19 March 2023

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Subject: Proposed law to amend the Cooperative Societies Ordinance (No. 12)
(Expansion of the applicability of admissions committees in Community towns), 5782 - 2022

I hereby appeal to you with a request to cancel the proposed law amending the Cooperative Societies Ordinance (No. 12) (expansion of the applicability of admissions committees in community towns), 5782 - 2022 (hereinafter: the proposal). The proposal is unconstitutional and contravenes international humanitarian law.

On 12 March 2023, the Ministerial Committee for Legislation approved the application of the rule of continuity to the bill in question, and the bill is scheduled for deliberation at the Economic Affairs Committee on 20 March 2023.

The proposal seeks to achieve two goals: (a) Expanding the powers granted to the admissions committees operating under the Cooperative Societies Ordinance, both at the regional level and in relation to the size of the community towns to which it applies; and (b) Expanding the areas of applicability of the legal arrangement set in the Ordinance to the West Bank. Both aims of the proposal are highly problematic. The first aim of the proposal is unconstitutional due to its violation of the fundamental rights to dignity, privacy, and equality for an improper purpose; and the second goal – its application to the occupied West Bank – is contrary to Israeli law and international law that applies to this area. We elaborate below:

1 This is an English translation of a Hebrew letter, available here.
A. Expanding the powers of admissions committees within Israel

1. The proposal seeks to expand the powers granted to the admissions committees that screen candidates for residence to community towns that include up to 700 housing units, compared to 400 housing units under the current law, as well as their expansion to, *inter alia*, "Emek Eron", "Hevel 'Adulam" and "Hevel Lachish".

2. The advancement of the proposal in question is part of the process of implementing the commitments of the coalition agreements, in which the government committed to a policy that advances and expands the processes of spatial Judaization and racial segregation in housing. To achieve these goals, it was agreed, *inter alia*, to expand the activities of the admissions committees in community towns by means of the amendment of the Cooperative Societies Ordinance and the expansion of the applicability of admissions committees to additional community towns (section 111 of the coalition agreement with the "Otzma Yehudit" [Jewish Power] faction dated 28 December 2022).

3. The latest variation of the admissions committees in community towns was reflected in the amendment to the Cooperative Societies Ordinance (No. 8), 2011 (hereafter: *Amendment No. 8*). This amendment regulated the admission committees in communal towns and in the communal extensions in agricultural settlements in the Naqab (Negev) and the Galilee where the number of households in the community, or in the original community town together with the expansion, does not exceed 400. Amendment No. 8 permits the exclusion of applicants due to "the applicant's incompatibility with the socio-cultural fabric of the community town" and allows the admissions committees to rely on the conditions of admission, or the characteristics of the community town, that were determined by the members of the community in the by-laws of the cooperative association in each and every settlement.

4. As is known, petitions were submitted to the Supreme Court against the constitutionality of Amendment No. 8 and an expanded panel of 9 justices handed down their judgment in 2014 (HCJ 2311/11 *Uri Sabah v. Knesset* (17 September 2014) (hereinafter: *the Sabah case*)). Four justices on the panel were of the opinion that Amendment No. 8 is wholly or partially unconstitutional due to its disproportionate infringement of the rights to equality, dignity, and privacy. The other justices of the panel (five in number) ruled that the law was not ripe at the time for constitutional review, though some clarified that the law raises very serious constitutional difficulties. Therefore, the law, even in its current form, is still subject to constitutional review.

5. Furthermore, the proposal in question contradicts the opinion of the Attorney General expressed in his response to the petitions in the *Sabah* case, in which he clarified that
Amendment No. 8 constitutes "a proper and proportionate balance between the need to ensure the development and continued strengthening of small communities in the periphery [...] and the duty to ensure that the allocation of the land is conducted in a reasonable and non-discriminatory manner [...]" (paragraphs 90-91 of the "Response Affidavit on behalf of the State" (25 January 2012). This proper balance, according to the Attorney General’s opinion, is reflected, inter alia, in reducing the applicability and limiting the scope of the law to "community towns located in the periphery (in the Naqab and the Galilee) which number up to 400 households" (Section 92 "Response Affidavit on behalf of the State" (25 January 2012)). According to this opinion, the balance would be violated if Amendment 8 applied to community towns with over 400 households and to other areas.

6. The law proposal aims to expand the scope of the violation of constitutional rights, while granting the admissions committees far-reaching powers that sanction arbitrariness, all for the ethically inappropriate and unlawful purpose of expanding segregation and hegemony on a racist basis. Court rulings determined that all primary legislation must serve a proper purpose. These rulings established that a purpose that does not give proper weight to human rights and disregards constitutional rights is not a proper purpose (see: HCJ 1661/05, the Gaza Coast Regional Council v. the Knesset, PD 59(2) 481, 570 (2005); HCJ 7146/12 Najet Serge Adam v. Knesset, 66(1) 717 (2013)).

7. We note in this context that in the report issued on 14 October 2021, the UN Special Rapporteur on the Right to Adequate Housing expressed his concern regarding the effects of discrimination in housing on the basis of race, color, or national or ethnic origin, including in the State of Israel:

   “Across regional contexts, the impacts of housing discrimination faced by groups on the basis of race, colour or national or ethnic origin is evidenced in [...] continued policies of direct and indirect segregation. In this regard, the Special Rapporteur expresses his grave concern about the persistent systemic discrimination and segregation in accessing the right to housing experienced and reported by particular vulnerable groups, particularly Roma communities in Europe and Asia, Palestinian citizens/residents in Israel and the West Bank [...]” (Emphasis added)

B. Expanding the applicability of the law to the areas of the West Bank

8. The proposal in question seeks to anchor the subject of admissions committees in primary Israeli legislation and to apply it to settlements in the West Bank - "southern Mount Hebron" or "in the area" as defined in the Extension of the Validity of the Emergency Regulations (Judea and Samaria and the Gaza Strip – Adjudication of Offenses and Legal Assistance) Law, 5728 – 1967.
9. As detailed below, there is an absolute prohibition on the application and implementation of the proposal in question in the area of the West Bank, as it blatantly violates an array of applicable laws - the provisions of international humanitarian law and human rights law - applicable to the West Bank as an occupied territory.

10. The proposal constitutes a step towards the annexation of occupied territories as it attempts to replace the norms of international humanitarian law and apply Israeli law to the West Bank in matters of land administration and development, despite that it has already been ruled by the Supreme Court that "the military commander derives his power from public international law concerning belligerent occupation. The legal meaning of this concept is twofold: First, the law, the judiciary, and the administration of the State of Israel do not apply in these areas... Second, the legal regime that applies in these areas is regulated by the public international law that applies to belligerent occupation." (HCJ 7957/04 Mara'abe v. Prime Minister of Israel, PD 60(2) 477,492 (2005); HCJ 1308/17 Silwad Municipality v. Knesset (9.06.2020) (hereinafter: the Silwad Municipality case)).

11. In the Silwad Municipality case, in which the Settlements Regularization Law for Judea and Samaria, 5777 - 2017, was invalidated, the majority of the justices on the panel expressed their opinion that the law contradicts the principle of territorial sovereignty, as the Knesset established through the law, in primary legislation, regulations that would apply, inter alia, to land located in the West Bank, and that there is a problem in the extraterritorial application of this kind of law (see paragraph 32 of President Hayut's ruling). Therefore, this proposal, if approved, will deepen the mechanism of de facto annexation of the Occupied Territories and may even be considered a move towards de jure annexation, all of which are in flagrant violation of the laws of occupation. Moreover, annexation constitutes a crime of aggression under Article 8(2)(a) of the Rome Statute.

12. Regulation 43 of the Hague Regulations constitutes, in the words of the High Court of Justice, "a quasi-constitutional framework for the laws of belligerent seizure" (HCJ 2164/09 Yesh-Din v. Commander of the IDF forces in the West Bank paragraph 8 (Nevo 26.12.2011)). According to this regulation, the Military Commander is authorized to administer the occupied territories and his main duty is to safeguard the needs of the local population under occupation, and he is, moreover, prohibited from contemplating policy considerations concerning the needs of his country. As stated “the military commander may not weigh the national, economic and social interests of his own country, insofar as they do not affect his security interest in the Area or the interest of the local population. Military necessities are his military needs and not the needs of national security in the broader sense. A territory
held under belligerent occupation is not an open field for economic or other exploitation.” (HCJ 393/82 Jamait Askat Al-ma-almoun Al-Maoudouda Almasaoulia Cooperative Society v. IDF Commander in the Judea and Samaria, PD 37(4) 785, 794 - 795 (198).

13. Furthermore, the Hague Regulations (specifically, Regulation 55) require the occupying power to manage the land resources exclusively as an administrator and for the benefit of the civilian population. According to these regulations, the Military Commander is clearly prohibited from transforming his country or its citizens into beneficiaries of public assets.

14. The proposal entrusts the administration of the land in the West Bank to the admissions committees, which have no status in international law and are not authorized to operate in occupied territory. Moreover, the land will not be administered for the benefit of the Palestinian population, but in accordance to the policy defined in the bill. In other words, the administration of the land will be in the hands of Israeli citizens, for the benefit of Israeli Jews, as established by Zionist settlement policy. By all accounts, these principles have never been viewed as being compatible with Regulation 43 of the Hague Regulations.

15. The proposal in question is, furthermore, contrary to Article 49 of the Fourth Geneva Convention, which prohibits the transfer of a civilian population of an occupying power to the occupied territory. The International Court of Justice (ICJ), in its Advisory Opinion of 9 July 2004 regarding the separation wall that was being built by the Israeli government in the West Bank, once again emphasized the illegal status of the settlements in the territories occupied since 1967, whose establishment is contrary to international humanitarian law. This issue is also recognized as a war crime in the Rome Statute (Article 8(2)(b)VIII of the Statute).

In light of the above, you are hereby requested not to approve the bill in question and to act to prevent its advancement into legislation.

Sincerely,

Dr. Suhad Bishara, Advocate
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Copies:
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