



February 2021

Elections 2021 – De Jure and De Facto Annexation in the Occupied Territories, Direct Legislation by the Knesset over the Territories, and Land Registration Arrangements in the Territories

Annexation of the Occupied Territories in the West Bank is on the agenda for many of the parties competing in the 2021 elections. Many candidates and parties have declared their intention to promote de jure annexation and establish the territories as an integral part of the State of Israel.

In recent years, there have been numerous **initiatives promoting the de facto annexation of the Occupied Territories** – particularly various practices and arrangements that aim to effectively annex the area to Israel. Examples of this include the Arrangements Law approved by the Knesset (and later disqualified by the Supreme Court, with the support of the Attorney General); several actions intended to displace the Palestinian population in Area C of the West Bank (including refusal to connect communities to water, the demolition of wells and water installations, the lack of planning for the population, and lack of infrastructure connections); direct legislation by the Knesset applying to the Territories; and most recently – land registration arrangements.

De jure and de facto annexation have far-reaching ramifications for the human rights of the Palestinian population in Area C, which amounts to hundreds of thousands of people.

The System of Government and Law in the Territories

The Occupied Territories are subject to military occupation. In this system, the military commander – OC Central Command – is the supreme authority. The laws that apply in the Occupied Territories include laws that existed prior to the occupation and amendments introduced by Israel over the years through orders issued by the military commander. In theory, these orders should be subject to the laws of occupation.

Occupation law is a sub-section of international humanitarian law that concerns human rights during wartime and conflict, specifically a partial or total occupation of a territory. These laws are intended to ensure the presence of a temporary military regime that is responsible for law and order in the occupied territory, as well as to protect the rights of the local Palestinian residents—known as “protected residents.” In accordance with occupation law, the local residents deserve protection since they do not enjoy a political status granting civil rights and cannot influence the policies nor legislation that govern their lives.

Furthermore, in accordance with the ruling of the International Court of Justice, international human rights law also applies in the Occupied Territories. This law dictates the human rights

of all people at all times, rather than specifically during wartime or conflict. According to international law, the State of Israel bears a special obligation toward the local residents in the occupied territory and, in particular, is responsible for providing them with protections, including protection of their life, property, dignity, way of life, beliefs, and family rights.

What happens in practice? From the start, Israel did not recognize the territories as occupied, and accordingly exempted itself from the requirement to maintain the laws of occupation. Israel later announced that, on an ex gratia basis, it would maintain the “humanitarian provisions” of the Fourth Geneva Convention concerning the protection of civilians. Over the years, the occupation regime in the territories has increasingly deviated from international law, from the laws of occupation, and from the protections of the Palestinian residents. Thus, for example, Israel established settlements and settled its citizens in the occupied territory – something that is prohibited under international humanitarian law.

Creeping Annexation of the Territories – De Facto Annexation

The most significant process that has occurred over the years is the creeping annexation of the territories, through the imposition of Israeli law on the settlements and their residents, by means of military orders as well as through direct legislation by the Knesset. This process constitutes the de facto annexation of the Occupied Territories. This de facto annexation has created two separate, discriminatory, and distinct legal systems for two populations living in a single territory on an ethno-national basis. The Jewish Israeli population enjoys greater rights, while protections afforded by international law are removed from the Palestinian population and discriminatory arrangements and laws are entrenched. The process of creeping annexation is occurring through a variety of means, each of which is significant in its own right and, together, make annexation a clear fact that has serious ramifications for the human rights of all people and for the political reality in the Occupied Territories.

In addition to establishing the settlement enterprise and imposing Israeli law on the Jewish residents of the settlements, Israel – as noted above – has actively removed Palestinian residents from Area C by denying planning and preventing access to water and farmland. Israel is also acting to eliminate the Green Line by promoting initiatives that diminishes and removes the distinction between Israel and the Occupied Territories, including through transportation infrastructure, the establishment of a university and its subjugation to the Council for Higher Education, and so forth.

New Practices of De Facto Annexation

In recent years, the methods of de facto annexation and violations of the human rights of Palestinians have become further entrenched through a wide range of means, including direct legislation by the Knesset and new land registration arrangements.

Direct legislation by the Knesset regarding the Occupied Territories: In recent years, the Knesset has promoted direct legislation pertaining to the Occupied Territories, distinct from the orders issued by the military commander. This has occurred through several governmental

initiatives. In 2017, the Ministerial Committee for Legislation decided that it will not promote legislation without examining whether the proposed law should be applied to the Occupied Territories and in what manner. Additionally, the Ministry of Justice established a special unit to consider the application of Israeli law in the Occupied Territories. In addition, the Knesset established a Subcommittee for Judea and Samaria Affairs in 2016 under the Foreign Affairs and Defense Committee. The subcommittee considers civilian issues relating to the Occupied Territories and seeks to advance the interests of the Jewish settlers in the area. Above all, during the Twentieth Knesset, eight laws and amendments were passed that apply directly to the West Bank. Several of these, particularly the Arrangements Law, significantly alter the nature of Israel's control over the Occupied Territories and have a direct impact on the rights of Palestinians.

This method of utilizing direct legislation to promote annexation has serious ramifications for the human rights of Palestinians living in the Occupied Territories. The legislation undermines the key principles of occupation as established in international law: its temporary character; maintenance of the existing law; and placing authority with the military commander. Lastly, this process entrenches the existence of two legal systems that distinguish between populations on the basis of national identity. By enacting legislation outside the sovereign territory of the State of Israel, the Twentieth Knesset is directly contradicting the laws that apply to an occupied territory and is reducing the rights afforded to protected residents in accordance with the laws of occupation. In this reality that constitutes a blend of occupation and annexation, the Palestinians lose out twice: they are denied the protections and rights of international humanitarian law and international law, yet are left without the protections afforded by Israeli law. This reality is illegal and intolerable in terms protecting human rights.

For further details, see [the ACRI report](#) and [FAQ file](#).

New land registration arrangements: Over the past year, there have been attempts to promote a new land arrangement in the West Bank, based on the registration of land rights in the Land Registry ("Tabu"). At present, only one-third of the land in the West Bank is registered in the Tabu. The land registration process began during the British Mandate period and continued under Jordanian rule. In 1968, after the Israeli occupation, the military commander froze the regulation process, since it constitutes a final act and, effectively, an act of annexation, and accordingly is contrary to the (at least ostensibly) temporary nature of the occupation. Another reason for freezing the regulation process was the fact that many landowners in the West Bank left the area after the war and the beginning of the occupation ("absentees"), while, in many cases, the documents of those who remained were held in Jordan rather than in the West Bank.

All of these rationales still apply, and indeed with greater force. Despite this, it is now proposed that land registration in the West Bank be arranged on a permanent basis. This proposal is another example of de facto annexation that is intended to confiscate the largest possible amount of land from its Palestinian owners and to prevent any possibility that they

may regain control of their land through legal proceedings. This initiative was launched after the prospects for formal Israeli annexation dwindled due to the change in administrations in the United States and following the disqualification of the Arrangements Law. Under the planned arrangement, any land over which the owner cannot prove ownership will become state land in perpetuity, without any possibility to appeal against the change. Even if a person is later able to secure ownership documents (registration in the Tabu), then, in contrast to the initial registration or to the current declaration process, the registration will still be regarded as final and appeals will only be possible in exceptional circumstances, such as instances of deception.

Accordingly, the Civil Administration recently recommended to cancel the freezing of arrangement proceedings in order to prevent legal proceedings relating to the declaration of land as state land, as currently implemented, and their replacement by a track of registration in the Tabu, which cannot easily be appealed against.

Registration in the Tabu is contrary to the two basic principles of the laws of occupation—its temporary character, since registration establishes a permanent situation and constitutes annexation, and the principal of custodianship, since the occupier is supposed to manage the territory as a trustee for the protected population and the allocation of declared land will almost always be in favor of the settlements. Accordingly, imposing a permanent registration proceeding (Tabu), as opposed to preliminary and declaration proceedings, is diametrically opposed to international law and constitutes a prohibited act of annexation.

For further details – see the [Land Arrangement FAQ file](#).

De Jure (Formal) Annexation

If annexation moves forward, it will have serious ramifications for the human rights of the Palestinians in the Territories:

- A. Annexation means that the Knesset, the Israeli Government (and the US Administration, insofar as it is involved)—none of which represent the Palestinian residents—will place themselves in the role of the sovereign and the legislator, and will declare that this sovereignty is permanent.
- B. The annexation of part of the West Bank will transform the occupation, which in accordance with international law is supposed to be a temporary state, into a permanent condition.
- C. Annexation will impose Israeli law in full on the annexed area, without any commitment to respect the law that applied prior to the occupation, as well as ignoring the restrictions established in international humanitarian law.
- D. Annexation means that Israeli national-territorial interests – i.e. the security of the settlers and the expansion of the settlements – will shape the policies in the annexed area. The obligations incumbent on the military commander in accordance with

international law to protect the interests and rights of the Palestinian population will be sidelined to an even greater extent than at present.

- E. Annexation will consolidate and deepen the reality of **two legal systems**, officially creating a regime of Apartheid, whereby within a single territory two completely different legal systems will apply. The imposition of Israeli law on the territories will attach the settlements and any additional annexed area to sovereign Israel, ensuring that the Jewish residents of the areas enjoy full rights. On the other hand, the military occupation regime will continue to apply to the Palestinian residents outside of the annexed area, as if nothing had changed. In this case, entry to the annexed areas will require an entry permit to Israel—this will apply not only to the settlements, but also to roads and agricultural land.
- F. **Danger of eviction, removal, and expulsion:**

All of the areas that are potentially earmarked for annexation include communities that Israel does not recognize; neither does Israel recognize their traditional way of life. The Jordan Valley includes numerous shepherding communities and the South Hebron Hills are home to numerous communities that already suffer repeated attempts to expel them from their homes. In the Ma'ale Adumim area there are unrecognized villages such as Khan al-Ahmar, while in Gush Etzion there is the community of Khirbet Zakariyah. In the event of annexation, the Palestinians communities that live in villages unrecognized by Israel will face a heightened risk of expulsion, since Israel will prefer to annex the territory without its residents.

For many years, Israel has refrained from recognizing these villages and communities, and has denied them any opportunity for development or planning – in contrast to its policy concerning the settlements. If a village remains unrecognized, it is impossible to register its inhabitants as residents of the village, and the official records imply that the residents live in a nearby town or village. In the event of annexation, such records are liable to lead the authorities to define the residents of these communities as trespassers. If they remain in their homes, they will become unlawful occupants, thereby heightening the risk of expulsion.

- G. **Damage to property rights** – The owners of the annexed land are liable to lose their land, whether officially, through its definition as absentee land or through confiscation, or by way of denying access and establishing a regime of permits. This damage to property rights will also incur damage to livelihood.
- H. **Status of the Palestinians in the annexed area (residency permits)** – One option for annexation is that the occupied territory, or part of the territories, will be annexed to Israel along with its Palestinian residents, as was the case in East Jerusalem. However, a worse option is that the Palestinians living in the annexed area will receive temporary military permits. This permit regime would separate the annexed area

from the West Bank, damage the fabric of life of the residents, and raise serious concerns regarding the protection of the human rights of the annexed Palestinian residents, including the violation of the right to self-determination and freedom of movement in their country. Annexation will disconnect Palestinian families living in the annexed territory from their community and other relatives. The permits that could be issued would not grant permanent status, and the holders of the permits would be liable to lose their status in accordance with the policy of a government over which they have no influence.

- I. **Injurious permits regime (permits for access to farmland) – damage to access to land and the ability to farm and make a living** – Annexation is expected to include the confiscation and usurping of land from its legal owners. Even those whose land is annexed without an official process of confiscation will lose access to their land or will be forced to obtain a permit in order to reach land that now de facto belongs to another country. The receipt of permits for access to farmland involves an exhausting and injurious bureaucratic process and causes serious, practical damage to the ability to access and farm their land.

Palestinians who live in the West Bank and whose land is situated in the area known as the “seam zone” have already learned about the meaning of such a permit regime, to their cost. The “seam zone” was created after Israel established the Separation Barrier. As a result of which, some Palestinians require residency permits in order to remain in their own homes after finding themselves on the “wrong” side of the Separation Barrier, which in many cases runs between and even through homes. Many residents have lost the ability to farm their land and make a living after they failed to meet the restrictive criteria for receiving permits, which determines who can access and farm the land, how many tools of what kind may be used, how many livestock may be brought into the area, and so forth. These criteria have become increasingly strict over the years. Access is also prevented due to the endless bureaucracy involved in obtaining or renewing a permit, since the permits are only valid for short periods.

If a permit regime is imposed on the annexed territories, many additional Palestinians will suffer in all spheres of life, including the ability to maintain their bonds with their community, access their land, and make a living, as well as to maintain social and family relationships in a situation where any travel in or out of the annexed area will require a permit.

- J. **Violation of the freedom of movement** – The settlements have already seriously violated and damaged the freedom of movement of Palestinians in the West Bank. Many main roads are off limits to Palestinians, whether by means of physical obstacles or under military orders. The settlements and the areas around them have also been declared military zones, where entry is forbidden to Palestinians. In all of

the annexation scenarios discussed to date, main and secondary roads will also be annexed. Even now, many Palestinians are forced to use a network of bypass roads, comprised of narrow and sometimes unpaved roads, in order to move from place to place. Israel's annexation of roads throughout the West Bank will further deny Palestinians access to additional roads, which will deepen discrimination and segregation on the roads, and lengthen and complicate journeys between different parts of the West Bank.

There is expected to be serious damage, in particular, in smaller villages, where the annexation of adjacent roads is liable to disconnect the village from the surrounding towns. This will lead to a sharp rise in the cost of transporting food and water and will greatly impede the capacity for medical and educational services.

The Allenby Bridge Crossing, which serves as the only crossing point for Palestinians between the West Bank and Jordan, is situated in the Jordan Valley. The annexation of the surrounding areas or of the roads leading to the facility will effectively disconnect the Palestinians from the outside world and make it even harder for them to travel to Jordan for family visits, vacations, study, commerce, and so forth. This kind of travel already requires a transit permit from the military commander. In the event of annexation, the ability to cross the annexed area will also add the need to obtain an entry permit to this area. Israel does not adopt a liberal approach to the granting of entry permits to its territory, and the annexation of the Allenby Bridge area will have serious impacts, particularly impeding traffic to and from the West Bank.

- K. **Damage to basic welfare, health, and education services** – Today, all civilian services – such as education, welfare, and health – are provided for the entire Palestinian population in the West Bank by the Palestinian Authority. This is also the case in Area C, despite the common misconception that civilian management of these areas is undertaken by Israel. If parts of Area C were annexed, Israel would be obligated to provide these services to Palestinians in the annexed areas; alternatively, obtaining these services will require frequent crossings of the border. If the Palestinian population in the annexed area does not receive permanent status, and is only issued with residency permits, they will not be eligible to medical or national insurance. They will be forced to receive all these services from the Palestinian Authority, despite the fact that they will not live under this authority.

These rights will also be violated since teachers, social workers, and physicians who routinely visit remote communities will require special permits in order to continue to do so. The damage to the freedom of movement on the roads will also lengthen routes to hospitals and schools for those in the annexed area and those elsewhere, thereby further damaging these basic rights.

What is the Problem with Annexation as Proposed in the Trump Plan?

Ostensibly, annexation by agreement of the parties, as part of a peace agreement and while maintaining the human rights of all those living in the area, could be a legitimate course of action. In the case of the Trump Plan, however, the plan is a unilateral proposal to annex occupied Palestinian territories in the West Bank – with the approval of the US Administration, but not as part of an agreed upon arrangement between Israel and the Palestinians. Israel and the United States do not have the right to decide on their own, in a unilateral manner, to violate international law and human rights. They cannot decide on their own to unilaterally annex territories. They cannot change the status of various areas of territory, while completely ignoring the status of the Palestinians who live on this land and the fact that they are liable to be disconnected from their homeland. The proposal reinforces the existence of two separate legal systems in the West Bank and would officially transform the existing regime into an Apartheid regime, where different legal arrangements are imposed on different populations on the basis of ethnic origin.

Sincerely,

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