

Data Sheet, January 2017

LAW ENFORCEMENT ON ISRAELI SOLDIERS SUSPECTED OF HARMING PALESTINIANS

Figures for 2015

186 investigations opened, 15 indictments served, the Israeli Army has no information on the number of complaints submitted

- Approximately one quarter of investigations launched by the Military Police Criminal Investigation Division (MPCID), following suspicion of harm caused to Palestinians in 2015, concerned **damage to property or looting** by Israeli soldiers - a significant increase compared to previous years.
- Despite orders, procedures and instructions which define the duty to report cases of suspected violations of international law by soldiers to MPCID, this duty is not enforced and steps are not taken against commanding officers who fail to enforce it. **In 2015, indictments were served in just 3.1% of the files** in which an investigation was concluded. This is an exceptionally low rate, and reflects a profound and ongoing failure to conduct exhaustive investigations that yield indictments, as well as near impunity for Israeli army soldiers from prosecution. It is reasonable to assume that the indictment rate is even lower than 3.1%, because since this information was obtained, additional investigation files were closed.
- The Israeli Army does not collect basic statistics on complaints of alleged offenses by soldiers against Palestinians. As a result, the Military Advocate General's Corps (MAGC) is effectively unable to monitor these investigations or formulate clear, systematic policies on this issue.

BACKGROUND

Yesh Din publishes an annual data sheet regarding law enforcement on Israeli soldiers suspected of harming Palestinians and their property in the West Bank and the Gaza Strip. The figures are based both on information obtained from the IDF Spokesperson each year following Yesh Din's request, and on the organization's long term monitoring of these statistics. The source of the data concerning indictments and rulings is Yesh Din's own research and monitoring of the indictments served in military courts against Israeli soldiers accused of criminal offenses against Palestinians and their property.

The process of opening a criminal investigation against Israeli soldiers suspected of offenses against Palestinians differs from the parallel civilian process of investigating Israeli civilians, suspected of similar crimes, in two key aspects: the manner of submitting a complaint and the decision whether or not to investigate a complaint.

Over the years, very few of the complaints regarding suspected offenses by Israeli soldiers against Palestinians were submitted directly by Palestinian victims to Israeli authorities. In 2015, just 11 of 187 reports which came to the attention of the MPCID were submitted by Palestinians.¹ In previous years too, few complaints were submitted directly by Palestinians: Five complaints of 239 in 2014, six of 239 in 2013, six of 240 in 2012.² There are several reasons for this phenomenon; first and foremost is the fact that Palestinian victims of offenses cannot simply go to the nearest MPCID base and submit a

1 In this context, it is noteworthy that the 187 reports that reached MPCID do not represent all the complaints and reports which came to the attention of the military law enforcement authorities during 2015, since in recent years most reports are submitted to the MAGC and not to MPCID. However, the MAGC is not accessible to ordinary Palestinians, so it is reasonable to assume that the 11 complaints submitted directly by Palestinian victims are of a total number much greater than 187.

2 According to responses provided by the IDF Spokesperson to Yesh Din's requests on 21 July, 2016, 25 June 2015, 3 April, 2014 and 23 January, 2013 respectively.

complaint. This is because there are no MPCID bases or stations in the West Bank. Palestinian residents of the West Bank may file complaints at the District Coordination Offices (DCOs) located throughout the West Bank, or in Israeli police stations. However, in the experience of Yesh Din and other human rights organizations, many complaints filed with the DCOs are not forwarded to the appropriate investigating authorities, or reach them after a significant delay. Submitting complaints to the Israel Police is also a difficult task for Palestinians, as some police stations are located inside Israeli settlements in the West Bank, which Palestinians are not permitted to enter without a police escort. Furthermore, there is often no Arabic speaking police investigator at the station to take the complainant's statement.³ And so, complaints regarding suspected offenses by Israeli soldiers are usually filed with the MAGC - the majority through Israeli individuals and organizations. Approximately 80% of reports regarding suspected offenses by Israeli soldiers against Palestinians which reached the MPCID in 2015 originate in complaints filed with the MAGC.⁴

In addition, a criminal investigation is not automatically opened every time military law enforcement authorities are informed of an incident. In some cases, the MPCID investigates on the basis of a report. For example, in cases of suspected looting or abuse of detainees. In other cases, however, the MAGC orders a preliminary inquiry, and the decision whether or not to investigate the incident is made only after the preliminary inquiry is completed.⁵ As a general rule, current Israeli Army policy regarding opening investigations (referred to as "investigation policy") states that in case of a suspected offense committed during army operations, the decision to initiate a criminal investigation is subject to a preliminary inquiry. Following a petition to the High Court of Justice (HCJ), the investigation policy was somewhat extended to include an immediate investigation by MPCID of every case of a civilian fatality in the West Bank as a result of army operations, except during incidents that occurred during "actual combat" situations.⁶

The policy under which a complaint is first made to the MAGC and a decision as to whether or not to launch an investigation by MPCID is made only after a preliminary inquiry has several significant ramifications. First and foremost is the unreasonable protraction of all inquiry and investigation procedures in cases of suspected offenses against Palestinians.

The Israeli Army lacks protocols or guidelines that set deadlines for each of the stages - the preliminary inquiry, the criminal investigation and the decision whether to serve an indictment. In the experience of Yesh Din and other organizations, in most cases these procedures are protracted and in several cases - can even take years.⁷ Procrastination, which characterizes the procedures of preliminary examination and inquiry prior to the decision whether to open an investigation, directly and immediately impacts the quality of investigations. Naturally, the chance of an effective investigation decreases as time passes. In addition, since most Israeli soldiers only serve in the military for a period of a few years, the slow progress of the military law enforcement system is critical: under the Military Justice Law, an Israeli soldier cannot be indicted for an offense committed during service more than 180 days after his or her discharge from the army, or one year if the alleged offense is more serious.⁸ It often happens that Israeli soldiers suspected of offenses complete their military service without being indicted, and later cease to be subject to the Military Justice Law. Only the Attorney General may decide to prosecute a person who is no longer subject to the Military Justice Law.

3 The obstacles and difficulties faced by Palestinians who wish to file complaints were discussed in detail in Yesh Din's previous publications. See Yesh Din reports [Mock Enforcement: The Failure to Enforce the Law on Israeli Civilians in the West Bank](#) (May 2015), p. 100; [Alleged Investigation: The failure of investigations into offenses committed by IDF soldiers against Palestinians](#) (July 2011) (hereinafter: Alleged Investigation), pp. 45-52.

4 147 of the 187 reports of suspected offenses against Palestinians that ultimately reached the MPCID were transferred by the MAGC. This data was obtained by the IDF Spokesperson in response to Yesh Din's question in a letter dated 21 July, 2016.

5 For more on this policy, see Alleged Investigation, pp. 23-24, 32-44.

6 The MAGC's statement, dated 6 April, 2011 in HCJ 9594/03 **B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories and The Association for Civil Rights in Israel vs. the MAGC**.

7 For more information regarding systematic flaws in MPCID investigations of suspected offenses by Israeli soldiers against Palestinians, including the unreasonable protraction of procedures, see: B'Tselem, [The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism](#) (May 2016); Yesh Din, [Alleged Investigation: The failure of investigations into offenses committed by IDF soldiers against Palestinians](#) (August 2011).

8 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 involuntary manslaughter or vehicular involuntary manslaughter, the law will apply to a person suspected of the offense for up to one year after discharge from the IDF.

The Turkel Commission, appointed by the Government of Israel to look into Israel's mechanisms for examining and investigating complaints and claims of violations of the laws of armed conflict, discussed the need for promptness and its importance for an effective investigation at length. The Commission recommended that clear and well-defined timeframes be defined for each of the stages of criminal proceedings.⁹ Following consultation with military officials, the team established to review and implement the recommendations made in the Turkel Report (the Ciechanover Commission) recommended a 14-week time limit for the process of reaching a decision as to whether or not to open an investigation, a nine-month cap on the investigation itself, and nine months for reaching a decision whether or not to serve an indictment.¹⁰ Nevertheless, almost four years after the Turkel Report was published and more than a year after the Ciechanover Commission Report was published¹¹ - these recommendations have not yet been integrated in the Israeli Army's procedures, and have not been anchored in binding guidelines issued by the Chief Military Prosecutor (CMP).

In many instances, protraction of proceedings adds to a great difficulty which Palestinian complainants face when they wish to receive an update regarding the status of investigation, or decisions made by the MAGC. This difficulty results, among other reasons, from insufficient coordination between MAGC and MPCID, and because the MAGC does not assume responsibility for the entire process. In Yesh Din's experience in representing Palestinian victims of offenses, the decision to close investigation files is often conveyed to the complainants and their lawyers after several months' delay. Even then, repeated requests are made to receive status updates as to the investigation. Such conduct violates the complainant's right to appeal the decision to close the investigation file, as well as effectively precluding any chance of completing the investigation or of taking further measures necessary for exhausting an investigation in relevant cases.

In May 2016, following a petition filed by the Public Committee against Torture in Israel on behalf of nine Palestinians whose complaints of torture or abuse by Israeli army soldiers did not receive a response after more than a year and up to five years since they their submission,¹² it became evident this was not a limited failure. In its response to the HCJ, the State of Israel updated that the MAGC's examination revealed that for 60 of all files closed by the MAGC between 2014 and May 2016, no information had been disclosed to the complainant. Thus, the MAGC established new procedures, designed to "minimize, as much as possible, the event of closing a file without updating the complainant".¹³ It is to be hoped that these procedures will be implemented and lead to an improvement.

These two issues - the division of responsibilities between law enforcement bodies inside the Israeli Army and unreasonably protracted law enforcement proceedings - have a crucial impact on the quality of law enforcement on Israeli soldiers suspected of harming Palestinians. Yesh Din's monitoring data, as well as figures and information published by other organizations, demonstrate that these mechanisms are highly ineffective. The result is a lack of accountability on the part of Israeli security forces operating in the occupied territories under Israel's control.

9 The Commission recommended a time frame of a few weeks to make a decision whether or not to investigate (recommendation no. 6) and recommended defining a time limit for concluding an investigation and reaching a decision whether to take legal measures or close the file (recommendation no. 10). See: **Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law**, February 2013 (hereinafter: "the Turkel Report"), pp. 385-386 and pp. 397-399 respectively.

10 **Report of the Team for the Review and Implementation of the Second Report of the Public Commission for the Examination of the Maritime Incident of May 31st 2010 Regarding Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Law of Armed Conflict According to International Law**, August 2015 (hereinafter: The Ciechanover commission report), Recommendation no. 6 - the decision whether to open an investigation, pp. 24-28; Recommendation no. 10 - establishing a timeframe for a criminal investigation, pp. 35-36.

11 The Ciechanover Commission recommended that the timeframes be anchored in the CMP's guidelines within 3 months of government approval of the Commission's recommendations. Although the Cabinet approved the Ciechanover Commission's recommendations on 3 July, 2016, the CMP has yet to publish guidelines on this issue.

12 HCJ 8311/14 **Raji Abed Rabu vs. the MAGC**. The ruling on the petition was given on 1 August, 2016.

13 From HCJ 8311/14 **Raji Abed Rabu vs. the MAGC**, Supplementary Affidavit of Response on behalf of the State, 29 May, 2016.

B. FIGURES FOR 2015

1. REPORTING

According to data obtained by the IDF Spokesperson, in 2015 the Military Advocate for Operational Affairs (MPOA) opened 737 files concerning alleged offenses committed by Israeli army soldiers against Palestinians and their property. Of these, 580 relate to incidents in the West Bank, 139 relate to incidents in the Gaza Strip and the other 18 files relate to incidents which occurred inside Israel or along its borders.¹⁴

However, **these data do not reflect the overall number of complaints and reports which reached the Israeli Army in 2015 following incidents which raise suspicion of offenses committed against Palestinians.** According to The IDF Spokesperson's responses to Yesh Din, the documentation system practiced in the MAGC in recent years "does not distinguish between reports following a specific incident and general communications", in words of the IDF Spokesperson, and it includes repeated reports and complaints concerning the same incident.¹⁵ Therefore, the 737 files opened in 2015 by the MPOA include various correspondence regarding various issues addressed to this body.

Along with the reports that reach the MAGC, various complaints and reports are sometimes delivered directly to MPCID. According to the IDF Spokesperson's data, in 2015 MPCID received **187 notifications** concerning suspected offenses by Israeli army soldiers against Palestinians and their property.¹⁶ However, **only a small number of these notifications were delivered to MPCID directly** by the victims or by others outside the law enforcement system. The vast majority of the notifications received by MPCID originated in reports delivered by the MAGC after it received a report or complaint from an external source: 147 notifications of the aforementioned 187 (78.6%) were delivered to MPCID by the MAGC, most of them following a preliminary inquiry or examination process by the MAGC.

Thus, **none of the data obtained by the IDF Spokesperson reflects the total number of complaints received regarding suspected offenses against Palestinians by Israeli soldiers.** The number of "files" opened by the MAGC does not reflect the number of complaints received, and the number of notifications delivered to MPCID relies mostly on reports transferred by the MAGC, after examining and filtering reports which came to its attention. In practice, **this means that the Israeli Army does not know how many complaints regarding incidents of offenses by Israeli army soldiers against Palestinians and their property reached the attention of law enforcement authorities.** As a result, the military law enforcement system does not know how many of the complaints were followed by an investigation, and the rate of indictments eventually served in relation to the total number of complaints.

Military authorities must collect and record such data so it is clear and readily available. Such basic statistics are key for analyzing the situation, identifying phenomena and trends, detecting flaws and formulating policies. Without such fundamental data, the law enforcement system is incapable of monitoring and supervising its actions and cannot operate effectively. Effective law enforcement cannot be achieved if monitoring and supervision of the system are ineffective.

14 According to the IDF Spokesperson's response to Yesh Din's questions, in a letter dated 3/3/2016.

15 According to the IDF Spokesperson's response to Yesh Din's request, on 25/6/2016.

16 According to IDF Spokesperson response to Yesh Din questions, on a letter dated 21/7/2016. 164 of these reports relate to incidents in the West Bank and 23 to the Gaza Strip.

The Army's Reporting Duty

Under Israeli military law, a commanding officer who is aware - or has reason to believe - that one of his or her subordinates committed an offense for which he or she can be tried in military court must issue a complaint or order a complaint be issued for that offense, sign it and submit it before a competent officer.¹⁷ According to the Israeli Army's General Staff orders, when the report raises suspicion of violation of international law, e.g. offenses such as looting, abuse or unlawful shooting, the competent officer must convey the information directly to MPCID and is forbidden from examining the incident by himself/herself.¹⁸ As for incidents resulting in the injury or death of Palestinian residents, in 2005 the Israeli Army adopted a procedure stating that every such incident, resulting in injury or death of a Palestinian who was not involved in combat, must be reported within 48 hours to the Chief of General Staff, to the Operations Division and to the MAG. The report should include full details of the incident and copies of operations logs, daily reports and any other relevant material.¹⁹

The Turkel Commission examined the manner in which the Israeli Army applied and implemented the reporting duty and concluded that "The 2005 Reporting Procedure determined by the Chief of Staff, following an undertaking to the High Court of Justice, has not been implemented." The Commission also recommended extending the procedure's application to apply to all incidents which raise suspicion of violation of international law, and not limit it to incidents involving injury or death.²⁰ As a result, a new operational standing order by the Israeli Army's Operations Division was issued in August 2014, greatly expanding the range of cases to which reporting duties apply during combat and non-combat situations. Currently, the reporting duty during combat applies to every incident in which there is reasonable doubt of violation of Israeli law or severe violation of international law, offenses of a sexual nature, offenses involving malice, damage to civilian property including looting and the use of weapons in severe violation of the rules of use. Regarding non-combat situations, the reporting duty was expanded and currently applies to every incident involving a fatality or severe injury, inadvertent damage to property on a large scale or of significant value, as well as every incident of unreasonable use of force against a person during an arrest.

The Ciechanover Commission noted the importance of implementing this reporting procedure and employing effective supervision mechanisms over the procedure. It recommended that the MAGC "employ strict enforcement measures in cases of non-compliance with the procedure on the part of commanders".²¹

Data show that in recent years only few reports of Israeli soldiers suspected of committing offenses reached the MPCID directly from the army units or commanders. In 2015, just **seven** such reports of 187 were delivered to MPCID by units. In the previous year, only **15** reports were delivered by commanders (and ten investigations opened subsequently).²²

Throughout last year, Israeli media reported that Israeli soldiers who were questioned by the MPCID and tried, expressed anger and claimed through their lawyers that their commanding officers promised them that the incidents they were involved in "would be resolved inside the unit" and would not reach MPCID for inquiry and investigation.²³ Such reports referred to the incident in which five soldiers from the Kfir Brigade were tried, after being accused of abusing handcuffed and blindfolded Palestinian detainees on several occasions. The court rulings in these soldiers' cases confirm that before a criminal investigation was opened, the soldiers' unit held some procedure of internal inquiry, designed to investigate the circumstances. Internal investigations and inquiries such as this one severely harm the criminal procedure, because they

17 Military Judicial Law, article 225.

18 The cases which require direct delivery of complaints to MPCID are listed in General Staff order no. 33.0304, article 62.

19 IDF Operations Division's operational standing order, updated 2005. See: **Turkel Report**, Chapter 3 (The Examination and Investigation Mechanisms in Israel Concerning Complaints and Claims of Violations of International Humanitarian Law), Section D (The Grounds that Give Rise to an Obligation to Investigate in Israel ['When to Investigate?']), pp. 323-325.

20 The **Turkel Report**, pp. 374-375.

21 The **Ciechanover Commission Report**, p. 17.

22 According to the IDF Spokesperson's response to Yesh Din's questions, letters dated 7 October, 2016 and 11 Nov, 2015.

23 See example: <http://www.ynet.co.il/articles/0.7340.L-4717510.00.html> , <http://www.ch10.co.il/news/218511/#.V-eQ7vI96M9>

may be used for coordinating the soldiers' versions. Furthermore, this incident occurred in a non-combat situation and thus violated the procedures set up regarding the reporting duty to MPCID.

In another incident, in April 2016, the court ruled in the case of Staff Sergeant H.D., a soldier in the Golani Brigade, accused of looting 2,420 NIS from a house in the Shujaiyeh neighborhood in the Gaza Strip during operation Protective Edge.²⁴ According to the court's ruling, when the commanding officer of the soldier's brigade learned of the looting incident, he initiated an internal inquiry into the identity of the soldiers involved in this severe incident, while promising the soldiers that if the money was returned the matter would be dealt with inside the unit and not be reported to MPCID. In their ruling, the judges criticized the brigade commander and noted explicitly that he had exceeded his authority and acted against procedures. Nevertheless, and despite the Ciechanover Commission's recommendation for the MAGC to employ strict enforcement measures in such cases, no disciplinary or actions of any kind were taken against the brigade commander in question. Furthermore, the improper process in this cases even served as a reason to reduce the sentence given by those judges who found the defendant guilty of theft but not looting. The MAGC appealed the charge and the leniency of the sentence. As of the writing of this document, the appeal is still pending.

An organizational culture which encourages soldiers and commanders not to report criminal incidents, even in severe cases such as looting, contradicts the IDF's statements regarding its profound commitment to enforcing the law. Moreover, it reflects the unwillingness and inability of the entire military system to handle incidents of law violations within the criminal procedure.

2. INVESTIGATIONS

186 criminal investigations were opened by the MPCID in 2015 for suspected offenses committed by Israeli soldiers against Palestinians: 164 investigations of incidents in the West Bank and 22 investigations of incidents in the Gaza Strip.

Different to previous years, the vast majority of these investigations were opened following reports which reached the MPCID in the same year. Only nine of overall investigations opened by MPCID in 2015 were the result of reports from 2014. In previous years, the rate of investigations opened as a result of older complaints was much higher: in 2014 - 70 out of 229 investigations (30.6%) and in 2013 - no less than 75 out of 199 investigations opened that year (37.7%), resulting from complaints submitted the previous year. However, since most of the reports delivered to MPCID in 2015 came from the MAGC after an inquiry and filtering process, the initial report may have reached the MAGC during a previous year. Yesh Din has no way of knowing that, considering the fact that the MAGC avoids documenting the submitted reports and their submission date individually.

This figure reflects a certain decrease in the number of investigations opened by the MPCID regarding suspected offenses against Palestinians: In 2014, the MPCID opened 229 criminal investigations, 209 of which in the West Bank and 20 in the Gaza Strip; in 2013, criminal investigations were opened for 199 incidents involving harm to Palestinians, 191 of which resulted from incidents in the West Bank, and 8 followed incidents in the Gaza Strip.

3. TYPES OF OFFENSES

49 of the investigation files opened by the MPCID in 2015 (26%) concerned suspected looting and property offenses by Israeli soldiers: 42 incidents in the West Bank and seven in the Gaza Strip. This is an unusually high number of incidents regarding property and looting compared to previous years: in 2014 the MPCID initiated investigations of 20 incidents of looting or harm to Palestinian property (9% of all investigations opened that year for suspected offenses against Palestinians), and in 2013 the MPCID investigated 18 such cases (also 9% of all investigations).

²⁴ NM (Northern Command Jurisdiction District) 172/15. For a list of indictments served in 2015 see page 10.

27 investigation files were opened by the MPCID (15%) following the death of Palestinians caused by Israeli soldiers - 21 of Palestinians killed in the West Bank and six in the Gaza Strip. This figure is low compared to figures for 2014, when the MPCID opened investigations into 41 incidents of death. It is still a high number compared to recent years: in 2013 and 2012 the MPCID investigated 15 incidents in each year regarding the death of Palestinians, and nine such incidents in 2011.

The Israeli Army's current investigation policy stipulates that every incident involving a civilian fatality in the West Bank as a result of military activity, except for incidents of "actual combat character", should lead to an immediate criminal investigation by MPCID.²⁵ According to B'Tselem, 2015 was an exceptionally deadly year in the West Bank: no less than 99 Palestinians were shot and killed by the Israeli security forces, excluding East Jerusalem.²⁶ Of these fatalities, 23 Palestinians were shot by the Israeli Border Police and 76 by Israeli soldiers. An additional 17 Palestinians were shot and killed in East Jerusalem.²⁷ According to the IDF Spokesperson's data, 21 investigation files were opened in 2015 concerning deaths of Palestinians in the West Bank. This means that the other 55 incidents in which Palestinians were shot and killed (72.3% of total incidents of shooting and killing Palestinians by Israeli soldiers in the West Bank in 2015) did not result in a criminal investigation.

This figure suggests that the investigation policy in cases involving Palestinian fatalities, as declared by Israel, is not implemented because the high rate of cases in which an investigation was not initiated implies a very broad use of the definition for incidents categorized as "actual combat". Most of the incidents involving Palestinian fatalities in 2015 took place in the context of stabbing, attacking and driving into soldiers, policemen and Israeli civilians, or attempts to do so, characteristic of the recent violence which erupted in the West Bank during 2015. Many soldiers reacted to such attempts and attacks by shooting to kill, and as the data show - In most cases the MAGC decided not to open an investigation into the death of these Palestinians. By doing so, the MAGC clarified that shooting to kill is a legitimate response to such incidents.

The figures reflect the Israeli Army's legal position - that an individual's act of nationalistically motivated violence, against civilians or security forces personnel, even without the use of firearms, is considered "actual combat". This greatly blurs the distinction between disturbances of public order (however severe) and combat incidents, and moderates the significance of the investigation policy amendment which was declared in 2011.

101 investigation files, (54%) of total investigations, were opened following violent incidents and injuries of Palestinian residents by Israeli soldiers (93 in the West Bank and eight in the Gaza Strip). An **additional nine investigation files (5%) were opened following incidents defined by the IDF Spokesperson as "misconduct"** (eight in the West Bank, one in the Gaza Strip).²⁸

25 This policy was set forward following HCJ 9594/03, **B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories and The Association for Civil Rights in Israel vs. the MAGC**, and was stated by the MAGC on 6 April, 2011.

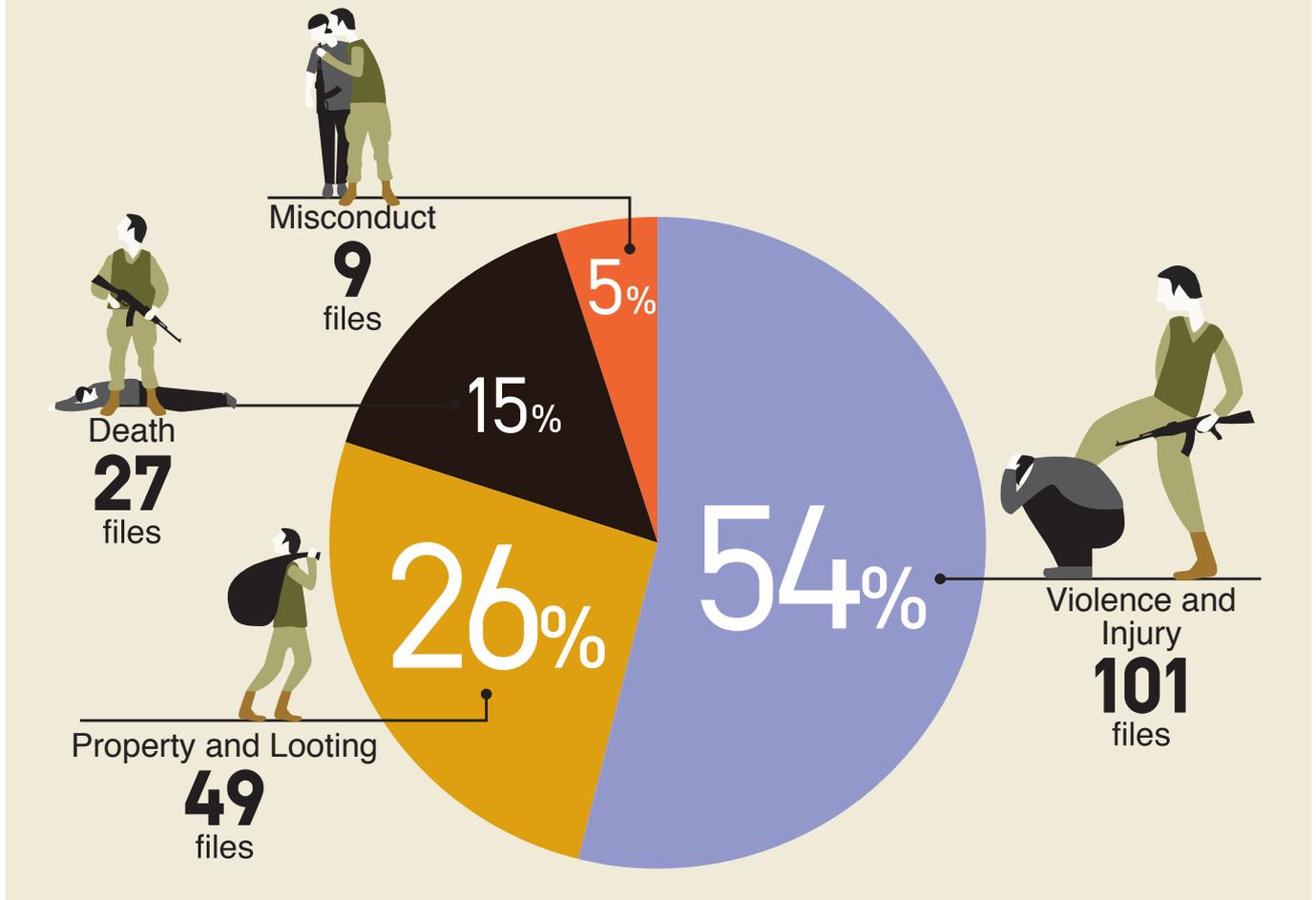
26 One of fatalities was a resident of A-Tur in East Jerusalem, but he was shot in A-Zaim in the West Bank.

27 For B'Tselem's data see: <http://www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-event/westbank/palestinians-killed-by-israeli-security-forces>

28 In response to Yesh Din's question which incidents fall under this category, the IDF Spokesperson replied in a letter dated 21 July, 2014 that these are "other incidents which do not fall under any of the above categories, such as a soldier who made statements that are incongruent with the IDF's values, or whose conduct was morally flawed". In May 2015, the MAGC updated its guideline no. 2.19, which defines the characteristics of this offense, applying to soldiers from the rank of sergeant and higher, and clarifies the trying policy for this offense. The guideline appears on the MAGC website: www.law.idf.il/SIP_STORAGE/files/3/1733.pdf



MPCID investigations opened in 2015 for suspected offense by Israeli soldiers against Palestinians, segmented by type of offense



4. INDICTMENTS

Of the 186 investigation files opened in 2015, 120 files were closed without any further steps, seven led to disciplinary actions, and only 4 files (3.1% of all files in which procedures were concluded) led to indictments served against soldiers suspected of causing harm to Palestinians.²⁹ All these indictments concerned violent incidents in which soldiers beat or attacked Palestinian detainees while they were handcuffed and in custody.

There is obviously no minimum quota or target number for indictments for the Israeli Army to reach. However, this is an exceptionally low rate of served indictments considering the fact that most of the investigations were opened only after a preliminary inquiry was already conducted, the identity of the suspects is usually known and they are relatively easy to trace, and that Palestinians refrain from reporting offenses of a lighter nature. This indicates a continuous and profound failure to conduct exhaustive investigations that are able support indictments, granting soldiers almost absolute impunity from prosecution.

²⁹ According to the IDF Spokesperson's response to Yesh Din's questions on 24 March, 2016. Additional investigation files were since closed and more indictments may be served in the future, so the rate of indictments out of total files may vary. Yesh Din is aware of an additional indictment served in 2016 against an officer serving in the DCO regarding severe suspicions regarding receiving benefits. The court imposed a gag order on the case.



In addition to the indictments which followed investigations opened that year, in 2015 the Military Prosecution served three indictments following a looting incident in a house in Shujaiyeh, in Gaza, during operation Protective Edge in 2014, as well as another indictment following a looting incident in the village of Idna, West Bank, in 2013. Another indictment was served in December 2015 in the Jerusalem District Court against two soldiers who completed their military service and had been discharged from the army, following an incident from 2013 in which 16 year-old Samir Awad was killed, after Israeli soldiers shot at his back. The indictment was served only after the boy's father, appealed to the HCJ, with B'Tselem, to order the MAGC to make a decision on the file - close it or try the suspects - more than two years after his son was killed. Since the suspects had already completed their military service and were no longer subject to Military Justice Law at the time the appeal was discussed in court, the court gave the MAGC and the State Attorney three months to make a decision in the case, after which the State declared an indictment would be served by the end of 2015. The indictment was served on December 30, 2015 - almost three years after Samir Awad's death - attributing a relatively minor charge of a negligent and reckless act to both defendants.

In total, 15 indictments were served in 2015 following seven investigation files opened into incidents in which Israeli soldiers were suspected of harming Palestinians or their property. In these indictments, 16 soldiers were accused, two were tried as civilians, 18 months after being discharged from military service.

Indictments served in 2015 following offenses against Palestinians, segmented type of offense



*The indictment was served in the Jerusalem District Court because the suspected soldiers completed their military service during the period between the time the incident occurred and the time the decision to indict was reached. The decision to indict was reached only after the family appealed to the HCJ with B'Tselem.

DETAILS OF INDICTMENTS SERVED IN 2015

1. In April 2015, three indictments were served against three soldiers from the 51st battalion of the Golani Brigade,³⁰ following looting of cash from a house which they occupied in the Shujaiyeh neighborhood in Gaza during operation Protective Edge in the summer of 2014. According to the indictments, while occupying the house belonging to a resident of the Gaza Strip, two of the soldiers, Staff Sergeant H.D. and Staff Sergeant Y.H., found a box with 2,420 NIS. They took the money and transferred it to a driver in their battalion in order to remove it from the Gaza Strip.

The first two soldiers were indicted for looting, misconduct and obstruction of justice, after they were accused of coordinating their testimonies and giving false testimony during interrogation by the MPCID. The driver, Staff Sergeant Z.D., was indicted for assisting looting and misconduct. The indictment against the driver was amended and the indictment charge reduced to receiving property obtained by malice. Another soldier involved, who held the money for two days after it was removed from the Gaza Strip, was sentenced during a disciplinary hearing and was not indicted.

Staff Sergeant Z.D., the driver who took the money out of Gaza, was convicted in November 2015 based on his admission of knowingly receiving stolen property, and misconduct. He was sentenced to 60 days of military labor, six months' probation and a demotion to the rank of private. One of the judges in this trial, Captain Eliezer Landman, also serving as rabbi for the Golani Brigade, was of the minority opinion that a disciplinary hearing would have sufficed. Because the soldier was tried, Landman held that a trial was severe enough punishment, and that probation and demotion should have sufficed.

Staff Sergeant H.D., the soldier who took the money and gave it to the driver, was convicted of theft in March 2016 - a lighter offense than the looting charge the Military Prosecution requested. He was also convicted of misconduct and obstruction of justice. His conviction on the lighter charge was based on the soldier's claim of flawed legal proceedings held against him. During trial it was revealed that following rumors that came to the attention of the brigade commander, he ordered an inquiry into the matter and stated that if the money was returned immediately the incident would be investigated and handled inside the unit and not be reported to the MPCID (of the status of preliminary inquiry and the commander's promise to evade reporting to the MPCID - see textbox on pages 5-6 "The Army's Reporting Duty"). A preliminary inquiry of the incident did not lead to the money. Only a few days later, when the soldiers left the Gaza Strip and returned to Israeli territory, did the unit soldiers collaboratively decide, coordinating their accounts, to admit to having taken the money and to return it. In their ruling, the judges stated that the soldiers admitted to the act based on the promise they were given, and that violation of this promise and the reporting of the looting to the MPCID deeply offended their sense of justice and fairness, and caused harm to the entire proceeding. Therefore, the judges decided to reduce the charge and convict the defendant of theft. He was sentenced to four months of military labor, five months' probation and demotion to the rank of private. The military prosecution appealed the conviction charge and the leniency of the sentence, and the appeal is still pending. The trial of the second soldier, Staff Sergeant Y.H., was concluded in August 2016. He was convicted of the lesser charge of abetting theft, as well as of the obstruction of justice and misconduct. In their sentence, the judges ruled that the circumstances of abetting looting had indeed been established, but in light of the fact that the main perpetrator (H.D.) was convicted merely of theft, they decided to convict him of abetting theft. The court sentenced him to two and a half months of prison to be spent performing military labor, six months' probation and demotion to the rank of private. The Military Prosecution appealed this sentence as well, and the appeal is still pending.

2. In April 2015, an indictment was served against a soldier from the Golani Brigade who stopped a Palestinian in a car driving near Nablus, inspected the contents of the car and boot and while carrying his firearm demanded that the driver drive him to the Israeli settlement of Yitzhar where he lives.³¹ The Palestinian car driver panicked, believing the soldier was abducting

30 CM (Northern Command Jurisdiction District) 171/15, **Military Prosecutor vs. Staff Sergeant Z.D.**; 172/15 **Military Prosecutor vs. Staff Sergeant H.D.**; 173/15 **Military Prosecutor vs. Staff Sergeant Y.H.**

31 CM (Northern Command Jurisdiction District) 151/15, **Military Prosecutor vs. Sergeant A.D.T.**

him, and tried to motion to a Palestinian minibus driver coming from the opposite lane. The soldier then leaned towards the driver, ordered him in Arabic to shut up and signaled the minibus driver to continue. The Palestinian car driver drove his car into a ditch by the side of the road and fled.

The original indictment attributed to the soldier the offense of threats and extortion, and misconduct. The indictment was amended following a plea bargain, and the extortion charge was changed to abuse of office. Through the plea bargain, the parties agreed on four and a half months in prison, probation, demotion to the rank of private and 5,000 NIS compensation to the complainant. Nevertheless, the court decided by majority opinion to reduce the soldier's sentence, and sentenced him to just two months in prison, demotion to the rank of corporal, four months' probation and compensation of 5,000 NIS. The Military Prosecution appealed the leniency of the sentence,³² and in the ruling on the appeal the judges accepted the prosecution's request and sentenced the soldier to four and a half months in prison (minus the time he served), demotion to the rank of private and compensation of the complainant in the sum of 5,400 NIS.

3. In May 2015, an indictment was served against a soldier accused of looting during a search he conducted with two other soldiers in a Palestinian house in Idna, in July 2013. The soldier was charged with having looted a gold chain worth 16,000 NIS and 70 NIS in cash he found in one of the drawers in the house.³³ In the indictment, served almost two years after the incident, the soldier was accused of looting. The soldier failed to appear at his trial and the military court ordered to summon him through the Military Police. As of now, the trial has not begun.
4. In October 2015, an indictment was served against a soldier serving as a cook in Ofer Camp, accused of throwing a stone at a handcuffed and blindfolded Palestinian detainee held in custody, and causing him an injury. The soldier was also accused of beating the detainee on his neck and cursing him.³⁴ The indictment charges included the offense of assault consummated by battery. In November 2015, he was convicted by his own admission as part of a plea bargain. He was sentenced to 60 days' in prison (minus the time he served), 30 days of military labor, 90 days' probation and demotion to the rank of private.
5. In October 2015, five indictments were served against soldiers from the Netzach Yehuda battalion of the Kfir Brigade, following an MPCID investigation of several incidents of beating and abusing of Palestinian detainees in their post.³⁵ Two additional soldiers from the unit were sentenced in a disciplinary hearing. The indictments show that the five defendants participated in three different incidents in which they beat, kicked, banged the Palestinians detainees' heads against the wall and further abused them while they were handcuffed, blindfolded and in their custody. On two occasions, one of the soldiers even electrocuted bound and blindfolded Palestinian detainees using an electric device, while another soldier filmed with his cell phone camera.

All five soldiers were initially indicted on charges of aggravated abuse; Against one soldier, Corporal A.B. an indictment was served regarding four different incidents; against three other soldiers, Corporal S.P., Corporal D.S. and Corporal R.S. an indictment was served for participating in two incidents; another soldier, Corporal S.A., was indicted for one incident of abusing a detainee. Later, four of the indictments were amended through plea bargains and some of the charges were reduced to mere abuse.

In February 2016, Corporal A.B., through a plea bargain, admitted to and was convicted of abuse and aggravated abuse. He was sentenced to seven months in prison, six months' probation and demotion to the rank of private.

32 CM (Court of Appeal) 28/15, **Chief Military Prosecutor vs. Sergeant A.D.T.**

33 CM (General Staff Jurisdiction District) 392/15, **Military Prosecutor vs. Sergeant A.M.**

34 CM (Northern Command Jurisdiction District) 482/15, **Military Prosecutor vs. Sergeant T.S.**

35 CM (Central Command Jurisdiction District) 481/15, **Military Prosecutor vs. Corporal S.A.**; 482/15, **Military Prosecutor vs. Corporal S.P.**; 483/15, **Military Prosecutor vs. Corporal A.B.**; 484/15, **Military Prosecutor vs. Corporal D.S.**; 490/15, **Military Prosecutor vs. Corporal R.S.**



Corporal S.P. admitted to, and was convicted through a plea bargain of, the offense of abuse. He was sentenced to 80 days in prison (minus the time he served), three months' probation and demotion to the rank of Private. Corporal D.S. through a plea bargain admitted to and was convicted of the offense of abuse. He was sentenced to 60 days' in prison (minus the time served) and three months' probation. Corporal S.A., through a plea bargain admitted to and was sentenced to 60 days' in prison (minus the time served), 100 days' probation, demotion to the rank of private and 1,500 NIS compensation to the complainant. The fifth defendant in this case, Corporal R.S., after a full trial was convicted on two charges of aggravated abuse. He was sentenced to nine months in prison, six months' probation and demotion to the rank of private.

6. In November 2015, three indictments were served against three soldiers from a battalion of the Home Front Command, following an incident of beating a handcuffed and blindfolded Palestinian detainee, left in their custody in their post.³⁶ According to the indictments, in early October 2015, one of the soldiers noticed the detainee brought to the post, and at his initiation, all three soldiers approached the detainee, cursed him, hit his head and legs and kicked him. One of the soldiers, Sergeant D.M., was also accused in the indictment of another occasion of beating a handcuffed, blindfolded Palestinian detainee in August of that year. All three soldiers were accused of aggravated abuse, both soldiers with the rank of sergeant were also charged with the offense of misconduct. All three soldiers were convicted in February 2016 (two admitted through plea bargains and the third had a full trial): Y.A. was sentenced to 88 days in prison - all were deducted on the basis of the number of days he had already served while in detention, three months' probation and demotion to the rank of private; D.M. was sentenced to five and a half months in prison minus three months he had already served, 90 days' probation and demotion to the rank of private. Sergeant A.G was sentenced to four months' in prison minus the time he had served, three months' probation and demotion to the rank of private

7. In December 2015, an indictment was served against two Israeli civilians following the death of Samir Awad, a 16 year-old Palestinian shot in the head and back by soldiers of the 71st battalion of the Armored Corps near the village of Budrus in January 2013.³⁷ The indictment was served only after the deceased's father appealed to the HCJ, with the assistance of B'Tselem, demanding that the Court order the shooters be indicted. The shooters had by then completed their military service, and two years had passed with the investigation file of the incident unconcluded. Following the appeal, the State Attorney declared an indictment would be served by the end of 2015 against two suspects.³⁸ According to the indictment, on January 2013, a military force set up an ambush near the Separation Barrier in order to apprehend and detain people attempting to damage it. At approximately 10:00, a group of youths reached the fence, including Samir Awad. He approached the Barrier and passed through an existing opening in it. The soldiers then chased Awad, shooting - first in the air and then directly at him. Awad turned around and ran back to the Palestinian side, stumbled on the fencing and fell, but the soldiers kept shooting towards him. After managing to extricate himself, Awad ran away, with the soldiers still pursuing him and shooting at him - even after he left the area of the Separation Barrier. According to the indictment, the soldiers fired at least five of the shots without looking through the weapons' sights. Despite the fact that a young Palestinian, who posed no risk to the soldiers, was killed in this incident, the defendants face a relatively minor charge of committing a negligent and reckless act. The trial is ongoing.

36 CM (Home Front Command Jurisdiction District) 101/15, **Military prosecutor vs. Corporal Y.A.**; 105/15, **Military Prosecutor vs. Sergeant D.M.**; 106/15, **Military Prosecutor vs. Sergeant A.G.**

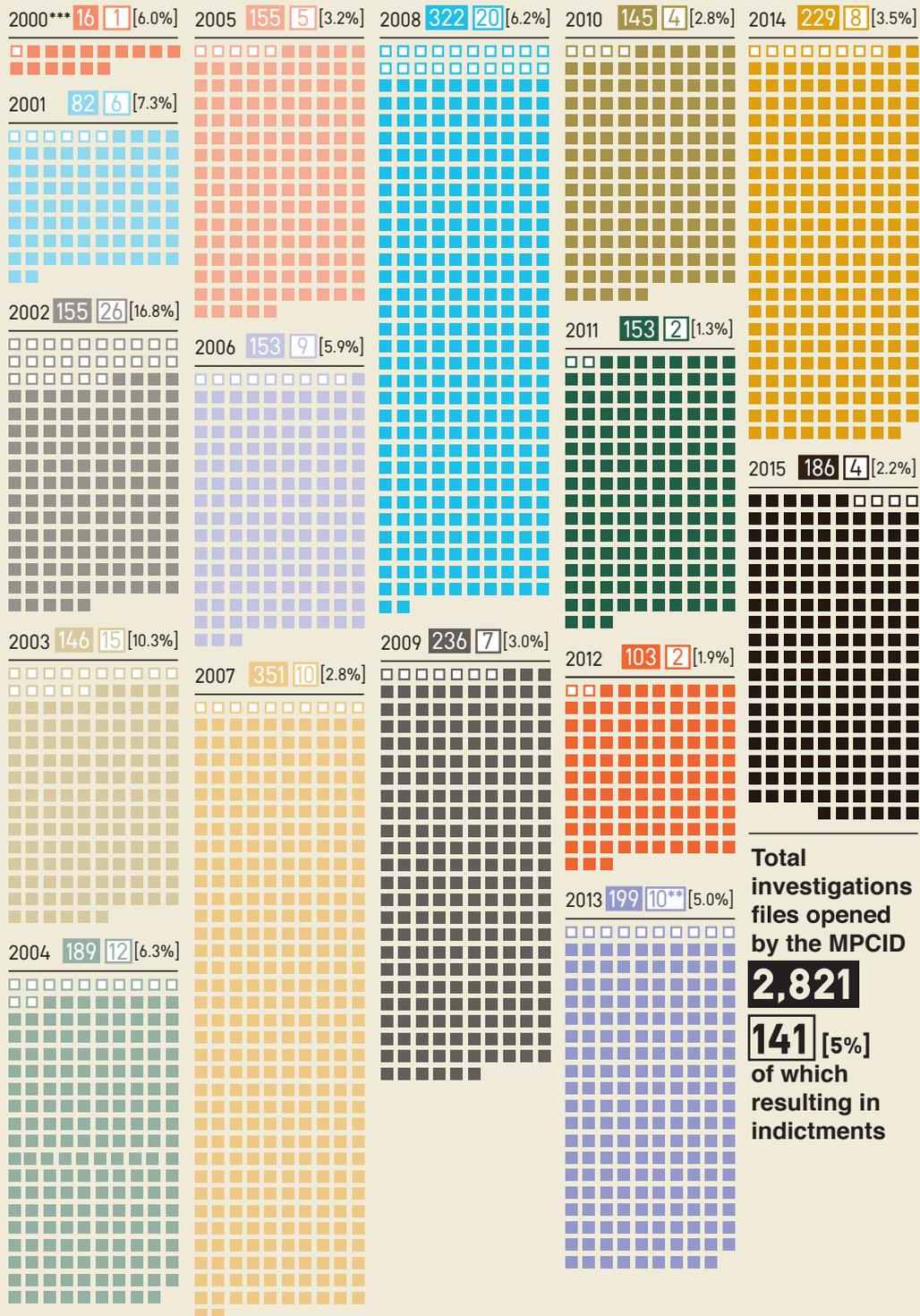
37 CR 68282-12-15, **State of Israel vs. Asaf Goldberg and Arthur Denisov.**

38 For background of the incident and further details of the appeal, see B'Tselem site: http://www.btselem.org/accountability/20151109_hcj_ruling_in_samir_awad_killing



MPCID investigations into harm to Palestinians and indictments served as a result, 2000-2015

■ No. of investigations files opened by MPCID □ No. of files that resulted in indictments*



*Data is presented by the year in which investigation was opened. Even if indictment was served in later years.

**One of the indictments was served in the Jerusalem District Court since the defendants completed their military service. The decision to indict was reached only in November 2015, following a petition to the HCJ.

***Since the beginning of the 2nd intifada, September 29, 2000.