



Israel's Compliance with the International Covenant for Civil and Political Rights

Yesh Din – Volunteers for Human Rights

SHADOW REPORT TO THE FOURTH PERIODIC REPORT OF ISRAEL

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Introduction

Organization background

Yesh Din – Volunteers Human Rights was established in March 2005 with the goal of promoting a substantive and sustainable improvement to the human rights situation in the territories occupied by the State of Israel. Yesh Din works within the following main issue areas:

Law enforcement on israeli civilians in the west bank: Yesh Din provides legal assistance to Palestinians who have been victims of ideologically motivated offences by Israeli civilians in the West Bank. Yesh Din monitors the processing of these investigations, appeals against the closure of cases where no perpetrator is brought to justice due to police failure, and advocates for improvement in law enforcement standards in its correspondence and dialogue with the Israeli authorities.

Right to property and access to lands: Yesh Din works to help Palestinian landowners and rural communities retain land title and access to farmland which is threatened by illegal settlement construction. Yesh Din represents Palestinian landowners and communities, using litigation in the High Court of Justice to address the State of Israel, demanding the protection of private land rights, and equitable application of the law as relates to land use.

Accountability of israeli security forces personnel: Yesh Din works to improve accountability within the Israeli security forces, as regards suspected criminal offenses perpetrated by personnel against Palestinians and their property. Yesh Din monitors the way in which the Israeli authorities handle and investigate such offenses, and advocates on behalf of the Palestinians for prompt and impartial investigations.

In light of the above, Yesh Din has accumulated extensive information and expertise concerning the human rights situation in the West Bank.

Executive summary

This submission by Yesh Din to the Human Rights Committee does not purport to provide an exhaustive assessment of Israel's compliance with its duties under ICCPR, but rather focuses on two key areas of concern which Yesh Din wishes to bring to the attention of the Committee, namely:

1. **Investigations into allegations of excessive use of force by Israeli forces;** and
2. **Law enforcement upon Israeli civilians in the West Bank** ('settler violence')

Through extensive legal advocacy and research work (based on a caseload of approximately 400 files, and official data acquired through Freedom of Information requests), Yesh Din has acquired in-depth knowledge concerning investigations into alleged offenses committed by Israeli security forces personnel against Palestinians. This experience, backed by the findings of Israeli and international bodies, indicates that the **Israeli military investigation system is marred by**

structural failures that render it incapable of conducting serious investigations into offenses committed by soldiers against Palestinians. The same conclusion was reached by the government-appointed Turkel Commission, which was charged with examining Israel's mechanisms for investigating complaints and claims of violations of the laws of armed conflict, releasing its in-depth report in early 2013. This reality, combined with the fact that the Government of Israel has not taken even the minimum action required to implement the recommendations of the Turkel Commission, leads to the depressing conclusion that the Israel is not interested in maintaining a professional investigation system enabling the disclosure of the truth and meeting the standards established in international law.

Throughout its activities, Yesh Din has similarly observed structural failures and institutionalized unwillingness to protect Palestinian residents of the West Bank from ideologically motivated offenses committed by Israeli civilians. Yesh Din's monitoring of the long-term outcome of more than 1000 investigation files processed by the Samaria and Judea [West Bank] District of the Israel Police concerning the involvement of Israeli civilians (settlers and others) in criminal offenses against Palestinian persons has revealed a colossal failure to provide real-time protection to thwart attacks, investigate offenses and prosecute those responsible. While Yesh Din has welcomed recent policy developments, in particular the establishment of a Nationalistic Crimes Unit within the Samaria and Judea District, results to date point to a lack of results, and the continued abject failure of law enforcement in this area.

The present report addresses the shortcomings of the relevant State bodies in safeguarding the right to life, liberty and security of person in the occupied Palestinian territory, as well as Israel's positive duties of protection and the right to legal remedy.

By means of the following document, we hope to offer the Committee a review of key policy issues and their ramifications, on the basis of Yesh Din's protracted and in-depth familiarity with the situation on the ground, and with the official Israeli mechanisms responsible for the protection of Palestinian residents.

1. Investigations into allegations of excessive use of force by Israeli forces

Issue 14:

In light of the previous recommendation by the Committee (para. 9), please indicate whether the State party has launched credible and independent investigations into all allegations of excessive use of force by the Israeli forces, in particular the Israel Defense Forces (IDF), against Palestinian civilians and demonstrators, particularly in the Gaza Strip and at checkpoints in the Occupied Palestinian Territory, including East Jerusalem. Please also provide information on measures taken to ensure that the perpetrators are promptly prosecuted and punished.

ICCPR Article 2, paragraph 3:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

ICCPR Article 6, paragraph 1:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Issue Summary & Background

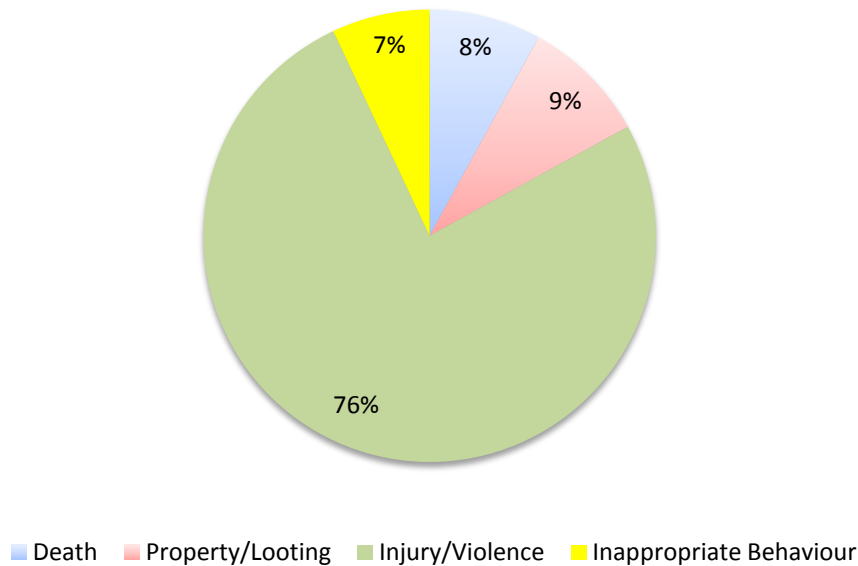
Yesh Din engages in the long-term monitoring of the Israeli military investigation and prosecution of alleged crimes by IDF soldiers against Palestinians and their property in the West Bank and Gaza. The organization has monitored hundreds of files under its legal and other treatment and received information and data from the IDF Spokesperson at its request.

I. Official data on types of offenses

→ According to data provided by the IDF Spokesman, of a total of 199 investigations were opened by the MPCID in 2013:

- 15 investigations related to Palestinian deaths (14 incidents in the West Bank and one incident in the Gaza Strip);

- 152 investigation files constituting 76% of the investigations opened following incidents of violence and injury (145 in the West Bank and 7 in the Gaza Strip);
- 18 files constituting 9% of the investigations opened following complaints of vandalism or looting (all in the West Bank).
- Furthermore, 14 investigation investigations were initiated following events defined by the IDF Spokesman as "inappropriate behavior."¹



II. Launching criminal investigations: the IDF Investigation Policy

The process of opening a criminal investigation against an IDF soldier suspected of offenses involving Palestinian victims differs from the usual civilian process. An investigation is not automatically opened following every complaint received by the law enforcement authorities in the IDF. A victim of an offense, or any other person or body that wishes to complain about an offense committed by an IDF soldier, must submit a notification to the Military Police Criminal Investigations Division (MPCID). In some cases the submission of a notification is sufficient to lead to the opening of an MPCID investigation into the complaint. In other cases, the notification leads first to the opening of a preliminary inquiry as ordered by the Military Advocate General's Corps (MAGC). At the end of this inquiry, a decision is taken as to whether or not investigate the incident.²

¹ The precise definition of this term is unclear to Yesh Din and a request for clarification on the matter that was sent to the IDF Spokesperson has not been answered to date.

² For further discussion of this policy, see Yesh Din's Report **Alleged Investigation: The failure of investigations into offenses committed by IDF soldiers against Palestinians** (August 2011) (hereinafter "Alleged Investigation"), 23-24, 32-44.

Generally speaking, the IDF investigation policy is that in cases of suspicion of a crime committed during combat, opening a criminal investigation is contingent on a preliminary inquiry. The preliminary inquiry usually relies on an operational investigation by the unit involved in the incident in question. Subsequently, the MAGC decides whether to open an investigation. Following a petition to the Israeli Supreme Court about the investigation of Palestinian deaths caused by IDF forces, the State announced that in every case where a citizen was killed in the West Bank by IDF forces except in military operations “of an overtly combative character,” the MPCID would open an immediate criminal investigation.³

The operational debriefing, a tool used by commanders in order to draw operational conclusions and learn from operational failures and mishaps, is not intended to gather evidence or to determine individual criminal responsibility. For the most part, the operational debriefing is held by parties within the chain of command of the unit involved in the alleged offense; those carrying out the debriefing are not investigators and they lack both the appropriate training and the proper tools to unearth evidence.

This policy has several significant ramifications. Firstly, the fact that certain complaints are not investigated poses an obstacle to the prosecution of offenders. Secondly, conducting a preliminary inquiry prior to the opening of an investigation consumes valuable time. As a result, in those cases in which a decision is taken to initiate a criminal investigation, the time elapsed since the incident severely hampers the possibility of undertaking an effective investigation, and in some instances entirely precludes such a possibility.

Finally, extensive coordination is required between the MPCID, which actually investigates the complaints, and the MAGC, which as noted above is authorized to order a preliminary inquiry to decide whether to open a criminal investigation, and upon completion of the investigation, to determine whether to serve an indictment or close the case. This division of responsibilities, and problems in coordination between the two bodies, creates considerable obstacles for those wishing to monitor the progress of the investigation.

→ **Long-term data provided by the IDF reveals that the rate of investigations initiated versus notifications filed has remained relatively stable in recent years. Between 2000 and 2013, the number of criminal investigations opened constituted 62 percent of the total number of notifications submitted.**

³ Examination and Investigation in Israel of Complaints and Claims of Violations of Laws of Warfare pursuant to the Rules of International Law, The Public Commission to Examine the Maritime Incident of 31 May 2010, Second Report, the Turkel Commission, February 2013, p. 274.

III. Indictments

- In 2013, **six indictments were served against soldiers following incidents involving injury to Palestinians or to Palestinian property**: four of these resulted from investigations opened in 2013 and two from investigations opened in 2012.
- **The overall trend for recent years points to a sharp fall in the proportion of indictments: only 2.2 percent of investigations initiated following incidents involving offenses against Palestinians between 2010 and 2013 led to the indictment of suspects.** By way of comparison, since the second intifada began in September 2000, the Military Advocate General's Corps has submitted indictments in 124 cases, accounting for 5.2 percent of the investigations opened; these indictments charged a total of 206 soldiers and officers.
- An examination of these figures relative to the total number of notifications submitted to the MPCID shows just **how low the chances are that a complaint submitted today by a Palestinian will ultimately lead to the prosecution of soldiers: only 1.4 percent of the notifications submitted to the MPCID in the period 2010-2013 led to indictment.** Of course this does not take into account events that were never reported to the MPCID to begin with.

| Year | Investigation files opened by MPCID | <u>Investigation files that yielded indictments</u> | |
|--------------|-------------------------------------|--|--|
| | | (The figures refer to the year in which the investigation file opened, even if indictments were submitted later) | |
| | | Number of files that yielded indictments | Percentage of investigation files opened |
| 2013 | 199 | 6 (additional indictments may be submitted in 2014) | 3.0% |
| 2012 | 103 | 1 | 1.0% |
| 2011 | 153 | 2 | 1.3% |
| 2010 | 145 | 4 | 2.8% |
| 2009 | 236 | 8 | 3.4% |
| 2008 | 323 | 20 | 6.2% |
| 2007 | 351 | 10 | 2.8% |
| 2006 | 153 | 9 | 5.9% |
| 2005 | 155 | 5 | 3.2% |
| 2004 | 189 | 12 | 6.3% |
| 2003 | 146 | 16 | 11.0% |
| 2002 | 155 | 23 | 14.8% |
| 2001 | 82 | 7 | 8.5% |
| 2000 | 16 | 1 | 6.3% |
| Total | 2,406 | 124 | 5.2% |

Deficiencies identified by Yesh Din in the military investigation system

- Delays in the investigation and prosecution

According to Yesh Din monitoring, the military law enforcement system works at a strikingly low pace, due to delays and footdragging at all levels of the apparatus.

- Delays in MAG's decision to open a criminal investigation

The long wait for the decision whether to open an MPCID investigation almost completely precludes the chances for a professional and effective investigation. In many cases the MPCID approaches victims and witnesses to collect testimony only after the decision to open an investigation, many months after the incident.

→ 75 of the investigations opened in 2013 relate to notices submitted in 2012 (this figure accounts for 38 percent of the investigations opened in 2013) This figure reflects the slow decision-making process regarding the opening of an investigation.⁴

→ As of April 30, 2011, Yesh Din was monitoring 11 files into which the MAGC had not yet decided whether or not to open a criminal investigation. From the time of giving notification of the incident until April 30, 2011 an average of 702 days (almost 2 years) had passed without a decision. (Six files had been waiting for a decision for more than two years, three waited between one and two years and two files waited a little less than one year).⁵

- The operational debriefing and the preliminary inquiry

One of the main causes for delay in the decision whether to open an investigation is the preliminary preliminary inquiry, which generally relies on the operational debriefing. The decision to open an investigation is frozen pending completion of the preliminary inquiry. In many cases the preliminary inquiry is extremely protracted, thereby impairing the effectiveness of the MPCID investigation, if one is opened. Undertaking operational debriefings prior to a criminal investigation endangers the potential investigation, because the passage of time allows the destruction or concealment of evidence, impairs witnesses' memory, and raises the concern that the soldiers involved in the incident will coordinate their versions of the events. In this context the debriefing before their commanders can function as a "dress rehearsal" for the criminal investigation.

Furthermore, the operational debriefing (with rare exceptions) does not consider the narrative of the victims of the offense, civilian eyewitnesses, or indeed any person other than the soldiers and officers involved in the operation under examination.

⁴Law enforcement on IDF soldiers in the occupied territories: summary of 2013 data, Yesh Din Data Sheet, September 2014.

⁵ Alleged Investigation, p.38.

- **Delays and foot-dragging in the implementation of investigations**

The investigation logs in the MPCID files reveal significant delays in the implementation of investigative actions. One of the most significant delays is in the collection of the testimonies of victims and witnesses. MPCID investigators use mediating parties (such as human rights organizations) to collect testimonies from complainants and witnesses. This requires advance coordination with the investigators, a process that tends to significantly delay the collection of evidence, and which is prone to mishaps that in some cases lead complainants to retract their complaints.

- **Delays in the MAG's decision whether to submit an indictment**

At the end of the MPCID investigation the MAG has to decide whether to submit an indictment or close the file.

→ The review of 44 files monitored by Yesh Din found that the average lapse from the end of an MPCID investigation until the MAGC makes a decision is 14 months and that in a significant number of files no decision has been made even two months after the end of the investigation.⁶

The slow pace of work of the IDF law enforcement system has an additional significant impact on accountability. Most soldiers serve in the IDF for only a number of years. The Military Justice Law establishes that a soldier cannot be indicted for an offense if more than 180 days have elapsed since his or her discharge from the army, or one year in cases raising suspicion of more serious offenses.⁷ Soldiers suspected of committing offenses often finish their military service without being prosecuted, and then cease to be subject to the Military Justice Law and therefore cannot be prosecuted.

- **Low quality of investigations**

A review of investigation files indicates defects in pursuing investigations and the failure to perform basic investigative actions. These range from a lack of investigative actions in the field (no visits to the site of the offense, searches, location of documents) through collecting testimony from witnesses and victims only months after the event, to a shortage of Arabic-speaking investigators and unprofessional and unskilled investigators.

⁶ See: **Alleged Investigation**, pp. 86-95. The review was conducted in 2011.

⁷ Article 6 of the Military Justice Law establishes that in the case of military offenses entailing imprisonment of two years or more, non-military offenses defined as crimes – i.e. a criminal offense entailing imprisonment of three years or more – and offenses of negligent manslaughter or manslaughter due to reckless driving, the law will apply to a person suspected of the offense for up to one year after his discharge from the IDF.

One of the main reasons for the lack of professionalism is that the investigators receive only general MPCID investigation training, which is inadequate to the complexity, severity, and gravity of the cases for the investigation of which they are responsible.

- **The principle of “command responsibility” does not exist in Israeli criminal law**

Israeli criminal law does not establish “command responsibility” on account of actions liable to be considered war crimes. A commander – or civilian – in Israel cannot be prosecuted on account of war crimes committed by their subordinates unless he personally ordered the execution of the crimes.

→ In dozens of investigative files examined by Yesh Din⁸ the MPCID investigators refrained from questioning senior officers under warning. This was true both regarding field officers and staff officers. Even in cases in which the investigation raised suspicion of unlawful policies or procedures the investigators did not extend their examination to include the responsibility of senior officers.

→ Yesh Din’s monitoring shows that while 190 soldiers and officers were indicted from the beginning of the second intifada in 2000 through April 2011, not a single senior officer of the rank of colonel or above was indicted.⁹

- **Absence of legislation prohibiting war crimes**

Israeli law does not include a prohibition against war crimes accompanied by sanctions reflecting the particular gravity attributed to these crimes among the family of nations. Only a small proportion of the relevant offenses in Israeli law reflect the offenses defined in international law (looting is one such example); other offenses are found in Israeli law as “regular” offenses; some offenses do not appear at all in Israeli law.

- **The MAG’s independence**

The MAG heads the military legal system and is subordinate in command terms to the chief-of-staff, and in professional terms to the guidelines of the Attorney General.

The MAG’s “dual cap” refers to the fact that he heads both the military prosecution system and the legal advice system. This undermines the independence of the investigative body. The MAG addresses issues requiring his intervention both as the senior legal adviser to the IDF and as the head of the military prosecution system. If an action he approved with his cap as legal advisor (or one of his staff approved) raises prima facie suspicion of violation of the laws of war, how can the

⁸ Alleged Investigation, p. 81-85.

⁹ Ibid.

MAG order an MPCID investigation concerning an issue in which he was personally or institutionally involved?

In many instances, staff from the MAGC are required to investigate practices and operating methods which the Corps itself was involved in creating or approving. It is difficult to imagine a graver violation of the independence of the investigating body.

- **Accessibility**

Since there are **no MPCID bases in the West Bank, Palestinians who wish to file complaints are unable to do so directly** and most complaints are submitted by police stationed at the District Coordination Offices and human rights organizations. This hampers the accessibility of Palestinian victims of offenses to the military law enforcement bodies.

→ Only 6 complaints out of the 239 notifications submitted to the MPCID in 2013 were submitted directly by Palestinians without a mediating body. The rest were submitted mainly by police personnel stationed at the DCOs and human rights organizations.¹⁰

- **Data not collected**

The MAGC has no way of knowing how long a criminal investigation lasts, even when it ordered the investigation itself, because according to the IDF Spokesperson, “the computerized system Military Advocate for Operational Affairs Unit (MAOA) not specify the date of opening investigations, but only the date the investigation file was received by the MAOA.” This means that in regard to offences against Palestinians and their property, the MAGC can not fully supervise the quality of investigations undertaken by the IDF, because speed of investigation is one of the main principles of an effective investigation, as noted by the Turkel Commission, which found that some investigations last many years, and recommended setting a timeframe for investigations. It also recommended that the MAG publish, at least once a year, statistical data on the period of time taken to process files.¹¹

Recommendations

The IDF investigation system is in need of fundamental reform in order to become an independent, effective apparatus capable of uncovering the truth. **Immediate implementation of all Turkel Commission recommendations can lead to significant improvements.**

¹⁰Law enforcement on IDF soldiers in the occupied territories: summary of 2013 data, Yesh Din Data Sheet, September 2014.

¹¹ Examination and Investigation in Israel of Complaints and Claims of Violations of Laws of Warfare pursuant to the Rules of International Law, The Public Commission to Examine the Maritime Incident of 31 May 2010, Second Report, the Turkel Commission, February 2013, pp. 331-332. (Recommendation 10).

1. **Immediate opening of investigations:** The MPCID must launch criminal investigations of all complaints that indicate suspicion of a criminal offense, without stipulating investigation on the completion of the inquiry process. In those instances where the incident is a clear combat incident, a preliminary inquiry into the facts, conducted prior to the launch of a criminal investigation, must be restricted to no more than a few days' duration, and conducted separately from the operational debriefing.

[This recommendation is in line with Turkel Commission Recommendation no. 5a – Fact-Finding Assessment, and Recommendation no. 6 –The Decision on whether to open an Investigation]

2. **Promptness:** Action is required to reduce the duration of treatment of cases by investigative and prosecutorial bodies. The MAG Corps (MAGC) must limit the time frame for MPCID investigations and MAGC decisions as to whether to close a file or proceed with an indictment.

[The Turkel Commission made a similar recommendation: Recommendation no. 10: Establishing the Investigation Timeframe]

3. **Independence of the MAG:** In cases where suspicions are raised as to the legality of policies or orders issued by any of the following: the MAGC, senior officers in the rank of the Military Advocate General or above, or the political echelon, the investigation must be carried out by an independent and professional body, external to the IDF and conferred with investigative and prosecutorial powers.

[Recommendation no. 7 in the Turkel Report pertains to the independence of the MAG, but we believe it is not enough to ensure the independence of the investigating body]

4. **Professionalism:** The MAGC must train the MPCID investigators who investigate offenses against Palestinians in the Laws of Armed Conflict and the obligations arising from them. A special emphasis should be placed on the investigation of crimes concerning collective punishment and other similar offenses that arise from the illegitimate policies of field commanders.

The investigation process must be carried out by experienced investigators enrolled in regular service (not by conscripts). The MPCID must make a serious and concerted effort to ensure that investigators who carry out tasks in the occupied Palestinian territories, and at the very least all those who come into direct contact with Palestinian complainants and eyewitnesses, speak Arabic and are capable of working in that language.

Similarly, the MAGC must increase the size of its workforce and allocate sufficient, trained personnel for the needs of the MAOA unit.

[Recommendation in line with Turkel Commission Recommendation no. 9 – CID Investigations, and no. 11: Transparency of Proceedings.]

5. **Legislation:** The principle of **command responsibility** should be adopted in Israeli law. This doctrine renders military commanders and civilian superiors criminally liable for offenses committed by their subordinates. **War crimes** must similarly be included in Israeli domestic legislation as special offenses.

[Recommendation in line with Turkel Commission Recommendations no. 2 - Responsibility of Military Commanders and Civilian Superiors; and no. 1 – War Crimes Legislation]

6. **Accessibility:** A permanent MPCID presence must be established in the West Bank, with bases at least in the north and the south of the territory, to allow access for complainants and witnesses to MPCID investigators. This presence must be established within existing IDF bases, without seizing additional land.

[Recommendation in line with Turkel Commission Recommendation no. 9: MPCID Investigations]

2.

Law Enforcement Upon Israeli Civilians in the West Bank

Issue 18:

Please provide updated information on progress achieved in reducing violent acts by Israeli settlers. Can the State party comment on the information that violent acts from settlers against Palestinians have taken place with the acquiescence and sometimes active involvement of members of the Israeli Defense Forces? In view of ongoing reports that settlers are not prosecuted or punished for their violent acts at Palestinians, please update the Committee with detailed information on how the State party has conducted investigations, how many settlers have been prosecuted and punished and on the remedies provided to victims.

ICCPR Article 2, §3:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

ICCPR Article 6, §1:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

ICCPR Article 20, §2:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Background

The parties responsible for law enforcement concerning offenses committed by Israeli civilians in the West Bank are the SJ District of the Israel Police, the IDF, th ISA and the Civil Administration. The SJ district, founded in 1994, is in charge of all law enforcement on the criminal level, including opening criminal files and conducting investigations. If necessary, depending on the outcome of the investigation, the district is also responsible for helping the State Attorney's Office draft indictments, as well as prosecution.

Since 2005 Yesh Din publishes data concerning the results of investigations by the Samaria & Judea (SJ) District Police into offenses committed by Israeli civilians against Palestinian civilians and property in the West Bank.

Yesh Din has monitored the results of the investigations in 1038 complaints filed by Palestinians at SJ District Police stations over the past nine years. The data constitute a broad sample of the work of the SJ District Police in this field. This document does not summarize the outcomes of the investigations into every incident in which Israeli civilians are involved in criminal offenses against Palestinians.¹²

I. Types of offenses

Yesh Din divides the investigative files it monitors regarding attacks by Israelis on Palestinians into four broad categories:

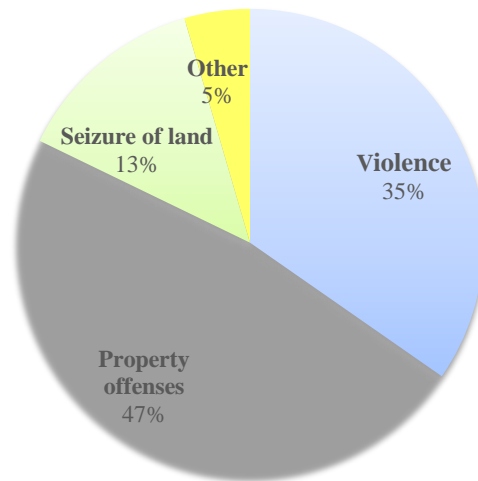
Property Offenses: Of the 1038 investigative files reviewed in this report, **493** (47 percent) involve complaints by Palestinians of damage to their property. These investigations include such offenses such as arson, theft, damage to property or crops, theft of crops, and so forth.

Violence: Of the 1038 investigative files reviewed in this report, **360** (35 percent) involve complaints of violence by Israeli civilians against Palestinians in the West Bank by Palestinians of damage to their property. Violent incidents include instances of shooting, beatings, stone throwing, assault with clubs, knives and rifle butts, as well as threats and other offenses.

Seizure of Palestinian Land: Of the investigative files monitored by Yesh Din, **138** (13 percent) involve complaints of attempts by Israelis to seize control of Palestinian land, by means such as: fencing, unauthorized cultivation, placement of buildings, trailers or greenhouses, driving Palestinians away from their plots or denying them access, trespassing, and so forth.

Other Offenses: Yesh Din is monitoring **47** investigative files involving other offenses that do not belong to the first three groups (5 percent of the total files being monitored). These include the killing of farm animals, desecration of mosques and cemeteries, pollution of Palestinian farmland by sewage from factories, dumping of waste on land belonging to Palestinians, and other offenses.

¹² It is important to note that the data presented here are the outcome of monitoring investigations in which the conditions and circumstances from the outset favor the law enforcement agencies. The reason for this is that Yesh Din functions as a mediating and liaising body between the police and the Palestinian complainants, and in many cases even helps to advance the investigation by bringing witnesses and relevant documents to the investigating units, insofar as these are required by the investigative and prosecuting bodies processing the complaints. Without the assistance provided by Israeli bodies, and particularly by human rights organizations, the ability of Palestinians to submit complaints to the Israel Police or to monitor the outcomes of the investigations would be almost non-existent.



II. The Outcome of Police Investigations:

In the Vast Majority of Cases A Decision to Close the File

→ Yesh Din is monitoring 1038 investigations that have been conducted, or are currently being conducted, by the SJ District Police. Of these, 72 cases are still at various stages of processing and investigation. The investigation and prosecution bodies have completed the processing of 966 cases and have made the following final decisions:

- In **72** files (7.5 percent of the investigations concluded to date), indictments were served against suspects;
- **883** files (91 percent of all the investigations concluded) were closed without an indictment being served against suspects;
- **11** files were lost by the SJ District Police and never investigated.

III. Grounds for Closure: Most Cases are Closed due to Police Failure to Locate Offenders or Collect Evidence

→ After closing the investigation file, the Israel Police is required to notify the complainant of the decision to close the file¹³ and to state the reason for closure in accordance with the nine grounds mentioned in the law.¹⁴ Of the 883 closed investigation files monitored by

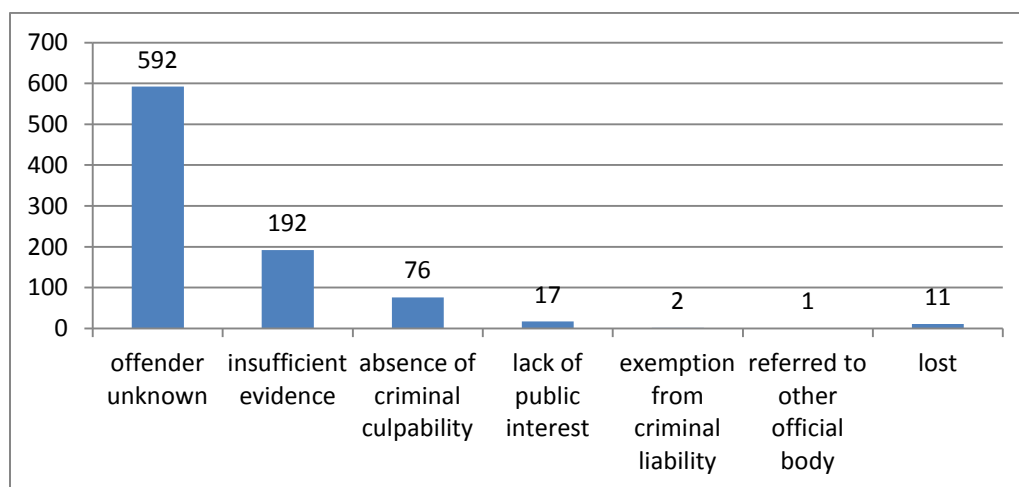
¹³ Article 63 of the Criminal Law Proceedings Law [Combined Version], 5742-1982, SB 1043.

¹⁴ The Israel Police Ordinance details nine grounds on which the police prosecutor may order the closure of an investigation file: Absence of guilt, unknown offender, insufficient evidence, lack of public interest, death of the suspect or defendant, obsolescence, the suspect is a minor, the suspect is insane, and another authority is empowered to investigate the case. See the Israel Police Ordinance, National Headquarters Ordinance 14.01.50: Authority of a

Yesh Din, the SJ Police District has not informed us of the grounds for closure in 3 cases. The remaining 880 investigations were closed on various grounds testifying to the quality of the investigation, as detailed below.

- **592** files were closed on grounds of "offender unknown," reflecting the failure of the police to locate and identify suspects responsible for the offenses;
- **192** files were closed on grounds of "insufficient evidence," due to the failure of the investigators to collect and consolidate sufficient evidence to prosecute suspects who were located;
- **76** files were closed on grounds of "absence of criminal culpability," meaning that no criminal offense was committed or that the suspect did not have any connection to the offense; of these, Yesh Din appealed against **26** decisions, since it believed it was unreasonable to close the investigations on these grounds;
- **17** files were closed on grounds of "lack of public interest;"
- **2** files were closed on grounds of "exemption from criminal liability."
- **1** file was closed on grounds of "referred to other official body"

The breakdown of the circumstances behind the closure of the investigation files shows that **784** files were closed on the grounds of "offender unknown" and "insufficient evidence." A further **26** files were closed on the grounds of "absence of criminal culpability," but detailed examination shows that the investigations in these cases were not exhausted, and accordingly we submitted an appeal against their closure. The Israel Police lost **11** files, which were therefore never investigated. The implication of these statistics is that **of the cases in which processing has been completed, and where the results are known to Yesh Din, 84.98 percent were closed due to investigative failures on the part of the police.**



Police Prosecutor to Close an Investigation File (Hebrew): <http://www.justice.gov.il/NR/rdonlyres/4B4F6000-AE76-43E3-A4FF-7779D5E17E0F/20100/6083.pdf>.

The reasons for investigative failures

The ongoing failure of the SJ District Police in this respect is due to a series of systemic defects and flaws in the manner in which investigations are conducted, as reviewed in detail in Yesh Din's report *Semblance of Law* (2006). This report found that over half of the investigations examined were characterized by negligence, a lack of professionalism, a paucity of investigative actions, and failure to meet acceptable standards of investigation.¹⁵

A current analysis of investigation files managed by the SJ District in the period since Yesh Din was founded in 2005 until the end of 2013 found failures and defects at all stages of investigation – from surveying the crime scene and collecting evidence at the scene, through collecting testimony, identifying, locating and investigating suspects, and all the way to analyzing the collected evidence and deciding whether it is sufficient to serve an indictment. The main conclusion from analyzing the investigation files is that actions not taken by the police are the main reason for investigative failures. **The failure to perform basic investigative actions is a failure that sometimes amounts to negligence.**

The absence of an established law enforcement system based on a proper investigation system that can lead to the prosecution of criminals is part of the State of Israel's general violation of its duty under international law to guarantee the well-being of the Palestinian population in the territory under its occupation.

Data collected by Yesh Din has remained stable since the organization started monitoring police investigation files in 2005,¹⁶ pointing to systemic and protracted failure of SJ District Police to investigate offenses by Israeli civilians against Palestinians.

Appeals against the Closure of Files

In certain cases Yesh Din appeals decisions to close investigation files without serving indictments but in the vast majority of cases the long time that passes between committing the crime and closing the file, and the even longer time that takes the State Attorney's Office to process the appeal, obviate the appeal. Investigation completion activities such as identification lineups or the investigation of witnesses and suspects must be undertaken as soon as possible after committing the crime and are useless if performed later. **Therefore, the right to appeal, available to victims**

¹⁵ For details of the flaws and defects identified, see **Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank**. Yesh Din, June 2006, 95-103.

¹⁶ Previous data were published in the Yesh Din reports **A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank** (June 2006) and **Too Little, Too Late: Supervision by the Office of the State Attorney over the investigation of offenses committed by Israeli civilians against Palestinians in the Occupied Territories** (May 2008). The monitoring data in these reports were based on the examination of 92 and 205 investigations, respectively. Additional statistics were published in the data sheet **Yesh Din Monitoring Update – Law Enforcement upon Israeli Civilians in the West Bank** (February 2011, March 2012, and July 2013); the data in these data sheets were based on the monitoring of 642, 781 and 938 investigations, respectively.

of crime, is insufficient to address most of the defects because of which investigation files close without indictments.

→ In 21.7¹⁷ percent of the total of investigation files under Yesh Din's monitoring, Yesh Din found that the investigation procedures had not been exhausted or that the material collected in the investigation was sufficient to submit an indictment. In these cases Yesh Din appealed the decision to close the file.¹⁸ In **27.3%** of the appeals¹⁹ submitted by Yesh Din (41 appeals) and in which a decision was made, the arguments put forth in the appeal were accepted and it was decided to return the file to the police for completion of the investigation or to submit an indictment on the basis of the evidence collected.²⁰

"Standing Idly By"

Article 6 of the Procedure of Law and Order Enforcement on Israeli Offenders in the West Bank and Gaza²¹ is about "operational responsibility for handling law enforcement," and divides the areas of responsibility between the Israel Police and the IDF. Article 6c of the procedure provides that events developed without prior information are to be handled by the IDF until the Israel Police arrives on the scene and responsibility is transferred to it. The procedure thereby imposes most of the responsibility for law enforcement upon Israeli civilians on the Israel Police but it does not exempt IDF soldiers from the immediate response to the incident and arresting suspects. Section 11a (5) of the procedure, concerning events of which there is no prior information and in which the first responders are IDF soldiers, provides that the IDF is to secure the scene until the arrival of the Israel Police. The section says explicitly that "the contents of this section do not derogate from the duty of IDF forces to take all necessary actions to treat wounded or prevent harm to life, body or property, as well as detaining and arresting suspects who might flee the scene." After the law enforcement procedure was published, the IDF developed its own procedure that says, among other things, that "any soldier who witnesses the commission of a crime by an Israeli, both against a person and against property, must act immediately to prevent and/or stop the crime, if necessary

¹⁷ In 191 out of 880 files closed at the conclusion of the investigation, and the grounds for whose closure were provided to Yesh Din.

¹⁸ In the last two years there was a sharp drop in the number of appeals submitted by Yesh Din, mainly because of a change in the organization's policy of submitting appeals, but this fact does not change the findings as to the results of the appeals that were submitted.

19 47 of the 191 appeals submitted by Yesh Din in which a decision was made.

²⁰ In 121 appeals the arguments were not accepted and the appeal was rejected. At the time of writing this report, 13 appeals are still being examined and no decision was made about them, in 6 appeals processing was stopped at the request of Yesh Din, 7 appeals were not reviewed at all by the state attorney's office on grounds of claimed lateness in submitting the appeal, and one appeal was apparently lost and its fate is unknown.

²¹ On September 2, 1998, the Atty. Gen. at the time, Elyakim Rubenstein, published the "Law and Order Enforcement Procedure concerning Israeli Offenders in the West Bank and Gaza."

to detain and arrest the suspects of committing the crime, to document the scene and to maintain it."²²

Cases documented by Yesh Din indicate that as opposed to the provisions of the military procedure, soldiers "stood by" and refrained from exercising their authority to prevent or stop offenders from committing offenses, released suspects from the site of the event and did not use the powers vested in them to detain them until the arrival of the police. In even more serious cases soldiers helped Israeli civilians commit offenses against Palestinians.

The State Comptroller Report published in July 2013, whose results conform with Yesh Din's findings, found defects in the performance of the Division Procedure, which requires IDF forces arriving at the scene of a crime (as well as a terror attack) to, among other things, detain those involved in the event while separating them, close the scene and secondary scenes, and refrain from moving or touching objects.²³ The State Comptroller Report also found defects as to IDF soldiers' responsibility to maintain the event scene. The comptroller noted that "at times IDF forces failed to fulfil the provisions set forth in the Judea and Samaria Division Procedure about the required behavior of IDF forces arriving at the scene of an event. This was expressed by IDF soldiers' removing items from the scene of the event before the arrival of the police and failure to transfer items seized by the IDF at the scene of the event to the police or transferring them belatedly. This conduct undermines the investigation of the events and the criminal procedure that must be exercised against the offenders."²⁴

One of the possible explanations for these defects according to the comptroller is that IDF soldiers are not trained to maintain event scenes.²⁵ Responsibility for conducting appropriate training for soldiers on this matter is primarily with the IDF with the help of the Israel Police. However, the high turnover of reserve and regular soldiers stationed in the area undermines the ability to effectively train the soldiers.

It appears that IDF soldiers are not aware of their obligation under International Humanitarian Law to protect the Palestinian population in the occupied territory, nor of the powers granted to them to do so. Examination of testimonies collected by Israeli NGO Breaking the Silence from soldiers who served in the West Bank indicates that soldiers are not trained for law enforcement in the occupied Palestinian territory, in all aspects, including the obligations derived from IHL.

²² Letter from Capt. Harel Weinberg from the office of the Legal Advisor for the Judea and Samaria Area to Attorney Limor Yehuda from the Association for Civil Rights in Israel, July 31, 2005.

²³ State Comptroller, annual report 63b, July 17 213, p. 138.

²⁴ State Comptroller, annual report 63b, July 17 213, p. 132.

²⁵ Ibid., p. 138.

Excerpt from the testimony of a Nahal soldier from Battalion 50 to Breaking the Silence:

Question: This might be a bit of a general question. Was there talk before going on the line, during preparation week and stuff, about dealing with settlers or Israeli citizens? I mean, what happens? Do you have the authority to arrest a settler who attacks you? Or attacks a Palestinian? Or attacks Palestinian property?

Answer: There is no direct reference to it. [...]

Question: Did they talk with you at any stage about the concept of protected persons? Do you know it, did you hear it?

Answer: I don't recall. [...]

Question: Was there a written procedure for handling settlers attacking Palestinians, in cases of violence towards Palestinians?

Answer: No.

Question: If there is a scene – I know these are kind of weird questions but I'm interested – say they vandalized an area, settlers came down from Elon Moreh or Yitzhar, or wherever, and did a "Price Tag", harmed olive trees, here and there, and so on. Is there talk of preserving the scene as a crime scene the police could come to and investigate?

Answer: There is no procedure for that matter. [...]

Recent policy developments: Establishment of 'Unit for Nationalistic Crimes' in Israel Police

In early 2013, the central unit of the SJ District Police established a Department for Nationalist Crime, which was intended to handle ideological crime by Jews against Palestinians.²⁶ The unit has standard positions for 80 police personnel, mostly investigators and detectives, and the goal is that within a year or two the new division will handle all nationalist crime (currently handled by the anti-disturbance units) in the regions and stations.

Besides establishing the unit, "nationalist crime" was defined and a basket of offenses was put under the definition of "nationalist crime." Nationalist crime events were defined as criminal acts including harm to life and/or property, committed by an individual or group, with the perpetrator being Jewish [left-wing/right-wing], Arab [Israeli/Palestinian], or foreign, committed or planned with the intention of influencing a political, ideological or religious cause. The aforesaid basket of offenses includes many and diverse offenses found in the criminal code: offenses against body,

²⁶ Planning to establish the unit began at the end of 2011 following the event in the Ephraim Regional Division Headquarters, when rightist activists broke into the base, vandalized vehicles and beat the deputy division commander.

liberty or property, threats or extortion, hooliganism, harrassment and more, when the motive for committing those offenses is out of racism or hatred as defined in the law books."²⁷

The new unit's main investment is in detection and intelligence capabilities, but despite the intentions and resources devoted to it, it has not yet handled the main point of weakness of the SJ District – the failure to conduct basic investigation activities in investigation files. There has been no evident change as a result of its activity – neither in the number of indictments submitted against suspects in offenses of harming Palestinians and their property, nor, according to our impression, in the amount of crime on the ground.

IV. Data collection about law enforcement upon Israeli civilians by the Israeli authorities

Every year Yesh Din asks the Director of Freedom of Information at the Israel Police for data about the investigation of offenses by Israeli civilians against Palestinians and their property. The list of cases provided by the police indicates clearly that it includes all of the offences defined as "Israeli disturbances," which also include offenses by Israeli civilians against security forces, the violation of military orders etc. This means that the State of Israel does not have data about investigation files opened by the SJ District concerning offenses by Israeli civilians against Palestinians and their property and consequently does not monitor the number and types of offenses or estimate or control the quality of investigations.

Likewise, the data on the indictments does not include the total number of indictments that the investigations produced, but only those submitted by the SJ District's prosecution department, which do not include the indictments submitted by the State Attorney's Office. Furthermore, to the best of our understanding the Israel Police has not created a distinct definition for offenses committed by Israeli civilians against Palestinians and their property. As a result, the figure provided as to the number of indictments included indictments for offenses such as "insulting a public official," "interfering with a police officer in the performance of his duties" and so on. This leads to the conclusion that none of the bodies in charge of law enforcement collect data as to the total indictments produced by SJ District investigations into offenses by Israeli civilians against Palestinians and their property. For the sake of illustration, the figures provided by the Police Spokesperson for 2013 indicate that the police submitted a total of 30 indictments in the SJ District, but only six of them were for incidents of harming Palestinians, and the rest for other offences.

The picture that emerges from the description of the problems mentioned above is that when it comes to offenses by Israeli civilians against Palestinians and their property, the Israeli law enforcement agencies do not have data as to the number of investigation files opened, the kinds of offenses investigated, the results of the investigations, the quality of the investigations, and the number of indictments served against the suspects. In other words,

²⁷ Letter from Chief Superintendent Hamutal Sabag, Director of Freedom of Information, Unit for Public Complaints, Israel Police, March 18, 2014, in response to Yesh Din inquiry under the Freedom of Information Act.

they have no data on the scope of the phenomenon of attacks on Palestinians and their property or information on the degree of success of enforcement efforts.

Recommendations

The presence of Israeli settlements constitutes a grave and comprehensive human rights violation against the human rights of Palestinians in the occupied Palestinian territory.²⁸[1] Only the dismantlement of settlements and the end of the occupation will solve the problems relating to law enforcement upon Israeli civilians in the West Bank. Nonetheless, as long as the current situation persists, in-depth and comprehensive reform is required in order to address and reduce criminal wrongdoings against Palestinians, including resource allocation, changes in the spirit of command, and clearly defining goals.

1. The protection of Palestinians must be defined as a central objective of the IDF, as the body entrusted with law enforcement in the West Bank, and as the element present on the ground .The IDF and Israel Police must assign sufficient forces with sufficient training for law enforcement, including protective action, alerts, and investigation .
2. Professional and effective investigations at the Judea and Samaria district police must be ensured, including such investigative actions as: collecting evidence at the site of incidents, summoning suspects for questioning, collecting statements from all those involved, holding live lineups, verifying suspects' claimed alibis, etc .
3. Training on international humanitarian law must be integrated into the IDF training system at all levels. It must be ensured that soldiers stationed in the West Bank are aware of the duties placed on them with regard to protecting the occupied population and its property, such as the duty to actively prevent or stop crimes, detain suspects, and preserve the scene of the incident. It must also be ensured that soldiers are aware of the powers vested in them in this context .
4. Soldiers who “stand idly by” must be prosecuted to the full extent of the law. Soldiers and commanders who violate their duty to protect Palestinians and their property must be investigated and tried.
5. Permanent, sufficient, and trained forces must be stationed at the regular sites of friction, which are known to the security forces. Sufficient trained forces must also be placed in expected sites of friction, following specific incidents or reasonable expectations of such .

²⁸ **The Impact of Israeli Settlements on Palestinian Rights in the West Bank**, Position paper submitted to the International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory, Yesh Din, November 2012.

6. Illegal outposts must be dismantled, and a determined and uncompromising effort must be made against illegal construction on the West Bank, recognizing that these are central sites of friction and harassment of Palestinians .
7. The State Attorney and the Judea and Samaria District Police must collect and publish full annual data on the number of indictments filed against Israeli citizens for harming Palestinians and their property. A clear distinction must be made for this kind of crime in such a way as to make it possible to isolate this data from indictments filed for other offenses. Data must also be published on conviction rates and the severity of penalties.

Annex I: Defects in the IDF Investigative Mechanism, Relevant Recommendations in the Turkel Report, and Yesh Din Data

| Binding investigative standard | Defect | Recommendation in Turkel Report | Relevant Data (Yesh Din Data) |
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| <ul style="list-style-type: none"> • Effective / professional | <p>Professionalism of the investigators and the investigations:</p> <ul style="list-style-type: none"> • Defects in the pursuit of investigations and failure to undertake basic investigative actions • Inadequate training of investigators • Lack of investigative actions in the field – no visits to the site of the offense, searches, location of documents • Shortage of Arabic-speaking investigators and interpreters • No MPCID base in the West Bank | <p><u>Recommendation 9: MPCID Investigations</u></p> <p>A Department for Operational Matters should be established in the MPCID.</p> <p>The military police officers appointed to the CID for Operational Matters shall undergo training in international humanitarian law, generally, and the obligations on investigating violations of international humanitarian law in particular. In order to ensure direct communication with witnesses, complainants and other relevant parties to the investigation, the investigators should include persons that are fluent in Arabic. In order to promote the MPCID’s accessibility to complainants, the MPCID for Operational Matters should have military bases deployed throughout the areas where the incidents under investigation occur.</p> | <p>In recent years, there has been a significant fall in the proportion of indictments: Just 2.2 percent of investigative files opened following incidents involving injuries to Palestinians in 2010-2013 led to the indictment of suspects. By comparison, from the beginning of the second intifada in September 2000 and to date, the MAG’s Corps has submitted indictments in 124 files, representing 5.2 percent of the investigations opened. A total of 206 soldiers and officers were indicted in these investigations. (2014 Data Sheet, based on data forwarded to Yesh Din by the IDF Spokesperson).</p> <p>In 2013, six indictments were served at the military courts against soldiers following incidents involving injury to Palestinians. (2014 Data Sheet,</p> |

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| | | <p><u>Recommendation 11: Transparency of Proceedings</u></p> <p>(A) The arrangements provided in the Rights of Victims of Crime Law relating to the receipt of information on criminal proceedings shall also be applied mutatis mutandis to persons injured by law enforcement activity by the security forces that are investigated by the CID.</p> <p>(B) The MAG Corps should implement a strict documentation procedure, especially in files of investigations of violations of international humanitarian law.</p> | <p>based on data forwarded to Yesh Din by the IDF Spokesperson).</p> <p>An examination of dozens of investigative files found only a handful of instances of documentation of visits to the scene of the incident by the MPCID investigators (Yesh Din report Alleged Investigation: The Failure of Investigations into Offenses Committed by IDF Soldiers against Palestinians, 2011, p. 79).</p> |
| <ul style="list-style-type: none"> • Prompt (without delay) • Transparent | <p>Delays and foot-dragging in the implementation of investigations:</p> <p>The investigation logs in the MPCID files reveal significant delays in the implementation of investigative actions.</p> | <p><u>Recommendation 10: Establishing the Investigation Timeframe</u></p> <p>A timeframe should be set for conducting investigations. The MAG in coordination with the Attorney General shall set a period of time between the decision to open an investigation and the decision to adopt legal or disciplinary measures or to close the case. In order to guarantee that the regulated timeframe is adhered to, and in order to allow for adequate review, the MAG shall</p> | |

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| | | publish, at least once a year, statistical data on the period of time taken to handle files. | |
| <ul style="list-style-type: none"> • Prompt • Effective / professional | <p>Delays in the MAG’s decision whether to open a criminal investigation</p> <p>The protracted period of waiting pending the decision whether to open an MPCID investigation almost completely eliminates the possibility of conducting a professional and effective investigation.</p> <ul style="list-style-type: none"> • In many cases, the MPCID only contacts victims and witnesses to collect their testimony after a decision has been taken to open an investigation – many months after the incident. The passage of time impairs the quality of the testimonies and therefore also limits the possibility of conducting an effective investigation. • The delay in the decision whether to open an investigation damages the trust of Palestinian | <p><u>Recommendation 6(A): Timeframe</u></p> <p>The Commission recommends the establishment in procedures of a timeframe of a few weeks during which the MAG shall decide whether to open an investigation based on the material in his possession.</p> | <p>In 75 of the notices submitted to the MPCID in 2012, a decision on the opening of an investigation was only taken in 2013 (this figure accounts for 38 percent of the investigations opened in 2013). This figure reflects the slow decision-making process regarding the opening of an investigation. (2014 Data Sheet, based on data forwarded to Yesh Din by the IDF Spokesperson).</p> <p>As of April 30, 2011, Yesh Din was monitoring 11 files in the clarification stage before the decision by the MAG’s Corps regarding the opening of a criminal investigation. An average of 702 days elapsed from the submission of the notice through the above-mentioned date (almost two years). Six of the files had been awaiting a decision for more than two years, three had been awaiting a decision for between one and two years, and two had been awaiting a decision for less than a year. (Yesh Din report Alleged Investigation: The</p> |

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| | complainants in the system. | | Failure of Investigations into Offenses Committed by IDF Soldiers against Palestinians , 2011, p. 38). |
| <ul style="list-style-type: none"> • Prompt • Effective • Independent | <p>The operational debriefing and the “clarification” proceeding</p> <p>[According to the investigative policy introduced by the Military Advocate General’s Corps, the opening of an investigation into an offense committed during the course of operational activities is conditioned on the presence of a preliminary clarification. In most cases, this clarification is based on the military operational debriefing.]</p> <p>The undertaking of the operational debriefing is liable to hamper and thwart an effective future investigation:</p> <ul style="list-style-type: none"> • The decision to open an investigation is frozen pending completion of the clarification proceeding. • In many cases the clarification proceeding is extremely protracted, thereby impairing the effectiveness of the MPCID | <p><u>Recommendation 5: Fact-Finding Assessment</u></p> <p>A separate mechanism shall be established in order to conduct a fact–finding assessment, which will enable conducting an assessment that complies with the international legal requirements, i.e., a prompt and professional assessment, which facilitates a potential investigation and does not hinder it.</p> <p>Immediately upon receiving the Preliminary Report Form, the MAG shall decide on one of the following possibilities:</p> <ol style="list-style-type: none"> a. That there is reasonable suspicion of criminal activity and that an investigation should be opened immediately. b. That there is no reasonable suspicion of criminal activity and that the case is closed. c. That additional information is required in order to determine whether there is reasonable suspicion of criminal activity. <p>If the MAG decides that more information is required, he shall order a special fact–finding assessment team to examine the</p> | <p>Yesh Din report Alleged Investigation: The Failure of Investigations into Offenses Committed by IDF Soldiers against Palestinians, 2011, p. 32.</p> |

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| | <p>investigation, if one is opened.</p> <ul style="list-style-type: none"> • The passage of time allows the destruction or concealment of evidence and impairs witnesses' memory. • Undertaking operational debriefings prior to a criminal investigation endangers the potential investigation, among other reasons due to the tangible concern that the soldiers involved in the incident will coordinate their versions of the events. In this context the debriefing before their commanders can function as a "dress rehearsal" for the criminal investigation. • The operational debriefing (with rare exceptions) does not consider the narrative of the victims of the offense, civilian eyewitnesses, or indeed any person other than the soldiers and officers involved in the operation under examination. | <p>circumstances of the incident within a timeframe that is stipulated in procedures, in order to enable the MAG to make a decision about whether to open an investigation. The members of the team shall be comprised of experts in the theatre of military operations, international law, and investigations.</p> <p><u>Recommendation 6(B): Duty to Provide Reasoning</u></p> <p>Every decision of the MAG not to open an investigation shall state the reasoning for that decision. This is important from a public and legal perspective, as well as a practical perspective, because such reasoning enables appeal and review of the MAG's decision.</p> | |
| Command responsibility | <p>The principle of "command responsibility" does not exist in Israeli criminal law</p> <p>Israeli criminal law does not</p> | <p><u>Recommendation 2: Responsibility of Military Commanders and Civilian Superiors</u></p> | <ul style="list-style-type: none"> • As a general rule, in the investigative files examined by Yesh Din the MPCID investigators refrained from questioning senior officers under |

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| | <p>establish “command responsibility” on account of actions liable to be considered war crimes. A commander – or civilian – in Israel cannot be prosecuted on account of war crimes committed by their subordinates unless he personally ordered the execution of the crimes.</p> | <p>(A) <u>Filling Gaps in Israeli Legislation</u></p> <p>Provisions will be enacted that impose direct criminal liability on military commanders and civilian superiors for offenses committed by their subordinates, where the former did not take all reasonable measures to prevent the commission of offenses or did not act to bring the matter to the competent authorities when they became aware of the offenses <i>ex post facto</i>.</p> <p>(B) <u>Investigation of Commanders</u></p> <p>Orders by commanders may in themselves (as distinct from omissions by commanders) also constitute violations of international humanitarian law. The Commission emphasizes that such orders by commanders should also be subject to examinations and investigations.</p> | <p>warning. This was true both regarding field officers and headquarters officers. Even in cases in which the investigation raised suspicion of unlawful policies or procedures the investigators did not extend their examination to include the responsibility of senior officers (Yesh Din examined 67 investigative files).</p> <ul style="list-style-type: none"> Yesh Din’s monitoring shows that while 190 soldiers and officers were indicted from the beginning of the second intifada in 2000 and through April 2011, not a single senior officer of the rank of colonel or above was indicted. (Yesh Din report Alleged Investigation: The Failure of Investigations into Offenses Committed by IDF Soldiers against Palestinians, 2011, p. 81). |
| War crimes | <p>Legislation prohibiting war crimes</p> <p>Israeli law does not include a prohibition against war crimes</p> | <p><u>Recommendation 1: “War Crimes” Legislation</u></p> <p>The Ministry of Justice should initiate legislation wherever there is a deficiency</p> | <p>Lacuna: War Crimes in Israeli Law and Court-Martial Rulings</p> |

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| | <p>accompanied by sanctions reflecting the particular gravity attributed to these crimes among the family of nations.</p> <ul style="list-style-type: none"> • Only a small proportion of the relevant offenses in Israeli law reflect the offenses defined in international law (looting is one such example); • Other offenses are found in Israeli law as “regular” offenses; • Some offenses do not appear at all in Israeli law. | <p>regarding international prohibitions that do not have a “regular” equivalent in the Israeli Penal Law.</p> <p>Furthermore, the Commission sees importance in the explicit adoption of the international norms relating to war crimes into Israeli domestic legislation.</p> | |
| Independence | <p>Independence of the MAG and His “Dual Cap”</p> <ul style="list-style-type: none"> • The MAG heads the military legal system and is subordinate in command terms to the chief-of-staff, and in professional terms to the guidelines of the Attorney General. • The MAG’s “dual cap” refers to the fact that he heads both the military prosecution system and the legal advice system. | <p><u>Recommendation 7: Independence of the MAG</u></p> <p>The MAG should be appointed by the Minister of Defense on the recommendation of a public–professional committee. In order to institutionalize the professional subordination of the MAG to the Attorney General, the latter should be the chair or a member of the public–professional committee.</p> <p>The MAG’s tenure should be fixed at one term of six years that may not be extended. In addition, the MAG shall be given a fixed</p> | |

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| | | <p>rank.</p> <p>Recommendation 8: The MAG’s “Dual Cap”</p> <p>Due to the MAG’s “dual cap” – as head of the military prosecution system and head of the legal advice system – the status and independence of the Chief Military Prosecutor (CMP) should be enhanced. The CMP should be appointed by the Minister of Defense on the recommendation of a committee headed by the MAG. The CMP’s tenure and rank should be fixed in advance.</p> <p>Recommendation 13: Individual and Systemic Review of the Military Prosecution System</p> <p>Recommendation 13(A): Individual Review – Appeal to the Attorney General. An appeal procedure should be established in law concerning decisions of the MAG and a period of time should be set for the granting of a decision in an appeal.</p> <p>Recommendation 13(B): Systemic Review – The Complaints Commission for the State Prosecution. A Complaints Commission for Civilian Prosecution should be established and should also be authorized to review all the branches of the military prosecution and to monitor the bodies at the IDF that conduct examinations and</p> | <p>The MAG addresses issues requiring his intervention both as the senior legal adviser to the IDF and as the head of the military prosecution system. If an action he approved with his cap as legal advisor (or one of his staff approved) raises <i>prima facie</i> suspicion of violation of the rules of law, how can the MAG order an MPCID investigation concerning an issue in which he was personally or institutionally involved?</p> <p>In many instances, staff from the MAG’s Corps are required to investigate practices and operating methods which the Corps itself was involved in creating or approving. It is difficult to imagine a graver violation of the independence of the investigating body.</p> |
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| | | investigations. This is in order to ensure that the MAG's regulations and policy are being implemented <i>de facto</i> . | |
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**Annex II: Yesh Din Data Sheet – Law Enforcement Upon IDF
Soldiers in the oPt**