



Direct Legislation by the Knesset for the Territories: Annexation and the Weakening of the Laws of Occupation – Human Rights Ramifications

August 2019

What regime applies in the Territories?

The Territories are subject of a regime of occupation. This is a military regime in which the military commander – OC Central Command – is the supreme (legislative) authority. The laws that apply in the Territories include laws existing in the area prior to the occupation, with the addition of changes made by Israel over the years through the military commander. These laws are supposed to be subject to the laws of occupation.

The laws of occupation, which form part of international humanitarian law relating to human rights during combat and conflict, are intended to ensure, on the one hand, the maintenance of the temporary military regime, which is responsible for law and order in the occupied area; and, on the other, to protect the rights of the local Palestinian residents, referred to as “protected residents.”

Furthermore, in accordance with the ruling of the International Court of Justice, international human rights law applies in the territories (this law relates to the rights of all humans, and not specifically to situations of combat or conflict). According to international law, the State of Israel bears a particular obligation toward the local residents in the occupied area, and is specially responsible for providing them with protections, including the protection of their life, property, dignity, way of life, beliefs, and family rights, among other areas.

What is the actual situation?

Israel never recognized the Territories as occupied, and accordingly rejected its obligation to maintain the provisions of the laws of occupation. Israel later announced that, ex gratia, it would maintain the “humanitarian provisions” of the Fourth Geneva Convention, which concerns the protection of civilians. Over the years, the occupation regime in the Territories has been characterized by a growing deviation from international law, the laws of occupation, and the protection of the residents. Thus, for example, Israel established settlements and settled its citizens in the occupied territory – a practice that is prohibited under international humanitarian law. In addition, Israel acted to impose Israeli law on the settlements and their residents, thereby creating two separate and discriminatory legal systems for the residents of the territories, based on an ethnic and national distinction.

The most important process that has occurred over the years is the **creeping annexation of the Territories** – in practical terms, even if not in declarative terms. This annexation creates two distinct legal systems for the two populations in the area. The Jewish/Israeli population

in the territories enjoys increasing protections and rights, while international protections are removed from the Palestinian population and discriminatory practices and laws become entrenched. This creeping annexation is imposed by a wide range of means, each of which is significant in its own right, and which combine to make annexation a clear reality with dramatic ramifications for the human rights of the different sides and for the political reality in the region.

In addition to establishing the settlement enterprise and imposing Israeli law on the Jewish residents, Israel also acts to remove Palestinian residents from Area C (among other means, by denying planning and preventing access to water and farmland). It also acts to obliterate the Green Line by promoting initiatives that obscure the distinction between Israel and the occupied territories (including transportation infrastructures and the establishment of a university accountable to Israel's Council for Higher Education), among other ways.

What's new now?

In recent years, the process of de facto annexation has been deepened, leading to an exacerbation in the violation of the Palestinians' human rights. This process has included direct legislation by the Knesset applying to the occupied territories, as distinct from the use of military orders issued by the military commander.

How does this happen in practice?

In 2017 it was established that the Ministerial Committee for Legislation would not promote legislation without examining whether it was necessary to impose the proposed law in the territories, and in what manner this should be done. A dedicated unit was established in the Ministry of Justice to oversee the application of Israeli law in the territories. In addition, Subcommittee for Judea and Samaria Affairs was established in the Knesset in 2016 under the Foreign Affairs and Defense Committee. The subcommittee discussed civilian issues relating to the territories and promotes the interests of the settlers in the area.

Above all, during the Twentieth Knesset, eight laws and legislative amendments were adopted that apply directly to the West Bank. Some of these, particularly the Arrangement Law, significantly change the nature of Israel's control over the territories and have a direct impact on the Palestinians' rights. These laws include:

- The Arrangement Law, which is intended to permit the retroactive approval of construction in the settlements and outposts on private Palestinian land, including the establishment of a land confiscation mechanism for this purpose and the payment of compensation to the owners. This is an exceptional and extreme legislative measure: a new law that does not apply in Israel, but solely in the territories; that applies on a territorial rather than personal basis; a law that instructs the military commander how to manage land in the territories; and one that directly violates the personal property rights of Palestinians protected under the laws of occupation.

- Amendment to the Administrative Affairs Courts Law, transferring from the Supreme Court to the Administrative Affairs Court in Jerusalem the processing of administrative petitions concerning the territories in the fields of planning and building, the Freedom of Information Law, entry and exit from the West Bank and passage within the area, and military restraining and supervision orders. The government's expectation is that this change will lead to more favorable rulings for the settlers, particularly in the field of planning and building.
- Amendment to the Council of Higher Education (CHE) Law and its application to academic institutions in the settlements, **eliminating the previous distinction between the CHE in the State of Israel and the CHE – Judea and Samaria.**
- Amendment to the Prohibition of Discrimination in Products Law, adding a prohibition against discrimination on the grounds of place of residence. The law now applies to the settlements as it does to locales inside Israel. At the same time, the Consumer Protection Law was also amended in order to oblige businesses to state whether they provide delivery or repair services to a particular area or to certain locales in Israel or the settlements.

For a full review and detailed explanations about the ramifications of each law, see [ACRI's report](#).

What are the human rights ramifications of these developments?

The processes of direct legislation and the intensified annexation have dramatic ramifications for the human rights of the Palestinians in the territories:

1. **Undermining all the basic principles of the laws of occupation to which Israel has committed itself:** Direct legislation by the Knesset for the territories contradicts the obligations of the military commander, undermines the three substantive foundations of the laws of occupation, and worsens the violation of Palestinian human rights.
 - A. **The principle of temporariness:** International humanitarian law establishes that occupation is by its essence a temporary and non-permanent situation. The establishment of the settlements undermined this principle, and now it is being further eroded by direct legislation. Direct legislation **means** that the Knesset and the Israeli government, which do not represent the Palestinian residents, are putting themselves in the role of sovereign and legislator in the territories, and in addition declaring that this sovereignty is permanent.
 - B. **Maintaining existing law:** Section 43 of the Hague Regulations establishes that the legal situation that applied prior to occupation continues to exist. The military commander is permitted to change the legal status quo solely if this is essentially for the good of the local population or for an overt military need. Over the years the army has issued thousands of orders and regulations that changed the law and the

reality in the territories. **Now** the Members of Knesset wish to change the law in the area by themselves, without any commitment to respect the existing law, and while ignoring the restrictions imposed by international humanitarian law.

- C. **The issue of sovereignty:** In a situation of occupation, the military commander is the temporary ruler (“substitute sovereign”) and acts as a legislative, executive, and judicial branch. The commander bears an obligation to protect the rights of the local residents under the laws of occupation. As a substitute sovereign, the army holds exclusive legal power in the territories, including in the fields of planning and building, control and management of land, and physical development. **In practice**, significant decisions concerning the management of the territories are also taken by the political level and the civilian bureaucracy in Israel – a process that entrenches the direct legislation of the Knesset (for example in the Arrangement Law). This **means** that Israeli national and territorial interests – the security of the settlers and the expansion of the settlements – shape policy in the territories, while the military commander’s obligations in accordance with international law to protect the interests and rights of the Palestinian population, as the substitute sovereign, are sidelined.
2. **Ongoing consolidation and entrenchment of two legal systems based on nationality:** In the territories, two completely different legal systems operate in the same territory – one for Israeli citizens and the other for Palestinian residents. The result is institutionalized discrimination against the residents on the grounds of their nationality. Although the territories are subject to a military regime, Israeli civilians in the area are subject to Israeli law (almost in its entirety), with all the rights this entails, including the Basic Laws. By contrast, the Palestinians are subject to military law, which is generally harsher, and are prosecuted under this law both for security offenses and for ordinary criminal offenses (for example, a Palestinian who commits a traffic offense or steals milk from a convenience store will be tried in a military court).

The advancement of direct legislation is not intended to impose sovereignty and annexation that will officially expand the borders of the State of Israel and apply Israeli law throughout the West Bank, as was the case in East Jerusalem. The reason for this is that Israel has no intention of granting status and voting rights to Palestinians, as sovereignty would require. Neither does it intend to provide equal educational, health, and welfare services throughout the “one state” between the Jordan and the Mediterranean. The goal of these processes is to formalize a discriminatory double regime of annexation and occupation. In this regime, on the one hand, Knesset legislation will expand the settlements and strengthen their affinity to the sovereign State of Israel. On the other, the military occupation regime will continue to apply to the Palestinian population as if nothing had changed. The initiators of the legislation claim that equality, democracy, and human rights are the ultimate goal of their laws – provided that these values are available to Israelis only.

The bottom line

Direct legislation by the Knesset for the territories is a new phenomenon, but it is part of a process that has been underway for over 50 years. The establishment of the settlements was marked from the outset by the violation of international humanitarian law and the **creation of two separate and discriminatory legal systems for settlers and Palestinians** (see [ACRI's report](#)).

By legislation outside the sovereign territory of the State of Israel, the Twentieth Knesset has violated the fundamental rules applying to an occupied territory, and has restricted the rights the laws of occupation seek to provide for the protected residents. In this reality, with its mixture of occupation and annexation, the Palestinians lose out at every turn. They are denied the protections and rights of international humanitarian law and international law, and they are excluded from the protections and rights of Israeli law. This situation is illegal and intolerable in terms of the protection of human rights.