

The Legal Opinion Submitted to the Attorney General on Amona: A Crossing of a Red Line

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The Army Radio reported that the committee established by the government to find a solution of the illegal outposts issue recently submitted a legal opinion to the Attorney General according to which it is possible to use the absentees' property in the case of the illegal outpost of Amona. The committee's idea is to take private Palestinian lands in the nearby plot to where Amona is today, whose owners do not live in the West Bank, and lease them to the settlers of Amona through a lease that will be renewed every three years. This way, the settlers of the illegal outpost, which must be evacuated by the end of December due to a High Court ruling, will be able to live close by to where the outpost is located today. AG Avichai Mendelblit will soon announce whether he intends to accept or reject the legal opinion.

Peace Now: *"Accepting the legal opinion of the committee and thereby violating private property rights in the Occupied Territories will constitute the crossing of a red line. The acceptance of the legal opinion would have dire consequences on a future peace agreement as it could lead to the establishment of dozens of new settlements and to the multiplying of the land taken up by settlements in the West Bank. The Israeli government cannot justify the stealing of private lands of absentees only to please the demands of settlers who themselves stole private lands against the law."*

Main Arguments:

- **Absentees' property is privately owned property, period.** The fact that their owners are abroad does not allow anyone to take their properties, no matter for how long. The state would never take properties of Israeli citizens living abroad and it must not do so in the Occupied Territories either.
- **It is clear as day that what is called temporary will become permanent.** The renewal of the lease every three years is a mere effort of legal acrobatics.
- **Replacing settler theft with government theft is unjustified,** even if the settlers acted with the backing of the government and the turning of a blind eye by law enforcement officials.
- **If the legal opinion is accepted it will open the door to doubling the land taken up by the settlements and the establishment of many new settlements.**
- **Past uses of absentees' property are entirely different** than an intentional effort to steal private lands in order the establishment of a new settlement for the Amona settlers.

Background: The Legal Opinion

After its establishment, the Netanyahu government formed a "professional committee for the regularization of West Bank illegal construction" ("the regularization team") in order to offer solutions for the legalization of illegal outposts and construction in the West Bank. According to the Army Radio report, the committee, headed by Attorney Haya Zandberg from the State Attorney's Office, submitted a legal opinion to the AG which allows the Head of the Government Property in the Civil Administration to lease private Palestinian absentees' lands to settlers in order to establish a new settlement nearby to the location of the illegal outpost of Amona. The idea is to lease the land for three years only and then renew the lease every three years. By using temporary leasing the legal opinion avoids the problem that lies in the selling absentees' property. However, it is clear that the establishment of a new settlement is not at all temporary.

The legal opinion contradicts the Israeli legal interpretation since 1967 according to which Israeli governments have been determining their policies. Even Attorney Plia Albeck, a senior in the State's Attorney's Office who has been referred to as "the mother of settlements" stated that absentees' property "cannot be used for the establishment of Jewish towns."

According to the legal opinion of the Assistant to the Attorney General to the Civil Administration from September 1997: "the Head of the Government Properties is nothing but a trustee who guards the property from damage while the owner is absent from the area... from the essence of an 'abandoned asset' as private property to which the Head of the Government Properties relation is temporary and for the purpose of protection only, a far more comprehensive ban is evident: **in fact, the Head of the Government Property must not engage in a business transaction with regards to the property that will stand in opposition to the mentioned obligation for protection, and mainly to the duty to return the property to its owner upon his return to the region.**"

Absentees Property is Private. Period.

Absentees Property is privately owned by Palestinians who, as of now, reside outside of the West Bank. The Head of the Government Properties serves as the trustee of these properties and is obliged to protect them from damage and to ensure they will not be taken by others. Clearly the establishment of a settlement on private land owned by absentees is a violation of the trustees' obligation.

According to the Army Radio report, Attorney Zandberg legal opinion includes cases in which internal legal opinions of the Civil Administration stated that Absentees Property could be leased in a temporary and renewing lease. However, these are entirely different cases, in which the absentees property had already been (illegally) used and there already exist third parties related to the issue. This is the exception that proves the rule, since the legal opinions

mentioned above would not have been necessary had the leasing of absentees property were allowed.

Future Implications of Using Absentees Property

If AG Mendelblit will accept the legal opinion, this will create an opening for the takeover of tens of thousands of dunams in the West Bank. The scope of absentees' property in the West Bank is estimated at around 100,000 dunams (double than the size of Tel Aviv and similar to the land taken up by all of the settlements today). Thus, by leasing absentees' property the government could establish many new settlements.

Accepting the legal opinion will also expose the Israeli government to lawsuits by the land owners, shall they return to the West Bank.

The most severe implication is that the state of Israel will crush the basic rights of Palestinians under its rule in the occupied territories, while violating international law - all out of the will to comply to the demands of a group of settlers that established an illegal outpost on stolen Palestinian land with the backing of the government.