



פורום המרצות והמרצים למשפטים למען הדמוקרטיה

Position paper 51: The IDF's Legal Obligation to Protect Palestinians in the Occupied Territories

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This position paper discusses the legal obligation of the Israel Defence Forces to protect Palestinians in the Occupied Territories.

- **Violent attacks by settlers on Palestinians living in the Territories and on their property, and the absence of appropriate enforcement of the law against such settlers by Israel's security forces are not new; they are well known to the authorities, and they have been documented since at least the 1980's. Nonetheless, events that we are now witnessing – such as the pogroms in Hawara, Turmus Aya and Um Safa – constitute a new threat to the rule of law and to the preservation of order and security in the territories.**

* The Israeli Law Professors' Forum for Democracy, an ad hoc and voluntary group of experts on Israeli law working to protect and promote liberal democracy in Israel. The forum engages in research, in analysis of legislative bills, writes policy papers, and provides information and explanation for the public as well as for professional audiences. The forum actively opposes initiatives and actions aimed at abolishing the independence of the judiciary, subordinating it to the government and to the partisan political considerations of the executive branch, and initiatives aimed at harming democratic institutions, equal and free elections, the right to equality, free speech, freedom of religion and other human rights.

The members of the Israeli Law Professors' Forum for Democracy, hold different academic views regarding the details of the various reforms proposed by Israel's 37th Government to change Israel's democratic regime. Therefore the position papers or other professional materials produced by us reflect the prevailing position among the members, even if they are not unanimous. We are, however, united in the opinion that the host of the government's proposals - which are an unprecedented and severe attack on the independence of the judiciary, the Attorney General and government legal advisors, the police, the military, and public broadcasting - will seriously damage the rule of law and Israel's democratic character. Therefore, we joined this forum to make our professional opinion available to the public at this fateful time.

The list of Forum's members and all position papers on our behalf are available at <https://lawprofsforum.org>, where you can also find all our position papers. Follow us on Twitter: <https://twitter.com/lawprofsforum>. Contact us: lawprofessorsforum@gmail.com.

- **This threat arises from a dangerous combination of messages voiced by senior officials in the Government, denial of the state's legal obligations in the Territories, and the ongoing steps designed to weaken those authorities charged with the rule of law and enforcement of the law, in particular, the Legal Advisories and the Supreme Court.**
- **The security forces are legally obliged to observe the law and to safeguard order and security in the Territories. This legal obligation includes the obligation to protect the residents of the Territories from physical injury and from injury to their property. This obligation means that the army must be organised in advance in such a way as to prevent injuries to Palestinian residents; they must act to stop attacks made on Palestinian residents and their property as they take place; and, if they have already taken place, the army must investigate such injuries in order to identify and locate those responsible for injury and bring them to trial.**
- **In the course of these violent attacks serious crimes are committed under Israeli law and under the law applying in the Territories, some of which may amount to war crimes under public international law. As the heads of the security forces have declared, these acts constitute acts of terror as the term is defined in Israel's Struggle against Terror Law, 2016.**
- **In the absence of appropriate investigation and prosecution by Israel, those involved in such events – civilians and military commanders alike – are liable to be exposed to prosecution before the International Criminal Court and before courts in other states.**
- **A request by the General Assembly of the United Nations for an advisory opinion on Israel's behaviour in maintaining a long-term occupation is pending before the International Court of Justice. In the absence of determined action by Israel to protect the safety of Palestinians and to enforce the law against those who attack them, the International Court of Justice may address the legal implications of Israel's continuing failure to enforce the law. These legal implications may include both determinations that Israel is in breach of various obligations under international law, and determinations respecting the obligations of the United Nations and of other states to ensure Israel's compliance with its international obligations.**