‘Settlements Law Could Open Israelis to War Crimes Prosecution’

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By [Tovah Lazaroff,](http://www.jpost.com/Author/Tovah-Lazaroff) [Yonah Jeremy Bob](http://www.jpost.com/Author/Yonah-Jeremy-Bob)

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The “Settlements Regulation Law” could place individual Israeli politicians, military personnel and civilians before the International Criminal Court at The Hague on charges of war crimes, 13 NGOs told the High Court of Justice on Sunday.

The 13 organizations, led by Yesh Din and Peace Now, issued the warning as part of their 63-page petition to the High Court against the law, which was passed on February 6.

The petition is the second to be filed against the legislation, which retroactively legalized some 4,000 settler homes build on private Palestinian property, offering compensation to the landowners in return.

In asking for an immediate injunction against its implementation, the NGOs cited the law’s criminal nature under international law and argued that it constituted annexation of portions of Area C of the West Bank.

“The petition stresses that the implementation of the provisions of the law may serve to incriminate Israeli citizens and security personnel who would implement it, as well as the MKs who voted in support of the law, as their actions may be considered war crimes according to international criminal law,” the petition said.

In approving the law the Knesset acted outside its jurisdiction, the organizations said, because it has no authority over the West Bank, which is beyond the border of sovereign Israel.

“To date, and for nearly 50 years, Knesset legislation in relation to the West Bank was limited to individual legal rights – applying only to Israeli citizens who live in the West Bank – while legislators refrained from directly administrating the area itself,” the NGOs said. “Legislating this law is a clear act of sovereignty, and thus constitutes unlawful annexation.”

Under the new law settlers are defined as local residents and their rights are given priority over those of the Palestinians, the petition said.

Legislating a law that deprives people of their property, through a process in which they are not represented, is the “textbook definition of tyranny.”

Under the rules of belligerent occupation, which are applicable to the West Bank, Palestinians and their property must be protected by the Israeli military that rules that area, the petition said. They cannot confiscate that property for the benefit of Israeli citizens, it added.

Although the legislation offers compensation to the Palestinian landowners, the NGOs said it violated both Israeli law and regulations that are the foundation of international law, including the Fourth Geneva Convention of 1949, The Hague Regulations of 1907 and laws dating back to the American Civil war.

Attorney-General Avichai Mandelblit has argued that the law is unconstitutional and told the High Court that he will not argue for it on the state’s behalf, explaining that will be done by a private attorney, the NGOs said.

Their petition was similar to the one filed on February 8, by the NGO Adalah, but gave a deeper description of the issues.

In that petition, Adalah did not emphasize that Knesset members who voted for the bill could be implicated in war crimes.

Sunday’s petition mentioned that the prohibition of confiscating property other than for military necessity (as opposed to the socioeconomic and ideological logic underpinning the Settlements Regulation Law) is not remotely like some international law rules. Rather, it dates back at least to the Lieber Code, enunciated by US president Abraham Lincoln more than 150 years ago.

It highlighted what it called the basic moral and legal inequality of the Knesset passing a law to take land from individual Palestinians who do not even get to vote for the MKs who, by passing the legislation, are taking it from them.

The petition contends more generally that individual Palestinians have no political means for opposing confiscation of their land.

It also argues that the law overturns the standard process for land confiscation, dropping all hints of procedural due process and protections for the property owners.

Confiscation laws are supposed to apply for the benefit of future public development and not for individual persons who have already illegally erected structures on the land in question, it said.

Moreover, the petition argued a new point by saying the law does not meet Israel’s identity as a Jewish and democratic state.

Adalah sidestepped this argument, likely due to its preference for a onestate solution, or at least its rejection of combining a democratic state with Jewish religious principles.

The NGOs said the law ironically applies to the West Bank, an area which is neither mostly Jewish, nor democratically run.

Quoting an article by legal scholar Aviad Hacohen, the petition explained that Jewish values only allow confiscating land when there is no other choice and with a minimum imposition on the property owners.

The petition says the law flagrantly exceeds those boundaries.

The 13 groups that filed the petition did so on behalf of 23 Palestinian local council heads and four Palestinian landowners. At issue, they said, are 1,135.7 hectares of private Palestinian property that has already been illegally seized.

Supporters of the law have argued that the offer of compensation places Israel in compliance in international law. Right-wing politicians have further explained that the law was the only way to prevent what would eventually be the evacuation of close to 4,000 homes.