

## Direct Legislation of the 20th Knesset Imposed on the West Bank

### Legislative Initiatives to Promote Annexation and Weaken the Laws of Occupation

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## Introduction

This document, published by the Association for Civil Rights in Israel (ACRI), reviews legislative initiatives in the 20th Knesset relating to the Occupied Territories. These initiatives of the Israeli parliament seek to promote the “legal annexation” of the West Bank and to undermine the legal foundation of the military regime that was applied to the area in June 1967.

Opponents of these legislative initiatives refer to this phenomenon as the “creeping annexation” or “accelerated annexation” of the Occupied Territories, while their supporters declare that they constitute “exercising sovereignty over parts of the Land of Israel (*Eretz Yisrael*).” These catchy slogans are inaccurate given the selective nature of this process. Those promoting this legislation do not seek to impose sovereignty and annexation in a manner that will officially extend the borders of the State of Israel and apply Israeli law throughout the West Bank, as was done decades ago in East Jerusalem. They have no intention of granting millions of Palestinians legal status and voting rights as required by the imposition of sovereignty. Neither do they plan to provide full and equal educational and welfare services throughout a single state extending from the Jordan River to the Mediterranean Sea.

Instead, the promoters of this initiative **seek to institutionalize a discriminatory hybrid regime of annexation and occupation**. This process includes, on the one hand, legislation by the Knesset expanding Israeli settlements and strengthening their affinity to the sovereign State of Israel; and on the other, the continuation of the Israeli military occupation regime over the Palestinian population as if nothing had changed. The new legislation ignores the prohibitions established in the international laws of occupation in an effort to expand the settlement enterprise and ensure the rights of the settlers, who vote for the Knesset and are represented in it. At the same time, they sweepingly deny the rights of the Palestinians, who do not vote for the Knesset, and who will continue to be subjected to military occupation. The promoters of these initiatives even go so far as to claim that the overall goal of their legislation is to promote equality, democracy, and human rights – provided that these values are directed solely at Israelis.

The legal initiatives described below constitute a new phenomenon within a familiar process that has continued to half a century. The establishment of the settlements was accompanied from the outset by the violation of international law and the creation of two separate and discriminatory legal systems for settlers and Palestinians. In the past, the role of the Knesset in this process was relatively marginal, but it has now become more central. Since the Knesset lies at the core of Israel’s democracy it is critical to consider this development.

**Part One** of this document describes the legislative initiatives relating to the West Bank promoted in the 20th Knesset, since it was sworn-in in March 2015. **Part Two** analyzes the damage these processes have caused to the principles of international law that underlie the laws of occupation – laws that were intended to provide protection for a population subject

to foreign military rule. **Part Three** proposes steps that could help protect human rights in the reality created in the Occupied Territories. The **Appendix** presents a brief review of the developments that have created the current reality, from the first military orders published in June 1967 through to the report of the Levy Commission, presented to the previous government, which provided a legal cloak for endorsement of settlements.

## **Part One: Legislative Proposals in the 20th Knesset concerning the West Bank**

### **The Formalization of Efforts to Apply the Knesset Legislation to the Occupied Territories**

In the summer of 2017, as events were held to mark the 50th anniversary of the occupation of the Territories, Justice Minister Ayelet Shaked (Jewish Home party) and Tourism Minister Yariv Levin (Likud), who serves as the liaison between the government and the parliament, published a guideline for members of the Ministerial Committee for Legislation. The guideline states that when any government bill is brought before the committee, it must discuss the possibility of applying that law in the West Bank. This may be achieved either through direct Knesset legislation or by requesting the Military Commander in the Territories to publish an order imposing the relevant law there.<sup>1</sup> The guideline began to be implemented in January 2018, when for the first time the Ministerial Committee for Legislation was presented with legal opinions concerning the application in the Territories of several bills that were due to be tabled for debate and voting in the Knesset.

In addition, Justice Minister Shaked established a special cluster or unit in the Ministry of Justice to address issues concerning the equalization of legislation in Israel and in the Territories as well as law enforcement in the Territories. The stated goal was to “accelerate the creation of orders by the Military Commander and promote the normalization of relations with the residents of Judea and Samaria.”<sup>2</sup> In May 2017 the Justice Ministry held a seminar on this issue, attended by staff from the Attorney General’s Office, legal advisors from government ministries, and representatives of the army’s Legal Advisor for Judea and Samaria responsible for military lawmaking in the Occupied Territories. These officials are tasked with working together on formulating legal opinions regarding the possible application in the Territories of proposed government bills

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<sup>1</sup> [“Ministers Advance Bid to Apply Israeli Laws in West Bank”](#), Sharon Pulwer, Haaretz, 7 May 2018.

<sup>2</sup> [“Guideline to Ministers: Government Bills Must Not Overlook Judea and Samaria”](#), Hezki Baruch, Arutz Sheva, 6 June 2017 (Hebrew).

During a discussion of this issue by the Knesset Committee held in January 2018, Deputy Attorney-General Raz Nizri, who was appointed to oversee of the new cluster, clarified that the standard legal method for applying legislation in the West Bank should still be by means of military orders, rather than through direct legislation by the Knesset.<sup>3</sup> Knesset Legal Advisor Eyal Yinon expressed a similar position. However, in light of the changes promoted by the Justice Minister, Yinon announced that he intended to instruct the legal advisors to the various Knesset Committees that when preparing a bill for the Second-Third Reading, it must be ensured that the committee discusses the question as to whether and how the bill should be applied in the West Bank.

In the 19th Knesset then Attorney-General Yehuda Weinstein similarly expressed opposition to the direct application of Knesset legislation to the Territories.<sup>4</sup> Weinstein responded to the first significant effort by Members of Knesset to amend the legislative mechanism applying in the West Bank through the enactment of the “Norms Bill.”<sup>5</sup> This proposal sought “to equalize the various norms applying to the citizens of the State of Israel.” According to the proposal, which was tabled before the Knesset in October 2014, a law approved by the Knesset would automatically be enacted in the West Bank by means of an order of the Military Commander, carried out within 45 days from the date of its publication in the official records. If the Military Commander found that there were grounds for changing the wording of the law as it pertains to the Territories, he would forward a suggested amended version to the Knesset committee responsible for preparing the bill.

In the legal opinion Weinstein presented to the government ministers, he explained that the bill damaged the status of the Military Commander in charge of the West Bank and transferred his authorities to the Knesset in violation of the international laws of belligerent occupation, under which the Israeli army controls the Territories.<sup>6</sup> Despite Weinstein’s opposition, in November 2014 the Ministerial Committee for Legislation voted in support of the proposed Norms Bill. Justice Minister Tzipi Livni (Hatnuah) and ministers Yair Lapid, Yael

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<sup>3</sup> [“Shaked: From Sunday on Government Bills Will Include a Guideline for Implementation in the Territories”](#), Jonathan Liss, Haaretz, 3 January 2018 (Hebrew).

<sup>4</sup> In addition to the Norms Bill, which attempted to introduce sweeping change, the 19th Knesset also saw additional legislative attempts relating to the West Bank. In July 2013, the Ministerial Committee for Legislation voted in favor of the Women’s Work Bill (Amendment – Application of the Provision of the Law to a Worker Employed in the Area), 5773-2013. This law was intended to apply the protections afforded to women in work places, such as protection against dismissal during pregnancy, to any woman – Israeli, Palestinian, or foreign – employed in the West Bank by an employer who is an Israeli citizen, by an Israeli corporation, or by an authority belonging to the State of Israel. The law was initiated by MK Orit Strock (Jewish Home) and also enjoyed the support of MK Merav Michaeli (Labor). Minister Yaakov Peri (Yesh Atid) filed an appeal against the approval of the law by the Ministerial Committee for Legislation. Attorney-General Yehuda Weinstein stated in his opinion that he was opposed to the bill, and that his position was that the desired initiative should be implemented by means of orders issued by the Military Commander rather than through direct Knesset legislation.

<sup>5</sup> [Private bill to amend the Governmental and Legal Arrangements Order \(Legislation in the Area by Means of an Order\), 5775-2014.](#)

<sup>6</sup> [“Ministers back bill forcing army to extend civil law to settlements”](#), TOI Staff and Tamar Pileggi, The Times of Israel, 9 November 2014.

Garman, and Yaakov Peri (Yesh Atid) voted against the decision. Livni tabled an appeal against the decision, following which the proposed law was not advanced further.

Despite the opposition of the most senior legal advisors, ministers and Members of Knesset continue to promote direct legislation applying to the West Bank, and enjoy considerable public support. In December 2017, the Likud Central Committee adopted a resolution stating that “on the completion of 50 years since the liberation of the areas of Judea and Samaria – including Jerusalem, our eternal capital – the Likud Central Committee urges elected Likud representatives to facilitate free construction and to apply the laws and sovereignty of the State of Israel to all the liberated areas of settlement in Judea and Samaria.”<sup>7</sup> In the 20th Knesset, the center of gravity has shifted from general declarations by those on the Right regarding the importance of strengthening and expanding the settlements, to specific demands to impose Knesset legislation and sovereignty on the West Bank.

### **Laws Passed in the 20th Knesset concerning the West Bank**

Since the swearing-in of the 20th Knesset, eight laws and legislative amendments have been passed which apply directly to the West Bank. Some of these acts of legislation, and in particular the Regularization Law, significantly change the nature of Israel’s control over the Territories and have a direct impact on the rights of the Palestinians. Other laws, such as the Civil Service Law, do not directly affect Israel’s control over the area or the rights of Palestinians, but we have included them here since they illustrate the transition to a system of direct legislation by the Knesset over the Occupied Territories.

#### **1. The Regularization Law**

In February 2017, after stormy debates, the Knesset approved the “Regularization Law,”<sup>8</sup> an anomalous and extreme act of legislation: First, the law does not apply in Israel but applies solely in the Occupied Territories; it deviates from the past pattern whereby existing Israeli laws were applied to the settlements or to Israelis residing in them. Second, this law relates directly to land management issues; it has a territorial application rather than applying to individual people. Third, the law instructs the Military Commander on how to manage private Palestinian land that Israelis had built on. Fourth, the law directly harms the personal property rights of Palestinians, which are protected under international law. Fifth, the Members of Knesset promoted and voted for the law despite the clear opposition of the Attorney-General, the Legal Advisor of the Defense Ministry, and the Legal Advisor to the Knesset. After a petition was submitted to the Supreme Court against the Regularization Law, Attorney-General Avichai Mandelblit refused to defend it, and the government was forced to hire the services of a private attorney, Harel Arnon, to defend its position before

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<sup>7</sup> [“Likud top body votes to urge annexing parts of the West Bank”](#), Jacob Magid, The Times of Israel, 31 December 2017.

<sup>8</sup> [“Knesset passes historic law legalizing 4,000 settler homes”](#), Tovah Lazoroff, Udi Shaham, Gil Hoffman, The Jerusalem Post, 6 February 2017.

the Court.<sup>9</sup> The State Attorney's Office presented the Court with its own position – opposing that of the government – stating that the law should be disqualified.<sup>10</sup>

The purpose of the Regularization Law was to grant approval for existing construction in settlements and in outposts situated on private land belonging to Palestinians, and therefore considered illegal. The law establishes a mechanism for confiscation of private Palestinian land and for allocation of compensation, to be carried out by the military. The promoters of the law originally sought to apply it retroactively in order to prevent the eviction of outposts and homes in settlements that the Supreme Court has ruled should be evicted, since they were built on private Palestinian land. However, the final wording of the law did not include the retroactive application clause. The Regulation Law represents the most extreme manifestation of the legislation in the 20th Knesset concerning the Occupied Territories.

## **2. Amendment to the Administrative Courts Law concerning Petitions from the Territories**

In July 2018, the Knesset approved the Administrative Affairs Courts Law (Amendment No. 117), 5778-2018,<sup>11</sup> which had passed its First Reading just two months earlier. The amendment transferred responsibility from the High Court of Justice to the Administrative Affairs Court in Jerusalem regarding petitions from the West Bank which relate to four issues: planning and building; freedom of information; entry and exit from the West Bank and movement within it; and military administrative restriction orders.<sup>12</sup>

This amendment was preceded by a private bill tabled by MK Bezalel Smotrich (Jewish Home), which was passed at its Preliminary Reading in June 2017. Smotrich's bill sought to apply the Administrative Affairs Courts Law in the West Bank in full, thereby transferring administrative petitions from the West Bank to the various Administrative Affairs Courts located across Israel. The legislative memorandum circulated by the Justice Ministry in January 2018 sought to grant exclusive authority to the Administrative Affairs Court in Jerusalem and to concentrate on the four fields mentioned above.<sup>13</sup>

The promoters of the law, including Minister Shaked and MK Smotrich, anticipate that their initiative will lead to more positive court rulings from the settlers' perspective, particularly in the area of planning and building. While the High Court justices have in certain cases imposed restrictions on construction in settlements based on the provisions established in

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<sup>9</sup> HCJ 2055/17 [Head of Ein Yabrud Village Council v The Knesset](#). The first hearing before a panel of nine justices was held in June 2018 (Hebrew).

<sup>10</sup> [State's Response](#) to the Supreme Court on Behalf of the Attorney-General, 22 November 2017 (Hebrew).

<sup>11</sup> [Administrative Affairs Courts Law \(Amendment No. 117\), 5778-2018](#).

<sup>12</sup> Regarding ACRI's position, see the comments on the legislative memorandum, [ACRI's letter to the Justice Ministry](#), 25 January 2018.

<sup>13</sup> Legislative Memorandum: [Administrative Affairs Court Bill \(Authorizing Administrative Affairs Courts to Discuss Administrative Decisions of Israeli Authorities Active in the Judea and Samaria Area\), 5778-2018](#).

international law regarding an occupied territory, the promoters of the law hope that the judges at the Administrative Affairs Courts will adopt a different approach.

### **3. The Amendment of the Council for Higher Education Law and Its Application to Academic Institutions in Settlements**

In February 2018, the Knesset enacted the Council for Higher Education Law (Amendment No. 20), 5778-2018.<sup>14</sup> The amendment abolished the separation that previously existed between the Council for Higher Education (CHE) in the State of Israel and CHE Judea and Samaria, a body established through the order of the Military Commander in the Occupied Territories. Ariel University and two teaching colleges, Orot Israel and Herzog, operated under the auspices of this body. The law effectively extended the applicability of the CHE Law to include Israeli academic institutions located in the Occupied Territories.

The amendment to the law prohibits the CHE to impair recognition already granted by CHE Judea and Samaria to institutions and degrees. The upgrading of the status of Ariel College to a “university center” and later to a university was implemented through a military order in accordance with a decision taken by CHE Judea and Samaria. Ariel University began to operate contrary to the opinion of the CHE’s Budget and Planning Committee and contrary to the opinion of the presidents of the universities in Israel, who defined its upgrading as a political decision rather than a professional one.<sup>15</sup> The amendment to the CHE Law also paved the way for the opening in August 2018 of the Faculty of Medicine at Ariel University, a move that also sparked opposition.

Horizon 2020, the European Union’s flagship program for research and academic cooperation, conditioned Israel’s entry on an assurance that EU funding would not reach Israeli academic institutions in the Occupied Territories in any manner.<sup>16</sup> It remains unclear whether and how the amendment to the law, which abolishes the separation between the two CHEs, will influence this program and other cooperation agreements.

### **4. Amendment to the Prohibition of Discrimination in Services Law**

In February 2017 the Knesset approved Amendment No. 4 to the Prohibition of Discrimination in Products, Services, and Entry to Places of Entertainment and Public Places Law, 5760-2000, which added a category of discrimination on the basis of place of

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<sup>14</sup> [“Israel’s Creeping Annexation: Knesset Votes to Extend Israeli Law to Academic Institutions in the West Bank”](#), Yarden Zur, Haaretz, 12 February 2018.

<sup>15</sup> [Wording of the High Education Council Law \(Amendment No. 20\), 5778-2018](#), as presented for the First Reading.

<sup>16</sup> [“Israel negotiating grant guidelines with EU program”](#), JTA, The Times of Israel, 15 August 2013.

residence.<sup>17</sup> The law was promoted by MK Shuli Moalem-Refaeli (Jewish Home) and applies to locales in Israel and to the settlements.<sup>18</sup>

At the same time, the Consumer Protection Law (Amendment No. 50) was amended in order to require businesses to add a label stating if they do not provide delivery or repair services to a particular area or locale in Israel or to the settlements. The first suit based on the law was submitted in February 2018 against a ceramics company by a family from the settlement of Ma'ale Mikhmash.<sup>19</sup>

## **5. The Arrangements Law**

In December 2016 the Knesset passed the Economic Efficiency Law (Legislative Amendments to Secure Economic Policy Objectives for the Budget Years 2017 and 2018), 5777-2016.<sup>20</sup> Under the terms of the law, a fund was established to narrow the gaps between local councils, following a government decision to permit the reallocation of funds to assist weaker local authorities.<sup>21</sup>

Section 21 established that “a local authority – a municipality, local council or regional council, including in the Judea and Samaria Area.”

## **6. Tax Benefits in Accordance with the Capital Investments Encouragement Law**

In June 2016 the Knesset adopted an amendment to the Income Tax Ordinance (No. 226) stating that an Israeli citizen who is a resident of the West Bank will be eligible for the tax benefits provided in Israel in accordance with the Capital Investments Encouragement Law, which provides benefits in the fields of industry and tourism, as well as in accordance with the Capital Investments in Agriculture Encouragement Law.<sup>22</sup>

It was determined that a government decision was required for the purpose of applying the law in the Occupied Territories, and this was duly provided in March 2017 as part of the Arrangements Law.

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<sup>17</sup> The amendment: [https://www.nevo.co.il/law\\_word/law14/law-2608.pdf](https://www.nevo.co.il/law_word/law14/law-2608.pdf)

<sup>18</sup> “[Good News for Residents of Judea & Samaria: Prohibition of Discrimination in Products on the Grounds of Place of Residence Law Passes in Knesset](#)”, Mekomonet J&S, 4 February 2017 (Hebrew).

<sup>19</sup> “[First lawsuit under Prohibition of Discrimination on the Grounds of Place of Residence Law](#),” Yehuda Yifrah, Makor Rishon, 5 February 2018 (Hebrew).

<sup>20</sup> [Economic Efficiency Law \(Legislative Amendments to Secure Economic Policy Objectives for the Budget Years 2017 and 2018\), 5777-2016](#).

<sup>21</sup> “[Assistance fund established for weak local authorities](#)”, Yuri Yalon, Yisrael Hayom, 31 December 2017 (Hebrew).

<sup>22</sup> “[The government is promoting industrial tax breaks - also in Judea and Samaria](#)”, Moran Azulai, Ynet, 20 January 2016 (Hebrew).



## 7. Civilian Service Law

In March 2017, the Knesset approved the Civilian Service Law, 5777-2017, which regulates the existing volunteering framework for 18 year olds who are exempted from mandatory military service.<sup>23</sup> The law establishes that civilian service may also be undertaken in “the Area” – as defined in the Emergency Regulations (Judea and Samaria – Jurisdiction in Offenses and Legal Aid), 5727-1967.

The law also states that authorization may be granted to employ civilian service volunteers in an operating body other than a public authority, if that body is involved in “the provision of a service or direct care to the population in Israel, including residents of Israel in the Area as defined in section 378(A) of the National Insurance Law.”

## 8. The Foster Care Law

In February 2016, the Knesset approved the Child Foster Care Law, 5776-2016, which establishes the rights of children placed in foster homes, principles for realizing their rights, and means for ensuring these rights. Section 2 of the law states that a “resident of Israel” for this purpose is “a person residing in Israel or in communities in the Area as defined in section 378(A) of the National Insurance Law.” Thus the law was also applied to settlements.

According to media reports, the Attorney-General opposed the application of the Foster Care Law by way of direct legislation of the Knesset.<sup>24</sup>

**Admissibility in Israel of the rulings of the military courts:** In addition to the laws detailed above constituting direct legislation by the Knesset over the Territories, the 20th Knesset also approved the amendment of the Evidence Ordinance (No. 18), 5777-2017.<sup>25</sup> The amendment establishes that the findings and conclusions of a military court in the Territories will be admissible as evidence in a civil trial in Israel.

According to the promoter of the law, MK Anat Berko (Likud), it will make it easier for terror victims to sue for damages in the civilian courts in Israel, since they will be able to base their claims on evidence that has already been heard in the military courts in the West Bank in proceedings against Palestinian attackers.<sup>26</sup>

## Proposed Bills Tabled before the Twentieth Knesset but Not Yet Approved

In addition to the above-mentioned laws and legislative amendments which were passed by the 20<sup>th</sup> Knesset, a large number of additional bills relating to the West Bank were also

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<sup>23</sup> [Publication of the Civilian Service Law, 5777-2017](#), Records No. 2632, 5 April 2017.

<sup>24</sup> ["We can apply new laws also to Judea and Samaria"](#), Liat Netovitch Koshzky, Makor Rishon, 26 December 2015 (Hebrew).

<sup>25</sup> [Amendment of the Evidence Ordinance \(No. 18\) Law, 5777-2017](#).

<sup>26</sup> ["West Bank Military Court Verdicts Now Admissible in Israel"](#), Jonathan Lis, Haaretz, 17 January 2017.

tabled but were not promoted through the legislative process. We will give four examples of such bills here.

### **1. Bill for the Direct Annexation of Settlements**

As early as 2007, MK Yisrael Katz (Likud) initiated a comprehensive bill for the annexation of Judea and Samaria. Over the following years, bills were tabled calling for the annexation of settlements or particular areas of the West Bank, such as Ma'ale Adumim, Hebron, the Jordan Valley, Gush Etzion, the Ariel bloc, and so forth. In December 2013, the Ministerial Committee for Legislation even approved a bill calling for the annexation of the Jordan Valley settlements, which ministers Tzipi Livni, Yair Lapid, and Yaakov Peri opposed. The bill was not promoted beyond that point.

The frequency of the tabling of bills of this type has increased in the 20th Knesset, as have the levels of support among Members of Knesset, including government ministers and senior members of the coalition. In February 2018, the chairpersons of the Knesset lobby group the Entire Land of Israel, MK Yoav Kish (Likud) and MK Bezalel Smotrich (Jewish Home), tabled a bill titled the Application of the Sovereignty of the State of Israel to Areas of Judea and Samaria, 5778-2018:<sup>27</sup> “The law, jurisdiction, administrative, and sovereignty of the State of Israel will be applied to all the areas of settlement in Judea and Samaria as described in the addendum.” An asterisk by the word “addendum” leads to a footnote stating: “The area to be included in the addendum will be determined during the preparation of bill for its First Reading.” To date, the bill has not been promoted.

The bill on the Application of Sovereignty to Ma'ale Adumim, a large settlement near Jerusalem, was accompanied by a public and media campaign. The bill was tabled before the Knesset in August 2016 on behalf of Members of Knesset from the Likud, the Jewish Home, Shas, and Kulanu. The explanatory notes commented that, “It is widely agreed in Israel and abroad that sovereignty should be extended to Ma'ale Adumim. If this will be implemented it will not substantially change the demographic balance in Israel and will not harm the state's democratic character. Accordingly, it is proposed that the law, jurisdiction, and administrative of the State of Israel already be imposed at this stage on Ma'ale Adumim, and that its status be determined as an integral part of the State of Israel.”

This bill and others like it highlight the selective character of the proposed annexation, implying a mixed regime of annexation and occupation. In June 1967, after Israel applied its sovereignty to East Jerusalem, Israel's law, jurisdiction, and administrative was imposed on the area and the territory of the State of Israel was expanded accordingly. The Palestinians living in the neighborhoods and villages in the annexed area did not become citizens, but

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<sup>27</sup> Available at: <http://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2063577>

were granted Israeli identity cards and the status of permanent residents who may submit requests for naturalization. By contrast, the annexation of Ma'ale Adumim is not due to be undertaken in such manner that all the area between Jerusalem and Ma'ale Adumim would be included in the annexed area. The proposal certainly did not seek to grant citizenship, identity cards, rights or services to the Palestinians who live in this area, who would remain under the authority of the Military Commander.

## **2. Greater Jerusalem Bill**

Another attempt to promote the annexation of settlements was undertaken in the form of two bills concerning the settlements in the Jerusalem area. One, known as the Greater Jerusalem Bill, was tabled by MK Yehuda Glick (Likud), and the other, called Jerusalem and Its Annexes, was tabled by MK Yoav Kish (Likud) and others.<sup>28</sup>

According to the Jerusalem and Its Annexes Bill, tabled by MK Kish, the area of jurisdiction of Jerusalem would be expanded to include the Jerusalem municipality itself, as well as subsidiary municipalities for other local authorities - the settlements of Ma'ale Adumim, Beitar Illit, Givat Ze'ev, and Efrat, as well as Gush Etzion Regional Council. In addition, the bill seeks to separate the Palestinian neighborhoods of Jerusalem located beyond the Separation Barrier from the area of Jerusalem municipality, and to establish a new subsidiary municipality in these neighborhoods.

The Greater Jerusalem Bill tabled by MK Glick is similar to Kish's proposal, but does not propose the removal of the Palestinian neighborhoods beyond the Separation Barrier from the area of the Jerusalem municipality. The list of annexed settlements according to this proposal is longer, including settlements that are a considerable distance from Jerusalem such as Ma'ale Mikhmash and Mitzpe Yeriho. The list also includes Mevasseret Zion local council, which is within the sovereign borders of the State of Israel.

According to both these proposals, Palestinians living in the areas in between Jerusalem and the subsidiary municipalities, for example between Jerusalem and Gush Etzion, would continue to be subject to the regime of the military occupation. It is unclear what ramifications this "municipal annexation" would have for the status of the area and the law that applies there.

## **3. Application of the Development of the Negev Law to the Settlements**

In March 2017, MK Bezalel Smotrich (Jewish Home) submitted the Negev Development Authority (Amendment – Communities in the Judea Region in the Negev), 5777-2017.<sup>29</sup> The Negev is a large area in Israel's south that is considered a socioeconomic periphery. The

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<sup>28</sup> See: [Greater Jerusalem Bill, 5777-2017](#).  
[Jerusalem and Its Annexes Bill, 5777-2017](#).

<sup>29</sup> [Negev Development Authority \(Amendment – Communities in the Judea Region in the Negev\), 5777-2017](#).

amendment to the law seeks to include within the Negev Development Law the local settlement council of Kiryat Arba and the regional council of Har Hevron settlements.

Accordingly, investments and budgets intended for the economic and social development of the Negev would also reach the southern settlements. The bill has been tabled before the Knesset but has not yet been discussed.

#### **4. Abolition of the Prohibition against Entry to Northern Samaria (Disengagement Plan)**

In March 2017, a private bill was tabled entitled the Implementation of the Disengagement Law (Amendment – Abolition of the Prohibition against Entry to and Presence in the Disengagement Areas and Amendment of the Name of the Law), 5777-2017.<sup>30</sup> The proposal seeks to abolish the prohibition against the entry of Israeli citizens to the area in the northern West Bank where settlements were evacuated as part of the 2005 Disengagement Plan, thereby permitting the reestablishment of the evacuated settlements. The bill was tabled before the Knesset but has not yet been promoted.

#### **Supervision by the Knesset of the Military Commander**

In addition to its legislative work, the parliament also performs an additional and important function by supervising over the executive branch. At discussions of Knesset committees, to which the representatives of the government and other authorities are invited, the officials are routinely required to answer questions presented by Members of Knesset and to listen to their suggestions and demands. Knesset committee discussions are also attended by additional stakeholders, such as citizens injured by the conduct of an authority who wish to present their case, representatives of institutions and companies interested in the topic discussed, civil society activists, and others.

In the 20th Knesset, a Subcommittee for Judea and Samaria Affairs has begun to operate under the auspices of the Foreign Affairs and Defense Committee. The subcommittee, chaired by MK Motti Yogev (Jewish Home), discusses civilian issues concerning the West Bank that are not security related. Representatives of the Defense Ministry, the Civil Administration, and the military's Legal Advisor for the West Bank are invited to the meetings, as are representatives of government ministries and relevant official bodies – the Water Authority, the Electricity Authority, Mekorot Water Company, the Ministry of Transport, and so forth.

The discussions are regularly attended by the settler leaders and representative of the local and regional councils in the settlements. These representatives demand that the civilian and military representatives solve various problems, such as improving the water supply to a particular settlement or improving the safety means at a dangerous intersection. The

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<sup>30</sup> [Implementation of the Disengagement Law \(Amendment – Abolition of the Prohibition against Entry to and Presence in the Disengagement Areas and Amendment of the Name of the Law\), 5777-2017.](#)

Palestinians are glaringly absent from these discussions. They cannot send a representative on their behalf to the subcommittee from a Palestinian community suffering from a water shortage, or demand that one particular dangerous intersection be prioritized over another.

The so-called-annexation proposals seek to perpetuate this situation: The settlers would live under the sovereignty of the Knesset and enjoy their rights as citizens in a democratic state, who are invited to discussions in the parliament and can engage with those who influence their lives. The Palestinians, meanwhile, would remain under military rule and continue to be invisible.

## Part Two: The Attempt to Dismantle to Laws of Occupation through Knesset Legislation

The legislative initiatives we have described are part of a political effort to entrench the annexation of the settlements and to undermine the fundamental principles of the military occupation regime. The two components – **strengthening annexation legislation (Israeli law)** and **weakening the laws of occupation (international law)** – are interrelated and influence each other.

In order to comprehend the implication of weakening the laws of occupation it is necessary to understand the 1907 Hague Convention and the 1948 Fourth Geneva Convention, two treaties that define the obligations incumbent on a state that maintains a regime of military occupation in an area outside its sovereign territory.

Article 43 of the Hague Convention imposes on the occupying state the responsibility to “ensure [...] public order and safety” in the occupied territory. The military commander serves as the substitute for the sovereign for a limited period; in other words, he de facto rules over the area pending the formation of the legitimate sovereign, which is the government and parliament elected by the people on the termination of the occupation. The military commander bears obligations toward the local residents, who are defined as “protected persons.” International law imposes restrictions on the power of the military with the goal of protecting the lives and rights of the protected residents. The field of international law relating to this situation is known as the laws of belligerent occupation.

Israel has selectively adopted this legal framework. The military regime established after 1967 was defined as governance in the “disputed territories,” avoiding recognition of the area as occupied and refraining from applying in full the Fourth Geneva Convention. Had Israel adopted all the provisions of this convention, it could not have established settlements, imposed forms of collective punishment, expelled Palestinians outside the Territories, demolished homes, and so forth. The reality of life in the Territories would be completely different had Israel not taken these steps.

In reality, however, the government of Israel announced that it was “voluntarily” (and in practice selectively) applying the humanitarian provisions of the Convention. By taking this approach, Israel sought, on the one hand, to secure international legitimacy for the imposition of a military regime on the Palestinian population by promising to adopt the humanitarian provisions, while on the other hand acting in the Territories without some of the restrictions established in international law.

The selective application of international law allowed Israel to “have the cake and eat it too,” and shaped the reality that has since become familiar in the Territories: Settlements that function as Israeli “enclaves” inside a territory subject to a military occupation that systematically violates the rights of the Palestinians.<sup>31</sup>

The Knesset’s direct legislation seeks to undermine still further three substantive foundations of the laws of belligerent occupation – foundations to which Israel has ostensibly committed itself: the principle of temporality; the prohibition against making substantive changes to the law applying prior to the occupation; and the issue of sovereign.

#### **A. The Principle of Temporality**

International law establishes that military occupation is inherently a transient and non-permanent situation. Israeli governments for decades have acted contrary to the principle of temporality by establishing settlements. Like the government actions, direct legislation by the Knesset applying to the West Bank also undermines the principle of temporality.

In the words of Minister Yariv Levin (Likud), “The settlement in Judea and Samaria is an accomplished fact; it is not a temporary or fleeting matter. The time has come for the State of Israel to treat all its citizens equally and to apply the same laws to them all.”<sup>32</sup> The Members of Knesset are seeking to put themselves in the position of the sovereign power in the West Bank, declaring that this sovereignty is permanent rather than temporary. Under this sovereignty, Israeli law will apply solely to Israelis and not to Palestinians, who will be left without representation and without rights and protections.

#### **B. Maintaining the Existing Law**

Article 43 of the Hague Convention establishes that “the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” This means that the military commander must as much as possible leave intact the existing law in the territory and enact new laws only if they are essential for the good of the local population or

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<sup>31</sup> Orna Ben-Naftali, Aeyal M. Gross, and Keren Michaeli, “Illegal Occupation: Framing the Occupied Palestinian Territory,” 23 Berkeley J. Int’l Law. pg. 551, 2005.

<sup>32</sup> “[An Initiative: All Laws will be applied in the Territories](#)”, Tovah Tzimuki, Yedioth Aharonot, 5 May 2017 (Hebrew).

for an explicit military need. This restriction is intended to prevent the occupying army from fundamentally changing the law and the reality in the country it controls – temporarily, as noted.

Over the last fifty years the army has issued thousands of orders and regulations that have changed the law and the reality in the Occupied Territories. The Members of Knesset now seek to change the law by themselves, without any commitment to respect the laws that *קודם* prior to the occupation. They have no interest in restricting themselves to act within the framework of international law, Jordanian law (the law that applied in the West Bank prior to the occupation) or the military legislation.

### **C. The Sovereignty Issue**

In occupied territories, the military commander serves as a substitute for the sovereign and acts as a legislative, executive, and judicial authority. The commander bears an obligation to protect the rights of the local residents under international law, which defines his obligations and their rights.

Since has the authority in the Territories to promote building plans, construct roads, confiscate land, lay water pipes, and other such actions relating to the control and management of land and physical development. Following the Oslo Accords, the Palestinian Authority (PA) received certain powers in Areas A and B, such as the approval of building plans within the Palestinian cities and the establishment of local water corporations. However, the nature of Israeli control in Area C, which accounts for 60 percent of the area of the West Bank, means that while the PA can promote localized development in Palestinian built-up areas, it is Israel that determines the nature of development in the area as a whole, for example the setting up of primary road networks, the location of new water drillings, or giving permission to establish or to expand a locale.<sup>33</sup>

In practice, significant decisions regarding the management of the West Bank are taken not only by the military, but also by the civilian political and administrative echelon in Israel. The government, including its various ministries and authorities, is an active and even senior partner in the direct management of everyday life in the West Bank. It determines where and when settlements are established, what budgets they receive, what infrastructures are

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<sup>33</sup> Some observers argue that following the Oslo Accords, the management of the daily lives of Palestinians was transferred to the Palestinian Authority, so that the Palestinians no longer live under military occupation, and their only contact with the military comes during arrests that are necessary for security reasons. However, this claim lacks any grounding in reality. In legal terms, the powers granted to the Palestinian Authority are by virtue of the interim agreement with Israel. These powers are restricted to the provision of services in specific fields such as education, health, and sanitation, alongside responsibility for restricted aspects of law, order, and security. It is the Israeli authorities who decide what use will be made of the water sources in the West Bank, where electric power stations will be established, where building extensions will be allowed, where roads will be constructed and for whose benefit, who will be registered in the Population Registry, whose entry into or departure from the West Bank will be restricted, and so forth.

established for them, where settlement industrial zones are developed, and so forth. These decisions directly influence both the Israeli population and the Palestinian population.

In some cases, actual or attempted government involvement goes far beyond issues relating to the settlements and the lives of the settlers. In June 2017, for example, a stormy discussion took place in the political-security cabinet regarding a plan to extend the boundaries of the Palestinian city of Qalqilya. The plan was promoted by the army and the Ministry of Defense, but after its publication it encountered opposition from government ministers. Internal Security Minister Gilad Erdan (Likud) explained that “expanding the area of a Palestinian city at the expense of areas under Israeli civilian and security control is not a decision that relates solely to the living conditions of the population in that particular city... Extensive Palestinian construction in Area C will obviously severely impede the ability to demand that this area remain under Israeli sovereignty in any future permanent agreement.”<sup>34</sup> The cabinet instructed the Attorney General to formulate a position regarding the division of responsibilities between the government and the military on this issue.<sup>35</sup>

The national and territorial interests of the Israeli governments, the security of the settlers, and the expansion of the settlements dictate and shape policy in the West Bank. Meanwhile, the obligations incumbent on the Military Commander to protect the interests and rights of the Palestinian population in accordance with international law are shunted aside. Direct legislation by the Knesset applying to the Territories that contradicts the obligations of the Military Commander exacerbates this trend. This reality leads to the undermining of the laws of occupation and to the worsening violation of the Palestinians’ human rights.

### **Part Three: Protecting Human Rights in a Hybrid Reality of Occupation and Annexation**

Since 1967, Israel’s control of the Occupied Territories has vacillated along an axis from occupation to annexation. The hybrid reality of occupation and annexation undermines the status of the Palestinians and violates their human rights. While the legislative initiatives discussed here may be a new phenomenon, they form part of this longstanding and alarming axis.

A telegram sent by the Foreign Ministry in 1971, exposed by the Akevot organization, describes the background to Israel’s refusal to recognize the applicability of the Fourth Geneva Convention to the Territories: An understanding that Israel’s policy in Jerusalem violates the provisions of the Convention, and a desire to prevent international intervention

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<sup>34</sup> [“Arab city expansion plan has the Right up in arms”](#), Elisha Ben Kimon, Ynet, 19 June 2017.

<sup>35</sup> [“Cabinet puts temporary freeze on Qalqilya expansion plan”](#), Jacob Magid, The Times of Israel, 13 July 2017.



“in affairs in which we do not wish them to intervene,” as the telegram declared, alluding to such actions as house demolitions, expulsions, and administrative detentions that severely violate the rights of the protected population and are accordingly prohibited under international law.<sup>36</sup>

If the legal framework of the laws of occupation had been fully observed from the outset, this would have ensured protection for Palestinians. This framework would also have prevented the establishment of the settlements, thereby avoiding the violations of rights that result from their presence, such as prohibitions on the movement of Palestinians in order to enhance the settlers’ security; denial of access to farmland and water sources; the rejection of Palestinian building plans due to the proximity of a Palestinian community to a settlement; violence and intimidation by settlers, and so forth. Without the settlements, there would have been no need for the emergence in the West Bank of two discriminatory legal systems, obliging the Military Commander to act within a legal framework that is systematically and extremely unequal.

A decision at an early stage to annex the West Bank fully would have constituted a violation of international law, which prohibits the unilateral annexation of a territory. It would also have encountered fierce opposition from the Palestinian population. However, genuine annexation would have in principle afforded Palestinian residents with the protections and rights offered in Israeli law. In such a reality, it would not have been possible to send the army to perform functions that it is not allowed to undertake in a democracy.<sup>37</sup>

The members of the 20th Knesset are seeking to expand their mandate and to enact legislation outside the sovereign territory of the State of Israel. Senior representatives of the 34<sup>th</sup> Israeli Government are undermining the definition of the West Bank as an occupied territory. In the hybrid reality of occupation and annexation the present government and Knesset are seeking to create, the Palestinians lose out on both: they are afforded neither the protections and rights of international law nor those of Israeli law. This is an intolerable situation from the perspective of the protection of human rights.

It is obvious that a fundamental change that would guarantee Palestinians all their rights and liberties could be reached only through a comprehensive and stable political agreement. The current format of Israeli military control alongside the partial control exercised by the PA cannot provide a basis for the full and optimal realization of human rights.

However, pending a political agreement of any type, all the Israeli bodies that exercise authority and control in the West Bank – the military, the Knesset, the courts, the Attorney

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<sup>36</sup> [The Umbricht Brief: Israel and the 4th Geneva Convention](#), 1971, Akevot.

<sup>37</sup> The reality that has emerged in annexed Jerusalem shows that even if Israeli law formally grants protections and rights to Palestinians, the authorities may grossly violate them. Nevertheless, the ability of Jerusalem residents to claim their lawful rights should not be belittled, particularly in contrast to the residents of the West Bank, who are promised very little by the law and where the realization of these limited rights encounters countless obstacles related to the military regime.

General, the police, the Ministry of Defense, and other ministries – **bear an obligation** to ensure the realization of the human rights of the Palestinian residents and to halt the violation of these rights.

To this end, it is vital to insist on the obligations and restrictions established in the laws of occupation. With hindsight, respect for these laws could have prevented numerous human rights violations and severe injustices that have emerged over the years. In addition, due weight should also be given to international human rights law (IHRL), which has developed significantly since the treaties and regulations defining the laws of occupation were written.<sup>38</sup> The reference to these laws and their underlying guiding principles should aim to enhance, and not to impair, the rights of the protected Palestinian residents.<sup>39</sup> Action in this direction could secure meaningful change in the human rights situation of the Palestinians and put a stop of improper and discriminatory practices, even in a reality in which the military regime continues to operate.

Members of Knesset who seek to assume this responsibility should first of all halt the legislative initiatives regarding the West Bank and leave legislation to the Military Commander, who is subject to the framework of international law. Secondly, they should use the parliamentary tools at their disposal to supervise the actions of the military and the security bodies. Members of Knesset bear the responsibility for supervising the executive branch and for ensuring that the law is respected – including the laws of belligerent occupation. Lastly, and most importantly, all those who seek to ensure the full human rights of all people living between the River Jordan and the Mediterranean should act to end the occupation.

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<sup>38</sup> [The Status of the Right to Demonstrate in the Occupied Territories](#), Position Paper, Association for Civil Rights in Israel, 2014.

<sup>39</sup> Aeyal M. Gross, “[Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?](#)” *European Journal of International Law*, Volume 18, pages 1-35, 2007.

## Appendix: The Development of the Law in the Territories – From Military Occupation to the Legalization of Outposts

This part of the report seeks to present a brief overview of the legal structure of the military regime in the West Bank and the legislative steps taken by the Military Commander and the Knesset. For a more detailed examination, we invite you to read the report published by ACRI in 2014: “One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank.”<sup>40</sup>

### The Establishment of the Military Occupation in the Territories

On 7 June 1967, immediately after Israel occupied the West Bank, the Military Commander issued a communique establishing a military government in “the Area” and a communique concerning governmental and legal arrangements. These communiqués enabled the Military Commander to assume all powers relating to “government, legislation, appointment, and administrative regarding the Area or its residents.” In addition, the Military Commander also published a communique and several orders establishing the criminal law and military courts system.

Over the years, and alongside the consolidation of the military government’s control of the Palestinian population, the army and the Knesset acted gradually to impose Israeli law on Israelis resident of the Territories and those who enter the area. Since the direct legislation of all the laws of the Knesset would constitute annexation, the Knesset applied its laws in the Territories on a personal and non-territorial basis, through the Emergency Regulations (Judea and Samaria – Jurisdiction in Offenses and Legal Aid). These regulations apply Israeli criminal law to the settlers, along with 17 additional laws, including the National Health Insurance Law, the National Insurance Law, the Income Tax Ordinance, the Population Registry Law, and so forth. Over the years, the Knesset has amended various laws in order to apply them to the settlers. Thus, for example, Amendment No. 2 to the Knesset Elections Law, adopted in 1970, established that Israelis living in the Territories are entitled to vote in elections to the Knesset despite the fact that they live outside the State of Israel.

Alongside these legislative steps taken by the Knesset which applied to the rights and obligations of individuals, the Military Commander issued orders that applied solely to Israeli settlements and not to Palestinian communities. In this manner, the military expanded the applicability of the laws of the State of Israel in the settlements. The Order concerning the Management of Local Councils and the Local Councils Articles created two types of communities in the West Bank: Palestinian cities and villages, subject to Jordanian law as modified by military orders, and Israeli local and regional councils, which maintained a system similar to that defined under Israeli law for local councils inside Israel. The settlement councils therefore enjoy the benefits and budgets provided by Israeli legislation

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<sup>40</sup> “[One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank](#)”, Association for Civil Rights in Israel, 2014.

to local authorities. This segregated system also permitted the establishment of Local Affairs Courts for Israelis only that hear cases relating to planning and building, labor laws, health laws, and other matters.

This reality, where Israeli law is de facto applied to the settlements through military orders, is referred to as the “enclaves law.”<sup>41</sup> It was premised on the notion that it is the military, and not the Knesset, which has the authority to enact legislation of this type in the Occupied Territories.

## **Life under Two Legal Systems**

Even a cursory glance at the West Bank reveals the systematic discrimination between Palestinians and settlers relating to almost every aspect of daily life. This is a central feature of Israeli control in the area.

Criminal law is one of the fields where the differences between the two legal systems are the most pronounced, with extremely significant ramifications for basic rights and particularly the right to liberty. At every stage of the criminal legal process, from initial arrest through prosecution and penalization, Palestinians are discriminated by comparison to Israelis. This applies to both adults and minors, and to ordinary as well as security offenses. Even the system for the enforcement of traffic laws, for example, discriminates against Palestinians in terms of the scope of enforcement and the severity of penalization.

On the issue of planning and building, a legislative and institutional separation has been imposed between the planning systems for Israelis and Palestinians. Settlers enjoy significant representation of their interests in the planning institutions and are full partners in planning processes relating to their settlements. Most of the settlements in the West Bank have detailed and updated outline plans permitting their expansion and the issuing of building permits. By contrast, the Palestinian communities under Israeli control in Area C suffer from the freezing of planning processes and are completely excluded from planning process. The policy toward Palestinians is based on an intention to prevent construction and encourage demolition. Policy concerning the demolition of houses built without permits is also far stricter toward the Palestinian population than toward Israelis, including the demolition of infrastructures required for basic existence, such as water wells and solar panels providing electricity. In the summer heat and the winter cold the military continues to leave Palestinian families and communities without shelter.

The freedom of movement, freedom of vocation, the right to demonstrate, and other liberties are guaranteed for settlers but limited when it comes to Palestinians. Palestinians’ right to family life is restricted, their privacy violated, and some of them cannot provide their

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<sup>41</sup> Amon Rubinstein, “The Changing Status of the Administered Territories,” *Iyunei Mishpat* 11 (5746) (Hebrew).

families with minimal conditions for existence. This reality is diametrically opposed to the principles and protections established in the international treaties.

### **The Levy Commission Report: There is No Occupation**

In 2012 the Israeli government established the Commission to Examine the Status of Building in Judea and Samaria. The commission was set up following petitions to the High Court of Justice that exposed the scale of illegal construction in the settlements, and particularly in the illegal outposts, and the direct involvement of official bodies in these offenses. The commission was headed by retired Supreme Court Justice Edmund Levy.

The Levy Commission Report sharply criticized the scale of building violations in the settlements and determined that, in general, these offenses were committed with the knowledge and even encouragement of the official authorities, and even of the political echelon. In order to solve this problem the report proposed various legal means for granting retroactive approval to homes in settlements and outposts. It recommended that demolition and eviction notices not be executed. The Levy Report also included an analysis of international law, concluding that Israel is not an occupying power in the West Bank; accordingly, it is not bound by the prohibition against establishing settlements and there is no reason to halt the expansion of these settlements.

The Israeli government did not officially adopt the report of the Levi Commission. In practice, however, the current government – like its predecessor – is promoting the recommendations included in the report to approve illegal construction. The government has also adopted the underlying legal position behind the report: if there is no occupation, then there is no prohibition against the establishment of the settlements; the Palestinians are not to be considered protected persons and should not be granted protections; and there is no impediment to confiscating their private land for the purpose of settlement. This is a far-reaching interpretation that must spark a debate about its impact on the rights of Palestinians.

The report of the Levi Commission reinforced the process by which Israel is distancing and disassociating itself from its obligations under the rules of international humanitarian law. This process paved the way for the enactment of the Regularization Law, the most extreme of the annexation laws adopted by the 20th Knesset.