



January 2, 2018

To:

MK Yoav Kisch  
Chairperson, Knesset Committee

To:

Members of the Knesset Committee

Greetings,

**Re.: Discussion concerning “The Mutual Relations between the Knesset and Israeli Citizens Resident in Judea and Samaria”**

1. We are writing to you ahead of the discussion scheduled for the Knesset Committee on January 3, 2018 under the above-mentioned heading. The discussion is due to discuss the application of the Israeli legislation enacted by the Knesset to citizens of the State of Israel who live in the Territories.
2. **We wish to draw your attention to the fact that the legal system Israel chooses to apply in the Territories, and the manner in which the laws of the State of Israel are applied there, have enormous ramifications for the human rights of millions of men and women. Accordingly, the human rights issue should form the core of the Committee’s discussion in this context, and generally in discussions concerning the Territories and the law applying therein.**
3. As you are surely aware, the official position of the State of Israel is that residents of the settlements live outside the sovereign territory of the State of Israel and in an area under military rule. It is true that some Members of Knesset and others are challenging this position and seek to impose Israeli sovereignty on the Territories, in one form or another. For the present, however, Israel’s position has not changed over fifty years, and accordingly constitutes the relevant position within which the Israeli legislator should act when examining the legal system in the Territories.
4. **An alternative position that has not yet been adopted, seeking to grant the Knesset immediate sovereign authorities in a territory that is not officially under its sovereignty, cannot serve as the basis for legislation.**

**The Law Applying in the Territories**

5. Since June 1967, Israel’s official position has been that the control of the Israeli Military Commander in the Territories is applied within the framework of “belligerent seizure,” and is subject to the international law applying to an occupied area. The legitimacy of this military control is based on several foundations, two of which are central to the Committee’s discussions:

- A. **The temporary nature of the control.** International law defines military rule of the “belligerent seizure” type as an inherently temporary regime. On the one hand, it permits effective military control in territory occupied in war; on the other, it affords protection to a civilian population that finds itself under the control of a foreign military for a limited period.

The characteristic of temporariness is fundamental to the legitimacy of the military regime in the occupied territory. Steps designed and intended to cause permanent holding of any or all of the Territories render the military control non-temporary, and accordingly improper and unlawful.

- B. **International humanitarian law as the legal basis.** The military legislation in an occupied territory is based on the principles and norms of international humanitarian law, as established in the Hague Regulations and the Fourth Geneva Convention. These establish special protection for the local population subject to occupation, including: a prohibition against forced transfer; a prohibition against changing the legal system pertaining in the territory; a prohibition against the confiscation and sequestering of land and property; and so forth. The purpose of these laws is to protect a civilian population from a foreign military, and accordingly its residents are referred to as “protected residents,” and the Military Commander is responsible in trusteeship for the management of their lives.

Insofar as the Members of Knesset wish to become the sovereign in the Territories, then in place of the above-mentioned norms, the norms of the democratic regime pertaining in the State of Israel should be applied to the Territories – in other words: the application of a single legal system in which all are equal before the law enacted by the Israeli Knesset.

### **The Proposed Law**

6. According to the explanatory notes, the purpose of the amendment to be presented to the Committee is to ensure the “equalization of the rights of almost half a million citizens of Israel who reside in Judea, Samaria, and the Jordan Valley. The amendment is required in light of the substantial gaps in legislation that have emerged over the years between the Knesset legislation and the military legislation, and in order to prevent the widening of these gaps.”
7. The term “**equalization of rights**” in the proposal seeks to adorn itself with the values of democracy, rights, and equality. However, this is a misleading presentation, since the Members of Knesset have not been presented with a choice between strengthening democracy and equality or weakening them. Instead, the Members of Knesset are asked to choose between the following two options: The genuine and substantive realization of democracy within the sovereign State of Israel, through the genuine and substantive realization of humanitarian law in the occupied territory under temporary military

control; or the undermining of the democratic regime applying in Israel and the delegitimization of the military regime in the Territories.

8. **It is true that there is a gap between the law applying to Israeli citizens who live inside the State of Israel and those who live in the Territories, and this gap creates difficulties. However, the truly enormous gaps are those created deliberately between the law applying to the settlers and those applying to Palestinians – two populations that live in the same territory and under the control of the same Military Commander, yet who are subject to two legal systems.**
9. It is impossible to describe here the full scope of the gross and institutionalized discrimination suffered by the Palestinians under the Israeli military regime, which grants clear and sweeping priority to the rights of the settlers, whether in criminal law, in freedom of expression and demonstration, in planning and building laws, in realizing the right to shelter, and so forth. (For a full comparison between the laws and the manner in which Israel has applied Israeli law to the settlers and the settlements through military legislation and through Knesset legislation, see: *One Rule, Two Legal Systems*, ACRI, 2014).
10. This systemic discrimination was created over a period of decades, primarily by means of military legislation institutionalizing the discrimination between the populations. It has turned the duty of trusteeship vis-à-vis the protected population incumbent on the Military Commander into an empty slogan. Members of Knesset are now seeking to deepen this discrimination. According to the proposal presented to the Committee, Members of Knesset will be able to determine whether the application of new legislation to Israeli citizens living in the Territories will be effected by way of direct legislation by the Knesset or through military enactment.
11. **Firstly, the Members of Knesset seek to make the Military Commander subject to Israeli law and the Israeli legislator, rather than to the principles of international humanitarian law from which the Military Commander draws the authority and legitimacy to rule the area.** If these principles are cast aside, and if the Commander's control is not temporary in any sense, and if he does not serve as a trustee for the protected population – then there the military control has no legitimacy and is unlawful and improper.
12. **Secondly, if the Knesset considers itself to be sovereign in the Territories, then this implies annexation requiring the application of a democratic regime to all the residents of the area.** However, an initiative to apply Israeli law to the settlers through the Knesset, as well as other initiatives and discussions in the Knesset in recent years, do not constitute annexation in its usual and substantive sense. They instead relate to a hybrid creation whereby Israelis in the settlements will be annexed to Israeli democracy, while their Palestinian neighbors will continue to live under military occupation.
13. Imagine the following situation: On a single street in Hebron, Jewish residents are annexed to Israel and live under a democratic regime, while Arab residents suffer under

military occupation. Who controls this street in Hebron – the Knesset or the Military Commander? What regime applies on this street – a democratic one or a military one? What norms are applied there – equal laws or institutionalized discrimination on the basis of nationality?

14. The proposal presented to the Knesset Committee exposes the dimensions of the gap between Israel's official position, on which the legitimacy of the military regime in the Territories is based, and the reality Israel is creating and seeks to advance in the Territories. This reality is anything but temporary, and is not based on the principles of international humanitarian law.

### **In Conclusion**

15. We urge the Members of Knesset not to lend their hand to the deepening of a discriminator and oppressive regime that leads to the systemic violation of human rights. Instead, the Knesset should respect the borders of its sovereignty and ensure full democracy within the boundaries of the state. At the same time, it should insist that the military operate under the norms established in international humanitarian law as these apply to an occupied territory. As long as military control over the Territories persists, this is the only way to prevent the systemic and grave violation of human rights and human dignity.

Sincerely,

Ronit Sela

CC:

Knesset Speaker, Members of Knesset, Legal Advisor to the Knesset, Legal Advisor to the Knesset Committee