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Palestinians that the status quo is untenable, but he did not offer a diplomatic framework for changing it. In response to Netanyahu's view that Israel's conflict with Palestinians is a "marginal issue," Obama declared its resolution central to not only Israelis and Palestinians, but to Americans as well.

Obama committed to U.S. support for Israel's security and Palestinian statehood and appealed to citizens to demand that their leaders make peace. His criticism of settler violence and his argument that an Israeli withdrawal from West Bank territory in the context of peace will enhance not only Israel's security but also that of the United States were unprecedented.

Obama called for new thinking and a rejection of "the formulas and habits that have blocked progress for so long." He omitted the view expressed in his first term that continued settlement was not "legitimate." In its place, he noted, the United States "does not consider" continued settlement activity "to be constructive, to be appropriate, to be something that can advance the cause of peace." He did not mention the June 1967 line as the point of departure for negotiations, and all but abandoned previous support for a settlement freeze that was at the heart of his failed, first term diplomatic effort. These views telegraphed a presidential reaffirmation of an American retreat from the view that settlement expansion and an Israeli commitment to base talks on the June 1967 line belong at the heart of any diplomatic initiative.

### **No Settlement Freeze**

Obama confirmed his decision not to focus U.S. policy on a settlement freeze, or settlements at all. In a critical reference to the Palestinian view at his press conference with a somber looking Palestinian Authority (PA) President Mahmud Abbas, he said:

*With respect to whether there's a requirement for a freeze or moratorium . . . if the only way to even begin the conversations is that we get everything right at the outset, or at least each party is constantly negotiating about what's required to get into talks in the first place, then we're never going to get to the broader issue, which is how do you actually structure a state of Palestine that is a sovereign, contiguous, and provide the Palestinian people dignity, and how*

*do you provide Israel confidence about its security, which are the core issues.*

*. . . And that's the essence of this negotiation.*

*And that's not to say settlements are not important. It is to say that if we solve those two problems, the settlement problem will be solved.*

*So I don't want to put the cart before the horse.*

*I want to make sure that we are getting to the core issues and the substance, understanding that both sides should be doing what they can to build confidence, to rebuild a sense of trust. And that's where, hopefully, the U.S. government can be helpful.*

In the coded language of Middle East diplomacy, Obama resurrected an argument used by Secretary of State Hilary Rodham Clinton in the past to rationalize the failure of the administration's settlement freeze diplomacy. Placing settlement expansion in the context of a final status discussion of borders, that is, to reduce its negotiating profile—was first employed by then Prime Minister Ehud Barak to downplay his approval of settlement expansion near Nablus before the July 2000 Camp David summit. Why be concerned about settlement expansion, he argued, or for that matter continue the redeployments called for in the Oslo accords, when an agreement on borders would soon be reached?

Nonetheless, the response to Obama's remarks among some Israeli politicians was less than enthusiastic. Naftali Bennet, the new minister of Economy and Trade from the Jewish Home party and a settler himself, asserted,

*The general atmosphere reminded me of the Oslo era. The feeling [of] "If we only will it, if we are only able to cede enough ground, the long-awaited peace will come. One must take chances for peace," "People on both sides want peace," "a Palestinian state next to Israel is the only chance for peace." All of these are nice statements, but they are divorced from reality. . . .*

*I desire peace with the Arabs no less than anyone else does, but the path of handing over territory to our enemies is not right. I told President Obama: "It is time to explore new avenues, which are different and creative." He said that it is important for him to meet and listen.*

### **Obama in Ramallah**

PA President Mahmud Abbas had equally pointed concerns.

During his visit to Ramallah in the West Bank, Obama sought Palestinian concessions on their continuing demand for a settlement freeze and an end to

“unilateral” efforts to win international support from institutions like the United Nations and International Criminal Court, without, however, offering a diplomatic plan for resolving the core issues of Palestinian statehood and Israeli security.

At the joint press conference with Obama, Abbas rejected the U.S. president’s views on a settlement freeze, and reaffirmed support for the Arab Peace Initiative and the Road Map, both conspicuous for their absence in Obama’s public remarks. [Abbas declared,]

*Regarding the issue of settlements, it is not only our perception that settlements are illegal, but it is a global perspective. Everybody considers settlements not only a hurdle, but even more than a hurdle, towards the two-state solution.*

*... We are asking for nothing outside the framework of international legitimacy. Hence, it is the duty of the Israeli government to at least halt the activity so that we can speak of issues. And when we define our borders and their borders together, each side will know its territory in which it can do whatever it pleases.*

...

*We continue to believe in the two-state solution [based] on the 1967 borders, and consequently, if peace between us and the Israelis is achieved, the Israelis will know very well that the Arab and Islamic world all together, which means fifty-seven Arab and Muslim states, shall immediately recognize the State of Israel according to the Road Map and the Arab [Peace] Initiative.*

### **Kerry Manages Diplomacy**

Secretary of State John Kerry has been tasked to devise a new U.S. negotiating strategy that will halt what Obama himself believes are the deteriorating prospects of a two-state solution. The president aspires to a diplomatic engagement centered on a discussion of borders and security, without, however, an effort to freeze settlements. He has rejected the premise that negotiations proceed from a unanimous recognition of the June 1967 line as the starting point of negotiations, a key achievement of the Annapolis talks led by Secretary of State Condoleezza Rice in 2008. Instead, the United States has resurrected half-measures aimed at building “trust and confidence” as incremental steps toward an undefined “broad vision of peace.” Secretary of State Kerry has endorsed an aid and investment-led effort focused on

improving Palestinian “quality of life”—recalling the similar effort by Secretary of State George Schultz in the 1980s.

Even the modest goals of such a strategy, all but divorced from a focused effort to end occupation, stand to be jeopardized by the resignation of Salam Fayyad as PA prime minister. Fayyad has been the key Palestinian interlocutor for Western economic aid and security assistance.

During his visit, Obama failed to offer a U.S. policy based upon a compelling vision and a plan for ending occupation and establishing a Palestinian state at peace with Israel. Yet only by adopting such a view can the president make credible his eloquent appeal for popular Israel and Palestinian support and confront the views of leaders like Minister Bennett, who noted that Palestinians are considered “enemies” to be vanquished rather than partners with common interests.

### **SETTLEMENT POLITICS AND THE NEW ISRAELI GOVERNMENT**

#### **“IN ISRAEL, SETTLEMENT POLITICS IS LOCAL”**

*From Settlement Report, March–April 2013. (Excerpted from “Netanyahu Builds on the Leaders of Yesha,” Ma’ariv, 27 December 2012.)*

Weeks before his reelection, Prime Minister Benjamin Netanyahu met with the heads of West Bank settler councils to seek their votes and political aid. Despite the ruling Likud party’s support for settlement and the commanding presence of settlers in the party’s ruling councils, Netanyahu felt it necessary to make a politician’s case to settlement leaders sympathetic to the rival Jewish Home party, itself a coalition representing the heart of the religious Zionist settlement movement.

Israel’s settlement policy is at the heart of international concern, but for the politicians gathering at Netanyahu’s request, settlement was a matter of local politics. Settlement leaders complained that Netanyahu had yet to implement the findings of the Levy commission, which called for the transfer of settlement oversight and planning from state security institutions to settler and civilian

agencies. As always, these local politicians demanded even more settlement construction.

In response, Netanyahu made his case for electing a large Likud majority at the expense of smaller parties like Jewish Home: "It is clear to everyone that this government has done a considerable amount in the last four years to promote settlement in Judea and Samaria," including removing from the national agenda the Annapolis plan for negotiations to divide Jerusalem and return to the June 1967 border promoted by former prime minister Ehud Olmert and his foreign minister (and new minister of justice in the just-seated government) Tzipi Livni; bringing ten thousand secular students to Hebron's Cave of the Patriarchs; constructing tens of schools and classrooms for a growing settler population now numbering over three hundred fifty thousand in the West Bank alone (excluding the two hundred thousand plus in East Jerusalem); investments in infrastructure and the paving of tens of kilometers of high quality roads; approvals for the construction of thousands of new settlement dwellings; official recognition of the university status of the school in the settlement of Ariel, and more.

"We should thank the prime minister," explained one leader from Efrat settlement near Jerusalem. "Netanyahu ended the drying out of my settlement council, and after twelve years of a freeze we received approval for the construction of hundreds of new dwellings."

**"SETTLEMENTS, NOT SOLUTIONS, TOP AGENDA FOR NEW ISRAELI GOVERNMENT"**

*This article was published in The Christian Science Monitor on 24 March 2013. It was authored by Joshua Mitnick. The text is available online at [www.csmonitor.com](http://www.csmonitor.com).*

President Obama received glowing praise from Israelis for a Jerusalem speech last week in which he reaffirmed his support for the two-state solution. But with the new Israeli cabinet's first working meeting today, a government that could lower the prospects of an eventual Palestinian state is taking the helm.

As a result of the strong electoral showing by the nationalist Jewish Home

party, which earned it a place in the governing coalition, key ministries and other government positions will be held by settlers and their allies, who are determined to make the Israeli presence in the West Bank and East Jerusalem irreversible.

"This is the opposite of a dream team, in every important intersection of authority," says Danny Siedemann, a Jerusalem lawyer and peace activist who monitors Israeli building in East Jerusalem and the West Bank. "All of these people are predisposed to an unprecedented settlement surge, in the West Bank and East Jerusalem. All of them are hostile to the two-state solution."

Although newly appointed Israeli Trade Minister Naftali Bennett, the charismatic leader of Jewish Home, exchanged pleasantries with U.S. ambassador to Israel Daniel Shapiro at a dinner to honor Mr. Obama, he speaks openly about doubling the number of settlers in the West Bank and East Jerusalem to one million and annexing much of the West Bank. As trade minister, he can award permits to Israeli businesses seeking to set up premises in West Bank industrial zones and exert influence on decisions made by other ministries.

With Jewish Home members also leading Israel's housing ministry, which oversees construction in the West Bank as well as Israel, and the Israeli parliament's finance committee, Mr. Bennett and allies are well positioned to push that agenda. Shortly after Obama's speech, Mr. Bennett posted a response (in Hebrew) on his Facebook page:

"A Palestinian state isn't the correct path," he wrote. "It's about time for new and creative solutions to the conflict in the Middle East. Moreover, there's no such thing as an occupier in his own land."

***The Coming Lovers' Quarrel***

To be sure, in the immediate aftermath of Obama's first state visit to Israel—almost universally recognized as a success if the measure is his ability to reassure Israel of his support—this line of criticism seems to be in the minority.

After Obama emerged from Israel's Yad Vashem Holocaust Memorial, Israel's former chief Ashkenazi rabbi, Meir Lau, a Holocaust survivor who served as an escort on the stop, told Israel Radio that

Obama had been moved by the museum. "If anyone did think he was an enemy," he said, "they now know he is a lover."

The visit was a success, in part, because Israel's government was on its best behavior. The army largely ignored rocket attacks from Gaza and an encampment of Palestinians in a controversial tract of land just to the east of Jerusalem. And unlike three years ago, when a new building project in East Jerusalem was announced during Vice President Joe Biden's visit to the country, similar discussions of new Israeli building projects—like a military academy in East Jerusalem—were dropped from the agenda of planning boards.

But Uri Ariel, the new housing minister from Jewish Home, is likely to bring those projects—and many more—back on the agenda. The far-right parliamentarian who resides in the settlement of Kefar Adumim knows about building in the West Bank from years of experience: He once headed the Amana Movement, a thirty-four-year-old settler organization that oversaw home building and the organization of new communities in the West Bank and Gaza Strip. He was also director general of the settlers' umbrella leadership, the Yesha Council, in the late 1980s and early 1990s, when settlement activity surged.

In an interview with the pro-settler weekly *Eretz Yisrael Shelanu* (Our Land Israel), he invoked the Messianic theology of the religious settler movement, saying his appointment marks "another stage on the path to redemption."

He also cited his career of advancing building "in all parts of our holy land." "With God's help, I will continue on this path," he told the newspaper.

### ***Bracing for Bad News***

Obama said during his central address in Israel that settlement construction threatens a two-state solution: "Israelis must recognize that continued settlement activity is counterproductive to the cause of peace, and that an independent Palestine must be viable with real borders that have to be drawn."

But now that the glare of the presidential spotlight has abated and Mr. Ariel is heading the ministry that prepares government building tenders in the West Bank, settlement watchdogs are bracing

for new announcements about controversial projects like East Jerusalem's Kidmat Tziyon, a 300-unit planned housing development located near a Palestinian Jerusalem neighborhood next to the Mount of Olives.

Siedemann said that in the next couple of weeks, the "logjam" of building projects in the West Bank and Jerusalem is liable to burst.

The international community will also be focused on the fate of E1, a land tract Israel's government has slated for housing, but is seen by critics as driving a wedge between the northern and southern West Bank. New building projects in far-flung settlements beyond Israel's separation wall will also be watched closely.

Ariel is a "man who gets things done," says Gil Hoffman, the political reporter for the *Jerusalem Post*. That said, Mr. Hoffman insists that Ariel is a pragmatist and will seek to maintain the pace of building under previous governments rather than a provocative building surge.

### ***Normalization***

Many Israelis expect that Jewish Home will use its leadership of the Knesset Finance Committee, which prepares the annual budget, to channel additional funds to the settlements.

Defense Minister Moshe Ya'alon has perhaps the most power after Prime Minister Benjamin Netanyahu. The hard-line member of Likud who is considered sympathetic to the settlers' goals has far-reaching powers to authorize building in the West Bank and has publicly said that an accord with the Palestinians is unrealistic in the near future.

The United States is hoping that Obama's positive first trip will reinvigorate peace efforts, though most settlers are not worried. They see the composition of the new Israeli cabinet as a reassurance that Israeli policy will move away from peace negotiations. Yisrael Meidad, a resident of the settlement of Shilo, says the new government could normalize Israeli perceptions of the settlers; many non-settler Israelis are generally not enthusiastic about the settlements and believe that many should be returned to the Palestinians for peace. If attitudes changed, Israel could be headed toward a starkly

different vision than that laid out by Obama.

"[The new government] might bring us in from the cold," Mr. Meidad says. "We've graduated from being cautiously optimistic to looking forward to its ability to consolidate what I think is the latent willingness of Israel's population to be comfortable with right-wing or nationalist Zionism."

#### INTERNATIONAL AND LOCAL LEGAL MECHANISMS: UN REPORTS AND STATE LAND IN ISRAEL

**"BY IGNORING INTERNATIONAL LAW, ISRAEL IS ONLY HURTING ITSELF"**

*This article was published in Ha'Aretz on 8 February 2013. It was authored by Ruth Gavison, a law professor at the Hebrew University in Jerusalem. It appeared in Settlement Report, May–June 2013 as "Law Expert Says Israel Cannot Ignore UN Report on Settlements."*

Israeli government officials are absolutely correct to point out that the UN Human Rights Council is a biased, anti-Israeli body. Nevertheless, one should not ignore the recent report on West Bank settlements written at its behest [*See Document A5 in JPS 167*], since it reflects the maturation of a prolonged process, typical of international law.

The report reflects the views of the international community, which sees Israel not only as an on-going occupier in the West Bank, but also one that conducts itself as proprietary owners, perceiving their rights as overruling the Palestinians' quest for self-determination on part of their homeland.

It should be noted that in contrast to the council's report, which views the 1967 borders (the Green Line) as the only criterion for the legitimacy of Jewish settlement projects, the Israeli government has before it the report prepared by retired justice Edmond Levy [*See Document C1 in JPS 165*] that states otherwise. This report, basing itself on the same international law, asserts that the entire West Bank is a legitimate target for Jewish settlement, subject to proprietary rights of Palestinian residents.

The state and its courts have done their utmost to avoid taking an unambiguous stand regarding the legality of Jewish settlement beyond the Green Line in the context of international law. The courts have dealt mainly with property rights of individual Palestinians, such as in the case of Elon Moreh, where the expropriation of private land by settlers was forbidden. The courts have never, however, addressed the significance and ramifications of the injunction against an occupying state transferring its population to conquered territory. The international community has always been critical of the settlement enterprise, but its terminology—for example, "obstacles to achieving peace"—has been more vague than explicit about its illegality, which continues to be the case.

The Rome Treaty of 1998, establishing the International Criminal Court, laid the foundation for the new UN report. The treaty explicitly defines as a war crime the transfer of populations to occupied territories by a victorious combatant. This treaty had the Israeli-Palestinian conflict in mind when the wording of this definition was addressed. Thus, the declared and consistent policy of transferring Israeli citizens into the West Bank, in the context of a territorial dispute, is now judged not only as undesirable, but as patently illegal in the eyes of the entire international community, including the United States. This puts Israel on a collision course with international opinion. The criticism is only bound to get worse.

Changing the debate over the settlement enterprise into a legal one is, indeed, bad for Israel. There is no distinction between legal and illegal settlements, as judged by Israel, or between Jerusalem settlement blocs or more isolated settlements. The new discourse entirely ignores local political and security considerations and does not encourage negotiations or mutual concessions. It is, therefore, understandable why Israel objected to including this topic in the Rome Treaty; it was overruled.

Israel and its leaders will face mounting criticism, and even sanctions, if they continue to argue that it is permissible for Jews to settle anywhere in mandatory, pre-1948 Palestine (excluding private land), as the Levy report contends, rather than claim that this is how it currently

interprets international law, until the issue is clarified.

After the Israeli political parties' deliberate suppression of this topic during the election campaign, the new government will have to make a decision: Will it support a two-state solution or will it continue to see the West Bank as part of the Jewish homeland? It must surely be aware that the second choice, based on the Levy report, will be an explicit rejection of the commitment to the concept of international law as perceived by the world.

Thus, the government in fact has no choice. It is time that it accepts that even according to its own courts, Judea and Samaria are occupied, or held, territories. As such, they are not part of the state of Israel and no "annexation" can alter this fact. According to international law, a country cannot act as the owner of conquered lands and settle them with its citizens. Such conduct is no longer merely forbidden, but now constitutes a war crime.

The government's obligation to abide by international standards and statutes does not constitute "surrender" to its enemies, but rather recognition of its commitments to them as well as Israel's best interests. Thus, it is of vital urgency that Israel make a distinction between settlements that are already established, and thus probably not subject to the treaty's clauses, and settlements not yet built. Negotiations should be based on this distinction.

There should also be some weight given to "facts" that were established on occupied territory, even if they turn out to have been unlawful, and to the length of time that has elapsed, not all of which was the fault of the Israelis. Israel is right in arguing that a total dismissal of the entire settlement project and a call for full withdrawal is unrealistic and not conducive to finding a solution. It is obvious that some areas will remain under Israeli control, and construction there should be allowed, as opposed to construction in other areas . . .

**"TAKING OVER PALESTINIAN LAND IN THE WEST BANK BY DECLARING IT 'STATE LAND'"**

*This article was published by B'tselem on 13 March 2013. It can be found*

*online in their Settlements section at [www.btselem.org](http://www.btselem.org).*

Since the High Court of Justice ruling on Elon Moreh (1979), which prohibited the seizure of private Palestinian lands for the purpose of building Israeli civilian settlements, the Israeli government announced that it would build settlements only on land that has been declared state land. The state reasoned that there are no obstacles to establishing settlements on state land, unlike on privately owned land, or to using state land for any purpose that the authorities see fit. However, this view runs contrary to the law which stipulates that state land in the West Bank, even if declared as such prior to 1967, is not to be earmarked for the use of the State of Israel, but rather for the use of the local Palestinian population. Israel, as an occupier, is not sovereign of the area and therefore has no ownership of the land, even of "declared state land." Nevertheless, practically no state lands have been allocated for Palestinian use, whereas their vast majority was handed over to settlements for their exclusive use.

When the Israeli government decided to establish settlements on state land, it encountered a problem: There was only a very limited amount of land registered as state land (some 527,000 dunams, [52,700 hectares]) and it was practically all located in the Jordan Valley and the Judean Desert. The state, however, wished to build settlements in the central Mountain Ridge of the West Bank.

The authorities solved the problem by rewriting the rules and applying an entirely different interpretation to the Ottoman Land Code, which remains the valid land law. By employing these tactics, between 1979 and 2002, Israel declared over 900,000 dunams as state land. This figure represents a 170 percent increase in the amount of state land in the West Bank prior to the Israeli occupation.

The new interpretation employed by Israel facilitated the declaration of state land, even in cases of land that was considered collective or private Palestinian property under the Land Code, as it was interpreted first by the Ottomans, then the British and finally the Jordanians when they controlled the West Bank.

Israel's interpretation imposed rigorous conditions of prolonged agricultural cultivation as a condition for acquiring ownership rights to the land. In addition, the Israeli interpretation disregarded the provisions of the local law, which grant Palestinian communities collective usage rights to grazing lands and other public lands. . . .

A comparative survey B'Tselem conducted in the Ramallah district for the report "Under the Guise of Legality" it published in 2012, reveals dramatic differences between the percentage of land Jordan registered as government property in areas of registered land ownership and the amount Israel declared as state land in areas the Jordanians did not manage to register prior to 1967. The results of the survey support the conclusion that a significant percentage of the land that Israel declared as state land is actually privately owned Palestinian property, which was expropriated from its lawful owners through legal manipulations and in violation of local and international law alike. . . .

**"JUST 0.7% OF STATE LAND IN THE WEST BANK HAS BEEN ALLOCATED TO PALESTINIANS, ISRAEL ADMITS"**

*This article was published in Ha'Aretz on 28 March 2013. It was authored by Chaim Levinson. The text is available online at [www.haaretz.com](http://www.haaretz.com).*

Over the past 33 years, the Civil Administration has allocated less than 1 percent of state land in the West Bank to Palestinians, compared to 38 percent to settlers, according to the agency's own documents submitted to the High Court of Justice.

The West Bank includes 1.3 million dunams (approximately 325,000 acres) of "state land," most of which is allocated to Jewish settlements.

The declared policy of the previous Netanyahu government was to remove Jewish construction from private Palestinian land in the West Bank and to approve all construction on state lands.

According to the classification of the Civil Administration, a small amount of "state land" was registered with the Jordanian authorities until 1967. But most declared "state land" was declared as such after 1979.

The need for such a declaration emerged in October 1979, when the High Court struck down as unconstitutional the state's practice of seizing Palestinian land, ostensibly for "military needs" but in practice in order to establish Jewish settlements.

It was after 1979 that the process of the wholesale declaration of territory as state land began. According to the law in the West Bank, any land with continuous agricultural cultivation for at least 10 years becomes the property of the farmer; land under cultivation cannot be seized by the state.

Although the Civil Administration team charged with determining which lands are cultivated is supposed to base their conclusions on testimony and aerial photos, a senior official in the Civil Administration conceded recently in the Ofer Military Court that the decisions are political.

The hearing at which the official was speaking was over the state lands declared with regard to the Hayovel outpost. The latter has been at the heart of a High Court case for over 7 years. The state had decided to retroactively authorize Hayovel, but aerial photos clearly show a number of houses and cultivated land, and the road to Hayovel goes through private Palestinian land. The state therefore devised a method of declaring the area between cultivated spots, for example, between trees, as "uncultivated" and thus it could deem it state land. Palestinians claiming ownership of the land petitioned against the decision through the organization Yesh Din and attorney Michael Sfar.

In a court hearing in January an official from the Civil Administration's oversight unit, Gilad Palmon, told the court: "The official who decides on the declaration [of state land] is at the political level, the defense minister." Another Civil Administration official, Yossi Segal, said: "The political echelon decides the size of the area."

Three years ago the Association for Civil Rights in Israel and Bimkom—Planners for Planning Rights asked the Civil Administration, by dint of the Freedom of Information Law, for figures on the extent of state lands in the West Bank. The Civil Administration refused to

provide the information and the organizations asked the court to intervene.

The Civil Administration's representatives told the court that there are 1.3 million dunams of state land in the West Bank and that it could not provide additional data. Jerusalem District Court Judge Yoram Noam did not accept the response and instructed the agency's representatives to provide more information.

The Civil Administration subsequently provided the court with the following details: 671,000 dunams of state land is still held by the state. Another 400,000 dunams were allocated to the World Zionist Organization. Most of the Jewish settlements, both residences and agricultural land, are on this land.

Another 103,000 dunams of state land were allocated to mobile communications companies and to local governments, mainly for the construction of public buildings.

Utilities such as the Mekorot water company, the Bezek communications company and the Israel Electric Corporation received 160,000 dunams, 12 percent of the total state land in the West Bank.

Palestinians have received a total of 8,600 dunams (2,150 acres), or 0.7 percent of state land in the West Bank.

The Civil Administration told the court that of this, 6,910 dunams were in the Jenin district, land allocations made a long time ago that are now in areas A and B (under full Palestinian control or Palestinian civilian and Israeli military control, respectively). One dunam was allocated for a stone quarry in the Hebron district; 630 dunams in the Bethlehem district were allocated for Bedouin; 1,000 dunams were allocated in the Jericho district and 10 dunams were allocated in Tulkarm.

Nir Shalev, a researcher for Bimkom, said: "Israel has claimed for years that the settlements are built only on state land, a claim that is repeatedly shown to be inaccurate. The data on allocations to the Palestinians, which the Civil Administration was forced to reveal, show the other side of the coin: Israeli policy determines that state lands in the West Bank are for the use of Israelis only—mainly settlers."

Because state land is essential for the expansion of settlements, a great deal of

pressure is exerted to influence the decision of where such lands are declared. *Ha'Aretz* checked and found that even when the state claims that certain lands are state lands, the process of determining usage beforehand is careless, and land declared as state land also includes private Palestinian land and cultivated land. One example of such carelessness regards the large settlement of Givat Ze'ev, northwest of Jerusalem. Next to the settlement is a home belonging to a Palestinian man, Saadat Sabri, who also cultivated a plot of land nearby.

In 2006, when building began on the separation barrier, bulldozers destroyed his fields. Although aerial photos clearly showed the land was cultivated the state declared the land to be state land in 2010 and joined Sabri's plot to Givat Ze'ev. Sabri petitioned the High Court against the move.

Researcher Dror Etkes found that land important to the expansion of settlements was declared state lands, including territory near Susia, Tekoa, Ma'ale Adumim, Kiryat Arba and other Jewish communities.

In the center of Ma'ale Adumim, for example, is land that aerial photos from the 1970s show as partially under cultivation. Yet in 2005 the entire area was declared state land and is now built on.

"The findings, which are a sampling, prove the claims that Palestinian landowners have been consistently presenting over the past few decades: Under the aegis of the broad declaration of lands as state lands, which includes almost a million dunams, Israel has taken over extensive cultivated areas, which were stolen from their owners through administrative decisions over which public and legal oversight is minimal, because they were supposedly not cultivated."

The director of Yesh Din, Haim Erlich, said: "Yossi Segal, who is in charge of abandoned property in the West Bank, reveals the painful and ugly fact that we have been aware of for some time: The survey, which is supposed to be professional, has become a political tool."

The Civil Administration did not respond to numerous requests for comment.

## THE DEFINING CHARACTERISTICS OF SETTLEMENT POLICY

### “OBSERVATIONS ON ISRAEL’S SETTLEMENT CONSTRUCTION PROGRAM”

*From Settlement Report, May–June 2013.*

Secretary of State John Kerry has revived U.S. interest in a diplomatic solution to the conflict between Israel and Palestinians. The government of Benjamin Netanyahu, for its part, has temporarily reduced certain elements of its settlement expansion program, suspending tenders for a number of weeks for new construction in some of the largest settlements.

More broadly, however, the main components of the program proceed unhindered. As the U.S. effort continues, Israel’s program of settlement expansion continues to be defined by the following characteristics:

#### **Construction**

The growth of the settler population in the West Bank is the most telling indicator of the stable growth and continuing success of the settlement enterprise. The settler population increases annually at a steady pace, notwithstanding occasionally dramatic swings in new building tenders and construction. This stability reflects the contribution to population growth provided by the natural increase of existing settler families, particularly in the large settlements, notwithstanding continuing migration from Israel to settlements.

Israeli housing policy favors construction in the largest settlements, where demand for new construction is being met to a far greater degree than in Israel itself. For example, the number of dwelling units constructed between 1996 and 2010 in Ariel, Beitar Ilit, Givat Ze’ev, Mod’in Ilit and Ma’ale Adumim—the largest West Bank settlements—was almost equal to the demand for new housing in these areas. During this period, these settlements grew by 18,500 households, with 17,800 new units constructed. In contrast, in Israel, new housing construction accommodated only 55 percent of new households during a similar period. Between 1996 and 2008, 20,000 dwelling units were

constructed throughout the West Bank in order to satisfy comparable demand; whereas in Tel Aviv, the most populous and popular region in Israel, the number of new dwelling units matched construction in the settlements, satisfying only about 50 percent of demand for new housing.

The tendering process for new settlement dwellings in the West Bank and East Jerusalem is characterized by striking annual fluctuations, seemingly without overriding political reference or policy coherence. A prominent exception to this trend may have occurred during 2009–12, when initial concerns about the Barack Obama administration’s call for a freeze on new settlement construction resulted in a record low number of tenders in 2009. The numbers of tenders increased, however, as U.S. policy faltered, growing to an unprecedented 3,133 in 2012.

Although there has been a notable decline in recent years in the West Bank’s comparative share of housing starts vis-à-vis Israel’s, down from 7 percent in 2008 to 2 percent during 2010–2012, the large number of new tenders for settlement construction announced in late 2012 will reverse this trend. This development is not unprecedented. A large number of tenders were issued in 2005 and 2006 and later reflected in an increase in housing starts in 2008. Despite short-term variations in the pace of new construction in the settlements, the number of housing units completed annually has been generally stable over the long-term.

In general, the three Israeli governments over the last decade, from November 2002 to February 2012, have maintained a consistent overall pace of tendering for new settlement construction in the West Bank and East Jerusalem settlements.

#### **Population**

Settlements in the middle range in terms of size—between 100 and 250 units (populations of 500 to 1,000)—enjoyed the highest rate of population growth during the period 1995 to 2011, while those at the ends of the spectrum—the smallest and the largest settlements—enjoyed considerable (approximately 100 percent) but markedly slower population

increases. Mid-range settlements appear to offer a solid foundation of social and housing infrastructures for sustainability and growth.

The smallest settlements—those with populations of less than 200—appear to have the most marginal prospects. These settlements are overwhelmingly located in the Jordan Valley, the region most distant from Israel and its metropolitan resources.

Approximately 100 new settlements (“outposts”) have been established since 1996, with a current population of around 3,000.

The 14 largest settlements, with the exception of Ariel, which is linked to the coastal metropolis of Tel Aviv by a modern highway, share a geographical proximity close to the Green Line and metropolitan Jerusalem or Tel Aviv.

In geographical terms, the fastest-growing settlements—the Mod’in bloc and Greater Jerusalem and Etzion bloc settlements—are located close to Israel’s major metropolitan centers. The tremendous investments made to link the Ariel bloc to the Tel Aviv region to compensate for its location in the heart of the West Bank have been far less successful as an engine of population growth. The isolated settlements of the Hebron region, for example, have grown faster than those in the Ariel bloc and the associated Shomron bloc settlements. An important exception to these trends is the increase by 177 percent during 1995 to 2011 of the Highway 60 settlements, located well

east of the separation barrier. This area is also at the heart of the explosive increase in new settlement “outposts.”

The settlements growing at the fastest rate are distributed throughout the West Bank, except for the Jordan Valley and Shomron bloc settlements. They are noted for their geographical variety not only east and west of the separation barrier, but also close to and distant from metropolitan Israel, as well as in terms of population.

There are a score of settlements with populations between 2,500 and 10,000. The settlements along Highway 60 are well represented in this category, as are many others east of the separation barrier. The vast majority of settlements, numbering close to 100, have populations less than 1,000. Most of these are located east of the separation barrier.

These observations highlight Israel’s continuing program of strengthening existing settlements and building new ones without regard to the ill-defined concept of settlement “blocs” or the separation barrier constructed in the last decade. These settlement “facts” have always been meant to define the diplomatic landscape and limit the prospect of withdrawal and the associated creation of a Palestinian state. If Secretary of State John Kerry is to be successful he must reverse this equation, and establish diplomatic limits to the settlement enterprise consistent with the creation of a sovereign Palestinian state.