

## Investigation of criminal offenses by IDF soldiers against Palestinians and their property

### Figures for 2000-2007

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#### Background

At the beginning of the second *Intifada* in September 2000 the Military Prosecution changed its investigation policy into the killing and wounding of Palestinians by IDF gunfire. Instead of a *Military Police Criminal Investigation Division* (MPCID) investigation of every incident that ended with the wounding or death of a Palestinian civilian who was not involved in combat, a new policy was set to open a criminal investigation only on the basis of a Military Prosecution decision. Such a decision is made on the basis of the operational investigation conducted into the incident by the IDF unit involved. A petition to the Israeli High Court of Justice filed in October 2003 by the human rights organizations *B'Tselem* and *The Association for Civil Rights in Israel* (ACRI)<sup>1</sup> assailed that policy. To this day, more than four years after the petition was filed, no ruling has been handed down on it.

Despite the aforementioned policy, the IDF has claimed over the years that in cases when there is a suspicion of criminal offenses by IDF soldiers that are not connected to fighting – such as, for instance, cases of abuse, looting, intentional damage to property and even unlawful use of a weapon and so on – the policy is to open a criminal investigation in each case reported and to prosecute, when the evidence collected makes that possible.

The figures given to Yesh Din by the IDF Spokesperson on MPCID investigations that were conducted, indictments that were filed and convictions obtained in cases of criminal offenses by IDF soldiers in the Occupied Territories (OT) against Palestinians and their property since the beginning of the second *Intifada*, portray a grim picture of law enforcement upon IDF soldiers deployed in the OT.

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<sup>1</sup> HCJ 9594/03 B'Tselem et al. V. Military Advocate General.

## MPCID investigations conducted

Thousands of Palestinian civilians, who were not involved in fighting, were killed and wounded in the OT by IDF soldier gunfire in the last years. According to B'Tselem figures, from the beginning of the second Intifada until September 30, 2007, 2,023 civilians were killed in the OT who, according to the organization's checks, did not take part in the hostilities.<sup>2</sup> The Palestinian Red Crescent, according to its figures, has treated from the beginning of the Intifada until the end of July 2007 more than 8,000 people injured by "live" ammunition.<sup>3</sup>

Considering the aforementioned figures, the low number of criminal investigations opened on the suspicion of criminal offenses that resulted in the killing and wounding of civilians stands out:<sup>4</sup> only 239 MPCID investigations opened on that matter by June 2007.

*MPCID investigations and their outcomes, by a group of offense:*

*October 2000-June 2007<sup>5</sup>*

	Property	Violence	Shooting	Other	Total
Total MPCID investigations	308	427	239	117	<b>1,091</b>
Total indictments	34	35	30	19	<b>118</b>
Total convictions	34	33	16	18 <sup>6</sup>	<b>101</b>

MPCID investigations into "shooting" offenses constitute 22% of all the investigation files opened on the suspicion of criminal offenses against Palestinians and their property. 427 investigation files (about 39% of all investigations) were opened following suspicions of acts of violence against Palestinians, 308 investigations (28%) were opened following causing damage to property and 117 investigation files (11%) were categorized as "other," which, according to the IDF Spokesperson, included offenses such as the illegal use of a weapon that did not cause damage, bribery, improper behavior and so on. Altogether, 1,091 MPCID investigations were opened on the suspicion of criminal offenses by IDF soldiers against Palestinians and their property from September 2000 to June 2007.

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<sup>2</sup> In addition to the aforementioned, according to B'Tselem figures, another 603 Palestinians were killed by Israeli security force gunfire, of whom it is unknown whether they participated in hostilities, and another 1,359 Palestinians who did take part in hostilities. For the full figures and comments on them, see B'Tselem website: <http://www.btselem.org/english/statistics/casualties.asp>.

<sup>3</sup> These of course include Palestinians who participated in combat against IDF forces. For the full Palestinian Red Crescent figures, see: <http://www.palestinercs.org/modules/cjaycontent/index.php?id=15>

<sup>4</sup> Gunfire that caused no damage is categorized by the IDF as an "other" category of offense rather than the "shooting" category of offense. See below.

<sup>5</sup> Source of figures: IDF Spokesperson's response to Yesh Din's questions, October 28, 2007. "Groups of offense" are based upon IDF categorization, as provided to Yesh Din.

<sup>6</sup> One of the files is still pending in the Military Court.

## Indictments filed

The IDF Spokesperson declined to provide Yesh Din, as it requested, the reasons for closing the investigation files that did not result in filing indictments. As a result, it is impossible to determine how many of the investigation files that did not result in indictments were closed on the pretext of “lack of guilt” – namely, that the investigation found the suspect had not committed an offense at all – and how many of the investigation files closed on pretexts that indicate a failure of the investigators in their investigation – pretexts of “lack of sufficient evidence” and “unknown perpetrator”.

The investigations opened into suspicion of hitting Palestinian civilians by gunfire had a low rate of success: only 30 investigation files led to filing indictments – **12.5% of the investigation files opened ended with indictments being filed**. It should be noted that 29 of the aforementioned 30 indictments were filed before January 1, 2005.<sup>7</sup> That means that for at least 2 ½ years, by June 2007, only one indictment was filed against IDF soldiers suspected of killing or wounding a Palestinian civilian who was not involved in the hostilities.

In the other offense groups, that are not “shooting”, offenses of harming property, violence and “other,” 88 indictments were filed following 852 investigation files opened – a 10.33% success rate in the investigation of those offenses, which is even lower than the success rate in the investigation of offenses in the “shooting” category. **Altogether, 1,091 investigation files were translated into only 118 indictments.**

## Convictions obtained

In the few cases when an indictment was filed, the Military Prosecution did succeed in obtaining a conviction (even though Yesh Din was not told how many of the convictions were obtained following plea bargains and which charge items were erased from the indictments following those bargains). In the group of offenses involving “property,” “violence” and “other” a 96.6% conviction rate was achieved (“property”: 100% convictions in 34 indictments; “violence”: 94.29% convictions in 35 indictments; “other”: 94.74% convictions in 18 indictments, with an additional case still pending).

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<sup>7</sup> The figure appears in the article by Amir Rapaport, “*The MPCID doesn’t know its job*”, Maariv, January 1, 2005 (Hebrew).

However, the picture is reversed when examining the success rate of the Prosecution in the Military Courts in indictments on hitting Palestinians by gunfire. Of 30 indictment filed in the offense category “shooting” – and this on the backdrop of thousands of killed and injured who did not participate in combat – **only 16 indictments (53.33%) ended with a conviction.**

So, almost half of the indictments in which soldiers were charged with the criminal offense of shooting that caused the killing and wounding of Palestinians ended with the acquittal of the accused. And this with the number of investigation files opening in such offenses minute in the first place, and the number of indictments filed following the opening of investigation files negligible.

### Comparative view

The low number of indictments filed against soldiers on offenses related to hurting Palestinians and their property in the last seven years stands out when we compare the number of indictments on those offenses – **118** – to the number of indictments filed in the last years by the IDF against soldiers accused of other criminal offenses: **5,090** indictments were filed in the years 2003-2006. The figures in the next table indicate that **in each of those years more indictments were filed on criminal offenses against soldiers than the total number of investigations by the MPCID in connection with offenses against Palestinians for nearly seven years**, since the beginning of the second Intifada.

*Indictments on criminal offenses filed by the Military Advocate General against IDF soldiers in the Courts-Martial, 2003-2006<sup>8</sup>*

	Indictments
2003	1,239
2004	1,726
2005	1,068
2006	1,057
Total	<b>5,090</b>

From comparing the figures on the indictments filed against IDF soldiers in offenses against Palestinians and their property with figures on filing indictments related to drugs – an offense whose investigation is complex – it appears that according to

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<sup>8</sup> Source of the figures: Military Advocate General’s Corps Headquarters (MAGHQ), **Activity Report for working year 2006**, p. 135 (Hebrew). The figures only include indictments on typical criminal offenses: drugs, illegal use of weapon, violence, theft, etc. (including indictments filed on criminal offenses committed in the OT by IDF soldiers during those years). The figures do not include offenses of defection (absence from service without permission) and traffic offenses – offenses which usually do not involve MPCID investigations.

Military Advocate General figures, in 2006 alone the **number of indictments against IDF soldiers on drug offenses was seven times higher than the total number of indictments filed on soldiers' harming Palestinians and their property for nearly seven years** since the beginning of the second Intifada: 702 indictments for drug offenses in 2006<sup>9</sup> compared to 118 indictments on offenses against Palestinians and their property in the years 2000-2007.

## Conclusion

Even considering the violent events in the years of the second Intifada and to this day, it is the IDF's duty to protect the civilian population that is not involved in the hostilities, a duty set forth in the Laws of Belligerent Occupation, the branch of International Law of Armed Conflict and in International Human Rights Law.

The figures that appear above present the IDF's *de facto* derogation of that duty. They mean that any soldiers serving in the OT knows well that the chances he will have to account for a serious crime committed against Palestinian residents of the OT – abuse, theft, demanding a bribe and even the killing or wounding of innocent civilians – the chances of that are minute.

The low number of indictments against soldiers accused of offenses against Palestinians in the OT in general, and offenses that led to the wounding and killing of civilians in particular, is directly related to the IDF's allocation of resources for the investigation of such offenses, the way the MPCID conducts those investigations and of course the "commander's spirit" as to the importance of such matters. As part of a new project undertaken by Yesh Din, the organization is going to examine those matters in the coming months.

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<sup>9</sup> Source of figures: MAGHQ, **Activity Report for working year 2006**, p. 134 (Hebrew).