



June 5, 2012

To:

Mr. Binyamin Netanyahu Government Ministers Members of Knesset
Prime Minister of Israel

Re: Comments on the Proposed Bills for the Arrangement of Outposts

We are honored to present our position ahead of the discussion on the proposed *Law for the Protection of Holders of Land in Judea and Samaria, 5772-2011* and the proposed *Law for the Protection of the Rights of Founders of Structures in Judea and Samaria, 5772-2011* – proposals whose purpose is to confiscate private land from Palestinians in the West Bank, on which unauthorized outposts were constructed. These bills are another step in a series of proposals that have been presented in the Knesset in recent months, in various formats, with a single goal: to grant retroactive legitimization to unauthorized construction on private land in the West Bank, while confiscating this land from its lawful Palestinian owners.

Generally, the establishment of settlements and outposts in the West Bank has severely injured the personal and collective rights of the Palestinians living under the occupation regime. However, the intention underlying the current proposed bills is a step up in trampling the individual rights of Palestinians and in the contempt for the rule of law in the Occupied Territories. The fact that a few of the proposed bills grant the landowners some possibility to turn to the (Israeli) court in order to claim compensation for the confiscated land cannot remedy its inherent moral and legal impropriety.

When considering the proposed bills, it is impossible to ignore the fact that their implication would be to encourage the invasion and usurping of the property of another (or turning a blind eye on such usurping, in the case of Katz's proposal). Thus, in adopting these proposed bills the Knesset will become complicit and directly responsible for such acts of usurping.



The impropriety of the proposed bills according to Israeli law and to international law

As is well known, the establishment of settlements of citizens of the State of Israel in territories held by the state through a regime of military occupation (or “belligerent seizure”) is prohibited under international law. Such an action constitutes a clear violation of the provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Times of War (the “Fourth Geneva Convention”) to which Israel is a party since 1951. As the legal advisor to the Ministry of Foreign Affairs clarified back in September 1967, “the prohibition is, therefore, categorical, and is not conditioned upon the motives or goals of the transfer; it is intended to prevent the settlement of members of the occupying state in the occupied territory.”¹ Since these proposed bills entail the authorization of new settlements of the citizens of the occupying state in the territories, they constitute a clear violation of the above-mentioned prohibition.

However, the particular gravity of the proposed bills lies elsewhere. After all, this illegality does not relate only to the legitimization of unauthorized outposts, but to the entire settlement enterprise in the West Bank, to which successive Israeli governments have been party (despite the fact that no government has disputed the status of these territories as ones held under “belligerent seizure” and through military rule, nor acted to change this status).

The unique aspect of the proposed bills discussed here is that they take an additional and grave step – they order the confiscation of private property in the occupied territory for the purpose of establishing such settlements. In so doing, the proposed bills contradict one of the clearest prohibitions of international law: the prohibition to confiscate private property. Regulation 46 of the Annex to the Hague Regulations, which undoubtedly reflects international customary law that binds all states, establishes regarding an occupied territory that “private property... is to be respected... private property is not to be confiscated.” The

¹ Opinion of H. Meron, Legal Advisor to the Ministry of Foreign Affairs, dated September 1967, as submitted to the Minister of Foreign Affairs, the Justice Minister and the Prime Minister at the time. It should be added that the violation of the prohibition against the transfer of population to the occupied territory is defined as a war crime in accordance with the Rome Statute of the International Criminal Court (article 8(2)(b)(viii)).



contradiction between the provisions of these bills and international law is absolute and irreconcilable. And there can be no doubt as to the validity and applicability of this prohibition regarding Israel's actions in the territories it seized. Since the ruling in HCJ 390/79 *Dweikat v. the Government of Israel*² (the Elon Moreh case), Israeli governments have not approved the establishment of settlements on private land in violation of this prohibition.

The implication is that the proposed bills contravene an international commitment incumbent on Israel, which Israel has never denied.

Moreover, confiscation of private property on a large scale, without the justification of military necessity, may become a grave violation of the Fourth Geneva Convention. Such violations are defined by the Rome Statute as a war crime (section 8(2)(a)(iv) of the Statute).

The proposed bills are also improper from the perspective of Israeli law.

They violate the right to property, which is protected under the Basic Law: Human Dignity and Liberty, in a retroactive manner that fails to meet the tests of the Basic Law and that extremely deviates from the arrangements recognized by Israeli law. Even if the promoters of these bills believe that their purpose (preventing the eviction of people from their homes) is worthy, the Israeli legislature has clearly ruled, in numerous legal provisions, that such a purpose cannot overrule the owner's right to property. The law maintains this position even in the case of persons who have taken possession of a property with the owner's permission; all the more so when the seizure took place without the owner's consent and through trespassing.

In addition, these proposed bills also constitute a step up in the institutionalization of the discriminatory regime maintained by Israel in the Occupied Territories – a regime that grants absolute preference, in all areas of life, to the interests of Israeli citizens above those of the Palestinian residents, while imposing a total separation between the two legal systems applying to these two populations. Thus, while the authorities demolish the homes of Palestinians in Area C on a weekly basis, claiming that these are illegal structures, the Israeli Knesset is working vigorously to retroactively legitimize construction by Israelis, which was carried out without permits and in contradictions to the rulings of the Supreme

² *Piskei Din* 34(1), 1 (1979).



Court. This situation, in which two distinct and discriminatory normative systems exist in a single territorial unit, one for Palestinians and the other for Jews, inherently contradicts the perception of human rights and casts a heavy shadow over the democratic identity of the State.

Before closing, we should state the obvious: Despite the illegality that mars the establishment of the unauthorized outposts, and despite the fact that they gravely injure the human rights of the Palestinian residents of the area, the inhabitants of the outposts have human rights that must be respected by the authorities of the State of Israel in all their actions. Thus, the authorities are obliged to ensure that the eviction of the outposts will be performed in a due process while minimizing the injury to the evicted persons during this process.

In conclusion, the proposed bills undermine the basic principles of our legal system and contradict obligations that the State of Israel has assumed in accordance with international law, which it has never denied. Therefore, we urge you and those Members of Knesset who believe in protecting human rights, in the principle of the rule of law, and in Israel's duty to respect international obligations it has assumed – to oppose these proposed bills.

Sincerely,

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