Ideologically motivated crime by settlers in Hebron gets tailwind from Israeli authorities

Yesh Din figures, November 2018

Yesh Din is an Israeli human rights organization that works to protect the human rights of Palestinians living in the West Bank under Israeli military occupation. We document cases in which Israel fails to fulfill its obligation under international law to protect Palestinians and assert public and legal pressure on state authorities to provide this protection. We work on two plains: assisting individuals whose rights have been violated and using the accumulated individual cases to identify systemic human rights violations in order to advocate for change.

Ever since its establishment in 2005, Yesh Din has documented incidents of ideologically motivated crime perpetrated by Israeli civilians - settlers and others - against Palestinians in the West Bank. Yesh Din provides assistance to Palestinians who are interested in filing a complaint with the police and monitors the response of law enforcement agencies. We have documented some 1,800 cases over the years and monitored investigations in some 1,300 files.

Yesh Din figures regarding Hebron

i. Types of offenses - particularly high rate of violent offenses

From 2005 to November 2018, Yesh Din assisted in filing 68 complaints following incidents of ideologically motivated crime in the city of Hebron, in which Israeli civilians, mostly settlers from
Hebron, harmed Palestinians. It is important to point out that Yesh Din does not document all incidents that take place in the city, but only those that are brought to its attention or in which the organization is asked to provide legal assistance to the crime victims.

Of the 68 complaints, 42 related to violent offenses including assault, battery, threats, stone-throwing and even shooting. The remaining complaints concerned damage to property, trespass, invasion of farmland, among others.

Compared to overall figures for the West Bank, the rate of violent incidence in Hebron is particularly high: While violence accounts for 35% of the incidents documented by Yesh Din in the West Bank as a whole, 62% of the incidents documented in Hebron were violent offenses. The reason for this presumably lies in the unique circumstances in Hebron, where Jewish settlements were established in the heart of the city and settlers and Palestinians live in close proximity.

![Types of Offenses](image)

### ii. Standing Idly By - soldiers fail to uphold their obligation to protect Palestinians from harm by Israeli soldiers

Soldiers have an obligation and are given authority to intervene to protect Palestinians and their property. Israeli soldiers have the authority to arrest, detain and take various measures in order to stop incidents in which Israeli civilians harm Palestinians. However, soldiers receive no training on the appropriate responses to such incidents and are unaware of their obligations or the
authority granted them. This, in turn, means that existing military directives are not assimilated by the soldiers on the ground.

The unique situation in Hebron, where settlers live in such close quarters with Palestinians, lends itself to friction and violent altercations between the two populations. The Israeli military keeps a sizeable soldier presence in the city to protect the Jewish settlement and enforce a policy that restricts the movement of Palestinians in the city. The soldiers stationed in Hebron engage in policing and public order tasks without receiving relevant training or clear instructions on their role and how to respond in cases in which Jewish residents harm Palestinians.

In at least nine of the cases documented in Hebron (about 13%), soldiers stood idly by or actively participated in the incident, thereby violating their duty to defend Palestinian civilians, protected persons under international law, and helping the assailants who sought to harm Palestinians or their property, whether by explicitly participating or by simply failing to intervene.

A soldier who guarded the Jewish settlement in Hebron was asked what his commanders instructed him to do in case Jews harm Palestinians or their property. He responded:

*What we’re supposed to do is call the police. They told us in advance that there is no ability and no right under the law. You can’t handcuff a settler who defaces property belonging to a Palestinian. You can’t handcuff him if you’re the soldier. You call the police. [...] A Jew throws rocks — the soldiers will call the police. The soldiers won’t point their guns at him. They will not arrest him. They won’t do anything to him. The police likely won’t either, except for telling him off. They told us this in briefings before going on patrol. They reminded us we weren’t allowed to.*

[From the testimony of a soldier with the rank of Staff Sergeant, November 2013. The testimony was given to Breaking the Silence and included in Yesh Din’s report *Standing Idly By - IDF soldiers’ inaction in the face of offenses perpetrated by Israelis against Palestinians in the West Bank*, May]
2015. The report was partly based on 77 testimonies collected by Breaking the Silence, including 65 that related to a questionnaire drafted by Yesh Din for the purpose of the report.

We estimate that the true rate of cases in which soldiers stand idly by is much higher. Our 13 years of experience have shown that Palestinians tend to refrain from reporting such incidents to either law enforcement agencies or human rights organizations, because they perceive the soldiers as protecting the settlers, often allowing them to do whatever they please.

There were only five cases in which Palestinian crime victims in Hebron were interested in filing a complaint with the Military Police Criminal Investigation Division (MPCID) regarding soldiers who had stood idly by, and Yesh Din provided assistance. The Military Advocate General decided not to open a criminal investigation at all in three of these cases. By and large, the Military Advocate General's Corps (MAGC) fails to act to bring soldiers who stood idly by to justice, which sends a clear message to soldiers and commanders regarding their duty to protect Palestinians and what the outcome will be if they violate this duty. In a meeting held ahead of the 2014 olive harvest, former West bank Legal Advisor - Colonel Doron Ben Barak told activists and human rights organization staff members that the military had a “cultural issue” when it came to addressing the phenomena of soldiers standing idly by.

However, the issue cannot be attributed to organizational culture alone, but rather reflects the “command ethos” both within the military and among the civilians overseeing the military’s law enforcement system. The military refrain from incorporating the practice of standing idly by in the face of violent incidents as a punishable offense that requires disciplinary or criminal action in the Military Justice Law, even if only as part of soldiers’ duty to enforce the law in their capacity as public servants. Such duty includes protecting victims and their property in real time by putting an end to the offense and detaining and arresting suspected offenders. The army’s official code of
ethics also fails to address situations in which soldiers or officers do nothing in the face of a violent incident

iii. Outcomes of law enforcement procedures following violence and vandalism in Hebron - effective immunity for offenders

In 68 cases of ideologically motivated crime against Palestinians, the crime victims filed complaints with the Israel Police, and a criminal investigation was conducted by the Hebron Police. Five of the investigations are still underway and in 63, investigation and prosecution officials have completed their work.

Closure of investigation files without prosecution:

Forty-eight investigation files (76%) were closed with no indictments filed against the offenders (In 13 cases of the 48, appeals filed by Yesh Din against the decision are currently under review).

Half of the cases (24 cases) concerned violent incidents, including some severe, such as violent assault of a person with a disability using a wheelchair, shots fired at a home, attempted arson of a home, assault on a woman and her children, among other things.

Forty cases, accounting for 83% of the closed files, were terminated on grounds that are indicative of investigative failure on the part of the police: Twenty-five cases were closed after police investigators failed to locate suspects (“offender unknown”). Thirteen cases were closed after police investigators failed to gather sufficient evidence to support an indictment (“insufficient evidence”). Two cases were closed on grounds of “absence of criminal culpability,” but Yesh Din believes the investigation had not been exhausted and appealed the decision to close the files on these grounds.
Additionally, the police outrageously decided to close two more cases on grounds of “lack of public interest” (One other case was handed over to the Civil Administration, and three others were closed on grounds of “absence of criminal culpability).

Indictments and legal proceeding outcomes:

Fourteen investigation files yielded indictments, all but one related to violent offenses. Two of the indictments were filed only after Yesh Din appealed the decision made by either the police or the prosecution to close the case. Following these appeals, indictments were filed based on existing evidence, or after the investigation was reopened and exhausted. While the rate of indictment is relatively high, a follow-up on the progression of these cases after indictments were served reveals a rather grim picture of Israel’s law enforcement system and its determination to bring persons suspected of harming Palestinians to justice:

- Two indictments were withdrawn after they were filed.
- Three indictments resulted in a conviction, but in two of them, the offenders were convicted of “prohibited assembly,” a far lesser charge than the original - assault;
- Three indictments concluded with a finding of “guilt without conviction.” In other words, the court found the defendant had committed the offense with which he was charged but avoided entering a conviction; *
- One indictment resulted in an acquittal;
- One indictment resulted in a guilty plea and a plea bargain;
- 4 cases are either still pending, or the results are unknown to Yesh Din. Of these, in one case, proceedings were suspended after the defendant, Baruch Marzel, failed to appear to court hearings. The case resumed in early 2018.
*The proportion of legal proceedings that ended with the defendant being found guilty, yet not convicted, is 21%, much higher than the overall rate of cases litigated by the State Attorney’s Office and adjudicated in Israeli courts that ended with the same result, which, in 2015, was 6%.

The overall picture of law enforcement in Hebron that emerges from these figures indicates Israel’s law enforcement system fails to address offences committed against Palestinians and their property and fails to fulfill its duty to protect Palestinians. This undermines the personal safety of Palestinians living in Hebron and contributes to the sense of impunity felt by the perpetrators.

Yesh Din’s ongoing research shows Hebron is not an anomaly and that Israel fails to protect Palestinians from Israeli civilians who harm them and their property across the board. The responsibility for this state of affairs lies at the feet of Israeli governments, which have, throughout the years, shown leniency toward settler violence and failed to take determined action to eradicate it.

**Legally required declaration:** 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.