



## Implications of Annexation for Israel's Rule Over Palestinians

### Introduction

The last few years have seen increasing discussion of Israeli annexation of Palestinian territory in the West Bank. With the recent formation of a unity government between Benjamin Netanyahu and Benny Gantz, [the terms of which allow for the advancement of annexation legislation](#) as soon as this summer, as well as ongoing work of a joint US-Israel mapping committee that was formed following the release of the Trump Plan, questions remain as to which territory could be annexed, how annexation would be carried out, and what such a move would mean for the nature of Israel's regime/s between the Jordan River and the Mediterranean Sea. This document will attempt to lay out the possibilities that lie ahead and explain some of the implications of annexation for Israel's governance, as well as the impact it could have on the ground.

### Context

In the territory between the Mediterranean Sea and the Jordan River, there are today around 7 million Jews and 7 million Palestinians. Since 1967, Israel has ruled over this entire territory, which includes controlling Palestinian residents in Israel proper, the West Bank (including East Jerusalem), and the Gaza Strip. This paper will focus primarily on the West Bank, where Israel has controlled Palestinian residents via a system of military rule, which has, since its beginning, advanced *de facto* annexation and today is moving towards formal *de jure* annexation.

In discussing the *de jure* annexation options currently under Israel's consideration, it is important to note that in none of them will Israelis and Palestinians have equality in their civil and political rights. Since there are approximately equal numbers of Israelis and Palestinians between the river and the sea and the Israeli government wants both as much territory as possible and a Jewish political majority, the guiding principle of those crafting the annexation plans will be to annex as much Palestinian territory as possible with as few Palestinian residents as possible. Doing so would make the current reality of undemocratic Israeli rule over Palestinians both permanent and more severe.

### The Character of the Israeli Regime Between the River and the Sea

There are three main types of Israeli regimes that have existed or could exist within the current trend towards *de jure* annexation. It is important to note that the explanations in this section

describe the impact of annexation on the character of the regime (meaning, its formal legal structure).

- *Creeping De Facto Annexation: One State Reality, Two Regimes* (The Past)
- *Creeping De Jure Annexation: By a Thousand Cuts* (The Present)
- *Wholesale De Jure Annexation: One State, One Discriminatory Regime* (A Possible Future)

### **Creeping De Facto Annexation: One-State Reality, Two Regimes**

One state with two separate regimes has been the reality for the majority of the period since the Israeli occupation of the Palestinian territories began in 1967. In this system, Israel has invested heavily in maintaining its control and status as the only state between the river and the sea, yet within this reality, there are two regimes that are formally separate.<sup>1</sup>

Within pre-1967 borders (“Israel proper”), there is a parliamentary regime, carried out through civilian law via Knesset legislation. Yet the West Bank is ruled via Israeli military law, according to which laws are authorized via the military commander.

Israel has gone to great lengths to erase the meaningfulness of the Green Line on the ground and make Israeli settlements seem like normal towns within Israel proper. Yet on the formal level, there is a **clear legal distinction** between these two regimes. For example, institutions within the settlements, such as settlement regional councils or Ariel University, were established through military orders and not via Knesset legislation, and all Israeli bodies that operate in the West Bank (for example, the Israel Police) are granted the authority to do so via military orders.

There are two areas in which the division between the two regimes has been blurred.

- *The annexation of East Jerusalem:* In 1967, the Israeli government extended Israeli law to East Jerusalem via a cabinet decision, which was followed by a declaration of sovereignty in 1980 when the Knesset passed a Basic Law entitled “Jerusalem, Capital of Israel.”

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<sup>1</sup> The reality of one state with two regimes has remained true also throughout the years of the Oslo Accords, which established the Palestinian Authority and divided the West Bank into three areas -- Area A is under Palestinian internal security and civil management, Area B is under Israeli security control and Palestinian civil management, and Area C is under full Israeli security and civil control. Thus, one might argue that there are three regimes under the Oslo Accords -- Israeli parliamentary rule within 1948 borders, Israeli military rule in Area C, and Palestinian autonomy in Areas A and B. This, however, is false. From Israel’s perspective, there are two regimes: Israeli parliamentary rule within 1948 borders and military rule in the West Bank. The limited Palestinian autonomy allowed for by the Oslo Accords ultimately remains under Israeli military authority, such that Israel remains the sole sovereign power in the entire area between the river and the sea.

- *Extension of Israeli civilian law to Israeli settlers as individuals in the West Bank:* The extension of Israeli civilian law to settlers created a reality of a two-tiered legal system within the West Bank, under which, within the same territory in the West Bank, an Israeli settler is under civilian law while a Palestinian is under military law.<sup>2</sup> It is important to note that the extension of Israeli law in this case applies to settlers as individuals and not to the territory of settlements.

Within this reality of one state with two regimes, Israel advanced a policy of creeping, *de facto* annexation. This was carried out through long-term changes on the ground, such as usurping Palestinian land and resources and building settlements, industrial zones, and related infrastructure.

*The above reality describes the situation on the ground until about four years ago. Since then, we have been moving into a new reality of annexation "by a thousand cuts," characterized by the advancement of legislative ("de jure") annexation.*

### **Creeping De Jure Annexation: By a Thousand Cuts**

Since 2015, the **clear legal distinction** between Israel's parliamentary governance and the military rule of the West Bank has started to be dismantled gradually, piece by piece. Increasing attempts have been made to extend Israeli laws to the West Bank. These attempts were advanced by former Justice Minister Ayelet Shaked and Israel's 20th Knesset (2015-2019), which passed eight bills that apply directly to West Bank territory and/or population. These pieces of legislation, along with dozens of other proposed bills, impose Israeli law directly in the West Bank and involve Israeli state institutions taking on the powers of the military commander.

This is significant insofar as it means that the Knesset, rather than the military commander, increasingly becomes the legislative authority in these areas. Specifically, the Knesset is now legislating over a population that it does not represent (because Palestinian residents of the West Bank do not have citizenship), as well as over an area that is not part of Israel's sovereign territory. By slowly uniting the systems of governance in Israel and the West Bank under the Knesset's authority, the nature of the Israeli regime is changing gradually, law by law.

Further, new guidelines set by Attorney General Avihai Mandelblit in December 2017 dictate that all government-sponsored bills must explicitly discuss the applicability of the proposed

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<sup>2</sup> The two-tiered legal system is true to a large extent, yet Israeli settlers are under military (not civilian) law, like Palestinians, for specific laws, such as those regarding land and traffic. Further, there are examples in other places in which a country's laws are extended to citizens beyond its sovereign territory (for example, a French citizen can be tried in France for a security offense committed abroad, and US citizens living abroad must pay American taxes). In the Israeli context, however, the extension of Israeli law to settlers is accompanied by Israeli occupation and the use of the Israeli military judicial system against Palestinian residents living in the same territory as Israeli settlers, resulting in systemic discrimination and creating a very different political context.

legislation to settlers in the occupied territories or explain why a given proposal is not relevant to settlements. This decision further erodes the **clear legal distinction** between the two regimes.

Here are three examples of relevant laws passed by the Knesset in the last years that extend Israeli law to the West Bank:<sup>3</sup>

- *The Regularization Law (2017)*: This law declares that in certain cases in which (very lax) conditions are met, private Palestinian land that was illegally grabbed and trespassed onto, and upon which Israeli outposts and settlements are built, must be expropriated and allocated to settlers (with compensation given to Palestinian landowners), rather than evacuated and returned to the owners. This law makes it easier for unpermitted outposts and settlements to be approved retroactively. In addition to violating Palestinian property rights, this law is the first to extend Israeli law to the West Bank territorially rather than personally (i.e. for settlers). The law has not yet come into effect and, following legal challenges, is awaiting a final decision by the Supreme Court.
- *Amendment to the Higher Education Council Act (2018)*: This amendment disbands the West Bank Council for Higher Education that was headed by the military commander and which approved settlement-based Israeli universities and colleges, including Ariel University. The law instead extends the authority of the Israeli Council for Higher Education to include academic institutions in the settlements as well.
- *Criminal Register Law (2019)*: This law combines Israel's criminal register with the West Bank's and establishes information transfer. It allows Israel to include in its criminal record information from military court proceedings in the West Bank.<sup>4</sup>

*“Creeping de jure annexation” is the reality of the Israeli regime today. It is important to note that this process is designed to pave the way towards “wholesale de jure annexation.”*

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<sup>3</sup> In addition to those described here, other annexation laws that passed include the [Encouragement of Capital Investments in Settlements Law](#) (which allows Israeli citizens to receive tax benefits for profits made in the occupied territories), the [Encouragement of Investments in Renewable Energy Facilities Law](#) (which includes a specific section extending the law to Israeli settlers in the territories), the [Prohibition of Discrimination Based on Place of Residence Law](#) (which makes it illegal to refuse goods or services to settlements), the [Transferring Authority to Adjudicate Petitions Concerning the Territories from the HCJ to Administrative Affairs Courts Law](#) (which extends the jurisdiction of the Jerusalem District Court to the West Bank and is intended to limit Palestinian access to the Supreme Court), and the [Transfer of Egg Quotas Law](#) (which allows settlement poultry farmers to transfer their production quotas to poultry farmers within Israel). A comprehensive list of all annexation legislation submitted during the 20th Knesset can be found through [this database](#) compiled by Yesh Din.

<sup>4</sup> The law unifying the criminal registers of Israel and the West Bank also includes the criminal register of Gaza from before the Israeli disengagement in 2005. Today, Gazans who commit crimes that are addressed by Israeli authorities (i.e. security offenses or crimes against Israeli citizens or on Israeli territory) are registered under Israel's civilian registry, as Gazans are considered “foreign residents.”

### **Wholesale De Jure Annexation: One State, One Discriminatory Regime**<sup>5</sup>

This option, which likely lies ahead, entails dismantling the legal separation between the regime within Israel and that in the West Bank. This could be done either via the application of Israeli law in full or of Israeli sovereignty to all or parts of the West Bank.

This move would mean that Israel would cement its permanent control over the West Bank, in parts directly and in parts (i.e. unannexed areas) less directly. Further, by uniting the regimes in Israel and the West Bank while maintaining systemic inequality, this new reality would formalize Israel's non-democratic character and formally establish Israel's status as an Apartheid state.<sup>6</sup>

Even if the remainder (that is, the unannexed parts) of the West Bank (along with Gaza) were thereafter referred to as "independent," this would be fictitious and false, for all intents and purposes – just as was the case with the so-called "independent" Bantustans of Apartheid South Africa. Once there is one regime between the river and the sea but only some people have full citizenship and civil and political rights, Apartheid has been formalized. Annexing the areas assigned to Israel under the Trump plan, for example, leaves the Palestinian areas as fragmented enclaves within the West Bank -- Bantustan-esque islands of unequal rights under permanent Israeli domination.

**Even if Palestinians are granted citizenship in the areas that are annexed, annexation would establish an overall reality of *de jure* Apartheid because Palestinians outside of the annexed areas would remain in enclaves without rights. Drawing territorial borders that are designed to exclude Palestinians from being able to obtain citizenship and rights is a way for Israel to cement its dominance over and systematically oppress Palestinians, *not* a way to keep Israel democratic or towards creating a Palestinian "state".** Under international law, as well as according to the Oslo Accords, the West Bank and Gaza are a singular unit, and if parts of the West Bank and Gaza are left as segregated archipelagos, the

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<sup>5</sup> In a different sense, there will still formally be two regimes after annexation, as Israel will not annex Gaza or major Palestinian urban centers in the West Bank (in order not to absorb the Palestinian population there and threaten the Jewish demographic majority). Thus, formally, the unannexed territory will be under a different regime than the rest of the territory. Despite this, the term "one state, one discriminatory regime" points to the fact that once Israel has declared annexation, it has declared that its control over the entire territory between the river and the sea is intended to be permanent. In annexing West Bank territory, Israel will have significantly changed the status quo in a way that has not been attempted since the 1967 annexation of East Jerusalem. Were it not for the reality of Israel's demographic aspirations, the government would want to advance annexation over the entire West Bank; stopping short of this in order to avoid absorbing significant numbers of Palestinians does not change the essential nature of a singular discriminatory regime.

<sup>6</sup> It is important to note that annexation would be a very different reality than that created under the Oslo Accords. Although the Oslo Accords also grant the Israeli army ultimate control over the West Bank, it is clear that, on a formal level, such a reality is designed to be temporary. Annexation, by contrast, grants power to Israeli civil (rather than military) authorities and is a clear declaration of the regime's permanence.

overall nature of the regime will have become one of institutionalized discrimination and Apartheid.

The existence of Palestinians who have citizenship and rights (those in pre-1967 borders) does not change the fact that the regime will be Apartheid in nature. If being Palestinian is at all a criterion for rejecting citizenship, even if only in particular areas under Israeli rule, that is by nature a discriminatory, Apartheid regime. The reality of “wholesale *de jure* annexation,” which formalizes perpetual and systematic Israeli discrimination against Palestinians, is not erased by giving rights to a subset of Palestinians. By comparison, if one African tribe in South Africa had been given citizenship in South Africa but race was still a determining criterion for citizenship writ large, the Apartheid nature of the South African regime would not have changed in any essential sense.

### How Annexation Could Occur

Annexation could be carried out via Knesset legislation or a cabinet decision,<sup>7</sup> and it could take the form of the application of Israeli law or the imposition of Israeli sovereignty.

On a legal level, applying Israeli law to or imposing Israeli sovereignty over areas in the West Bank has tremendous repercussions. If, for example, Israeli law were applied immediately and wholesale to all settlements, it would mean that all settlement regional councils, institutions, and corporations would need to be standardized to comply with Israeli civil law because they were incorporated or approved under military law and standards, rather than Israeli civil law. Israeli civil and military standards differ for nearly every law and institution: these differences are in some cases significant, while in others, they are purely by happenstance. Regardless, uniting the two regimes would require much legislative work and coordination (for example, establishing the required Israeli government bureaus according to Israeli requirements, etc.).

**Implementing annexation -- even if it is applied in one go -- is thus most likely to be a gradual process that will take 3-5 years to carry out, if not much more.**

**However, the declarative announcement of annexation will be the decisive moment requiring response from the international community, even if implementation might take several years.**

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<sup>7</sup> On June 27, 1967, the Israeli Knesset passed an amendment permitting the cabinet (without Knesset legislation) to apply Israeli law over any territory within the borders of Mandatory-era Israel (to use the terminology of the law). The following day, Israeli law was applied to East Jerusalem via a decision by the cabinet (as East Jerusalem was part of Mandatory-era Israel). It is possible that future areas within the borders of Mandatory-era Israel (e.g. the West Bank) would thus also be annexed via cabinet decision. However, when Israeli law was applied to the Golan, it was done via Knesset legislation (because it was not part of the borders of Mandatory-era Israel).

Whether annexation is declared by an announcement of the application of Israeli law or an announcement of the application of Israeli sovereignty, there is no practical difference between the two. This is clear enough from the case of East Jerusalem, in which the government first claimed that the application of Israeli law to East Jerusalem was, to use the official language of the time, for “[municipal fusion](#)” (meaning administrative purposes) only, but full Israeli sovereignty (without granting citizenship to Palestinian residents) was eventually applied.

### Scope of Annexation

Annexation could be implemented in different areas, ranging from the small bloc of Latrun, to settlement/s near Jerusalem, to the territory proposed in the Trump Plan, to the entirety of Area C, to the whole West Bank.<sup>8</sup>

Although it may seem less severe if only a small bloc of territory is annexed, once annexation has begun in the “wholesale *de jure*” phase, a precedent will have been set, and it is only a matter of time until further annexation progresses. When annexation has been established as a practice of the regime, it will be easy to scale up the size. In the same way that settlement building happens bit by bit but within the general context of Israeli expansion in the West Bank, so too could annexation happen area by area but within a general context that has been fully transformed.

It is in fact possible that Israel will intentionally begin annexation with a small piece of territory in an attempt to avoid international pushback by relying on the “salami tactic” of gradual yet ultimately complete transformation.

At this moment, it seems most likely that Israel will pursue annexation based on the Trump Plan, but implement it gradually. According to the coalition agreement between the Likud and Blue and White parties, the process of annexation can begin on July 1st. Yet the work of drawing detailed maps of each area to be annexed, which is being carried out by a joint US-Israeli committee, may not be completed by then. Because of this, it seems likely that Israel would prefer to implement the Trump Plan’s vision of annexation in stages, thus allowing the process to begin without having to wait for the completion of all of the mapping, while also shielding itself from pushback from the rest of the international community by working in small steps that are less likely to garner significant attention. If the international community does not respond and demand that a price be paid for such action, it will only encourage Israel to take further steps.

### Why would annexation of the West Bank be different from the 1967 annexation of East Jerusalem?

When Israel annexed East Jerusalem in 1967, the political reality was different. It appeared that Jerusalem was a unique case, because of its historical and religious importance, because Israel

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<sup>8</sup> See the appendix for a fuller description of the range of territories that could be annexed.



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already controlled an adjacent half of the city before the 1967 war, and because Israel's desire for sovereignty over the eastern part of the city did not point to practical plans to annex other areas as well. Today, annexationist forces have achieved a new prominence in Israeli political life and have been further emboldened by President Trump. Annexation is now openly discussed and supported in the Knesset, as can be seen through the passage of annexation legislation discussed above.

Furthermore, after over half a century of occupation, it is increasingly obvious that Israel's undemocratic rule over the Palestinians is not temporary. The permanence of Israeli rule over Palestinians has become mainstream in Israeli politics, now buoyed by President Trump and his plan for the Middle East. This means that today, annexation of any area, even if geographically smaller and less important than East Jerusalem, would have far-reaching implications, as it would indicate the beginning of an attempt to formalize Israeli control over much broader swaths of the West Bank.

### **Since Gaza will not be annexed, what does that mean for the nature of the Israeli regime?**

The disengagement from Gaza in 2005 was an attempt to gerrymander what was then 1.5 million (by now 2 million) Palestinians out of Israel's demography, while dividing and fragmenting the Palestinian people and strengthening Israel's control over them. The disengagement changed the way Israel controlled Gaza, but it did not change the fact that, in many aspects, Israel remained in effective control over the Strip. In reality, Israel remains the sole sovereign power that effectively controls the entire territory between the Jordan River and the Mediterranean Sea, including the Gaza Strip. Today, even pro-annexation Israeli forces praise the "demographic reduction" that the disengagement provided Israel. It is important to note that the majority of those who support annexation today speak about annexation of West Bank territory, not Gaza, because cutting off Gaza is a key part of Israel's strategy of fragmenting Palestinian population and territory while aiding Israel's demographic aspirations.

If parts of the West Bank are annexed without Gaza, it makes Gaza's economically and politically untenable position permanent and will entrench its separation from the rest of the Palestinian territories. It does not need to be formally included in the annexed area to bear the implications of annexation in the West Bank. Just as unannexed Palestinian areas of the West Bank will suffer as Bantustan-esque enclaves, so too will Gaza's status as a similar enclave under Israeli control become permanent if West Bank territory is annexed without it.

**In considering the nature of the Israeli regime, the most important factor is the rights of all 14 million people living between the river and the sea, which includes Gaza. There are several possibilities that would provide for this, including a one-state solution with equal rights for all people, a sovereign and secure Palestine (including both the West Bank and Gaza) and Israel as two states side by side, or a confederation. What matters is that any acceptable and sustainable solution must provide equal rights for all people living between the river and the sea.**



## What will happen to Palestinians in areas that are annexed?

Regarding the Palestinians living inside the areas that are to be annexed formally, a few options are possible:

1. Palestinians in the annexed areas are granted Israeli citizenship.<sup>9</sup>
2. Palestinians in the annexed areas are granted permanent Israeli residency, like the status conferred on the residents of East Jerusalem in 1967, including social security and freedom of movement but not including the right to vote in national elections.<sup>10</sup> With East Jerusalem-style status, residents would be eligible to apply for citizenship, which Israel may choose to grant or reject. In the case of East Jerusalem, for example, the majority of applications are rejected.<sup>11</sup>
3. Palestinians in the annexed areas are not granted formal status but receive permits to remain in the area where they live (similar to the situation in the Seam Zone today). It is possible that such a situation would be intended to be permanent, that it would be conditional upon meeting particular criteria, or that it would be an interim status if Palestinians are required to apply for citizenship or residency (rather than it being automatically granted) until they receive such status.<sup>12</sup>
4. The boundaries of the annexed territory are drawn such that no (or very few) Palestinians are included in it, i.e. Palestinian communities inside the annexed areas are carved out as mini enclaves. (This, for example, is what Netanyahu proposed in his plan to annex the Jordan Valley -- annexation of territory "without a single Palestinian."<sup>13</sup> This is also the option presented in the Trump Plan, which proposes that all Palestinian communities in annexed areas (apart from East Jerusalem within the Separation Barrier) will be enclaves surrounded by Israel -- lacking Israeli citizenship or residency status and under Palestinian civilian control and Israeli security control).<sup>14</sup>

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<sup>9</sup> Note, however, that it is possible that residents of the annexed area could be given citizenship (or residency) while their villages remain unrecognized. This is already the case for many [Bedouin villages in the Negev](#) today, where residents have citizenship but the villages are unrecognized and face home demolitions and evictions.

<sup>10</sup> It is also possible that a new form of residency status could be developed for Palestinians in annexed areas. This could include particular rights that could be the same as or less than the status of Palestinians in East Jerusalem.

<sup>11</sup> From 1967 to 2018, about 16,000 East Jerusalem Palestinians applied for Israeli citizenship, but only about 5,500 were approved.

<sup>12</sup> If Palestinians are required to apply for citizenship or residency, it is possible that very few applications will be accepted. If that is the case, the "interim" status described above could in fact be permanent.

<sup>13</sup> Although Netanyahu said not a single Palestinian would be annexed, the map he proposed includes the homes of about 4,000 Palestinian residents from unrecognized villages. It is not clear if such residents would be pushed out from their homes to unannexed territory or given Israeli citizenship or residency or some other status in such a scenario.

<sup>14</sup> The Trump Plan not only draws boundaries for annexation that exclude the Palestinian population by creating 43 Palestinian enclaves (according to an [estimate by Shaul Arieli](#)) but also cuts out the Palestinian neighborhoods of East Jerusalem that are beyond the Separation Barrier (about 120,000

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5. Palestinians are pushed out from their homes in areas that are designated for annexation and forced to move to unannexed territory. Palestinians living in unrecognized villages or are registered as living in urban centers rather than their home villages would be particularly vulnerable to this option. (This is discussed in more detail under “Palestinian Access and Movement” below.)
6. Some combination of Options 1-5.

Although it is possible that Israel would grant citizenship to Palestinians in the areas it annexes, it is likely to avoid doing so, in order not to dilute Jewish majority in national elections. It is quite possible that a situation could emerge that is similar to East Jerusalem, described above, in which it is technically possible for Palestinian residents to apply for Israeli citizenship, but Israel retains the right to reject applications and denies the majority of applications. This allows Israel both to save face by claiming that Palestinians can achieve full citizenship while also maintaining its political majority by denying most applications.

Note that even in the “best case” scenario (i.e. Palestinians in the annexed area receive citizenship), the vast majority of Palestinians (i.e. those outside the formally annexed area) will remain without citizenship or rights.

### **What could annexation mean for Palestinian freedom of movement in the West Bank?**

The Entry into Israel Law requires Palestinians from the West Bank to obtain a permit to enter Israel proper. If West Bank territory is annexed and Israeli law is extended to those areas without adaptations, it would severely limit Palestinian freedom of movement because Palestinians from unannexed areas would need permits to enter annexed areas, cutting off Palestinians in unannexed territory from agricultural land, family, friends, and more in annexed territory. It would also restrict Palestinian movement within the West Bank, given that roads connecting different unannexed communities are likely to cross through annexed territory.<sup>15</sup>

Preventing Palestinians from unannexed territory from entering annexed territory would require significant resources and infrastructure: preventing vehicular traffic from unannexed territory would require building checkpoints and roadblocks, and preventing pedestrian traffic from unannexed territory would require a more significant investment, including a physical separation barrier and military patrols that ensure that Palestinians do not reach annexed territory by foot.

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Palestinian residents) in order to further strengthen the Jewish majority within Israel proper and its annexed territory.

<sup>15</sup> Thus, for example, if the Jordan Valley were annexed, it would impede access to and from the Allenby Crossing. Currently, Palestinians from the West Bank who travel abroad enter and exit via Jordan, crossing at the Allenby Crossing from Jordan into the West Bank. Because they enter directly into the West Bank, they do not need an entry permit, as they would in order to enter the State of Israel. If the Jordan Valley is annexed, however, that land would be the State of Israel, and the permit regime would thus be in effect. If exceptions were not made, this would hinder Palestinian ability to travel abroad.

All of this would take time and resources to develop and, especially in the case of preventing pedestrian traffic, would require tremendous manpower to enforce.

In addition, in order to ensure that unannexed Palestinian communities are not under *de facto* siege, special roads, similar to those termed “fabric of life roads” today, would have to be built to connect them.<sup>16</sup> Such roads would allow Palestinians to travel between different unannexed enclaves.

If the whole of Area C were to be annexed, this would leave about 160 fragmented Palestinian enclaves in the West Bank (that is, territory that is today Area A or B) that would need to be encircled by a wall, military patrols, and/or checkpoints (depending on whether vehicular or pedestrian movement or both were being prevented) to prevent residents of these enclaves from entering what was once Area C and would now be Israel proper. The resources required to do this would be tremendous, making it extremely difficult to carry out.

By reducing the number of Palestinian enclaves, the Trump Plan makes it easier for Israel to implement such a regime, yet it would also require time to implement. Although the exact map is not yet clear, the Trump Plan seems to entail about 10-15 larger Palestinian blocs and 43 Palestinian enclaves that would all need to be encircled.

Either possibility described above (the annexation of Area C or annexation according to the Trump Plan)<sup>17</sup> would require tremendous infrastructure development that would likely take several years to complete.<sup>18</sup> Because of this, it is most likely that Israel would maintain the separation between Israel proper (and annexed East Jerusalem) and the rest of the West Bank based, as is the case today, largely on the route of the Separation Barrier, for the purposes of movement and traffic. It is also possible that it would maintain the division based on the Separation Barrier temporarily in an initial stage until additional separation walls and/or checkpoint infrastructure could be built. Accordingly, Israel would likely make exceptions to the Entry into Israel Law that would allow Palestinians from unannexed territory to access annexed territory, while simultaneously continuing to invest in segregated roads.<sup>19</sup>

If or when infrastructure that prevents vehicular and pedestrian movement out of unannexed territory is completed, it will be possible to seal these areas hermetically and fully prevent Palestinians from leaving unannexed territory without a permit.

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<sup>16</sup> Fabric of life roads are roads that connect Palestinian population centers and are designed to keep Palestinians off the roads used by settlers.

<sup>17</sup> Annexation of smaller pieces of territory, such as the Jordan Valley, is also possible. This would be easier to implement because the territory is more consolidated, but preventing movement from these areas would still require time and resources.

<sup>18</sup> It is also possible that Israel would only enforce preventing vehicular traffic at an initial stage and would wait to prevent pedestrian traffic until a wall is built. Even so, the initial stage of preventing vehicular traffic would take years to implement.

<sup>19</sup> This includes bypass roads, which are roads built to connect Israeli settlements and which allow settlers to bypass Palestinian population centers, and fabric of life roads, described above.

Building separate roads and infrastructure would deepen segregation within the West Bank and, though it would take time to accomplish, would complete a strategic process begun by Israel in the 1980s to create side-by-side segregation within the West Bank in order to avoid close contact between settlers and Palestinians. By allowing settlers to ignore the reality of Palestinian life in the West Bank, this segregated infrastructure development massively enables settlement expansion by furthering the transformation of settlements into suburbs of Jerusalem and Tel Aviv.

It is also important to note that building “fabric of life” roads for Palestinian movement between different enclaves and blocs will significantly lengthen the time and distance that an average trip takes. **Further, according to the Trump Plan, the entire area (both annexed and unannexed territory), including the “fabric of life” roads, will remain under Israeli security control. This means that the Israeli military can close, limit, and monitor these roads at any time and will have the ability to fully prevent Palestinian movement between enclaves and blocs.**

### **Possible Negative Impacts on the Ground**

As discussed above, it is not clear where and how annexation will be carried out. There are potential but limited positive implications if a small number of Palestinian residents in the annexed areas receive citizenship or residency status (including, for example, access to Israeli national health insurance and freedom of movement within pre-1967 borders as well). However, these benefits would only be relevant to a tiny fraction of the overall Palestinian population in the West Bank. Further, on a political level, the blow that annexation would deal to Palestinian self-determination will far outweigh particular individual gains to a minority of West Bank Palestinians (which would only be relevant in a case where Israel grants residency status or citizenship). In addition, an even larger number of Palestinians are likely to lose those rights and freedoms: according to the Trump Plan, the more than 120,000 Palestinian residents of Jerusalem who reside on the West Bank side of the Separation Barrier will lose their Jerusalem residency.

The following section will sketch out some of the possible negative implications for the reality on the ground under various annexation scenarios.

### **Land**

- *Absentees’ Property Law as a Basis for Significant Land Grab*

The Absentees’ Property Law is a law passed in Israel in 1950, following the 1948 War, which effectively transferred the property of Palestinian refugees into Israeli custody by declaring that the land and property of Palestinians and nationals of Arab countries who were in enemy states (that is, Jordan, Egypt, Lebanon, Syria, Iraq, Saudi Arabia, and Yemen) or “in the land of Israel that is not the State of Israel” (that is, the West Bank and

Gaza) during the “state of emergency” (declared in November 1947 and still legally in place today) would be transferred to the Custodian of Absentee Property (meaning the State of Israel).

This law, if applied to the annexed territory, would mean that all Palestinian land -- even registered private Palestinian land -- in the annexed areas that belongs to Palestinians in unannexed areas or living in “enemy states”<sup>20</sup> would be taken by the State into its custody. If Israel annexed the whole of Area C, this could affect Palestinian ownership of up to 1.5 million dunam of land, which is about 44% of Area C’s total territory (and 27% of the West Bank’s total territory). To prevent this, there would have to be a special decision by the Attorney General not to apply the law to the annexed territory. (Even if such a decision were made, it could be reversed at any point in the future, or changed by a future Attorney General, and could be used as a massive point of leverage over Palestinians).

- *Expropriating Private Palestinian Land for Public Use*

Israel has carried out major seizures of Palestinian land since the beginning of the occupation through a variety of means. However, expropriation is used very rarely in the West Bank today, and there are in fact only three cases in which private Palestinian land was expropriated for settlement construction.<sup>21</sup>

The main methods Israel has instead used to take Palestinian land are:

- Taking land that had been registered<sup>22</sup> as public land under Jordanian law (about 11% of the area of the West Bank);<sup>23</sup>
- Seizing private Palestinian land (whether registered or not) for “security purposes” (about 2% of the area of the West Bank);

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<sup>20</sup> Today, Jordan is excluded from the list of enemy states, because, as part of the peace treaty between Jordan and Israel, Israel introduced an exception to the Absentees’ Property Law that it would not apply to Jordan.

<sup>21</sup> These cases are Ofra, Maale Adumim, and the archaeological site of Susya. All of these cases had unique attributes and are the exception to the rule of how land grab and settlement construction generally happen in the West Bank today. Today, land (including for roads and infrastructure) acquired via expropriation account for 1.4% of the West Bank.

<sup>22</sup> “Registered” refers to land that was recorded (in a register termed “Tabu”) during the periods of the British Mandate or Jordanian rule. Only about a third of the West Bank has been registered (because the registration process was not completed by the Jordanians and is not continued by Israel). This means that the majority of private Palestinian land in the West Bank today is not registered, though it is recognized by Israel. Even with recognition, non-registered, private Palestinian land ownership can be vulnerable to particular forms of land grab, while ownership over registered, private Palestinian land is difficult to challenge.

<sup>23</sup> As the occupying power in the West Bank, the Israeli military took control over the entirety of public land under Jordan in the West Bank.

- Declaring private (non-registered) Palestinian land to be state land, via misuse of an Ottoman-era law<sup>24</sup> (about 14% of the area of the West Bank).<sup>25</sup>

Through these three mechanisms, Israel has stolen about 27% of the land in the West Bank.<sup>26</sup> Crucially, the main mechanism for stealing private Palestinian land (that is, declaring it state land) cannot be used to take land that is registered.

Expropriation, on the other hand, could be used against registered, private land. Until now, expropriation has been restricted due to an Israeli Supreme Court decision, which states that expropriation is only allowed if it serves the local public, and “the public” in the West Bank means Palestinians.<sup>27</sup> However, if annexation is carried out, the definition of “the public” changes to include Israelis, thus opening the door for potentially significant land grab.<sup>28</sup> In Area C, for example, there are about 500,000 dunam of land (9% of the West Bank) that is private, registered Palestinian land, which means that it cannot be seized via today’s mechanisms but could be seized through expropriation after annexation, in addition to another 1,000,000 dunam or so of private, unregistered Palestinian land (18% of the West Bank) in Area C that could be vulnerable to expropriation.<sup>29</sup>

### **Palestinian Presence in and Access to the Annexed Area**

- *Implications for Unrecognized Palestinian Residents*

If Israel annexes any territory that includes Palestinian residential areas, the question arises as to whether it will annex any Palestinian who lives in those areas or only those Palestinians who are registered residents of the area. Since Israel controls the Palestinian population registry, many Palestinian residents in Area C are not listed as

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<sup>24</sup> Israel misuses an Ottoman-era law to claim that uncultivated Palestinian land can be declared state land. More information about this practice can be found [in this report](#) by B’Tselem.

<sup>25</sup> This number comes from GIS data provided by the Civil Administration to human rights organizations following a Freedom of Information request.

<sup>26</sup> This discussion focuses only on land grab in which Israel has formally acquired Palestinian land. The total land grab (that is, land that is no longer available for Palestinian use or development because Israel has declared a firing zone, a nature reserve, etc.) is significantly more than the numbers discussed in this section.

<sup>27</sup> Private Palestinian land is, however, expropriated to build roads in the West Bank, under the justification that these roads also serve Palestinians. (This claim, though, is misleading, as these roads include bypass roads, which are designed to boost the settler population).

<sup>28</sup> This can be seen clearly from the case of East Jerusalem, which, because it is annexed and thus legally has a different definition of “public” applied to it, has seen about a third of its land expropriated for settlement construction.

<sup>29</sup> When private but unregistered Palestinian land is cultivated, it is generally not declared to be state land (though there are many cases where Israel has violated this rule). However, expropriation can be carried out even against cultivated land, which is why post-annexation expropriation makes unregistered land further vulnerable to theft.



residents of their villages but rather as residents of nearby urban areas.<sup>30</sup> For example, Palestinian residents of the South Hebron Hills villages of a-Tuwani and Susya are registered as residents of the nearby city of Yatta (which is unlikely to be annexed because it is a major urban center). If rural areas are annexed and residents remain unrecognized, these Palestinians would become “illegal aliens” in their own homes.

There are unrecognized residents in both recognized and unrecognized villages. (For example, a-Tuwani is a recognized village by the Civil Administration while Susya is not, but residents of both villages are registered as residents of Yatta). Unrecognized villages in Area C, however, will face even more significant problems with annexation. As Israel has been unwilling to recognize these villages, residents do not have building permits and thus face the constant threat of demolition. Annexation would create a much worse situation than the current reality. Today, residents of Susya, for example, are not permitted to build, but they are allowed to be on their land (which is privately owned Palestinian land). This could change if annexation occurs without the granting of citizenship or residency status.

- *Access to Agricultural Land in Annexed Territory*

Many Palestinians in more densely populated areas (i.e. those areas that are less likely to be annexed) own agricultural land in rural areas (i.e. those areas that are more likely to be annexed). If the Entry into Israel Law is applied to annexed territory and agricultural land is not seized by the state, there is a possibility that the permit regime will be implemented, thus requiring Palestinians to obtain permits to access their own land. Past record suggests that as a result, Palestinians could be effectively banished from their land. This can be seen from the reality in the Seam Zone: in 2018, [74% of requests](#) from Palestinians to access their agricultural land in the Seam Zone were denied.

- *Family Unification*

If Palestinians in annexed areas are given residency or citizenship status, they may receive some particular benefits (such as national insurance and freedom of movement with pre-1967 borders as well), yet such status could also create problems. If, for example, the Jordan Valley is annexed and Palestinians there receive residency status like that in East Jerusalem, they would not be able to live there with spouses who are registered in areas that are not annexed. This problem could also affect the children of such couples, as it is likely that residency or citizenship status will not transfer to children if one parent does not have the relevant status, creating a variety of issues currently faced by such families in East Jerusalem.

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<sup>30</sup> This is consistent with a longstanding Israeli policy of attempting to concentrate Palestinians into a designated number of population centers. In particular, this has meant that Israel has created a coercive environment (for example: lack of planning and infrastructure, preventing access to water and electricity, home demolitions, etc.) for Palestinian residents of Area C (largely rural villages) in order to pressure them to move to Areas A and B (largely urban centers).



## Settlements

- *Fast-Tracking Settlement Expansion*

The High Planning Committee, which oversees development and construction of the West Bank, is a military commission. Under military law at present, any advancement of planning in the West Bank requires the approval of the Defense Minister, meaning that settlement expansion is tied to high-level political considerations. High ranking political officials, notably the Defense Minister and Prime Minister, can thus intervene at any stage and freeze settlement building.

Once settlements are under regular Israeli civil law, however, this will no longer be true. Israeli planning committees approve plans, and practices of good governance prevent political bodies from intervening. This will greatly reduce the possibility of diplomatic and high-level political intervention to freeze expansion. The process of settlement expansion may consequently speed up.

- *Increasing Barriers to Settlement Evacuation*

Formally, under Israeli law, settlements are temporary. This is based on a 1978 Supreme Court case regarding the settlement of Beit El, in which State Attorney Gavriel Bach argued that settlements fulfill a “military need” of the military commander in the occupied territories and are thus temporary (due to the nature of the occupation as a temporary reality). Today, with 650,000 Israeli settlers, it seems ridiculous to claim that the situation is temporary, but that is legally true. Thus, for example, when Israeli settlers went to the Supreme Court during the 2005 disengagement from Gaza and argued that removing them from their homes was a violation of their civil rights under Israel’s Basic Laws, the Supreme Court ruled that the evacuations were justified, even though evacuating settlers violated their rights, because settlements in Gaza were temporary and were there to fulfill the need of the military commander. Following the military commander’s decision that they were no longer necessary, it was legally permissible to evacuate them. However, once land is annexed, the state does not have the legal authority to violate the right of citizens to their land. If annexation occurs, Israel's ability to evacuate settlements will face legal problems in the future, including in the framework of a possible future peace plan.

- *Giving Power to Settler Regional and Local Councils Over Palestinians*

Israeli law gives significant power to municipal authorities, including planning and building approval. Currently, settler regional councils are subject to the authority of the military commander (and thus also the Defense Ministry). Annexation would increase their autonomy and decrease outside barriers to prevent their actions. If the Palestinian population or their land in annexed areas are put under the authority of settler regional councils, many issues would arise, including two that follow below.

- *Municipal Taxes*

Putting Palestinian land in annexed territory under the authority of settler municipal authorities means that Palestinians who have greenhouses or agricultural land in territory that is annexed will have to pay land taxes to those authorities. As these are settlement institutions in which Palestinians are not represented, it creates a reality in which Palestinians must pay taxes that, structurally, will not benefit them.

- *Planning and Demolitions*

Putting Palestinian land in annexed territory under the jurisdiction of settler regional council planning committees would undoubtedly increase demolitions of Palestinian agricultural structures in the annexed territory<sup>31</sup> and continue the policy of hindering Palestinian development by withholding building permits.

### **Royalties for Natural Resources**

If annexation occurs, royalties and taxes related to natural resources in the annexed areas, such as quarries, will go to Israel itself rather than the Civil Administration. The Civil Administration has thoroughly failed in its job of overseeing and equitably distributing this revenue, but it has at least been formally charged with the task of keeping Palestinian interests at heart. The State of Israel is charged with being loyal only to its citizens, and so if it becomes the body overseeing such resources, it is not responsible for answering to Palestinian needs or interests at all.

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<sup>31</sup> Like the borders of Areas A and B, which were drawn to exclude as much Palestinian agricultural land as possible and include mainly population centers, so too does it seem highly likely that the drawing of the borders of the approximately 43 Palestinian enclaves (i.e. Palestinian villages within the territory designated for Israel) envisioned by the Trump Plan will be done in order to include only the built-up areas of the relevant Palestinian villages with the minimum possible agricultural land.

## Appendix: Areas of Annexation

Many different parts of the West Bank could be annexed. The list below details various possibilities, though it is possible that annexation would cover parts or combinations of the areas listed below.

- *Latrun* -- This is a very small area without any population along Highway 1, the main highway connecting Jerusalem and Tel Aviv. Because of this, it would be a very easy place for Israel to begin formal annexation, especially because one could argue that in any future two-state solution scenario, Latrun would be likely included as part of Israel via land swaps.
- *Settlement blocs near Jerusalem* -- This could include settlement blocs such as Givat Ze'ev, Maale Adumim, and/or Gush Etzion, all within a few miles of Jerusalem. This could be accompanied by Jerusalem Affairs Minister [Zeev Elkin's proposal](#), endorsed by the Trump Plan, to remove Palestinian neighborhoods that are currently within municipal Jerusalem but beyond the Separation Barrier (including Kufr Aqab, the Shuafat refugee camp, and Walaje) from Jerusalem's jurisdiction, in order to obtain a higher proportion of Jews in the city.
- *The Seam Zone* -- This area, which is about 9% of the West Bank, includes the land on the "Israeli side" of the Separation Barrier.<sup>32</sup> Palestinians who reside or own agricultural land in the Seam Zone must obtain permits to enter the area, cutting off many Palestinians from their land and from each other. Because of the proximity to the Green Line and the abundance of settlements already in the area, this area is another likely candidate for annexation.
- *The Jordan Valley* -- This is the area that Netanyahu pledged to annex in September 2019. The area included in Netanyahu's proposal constitutes about 22% of the West Bank. (The delineation in the Trump Plan is somewhat different.) This is an area in which Israel has built settlements since the beginning of the occupation, and proposals to annex the Valley are considered mainstream within the Jewish Israeli public.
- *Built-up areas of settlements* -- To the best of public knowledge, there are no blueprints or maps for such a plan. This is less likely to be the government's course of action because such a territory would not be contiguous, and it is a relatively small amount of territory that would require a significant amount of administrative work.

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<sup>32</sup> It is possible that the Seam Zone could be expanded up to the planned route of the Separation Barrier and not only the existing route of the Separation Barrier, to include, for example, Ariel.

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However, it is possible that annexation of this area could be a first step or accompany the annexation of other areas.

- *Jurisdictional area of settlements* -- This would be about 9.5% of the area of the West Bank, which is more than the built-up area of settlements alone. It would involve less administrative work than annexing only the built-up area of settlements because it is more in line with already existing building plans and maps.
- *The Trump Plan* -- The Trump Plan lays out its own distinct areas that could be annexed and that are now under discussion by a joint US-Israeli committee. According to the conceptual map included in the plan, these areas account for about 30% of the West Bank. Israel may see an advantage in annexing the areas proposed by the Trump Plan, as it comes with an automatic American stamp of approval, making this plan perhaps the most likely. However, because the mapping and logistical work will require a good deal of time (as no detailed map exists, to the best of public knowledge), it is possible that the annexation of the territory would be divided into several stages.
- *All of Area C* -- This area is about 61% of the West Bank. Annexing Area C has been repeatedly proposed by current Defense Minister Naftali Bennett of the Yamina alliance and other settler leaders.<sup>33</sup>
- *All of the West Bank* -- Full annexation of the West Bank (leaving Gaza unannexed) is the position promoted by some Israeli politicians, including current Minister of Education Rafi Peretz, leader of the Jewish Home party and a member of the Yamina alliance.<sup>34</sup>

**Yehuda Shaul, May 2020**

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<sup>33</sup> As noted above, this could be difficult to implement because it would create about 160 Palestinian enclaves (i.e. unannexed territory in what was once Areas A and B), fully surrounded by Israel (i.e. annexed territory that was once Area C).

<sup>34</sup> Note that those who promote this option do not support giving equal rights to Palestinians. It is possible that, even within this option, certain areas of Palestinian population centers could be designated for limited self-management.