

המרכז לסיוע משפטי לעולים  
ЦЕНТР ЮРИДИЧЕСКОЙ ПОМОЩИ ОЛИМ



יהדות  
מתקדמת  
בישראל

התנועה ליהדות מתקדמת בישראל ■ המרכז לפלורליזם יהודי  
ДВИЖЕНИЕ ПРОГРЕССИВНОГО ИУДАИЗМА ■ ЦЕНТР ЕВРЕЙСКОГО ПЛЮРАЛИЗМА

Hotline for Refugees and Migrants



# YOU SHALL NOT MISTREAT HER

**A Decade since the Promulgation of  
the Family Unification Procedure for  
Migrant Victims of Domestic Violence**

August 2018

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## About the Hotline for Refugees and Migrants

The Hotline for Refugees and Migrants exists to safeguard the rights of refugees, migrants and survivors of human trafficking. Through client services, detention monitoring, legal action and public policy initiatives, the Hotline works to achieve systematic improvements and a rights based approach to migration law, policies and practices.

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## About the Israel Religious Action Center

The Israel Religious Action Center is the legal and political wing of the Israel Reform Movement. In 1992, with the waves of Aliyah from the Former Soviet Union and Ethiopia, IRAC decided to create legal aid centers for Olim (new immigrants), as part of its ideology of Tikkun Olam – social action. The aim of the Legal Aid Centers was to assist new immigrants in their successful absorption into Israeli society and to overcome the bureaucratic hurdles. In time, the legal Aid Centers focused more and more on questions of status in Israel and became one of the leading experts on issues of immigration and Aliyah.

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## Introduction

The status of migrants in Israel is determined by three laws: the Law of Return<sup>1</sup>, the Citizenship Law<sup>2</sup>, and the Entry to Israel Law<sup>3</sup>. The Law of Return applies to any Jew who is a resident of a country other than Israel who wishes to immigrate to Israel, as well as his children and grandchildren. These immigrants are eligible to receive Israeli citizenship. Under the Citizenship Law, a person can gain citizenship in Israel according to the Law of Return or through family reunification procedures. The status of all other migrants in Israel is determined by the Entry to Israel Law.

The State of Israel does not view itself as a destination country for migration, and government officials have stated many times that the only avenue for migration to Israel is through the Law of Return. Nevertheless, the reality is more complex. The attitude of state authorities, particularly that of the Population, Immigration and Border Authority (PIBA), towards non-Jews or non-citizens is formed by an array of regulations, procedures, decisions, and actions which indicates a clear policy: denial or prevention of status, detention and deportation of non-Jews. PIBA views itself as the "gatekeeper" to the State of Israel, charged with protecting its Jewish nature and character. Through its authority, PIBA implements a strict policy, dictated in part by the government, but also sets initiatives of its own, intended to make it difficult for non-Jews to obtain a legal status in Israel.

In 2007, Israel promulgated a special Regulation to enable non-citizen domestic violence victims who are married to their Israeli citizen abusers to obtain permanent residence status. Until then, non-citizen women<sup>4</sup> who left their abusive Israeli spouses faced removal from Israel, as their residence permit was conditional on their marriage to an Israeli. If their marriage ended before they obtained citizenship, they no longer had any right to stay in Israel and could be deported within weeks. Their only hope was a successful application to the Ministry of Interior's Inter-Ministerial Committee for Humanitarian Affairs (the "Humanitarian

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<sup>1</sup> The Law of Return, 1950: <http://www.mfa.gov.il/mfa/mfa-archive/1950-1959/pages/Law%20of%20return%205710-1950.aspx>.

<sup>2</sup> The Citizenship Law, 1952 (in Hebrew): [http://www.nevo.co.il/Law\\_html/Law01/011\\_001.htm](http://www.nevo.co.il/Law_html/Law01/011_001.htm).

<sup>3</sup> The Entry to Israel Law, 1952 (pdf): [https://www.unodc.org/res/cld/document/Law-no--5712-1952--entry-into-israel-law\\_html/Entry\\_Into\\_Israel\\_1952.pdf](https://www.unodc.org/res/cld/document/Law-no--5712-1952--entry-into-israel-law_html/Entry_Into_Israel_1952.pdf).

<sup>4</sup> There are no documented instances of non-citizen men who were abused by their Israeli citizen spouses, but the rules relating to non-citizens married to citizens are gender-neutral.

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Committee”), who could, if it found compelling circumstances, recommend an extension of their residence permit and even permanent residence status. Human rights organizations hoped that the 2007 regulation would eliminate any hesitation due to deportation concerns on the part of non-citizen women when deciding to leave their abusers, and reform the prior system under which domestic violence victims were punished for leaving their abusers through their loss of immigration status. Alas, in the decade since the regulation came into effect, there has been no improvement in outcome for domestic violence victims seeking to stay in Israel after leaving their abusive Israeli spouses. On the contrary, in recent years the authorities have become even more reluctant to allow non-citizen women who leave their Israeli spouses due to domestic violence to stay in Israel. This reluctance has led the Ministry of the Interior to purposely misread the letter and intent of the 2007 procedure, setting an impossibly high bar for these women to meet to prove their connection to Israel. This reluctance has also led the Ministry of Interior to vigorously defend against judicial and administrative appeals by these women in their efforts to stay in Israel.

## *I. Background*

Under PIBA's regulations<sup>5</sup>, the spouse of an Israeli citizen can be naturalized through the Graduated Procedure, which consists of a series of steps that culminate in citizenship approximately 4.5 years after initiating a request.<sup>6</sup> Upon application for naturalization to PIBA,<sup>7</sup> the spouse receives a one-year B/1 permit, which entitles her to work but not to social rights such as health insurance, unemployment and disability benefits and a pension. After six months, the spouse receives an A/5 permit, which entitles her to work and to social rights. This permit may be renewed annually for four years, at which point the spouse is entitled to apply for citizenship, which will usually be granted if PIBA finds the relationship to be genuine and in the absence of any criminal or security impediments to granting citizenship.

If the relationship is terminated prior to receipt of citizenship due to divorce, separation or death of the Israeli partner, the foreign partner may, upon the fulfillment of certain criteria, be referred to the Humanitarian Committee.<sup>8</sup> The Humanitarian Committee may recommend permitting the foreign partner to stay for some months or years, or even permanently if it finds compelling humanitarian reasons to do so. However, though regulations exist to address the needs of divorcing or widowed foreign spouses, particularly when they have children with the Israeli spouse, PIBA does not routinely grant such relief. Often (and unfortunately, lately, more often than not), they are required to leave Israel, regardless of whether they have children in common with their partner.

Even in the healthiest of relationships, where the non-citizen partner's immigration status is wholly dependent on an Israeli partner there is an imbalance of power. Where the Israeli partner is abusive, the imbalance of power provides a foundation

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<sup>5</sup> For a detailed and thorough report on Israel's immigration policies and relevant agencies, see *The Labyrinth: Migration, Status and Human Rights*, a joint publication of the Hotline for Refugees and Migrants, The Association for Civil Rights in Israel and Physicians for Human Rights – Israel: <http://hotline.org.il/en/publication/the-labyrinth-migration-status-and-human-rights/>.

<sup>6</sup> Regulation For Processing The Provision Of Legal Status To A Foreign Spouse Married To An Israeli Citizen (Regulation 5.2.0008, published on October 1, 2014, in Hebrew): [https://www.gov.il/he/Departments/policies/status\\_foreigner\\_married\\_to\\_israeli\\_procedure](https://www.gov.il/he/Departments/policies/status_foreigner_married_to_israeli_procedure).

<sup>7</sup> PIBA is a division of the Ministry of Interior, established in 2008.

<sup>8</sup> Regulation for Processing the Termination of the Graduated Regulation for the Foreign Partner of an Israeli, (Regulation 5.2.0017, published on May 17, 2015, in Hebrew): [https://www.gov.il/he/departments/policies/israeli\\_spouse\\_process](https://www.gov.il/he/departments/policies/israeli_spouse_process).



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for total domination of the immigrant partner. Knowing that the moment she leaves her abusive partner, she will lose her residence permit and be deported creates a tragic disincentive for an immigrant woman to leave her spouse.

In the matter of L.S., a seminal case involving a Russian woman who moved to Israel in 2001 by invitation of her Israeli spouse, but left him due to his abuse, PIBA extended her temporary resident visa every few months, but declined to grant her permanent status. Its decision was influenced, at least in part, by her abusive spouse's claim that she married him for his Israeli citizenship. In 2006 L.S. was informed that the Humanitarian Committee denied her request for citizenship and ordered her deportation, along with her 13-year-old Israeli daughter. In justifying its decision, the Humanitarian Committee noted that the couple's daughter, an Israeli citizen from birth by virtue of her father's citizenship, has no contact with her father. L.S. appealed the decision on March 30, 2006. In the administrative petition (a type of appeal), she requested that PIBA establish and publish threshold criteria that would enable immigrants married to their Israeli abusers who leave the relationship prior to naturalization to obtain resident status.<sup>9</sup>

At around the same time as the L.S. petition, the Israel Religious Action Center's Legal Aid Center For Olim and the Association For Civil Rights in Israel, which represent many of the immigrant women who leave their Israeli partners to escape abuse, requested help from then-Member of Knesset Zehava Galon of the Meretz party to address this phenomenon. MK Galon called for a meeting of the Knesset's Internal Affairs and Environment Committee to discuss the matter of foreign domestic violence victims who are deported from Israel. At the meeting, which took place on May 23, 2006<sup>10</sup> members of Knesset listened to representatives of IRAC's Legal Aid Center For Olim (LACO), the Association For Civil Rights in Israel (ACRI), PIBA and others, and asked that PIBA create a special Regulation to address the immigration status of domestic violence victims who seek to stay in Israel after leaving their abusive spouses. Members of Knesset agreed with advocates for immigrant domestic violence victims that PIBA should delineate clear Regulations that would roadmap the process to extend residence permits for women who fall into this group. They also agreed that the then-current situation must be changed; domestic violence victims should not be forced into a legal limbo as they wait for

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<sup>9</sup> Administrative Petition 8634/08, *L.S. v. Minister of the Interior* (Nevo August 12, 2009). The March 30, 2006 administrative petition was ultimately erased when the Humanitarian Committee reconsidered its recommendation to deport L.S. and extended her temporary resident visa.

<sup>10</sup> Transcript of the May 23, 2006 meeting of the Knesset's Internal Affairs and Environment Committee about battered foreign women who are deported from Israel may be found at (In Hebrew, doc): [http://fs.knesset.gov.il/17/Committees/17\\_ptv\\_131804.doc](http://fs.knesset.gov.il/17/Committees/17_ptv_131804.doc).

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months and sometimes years for a decision from the Humanitarian Committee. Once the decision is received, at best it offers temporary relief in the form of a one-year extension of their residence permit which necessitates repeated applications to PIBA for a review of their file and extension of their permits.

After nearly nine months of silence from PIBA, on February 12, 2007, the Israeli newspaper Haaretz reported that the Minister of Interior announced that domestic violence victims would no longer be automatically deported, and outlined a procedure (the Domestic Violence Procedure) that would set threshold conditions for them to meet in order to be referred to the Humanitarian Committee.<sup>11</sup> PIBA did not make a copy of the Domestic Violence Procedure, Regulation 5.2.0017A dated April 18, 2007, available to the public until the summer of 2007. Regulation 5.2.0017A was superseded by Regulation 5.2.0019, a revised version, on April 5, 2012, and was revised again on October 15, 2013.<sup>12</sup> A translation of the text of the current iteration of the Domestic Violence Procedure is included as Appendix A.

The Domestic Violence Procedure applies only to non-Israeli spouses whose marriage was registered in the population registry and who submitted a request for status with their spouse-sponsor. The non-Israeli spouse must prove the alleged abuse in one of three ways: having spent a month or more in a battered women's shelter, obtained an order of protection against the abusive spouse, or provided other evidence of the abuse. If these preconditions are met, her case will be transferred to the Humanitarian Committee for its determination as to her status, but only if:

- a. the couple has a child together, she has custody of the child or consistent and close contact with the child and a social worker opined that her departure from the country would significantly harm the child; or
- b. the couple does not have a child together but the duration of the marriage passed the halfway point of the naturalization process (more than two years with A/5 status) and she underwent an interview process to determine her connection to Israel as compared to her connection to her country of origin.

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<sup>11</sup> Ilan, Shahaar. "Minister of the Interior: Battered Foreign Women Will Not Be Deported Immediately" Haaretz, February 12, 2007 (in Hebrew): <https://www.haaretz.co.il/misc/1.154%90>.

<sup>12</sup> Regulation 5.2.0019, published on October 15, 2013, Procedure For Terminating The Graduated Procedure To Regularize Legal Status For the Spouses of Israelis As A Result Of Violence Perpetrated By The Israeli Partner (in Hebrew): [https://www.gov.il/he/departments/policies/procedure\\_stop\\_process\\_of\\_foreign\\_permit\\_breakup\\_resulting\\_of\\_violence\\_from\\_israeli\\_partner](https://www.gov.il/he/departments/policies/procedure_stop_process_of_foreign_permit_breakup_resulting_of_violence_from_israeli_partner).

## ***II. The Domestic Violence Procedure: Flaws In Its Enactment and Promulgation***

### **A. Failure To Consult Advocates When Drafting the Domestic Violence Procedure**

The Domestic Violence Procedure arose in response to years of complaints by advocates for non-Israeli domestic violence victims who, in the best case scenario, fought and waited for years for PIBA to give them permanent status, and in the worst case scenario were deported from Israel within weeks of leaving their Israeli abuser spouses. All these decisions by PIBA were made with no consistency or predictability in outcome, and with no guidelines to aid victims and their attorneys in crafting their applications. However, PIBA failed to include in its rule-making process these same advocates with knowledge of the nature of the problem that the Domestic Violence Procedure was to solve. Apart from the May 23, 2006 fifty-minute Knesset meeting about this topic, PIBA had no interaction with advocates for immigrant domestic violence victims in the nearly nine months it took for the Domestic Violence Procedure to be announced to the media on February 12, 2007.

### **B. Failure To Publicize The Domestic Violence Procedure**

Representatives of the domestic violence victims who were to be helped by the Domestic Violence Procedure had no access to the actual document until the summer of 2007, approximately five months after the announcement of its existence. Advocates had heard of the Domestic Violence Procedure through the press, but its existence was shrouded in great mystery. The initial iteration of the Domestic Violence Procedure, Regulation 5.2.0017A, was dated April 18, 2007, two months after the announcement of its existence.

Victims to whom the Domestic Violence Procedure applies are not told by PIBA that they are eligible for special consideration and that there is a regulation that governs their status. This information should be made easily accessible to immigrants renewing their residence permits, so that if they do suffer from domestic violence, they will know that their situation may qualify them for relief.

### **C. Failure To Adequately Include Advocates When Revising The Domestic Violence Procedure**

A comparison of the initial Domestic Violence Procedure, Regulation 5.2.0017A, and its first revision, Regulation 5.2.0019 updated on May 4, 2012, shows that the revision

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in fact worsened the options available to domestic violence victims in three ways:

first, the revision permits the Humanitarian Committee to downgrade a domestic violence victim's temporary residence permit from A/5 to B/1. This eliminates a domestic violence victim's entitlement to social benefits such as health insurance (particularly damaging to a victim of abuse who requires medical care) and equates her status with that of a migrant worker, rather than a temporary resident in the process of becoming a citizen;

second, the revision eliminates the instruction to the Humanitarian Committee, that it could, at its option, award 1) an A/5 permit for a maximum of three years, and then examine the applicant's request for permanent residency, or; 2) award an A/5 permit for a minimum of two years and then examine any change in circumstances; and

third, the revision makes stricter the criteria for relief for domestic violence victims who have no children with their abusive spouse by changing the requirement for them to have reached the halfway point of the Graduated Procedure to a requirement that they surpass the halfway point of the Graduated Procedure.

In addition, in the revision, the examination of a woman's connection to Israel was described more specifically as an examination of the length of her stay in Israel (and whether she was documented at the time), her work in Israel, her relatives in Israel and her assimilation into Israeli society. The examination of a woman's connection to her country of origin was described as the presence of relatives and property there, visits there during her stay in Israel and social entitlements there.<sup>13</sup> Generally, a woman who is in the process of becoming a citizen has been in the country for fewer than 4.5 years, assuming that her request for citizenship based on her marriage to an Israeli citizen was filed promptly. One exception is in the case of an applicant who had been living in Israel previously on another visa, but even then generally PIBA argues that the prior period should not be taken into account. This length of time would be dwarfed by the length of her stay in her country of origin. Aside from a spouse and any children, most non-citizen women leave their first degree relatives behind when moving to Israel in order to be with their Israeli spouse. In addition, there is a limit to the extent to which any immigrant can assimilate into Israeli society in under five years. For a woman who is struggling in a violent relationship and may be isolated by her spouse, the prospects for

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<sup>13</sup> The revisions in the Domestic Violence Procedure with respect to examining the applicant's connection to Israel and her country of origin were adopted by as a result of the Israeli Supreme Court's decision in *F.Z. v. Minister of Interior* 8611/08 (Nevo February 27, 2011).

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assimilation in just a handful of years are even more limited. In this way, most of the Domestic Violence Procedure's enumerated indications demonstrating connection to Israel versus those to her country of origin are virtually guaranteed to lead to the conclusion that her connections to her country of origin are stronger.

The first revision, by eliminating the permanent residence option from the Humanitarian Committee's discretion to grant relief, removes any entitlement or expectation that the Domestic Violence Procedure would conclude in permanent residence for a domestic violence victim. This means that a woman may spend years applying and reapplying for status with the threat of deportation continually hanging over her head, and, as mentioned above, she may also be downgraded to a B/1 permit, with no healthcare, unemployment and disability benefits and other social rights. At the same time, the first revision states that after the Humanitarian Committee's initial review and decision with respect to the file, further decisions about the file, for instance whether to grant permanent residence, will be made by PIBA's regional bureaus. In reality women are referred to the Humanitarian Committee on an annual basis and must go through the committee for renewal several times, with no actual limit to the procedure.

Advocates for domestic violence victims were neither consulted nor informed of the revision until it was a *fait accompli*. To the extent that the initial version of the Domestic Violence Procedure gave anyone the impression that PIBA wished to encourage immigrants to leave their abusive Israeli partners by alleviating their fears about deportation, the revision made it clear that PIBA's goal was otherwise. A domestic violence victim contemplating her options would be on notice, when seeing the revisions, that PIBA is not inclined to grant her permanent residency and may even cut her social benefits and downgrade her status as she waits for her application to be reviewed.

On June 4, 2013, a year after the revision, there took place a joint meeting of the Knesset Committees on Foreign Workers and Public Petitions of the 19th Knesset, which included representatives of PIBA as well as advocates who work with non-citizen domestic violence victims and a few of the women themselves.<sup>14</sup> The subject of the discussion was the rights of domestic violence victims without permanent status and their children. At the end of the discussion, the committees requested that PIBA change the Domestic Violence Procedure so that marriage to and a child in common with an Israeli citizen would automatically entitle a woman

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<sup>14</sup> Transcript of the June 4, 2013 joint meeting of the 19th Knesset's Foreign Workers and Public Petitions Committees may be found in Hebrew at (doc): [http://fs.knesset.gov.il/19/Committees/19\\_ptv\\_242137.doc](http://fs.knesset.gov.il/19/Committees/19_ptv_242137.doc).

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to have her case heard by the Humanitarian Committee, with no requirement for an A/5 permit. The committees also requested that the Humanitarian Committee shorten its wait times for deliberation.

As a result of the joint session, the Domestic Violence Procedure was revised a second time on October 15, 2013 to its current iteration, in which marriage to and a child in common with an Israeli citizen would automatically entitle a woman to have her case heard by the Humanitarian Committee, with no requirement for an A/5 permit, provided the other conditions such as the registration of the marriage and the proof of domestic violence are met. Also at the June 4, 2013 Knesset meeting, advocates for domestic violence victims requested that PIBA designate a contact person with whom they could speak when the need arose. Amnon Ben Ami, the Director General of PIBA at the time, promised that he would designate a contact person, and that he personally meets with all the heads of the human rights and other advocate organizations once every 3-6 months. In the 2.5 years since that meeting and until the conclusion of his tenure at PIBA at the end of 2016, he met with advocates twice at most. Neither of his two successors to date, Amnon Shmueli and Professor Shlomo Mor-Yosef, have met with advocates to discuss the matter of the Domestic Violence Procedure.

The Knesset Committees on Foreign Workers and Public Petitions of the 19th Knesset reconvened for a second joint meeting on November 5, 2013 to follow up on the June 4, 2013 meeting.<sup>15</sup> One of the issues raised by advocates and members of Knesset was the failure of the Domestic Violence Procedure to provide relief for women whose abusive spouses purposely avoid registering their marriage and applying for permanent status on their behalf in order to more effectively dominate them and more easily discard them when the relationship ends. In response, Amos Arbel, the head of PIBA's Registration and Status Division, referred the participants to a catchall provision in the Domestic Violence Procedure. The catchall provision states that, in cases of proven domestic violence, when the file does not otherwise qualify for a hearing by the Humanitarian Committee, the local bureau may refer the file to the regional head of desk with a recommendation for an exception to be made, and extend the applicant's permit until a decision is made. In practice, the catchall provision of the Domestic Violence Procedure adds no additional substantive relief to non-citizen domestic violence victims.

The Knesset Committees on Foreign Workers and Public Petitions of the 19th

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<sup>15</sup> Transcript of the November 5, 2013 joint meeting of the 19th Knesset's Foreign Workers and Public Petitions Committees may be found in Hebrew at (doc): [http://fs.knesset.gov.il/19/Committees/19\\_ptv\\_261477.doc](http://fs.knesset.gov.il/19/Committees/19_ptv_261477.doc).

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Knesset reconvened for a third and final joint meeting on March 4, 2014 to follow up on the prior meetings.<sup>16</sup> Member of Knesset Michal Rozin of the Meretz party, the head of the Foreign Workers Committee of the 19th Knesset, expressed the expectation that domestic violence victims with children who meet the conditions of the Domestic Violence Procedure receive status almost automatically by the Humanitarian Committee, echoing the request of Nicole Maor of LACO, who was also at the meeting. MK Rozin also expressed that the Humanitarian Committee should meet more frequently so that cases do not languish, complaining that despite the prior discussions on the subject, she has heard of more and more women whose decisions as to status were delayed and who remain in limbo, often with no work permits. She explained that the State gives abusers the tools with which to abuse their partners, thereby collaborating with them, through the Graduated Procedure and the flaws in the Domestic Violence Procedure. Then-Member of Knesset Moshe Mizrahi of the Labor Party equated the women in question to hostages and compared them to victims of trafficking due to the absolute power that their abusive partners wield over them with their control over their naturalization process, and the fact that they were brought to Israel by their partners under the false pretense that they would be treated with love and respect.

Despite the requests made by Members of Knesset and advocates to revise the Domestic Violence Procedure to make it easier for domestic violence victims to obtain extensions of their permits so that they could work, enjoy health care and other social benefits, and not live in fear of deportation, there have been no further revisions to the procedure to date.

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<sup>16</sup> Transcript of the April 3, 2014 joint meeting of the 19th Knesset's Foreign Workers and Public Petitions Committees may be found in Hebrew at (doc): [http://fs.knesset.gov.il/19/Committees/19\\_ptv\\_274974.doc](http://fs.knesset.gov.il/19/Committees/19_ptv_274974.doc).

### ***III. The Domestic Violence Procedure: Flawed Procedural Criteria For Relief***

#### **A. Exclusion Of Unmarried Domestic Violence Victims**

The Domestic Violence Procedure applies only to people who are married, whose marriage was registered in the Population Registry and for whom a request was made to obtain citizenship or residency based on the marriage. As civil marriage is not available in Israel, people of different religions typically either seek to obtain a civil marriage abroad, or forgo a marriage ceremony in favor of simply living together in a common law marriage. For many people, travelling abroad for the purpose of getting married is prohibitively expensive. In addition, if the non-Israeli partner does not have a valid residence permit, she may not be allowed reentry to Israel if she leaves. Finally, travel restrictions against the Israeli would also make marriage abroad difficult.

Non-Israelis who are in a relationship with Israeli citizens or permanent residents have a path to permanent residency as a result of their relationship status. Regulation 5.2.0009<sup>17</sup> sets forth the criteria for such couples. However, if their relationship terminates due to domestic violence, the non-Israeli partner is not covered specifically by the Domestic Violence Procedure. As discussed above, the catchall provision in the Domestic Violence Procedure that covers special humanitarian circumstances adds no additional substantive relief to immigrant victims of domestic violence.

To the extent that the Domestic Violence Procedure aims to encourage victims of domestic violence to leave their abusive partners, it fails to achieve that purpose in the case of unmarried couples. For instance, in the case of a Moldovan woman who was in a common law marriage with an Israeli citizen, PIBA refused to apply the Domestic Violence Procedure, stating, in part, that her situation did not qualify because she was not legally married. There was no mention of the catchall provision in the refusal. In his decision denying her administrative petition, Judge Ron Shapira, then-Vice-President of the Haifa District Court suggested that PIBA should be more sensitive to the plight of immigrant victims of domestic violence,

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<sup>17</sup> Procedure For Handling The Provision of Legal Status To Partners of Israelis, Including same-sex partners, (Regulation 5.2.0009, published on July 10, 2013): [https://www.gov.il/he/departments/policies/israelis\\_couples\\_status\\_procedure](https://www.gov.il/he/departments/policies/israelis_couples_status_procedure) (link in Hebrew).



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as their Israeli partners use the power that the Graduated Procedure gives them to dominate their foreign partners.<sup>18</sup> Even when couples are married, PIBA may seize upon any technical flaw in their status as an excuse to deny the abused wife status. For instance, PIBA adopted the Humanitarian Committee's recommendation denying a residence permit to a Moroccan woman who married and had a child with a Muslim permanent resident, though she was in the midst of the Graduated Procedure when the relationship ended in 2003 due to the husband's violence. The case was reviewed in light of the then-new 2007 Regulation though the relationship ended before its promulgation.<sup>19</sup> PIBA claimed that, as the husband divorced and remarried a prior wife before marrying the applicant, the marriage was technically bigamous and so, though the applicant was not at fault and had no knowledge of his marital status until she was pregnant with their child, she was not eligible for relief under the Domestic Violence Procedure.<sup>20</sup> PIBA also took issue with the fact that the applicant had a B/1 visa instead of an A/5 visa. In his February 15, 2009 decision, Judge Moshe Sobel of the Jerusalem District Court sitting as an Administrative Affairs Court ruled that the Humanitarian Committee must re-examine the woman's application and consider her relationship as a *bona fide* marriage, because she entered into it in good faith. Judge Sobel also ruled that as the woman met the residence conditions of the Domestic Violence Procedure, and as her lack of an A/5 visa was due to PIBA's failure to upgrade her and not due to her ineligibility, the Humanitarian Committee must not deny her relief due to this technical flaw in her application.<sup>21</sup> Ultimately, PIBA delayed awarding the applicant a B/1 visa until November 2010 (only after two requests for judicial intervention and a request for a contempt order) and upgraded her to an A/5 visa in 2014 (after an administrative petition was filed on her behalf). In November 2017, LACO, which represents the applicant, requested permanent residence on her behalf. The request is pending as of the writing of this report.

### **B. Exclusion Of Domestic Violence Victims Whose Partners Failed To Obtain Resident Status On Their Behalf As Part Of The Abuse**

An abusive partner may easily use immigration status and fear of deportation as a tool of terror in his dominance over his non-Israeli partner. He may purposely delay or fail to register the marriage, or fail to request resident status for his partner. This

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<sup>18</sup> Administrative appeal 41708-06-14 *V.P. v. Minister of Interior* (Nevo September 22, 2014).

<sup>19</sup> During the intervening years PIBA renewed her B/1 visa annually.

<sup>20</sup> Administrative petition 8799/08, *Y.A.L. v. Minister of Interior* (Nevo February 15, 2009).

<sup>21</sup> The first iteration of the Domestic Violence Procedure was in effect at the time of this case, and so the applicant was required to have been in the Graduated Procedure for one year and to hold an A/5 visa in order to qualify for relief.

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was the situation in the case of a Jordanian woman who married a permanent resident in Israel, and entered Israel legally at his invitation.<sup>22</sup> They had three children together, but the husband refused to apply for legal status for his wife, who would have been eligible for permanent residence after several years of legal residence.<sup>23</sup> He also refused to obtain permanent resident status for their youngest, Israeli-born daughter, who had a medical condition that required constant care and who needed the medical benefits that come with permanent residence status (to which she was entitled automatically due to her birth and father's status).

Whenever the woman would state her intention to go to the police, he would respond that without legal status, she had no recourse and could lose her children if she were deported to Jordan. Finally, after a particularly severe beating in which he broke her arm, the husband threw the wife out of the house. Only then, after a decade of marriage, did she go to the police. As a result, the wife and her children were evacuated to a battered women's shelter, and the husband was sentenced to five months in prison because of his violent conduct. On March 10, 2011, she made a formal request for a residence permit. In a letter dated February 22, 2012, she was informed that the Humanitarian Committee recommended that she receive an A/5 permit for a year, and permanent residence for her daughter. In the eleven intervening months until she received a favorable response from the Humanitarian Committee, she was without any legal status, without a work permit and without health insurance.<sup>24</sup> Since then, her A/5 permit has been renewed annually with no prospect or promise of an end to her temporary status.

In February of 2012, a few weeks before the date of the Humanitarian Committee's decision, The Center For the Defence of the Individual, a not-for-profit representing the woman, filed an administrative petition on her behalf. The petition requested that PIBA a) grant the woman temporary status while she awaits a decision and b) amend the Domestic Violence Procedure to provide relief for similarly situated women who meet the substantive criteria but have no legal status due to their husbands' actions.<sup>25</sup> PIBA declined to amend the Domestic Violence Procedure but

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**22** Administrative Petition 13110-02-12 *D. v. Minister of Interior et al.*:

<http://www.hamoked.org/Document.aspx?dID=Documents1943>.

**23** The Regulation For Processing The Provision of Legal Status to the Foreign Spouse of A Permanent Resident governs this process (Regulation 5.2.0011, published on December 1, 2014, in Hebrew), [https://www.gov.il/he/departments/policies/foreign\\_marriage\\_citizen\\_procedure](https://www.gov.il/he/departments/policies/foreign_marriage_citizen_procedure).

**24** Eleven months is a relatively short waiting period for a decision from PIBA. In recent years, waiting times have increased to over a year in many cases.

**25** See Center For the Defence of the Individual press release dated August 9, 2012 available at: <http://www.hamoked.org/Document.aspx?dID=Updates1212>.

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agreed to prioritize processing the applications of domestic violence victims who lack legal status but meet the criteria for relief in all other ways. The administrative petition was dismissed following PIBA's concession in a decision by the Jerusalem District Court sitting as an Administrative Affairs Court dated August 2, 2012. In the decision, Judge Nava Ben-Or stated that she will not intervene to require PIBA to change the Domestic Violence Procedure as long as it meets its commitments, but long wait times in the future may warrant a re-examination of the issue.<sup>26</sup>

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<sup>26</sup> Administrative Appeal 13110-02-12, *D. v. Ministry of Interior*, par. 17 (Nevo August 2, 2012).

## ***IV. The Domestic Violence Procedure: Flaws In The Relief Available***

### **A. Consideration By the Humanitarian Committee Is Inadequate Relief**

The stated purpose of the Domestic Violence Procedure is to offer domestic violence victims an opportunity to exit violent relationships without fear of deportation. However, the Domestic Violence Procedure, under its interpretation by PIBA, only offers domestic violence victims an opportunity to be considered for relief by the Humanitarian Committee. Even once an abused woman overcomes all the procedural hurdles placed in her path by the Domestic Violence Procedure, there is no guarantee that the Humanitarian Committee will view her application favorably and extend her residence permit. Moreover, the May 4, 2012 revision of the Domestic Violence Procedure eroded the relief available to women by rendering permanent resident status an unattainable goal without judicial intervention. The Interior Ministry claims, even though this has been rejected by the courts, that if there is no explicit instruction for granting permanent residence, then there is no jurisdiction for granting such status. That means that even in the most compelling requests, the Humanitarian Committee does not grant permanent residence status.

### **B. Humanitarian Committee Decisions Are Unpredictable In Both Timing And Outcome**

Though the Humanitarian Committee meets monthly,<sup>27</sup> its members are unnamed, there is no right of attendance or representation at its meetings and the transcript of its meetings is unavailable even for judicial review. In the past decade, the

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<sup>27</sup> Representatives of PIBA claimed that the Humanitarian Committee meets once a month, and sometimes more often, in the above-referenced Knesset meetings, but there is no publicly-available calendar of its meetings, and applicants have no way of knowing when their file will be reviewed. PIBA responded to a Freedom of Information request by Oded Feller of the Association of Civil Rights In Israel in a July 14, 2014 letter which stated that in the years 2008 to 2013, the Humanitarian Committee met between 8 and 12 times annually, and 6 times in 2014 through the end of June. A copy of PIBA's response may be obtained at the following link, under May 31, 2016 background materials for the Special Committee for the Transparency and Accessibility of Government Information (in Hebrew): <http://main.knesset.gov.il/Activity/committees/GovInfo/Pages/CommitteeMaterial.aspx?ItemID=2002760>.

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waiting period for a decision has increased dramatically. From a waiting period of a few months, domestic violence victims now often have to wait literally years for their case to be brought before the Humanitarian Committee. As there is no transparency as to its guiding principles when making its decisions, they are arbitrary and unpredictable. Even in the event of a favorable determination by the Humanitarian Committee, the relief is, at best, an extension of the residence permit for an additional year or two, thus leaving abused women with uncertainty as to their long-term status, under threat of expulsion at any time PIBA chooses to stop renewing their residence permit. There is no publicly-available data about the number of applications for relief under the Domestic Violence Regulation filed since its promulgation in 2007, the number of applications that received favorable consideration and the relief granted.

At the March 4, 2014 joint meeting of the Knesset Committees on Foreign Workers and Public Petitions of the 19th Knesset, MK Moshe Mizrahi asked that the Minister of Interior reveal how many applications the Humanitarian Committee received in 2012 and 2013 from domestic violence victims, and how many received some sort of resident status. No official response to this request was ever made,<sup>28</sup> but at that meeting Hadas Dricks, a PIBA official, stated informally that at each Humanitarian Committee meeting there are at least 2-3 applications under the Domestic Violence Procedure, and the Humanitarian Committee meets monthly. If these figures are accurate, then the Humanitarian Committee reviews between 24 and 36 files annually. Some of them might be the same cases which cycle back for further consideration.

In October 2017 the Hotline for Refugees and Migrants filed a request with PIBA under the Freedom of Information Act (FOIA) asking for data regarding the implementation of the procedure since 2007. After repeated attempts to receive a reply, a response was finally sent in January 2018 containing only partial information that included the monthly number of claims brought before the Humanitarian Committee in 2017. In February 2018, when a follow-up request for additional information was rejected by PIBA, who claimed that providing this information will require unreasonable resources, the Hotline filed a legal petition under the FOIA before the Administrative Affairs Court.

In a letter dated March 28, 2017 PIBA granted T.B.,<sup>29</sup> an Ethiopian mother of an Israeli child, a one-year B/1 visa, extendable for an additional year. T.B. had begun

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<sup>28</sup> Knesset members asked for statistics about battered women who leave their Israeli abuser spouses as far back as the March 23, 2006 Knesset meeting described above, but to no avail.

<sup>29</sup> T.B. is a client of the Israel Religious Action Center's Legal Aid Center For Olim.

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the Graduated Procedure but was forced to leave the relationship due to her husband's violent conduct before she was upgraded to an A/5 visa. The letter cited no specifics underpinning the decision, alluding only to "the specific circumstances raised in the applicant's matter" and that it was decided to accept *ex gratia*, as a mark of leniency that goes above its legal obligation, the recommendation of the Humanitarian Committee. T.B. met all the requirements of the Domestic Violence Procedure. Nothing about this letter, which is typical of others received in similar circumstances, serves as a guidepost for future cases, nor does it provide any certainty that even when the Humanitarian Committee recommends extending or granting status to an applicant, that the recommendation will be adopted by PIBA.

PIBA's insistence that any award of temporary status is *ex gratia* contradicts the decision in *L.S. v. Ministry of Interior*. In that decision, Vice President of the Jerusalem District Court, Judge David Heshin, writes:

**I cannot accept the respondents' claim that the work of the Inter-Ministerial Committee (the Humanitarian Committee) on this subject is *ex gratia*. After the recognition of the issue of foreign partners who cut their ties with their violent Israeli husbands, after they complained about them and as a result lost their right to continue with the Graduated Procedure, or in the alternative the issue of battered foreign women, that do not complain and do not leave the violent husbands, out of fear that their Graduated Procedure will be stopped and they will be deported from Israel, and it was decided that the solution will be in the framework of a special procedure, then we are squarely within the law and not operating *ex gratia*. The issue here is not some unique, extraordinary situation that requires a solution that is outside the framework of the law, but rather a known phenomenon, to which a solution has been offered within the framework of the law and from its power.<sup>30</sup>**

Despite this decision, a review of PIBA letters sent to domestic violence victims in response to their applications for temporary residence permits shows that these letters routinely claim that any relief granted is *ex gratia*.

### **C. Even Positive Humanitarian Committee Decisions Result in "Temporary Forever" Outcomes Necessitating Judicial Intervention**

When PIBA, upon the recommendation of the Humanitarian Committee, grants

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<sup>30</sup> Administrative Petition 8634/08, *L.S. v. Minister of the Interior*, Par. 9, Interior (August 12, 2009 Nevo).

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a temporary resident visa to an applicant pursuant to the Domestic Violence Procedure, the applicant's status is reviewed whenever her visa is about to expire. This process of review and renewal could last forever, as there is no guideline limiting it. PIBA seldom grants an applicant permanent resident status without judicial intervention.

In *L.S. v. Ministry of Interior*, described above, the Jerusalem District Court ordered that L.S. be awarded permanent resident status after PIBA extended her status from time to time for several years, each time citing a lack in any change of circumstances warranting a change in her status. Judge David Heshin stated that PIBA may not review L.S.'s case forever for a change in circumstances to avoid giving her permanent status.<sup>31</sup>

However, in *Anonymous v. Ministry of Interior*, Adjudicator Dotan Bergman of the Jerusalem Appeals Tribunal upheld PIBA's refusal to upgrade a Russian woman to permanent status after 11 years in Israel with her Israeli son, seven of them with an A/5 temporary resident visa granted by recommendation of the Humanitarian Committee pursuant to the Domestic Violence Procedure.<sup>32</sup> In the decision, issued in 2016, Adjudicator Bergman stated that the burden is on the appellant to demonstrate that her case is an exception, and that there are special circumstances warranting an award of permanent status (par. 13 of the decision), and stated that the L.S. decision does not obligate PIBA to upgrade the woman's status. He rejected her claim that having temporary residence does not provide her and her son with a feeling of stability, stating that this is a subjective claim that would, if accepted, lead to permanent residency to all foreigners who have lived in Israeli for a few years and are parents to minors with permanent status (par. 18 of the decision). The abusive husband in this case moved back to Russia and passed away in 2010, so the matter of the child's contact with his father was not under discussion during the years that the mother's temporary visa was renewed for humanitarian reasons. On appeal, the Jerusalem District Court sitting as an Administrative Affairs Court reversed the decision and ordered PIBA to review the case once more, appropriately balancing the relevant factors and not placing undue weight on unproven criminal allegations against her initiated by her abuser.<sup>33</sup> PIBA refused her request once again. A further appeal to the Appeals Tribunal (this time before a different adjudicator) by LACO, representing

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<sup>31</sup> Id.

<sup>32</sup> Administrative Appeal 2399-15. *Anonymous v. Ministry of Interior* (Nevo August 14, 2016).

<sup>33</sup> Administrative Petition 3486-10-16, *Anonymous v. PIBA* (unpublished decision dated April 27, 2017).

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the woman, finally resulted in the issuance of permanent residence status. The Appeals Tribunals, founded in 2014, specialize in immigration proceedings and serve as the gatekeeper to the "judicial system for thousands of migrant workers, asylum seekers, spouses of Israeli citizens, residents and anyone who is looking for a remedy related to immigration or citizenship."<sup>34</sup> Tribunal adjudicators are not entirely independent, as many of them worked previously in PIBA in the appeals committees that preceded the Appeals Tribunals. They are also appointed for five-year terms and their re-appointment may be jeopardized if they routinely reverse PIBA decisions. In addition, since the tribunal is not a court, PIBA is not obligated to apply its rulings in similar cases, and most of its decisions are not publicly available, meaning that an applicant under the Domestic Violence Procedure has little chance of success without legal representation and the willingness and tenacity to appeal the tribunal's rulings, if necessary.<sup>35</sup>

In addition to the final outcome in *Anonymous v. Ministry of Interior*, in *Ministry of Interior v. A.L.*<sup>36</sup> the Jerusalem District Court in 2017 upheld an Appeals Tribunal decision that directed PIBA to grant permanent residence status to a Kenyan woman and her two children who have been living in Israel with temporary resident visas for 15 years. In the decision, Judge Eli Abravanel, relying on the L.S. decision, held that PIBA cannot categorically deny all requests for status upgrade from temporary to permanent resident, require threshold conditions for a change in circumstances before considering such requests and leave an applicant in "temporary forever" limbo (par. 8 of the decision).

In *V.H. v. Ministry of Interior*, Adjudicator Marat Dorfman of the Appeals Tribunal in Jerusalem referred to the A.L. decision in ordering permanent status to an Uzbeki woman who came to Israel to join her Israeli husband. V.H. lived in Israel for 12 years with her Israeli daughter, five of them with an A/5 temporary resident visa granted by recommendation of the Humanitarian Committee.<sup>37</sup> The appellant in V.H. did not receive her humanitarian status pursuant to the Domestic Violence Procedure. However, in holding that PIBA's decision not to upgrade her status

<sup>34</sup> See November 29, 2006 Summary of "Beit Hadin L'ararim", a report by the Hotline For Refugees and Migrants about the Appeals Tribunals <http://hotline.org.il/en/congestion-delays-lack-of-transparency-and-failure-to-make-decisions-a-new-report-reveals-the-inadequacies-of-the-tribunal-for-migration-matters/>; for a detailed discussion of the Appeals Tribunals, see the Hotline's complete report about the Appeals Tribunals (Hebrew): <http://hotline.org.il/publication/tribunals/>

<sup>35</sup> Id.

<sup>36</sup> Administrative Appeal 59068-01-17, *Minister of the Interior v A.L.* (Nevo May 28, 2017).

<sup>37</sup> Administrative Appeal 1944-17, *V.H. v. Minister of the Interior* (Nevo September 18, 2017).



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was unreasonable, Adjudicator Dorfman noted the domestic violence that led to the breakup of her marriage. Also, he noted the fact that she left the relationship only four months before her eligibility for Israeli citizenship under the Graduated Procedure, her strong contacts to Israel and the best interests of her Israeli child for the mother to have a stable immigration status (par. 11 of decision). The abusive husband in V.H. passed away in 2011, so the matter of the child's contact with her father was not under discussion during the years that the mother's temporary visa was renewed for humanitarian reasons.

However, it is clear from the above that only extended legal proceedings ultimately force PIBA to grant permanent status.

Deciding to apply for relief under the Domestic Violence Procedure is a long-term commitment to life in limbo, given the certainty of not receiving permanent status without a judicial fight, and the uncertainty of the outcome of judicial intervention. Despite its early promise to the contrary, the Domestic Violence Procedure contains no guarantee of relief for victims of domestic violence seeking to leave their abusive spouses.

## V. The Domestic Violence Procedure: Flaws In Its Application

### A. Bar For Connection Test Is Set Unreasonably High

For domestic violence victims who have no child with their abusive spouse, to qualify for consideration by the Humanitarian Committee they must have passed the halfway point of the Graduated Procedure (more than two years) and undergo an interview process to determine their connection to Israel as compared to their connection to their country of origin (the Connections Test). The Connections Test is a subjective examination of a woman's connection, attachment, affinity and bonds to and linkage with Israel by reviewing where she owns property, where she works, where her relatives and friends are located and how assimilated she is in Israel.

For women with no children with their abusive spouses, the Connections Test as applied by PIBA is strict in theory, and fatal in practice. This was so in the matter of F.Z., an Ethiopian woman represented by Reut Michaeli. F.z. left her Israeli husband due to his abuse in 2007, after three years of marriage. She entered a battered women's shelter and requested that her status as a temporary resident be renewed. Her request was denied and an administrative petition to the district court in Jerusalem was denied as well in 2008. On appeal, the Israeli Supreme Court in 2011 accepted the state's position that not in every case of domestic violence an immigrant would receive status. However, it set forth an examination of contacts that compares the woman's bonds to Israel by looking at her property, location of relatives, friends, etc.<sup>38</sup> This examination was adopted by PIBA as a result of this decision in the April 5, 2012 revision of the Domestic Violence Procedure.

In the F.Z. decision, written by Judge Edna Arbel, the Israeli Supreme Court acknowledged that the purpose of the Domestic Violence Procedure was to encourage victims to complain about their abusive spouses and exit the violent relationship, and that there is a public interest in protecting immigrant victims of domestic violence.<sup>39</sup>

The decision also stated that while it is necessary to give weight to the Connections Test when finalizing the status of foreigners in Israel, when it comes to domestic

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<sup>38</sup> *F.Z. v. Minister of the Interior* 8611/08 (Nevo February 27, 2011).

<sup>39</sup> *Id.* par. 14.

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violence victims “there must be given less weight to the conditions of the contacts examination as compared to other cases that are part of the Graduated Procedure” (par. 16 of the F.Z. decision). The Court justifies its decision in setting a lesser weight to the Connections Test not just because of the public interest in protecting victims of domestic violence, but “...there is a more practical reason that has to do with the characteristics of victims of violence who, in many cases, were habituated, against their will, to a dependent lifestyle, restrained and inward-focused, and because of this are left without social and family contacts and have difficulty in presenting the expected indicia of contacts to Israel that may be found in other cases”.

Following the F.Z. decision, the case was returned to the Humanitarian Committee, which once again rejected her request for status, determining that she did not pass the Connections Test in 2014. In the 7 years between F.Z.’s escape from her abusive marriage and the final decision of the Humanitarian Committee, she had no residence or work permit, and so had no meaningful opportunity to integrate into Israeli society. Despite these facts, F.Z. had close friends in Israel, kept in touch with her abusive husband’s family, and even volunteered as a mentor to other Ethiopian women clients of the battered women’s shelter in which she stayed. The Humanitarian Committee’s decision ignored these facts, as well as the difficulty described by the Court in the F.Z. decision for abused women generally in creating a normal life for themselves in a new country while imprisoned in an abusive marriage. Ultimately, F.Z. gave up and returned to her native Ethiopia rather than stay and exhaust her judicial options.

As the Connections Test is a subjective examination squarely within the jurisdiction of the Humanitarian Committee, it is nearly impossible for an Israeli court to overturn the results of a Connections Test. The most a court can do is return the case to the Humanitarian Committee for an additional review that focuses on a particular aspect of the Connections Test.

### **B. Connections Test Is Inappropriately Applied To Women With Children**

Under the Domestic Violence Procedure, victims of domestic violence with a child in common with their abusive spouse are not required to meet the Connections Test to qualify for consideration by the Humanitarian Committee. This is due to the recognition, expressed by the court in F.Z., that being the mother of an Israeli child is in itself a presumption of sufficient bonds to Israel.<sup>40</sup>

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<sup>40</sup> Id. par. 16.

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However in recent years, the Humanitarian Committee routinely applies the Connections Test to victims of domestic violence with children with their abusive spouse, rendering meaningless the lesser bar set for these women in the Domestic Violence Procedure. This was the case in the matter of a Nepalese woman who came to Israel on a B/1 work visa in 2005. She married an Israeli citizen in Cyprus in 2011, and began the Graduated Procedure. She was upgraded to an A/5 visa in 2012, and their daughter was born in 2013. After their daughter's birth the husband became increasingly violent towards the woman, until eventually she left him and entered a battered women's shelter in 2013. She learned that her husband had a criminal past and spent time in jail prior to their relationship, and decided to end the relationship. In March of 2014 she requested relief under the Domestic Violence Procedure, and her A/5 visa was renewed during the pendency of her application. In October 2014 she was notified by letter that her request was denied, and that she must leave Israel (with her Israeli daughter, naturally) within thirty days. The letter did not reference the Domestic Violence Procedure, nor was there any mention of the best interests of her child. Instead, the letter gave as reasons for the refusal the lack of contact between the child and her father, the father's criminal past, the fact that the woman's family lives abroad and the lack of humanitarian reasons to award her resident status in Israel. In fact, the contact between the father and the child was sporadic due to bureaucratic reasons beyond the applicant's control. Sarah Lewis, formerly of LACO, which represented the Nepalese woman, filed an appeal to the Tel Aviv Appeals Tribunal on her behalf on October 30, 2014.

On November 2, 2015, over a year later, the Appeals Tribunal instructed that prior to issuing its ruling, the case must be returned to the Humanitarian Committee for its review of the best interests of the child, including the effect on the child of severing contact with her father. In a letter dated April 13, 2016 (over six months after the Appeals Tribunal's instruction), the woman was informed that the Humanitarian Committee, once again, rejected her request for resident status. Once again, it based its rejection on lack of contact between the child and her father and the claim that the woman's connections were stronger to her country of origin than to Israel. In a February 13, 2017 decision written by Appeals Tribunal Adjudicator Bafi Tam, the Appeals Tribunal rejected the woman's appeal and ordered that the woman and her child leave the country within 30 days.<sup>41</sup> Underpinning Tribunal Adjudicator Tam's decision was her understanding that it is squarely within the Humanitarian Committee's jurisdiction to apply the Connections Tests fully to victims of domestic violence with a child with their abusive spouses under

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<sup>41</sup> Administrative Petition 2209-14, *Anonymous v. Ministry of Interior* (Nevo February 13, 2017).

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the Domestic Violence Procedure (par. 18 of the decision). Also, that an Israeli child does not automatically result in granting an applicant a residence permit, as parents are not entitled to residence permits as a result of their children's citizenship status (par. 23 of the decision).

Shortly thereafter, the father revealed that he filed for an order preventing his daughter from leaving Israel (information to which PIBA had access in its computerized system but failed to mention in any of its prior submissions to the court). On March 30, 2017 LACO filed an administrative petition appealing the February decision, and on September 7, 2017, the District Court suggested in a deliberation of the case that PIBA review the appellants' request again, with particular attention to the best interests of the child when considering the ramifications of a move to Nepal. PIBA rejected this suggestion, and on September 11, 2017 the Jerusalem District Court issued its decision, written by Judge Oded Shaham, denying the petition.<sup>42</sup>

LACO filed an appeal to the Israeli Supreme Court (*Anonymous v. PIBA 7938/17*). During the attendant proceedings, PIBA stated that it does not intend to deport the mother without her child, and will take legal steps to have the restraining order preventing the daughter from leaving Israel overturned. On November 30, 2017 the Israeli Supreme Court, in a decision by Justice Daphne Barak-Erez, directed the parties to opine as to whether the father in the case should be added as a respondent in the case, presumably so that the sincerity of his opposition to his daughter's departure from Israel can be determined. Perversely enough, the applicant's ability to stay in Israel with her daughter may well hinge on the (abusive) former husband's willingness to join the case and fight for his daughter, and thus her mother, to stay in Israel. The case is pending. The Humanitarian Committee should not have applied the Connections Test, given that the Domestic Violence Procedure does not require it. However, had it applied the Connections

<sup>42</sup> Administrative Petition 68103-03-17, *Anonymous v. Ministry of Interior* (Nevo September 11, 2017). In declining to take into account the child's citizenship status, Judge Shaham, as did Tribunal Judge Tam, relied on a series of cases that hold that in Israel, a child's citizenship does not extend to her parents, that the opposite is the case. See *Kandel v. Minister of the Interior* (Israeli Supreme Court 431/89) and *Livshits v. Minister of the Interior* (Israeli Supreme Court 1292/12). However, these cases involve foreigners who sought to settle in Israel with their non-Israeli children who had citizenship claims under the Law of Return, which gives citizenship rights to diaspora Jews. Neither of these cases contemplated the *de facto* deportation of an Israeli child along with her custodial parent. In *Livshits*, while the request for citizenship was denied, the foreign mother and her two minor children whose father was Jewish received temporary residence permits. Such relief is more than the Ministry of Interior is willing to do in the case at hand, in which the child is Israeli and her mother has been living and working in Israel legally for over a decade.

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Test as prescribed by the F.Z. decision it would have found that the woman's connections to Israel are stronger than those to her country of origin: she has lived in Israel for twelve years, is raising her only child in Israel, and is working in Israel.

In *A.Y. v. Minister of the Interior*, Judge Mintz of the Jerusalem District Court upheld the denial of temporary resident status to the abused Ethiopian mother of two Israeli children.<sup>43</sup> In the decision, the judge cited the deference that must be given to Ministry of Interior decisions about resident status (Decision par. 8) and the fact that the father saw his daughter only once a month, did not seem interested in maintaining contact with his daughter and even encouraged the deportation of the mother and child (Decision par. 18). The judge also pointed out that the appellant did not demonstrate that her bonds to Israel are greater than her bonds to Ethiopia (par. 14). In this case, like in many others, the abusive husband's power over his non-Israeli spouse was enhanced even after the end of the relationship through the agency of PIBA, who took into account his desire that his former spouse, his victim, and their child be deported.

In a 2013 decision, Judge Ron Shapira of the Haifa District Court commented on the fact that in some instances, as in *A.Y.*, the Ministry of Interior becomes a component of the power wielded by a violent spouse through which he is able to strike against his foreign partner; "if she does not keep quiet and absorb the blows in submission – she will be deported."<sup>44</sup>

The Connections Test was also inappropriately applied in the matter of *E.A.*, a client of LACO. *E.A.* married her Israeli husband in her native Ethiopia, had a child with him in 2007, came to Israel in 2009, entered the Tiered Procedure shortly thereafter, left her abusive husband in 2012 and divorced him in 2013. In 2014, two years after applying for resident status, she received a refusal from PIBA. The refusal was on the grounds that the Connections Test showed that *E.A.* had greater ties to Ethiopia than to Israel, and that her only relative in Israel is her abusive ex-husband, while in Ethiopia she has 3 children from a prior marriage. *E.A.* was a child-bride, forcibly married at the age of 7 by her family to a 20 year-old man, and gave birth to her first child at the age of 14.

There was no indication that the Humanitarian Committee reviewed *E.A.*'s application as arising from the Domestic Violence Procedure. Furthermore, aside from noting the domestic violence perpetrated by her ex-husband to demonstrate that her connections to Israel were weak, there was no serious weight given to

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<sup>43</sup> Administrative Petition 64413-12-16, *A.Y. v. Minister of the Interior* (Nevo March 23, 2017).

<sup>44</sup> Administrative Petition 59945-01-13, *S.H.M. v. Minister of the Interior*, p. 5 (Nevo July 28, 2013).

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what she had suffered (which included physical, sexual and mental abuse by her ex-husband, who infected her with HIV). The woman appealed the decision, and in November 2014 PIBA agreed, *ex gratia* in its words, to revisit its decision, leading to a decision by the Appeals Tribunal directing the Humanitarian Committee to review the case pursuant to the Domestic Violence Procedure.

When over two years passed with no response from PIBA despite repeated requests, the woman requested judicial intervention to direct PIBA to review her case. Only after the request for judicial intervention did PIBA begin reviewing her case. In 2017, when her Israeli daughter was 10 years old and they had been in the country for 8 years, she received a letter from PIBA informing her that she has 30 days to arrange her affairs and leave the country with her daughter. As in E.A.'s prior letter, PIBA once again referred to the Connections Test and the fact that she has not been in Israel sufficiently long to tip the scale in favor of Israel as the place where she has greater bonds. The letter included the formulaic statement that even a long stay in Israel in and of itself does not provide sufficient justification for a temporary residence permit. It added that the fact that there is limited and sporadic contact between the daughter and the father was weighed against the number of family members that she has in Ethiopia, as an extension of the Connections Test.

Contrast the cases discussed above with the matter of a Ukrainian woman, a client of LACO, who left her Israeli husband due to his violence. She has two children with him, a 5-year-old and a 3-year-old child who suffers from autism, and was very nearly at the end of the Graduated Procedure when she left the relationship. PIBA granted her an A/5 visa for a year in a 2017 letter which stated that the woman's connections to Israel and her country of origin were examined, contact between the father and his children was only renewed lately, the father is not interested in maintaining the contact and she has family abroad including her mother who visited her frequently. Despite all these reasons, which in many other similar cases led to a rejection, in this case PIBA states that the Humanitarian Committee's recommendation to award the woman temporary residence status will be accepted. What made the outcome different in this case is left to conjecture — perhaps it was the fact that the woman stayed in the relationship for long enough to get close to the end-point of the Graduated Procedure; perhaps it was the fact that there was a special-needs child whose needs may not be sufficiently met in the Ukraine in the estimation of the Humanitarian Committee. What this shows, as explained above, is that that Connections Test is used as a means to an end; when the Humanitarian Committee wants to deny a request, it claims that the

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connections are insufficient, and when it wants to accept it, it claims the opposite, even under similar facts.

### C. Best Interests of the Child Inadequately Considered

Israel is a signatory to the 1989 United Nations Convention on the Rights of the Child,<sup>45</sup> which states, in Article 3:

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.**
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures**

The best interests of the child are strongly affected by a decision to deport that child's mother, with the child in tow, to a foreign country in which that child may never have been, which is not that child's home and in which the child may endure economic and social hardship and life as an outsider. PIBA, as well as the courts adjudicating applications under the Domestic Violence Procedure, are obligated to take Israel's commitments under this Convention seriously and to weigh the best interests of the child as a primary consideration. Assuming she is thriving there, sending a child away from her homeland is seldom in her best interests.

However, PIBA routinely refuses to grant resident permits under the Domestic Violence Procedure to mothers of Israeli children, relying heavily on legal precedents that hold that a child's citizenship status does not confer immigration rights on the child's parent (see discussion above). Courts often uphold these refusals, as in *A.Y. v. Minister of the Interior*, discussed above, in which the decision states: "the applicant cannot base her claim that the best interest of the daughter compels leaving her in Israel and for this reason the principle is that the Israeli citizenship of the minor cannot grant the appellant, who is the custodial parent, a resident permit in Israel (Decision par. 13).

In *Anonymous v. PIBA 7938/17*, discussed above, had PIBA considered the best

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<sup>45</sup> The text of the 1989 United Nations Convention on the Rights of the Child may be found at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.



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interests of the child, it would have noted that were the mother and child to move to Nepal (a country which the child has never even visited), it is possible that the child would not be entitled to Nepalese citizenship, as her father is not Nepalese. She would also not have access to the same quality health and educational services as she receives in Israel, due to the disparity between the development status of the two countries, and her mother would no longer receive child support.

In the matter of E.A., discussed above, PIBA gave no weight to the interests of the Israeli child, who was undergoing treatment due to the violence directed at her mother to which she was a witness, and for whom a move to Ethiopia would be a drastic change in her life. According to a UNICEF report, Child Marriage In Ethiopia, child marriage remains common in Ethiopia, as is Female Genital Mutilation/Cutting.<sup>46</sup> E.A. herself was married at the age of 7 and had her first child at 14, and there is no guarantee that her daughter would be able to escape this fate. Additionally, E.A. is HIV positive, and in Ethiopia HIV/AIDS was the second-leading cause of death in 2012 according to a 2012 World Health Organization statistical profile, second only to lower respiratory infections.<sup>47</sup> This raises a serious risk for E.A. if she is deported. In addition, according to the Canadian Immigration and Refugee Board, Ethiopia does not allow dual citizenship, so in order for E.A.'s daughter to obtain Ethiopian citizenship she would have to renounce her Israeli citizenship, making it harder for her to return to Israel upon her majority if she so chooses.<sup>48</sup>

The best interests of the child also factor into the "temporary forever" line of cases discussed above, in which applicants' temporary resident status is renewed for years without prospect of attaining permanent status. In *Ministry of Interior v. A.L.*, discussed above, the Jerusalem District Court, in upholding the Tribunal's decision that granted permanent residence status to the applicant and her two children, stated, in relevant part, that insufficient weight was given to the best interests of the applicant's Israeli-born children and her Kenyan-born children from a prior marriage (Decision par. 9). Judge Abravanel stated: "it is obvious that the best interests of the children requires attaining stability in their family life, the ability to plan their future and the possibility to lead a normal life that is not dependent on repeated extensions of resident permits. It is understood that this consideration does not tip the scales in itself, but its weight is not negligible when added to the other aforementioned considerations." (Decision par. 10.)

<sup>46</sup> Child Marriage in Ethiopia (pdf): [https://www.unicef.org/ethiopia/Evidence\\_Review.pdf](https://www.unicef.org/ethiopia/Evidence_Review.pdf).

<sup>47</sup> See: <http://www.who.int/gho/countries/eth.pdf?ua=1>.

<sup>48</sup> See (pdf): <https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/04/ETHI00912.E.pdf>.

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The *de facto* deportation of Israeli children with their mothers is a form of abdication of Israel's international obligations, not to mention a willful misapplication of the letter and spirit of the Domestic Violence Procedure. In the Domestic Violence Procedure itself, one of the criteria for relief for a victim of domestic violence who has a child in common with her abusive spouse is that a social worker opined that it would be in the child's best interest for the mother not to be deported. Nothing in the text of the Domestic Violence Procedure contemplates deporting an Israeli child along with her mother, and nothing in the text requires a close relationship between the child and her Israeli father in order for her not to be deported along with her mother. However, that has become PIBA's interpretation of the Domestic Violence Procedure, and some courts have begun to adopt this view as well. See *Anonymous v. PIBA* par. 20:

**When the issue at hand is the breakup of a relationship due to violence and there is a child in common with whom the foreign parent maintains a stable and continuous relationship (from which it is understood that the Israeli parent is presumably in contact with the child or else, there is nothing to prevent the child from following the foreign parent) the file will be considered by the Humanitarian Committee given the satisfaction of three cumulative conditions.**

This insidious rewriting of the Domestic Violence Procedure adds an added hurdle for victims to meet and gives the abuser yet another tool in his arsenal against his victim even after she leaves the relationship; if he refuses to see their child in common, he makes it that much more likely that his spouse will be deported. As a direct result of this perverse re-interpretation of the Domestic Violence Procedure, attorneys for victims of domestic violence have begun counseling their clients to encourage contact between their child and her abusive father in order to increase their chances for a favorable decision from the Humanitarian Committee.

## VI. PIBA's War of Attrition Against Victims Of Domestic Violence

Though there have been no revisions to the Domestic Violence Procedure since October 15, 2013, there has been a systematic retreat in PIBA's willingness to grant relief pursuant to it. Initially, it was understood that the Domestic Violence Procedure would serve as a conduit to enable women who met its conditions to be heard by the Humanitarian Committee and thus receive status, barring unusual disqualifying circumstances. This view was expressed in the Knesset meetings, discussed above, on the subject.

Advocates report that in the first few years of the Domestic Violence Procedure, PIBA would sometimes approve status for women who qualify out of its own initiative. Other times, after an initial rejection PIBA would grant the request upon a petition to the Appeals Tribunal, even without a decision compelling it to do so. Unrepresented women were at a disadvantage, because they did not have the means to appeal an initial, knee-jerk rejection or the knowledge that such appeals were in large part successful. In this way, from the start PIBA waged a war of attrition against immigrant women victims of domestic violence, hoping that if the process of getting resident status is sufficiently costly, lengthy and uncertain, it would be unappealing for economically and psychologically vulnerable women to even try.

In recent years, PIBA has mounted vigorous defenses of appeals of its decisions, going so far as to claim that the criteria of the Domestic Violence Procedure were in fact *ex gratia*, despite the fact that this position was rejected by the court in L.S. This was the case in the matter of Y.T., an Ethiopian woman who married an Israeli citizen in 2008, had two children with him, and left him because of his abuse in 2013. The abusive husband did not apply for citizenship on her behalf until 2010; had he done so she would have qualified for citizenship by the time the relationship ended. In 2016, after years of waiting for a response to her application for a residence permit based on the Domestic Violence Procedure, she was informed that she would be downgraded to a B/1 resident permit for two years, a year at a time, a decision based in part on a telephone call in lieu of an in-person interview with the woman to assess her situation. Y.T., represented by LACO, appealed the decision.<sup>49</sup> The Ministry of Interior contested the appeal, stating that Y.T. is not automatically

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<sup>49</sup> Administrative Petition 1359/16, *Y.T. v. Minister of the Interior* (Nevo October 30, 2017).

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entitled to any resident permits absence special humanitarian considerations, her children's interests are not hurt by the downgrade in her residence permit, and that the B/1 status should not be seen as a downgrade but rather as a new status altogether due to the humanitarian considerations posed by her situation (Decision par. 8). Adjudicator Sarah Ben Shaul-Weiss of the Jerusalem Appeals Tribunal overturned PIBA's decision with respect to the woman and directed that a proper interview be conducted (Decision par. 17) taking into account the Domestic Violence Regulation rather than searching for special humanitarian considerations (Decision par. 12). She stated that downgrading the woman's status does not serve the public interest in combatting domestic violence, as discussed in the F.Z. decision (Decision par. 14), and that a telephone call was not a substitute for an in-depth interview (Decision par. 15).

PIBA's current position is that the Domestic Violence Procedure serves as a gatekeeper to the Humanitarian Committee only, and contains no substantive relief. In its current view, the Humanitarian Committee is free to treat cases that come to it under the Domestic Violence Procedure as it treats any other extraordinary humanitarian case, with no regard to the substance of the procedure. Under this new regime, PIBA has rejected numerous requests by women who are victims of domestic violence citing the following reasons:

- The passage of time since the incidents of violence mooted the basis of the request (despite the fact that the passage of time was caused by PIBA's delay in responding to the application). In the matter of E.A., discussed above, her PIBA rejection letter referred to "the passage of time and various circumstances" in stating that "this claim does not contain a reason that justifies the requested status." The passage of time includes the over two years that it took PIBA to respond to her second request, as well as the time it took for PIBA to respond to her initial request.

The "passage of time" reasoning was mentioned also in the matter of a Georgian woman, an ACRI client who was in the Graduated Procedure as a partner of an Israeli. She left her abusive partner and entered a battered women's shelter. Her Israeli child is a developmentally delayed 6-year-old who is not in contact with the father. According to PIBA's September 2017 letter rejecting her request for a residence permit, the father is not permitted to contact the child because "his behavior has been judged to be inappropriate, dangerous and apparently violent." The letter stated that due to the passage of time since the couple's separation and the "different circumstances," the domestic violence claim does not justify giving her the requested status.

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- Where there is no contact between the Israeli children of the applicant and their abusive father: the lack of contact justifies the kids' *de facto* deportation, along with their mother. See *L.S. v. Ministry of Interior*, above. See also the matter of the Georgian woman with the six-year-old child, above, in which PIBA's letter based its rejection, in part, on "the young age of the son and the absence of contact between the father and child due to the danger posed by the father".
- Where there is contact between the between the Israeli children of the applicant and their abusive father: the fact that their violent father is not an appropriate role model justifies their *de facto* deportation, along with their mother. See *Anonymous v. PIBA*, above.

## VII. Israel's Obligations Under International Human Rights Law

Israel is a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW Convention), which states in Article 16:

**1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:**

**(c) The same rights and responsibilities during marriage and at its dissolution;**

**(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount [...]<sup>50</sup>**

In allowing abusers to control and bully their immigrant spouses through its harsh immigration rules and inadequate protections for victims of domestic violence, Israel is in fact maintaining a discriminatory practice relating to marriage and family relations that affects women disproportionately. In addition, by permitting the *de facto* deportation of Israeli children with their non-citizen mothers, Israel is not prioritizing the interests of those children, as it is obligated to do by the CEDAW Convention.

The Committee on the Elimination of Discrimination Against Women issued General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, in 2017.<sup>51</sup> General recommendations are authoritative statements elaborating on the obligations assumed under the CEDAW Convention. It states, in paragraph 31. as follows:

**31. Repeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them; including in customary, religious and indigenous laws. In particular, repeal:**

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<sup>50</sup> For the full text of CEDAW see:

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>.

<sup>51</sup> The full text of General recommendation No. 35 may be found at (pdf): [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/t\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/t_Global/CEDAW_C_GC_35_8267_E.pdf).

- c) All laws that prevent or deter women from reporting gender-based violence, such as guardianship laws that deprive women of legal capacity or restrict the ability of women with disabilities to testify in court; the practice of so-called "protective custody"; **restrictive immigration laws that discourage women**, including migrant domestic workers, **from reporting this violence** as well as laws allowing for dual arrests in cases of domestic violence, or for prosecution of women when the perpetrator is acquitted among others. (Emphasis added)

The Domestic Violence Procedure, though it was envisioned as a solution to this very problem of immigration laws that discourage women from speaking up about domestic violence, has fallen far short of its stated goal. In the last decade since its promulgation, it has become part of the problem, rather than part of the solution called for by CEDAW's General recommendation No. 35.

Former Supreme Court Justice Dalia Dorner, in a landmark decision about a victim of domestic violence who killed her abusive husband, wrote about the consequences of society's indifference to domestic violence:

**The root of all evil is not the desperate reaction of a victim of the abuse, but the silence of society, starting with those who know of the ordeal of the abuse and do not report it, and ending with the authorities that do not intervene to the necessary extent. Many studies show that the indifference of society and its disregard for the acts of violence within the family enable the development of a violent dynamic that intensifies and grows, that ends in death – for the most part the death of the wife at the hands of the husband, and at times the death of the violent husband by the battered woman.**<sup>52</sup>

Though over twenty years have passed since this decision, its commentary about the indifference of society that creates an environment that permits domestic violence to flourish remains relevant and applicable in the immigration context. It is this environment of official tolerance for domestic violence that the CEDAW Convention aims to change.

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**52** *C.B. v. State of Israel* 6353/94 (Nevo August 14, 1995).

## VIII. An International Comparison

### A. How International Law And Selected Western Democracies Address The Immigration Status Of Victims Of Domestic Violence

#### The Istanbul Convention

The Council of Europe (CoE) is the leading human rights organization in Europe, established to promote democracy and protect human rights and the rule of law in Europe.<sup>53</sup> It includes 47 member states, 28 of which are European Union (EU) members. On August 1, 2014, the CoE's Convention on Preventing and Combating Violence Against Women and Domestic Violence, known as the Istanbul Convention, entered into force, ratified to date by 28 countries, including Germany, France, Netherlands, Norway, Sweden and Switzerland.<sup>54</sup> Fourteen EU member countries ratified the Istanbul Convention (all European Union member countries signed it), and the EU is in the process of joining the Istanbul Convention as well.

Chapter VII, Migration and Asylum, Article 59 Residence Status of the Istanbul Convention states:

- 1) Parties shall take the necessary legislative or other measures to ensure that victims (of violence) whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
- 2) Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner

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<sup>53</sup> More information about the Council of Europe may be found at: <https://www.coe.int/en/web/about-us/do-not-get-confused>.

<sup>54</sup> Information about the Istanbul Convention, including a link to a list of the ratifying countries, may be found at: <https://www.coe.int/en/web/istanbul-convention/about-the-convention>. Some countries filed reservations along with their ratification, a few of them, such as Cyprus, regarding the provisions of Article 59. The reservations are valid until 2019.



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as recognised by internal law to enable them to apply for an autonomous residence permit.

- 3) Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:
- a. Where the competent authority considers that their stay is necessary owing to their personal situation;
  - b. Where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

By ratifying the Istanbul Convention, nations acknowledge the phenomenon of domestic violence by sponsor-spouses against their foreign-born partners and the need for governments to protect immigrants who are dependent on their abusive spouses for residence permits, address their personal safety needs and increase the likelihood for their cooperation with criminal procedures, thus strengthening enforcement of laws against domestic violence. While the Domestic Violence Procedure, as written, is a start to helping liberate victims of domestic violence and encouraging them to leave abusive relationships, it does not go far enough in offering consistent, timely and permanent relief from the threat of deportation.

#### The 2004 EU Directive

The EU issues directives, which are legal acts requiring member states "to achieve a particular result without dictating the means of achieving that result."<sup>55</sup> The directives are binding on all member states, which must amend their domestic laws to implement them.<sup>56</sup>

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member State (the 2004 EU Directive) states, in relevant part<sup>57</sup>:

#### Chapter: 3 Right of Residence

#### Article 13 - Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership.

<sup>55</sup> See: [https://europa.eu/european-union/eu-law/legal-acts\\_en](https://europa.eu/european-union/eu-law/legal-acts_en).

<sup>56</sup> For more information on European Union law, see: [http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU\\_1.2.1.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_1.2.1.html).

<sup>57</sup> See (pdf): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>.

2. Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2<sup>58</sup> shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State where:
- (a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 2(b) of Article 2, the marriage or registered partnership has lasted at least three years, including one year in the host Member State; or
  - (b) by agreement between the spouses or the partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children; or
  - (c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or
  - (d) by agreement between the spouses or partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.

The 2004 EU Directive recognizes the problematic nature of withdrawing residence privileges from partners of EU citizens, even when domestic violence is not a factor. It specifically prohibits member countries from doing so in cases of

**58** The 2004 EU Directive Chapter 1, General Provisions Article 2, Definitions, subparagraph 2 states: For the purposes of this Directive:

- 2) "Family member" means:
- the spouse;
  - (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
  - (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);
  - (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

See: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32004L0038>.

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domestic violence, as long as the marriage lasted three years. As written, the 2004 EU Directive does not permit any subjective evaluations by committees such as Israel's Humanitarian Committee, and the only requirement for relief, aside from the length of the relationship, is the presence of domestic violence as a difficult circumstance.

#### The United States

The United States' Violence Against Women Act of 1994 (VAWA), The Violence Against Women Act of 2000 (VAWA 2000) and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) contain provisions designed to protect immigrant victims of domestic violence by allowing them to petition for legal permanent resident without the cooperation of their abusive U.S. citizen/permanent resident spouse, or self-petition. Under VAWA, spouses of U.S. citizens or permanent residents may self-petition for immigrant visas without the cooperation and/or knowledge of their abuser spouse, who are not even notified of the filing.<sup>59</sup> The spouse must show proof of the marriage (the bigamy of an abusive spouse does not disqualify an applicant provided that she believed that she was legally married), that she entered the marriage in good faith and not only to gain immigration benefits, that she resided with her spouse, that the marriage terminated due to the violence within the two years prior to application, that there was battery/extreme cruelty by the abuser spouse and that she is of good moral character. A battered spouse of a U.S. citizen or permanent resident who is in removal proceedings may cancel the proceedings and obtain lawful permanent residence without participation of the abusive spouse.<sup>60</sup>

Under VAWA 2000, undocumented women in the United States who suffer from domestic violence at the hands of intimate partners, regardless of their marriage status or the immigration status of their intimate partners, may be eligible for a non-immigrant U Visa (a visa for victims of crimes who are willing to assist authorities in their investigation and/or prosecution of the criminal activity) valid for four years, provided they can demonstrate that they suffered "substantial physical or mental abuse" as a result of the domestic violence, they are helpful in investigating and prosecuting the domestic violence which must have occurred in the United States.<sup>61</sup> Unlike the Domestic Violence Procedure, VAWA does not differentiate between women with and without children with their abusers.

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<sup>59</sup> See: <https://www.uscis.gov/humanitarian/battered-spouse-children-parents>.

<sup>60</sup> Id.

<sup>61</sup> See: <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

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### Australia

In Australia, partners of Australian citizens, Australian permanent residents and eligible New Zealand citizens who apply to live permanently in Australia “can still be considered for permanent residence if they provide acceptable evidence that they or members of their family unit have been the victim of family violence committed by their Australian partner.”<sup>62</sup> This provision is contained in Schedule 2 of Australia’s Migration Regulations 1994, and is one of three exceptions to the “genuine and continuing relationship” requirement for a partner visa applicant who applies for permanent residence.<sup>63</sup>

Australia developed a Family Safety Pack, available online, which provides information about domestic violence, resources for immigrants in abusive relationships, and the rights of immigrants in abusive relationships to stay in Australia after leaving their abusive partner. The text is translated into 46 languages, and also adapted it into a low literacy story board with minimal text in each language and is available as audio files in some languages. The Family Safety Pack is an initiative of Australia’s National Plan to Reduce Violence against Women and their Children 2010-2022, and seeks to reduce violence against and improve support for women from culturally and linguistically diverse backgrounds.<sup>64</sup> The Family Violence and Partner Visas factsheet, which is included in the Family Safety Pack, states, in relevant part:

**Partner visa holders do not have to remain in an abusive relationship to stay in Australia. In Australia, domestic and family violence is not accepted. A partner, family members or other people in the community cannot threaten your visa status. If you hold a temporary Partner visa (subclass 300, 309 or 820) and experience family violence and your relationship ends, there are provisions in Australia’s migration laws to allow you to continue with your permanent Partner visa (subclass 100 or 801) application.**<sup>65</sup>

The Australian provisions offer an automatic remedy for all who qualify (by proving a

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<sup>62</sup> See: <https://www.border.gov.au/about/corporate/information/fact-sheets/38domestic#fvp>.

<sup>63</sup> See Migration Regulations 1994 (Cth) sch 2 cls 100.221(3)–(4), (pdf): <http://www.refworld.org/pdfid/4e23f6e12.pdf>; see also the Australian Law Reform Commission of the Australian Government’s publication on the subject of Family Violence, available at: <https://www.alrc.gov.au/publications/family-violence-and-commonwealth-laws%E2%80%94immigration-law/family-violence-exception>.

<sup>64</sup> See: <https://www.dss.gov.au/family-safety-pack>.

<sup>65</sup> The text of the Family Violence and Partner Visas factsheet may be found at: <https://www.dss.gov.au/women/publications-articles/reducing-violence/family-violence-and-partner-visas>.

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genuine marriage and that they or a family member suffered violence at the hands of the Australian partner), they do not limit relief to married partners, they apply equally to domestic violence victims regardless of whether they have children with their abusive partner and they provide clear and easily understandable information about relief available in multiple languages.

### **B. The Domestic Violence Procedure: An International Comparison**

The remedies for immigrant domestic violence victims in the U.S., the EU and Australia include the following four common elements:

1. permanent residence permits or visas of enumerated length, rather than periodic extensions of temporary resident status;
2. The inclusion of intimate partners without insistence on a formal marriage requirement;
3. Resident status upon meeting threshold conditions without the need for subjective review by a committee, and no requirement for victims to pass the equivalent of a Connections Test to qualify for relief;
4. Equal treatment for all victims regardless of whether they have children with their abuser.

## **IX. Conclusion and Recommendations**

While Israel is to be lauded for promulgating special considerations for victims of domestic violence seeking to remain in Israel after leaving their abusers, the past ten years since the inception of the Domestic Violence Procedure have shown that there is much room for improvement. The Domestic Violence Procedure should be revised to permit immigrants who are victims of domestic violence to continue with the Graduated Procedure without regard for the dissolution of their relationship, much like in the United States and Australia. Once they meet the threshold criteria, they should have no cause to fear deportation. They should simply finish out their time in the Graduated Procedure and then be permitted to apply for permanent residence as if their relationship were still intact, and without regard to whether or not they have children who are Israeli citizens.

Once this happens, PIBA's practice of *de facto* deporting Israeli children with their non-citizen mothers will come to an end, as will its practice of leaving domestic violence victims in the "temporary forever" limbo of having to apply for annual renewals of temporary visas with no endpoint in sight without judicial intervention.

As shown by the examples of the EU, Australia and the United States, there are ways to craft effective laws and principles that provide relief to immigrants who are victims of domestic violence with a minimum of bureaucratic hurdles and without the need for constant judicial intervention. It is time for the Domestic Violence Procedure to be revised so that it effectively combats the problem of domestic violence against immigrants.

Protection of immigrants who suffer from domestic violence must encourage them to leave the violent relationship.

It is necessary to alter the existing procedure in order to make this possible, and amongst other things:

1. To draft a procedure that regulates the status of immigrants suffering from domestic violence and their rights, without the need to raise each claim before the humanitarian committee, similar to the existing procedure regarding aged parents or children from previous relationships which require threshold requirements only. The regulation should apply to immigrants who have started the family unification process either as married couples or who are in *de facto* relationships.

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2. To narrow the Connection Test and to determine that immigrants without children who has been in the family unification process for more than half of the period has a close enough connection with Israel to qualify for relief.
3. A request to regularize the status of immigrants suffering from domestic violence will not be rejected due to the reason that they did not start the family unification process, in the situations where the fact that the process was not started was a symptom of the Israeli partner's control over the non-Israeli partner. In this situation, an immigrant who was in a relationship with an Israeli partner and suffered domestic violence for a year will be seen as having been in a relationship long enough for the procedure to apply or for the case to be brought before the Humanitarian Committee.
4. In any case where there is a joint child, the immigrant shall receive status in Israel, whether or not there is contact between the child and the Israeli parent, unless there are extenuating circumstances.
5. The length of the process shall be determined in the procedure and at the end of that period, the immigrant suffering from domestic violence shall receive permanent residence.
6. Seeing that part of the process of the rehabilitation is dependent on status, an immigrant suffering from domestic violence who had legal status in Israel and applied for its extension, shall be granted such an extension until a decision is made regarding the application.