

## Key Points

- On Monday, 6 February the Israeli Knesset passed the third and final reading of *Hok Hahasdara*, the Regulation Law, by 60 votes to 52. The Regulation Law retroactively gives residents of up to 4,000 housing units in West Bank settlements the right to live in their homes which were built – some accidentally – on private Palestinian land, in return providing the landowner with an annual usage payment of 125 per cent of the land’s rental value. The Law sits alongside other potential legislation being promoted in right-wing circles which includes plans to declare sovereignty in parts of Area C of the West Bank, beginning with the large settlement of Maale Adumim.
- Shifts in both domestic and international politics affected the Israeli political calculus and created the framework for this piece of legislation to pass. The Law comes in the context of the evacuation of the Amona outpost and Prime Minister Benjamin Netanyahu and Jewish Home leader Naftali Bennett’s attempts at assuaging objections of their own constituents. The incoming American administration – far less critical, if not supportive, of the settlement project than its predecessor – led the Israeli government to believe that the tide had turned and assessed that a Trump Presidency would not object to these moves. Former American ambassador to Israel, Dan Shapiro, wrote that it is “difficult to imagine this vote would have occurred so soon before PM Netanyahu’s visit to DC without a clear OK sign from Trump Administration”.
- The Regulation Law faces its strongest challenge in the Israeli Supreme Court and is highly unlikely to survive. Israel’s Attorney General Avichai Mandelblit has been one of the most vocal critics of the Law, declaring it unconstitutional and refusing to defend

it in the Supreme Court. Critics of the Law, including Mandelblit and former Foreign and Justice Minister Tzipi Livni, have warned of potential lawsuits that Israelis may face at the International Criminal Court (ICC)

## What is the Regulation Law?

- *Hok Hahasdara*, known as the Arrangements Law, the Legalisation Law or the Regulation Law (hereinafter The Regulation Law) seeks to solve a situation in which, over several decades, Israeli housing units in the West Bank were built – sometimes accidentally – in open areas adjacent to already established settlements on land where individual Palestinians subsequently asserted property claims. As the Law states: “In many cases, settlements were built in agreed-upon areas, and were even encouraged or built in coordination with the state, or were built in good faith by the Israeli residents, who were unaware that this was privately-owned land. Leaving the situation as is in these settlements or their destruction is liable to seriously, unjustifiably harm those who have lived there for many years. Therefore, the regulation of these settlements is necessary.” The Law permits the State to retroactively legalise these settlement houses or outposts which are located on privately-owned Palestinian land and give usage of the land to the existing residents until there is a diplomatic resolution of the status of the West Bank.
- This retroactive legalisation will apply in cases where Israelis living in the West Bank initially received government assistance or construction was carried out “innocently”. The Law defines government assistance as either initial or post-facto, and also includes the backing of local municipalities. It describes innocent construction as a situation in which the settlers did not know that the land they

were building on was privately owned by Palestinians.

- The Regulation Law includes a monetary mechanism that would compensate any potential Palestinian landowners in return for the communities remaining in place. The Law says that a landowner can choose between receiving an annual usage payment of 125 per cent of the land's value as determined by an assessment committee for renewable periods of 20 years, or an alternate plot of land if this is possible.
- While the actual scope of the Regulation Law remains unclear, reports from Israeli settlement watchdog Peace Now suggest it could result in the legalisation of 55 outposts and approximately 4,000 housing units in settlements and outposts. The Law also freezes all demolition orders against homes built on land claimed by Palestinians in these areas for 12 months, in order to allow the government to determine whether such buildings were built in good faith and/or with government assistance.
- To alleviate concerns of the centrist Kulanu party within the coalition, the Regulation Law does not apply to three cases of homes built on private Palestinian land on which the Supreme Court has already ruled should be dismantled. These include the Amona outpost (which was evacuated on 2 February), nine homes in the Ofra settlement (delayed by the Supreme Court till 5 March), and 16 homes in the Netiv Ha'avot outpost in the Gush Etzion area.

## The Regulation Law and Israel's Supreme Court

- Although the Regulation Law has navigated successfully through the Knesset, it faces a strong legal challenge in the country's Supreme Court. The Law presents a significant shift away from the Supreme Court's interpretation of international law regarding the expropriation of land in the West Bank, and Israel's Attorney General Avichai Mandelblit has been one of its most vocal critics. During its preliminary and first readings, Mandelblit argued that the Law bypassed standard land regulation procedures in the West Bank and would be in breach of local and international law. He has also reportedly told PM Netanyahu that he was not prepared to defend it in court.

- The Supreme Court has ruled that Israel holds the West Bank under belligerent occupation, and that the area is under *military*, rather than *civil* authority. The Court has thus historically allowed public or state land to be used for settlements, as well as privately-owned Palestinian land to be requisitioned for security or public purposes (such as building roads or the separation barrier). However, the Supreme Court has never allowed the State to expropriate privately-owned Palestinian land for the sole purpose of establishing an Israeli settlement. In order for the Regulation Law to survive a legal challenge, the Supreme Court would have to overrule this previous stance, a move that is highly unlikely.

## The controversy in Israel surrounding the Law

- Aside from those whose ideological position supports Jewish rights to the entire "Land of Israel," proponents of the Regulation Law argue that it provides a solution for individuals and families who bought homes in good faith with the support of government agencies whose homes have subsequently turned out to be on private Palestinian land. They argue that the majority of the plots of land of which these housing units sit were originally built on uncultivated fields and in the overwhelming majority of cases, no individual Palestinians have come forward to claim them. While they see it as unjust that these Israelis should be under the threat of eviction in such circumstances, they also argue they are addressing the rights of Palestinian land owners through financial compensation.
- The Regulation Law has come under fire from MKs both among the opposition and within the government. Opposition leader Isaac Herzog described it as "a bill for the creation of a bi-national state," and argued that "this law creates de facto annexation, contrary to all of Israel's international obligations". Yesh Atid Faction Chairman Ofer Shelah said that "Netanyahu himself said that a legalisation law would bring us to The [International Criminal Court] Hague, and he is passing this illegal Law in the Knesset because [Betzalel] Smotrich [from Bennett's national religious Jewish Home party] forces the Prime Minister's hand in this coalition". Echoing this critique, Yesh Atid Chairman Yair Lapid told his faction meeting that the "only reason

this law is being raised is politics...they are passing a law that will endanger IDF soldiers, will endanger Israel's international standing, will endanger our being a state of law and order, because they have problems within the coalition”.

- Likud MK Benny Begin, a strong supporter of the settlement movement, was the only member of the coalition to cast a vote against, condemning it as a “looting bill” and stating that “this bill is not smart, responsible or stable”. Former Justice Minister and Likud MK Dan Meridor called the law “unjust and unconstitutional” arguing that it was “harmful to Israel and endangers all settlement in Judea and Samaria”.
- Some within the coalition, such as Defence Minister Avigdor Lieberman and Minister for Regional Cooperation Tzachi Hanegbi voted for the Regulation Law despite assuming it would be overturned by the Supreme Court. Over the weekend, Hanegbi said that “people on the right haven't got the courage to tell the settlers the truth. It is reasonable to assume that the bill will not pass [in the Supreme Court]”.

### The political context to the Regulation Law

- With so many MKs opposed to the bill, and some within the ruling coalition predicting its rejection by the Supreme Court, the motivation to pass it can primarily be found in the political arena and is related to the battle between Netanyahu and Naftali Bennett for the leadership of the pro-settlement constituency, an electoral asset worth approximately three to five Knesset seats. As the current Knesset approaches the two-year mark, and with Netanyahu under threat of criminal indictment, an election may be closer than many believe and these votes might prove crucial in determining the next Prime Minister.
- The right-wing coalition parties were put in an awkward position by a Supreme Court legal ruling requiring the government to evacuate 40 modular homes built illegally on private Palestinian land in the West Bank outpost of Amona. This evacuation led to a physical confrontation between residents and their supporters and security forces, which garnered angry opposition among the

supporters of right-wing parties. The storm and controversy surrounding Amona created an added impetus for each party to try and position itself as supportive of the settlements and more determined to prevent more Amona-type scenarios.

- Pressure from the international community – particularly the American administration – is another factor which has traditionally impacted Israeli decision making with respect to the West Bank, but which is now absent. Netanyahu was often deterred to pursue settlement policies by expected American condemnation. In fact, he reportedly postponed a previous discussion of the Regulation Law in December due to fear of how it would affect relations with the Obama administration. Obama was heavily critical of Israeli settlement expansion in both the West Bank and East Jerusalem and ultimately refused to veto UN Security Council Resolution (UNSCR) 2334 in December 2016, which termed all building over the former armistice “Green” Line as lacking any legal validity, and which was widely rejected by Israelis and their supporters across the board as unreasonable and unbalanced. The UN resolution also led to a mood amongst many Israelis of double jeopardy. That as the country would be criticised regardless of its actions, it should not be deterred by potential international condemnation for settlement building or legalisation.
- Netanyahu frequently pushed back against pressure from his right wing coalition partners to expand settlements or promote annexation of parts of the West Bank by arguing the need to be cognisant of international concerns. American pressure also led Netanyahu to implement a one-time, ten-month settlement moratorium between November 2009 to September 2010 in the hope of renewing peace negotiations with Palestinian Authority President Mahmoud Abbas, although the gesture failed to convince Abbas to return to negotiations and he refused to restart talks for the first nine months of that period.
- The transition from an Obama to Trump administration has therefore affected the Israeli political calculus. The election of Trump – who is perceived as a strong friend of Israel and who appointed a supporter of the settlement project as his ambassador to Israel – was welcomed by the Israeli Right and viewed

as giving Israel a carte blanche on West Bank actions. The perceived change of position in the American administration has also enabled Bennett to pressure Netanyahu to demonstrate his commitment to the settlements, especially following Amona.

## The international consequences of the Regulation Law

- The passage of the Regulation Law will likely create diplomatic fallout from the international community, who will question Israel's continued commitment towards a viable two-state solution. Despite its temporary nature, the notion of expropriating privately-owned land undercuts the government's narrative that it supports the two-state solution and puts the government at odds with UNSCR 2334, which "calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperilling the two-State solution".
- The passage of the Regulation Law will also raise fears that it will strengthen those right-wing voices in Israel calling for "creeping annexation". A bill proposing Israel annex Maaleh Adumim, a large settlement in the West Bank close to Jerusalem, is being prepared in the Knesset Ministerial Committee on Legislation. Bennett has suggested Israel annex Area C, an area comprising 60 per cent of the West Bank, a move which would destroy the chances for a two-state solution.
- Critics of the Regulation Law, including Mandelblit and former Foreign and Justice Minister Tzipi Livni, have warned of potential lawsuits that Israelis may face at the International Criminal Court (ICC). At the Palestinians' request, ICC Prosecutor Fatou Bensouda is soon to decide whether Palestine is a country and whether the court will discuss crimes committed in its territory. The Rome Statute that established the ICC believes settlements to be illegal and in 2012 the UN General Assembly decided to afford Palestine "Non-Member Observer Status". Indeed, senior Fatah official Jibril Rajoub confirmed the Palestinians' intention to deal with the Law at the ICC.

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