



# BROKEN TRUST:

## STATE INVOLVEMENT IN PRIVATE SETTLEMENT IN BATAN AL-HAWA, SILWAN

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# Table of Contents

<b>I. The Reality</b> .....	4
A. The Batan al-Hawa Neighborhood and Settlement Plan .....	4
B. 2014-2016: Dramatic Developments in Scope and Impact of the Settlement.....	4
C. The Goal: To Consolidate Jewish Control of the Old City Basin and Create an Irreversible Reality.....	5
D. Settlers as Neighbors.....	5
<b>II. The System</b> .....	8
A. Discriminatory Laws.....	8
B. Seizure of Trusts.....	8
C. Sale without Tender.....	9
D. Questionable Acquisitions.....	9
<b>III. State Involvement</b> .....	10
A. The Ministry of Justice – The Registrar of Trusts.....	10
B. The Ministry of Justice – The General Custodian.....	10
C. The Police.....	11
D. The Ministry of Housing and Private Guards.....	12
E. Senior Politicians in the Service of the Settlers.....	13
<b>IV. Calculating the Cost of the Settlement</b> .....	14
A. The Political Objective: To Consolidate Jewish Control of East Jerusalem and Thwart the Two State Solution.....	14
B. Expropriation of Homes, Leaving Residents Homeless and Threatening their Status as Jerusalem Residents.....	15
C. A Constant Source of Friction in the Shadow of the Temple Mount/Haram al-Sharif.....	16
D. The Violation of International Law.....	16
E. Reopening the Wounds of 1948: Discrimination in Israeli Law Liable to Lead to the Reopening of Cases on Both Sides.....	17
<b>V. Whose Struggle is this?</b> .....	18

# I. The Reality

## A. The Batan al-Hawa Neighborhood and Settlement Plan

Batan al-Hawa is a Palestinian neighborhood in the heart of Silwan with a population of almost 10,000.<sup>1</sup> The neighborhood's proximity to the Temple Mount/Haram al-Sharif, its high population density and low socioeconomic status make Batan al-Hawa one of the most sensitive and volatile areas in Jerusalem.

Since 2001, the Ateret Cohanim settler organization has been working to transform the center of Batan al-Hawa into a large Israeli settlement. In 2004, settlers affiliated with Ateret Cohanim entered two buildings purchased by a Palestinian front man. The first, Beit Yonatan, is a six-story building illegally constructed for the settlers. The second, Beit Ha'Dvash, is a small one unit building situated approximately 100 meters from Beit Yonatan. Over the ensuing decade, settlement in the area was limited to these two buildings, comprising a total of seven or eight housing units.

Today, the primary tool used to realize settlement plans in Batan al-Hawa is the forced eviction and removal of Palestinian families who have lived in the neighborhood for decades. Claims are based on the argument that the title to the area was held by the Benvenisti Trust – a Jewish trust active in the area in the late nineteenth and early twentieth centuries. The land in question covers an area of 5.2 dunams (1.3 acres) and is currently home to some 90 Palestinian families.

According to Israeli law, land that may have belonged to Jewish trusts prior to 1948 is managed by the Israeli General Custodian. In 2001, individuals with close ties to Ateret Cohanim were appointed as trustees to the Benvenisti Trust and in 2002 the General Custodian transferred the land to its possession, thereby empowering the trustees to advance their eviction claims. Ateret Cohanim has employed two additional strategies. First, with the assistance of the General Custodian, the Benvenisti Trust has purchased additional tracts of land previously managed by the General Custodian. The sale was made without tender and without the residents currently living on the plots being afforded an opportunity to purchase them. Second, settlers have purchased properties from Palestinian residents using questionable means. The total number of Palestinian families at risk of losing their homes as the result of these combined actions exceeds one hundred.

If the settlers are successful, Batan al-Hawa is anticipated to become the largest settlement compound in a Palestinian neighborhood in the Historic Basin of the Old City, with the outcome of significantly tightening the emerging ring of settlements around the Old City and severely undermining the possibility of a future two state solution in Jerusalem.

## B. 2014-2016: Dramatic Developments in Scope and Impact of the Settlement

Since October 2014, there has been a dramatic escalation in the pace of Israeli settlement in Batan al-Hawa. By the end of 2015, the settlers had quadrupled the number of housing units in their possession, having taken over a total of some 27 units in six buildings. In addition, [12 eviction claims](#) relating to 51 families – most initiated over the past year – are currently pending.

On 20 October 2014, settler families entered two buildings in Silwan belonging to the Qawasmeh family. One four-unit building is located in Batan al-Hawa. Approximately six months later, on 6 May 2015, settlers entered three of the five housing units in a building belonging to the Abu Nab family. On 27 August 2015, settlers entered [the home of the Sarhan family](#), a 10-unit building. A few days later, they entered an additional housing unit adjacent to the entrance of the Sarhan building. Their entry, reinforced by a substantial police presence,

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<sup>1</sup> Silwan has a total population of approximately 49,000, including some 14,500 residents of Ras al-Amud, a neighborhood that is contiguous with Silwan and is considered part of the village by the residents. Bimkom, [Survey of Palestinian Neighborhoods in East Jerusalem](#) (Jerusalem, 2013).

precipitated extreme clashes. On October 19, 2015, [police evicted](#) the families living in the two remaining units in the Abu Nab building and the units were transferred to the settlers. Later, settlers blocked access to an apartment inhabited by the family of one of the evictee's sons, effectively prohibiting the family from reaching its home.

Over the course of just one year, the settlers tripled the number of buildings under their control (from two to six), increasing the number of housing units in their possession from 7 or 8 to 27 or 28. Ateret Cohanim has plans to seize more than 60 additional housing units, which would necessitate the eviction of the Palestinian families living in them. [Twelve eviction claims](#) pertaining to 51 families are currently in process. If Ateret Cohanim succeeds in executing its plans, it will dramatically alter the composition and character of Batan al-Hawa and of Silwan as a whole.

## C. The Goal: To Consolidate Jewish Control of the Old City Basin and Create an Irreversible Reality

**“To seize outposts in East Jerusalem and create an irreversible reality in the Holy Basin around the Old City”** – [The goal of private settlement in Jerusalem, according to](#) Adi Mintz, a senior figure in the ELAD settler organization and former Chair of Yesha Council.

The settlement in Batan al-Hawa now being developed by Ateret Cohanim is an integral part of efforts by settler organizations and Israeli authorities to consolidate Jewish control of the Historic Basin. The campaign spans the Muslim Quarter of the Old City and the surrounding Palestinian neighborhoods.

The activities of Ateret Cohanim are complemented by the ELAD settler organization's efforts in the adjacent neighborhood of Wadi Hilweh, Silwan. Even prior to the current wave of settlement activities, ELAD had already managed to settle some 350 people in approximately 20 buildings. This settlement was significantly reinforced on [30 September 2014](#), when settlers entered 25 housing units in 11 buildings. ELAD has also enjoyed a position of influence running the City of David national park, located in Wadi Hilweh, since the Jerusalem Municipality and later the Israel Nature and Parks Authority delegated daily management responsibilities to the organization<sup>2</sup>.

Some 2,500 settlers now live in about one hundred buildings in the heart of Palestinian neighborhoods in and around the Old City. This figure is minor in comparison to the 100,000 Palestinians who live in these areas, and in itself might not seem to be a decisive variable when regarding the question of sovereignty in a future agreement. However, the combination of extensive settlement compounds and massive settler run tourism projects and national parks being promoted by the government, the Municipality, and other bodies (with investments in excess of one billion shekels over the past decade) contribute significantly to the reinforcement of Israel's expropriation of East Jerusalem.

## D. Settlers as Neighbors

The reality created by the entry of settlers into the heart of Palestinian neighborhoods is dominated by [friction and violence](#). As if the infiltration of their neighborhood by a fiercely ideological and armed group was not provocative enough, the settlers are accompanied by the Israel Police and Border Police, as well as by private security guards funded by the Ministry of Housing. This presence generates fierce resistance from Batan al-Hawa's residents, who sporadically throw stones and Molotov cocktails at settlers' homes and vehicles. Equally common, settlers harass Palestinian residents with the intention of making their lives so intolerable they will inevitably vacate their properties. The confrontations have resulted in deaths. Milad 'Ayash, 17, was [shot and](#)

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2 A petition against the transfer of extensive powers to ELAD was rejected but the case exposed the extent of the powers ELAD enjoys, which were reduced during the court hearings on the case. HCJ 5031/10 *Ir Amim et al. v Nature and Parks Authority* (26 March 2012).

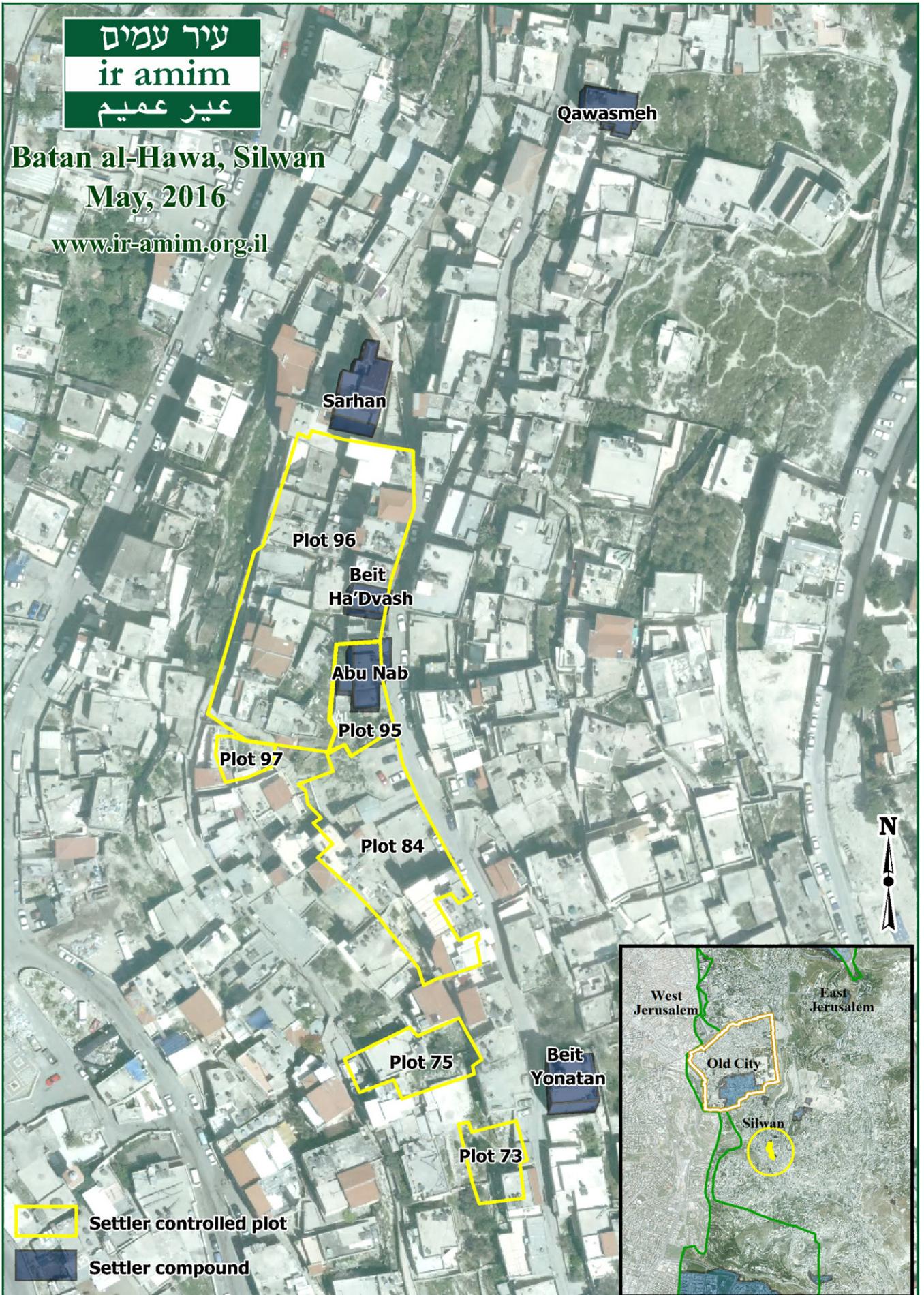
killed in Batan al-Hawa on 13 May 2011 during clashes between Palestinians, police and settlers. The shooting took place from inside Beit Yonatan. At the time, only a few individuals were on site, which would have enabled police to easily question witnesses. Despite this fact, serious investigative failures resulted in the police and the Military Police Investigations Unit issuing an announcement that the file had been closed on the grounds of “perpetrator unknown.”



Near Abu Nab houses, May 2015 | Photo: Ahmad SubLaban

Zuheir Rajabi, a local resident, describes life alongside the settlers in the congested neighborhood in the following terms: “We don’t have any problem with Jewish neighbors; really we don’t. But these aren’t neighbors; these are people who come with police and guards and court orders, and all they do is try to throw us out of here. Look, on the day the settlers entered the Sarhan home, they disconnected the water and cable television of the Abu Sneineh family, who live on the ground floor.” A few days later, settlers attacked several of the neighborhood children with pepper spray. Clashes erupted and the police and Border Police who came to the neighborhood fired stun grenades and tear gas, injuring a seven-month old baby among others.

The constant friction between settlers and Palestinian residents is compounded by pressure from state and municipal authorities. In many cases, local residents fighting to remain in their homes are forced to defend themselves on several fronts simultaneously. As another resident of the neighborhood explained: “Every resident of Silwan needs to employ three attorneys: one to prove that you own the house where you live, one to oppose the demolition orders issued against you, and one to free your child from detention.”



## II. The System

### A. Discriminatory Laws

The combination of three laws enacted by Israel since 1948 (in 1950, 1968, and 1973)<sup>3</sup> created a situation whereby the right of return to properties lost during the 1948 War is granted to Jews but not to Palestinians. Since the *de facto* annexation of East Jerusalem in 1967, Jews who lost properties that were outside Israel's 1948 borders, and which are now in the annexed area, are entitled to reclaim their properties through the



Abdullah Abu Nab, July 2015  
Photo: Ahmad SubLaban

General Custodian. This provision was established despite the fact that Jews who lost properties in 1948 received compensation from the state in the form of property in West Jerusalem. Palestinians who lost property in West Jerusalem do not enjoy comparable rights, meaning that Palestinian families are unable to recover properties lost in West Jerusalem. In many cases, as in Batan al-Hawa, the East Jerusalem properties in which Palestinians from West Jerusalem were resettled are now subject to ownership claims by Jews, threatening to make the Palestinians refugees for a second time. The Abu Nab family, for example, owned land and homes in West Jerusalem but cannot regain ownership of these assets.

The settlers act to secure the ownership rights of Jews who owned land prior to 1948. In some cases they purchase the rights from Jewish heirs, while in others they receive authorization – with the assistance of state

authorities – to manage trusts that hold title to properties owned by Jews prior to 1948. From this position they are able to submit their claims to the General Custodian, which then releases property into their control. In most cases, settlers then initiate legal proceedings to evict the Palestinians living in the contested properties. This process constitutes a type of “right of return,” granted in accordance with state laws to Jews only, to properties inhabited before 1948.

As previously noted, the settlers in Batan al-Hawa have managed to gain control of the Benvenisti Trust, which operated in the area in the late nineteenth and early twentieth centuries, providing them with a legal platform from which to demand residents' evictions.

### B. Seizure of Trusts

Section 5 of the Legal and Administrative Matters Law [Combined Version], 5730-1970, was intended to allow the original Jewish owners, or their heirs, to recover land in East Jerusalem lost in 1948. The members of Ateret Cohanim, however, are not the heirs of the Benvenisti Trust, which held title to the properties in Batan al-Hawa, just as they are not the heirs of trusts in the Muslim Quarter and in other areas where they have succeeded in seizing control of properties. The state intervened – not for the first time – to enable the appointment of representatives of Ateret Cohanim as trustees, thereby empowering them with the authority to demand the “return” of property that was never actually under their ownership. In some cases the rabbinical courts approved the appointment of trustees; in others, approval was granted by the Registrar of Trusts with the support of the District Court.

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<sup>3</sup> Absentee Property Law, 5710-1950; Legal and Administrative Matters Law, 5728-1968, which exists today as the Legal and Administrative Matters Law [Combined Version], 5730-1970; and the Absentee Properties (Compensation) Law, 5733-1973.

## C. Sale without Tender

Settlers have gained control of additional properties through direct purchase from the General Custodian. In December 2005, the General Custodian sold four additional plots (73, 75, 84, and 97) in Batan al-Hawa to Ateret Cohanim. The plots, covering an area of 3 dunams (.7 acres), are situated between the area being claimed in the trust's name (Plots 95-96) and Beit Yonatan. The settlers purchased the plots, in one of the densest areas of Jerusalem, for less than one million shekels. Contrary to the requirements of the Mandatory Tenders Law, and customary practice, the General Custodian did not issue a tender announcing the sale of the plots, meaning that the families who have lived there for decades were given no opportunity to submit bids to purchase property. Overnight, more than 10 Palestinian families who live in the built-up areas of these plots became subject to eviction. Ateret Cohanim has initiated proceedings to halt construction and evict the Silwadi family, which lives adjacent to the area, on the grounds that part of their home lies within the plot now owned by Ateret Cohanim.

Plot 73, included in the sale, is currently vacant. Last year a company known by the name of Malih 73 submitted a request for a building permit for a three-story building. The authorized signatories of this previously unknown company are members of Ateret Cohanim.

## D. Questionable Acquisitions



Sarhan house, September 2015  
Photo: Ahmad SubLaban

The settlers customarily claim that they purchase property in the Palestinian neighborhood through legitimate real estate transactions. As previously noted, most of the planned settlement in Batan al-Hawa is accomplished through ownership and eviction claims submitted on the basis of discriminatory laws. When settlers do purchase a Palestinian property, the process involved bears little resemblance to a traditional real estate deal.

Both Beit Ha'Dvash and the plot on which Beit Yonatan was constructed were purchased for Ateret Cohanim by a Palestinian front man in order to conceal the buyers' identities from the sellers. In the case of the Sarhans, a relative of the family sold the property, home to multiple Palestinian families, only after Ateret Cohanim filed eviction claims against his own family. Other members of the Sarhan family subsequently submitted a complaint to the police claiming legal ownership of the building and disputing the sale of the building without their consent.

The combination of pressures applied to Palestinians living in properties sought by the settlers often confront families with a cruel choice: to cling to their land and risk losing it (a realistic scenario given the evictions of other families in the same neighborhood), while amassing heavy debts and fending off harassment, or agree to vacate their homes in exchange for substantial sums of money. The use of painful sticks on the one hand and the carrot of financial incentives on the other is effective not only in breaking spirits but in creating an atmosphere of suspicion and mistrust within Palestinian society. See this [Haaretz report](#) for further description of settler tactics used to acquire land and property.

## III. State Involvement

### A. The Ministry of Justice – The Registrar of Trusts

In the late nineteenth century, Yemenite Jews settled in the Batan al-Hawa neighborhood in buildings constructed by the Benvenisti Trust. The original trustees were the two chief rabbis of Jerusalem who served toward the end of the nineteenth century, together with the principal of the Alliance vocational school. In November 2001, the District Court ruled (OS 750/01) that since the chief rabbis had stated they were prevented from fulfilling their functions, it would approve the appointment of three new trustees. One of the new trustees, Rabbi Ralbag, formerly served as head of the Jerusalem Religious Council. The other two are well-known activists in Ateret Cohanim. Attorney Avi Shefferman, who presented himself as an authority on trusts, was a member of the Blick International company that purchased Beit Yonatan and, in fact, one of the actual buyers. The other member, Motti Zarbiv, is a resident of Beit Hadassah in Hebron, formerly involved in the purchase of the A'bbasi home in Wadi Hilweh and other local transactions.

In its response to the Court, the Registrar of Trusts did not substantiate its reasons for consenting to the appointment of these two trustees, focusing exclusively on the previous trustees' inability to perform their functions. The new trustees, both closely involved in Ateret Cohanim, do not have any particular affinity with the trust or with the Jews who formerly lived in the area; moreover, it is extremely doubtful whether their goals are consistent with the original goals of the trust, which was established to assist poor Jerusalemites.

### B. The Ministry of Justice – The General Custodian

The General Custodian has been involved in the transfer of assets to the Benvenisti Trust in Silwan in two ways: In 2002, it released plots 95-96 into the trust's possession; three years later, it sold four additional plots to the trust without issuing a tender.

The General Custodian ostensibly acted lawfully in releasing plots 95 and 96 into the trust's possession. However, it is questionable whether the intention of section 5 of the Legal and Administrative Affairs Law – permitting the release of properties – was to authorize the release of plots more than 30 years after the annexation of East Jerusalem. Moreover, the General Custodian later took additional steps serving the interests of Ateret Cohanim by using its authority to determine the precise location of the plots in question.

Responding to a parliamentary question in 1987, then Justice Minister Avraham Sharir stated that the Committee of the Yemenite community had not been able to respond to the General Custodian's request to present documents proving its ownership of the area. The justice minister added, "We are aware, Mr. Chairman, that many of the members of the Yemenite community sold their properties in Silwan following the 1929 riots."<sup>4</sup>

In 2001, in response to the application to appoint trustees (the above-mentioned OS 750/01), the General Custodian confirmed its authority as manager of the plots. The response stated that in 2000 it received a request on behalf of the original trustees to release the properties and that said release required the appointment of trustees to the trust. Only then was the request submitted to appoint trustees with close ties to Ateret Cohanim. The General Custodian stated that it was not opposed to the request, but did not express an opinion as to the identity of the appointees, leaving the decision to the Registrar of Trusts. On 30 September 2002, the General Custodian released the plots to the trust. In 2014, the Magistrate's Court rejected a petition by the trustees against the Abu Nab family on the grounds that they had failed to prove that the Abu Nab family home was situated on property under their ownership. In January 2015, the General Custodian amended the certificate of release of the plots, specifically demarcating their location. On the basis of this document the trustees won an appeal to the District Court and succeeded in evicting the Abu Nab families from their homes.

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4 Proposed Order of Day, Knesset, 2 March 1987

The General Custodian sold the remaining four plots under its possession to the settlers without issuing a tender, and without giving the families living in the plots the first option to submit an offer to purchase the land on which their homes were built. In addition to the *prima facie* deviation from the rules of administration, the sum paid in return for the four plots was less than one million shekels – a figure that appears, *prima facie*, to be less than the value of the land.

## C. The Police

The Israel Police and Border Police operate in Silwan and in the other neighborhoods where settlers have located as if their function is to protect the wellbeing of the settlers, at all costs and at the expense of Palestinian residents. As Magistrate Court Judge Rafi Strauss wrote following the eviction of the Hijazi family: “The conduct of the Respondent [the Jerusalem Police]... is inconsistent with the observance of the basic conditions for police intervention in a civil dispute.”<sup>5</sup>

Police forces escort settlers when they seize control of Palestinian homes and, in some instances, impose a curfew on the Palestinian residents of the neighborhood during execution of evictions. Even in “routine” cases, since the settlers entered the neighborhood, the police have regularly employed extensive force against Palestinian residents, including use of tear gas, stun grenades, beatings, and detentions. In one documented incident, police officers threw stones at Palestinians alongside the settlers. In other cases police details, including senior officers, have provided protection to members of Ateret Cohanim on their “visits” to intimidate Palestinian families into leaving their homes and transferring them to the settlers.



Eviction of Abu Nab family, May 2015 | Photo: activists

Palestinian residents who submit complaints against settlers do not enjoy comparable service. Raisa Musa al-Karaka explains: “We have suffered so much abuse and filed so many complaints. I went to the police some 20 times, and not once did it help (...) whenever I go to file a complaint with the police, I am the suspect. They always yell at me and bang on the table, and make me weep from bitterness.” (See the report, “[Unsafe Space](#),” p. 7).

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5 Decision dated 11 April 2006, Sun.Civ.App. 3495/06 *Adnan Qarash et al. v Israel Police*.

## D. The Ministry of Housing and Private Guards

In addition to the Israel Police and Border Police, security guards from private companies operate in neighborhoods where settlers have taken over Palestinian homes. The Ministry of Housing finances these services, and in 2014 the government budgeted over 100 million shekels to maintain this private security force. In 2015, the total sum allocated by the Ministry of Housing was 83 million shekels, and in December the additional sum of 13 million shekels was allocated. A simple calculation shows that over the past year, every settler in the heart of a Palestinian neighborhood in East Jerusalem was afforded approximately NIS 2,750 a month in government funding from this budget line alone.



Batan al-Hawa, July 2015 | Photo: Ahmad SubLaban

This arrangement has continued despite the 1991 opinion issued by then Attorney General Yosef Harish stating that “It is unacceptable that the petitioners [ELAD settler organization] will appoint guards on their own behalf,” particularly “in a sensitive place such as the neighborhood of Shiloah [Silwan], where the involvement of armed civilians who are not part of the security forces is to be avoided... as something that in itself may constitute a source of escalation.” In September 2005, a committee headed by Major General (Ret.) Ori Orr established that the use of private security firms by the Ministry of Housing should be terminated. A year later, this function and the accompanying budget were transferred to the police, but the decision was reversed the following year. In 2010, the policy led to the worst possible outcome when a private security guard killed neighborhood resident Samer Sarhan.

A further manifestation of the close relationship between the Ministry of Housing and Ateret Cohanim is the building permit application submitted to the Jerusalem Municipality in July 2015. Part of the application, for construction of a new building, was submitted by Malih 73, a company controlled by Ateret Cohanim members. An additional part of the application, calling for the widening of a stretch of road to facilitate passage of security vehicles, was submitted by the Ministry of Housing and Construction.

## E. Senior Politicians in the Service of the Settlers

As in other East Jerusalem neighborhoods, the settlement in Batan al-Hawa would not be feasible without the active assistance of various arms of the Israeli government. Ateret Cohanim enjoys a devoted lobby including key figures in the Israeli political establishment. In May 2015, [Minister Uri Ariel](#) was documented fixing a mezuzah on the doorpost during the dedication of a synagogue inside the Abu Nab family's former home after the family's eviction. The minister was bestowed the "honor" in recognition of his longstanding support (together with his wife) of the Silwan settlers. Five years earlier, [Minister Ariel threatened](#) that he and his supporters would evict the Abu Nab family from its home with their own hands rather than waiting for the state to execute the eviction. In June 2014, MK [Tzipi Hotovely](#), now deputy foreign minister, participated in celebrations marking the tenth anniversary of the settlement in Beit Yonatan and Beit Ha'Dvash. MK Motti



Minister Erdan in Batan al-Hawa, June 2015

Yogev and then MK Yoni Chetboun also attended. Last August, Minister of Public Security Gilad Erdan chose to hold one of his first tours as minister in the Jewish settlement in Batan al-Hawa<sup>6</sup>.

The close relationships between settlers and authorities and the sizable budgetary allocations afforded to the settlers are inconsistent with both parties' often made argument that the choice to live in Batan al-Hawa and other Palestinian neighborhoods is a simple matter of real estate, with no connection to government policy. Intensive investment of resources in these settlement compounds clearly contradicts this claim. In August 2015, for example, it was [reported](#) that the Jerusalem Municipality had approved a budget of NIS 11.2 million for a mikveh (ritual purification bath) in the Ma'ale Zeitim settlement in the heart of Ras al-Amud. Responding to criticism, the Municipality stated that a similar sum had been allocated for the construction of a mikveh in Pisgat Ze'ev. Pisgat Ze'ev has a population of some 40,000 people while Ma'ale Zeitim is home to about one hundred families.

These and other data reveal the preferential treatment government and municipal authorities confer on settlers living in the hearts of Palestinian neighborhoods in East Jerusalem. Without this lavish support and assistance, it is unlikely that settler organizations would have enjoyed such success in seizing control of properties and relocating settlers to these Palestinian areas.

6 [Minister Erdan's visit to Silwan](#)

## IV. Calculating the Cost of the Settlement

### A. The Political Objective: To Consolidate Jewish Control of East Jerusalem and Thwart a Two State Solution

Ateret Cohanim and the other settler organizations in Jerusalem focus their efforts on establishing settlement compounds in the Muslim Quarter of the Old City and in the surrounding Palestinian neighborhoods. The residents of these settlements openly declare that their presence in the area is intended to undermine any possibility of the Historic Basin being part of a Palestinian capital under a future peace agreement. Since there is no possibility that the Palestinians will accept an agreement in which the Historic Basin remains under Israeli sovereignty, this stand suggests the thwarting of any prospect of a political solution and an end to the conflict.

It should be emphasized that during official negotiations at Camp David and Annapolis and during informal contacts such as those made during the Geneva Initiative, Israelis, Palestinians, and representatives of the international community have all accepted the principle enshrined in the "Clinton Parameters:" Jerusalem serving as two capitals, with the Jewish neighborhoods recognized as part of the State of Israel and the Palestinian neighborhoods forming the Palestinian capital.

The settlement in Batan al-Hawa is of profound strategic importance due mainly to its location in the heart of Silwan, between the large Ma'ale Zeitim settlement in Ras al-'Amud and the ELAD settlements in Wadi Hilweh, close to the Dung Gate of the Old City. Realization of settlement plans will enable a significant link in a chain of settlements surrounding the Historic Basin. The significance of the Batan al-Hawa settlement therefore exceeds the relatively small number of settlers involved.



Aerial photo of Old City and surrounding Palestinian neighborhoods in East Jerusalem, 2012 | Photo: Ahmad SubLaban

## B. Expropriation of Homes, Leaving Families Homeless and Threatening their Status as Jerusalem Residents

The area over which Ateret Cohanim claims ownership is densely populated with families who have lived in the area for decades. In each of the buildings in question, Ateret Cohanim aims to evict several extended families. For some of these families, evictions push them into refugee status for a second time. For example, until 1948 the members of the Abu Nab family lived in the Jurat al-'Anab neighborhood close to Sultan's Pool and owned land in the Katamon neighborhood of West Jerusalem. After the 1948 War both areas became part of the State of Israel. The family became refugees, moving to and building their home in Batan al-Hawa, and now having been evicted from that home, they are refugees once again. Israel does not allow them to reclaim the property they lost in 1948, and has now facilitated their eviction from the homes where they have lived for decades – on the basis of the claim that Jews lost their property during the same war.



Abu Nab family, July 2015 | Photo: Ahmad SubLaban

In total, roughly one hundred families (some 600 people) currently live under threat of eviction and losing their homes. This anxiety looms over people who have lived lawfully in their houses – not as squatters, but as residents who have purchased and rented houses in the neighborhood, some of whom built their homes while Jordan still controlled the area.

The eviction of families who have lived in Jerusalem for decades is liable to lead to their *de facto* expulsion from the city, in turn leading to the loss of their permanent residency status and their ultimate displacement from Jerusalem. This abuse is being inflicted in the name of the historical rights of a body established at the end of the nineteenth century, the original goals of which are entirely unrelated to settlers' current claims. The eviction and expulsion of the residents of Batan al-Hawa will do nothing to benefit the former Jewish residents of the area, who likewise have no connection to the current claim. Instead, it will serve the interests of a radical settler organization promoting a hazardous political agenda. It is both improper and unjust that residents who have acquired nothing illegally, and who bear no responsibility for the removal of people from their homes, should pay the price for these aspirations.

## C. A Constant Source of Friction in the Shadow of the Temple Mount/Haram al-Sharif

The presence of a Jewish settlement in a densely populated neighborhood in the heart of Silwan generates daily friction between Palestinian residents and the settlers who have expelled their neighbors from their homes and seek to change the composition of the neighborhood. The sizeable security forces paid to protect the settlers threaten the Palestinian residents and disrupt daily life in the neighborhood. Security guards and police officers often employ violence against Palestinian residents, including children. Following a trivial altercation between a group of settlers and a Palestinian boy, during which the settlers claimed that the boy had deliberately bumped into them while riding his bike, settlers and Border Police beat and used tear gas on a large number of Palestinian residents. In more extreme incidents, Palestinian residents have been shot and killed. Conversely, settlers face the threat of stone-throwing and, in some cases, Molotov cocktails.



View of al-Aqsa from Sarhan house, September 2015 | Photo: Eyal Raz

Daily friction can all too easily spiral out of control. The shooting and killing of a Palestinian in the neighborhood by settlers or security guards, as has happened in the past, has the potential to ignite the entire neighborhood. A serious attack on the Jewish residents is liable to intensify the policing regime in the area and the restrictions already imposed on Palestinians, as has been the case in recent months in the Old City of Jerusalem and in Hebron. When all this unfolds within arm's length of the Temple Mount/Haram al-Sharif, the danger of an eruption of violence in these two volatile areas is amplified still further. Regrettably, it appears that rather than acting to lower the flame, the Israeli government is accelerating the tension.

## D. The Violation of International Law

According to international law, East Jerusalem, like the rest of the West Bank, is considered occupied territory. The establishment of settlements in this area violates the rules of law: the occupying power is not permitted to transfer civilians from its territory to the occupied territory. The [Hague Convention](#) also prohibits the occupier from making permanent changes in the occupied area, except due to military necessity or when intended to benefit the occupied population. The goal of these provisions is to prevent injury to the residents of the occupied area and to reflect the understanding of occupation as a temporary condition. The rules of international law oblige the occupying power to protect the residents of the occupied area, who enjoy a protected status. The government is certainly not permitted to participate actively in injurious actions such as expelling residents from their homes. The expulsion of families who have lived in Jerusalem for decades violates these rules. Moreover, eviction is liable to lead to Palestinians' de facto expulsion from the city and the loss of their permanent residency status.

## E. Reopening the Wounds of 1948: Discrimination in Israeli Law Liable to Lead to the Reopening of Cases on Both Sides

The current legal system in Israel permits Jews to claim properties under their ownership prior to 1948, while denying this option to Palestinians. In his book *Sheikh Jarrah*, former Attorney General Michael Ben Yair argued that the opening of cases involving the Jewish ownership of land in East Jerusalem could strengthen the Palestinian claim to “right of return.” The following excerpt is taken from the chapter “Breathtaking Foolishness: Opening the 1948 Files:”

“A further absurdity that is liable to be created by the return of Jewish properties in East Jerusalem relates to the legitimization of the right of return. This cannot be a one-way process. (...) It is simply impossible, unacceptable. The world will not accept it. And so the outcome of the “real estate law of return” will effectively be to legitimize the right of return alleged by the Palestinians. (...) Legitimizing the Palestinian right of return means that the above-mentioned confiscations from Palestinians are jeopardized. It is simply foolish to demand the release of Jews’ properties in the east of the city, given that this jeopardizes – through the reopening of the 1948 files – the confiscation for public needs undertaken for the purpose of Jewish settlement in vacant areas of East Jerusalem following the Six Day War (...) Those who are particularly concerned that this reality should not change should be the last to cause the reopening of the 1948 files. This mustn’t happen! (...) It is simply unparalleled foolishness. (...) Apart from the fact that it is contrary to conscience, commonsense, and justice, it is also breathtaking foolishness to undertake actions that cause the reopening of the 1948 files. Simple foolishness. Simple stupidity. It’s a case of dragging the rug out from under your own feet.”<sup>7</sup>



Batan al-Hawa: “We’ll remain as long as there are *za’atar* and olives. Silwan – *sumud* – power,” June 2015  
Photo: Ahmad SubLaban

7 Michael Ben-Yair, *Sheikh Jarrah* (2013, Hargol Publishers, in Hebrew), pp. 27-29.

## V. Whose Struggle is this?

The political sensitivity of Jerusalem and the tremendous efforts made by the authorities and the settlers to expand the settlement in Batan al-Hawa have transformed the area into a frontline in the struggle to maintain the viability of the two state solution. Changing the character of the neighborhood and strengthening the link between the settlement points in Wadi Hilweh and Ma'ale Zeitim is already eroding its likelihood. The political and security environment that emerged in the city toward the end of 2015 illustrated yet again the unsustainability of the current situation. Nonetheless, the current government in Israel appears to be committed to this course of action. In the face of these powerful forces, it would be a grave error to abandon the threatened Palestinian families to their fate. The reality that is currently emerging is disastrous not only for the family about to lose its home, but for all those who believe in the imperative of striving to reach a political solution to the conflict.



Center for Jewish Nonviolence activists working in the yard of Jawad Abu Nab's house, sealed off by settlers, July 2016