



June 15, 2016

### Yesh Din's analysis of updated Israeli Ministry of Justice report on Israel's Investigation and Prosecution of Ideologically Motivated Offences Against Palestinians in the West Bank (May 2016)

The updated report by the MoJ includes a correction of a key figure quoted in the initial MoJ report of January 2016 which was pointed out in [Yesh Din's response](#) to the latter. However, many of the identified flaws of the report remain. Overall, the MoJ report does not address the specific status of Palestinians in the West Bank as protected persons under occupation.

#### Background

In May 2016, the Israeli Ministry of Justice released an updated version of its report "Israel's Investigation and Prosecution of Ideologically Motivated Offences against Palestinians in the West Bank"<sup>1</sup> (henceforth: the May Report), initially published in January 2016<sup>2</sup> (henceforth: the January Report).

The May Report continues to describe Israeli law enforcement efforts as effective and adequate for deterring and punishing ideologically motivated offenses committed by Israeli civilians against Palestinians in the West Bank. Yet, Yesh Din's ongoing monitoring of the proceedings and outcomes of investigations since 2005 shows that **85% of investigations are closed due to investigative failures**. According to our data, a **police complaint filed by a Palestinian in the West Bank has a mere 1.9% chance of being effectively investigated, and a suspect identified, prosecuted and convicted**.

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<sup>1</sup> Israel's Investigation and Prosecution of Ideologically Motivated Offences Against Palestinians in the West Bank (Updated May 2016), Israeli Ministry of Justice website:

<http://www.justice.gov.il/Units/InternationalAgreements/HumanRightsAndForeignRelations/Faq/IsraelsInvestigationAndProsecutionofIdeologicallyMotivatedOffencesAgainstPalestiniansWestBank-31.5.16.pdf> (MoJ report).

<sup>2</sup> [Israel's Investigation and Prosecution of Ideologically Motivated Offences Against Palestinians in the West Bank](#) (updated 21, January 2016), Israeli Ministry of Justice website:

<http://www.justice.gov.il/Units/InternationalAgreements/HumanRightsAndForeignRelations/Faq>

### **Yesh Din's analysis of May 2016 MoJ Report:**

Over the past ten years, from 2005 to August 2015, Yesh Din has been assessing the work of Israeli law enforcement agencies in the West Bank and monitored the results of investigations into more than 1,100 cases of ideologically motivated crime committed by Israeli citizens against Palestinians, conducted by various SJ District Police stations, including the Hebron Area, Shomron Area, Binyamin Station and the Nationalistic Crime Unit at the SJ Central Unit (for more information regarding Yesh Din's methodology, see our response to January Report or the description on our [website](#)).

- **MoJ report does not reflect the specific status of Palestinians in the West Bank as protected persons under occupation**

The MoJ report presents its data on law enforcement efforts based on its 'deep commitment to the rule of law' which 'characterizes Israel's approach to law enforcement in areas of the West Bank still under its responsibility according to the Oslo Agreements. Yet, the report fails to address the special status of Palestinians as protected persons. As the occupying power of the West Bank, Israel bears the duty to protect the rights of Palestinian civilians living in the Occupied Territories as protected persons under International Humanitarian Law.

The described failures of law enforcement on Israeli civilians in the West Bank is incongruent with Israel's duty to protect Palestinians. Yesh Din's data contradicts the declarations made by Israeli officials in this report that 'all of Israel's authorities, law enforcement and judicial alike, are dedicated and committed to preventing, fighting and eradicating any form of violence and, in particular, ideologically-based offences against Palestinians in the West Bank.' (page 9)

Although some improvements have been made, Yesh Din's data points to consistent systematic failures in law enforcement that are a result of government policy. Lack of law enforcement on Israeli citizens who harm Palestinians and their property sends perpetrators a clear message that their actions will be tolerated and they will be immune from punishment. Yesh Din's recent data shows an increase in attacks carried out against Palestinians in residential areas of West Bank villages since August 2014, reflecting a growing boldness on the part of perpetrators, who know they will not be penalized.<sup>3</sup>

- **Cases investigated vs. investigations opened per year**

The May Report varies from the January Report mainly in the **number of cases presented** for 2015 referred to as 'Cases investigated by the Israeli Police in the West Bank involving allegations of Ideologically-based offences committed by Israelis' (page 2 - table). Whereas in the January Report this number was stated to be 119 for 2015, in the May report it is 279. This figure corresponds with the data Yesh Din obtained from

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<sup>3</sup> [Data Sheet](#) October 2015, Law Enforcement on Israeli Civilians in the West Bank – Yesh Din Monitoring Update 2005 - 2015.

the Israeli Police through a Freedom of Information request, however not for cases investigated but for **investigations opened** for such offenses in 2015, which is 280. The number of cases investigated in 2015 must be higher than the number of cases opened. The differentiation of figures for ongoing cases investigated and new investigations opened in each year is unclear throughout the report.

Counting only those investigations **opened** in 2015 also leads to a different ratio of indictments for these cases (29.7% as stated on page 6). The number of indictment filed stated by the MoJ as 83 (page 6) includes investigations of cases opened in previous years. The comparative figure here must be the number of indictments filed in cases that were **opened** in 2015, stated as 63, resulting in a much lower indictment rate of 23%. The indictment rate also includes indictments for offences by Israeli civilians committed against Palestinians as well as **against Israeli security forces personnel (ISFP)**. When looking separately into offences committed by Israel civilians **against Palestinians** the indictment rate is much lower (7.3 % according to Yesh Din data).

- **No separation of ideologically-motivated offences committed by Israeli civilians against Palestinians from those directed at Israeli security forces personnel (ISFP)**

As in the January Report, the May Report does not distinguish clearly between offences committed by Israeli civilians against Palestinians and those committed against ISFP. The figure of 279 of cases investigated in 2015 corresponds with the official data Yesh Din obtained from the police regarding investigations opened for ideologically-motivated offences committed by Israeli civilians in the West Bank. However, according to the data obtained by the Israel Police, most of these investigations did not concern ideologically-motivated offenses committed against Palestinians in the West Bank but rather against Israeli security forces personnel or by targeted enforcement.

The numbers of **cases closed due to lack of evidence** (table page 7-8) refers to all cases committed by Israelis – those committed against Palestinians and against ISFP. Therefore, the ratio given in the May report regarding cases closed due to lack of evidence (page 9) does not reflect the number of cases closed due to lack of evidence regarding offences committed by Israelis against Palestinians.

- **Number of cases investigated based on complaints submitted by Palestinians**

It remains unclear what the MoJ's source of information is for citing that only 40 cases investigated were based on complaints submitted by Palestinians in 2015 (page 6. The January 2016 MoJ Report cited 31). According to the official data Yesh Din obtained from the Israel Police, 89 investigations were opened in 2015 concerning offences committed against Palestinians. **In 2015, Yesh Din assisted Palestinian victims of ideologically motivated offenses file a complaint to police in 66 cases, which are approximately 74% of the new police investigations opened following incidents that took place in 2015.** It is therefore safe to conclude that the cases which Yesh Din represents (by virtue of power of attorney) are a reliable reflection of the minimum of cases brought to police.

- **Lack of law enforcement on ideologically-based offences against Palestinians in the West Bank - alarmingly low indictment rate reflects failures in investigations**

On page 9 of the new January Report the MoJ adds: 'It is important to note and emphasize, that all of Israel's authorities, law enforcement and judicial alike, are dedicated and committed to preventing, fighting and eradicating any form of violence and, in particular, ideologically-based offences against Palestinians in the West Bank.'

The MoJ's publication attempts to present a comprehensive picture of law enforcement in cases of ideologically motivated crime, and yet it does not address the outcome of the rarity of indictments served against suspects of crimes committed against Palestinians. According to Yesh Din's monitoring data of over 1,100 cases, only 7.3 % of all complaints submitted to the Israeli police regarding offences committed by Israeli civilians against Palestinians result in an indictment<sup>4</sup> and only one third of all complaints (33.3%) result in a full or partial conviction of the defendants.<sup>5</sup>

*Consistently low indictment rates (page 7 MoJ report)*

The MoJ Report presents data suggesting a marked increase in the indictment rate in ideologically-motivated offenses (page 7-8 – table, row two, 'indictments filed'). Yesh Din has analyzed the official data received from the Israel Police for 2015 and found that the majority of these indictments cited do not concern cases in which Palestinians or their property were harmed by Israeli citizens in the West Bank.<sup>6</sup>

According to data the Police provided Yesh Din with following a request for information under the Freedom of Information Act, Police investigated 280 new incidents of ideologically motivated offenses committed by Israelis in the West Bank in 2015. Of these new cases, indictments were served in 59 cases (21%). Based on the data provided by the Israel Police, indictments were served in merely 4 cases (4.5%) for offences carried out against Palestinians in the West Bank. This data corresponds with the data Yesh Din obtained from the Israel Police in previous years regarding the work of the Nationalistic Crime Unit at the Samaria and Judea (SJ) District Police (termed NMCU in the MoJ Report), the elite force combatting ideologically motivated crime among Israeli citizens: **just 30% of the indictments served against suspects in investigations conducted by the Unit in 2014 involved offenses committed against Palestinians (14 of 46 indictments)**; in 2013, a mere 11.6% of indictments served concerned offenses against Palestinians (5 of 43 indictments).

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<sup>4</sup> [Data Sheet October 2015 – Law Enforcement on Israeli Civilians in the West Bank – Yesh Din monitoring update.](#)

<sup>5</sup> [Data Sheet May 2015 - Prosecution of Israeli civilians suspected of harming Palestinians in the West Bank – Yesh Din monitoring figures.](#)

<sup>6</sup> It is likely that these offences were directed against security forces personnel, or concerned offences such as violation of an administrative order restricting the movement of an individual or insulting a civil servant, etc.

### *Alarming low conviction rates*

According to Yesh Din's data, nearly a quarter of the legal proceedings (22.8%) were eventually cancelled or vacated, and another quarter (24.6%) resulted in a judicial decision not to convict the defendants, despite finding that they did committed the offenses for which they were tried. These statistics demonstrate that **a police complaint filed by a Palestinian in the West Bank has a mere 1.9% chance of being effectively investigated, and a suspect identified, prosecuted and convicted.** This suggests grave concerns regarding Israel's pretense of effectively enforcing the law in the occupied Palestinian territories.

The second case mentioned in the May Report as a 'Recent example of Criminal Cases involving Ideologically Based Offences in the West Bank' (page 11/12) is, in fact, emblematic in demonstrating law enforcement agencies' failure to protect Palestinians from ideologically-motivated attacks. According to the May Report, the offenders were apprehended, prosecuted and sentenced. Yesh Din granted legal aid and monitored this case, in which the indictment included no mention of the attack against Palestinians and addressed only offenses against Israeli security forces personnel:

According to testimonies taken by Yesh Din, in October 2014, during the olive harvest, a Palestinian couple, residents of Yasuf, was attacked on their land near the outpost of Tapuach West. The couple was attacked by a group of masked Israelis, who, according to the indictment served, had weapons, a knife and metal rods. They beat the couple, stoned them and smashed their car window. According to the indictment, soldiers who arrived at the site arrested one of the accused, who in return beat them, pushed and cursed them, as well as police officers who arrived as well. In the police station, the Israeli perpetrator encountered the Palestinian man whom he attacked in the field and attempted to spray his face with pepper gas, pushed him, cursing and spitting on him, all in the presence of the police officers inside the police station. A week later, another suspect was arrested, who fled the scene of the incident.

A severe indictment was served that month (October 2014) against the first suspect, including charges of joint assault based on a racist motive, assault resulting in bodily damage, and willful damage to property with an accomplice based on a racist motive, as well as charges such as interfering with a police officer's work, interfering with a public servant, assaulting a police officer, insulting a civil servant, and unauthorized entry to a closed military zone. Later, following difficulties in providing sufficient evidence, a plea bargain was reached and in March, an amended indictment was served against the two perpetrators; this time all charges concerning assault of the Palestinians disappeared, and the perpetrators were charged with infringing a legal order, entering a closed military zone, rioting, interfering with the work of a public servant and assault of a public servant. One of the perpetrators was charged also with assault of a police officer and interfering with a police officer who was performing his duty. There was no mention of

the assault of the Palestinians in the field or in the police station (see also a description of our report on this case in [ynet](#) in October 2014 - with photographs).<sup>7</sup>

- **Decline in the number of Palestinians who complain to the Israel Police**

The May Report continues to point to an alleged decline in the number of complaints filed by Palestinian victims of attacks perpetrated by Israeli civilians (page 9). Israeli law enforcement agencies choose to present this data as reflecting a decrease in the number of incidents, or criminal offenses that occur. In doing so, they ignore the consistent decline in Palestinians' willingness to complain to Israel Police. Yesh Din has directed attention to this concerning trend in its publications<sup>8</sup> as well as in advocacy meetings with Israeli and international duty bearers.

**In 47 of the 135 cases of ideologically motivated offenses documented by Yesh Din in 2015 – approximately 35% - Palestinian victims explicitly expressed they would not complain to the Israel police** (but did give testimony of the incident to Yesh Din).

It would be unreasonable to conclude that the decline in the number of new cases brought to police reflects a decrease in the number of incidents that occur, when Yesh Din's data reflects a very high rate of victims who refrain from filing complaints with the Israel Police. (For more information on the data and reasons of decreasing willingness to file a complaint, see Yesh Din response to January 2016 MoJ Report or our recent data sheet).<sup>9</sup>

- **Reference to use of administrative orders and Access to Justice**

Our concerns regarding the extensive use of administrative orders (pages 14-15 May Report) and physical barriers for accessing justice (page 3-4 May Report) remain as laid out in our response to the January MoJ report.

In brief, Yesh Din views the increasing use of administrative orders restricting the movement of individuals as an undemocratic measure, reflecting the failure of law enforcement authorities to establish prevention through proper criminal proceedings.

Also, while the MoJ claims that the State spares no effort in order to bring Palestinian complainants and eyewitnesses to Israeli courts (page 4), in Yesh Din's experience victims and eyewitnesses who are subpoenaed to testify in Israeli courts face several obstacles, including receiving permits to enter Israel.

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<sup>7</sup> Ynet, October 11, 2014 <http://www.ynet.co.il/articles/0,7340,L-4579496,00.html>

<sup>8</sup> [Mock Enforcement](#) – The failure to enforce the law on Israeli civilians in the West Bank. Yesh Din, May 2015, page 97-103; [Data Sheet](#) October 2015, Law Enforcement on Israeli Civilians in the West Bank – Yesh Din Monitoring Update 2005 – 2015, pages 5-6.

<sup>9</sup> [Data Sheet](#) October 2015, Law Enforcement on Israeli Civilians in the West Bank – Yesh Din Monitoring Update 2005 – 2015.

## Summary

Although the number of cases investigated by the Israeli Police in the West Bank involving allegations of Ideologically-based offences committed by Israelis was adapted to the figure as provided by the police (279 instead of 119 handled only by NMCU), the main failures of the report remain. These include lack of distinction between offences committed by Israeli civilians against Palestinians and against ISFP, a blurring of the figures for cases opened and those investigated, incomprehensible number of cases based on complaints by Palestinians (40 instead of 89), and a missing account for the specific protection of Palestinians under occupation.

Both in the January as well as in the May Report, the MoJ states that “Israel has taken extensive measures to prevent violence in general - and against Palestinians in particular” and that “In recent years, Israeli authorities made considerable efforts to enhance law enforcement in the West Bank, which have led to a significant decrease in ideologically-based offences and an increase in the number of investigations and the rate of prosecution”.<sup>10</sup>

While there have been efforts to improve addressing ideologically motivated offenses against Palestinians in the West Bank over the past 5 years, law enforcement in such cases is still ineffective and does not provide adequate protection for Palestinians and their property. Palestinian victims continue to experience fundamental obstacles to accessing justice. The increase in the number of attacks against Palestinians in residential areas in Area C noted by Yesh Din<sup>11</sup> reflects the lack of enforcement and deterrence, and further deepens Palestinians' fear and mistrust of Israeli law enforcement agencies.

**Suggested references** for further information on Yesh Din's data on law enforcement of ideological crimes committed by Israeli civilians against Palestinians in the West Bank:

- ❖ [Mock Enforcement](#) – The failure to enforce the law on Israeli civilians in the West Bank. Yesh Din, May 2015,
- ❖ [Data sheet May 2015](#) - Prosecution of Israeli civilians suspected of harming Palestinians in the West Bank – Yesh Din monitoring figures
- ❖ [Data Sheet October 2015](#), Law Enforcement on Israeli Civilians in the West Bank – Yesh Din Monitoring Update 2005 – 2015

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<sup>10</sup> MoJ Report, page 1.

<sup>11</sup> [Data Sheet October 2015, Law Enforcement on Israeli Civilians in the West Bank – Yesh Din Monitoring Update 2005 - 2015.](#)