

Adalah The Legal Center for Arab Minority Rights in Israel
عدالة المركز القانوني لحقوق الاقلية العربية في اسرائيل
עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



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Subject: Governmental decision concerning the transfer of spheres of operation to the Ministry of the "Negev, Galilee, and National Resilience"¹

I hereby request that you take action to cancel Government Decision No. 109 of 5 February 2023, titled "Changing the Name of The Ministry For The Development of The Periphery, Negev and Galilee to [the] 'Ministry of the Negev, Galilee and National Resilience'; Transfer of spheres of operation; Transfer of Authorities from Minister to Minister and Amendment of Government Decisions", in relation to the transfer of areas and spheres of operation in the occupied territories to the "Ministry of the Negev, Galilee and National Resilience" (hereinafter: the Ministry). The aforementioned decision was taken without authority and is contrary to international law applicable to the West Bank as an occupied territory.

¹ This is an English translation of a Hebrew letter, available [here](#)

1. In the aforementioned decision, the government approved, inter alia, that "spheres of operation" related to settlements in the West Bank will be transferred to the Ministry of the Negev, Galilee and National Resilience. These, inter alia, include:
 - "c. Young [newly established] settlement - unregulated Israeli settlements in Judea and Samaria, including neighborhoods and settlement points that meet this definition at the time of approval of the decision.
 - ...
 - e. Threatened settlements classified by the security bodies at threat levels 3-5 (the highest threat levels." (sections 2c and 2e of the decision).

Within this framework, it was determined that the areas of operation of the office will include:

"Promotion of regularization of activities in the young settlement, including planning, connection, renewal and upgrading of infrastructures, security components, necessary public buildings, and other essential infrastructures and other components as may be required, in coordination with the authorized bodies and subject to the applicable law in the region and without detracting from their powers, and with the approval of the Prime Minister on matters of principle as determined by him, after coordination with the Minister of the Negev, the Galilee and the National Resilience." (Section 3(15) of the decision).

2. In order to carry out the aforementioned areas of operation, it was decided to "establish in the Ministry of the Negev, the Galilee and the National Resilience a division for young settlement under the Authority for Planning and Development of the Settlement and the Village on the basis of the existing regulations. The division will work to promote, plan, connect, renew and upgrade infrastructures, security components, necessary public buildings, and other essential infrastructures and other components as may be required in the young settlement..." (section 6(12) of the decision). The legal opinion accompanying the proposed decision, on behalf of the Ministry for the Development of the Periphery, the Negev and the Galilee, dated February 3, 2023, clarified in this context that "it is requested to regulate a sphere of operation to promote the settlement of young settlements in Judea and Samaria and accordingly, change the area of operation of the Ministry so that it can operate in these settlements."
3. Therefore, the stated decision seeks to assign the Ministry, and the minister entrusted with it, with powers in the occupied territories, which are granted to the military commander according to international law.
4. As is known, Israel's actions in the West Bank, as an occupied territory, are subject to rules of international humanitarian law and international human rights law. It has already been ruled by the Supreme Court, that, "the power of the military commander comes to him from the public international law relating to belligerent occupation". The legal

significance of this concept is twofold: first, the law, the judiciary, and the administration of the State of Israel do not apply in these areas...Secondly, the legal regime applicable in these areas is controlled by the public international law that deals with belligerent occupation."

(HCJ 7957/04 Mara'abe v. Prime Minister of Israel, PD 60(2) 477, 492 (2005); see also: HCJ 1661/05 The Gaza Coast Regional Council v. Knesset of Israel, para. 77 of the judgment The Law (published in legal databases, 2005); HCJ 3239/02 Merab v. Commander of the IDF forces in the Judea and Samaria area, PD. 57(2) 349 (2003)). The application of humanitarian law in the occupied territories was also addressed by the International Court of Justice (ICJ), in its Advisory Opinion of July 9, 2004 regarding the separation wall being built by the Israeli government in the West Bank (See par. 89 and 101 of the opinion in the following link: www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm)

5. First, it should be clarified that the government has no authority to transfer "spheres of operation" related to the administration of the occupied territories, or any part thereof, to the Ministry of the Negev, Galilee and National Resilience. Section 31(d) of the Basic Law: The Government provides that "[t]he Government is entitled [...] to transfer spheres of operation from one ministry to another", yet this authority certainly does not include the transfer of "spheres of operation" related to the administration of occupied territories and subject to [the authority of] the military commander in these territories, according to international law – separate from, at this stage, the substance of the actions that will be under the Ministry's purview, which is also prohibited under international law, as detailed below. According to Basic Law: The Government, government ministries operate under the authority of and in accordance with Israeli domestic law, and they cannot arrogate to themselves powers granted, under international law, to the military commander.
6. The decision is also contrary to the "Promulgation on Legal and Administrative Arrangements Procedures" (No. 2) dated August 11, 1967, which established the military regime in the West Bank and sought to maintain the governmental, legal, and judicial procedures that existed in the occupied territories, subject to changes to be made by the order of the military commander and resulting from the establishment of the military regime. This decree entrusted the management of said territories to the military commander only. Therefore, the decision is essentially void.
7. In light of the above, the matter at hand is the indirect application of Israeli domestic law on the West Bank and de facto, a decision of annexation of territories within the West Bank where the Ministry will operate by virtue of its decision. For the decision seeks to transfer the managing authority in the occupied territories to the Ministry and manage them as if they were part of the territory of the State of Israel, subject to the laws of the country, and were operated by the Ministry and the appointed minister. Therefore, the decision, and any steps taken to implement it, will deepen the mechanism of de facto annexation of occupied territories and could even be considered a de jure annexation, all

of which are in flagrant violation of the laws of occupation. These acts of annexation constitute a crime of aggression under Article 8(2)(a) of the Rome Statute.

8. In addition, this decision and implementing steps are in pursuit of a policy that constitutes a blatant violation of international humanitarian law, which expressly prohibits the establishment of settlements in occupied territories. Article 49 of the Fourth Geneva Convention prohibits the transfer of the occupying power's civilian population to the occupied territory. Such transfer of a population is included as a war crime in the Rome Statute (Article 8(2)(b)(viii)) - a matter that has been under investigation by the International Criminal Court, in the context of the Israeli occupation since 1967.
9. Finally, the decision also indicates that there is intent on the part of each of the [individuals] who made the decision to commit criminal offenses under the Rome Statute.

In light of all the above, you are hereby requested to immediately act to cancel the aforementioned decision in regard to the transfer of spheres of operation in the occupied territories to the Ministry of "Negev, Galilee and National Resilience" and to refrain from taking any steps to implement it.

Best regards,
Attorney Suhad Bishara