

# **Nativ Ha'Avot File**

## **Honoring the Supreme Court Ruling: Saying No to Theft of Private Land**

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### **A. Why must the houses in Nativ Ha'Avot be dismantled?**

- 1. Because the High Court of Justice ruled in a final judgment that the houses must be demolished by March 6, 2018.
- 2. Because the state issued final demolition orders for all structures in the outpost, even at the start of their construction.
- 3. Because the structures are on land owned by Palestinian residents of el-Khader.
- 4. Because otherwise, it will mean that permits are granted for the theft of private lands for the establishment and expansion of settlements and outposts.
- 5. Because failure to respect the High Court's decision and leaving the structures intact will allow the settlers to continue wreaking anarchy and to establish unauthorized outposts.
- 6. Because this is an illegal and immoral act that constitutes a tacit approval for the continuation of the settlers' rampage, jeopardizing the chances of reaching a peace agreement and the establishment of a Palestinian state.

**.B. The land on which the houses were built is private**

1. **The State has decided**—After years in which the state avoided declaring the status of the lands in Nativ Ha'Avot—apparently due to the knowledge that they are partially private lands—in April 2014, the Custodian of Government Property declared some of the lands on which the outpost was built as "state lands." All the other lands turned out to be private lands. The declared state lands are currently undergoing a legal process after an appeal has been filed against this declaration.



2. **The land was cultivated** - according to the Israeli interpretation of the Ottoman Land Law, cultivated land is considered private land, and uncultivated land reverts to "state land." Aerial photographs prove that those parts that were not declared state land were cultivated.



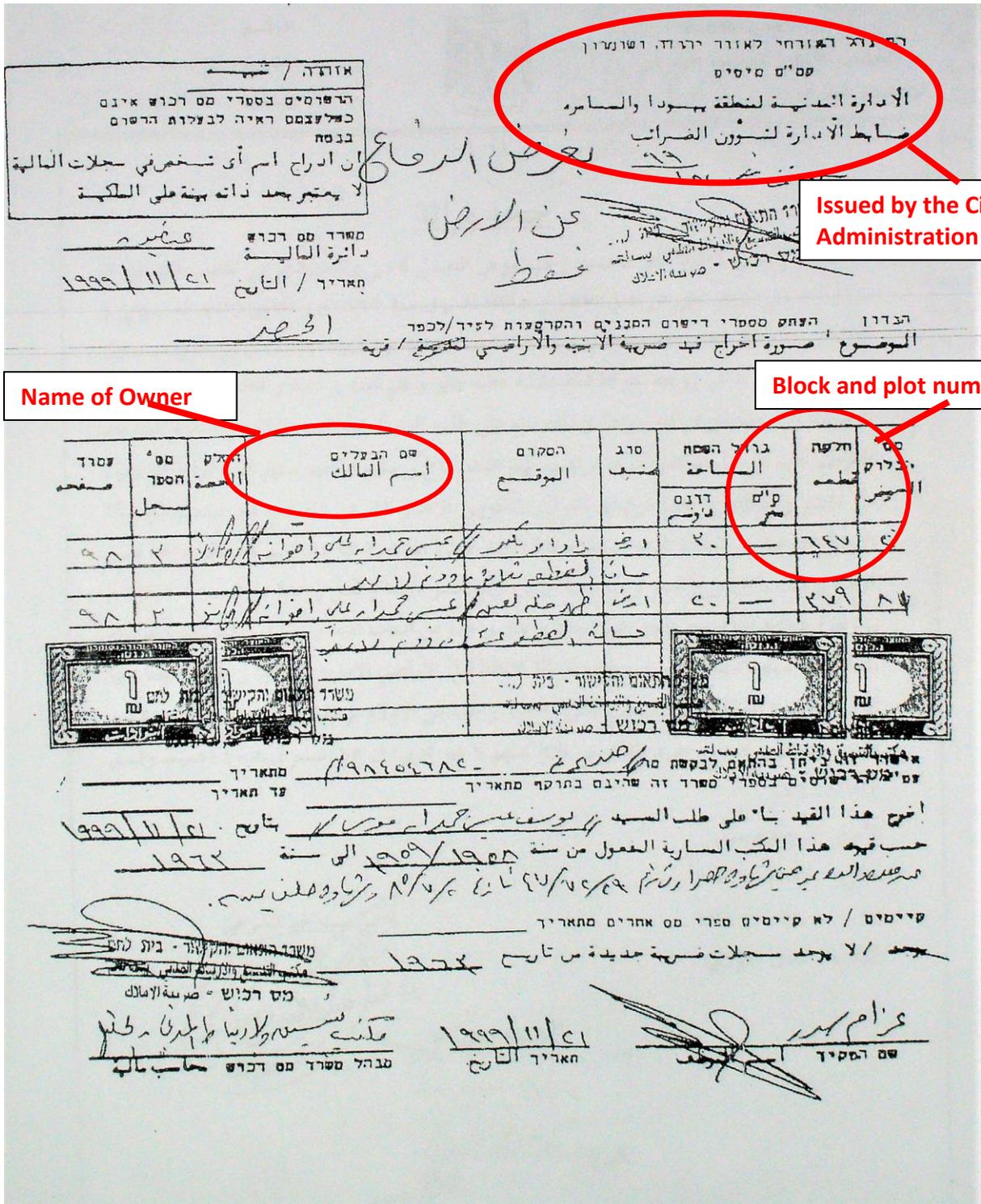
Nativ Ha'avot outpost, February 2, 2002 between terraces and crops

3. **The land has owners** – in the al-Khader area there is no full land registration ("Tabu") (Israel stopped the registration procedure in 1967). Instead of Tabu, the owners possess property tax documents ("Malia") issued by the Civil Administration, which attest to their ownership. The land belongs to, inter alia:

- Ali Muhammad 'Issa Musa
- Yusuf 'Issa Hamdan Musa
- Musa 'Issa Hamdan Musa
- Ribhi Hussein Muhammad Saleh
- Ali 'Abed Muhammad Musa
- Ali Salim Muhammad Musa
- Omar Muhammad Mahmoud Atwan



Some of the landowners in the Supreme Court, September 13, 2017



Name of Owner

Block and plot number

Issued by the Civil Administration

A document of ownership ("Maliah") of the land of the outpost:

**C. All construction in the outpost comprises invasion and theft, both of private land and public land**

1. **The settlers were not given any land, not even "state land," and they paid absolutely nothing for it**—The state's response to the High Court of Justice petition, which was filed in 2008 demanding the evacuation of the entire outpost, stated explicitly that the settlers had no right to take control of the land and that they were intruders for all intents and purposes: *"the establishment of the outpost on the land is considered a trespass, either to private land or to state land."* (24/11/2008)

2. It should be remembered that:

- a. A demolition order was issued by the Civil Administration for every structure built in the outpost, including roads and infrastructure.
- b. The area of the outpost is not within the jurisdiction of any settlement.
- c. There is no approved construction plan that allows for construction in the outpost.
- d. The buildings have no legal building permits.
- e. At least seven petitions have been filed against the outpost over the years: The settlers and the authorities had sufficient time to know that this was an illegal outpost, but they nevertheless continued to build it.

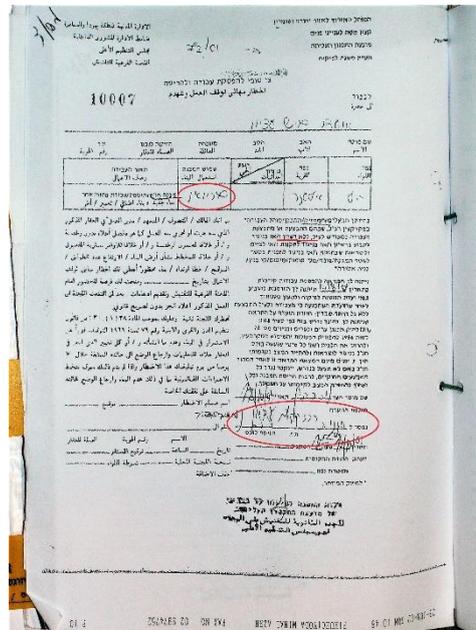
3. The settlers who built their villas in the outpost (including those who built on lands that are now considered, in retrospect, "state lands") did so despite the demolition orders, without permission. They took free private (or public) land for themselves. Now, following the court ruling that they must return them—they complain and put massive pressure on the government, demanding compensation and an alternative solution at the public's expense.

The President of the Supreme Court, Justice Miriam Naor, related to this in her judgment (2016):

*"The legal proceedings in the matter of the Nativ Ha'avot outpost have been going on for many years. Illegal construction has continued over the years, including after orders for the cessation of work and demolition were issued and after the previous judgment was handed down. Under these circumstances, the weight of the settlers' right argument cannot decide the balance. "*

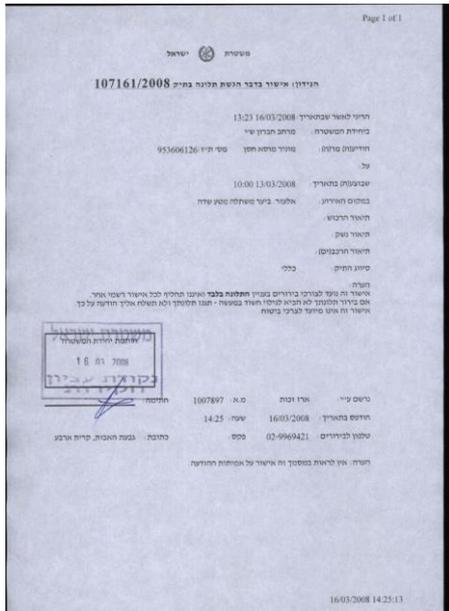
D. The history of the "Nativ Ha'avot" outpost - a chronicle of theft, dispossession and violation of the law

1. **1999 - Settlers prevent the Palestinians from working the land.** According to the settlers themselves, the outpost was established against the background of the Civil Administration's approval of a project in 1999 for the Palestinians to work and improve their land. Settlers who saw what was going on went to the area and blocked the work with their bodies. In cooperation with the Gush Etzion Council, they issued a political campaign to put pressure to cancel the approval by the Civil Administration.
2. **2001 - The caravans arrive –** In 2001, when the intifada on the rise, the IDF was busy fighting and the Palestinians were under siege and curfew, the first four caravans were brought to the outpost to take over the land, and it has not stopped expanding since then.
3. **2001-2017 –The settlers did not pay a penny for the land and received demolition orders immediately at the start of construction -** Immediately after the construction of the first caravans, the Civil Administration issued demolition orders for all the structures built in the outpost. Since then, every building in the outpost, including those built in recent years, has received a demolition order. To date, about 100 demolition orders have been issued for construction in the outpost.

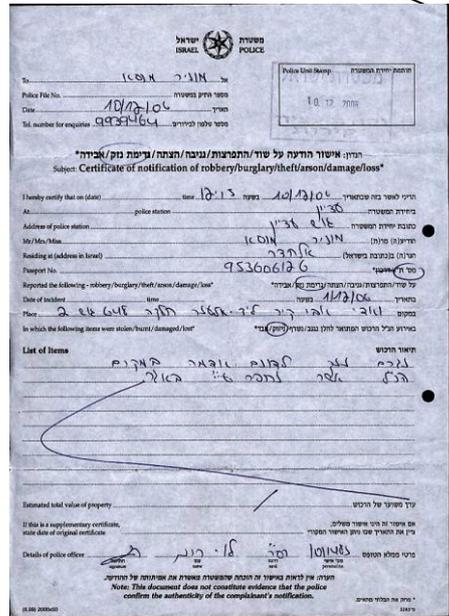


Demolition order no. 72/01 to the trailer, dated October 17, 2001 - "handed to Hananya – the Land Coordinator of Etzion"





A complaint from 2008



A complaint from 2006

- B. **Petitions** - In the absence of a substantive response, three petitions were submitted to the High Court of Justice on behalf of the Palestinians: **HCJ 5083/02** Yosef Musa v. The Civil Administration et al; **HCJ 7379/02** Omar Muhammad Sabih v. The Civil Administration; and **HCJ 1316/03** Huda Salim v. The Civil Administration et al. In these cases, since no land survey was conducted on the ground, the discussion moved to the matter of examining the land ownership in the relevant bodies in the Civil Administration - but in the end the question of ownership was not decided. The outpost continued to develop and the Palestinians remained barred from reaching their lands.
5. **2008 — Another petition filed by the owners with Peace Now** - demanding the evacuation of the entire outpost (HCJ 8255/08 Ali Musa et al. V. Minister of Defense et al.). In response, the state announced that it intends to conduct a land survey to determine the exact status of the land and promised that **"structures discovered to be built on private land, the demolition orders against them will be enforced"** and that the government will consider authorizing the structures that on state land. In the judgment, the late Justice Edmond Levy harshly criticized the fact that the state had committed for years to conduct a survey to determine the status of the land, but did not do so. In the end, he ruled that the Civil Administration's priorities for law enforcement should not be interfered with in this case, but ruled that: "The petitioners have the right to appeal to this court again, to the extent that they see cause for this in the future."

6. **2014 - The declaration of state land (and in fact of private land)** - In April 2014, the Custodian of Government Property [declared](#) nearly 1,000 dunams in the area west of Bethlehem as "state land." Part of the land on which the Nativ Ha'avot outpost was built was declared state land, while other sections of the land remained outside the declaration because the state's examination revealed that it was cultivated, and therefore considered private land. This declaration was appealed by the landowners who claim that the entire area is private land (Appeal No. 50/14). This appeal is pending before the Military Appeals Committee at Ofer Camp.
  
7. **2014 – A Petition demanding the demolition of the structures on private land submitted to the High Court of Justice** - The months passed and it turned out that the state was not going to keep its promise to demolish the houses that turned out to be on private land. In November 2014, the owners of the land, together with Peace Now, filed a petition to demolish 17 structures that turned out to be on private land (HCJ 7292/14 Ali Musa et al. V. Minister of Defense et al.). As it happens, the High Court of Justice ruled that the state must demolish the non-residential structures until December 31, 2016, and the 13 residential houses until March 6, 2018.
  
8. **2015 – A petition to halt the wave of construction in entire outpost** - Immediately after the declaration of state land, settlers began massive construction at the parts of the outpost that were declared state land. Here, too, the houses were built illegally, without permits while the builders don't pay a penny for the land. All of the houses received demolition orders that but they were never enforced. The Palestinian landowners, who claim ownership of the land and whose appeal against the declaration is still pending at the Appeals Committee, were again forced to petition the High Court of Justice demanding that all construction in the outpost be halted (**HCJ 5480/15** Mariam Musa et al. V. Minister of Defense et al.) The High Court of Justice issued an interim order forbidding continued construction, and the petition is still pending before the court.

## **Appendix: Declaration of State Lands – "the legal theft"**

### **1. How did state land suddenly appear in Nativ Ha'Avot?**

**A. Israel's draconian Interpretation of the Ottoman Land Law** – In the early 1980s, legal experts at the Ministry of Justice developed a method for taking control of land in the occupied territories, based on a unique interpretation of the Ottoman Land Law of 1858. According to the Israeli interpretation, if the land is not registered in the Tabu (Land Registry) and is not cultivated for several years - it is considered public land (also called "state land"). Thus, during the 1980s and 1990s, a comprehensive survey of West Bank land was conducted and hundreds of thousands of dunams (about a sixth of the West Bank) were declared state land.

In effect, the only way for the Palestinians, the landowners in the occupied territories, to maintain their ownership is to ensure that the land is cultivated continuously and intensively. If the land is rocky, if the growth is thin, or if the owners simply do not want to engage in agriculture - the land is transferred to the Civil Administration. It is almost impossible to maintain private ownership in such cases, because the registration process in the Tabu (Land Registry) was also stopped by Israel.

The proof that this is a unique Israeli interpretation is that since the Ottoman Land Law was enacted in 1858, the Ottoman rule, the British Mandate, and the Jordanian government were operating in the West Bank. None of them interpreted the law so extensively, and the land registered in the name of the state according to the law was very limited.

The state doubly benefits from this method: It confiscates land for settlement purposes without expropriation (which is prohibited under international law) and does not pay compensation for the expropriation, because it is merely a "declaration." (For more on this process, see B'Tselem's report, "[Under the Guise of Legality](#)").

**B. Until the establishment of the outpost, no one thought of declaring the land as state land** (other than the settlers).

In the extensive survey of the 1980s, tens of thousands of dunams were found in the Bethlehem area, which were declared as state lands. The lands in the "Nativ Ha'avot" area were not declared because most, if not all, of them were cultivated.

In 1999, when the Palestinians sought to improve their land and cultivate more rocky and less cultivated parts of their land, the Civil Administration granted them approval to work in the lands. This means that at the time, the Civil Administration did not see the land as state land. But the settlers did not view this favorably and they blocked the work by force and established the outpost. Eventually, in order to prevent its dismantling, a new survey was conducted that succeeded in "extracting" a few more pieces of land and sections of plots that were not extensively cultivated and declared them as state land.

**C. In the Jordanian period, there were no "state lands"** - Another example of dishonesty of the Israeli method, is the fact that in the village of al-Khader, on whose land the outpost was built, the Jordanian authorities had begun a process of land registration in the Tabu, known as Land Registry. The process, which began in the 1960s, was about to reach completion and final publication, but the Six-Day War (1967) interrupted it. All the village lands were divided into plots, with agreed borders and owners, and the authorities also set the boundaries of state lands. The hill on which the outpost was later built was considered private land according to the nearly completed Jordanian arrangement. The Jordanians did not claim that the land was not cultivated and therefore it was state land.

**D. The Palestinian landowners filed an appeal against the declaration of state land** (Appeal No. 50/14). The appeal is currently being heard by the Appeals Committee of the Civil Administration, which is the judicial body that advises the head of the Civil Administration on this matter. As long as the appeal is not over, it is legally forbidden to allocate the land for any use, and certainly not to give someone rights to the land (which may eventually turn out to belong to someone else). Therefore, at this stage, the government cannot approve a building plan for the outpost or authorize any of its houses.

In conclusion, the entire definition of land as "state land" in this area stemmed from the fact that the settlers forcibly prevented the landowners from cultivating their land. The Israeli method of "declaring state land"—enabling the seizure of plots of land from their owners, which the state claims have not been cultivated for several years—is **an immoral method that is actually stealing land under the guise of legality.**

## **2. "State lands" - of which state?**

The more precise term for "state lands" is "public lands," i.e., lands belonging to the public. In the occupied territories, even though they themselves are not part of the State of Israel, Israeli governments are those that manage the public lands through the IDF (the Civil Administration).

However, Israel's use of state land is discriminatory and reeks of racism. [According to data](#) provided by the Civil Administration to the Israeli Association for Human Rights and Bimkom in the framework of a petition under the Freedom of Information Law, 98.73% of the public land allocated in Area C was given to Israelis. [Only 1.27% of the public land](#) was allocated for the use of the Palestinian residents.

Thus, from a moral standpoint, even if we accept the Israeli interpretation of the law, public lands are supposed to serve the general public living under Israeli rule in the occupied territories. In order to rectify the long-standing discrimination in the distribution of the most expensive public resource, the land should be allocated to the needs of the Palestinian public and not to the settlers.