

9 March 2023

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**The subject: the decision of the Political-Security cabinet regarding the "regularization" of outposts in the West Bank**

I hereby request that you revoke the decision of the Political-Security Cabinet of 12 February 2023 regarding the "regularization" of ten settlements (outposts) in the West Bank (hereinafter: **the decision**). The aforementioned decision is contrary to international humanitarian law and to international criminal law that applies to this area as an occupied territory, as detailed below:

1. The aim of the above decision is to plan and enable the development of 10 outposts in the West Bank. These were listed in the government decision under the names: Avigail, Beit Hogla, Givat Harel, Givat Haroeh, Givat Arnon, Mitzpe Yehuda, Malachei Shalom, Sde Boaz, Shacharit, and Asa'el. According to information published on the Peace Now website, these outposts include approximately 335 housing units and are spread on over 1,100 dunams, including approximately 420 dunams of land that is privately owned by Palestinians.

<https://peacenow.org.il/en/the-security-and-political-cabinet-approved-the-establishment-of-9-new-settlements-by-authorizing-10-illegal-outposts-in-the-occupied-territories>

2. The mapping of the aforementioned outposts furthermore reveals that they are located in the areas of Palestinian rural councils, as follows (**see attached maps**):

<b>Outpost</b>	<b>Village Council</b>
Avigail	Yatta rural council
Beit Hogla	Alnaby Musa rural council
Givat Harel	Sinjil, Al-Laban, Al-Sharkiya, and Qaryut rural councils
Givat Haroeh	Sinjil rural council
Givat Arnon	Yanun rural council
Mitzpe Yehuda	Al Obeida rural council
Malachei Hashalom	Al Ma'air rural council
Sde Boaz	Al Khader rural council
Shacharit	Beyda and Kafar Al-Dik rural councils
Asa'el	A-Sim'a rural council

3. In practice, this is, first and foremost, a decision that contravenes the judgment of the High Court of Justice in the **Silwad Municipality** case, in which the Settlements Regularization Law for Judea and Samaria, 5777 - 2017, was overruled due to its disproportionate violation of the right to property, equality, and dignity of Palestinian landowners in the West Bank (HCJ 1308/17 **Silwad Municipality v. Knesset** (delivered on 9 June 2020). To remind you, this was a law that sought to expropriate land from Palestinian residents of the West Bank in order to legalize settlements that were built on this land. The court determined that due to the nature of the law, which seeks to take land from Palestinians and give it to Jews, violates not only the right to property but also the right to equality and dignity. Similarly, the decision in question seeks to "legitimize" settlements by taking land from Palestinians and making it available to Israeli settlers. Hence, and by virtue of the same logic as that of the above ruling, the current decision is illegal, as it is contrary to the principles cited in the **Silwad municipality** judgment.
4. As is known, Israel's actions in the West Bank, as an occupied territory, are subject to rules of international humanitarian law and international human rights law. (See HCJ

7957/04 **Mara'abe v. Prime Minister of Israel**, PD 60(2) 477,492 (2005); HCJ 1661/05, **the Gaza Coast Regional Council v. the Knesset**, PD 77 ( published in 2005) (hereinafter: the **Gaza Coast** case); HCJ 3239/02 **Marab v. Commander of the IDF Forces in the Judea and Samaria Area**, PD 57(2) 349 (2003)). The application of humanitarian law in the Occupied Territories was also addressed by 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. (See paragraphs 89 and 101 of the decision in the following link:

[www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm](http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm))

5. This decision constitutes a violation of the norms of international law on several levels:
  - A. Firstly, it is a violation of Article 49 of the Fourth Geneva Convention, which prohibits the transfer of the occupying power's civilian population to the occupied territory. The International Court of Justice (ICJ), in its above-mentioned advisory opinion, emphasized once again the illegal status of the settlements in the West Bank and their contravention of international humanitarian law and noted that this breaches the right of the Palestinian people to self-determination.
  - B. Secondly, the decision seeks to alter the nature of Palestinian lands under the jurisdiction of the aforementioned rural councils on which the settlements are built, including those that are privately owned, which is contrary to Regulation 43 of the Hague Regulations. It also goes without saying that the decision does not meet either of the two exceptions set forth in this regulation.
  - C. Thirdly, the decision is contrary to Regulation 46 of the of the Hague Regulations , which expressly prohibits confiscation of private property. The first reference to the expropriation of assets in a court judgment after the end of hostilities in World War II was in the **Krupp case** at the Nuremberg trials. The court ruled, *inter alia*, that this expropriation constitutes a violation of Article 46 of the Hague Regulations which, as aforementioned , prohibits the expropriation of private property. The court ruled, *inter alia*:

“We conclude from the credible evidence before us that the confiscation of the Austin plant based upon German inspired anti-Jewish laws and its subsequent detention by Krupp firm [...] was also a violation of Article 46 of the Hague Regulations which provides that private property must be respected: that the Krupp firm [...] voluntarily and without duress participated

in these violations by purchasing and removing the machinery and leasing the property of the Austin plan and in leasing the Paris property ...”

US Military tribunal at Nuremberg, **US v. Alfreid Krupp et al.** cited in HOW DOES LAW PROTECT IN WAR? Second edition (2006) ICRC, volume 2 pp. 1030.

- D. Fourthly, extensive appropriation of the assets of a protected population also constitutes a blatant violation of the 1949 Fourth Geneva Convention under Article 147 of the Convention.
  - E. Fifthly, since the purpose of the decision is distinctly racial-political, as described above, it also constitutes a "crime of apartheid" under Article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid.
  - F. Sixthly, the above decision amounts to a war crime under the Rome Statute establishing the International Criminal Court (Article VIII (b) (2) 8 of the Statute) – a matter that has been under investigation in relation to the 1967 Israeli occupation.
6. Finally, we note that the present decision was strongly condemned on 20 February 2023 by the United Nations Security Council which determined, *inter alia*, that:

“The Security Council expresses deep concern and dismay with Israel’s announcement on February 12, 2023, announcing further construction and expansion of settlements and the “legalization” of settlement outposts.

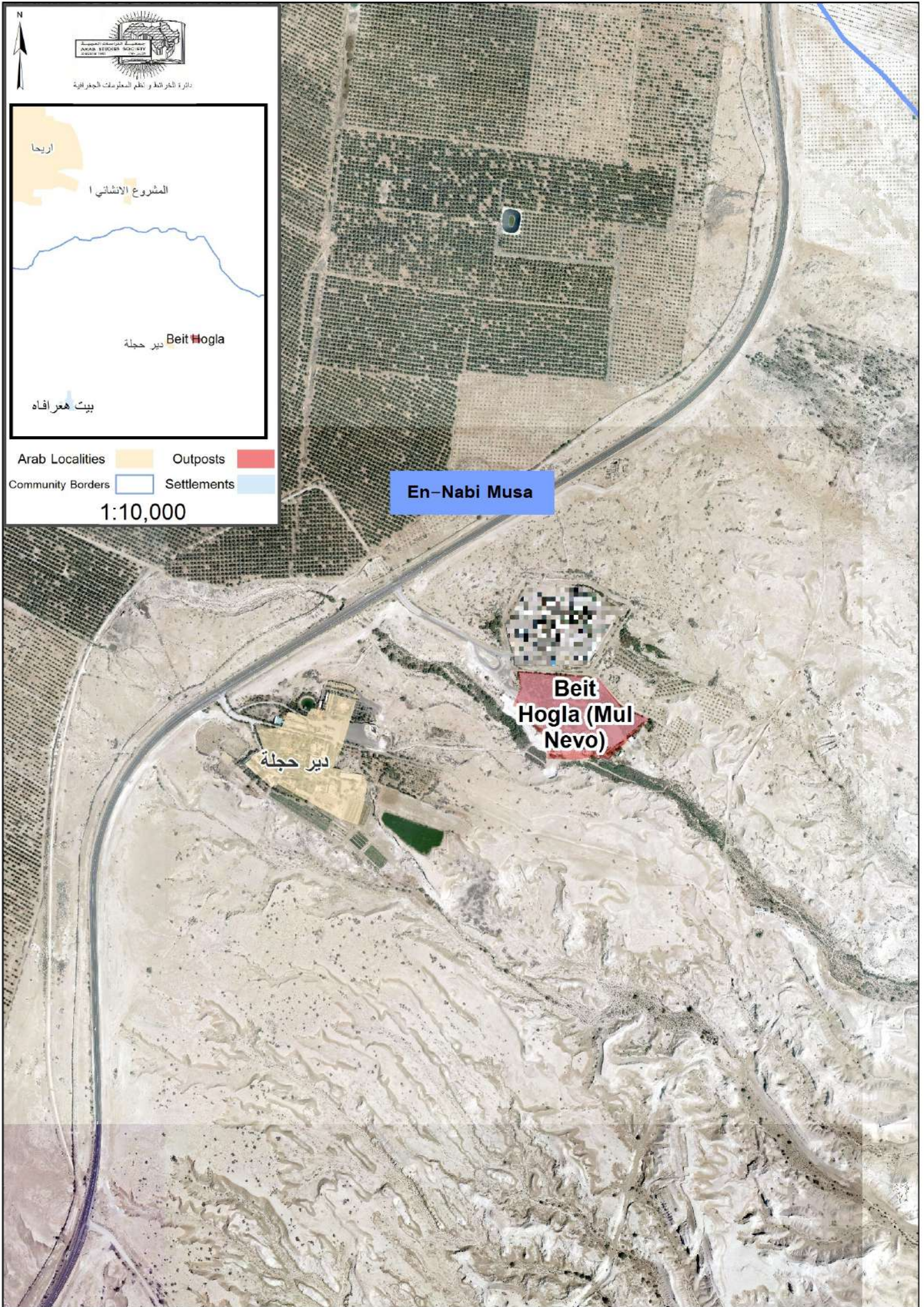
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/052/50/PDF/N2305250.pdf?OpenElement>

In light of all of the above, you are hereby requested to cancel this decision immediately and refrain from any steps to implement it.

Best regards,

Dr. Suhad Bishara, Advocate





دائرة الخرائط و نظم المعلومات الجغرافية



Arab Localities		Outposts	
Community Borders		Settlements	

1:10,000

