. The only distinction between them is an improper one based on nationality.

98. Moreover, in the past, when the Supreme Court validated the graduated procedure for foreign spouses of permanent residents, which took effect in 1995, the visa in question was a B/1 visa for 27 months from the moment the family unification application was approved. This visa was to be given to any foreign national married to a permanent resident, including Palestinians from the West Bank. Thus, spouses of permanent residents, who entered the graduated procedure, Palestinian spouses included, received a permit to reside and work in Israel. This is the Ministry of Interior procedure for family unification for spouses of permanent residents which the HCJ validated.

See:

HCJ 2950/96 **Musa et al. v. Minister of Interior** (published in Nevo).
AP 422-05-10 **Abu Kalabin et al. Oz Unit – Ministry of Interior** (published in Nevo).
Sec. 3 of the letter of Aner Helman of the State Attorney's Office dated February 4, 1997, attached hereto as **Exhibit P/8**.

99. The petitioners do not know why or when the Respondents, or any one of them, decided to make the improper distinction between non-Palestinian spouses of permanent residents and Palestinian

spouses of permanent residents, and give the former family unification permits which constitute work permits and the latter family unification permits which do not.

Violation of the freedom of occupation

100. Freedom of occupation is part and parcel of human dignity and autonomy:

> **… every person has a fundamental right to autonomy. This right has been defined as the individual's right to determine his actions and wishes according to his choice and to act in accordance to these choices… this right to shape one's own life and destiny encompasses all of the central aspects of a person's life – where he might live; his occupation, who he lives with; what he believes. It is pivotal for the being of every single member of society. It expresses acknowledgment of the individual's value as if he were an entire universe. It is essential for every individual's personal identity, in the sense that a person's overall choices define his life and his personality…** (AA 2781/93 **Da'aka v. Carmel Hospital**, IsrSC 53(4) 526, para. 15 of the Judgment of Hon. Jus. Or).

101. From the beginning of this court's case law, freedom of occupation was given the status of a fundamental right and it was granted to everyone. The status of the right to freedom of occupation has since been reinforced in light of Basic Law: Freedom of Occupation (HCJ 2740/96 **Shansy v. Diamond Comptroller**, IsrSC 51(4), para. 9 of the judgment of Hon. Jus. Strasberg-Cohen).

See also:
HCJ 1715/97 **Israel Investment Manager Association v. Minister of Finance**, IsrSC 51(4) 367, para. 15 of the judgment of Hon. President (emeritus) Barak;
HCJ 9723/01 **Levy v. Director of the Industry and Services Department for Foreign Worker Permits**, IsrSC 57(2), para. 5 of the judgment of Hon. Jus. Procaccia.

102. The reality in which a person who lawfully resides in Israel for years cannot work as a free person, according to his choices and preferences, is a severe violation of the fundamental right to freedom of occupation.

103. Indeed, the right, as enshrined in Basic Law: Freedom of Occupation, refers to citizens and residents of the country, whereas the group referred to herein does not belong to these categories.

However, as the Supreme Court contends, anyone present in Israel is entitled to freedom of occupation, including foreign workers whose connection to the country is much weaker than that of the group which is the subject of this petition:

> **I think it appropriate to point out, nonetheless, that the laconic and sweeping position of the respondents, on the face of it, that foreign workers in Israel do not enjoy the constitutional right to freedom of occupation, in view of the language of Basic Law: Freedom of Occupation, is in my opinion problematic, in view of the case law recognition of the right to freedom of occupation as a right enjoyed by 'everyone', a case law recognition that preceded the Basic Laws (see HCJ 1/49 Bejerano v. Minister of Police [12]; HCJ 337/81 Miterani v. Minister of Transport [13]; see also the position of Prof. Barak on freedom of occupation as a 'constitutional' right as opposed to freedom of occupation and human dignity: Barak, Constitutional Interpretation, at pp. 585, 598), in view of the status of the right in international law, and especially in view of the alleged violation to the right to freedom of occupation...** (**Kav LaOved**), para. 42 of the judgment of Hon. Jus. Levy)

104. We shall note, beyond requirement, that the definition of the term "resident" changes periodically and can be interpreted differently. Case law often uses the test of most ties or the test of center of life in order to examine a person's residency. A purposive interpretation of the term "resident" in Basic Law: Freedom of Occupation would surely lead to the conclusion that a resident is a person most of whose ties are to Israel and that the Basic Law was designed to apply freedom of occupation to anyone whose center of life is in Israel irrespective of whether or not he has an Israeli ID card.

The tests of proportionality

105. There is no doubt that the administrative measure the Respondents are applying to Palestinians who lawfully reside in Israel for many years, i.e. not providing work permits as part of the family unification permits and imposing on them a procedure designed for Palestinians living in the OPT for obtaining a work permit – violates their right to dignity, a livelihood, equality and freedom of occupation.

106. The lawfulness of an administrative measure is determined according to the principle of proportionality. According to this principle, any governmental act must be designed to fulfill an appropriate purpose. It must be applied to an appropriate degree and not beyond necessity.

> **As the "fundamental of fundamentals of administrative law", as Prof. Dafna Barak-Erez calls it (Administrative Law 103 (2010)), the principle of lawful administration is currently enshrined in the constitutional limitations clause, in light of which any governmental act must be examined, at least those compromising protected constitutional values - primarily human rights** (HCJ 2651/09 **The Association for Civil Rights v. Minister of Interior**, published in Nevo, para. 6 of the judgment of Hon. Jus. Levy).

> **Indeed, the test of proportionality was designed to protect human rights… a governmental act is proportionate only if it fulfills a proper purpose using suitable means which are least injurious to human rights and whose injury to human rights is appropriately proportional to the benefit they offer in achieving the purpose. This is a result of the constitutional status of human rights which no governmental act must violate, other than for "a proper purpose and to an extent no greater than is required" (the limitations clause in Basic Laws concerning human rights). This is required by our interpretive approach, according to which upholding human rights is the (general) purpose of any governmental act (see HCJ 953/87, 1/88 Poraz v. Mayor of Tel Aviv Yaffo et al; Labor Party in the City of Tel Aviv Yaffo et al. v. Tel Aviv Yaffo City Council et al. [11], at p. 329; HCJ 693/91 Efrat v. Director of the Population Registry at the Ministry of Interior et al. [12]). Only when the governmental act violates human rights to the least (most moderate) possible extent is it possible to say that the purpose of the governmental act, whose general purpose is to uphold human rights and its specific purpose is to achieve the special purposes underlying it – is appropriately fulfilled.** (HCJ 4330/93 **Ghanem v. Bar Association Tel Aviv District Committee**, IsrSC 50(4), 221, para. 12 of the judgment of Hon. President (as was his title then) Barak).

107. The first question asked in the proportionality test is whether the measure selected by the authority was designed for a proper purpose. A purpose is considered proper if, *inter alia*, it is designed to achieve a societal purpose or safeguard a public interest (see for example, HCJ 5016/96 **Lior Horev v. Minister of Transport**, IsrSC 51(4), para. 64 of the judgment of Hon. President (emeritus) Barak).

108. The Petitioners acknowledge that it is difficult for them to judge whether the purpose is proper as they fail to understand the purpose for which the procedure for issuing work permits is imposed on Palestinians holding family unification permits. The Petitioners put this question to the Respondents repeatedly, but the latter did not provide an answer as to the purpose of the measure.

109. Generally, the purpose underlying the arrangements for issuing work permits to foreign nationals is maintaining security. Other purposes are controlling illegal and protecting labor rights. The former is irrelevant to the population which is the subject of the petition, while the latter is not effectively assured by the measure discussed herein, as detailed above.

110. The tests of proportionality require an examination of the main purpose of the administrative measure in question. There is no doubt that the procedure for of issuing work permits to residents of the West Bank was primarily designed to achieve a security purpose. This is a clearly proper purpose.

111. Case law has developed three subtest designed to assist in examining the proportionality of a measure (see for example, HCJ 3477/95 **Ben 'Attiya v. Minister of Education, Culture and Sports**, IsrSC 49(5) 1; HCJ 4644/00 **Yafura Tavori LTD. v. The Second Television and Radio Broadcasting Authority**, IsrSC 54(4) 178; HCJ 3648/97 **Stemka v. Minister of Interior**, IsrSC 53(2) 728).

112. The first subtest is the test of rational means. There has to be a correlation between the purpose and the measure taken by the authorities to achieve the purpose, meaning the measure must rationally lead to the achievement of the purpose.

113. As detailed in the section on proportionality, the selected measure – imposing the procedure for issuing work permits to individuals who lawfully reside in Israel – does not achieve a security purpose. These individuals reside in Israel with their families in any case. Their family unification applications were approved following rigorous security checks which are repeated every time their stay permit is renewed. Thus, the security purpose is achieved by a different means. It is not clear

how not providing a work permit as part of a stay permit serves any security purpose and/or adds to the security purpose which has already been achieved during the process of approving the family unification application. Thus, the selected measure does not meet the first subtest of proportionality – the test of the rational measure.

114. Presuming, for the sake of argument, that the first test is met, that is, the measure is rationally connected to the purpose, we turn to the second proportionality subtest – the test of the least injurious measure. This subtest requires that the governmental measure at issue is the least injurious, considering the rights at stake, which are, in this case, fundamental rights of the first order. The status of these rights, as detailed above, and the extent of the violation caused by the selected measure require that an alternative, less injurious measure be employed. The measure selected by the authorities in the case at hand is designed for a different situation and a different group of people altogether. No attempt was made to devise a procedure that would be specific to the group at issue and that would be less injurious.

115. The third subtest of proportionality requires that the injury caused by the selected measure be proportional to the benefit reaped from it. The test requires an appropriate correlation between the means and the goal. The measure selected in this case fails to meet this third test as it causes harm and violates fundamental rights for a prolonged, indefinite period of time, without yielding any benefit. Alternatively, the benefit gained is speculative and questionable.

116. In conclusion, the measure employed by the Respondents fails all the subtests of proportionality and must be revoked.

The Temporary Order

117. As stated, the Temporary Order prevents Palestinian stay permit holders from having their status upgraded to temporary and then permanent status. These Palestinians reside in Israel lawfully, often for many years, without social rights, and, as detailed above, also without any real possibility of working lawfully. This situation is neither reasonable nor proportionate.

118. Both the State and the Supreme Court have emphasized that the purpose of the Temporary Order is strictly security (see **Adalah**, para. 60 of the judgment of Hon. President (as was his title then) Barak), para. 16 of the judgment of Hon. Jus. Cheshin). It is no wonder that withholding work permits from family unification permit holders is not enshrined in the provisions of the Temporary Order, as doing so would not serve its security purpose. One must wonder why the authorities have

chosen to act in this manner and cause a disproportionate injury to individuals who come under the Temporary Order, for no purpose.

119. The Temporary Order has created a group of people who live in Israel under the constant threat of being torn apart from their families, forever treated as foreign and suspect by the authorities. The Respondents add insult to injury by restricting these individuals' ability to work, make free choices, provide for their families, develop, be integrated into society and live a normal life.

Conclusion

120. Palestinians who live in Israel with their families as part of the family unification process and who seek to work in order to provide for their families are forced to apply for a work permit in the context of a complicated procedure which does not suit their situation. This procedure was originally meant for Palestinians who live in the West Bank and who leave Israel at the end of the work day. The Respondents imposed it on Palestinians who are the subject of this petition in an arbitrary and unreasonable manner while misapplying discretion.

121. Imposing the procedure violates fundamental rights: the right to dignity, a livelihood, equality and freedom of occupation. Imposing the procedure and violating these rights do not serve any legitimate purpose and fail to meet the test of proportionality.

122. In light of the foregoing, the Honorable Court is requested to issue an *order nisi* as requested, and render it absolute upon hearing the response of the Respondents. The Court is also requested to instruct the Respondent to pay for Petitioners' costs and legal fees.

123. This petition is supported by affidavits from Petitioners 1-4.

13 September 2011

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Sigi Ben Ari, Adv.

Counsel for the Petitioners