

Adalah The Legal Center for Arab Minority Rights in Israel
عدالة المركز القانوني لحقوق الاقلية العربية في اسرائيل
עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



Adalah Position Paper

**The Acceleration of the Annexation of the West Bank under the 37th Israeli Government led
by Prime Minister Netanyahu**

June 2023

P.O. Box 9744 Haifa 3109701 Israel Tel: (972)-4-950-1610 Fax: (972)-4-950-3140

04-9503140 חיפה 3109701, ص.ب 9744 هاتف 9501610-04 فاكس

04-9503140 חיפה 3109701, ת.ד. 9744 טלפון 04-9501610 פקס

Email: adalah@adalah.org

<http://www.adalah.org>

Table of Contents

A. Introduction.....	2
B. Measures Taken Thus Far.....	3
1) Institutional changes and transfer of spheres of operation to government offices.....	3
2) Legalization of outposts and expansion of settlements	6
3) Direct application of Israeli domestic law in the occupied West Bank	8
C. Conclusions.....	9

A. Introduction

Since the establishment of the 37th Israeli government in December 2022, headed by Prime Minister Benjamin Netanyahu, there has been an even further acceleration of the policy of entrenching settlements in and annexation of the occupied West Bank. As Adalah laid out in its position paper regarding the coalition agreements in January 2023,¹ the government's fundamental guidelines are based on the principle that the right to self-determination between the Mediterranean and the Jordan River and in the occupied Syrian Golan, is granted exclusively to the Jewish people. The first section of the government's fundamental guidelines document states that "the Jewish people have an exclusive and inalienable right to all areas of the Land of Israel. The government will promote and develop settlement in all parts of the 'Land of Israel', in the Galilee, the Negev, the Golan, Judea and Samaria".² Accordingly, the Prime Minister expressly pledged that his government would lead "the formulation and promotion of a policy under which sovereignty will be implemented"³ throughout the West Bank, when Israel's "national and international interests" so permit.

The government has also expressed this position in replies to requests in correspondence with Adalah. In one such letter, the Cabinet Secretary, Attorney Yossi Fuchs, replied as follows: "Judea and Samaria are the cradle of the history for the Jewish people and were liberated in 1967 in a defensive war against the aggression of the Jordanian occupation, which illegally held these areas since 1948. The area of Judea and Samaria was included in the territory designated for the establishment of a Jewish state in the Land of Israel over 100 years ago within the framework of

¹ Adalah's Position Paper: [The Basic Guidelines and Coalition Agreements of the 37th Israeli Government: The Roadmap for Deepening a Regime of Jewish Supremacy](#), January 2023.

² See the [Guiding Principles of the 37th Israeli Government](#) (Hebrew).

³ Section 26 of the [coalition agreement with the "Noam" faction](#).

the League of Nations decision that was unanimously accepted at the San Remo conference by the 50 member states."⁴

This position paper will focus on the concrete steps taken to entrench settlements and promote annexation by the 37th government over the last six months. These measures breach international law regarding the status of the 1967 Occupied Territories and prevent land use by the occupied Palestinian population.

B. Measures Taken Thus Far

The government and the Knesset have initiated a series of legislative processes, governmental decisions, and institutional changes that will alter the status of occupied territories in the West Bank, and constitute *de facto* and *de jure* annexation measures, as detailed below.

1) Institutional changes and transfer of spheres of operation to government offices

Since its establishment, the government took several decisions regarding institutional changes that will transfer spheres of operation, previously under the authority of the military commander in the Occupied Territories, to Israeli government offices that function in the territory of Israel under Israeli law. The clear aim of these decisions is to advance the settlement enterprise, to gradually dismantle the authority of the military's Civil Administration over them, and to apply Israeli state sovereignty over these areas.

i. Management of West Bank settlements transferred from the military to a ministry:

The first step in this regard was taken through Government Decision No. 109 of 5 February 2023,⁵ in which the government confirmed, *inter alia*, that "spheres of operation" related to the settlements in the West Bank will be transferred to the newly named Ministry of the Negev, the Galilee, and National Resilience. These authorities will include:

⁴ Response from the Cabinet Secretary Mr. Yossi Fuchs dated 21 February 2023 to the letter of Adalah Attorney Suhad Bishara, dated 14 February 2023, regarding Government Decision no. 109, dated 5 February 2023, under the title "Changing the name of the Ministry for the Development of the Periphery, the Negev and the Galilee to Ministry of the Negev, Galilee and National Resilience; transfer of spheres of operation; transfer of powers from minister to minister, and the amendment of government decisions" with regard to the transfer of areas and spheres of operation in the 1967 Occupied Territories to the "Ministry of the Negev, Galilee and National Resilience". See the translated response (English) [here](#).

⁵ Government Decision No. 109 - "Changing the name of the Ministry for the Development of the Periphery, the Negev and the Galilee to the 'Ministry of the Negev, the Galilee and the National Resilience'; transfer of areas of operation; transfer of powers from minister to minister and amendment of government decisions", with regard to the transfer of spheres and areas of operation in the Occupied Territories to the 'Ministry of the Negev, The Galilee and the National Resilience' of 5 February 2023.

"c. the young settlements - unregulated Israeli settlements in Judea and Samaria, including neighborhoods and settlement points that met this definition when the decision was approved.

...

e. Threatened settlements, classified by security institutions at threat levels 3-5 (the highest threat levels)." (Sections 2c and 2e of the decision)."

Within this framework, it was determined that the "spheres of operation" of the Ministry will include:

"Promotion of regularization measures in the young settlements, including planning, connection, renewal and upgrading of infrastructures, security components, necessary public buildings and other essential infrastructures, and other components as may be required, in coordination with the authorized bodies and subject to the applicable law in the area without detracting from their powers, and with the approval of the Prime Minister on matters of principle as will be determined by him, after coordination with the Minister of the Negev, the Galilee, and National Resilience".⁶

Further, the government decided to "establish in the Ministry of the Negev, the Galilee, and National Resilience a division for young settlements under the Authority for Planning and Development of the Settlements and the Villages based on existing regulations. The division will act to promote, plan, connect, renew and upgrade infrastructures, security components, necessary public buildings and other essential infrastructures and components as may be required in the young settlements...".⁷

In practice, this decision will transfer the management powers over Occupied Territories to the Ministry of the Negev and the Galilee. This Ministry will administer them as if they were part of the territory of the State of Israel and subject to the laws of the state, pursuant to which the Ministry and the Minister in charge operate.

On 14 February 2023, Adalah sent a letter to the relevant authorities demanding that the decision be retracted and that no steps be taken to implement it. In response to this request, the Cabinet Secretary replied that "the decision was made lawfully and in keeping with the opinion of the

⁶ See footnote 5, above, section (c)(15) of the decision.

⁷ See footnote 5, above, section (f)(12) of the decision.

Attorney General's representative" and that the territories of the West Bank are part of the area designated for the establishment of a Jewish state at the San Remo conference, as mentioned in the introduction above.⁸

ii. Appointment of an additional minister within the Defense Ministry:

The government took another decision, which was passed by the Knesset as part of Amendment No. 14 to the Basic Law: The Government on 27 December 2022.⁹ This new amendment allows the appointment of an additional minister in ministerial offices, and as such, it permitted the appointment of MK Smotrich as an additional minister in the Ministry of Defense. With this appointment, he is responsible for the Unit for the Coordination of Government Activities in the Territories (COGAT) and the Civil Administration in the West Bank. The purpose of Minister Smotrich's appointment is to enable the realization of the Religious Zionist Party's stated policy and political ideology regarding settlement expansion in the OPT and the "regularization" of settlements and outposts.¹⁰ Indeed, as part of the memorandum of understanding signed on 23 February 2023 between the Prime Minister, Minister Smotrich, and Defense Minister Galant, it was agreed that the partners would 'civilianize' the powers of the additional minister, Smotrich, who will "bear ministerial responsibility for all civilian aspects" of the powers transferred to him.

It was further agreed that under Minister Smotrich's responsibility, a "Settlement Administration" will be established in the West Bank, with duties for, *inter alia*, "leading and implementing the 'equal citizenship' reform in Judea and Samaria, which concerns improving and upgrading the services provided in Judea and Samaria, *inter alia*, through government ministries"; "settlement regularization; "coordination of the headquarters efforts to update the security legislation in Judea and Samaria, relating to the spheres that are under the authority of the additional Minister, by means of orders issued by the commander of the area". For this purpose, it was also agreed that "an additional deputy, who will be a civilian Ministry of Defense employee", will be appointed to be the head of the Civil Administration and will receive the title of "Civilian Deputy". The "Civilian Deputy" will work under the command of the Head of the Civil Administration but will be professionally subordinate to the head of the "Settlement Administration" in the West Bank and will be in charge of the civilians in the Civil Administration who fall under the spheres assigned to the additional Minister's scope of responsibility.

⁸ Adalah's letter [Translated to English] is available [here](#).

⁹ Adalah opposed the amendment to the Basic Law: The Government in the framework of the coalition agreement with the "Religious Zionist Party". See Adalah press release, [here](#).

¹⁰ On 18 December 2022, Adalah sent a letter to the competent authorities demanding that the bill not be advanced into legislation, as it violates international law. See Adalah press release, [here](#).

iii. The new Minister of Settlements and National Missions will sit on the Higher Planning Council:

On 19 February 2023, the government adopted Decision No. 137, which changed the name of the Ministry of Settlements to the "Ministry of Settlements and National Missions" and transferred parts of operation from one ministry to another. In the framework laid out, the government directed the Minister of Defense "to instruct the competent authorities to appoint the representative of the Minister of Settlement and National Missions as a member of the subcommittee for the settlements of the Higher Planning Council in Judea and Samaria, in accordance with the provisions of the law and security legislation".¹¹ This appointment will transform the "Ministry of Settlement and National Missions" into an official partner in the planning decisions regarding the settlements.

The Higher Planning Council is part of the Central Planning Bureau in the West Bank, which is responsible for the physical planning in area C, and holds all of the planning powers in the West Bank. It also acts as an advisory committee for the granting of permits "in areas seized for military needs, when the plans in question are in areas under military occupation" and approves "building plans on the basis of approved detailed plans".

2) Legalization of outposts and expansion of settlements

i. Legalizing 10 outposts:

On 12 February 2023, the Security Cabinet decided to "regularize" 10 settlements (outposts) in the occupied West Bank. This decision enables the planning and development of these areas, previously considered illegal, even under Israeli law: Avigail, Beit Hogla, Givat Harel, Givat Haroeh, Givat Arnon, Mitzpe Yehuda, Malachei Shalom, Sde Boaz, Shacharit, and Asa'el.¹² According to information published by Peace Now, these outposts include approximately 335 housing units and are spread on over 1,100 dunams, including approximately 420 dunams of land that is privately owned by Palestinians.¹³ The mapping of the locations of the 10 outposts further reveals that they are located in the areas of Palestinian rural councils, as follows:

¹¹ The decision (Hebrew) is available [here](#).

¹² On 9 March 2023, Adalah sent a letter to the Israeli authorities demanding the annulment of the decision, as it is contrary to international law. The translated letter is available [here](#).

¹³ See Peace Now, [The Security and Political Cabinet approved the establishment of 9 new settlements by authorizing 10 illegal outposts in the Occupied Territories](#), 15 February 2023.

Israeli Outpost	Palestinian Village Council
Avigail	Kfar Yatta village council
Beit Hogla	Allenby Musa village council
Givat Harel	Sinjil, Al-Laban, Al-Sharkiya, and Qaryut village councils
Givat Haroeh	Sinjil village council
Givat Arnon	Yanun village council
Mitzpe Yehuda	Al Obeida village council
Malachei Hashalom	Al Ma'air village council
Sde Boaz	Al Khader village council
Shacharit	Beyda and Kafar Al-Dik village councils
Asa'el	A-Sim'a village council

ii. Building over 7,000 new homes in the occupied West Bank:

In addition, the Settlement Subcommittee of the Higher Planning Council in the West Bank has decided to proceed with the development of over 7,000 housing units in the settlements, including in four additional outposts – Mevo'ot Yericho, Nofei Nehemiah, Pnei Kedem and Netiv Ha'Avot.

iii. Re-establishment of evacuated settlements:

On 20 March 2023, the Knesset passed an amendment to the Law on the Implementation of the Disengagement Plan (Amendment No. 7), 2023, in which the restrictions on the entry and stay of Israeli citizens in the areas that were evacuated as part of the Disengagement Plan were removed. In practice, this amendment will allow the settlers' entry into the evacuated areas and

the re-establishment of the settlements that were evacuated in 2005 as part of the Disengagement Plan: Sa-Nur, Ganim, Kadim, and Homesh.¹⁴

Following a letter from Adalah, the International Law Department at the Office of Legal Counsel and Legislative Affairs of the Justice Ministry sent a response, on 21 May 2023. In its reply, the Ministry asserted, among other things, that the decision regarding the disengagement amendment is of a political nature and does not contradict international law. It further stated that the amendment eliminates the criminal prohibition on Israeli presence in the evacuated area and enables them to "acquire property rights in the future, in accordance with the established normative framework in the region." Furthermore, it stated that the "essence of the law is to equate the status of the evacuated area in northern Samaria to the status of other designated areas, defined as Area C."¹⁵

Meanwhile, on 18 May 2023, Major General Yehuda Fox, Commander of the Central Command, signed an order entitled "Implementation of the Disengagement Plan (Cancellation regarding the Homesh area) (Judea and Samaria) (No. 2137) 2023-5783." This order permits the presence of settlers in the specific area marked as the "Homesh area" on the map.¹⁶

3) Direct application of Israeli domestic law in the occupied West Bank

Another trend associated with annexation in the West Bank is the promotion of legislative bills that will be directly applicable in the OPT. One example includes the bill to amend the Cooperative Societies Ordinance (Number of Households in a Communal Settlement), 2023 (also known as the "Admissions Committees Law"), which seeks to expand its applicability to larger settlements and into the West Bank. The Government has committed, as part of the coalition agreements, to an even more extreme version of that amendment, which was recently approved by the Knesset in a preliminary reading, with the government's support.¹⁷

The legislation of this bill is part of the ongoing process of implementing the coalition parties' agreements, in which the government committed to a policy of advancing and expanding the Judaization of territories and deepening racial segregation in housing. The Admissions Committees Law (part of the amendment to the Cooperative Societies Ordinance (No. 8)– 2011) has been regulating the admissions committees' authority to screen potential residents in

¹⁴ On 16 March 2023, Adalah sent a letter to the relevant authorities in an attempt to prevent the bill from advancing into legislation. See Adalah's press release [Israeli Knesset Advances Amendment Allowing Settlers to Return to West Bank Settlements Evacuated Under the "Disengagement Plan"](#), 20 March 2023.

¹⁵ The response is available [Hebrew], [here](#).

¹⁶ See the order [Hebrew], [here](#).

¹⁷ The bill to amend the Cooperative Societies Ordinance (Number of Households in a Communal Settlement), 2023-2023 (P/1832/25), was approved by the Knesset in a preliminary reading, in accordance with Section 111 of the [coalition agreement with the "Otzma Yehudit" party](#), dated 12.28.2022.

communal settlements in the Naqab (Negev) and the Galilee, where the number of households does not exceed at 400. This law permits the exclusion of applicants on account of "the applicant's lack of compatibility with the socio-cultural fabric of the community town" and allows the admissions committees to rely on the characteristics of the community town, as determined by the community members in the by-laws of their cooperative association in each and every community. In practice, this arrangement is principally a tool for screening out and excluding Palestinian citizens of Israel and preventing their residence in these communities and constitutes a legal mechanism for residential segregation in many localities in the State of Israel.¹⁸

This bill seeks to expand the authority of admissions committees and to apply the legislation to settlements in the West Bank.¹⁹

C. Conclusions

The Israeli government is working systematically to implement the policy goals declared in its coalition agreements. Its actions express an intention to continue to entrench a regime of Jewish supremacy that grants the Jewish people an exclusive right to self-determination, as enshrined in the 2018 Basic Law: Israel- the Nation-State of the Jewish People, and to extend it beyond the Green Line into occupied Palestinian territory. All of the government's declarations and actions demonstrate that its stated intention is not merely *de facto* annexation camouflaged in the framework of a temporary occupation but annexation *de jure*, in flagrant violation of international law.

The measures adopted by the government and the legislation approved by the Knesset thus far clearly reveal the trend of transferring parts of the military regime's sphere of operation associated with the settlements to various Israeli government offices. The concept regarding the unification of laws between the localities in Israel and the settlements is expressed in a most alarming way in the aforementioned decisions.

These measures and laws deepen and expand the subjugation and oppression of the Palestinian people and express the total denial of their right to self-determination in their homeland, while

¹⁸ Adalah and others submitted petitions to the Israeli Supreme Court against the constitutionality of the Admissions Committee Law Amendment No. 8, 2011. The Court rejected the challenge on grounds that it was premature at the time, although the amendment anchors this mechanism of exclusion that has existed for decades (HCJ 2311/11 **Uri Sabah v. Knesset** (2014). For a summary of the judgment in English, see: [here](#).

¹⁹ On 19 March 2023, Adalah sent a letter to the relevant authorities in an attempt to prevent the bill from being advanced into legislation. See translated letter [here](#). Adalah sent its objection to the current version of the amendment on 4 June 2023. see more [here](#).

implementing laws and institutional measures which, in practice, bypass the applicability of IHL and replace it with domestic Israeli law.²⁰

These decisions constitute annexation of parts of the West Bank, wherein a variety of government ministries will administer the settlements and, in practice, manage occupied territories as if they were an integral part of Israeli territory. Hence, these decisions will lead to the deepening of the *de facto* annexation of occupied territories and could be considered part of a *de jure* annexation process, in absolute violation of the laws of occupation.²¹

The implementation of the above laws and decisions constitute war crimes under Article 8(2)(b)(VII) of the Rome Statute (the transfer of the Occupying Power of its own civilian population into occupied territories), and, in addition, *de facto* annexation measures constitute a crime of aggression under Article 8(bis)(2)(a) of the Rome Statute.

These substantial measures further deepen the apartheid system that already exists in the OPT. This mechanism is prohibited by the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), which defines practices of apartheid as a crime against humanity. Therefore, the above measures also constitute a crime of apartheid, which is defined as a crime against humanity under Article 7(1)(j) of the Rome Statute.

The above measures also have a direct impact on the question that is currently pending before the International Court of Justice (ICJ), regarding the legal consequences of Israel's policies in the OPT, including East Jerusalem. The UN General Assembly, by a resolution dated 30 December 2022, requested an advisory opinion in this matter by which, the ICJ was asked to give its opinion on the “legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures” as well as regarding “the effect of the legal status of the occupation” and “the legal consequences that arise for all States and the United Nations from this status.”²²

²⁰ These measures, in practice, void the "Promulgation on Legal and Administrative Arrangements Procedures" (No. 2) dated 11 August 1967, which established the military regime in the West Bank and sought to maintain the governmental, legal, and judicial procedures that existed in the occupied territories, subject to changes to be made by the order of the military commander and resulting from the establishment of the military regime. This decree entrusted the management of these territories solely to the military commander.

²¹ The ICJ addressed this issue in its [Advisory Opinion of 9 July 2004 regarding the Separation Wall](#), in which it emphasized the prohibitions of annexation and the application of Israeli sovereignty to the territories occupied since 1967. See paragraphs 75 and 78 of the opinion.

²² The decision and appeal to the ICJ can be found [here](#).

In light of the above, Adalah calls for immediate and urgent action by third states and the relevant international bodies, including the UN, the International Criminal Court and the International Court of Justice.