



21 July 2009

Mr. Reuven Rivlin                      Members of the 18<sup>th</sup> Knesset                      Mr. Menahem Mazuz  
Speaker of the Knesset                      The Knesset, Jerusalem                      Attorney General

Mr. Yaron Bibi  
Director, Israel Land Administration

Gentlemen/Ladies,

Re:    **Draft Israel Land Administration Law (Amendment No. 7) 2009**  
**Restrictions on Transfer of Title in Rural Communities and Agricultural Villages**

We hereby approach you concerning the draft Israel Land Administration Law (Amendment No. 7) 2009, in the context of restrictions on the transfer of property rights in rural communities and agricultural villages, as follows:

1. Yesterday, 20 July 2009, the Knesset Economic Committee approved a section of the draft land reform law whereby restrictions shall be imposed on the transfer of ownership of real estate properties in rural communities and agricultural villages. According to Section 10 of the draft law:

“The Council has the right to decide, according to rules it will establish, that when the Authority confers ownership of a real estate property in a cooperative society which is a small rural community or agricultural village, it shall be contingent upon obtaining the consent of the cooperative society, the Jewish Agency or the World Zionist Organization, depending on the location; should the Council decide to establish these rules, the Authority shall only confer ownership of the real estate property in the cooperative society after such consent has been given to it in writing. In this Section -

'Agricultural village' - a cooperative society classified by the Registrar of Cooperative societies, under the Cooperative Societies Ordinance<sup>1</sup>, as a workers' moshav, a cooperative village, a kibbutz, a cooperative moshav, a cooperative society for community settlement or as a rural community, including with respect to residential expansion;

'Small rural community' - a cooperative society classified by the Registrar of Cooperative Societies, under the Cooperative Societies Ordinance, as a cooperative society for community settlement or as a rural community in which the number of households does not exceed 500 or any other number established by the Council”;

<sup>1</sup> The Laws of Israel, Vol. I, p. [70] 336; [1] 360.

2. The significance of the above Section is that the Authority will be able to continue maintaining the mechanisms of admissions committees, which have until now been screening out Arab candidates and preventing them from living in the abovementioned rural communities and agricultural villages.
3. The practical result of the draft law is that the majority of the land in the ownership of the Development Authority or the State of Israel, defined as “Israel Lands” in the Basic Law: Israel Lands, will be allocated according to the admissions committees' mechanisms and only to candidates approved by the cooperative societies, “or the Jewish Agency,” or the “World Zionist Organization”. Based on past and present experience and from declarations by the “Jewish Agency” and the “Zionist Organization” as Zionist organizations entrusted (as you contend) with the interests of the Jewish people solely, it may be assumed that this approval mechanism will constitute a further filter to prevent the Arab population from acquiring property rights in the above mentioned places.
4. This decision governs and applies to 697 communities (648 agricultural villages and 49 rural communities). These communities constitute about 68.2% of all residential communities in the State of Israel (1,022 cities, towns and villages in the country, of which 197 are urban and 825 rural<sup>2</sup>), and 84% of all rural settlements.<sup>3</sup>
5. Although these places constitute approximately 68.2% of the residential communities in the country, the percentage of the population living there amounts to only about 5.3% of the total civilian population of the State (384,500 residents). Table No. 1 below presents the location of the communities governed by the resolution, according to districts and the size of the population in each district.<sup>4</sup>

**Table No. 1:** Rural Communities and Agricultural Villages Governed by Resolution No. 1015, with Breakdown of Districts and Size of Population<sup>5</sup>

	<b>Agricultural Communities</b>	<b>Rural Communities</b>	<b>Number of Communities Governed by Resolution 1015</b>	<b>Size of Population (Thousands)</b>
<b>T o t a l</b>	<b>648</b>	<b>49</b>	<b>697</b>	<b>384.5</b>
Jerusalem District	49	1	50	25.8
Northern District	221	38	259	132.2
Haifa District	45	1	46	26.4
Central District	156	3	159	116.3
Tel-Aviv District	2	--	2	0.8
Southern District	175	6	181	82.8

6. These communities are located and incorporated municipally in 52<sup>6</sup> regional councils all over the country.<sup>7</sup> These councils govern over 81%<sup>8</sup> of the area of the State, and

<sup>2</sup> Excluding the towns/villages on the Golan and the West Bank

<sup>3</sup> Data provided in the Israeli Statistical Yearbook, 2008, No. 59, Table No. 2.9

<sup>4</sup> The figures and percentages presented here do not include the places and residents living on the Golan and the West Bank.

<sup>5</sup> Data provides in the Israel Statisticcal Yearbook, No. 59, Table No. 2.9

<sup>6</sup> Excluding the regional councils located on the Golan (1) and the West Bank (7).

<sup>7</sup> Of which only three Arab councils, two in the North - Al-Batouf and Bustan Al-marj, and another one in the south - Abu-Basma.

<sup>8</sup> Data from the Geographic Information System - GIS

consist of 844 places, the majority of which - 697 (83%) are agricultural villages and rural communities (to which Resolution No. 1015 applies). The next table presents the distribution of the regional councils by district and the number of communities and the size of the population in each council.

**Table No. 2:** Distribution of the Regional Councils with Breakdown of Districts, Communities and Population Size (2006)<sup>9</sup>

	Number of Regional Councils	Number of Communities in the Councils	Size of Population (Thousands)
<b>Total in Israel</b>	<b>52</b>	<b>844</b>	<b>555.1</b>
Jerusalem District	1	63	36.2
Northern District	16	306	187
Haifa District	5	64	49.7
Central District	12	197	163.7
Tel Aviv District	1	4	4
Southern District	17	210	114.5

7. In other words, approximately 81%<sup>10</sup> of the area of the State of Israel is governed by regional councils housing only 7.5% of the total population of the country.<sup>11</sup>

#### **Violation of the Right to Choose a Place of Residence:**

8. The draft law is severely detrimental to citizens' rights to choose where they want to live within the territory of the State. This constitutes a violation of the citizen's dignity, equality and freedom, contrary to the Basic Law: Human Dignity and Freedom. Choosing a place to live is mainly a matter of the individual's personal liberty. It is part of the exercise of personal freedom of expression. It is also part of the exercise of the individual's freedom of movement within the territory of the State. The individual is entitled to choose a place to live out of all the various areas within the territory of the State designated for residence. He is entitled to choose his personal identification with a particular place.
9. Supreme Court precedents consider the exercise of the right to choose a place of residence - without calling it by that name - by means of imposing a **duty** on the State to allocate land for residential purposes in residential areas. That is to say, this **right** is also in fact recognized due to the existence of the **duty** that creates it. The rulings expressly established that the allocation of land by the State for residential purposes must respect the principles of the prohibition of discrimination, and distributive equality and justice. These duties created the constitutional right to **freedom of access** to residential places established by the State or its agents.
10. In the **Ka'dan** judgment, the State argued that it recognizes the right of equal access to residence for all citizens in the residential places established by the State, but it reasoned that this rule does not apply to the communities it builds in cooperation with the Jewish Agency. However, in this judgment, the Supreme Court did not accept this exception and established that in this case there is no room for exclusion either. In other words, the **Ka'dan** judgment applied the principle of **equal access** to residence

<sup>9</sup> Data provided in the Israel Statistical Yearbook, 2008, No. 59, Table No. 2.13

<sup>10</sup> Data from the Geographic Information System - GIS

<sup>11</sup> Data provided in the Israel Statistical Yearbook, 2008, No. 59, Table No. 2.13

both with respect to the communities established by the State and the communities established with the State's participation - as a rule this applies especially to non-specific communities. This was expressed in Paragraph 26 of the **Ka'dan** judgment:

“The State accepts that while the State itself (by means of the Ministry of Construction and Housing) set up the Harish urban community, and another neighborhood on the central hill at Katzir, the lands were ‘allocated to the general public according to the rules customary in the Ministry of Construction and Housing’. This allocation was egalitarian, with no distinction between Arab and Jew. Indeed, the State said in its response that ‘we have no dispute with the Petitioners that the entitlement to live in the Tel Iron Local Council in the present and in the future will be similar to any other Local Council, while giving the general public the opportunity to purchase apartments. This does not include [purchasing apartments] within the boundaries of the cooperative society, where acceptance into the society is conditional upon proceedings existing in every cooperative society in accordance with its regulations’. But what is the difference between the rural community and the urban community? This was not addressed in the State's response affidavit (by the Administration and the Ministry of Construction and Housing), except the statement of fact that the land had been allocated to the Agency which operates as an arm of the Jewish people in the Diaspora. But now we are not dealing with the Jewish Agency but with the State of Israel. We ask whether the State (i.e. the Administration) has the right to determine that it shall itself allocate land for the Katzir rural community which is designated solely for Jews, within the boundaries of the local council of Tel Iron. Such allocation is prejudicial to the Petitioners' right to equality, since it means that they are dealt with differently on the basis of their nationality. What are the special purposes in which the principal of equality may be compromised by law? To this question we heard no reply on behalf of the State.”

11. These duties imposed on the State, which reinforced the existence of the right to choose a place of residence or the right to equal access thereto, have been raised more than once in the Supreme Court judgments. Thus, for instance, the judgment in the **New Dialogue Society** case states the following:

“The Administration serves as the public's trustee in managing the State's land. It must administer them while guarding the public interest therein, including safeguarding the land for the benefit of the entire public, including the need to refrain from granting unjustified benefits in the land to others. As required of every administrative entity, the Administration must act fairly based on pertinent and egalitarian considerations, giving equal opportunity to the entire public. One of the general purposes of every administrative entity is to act with equality. This also applies to the determination and implementation of the land allocation policy.”<sup>12</sup>

In the **Poraz** case the following was said:

“Public lands should be used according to State criteria - the adoption of such criteria is the duty of public authorities in all their affairs, and all the more so insofar as it concerns dealing with property belonging to the entire public.

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<sup>12</sup> H CJ 3939/99, **Kibbutz Sde Nahum et al. v. Israel Land Administration et al.**, PD 56(6) 25, 64.

Translating the said criteria into methods of conduct points, inter alia, to the duty to dispense fairness and equality, based on the principles of good governance.”<sup>13</sup>

12. That is not all. The judgment further stated that excluding an individual from living in a particular community of his choice is prejudicial, offensive and sends a negative message indicating that individual’s inferiority, especially when it is done in light of his group affiliation. Accordingly, the compromise of the individual’s right to choose his place of residence due to his social affiliation violates his right to dignity and equality (see Paragraph 30 of the **Ka’dan** judgment).
13. The right to free and equal access to public land which was recognized in the Supreme Court judgments is, therefore, the practical expression of the individual’s right to choose his place of residence.
14. The right to choose a place of residence as a constitutional right is recognized in comparative law and in international treaties to which the State of Israel is a party.
15. Thus, for instance, Article 21(3) of the Constitution of South Africa states:

**21. Freedom of movement and residence**

1. Everyone has the right to freedom of movement.
  2. Everyone has the right to leave the Republic.
  - 3. Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.**
  4. Every citizen has the right to a passport.
16. Article 12 of the International Covenant on Civil and Political Rights to which Israel is a party, states the following:

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

General Comment No. 27 by the UN Human Rights Committee, which relates to Article 12 states the following:

**Liberty of movement and freedom to choose residence (para. 1)**

**4. Everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence. In principle, citizens of a State are always lawfully within the territory of that State.** The question whether an alien is "lawfully" within the territory of a State is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided they are in compliance with the State's international obligations. In that connection, the Committee has held that an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of article 12. <sup>2</sup> Once a person is lawfully within a

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<sup>13</sup> HCJ 5023/91, **Poraz v. Minister of Construction and Housing**, PD 46(2) 793, 801

State, any restrictions on his or her rights guaranteed by article 12, paragraphs 1 and 2, as well as any treatment different from that accorded to nationals, have to be justified under the rules provided for by article 12, paragraph 3.<sup>3</sup> It is, therefore, important that States parties indicate in their reports the circumstances in which they treat aliens differently from their nationals in this regard and how they justify this difference in treatment.

Footnote: 3: General comment No. 15, para. 8, in HRI/GEN/1/Rev.3, 15 August 1997, p. 20. (this general comments refers to the treatment of foreign aliens)

5. The right to move freely relates to the whole territory of a State, including all parts of federal States. **According to article 12, paragraph 1, persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place. Any restrictions must be in conformity with paragraph 3.**

6. The State party must ensure that the rights guaranteed in article 12 are protected not only from public but also from private interference. In the case of women, this obligation to protect is particularly pertinent. For example, it is incompatible with article 12, paragraph 1, that the right of a woman to move freely and to choose her residence be made subject, by law or practice, to the decision of another person, including a relative.

7. Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory. Lawful detention, however, affects more specifically the right to personal liberty and is covered by article 9 of the Covenant. In some circumstances, articles 12 and 9 may come into play together.<sup>4</sup>

(Emphases not in the original)

See:

General Comment No. 27: Freedom of Movement to the ICCPR gives interpretation to Article 12 of the ICCPR

Citation: CCPR/C/21/Rev.1/Add.9, General Comment No. 27, 2 November 1999, available at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6c76e1b8ee1710e380256824005a10a9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6c76e1b8ee1710e380256824005a10a9?Opendocument)

17. Furthermore, Article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination, to which the State of Israel is a party, establishes the prohibition of discrimination against the realization of the right to live within the State, as follows:

Article 5 [Right to Residence]

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

**(i) The right to freedom of movement and residence within the border of the State;**

18. Protocol No. 4 on the European Convention on Human Rights states the following:

“The Governments signatory hereto, being Members of the Council of Europe, *Being resolved* to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as "the Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

*Have agreed* as follows:

**Article 2**

**1. Everyone lawfully within the territory of a State shall, within that territory, has the right to liberty of movement and freedom to choose his residence.”**

See:

European Convention on Human Rights (1950)  
Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. No. 46, entered into force May 2, 1968.  
<http://www1.umn.edu/humanrts/euro/z23prot4.html>

19. Based on the foregoing, any restriction to access of the citizens of the State to public land in rural and agricultural communities will constitute an infringement of their constitutional rights to choose a place of residence, to dignity, equality and personal autonomy.

**The draft law is not legislated for a worthy cause**

20. We shall argue that the above mentioned draft law is not legislated for a worthy cause, because it violates the principles of equality among all citizens. Furthermore, the method of screening or restriction of the entitlement to acquire property rights in rural and agricultural communities is not for a worthy case since it violates the principle of distributive justice.
21. The draft law ignores and contravenes the basic principles outlined by the Supreme Court in connection with the distribution of land and benefits by the Israel Land Administration, especially the principle of distributive justice, and therefore it is not legislated for a worthy cause. That is because it benefits only a particular group out of the general citizens of the State, the “authorized” group. In the **New Dialogue** case, the Supreme Court established the principle of distributive justice as a pertinent and binding consideration for the Administration’s distribution of land, as follows:

“These things bring to the surface the value of exercising distributive justice in the Israel Land Administration’s allocation of land. This value concerns the just social distribution of social and other resources. The duty to base considerations on distributive justice is an integral part of the power of the administrative authority, which has the power to decide to allocate limited resources. .... These things teach us that the value of distributive justice is an important one, to which every administrative authority must give appropriate weight in every decision concerning the distribution of public resources. This has special consequence in the case before us. The Israel Land Administration is the entity in charge of all of the lands in Israel. The importance of this asset, and the importance to be given to its just and appropriate distribution, cannot be exaggerated. The decisions contemplated in the petitions before us have momentous implications on the distribution of this limited and valuable resource. There is significant public interest in ensuring that resources of this type be distributed by the State, or authorities operating on its behalf, fairly, justly and reasonably.”<sup>14</sup>

22. Although the **New Dialogue** case referred to compensation and benefits to farmers who had been cultivating the land for many years and had suffered losses with respect to their labors on this land and who sought to acquire it, the Supreme Court deemed it proper to void the decision, and justly so, due to the extreme nature of the benefits granted, and because they contravened the principle of distributive justice. All the more so, when concerning the land in question in the case at hand, there is no connection between the person awarded the land and the land itself, except that he is acceptable to the previously mentioned Zionist entities and the admissions committees; or in other words - he enjoyed a windfall.

In light of all of the above, you are hereby requested not to approve Section 10 of the above draft law.

Sincerely,

Suhad Bishara, Adv.

Sincerely,

Hana Hamdan  
Urban and Regional Planner

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<sup>14</sup> See Footnote 12 above, pp. 64-65.