



## Investigating IDF offenses against Palestinians Yesh Din's Monitoring of MAOA Squad

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### Background

The Military Advocate for Operational Affairs Squad (MAOA squad) was created as part of the IDF's Military Advocate General Headquarters (MAG HQ) at the end of 2007 to "gather and concentrate the operational area under one body, while creating the 'added value' of specialization, uniformity, optimization, improvement and amelioration of treatment of this area."<sup>1</sup>

The "operational area" which the MAOA squad is meant to handle includes reviewing the investigation files of operational accidents in the IDF, presenting inquiry summaries to the families of IDF fallen who died in active duty, representing the military prosecution on rules of engagement and handling offenses by soldiers against Palestinians in the Occupied Territories.<sup>2</sup>

In 2008 alone MAOA squad received 441 criminal investigation files from the Military Police Criminal Investigation Division (MPCID) in all the aforementioned areas, more than 400 complaints and about 20 operational debriefings.<sup>3</sup> These files are handled by Advocate for Operational Affairs Lieut.-Col. Sigal Mishal-Shechori, with a few other subordinate lawyers.

The powers of the MAOA squad in the area of offenses by soldiers and officers against Palestinian civilians and their property in the Occupied Territories are concentrated within two critical stages of the law enforcement procedure:

1. Deciding whether to launch a criminal investigation following a complaint made about an alleged offense committed by soldiers and officers, when the complaint deals with an incident in which IDF forces used firearms (in other cases the investigation is supposed to be opened by the MPCID without need for permission of the MAOA). According to a procedure written by the Military Advocate General, decisions on opening an investigation into firearm offenses in operational circumstances in the Occupied Territories are made by the MAG on the basis of an

<sup>1</sup> Military Advocate General Headquarters (MAG HQ), **Activity Report for 2008**, p. 14.

<sup>2</sup> Until the MAOA squad was created in late 2007 most of the burden of decision making in investigation files regarding offenses by soldiers against Palestinians in the Occupied Territories rested on the shoulders of the various command advocates, in certain cases with the involvement of the Military Advocate General.

<sup>3</sup> MAG HQ, see footnote 1.

MAOA squad recommendation, only after an "operational debriefing" is conducted by parties in the command chain of the involved unit and their findings are provided to the MAOA.<sup>4</sup>

2. Making a decision on whether or not to indict suspects following the completion of an MPCID investigation. The MAOA is authorized to order the closure of an investigation file or return the file to the MPCID to complete the investigation as well as recommending to the MAG to press charges against suspects.

Even though the squad's declared purpose, as mentioned above, is to improve and ameliorate the treatment of the issues at the center of its activity, data from Yesh Din's ongoing monitoring of law enforcement procedures against IDF soldiers and officers involved in criminal offenses against Palestinians<sup>5</sup> show that the squad's processing of the files monitored by the organization is so slow that it endangers the ability to conduct investigations and press charges against soldiers and officers involved in criminal offenses, some of which are very serious, against Palestinian civilians and their property.

### **Yesh Din monitoring findings**

In the last years Yesh Din has been monitoring more than 130 investigation files that were and are investigated by the MPCID.<sup>6</sup> The organization's legal advisor represents the Palestinian complainants who are the victims of the offenses before the military investigation and prosecution authorities. Dozens of those files are either still under investigation or their investigation has been completed and the files closed or indictments were submitted in them.<sup>7</sup>

Yesh Din has found that in a high proportion of these files a serious backlog has been created in the MAOA, with files delayed for very long periods of time awaiting a MAG decision in the two aforementioned phases: whether to open an MPCID investigation at all, and whether to file indictments once the MPCID investigation is completed.

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<sup>4</sup> For further information on the use of operational debriefings and the problems that stem from the Military Advocacy's policy of relying on their findings to make decisions on opening criminal investigations, see Yesh Din's report **Exceptions: The prosecution of IDF soldiers for offenses against Palestinian civilians, 2000-2007**.

<sup>5</sup> As part of a project to examine law enforcement procedures upon members of the Israeli security forces involved in offenses against Palestinians and their property in the Occupied Territories, Yesh Din closely monitors criminal investigations in this matter and their results. Palestinian civilians who have fallen victim to criminal offenses by IDF and police forces have given Yesh Din's legal advisor the power of attorney to monitor the investigation and prosecution procedures into their complaints on their behalf.

<sup>6</sup> Yesh Din is also monitoring several dozens of investigation files against Israel Police officers conducted by the Department for the Investigation of Police Officers (DIPO) in the Ministry of Justice. Yesh Din is separately monitoring the investigation of hundreds of complaints filed against Israeli civilians for offending the bodies and properties of Palestinians in the Occupied Territories.

<sup>7</sup> During 2010 Yesh Din intends to publish a comprehensive report reviewing the findings that emerged from monitoring the MPCID and DIPO investigation files.

Of the investigation files monitored by Yesh Din, 76 files are waiting for decision at the MAOA squad, as follows:

- In 12 files the decision has been delayed for over a year:<sup>8</sup>
  - Of those, in 11 files the MPCID investigation ended and the delay is in the MAOA squad handing down its decision on the fate of the file: whether to close it without taking action against suspects or to file indictments.
  - In another file the delay is in the decision whether to launch a criminal investigation at all following a complaint that was made.
- In 26 of the files the decision has been delayed between six months and a year.
  - Of these files the MAOA decision has been delayed regarding 18 files in which the MPCID investigation has been completed.
  - In another eight files the MPCID investigation was put on hold until the MAG decides whether to open a criminal investigation into the circumstances of incidents in which the complaints that are the subject of the files were made.
- In 38 of the files transferred to the MAOA in the last six months no decision has been handed down yet.
  - 24 MPCID files in which the investigation ended have been waiting for decision by the MAOA up to six months.
  - In 14 complaints transferred from the MPCID to the MAG no criminal investigation has opened yet and the files are waiting for the decision of the MAOA whether to open an investigation.

Following are several examples of complaints by Palestinians submitted to the MPCID with the help of Yesh Din on serious offenses allegedly committed against them by soldiers, the decisions about which have been held up for such a long time that the delay undermines the chance of effective investigation or prosecution in the future:

- On November 10, 2006 a number of IDF soldiers detained a group of 16 Palestinians on the land of the village of al-Zawiya. According to the complaint filed with Yesh Din's help, several of these civilians were severely beaten. Some of them were beaten while their hands were tied and their

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<sup>8</sup> It should be emphasized that these figures, based on Yesh Din's monitoring, are biased in favor of the military authorities, because in the files monitored by the organization Yesh Din offers help to the investigation and prosecution authorities, at their request, in order to maximize the chance that the investigations and prosecutions bear fruit. Likewise, we can assume that the regular letters and reminders the office of Yesh Din's legal advisor sends the MAOA help expedite the processing of the files monitored by the organization, relative to other files in which Yesh Din is not involved.

eyes were blindfolded. At least one of the men who were beaten, Adnan Shaqir (b. 1974), who contacted Yesh Din, was hospitalized in Nablus suffering from severe injuries. A few days later, on November 14, 2006, Shaqir made a complaint to an Israel Police officer stationed at the Qalqiliya District Coordination Office (DCO). On December 3, 2007 Yesh Din was told that the investigation file was transferred to the MAG HQ. In February 2009 - - two years and three months after the incident -- Yesh Din was told by the MAOA squad that the investigation file was returned to the MPCID to complete the investigation and in August 2009 the MAG told Yesh Din that the investigation was completed and the file was returned to the MAOA. To this day, two years and 10 months after the incident, the MAOA has not decided whether to close the file or alternatively to file indictments against suspects.<sup>9</sup>

- On March 18, 2007, M.G., a student, was assaulted by a number of soldiers at the Hawara checkpoint. Among other things M.G. complained that a soldier wearing a helmet tried to butt him and that soldiers kicked him all over his body while he was held in a closed cell next to the checkpoint. As a result of the assault M.G. lost one of his testicles. The next day M.G. complained to an Israeli policeman stationed at the Nablus DCO and a few days later he gave his testimony to MPCID investigators. On July 1, 2008 Yesh Din was told that the file was transferred to the MAOA. Repeated inquiries to the MAOA were not answered by August 4, 2009 – two and a half years after the incident and more than a year after an MPCID representative told Yesh Din that the file had been transferred to the MAOA. To this day the MAOA has not made a final decision on the file.<sup>10</sup>
- On November 27, 2007 M.S., 17, was shot and injured in his abdomen during an IDF operation in his village, Azoun. According to M.S. he was shot in the street, when an IDF force entered the village apparently to arrest a "wanted" Palestinian. M.S. was hospitalized and doctors had to amputate his spleen. Two weeks later M.S. filed a complaint with the help of Yesh Din volunteers. On July 2, 2008 an MPCID representative told Yesh Din that the MPCID investigation of the case had ended and that the file was transferred to the MAOA for its decision. Repeated inquiries to the MAOA requesting an update on the processing of the file were not answered by August 4, 2009, when the MAOA told Yesh Din that "due to the nature of the complaint the MPCID investigation was put on hold and an inquiry was made with the relevant military authorities. The file is being handled." So far, nearly a year and 10 months after the incident and a year and two months after the investigation

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<sup>9</sup> Yesh Din file 1233/06 (MPCID Sharon and Shomron file 117/07; MAOA file 417/07).

<sup>10</sup> Yesh Din file 1251/07 (MPCID Sharon and Shomron file 185/07; MAOA file 432/08).

file was transferred from the MPCID to the MAOA, no final decision has been made on the fate of the file.<sup>11</sup>

- On August 1, 2008 Y.S., 13, of the Jilazoun refugee camp, was injured by a direct hit of a gas grenade in his face. As a result serious injury was done to his jaws, teeth and tongue. On August 6, 2008 Yesh Din notified the MPCID of the incident and the case was transferred to the MAOA that very month to decide whether to open a criminal investigation. So far Yesh Din has not been informed of the MAOA decision, whether to open an MPCID investigation or not.<sup>12</sup>
- H.G., a resident of the village of Tuqu', 17, was shot and killed by a soldier in a military jeep in his village on September 13, 2008. A complaint was filed by Yesh Din to the MPCID base in Jerusalem on September 21, 2008 and on October 5, 2008 the organization was told that processing of the complaint was transferred to the MAOA. Today, nearly a year after the complaint was transferred to the treatment of the MAOA, the latter has yet to decide whether to conduct a criminal investigation into the incident.<sup>13</sup>
- Y.M., a 14-year-old resident of Hebron, was shot in the head by a rubber-coated bullet on December 12, 2008. The boy was very badly injured. A few days after the incident his father made a complaint to the Hebron police and Yesh Din helped give notice of the incident directly to the MPCID. To date, over nine months after the incident, the MAOA has yet to instruct the MPCID to open an investigation.<sup>14</sup>

And these are only examples.

The figures that appear above refer only to the files waiting **now** for MAOA decision. But the files that were monitored by Yesh Din and the processing of which by the MAG has ended portray an even worse picture of the length of processing of these files by the MAG:

- Of 25 investigation files of which the MAOA processing has ended, seven files waited more than a year for the MAG decision about them: nearly 30% (!);
- 12 of the investigation files (48%) were delayed between six months and a year until a decision was made about them;
- In six files MAG decisions were made up to six months after they were received by the MAG.

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<sup>11</sup>Yesh Din file 1361/07 (MPCID Sharon and Shomron file 394/07; MAOA file 453/08).

<sup>12</sup>Yesh Din file 1547/08 (MAOA file 695/08)

<sup>13</sup>Yesh Din file 1588/08 (MAOA file 840/08).

<sup>14</sup>Yesh Din file 1686/08 (MAOA file 994/08).

## **Conclusions**

The IDF has an obligation deriving simultaneously from humanitarian international law, international human rights law and Israeli constitutional and administrative law, to protect the well-being and safety of the civilian population in the Occupied Territories. One of the concrete obligations that stems from that general obligation is the obligation to maintain an effective law enforcement system and in it to conduct effective, professional and independent investigations and to prosecute soldiers and officers involved in criminal offenses against the civilian population of the Occupied Territories, when there is evidence of their guilt.

The prolonged delay in making decisions by the MAOA squad delays investigation and prosecution procedures to an extent that critically impedes the ability to conduct or complete investigations and conduct trials in the courts-martial. The passage of time weakens the witnesses' memories. The passage of time makes evidence disappear from the scene and with it the chance to produce forensic findings. The passage of time undermines the sense of justice, the victims' trust that there is an intention to examine their complaints and harms the deterrence of other potential offenders. A substantial delay in law enforcement procedures undermines the chance to deliver justice to both suspects and victims.

The delay in handling cases by the MAOA raises a grave concern that many incidents that could have ended with the prosecution of offenders actually end with the closure of the investigation files without filing indictments because of the evidential damage caused by the passage of time.

One of the main purposes of establishing the MAOA squad was to improve and to ameliorate law enforcement procedures upon IDF forces in the Occupied Territories. However, Yesh Din's monitoring shows that the long periods of time between filing the complaint and the decision whether to open an investigation (in firearms-related offenses) and between ending the criminal investigation procedures by the MPCID and making the decision at the MAOA as to the fate of the investigation file (in all offenses), indicate very grave defects that damaged the quality of law enforcement in the IDF. The result is that the IDF and the state of Israel are derelicting their obligation to defend the Palestinian civilian population of the Occupied Territories.

A partial explanation of the prolongation of processing the investigation files until a decision is made could be the small staff of the MAOA squad: just a handful of lawyers who, in addition to their jobs in the area of law enforcement upon IDF soldiers suspected of committing offenses in the Occupied Territories, also handle other matters. Another significant cause of the long delays in making decisions by the MAOA is the need to send back some of the investigation files for investigation completion by the MPCID. Sometimes the completion takes a long time, during which no decision can

be made on the continued processing of the file by the prosecution. In addition it is hard to avoid the feeling that if the files concerned a different population of victims, pressure on the IDF to complete the investigations in reasonable time would have been fruitful. Since the victims in question are Palestinians who have no influence on the political decision-makers or on the military commanders, the serious situation described here is made possible and persists.

The MAG is aware of the serious problem of the prolongation of the decision-making process in the MAOA squad. In response to a query by Yesh Din, the Chief Military Prosecutor, Col. Zhenia Modzavirshvili, wrote:

"The MAOA has done much to expedite the processing of the various files, old and new, in order to narrow the gaps it deals with, all with a very small and evidently insufficient staff (although excellent, professional and incredibly devoted). [...] clarifying the truth also requires as thorough and exhaustive actions as possible, and therefore sometimes the delay in the processing time of investigation files inevitably stems from the need to conduct completions and other investigative actions [...] I share your position that we must do everything possible to reduce processing times, and we have recently taken concrete steps in that direction, which we expect to improve the present situation."<sup>15</sup>

We shall continue observing whether the measures reported by the chief military prosecutor do indeed result in a real improvement of the decision-making process on the outcome of investigations. Despite our understanding of the burden resting on the shoulders of the handful of lawyers who process the investigation files, the prolongation of the procedures of the MAOA squad's processing of investigation files into criminal offenses by IDF forces against Palestinian civilians and their property causes real harm to the ability to prosecute the offenders and makes the State of Israel violate its obligation to defend the well-being and property of the civilian population of the Occupied Territories. The IDF must allocate the necessary resources to process the investigation and inquiry files into the complaints of Palestinian civilians who are victims of offenses by its soldiers as effectively and quickly as possible and cancel the need for permission from the MAG to open investigations into complaints related to the illegal use of weapons.

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<sup>15</sup> Letter from Chief Military Prosecutor, Col. Zhenia Modzavirshvili, to attorney Michael Sfard, Yesh Din's legal advisor, August 24, 2009.