



## Jewish rioters face stiffer penalties in IDF courts

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**Trying West Bank Israelis in military courts would be a "huge policy shift," legal experts say.**

Photo by: Marc Israel Sellem

Following criticism of Prime Minister Binyamin Netanyahu's decision to adopt new measures against Jewish rioters in the West Bank, human rights and military law experts said Thursday that no legislative changes would be required to try Jewish residents in military courts rather than civilian courts, and warned that settlers could face much stiffer penalties if the policy is enacted.

Among the series of measures recommended by Justice Minister Yaakov Neeman and Public Security Minister Yitzhak Aharonovitch include permitting the IDF to try Jewish activists charged with security offenses in West Bank military courts instead of regular courts in Israel.

**According to David Kretzmer, professor emeritus of the Hebrew University's law faculty, in theory, Jewish Israelis can already be tried in military courts, because the IDF military commander in the West Bank has the jurisdiction to deal with any resident of the territory convicted of a security offense.**

According to international law, the West Bank is considered occupied territory and in line with the Fourth Geneva Convention (1949), the IDF military commander established the military court system in 1970, as part of the Security Regulations Order 387 (Judea and Samaria), to ensure the protection of civilians during times of war. While the legislation applied in the region is the same as that under force before the IDF's entry, specific changes have been made, according to the Military Advocate-General's Office, "for maintaining the safety and security of the area."

Human rights lawyer and military courts expert attorney Smadar Ben Natan noted that, Jewish Israelis were still tried in the military courts as late as the 1980s, but the policy changed and currently only Palestinians are tried there.

Trials take place in one of two military courts, in Salem, near Jenin and in Ofer, near Ramallah: both are in military bases.

Either side may appeal judgements in the Military Court of Appeals, whose decision is final; however in some cases a further appeal may be heard in the Supreme Court.

Criminal trials open with an official investigation carried out by the Military Advocate-General's Office. MAG officers then decide whether there is sufficient evidence to file an indictment or close the case.

**According to Kretzmer and Ben Natan, the overwhelming majority of criminal trials in military courts result in plea bargains, and so there are few evidentiary hearings where the prosecution and defense each make their own arguments.**

**"That works because most Palestinians are kept in detention pending trial," said Kretzmer.**

**"So their lawyers think it is better to reach a deal."**

Although plea bargains are common – although not as common – in civilian courts, Ben Natan says more defendants choose to confess in military court cases because the focus is on the interrogation, which is usually carried out by the security services rather than the police.

Military courts also have harsher due process and far stiffer penalties than civilian courts, because defendants are tried under military law, which is focused on dealing with security offenses, rather than the penal code.

“The change in policy reflects a hardening attitude against settlers,” Ben Natan said.

Under military law defendants can be held for eight days before being brought before a judge, compared with 24 hours for civilian courts; likewise military law allows security prisoners to be held for 90 days without access to a lawyer, compared with 21 days under civilian courts. The penalty for attempted murder is a life sentence under military law - whose context is security offenses perpetrated by the enemy - compared with just six years under the Israeli penal code, which applies in civilian courts.

Murder is punishable by the death penalty (although in practice that is commuted to life imprisonment) compared with life under civilian law; and manslaughter attracts a life sentence under military law, compared with a maximum 20 years in civilian courts.

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