Arbitrary Collective Punishment

Infringement of Palestinians’ freedom of movement in the West Bank under the pretext of security
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Position paper, December 2019
Research and writing: Yonatan Kanonich
Legal counsel: Atty. Shlomy Zachary, Atty. Michal Ziv
Translation: Leora Gal
Graphic design: Studio Yuda Dery


Yesh Din Volunteers: Dahlia Amit, Maya Bailey, Hanna Barag, Atty. Dr. Assnat Bartor, Osnat Ben-Shachar, Rochale Chayut, Dr. Yehudit Elkana, Rony Gilboa, Hana Gottlieb, Tami Gross, Dina Hecht, Niva Inbar, Daniel A. Kahn, Edna Kaldor, Ruth Kedar, Lilach Klein Dolev, Dr. Joel Klemes, Bentzi Laor, Judy Lots, Aryeh Magal, Sarah Marliss, Amir Pansky, Talia Pecker Berio, Nava Polak, Dr. Nura Resh, Eddie Saar, Idit Schlesinger, Ilana Meki Shapira, Dr. Tzvia Shapira, Dr. Hadas Shintel, Ayala Sussmann, Sara Toledano, Yoram Zeevi.


Yesh Din's activity in 2019 was supported by:

Cover photo: Military roadblock at the entrance to Highway 60 by Ein Yabrud, January 2019 (Photo: ActiveStills)

Yesh Din is mostly funded by foreign governmental entities. A list of our donors is available on the Israeli Associations Register’s website and on our website. Yesh Din is proud to be funded by states that believe, as we do, that the occupation is not an internal Israeli matter and that support the advancement of human rights.
INTRODUCTION

Israel has exercised military occupation over the West Bank for more than 52 years. The Israeli army routinely infringes upon Palestinians’ freedom of movement as an inherent part of its occupation and control system. This is done with the use of manned checkpoints, routine roadblocks and roads with restricted access to Jews only, among other methods. This position paper addresses an additional practice: arbitrary infringement upon Palestinians’ right to freedom of movement and the army’s use of alleged security pretexts in order to collectively punish Palestinians who are not suspected of any crime.

This position paper presents two cases that vary in time, place, cause and effect. In both cases, the Israeli army collectively penalizes a large population that did nothing wrong and denies innocent people their right to freedom of movement.

Violating the right to freedom of movement also severely infringes upon the right to equality and human dignity, and leads to additional human rights infringements, including the right to respect for private and family life, the right to health, the right to education and the right to livelihood.

Collective punishment violates the right to personal liberty and the right to fair trial. It is prohibited by international humanitarian law, which grants the military commander the authority to act in the occupied territory, and which establishes that punishment of an offense must be grounded in individual responsibility.

The Hague Convention stipulates that “No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.” The Fourth Geneva Convention reaffirms this prohibition, emphasizing that “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited”, and “Reprisals against protected persons and their property are prohibited.” Israel too concurs that “The articles of customary international law prohibit collective punishment.”

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1 Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (The Hague, 1907), Art. 50 of the Regulations.
3 HCJ 7577/06 The Association for Civil Rights Israel v. Commander of Military Forces in the West Bank, response on behalf of the respondent, section 86, January 7, 2007.
“DEPENDING ON THEIR MOOD”

Highway 60 is the main north-south thoroughfare in the West Bank; it links the Palestinian cities of Jenin, Nablus, Ramallah, East Jerusalem, Bethlehem and Hebron. Highway 60 serves both Palestinians and Israeli settlers. Over time, Israel has altered the route of Highway 60 in several areas to adapt it to the location of Israeli settlements and settler traffic. Palestinians are able to merge onto Highway 60 at just a few junctions.

Over 20,000 people reside in the Palestinian villages of Ein Yabrud (عتين يبرود), Silwad (سلواد), Dura al Qar (دورا القرع), Deir Jarir (دير جرير) and al-Mazra‘ah a-Sharqiya (المزرعة الشرقية).

In December 2018, two shooting incidents took place on Highway 60 not far from the settlement Ofra, in which two Israeli soldiers were killed and several Israeli citizens were wounded. Following these incidents, the Israeli army established a roadblock at the junction outside Ein Yabrud, which connects all the neighboring villages to Highway 60. For approximately three months the army blocked off this junction completely, preventing Palestinians from accessing Highway 60 at all hours. Yet this roadblock did not fully prevent Palestinians from accessing Highway 60. It merely forced Palestinians to drive on smaller roads to reach the next junction with Highway 60, adding approximately 15 km - and at least 30 minutes - to their drive.

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Legend:

- ✗ Roadblock (see cover photo)
- 🟢 Highway 60
- 🟡 Alternative route due to roadblock
On February 28, 2019, Yesh Din’s legal team petitioned the Commander of Military Forces in the West Bank on behalf of Ein Yabrud’s Village Council Head to remove the roadblock. Yesh Din argued that the roadblock, which prevents residents of several Palestinian villages from swiftly accessing Highway 60, contradicts the military commander’s obligations as stipulated by international humanitarian law to provide for the daily needs of protected persons in the occupied territory. Yesh Din added that the roadblock violates the prohibition on collective punishment and causes widespread and disproportionate harm to tens of thousands of people who are not suspected of any offense.5

Yesh Din received the army’s response less than three weeks later. The army claimed that the roadblock was established for “security reasons” since “the junction in question was used as an escape route for terrorists in murderous terrorist incidents that recently occurred nearby, and a central consideration in the decision is the need to prevent recurring attacks.” Despite the alleged security importance of the roadblock, the army added that “Recently it was decided to partially open the junction, at this stage traffic will be permitted to pass between 1:30-5:30 pm daily.”6

Since March and until publication of this position paper (December 2019), the army has arbitrarily opened and closed the road. The road is always blocked at night. Soldiers occasionally open the road at noon and close it in the afternoon, sometimes the road is opened in the morning and closed at night. On many weekends, the road is blocked for all of Friday and Saturday.

Blocking direct access to Highway 60 harms the daily lives of tens of thousands of Palestinian residents of the nearby villages, and of thousands of additional Palestinians who seek to travel on this route. Every daily drive for work or pleasure, shopping or visiting family now takes an additional 30 minutes, if not more, as does the drive to access and farm private land located just across Highway 60. In addition, the roadblock prevents emergency and rescue vehicles from swiftly accessing the nearby villages and urgently evacuating residents to hospital.

Palestinian residents are helpless and uncertain when facing the roadblock. Samir J’bara, Head of Ein Yabrud Village Council told Yesh Din that “The Palestinian DCO informed us that it is a ‘security need’, but nobody informs us when it opens or closes, every day is different.” Deputy Head of Council Fathi Jarmah added that “The soldiers open and close the roadblock when they want to, depending on their mood.” According to Nassim Dahbarah of Ein Yabrud, “When the road is blocked, there’s no one to open it, there’s no way to pass even in humanitarian cases”, “This isn’t a security concern, they want to punish us and oppress us,

5 Letter from Yesh Din to the Commander of Military Forces in the West Bank et al, “Urgent demand to remove the roadblock located on the road leading from the village Ein Yabrud to Highway 60”, February 28, 2019.
6 Letter from Israeli Military Central Command, Office of Public Appeals to Yesh Din: “Urgent demand to remove the roadblock located on the road leading from the village Ein Yabrud to Highway 60”, March 19, 2019.
sometimes there are soldiers by the checkpoint in the middle of the day and when we want
to pass to Highway 60, they tell us to turn around, for no reason.” 7

A senior security official told Ha’aretz newspaper that “as usual, the army set up checkpoints
on nearby roads immediately after the attack” following the shooting incidents of December
2018. Yet the official added that, “Later, however, the defense establishment wanted to remove
them so as not to harm the Palestinian population. But this didn’t happen. At a meeting on
the subject, defense officials said the decision to leave the checkpoints in place at certain
hours stemmed from demands by settlement leaders.” Therefore, leaving the roadblocks in
place “was a transportation decision intended to benefit the Jewish population […] not an operational decision”. 8

The need to prevent attacks is uncontested. Even if closing the road balanced Palestinian
human rights with security needs, as the army’s formal response to Yesh Din stated (instead
of inspecting passengers, for example), what has allegedly changed in the security situation
to enable the road to now be opened daily?

This alleged change is questionable also because the decision to open the road was made
just shortly after Yesh Din petitioned the army. It is all the more questionable given the absurd
decision to open the road at 1:30 pm and close it at 5:30 pm, while in practice, soldiers
open and close the roadblock every day at a different time with no warning. In addition,
the senior military official’s admission that the roadblock remains because of the settlers’
demands, and not as a result of an operational decision, indicates that this roadblock is in
fact a form of collective punishment that results in disproportionate harm to thousands of
innocent Palestinians.

7 Yesh Din case 4370/19.

8 Yaniv Kubovich, “Capitulation to Jewish Settlers Has Enabled Violence Against Soldiers, Defense Officials Say”, Ha’aretz,
October 23, 2019 [our bolding].
“THEY’VE MADE OUR LIVES A NIGHTMARE, OPENING AND CLOSING WHenever THEY WANT TO”

There are 876 residents in the village of Deir Nidham.

Just three roads lead to Deir Nidham: the main route (see A on map) links the village to Route 465 to the north. The second entrance (B) is located to the west and enables access to the village by way of a longer route, part of which is unpaved. The third entrance (C) is located on Route 450 near the Israeli settlement of Neve Tzuf (Halamish) and an adjacent army base; this route to Deir Nidham is long, steep and mostly unpaved.

In February 2019, the Israeli army set up concrete blocks and an iron gate at the entrance to the main road leading to Deir Nidham, blocking both entry and exit (see photo on page 11). The residents of Deir Nidham requested that the Palestinian DCO inquire as to why Israel blocked the main route to the village. The DCO conveyed the Israeli army’s response to the

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9 State of Palestine, Palestinian Central Bureau of Statistics, Preliminary Results of the Population, Housing and Establishments Census 2017, p. 73.
residents, whereby the road was closed because children throw rocks at cars on Route 465. The residents were forced to drive the longer route (B).

One month later, the army established an iron gate at the western entrance to Deir Nidham (B) but left it open. A week later, the army closed this gate and denied the residents of Deir Nidham direct access to Route 465 from the second route as well. Again, the army claimed that it had blocked the road because children were throwing rocks at the road. Soldiers stationed near the roadblock spoke to members of Yesh Din in July and repeated the claim that, “if they don’t throw [rocks], the entrance won’t be blocked”.

The residents of Deir Nidham were left with no choice but to access the village from the sole remaining, unpaved road (C) that leads to Route 450. As previously stated, this is a long, winding and steep road; it can be a dangerous drive, especially when the road is wet. In addition, in early 2019 the army established a manned checkpoint at the intersection of the road and Route 450, where soldiers check persons entering and exiting Deir Nidham. Residents of Deir Nidham who seek access to Route 465 and from there to the central West Bank must drive by the settlement Neve Tzuf (Halamish) and pass through an additional manned checkpoint located near the settlement and the adjacent army base.

The school principal of Deir Nidham wanted to enter the village through the yellow gate [B] and wasn’t allowed to. He asked where he should enter and was told – from the settlement Halamish. At the first checkpoint by Halamish he was stopped and wasn’t allowed to pass, without any explanation why. He asked – where should I enter? The soldiers answered – we don’t care. He drove the whole way back and through the village Ni’lin, to Deir Qadis, to Kharbatha Bani Harith, to Deir ‘Ammar, to Beitillu [approximately 45 km] and when he got to the second checkpoint by Halamish and the entrance to the village [C], he was stopped for about an hour, with no reason, and only then did they let him enter the village.

The main entrance to the village [A] was permanently blocked between February-July 2019, and during this time the western entrance [B] was opened and closed arbitrarily by the army. On July 18, 2019, after several weeks during which both entrances were blocked, the army opened both roads to traffic leading to the village from Route 465. Since then, the army has opened and closed these entrances at random without updating the residents. The road may be blocked for a few hours, a few days, or even a week at a time.

10 Visit held on July 11, 2019.
There were periods when [the army] would close the road only during the morning, precisely when everyone leaves for work and class, and then reopen it again at ten. For the past month, it’s been open all the time and we have no idea why.  

As stated, according to the army’s response to the Palestinian DCO as well as Yesh Din’s conversations with soldiers stationed by the village, the reason for blocking the entrance to the village is that children throw stones at the main road. And yet it is unclear how stone-throwing is related to blocking the village’s entrances.

Even if children from the village throw stones at Israeli vehicles – as the army claims, children would not arrive by vehicle to throw stones. Furthermore, the roadblock is located at the entrance to the main road and therefore does not prevent travel towards the main road. It is clear therefore, that blocking entrances to the village is a punitive measure unrelated to the alleged stone throwing; certainly, it will not lead to apprehending stone throwers. These

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12 Testimony of Munjad Tamimi, Deir Nidham Deputy Head of Council, November 13, 2019.
roadblocks do not serve a concrete security need but rather are collective punishment of all Deir Nidham residents on behalf of the occupation authorities.

I don’t think this is about stone throwing incidents because the soldiers have an observation post above the road regularly. The children wouldn’t dare go down and throw stones [...] We are constantly threatened by roadblocks – it’s enough that one guy argues with a soldier and immediately they close the road. They punish all of us.\(^\text{13}\)

They’ve made our lives a nightmare, opening and closing [the road] whenever they want to. And then we have to take the long way and pass through a checkpoint where the soldiers detain us and humiliate us. There’s no connection between stone throwing and the road being closed, it’s only because we live by a settlement that the army wants to make life hard for us and oppress us, all they need is an excuse. This has really paralyzed the village.\(^\text{14}\)

\(^{13}\) Testimony of Fadel Tamimi, imam of Deir Nizam, July 25, 2019.

\(^{14}\) Testimony of Munjad Tamimi, Deir Nidham Deputy Head of Council, November 13, 2019.
SUMMARY

The roadblocks imposed by the Israeli army and its prohibitions on movement in the Occupied Palestinian Territories, as presented in this position paper, are not directed at individuals convicted or suspected of security or other offenses.

It is therefore plausible that the army uses these measures to oppress and pressure the Palestinian community into ceasing activities directed against the Israeli occupation. Israel’s use of such roadblocks is unacceptable; it contradicts international humanitarian law and it severely infringes upon the right to freedom of movement of entire Palestinian communities in the West Bank.

The Israeli army is not the elected administration in the Occupied Palestinian Territories, and was certainly not chosen by the Palestinians, who are protected persons in the West Bank. As such, the army does not seek to justify its actions vis-à-vis the Palestinian residents and does not operate transparently or equally. The army blocks and opens roads arbitrarily and without informing the residents. Not only does this action undermine the security need for blocking roads, but it severely harms the lives of Palestinians, who are subject to constant uncertainty regarding their ability to move and plan their daily lives. They can plan when to leave their homes for school, work or shopping, but they cannot ever know when they will arrive at their destination or return home.

And at times even the army cannot justify why the roadblocks serve an alleged security need; instead, it is the settlers’ demands that lead the army to maintain roadblocks. This constitutes collective punishment, pure and simple.

When Israeli settlers throw stones at Palestinians’ vehicles or at the Israeli security forces, the Israeli army does not close off the entrances to Israeli settlements for lengthy periods. And when an Israeli settler shoots at Palestinians, the army does not prevent all Israeli settlers from traveling on main roads in the West Bank.

Collective punishment is indisputably prohibited, yet it is used routinely and exclusively against Palestinians in the Occupied Palestinian Territories.