*Translated from the original Hebrew to English*

**Supreme Court of Israel**
**Sitting as the High Court of Justice**
**HCJ 1308/17, Silwad Municipality, et. al. v. The Knesset, et. al**

**The petitioners:**

1. **Silwad Municipality**
2. **Na'alin Municipality**
3. **Burqa Village Council**
4. **Bil'in Village Council**
5. **Khirbit Beni Harith Village Council**
6. **Deir Qadis Village Council**
7. **Al-Naqoura Village Council**
8. **'Iraq Burin Village Council**
9. **Kufr Qalil Village Council**
10. **Deir Sharaf Village Council**
11. **Burin Village Council**
12. **'Asira al-Qibliya Village Council**
13. **Deir al-Hatab Village Council**
14. **Al-Sawiya Village Council**
15. **'Azmut Village Council**
16. **Al-Luban al-Sharqiya Village Council**
17. **Kufr Qadoum Village Council**

18. **Adalah – The Legal Center for Arab Minority Rights in Israel, registered association no. 58-031-224-7**
19. **Jerusalem Legal Aid and Human Rights Center, registered association no. 58-030-759-3**
20. **Al Mezan Center for Human Rights**

All represented by Attorney Suhad Bishara and/or Myssana Morany and/or Hassan Jabareen and/or Sawsan Zaher and/or Nadeem Shehadeh and/or Muna Haddad and/or Mohammad Bassam of Adalah – The Legal Center for Arab Minority Rights in Israel
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**versus**

**The respondents:**

1. **The Knesset**
   Represented by the Knesset's Legal Advisor
   The Knesset
2. **The Military Commander in the West Bank**
   Represented by the State Attorney's Office (High Court of Justice Department)
   29 Saladin Street, Jerusalem, 9711052

## Petition to grant an *order nisi* and interim order

We hereby submit a petition to issue an *order nisi* to the respondents, instructing them to show cause as to:

A. Why it should not be determined that the Law for the Regularization of Settlement in Judea and Samaria [the West Bank] – 2017 is invalid in all territories of the West Bank and, therefore, Respondent No. 2 is prohibited from taking action in accordance with it;

B. Why it should not be determined that the Law to Regularize Settlement in Judea and Samaria, 5777-2017 is invalid because it is unconstitutional.

## Motion to grant an interim order

We hereby ask the Honorable Court to issue an interim order instructing the respondents to refrain from implementing the Law for the Regularization of Settlement in Judea and Samaria – 2017 and, *inter alia*:

A. To refrain from registering land in the West Bank as government property in accordance with the law;
B. To refrain from appropriating the rights to use and hold land in the territories of the West Bank and transferring them to the "officer in charge" in accordance with the law;
C. To refrain from granting rights to use and hold land in the West Bank for the purposes of settlement in accordance with the law;
D. To refrain from forming an appraisal committee for the purpose of implementing the law;
E. To refrain from establishing an objections committee in accordance with the law;

All of this until a final decision on this petition.

The partial or full implementation of the law would cause irreparable damage to petitioners 1-17, particularly in light of the limited time frame allowed for its implementation: full implementation within 12 months from the date it enters into effect.

To implement the law at this stage, prior to a final decision on its constitutionality, would be to contradict judicial rulings that have underscored the importance of the Attorney General's professional opinion in determining law that is binding upon all authorities, including Respondent No. 2 [The Military Commander in the West Bank]. The Attorney General explained why Respondent No. 2 was prohibited from implementing the law as follows:

> "According to judicial rulings, the expropriation of private Palestinian land in Judea and Samaria shall be conducted in accordance with the local law, for a public purpose, and while meeting the requirement of proportionality, or, of course, expropriation for military purposes. In contrast, the objective of the expropriation in the [current] legislation is to retroactively regularize illegal Israeli construction on private Palestinian land.
>
> According to international law, a state cannot apply its laws to lands that lie beyond its territory. The Military Commander of IDF forces in the area is the legislative authority in Judea and Samaria. Therefore, arrangements pertaining to land in Judea and Samaria and to suspending the right to use them must be made in security regulations, and are subject to international law, which is the source of the sovereign's authority in a territory under belligerent occupation. It is doubtful whether the [Settlement Regularization Law] would be valid so long as it is only grounded in Israeli legislation, and, as I noted previously, we believe that the Military Commander would be unable to establish a similar arrangement via security regulations given the conflict with international law."
>
> (The Attorney General's position, hereinafter: Appendix P/3.)

Therefore, any implementation of the law at this stage, prior to a final decision, is liable unlawfully to cause enormous damage, and failure to issue an immediate interim order is liable to make any discussion of this petition superfluous in the event that the legal rights to the land are transferred to the settlers, even *vis-à-vis* only some of the petitioners.

The grounds for the petition as a whole constitute an integral part of this motion.

## The grounds for the petition

## Introduction

1. On 6 February 2017, the Knesset enacted the Law for the Regularization of Settlement in Judea and Samaria – 2017 (hereinafter: the Settlement Regularization Law), which is designed to expropriate land from Palestinians who hold rights to it and to allocate the land to Israeli settlers, and thus to "regularize" – from the perspective of domestic

Israeli law – settlements in the West Bank that were built on privately-owned Palestinian land.

**== A copy of the text of the legislation as submitted [to the Knesset] for second and third readings is attached as Appendix P/1.**

2. For the purpose of implementation, the law stipulates a very short time frame for registering rights to land, appropriating the rights to use and hold it, and the transfer of these rights to settlers. Article 4 of the law stipulates periods of 12 months, 6 months and 60 days respectively for carrying out these activities.

3. The Settlement Regularization Law contravenes two legitimate legal systems recognized in international law: administrative law, which rests on the principle of equality before the law, and international humanitarian law, which applies to occupied territory. It strips the Palestinian residents of the West Bank of their basic rights and leaves them without the protection of the law by allowing them to be dispossessed of their private property for the sake of Israeli settlers in the West Bank, in the pursuit of an ethno-ideological end.

4. By contravening these laws, the Settlement Regularization Law breaches the most absolute prohibitions in international law, including the prohibitions listed in the International Convention on the Suppression and Punishment of the Crime of Apartheid, which defines practices of apartheid as crimes against humanity. Article 2 of the convention notes that the prohibition applies to acts that establish and maintain domination by one racial group over any other group of persons, with resulting rights violations. As we explain in this petition, the implementation of the law will harm a large number of Palestinians in the West Bank. In addition, the clear, declared purpose of the law, which seeks to privilege the interests of one group on an ethnic basis and leads to the dispossession of the Palestinians, leaves no doubt that this law involves crimes under the convention. The international community has therefore expressed its vehement opposition to the law, as detailed below.

5. The explanatory notes of the Settlement Regularization Law make it exceedingly clear that the act of stripping the Palestinians of their property rights is intended to promote the interests of Jewish Israeli settlers in the West Bank. It does not aim to serve the interests of the local Palestinian population or to promote a clear, legitimate security interest that is intended to protect the entire population of the West Bank. Article 1 of the Settlement Regularization Law states that the objective of the law is "to regularize settlement in Judea and Samaria, and to enable it to continue to be strengthened and develop." Unlawful ethnic privileging clearly appears in the explanatory notes to the law:

"The goal of the [law] is to regularize the status of Israeli settlements in Judea and Samaria (hereinafter – the area), in order to enable the continued strengthening and development of Israeli settlement in the area."

**== A copy of the proposed legislation and explanatory section is attached as Appendix P/2.**

6. Both the Attorney General and the Legal Advisory Department of the Knesset's Constitution, Law and Justice Committee have also expressed their strong opposition to the law. The Attorney General stated as follows:

"The proposed legislation stands in conflict with the obligation of the Military Commander in the Judea and Samaria area to protect the property of the Palestinian population in the area because it provides for the unlawful violation of property rights and confiscation of land from its rightful owners. This obligation is a heightened obligation, stipulated in international law, as it applies to a territory under belligerent occupation, and has been recognized and established in Supreme Court rulings."

Document entitled "The Attorney General's opinion – the proposed Regularization Law," which can be found [in Hebrew] on the Knesset's website: http://fs.knesset.gov.il/20/Committees/20_cs_bg_362461.pdf

**== A copy of the Attorney General's opinion is attached as Appendix P/3.**

7. The Legal Advisory Department of the Knesset's Constitution, Law and Justice Committee also underlined difficulties arising from the implementation of the law by Respondent No. 2 [The Military Commander in the West Bank] in its own opinion:

"The arrangement in the proposed legislation significantly deviates from the framework that today allows the Military Commander to expropriate land in Judea and Samaria for a public purpose, and raises various difficulties: It includes a legislative directive to an administrative authority to expropriate land, without conducting an orderly expropriation proceeding consistent with the local law or with the principles of administrative law in Israel; the expropriation is conducted in an inequitable way; the expropriation is for the purpose of legitimizing actions that were apparently carried out unlawfully […]" (p. 2 of the opinion).

**== A copy of the opinion of the Legal Advisory Department of the Knesset's Constitution, Law and Justice Committee's opinion is attached as Appendix P/4.**

8. The petition presents two main arguments related to the remedies cited at the outset. First, the implementation of the law in the territories of the West Bank is absolutely prohibited because it blatantly violates the array of laws – international humanitarian law and human rights law – that apply to the West Bank as occupied territory and to the Palestinian population in the West Bank as a protected population. Therefore,

Respondent No. 2 is prohibited from implementing the provisions of the law. Secondly, the law is invalid because it is unconstitutional, since it violates the constitutional rights of the Palestinian population of the West Bank to property and dignity, and is inconsistent with the limitation clause in the Basic Law: Human Dignity and Liberty. In relation to the application of Basic Laws to legislation of this type, we argue primarily that, in contrast to rights that apply to the citizen as a citizen (such as the right to vote and to be elected in the Basic Law: The Knesset), the constitutional protections in the Basic Laws (such as the right to property and the right to dignity) apply to any person, regardless of his/her place of residence or status, especially when he/she is subject to the Israeli authorities and/or effectively under Israeli control. Indeed, the law not only causes harm to the right to private property of the Palestinians, but also violates their right to dignity by asserting that the interests of the Jewish Israeli settlements and settlers in the West Bank outweigh and are superior to the rights of the Palestinians, thereby justifying their dispossession. We argue that the violation of rights in this case does not serve a legitimate purpose, primarily because it violates absolute prohibitions of international law. Given the invalid purpose of the law, we will not need to discuss the test of proportionality, since prohibitions of this sort are, by nature, not subject to this type of test and cannot be tested on this basis. Thus, for example, the Supreme Court did not base its examination of the constitutionality of the army's use of Palestinians as human shields (the "neighbor procedure") on the proportionality test because it determined that this use constituted a gross violation of international humanitarian law (HCJ 3799/02, *Adalah – The Legal Center for Arab Minority Rights in Israel v. GOC Central Command, IDF*, PD 60(3), 67 (2005)). The same rule also applies to the Settlement Regularization Law.

**The petitioners**

9. Petitioners no. 1-17 are Palestinian local authorities in the West Bank whose jurisdiction includes the settlements listed in the addendum to the law. The law will adversely affect these Palestinian local authorities and their residents.

10. Petitioner No. 18 is an association founded in November 1996 as an independent legal center working to promote human rights in general and the rights of the Arab citizens in Israel in particular.

11. Petitioner No. 19 is an association founded in 1997 and operates as a legal aid center for the Palestinians in the occupied territories as part of the Quaker Legal Aid Center.

12. Petitioner No. 20 is an association that works to promote the rights of the Palestinian residents of the occupied territories.

## Statement of Facts

13. The law instructs the Military Commander in the area of the occupied West Bank to expropriate private Palestinian land that was encroached upon by Israeli settlers prior to the law (article 3) and on which they built [houses and others structures] without a permit, and to reallocate the land to the settlers who encroached and built on it.

14. The law defines all land in the area "for which the rights to use and hold it, or part of it, have not been assigned to the authorities in the area or to the officer in charge" of government property as "land requiring regularization". It instructs the authorities in the area to appropriate the land or the rights to use and hold it, if there has been "settlement" on it that was carried out "in good faith" or "received the state's consent for its construction" (article 3).

15. Article 3 distinguishes between two types of land requiring regularization:

    (1) Land where no one is registered or entitled to register as the freeholder: Ownership of this lands will be expropriated and the land will be registered, within 12 months of the law's publication (article 4(a)) as government property. In this aspect, the law substantially alters the land laws applicable in the West Bank, as the Attorney General explained in his opinion on the matter:

> "The law stipulates that land to which no one has proven his rights will be registered in the name of the officer in charge [of state property]. This arrangement substantially changes the land laws in practice in the Judea and Samaria area, and the policy towards state land. According to this policy, the officer in charge declares state land (and does not register ownership) only when all of the records and findings indicate that it is not private land. This policy stems from that heightened obligation to protect private property, and in view of the fact that the Military Commander suspended the process of land registration in the area in 1967." (The Attorney General's opinion, P/3, para. 3.)

(2) Land where there is a registered freeholder or someone entitled to register: In regard to this land, the authorities in the area, within six months of the Settlement Regularization Law's publication (article 4(b)), will appropriate the rights to use and hold the land, and transfer them to the officer in charge of government property until there is a "political resolution regarding the status of the area and settlement in it" (article 3(2)(b)). The appropriation of rights will allegedly be conducted, to the extent possible, in accordance with local law in force in the area (article 3(2)(b)). But this subordination [to local law] is fictitious because the law states that the appropriation of rights "will be executed, to the extent possible, in accordance with the Jordanian Land Law, *as long as they do not contradict the provisions of this law* […]" (article 3(2)(B)) (emphasis added).

16. Although the law ostensibly creates two types of land to which different provisions apply, in both cases the violation of the right to property is severe and extensive: the act of appropriating the rights to use and hold land for an unknown period (until "a political resolution") and transferring these rights to a third party completely eviscerates the right to property. The Attorney General emphasized this point in his opinion, as follows:

> "The fact that the legislation denies, ostensibly, only the rights to use the land, as opposed to previous drafts that referred to the complete transfer of ownership, does nothing to offset the severity or illegality of the violation. The rights to use and hold land are central and significant rights that are among the cluster of rights that constitutes the right to property. In addition, the transfer is not limited in time, so it is a permanent denial of rights." (The Attorney General's opinion, P/3, para. 1.)

17. The Legal Department of the Joint Committee of the Constitution, Law and Justice Committee and the Foreign Affairs and Defense Committee (hereinafter: the Joint Committee), which discussed the legislation prior to a second and third reading, also explained in this context that "it is actually expropriation":

> "Elazar Stern – the Legal Department:
> It's a matter of semantics. It's all the same, it's simply that the [bill's] proposers wanted to write it this way. It is actually expropriation." (Protocol No. 7 of the committee's meeting of 13 December 2016, p. 3.)

**== A copy of the relevant pages of protocol of the committee's meeting of 13 December 2016 is attached as Appendix P/5.**

18. The Legal Advisory Department of the Knesset's Constitution, Law and Justice Committee wrote similarly in an opinion it submitted to the Committee:

> *Despite the use of the term "right of use," the content of the arrangement in the proposed legislation indicates that the essence of the violated right is the right to own land and not the right to use it."* (Opinion of the Legal Advisory Department of the Committee, Appendix P/4, p. 10.) (Emphasis in the original.)

19. The Settlement Regularization Law does grant some compensation to the Palestinian landowners who have been stripped of their rights to use and hold their lands (article 8(a)), but this does not remedy the violation of their rights and the flaw in the legislation, as explained below.

20. After seizing the land, the officer in charge of government property will transfer the rights to use and hold it to settlers for settlements that have already been built on it, via the Settlement Division and other settlement institutions (article 5). In addition, the state will endeavor to complete the planning process for the land as speedily as possible (article 6(a)) for the purpose of regularizing the existing construction (article 6(b)).

21. Moreover, article 7(a) of the Settlement Regularization Law states that if a particular settlement satisfies the conditions stipulated in article 3, all pending enforcement proceedings and administrative orders against it will be annulled (articles 7(a)-(b)). Here, the law lists 16 settlements in the cases of which legislators will not wait for a decision by the officer in charge – which is due within one year – on whether the conditions stipulated in article 3 exist (and construction will be permitted and the orders canceled). Instead, any pending enforcement proceedings and administrative orders will automatically be suspended for one year (article 11).

**The settlements to which the law applies**

22. In order to fall within the purview of the Settlement Regularization Law, a "settlement" must satisfy one of two conditions: it must have been constructed either in good faith by the settlers, or with the consent of the state. Four concepts are relevant to this section (settlement, good faith, the state's consent, state); one of them (good faith) is not defined in the law and raises various problems of interpretation, while the

other three (settlement, the state's consent, state) are defined in a broad and vague way, as explained below.

23. We note at the outset that the term "settlement" was defined extremely broadly, to include "all of the residences in it, the facilities, the agricultural land that serves its needs, public buildings that serve the residents, means of production, as well as access roads and infrastructure for water, communication, electricity and sewerage", and "including a neighborhood or extension of the settlement" (article 3 of the law).

24. That is, if the conditions defined in article 3 of the law are satisfied, the Military Commander must confiscate all the land used to serve the settlers in the settlement in question (including for purposes of residence, public buildings, industry, agriculture, access roads and infrastructure).

25. The conditions for including a "settlement" within the purview of the law are extremely broad and unclear. The concept of "good faith" is not defined in the law at all, and as we know from other areas of law in which this concept is used, it is vague and potentially applicable to each and every case. It cannot be inbued with a general meaning, although there are certain rules of thumb to guide its usage.

26. The second condition – that of "the state's consent" – is also problematic. The state's consent is defined in very broad terms, as follows:

> "The state's consent" – explicit or implicit, in advance or after the fact, including assistance in laying infrastructure, granting incentives, drawing up plans, issuing advertisements aimed at encouraging construction or development, or contributions either in cash or in kind.

27. This consent – explicit or implicit, in advance or after the fact – can include a very broad range of actions, and it is therefore impossible to understand the way in which it will be applied. The Legal Advisory Department of the Constitution, Law and Justice Committee noted this problem in explaining that "the definition of 'consent' in the proposed legislation includes a very wide range of possible expressions of consent on the part of the 'state'" (opinion of the Legal Advisory Department of the Committee, Appendix P/4, p. 10). This problem becomes even more acute given the broad definition of "the state":

"The state" – the Government of Israel or one of the governmental ministries, the authorities in the area, a local authority or regional authority in Israel or in the area, and settlement institutions.

28. This very broad definition of the state includes local authorities that are not state authorities as well as private bodies: settlement institutions such as the Settlement Division. The Legal Advisory Department of the Constitution, Law and Justice Committee also explained that, "The definition of the 'state' is extremely broad and it includes almost any entity with governmental or public characteristics that may pertain to a settlement" (opinion of the Legal Advisory Department of the Committee, Appendix P/4, p. 11). These may include "the government, a governmental ministry, the Civil Administration, the IDF, local authorities, regional councils, the World Zionist Organization, the Settlement Division and other settlement institutions which the Minister of Agriculture has recognized" (opinion of the Legal Advisory Department of the Committee, Appendix P/4, footnote 39).

29. Along with the aforementioned definitions, the Addendum to the Settlement Regularization Law lists 16 settlements (see table below) for which, as noted, the legislature suspends, with immediate effect, pending enforcement proceedings and administrative orders for an entire year (article 11).

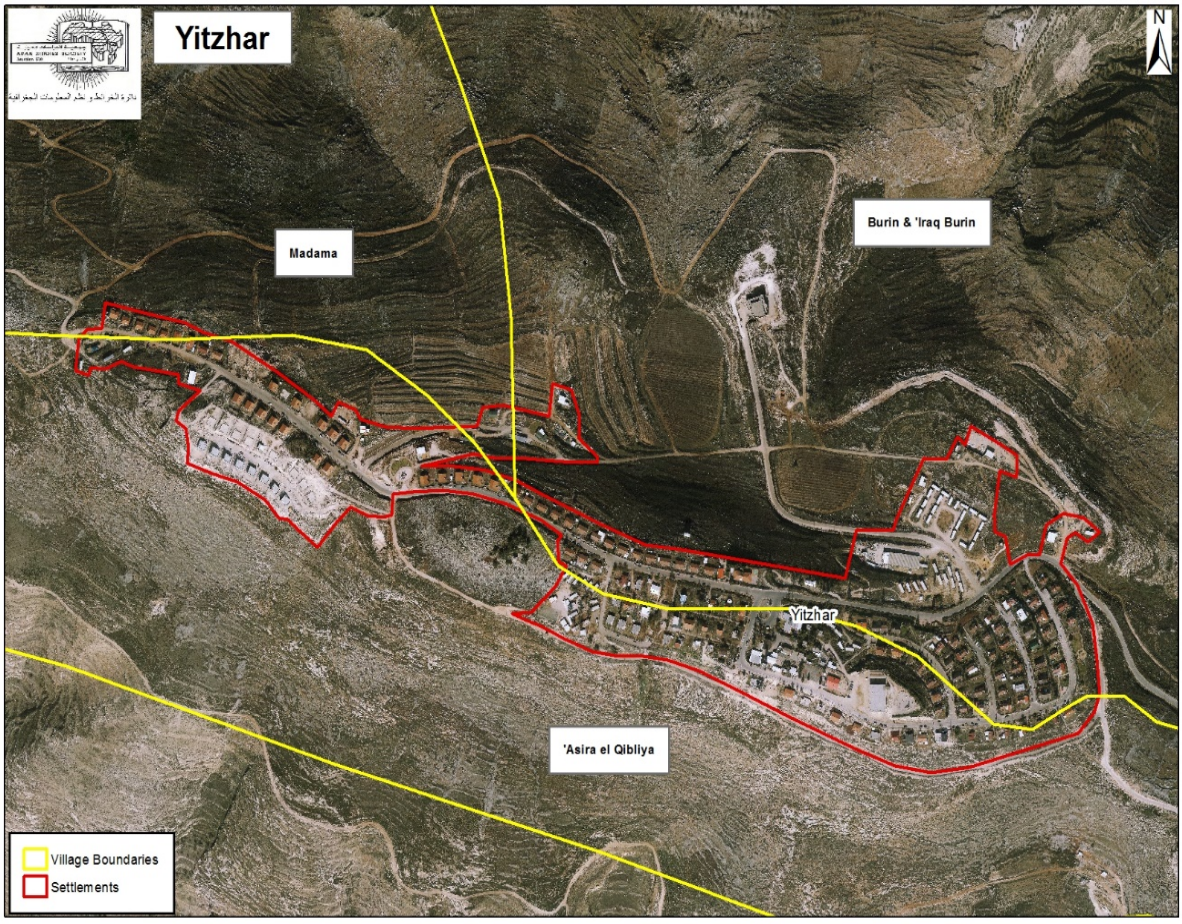
**Table of settlements listed in the Addendum to the Settlement Regularization Law and the Palestinian towns encroached on by them**

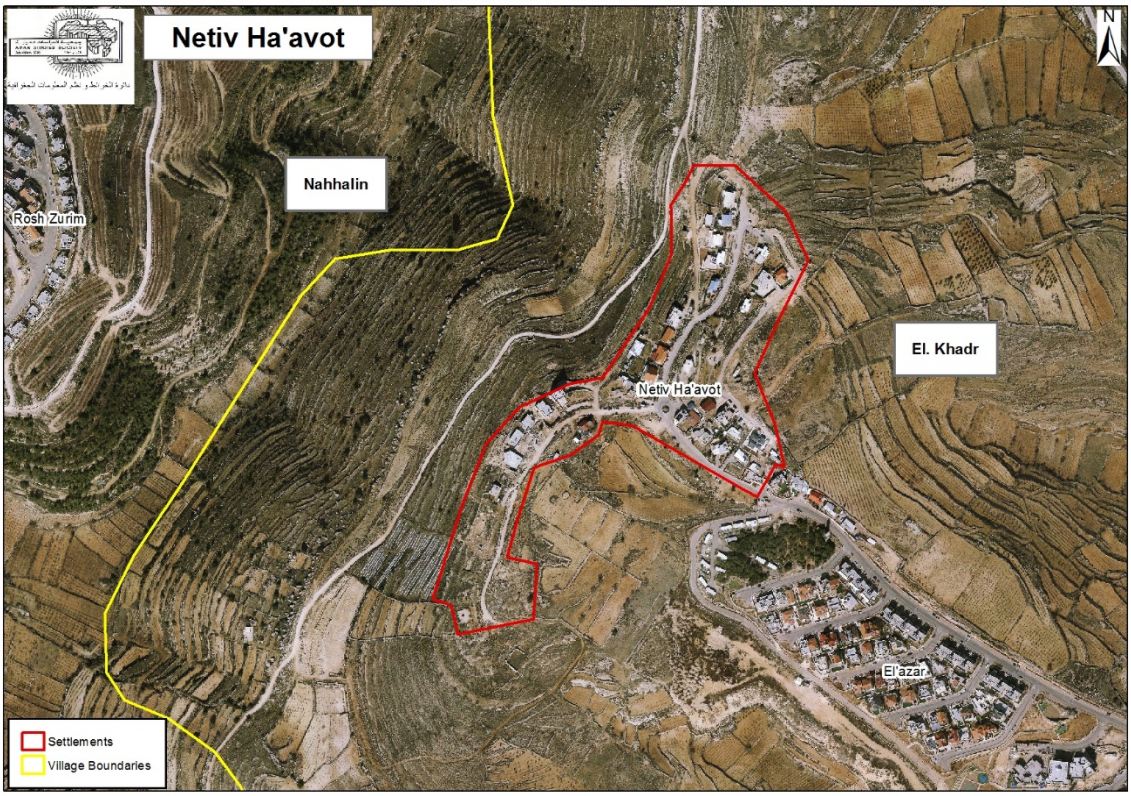
| **Settlement** | **Palestinian towns on which the settlement was constructed** |
|---|---|
| Ofra | Ein Yabrud, Silwad |
| Netiv Ha'avot | Al-Khadr |
| Eli | Al-Luban al-Sharqiya, al-Sawiya |
| Kochav Hashachar | Deir Jarir, Kafr Malek |
| Mitzpe Kramim | Deir Jarir, Kafr Malek |
| Elon Moreh | 'Azmut, Deir al-Hatab |
| Ma'ale Michmas | Deir Dabwan |
| Shavei Shomron | Al-Naqoura, Deir Sharaf |
| Kedumim | Kufr Qadoum |

| | |
|---|---|
| Psagot | Al-Bireh |
| Beit El | Dura al-Qara, Al-Bireh |
| Yitzhar | ‘Asira al-Qibliya, Burin, ‘Iraq Burin |
| Har Bracha | Kufr Qalil, Burin, ‘Iraq Burin |
| Modi’in Illit | Deir Qadis, Khirbit Beni Harith, Bil’in, Na’alin |
| Nokdim | ‘Arab al-Ta’amri (near Za’atra) |
| Kochav Ya’akov | Kufr ‘Aqab, Burqa |

30. Below are aerial photographs of two settlements, showing the Mandatory jurisdictions of the local authorities on whose territory they were built. Similar maps of the other settlements are attached in the appendixes.

**== A copy of the aerial photographs of settlements showing the Mandatory jurisdictions of the local authorities on whose territory they were built, is attached as Appendix P/6.**






31. When the question arose in the committee of how and why these specific settlements were selected, MK Bezalel Smotrich, one of the sponsors of the legislation, explained that these were settlements with legal proceedings pending against them at various stages:

> "These settlements are settlements that, to the best of our knowledge, based on familiarity with the situation on the ground, are facing all sorts of proceedings in various stages that are being conducted today, primarily brought by extreme leftist organizations that conduct correspondence and bring it before the Supreme Court. Since it will take time for the authorities in the area to review all 4,000 – who knows how many – illegal structures that sit on un-regularized land and to examine whether the conditions of article 3 have been satisfied in each of them, we are simply requesting that the orders be suspended, so that if legal proceedings develop *vis-à-vis* the structures in these settlements, then the statement will be that we are 'on hold' until we examine whether they fall within the purview of this legislation."
> (Session 7 of the Joint Committee's meeting of 13 December 2016, p. 59.)

**== A copy of the relevant pages from the protocol of session 7 of the Joint Committee of 13 December 2016 is labeled and attached as Appendix P/7.**

32. Thus the list consists of an initial group of settlements where the law's proponents know there is existing construction on private property, and that people are demanding the restoration of the land.

33. It should also be noted that the Settlement Regularization Law does not determine any proceeding of objection or appeal for those affected by its provisions and who have been stripped of their rights. The law only provides for a mechanism for objecting to the decision of the Assessment Committee concerning the level of usage fees to which the landowner is entitled (article 10). In light of the overly-broad definitions in the law and the lack of a mechanism for appealing decisions made by the [Israeli] authorities in the area on this matter, the implication of the law is the actual expropriation of Palestinian land on which any settlement has been constructed or which settlers are using for purposes of residence, agriculture, a public building, industry, access roads, or infrastructure.

**International criticism**

34. Upon its enactment, the Settlement Regularization Law attracted strong international criticism for its violations of international humanitarian law and because of its negative repercussions for the peace process. The day after its enactment, the Secretary General of the United Nations denounced the law, explaining that the legislation, which violates international law, would have far-reaching legal consequences for Israel:

> "United Nations Secretary-General António Guterres today deeply regretted the adoption by Israel's legislative body, the Knesset, of the so called 'Regularization bill,' saying the measure contravenes international law and will have 'far-reaching legal consequences' for the country."
>
> http://www.un.org/apps/news/story.asp?NewsID=56123#.WJpINvl97b0

35. The European Union's High Representative for Foreign Affairs and Security Policy, Federica Mogherini, also issued a harsh condemnation of the law, stating that it "crosses a new and dangerous threshold":

> "The European Union condemns the recent adoption of the 'Regularization Law' by the Israeli Knesset on 6 February. This law crosses a new and dangerous threshold by legalizing under Israeli law the seizure of Palestinian property rights and effectively authorizing the confiscation of privately owned Palestinian land in

occupied territory. The law may provide for 'legalizing' numerous settlements and outposts previously considered as illegal even under Israeli law, which would be contrary to previous commitments by Israeli governments and illegal under international law.

In passing this new law, the Israeli parliament has legislated on the legal status of land within occupied territory, which is an issue that remains beyond its jurisdiction."

https://eeas.europa.eu/headquarters/headquarters-homepage/20104/statement-high-representativevice-president-federica-mogherini-regularisation-law-adopted_en

36. The European Union also denounced the law prior to its final enactment, in a statement published in December 2016:

https://eeas.europa.eu/topics/water-diplomacy/16735/statement-by-the-spokesperson-on-the-regularisation-bill-in-israel_en

37. The law was also denounced by international human rights organizations, including Human Rights Watch, which issued the following statement against the legislation on the eve of its enactment:

"The Knesset's passage of the 'Regularization' bill undoes years of established Israeli law and, coming just weeks after the Security Council's unanimous passage of Resolution 2234 on the illegality of settlements, reflects Israel's manifest disregard of international law. The bill further entrenches the current reality in the West Bank of de facto permanent occupation where Israeli settlers and Palestinians living in the same territory are subject to 'separate and unequal' systems of laws, rules and services. Israeli officials driving settlement policy should know that the Trump administration cannot shield them from the scrutiny of the International Criminal Court, where the prosecutor continues to examine unlawful Israeli settlement activity."

38. The previous American administration also opposed the legislation. The State Department's deputy spokesperson, Mark Toner, stated on 6 December 2016 that:

"This legislation, if it is enacted, would be a dramatic advancement of the settlement enterprise, which is already greatly endangering the prospects for a two-state solution […] And we've also been troubled by comments that we've heard by some political figures in Israel that this would be the first step in annexing parts of the West Bank."

https://2009-2017.state.gov/r/pa/prs/dpb/2016/12/264912.htm

**Exhaustion of proceedings**

39. On 19 July 2016, Petitioner No. 18 contacted the Attorney General, asking him to oppose the Regularization Law, and on 13 December 2016 the same petitioner contacted the Constitution, Law and Justice Committee and the Foreign Affairs and Defense Committee prior to its deliberations on the law in preparation for its second and third readings. The petitioner received no response in this matter and, as noted, the law was passed by the Knesset on 6 February 2017.

**== Copies of Petitioner No. 18's letters of 19 July 2016 and 13 December 2016 are attached as Appendix P/8.**

## Cause of Action

We divide our legal arguments here into two parts: In the first part, we explain why it is necessary to declare the Settlement Regularization Law invalid in the territory of the West Bank, and why the Military Commander in the area is thereby prohibited from acting in accordance with it. In the second part, we argue that the law is unconstitutional because it violates human rights that apply to any person subject to the Israeli authorities, in contravention of the Basic Law: Human Dignity and Liberty. In this context, the law violates the constitutional rights to property and dignity of the Palestinian residents of the West Bank, and this is contrary to the stipulations of the limitation clause.

**Part One: The law is invalid in the West Bank because it violates international law**

40. In this part, we argue that the Settlement Regularization Law is not valid in the West Bank because it violates provisions of international humanitarian law and international human rights law that apply in the occupied territories and establishes [legal] norms, whereas this Honorable Court has already ruled that, "The Military Commander derives his power from public international law pertaining to belligerent occupation. The legal significance of this occupation is twofold: first, the law, jurisdiction and administration of the State of Israel do not apply in these areas. They were not 'annexed' to Israel; secondly, the legal system that applies in these areas is governed by public international law pertaining to belligerent occupation" (HCJ 7957/04, *Mara'abeh v. Prime Minister of Israel*, PD 60(2) 477, 492 (2005)) (hereinafter: the *Mara'abeh* case).

See also: HCJ 1661/05, *Gaza Coast Regional Council v. The Knesset*, para. 77 of the ruling (published in *Maagarim*, 2005) (hereinafter: the *Gaza Coast* case); HCJ 4764/04, *Physicians for Human Rights v. The Commander of IDF Forces in Gaza*, PD 58(5) 385 (2004); HCJ 2056/04, *Beit Surik Village Council v. The Government of Israel*, 58(5) 807, para. 23 (2004); HCJ 3239/02, *Mar'ab v. The Commander of IDF Forces in Judea and Samaria*, PD 57(2) 349 (2003); HCJ 7015/02, *Ajouri v. The Commander of IDF Forces*, PD 56(6), para. 13 (2002); HCJ 3451/02, *Al-Mandi v. The Minister of Defense*, PD 56(3) 30, 34-35 (2002); HCJ 3114/02, *MK Barakeh v. The Minister of Defense*, PD 56(3) 11 (2002); HCJ 102/82, *Tzemel v. The Minister of Defense*, PD 37(3) 365, 374-375 (1983).

41. The Court has also recognized an additional source of "laws that apply in the State of Israel's belligerent occupation. These are the basic principles of Israeli administrative law that pertain to a public employee's use of governmental authority. These include, *inter alia*, rules of substantive and procedural fairness, the obligation to act reasonably, and rules of proportionality" (the *Mara'abeh* case, p. 492). (See also: HCJ 393/82, *Jama'yat Iskan al-Ma'alimun al-Ta'awuniyeh al-Mahduda al-Masuliyeh v. The Commander of IDF Forces in Judea and Samaria*, PD 37(4) 785, 810 (1983)) [hereinafter: the *Jama'yat Iskan* case]).

42. The International Court of Justice (ICJ) noted the application of humanitarian law in the occupied territories in its Advisory Opinion of 9 July 2004 in the case of the Separation Wall built by Israel in the West Bank. (See para. 89 and 101 of the ICJ's Advisory Opinion: www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm.)

43. Therefore, the rules of international humanitarian law apply to Israel's actions in the West Bank, including the 1907 Hague Convention respecting the Laws and Customs of War on Land and its associated regulations (hereinafter: the 1907 Hague Convention), the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, and international human rights law.

44. According to international law, the type of action permitted by the Settlement Regularization Law will not alter the legal status of the territories it affects and they will remain occupied territory, as they were prior to the law. And its owners, along with all the Palestinian residents of the [West Bank], are protected residents under

international humanitarian law. In its Advisory Opinion of 9 July 2004, the ICJ again emphasized the status of all of the territories annexed by Israel in 1967 as occupied territory (para. 98-99). In a similar context, the ICJ unequivocally ruled that measures adopted by Israel following the annexation that aimed to alter the status of East Jerusalem did not do so, and nor did they change Israel's status as an occupying power (para. 75 and 78). These statements by the ICJ also apply to our case. In the *Mara'abeh* case, the Honorable [Israeli Supreme] Court did not reject the principles of the ICJ's Advisory Opinion.

45. Indeed, Article 43 of the 1907 Hague Convention stipulates that an occupying army must preserve the law that was in force in the area prior to the occupation and act in accordance with it, and that the central consideration in exercising the authorities of the occupying power is the well-being of the local population in the occupied territory. Therefore, the well-being of the occupied population and the security of the occupying power are the motives behind the laws of occupation and the considerations which the occupying power may take into account when exercising governmental powers and administering the occupied territory (see also the *Jama'yat Iskan* case). Thus, any change that Israel makes to the legal situation in the occupied territories must fulfil this condition; otherwise, such a change would have no effect from the perspective of international law.

46. As noted, article 3(2)(b) of the Settlement Regularization Law does stipulate that stripping of the rights to use and hold land under the law "will be executed, to the extent possible, in accordance with the Jordanian Land Law", i.e. the applicable local law. However, it further states that these provisions will apply "as long as they do not contradict the provisions of this [the Settlement Regularization] law." Therefore, this provision fails to remedy the problem of applying Israeli law that establishes legal norms in the occupied territory, in contravention of international humanitarian law, as explained below. In this article, the Jordanian Land Law is also subordinated on the conceptual, principle and practical levels to the provisions of the Settlement Regularization Law and the political motives behind it.

47. In practice, the law completely abrogates all of the protections in international humanitarian law concerning the right to property, through Israeli legislation that violates the rights of protected residents of the occupied territories.

48. International humanitarian law prohibits the State of Israel, as an occupying power, from exploiting occupied territory for its own political purposes or for the needs of its own citizens, which includes for settlement construction. On this matter, it was determined in the *Jama'yat Iskan* case that, "The Military Commander is not allowed to consider the national, economic, or social interests of the state as long as they have no impact on its security interests in the area or on the interests of the local population. Even the needs of the army are [limited to] its military needs and not the needs of national security in a broad sense. The area held in belligerent occupation is not an open field for economic or other exploitation" (the *Jama'yat Iskan* case, pp. 794-795; see also on this matter: the *Mara'abeh* case; HCJ 2150/07, *Abu Safiya v. The Minister of Defense*, PD 53(3) 331 (2009); HCJ 69/81, *Abu Ita v. The Commander of IDF Forces in the West Bank*, PD 37(2), 197 (1983); HCJ 10356/02, *Hass v. The Commander of IDF Forces in the West Bank*, PD 58(3), 443, 455 (2004)) (hereinafter: the *Hass* case).

49. As described in the Statement of Facts, above, the objective of the Settlement Regularization Law is clearly the ethno-political goal of retroactively "legalizing" – under Israeli domestic law – settlements that were built in violation of international humanitarian law. Since the law seeks to alter the character of privately-owned Palestinian land on which settlements have been constructed, i.e. land owned by Palestinians who live in the occupied territories as well as those who became refugees outside these territories, and in light of the fact that the law fails to meet either of the two exceptions stipulated in Regulation 43 of the 1907 Hague Convention, the legalization of the settlements (the law's objective), together with the transfer of the rights to use the private Palestinian land on which they were built, like the establishment of settlements itself, is a gross violation of article 55 of the 1907 Hague Convention. And again, in its aforementioned Advisory Opinion, the ICJ emphasized the illegal nature of the settlements established in the territories occupied since 1967 under international humanitarian law.

50. This principle is also determined in specific regulations addressing the Occupier's authorities with regard to public property, such as Article 55 of the 1907 Hague Convention, which states that the Occupying State is merely the administrator of the territory, and must safeguard the capital of properties located on it and administer

them in accordance with the rules of usufruct. This territory is under its control only temporarily and for purposes of usufruct alone. Article 23 of the Convention also prohibits the destruction or seizure of the enemy's property, unless it is imperatively demanded by military necessity. Article 53 of the 1907 Hague Convention and Article 53 of the Fourth Geneva Conventions also establish a similar rule.

51. Article 46 of the 1907 Hague Convention stipulates the need to respect the right to property and explicitly prohibits the confiscation of private property.

> "Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. *Private property cannot be confiscated*." (Emphasis added.)

52. Article 46 of the 1907 Hague Convention protects the right to property not only against a total violation of the right, but also against limitations that constitute a violation of this right, for example, seizing and preventing the use of land by its lawful owners. In the *Krupp* case, in response to the defense's argument that the laws of belligerent occupation do not prevent the seizure and use of property in occupied territories, the court ruled that since Article 46 requires respect for the right to property, there is also a violation of this right when the property is seized and the owners are prevented from using it and exercising their legal rights in it. The ruling states:

> "Article 46 stipulates that 'private property [...] must be respected.' However, if, for example, a factory is being taken over in a manner which prevents the rightful owner from using it and deprives him from lawfully exercising his prerogative as owner, it cannot be said that his property 'is respected' under Article 46 as it must be."
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> Case no. 58. *Trial of Alfried Felix Alwyn Krupp von Bohlen und Halbach and eleven others,* United States Military Tribunal, Nuremberg, 17th November, 1947 – 30th June, 1948. Published in *Law Reports of Trials of War Criminals*, selected and prepared by the United Nations War Crimes Commission, Volume X (1949), pp. 69, 137.
>
> https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-10.pdf

53. No compensation payment in this context, such as that offered by the Settlement Regularization Law, can remedy this violation of the right to property. Thus it was ruled in the *I.G. Farben* case that a monetary payment does not remedy an illegal action. Though this was stated in the context of the absolute confiscation of property,

the principle is valid in every case of violation of property that occurs through its seizure and the prevention of its lawful owners from using it.

> "The payment of a price or other adequate consideration does not, under such circumstances, relieve the act of its unlawful character. Similarly where a private individual or a juristic person becomes a party to unlawful confiscation of public or private property by planning and executing a well-defined design to acquire such property permanently, acquisition under such circumstances subsequent to the confiscation, constitutes conduct in violation of the Hague Regulations."
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> Case No. 57 *[I.G. Farben]. Trial of Carl Krauch and Twenty-Two Others*, United States Military Tribunal, Nuremberg, 14th August, 1947 – 29th July, 1948. Published in *Law Reports of Trials of War Criminals*, selected and prepared by the United Nations War Crimes Commission, Volume X (1949), pp. 1, 44.
>
> https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-10.pdf

54. The Attorney General also noted this in his Opinion on the Settlement Regularization Law (Appendix P/3) as follows:

> "The proposed legislation stands in conflict with the obligation of the Military Commander in the Judea and Samaria area to protect the property of the Palestinian population in the area because it provides for the unlawful violation of property rights and confiscation of land from their its owners. This obligation is a heightened obligation, stipulated in international law as it applies to a territory under belligerent occupation, which has been recognized and grounded in Supreme Court rulings."
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> "The fact that the legislation denies, ostensibly, only the rights to use the land, as opposed to previous drafts that referred to the complete transfer of ownership, does nothing to offset the severity or illegality of the violation. The rights to use and hold land are central and significant rights that are among the cluster of rights that constitutes the right to property. In addition, the transfer is not limited in time, so it constitutes a permanent denial of rights."

55. The fact that the transfer only pertains to the rights to use and hold land, and that compensation is awarded to the landowners (in the form of annual usage fees) has no relevance here. This finding can also be concluded from the fact that the seizure of land for purposes of settlement construction is in any case in violation of international law; the nature of this seizure and any compensation, as noted, cannot remedy this blatant violation. Moreover, the transfer of the rights to use and hold land does not alter the status of the seized territory as occupied territory.

56. The rule stated in the aforementioned Article 46 of the 1907 Hague Convention is detailed more specifically in Article 52 of the convention, which prohibits the

demanding of requisitions in kind and services, except for the needs of the army of occupation, which are defined as follows […]:

> "All authorities are again in agreement that the requisitions in kind and services referred to in Article 52, concern such matters as billets for the occupying troops and the occupation authorities, garages for their vehicles, stables for their horses, urgently needed equipment and supplies for the proper functioning of the occupation authorities, food for the Army of Occupation, and the like."
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> Case no. 58. *Trial of Alfried Felix Alwyn Krupp von Bohlen und Halbach and eleven others*, United States Military Tribunal, Nuremberg, 17th November, 1947 – 30th June, 1948. Published in *Law Reports of Trials of War Criminals*, selected and prepared by the United Nations War Crimes Commission, Volume X (1949), pp. 69, 137.
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> https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-10.pdf

57. The prohibition on the violation of the right to ownership in this context also creates "an obligation to actively work to protect the rights to private property of the protected residents, which includes protecting them from unlawful construction on their land and seizure of it" (HCJ 9949/08, *Hamad v. The Minister of Defense*, para. 15 of the ruling [published in *Maagarim*, 25 December 2004]), and this in light of the significant violation of the property rights of the protected residents in the occupied territories (see also on this subject: HCJ 5665/11, *Kfar Adumim Cooperative Village for Communal Settlement Ltd. v. The Minister of Defense*, paras. 12-14 [published in *Maagarim*, 10 October 2012]; HCJ 851/06, *Amona Cooperative Agricultural Association for Settlement v. The Minister of Defense* [published in *Maagarim*, 29 January 2006]; HCJ 8887/06, *Abd a-Razeq v. The Minister of Defense* [published in *Maagarim*, 2 August 2011]; HCJ 9060/08, *Yassin v. The Minister of Defense*, PD 65(2) 669 (2012)).

58. We further note in this context that extensive confiscation of properties belonging to the protected population constitutes a gross violation of the Fourth Geneva Convention of 1949, according to Article 147 of the convention.

59. The Settlement Regularization Law also violates Article 49 of the Fourth Geneva Convention, which prohibits the transfer of the Occupying Power's own civilian population into the occupied territory. The law legitimizes the seizure of occupied territory, the alteration of its designated purpose and the creation of new facts-on-the-ground that prevent Palestinian residents from freely enjoying their own wealth and

natural resources. Further, the transfer of an Occupying Power's own civilian population to occupied territory was also designated a war crime in the Rome Statute establishing the International Criminal Court (Article 8 (2)(b)(viii) of the Rome Statute).

60. Thus, according to both Israeli Supreme Court case law and international law, the Military Commander in the West Bank is prohibited from acting in accordance with the Settlement Regularization Law, and the Honorable Court is therefore requested to rule it invalid and not applicable in the West Bank as territory occupied in 1967.

**Part Two: The law is unconstitutional and thus invalid**

**The application of Israel's Basic Laws to the protected residents of the occupied territories**

61. The question of the applicability of Israeli constitutional law to the protected residents of the occupied territories has been left undecided in a number of [Israeli Supreme Court] rulings (see, e.g. HCJ 8276/05, *Adalah v. The Minister of Defense*, PD 62(1) 1 (2006); HCJ 281/11, *The Head of the Beit Iksa Village Council v. The Minister of Defense* (6 September 2011); in the *Gaza Coast* case, p. 560). However, in practice, constitutional rights that do not inherently apply to citizens alone (such as the rights to vote and to be elected, as established in the Basic Law: The Knesset), but rather apply to any person as such (such as the right to property and the right to dignity), have been applied to the Palestinian population of the West Bank.

62. In this context, [the Supreme Court] has explicitly ruled that the right to dignity and the right to property in the Basic Law: Human Dignity and Liberty apply to all persons, in contrast to the right to exit and enter Israel, for example, to which citizens alone are entitled. Thus, Article 2 of the Basic Law: Human Dignity and Liberty states that, "There shall be no violation of the life, body or dignity of any person as such," when it is clear that the intention is that governmental authorities are not entitled to harm a person's life, body or dignity. A similar provision appears in Article 3 of the same Basic Law, which states that "There shall be no violation of the property of a person."

63. Accordingly, Supreme Court rulings have extended these rights to the [Palestinian] residents of the West Bank. Thus the court ruled, for example, in the *Murad* case, which dealt with agricultural land in the possession of Palestinian residents that was sealed off by order of the Military Commander. In the *Murad* case, the Honorable Court drew the right to property of the Palestinian landowners from both international humanitarian law and the Basic Law: Human Dignity and Liberty. The court explained that "an additional basic right that should be considered in our case is, of course, the right to property of the Palestinian farmers on their lands. In our legal system, the right to property is protected as a basic constitutional right (Article 3 of the Basic Law: Human Dignity and Liberty)." (HCJ 9593/04, *Murad v. The Commander of IDF Forces in Judea and Samaria*, PD 61(1) 844, para. 14 of the ruling (2006)).

64. This was also the case in the *Abu Daher* case, when the court discussed the claim that harming Palestinian groves was necessary in order to protect the security of the Minister of Defense, who lived nearby. There, too, the court drew the right to property of the Palestinian landowners in the occupied territories from the Basic Law: Human Dignity and Liberty: "Along with this right [to life and bodily integrity] stands the right to property of the residents of the area, which is also recognized as a protected basic constitutional right. It is recognized as such under constitutional law in Israel according to Article 3 of the Basic Law: Human Dignity and Liberty" (HCJ 7862/04, *Abu Daher v. The Commander of IDF Forces in Judea and Samaria*, PD 59(5) 386, 372 (2005)). In the *Samit* case, the Honorable Court again cited the Israeli constitutional right among the normative sources of the freedom of movement of Palestinians in the West Bank (HCJ 3969/06, *Head of the Deir Samit Village Council v. The Commander of IDF Forces in the West Bank*, para. 17 of the ruling [published in *Maagarim*, 22 October 2009]).

65. The *Hass* case […] addressed the validity of a seizure and demolition order issued by the Military Commander in the West Bank, based on the claim that it was required to secure the Worshippers' Way to al-Haram al-Ibrahimi (the Cave of the Patriarchs) in Hebron. In determining that there was a security-based reason for issuing the order, the court examined "whether it meets the constitutional test in balancing between the worshippers' freedom of religion and right to worship on the one hand, and the petitioners' right to private property on the other hand" (the *Hass* case, p. 460). The

court named the normative sources of the rights to religion, worship and property of the Palestinian population in the area as international law and Israeli constitutional law, ruling that, "freedom of religion and worship is afforded as a constitutional right to the population living in the area […] The right to private ownership of the land and buildings that are the subject of the seizure order is a protected constitutional right. It is recognized by international law, including in the Hague Convention and in the Geneva Conventions. It received constitutional status in Israel in Article 3 of the Basic Law: Human Dignity and Liberty […]" (the *Hass* case, pp. 463-464).

66. In addition, the extension of the Basic Law: Human Dignity and Liberty to non-citizens is obligatory in light of the fact that these rights are being violated by state authorities, which serve the Israeli constitutional regime and are required to respect human rights. Article 11 of the Basic Law: Human Dignity and Liberty, which determines its own application, instructs that "all government authorities are required to respect the rights under this Basic Law." Therefore, the application of the Israeli constitutional regime is a product of the actions of the Israeli authorities, irrespective of the subject of those rights. After all, the state cannot be entitled to undertake actions in territory under its control that are prohibited within its own territory. This purposeful interpretation of the Basic Laws requires that "all Israeli officials carry the Basic Law in their toolbox. Where the official goes, the Basic Law goes with him. The official only has the powers the law grants him. The Basic Law strips him of certain rights and imposes certain obligations on him. These both determine the bounds of the official's authority. This authority does not change when the government official crosses the state's borders […] In any case, from the perspective of domestic Israeli law, the duty of the official ('government authority') is to respect the rights in accordance with this Basic Law" in every action he performs, whether within the borders of the state or outside it" ([Former Israeli Supreme Court Chief Justice, Professor] Aharon Barak, *Human Dignity – The Constitutional Right and its Daughter-Rights*, p. 404 (2014)).

67. The significance of the foregoing is that, like the basic principle of the rule of law, the administration's authorities are a product of the law and bound only by the law. After all, the legislative branch is a product of the constitutional regime and is subject to the confines of that constitutional regime. Consequently, no legislative action by the

Knesset lies beyond the purview of the Israeli constitutional regime. With regard to our case, any legislation enacted by the Knesset that violates the governmental authorities' duty to honor the human rights stipulated in the Basic Law must satisfy the conditions of the limitation clause.

68. We add in this context that not only the legislature is required to implement the Basic Law: Human Dignity and Liberty, but also the judicial branch, including the Supreme Court when it sits as the High Court of Justice and is authorized to hear petitions by Palestinian residents of the West Bank, which is obviously the case regarding the Settlement Regularization Law. Indeed, the law will naturally give rise to hearings in the context of petitions to this Honorable Court, and the court, like any state authority, is obliged to act in accordance with to basic constitutional principles and especially in relation to rights that by nature apply to every person as such.

69. Here is the place to refer to the *Adalah* case (HCJ 8276/05, *Adalah v. The Minister of Defense*), which addressed the question of the constitutional right of the petitioners, protected residents of the occupied territories, to challenge the constitutionality of Amendment No. 7 to the Torts Law (State Liability) –1952. The Honorable Court ruled in this case that, since the rights violated by the amendment are rights, which allow for lawsuits to be brought against the State of Israel in Israel in accordance with Israeli torts law for a wrong committed outside Israeli territory, then the Basic Law: Human Dignity and Liberty applies in such cases, even when the protected individuals are residents of the West Bank and the Gaza Strip.

70. Similar to the *Adalah* case, here, too, the same legal framework can be applied since the rights of the protected residents in the West Bank are established under customary international humanitarian law, which is binding on Israel, and also by international human rights law ratified by Israel; both are considered binding bodies of law before the High Court of Justice. Thus, the application of the Basic Law: Human Dignity and Liberty in the circumstances of the case is self-evident. In fact, the *Adalah* ruling is based on the rationale that Israeli courts must honor and uphold the Basic Law. Thus there is an important common element between the Settlement Regularization Law and the *Adalah* case, namely the need to resort to the Israeli justice system to receive any remedy to a violation of the law. And in the current case, the Supreme Court will exercise this authority as the highest Israeli court, that which deliberates on relations

between the Palestinians and Respondent No. 2 [The Military Commander in the West Bank], particularly in matters pertaining to violations of rights. Israel's judicial system cannot exempt itself from applying the principles of human rights and constitutional principles in its hearings on every subject brought before it.

71. This interpretation, that applies the duty to respect human rights to state authorities, is necessary for the sake of consistency, since other Basic Laws adopt a similar approach that is not limited to Israeli territory. For example, Article 15(D)(2) of Basic Law: The Judiciary empowers the Supreme Court to issue orders to state authorities and to any person carrying out public functions under law, regardless of their location or the area where they exercise their authority (see: Liav Orgad, "Whose Constitution and For Whom? On the Scope of Application of the Basic Laws," *Mishpat Umimshal* 12 145, 175 (2009)).

72. Professor Aharon Barak's words on the various models of applying constitutional norms to private law are relevant to our case. Barak espouses a model that applies to the judicial branch, noting:

> "The constitutional directives regarding this human right are also aimed at the judicial branch, and require it to develop rules in common law, to interpret legislation or provide specific remedies that uphold the constitutionally-protected human right and do not contravene it […] The importance of this model is in cases where the wording of the constitutional directive indicates that the human right is aimed toward the government and toward it alone […] When the court issues an order that enforces a discriminatory contract, it places the power of the state – which operates through a variety of means, including the rules concerning contempt of court – at the disposal of a single individual who violates another individual's right to equality. In doing so, he violates the government's obligation not to discriminate. This outcome should be precluded, because the principle of the rule of law – or, more accurately, the rule of the constitution – also applies to the judiciary."
>
> (Aharon Barak, *Interpretation in Law: Constitutional Interpretation*, p. 663, (1994)).

These words, stated in connection to the judicial branch's duty to respect constitutional rights when ruling between two private individuals, are even more relevant to our case, in which the judicial branch is being asked to provide remedy to plaintiffs in response to a violation of their rights by the state. If it does not do so, then it would violate its duty to respect the rule of constitutional law and the human rights stipulated therein.

73. This interpretation, which mandates the application of the Israeli constitutional regime to occupied territory via the duty of state authorities to respect human rights, is consistent not only with the text and objective of the Basic Law: Human Dignity and Liberty, but also with international law, which also stipulates protections for many human rights, including, of course, the rights to property and dignity (on this matter, see: Yael Ronen, "The Application of Basic Law: Human Dignity and Liberty," *Sha'arei Mishpat* 7, pp. 149, 174 (2014)).

74. Therefore, the Basic Law: Human Dignity and Liberty applies to violations of human rights protected in the Basic Law even when the application of this law is extra-territorial. Below, we explain why the law violates rights of this type (dignity and property) and why the violation is contrary to the limitation clause.

**The application of the limitation clause**

75. The Settlement Regularization Law violates the right to property of Palestinian landowners – both residents of the West Bank and refugees – in the most sweeping manner. The legislation violates the rights of the Palestinian population to use and possess extensive territories and to register this land as "state property," while privileging the political interests of the occupying power. The legitimization of illegal settlements that were built on private Palestinian land and the encroachment of Israeli settlers onto this land undoubtedly constitutes a violation of the right to property and, in the circumstances of the case, also of the right to dignity.

76. The Supreme Court has accorded special weight to the right to property of the Palestinians in the West Bank and has even referred to it as a constitutional right that must not be violated except for a proper purpose and in a proportionate manner that is consistent with international humanitarian law and Israeli domestic law (see the *Murad* case, para. 14; HCJ 10356/02, *Hass v. The Commander of IDF Forces in the West Bank*, PD 58 (3) 443, 461, 462, 464 (2004); HCJ 1890/03, *The Municipality of Bethlehem v. The State of Israel*, PD 59(4) 736, 765-766 (2005); HCJ 5627/02, *Sayef v. The Government Press Office*, PD 58(5) 70, 75 (2004). Furthermore, the confiscation of Palestinians' resources in the occupied territories, with total disregard for their needs and livelihoods, undoubtedly violates their right to dignity. The rights to property and dignity are, of course, protected by international human rights law. In a

number of rulings, the Supreme Court has affirmed the application of international human rights law to the occupied territories (on this subject see: HCJ 2150/07, *Abu Safiyeh v. The Minister of Defense* 63(3) 331 (2009); the *Hass* case).

77. In addition, confiscating the private property of Palestinians in the West Bank, and privileging the interests of the Jewish settlers who stole the and in violation of international law, as stated, solely because of their [ethnic] affiliation, undoubtedly constitutes a violation of the Palestinians' right to dignity. The Settlement Regularization Law places illegitimate ethno-political interests above the rights of the Palestinian landowners, making them inferior in status to the settlers, to whom their land will be allocated under the law, in violation of the "autonomy of the individual will" (HCJ 6427/02, *The Movement for Quality Government v. The Knesset*, PD 61(1) 619, p. 38 (2006)).

78. This type of violation, which assigns a person an inferior status due to his/her ethnic affiliation and discriminates against him/her on this basis, violates his/her dignity because it rises to the point of humiliation. In fact, any violation resulting in humiliation is a violation of the core components of the right to dignity. Hence it was established in the *Miller* case that "there can be no doubt that the purpose of the Basic Law [Human Dignity and Liberty] is to protect the person from humiliation. The humiliation of a person violates his[/her] dignity" (HCJ 4541/94, *Miller v. The Minister of Defense*, PD 49(4) 94, 131 (1995) (p. 132 of the ruling). These words are even more apposite in the circumstances of our case (see also: HCJ 6824/07, *Mana'a v. The Israel Tax Authority*, PD 64(2) 479, para. 30-31 (2010)).

**An improper purpose**

79. The Settlement Regularization Law does not serve a proper purpose. A purpose that does not give due weight to human rights and disregards constitutional rights is not a worthy purpose (The *Gaza Coast* case, p. 570; see also Request for Criminal Appeal 5086/97, *Ben Hur v. The Tel Aviv-Jaffa Municipality* PD 51(4) 625 (1997); Civil Appeal 524/88, *"Pri Ha'emek" – Agricultural Cooperative Association v. Sde Yaakov – Moshav Ovdim of Hapoel Hamizrahi for Settlement*, PD 45(4) 529 (1991)).

80. As described in the statement of facts, above, the primary consideration underlying the law is to retroactively legitimize, under Israeli domestic law, settlements in the West

Bank that are illegal under international law. This political objective absolutely cannot be legitimate because it breaches international law, as described above. It is further contrary to a number of UN Security Council resolutions that explicitly address Israel's policy of constructing settlements in the territories occupied since 1967, and again emphasize the illegality of Israeli settlements in these territories. The latest of these resolutions was Resolution No. 2336 of 23 December 2016 (www.un.org/webcast/pdfs/SRES2334-2016.pdf); see also: UNSC Res 446 (22 March 1979); UNSC Res 465 (1 March 1980)).

81. The improperness of the law's purpose also stems from the violation of international human rights law. The right to property and the prohibition on the arbitrary deprivation of a person's property have been established in the Universal Declaration of Human Rights, Article 17 of which stipulates that:

> "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."

82. We also note that the proposed legislation contradicts a number of Israeli Supreme Court rulings ordering the demolition and evacuation of settlements that were built on private land in various areas of the West Bank (HCJ 851/06, *Amona Agricultural Cooperative Association for Settlement v. The Minister of Defense*, in the case of the Amona settlement; HCJ 8887/06, *Al-Razeq v. The Minister of Defense*, in the case of the Migron settlement; and HCJ 9060/08, *Yassin v. The Minister of Defense*, in the case of the Givat HaUlpana settlement). The Settlement Regularization Law includes provisions that freeze pending administrative demolition orders against buildings, at least in the settlements listed in the law's Addendum (16 in number), in order that these settlements will not be endangered by legal proceedings like those settlements that are the object of the aforementioned legal proceedings. Therefore, the law is also designed to prevent the actual implementation of administrative decisions in the matter of these settlements, in violation of the rule of law and the principle of the separation of powers.

83. Finally, we may note that this Honorable Court has already expressed its view on the illegality of laws in Israel that are similar in essence to the Settlement Regularization Law and are similarly draconian. With regard to the Land Acquisition Law (Validation of Acts and Compensation) – 1953, which retroactively legitimized the seizure of land

by the state, carried out without lawful authority, the Honorable Court stated that if the law were enacted today, the court would strike it down because it contradicts the Basic Laws. It was determined in the *Dinar* case that:

> "The Land Acquisition Law led to a very significant violation of the right to property of landowners whose lands were transferred to the Development Authority under this law. The harm caused by the law was undoubtedly even more severe than the harm usually suffered by a landowner whose lands are expropriated in accordance with the Land Ordinance. This is because the Land Acquisition Law enabled the retroactive legitimization of the state's seizure of the land, which apparently was done (at least in part) without lawful authority […] This seizure was also not subject to the provisions stipulated in the Land Ordinance in all matters pertaining to notifying the landowner of the expropriation and land seizure proceeding (see articles 5 and 8 of the Land Ordinance) […] *And there is no doubt that today this sort of legislation would not meet the test of constitutionality*; the enactment of Basic Law: Human Dignity and Liberty in 1992 indicates the change of social priorities, including the accordance of greater weight to the basic rights of the individual versus the interests of the state. One field that was particularly affected by the constitutional status of the right to property following the enactment of Basic Law: Human Dignity and Liberty is the laws of expropriation. It was established in the rulings of this court that expropriation is subject to the test of proportionality and that land should not be expropriated if it is possible to achieve the goal of the expropriation through means that violate the right to property to a lesser degree […] It was also determined that the expropriation should be reversed when there is no longer a public need for the expropriated lands […]" (emphasis added).
>
> Civil Appeal 3535/04, *Dinar v. The State of Israel*, para. 7 of the ruling of Justice Beinisch (published in *Maagarim*, 27 April 2006).

84. And if this situation applies to the Acquisition Law, without understating the draconian, arbitrary nature of that law and its occupation-based orientation, then it applies to an even greater extent in our case, because the expropriation is being conducted for the purpose of allocating the expropriated land to the settlers who encroached and unlawfully built on it.

In light of the above, the Honorable Court is hereby requested to issue an *order nisi*, as detailed at the outset of this petition, and, after receiving a response from the Respondents, to make it absolute.

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| Suhad Bishara, Attorney | Myssana Morany, Attorney | Suleiman Shaheen, Attorney |

Haifa, 8 February 2017