

The Return to Homesh: A Sign of What Lies Ahead

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The efforts by settlers to relocate the illegal yeshiva in Homesh to territory defined as “state-owned land,” without going through the requisite and regulated legal process – with the approval of the Israeli government and the tacit agreement of the IDF – are testimony to the fact that the current government of the State of Israel does not feel bound by the law, at least not in the West Bank. The government prefers to undermine the rule of law, violate Israel’s commitments to the United States, and pay the price for the escalation of terrorism in the northern West Bank in order to advance the ideology of the radical right wing in the government, which seeks to chain the West Bank forever to the State of Israel and thwart any chance of a political-territorial compromise with the Palestinians.

On the night of May 28, 2023, the building that was home to the Homesh yeshiva, which had been erected on privately-owned Palestinian land, was relocated a few hundred meters to an area that is defined as “state-owned land.” Instead of tents, mobile homes were positioned at the new site. This is a significant step toward the establishment of a new, permanent settlement at this location. Security officials said that while the army guarded the settlers who relocated the yeshiva, the move occurred at the explicit behest of the political leadership and against the position of the security establishment. In addition, security officials said that “this mission was imposed on the IDF by Minister in the Ministry of Defense Bezalel Smotrich, after heavy pressure was leveled on Defense Minister Yoav Gallant.” This is the first time since the disengagement in 2005 that permanent structures were erected in Homesh and on territory in northern Samaria formerly evacuated by Israel.

The original settlement of Homesh was established on privately-owned Palestinian land that the State of Israel expropriated in 1978 for military purposes – namely, to establish a Nahal outpost. Since 1979, the establishment of settlements on privately-owned land expropriated for military purposes ceased to be accepted practice, in the aftermath of a Supreme Court ruling and the subsequent formulation of Israeli policy, whereby settlements would only be established on state-owned land, or on land purchased by Jews.

As part of the disengagement plan, carried out in 2005 by a Likud government under the leadership of PM Ariel Sharon, it was decided that in addition to its withdrawal from the Gaza Strip, Israel would also evacuate its citizens from a defined area in northern Samaria, and subsequently, four settlements were evacuated: Ganim, Kadim, Homesh, and Sa-Nur. The decision to remove settlements in northern Samaria was coordinated with the US administration and was a precondition for US support for the disengagement plan. According to the wording of the Disengagement Law, the territory evacuated was defined as a closed military area, and Israeli citizens were barred from entering it.

Following the disengagement there were many attempts by the right to rebuild the Homesh settlement, and the yeshiva in Homesh has been open since 2009, albeit built on privately-owned Palestinian land and in violation of the no-entry order. Although the yeshiva was removed several times – each time accompanied by clashes between the IDF and those in the yeshiva – it was consistently reopened. In 2013, a petition to the Supreme Court was filed on behalf of the Palestinian owners of the land, which requested access to their land and the right to work the land, and as such, the removal of the yeshiva. Subsequently, the appropriation and closure orders that prevented the Palestinians gaining access to their land were annulled. Nonetheless, in practice, the Palestinian landowners were not granted access to their lands and they appealed to the Supreme Court several times. The Court ordered the IDF to allow them access, but this never happened.

On March 21, 2023, an amendment to the Disengagement Law proposed by the current government was approved by the Knesset. According to the amendment, the ban on Israelis entering and remaining in the territories that were evacuated in northern Samaria would be revoked. On May 20, the Commander of the IDF Central Command signed the order implementing the amendment. This legislation alone does not legalize the yeshiva – certainly not on privately-owned Palestinian land. At the same time, the relocation of the yeshiva to state-owned land can only be completed following a licensing process and the issue of permits. Therefore, the relocation of the structures, which was done in the dead of night and at the direction of the political leadership, was illegal. The incident, which did not earn much public attention, is problematic on several levels, each of which is worrying, and when taken together, is extremely so. The relocation of the yeshiva is an illustration of a dangerous process that has been launched and may well expand under the current government.

The first level of concern is related to damage to the rule of law. The establishment of illegal outposts in the West Bank is far from rare, but these are set up by private individuals, and the IDF's Central Command and the Civil Administration have tried, albeit with only limited success, to resist these efforts and impose the rule of law. In the past, such cases – known as “fresh incursions” – could be addressed by a decision of the military commander for the removal of the structures without the approval of the Defense Minister. However, under the current government, any such evacuation – even in the case of “fresh incursions” – must be approved by Minister Bezalel Smotrich, by virtue of the coalition agreements he signed with Likud and his role as a minister in the Ministry of Defense. The upshot is that “fresh incursions” by settlers, acting without legal authority, are not removed – further undermining the already impaired rule of law. Homesh, however, is an exceptional case in that the political echelon directed an illegal activity. This is a dangerous precedent wherein the IDF obeys orders from the political leadership, even though these orders are against the law. The government's support for the settlers' illegal relocation of the Homesh yeshiva is testimony to the fact that the current Israeli government does

not feel bound by the law – at least not in the West Bank. This incident highlights one of the key reasons that the current government is forging ahead with a plan designed to weaken the Supreme Court, thereby preventing it from blocking the possibility to operate in these areas free of legal restrictions.

The concern that the government will issue orders and directives while ignoring legal rulings is one of the main reasons behind the recent wave of protests in Israel. In the West Bank, this concern has already materialized. The case of moving the yeshiva posed a dilemma for the security establishment – whether to obey the instructions of the government or those of the law. It appears that the commanders refrained from confronting the government and attempted to weather it with passive involvement. It is possible that given the circumstances a petition will be filed with the Supreme Court, seeking the evacuation of the yeshiva. If the Court decides to get involved, it will find itself on a direct collision course with the government. Moreover, if a court order is issued to remove the yeshiva because it was illegally established and if the government were to decide not to adhere to that order, the IDF would have to decide with whom to side. This would put to the test the promises made by top commanders in the IDF to the Israeli public that the military would not carry out any government order that violates the law.

The second level of concern relates to implications of retaking control of northern Samaria for the security situation in the West Bank as a whole. This move undermines stability and foments discontent on the ground; it obligates the IDF to deploy troops to secure the yeshiva and the roads leading to it; it increases friction between the Jewish and Palestinian populations and increases the motivation of Palestinians to carry out terror attacks; it curbs the motivation of the Palestinian Authority's security apparatuses to impose law and order and to thwart violence and terrorism; and, at the same time, it adds to the continued growth of terrorist organizations in Samaria, which could expand into other areas.

The third level relates to the long-term ramifications of the move. The goal of the disengagement from northern Samaria was to allow for separation from the Palestinian population in an area where there were very few settlements and a large Palestinian population. Restoring the settlements in this area is designed specifically to thwart the option of a future political agreement. Even according to then-President Donald Trump's so-called "deal of the century," which was drafted in the spirit of the Israeli right, Homesh was not supposed to be under Israeli sovereignty. The return to Homesh represents another stage in the current right wing government's headlong descent toward a one-state reality. The leaders of the settlement movement in the West Bank are working to establish facts on the ground in the heart of Palestinian territory by establishing contiguous settlements, outposts, and agricultural areas, to prevent the very possibility of separation and a political resolution and thus tying the hands of future Israeli governments. The choice will be between "a state of all its citizens," with full equal rights for the Palestinian population, which would mean the end of the Jewish character of the State of Israel, and between "a Jewish supremacy state," with full rights for the Jewish population and limited rights for the Palestinians. Such a state could not be democratic and could even be considered an apartheid state.

The fourth problematic element relates to the implications of the move for Israel's foreign relations, especially its ties with the United States. Following the approval of the amendment to the Disengagement Law, Israel promised the US administration that it would safeguard the status quo on the ground and that no new settlements would be established in the area. After the relocation of the Homesh yeshiva, the United States came out strongly against the move: "We are deeply troubled by the Israeli government's recent order that allows its citizens to establish a permanent presence in the Homesh outpost, which...is inconsistent with both former Prime Minister [Ariel] Sharon's written commitment to the Bush administration in 2004 and, significantly, the current Israeli Government's commitments to the Biden administration." The State Department spokesperson went on to say that "the expansion of settlements undermines the geographic viability of a two-state solution. It exacerbates

tensions, [and] it further harms trust between the two parties.” Moreover, the move, coupled with the other policies of the current government, exposes Israel to criticism in the international arena and to likely legal jeopardy following an advisory opinion regarding the illegality of the occupation, which was requested from the International Court of Justice, and the increased pressure on the prosecutor of the International Criminal Court to accelerate the investigation against Israeli officials engaged, inter alia, in the settlement policy, which is defined by the Statute of the ICC as a war crime.

Looking to the future, the case of Homesh is a vivid demonstration that the current Israeli government prefers to undermine the rule of law, to violate its commitments to the US administration, and to pay the price in terms of likely increased terror in Samaria, in order to advance the ideology of the radical right wing in the government, which wants to prepare the groundwork for the annexation of the West Bank. This thwarts any possibility of there ever being an effective Palestinian government and chains the territory to Israel forever – with no possibility of reaching a political compromise with the Palestinians. In so doing, the government is ignoring the position of most of the Israeli public, which opposes a “one-state reality” – a poll by the Institute of National Security Studies found that 85 percent of Israelis oppose this situation. Two-thirds of the Israeli public want to separate from the Palestinians rather than deepening the merger of the two populations and the accompanying friction. The return to Homesh is another milestone in the erosion of the Zionist dream and the Jewish-democratic character of the State of Israel.

Editors of the series: Anat Kurtz, Eldad Shavit and Judith Rosen