Everyone Pays the Price: Case Study of Jerusalem

Collective Punishment against Palestinians, between Israeli Policies and International Law
The Society of St. Yves - Catholic Center for Human Right is working under the patronage of the Latin Patriarchate in Jerusalem. It was founded in 1991 by the Latin Patriarch of Jerusalem and the Holy Land, His Beatitude Emeritus Michel Sabbah, to help “the poor and the oppressed” according to the social doctrine of the Catholic Church, and was named after Saint Yves, patron Saint of lawyers and known as “Advocate of the poor”.

St. Yves provides gratis legal assistance, counsel, awareness raising and local and international advocacy to the fragmented members of the community. Today St. Yves manages around 2000 cases per year.

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I. Background

II. Introduction
   A. Historical Background
   B. Evolution of Collective Punishment Policies & Practices

III. Local Legal and Political Frameworks
   A. Forms of Collective Punishment Measures Against Palestinians: Jerusalem Case Study
      1. Home Demolitions
      2. Residency Revocations
      3. Blockades and Freedom of Movement
      4. Harassment (Punitive Arrests, Fines, Body Checks, etc.)
   B. Collective Punishment as Official State Policy: Discrimination on All Levels, Including Judiciary

IV. International Law Perspective
   A. International Humanitarian Law
   B. International Human Rights Law
   C. International Criminal Law
   D. Customary IHL & Practice
   E. UN Findings on Collective Punishment in the oPt
   F. Third State Responsibility

V. Conclusions and Recommendations
## ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HRC</td>
<td>Human Rights Council</td>
</tr>
<tr>
<td>ICL</td>
<td>International Criminal Law</td>
</tr>
<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
</tr>
<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
</tr>
<tr>
<td>OP</td>
<td>Occupying Power (Israel)</td>
</tr>
<tr>
<td>oPt</td>
<td>Occupied Palestinian Territory</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
</tbody>
</table>
BACKGROUND

In 2017, Israel will mark the 50-year anniversary of its occupation of the occupied Palestinian territory (oPt), which consists of the Gaza Strip, and the West Bank including East Jerusalem. These 50 years have been marked by a wide range of violations of international law generally (including violations of peremptory norms of international law or jus cogens), and international human rights law (IHRL) and international humanitarian law (IHL) more specifically. While Israeli policies and practices against the Palestinian people have amounted to some of the most heinous and unimaginable atrocities, neither the State nor its individual perpetrators have been held accountable.
Collective punishment is a long-standing Israeli policy. Palestinians of the Gaza Strip collectively suffer from a blockade through land, air and sea. Palestinians in Area C collectively suffer from a denial of humanitarian aid and assistance through a racist and unlawful permit and planning regime. Palestinians in Jerusalem collectively suffer from the effects of systematic discrimination and the illegal annexation. Overall, Palestinians throughout the oPt are faced with a wide range of violations of IHL and IHRL committed by Israel, the Occupying Power (OP). While some the violations come as standard policy and practice, Palestinians are unfortunately all too familiar with such violations when they take the form of the serious IHL violation of “collective punishment” – especially when aimed at Palestinian communities in Jerusalem.

Palestinian Jerusalemites continue an uphill battle against the institutionalized racial discrimination of Israel’s institutions, especially the police and the judiciary. The situation in Palestinian neighborhoods throughout Jerusalem over the past couple of years has been particularly alarming due to Israel’s increased use of punitive measures. Such measures have included, but have not been limited to: home demolitions; residency revocations; restrictions on the freedom of movement; and other forms of harassment. These punitive measures constitute collective punishment, a serious violation of IHL, targeting innocent families, friends and communities of protesters and alleged perpetrators of attacks.

Through this report, the Old City, Jerusalem-based Society of St. Yves – Catholic Center for Human Rights (hereafter “St. Yves”) aims to bring greater attention to this serious violation of IHL committed by Israel against Palestinians in the oPt – especially in Jerusalem. In November 2015, St. Yves held a workshop entitled “Collective Punishment: Between Israeli Policies and International Law” in cooperation with the Konrad Adenauer Stiftung of Germany. The workshop aimed to highlight the escalating trends of collective punishment

1 Society of St. Yves – Catholic Center for Human Rights, St. Yves Holds a Workshop on “Collective Punishment: Between Israeli Policies and International Law” (Nov. 30, 2015), http://www.saintyves.org/?MenuId=0&Lang=1&TemplateId=news&id=122&catid=1&full=1. See also Society of St. Yves, Punitive Residency Revocation: The most recent tool of forcible transfer (June 20, 2016), http://www.saintyves.org/?MenuId=3&Lang=1&TemplateId=news&id=145&catid=1&full=1; Society of St. Yves, St. Yves Demands The Israeli Government to Put an End to Punitive Closures Policies in East Jerusalem (June 11, 2015), http://www.saintyves.org/?MenuId=0&Lang=1&TemplateId=news&catid=1&full=1&id=119.
measures imposed by the Israeli authorities on Palestinians and their grave effects on the basic rights of Palestinians under the current Israeli legal and judicial systems, as well as the position of international law on the legality of such collective punishment measures, and was attended by a large audience representing civil society partners, academic institutions, activists and diplomatic missions.

This report comes in continuation of St. Yves work against these grave violations. During the past months, as part of its monitoring and documentation work, St. Yves also conducted numerous interviews with Palestinian Jerusalemites, documenting violations stemming from such punitive measures, or collective punishment, under IHL. In particular, the types of violations documented include home demolitions, residency revocations, closures, restrictions on freedom of movement, and other forms of harassment (arrests, fines, body checks, etc...). Some of these testimonies are included within this study.

This study is focused on the policies and practices of collective punishment committed by Israel in the oPt, especially in Jerusalem, against its native Palestinian inhabitants – the protected population under IHL. The report will also look at how Israel has used collective punishment measures in other areas throughout the oPt based on findings made by international mechanisms, especially within the UN. Thus, it will look at how such violations are committed by Israel generally, and when those violations specifically constitute collective punishment as prohibited by IHL.

The report will address collective punishment procedures and their evolution since the start of occupation until today. It aims to also provide an analysis of the local political and legal contexts. It further looks at the policies and practices of home demolitions, residency revocations, restrictions on freedom of movement and forms of harassment, as identified by St. Yves and other stakeholders (the UN and its various agencies and bodies, INGOs, NGOs, etc...). Moreover, the report sets out to examine how collective punishment against Palestinians is an official state policy, sponsored by the executive, legislative and judiciary.

This study aims to thoroughly analyze the serious IHL violation of collective punishment in the oPt, especially in Jerusalem. It covers the prohibition on collective punishment under IHL, including its legal history and its standing today. This also includes how such practices and policies also violate IHRL, as well as general international law. It then provides an overview of international mechanisms have made findings on collective punishments committed by Israel within the oPt. It also covers the role of third States in dealing with the serious IHL violation of collective punishment, as well as grave breaches and other serious violations of IHL as specific violations amounting to collective punishment. It concludes with a series of legal and policy recommendations for third States and Parties in particular.
INTRODUCTION

This section provides a brief history of the occupation and the background and evolution of collective punishment procedures.

A. Historical Background

The 1947-1948 civil war in Palestine began between forces from its native Palestinian Arab population and Zionist Jewish immigrants attempting to create a State within the territory of Palestine. Tensions and sporadic periods of conflict had been occurring since the beginning of the British Mandate, where native Palestinian Arabs fought against the British forces and their allied immigrant Zionist Jewish militias. The Zionist Jewish community at the time made a declaration of independence for the State of Israel over the territory of Palestine, which the native Palestinians rejected, and was immediately followed by a war between its forces and the neighboring Arab States. At the end of the war, Jordan took control over the West Bank, including East Jerusalem and Egypt took control over the Gaza Strip, while the remaining territory was under control of the declared State of Israel. The events of this period are traditionally known to the Palestinians as “An-Nakba” or “the catastrophe”, resulting in a Palestinian refugee exodus from their native lands amounting to around 700,000 refugees.

In 1967, Israel attacked Egyptian forces, triggering the Six-Day War. Israel took over the Gaza Strip from Egypt and the West Bank, including East Jerusalem, from Jordan. The events of this war are traditionally known to the Palestinians as “An-Naksa” or “the setback”. In 2017, Palestinians will mark 50 years of the brutal military occupation of the oPt.

B. Evolution of Collective Punishment Policies & Practices

The implementation of collective punishment policies and practices against Palestinians dates back to the preceding British Mandate, when it set out its Defense (or Emergency) Regulations in 1945 as a means to quell the Palestinian Arab revolt against Britain that had started since the advent of the British Mandate. Since Israel occupied the oPt, it has implemented a wide range of military orders applicable to the oPt and its Palestinians, while incorporating and modifying the British Emergency regulations and continuously renewing them since 1948 to serve the purposes best fit for its treatment of Palestinians and continued settler-colonial project.

More importantly, these laws and regulations have been used as brutal means of punishment against

2 On Al-Muqtafi, the Institute of Law at Birzeit University estimates that military orders have reached over 2,500 since 1967; see http://muqtafi.birzeit.edu/PDFPre.aspx?PDFPath=en/Uploads/supportive_research_and_studies/dd.pdf.
Palestinians in response to protest and individual attacks (even those based on mere suspicion). As explained by B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, the regulations have been used by Israel to “punish and deter”, serving as “the authority for Israel to demolish and seal hundreds of houses, deport residents, administratively detain thousands of persons, and impose closures and curfews on towns and villages”. Through its military rule, Israel’s use of these regulations have served to establish a fait accompli in the oPt, while its laws and regulations stand in complete contradiction to, and violation of, the rules of IHL.

To Palestinians, Israel’s use of collective punishment measures has become a well-known feature of the occupation. Over the course of its successive governments, Israel has continuously and consistently engaged in and defended policies and practices of collective punishment, using and exploiting these laws and regulations and the abusive discretion of its occupation. Through its various State organs and agents, Israel, the OP, has used such policies and practices to further its control over the oPt and to send a message to the Palestinians that its population will be collectively held responsible before Israel for any act by any Palestinian against its authorities. As a result, whole towns and villages have suffered time and again from Israeli measures that are both responsive and punitive.

These measures are numerous and diverse. They have served Israel’s attempts to further tighten its military control over certain areas, primarily over East Jerusalem as occupied in 1967. They have been more prominently used to permanently eliminate all forms of opposition and protest against the occupation. They were especially intensified during the Second Palestinian Intifada (or the Al-Aqsa Intifada) lasting between 2000-2005, the events since summer 2014 (also referred to as the Jerusalem Intifada) and subsequent escalations in October 2015 in a period of extremely heightened tensions. Key measures during these periods have included campaigns of closures and mass arrests targeting specific areas under its occupation where protests take place or where suspected attackers originate from, affecting every fragment of Palestinian society, especially children, women, youth and the elderly. Additionally, during these periods, Israel intensifies its ruthless use of administrative detention, contrary to fair trial rights and other basic fundamental rights, against everyone ranging from activists to politicians to the general public. Victims number in the hundreds inside prisons and detention centers, without indictment or trial.

In addition, several measures that have also affected the daily lives of Palestinians over the past five decades of occupation, and more so during periods of unrest include: road closures, sealing off entire neighborhoods, increased physical and mental abuse at military checkpoints spread throughout the West Bank and Jerusalem, closures of academic institutions, the closure and raiding of Palestinian civil society organizations, the closure and raiding of Palestinian civil society organizations in the West


5 This was an especially prominent measure during the first Palestinian Intifada starting in 1987. Israel regularly raids Palestinian universities throughout the West Bank. See, e.g., Birzeit University condemns Israeli ‘military attack’ on campus, Ma’an News Agency (Jan. 12, 2016), https://www.maannews.com/Content.aspx?id=769754; Israeli forces raid al-Quds University, damage contents of book fair for the needy, Ma’an News Agency (Nov. 20, 2016), https://www.maannews.com/Content.aspx?id=774037 (raiding also Palestine Technical University in Tulkarem).
Everyone Pays the Price: Case Study of Jerusalem

Collective punishments have continued to escalate and expand to affect every aspect of Palestinian lives, from single innocent individuals, to small towns and villages, to entire cities and territorial areas. One clear example, coming as part of official government policy, includes the blockade of the entirety of the Gaza Strip, punishing the totality of its Palestinian population of approximately 2 million after outcome of the Palestinian elections. Another clear example, includes the closure of main roads of access, affecting the entirety of the Palestinian population in and around Jerusalem and in Hebron following alleged attacks. These collective punishment measures help Israel in unlawfully asserting its sovereignty over the oPt through imposing control over every detail of Palestinian daily lives. National and international NGOs, along with international organizations and other observers, continue to note the high frequency of measures amounting to collective punishment especially in situations where there is large scale escalation of protests against the military occupation (see next section).

With respect to Jerusalem more specifically, Israel continues to take measures to assert its sovereignty over the whole of Jerusalem and change its historical and demographical features – many attempts of which have come in the form of collective punishment. Israel illegally and unilaterally annexed East Jerusalem in 1980, and it has continued to suffer since it was occupied in 1967. Since its annexation, Israel has continued to attempt to cut off the city from its surrounding areas and from the remainder of the West Bank, including its own neighborhoods and its outside towns and villages. Palestinian Jerusalemites continue to be pushed further away from Jerusalem and closer to other cities and towns such as Bethlehem and Ramallah through Israeli attempts to manipulate the demographic composition of Jerusalem. Some of the measures undertaken by Israel that have led to this situation, include the imposition of heavy taxes upon traders and storeowners, heavy fees in exchange for the provision of public services, and, in many cases, deliberately targeting the freedom of movement within Jerusalem similar to, or even worse than, the same restrictions throughout the remainder of the West Bank. Behind these measures lies Israel’s intent to remove Palestinians from communities of Jerusalem and certain parts of the West Bank.


7 Jerusalem and Hebron are particularly unfortunate, given that both are subject to increased nature of the attempts to shift the demographics and further consolidate those lands. See, UN agency condemns Israel’s closures in Hebron as ‘collective punishment’, UN News Centre (July 25, 2016), http://www.un.org/apps/news/story.asp?NewsID=54544#.WDsPqaJ97MU; Army closure of Ramallah area checkpoints causes delays, traffic jams, Wafa News Agency (Nov. 7, 2016), http://english.wafa.ps/page.aspx?id=GCZhfga51583109094aGCZhfg.

8 Basic Law: Jerusalem (1980) (Isr.).


As further explained below, collective punishment is a serious violation of IHL. IHL applies to situations of armed conflict, including situations of occupation. IHL “protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare”.12 The rules of IHL were developed in order to deal with the reality of human suffering during warfare without discrimination.13 Under the rules of occupation, Israel is required to ensure the rights of protected persons, which includes civilians in occupied territories, and is obligated to restore and ensure their public order and safety and humanitarian needs, while also respecting the customs and laws in the country.

Although not always constituting collective punishment, Israel continues to engage in measures with serious effects on social, political and economic life targeting Palestinians in the oPt. Israel controls every aspect of Palestinian life and exploits potential for instability to further ensure its continued occupation of the oPt.14 As such, the next section explains Israel’s policies and practices when they take the form of the most prominent collective punishment measures used against Palestinians in the oPt in general, and more specifically in Jerusalem. As a result of the increased use of collective punishment, there is a need to increase awareness on such policies and practices, especially since the events of summer 2014, and shed light on those measures undertaken by Israel against Palestinians, mainly in response to protest or alleged attacks. These policies and practices run contrary to the conventional and customary rules of IHL and not only constitute the serious violation of collective punishment, but other grave breaches and serious violations of IHL. Furthermore, depending on the collective punishment measure, they violate human rights obligations, and may also contribute to violations of peremptory norms of international law.

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13 Or what is referred to as “adverse distinction”. See ICRC Customary IHL Study, Rule 88: Non-Discrimination, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule88, “Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited”.

LOCAL LEGAL AND POLITICAL FRAMEWORKS

This section explains the local legal and political frameworks and, in particular, the forms of collective punishment committed against the Palestinians, especially in Jerusalem, as well as the complicity of all aspects of Israeli governance in the discriminatory application of such measures against Palestinians in the oPt.

A. Forms of Collective Punishment Measures Against Palestinians: Jerusalem Case Study

Within the oPt, and particularly in and around Jerusalem, Israel has developed a complex system which discriminates against the native Palestinian population— to whom they owe obligations under international law generally and IHL and IHRL specifically. As mentioned above, based on historical Israeli measures, some of the practices and policies employed by Israel against the Palestinians include, but are not limited to, home demolitions, residency revocations, restrictions on freedom of movement (blockades, curfews, checkpoints, etc.), as well as other types of harassment (punitive arrests, fines, body checks, etc.). This section explains these policies and practices in more detail, based on public information and the interviews conducted by St. Yves. Within each of these categories, the measures are employed as a matter of general policy, or as specific collective punishment measures.

1. Home Demolitions

The policy of home demolitions has been one of the most protuberant measures taken by Israel since its occupation of the West Bank in 1967 and especially in Jerusalem. This policy has been based on a wide array of arguments and justifications to circumvent international law, in order to continue the policy and the subsequent displacement of Palestinians. Some of the justifications used include the lack of building permits especially for those homes in Jerusalem, the requirements of military necessity, and, most relevant to this topic, punitive measures under the pretext that a member of the family was accused of carrying out an attack against Israel. The punitive demolitions are carried out vis-à-vis Regulation 119 of the 1945 Emergency (Defense) Regulations. They have been a prominent measure employed by Israel for the purposes of displacing families and leaving them homeless as a message by the authorities believing that this would deter future attacks.

As noted by B’Tselem, in 2005, a military committee determined that the home demolition policy as a counter-terrorism tool was questionable and “walked the line” of legality. The then-Minister of Defense,
Shaul Mofaz, adopted the committee’s recommendations, and stopped its use of the measure, with the exception of one home demolition and the sealing of two other units in 2009 in East Jerusalem.\textsuperscript{19} The policy was then reinstated in 2014.\textsuperscript{20} As one expert opinion by prominent Israeli international lawyers explains, the home demolitions policy violates “not only the right to property of the residents of the Territories, but also the provisions of Article 50 of the 1907 Hague Regulations and Article 33 of the Fourth Geneva Convention, both of which prohibit collective punishment”.\textsuperscript{21} Furthermore, it criticized the Israeli Supreme Court, stating that it “should not declare a policy that has collective punishment features to be legal” and should not provide “judicial stamp” to a policy resulting in serious violations of IHL and IHRL.\textsuperscript{22} Additionally, home demolitions may also amount to the illegal act of reprisal under IHL.\textsuperscript{23}

The Israeli Committee against Home Demolitions (ICAHD), has been one of the most active NGOs challenging home demolitions. According to ICAHD, it is estimated that between 1967 and 1997, when the policy was halted post-Oslo agreements, “approximately 1,750 homes were destroyed or sealed in punitive demolitions”\textsuperscript{24} The policy was reinstated when the Second Palestinian Intifada erupted, where “664 Palestinian homes were demolished as forms of punishment leaving 4,182 innocent people displaced”.\textsuperscript{25} According to B’Tselem, punitive home demolitions per year are as follows (as of 27 October 2016): 21 (and 3 sealings) in 2016; 11 in 2015; 4 in 2014; 177 in 2004; 225 in 2003; 252 in 2002; and 10 in 2001.\textsuperscript{26} Further, between 1987-2004, the statistics are as follows: 1,115 complete demolitions; 64 partial demolitions; 299 complete sealings; and 118 partial sealings. ICAHD’s more recent estimates include 48,488 homes and other structures demolished since 1967 – under its range of pretenses.\textsuperscript{27} Of these, it is estimated that 12,000 of these were homes, and 3-5% of them were punitive home demolitions.\textsuperscript{28} According to the Palestine Liberation Organization’s Negotiations Affairs Department, the number of demolitions in the oPt are over 30,000 since 1967, and in Jerusalem over 3,380 homes and other structures overall.\textsuperscript{29} The most alarming aspect with respect to home demolitions is their occurrences during the First and Second Intifadas, as well as since the events of summer 2014 – on the basis of punitive, administrative measures, and under the justification of military necessity.\textsuperscript{30} An important

\textsuperscript{19} Id.  
\textsuperscript{22} Id., 49.  
\textsuperscript{23} Id., 30.  
\textsuperscript{25} Id.  
\textsuperscript{26} B’Tselem, House Demolitions as Punishment (updated Oct. 27, 2016), http://www.btselem.org/punitive_demolitions/statistics.  
\textsuperscript{27} ICAHD (main page), http://icahd.org/ (as of Nov. 27, 2016). See also ICAHD, Israel’s Policy of Demolishing Palestinian Homes Must End: Submission to the UN Human Rights Council by the Israeli Committee Against Home Demolitions, http://icahd.org/get-the-facts/analysis/.  
\textsuperscript{30} Absolute military necessity may be invoked for justification on the destruction of private property. The OP cannot use this justification, particularly given that planning for such destruction has been planned well in advance and through sophisticated technical arrangements. Yet most importantly, military necessity is a consideration used for the purposes of armed conflict and against a military adversary – which does not exist in the West Bank, and East Jerusalem in particular. Thus, it is invoked to achieve a military purpose, in order to weaken the enemy, and would include
point to note is that in Palestine very few homes have sole occupants and thus home demolitions will almost always affect more than one individual.

Yet again, as noted by the statistics compiled by B’Tselem and others, and the reinstatement of punitive demolitions as a matter of policy, home demolitions are especially evident and accelerated during periods of protest and escalation – such as in the last couple of years.\(^\text{31}\) This is, again, indicative and clearer of home demolitions as carried out by Israel against Palestinians, as a matter of policy and practice and as collective punishment. Punitive demolitions escalated again in the beginning of October 2015, when Israel intensified its policy due to growing unrest especially in Jerusalem.\(^\text{32}\) Homes were demolished throughout East Jerusalem and the remainder of the West Bank, also causing damages to nearby homes and rendering them uninhabitable. B’Tselem statistics for 2016 alone included 21 homes demolished, leaving 2 nearby apartments uninhabitable and 144 people homeless including 44 minors.\(^\text{33}\) Punitive sealings for 2016 numbered 3, leaving 12 homeless, including 3 minors. For 2015, 11 homes were demolished, leaving 14 nearby apartments uninhabitable and 85 homeless, including 43 children. For 2014, when the punitive home demolition policy was resumed, 4 homes were demolished, leaving 27 homeless, including 13 minors. Of course, it is important to note that during periods of relative calm, such as post-Oslo peace accords and after the end of the Second Palestinian intifada, punitive home demolitions were relatively lower.\(^\text{34}\) Given the extreme spike in punitive demolitions with the coming of the Second Intifada, the UN Security Council called on Israel to respect IHL and cease its policy of punitive home demolitions.\(^\text{35}\) Furthermore, with the last wave of demolitions, came condemnations from the UN Special Rapporteurs on the human rights in the oPt and the right to adequate housing, stating “the use of house demolition as a punitive measure is a form of collective punishment”.\(^\text{36}\) Nevertheless, Israel continues its use this form of collective punishment based on State policy and its prescription into law by the Defense (Emergency) Regulations.

Most recently, according to HaMoked, on 14 November 2016, the military issued a demolition order for an apartment of an East Jerusalem resident who had committed an attack on October 9, 2016 in Jerusalem. The demolition would leave his wife and five children homeless.\(^\text{37}\) Furthermore, in the span since the events of summer 2014, HaMoked compiled the following statistics:

- 34 homes demolished: 11 in northern West Bank; 18 in southern West Bank; 5 in East Jerusalem;
- 7 homes sealed: 3 in southern West Bank; 4 in East Jerusalem;
- 2 homes targeted for demolition: 2 in East Jerusalem; and
- 98 homes surveyed without a punitive order issued: 14 in northern West Bank; 66 in southern West Bank; 18 in East Jerusalem.\(^\text{38}\)
Not only do such home demolitions violate the rule prohibiting collective punishments, but they may also violate other IHL rules including, inter alia, the prohibitions against forcible transfer (a grave breach of the Fourth Geneva Convention) and reprisals. This is in addition to the wide range of IHRL violations that may come with home demolitions, including its effects on vulnerable groups such as children. Furthermore, it may also constitute a violation of peremptory norms of international law, such as racial discrimination, apartheid, crimes against humanity and others.

In Jerusalem, which is considered they key to any potential peace process between both parties to the conflict, Israel continues to exercise policies attempting to create facts on the ground. This is especially the case in East Jerusalem, the capital of the State of Palestine based on the 1967 borders. The Israeli occupying power has increased its use of home demolitions as a method of pressuring Palestinians while its Jerusalem Municipality continues to act towards decreasing its Palestinian population and maintaining a Jewish majority. The plan to achieve these faits accomplis is representative of the OP’s vision not to withdraw from East Jerusalem as Palestinian capital and as prescribed by UN Security Council Resolution 242. As previously noted, the attempts at land confiscation for the purposes of annexation and demographic manipulation come as part of Jerusalem’s long-term planning, such as in the famous ‘Jerusalem 2020’ plan, which aims to achieve a 70% Jewish majority in Jerusalem as opposed to a 30% Palestinian Arab minority. Through the Jerusalem Municipality, Israel continues to engage in planning at the expense of the local population. Overall, it has become evidently clear that during certain periods of unrest, Israel exploits its use of the situation to implement collective punishment measures to further its overall plans for Jerusalem and its native Palestinian population.

2. Residency Revocations

Since the occupation of East Jerusalem began in 1967, Israel has continued to ensure its full control over the whole of Jerusalem – not only through the effective annexation of 1980, but through other measures as well. Palestinians who were not present at the time of the occupation lost their right to reside in Jerusalem, and those who were not available for Israel’s census post-occupation, also lost their right. Specifically, in East Jerusalem, between 1967 and 2010, at least 14,000 Palestinians had their Jerusalem residency revoked out of which 11,000 revoked since 1990 under a wide range of pretenses.

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40 See Arafeh.

41 S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967); "Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles: (i) Withdrawal of Israeli armed forces from territories occupied in the recent conflict".


of Israel’s occupation of East Jerusalem, these measures have taken different shapes and forms to limit the presence of Palestinians in East Jerusalem. As such, even Palestinian Jerusalemites moving to other parts of the oPt can lose their permanent residency status.

While not at the rate of home demolitions, a concerning aspect about the residency revocations comes when such measures are punitive in nature. Given the annexation of East Jerusalem, Israel illegally attempts to exercise its sovereignty over the occupied territory. The Minister of Interior has exercised his power to revoke residencies, where those individuals in “breach of allegiance to the state of Israel” in violation of IHL. This is particularly worthy of note as Article 45 of the 1907 Hague Regulations provides that “[i]t is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power”. As a result of this process, the Minister of Interior has pushed the residency revocation of three elected members of the Palestinian Legislative Council (Mohammed Abu Tir, Ahmed Attoun and Mohammed Totah) and the Minister for Jerusalem Affairs (Khaled Abu Arafeh). These residencies were revoked after the members were elected to the Palestinian Legislative Council. A petition challenging this type of revocation has been filed with the Israeli Supreme Court. If the grounds are also provided a “judicial stamp”, this can have long term implications on punitive residency revocations in the future. Abu Tir and Attoun were forcibly transferred outside East Jerusalem, and Totah and Arafeh were arrested at the ICRC premises in Jerusalem while trying to seek refuge there. The UN Special Rapporteur on freedom of expression and opinion condemned these acts, claiming a violation of IHL by Israel concerning allegiance to a hostile power, and the right to freedom of opinion and expression under IHRL. As noted by the Norwegian Refugee Council, the Minister of Interior gave them the four individuals a choice, either leave the Hamas ticket or have their residencies revoked.

In January 2016, with that petition still pending, four East Jerusalem Palestinians suspected of criminal offenses also had their residencies revoked. These four Palestinians are alleged to have been involved in “security incidents”, or attacks against Israelis. These incidents occurred in the months of September and October of 2015.
Furthermore, Israeli legislation may also in and of itself constitute collective punishment. As noted by the Norwegian Refugee Council, the 2005 amendments to the Citizenship and Entry into Israel Law “the Ministry of Interior may reject an application if the resident’s parent, child, sibling, brother-in-law or sister-in-law is involved, according to the Israeli security forces, in security-related activity”. In a petition filed by the Association for Civil Rights in Israel and Adalah, the two NGOs criticized the decision of the Ministry of Interior for initiating such proceedings against East Jerusalem residents Subhi Abu Khalifa and Shuruq Dawiat, especially given that they had not yet been convicted in a court of law.

During the escalations in October 2015, it was also reported that a senior Israeli military official had advised for not only revoking the residencies of Palestinian Jerusalemites, but also to deport families of Palestinians suspected of carrying out attacks to the Gaza Strip. As noted by Al-Haq, the Israeli Minister of Justice stated that Palestinian attackers and their “supportive” family members would have their residency revoked as well as their social security benefits. As further noted by Al-Haq, Israeli Military Order 378 (1970) allows Israel to decide for individuals to “live within the bounds of a certain place”. During this time, the Israeli Prime Minister and other officials raised the idea of revoking residency permits from Palestinians in East Jerusalem, beyond the Wall, as a means to deal with the escalations. In a measure that could potentially affect 80,000-100,000 Palestinians, it was reported that the Prime Minister was intent on having a discussion about the matter. Furthermore, two weeks prior, the Minister of Interior planned to revoke the residency status of 19 East Jerusalemites accused of involvement in attacks. In response, St. Yves demanded in a correspondence with the Israeli Prime Minister and Minister of Interior to immediately rescind the Cabinet’s decision dated 14 October 2015 whereby the Minister of Interior gave instructions to revoke the status of 19 Palestinian residents of Occupied East Jerusalem suspected of carrying out “terror attacks”.

The decision to revoke these residencies is based on the racist Citizenship and Entry into Israel Law which gives discretion to the Minister of Interior to revoke residency licenses from their holders. Israel has used this law as a tool to void Occupied Jerusalem from its Palestinian population and achieve its “demographic balance” goals. The Israeli government issued the decision after the recent escalation in the city to get rid of as many Palestinians as possible.

St. Yves demanded that the discretion granted to Minister of Interior be treated with much caution and be limited solely within the boundaries of the conditions explicitly defined by law and not be used in an absolute arbitrary way as means of discriminatory punishment. St. Yves further stressed that if the Israeli government is concerned about security as it claimed when it gave this decision, it can rely on its criminal laws to achieve it without harming the civil status of the suspected Palestinian Jerusalemites. St. Yves highlighted that this recent revocation decision is applied in a discriminatory manner as the only criteria of application is only applicable to Palestinian “attackers” and excludes Jewish Israeli attackers who commit similar or even more dangerous attacks against Palestinians.

On January 8th, 2017 the 28 old Palestinian Fadi Qunbar carried out a truck-ramming attack in Jerusalem that left 4 Israeli soldiers dead. Israeli authorities were quick to react: the house of his family was demolished, and the Israeli Minister of Interior decided to revoke the residencies of 12 members of direct and extended family, including his mother’s residency and social rights with immediate effect. The decision was issued without the possibility to appeal or object against it.

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53 NRC Residency, 43-44. The Ministry of the Interior has used this many times to reject family reunification and, in many cases, this is irreversible.
57 Id.
The Israeli Minister of Interior, Arye Deri stated that “From now on anyone who plots, plans or considers carrying out an attack will know that his family will pay a heavy price for his deed. The consequences will be harsh and far-reaching, like the decision I made regarding the mother and relatives of the terrorist who perpetrated the attack in Armon Hanatziv in Jerusalem”. 59

Such measures, as taken by the Minister of Interior, may not only constitute collective punishment against the families of the alleged attackers, but also violations of other IHL rules including, inter alia, the prohibition on forced transfer (a grave breach) and the prohibition on an OP requiring allegiance to it by protected persons within occupied territories. Of course, this would also come with a wide range of other violations of IHRL, especially on the freedom of opinion and expression. Furthermore, it may also be one of the aspects constituting violations of peremptory norms of international law, such as racial discrimination, apartheid, crimes against humanity and others.

3. Blockades and Freedom of Movement

Another key feature of the occupation has come with restrictions on the freedom of movement in the forms of closures, curfews, blockades and, most prominently, checkpoints. Generally, many of these are put in place in areas near settlements, and also close off Jerusalem in particular from the remainder of the West Bank.60 The obstacles to freedom of movement have also been cemented in the blockade of the Gaza Strip post-elections, and the building of the Annexation Wall (or what Israel refers to as the “security barrier”) during the Second Intifada, both as measures that were punitive and responsive. On the Annexation Wall specifically, the Office for the Coordination of Humanitarian Affairs (OCHA) has estimated that 85% of the Wall route runs inside the West Bank, 9.4% of the West Bank including East Jerusalem will be isolated by the Wall, and 65 out of 150 settlements are on the “Israeli side” of the Wall.61 Furthermore, 1000s of East Jerusalem residents are located on the ‘Palestinian side’ of the barrier,62 which could have huge consequences considering threats to revoke their residencies (as explained above).

Yet, again, under security pretenses during the periods of escalation, this system becomes increasingly intensified. In October 2015, OCHA documented new movement restrictions in East Jerusalem. In addition to the pre-existing checkpoints and other obstacles, new obstacles put in place around East Jerusalem alone consisted of 17 checkpoints, 20 roadblocks and 1 earthmound.63 As explained by OCHA, the October 2015 events systematically restricted the movement of Palestinian residents of East Jerusalem and affected 138,000 people in nine neighborhoods.64 Eventually, while most were removed, eight obstacles remained

59  Haaretz newspaper: Israel Seeking to Strip Residency of 12 Relatives of Jerusalem Truck Attack Assailant
Read more: http://www.haaretz.com/israel-news/premium-1.764202
62  id.
in place by the end of 2015. Additionally, OCHA documented that during this same period of time obstacles intensified throughout the entirety of the West Bank. In the Northern West Bank, there were 18 new obstacles in addition to 167 pre-existing obstacles; in Hebron, there were 53 new obstacles in addition to 109 pre-existing obstacles; and overall, closure obstacles at the end of the year amount to 543 (179 earthmounds, 77 roadblocks, 70 checkpoints, 63 road gates normally closed, 50 road barriers, 48 road gates normally open, 26 partial checkpoints, 22 earthwalls and 8 trenches). Hebron is also subjected to severe measures, where over 20% of the 95 obstacles and permanently staffed checkpoints were within its H2 area under Israeli control, affecting 4,000 children who go to school there. Overall, in September 2014, the total amount of obstacles documented by OCHA amounted to 490.

With the events of October 2015, some of the key movement restrictions included the isolation through installed obstacles, and heavy police presence through the Jerusalem neighborhoods of Isawiya, Jabal Mokaber, Silwan, Wadi al-Joz, Sheikh Jarrah, and elsewhere. In particular, and as also discussed below, the frequent and highly-increased presence of authorities throughout the Old City and especially in front of the Damascus Gate.

As per the testimonies collected by St. Yves researchers, East Jerusalem residents complained about the numerous checkpoints between Damascus Gate and Al-Wad Street, which is less than one kilometer in distance. These checkpoints targeted all persons—men, women, children and the elderly—who were subjected to humiliating searches violating their personal dignity. The passers-by were subjected to beatings during the searches and at times, killings based on suspicion. According to the witness, the victim was discriminately targeted. Another person claims he was body searched four times over the course of one month, and each time he feared for his life. Another child, a resident of Al-Wad Street, explained that the authorities seemed intent on scaring the children during the searches, hitting them and insulting them, having been checked numerous times.

These measures have led to the creation of a state of terror in the Old City, and have far-reaching implications on all aspects of life, whether educational, commercial or religious. It has also had an impact on civil society within the Old City. As one civil society activist from the Jerusalemite Trade Association explained, commercial traffic has been paralyzed, especially since October 2015, with some shops being forced to shut down. Residents of the Old City continue to suffer from severe restrictions on the freedom of movement, as well as from the measures imposed on merchants in the Old City, such as penalties. As another testimony explains, the number of Arab-owned shops in the Old City is around 1450, all of which have been affected in one way or another. From those stores, 30 stores have had to shut down due to bankruptcy because of the prevailing situation and inability to pay for the fines and other measures imposed on them by the Jerusalem Municipality. After Muhammad Halabi was killed, police assaulted shop owners and forced them to close their shops.

According to interviews conducted, civil society organizations in the Old City were also severely affected by these movement restrictions. Beneficiaries had, at times, feared the checkpoints and other obstacles, particularly given their knowledge of ill-treatment and even killings. Some organizations were unable to carry out their activities and closed down for long periods of time in and around the Old City. Regarding education, some schools in the Old City were closed due to students being unable to access them, as well as parents’ fear of harm to their children. On some occasions, according to the interviews, some schools have been stormed by authorities under the pretext of searching for stone-throwers, creating an environment of terror an intimidation within schools. With respect to other schools, during the fourth quarter of 2015, 185 education-related incidents were documented in the West Bank including: 91 interferences with access

65 Id.
66 Id.
Everyone Pays the Price: Case Study of Jerusalem

to education, 74 attacks on schools, 11 threats of attacks against protected persons in relation to schools, and nine attacks on protected persons in relation to schools. Nine percent of the violations documented by UNICEF were located in Jerusalem.70

Furthermore, the restrictions also significantly affected the freedom of worship, particularly through control of movement in and out of Al-Aqsa mosque. In particular, the activist group of men known as the Mourabitoun and women known as the Mourabitat, were outlawed by the authorities for their protesting of incursions into the Al-Aqsa compound – backed on the use of the Defense (Emergency) Regulations.71

Yet these restrictions on movement can also come in different forms, affecting the Palestinian population as a whole, or particularly affecting certain communities for their association with protests or suspected attacks. For example, as noted by Diakonia, in response to an attack in Tel Aviv that left four Israelis dead, a four-day ban was imposed on all travel by Palestinians from the oPt to Israel and Jerusalem – which the UN High Commissioner for Human Rights condemned as collective punishment.72 Israeli authorities revoked 83,000 permits for Palestinians to “visit” Israel, and suspended the work permits of 204 Palestinians of the extended families of the alleged attackers.73 After an attack against Israeli settlers at Kiryat Arba in July 2016, all work permits for persons from Bani Na‘im – where the attacker originated from – were revoked and the town was sealed off for 34 days.74 Furthermore, there are other situations where entire towns and villages have been sealed off. For example, Beit Ur Al-Tahta, has been entirely sealed off on more than one occasion as a result of specific attacks, as have other towns been such as Beit Fajjar for the same reason.75

Movement and access restrictions, especially when conducted in a responsive and punitive manner, may not only constitute collective punishment, but also violate other IHL rules, including fundamental rights and guarantees of persons, especially vulnerable groups protected by the Fourth Geneva Convention. Of course, this would also come with a wide range of other violations of IHRL, including the freedom of movement, and especially including those treaty-specific obligations towards groups such as women and children.

4. Harassment (Punitive Arrests, Fines, Body Checks, etc.)

The daily forms of harassment committed by Israeli authorities against the Palestinian population include, but are not limited to, punitive arrests, fines and body checks (similar to the stop-and-frisk methods employed by police in the United States), targeting only Palestinians. These forms of harassment are nothing new, and have been employed throughout the oPt since the occupation of 1967, and against Palestinians since 1948.

Again, these forms of harassment have primarily come as punitive measures in response to periods of escalation, as well as in response to individual attacks. For example, in response to the events in October 2015, the government approved a bill expanding the stop-and-frisk law, based on mere suspicion.76

The Public Security Minister at the time, explained that there was a need to

71 Gill Cohen, Israel Bans Two Muslim Activist Groups From Temple Mount, Ha’aretz (Sep. 9, 2015), http://www.haaretz.com/israel-news/1.675329.
conduct body searches to deal with the attacks. This would include “places a regional police commander declared temporarily as a location where such searches can be made (...) if he has a reasonable suspicion that the peace could be disturbed by an act of violence in that place”.

The decision was heavily criticized as being racist and constituting collective punishment. The expansion of this law adds that “[f]or the purposes of this amendment reasonable suspicion shall be, among others, if the person is acting aggressively in a public place, or employs verbal violence or threats, or acts alarmingly or otherwise frighteningly.” This prevented movement for 6,000 Palestinian residents and closed off six other villages. Most importantly, these closures do not meet the requirements of necessity and proportionality, and have only been made under general security pretenses. As further noted by Diakonia, these are not isolated incidents and run in tandem with other measures of collective punishment on restrictions of movement – similar closures of entire towns and villages, as punitive and responsive measures, include the closing of Qabatiya, Nahalin, Zawiya, Hajjah and, as mentioned above, the closure of Hebron.

Furthermore, Israel, the OP continues to increase its use of administrative detention, or “detention without charge or trial that is authorized by administrative order rather than by judicial degree”, during periods of unrest. While the use of this measure is admissible under international law under exceptional circumstances, it has become a key feature of the occupation. According to Addameer, in October 2016, there were roughly 7,000 political prisoners and 720 administrative detainees, 400 of which are child prisoners, 64 of which are female prisoners and 470 are East Jerusalem prisoners. Yet of course, Israel continued, during the end of October 2015 in particular, with a campaign of mass arrests and detentions, without charge or trial. During this time, until the very end of 2015, Addameer documented the following:

- More than 2,663 Palestinians arrested since the beginning of October 2015.
- Over 620 Palestinians including 177 children were arrested from occupied Jerusalem, 1,885 Palestinians including 278 children were arrested from the rest of the occupied West Bank and 158 Palestinians including 24 children were arrested from the 1948 occupied territories.

The number of Palestinian political prisoners drastically increased after this widespread mass arrests campaign to reach approximately 6,800 prisoners and detainees including 660 administrative detainees, more than 470 children, 60 female prisoners and five members of the Palestinian Legislative Council.

This is not new, and is a known feature of the occupation, especially given the campaigns of mass arrests during the first and second Palestinian intifadas. As with the increases in home demolitions, the use of administrative detention is considerably at higher rates in periods of escalations.\(^{86}\) For example, the total of administrative detainees until September 2015 is numbered at 315, rising to 429 in October 2015 and, in April 2016 reaching 692.\(^{87}\) This number reached over 1,000 during the Second Palestinian Intifada.\(^{88}\) Furthermore, at the end of April 2016, 414 Palestinian minors were held in Israeli prisons as security detainees and prisoners, including 13 administrative detainees.\(^{89}\)

With respect to the information compiled by St. Yves, there was a steady increase of mass arrests including children, especially in Jerusalem. Israel engaged in campaigns of mass arrests through Palestinian neighborhoods of Jerusalem, including 907 arrests between 1 October 2015 and 31 December 2015, which included the arrests of 354 children (40 under the age of 12), and 46 women. There were 782 cases of arrests between 1 January 2016 and 31 May 2016, which included 41 women and 323 children (28 under the age of twelve). Many of these arrests result in judgments against them, including prison sentences and house arrest, especially targeting children. There were also several cases of judgements prohibiting entry to Al-Aqsa Mosque in 2016, totaling 134 cases including 18 women and 13 children, as well as 37 elderly. These lasted a minimum of two weeks, directly targeting the freedom of worship through the use of the Emergency (Defense) Regulations and other laws and policies, as noted above.

From the testimonies collected by St. Yves, children who have been arrested complain that they have been subjected to torture and other forms of ill-treatment including, but not limited to, sleep deprivation and long interrogations in order to extract information. Furthermore, in contradiction of international and Israeli law, lawyers were not afforded to the detainees and there were no family members present during this time. They were also subject to insults, threats and beatings simply based on suspicion. As one testimony notes, the minor was subject to electric shocks to his feet during the interrogations in the Maskobieh Detention Center in Jerusalem, well-known for its history of torture and other forms of ill-treatment, especially against Palestinian children from Jerusalem.

These are just some examples of the major forms of harassment witnessed, especially in and around Jerusalem. These forms of harassment, may not only constitute collective punishment, but also violate other IHL and IHRL rules, especially those fundamental rights and guarantees of persons including freedom of worship, as well as specific rights afforded to vulnerable groups, as protected by the Fourth Geneva Convention.

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\(^{86}\) The use of administrative detention must be necessary and proportionate and, overall, in only exceptional circumstances. Yet, in the oPt, the OP has used this measure to bypass their fair trial obligations and detain political opponents. Under IHL, such reasons must be of imperative necessity and must not be collective in nature. This is particularly important, given the fact that within the West Bank and East Jerusalem in particular, the OP has no basis to argue this given the absence of hostilities. See B’Tselem, The basis for administrative detention in international law (Jan. 1, 2011), http://www.btselem.org/administrative_detention/international_law.


\(^{88}\) Id.

B. Collective Punishment as Official State Policy: Discrimination on All Levels, Including Judiciary

The Israeli system functions in a manner that does not allow any real, genuine challenges to any of the acts of collective punishment identified above. Home demolitions, residency revocations, restrictions on the freedom of movement and other forms of harassment cannot be genuinely challenged within the Israeli legal system. Collective punishment is adopted as a formal policy by all levels of the Israeli government – executive, legislative and judicial. In particular, the judiciary has proven itself to be part of a system which entrenches the Israeli occupation and protects the State where it clearly commits violations of international law.\(^90\)

Since the events of summer 2014, and more so since October 2015 which marks the start of a wave of political instability and violence, Israel has increased its series of measures amounting to collective punishment. These measures have no genuine oversight, and the decision-making process is largely discreet and unclear. In addition to the laws in place with respect to Israel’s use of the Emergency (Defense) Regulations and an associated complex web of military orders, decisions are made by the Israeli executive and particularly by the so-called “Security Cabinet” of Israel.

For example, on 14 October 2015, the Security Cabinet (also known as the Ministerial Committee on National Security Affairs) approved a number of measures to deal with the escalating situation in the West Bank and especially East Jerusalem at the time.\(^91\) In particular, the Israeli Police were authorized to impose closures on “center[s] of friction and incitement in Jerusalem”. With respect to suspected perpetrators, their homes were to be demolished, their properties confiscated, and their permanent residency rights revoked. By law, the Committee is headed by the Prime Minister and is composed of several Ministers, including the Foreign, Defense, Internal Security, Justice and Finance Ministers, with also active participation from the Attorney General of Israel and the National Security Council.\(^92\)

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\(^92\) Prime Minister’s Office, Ministerial Committee for National Security Affairs, http://www.pmo.gov.il/Secretary/ministersCommissions/Pages/cabinetleumi.aspx (in Hebrew) [Isr].
The work and decisions of the Security Cabinet are without a doubt the clearest example of the obvious inter-institutional collaboration of the State in ordering policies and practices of collective punishment. The Security Cabinet has, for example, in the recent past, made decisions to: take punitive measures against Palestinian prisoners in response to three Israeli settlers which went missing,93 the complete closure of Hebron when the three young settlers were found,94 and easing the restrictions on the use of live force and use of .22 Ruger sniper rifles in response to a death of an Israeli driver from stone-throwers.95 Perhaps the most horrifying of these measures comes in the form of withholding the bodies of suspected attackers and releasing them, if even, under dubious conditions as a means to prevent autopsies and protests.96

As shown above, the three main branches of the Israeli government have been complicit in every way possible concerning the use of collective punishment measures in different shapes and forms against the protected Palestinian population. It has done so through a combination of law and policy, with different organs of the State filling in the gaps and complementing the others to continue collective punishment measures. Most importantly, this concerns the role of Israel’s government Security Cabinet, the Knesset, and the Israeli Supreme Court, through implementation by Israel’s military and police. What is most important, is that this system applies to Palestinians only. As noted by one judge in the HaMoked petition filed in the Israeli Supreme Court concerning the use of Regulation 119,
The reason that Regulation 119 was not used against Jews is that there is no need for the same deterrence in the Jewish sector. It cannot be denied: there certainly are attacks of Jews against Arabs. Criminal law and proper punishment must certainly be exhausted. To our dismay we have even reached the horrifying murder of Muhammad Abu Khdeir. However, the difference exceeds all similarities. The gap is huge – in the quality of the attacks, their quantity, and mainly, for the purpose of the case at hand, the attitude of the environment: strong and decisive wall-to-wall condemnation in the Jewish sector, which is not the case on the opposite side, and there is nothing to added. [sic]

In retrospect, and as noted by the expert opinion discussed above, not only has collective punishment been accepted at all levels, but it has a “judicial stamp”, providing no means of recourse. The institutionalized nature of racial discrimination against Palestinians, particularly as it concerns the application of such punitive measures, is clear.

Overall, when considering the collective punishment measures identified above, the Israeli judiciary has failed to provide any sort of oversight with respect to halting such practices as policies. This is especially clear, as shown above, with respect to the home demolitions. With respect to residency revocations as a form of collective punishment, the Israeli judiciary has also failed to act. This is keeping in mind that the Israeli Supreme Court has failed, even until today, to recognize even the occupation of the oPt and the obligations flowing therefrom or the illegality of settlements under international law.

As noted within the previous sections above, it has also been clear in terms of the statements given by several ministers in particular. This has been made particularly clear by statements and actions taken by the Prime Minister and the Minister of the Interior concerning the attempts at punitive black revocations of residency for Palestinian Jerusalemites. As noted by Diakonia, “[a]dditional punitive measures have been discussed by recently appointed Israeli Defense Minister Avigdor Lieberman, including a partial freeze on the transfer of PNA tax money, a blanket directive not to return the bodies of alleged terrorists, and renewed discussions about deporting their families”. It is perhaps most disturbing when concerning the situation of Palestinians in the Gaza Strip. For example, during the 2008-2009 attack on Gaza, Deputy Prime Minister Eli Yishai stated that “It [should be] possible to destroy Gaza, so they will understand not to mess with us” and that “it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets”. He further added that “even if the rockets fall in an open air or to the sea, we should hit their infrastructure, and destroy 100 homes for every rocket fired”.

Yet overall, it is most important to note that the policies and practices of collective punishment stem from a collective infrastructure consisting of all levels of the Israeli government. The laws and regulations are derived from the executive and legislative branches, protected in entirety by the judiciary, and implemented by the police, military and other authorities within a system of institutionalized racial discrimination against the protected Palestinian population within the oPt.


100 Diakonia Collective Punishment, at 9.

101 Adam Horowitz, Goldstone found that Israel’s collective punishment policy in Lebanon served as a model for Gaza, Mondoweiss (Jan. 26, 2010), http://mondoweiss.net/2010/01/goldstone-found-that-israels-collective-punishment-policy-in-lebanon-served-as-a-model-for-gaza/.
INTERNATIONAL LAW PERSPECTIVE

IHL (also referred to as the law of war or the law of armed conflict) is an area of international law defined by the ICRC as “a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict” and “protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare”. IHL applies to situations of occupation. Article 42 of the Hague Regulations states that “territory is considered occupied when it is actually placed under the authority of the hostile army...The occupation extends only to the territory where such authority has been established and can be exercised”.

According to the Fourth Geneva Convention, “[t]he Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”.

As explained below, collective punishment is specifically prohibited under IHL. Israel, as the occupying power, is required to respect IHL. Many of the practices and policies identified above, and as noted by various international mechanisms below, have been found to amount to collective punishment. Collective punishment as a policy or practice as a whole, by a Party to a conflict, would qualify as a serious violation of IHL, or a war crime. Furthermore, the specific acts undertaken as collective punishment may also constitute grave breaches or other serious violations of IHL. Additionally, policies and practices that amount to collective punishment may also constitute other violations of international law, including IHRL and contribute to violations of peremptory norms of international law.

A. International Humanitarian Law

As the OP in the West Bank, including East Jerusalem, and the Gaza Strip, Israel’s obligations under IHL are codified in the 1907 Hague Regulations and the Fourth Geneva Convention of 1949, both largely reflective of customary international law. The application of the Fourth Geneva Convention to the entirety of the oPt has been reaffirmed on numerous occasions by the UN Security Council and the UN General Assembly as well as the International Court of Justice (ICJ) in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Territories.

According to IHL, Israel is bound by an obligation to administer the oPt for the benefit of the protected Palestinian population. Israel, as the occupying power, is responsible for maintaining law and order, protecting Palestinian civilians from any form of violence, and, crucially, ensuring that their rights are respected and needs are provided for as the protected population under the Fourth Geneva Convention.

Article 50 of Hague Regulations, which is considered as customary international law, contains the first conventional prohibition of collective punishment under IHL. The Hague Regulations currently has 38 States as party to it, including Palestine but not Israel. Interestingly, Palestine acceded to the Convention in 2014, over a century after it came into force. As a matter of customary IHL, all States are bound by these rules. The Hague Regulations specifically states the following:

“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.”

103 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Oct. 18, 1907 [hereinafter Hague Regulations].
106 See Hague Regulations art. 43 & Fourth Geneva Convention art. 64.
107 Hague Regulations art. 50.
Simply put, persons not responsible for a specific act, must not be in any way punished for that act or in response to that act.

This rule was considered ambiguous to some degree and was further developed with the adoption of the Four Geneva Conventions of 1949. As noted by the ICRC Study on Customary IHL, it is considered a rule of customary IHL. Customary international law is referred to as a “general practice accepted as law”. The customary status of a rule of international law requires the support of two elements: state practice and opinio juris (belief that the practice is legally mandated). Israel, like all States, is bound by this as a rule of customary IHL. Thus, as part of this customary obligation, Israel cannot exercise policies or practices that would amount to collective punishment.

In the contemporary situation faced in the oPt, what is of utmost importance, is the prohibition as included within the Fourth Geneva Convention, relative to the protection of civilians (with 196 States Parties, including both Israel and Palestine). Article 33 of the Fourth Geneva Convention specifically prohibits collective punishment against protected persons:

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.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

This is not within the strict sense of penal sanctions but, as the commentaries explain “penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed”. Consequently, punishment for those acts must apply only to those individuals who are responsible for such acts, and the punishment must be accordance with the IHL and IHRL principles.

110 See North Sea Continental Shelf (Germany v. Netherlands), 1968 I.C.J. 3, ¶ 77 (Feb. 20).
111 Fourth Geneva Convention art. 33.
Furthermore, the article clearly identifies two particular measures as being intimidation or terrorism. The historical context is exceptionally relevant, where the prohibition was also derived from the fact that instead of actually preventing hostile acts, the effects were contrary – or as the commentaries note, it “strengthened the spirit of resistance”. The commentaries further explain that such acts “are opposed to all principles based on humanity and justice and it is for that reason that the prohibition of collective penalties is followed formally by the prohibition of all measures of intimidation or terrorism with regard to protected persons, wherever they may be”. Israel is bound by the prohibition on collective punishment not only as a rule of customary IHL, but also as a High Contracting Party to the Fourth Geneva Convention.

The 2016 updated commentaries specifically refers to the prominence of collective punishment in the oPt in violation of article 33 of the Fourth Geneva Convention. It notes, in particular, “[e]xamples of Israeli practices in the [oPt] that have been described as collective punishment include home demolitions, prolonged curfews, closures of towns and villages, transfer of relatives, and restriction on electricity and water supplies”. In reference to the policy of home demolitions as approved by the Israeli High Court of Justice for the purposes of deterrence, the commentaries state that “[s]uch a justification runs counter to the rule in Article 33”, and indeed it is specifically mentioned in the Article whereby “reprisals against protected persons and their property is prohibited”.

Within each of the policies and practices identified above (and those not identified), not only would they constitute the serious IHL violation of collective punishment, but also violations of other IHL rules. There are situations where such acts can be justified under the notion of military necessity, but this argument is not used when implementing collective punishment measures. Furthermore, military necessity arguments have a very high threshold, and must have a military objective in order to weaken the adversary party to the conflict, which are basically non-existent in the West Bank including East Jerusalem. Furthermore, they must not run counter to other IHL rules.

113 Id., p. 226.
114 Id.
115 2016 Commentaries, at 1156-1157.
116 Id., 1161.
117 Id., 1162.
B. International Human Rights Law

Complementary to IHL, international human rights law (IHRL) also applies during occupation, and ever more so in situations of prolonged occupation.118 As such, all States have extraterritorial human rights obligations by way of conventional and customary international human rights law. States are required by the ICCPR to “respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the [ICCPR]”.119 States would also have extraterritorial human rights obligations in areas under their effective control vis-à-vis other treaties, such as the International Convention on Economic, Social and Cultural Rights120. Given that human rights apply extraterritorially, as noted by the 2016 updated commentaries, where are mechanisms where individuals or States may complain of or file complaints on collective punishments that violate human rights norms.121 Israel currently continues advance the position that various human rights treaties are not applicable to the oPt because of the primacy of IHL in a context of armed conflict as lex specialis. This however was authoritatively settled in 2004 by the ICJ in the Advisory Opinion on the Israeli Annexation Wall. The Court supported the position of all human rights committees that agreements such as the ICCPR and the ICESCR are applicable in Israel and the oPt, clarifying that Israel continues to have the status of OP in the oPt and is bound, as such, by customary international law and the humanitarian and human rights treaties it has ratified.122

Under IHRL, Israel has the obligation to permit the realization of human rights and to take progressive steps for their full realization to the maximum of their available resources. Israel must also refrain from interfering in the enjoyment of these rights. Subsequent to lawful application of IHL, IHRL outlines in greater detail the human rights of persons that must be respected, protected and fulfilled by the State exercising effective control over the territory. This is, keeping in mind, that Israel denies it has human rights obligations vis-à-vis the West Bank, with the exception of East Jerusalem which has been annexed de jure by Israel, contrary to peremptory norms of international law.

Further, in the overall legal context, as well as the peculiar situation in the oPt (which will be further explained), it is important to note that collective punishments may amount to human rights violations committed by Israel. This is especially true when considering, for example, practices and policies of home demolitions and arbitrary arrests and detentions, as violations of the right to life, liberty and security, adequate housing, non-discrimination, fair trial and other rights.

There are certain provisions of the ICCPR that Israel may derogate from, but this may only be in times of public emergency and “to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law”.123 They must also be non-discriminatory in nature. Yet in such situations, States are required to inform the UN Secretary-General of which specific provisions they are derogating from and what for reason.124 Yet, there are certain provisions

118 See ICJ Wall AO, paras. 102-113.
120 See ICJ Wall AO, para. 112.
121 2016 Commentaries, at 1169.
122 See ICJ Wall AO, para. 78, 86-113.
123 ICCPR art. 4(1).
124 Id., art. 4(3).
that are non-derogable, including the right to: life; freedom from torture; freedom from slavery or servitude; freedom from the retroactive application of penal laws; recognition as a person before the law; and freedom, thought, conscience and religion. Nevertheless, some rights, such as the freedom to manifest one’s religion or beliefs may be limited in exceptional circumstances. The Human Rights Committee, the treaty-body of the ICCPR, has stated in reference to states of emergency, that “States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence”.

As referenced by the 2016 updated commentaries, the UN Human Rights Commission had affirmed that Israeli punitive measures included collective punishment. It further notes that the UNGA has condemned Israeli practices of collective punishment in the oPt reaffirming the obligations of the High Contracting Parties to the Fourth Geneva Convention and demanding that Israel fully comply with its obligations therein.

Within each of the practices and policies identified above, they must not run counter to IHL and IHRL rules. Most importantly, any acts taken on the basis of “security” arguments, must be necessary, proportionate and balanced against the exigencies of the situations. Most importantly, persons not involved in certain acts cannot be punished for an act they did not personally take part in.

C. International Criminal Law

In terms of international criminal law and prosecution for the war crime of collective punishment, the Report of the Commission on Responsibility post-World War I considered “collective penalties” as a war crime. The prohibition has been specifically contained in the statutes of the Special Court for Sierra Leone (art. 3.b) and the International Criminal Tribunal for Rwanda (art. 4.b), and can be referenced from the open-ended nature of the International Criminal Tribunal for the Former Yugoslavia (art. 3). In the Delalic case at the ICTY (former Yugoslavia), and as the ICRC Study on Customary IHL notes, the Court explained that the policy of “internment or assigned residence under Article 78 of the Fourth Geneva Convention is an exceptional measure that may never be taken on a collective basis”.

125 ICCPR arts. 6, 7, 8 (paras. 1 and 2), 11, 15, 16 & 18.
126 Id., art. 18. Certain rights, such as the freedom of opinion and assembly may also be restricted. See also Human Rights Committee, General Comment 29: States of Emergency art. 4, CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2011): “Derogation from some Covenant obligations in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant”. 127 Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).
132 Id. 2016 commentaries, 1166-1169.
While the beginnings of the Rome Statute of the ICC had specifically included collective punishment as a war crime, this never materialized and was not included in the final version of the 1998 Rome Statute. What is interesting is that, as one article notes, this was proposed by States involved in annexation or occupation of “foreign” territory – although unclear of who those States were. Collective punishment may currently be considered with reference to specific crimes within the Statute. These may include, but would not be limited to, those crimes falling under Common Article 3 to the Four Geneva Conventions, that also fall within the list of war crimes under the jurisdiction of the Court. As such, collective punishment can be looked at in the context of other crimes proscribed within the Statute. Furthermore, it is most important to note that within the context of ICL, collective punishment can encompass many crimes already strictly defined as such within the Rome Statute, so as to fall in line with the principle of legality.

On 2 January 2015, Palestine acceded to Rome Statute of the ICC. One day prior, Palestine lodged a declaration under Art. 12(3) of the Rome Statute, accepting the Court’s jurisdiction from 13 June 2014. On 16 January 2015, the Prosecutor opened a preliminary examination into Palestine. The ICC is now able to exercise its jurisdiction over crimes within the jurisdiction of the Court committed in the oPt constituting the State of Palestine (as within the 1967 borders).

D. Customary IHL & Practice

In its study on customary IHL, the ICRC provides that, under Rule 103, “[c]ollective punishments are prohibited”. This rule is broader than Rule 102, which specifically deals with criminal punishments that are of a collective nature, and which states that “[n]o one may be convicted of an offence except on the basis of individual criminal responsibility”. Thus, as explained, and finding its support in the Fourth Geneva Convention, the scope of this prohibition goes beyond penal/criminal sanctions for acts that individuals, or a group/community, did not commit.

The ICRC references Additional Protocols I and II to the Geneva Convention. Article 75(2)(d) of Additional Protocol I, applicable to international armed conflicts (as is the situation in the oPt), specifically includes

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134 From Darcy (above); see William Schabas, The UN International Criminal Tribunals 279 (2006).
136 2016 Commentaries, at 1171.
141 Rule 103.
the prohibition on collective punishments. The extent of this rule of prohibition is further evidenced in Additional Protocol II, applicable to non-international armed conflicts, which specifically prohibits collective punishments as a fundamental guarantee of human treatment of persons. Moreover, the practice of States in this regard is noted by the inclusion of this prohibition in several military manuals, domestic legislation, and statements. A wide range of the examples are clearly delineated in the ICRC study’s collection of practice.

While not Party to Additional Protocol I, Israel, as a Party to the Fourth Geneva Convention and by way of customary IHL, is bound by the obligation prohibiting collective punishment. Nevertheless, a clear problem comes with the enforcement of IHL due to its lacking investigatory and response mechanisms (see section below). Currently however, there is the possibility for the ICC to investigate and prosecute crimes that may have been committed as part of policies and practices of collective punishment. This would entail the identification and prosecution of the specific individuals most responsible for such crimes. Additionally, States may become engaged in taking measures in response to violations of this prohibition by Israel in the oPt. In both areas, whether this concerns individual criminal responsibility or State responsibility, several international bodies have made crucial findings on policies and practices of collective punishment committed by Israel in the oPt.

E. UN Findings on Collective Punishment in the oPt

The IHL violation of collective punishment by Israel in the oPt has been raised by the UN General Assembly, the UN Human Rights Council (as noted above), the UN Special Rapporteur on the oPt, individual States, international organizations and NGOs, with respect to the overall situation in the oPt, as well as specifically related to the situations in the Gaza Strip and East Jerusalem. Since the Second Intifada began in 2000, there has been increased scrutiny of Israel from the perspective of international law through the increased use of fact-finding (or commissions of inquiry).

Since the second Palestinian intifada erupted in 2000, collective punishment has revolved around the wide


range of practices and policies identified above (home demolitions, road blocks and checkpoints, etc.) within the West Bank and especially in Jerusalem. With the Gaza Strip, this has been particularly evident vis-à-vis episodes of hostilities between Israel and Palestinian armed groups, as well as with the blockade. Yet, of course, these are not the only areas where Israel takes measures that may amount to collective punishment. On numerous occasions, Israel has withheld of tax revenues to the Palestinian Authority, documented as far back as the Human Rights Inquiry Commission of 2001.\textsuperscript{147} More recently, after Palestine acceded to the Rome Statute of the ICC in January 2015, Israel immediately froze the transfer of tax revenues to the Palestinian Authority, which forms the majority of the government’s budget and affecting the population to which it provides public services.\textsuperscript{148}

Findings of collective punishment have been made by several UN fact-finding missions (or commissions of inquiry). The 2000 UN Human Rights Inquiry Commission report explained that “[f]or most Palestinians, the closures of roads and borders, destruction of homes and property, and accompanying measures of curfews and restrictions are regarded as clear expressions of an Israeli policy of inflicting collective punishment upon all Palestinian inhabitants.”\textsuperscript{149} The Commission provides the following:

…attention is drawn to article 33 of the Fourth Geneva Convention, which prohibits collective punishment. Israel has invoked security considerations to justify closures and other measures described above. From the Commission’s own observations, it would appear that while in some instances security considerations may justify temporary closures, the comprehensive and protracted closures, as well as the scale and nature of the destruction of property of Palestinian civilians, is best regarded as collective punishment.\textsuperscript{150}

In its conclusions, the Commission provided that “[a]ll concerned authorities must refrain from measures that amount to collective punishment. This would include withholding transfer to the Palestinian Authority of taxes and duties collected by the Government of Israel, the imposition of restrictions on movement, or violent acts of reprisal by either side.”\textsuperscript{151} In 2015, Israel decided to halt the transfer of tax revenues it collects on behalf of the Palestinians as a direct response to Palestine’s joining of the International Criminal Court.\textsuperscript{152} Later in the year, the Israelis did indeed release the tax funds, with plans to deduct costs related to debts for electricity, water and medical services.\textsuperscript{153} Such unilateral measures were taken in a responsive, punitive fashion, affecting the entirety of the Palestinian population.

In 2006, the UN Human Rights Council passed resolution S-3/1, explaining “that the Israeli military incursions in the [oPt], including the recent incursion in northern Gaza and the assault on Beit Hanoun, constitute a collective punishment of the civilians therein and exacerbate the severe humanitarian crisis in the [oPt].”\textsuperscript{154} The resolution established the High-Level Fact-Finding Mission to Beit Hanoun. In its 2008 report in reference to the blockade of the Gaza Strip, it stated that it agreed with the UN Secretary-General, Special Rapporteur on the oPt and the UN High Commission for Human Rights that the “that the blockade amounts to collective punishment contrary to international humanitarian law”.\textsuperscript{155}


\textsuperscript{149} 2001 UN Commission, para. 25.

\textsuperscript{150} Id., para. 95.

\textsuperscript{151} Id., para. 124.


\textsuperscript{155} Report of the high-level fact-finding mission to Beit Hanoun established under Human Rights Council resolution S-3/1, A/HRC/9/26 (Sep. 1,
Perhaps the most critical of these investigations came with the UN Fact-Finding Mission on the Gaza Conflict in 2009. The Fact-Finding Mission found that, with respect to detained Palestinians and in addition to the arbitrary of deprivation of liberty and violation of due process rights, Palestinians in Gaza were subject to “continuous and systematic abuse, outrages on personal dignity, humiliating and degrading treatment contrary to fundamental principles of international humanitarian law and human rights law”. The Mission concluded, in direct reference to Article 33 of the Fourth Geneva Convention, that the treatment of Palestinian civilians “constitutes the infliction of a collective penalty on these civilians and amounts to measures of intimidation and terror”, and that such acts were grave breaches of IHL and war crimes.

The Fact-Finding Mission was particularly damning of Israel’s policies and practices that amount to collective punishment under IHL. It attributed the conditions of life in Gaza to Israel’s deliberate actions through its armed forces against the Gaza Strip indicating “the intention to inflict collective punishment on the people of the Gaza Strip in violation of international humanitarian law”. Furthermore, the Mission noted the blockade, detention of members of the Palestinian Legislative Council, rounding up of large groups of civilians and their prolonged detention, damage and destruction of agricultural and water works, and suspension of family visits to prisoners.

In the context of the overall restrictions on the Gaza Strip, the Mission states its belief that the primary purpose was to “collective punish the civilian population” in addition to leaving or turning against Hamas. Further, it noted that the situation in the Gaza Strip did not justify a policy of collective punishment of the civilian population for the purposes of military security. In its conclusions, the Mission found that the blockade in and of itself amounts to collective punishment as did the rounding up of large groups of civilians and their prolonged detentions, in violation of Article 33 of the Fourth Geneva Convention and Article 50 of the Hague Regulations.

More recently, the commission on inquiry on the Gaza conflict of 2014 released its report, based on a mandate applicable to the entirety of the oPt. This is particularly relevant since the more recent trends in collective punishment intensified with the escalated tensions in June-July 2014, when three Israeli settlers went missing...
and Palestinian Mohammed Abu Khdeir of the East Jerusalem town of Shuafat was murdered.

The Commission of Inquiry stated that the operation in Khuzza’a “was indicative of a punitive intent in the action of the IDF in Khuzza’a and may constitute collective punishment”. With respect to punitive home demolitions, the commission found that “impact of the punitive demolition of a home affects entire families, including those with no link to the alleged crime, and therefore constitutes collective punishment, in violation of international humanitarian law”. It also criticized the decision of the High Court of Justice, filed by Hamoked (HIC 8091/14) regarding Regulation 119 on the demolition of homes of ‘terrorists’, which rejected the claim that “regardless of its specific circumstances, necessarily amounts to collective punishment.”

F. Third State Responsibility

There are two particular areas of responsibility owed by third States. Firstly, under IHL, and secondly, under the rules on State responsibility.

Under Common Article 1 of the Geneva Conventions, States have an obligation to ensure respect for IHL. As explained by the ICRC Study on Customary IHL, “States may not encourage violations of international humanitarian law by parties to an armed conflict” and States “must exert their influence, to the degree possible, to stop violations of international humanitarian law.” The recent commentaries to the Geneva Conventions explain that “[c]ommon Article 1 is not a mere stylistic clause but is invested with imperative force and counts among the means available to ensure compliance with the Conventions.” Furthermore, the Commentaries note that, “States have also recognized the importance of adopting all reasonable measures to prevent violations from happening in the first place”. The ICRC Study further qualifies the obligation to ensure respect as an erga omnes obligation, meaning an obligation owed by a State towards the whole of the international community.

States should individually or collectively act to prevent or impede grave breaches or other serious violations of IHL. States should take a proactive approach as such, and take on measures that could range from diplomatic pressure to adopting lawful countermeasures such as arms embargoes, especially when there is a direct link to the violation committed.

States may also have an obligation to investigate and prosecute individuals for war crimes. In particular, Article 146 of the Fourth Geneva Convention creates an obligation on High Contracting Parties to investigate and prosecute individuals for grave breaches as identified by Article 147. Furthermore, Article 146 goes beyond the grave breaches, creating an obligation to “take measures necessary for the suppression of all acts contrary to international humanitarian law by parties to an armed conflict” and States “must exert their influence, to the degree possible, to stop violations of international humanitarian law”. The ICRC Study further qualifies the obligation to ensure respect as an erga omnes obligation, meaning an obligation owed by a State towards the whole of the international community.

169 Id., para. 530. Interestingly, in this case, Jewish law and studies by “counterterrorism experts” were invoked by judges to justify the policy of home demolitions would act as a sound sanction and a deterrent from future attacks.
170 Id.
to the provisions of the present Convention other than the grave breaches...”¹⁷⁶ Thus as a serious violation of IHL, collective punishment may constitute a crime punishable through the use of universal jurisdiction, especially given that there is prior jurisprudence with the international criminal tribunals.¹⁷⁷ This obligation is even more important when considering those violations constituting collective punishment that do in fact also constitute grave breaches, identified by Article 147 of the Fourth Geneva Convention, including:

\[
\text{...wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving of a protected person the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.}
\]

Furthermore, States must also look to the International Law Commission’s (ILC) Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) as this concerns internationally wrongful acts.¹⁷⁸ While not exhaustive, the ARSIWA stipulates a number of peremptory norms of international law (or jus cogens), from which no derogation is permitted. While not specifically mentioning collective punishment, it has been argued by the International Court of Justice and the ILC that customary IHL rules form part of jus cogens.¹⁷⁹ States are to “cooperate to bring to an end through lawful means” serious breaches of jus cogens.¹⁸⁰ States must also comply with the obligations of non-recognition and non-aid or assistance in connection with such serious breaches.¹⁸¹ It is also important to consider those those collective punishment measures that may also contribute to other jus cogens violations, especially those denying self-determination, annexation and institutionalized racial discrimination and apartheid and crimes against humanity.

The legal consequences for internationally wrongful acts committed by a State, as outlined by the ARSIWA, and based on prior jurisprudence, includes the following: cessation and non-repetition,¹⁸² and reparation¹⁸³ (in the forms of restitution,¹⁸⁴ compensation¹⁸⁵ and satisfaction).¹⁸⁶


¹⁷⁷ Universal jurisdiction can be based on the: territoriality principle (where the crime occurred); active personality principle (nationality of the perpetrator); passive personality principle (nationality of the victim); and protective principle (protection of national interests or security). See also ICRC Study on Customary IHL, Rule 158: Prosecution of War Crimes, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule158.


¹⁸⁰ ARSIWA art. 41(1).

¹⁸¹ Id., art. 41(2).

¹⁸² ARSIWA art. 30.

¹⁸³ Id., art. 31.

¹⁸⁴ Id., art. 35. For restitution, the State should also “re-establish the situation which existed before the wrongful act was committed”.

¹⁸⁵ Id., art. 36.

¹⁸⁶ Id., art. 37.
CONCLUSIONS AND RECOMMENDATIONS

Collective punishment can take many forms, and would constitute a serious violation of IHL – although not a "grave breach". It is considered a serious violation under IHL and may also amount to other violations of IHL and IHRL, and has been criminalized in domestic legislation and military codes.187

Nevertheless, the types of systematic violations as outlined above can be categorized as collective punishment under IHL. This is especially true when considering the collective punitive measures including home demolitions, blockades and closures, residency revocations, and other forms of harassment in response to periods of unrest against the occupation by the protected Palestinian population and to individual attacks against Israelis (both military and civilian). Some of these measures as clearly written into law, and also carried out as a matter of policy. It is therefore upon Israel, as OP, bound by conventional and customary IHL, to reverse its legal and policy prescriptions that amount to collective punishment under IHL. Furthermore, it is under an obligation to ensure effective remedies, both civil and criminal, for the Palestinian victims of its IHL violations, including those constituting collective punishment.

The fact of the matter is that since 1967, Israel has failed to respect IHL especially the prohibition on collective punishment. The findings on collective punishment are nothing new. Not only have some measures of collective punishment been long-lasting policy, such as its punitive home demolitions, but Israel continues to find new ways to collectively punish the Palestinian people especially during times of escalations and in response to individual attacks against Israelis. As such, it is necessary to assess other means for accountability for the serious IHL violation of collective punishment.

For third States:

As outlined by the 2016 updated commentaries to the Geneva Conventions, and based on previous measures, in meeting the Common Article 1 obligation to ensure respect under those Conventions, States should consider individual and collective stops towards ending Israel’s violations of IHL, especially those constituting collective punishment. Such measures may include: dialogue; diplomatic pressure; directly intervening with commanders; sanctions and other legal countermeasures; among others. In particular, States should consider conditioning, limiting, or refusing arms transfers, penal measures against suspected IHL violators; and supporting national and international efforts – especially the ICC – in bringing war crime perpetrators to justice.

In line with obligations under the rules on State responsibility, States must continue to adhere to the principles of non-aid and assistance, and non-recognition, of unlawful situations resulting from or in conjunction with the use of collective punishment by Israel against Palestinians – especially as this concerns the Gaza blockade and the continued use of home demolitions, residency revocations and other collective punishment measures against Palestinian Jerusalemites.

Continue to support international organizations, international NGOs and national NGOs in monitoring and documenting violations, especially those also constituting collective punishment.

For the EU:

In line with the EU Guidelines on promoting compliance with IHL, continue to address those violations of IHL that may also amount to collective punishment though its various means of action including: political dialogue, general public statements, demarches, restrictive measures/sanctions against Israel as a State and individual perpetrators, cooperation with

other international bodies (including the ICC and UN Human Rights Council), investigations and prosecutions and control of arms sales.\textsuperscript{188} This is especially an urgent consideration when considering the blockade of Gaza as well as the punitive measures such as home demolitions taken against Palestinian Jerusalemites.

\textit{For the UN:}

That the UN General Assembly continue to address Israel’s continued use of collective punishment, and call upon third States to consider appropriate measures in response to Israel’s use of such practices and policies. It should also strengthen the use of its Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories to request third States’ reporting on how they are meeting their obligations under Common Article 1 with respect to Israeli violations in the oPt, especially those also constituting collective punishment.

The UN Human Rights Council should continue to follow-up on the Report of the UN High Commissioner for Human Rights on the implementation of the recommendations of the 2009 UN fact-finding mission on the Gaza conflict and the 2014 commission of inquiry.\textsuperscript{189} In particular, assess those recommendations to the international community concerning: use of universal jurisdiction and using their influence to prevent and end violations in accordance with Common Article 1 of the four Geneva Conventions.

That its agencies operating within the oPt, include proper analysis on violations that may also be categorized as collective punishment for reporting purposes.

The UN treaty bodies should also consider to include scrutiny on those violations of Israel’s treaty obligations that may also constitute collective punishment, especially those contained within the ICCPR and ICESCR.

\textit{For the ICC:}

During the preliminary examination stage, assess crimes committed within the jurisdiction of the Court, that may also constitute the serious IHL violation of collective punishment. Particularly, this would concern the categories of violations assessed above that may also qualify as war crimes or crimes against humanity (such as the crimes of persecution and forced transfer).

\textsuperscript{188} Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL) [Official Journal C 303 of 15.12.2009].

Annex

Samples Testimonies
Testimony # 1

Name: (S A. D)
Address: Sur Baher
Job: Housewife

1. I am a citizen of Sur Baher and I am the mother of the prisoner (A. M. D), aged 19. He has been jailed in Israeli prisons for almost a year. Israeli authorities accuse him of carrying out an attack that targeted a settler.

2. After arresting my son on 25/9/2015, Israeli authorities handed us a revocation of my son’s residency, which means a revocation of his Jerusalemite ID because he attempted an attack on a settler; although there was no evidence against him. A few months after that we were handed an order to evacuate our house for it to be sealed off. We were forcibly evacuated 8 months ago on 11/4/2016. The order issued to seal off the house is based on the alleged attack. The punishment measure against my son was not enough; they also punished us, his whole family, by sealing off our house. This resulted in our displacement and evacuation from our own house to a rented house. They also revoked my son’s national and health insurance.

3. I would also like to add that the residencies of (M. AK) and (F. AA), alleged “attackers”, were also revoked based on the same charges as my son’s. Their parents were also handed orders to evacuate their houses as a form of collective punishment and to make a lesson of us to everyone.
Testimony # 2

Name: (S.E. A.K)
Address: Sur Baher
Job: unemployed

1. I am a citizen of Jerusalem, the father of the prisoner (O. S. AK), accused of throwing stones on a settler’s car, and causing his death. He has been imprisoned for almost a year now.

2. On 26/9/2015, my son was arrested on these charges and he is now in Megiddo prison. The prosecution demands a sentence of 18 years for him.

3. Less than a month after my son’s arrest, we were handed a letter of residency revocation for my son; a revocation of his Jerusalemite ID because of the alleged attack, although there is no evidence against him. But the occupation authority decided to revoke his ID, knowing that he meets all the conditions set by Israel to keep his ID, but the reason given in his revocation is disloyalty to the state of Israel.

4. Almost one month after my son’s arrest, the Combat Engineering Corps of the Israeli army along with the Israeli intelligence called upon my house, taking measurements in preparation for demolishing it as a collective punishment of us, his family. A week after that, they came once again and took pictures. After that they handed me an order of evacuation to seal off my house as a punishment of my son’s alleged attack. This is a collective punishment measure. Moreover, they revoked my son’s health insurance and national insurance.

5. Israel will displace a family of 7 people because of my son’s alleged attack. Now I’m following up with a legal aid organization to attempt to preserve my son’s ID. I would like to add that (A)’s house was sealed and his ID revoked. Also, (F)’s house has been issued an evacuation order and an ID revocation letter. We face displacement although we are innocent. This is a collective punishment policy which Israel has been increasingly practicing since October 2015.
Testimony # 3

Name: (E.S)
Address: Old city of Jerusalem
Job: Social worker

1. I am a Jerusalemite citizen, 28 years old. I work as a social worker at a local organization. I live in the old city.

2. Since the beginning of October 2015, the occupation has taken more measurements of collective punishment against the population of the old city. Most prominently, sealing shops, especially in al-Wad street, where they were sealed for almost one month because of the attack that (M. A) carried out in October 2015. Some of the neighborhoods in the old city were closed. Whoever wanted to go home there was escorted by the police. It was a very bad situation.

3. Also, abusive checkpoints were spread out a few meters apart. The aim of these checkpoints was to terrify people and to harass them by unfounded random body checks. The Israeli occupation just wanted to re-affirm their total control over the city.

4. As a citizen of the old city, I have noticed that the period from October 2015 until December 2015, was very hard because of the state of terror that took over the city, especially when moving around at night. Personally, I was very scared. I remember that on 2/5/2016 after coming back from a friend’s wedding at around 10 o’clock at night, I was arbitrarily detained at the Damascus gate for two hours.

5. As for my work, since my organization is located in the old city, most of our activities were canceled. I remember that in March 2016, (F) was murdered by the Israeli forces somewhere near our headquarters and so people were too terrified to come to us and they stopped coming. We work with children and women but our activities were canceled because people were terrified of moving around. The administration of the center had to postpone some of the projects because of the escalation of violence back then, and because it was hard to communicate with beneficiaries. I can say that the old city was cut off from Jerusalem in general. The neighborhoods were also separated from one another.

6. As for schools, especially schools inside al-Aqsa mosque, they were closed for many days because parents were scared to send their children to school. The Israeli police also sent children home on more than one occasion and would not allow them to get to school. For instance, al-Aytam school was closed more than once and students were arrested from inside school.

7. As for commercial movement, shops were closed in al-Wad Street. People barely go there anymore. Damascus gate turned from a socially busy area to a military zone.

8. Women were targeted more than men in being banned from freedom of worship. There was a black list prepared every day that included the names of those banned from entering al-Aqsa mosque. It was closed every day from 7am till 11 am because that time was reserved for Jewish prayers. Then there were protests in al-Aqsa and a lot of the activists there were arrested. Some of them were deprived of their health insurance. All of this came as a collective punishment. Palestinians were collectively held responsible for anything that happened in town.

9. A lot of the checkpoints are permanently installed now and have become an imposed reality. The occupation imposed this as a part of a pre-arranged plan.
Testimony # 4

Name: (I. AG)
Address: Jabel al-Mukaber
Job: Housewife

1. I am the mother of prisoner (B. AG), a citizen of Jabel al-Mukaber. I am 49 years old.

2. The Israeli occupation accuse my son, aged 22, of conducting an attack on a bus in Jabel al-Mukabber. They claim that the attack resulted in the killing of 4 Israelis and injuring 7. They also claim that my son carried out this attack with (B. E) on 13/10/2016. My son was sentenced to 3 life sentences, additional 60 years of jail and a fine of one million NIS.

3. Hours after the attack, the Israeli army and special forces forcibly entered our rented house, blasted our door open, and destroyed everything inside; furniture, electric devices, and even official papers.

4. Two days after that, the owners of the house asked us to leave the house because they did not want it to be demolished as a collective punishment against the family; as the army had already taken measurements of the house in preparation for demolishing the house. So we left the house and went to live with my sister in one room. We are suffering displacement until now.

5. Since we went to live with my sister, and since we do not own a house to be demolished, they have broken into my sister’s house several times. Every time they search the house and I think this is a collective punishment not just for the prisoner’s parents but whoever receives them as well. It is clearly a measure of displacement.

6. A month after the attack, a legal aid organization came and informed us that my son’s residency and ID have been revoked because of the alleged attack on Israelis. My son also told me that he has been informed of that.

7. I know that there are other youths in Jabel al-Mukaber who have lost their residencies because of alleged attacks on Israelis. They revoke their IDs because of disloyalty to the state of Israel. An institution is going to look into this issue and there is a hearing in April 2017.

8. In Jabel al-Mukaber, the houses of (G. AJ), (O. AJ), (B. E), and (A. AJ) were demolished because they were accused of attacks against Israel. They demolished (B. E) parents’ house. But they demolished (A. AJ)’s house since he is married. They demolished (G. AJ)’s house too and revoked his wife’s residency as a collective punishment. They also revoked his children’s IDs. They punished the person responsible but that was not enough for them, they also targeted his family.

9. Israel also installed checkpoints in Jabel al-Mukaber as a collective punishment for the whole town. This affected the daily lives of Palestinians living there. We were harassed on checkpoints as my son’s family. This makes me and my family worried about moving around. I was scared for my life and my children’s lives; because they might kill one of us as vengeance. As a result, I stopped going out for months except for my son’s trial. The whole town was punished. People couldn’t use their cars, as they were banned to do so by the occupation forces; they only walked. We were all collectively punished on all levels. My son lost his residency, we were displaced and our movement was restricted.
Testimony # 5

Name: (M. R)
Address: Shuafat Camp
Job: Social worker

1. I am a social worker at the African Community in the old city in Jerusalem. I am 27 years old. Before the events of October 2015 I used to be active in the youth movement for nonviolent struggle. But this youth movement died out after October 2015 because of the collective repressive measures taken by the occupation authority.

2. As an example of these measures; anyone aged between 20 - 30 was targeted by Israeli police forces and Israel’s security forces as a suspect. So at any checkpoint, Israeli forces call upon every youth, and this makes them worry and become confused. This leads to one of two things; either body checks during which they are called names and hit, or getting killed.

3. I work in the old city near al-Aqsa mosque. Once I was walking around the old city near Jaffa Gate and I was carrying a bag. There were police forces and soldiers there. They asked me to put down my bag and move towards them while pointing their guns at me. I was confused and felt that I was about to be killed for no reason at all. Then, they stood me against the wall and they searched me in a provocative way touching me everywhere, searched my bag and checked my ID. Then they let me go. This was in November 2015.

4. The other incident was near Damascus Gate in February. I was detained by police forces and soldiers and I felt scared. A force of Israeli security pushed me and they ordered me to put down my bag. So I did. Then they started questioning me about why I was in the area although I am a Jerusalemite. They stood me against the wall and searched me and my bag in a provocative way. Then they handed me police summons.

5. These incidents stopped me from moving freely around town because of fear. I was never afraid before October 2015. Now whenever I see soldiers I feel scared because I could be killed any moment. I am tense every day while going about my daily life. Youth between 20 and 30 years old are especially targeted.

6. Social events and youth movement that used to be held weekly stopped because of collective punishment, which became a standard policy.
Testimony # 6

Name: (M. M)
Address: Old city in Jerusalem
Job: Project Coordinator at a local organization

1. My name is (M.M), aged 41. I work as a Project Coordinator at a local organization in the old city. We work in social development, helping the poor, sponsoring orphans, and providing food for poor families. We target all groups of the society: men, women and children.

2. Since the beginning of October 2015, we closed the organization for about a month because the street where we are located was turned into a military zone. After (M.E) attack on 3/10/2015, settlers started to attack residents of the area, protected by the Israeli police and army. The street turned into a military zone and people were not allowed to move. The Israeli measures against Palestinians excluded no man, woman or child. We closed our organization as beneficiaries were too afraid to go there anymore. There were dozens of heavily armed soldiers in every corner of the street. They targeted any passerby. Then there were fines issued against shops that had been there for years, claiming that they did not pay the Arnona tax. These were arbitrary measures and caused shops to close. Around 35 shops closed down since then because of the economic setback caused by the punitive measures that included these taxes.

3. As for our organization, we lost our donors. Around 3 other organizations closed down because of the lack of donors. Personally, I have not been paid my salary in 4 months because of the economic setback. Donor countries stopped focusing on Jerusalem as they were threatened and intimidated by Israel.

4. Checkpoints are very dangerous. I remember once I was at work, and I went out to smoke a cigarette, I noticed that there were soldiers and police forces out side, they were detaining 4 children. They were students on their way to school, aged 6 or 7 years old. The police claimed that they threw stones at them so I had to go down to talk to the police officer. I tried asking why they were doing this to children but he would not talk to me at first. But I persisted and after I discussed legal rights with him, he let them go eventually; especially as people gathered around to listen.

5. I know that the checkpoints set in the old city are there to suffocate the people living there and isolate the old city, especially al-Wad Street from the surrounding neighborhoods. I used to see the army at those checkpoints beating up the youth there quite often. I also saw a number of Palestinians killed by Israeli forces at Damascus gate and al-Wad Street for very lame reasons. The aim is to establish a state of panic that was taking over at those checkpoints. At many occasions, and to achieve this, the Israeli forces aimed to injure them, whenever they suspected them.

6. I was there personally and witnessed when the Israeli army killed (M.A) at Damascus Gate. The army provoked him. They asked for his ID and tried to push him while he waited for goods (meat) since he worked with his father as a butcher. At that time there was a state of panic all over and killing was too easy for the army. (M.A) tried to defend someone and he was still holding a knife as he was a butcher, so they shot him at the shop. It was the army who started to provoke him first.

7. I also remember when (M.H) carried out the attack. The Israeli army and the police forces stopped everyone in the street, residents and merchants alike. I witnessed many incidents where Palestinians were shot. I was there when they killed (N). He was not feeling very well and was stopped by the Israeli municipality employees, with whom he had an argument. There were armed workers painting the walls there, so they provoked him. There was a brawl between them and they killed him right there. He was totally unarmed and did not have any sharp tools on him. Moreover, I witnessed the killing of (AS). I was with a friend at Damascus Gate. The soldiers tried to stop him but he ran away because he was from the West Bank and did not have a permit. So they shot him although he was no danger to them. They could have injured him instead of killing him if they wanted to because legally, the police are not allowed to shoot a person unless they pose a direct threat to them, and from afar.
8. Direct intentional killing was a means to terrify people inside the old city. I think that in every case they killed a Palestinian, they could have avoided killing them with one single shot aimed to injure instead. But this was a measure of collective punishment against all Palestinians.

9. Israeli forces broke into our organization more than once under the pretext of not paying the Arnona tax. But the army targeted society works in Jerusalem even though we had a license from Israel as a charitable organization.

10. The schools of the old city, especially in al-Wad Street where there are around 5 schools, had to close their doors for over a month, because parents and the schools’ administration alike feared for the students’ lives. The violation of the right to education and right to movement and the targeting of children were main causes of this fear. They also violated the personal space of each person, bodily searching intimate areas, either in public or in public toilets.

11. The reason behind focusing on the old city and the Damascus gate is because it is a strategic point for the Jerusalemites living there. So the Israeli government aims to Judaize that area by taking control of it and ensuring security there so that settlers would be encouraged to go more often to that area.
Testimony # 7

Name: (K)
Address: al-Wad Street
Job: Jerusalemite Traders Association; Owner of a shop

1. I am the Secretary of Jerusalemite Traders Association and I own a clothes shop in the old city in al-Wad Street.

2. Ever since the beginning of the events of October 2015, when (M. H) carried out the attack that was right in front of my shop, the occupation authority took immediate collective punitive measures. They held everyone responsible for this attack, which would never happen anywhere else in the world. The traders were punished for not helping the (Israeli) injured although the attack took place at 6 pm. There were security agents and guards and settlers, how were the traders supposed to help? It is not the responsibility of the traders to ensure security. They started handing out arbitrary fines. They said that shop placards needed a special license that costs 750 NIS. They forbade us from presenting our goods outside our shops. I think that in the first 30 days after the start of the events the shops were empty and the commercial traffic was paralyzed. A lot of shops were closed down during that time.

3. I had a checkpoint placed right in front of my shop. The oppression reached every passerby in the street. The settlers also held obsequies at a corner of the street for the dead settlers for around 16 days, during which they would incite comers to abuse Arabs protected by security agents.

4. More importantly, the Damascus Gate was packed with Israeli Special Forces, soldiers, dogs and snipers over the roofs swarming the place. Any person coming to shop would feel that he just entered a battle field. There are over 170 shops in al-Wad Street, 30 of which were closed for good because of the economic crisis, unfortunately. If things do not improve in Ramadan then I’m afraid that 40 more will have to close for good too. Personally, I had no income for over 4 months. From October till February, I lost over 50,000 NIS and had zero income. Some people lost over 200,000 NIS.

5. There were around 7 checkpoints in al-Wad Street, separated by a few meters, knowing that the whole street was 500 meters long.

6. Al-Wad Street is the main street that leads to al-Aqsa mosque and the Wailing wall, that is why it was targeted by Israelis. The first settlers came in al-Wad Street, when Ariel Sharon occupied a house there 30 years ago. One of the shop owners there owes around 3 million NIS to the Arnona tax.

7. There are around 1450 shops in the old city that were affected by the events, which means around 1450 families were affected because of these collective punishment measures. These shops are spread at the Damascus gate which was turned into a battle field.

8. Since April, the measures were reduced because of the Jewish holidays; as a way to show their “humane” side and as a policy of alternating between tightening and loosening punitive measures.
Testimony # 8

Name: (F.A)
Address: Sur Baher
Job: Employee

1. I am the mother of prisoner (W. F. A), accused of carrying out an attack that resulted in the death of an Israeli.

2. My son was arrested on 25/9/2015, and he has been in al-Naqab prison for almost a year now. A few days after my son’s arrest, we were handed an order of revocation of his residency, his national and health insurance, despite the fact that there was no evidence against him and that he met all conditions to keep his residency.

3. After that we were handed an order of evacuation to seal off our house because of my son’s indictment. The Israeli occupation did not think that my son’s imprisonment, the revocations of his residency and health insurance was an adequate punishment, they wanted to punish his family and brothers too. This is a form of collective punishment. We are legally trying to keep our house because my family and I face displacement now. Prisoner (M. AK)’s father is also facing displacement now. We consider these measures as collective punitive measures for the whole Jerusalemite society.
Testimony # 9

Name: (M.H)
Address: al-Wad Street
Job: Owner of clothes Shop

1. I am 65 years old and I own a clothes shop in al-Wad Street.

2. Since October 3rd 2015, after (M.H)’s attack which took place in al-Wad Street, the occupation forces closed the street in a random and cruel way. Settlers and soldiers harassed citizens in the street and at Damascus Gate. They banned people from entering the street. They put checkpoints from the Damascus Gate to al-Aqsa mosque. They started to use abusive and insulting measures against youth including beating them up, pinning them against the wall, insulting them and yelling at them. Life in the old city turned into hell. Movement became very restricted, almost impossible to achieve because of the Israeli measures.

3. We, as traders, were incurred great damages due to these Israeli measures. We had no income for almost 5 months because people were afraid to go out shopping in al-Wad Street. Soldiers and police forces were spread around as if they were aiming to stop people from coming into the old city. Around 20 shops closed down for around 5 months because they could not afford the running cost. Most traders lost around 80 – 100% of their income. I, personally, believe that I have lost two years’ worth of work; I am heavily in debt.

4. Our punishment as traders came because we could not help the injured people of the attack. But practically speaking, we are civilians with no arms and no means to help anyone.

5. The municipality fined several shops claiming that their shop signs are not licensed just to provoke people. They raided bazaars and fined us without prior warning. They also warned shops to pay the Arnona tax.
Testimony # 10

Name: (M.R)
Address: al-Wad Street
Job: Souvenir shop owner

1. I am 58 years old and I own a souvenir shop in al-Wad Street in the old city.

2. Starting October 2015, after (M.H)’s attack, the occupation forces took several measures, closing down several shops primarily for around 10 days. The police, army and settlers were spread around the city. A lot of shops closed down because of the restricted movement inside the city. After 10 days we opened our doors again although we had no shoppers, because we feared settlers who might try and take over our shops.

3. There were around 10 checkpoints from Damascus Gate to al-Aqsa mosque. They aimed to provoke passersby by searching them in insulting ways where Jerusalemites sometimes had to undress to be searched. These measures made people fear coming to the old city, worrying about body checks, being beaten or getting killed. This affected the commercial traffic negatively inside the old city.

4. The old city is targeted in general because al-Wad Street is the main street of the city and it leads to al-Aqsa mosque and the Wailing Wall. If this street is paralyzed then all Jerusalem is paralyzed. Also, it became the main road for the settlers and that’s why the Israeli occupation forces wanted to control it.

5. There are shops that closed down completely because they cannot afford to pay their rent.

6. I still open my shop although there are no shoppers. I am losing money and time and consuming up my capital. My loss exceeds 100%. We are all losing money but we are hanging there as a patriotic sign. The question is until when will there be these collective punitive measures? Not to mention the water and electricity bills, the Arnona tax and the imposed fines on shop signs and licenses. These are punitive measures targeting the Jerusalemite traders.

7. I think the situation is very hard for shops right now. Now it’s Ramadan and people want to go pray in al-Aqsa and there is tension all the time which paralyzes commercial traffic. We were hoping that the people in the West Bank will get permits but so far they haven’t had any so I have to close my doors for 3 and 4 days in a row.
Testimony # 11

Name: (H.S)
Address: al-Wad Street
Job: Housewife

1. I am a Jerusalemite citizen living in the old city, on the main entrance to al-Aqsa mosque.

2. Since the start of the escalation in October 2015, the Israeli occupation forces installed checkpoints all over in al-Wad Street at the Damascus Gate. The soldiers were randomly harassing people. From our front door to the Damascus Gate there were around 4 checkpoints.

3. Soldiers on checkpoints targeted youth in a provocative way. They treated people as suspects. They even stopped girls, and anyone who refused to be searched was beaten up or even killed. During the body checks, girls were assaulted and guns were pointed at children. We feared letting our children and girls go out. The arrests increased a lot too. Our neighborhood has 2 fixed checkpoints that are always picking on youth.

4. I believe that these measures were planned beforehand, but are implemented now under the pretext of the current events. There is no excuse for the collective punishment. These are punitive measure taken by the occupation forces. At some point we did not allow our children to get out of the house at all out of fear for their lives. Ever since the start of October 2015, our neighborhood witnessed a number of invasions and instability. Children were a main target.

5. No person was excluded from these harassments. Settlers harassed people in the streets protected by soldiers.
Testimony # 12

Name: (A.H)
Address: Old city
Job: Student

1. I’m 17 years old. I live in the old city in al-Wad Street. I’m a student at a school in al-Wad Street.

2. Since the beginning of October 2015, after (M.H)’s attack, the Israeli occupation forces imposed a siege on the citizens of the old city. They put up checkpoints and spread police forces, Special Forces and soldiers all around. They targeted all Palestinians without any exceptions. Parents feared children getting out of their houses because of these measures. I remember that from our house to the Damascus Gate there were around 12 checkpoints that checked every passerby inside the old city.

3. I was physically searched in October around 4 times without any reason, except that I am Palestinian. Every time, they took my ID, forced to put my stuff down, and I was pinned to the wall holding up my hands. If you don’t follow their orders you could get shot or beaten up. Each time I was bodily searched publicly. Once they made me and my friend undress in front of people under the pretext of the body check.

4. Recently, 15 days ago, I was arrested under the pretext of obstruction of police work.

5. My school is in al-Wad Street where there were several attacks and which is targeted by the Israeli forces. Since October 2015, education came to a stop. Only 20 to 25 students came to school. We were forbidden from going outside to the playground because there was a checkpoint right outside school. If they saw any student outside, they would shoot rubber bullets at us. They invaded school sometimes under the pretext of searching it.

6. I remember that the occupation forces invaded our school around 5 or 6 times. They searched classes and harassed students and teachers alike. We lived in fear all the time at school. Most of our days in school went by without studying much because of the panic state we lived in.

7. Parents often would not allow their children to go out in the old city for fear of the body checks. My parents did the same thing. Nobody knew when there would be escalation or closure of roads. I was too afraid to go out.

8. Right now, there are around 10 checkpoints; 5 at the Damascus gate and others at the entrance of the city. There are checkpoints at the entrance of al-Aqsa mosque too. Soldiers at these checkpoints provoke people and if anyone merely glances at them, they would be searched. I remember that around 10 Palestinians were killed on these checkpoints.