

The new settlement in a-Nahla - a significant threat to the two-state solution

The full story of how settlements are established

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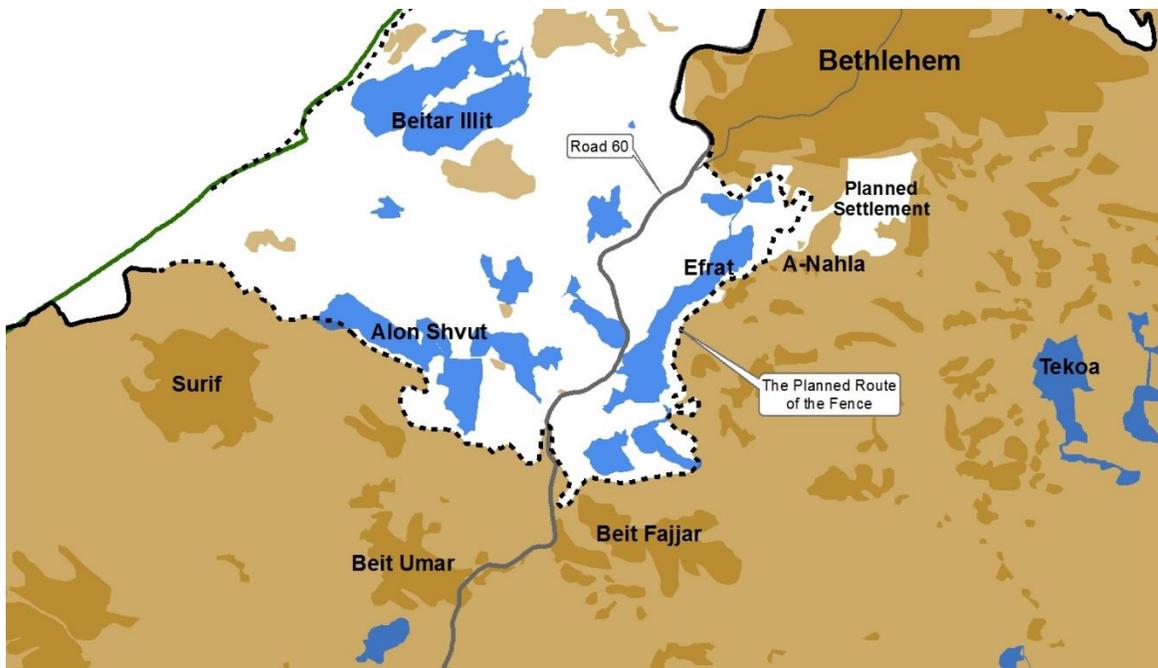
A. Summary:

Establishment of new settlement south of Bethlehem

A new settlement with thousands of housing units is currently being promoted, with destructive implications for the prospects of a two-state solution, on land east of the Palestinian village of a-Nahla south of Bethlehem, near the settlement of Efrat (the settlers and the state call the site "Givat Eitam", we would like to call it "E2" because it would seriously damage the chance for a two state solution, just like the famos plan in "E1").

- **Establishment of an “agricultural farm.”** At the end of 2011, Defense Minister Ehud Barak approved the founding of an agricultural farm east of the village of a-Nahla. In October 2013 the settlers established a new settlement point there, maintained by a number of young people and secured by the IDF. On July 4, 2014 in the middle of the night the settlers opened a new road allowing easy access and development of the outpost.
- **An agricultural farm is actually a new settlement.** The history of the settlements shows that in many cases agricultural farms are the basis for the creation of new settlements. First the land of the farm is cultivated, then temporary buildings are erected and finally a neighborhood is built at the site. A number of new agricultural farms have recently been built in the occupied territories (near the outpost of Bruchin in the Salfit area, and south of the settlement of Ma'ale Amos southeast of Bethlehem), whose purpose is to create new settlements without requiring a government decision to do so.
- **A severe impediment to the two-state solution** - The Housing Ministry has a blueprint plan (not yet approved) to build 2,500 housing units as an expansion of the settlement of Efrat. This could be the final blow to the two-state solution: the settlement will block Bethlehem from the south and prevent the city's development in almost the only direction that has not yet been blocked by Israeli settlements or highways. Furthermore, any attempt to annex the settlement of Efrat and Givat Eitam to Israel would dissect the West Bank (as would the E1 plan) and sever the main road (highway 60) that connects the southern West Bank with Bethlehem.
- **Land takeover.** The land on which the settlement of Givat Eitam is planned was incorporated into the jurisdiction of the settlement of Efrat and consists of 1,341 dunams declared “state land” in 2004 and another 309 dunams of Jewish National Fund (JNF) land.

- a. **Declaration of state land.** [The declaration of state land](#) is a kind of land appropriation based on a draconian Israeli interpretation of the Ottoman Land Law. Following the declaration of 1,341 dunams as state land in 2004, the Palestinian landowners petitioned the Israeli High Court of Justice (HCJ), and the court is expected to announce its ruling on the matter shortly. The hearings in this case exposed for all to see the Israeli system of taking over Palestinian land in favor of settlements under the cover of a legal process of "declaration" (see further detailed below). Once the HCJ approves the status of the land, the Israeli government will be able to promote its building plan in the planning institutions, and once the plan is approved it can begin building on the ground.
- b. **Registration in favor of the JNF.** In 1979 and 1990, 309 dunams of land were registered, in a speedy and dubious procedure, under the name of the Himnuta Corporation that belongs to the JNF. The JNF already now allows the settlers to use its land, and they began building the settlement by establishing the agricultural farm on JNF land even before the process of declaring it as state land was completed.



B. Background

- **The location of the new settlement and the impediment of the prospects of a viable Palestinian state.** The formal and informal negotiations between Israel and the Palestinians exposed several significant disputes concerning the border and land swaps. The settlement of Efrat is one of the points of contention. Efrat is situated south of Highway 60, the only main road that connects the southern West Bank with Bethlehem. If Israel attempts to create Israeli contiguity from the Green Line to Efrat, similar to the E1 plan, it will sever Palestinian contiguity and the only significant existing link between the southern and northern West Bank, and prevent the possibility of a viable Palestinian state. In addition, the city of Bethlehem is blocked from the north by the Israeli neighborhoods Israel built in the territories it annexed to Jerusalem (Gilo, Har Homa and Givat Hamatos); it is blocked from the west by the separation fence and the Tunnel Highway Israel paved for the settlers; and practically the only direction in which Bethlehem can grow is south. The settlement of Efrat and particularly Givat Eitam block Bethlehem's growth potential and create a corridor of Israeli contiguity from west to east, towards the Israeli settlements east of Bethlehem – Tkoa and Nokdim.
- **The development of the settlement of Efrat.** The Netanyahu government is investing heavily in the development of the settlement of Efrat, in order to make a future evacuation and the establishment of a viable Palestinian state more difficult. After for years there was little construction and Efrat, in recent years there has been a building boom. Since the Netanyahu governments came to office in 2009, tenders were issued for the construction of 817 building units in Efrat. In the outposts of Givat Hadagan and Givat Hatamar north of Efrat, construction of permanent neighborhoods began and they were fitted to become neighborhoods of Efrat. This will dramatically increase the area of the settlement, which already extends all the way to the houses of the Palestinian town of al-Khadr adjacent to Bethlehem.

C. Developments on the ground

- **The Housing Ministry plan in Givat Eitam.** The Housing Ministry drew up a blueprint construction plan which has not yet been approved, to build a neighborhood of 2,500 housing units on some 50 dunams of land east of the village of a-Nahla: this includes 1,341 dunams declared state land and another 309 dunams of land owned by the Himnuta Corporation owned by the JNF. In November 2013 [Peace Now exposed](#) that the Housing Ministry issued a tender to contract with architects to draw up detailed plans for several settlements. One of the plans the Housing Ministry commissioned was an initial plan for 840 housing units in Givat Eitam to turn the blueprint plan into a detailed plan that could be approved. Following the publication, the Housing Ministry announced the cancellation of the tender but may have since selected an architect in a separate process.

On October 21st, 2014, the Ministry of Housing [approved a contract](#) with architects for planning in the area designated for a settlement at A-Nahla. **The architects were hired to prepare plans for the roads and the infrastructure** of “Givat Eitam” for 825,420 NIS, financed by the Ministry of Housing.

- The Efrat settlers treat the settlement on the lands of a-Nahla as a fait accompli and encourage activity on the ground. [On the map of Efrat on the local council's website](#) the plan for Givat Eitam appears as part of the settlement.
- **Declaration of state land.** As long as the declaration of state land has not yet been completed, the building plan cannot be submitted for the approval of the Higher Planning Council. In August 2004 Israel declared 1,341 dunams of land near the village of a-Nahla as state land. The appeals submitted by the Palestinian landowners have not yet been decided by the HCJ (details below).

The HCJ held a number of hearings on the appeal, most recently in February 2004, and on September 7, 2014 issued [a pre-ruling decision](#) rejecting most of the petitioners' arguments, but suggested referring the case back to the appeals committee in order to discuss the question of whether it is possible to declare a parcel of land as state land if parts of it is being cultivated. On December 16th, 2014, [the court repeated](#) in another decision that: *"needless to say, all other issues raised within the petition, excluding the said partial cultivation, were exhausted in our decision dated 7 September 2014"*.

- **Meanwhile the settlement was established on JNF land.** In 2011 the defense minister allowed the settlers to build an agricultural farm on the land purchased by the JNF's Himnuta Corporation. This area of 309 dunams is not part of the declaration of state land because it is considered to be private land owned by the JNF. As far as the settlement's development plans, in the Housing Ministry and the local council, JNF land is meant for the exclusive use of the settlement.

Thus, through the JNF, the settlers have managed to establish a first foothold on the ground well before finishing the legal proceedings of the declaration, and they plan to expand their activity at the site and hold educational and touristic activities there in order to bring Israeli visitors to the site.



The agricultural farm east of the village of a-Nahla, May 2014

- **Opening a new road to the outpost.** On the night between July 3 and 4, 2014, a new road was opened connecting Efrat with the agricultural farm. Settlers took advantage of the public atmosphere following the finding of the bodies of the boys who had been abducted and murdered, and established a fact on the ground without permits and in contravention of the HCJ's interim order. The new road solves the serious problem they had of access to the farm. Until then they had to use a difficult road that runs through private Palestinian land. The new road runs through land that was declared state land in 2004 (and whose status is still pending in the HCJ). Adv. Sani Khouri, who represents the Palestinian landowners, gave notice to that effect to the court.



D. Declaration of state land – an expropriation “bypass route”

According to international law and Israeli case law, Israel is not allowed to expropriate private land in occupied territory to build settlements. On the political level, in the last decade since the parties committed to the “roadmap,” all of Israel's prime ministers have declared that Israel does not expropriate new land for settlements. As a matter of fact, Israel uses the ["declaration of state land"](#) as a bypass route that allows it to take over Palestinian land without formally calling it "expropriation."

The declaration procedure is based on [a draconian interpretation of the 1858 Ottoman Land Law](#), according to which land that has not been cultivated for a period of time can turn into "state land" or public land. Since the 1980s Israel has acted to locate uncultivated land in the occupied territories and has declared nearly one million dunams (20% of the West Bank) as "state land." Israel claims that the declaration of state land is not expropriation that changes the status of the land from private land to state land, but rather a process that only makes a formal declaration of the “substantive status quo.” Tens of thousands of Palestinian landowners, even if they were registered in the property tax ledgers, have lost their land in this way (for more about the declaration of state land [see here](#) and [B'Tselem report](#)).

On August 3, 2004, the Director of Government and Abandoned Property, declared 1,341 dunams of land near the village of a-Nahla as state land. The landowners appealed to the military appeals committee and when they were rejected petitioned the High Court of Justice against the appeals committee's decision. The hearings in the military appeals committee and the HCJ illustrated how the purpose of the Israeli policy is actually to deprive the Palestinians of their rights to the land and transfer them to the settlements.

The discussion to date has revealed the bluff of the "declaration" and shown how it is in fact a mechanism for taking over Palestinian land:

1. The State openly admits **the settlement development plans are what determine the borders of the declaration** and not the “substantive status quo.”
2. **The settlers and the Efrat Local Council worked behind the scenes** in cooperation with the Civil Administration to promote the declaration. Which is to say that the Civil Administration, which is supposed to maintain the land in favor of the entire public, is working with those who wish to receive the land, namely the settlers, as one, in order to turn the land into "state land" (which will then be allocated to the settlers).
3. **Ethnic discrimination: declaration for Palestinians only.** A plot of uncultivated land was located within the area, which according to the state (“substantive law”) should have also been declared as state land, but in fact remained outside of the boundaries of the declaration. During the discussions it emerged that the reason was that the plot is owned by Jews and therefore the Civil Administration saw no need to declare it state land.

4. **After the declaration**, the "state land" that is in fact public land, will be given to the settlers and not the Palestinians.

1. The settlement development plans are what led to the declaration and determined its boundaries

In response to the petitioners' claims that settlement development is the reason and purpose of the declaration, the state wrote as follows:

*"[...] This has no bearing on the question of land rights... **Even if the examination undertaken by the respondents before the declaration of the land as government property was undertaken in order to determine whether and in what way it could serve for the future use of the settlement of Efrat, this does not mean the petitioners' arguments are accepted...** had it been found as part of the examination of the status of the land for the purpose of the declaration that according to substantive law the land was not government property, it is clear that no declaration would have been made in regard to it." (State response to HCJ from July 20, 2009, emphasis added)*

Hence, the state actually admits that the reason for the declaration procedure was "future use of the settlement of Efrat." In other words, from the outset the intention was to find land that could be transferred to the settlers, and not really to examine the status of the land objectively (after all, state land could and should also be used for public Palestinian purposes).

The state's "compromise" offer

Some of the appellants' arguments were that at least some of the plots or parts of them were cultivated (they have old fruit trees) and therefore they must not be declared state land. The court sent the parties to negotiate to reach an agreement about those plots.

On July 22, 2012, the State offered a "compromise," according to which the owners of the cultivated plots (which comprise enclaves within the Givat Eitam plan) would receive alternative land (out of land the State declares). The Palestinians rejected the offer because they refused to receive alternative land taken from other Palestinians.

In all of the State's arguments it did not deny that the plots or parts of them were cultivated. The very fact that the State was willing to allocate alternative land is an implicit admission that there are cultivated plots that cannot be declared state land. However, the State refuses to exclude the cultivated land from the declaration, because of planning and development needs:

*“The respondents are unable to accept the petitioners’ motion, **because allocating land in this way creates ‘patches’ of allocated land and unallocated land within the declaration area, without contiguity on the ground, which will, practically speaking, prevent any future use, such as development and planning.**” (State notice to the High Court of Justice from July 22, 2012. Emphases added)*

In its first response from July 20, 2009, the State argued that the consideration for declaration was not planning and development but the “substantive status.”

In another place the State admitted if there is private land and the consideration is development needs, a “declaration” is not possible and “expropriation” is required:

*“[...] declaration of land as government property (state land) **does not create rights to the land but only declares their existence.** When the land in question is privately owned [...] it can not be declared government property, and transferring ownership thereof for public use by the military commander can be done only by **expropriation** (and that too only for certain purposes).” (State response from June 20, 2010, emphases in the original)*

The problem is that the military commander is forbidden from expropriating land for settlement purposes. Therefore, in the case of a-Nahla, the State admits that it is forbidden to expropriate land for the purpose of settlement development, but when it turns out there is private land within the area declared state land – it claims it can not give it up because of settlement development needs.

2. The settlers initiate the declaration, act to prevent the cultivation of the land, and finally receive from the Civil Administration the legal guise for the declaration:

During the discussion in the appeals committee the system was exposed along with the settlers’ involvement in the declaration process. It turned out that a central figure in the declaration process was Yedidya Sarmante, an employee of the Efrat Local Council (a civilian security coordinator and **land coordinator**), who had acted to evict Palestinians from their land and prevent them from cultivating it even before the declaration. It emerged that he had close ties with the Civil Administration and effectively functioned as a land inspector (even though formally speaking he has no powers).

Although the appeals committee criticized that (and the office of “land coordinator” in the councils), it did not disqualify the declaration. From the decision of the appeals committee:

"445. This does not mean, however, that conflict of interests of a person who is an employee of the local council having Civil Administration's inspection powers, even if the intention of that mixture was to protect state or survey lands in Judea and Samaria, is desirable or appropriate, and that state of affairs from those aspects, as clarified to us albeit partially in this appeal, requires rectification.

446. It would be advisable for the Civil Administration and the Legal Advisor for the area to make this matter clear to the local councils (more than a few of which employ an official called a "land coordinator" or a similar name), and even to enact a suitable enforcement and reporting procedure, to clarify the boundaries of what is legally permitted and forbidden in this matter."

3. Declaration of state land – for Palestinian land only

The hearing in the appeals committee revealed that in the case of Jewish-owned land, the land was not declared state land even though in terms of the objective conditions, "substantive law," according to the state it ought to have been declared. Furthermore, there are elements within the system trying to cover up and conceal that fact.

The land coordinator of the Efrat Council, Yedidya Sarmante, testified to the appeals committee and confirmed that there is Jewish-owned land in the area that is not cultivated (and therefore should have been declared as state land) but was not declared (from the protocol of the appeals committee hearing on January 23, 2006):

Q: What is your job in Efrat Municipality?

A: I am Land Coordinator and Security Officer.

Q: What does it mean that the Municipality has a land inspector; what is your job as land inspector?

A: the job of land inspector is to inspect state lands or survey lands and make sure there are no works on it or intruders.

The Committee's Question: What is the border of the land that you inspect?

A: Up to Givat Eitam, as well as Givat Hatamar and Givat Hadagan.

Q: You inspect also areas that are outside of the borders of the settlements, in what authority do you inspect outside of the borders? Who authorised you?

A: Survey lands and Jewish lands outside the settlement, I need to guard them and they are part of the Blue Line.

Q: Can you point out lands in the area that was bought by Jews after 1967?

A: (The witness points at the map). Marked as X, outside the declaration.

Q: Are those lands cultivated?

A: No.

In its decision, the appeals committee not only did not reject the discrimination, but lauded it as proof of appropriate prudence by the Civil Administration:

*"407. A review of the declaration map shows that **the respondent was very cautious in determining the boundaries of the declaration**, and not only where there was Jewish land [...] was the declaration of government property not applied but also in any other place where there was agricultural cultivation, including by most of the appellants themselves."*
(Emphasis added)

Concealing the evidence

At a HCJ hearing on March 13, 2013, the petitioners' lawyer, Sani Khouri, referred to the protocol of the appeals committee, where Efrat's land coordinator testified about the land that was purchased by Jews. The state argued it was not familiar with that land. The judges, who regarded the discrimination claim gravely, gave the sides 60 days to complete their missing information and to produce the map from the appeals committee's protocol on which the land coordinator marked the Jewish-owned land.

The sides approached the military appeals committee to receive the map but were told **the file had disappeared**. Requests from the state attorney's office were futile. The key information that could have conclusively proven that Jewish-owned land was not declared state land only because it belonged to Jews miraculously disappeared.

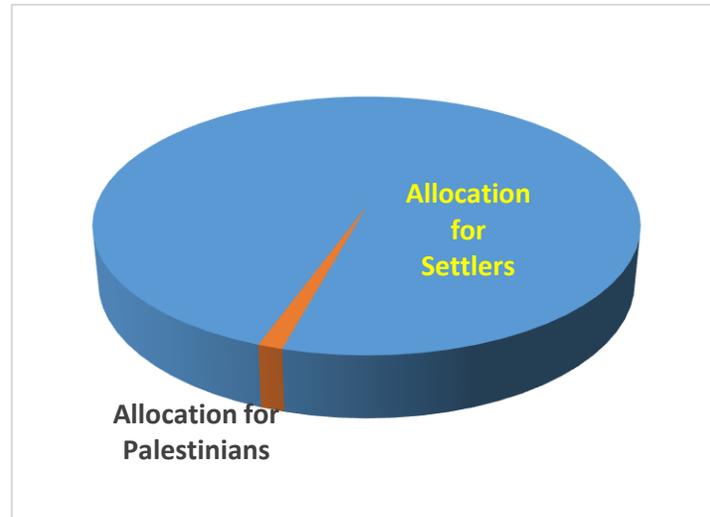
Ultimately an additional hearing was held on the petition, on February 19, 2014, without the full evidence. In its pre-ruling decision from September 7, 2014, the court rejects the petitioner's claim of discrimination applying that *"did not explain which land they were referring to"*.

4. "State land" for settlers only

The terms "state land" or "government property" are confusing terms, because it is not clear what state or what government they refer to. A clearer term is "public land" or "land for the benefit of the public." Public land is land administered by the sovereign in favor of the entire public to build public institutions, roads and other projects.

In the occupied territories, the entity that entered the shoes of the sovereign is the IDF, and in fact the land known as "state land" is land intended for the benefit of the public and administered by the Civil

Administration. [Information revealed by the Association for Civil Rights in Israel and Bimkom](#) showed that almost all of the public land allocated by the Civil Administration has been given to Jews and to settlements and Israelis. Only 1.27% of the land that was allocated has been allocated for the needs of the Palestinians.



The plan east of a-Nahla, as well as the testimonies exposed during the declaration process, indicate that Israel intended to extract the land from Palestinian hands and transfer it to the settlers – but to do so in a "legal" manner that would not look like a takeover and discrimination.