Data Sheet, September 2014

Law Enforcement upon IDF Soldiers in the Occupied Palestinian Territory

Figures for 2013

239 complaints submitted, 199 investigations opened – six indictments served

Background

Every year Yesh Din publishes a data sheet regarding law enforcement upon IDF personnel suspected of harming Palestinians and Palestinian property in the West Bank and the Gaza Strip (in this data sheet - “offenses against Palestinians”). The data is based on information provided by the IDF Spokesperson each year at Yesh Din’s request, and on the organization’s long-term monitoring of the statistics. The source of the data concerning indictments and rulings is Yesh Din’s own research and monitoring, based on copies of indictments and rulings provided by the IDF Spokesperson at Yesh Din’s request.

The process of opening a criminal investigation against an IDF soldier suspected of offenses involving Palestinians 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 return the case to the MPCID for a criminal investigation.¹

¹ 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 (July 2011) (hereinafter “Alleged Investigation”), pp. 23-24, 32-44.
As a general rule, current IDF policy on opening investigations (“investigation policy”) states that in case of suspicion of an offense committed during army operations, the decision to initiate a criminal investigation is subject to a preliminary inquiry. The preliminary inquiry relies for the most part on an operational debriefing conducted by the unit involved in the incident. On this basis, the MAGC decides whether to order the opening of an investigation. Following a High Court of Justice petition regarding the policy of investigation in cases involving deaths of Palestinian civilians, the State announced that in any case in which the death of a civilian in the West Bank resulted from operations by IDF forces, an MPCID investigation will be opened immediately. However, for deaths resulting from operations of an "overtly combative character" the decision to initiate the investigation remains subject to the discretion of the MAGC.³

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.

**Figures for 2013**

**Notifications/Investigations**

In 2013, 239 complaints and other reports (“notifications”) were submitted to the Military Police Criminal Investigations Division (MPCID) regarding criminal offenses allegedly committed by IDF Personnel against Palestinians and their property in the West Bank and Gaza.⁴ This figure is almost identical to that for 2012, when 240 notifications were submitted to the MPCID.⁵

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² The operational debriefing is an internal examination used by commanders to draw operational conclusions and learn from operational failures. It is not intended to gather evidence or determine individual criminal responsibility. See: Alleged Investigation, pp. 9, 34-38.

³ From the announcement made by the Military Advocate General’s Corps dated April 6, 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 v Military Advocate General.

⁴ The source of the data presented in this data sheet regarding notifications submitted and investigations opened in 2013 is information provided to Yesh Din by the IDF Spokesperson in a letter dated April 3, 2014. The information was provided at Yesh Din’s request.

⁵ The source of the data presented in this data sheet regarding notifications submitted and investigations opened in 2012 is information provided to Yesh Din by the IDF Spokesperson in a letter dated January 23, 2013. The information was provided at Yesh Din’s request.
However, the number of criminal investigations initiated by the MPCID in 2013 was almost double that during the previous year. The MPCID initiated criminal investigations based on 124 of the 239 notifications it received in 2013. The MPCID also initiated 75 investigations in 2013 following notifications submitted in 2012. In total, therefore, the MPCID initiated 199 criminal investigations in 2013 concerning alleged offenses by IDF personnel against Palestinians. Of the incidents investigated by the MPCID, 191 occurred in the West Bank and eight in the Gaza Strip. In 2012, by way of comparison, criminal investigations were opened following 78 notifications submitted in that year, as well as 25 additional investigations based on notifications submitted in 2011. Thus the total number of criminal investigations opened in 2012 was just 103.

The data provided by the IDF Spokesperson reveals the strikingly slow pace of work of the military law enforcement system. As noted, out of 199 criminal investigations initiated in 2013, 38 percent (75 investigations) were the outcome of notifications submitted to the MPCID in 2012. This pace of work is inadequate and reflects an inability to cope with the rate of incidents and of notifications submitted to the MPCID. Similarly, this factor directly affects the quality of investigations: naturally, the likelihood that an investigation will be effective is reduced the more time has elapsed since the relevant incident.

Since most soldiers only serve in the IDF for a period of a few years, these mechanisms, and resulting delays, have an additional significant impact on accountability. 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. As a result of delays accumulated at all stages of the process - the decision to initiate an investigation, protracted investigations, and time elapsed pending a decision as to whether to serve an indictment or close the case - some soldiers suspected of offenses cease to be subject to the Military Justice Law and therefore cannot be prosecuted.

The number of criminal investigations resulting from the total number of notifications submitted in 2013 is as of yet unknown. Based on available data for previous years, in many of the pending notifications submitted in 2013 a decision as to whether to open an investigation should not be expected until 2014.

However, the long-term statistics reveal 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.

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6 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.

7 Yesh Din’s figures show that one of the main bottlenecks responsible for the protracted law enforcement proceedings is when the MPCID investigation is completed and the investigation file is forwarded to the Military Advocate General’s Corps for a decision on whether to serve an indictment or close the file. An examination by Yesh Din of several dozen such investigation files showed that the average time taken by the Military Advocate General’s Corps to reach this decision is approximately 14 months. In a substantial proportion of cases, no decision had been taken even two years after the completion of the investigation. See: Alleged Investigation, pp. 86-94.
From a long-term perspective, the number of criminal investigations opened in 2013 is not atypical. No particular trend can be identified over recent years in terms of the proportion of notifications that lead to a decision to open investigations into incidents involving offenses against Palestinians. Accordingly, the substantial increase in the number of investigations initiated in 2013 would seem to be the result of a process of “spring cleaning”, whereby decisions were made in a large number of cases that had accumulated on the desk of the Military Advocate General’s Corps over the years.

The extensive delays in the handling of complaints reflects the slow pace of work of the Military Advocate for Operational Affairs Unit (MAOA) - the MAGC body responsible for processing and reaching a decision in cases involving suspected offenses against Palestinians. As discussed in Yesh Din’s report, Alleged Investigation, published in 2011, the MAOA unit faces a tremendous burden of work.

Of the 239 notifications submitted to the MPCID in 2013, only six were submitted directly by Palestinian victims of offenses. All of the remaining notifications were submitted by mediating bodies – mainly police personnel stationed at the District Coordination Offices in the West Bank and human rights organizations. This negligible rate of direct submission is not unusual and is noted every year. It is the result of the fact that, among other barriers, there are no MPCID bases in the West Bank to which Palestinian residents can complain about alleged offenses committed by IDF personnel; accordingly, a mediating body is required.

Over the past year, the IDF contacted human rights organizations, including Yesh Din, and asked them to forward notifications concerning offenses by IDF soldiers against Palestinians directly to the Military Advocate General’s Corps, rather than to the MPCID. This policy was ostensibly designed to shorten the procedures and to ensure that the Military Advocate General’s Corps, which as noted is the body that orders the opening of an investigation, is informed of incidents involving offenses against Palestinians as soon as the initial notification is submitted.

8 Alleged Investigation, p. 17.
However, this policy further stands in the way of Palestinian victims of offenses submitting a complaint, and perpetuates their dependence on mediating bodies. This policy is also contrary to the spirit of the Turkel Commission: in its report, published in February 2013, the Commission recommended, among other actions, the establishment of “A Department for Operational Matters (...) in the MPCID (...), with bases in the areas where the incidents under investigation occur. The investigators should include persons that are fluent in Arabic.”

Furthermore, this policy creates considerable confusion and impedes comprehensive monitoring of the process and outcomes of the investigations. Yesh Din’s experience over the past year shows that the coordination between the Military Advocate General’s Corps and the MPCID is inadequate. For example, there are certain pending cases in which the Military Advocate General’s Corps has ordered the opening of a criminal investigation, and in some cases the MPCID has even summoned witnesses to provide their account of the events, yet despite this the MAGC is unable to locate the files, and accordingly it is unclear whether it is updated on their progress. In 13 such cases in which Yesh Din is representing the Palestinian victims of the offenses, the Military Advocate General’s Corps has not managed to locate the files in order to update Yesh Din on the state of the investigation. In addition, the statistics provided to Yesh Din by the IDF Spokesperson show that the Military Advocate General’s Corps has no way of knowing the duration of a criminal investigation, even in instances when it ordered the opening of that investigation. According to the IDF Spokesperson, this is due to the fact that “the computerized system used by the Military Advocate for Operational Affairs Unit (MAOA) does not include details regarding the date on which an investigation was opened, rather only regarding the date on which the investigation file was received by the MAOA.” As a result, the MAGC is not in a position to supervise the quality of investigations as far as promptness is concerned. As noted by the Turkel Commission, promptness is a key principle for the management of an effective investigation.

10 This information was provided to Yesh Din by the Military Advocate for Operational Matters, Lieutenant Colonel Ronen Hirsch, in his letter dated January 19, 2014.
11 From the reply of the IDF Spokesperson to Yesh Din, April 3, 2014.
12 See section E: Method of Conducting an Examination and an Investigation (‘How to Investigate?’), in part 1 of the Second Report of the Public Commission to Investigate the Maritime Incident of May 31, 2010 (the “Turkel Commission”), Israel’s Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law (February 2013). This part details five general principles for implementing an effective investigation: Independence; Impartiality; Effectiveness and Thoroughness; Promptness; and Transparency. The Commission then discusses the manner of implementation of each of these principles, including in the context of armed conflict.
Types of Offenses

Of the investigation files initiated by the MPCID in 2013, 15 were opened following the death of Palestinians (14 incidents in the West Bank and one in the Gaza Strip). A further 152 investigation files, accounting for 76 percent of the total, were opened following incidents involving violence and injuries (145 in the West Bank and seven in the Gaza Strip). An additional 18 files, accounting for nine percent of the total, were opened following complaints of incidents involving damage to property or looting (all in the West Bank). A further 14 criminal investigations were opened following incidents described by the IDF Spokesperson as “inappropriate conduct.”

Indictments

According to the figures provided to Yesh Din by the IDF Spokesperson, six indictments against soldiers were submitted to the courts-martial in 2013 following incidents involving injury to Palestinians or to Palestinian property: five of these resulted from investigations opened in 2013 and one from an investigation opened in 2012.

This figure is considerably higher than that for 2012, when just a single indictment was served against a soldier accused of abuse and inappropriate conduct following an incident in which he kicked and threatened a Palestinian detainee. However, this finding is an exception to the

13 The precise nature of this definition 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.
general trend: in recent years, there has been a sharp fall in the proportion of indictments. Just 2.2 percent of investigations initiated between 2010 and 2013 following incidents involving offenses against Palestinians led to the indictment of suspects. By way of comparison, from the beginning of the second intifada in 2000 to present, the Military Advocate General’s Corps has submitted indictments in 124 cases, accounting for 5.2 percent of the investigations opened; these indictments related to 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. Naturally, this figure does not include incidents that were not even reported to the MPCID.

One of the indictments served in 2013 followed an incident in which Udai Darwish, 21, from Dura in the South Hebron Hills, was shot and killed after he attempted to enter Israel through a gap in the Separation Barrier close to Metar checkpoint in January 2013. The indictment, submitted in March 2013, accuses Staff Sergeant M.M., a combat soldier in the Home Front Command, of negligent manslaughter. M.M. opened fire on Darwish contrary to the open fire regulations. He was convicted on the basis of his own admission and sentenced to seven months’ imprisonment, a five-month suspended sentence, and demotion to the rank of sergeant.

Three further indictments were served in September and October 2013 against four combat soldiers from the 51st Battalion of the Golani Brigade. The soldiers (two of whom were performing regular compulsory service and two reservists) were accused of abuse under aggravated circumstances. According to the indictment, the four soldiers beat a Palestinian detainee while he was handcuffed and blindfolded, and even recorded the attack on one of their cell phones. After the detainee entered Israel from the Gaza Strip, he was held at the army base where the four soldiers were serving and they were charged with guarding him. The two regular service soldiers ultimately admitted the offenses attributed to them in an amended indictment and were convicted of assault under aggravated circumstances. Staff Sergeant A.Y. was sentenced to six-and-a-half months’ imprisonment, a six-month suspended sentence, and demotion to the rank of private. The second defendant, Corporal M.M. was sentenced to five-and-a-half months’ imprisonment, a six-month suspended sentence, and demotion to the rank of private. A reserve duty soldier who was present during the incident and filmed it was recently convicted of aiding and abetting abuse; he has not yet been sentenced. A ruling has not yet been granted in the trial of the fourth soldier.

Two additional indictments were submitted to the courts-martial in 2013. However, the relevant files have not yet been received by Yesh Din and we are not in possession of the details. According to the information provided by the IDF Spokesperson, one indictment was served against a defendant accused of a violent offense and another was served against a defendant accused of unlawful use of a weapon. The IDF Spokesperson also noted that in January 2014 three additional indictments

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14 Court-Martial file in the Home Front Command Jurisdiction District 37/13, Military Prosecutor v Staff Sergeant M.M.
15 Court-Martial file in the Northern Jurisdiction District 490/13, Military Prosecutor v Staff Sergeant A.Y. and Corporal M.A.
16 The IDF Spokesperson has not yet provided the indictments against the two reserve duty soldiers accused in connection with this incident. Accordingly, we do not have file numbers for these cases.
were submitted to the courts-martial following offenses committed by soldiers against Palestinians in 2013: two relating to violent incidents and one relating to a property offense.
In 2013, the courts-martial also completed proceedings relating to two incidents from earlier years. On April 29 Staff Sergeant E.G., a combat soldier in the Shimshon Battalion, was convicted based on his own admission in a hearing following an appeal of his conviction in August 2010. E.G. was originally indicted in March 2009 after he detained and beat Palestinians in Kafr Qadum in September 2008. In the original proceeding E.G. was convicted of assault under aggravated circumstances and inappropriate conduct. He was sentenced to 65 days’ imprisonment, a three-month suspended sentence, and demotion to the rank of private. Following the soldier’s appeal, the verdict was vacated, and in April he was convicted in the framework of a plea bargain on a charge carrying a more lenient criminal record. His sentence remained unchanged.

In June 2013, the Home Front Command Jurisdiction District completed a proceeding relating to Staff Sergeant Y.N., a combat soldier in the Home Front Command’s Search and Rescue Unit. Y.N., who had already completed his military service by the time the verdict was handed down in his case, was originally indicted in 2011 on a charge of exceeding authority. According to the indictment, on August 12, 2008, Staff Sergeant Y.N. and another soldier who was present with him at a checkpoint close to the village of Azzun ‘Atmah detained a 14-year-old Palestinian youth. The two soldiers were accused of humiliating the youth, using offensive language, and documenting the incident on a cell phone. Staff Sergeant Y.N. was convicted in the framework of a plea bargain and sentenced to 45 days’ imprisonment to be served by way of military labor, a four-month suspended sentence, and demotion to the rank of private.

17 Court-Martial of Appeals file 148/10, Staff Sergeant E.G. v Chief Military Prosecutor.
18 Court-Martial file in the Central Command Jurisdiction District 206/09, Military Prosecutor v Staff Sergeant E.G.
19 Court-Martial file in the Home Front Command Jurisdiction District 32/11, Military Prosecutor v Staff Sergeant Y.N.