

שלום נכשין سلام الآن PEACE NOW

# ANNEXATION UNDER THE RADAR

THE ESTABLISHMENT OF THE "SETTLEMENT

ADMINISTRATION" UNDER MINISTER BEZALEL SMOTRICH

SETTLEMENT WATCH PROJECT, JULY 2023



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## Synopsis:

- The establishment of a new governmental body called “the Settlement Administration (Judea and Samaria),” which is slated to govern all of the aspects of life in the settlements. The Administration will take over the roles of the Civil Administration, which is a military body, in governing the settlements and leaves the military Civil Administration only the governance of the aspects of the life of the Palestinians. **The establishment of this new Administration signals the virtual annexation of the territories** because the Administration, as opposed to the Army, is a civil governmental body that is obligated, by definition and pursuant to the law, to promote the interests of the State of Israel and its citizens and is not obligated to concern itself with the interests of the Palestinian population.
- A separation has been created on the basis of nationality between Israeli settlers, who are governed by the Settlement Administration, and the Palestinian residents, who are governed by another body of the Civil Administration, **and this is one characteristic of a system of apartheid.**
- Separate legal counsel for The Settlement Administration – while the military legal counsel is obligated to consider the interests of the occupied Palestinian population, and it serves as a restraining authority with respect to the government’s policies in the territories, the legal counsel of the Administration, which is subject to Minister Smotrich, is obligated to consider only the interests of the Israelis.



### **The Authority of the Settlement Administration:**

- *The authority to approve all of the planning stages for Israelis in the West Bank, to establish and expand settlements, infrastructure, and highways,<sup>1</sup> as well as the approval of planning for Palestinians (in coordination with the military Civil Administration). It bears noting that on June 18, 2023, the government decided to repeal the requirement of government approval for the **various planning stages in the settlements** yet left the approval of Palestinian planning under the authority of Minister Smotrich (under the direction of the cabinet and in coordination with the security apparatus).*
- All of the authority with respect to the expropriation of land in the territories, including expropriation for public needs, declaration of land as “government land,” and registration of land as government land.
- Enforcement of planning and construction laws with respect to Palestinian construction in Area C as well as enforcement with respect to Israeli construction.
- Responsibility for all aspects of land administration connected to the transfer of land from Palestinian possession to Israeli control, such as the registration of ownership, approval of transactions, and more.
- Arrangement of outposts – administrative work and promotion of legalizing outposts to meet the threshold requirements of the planning committees. The Administration has complete authority to legalize outposts as neighborhoods of settlements.
- Responsibility for electricity, water, communications, and highway infrastructure for Israelis and for Palestinians.
- Responsibility for archeology and nature reserves.
- Responsibility for agricultural farms.

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<sup>1</sup> On June 18, 2023, the government decided to repeal the requirement for approval of the political echelon of each of the stages of planning in the settlements. See, in detail, [Israeli government assigns sole responsibility for West Bank settlement planning process to Minister Smotrich](#).

## **Annexation Under the Radar**

### **The Establishment of the Settler Administration under Minister Smotrich**

**Settlement Watch, Peace Now, July 2023**

On February 23, 2023, as part of the coalition agreements to form the current government, a document called "The Principles and Division of Responsibilities and Authorities between the Minister of Defense and the Additional Minister in the Ministry of Defense" was signed between the Minister of Defense (Yoav Galant), the Minister of Finance (Bezalel Smotrich), and a representative of the Prime Minister. The agreement established a new governmental body called the "Settlement Administration," intended to manage all aspects of life in the settlements in the occupied Palestinian Territories (oPt). **The new body is subject to the authority of Minister Smotrich, who effectively serves as the Minister of Settlements** (in addition to his role as Minister of Finance).

According to the agreement, the management of most other aspects of the lives of the Palestinian population in the oPt remains in the hands of the military. It should be noted that the Settlement Administration, under Minister Smotrich, was also given direct authority over Palestinian affairs, including enforcement of planning and building laws against Palestinian construction in Area C, as well as managing all land-related matters, including land seizure and declaring 'state lands', among others.

On the same day (February 23, 2023), the government had already appointed a close associate of Minister Smotrich as the head of the Settlement Administration and began implementing the agreement.

Until now, all civil authorities in the oPt, including the management of settlements and settlers, were under the jurisdiction of the Civil Administration, which is part of the Israel Defense Force (IDF) and is subject to the Minister of Defense. The Civil Administration, as a military mechanism, was responsible for planning, land administration, environment, health, and other services for the Palestinians in Area C of the West Bank, as well as for the settlers.

The Israeli government did not directly manage these areas through a civilian governmental body because the West Bank is not part of the State of Israel, and the government has no authority to act outside its sovereign territory. International law recognizes a situation in which a state occupies (temporarily) a territory that is not part of its sovereign territory. Still, it establishes clear conditions for how to do so. According to the laws of occupation, from which Israel founds its authority to act in the oPt, the management of life in the occupied territory must be done through a military mechanism, **which is required to act for the benefit of the protected residents**, the Palestinians, as long as the territory is occupied.

On the other hand, a civilian governmental body like the Settlement Administration, established under an agreement between the Minister of Defense and Minister Smotrich, is a body that is committed by definition and by law to the interests of the State of Israel and its citizens. Therefore, **its establishment and operation in the West Bank essentially constitute the annexation of the territories.** It is true that the military agencies that operated under the Minister of Defense effectively implemented the policies of the Israeli government and had a significant presence in the oPt. However, according to international law, the primary obligation in managing the occupied territory is toward the Palestinian residents, and the military serves as an agency that is independent of the government that should consider the interests of the occupied population. But beyond the cosmetic change, creating an administration that is solely obligated to the considerations and desires of the State of Israel dangerously destroys a structure that was carefully architected to comply with international law. If, in the past, one could argue that there was minimal restraint, taking into account international law and Palestinian interests, now it is completely absent.

Furthermore, according to the agreement, the legal counsel of the Settlement Administration is provided by the Legal Adviser's Office of the Ministry of Defense and is subject to Minister Smotrich, the Minister of Settlements. The office of legal counsel of the Civil Administration, which deals with all matters related to the lives of Palestinians in the territories (Legal Advisor to the West Bank), will continue to be under military jurisdiction.

Therefore, beyond the personal question of who is responsible for the mechanism and who will implement it, and what their political obligations are, the establishment of the Settlement Administration is not merely a symbolic or political process but instead constitutes as annexation of the oPt and their direct management by the Israeli government.

Moreover, it involves a nationally-based separation within the same governing entity between Israeli settlers, who are managed by one body, and Palestinian residents, who are managed by another body. **This is one of the characteristics of an apartheid regime.**

An examination of the agreement and its appendices, which were recently exposed following demands and pressures from MK Gilad Kariv, reveals the extent of the annexation process and how the Israeli government seeks to manage the oPt from now on.

### **Main provisions of the authorities division agreement:**

#### **A. Establishment of the Settlement Administration**

Under the Minister of Settlements, which deals with the management and supervision of services and various aspects of life in the settlements and the settler population in the oPt. At the head of the Settlement Administration, in a role similar to a director of a government ministry, the government appointed a close associate of Minister Smotrich, [Yehuda Eliyahu](#).

[who was a prominent member of the Regavim organization](#). Under the head of the Civil Administration, a "Civilian Deputy" is supposed to be appointed, who is professionally subordinate to the instructions of the Settlement Administration, although he is operationally subordinate to the head of the Civil Administration and has the authority to guide the civilian officials of the implementation mechanism in matters of land, planning, environment, infrastructure, and all other areas of managing the lives of the civilian settler population.

Alongside the ongoing management of the civilian mechanism, the document specifies several goals that reflect the minister's intentions regarding the role of the Settlement Administration:

- Facilitating services provided to settlers.
- Concentrating the office's work on legislative amendments related to settlements.
- Promoting the authorization of outposts.

All of these are tools in the hands of the Minister of Settlements to promote and accelerate development in the settlements.

## **B. Independent Legal Counsel under the Minister of Settlements**

According to the agreement, the legal counsel of the Settlement Administration will be conducted by a new unit within the Legal Counsel Department of the Ministry of Security, and it will be subject to Minister Smotrich. The legal consultation of the Civil Administration, which will continue to deal with all matters related to the lives of Palestinians in the oPt (the Civil Administration's legal advisors), will remain a military body under Military Prosecution.

Legal counsel plays a crucial role in reviewing the actions of the authorities. The legal advisers are responsible for ensuring that all government actions are carried out in accordance with the law. **The removal of the legal counsel from the IDF, which is an external body to the government and directly subject to the Military Prosecution rather than to the political rank, is intended to enable the government to "overcome" legal difficulties and limitations imposed by more independent legal advisers. As mentioned, the military legal consultation is obligated to consider the interests of the occupied Palestinian population. In contrast, the legal consultation under the minister must consider the interests of Israelis.**

## **C. The Authorities of the Settlement Administration (The Civilian Mechanism)**

### **1. Planning**

Approval of all planning stages for Israelis in the West Bank, including the establishment and expansion of settlements, infrastructure, and roads, will be transferred to the Administration



under the Minister of Settlements. The approval of planning for Palestinians in the oPt will be transferred to a joint forum of the civilian and the military authorities, subject to cabinet approval.

Until now, the Higher Planning Committee (HPC), the professional body entrusted with approving construction plans in the oPt, could only discuss plans after the approval by the Minister of Defense to advance them. This has now changed, and under the new regulation, the authority to approve planning for the settlers has been transferred to the Minister of Settlements. [More information can be found here.](#)

During the month of March, Minister Smotrich requested the appointment of a representative on his behalf as a member of the HPC. This requires the bureaucratic approval of the HPC for the appointment of the representative, which, as far as we know, has not yet been convened to approve it. The implication is the politicization of planning decisions. The HPC, which is entrusted with approving all construction plans in the oPt (both in settlements and for Palestinians in Area C), is a highly problematic body as it lacks any Palestinian representatives. Nevertheless, the body has professional integrity as it consists of Israeli architects and planners who represent relevant government bodies for planning (representative of the Israel Planning Administration, Environment Protection Unit, the Israel Land Administration, etc.). Planning decisions are supposed to be made based on professional considerations to ensure proper planning. The introduction of a political representative appointed by the Minister will undermine what remains of the professional façade of the planning bodies within the Civil Administration.

## **2. Enforcement and monitoring of construction**

As is well known, the Civil Administration's enforcement unit [demolishes thousands](#) of Palestinian buildings and homes in Area C each year. According to the agreement, the enforcement policy will be determined in consultation between the Prime Minister, the Minister of Defense, and the Minister of Settlements, and implementation will be the responsibility of the civilian mechanism under the Minister of Settlements. Enforcement actions will be coordinated in a joint forum with the military authorities and headed by the Minister of Settlements.

The agreement imposes a limitation on rapid and unilateral enforcement without prior consultation with the minister's representatives. This clause seems to be aimed at preventing the military from immediately evacuating new settlements upon their establishment.

## **3. Lands**

All the authorities related to land seizure in the oPt, including seizure for public purposes, declaration of land as 'state land,' registration of land as 'state land,' are transferred to the

Administration under the jurisdiction of the Minister of Settlements. [See here for further expansion on the various types of confiscations.](#)

In addition to that, the management of all aspects of land registration, including approval of purchase transactions, blue line team operations, initial registration, utilization of [Section 5](#) of the Order Concerning Government Property ('Market Regulation') for the purpose of expropriation, and more, also fall under the authority of the administration. All of these actions are related to the ways in which land is transferred from Palestinian hands to Israeli control, and they involve significant legal and bureaucratic work that should take into account the claims of Palestinian ownership. In the past, the settlers have complained about the existing mechanism, which makes it difficult for them to gain control over land. The transfer to the direct authority of the Minister of Settlements, who is primarily committed to Israeli interests, is intended to address the concerns of the settlers.

The allocation of land also falls under the authority of the Smotrich administration. After the land has already been transferred to Israeli control and is considered public land (referred to as 'state land'), there is still a need to decide to whom to allocate the land, for what purposes, and when. [Although almost all allocations of public land in the oPt were granted to settlers and settlements under the Civil Administration](#) and not to Palestinians, the transfer of authority to the administration is aimed at facilitating and expediting the allocation of land for settlement purposes.

#### **4. Establishment/Authorization of Outposts and New Settlements**

In order to legalize an outpost, significant groundwork is required to regulate the land status, prepare plans, and obtain approval from the planning committees. The authorities granted to the administration regarding planning and land are essentially the tools through which unauthorized outposts can be legalized. However, beyond these authorities, the Administration is also tasked with preparing the groundwork and advancing a work plan for the legalization of those outposts. Minister Smotrich seeks to invest the required resources and expedite the process of outpost legalization.

When it comes to the legalization of outposts, especially as "neighborhoods" within existing settlements, the Administration has full authority to promote it. Only in cases where the outposts are located at a significant distance from an existing settlement an official government decision on establishing a new settlement is required. Once such a decision is made, all the authorities for its implementation lie within the hands of the Administration.

On February 12, 2023, [the government decided to establish nine new settlements for the purpose of legalizing ten outposts.](#) This decision paves the way for the Administration to promote planning and regulate the land status for their legalization. Beyond these ten outposts, the Administration can also promote the legalization of dozens of additional outposts as "neighborhoods" with the sole approval of the Minister of Settlements.



## 5. **Agricultural Outposts**

In recent years, over 50 new agricultural outposts have been established illegally. These farms seize vast expanses of land, each occupying thousands of dunams, by displacing Palestinian farmers and shepherds from the surrounding areas. The Administration under the Settlements Minister has also taken on the responsibility of determining policies for these agricultural outposts, finding the legal and financial means to facilitate the takeover of land, and promoting the establishment of additional agricultural outposts.

## 6. **Additional areas under the responsibility of the Settlement Administration:**

- **Infrastructure, electricity, communications, water, and energy** – Both for Israelis and Palestinians in the oPt.
- **Transportation** – The responsibility for traffic planning and public transportation will lie with the Settlement Administration. Vehicle importation will continue to lie with the military within the Civil Administration's jurisdiction.
- **Archaeology and nature reserves** – Management and enforcement authority, granting excavation licenses, handling antiquities theft, declaring nature reserves and managing them, opening publicly accessible sites.
- **Environmental Protection**– The management of environmental policy, as well as the authority to monitor various aspects such as waste management, landfill sites, gas stations, excavations permits, river cleaning, and other related matters, will be under the jurisdiction of a joint military and civil committee. This committee will be responsible for coordinating and overseeing these environmental activities.
- **Municipalities** – Determining jurisdictional areas, merger and division of local authorities, and admission committees.

## 7. **Legislation**

Legislation in the oPt is military legislation. The Knesset does not have the authority to legislate laws outside its sovereign territory. According to international law, Israel administers the oPt through military legislation signed by the Commander of the Central Command. The Civil Administration under Minister Smotrich has been granted the authority to prepare all legislative amendments relating to civil matters. This allows them to promote significant changes in the status of the settlements, such as enabling the establishment of agricultural outposts or facilitating control over land or infrastructure connections to unauthorized outposts, and more. The signing of these laws remains under the authority of the Commander of the Central Command, in accordance with international law. Responsibility for preparing legislation in security matters remains in the hands of the military.

#### **D. Authorities remaining in the hands of the Civil Administration:**

1. **Management of holy sites** (Cave of the Patriarchs, Rachel's Tomb, and Samuel's Tomb). The agreement specifies that some of the authorities for managing these sites will be transferred to the Civil Administration.
2. **Permit regime-** Policy and management of movement permits for Palestinians and entry to Israel, entry permits from abroad to the oPt, and more.
3. **Palestinian economy** - Policy regarding imports and exports to the oPt, implementation of economic agreements with the Palestinian Authority ("Paris Protocols"), licensing of excavations for Palestinians, the establishment of wastewater treatment facilities, and disposal of Palestinian waste.
4. **Gaza Strip** - Management of all interfaces with the Gaza Strip, policy regarding the entry of goods, infrastructure, etc.
5. **Security coordination with Palestinian security agents.**
6. **Management of crossings (checkpoints)** - The issue of managing crossings is defined in the agreement as a "separated discussion topic." In the meantime, the military will continue to be responsible for the checkpoints until further decision.
7. **Decisions regarding the international community in the oPt.**
8. **Security legislation** - Preparation of legislation in security matters and seizure orders for land for security purposes (in coordination with the civil administration). These laws are also ultimately signed by the Commander of the Central Command.

In accordance with Israeli government measures targeting critics of its policies in the occupied territories, Peace Now clarifies that this year the majority of its funding came from foreign political entities as defined by the law, and they are listed at the website of the Associations Unit