

The Renewed Kibbutz

By

Ronen Manor, Advocate¹

Abstract

Over the years, the unique form of cooperative settlement known as a kibbutz, has had to undergo various difficulties and changes, yet it has managed to maintain its principles and survive. Nevertheless, during the last decade, many kibbutzim have made substantial changes which contradict traditional kibbutz ideology. This article is based on the report of the Public Committee for the Kibbutzim. It describes the inevitable changes that have occurred and analyzes the reasons and considerations that have led to the creation of a new form of kibbutz.

Introduction

The economic crisis that overtook Israel in the mid 1980's had a dramatic effect on the traditional structure of the kibbutz.

Many kibbutzim² went through a severe financial crisis and were unable to repay their immense debts to the banking system. They had to commit themselves to long term debt settlements with the banks, and became increasingly dependent on their creditors.

The crisis weakened both the authority and status of the Kibbutz movement, and caused a significant deterioration in its demographic and social structure, since much of the young generation had left the Kibbutz, while new members were reluctant to join. Furthermore, kibbutzim that went bankrupt were no longer able to supply the basic needs of their members, especially of the older generation whose economic welfare has become insecure.

Many kibbutzim felt, therefore, that fundamental changes had to be made and, in effect, various changes in all aspects of life have been gradually implemented in the majority of kibbutzim.

The first change refers to economic management. In the traditional model, the economy of the Kibbutz comprised various spheres of activity. Each branch was managed by its own specific manager, and the ensemble of activities was directed by the overall economic manager of the kibbutz. Work, as well as management, were shared equally by Kibbutz members, and no separation existed between the community and economic activity.

In the new model, especially in the industrial sector, economic activity is separated from the community, separate corporations are established, and each branch is a separate profit center. Economic activity is managed by professional managers, who answer to a board of directors, as in a private company. The work is no longer done by kibbutz members only, and outside employees are hired in accordance with purely economic criteria.

¹ The article is dedicated to the memory of my teacher, Professor Smadar Otolenghi, an expert in cooperative societies law, who passed away before her time last year.

²The plural of kibbutz.

Moreover, a profound change occurred where the principle of collective responsibility was concerned. The individual and family are now granted more independence and responsibility, in a manner that narrows down the degree of cooperation and equality in kibbutz life. Every kibbutz member is now responsible for his own livelihood, and is entitled to a differential salary, reflecting his personal contribution to the community. The relationship between the individual and the collective has been redefined in a way so as to increase the autonomy of the individual and the family, and decrease the responsibility of the collective.

Another significant change in kibbutz lifestyle and in its principles relates to the possession of private property. According to the basic principle of the kibbutz, members are not permitted to possess private property. Over the years, kibbutzim have accepted the idea that members may possess private property that derives from external sources. Furthermore, many kibbutz members, especially founding members, were troubled by the idea that they would not be able to bequeath their homes to their descendants, and initiated legal action to allow the allocation of property (making kibbutz property the private property of kibbutz members). This initiative led the Israel Lands Administration (legal owner of most of the land in Israel) to pass resolutions permitting the allocation of apartments in the kibbutz and in the collective moshav, to their individual members.³ Many kibbutzim have decided to approve this resolution, and have initiated the allocation of apartments to their members.

The kibbutz has also changed its relationship with the outside world. In the past, the kibbutzim were isolated and separate, maintaining their own form of economy, culture and education. Since the 1980's, a gradual tendency to integrate with their surroundings has emerged. Kibbutz members work and study outside the kibbutz and vice versa. This integration increased even further when many kibbutzim decided to establish a neighborhood community, to reinforce and enlarge their population by building a nearby neighborhood for non-kibbutz members.

Economic and demographic facts

The actual hard facts of the kibbutz movement are rather gloomy. Most of the kibbutzim are in a difficult economic situation. Around 60% are insolvent and their members maintain a standard of living that is higher than they can afford. Around 79% cannot repay their debts to the banking system, and despite the generous remission of debts reflected in the kibbutzim debt settlement signed in the late 1980's, each kibbutz still owes an average debt balance of US\$ 9,000,000. In addition to their debt to the banks, the kibbutzim carry a heavy burden of actuary debt for pension payments.

The picture is not much brighter in the demographic field; average age rises every year, and has now reached the age of 53.. The population is aging steadily while most of the young generation are leaving the kibbutz. Today's kibbutz population constitutes less than 2% of the total population of Israel, as compared to 3% in the past. This is demonstrated as follows:⁴

³ Resolution 751 from 2/96 that was recently replaced by Resolution 979.

⁴ See chapter 2 in the report of the Public Committee on the kibbutzim issue.

Year	Population
1952	69,089
1983	500,115
1987	127,000
1991	129,300
1997	116,500
2000	115,300

Along with the rest of society, many kibbutzim have adopted a number of changes in their lifestyle, varying from the minor to the dramatic.

These changes, can be divided into 3 principal categories, as follows:

A) Kibbutzim that have retained the traditional lifestyle, with minor changes.

Here the traditional kibbutz values are preserved, especially in the domains of education, social life, community services, cooperative principles, kibbutz ownership of property, etc.

The changes focus on making the kibbutz economically more productive and efficient, inter alia by privatizing certain services, employing outside workers and minimizing expenses, and by integrating the different productive sectors to minimize kibbutz exposure to economic risks.

B). Kibbutzim that have implemented differential salaries and decided to allocate assets:

Kibbutzim that were in financial difficulties came under pressure to take more significant steps in order to heighten efficiency and increase the individual economic security of their members.

These kibbutzim, in addition to privatizing most of their community services and separating between the community and productive activity, have implemented differential salaries, namely - members receive different salaries according to their contribution to the community, and pay progressive taxes. To help the weaker sectors of the community, a security net was established to assist them in maintaining a minimum standard of living.

When these kibbutzim have incurred heavy debts, and their assets are mortgaged to secure these debts, greater incentive exists to separate housing from other assets and to embark on measures to allocate apartments to kibbutz members.

Some kibbutzim have also decided to establish a neighborhood community in order to expand, thicken and strengthen the social structure by means of new young families desiring to purchase a home in rural surroundings without having to adopt a kibbutz lifestyle and principles or become members.

C). Kibbutzim that have implemented the allocation of productive assets.

This model reflects the most radical changes adopted by certain kibbutzim in order to cope with the economic and demographic deterioration.

In this model, the kibbutz also allocates productive assets to its members, in addition to the allocation of apartments and privatization of community services.

These changes include, inter alia, the incorporation of the productive branches under a holding company. The shares are allocated to the kibbutz and its members, and each member is entitled to own a certain percentage of shares, according to seniority, up to a maximum percentage. The shares can be inherited and can be sold under certain conditions; they therefore possess a real economic worth.

A new applicant for membership must buy his share according to economic valuation, and each member is entitled to compel the kibbutz to buy him out.

In some cases, members are also entitled to annual dividends, depending on economic performances.

It should be clear, however, that variations may occur within the patterns, modified to fit the needs of each kibbutz.

The need for redefinition

As we can see, unlike in the past, when only one unified kibbutz model existed, kibbutzim nowadays have developed in different directions, and various models have emerged..

Some 25% of kibbutzim maintain the traditional way of life and preserve the basic values of mutual partnership, strict equality, and democratic management of their economic activity.⁵

The rest have adopted changes in the classical kibbutz structure, by encouraging members to be more autonomous and economically independent. They have also embraced capitalistic modes of conducting productive activity, while preserving the basic cooperative principle of community ownership of their production means.

Nonetheless, a broad social solidarity remains, reflected in the principle of mutual guarantee and in maintaining the economic social security net.

A few kibbutzim went even further, abandoning most of the basic traditional principles, and now allocate production means to their members.

This step gave rise to the question of the conditions under which a kibbutz may still be perceived as a kibbutz, which led to a re-examination of the correct legal determination.

A) The Beit Oren case:

In 1999, 8 members of kibbutz Beit Oren applied to the High Court of Justice to instruct the Registrar of Cooperative Societies to abolish the classification of Beit Oren as a kibbutz and classify it as a different kind of cooperative society.⁶

The petitioners argued that the kibbutz has dramatically changed its life style, inter alia by implementing differential salaries, shutting down the communal dining room, and privatizing the educational system and other services.

These changes do not fit the legal definition of a kibbutz – particularly where the principle of equal consumption is concerned. Consequently, the Registrar of Cooperative Societies, authorized to register and classify cooperative societies, was requested to change the classification of Kibbutz Beit Oren, or initiate winding up proceedings.

⁵ See chapter 2 in the Report of the Public Committee.

⁶ Supreme Court of Justice appeal no. 4639/99 Eviatar Yoram v The Registrar Of Cooperative Societies

The kibbutz replied that it still maintained the basic principles of a kibbutz, and that the changes made were essential to prevent a financial collapse and to improve the economic situation.

All the parties involved realized that this case was bound to reach beyond this legal territory and would have wide implications on the issue of the kibbutzim as a whole.

B) The Public Committee

The Beit Oren case brought home the need to tackle the problem. It was obvious that this was a very important social and public issue that would have great impact on Israeli society and should, therefore, be examined by a public committee. The State of Israel accordingly proposed this to the Supreme Court of Justice and following a government decision on 2/2002, a committee was set up, comprising experts and delegates from relevant government ministries and the rural sector.

The committee's task was to recommend a new legal definition befitting the new development of the kibbutz. The committee was also asked to submit its opinion on the issue of allocating apartments to kibbutz members.

After 12 months of work, the committee submitted a detailed report on the issues (hereinafter: the report)⁷.

The legal redefinition

The traditional legal definition of the kibbutz in Israeli law, is as follows⁸: **“A society for settlement, being a separate settlement, organized on the basis of collective ownership of possession, of self employment, and of equality and cooperation in production, consumption and education”**.

It is clear that the changes made in the kibbutzim in the last decade, such as differential wages, privatization of services and allocation of apartments, cannot coexist with the traditional legal definition.

Two different concepts exist in the kibbutz movement, reflecting different philosophies on this issue. A minority of kibbutzim are of the opinion that this can only be a society that maintains the traditional principles and way of life, whereas the majority believe that the changes are part of the dynamic development of the kibbutz, and should be incorporated in the legal definition thereof.

The committee agreed unanimously that the kibbutzim should be able to determine their own way of life, and that there was no way to prevent the implementation of changes in kibbutzim desiring change.

The committee decided to create two new legal classifications for settlements presently known as kibbutzim. The first classification would be the term Communal Kibbutz, essentially identical to the traditional kibbutz definition. The second classification was to be the Renewed Kibbutz, which would include developments and changes in lifestyle, provided the basic principles of mutual guarantee and equality are preserved.

In light of the above, the Committee recommended that two determinations would be created instead of the current legal definition of the kibbutz, namely:

⁷ The Report of the Public Committee on the kibbutzim of 30.6.03

⁸ Cooperative Societies Regulations (classes of societies) 1995

a) The Communal Kibbutz: “A society for settlement, being a separate settlement, organized on the basis of collective ownership of possession, of self employment, and of equality and cooperation in production, consumption and education”.

b) The Renewed Kibbutz- “A society for settlement, being a separate settlement, organized on the basis of collective partnership in possession, of self employment, and of equality and cooperation in production, consumption and education, that maintains mutual guarantee among its members, and whose articles of association include some or all of the following:

- (1) Relative wages according to the individual contribution or to seniority.**
- (2) Allocation of apartments. (2) allocation of apartments**
- (3) Allocation of production means to its members, excluding land, water and production quotas, provided that the cooperative society maintains control over the means of production and that its articles of association restrict the negotiability of allocated production means.”**

Allocation of apartments

The Public Committee also addressed the issue of apartment allocations. This issue involves many legal and social difficulties, some on the practical level and some on the theoretical level. Although the resolutions of the Israel Lands Administration establish an allocation procedure, they do not refer to potential problems within the kibbutz community. Once the apartments are the private property of members, the kibbutz risks losing control over its population, since foreigners can infiltrate and the kibbutz is liable to lose its identity. Restrictions on negotiability need to be imposed in order to prevent such undesirable results; but how strict should they be?

Moreover, what would be the criteria for allocation in terms of the determining day for entitlement? What apartment quotas should be available? What measures should be taken to set aside reserves for future expansion, etc?

In light of the above, the Committee recommended the following principles:

- (1) The allocation process may apply only to the Renewed Kibbutz, which permits the possession of private property.
- (2) In order to preserve the unique character of the community within the kibbutz, negotiability should be limited, to enable the kibbutz to maintain control over the identity of its residents and the right of first refusal to re-purchase apartments.
- (3) The kibbutz can choose two main ways to restrict negotiability- the first would be to restrict the sale of apartments to people who are accepted as members, and the second -- to oblige new purchasers to become members of the new cooperative community society.
- (4) The kibbutz must ensure at any given time that the majority of its residents are members; otherwise it could lose its classification and identity as a kibbutz.
- (5) In any event of rights transfers (including inheritance), the kibbutz would have the right of first refusal to purchase back the apartment at market value.
- (6) The allocation process would offset the payment the kibbutz owes to members who leave.⁹
- (7) Kibbutz members would be entitled to compel the kibbutz to purchase their apartments instead of making the leaving payment noted above, provided that they cease to be members.

⁹ According to the Cooperative Societies Regulations (membership) (retired kibbutz members rights) 1993, each kibbutz member who leaves the kibbutz, is entitled to a leaving fee, calculated relative to his seniority and social status.

With regard to the two patterns of restrictions on negotiability, the Committee's report recommends that principles be outlined in greater detail. All these principles would have to form part of the Articles of association and of the contracts signed between the kibbutz and each member.

The Committee also stated its opinion on the issue of the determining date, namely, the decision that only people who were members on the determining day and onwards (or their heirs) would be entitled to an apartment

In this connection, note must be made of a recent district court decision in the case of Kibbutz Glil Yam near Herzliyah city¹⁰. In this case, the court decided that only people who were kibbutz members at the time the kibbutz decided to adopt basic changes in its lifestyle, and amend its articles of association so as to permit, at some point, property allocation and privatization, would be entitled to share in the kibbutz assets. All members who left the kibbutz, or passed away, prior to that day would not have any rights of possession.

An appeal was recently submitted in a further case, requesting the Supreme Court of Justice to declare that all kibbutz members, past or present, are entitled to a share in the kibbutz assets or, alternatively, that the determining day must correspond to the date on which the Israel Lands Administration decided to allow the allocation of apartments (2/96)¹¹.

The Committee is of the opinion that, in principle, only people who were kibbutz members when the decision to allocate apartments was approved by the general assembly, would be entitled to receive an apartment.

Mutual guarantee and equality

Two of the most basic principles of the traditional kibbutz way of life, are mutual guarantee and equality. These principles are at risk, following the dramatic changes in the traditional way of life. Differential salaries necessarily mean that kibbutz members are no longer equal in their income and financial capacities. The privatization of community services, such as health, welfare and education, was a blow to the weaker population of the kibbutz -- the handicapped and the elderly. These members are extremely concerned by the privatization process, since they constitute the most vulnerable part of the community. In some cases, for example, elderly members spend most of their monthly allowance on the purchase of medicines, with little left to conduct a decent life and for their basic needs.

For this reason, emphasis must be placed on the need to maintain the basic principles in the Renewed Kibbutz. Some scholars even believe¹² that a minimum social security net should be determined by proper legislation, so that the decision is not left to the discretion of the kibbutz management and in order to create equal standards.

In light of the above, the Public Committee recommended the following guidelines: (1) Mutual guarantee must be a pre-condition to the existence of the Renewed Kibbutz and should be maintained in order to secure basic rights for its members.

¹⁰ Civil case (Tel Aviv District Court) 2933/98 Helena Lindenbaum v Kibbutz Glil Yam. This is the first case of members who left the kibbutz many years ago, and were heirs of deceased members, who demanded a share in the kibbutz assets (the kibbutz expected to receive a large sum of money from a real estate transaction).

¹¹ Supreme Court of Justice appeal 11068/03 filed on 18.12.03 Amutat Dor Ledor Bakibbutzim v Israel Lands Administration

¹² Professor Smadar Otolenghi's opinion, as presented to the Committee.

(2) The Renewed Kibbutz must safeguard basic equality among members, by maintaining a security net and mutual aid funds for health, welfare and education, and by providing aid to populations with special needs.

(3) Members are entitled to certain minimum rights- minimum wage for members of working age, minimum pension for pensioners, social security and the right to accommodation.

(4) The kibbutz movement would prepare proposals for the minimum platform of rights as noted above, and the Registrar of Cooperative Societies would ensure that the minimum needs of members are protected, especially those of the population with special needs.

The required majority

The question of what majority is required to pass a decision to adopt essential changes in the kibbutz way of life, resulting in the redefinition of the traditional kibbutz to a Renewed Kibbutz, is controversial.

Some argue that since these changes are so significant, they contradict the most basic principles and ideology that form the basis of consent of the founding members, and therefore cannot be altered by a majority of votes in the kibbutz general assembly, and that an agreement of 100% of members is needed (rendering this practically impossible).

This argument relies also on a Supreme Court precedent in the Pri-Haemek case¹³, which abolished a regulation purporting to charge members of a cooperative society with debts of the cooperative without their prior consent. The Supreme Court ruled that such a significant impact on members' right of possession needed the consent of each member.

Furthermore, these changes undermine the legitimate expectations of the senior and weaker members of the kibbutz, who contributed the best years of their lives to the kibbutz, expecting to receive the full support of the collective in the future, when they would be old and retired.

Indeed, from a purely legal point of view, these changes constitute a change of the basis of consent and, according to the standard kibbutz articles of association, this issue cannot be amended by a decision of the general assembly. These changes are especially dramatic for the older generation of kibbutz founders, who surrendered the possession of private property in favor of the kibbutz's collective ideals. Naturally, these members still maintain and wish to preserve the traditional way of life.

From a practical point of view, however, we cannot ignore the ongoing process of change that most of the kibbutzim are going through, some of them because it is the only way to survive as a kibbutz. Furthermore, in most cases the process has proved successful, and the kibbutz economic and social situation has improved dramatically, and it would be unwise to disrupt it by posing an impossible demand for absolute majority.

Instead of according priority to the will of a small minority in the kibbutzim, we should tackle the problematic aspects of the process that cause concern to the older generation and to the handicapped members, and establish suitable arrangements to ensure that the weaker members will maintain a reasonable existence. Protective

¹³ Supreme Court appeal 524/88 Pri-Haemek Agricultural Cooperative Society v Moshav Sde Yaacov.

arrangements of this nature should not be liable to changes in the future, to ensure that the rights of the weaker members are preserved.

If such arrangements are accepted, most members who have objected so far would be satisfied.

According to Professor Smadar Otolenghi, the legal difficulty of altering the basis of consent can be solved by having the Registrar of Cooperative Societies redefine the kibbutz as a Renewed Kibbutz provided that 75% of members vote for this move. Once the kibbutz is re-defined as a Renewed Kibbutz, the old principles that formed the basis of consent in the articles of association would no longer be valid, since these articles would be subject to the Cooperative Societies Regulations. In that case, the kibbutz needs to adopt new articles, adjusted to Renewed Kibbutz principles and including a proper mechanism to protect the needs of the weaker population.

According to the regulations, every change in the articles is subject to the approval of the Registrar. In practice, the Registrar will be the authority who ensures that the new articles include sufficient protection of the minorities' rights and provide an adequate social security net.

We would also mention that, according to the regulations, any amendment of the articles of association requires a special 75% majority of votes of the members participating in the assembly, and a quorum of at least 66% of the total membership of the cooperative society needs to be present at the assembly. Thus a strict requirement exists for a special majority, to ensure that decisions of this nature are taken seriously. The Committee is of the opinion that the process of kibbutz redefinition can be carried out with the broad consent of its members, and the required majority is the same as the majority needed to pass a decision to amend the kibbutz articles of association, namely 75%. The Committee points out that more extreme decisions, such as winding up the cooperative or transforming it into a company, require a special 75% majority of votes, and that there is no demand for an absolute majority. No reason exists, therefore, to demand an absolute majority in the redefinition process.

The Committee also takes into consideration the fact that many kibbutzim are interested in the redefinition process, and that this should not be prevented by demanding an absolute majority. However, the decision must obtain a broad consent. Since this is a problematic issue, the Committee recommended that the procedure of redefining the Renewed Kibbutz be handled by proper legislation.

Neighborhood Communities

A further central issue within the kibbutzim relates to the process that began in the early 1990's: establishing neighborhood communities on kibbutz land, near a residential area. The process is based on resolutions of the Israel Lands Administration, awarding substantial financial benefits to the rural sector¹⁴.

Notwithstanding the fact that these resolutions were declared void and were abolished by the Supreme Court of Justice¹⁵, and while the new resolutions pertaining to the process provide no economic incentive to establish a neighborhood community, many kibbutzim have chosen to do so, in order to thicken their dwindling population with fresh and young residents.

The two communities live side by side, on the same kibbutz. They share the same public facilities, such as kindergartens, schools, sport clubs, libraries, social clubs etc.

¹⁴ Resolution 737 from 1995 which was recently replaced by Resolution 959.

¹⁵ Supreme Court of Justice appeal 244, 935/00 Amutat Siach Chadash v The Minister for National Infrastructure, Supreme 2003 Vol 6 page 25. Ruling handed down 8/02.

They are also provided with the same municipal services, sharing the maintenance of municipal services, security guards, education and cultural life.

The residents of the neighborhood community are not kibbutz members, they own their homes, and the neighborhood is located outside kibbutz land.

The kibbutz continues to be administrated by its traditional organs, the general assembly, and the management committee that directs productive activity and takes care of the needs of kibbutz members.

There is no doubt that neighborhood communities have enhanced the economic and demographic situation of the kibbutzim. However, the different status of two communities in the same kibbutz also creates problems in the municipal area, where the residents of the new community cannot elect their own municipal committee as do kibbutz members. As for the social sphere, inequality prevails in the economic welfare of the two communities: one with old houses and poor members, and the other with new, luxurious houses and upper middle-class residents.

Recent research findings submitted to the Public Committee¹⁶, dealing with the social implications of the neighborhood communities on kibbutzim, concluded that whenever the two communities are not separated, they tend to mix and share the same social fabric of the kibbutz.

The Committee is concerned that these kibbutzim could lose their independent character. It therefore believes that the preferable way to increase the kibbutz population is by admitting new members. However, as neighborhood communities are an important tool in densifying the population in certain kibbutzim, this could be done when necessary, albeit the kibbutz should preserve its uniqueness and its values.

What does the future hold?

Unlike in the past, the kibbutz today has many and varied faces and patterns that differ from the familiar, traditional model. This new reality led to the establishment of the Public Committee, aimed at creating a new classification that would coexist with the current situation. But the main question remains: what is the core essence in the definition of a kibbutz? This question applies particularly to the majority of kibbutzim that fit the Renewed Kibbutz definition.

According to the Committee's opinion, the traditional definition, as does the new definition, represents a unique form of collective, which upholds the values of mutual guarantee, equality and care for the weak members.

In our opinion, most kibbutzim fail to meet even the new definition of Renewed Kibbutz, because there is no equality among members – not in their revenues, not in their consumption, nor in their production. Kibbutzim pay differential wages, and in their search for cheap labor they prefer to employ outside employees and not kibbutz members, meaning that even the value of self-employment is disregarded.

Furthermore, due to the drastic cutbacks in community services, not much remains of the mutual guarantee principle, and members increasingly need to rely on themselves. According to the office of the Registrar of Cooperative Societies, the majority of kibbutzim have decided to allocate apartments to their members. These facts, along with the ongoing process of privatization and the adoption of capitalistic methods, are

¹⁶ Dr Menachem Topel, Yad Tabenkin Institute

taking the kibbutz further away from the traditional model, bringing it closer to models of a Moshav or community settlement.

For this reason, several kibbutzim have embarked on a new process of transformation to Moshavim¹⁷ - a more suitable settlement model, with private property, a developed community life and cooperation in production.

Out of more than 270 registered kibbutzim in Israel, only a small minority of approximately 20 kibbutzim¹⁸ have decided to adopt a general allocation of the kibbutz assets, including production means. These kibbutzim have crossed a red line, also where the new, liberal definition of Renewed Kibbutz is concerned, and they cannot continue to be classified as kibbutzim.

About 25% of the kibbutzim still preserve the traditional way of life, thus ensuring their future as a kibbutz.

The future will show whether this is only a temporary step in the inevitable transformation of the kibbutzim to community settlements, or whether the Renewed Kibbutz is a conversion of the kibbutz principle of continuation and adjustment to the changing times, and the kibbutz will in effect, remain a dominant factor in the formation of Israeli society.

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¹⁷ According to the Registrar's office, 4 kibbutzim have started this process: Kibbutz Yad Hana, Kibbutz Haon, Kibbutz Amatzia and Kibbutz Mishmar David. There is also a special committee in the Prime Minister's Office, established to assist in the process.

¹⁸ According to the Registrar's office.