

From Occupation to Apartheid

Substantial Changes in Israeli Control in the West Bank 2015-2018

Executive Summary

The Netanyahu-Bennett government is leading a profound and dramatic change in the rules of the game of what is permissible and what is forbidden in the occupied West Bank. From a legal situation of "belligerent occupation" whereby Israeli control over millions of Palestinians is defined as a temporary situation and all its activities are limited to the needs of the occupied population or for security purposes (at least in principle), the government is leading the country toward de facto annexation and a one-state reality with a population with rights (Israelis) and a population without rights (Palestinians). This is done without an official declaration of annexation or of the establishment of a bi-national state but rather a series of administrative decisions, in the form of changes in legislation and in legal interpretation that apply the principles of Israeli civil law to the West Bank and its residents without allowing them to participate in the democratic process.

A. Legal Opinions of the Legal Echelon

1. Legal opinions of Attorney General Mandelblit, contrary to the positions of his predecessors:

- **It is permissible to expropriate Palestinian land in cases in which the Israeli takeover was done in "good faith"** – Such an opinion was expressed by Attorney General Mandelblit in the state's position in multiple cases (Ofra and Mitzpeh Kramim) according to which it is possible to expropriate private land from its Palestinian owners if the settlers' taking of the land was done in good faith. He is willing to attribute "good faith" to cases in which construction was done illegally and without permits. This is in fact the realization of the [Expropriation Law \(the "Regulation Law"\)](#) enacted by the Knesset and is currently being [heard by the High Court of Justice](#).
- **It is permissible to expropriate land for the purpose of access to the settlement, because settlers can be considered a "protected population" of the occupation regime** – Contrary to the positions of the state over 50 years of occupation and contrary to the rulings of the Supreme Court, Attorney General Mandelblit ruled in [an opinion from November 2017](#) that private land was permitted to be expropriated for the benefit of the settlers in order to prepare an access road to the outpost of Haresha. Thus far, the position was that expropriation is allowed only for purposes that serve the protected population (Palestinians) or for security purposes.

- **Abandoned property may be used for settlement purposes; it is even permissible to "liquidate" the abandoned property without a judicial process** – In order to build an alternative to the outpost of Amona, whose residents sought to remain on the same hill they invaded, Attorney General Mandelblit [permitted the construction](#) of residential buildings for settlers on private land whose Palestinian owners are abroad ("abandoned properties"). Since it turned out that in most cases in Amona the absentee owners also have co-owners from among the Palestinian residents still living in the West Bank, Mandelblit permitted a procedure of "disassembly—of dividing the property among its owners, even without a judicial decision and without hearing the positions of all owners without their knowledge.
- **It is permissible to expropriate land from the Hebron municipality without judicial process in favor of a settlement** – In Hebron, there are lands owned by Jews before 1948, which later under Jordanian rule were rented in the form of protected tenancy to the Hebron municipality for public purposes. The legal advisors ruled in the past that the law prohibits the expropriation of the Hebron Municipality's rights to these properties without legal grounds and without judicial process. In October 2017, the subcommittee of the Higher Planning Council approved the request for a building permit for [the construction of 31 housing units for Hebron settlers](#) in an area that was rented to the Hebron municipality as protected tenancy but closed due to security claims. This means that the Attorney General has approved the expropriation of the protected tenancy status of the Hebron municipality for the purpose of the settlement. In November 2018, the defense minister announced that a construction plan for the settlement could be advanced [in the wholesale market in Hebron](#).

2. "The Legal Regulation Team"

In July 2015, Prime Minister Netanyahu appointed a "**professional team to formulate an outline for regulating construction in Judea and Samaria**", headed by Avichai Mandelblit, the then government secretary, who was replaced by Attorney Haya Sandberg of the State Prosecutor's Office when Mandelblit was appointed Attorney General.

The Mandelblit/Sandberg team prepared two products:

- A. **A summary report** with a series of precedent-setting legal solutions that propose changing the legal interpretation to suit the government's desire to legalize construction offenses by settlers and the theft of Palestinian land. [The report was published in the press](#) and sets new principles that allow the expropriation of private land under different circumstances, and changes existing planning principles for the purpose of regulating illegal construction. The report is a kind of a legal toolkit for the Attorney General to use and to accept or reject in specific cases.
- B. **Specificity opinions** – The team has prepared dozens of detailed legal opinions for the regulating of outposts and concrete neighborhoods (especially those that have been brought before the High Court of Justice.) These opinions get presented to the Attorney General who decides whether and how to implement them.

B. Legislative Changes

1. A directive to the government and the Knesset: Every bill should address its application to the West Bank

According to a [publication in Haaretz](#), on December 31, 2017, the Attorney General issued a directive to all of his deputies, mandating that all government-sponsored bills include a clause specifying whether or not they would also apply to the West Bank.

A similar directive was distributed by Ministers Ayelet Shaked and Yariv Levin in May 2017 as a new procedure for the work of the Ministerial Committee for Legislation.

The Knesset Committee discussed a further similar proposal for a change in the Knesset's articles of association, but in the end, due to lack of authority, it made do with just a declarative decision.

2. Legislation

A series of laws and bills introduced by the Knesset aimed at institutionalizing the existing discrimination regime in the West Bank: to promote and strengthen settler rights on the one hand, and to erode the rights of Palestinians under Israeli military control on the other. There is a clear tendency in the Knesset to apply its laws to the occupied West Bank as form of annexation. [ACRI published a detailed report](#) and analysis of these legislative changes, from which we take but a few examples:

- [The Expropriation Law \(the "Regulation Law"\)](#) – passed in the Knesset in February 2017 – applies only to the West Bank and directly and severely infringes on Palestinian property rights. In effect it determines that a large part of the land grab carried out in the settlements over the years will be transferred to the settlers. [The law is pending before the High Court of Justice](#) in petitions filed by various organizations.
- **Amendment to the Council of Higher Education Law** – a law passed in February 2018 applies the powers of the Council of Higher Education to academic institutions in settlements in the occupied territories, as if they were also in Israel. It is not yet clear to what extent the law may harm Israeli academic institutions in terms of funding from international foundations, participation in international conferences, and research.
- [Amendment to the Administrative Courts Law](#) – passed in July 2018 and determined that administrative petitions in the areas of planning and building, freedom of information, entry and exit from the territories, and orders for removal and supervision of the army will be transferred from the Supreme Court to the Jerusalem District Court. The law symbolically relates to the West Bank as another Israeli district, and in practice reduces the judicial level that deals with such matters there, from 16 judges in the Supreme Court (3 in each petition) to individual judges in the District Court (1 in each petition).

- **Proposed laws for the annexation of settlements** – a significant number of bills have been submitted by the Knesset (some of which were even supported by the government) and seek to annex large areas of land in the territories without annexing the Palestinian residents. Among other things, the proposed law on the application of sovereignty in Judea and Samaria, a proposed law for the annexation of Ma'aleh Adumim, a bill for the annexation of the Jordan Valley, a proposed [Greater Jerusalem Bill](#), and more.
- **Proposed law for the management and allocation of land by the Settlement Division** – a bill designed to enable the continuation of the Settlement Division's management of most of the public lands in the West Bank, after 50 years of it doing so without transparency, supervision and sometimes while violating the law and committing fraud. This bill passed a preliminary reading with the support of the coalition. [See more here](#).
- **Reducing the democratic space** - A long list of laws and bills designed to reduce the democratic space in Israel, among other things: limiting the authority of the Supreme Court; harming gatekeepers of democracy institutions such as the State Comptroller, the State Prosecutor's Office, the media and the public service; and, among others, constraining the ability to operate of civil society organizations that oppose the occupation. All this has implications for the protections given to the protected Palestinian residents in the West Bank and for the public discourse on the subject. [See update by ACRI](#).
- **“Fabric of Life in Settlements” Bill (aka Regulation Law #2)** – A bill to legalize 66 outposts and illegal neighborhoods in the settlements within two years. The bill states that in the interim period, the authorities will provide these outposts with all the services, and the Finance Ministry will give the settlers a mortgage guarantee for the purchase and construction of illegal houses. The Ministerial Committee on Legislation [supported the bill](#) on December 16, 2018 and it passed the preliminary reading in the Knesset on the 19th of December 2018.

To read the full report, see here: <http://peacenow.org.il/en/from-occupation-to-aparthied>