

Killing Time

The slow processing of complaints regarding Gaza Great March of Return casualties and the use of the Fact-Finding Assessment Mechanism to thwart prosecution of soldiers



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Cover photo: Palestinians run from tear gas during a protest called the "Palestinian Women for the Return and Breaking the Siege" near the Israeli-Gaza fence, east of Gaza city, July 3, 2018 (Photo: Mohammed Zaanoun, ActiveStills).

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The processing of complaints regarding the killing and wounding of Palestinians during Great March of Return protests in the Gaza Strip - data summary:

- 234 Palestinian deaths have so far resulted in only 17 investigations, most of which are still open.
- Only one indictment has been served against a soldier concerning an incident in which a Palestinian protestor was killed, on disciplinary charges that are not connected to the death.
- The FFA Mechanism does not look into complaints regarding injuries. The military has not launched a single investigation into cases of injury, even when they are severe, and regardless of the circumstances.
- Two years after the incidents began, about 80% of those forwarded to the FFA Mechanism for assessment are still under review or investigation.

A. Introduction

Beginning on March 30, 2018 (Land Day, marked every year by Palestinians in Israel), Gaza residents took to the fence separating Gaza from Israel to stage mass protests against the closure Israel has been imposing on the Gaza Strip since Hamas won the election in 2007 and calling for the fulfillment of Palestinian refugees' right of return. The protests, known as the Great March of Return (GMR), were held regularly every Friday, and sometimes on other days of the week as well, until the end of 2019, with Gaza residents of all ages and genders in attendance in numbers varying from tens of thousands in the early weeks to several hundred.

The Israeli military has responded to these protests with rules of engagement that allow soldiers to use potentially lethal force, including firing live rounds at protestors they identify as "primary instigators" or "primary rioters." The military's response to a petition filed by human rights organizations, including Yesh Din, against the rules of engagement for the Gaza protests indicated use of live fire against these primary "instigators" or "rioters" was permitted in certain conditions even if they did not pose a clear and immediate danger to human life. This policy showed unprecedented disregard for human life on Israel's part and has resulted in the death and injury of protestors on a scale rarely seen even relative to

the familiar standards of the Israeli occupation and the violent clashes it produces in the Occupied Territories.

The lethal results of the rules of engagement Israel put in place in response to the protests can be gleaned from figures collected by human rights organizations in the Gaza Strip, as well as official figures the military provided to Yesh Din regarding the investigation of such incidents. The two sources indicate hundreds of Palestinian protestors have been killed in incidents near the Gaza perimeter fence.

In the 86 Fridays between March 30, 2018, and December 27, 2019, when protests were held regularly, Gaza based Palestinian human rights organization PCHR (Palestinian Center for Human Rights) reported **217 Palestinian protestors killed**, including 48 children, two women, nine persons with disabilities, four paramedics and two journalists. PCHR's statistics also indicate more than 14,500 people were injured in the protests, 207 of them remain permanently paralyzed, and 149 have lost limbs as a result of their injuries.¹

Al Mezan Center for Human Rights, also based in Gaza, reported similar numbers. According to the organization's figures, from March 30, 2018, to December 20, 2019, in 85 weekly protests, **215 Palestinians were killed**, including 47 children. Additionally, 19,173 were injured, including 9,506 who sustained injuries from live ammunition fired by Israeli soldiers.²

According to figures collected by the UN Office for the Coordination of Humanitarian Affairs (OCHA), between March 30, 2018, and July 31, 2019, 206 Palestinians were killed in GMR protests, and no less than 33,687 were injured. The injuries were sustained by live fire, rubber bullets, gas canisters and others.³

General background on the investigation of shooting incidents causing death or injury and the policy on investigating incidents that occurred during the Gaza Strip protests

Investigations and inquiries into the killing and injury of Palestinians during the GMR protests should be considered in the wider context of these protests, namely the Israeli occupation of the West Bank and Gaza Strip since June 1967. While the features of Israel's effective control over the Gaza Strip have changed since Israel unilaterally pulled out of

1 See report on the PCHR website <https://www.pchrgaza.org/en/?p=14387>. Last accessed, August 12, 2020.

2 See Al Mezan press release dated December 20, 2019 on the organization's website: [85th Friday of the Great Return March Demonstrations: 44 Wounded, Including 18 Children, One Woman and One Journalist](#). Last accessed, August 12, 2020.

3 For OCHA statistics on deaths and injuries in the Gaza Strip: [Humanitarian snapshot: Casualties in the context of demonstrations and hostilities in Gaza | 30 Mar 2018 - 31 July 2019](#). Last accessed, August 12, 2020.

Gaza in 2005, the regime remains an occupation, albeit materially different from the type of control over the West Bank. Israel continues to control Gaza's land crossings and travel to and from it; it controls the entry of goods and products, including food products and fuel; it controls Gaza's sea and air space and travel through them; the population registry, the power supply, the functioning of essential infrastructure and other critical aspects of governance. All this means that the law of occupation continues to apply to the Gaza Strip.⁴

Investigating the death and injury of Palestinians in the specific context of the protests is part of Israel's wider obligations towards the protected persons living in the occupied territory it controls. The Israeli military law enforcement system concerning soldiers is governed by provisions of Israeli law applicable to the army and by obligations imposed upon the Israeli army as an occupying power under international law.⁵ As a rule, the military's own directives set out that in any case of a Palestinian death outside of combat activity, a criminal investigation of the incident must be opened immediately. Yesh Din concurs with this position, leading to an expectation that the military investigate every case in which a Palestinian civilian is killed during civilian action, such as an unarmed protest. Military directives do not mandate immediate investigation of injuries, but it is clear that complaints about injuries and other types of harm must be investigated promptly and effectively when an offense is suspected or when innocents were harmed without justification.

Israel does not accept this position with respect to the protests in Gaza and fails to follow its own rules, whereby criminal investigations should be launched immediately in cases of death outside of combat action. Israel considers the GMR protests violent incidents taking place as part of its armed conflict with Hamas and has, therefore, applied a separate legal framework for addressing complaints it receives regarding harm during these protests. This position was made clear in two High Court petitions filed against Israel's response to the Gaza protests.

In April 2018, Yesh Din, together with The Association for Civil Rights in Israel, Gisha: Legal Center for Freedom of Movement and HaMoked: Center for the Defence of the Individual, filed a High Court petition against the rules of engagement used in the Gaza protests, which permitted live fire against protestors and have resulted in hundreds of deaths and thousands of injuries.⁶ Adalah and Gaza-based Al Mezan also challenged the rules of

4 For more information and details on how Israel continues to control what happens inside the Gaza Strip see, [Gaza Up Close](#) on the Gisha website. Last accessed, August 12, 2020. Given Israel's continued control over such critical aspects of life, the law of occupation continues to apply in Gaza post disengagement. See: [Scale of Control: Israel's Continued Responsibility in the Gaza Strip](#), Gisha (2011).

5 For background on Israel's duty to investigate harm to Palestinians by soldiers and current figures on the performance of the military law enforcement system with respect to soldiers suspected of criminal offenses against Palestinians in the West Bank see: [Law Enforcement on Israeli Soldiers Suspected of Harming Palestinians and their Property Figures for 2017-2018](#) (Yesh Din data sheet, November 2019).

6 HCJ 3003/18 **Yesh Din - Volunteers for Human Rights v. IDF Chief of Staff**. For more details and the petition itself, see [Yesh Din website](#).

engagement in a separate petition.⁷ The petition Yesh Din filed argued that the rules of engagement permit soldiers to use live fire against protestors even when they clearly pose no threat to human life. The petition further argued that the protests in Gaza are civilian affairs, even when they include violence that could justify some use of force by Israel, and, for this reason, must be addressed within the framework of law enforcement norms under international human rights law rather than the laws of war.

In its response to the petition, Israel rejected the argument that the protests were civilian in nature, claiming they were planned and organized by Hamas and formed part of the calculated strategy it employs as part of its armed conflict with Israel. According to this line of argument, the presence of Hamas operatives was strongly felt in these protests and many of them “were sent to the public disturbances with orders to stir up the masses, encourage them to advance towards Israeli territory, breach the security barrier [the fence separating Gaza and Israel] and carry out terrorist attacks.” Israel’s position acknowledged that civilians who were not considered Hamas operatives or were not taking direct part in hostilities also participated in the protests, but maintained that the entire affair, which was a combination of combat activities and civilian incidents, sometimes including violence, took place as part of the armed conflict between Israel and Hamas. For this reason, the State took the position that the legal framework governing Israel’s reaction to the protests is the laws of war, which also inform how to address civilian public disturbances taking place within them (“law enforcement laws within the laws of armed conflict”). This is a rather novel legal argument, as the common approach views law enforcement as an independent paradigm that is **separate** from the laws of armed conflict. The military claimed the rules of engagement it used in the protests conform to Israeli and international law. The State has refused to disclose the rules themselves, arguing they are classified, but has confirmed they permit the use of potentially lethal force against “key instigators.”

The petition was unanimously dismissed by the court in May 2018, and Israel has consequently continued to use the same rules of engagement it employed since the beginning of the protests near the Gaza perimeter fence. The green light given by the court has also informed Israel’s policy on investigation and inquiry into complaints and allegations of offenses committed by soldiers and harm to Palestinians.

However, the events in the Gaza Strip were civilian events, and their participants were in part, if not mostly, unarmed civilians who cannot be considered combatants by any standard. Some of the protests have been attended by many thousands of Gaza residents - women, children and men. Although some protests have included violent acts, such as stone and Molotov cocktail throwing, tire burning and attempts to sabotage the fence, it is difficult to make the argument that the tens of thousands of protestors were combatants involved in hostilities during these protests. Israel itself does not deny Palestinian civilians it describes as “uninvolved in terrorism” participated in the protests, and has declared

⁷ HCJ 3250/18, **Adalah et al. v. IDF Chief of Staff et al.** For more details and the petition itself, see [Adalah website](#).

it does not see the presence of Gaza residents in the protests in and of itself as “direct participation in terrorist activities.”⁸ Therefore, Yesh Din maintains that the legal framework governing the response to these events, and the rules of engagement that derive from it, relate to law enforcement rather than the laws of war, which gives rise to the obligation to investigate suspected criminal acts, including the unlawful killing of Palestinian residents.



Israeli armed forces shoot tear gas as Palestinians gather near the Israeli-Gaza fence, on the 7th week of the Great March of Return protests, May 11, 2018 (Photo: Oren Ziv, ActiveStills)

8 These statements were made in the State's response in HCJ 3003/18, **Yesh Din - Volunteers for Human Rights v. IDF Chief of Staff**, and HCJ 3250/18 **Adalah et al. v. IDF Chief of Staff et al.**

B. Investigation and inquiry in Gaza incidents

After the High Court ruling, and given the military's perception that the protests near the Gaza perimeter fence fall under the laws of armed conflict, the military separated its routine law enforcement work regarding incidents in which Palestinians are harmed from the investigation of suspected offenses committed as part of its response to the protests.

Complaints of death and injury: Investigation after fact-finding

The military's legal stance on its response to the protests is that these incidents are not part of routine law enforcement operations, which are examined in light of Israeli law and international legal standards incumbent on Israel as the occupying power, but rather under the rules governing warfare - international humanitarian law. According to these rules, a complaint regarding harm to civilians, in circumstances that do not raise a clear suspicion of war crimes that can never be justified such as looting or using people as human shields, is not enough to order a criminal investigation. In such cases, a "fact-finding assessment" should be conducted initially and subsequently used to determine whether or not to launch an investigation.⁹

While reports and complaints about Palestinian fatalities and injuries are normally reviewed by the Military Advocate General's Corps (MAGC), which decides whether or not to criminally investigate, similar complaints regarding incidents that occurred during the Gaza protests are first reviewed by what the military calls the General Staff Mechanism for Fact-Finding Assessments, or the FFA Mechanism

The work of the FFA Mechanism is not part of a criminal investigation. The FFA Mechanism is designed to perform a **quick factual assessment** prior to a decision whether or not to investigate. The process involves collecting material and information that can help the MAGC make its decision regarding an investigation, as well as draw operational conclusions for internal military purposes.¹⁰ The material the FFA Mechanism collects remains confidential and cannot be used against suspects in cases in which a criminal investigation is subsequently ordered.

9 The Public Committee to examine the Maritime Incident of May 31, 2010 - The Turkel Commission, **Second Report: Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law** (February 2013) [hereafter: **Turkel Report**], p. 449.

10 According to the military's response to a Freedom of Information Application filed by Yesh Din with respect to the work of the General Staff Mechanism for Fact-Finding Assessments, August 4, 2019.

The FFA Mechanism was established during the military operation in the Gaza Strip in the summer of 2014 (Operation Protective Edge) for the purpose of performing inquiries into incidents suspected as violations of the laws of war and has since become the standing mechanism for inquiries into complaints and allegations about possible breaches of the laws of war. The notice about the establishment of the FFA Mechanism states that this was “part of the process of implementation of the recommendations outlined by the Public Commission chaired by Supreme Court Justice (ret.) Jacob Turkel.”¹¹ It appears to be another step the military has taken to counter criticism against it and bring Israel’s internal inquiry and investigation systems in line with the rules of international law.¹²

The work of the FFA Mechanism: A policy of ambiguity and non-transparency

The military began using the FFA Mechanism to examine shooting incidents during the Gaza Strip protests early on, on April 4, 2018, after the first protest ended with 15 Palestinian fatalities and about 800 injuries resulting from live fire. The mechanism was initially headed by Brigadier General Moti Baruch, who was the head of the Doctrine and Training Division in the General Staff.¹³ He was subsequently replaced by the current head, Major General Itai Veruv, Head of the Military Colleges.¹⁴

11 For more on Israel’s use of the FFA Mechanism to create the appearance of investigations following Operation Protective Edge see: [Whitewash Protocol: The So-Called Investigation of Operation Protective Edge](#), B’Tselem (2016). Much of the criticism raised in the report released by B’Tselem regarding the lack of transparency around the FFA Mechanism and its operation, the lack of clarity regarding the types of incidents it investigates and the absence of any time limits for its inquiries are highly relevant to the matter discussed in this paper as well.

12 [IDF Conducts Fact-Finding Assessment following Operation Protective Edge](#), MAGC website. Last accessed, August 12, 2020.

13 [Investigation of Allegations of Misconduct](#), MAGC website (February 2019). Last accessed, August 12, 2020.

14 According to the military’s response to a Freedom of Information Application filed by Yesh Din with respect to the work of the General Staff Mechanism for Fact-Finding Assessments, August 4, 2019. It is worth noting that Major General Veruv’s appointment itself raises questions given opinions he had voiced regarding use of violence against Palestinians. In 2009, while serving as commander of the Kfir brigade, which operates mostly in the West Bank, Veruv testified in the trial of Lieutenant Adam Malul, who had been charged with beating Palestinians (Central Court-Martial [District] 205/09). Veruv admitted he allowed soldiers to use physical violence during spontaneous “interrogations” of Palestinian civilians, even when they were passersby who were suspected of nothing and posed no danger. Veruv was officially reprimanded for these comments by the GOC Central Command. In June 2009, Yesh Din, together with the Association for Civil Rights in Israel, filed a High Court petition (5282/09 [Yesh Din v. Chief of Staff Gabi Ashkenazi](#)) demanding Veruv’s immediate suspension and a criminal investigation against him for suspected violence and abuse of authority. In June 2010, the MAG at the time, Avichai Mandelblit, did order a criminal investigation against Veruv and the petition was deleted. The MAG closed the investigation without taking any action against Veruv in January 2011. See reports on the [Yesh Din website](#) and the [Association for Civil Rights in Israel website](#).

Information provided by the military at different times reveals that the work of the FFA Mechanism is not confined to making quick factual assessments designed to help the Military Advocate General (MAG) decide whether or not to launch a criminal investigation. In its response to the two petitions filed by Yesh Din and other organizations against the rules of engagement employed by Israel during the Gaza Strip protests, the military mentioned the work of the FFA Mechanism, stating that in addition to performing “a comprehensive factual assessment of the incidents and collecting material and information [...] relevant to a determination as to whether there are reasonable grounds to suspect a criminal offense warranting a criminal investigation has been committed,” the mechanism also serves as “an additional channel for operational evaluation.”¹⁵ This information regarding the dual function of the mechanism was repeated in a response the military provided to Yesh Din’s inquiries about the operation of the mechanism and the people serving on it.

The response did not provide exact information regarding the identity of those serving in the mechanism. The military stated vaguely that “The mechanism has inquiry teams made up of officers in both regular and reserve military service, who have expertise in various military occupations,” and that they “receive assistance from legal experts with experience in investigations.”

The lack of transparency goes beyond the military’s evasiveness about who serves on the mechanism, and it is one of the major flaws characterizing its work. The FFA Mechanism releases no information about its work or the criteria for determining which cases are forwarded to it. Specific questions Yesh Din asked regarding incidents forwarded for examination by the mechanism were not answered by the military. With the exception of some general figures about the number of incidents forwarded to the FFA Mechanism and the total number of incidents regarding which it concluded its inquiries, **there is currently no publicly available information about the FFA Mechanism’s inquiries or what guidelines it follows.**

In addition, the fact that the FFA Mechanism does not function solely as a tool for a quick factual assessment for purposes of making a determination as to whether or not to launch a criminal investigation, but also serves as an operational evaluation tool, may create a conflict of interests and impede future investigations inasmuch as such are initiated. Criticism voiced in the past, including in testimonies before the Turkel Commission, addressed the fundamental issues with relying on operational inquiries as a tool for decisions on investigations. One of the arguments made was that the inquiry could undermine a future investigation as it can be used by the individuals participating in it to match stories; another was that the absence of a time limit on operational inquiries could unreasonably delay the investigation and that operational inquiries are usually based on the accounts of the troops

15 HCJ 3003/18, **Yesh Din - Volunteers for Human Rights v. IDF Chief of Staff**, and HCJ 3250/18 **Adalah et al. v. IDF Chief of Staff et al.**, Response on behalf of the State, October 29, 2018, paragraph 47.

involved without from the complainants or other witnesses.¹⁶ Given these and other issues, the Turkel Commission thought that: “a separate mechanism shall be established in order to conduct a fact-finding assessment [...] which will enable conducting an assessment that complies with the international legal requirements.”¹⁷

The difficulties and concerns put forward to the Turkel Commission with respect to relying on operational inquiries for decisions on investigations may arise with respect to the work done by the FFA Mechanism on incidents that occur during the Gaza protests, particularly given the unreasonable length of time the inquiries take, as indicated by figures provided by the military with respect to the work of the Mechanism. The figures presented below summarize the information Yesh Din has regarding the duration of the FFA Mechanism’s inquiries into complaints about suspected breaches of the laws of war during the GMR Protests between March 2018 and March 2020, the criminal proceedings the military launched following these inquiries and their outcomes.



Palestinians evacuate an injured protestor during the Great March of Return weekly Friday demonstration near the Israeli-built barrier that surrounds Gaza, east of Gaza City, October 18, 2019 (Photo: Mohammed Zaanoun, ActiveStills)

16 **Turkel Report**, Recommendation No. 5: Fact-Finding Assessment, p. 378.

17 **Ibid**, p. 382.

C. Figures: How the military stymies the investigation and prosecution of soldiers

Figures the military provided to Yesh Din indicate the scope and outcomes of the work performed by the FFA Mechanism.¹⁸ The numeric figures are general and preclude an examination of the quality of the inquiries or the guidelines for the work of the FFA Mechanism, but they do give rise to two key conclusions regarding how the mechanism is used by a military system that strives to avoid investigating and prosecuting soldiers who harm Palestinians.

The outcome, not the circumstances, is the deciding factor: A policy of non-investigation of injuries

The figures provided by the military indicate that the **FFA Mechanism made inquiries only in complaints concerning incidents in which Palestinian protestors were killed**. It failed to look into even a single case among the thousands of injuries, many of them severe, including cases of individuals who suffered gunshot wounds that left them permanently paralyzed and protestors who lost limbs. This fact is disturbing by its own right and raises questions about the fate of complaints regarding protestor injuries. The issue is particularly unsettling given that the military informed Yesh Din, when responding to questions about law enforcement against soldiers suspected of harming Palestinians, that it addresses incidents in Gaza separately from its routine handling of complaints regarding harm to Palestinians. Therefore, the figures provided to Yesh Din regarding the military law enforcement system's handling of soldiers suspected of harming Palestinians do not include reports of Palestinian injuries during the protests along the Gaza perimeter fence.¹⁹

According to information posted on the MAGC website, the cases forwarded to the FFA Mechanism were brought to the attention of the army through various sources, including operational reports submitted by the units on the ground, media reports and more than 60 reports forwarded to the FFA Mechanism following complaints submitted by human rights

18 All figures in this section of the report are based on the military's responses to Yesh Din applications under the Freedom of Information Act dated [August 4, 2019](#) and [March 9, 2020](#) (in Hebrew), unless another source for the information is specifically cited.

19 So, for instance, in a response to Yesh Din dated April 7, 2020 regarding complaints and reports of suspected harm to Palestinians, the military provided figures on complaints and reports of suspected harm to Palestinians in the year 2019, making a note of the fact that the figures **did not** include complaints regarding incidents during the Gaza protests. This fact is also explicitly noted in a response the military provided to Yesh Din on June 20, 2019 with respect to complaints and reports received in 2018. The figures reported in this [letter](#) (in Hebrew) regarding the Gaza Strip include 32 complaints about shooting incidents, including 11 deaths and 21 injuries. This number could not possibly cover all reports and complaints of injuries during the Gaza protests.

organizations on behalf of victims' families.²⁰ The figures support the conjecture that the military believes it is only required to look into incidents in which protestors were killed and that it does not even bother with incidents in which protestors were "merely" injured, while the injuries themselves were sometimes extremely severe.²¹ ²² In evidence, Gaza-based Palestinian human rights organization PCHR reports it alone forwarded the military 184 complaints of suspected violations in connection with GMR protests,²³ meaning the 60 complaints of fatalities the military reported receiving from human rights organizations are, at the very least, a small proportion of the complaints brought to the military's attention.

Al Mezan Center for Human Rights (مركز الميزان لحقوق الإنسان), a major Gaza based organization that represents many of those hurt in the protests, forwarded 81 complaints of suspected illegal harm to Palestinians during the GMR protests to the MAGC. Forty-four of these complaints concerned incidents in which protestors were killed and 37 concerned injuries. The military told Al Mezan that seven of the complaints led to a criminal investigation, and four were closed without one. All 12 complaints referred to by the military concerned fatalities. Al Mezan received no information about the remaining complaints it had forwarded. None of its 37 complaints regarding injuries has led to an investigation so far.²⁴

These figures may support information provided directly by the army indicating that the **FFA Mechanism conducts inquiries into cases of protestor deaths only, and there is concern that injuries are not examined by the military law enforcement at all.** If this is truly the case, it points to a deep flaw in law enforcement - where inquiries and investigations are conducted according to the outcome of the incident rather than its circumstances.

20 [Investigation of Allegations of Misconduct](#), MAGC website (February 2019). Last accessed, August 12, 2020.

21 Statistics collected by the UN Office for the Coordination of Humanitarian Affairs (OCHA) reveal that about a quarter of the Palestinians injured in the protests sustained their injuries from live fire and 1,500 more from rubber bullets. See OCHA website: <https://www.ochaopt.org/content/humanitarian-snapshot-casualties-context-demonstrations-and-hostilities-gaza-30-mar-2018-0>. Last accessed, August 12, 2020.

22 According to a [report](#) on the B'Tselem website, 6,300 of more than 14,000 injured evacuated to hospitals were hurt by live rounds fired by soldiers. B'Tselem field researchers interviewed 406 of the injured, including 63 minors, asking questions about the nature of their injuries and the circumstances in which they sustained them. The information collected shows most of those injured by live fire were shot when they were not in the immediate vicinity of the fence or actively participating in the protests. For the full figures and reports about those wounded in the protests, see B'Tselem website item dated November 2018: [Seven months of protests by Gaza fence: Over 5,800 Palestinians wounded by live Israeli gunfire](#). Last accessed, August 12, 2020.

23 PCHR, [Upon Criminal Complaints Filed by PCHR: Israeli Authorities Open Investigation into the Killing of 5 Palestinians, including 3 Children, at GMR Protests](#), May 4, 2020. Last accessed, August 12, 2020. The figures also show that as of May 2020, the MAGC had informed PCHR of the outcomes of the inquiries in only 22 of the 184 complaints PCHR had forwarded. Investigations were ordered in 14 of these, while eight were closed on the grounds that no criminal offense was suspected.

24 According to information provided by Al Mezan in response to Yesh Din's request via e-mail on July 2 and 20, 2020.

It is difficult to accept such an arbitrary distinction between a case in which a person is killed, and therefore a complaint in the matter will be handed over to the FFA Mechanism for assessment, as opposed to a complaint about a severe injury, which is never even examined simply because the victim survived. Experience shows that whether a shooting incident results in death or injury is sometimes random and depends on luck and circumstance. In some cases, injuries lead to death, and in any event, the final outcome has no bearing on the **legality** of the offending soldiers' conduct. When addressing the issue of the obligation to investigate law enforcement activities in the context of armed conflict, the Turkel Commission did not focus only on cases in which use of force results in the death of individuals who did not participate in the fighting, but mentioned, in the same breath, the obligation to investigate incidents in which serious injury or death are caused.²⁵

A policy of focusing on the investigation of severe, serious incidents only, or, as in this case, fatalities only, falls squarely in line with an overall trend observed by Yesh Din in recent years, whereby criminal investigations against soldiers suspected of harming Palestinians are opened only in the most severe cases. Statistics collected by Yesh Din regarding law enforcement against soldiers suspected of harming Palestinians show that about 90% of the investigations opened in 2017-2018 into incidents in which Palestinians were shot concerned fatalities, while scores of complaints regarding injuries, including severe ones, were closed without investigation.²⁶

Foot dragging: The mechanism for slow factual assessment

According to figures provided by the military, **231 incidents in which Palestinians were killed** in protests near the fence have been forwarded to the FFA Mechanism.²⁷ Of these, the FFA Mechanism completed its assessment in 96 cases. In 14, the MAG ordered a criminal investigation into suspected offenses committed by soldiers. Forty-three cases were closed without an investigation ordered, and the remaining 39 were still under review at the time the figures were provided to Yesh Din.

25 “[T]he Commission is satisfied that during an armed conflict there is a difference between the use of force in the context of the conduct of hostilities and the use of force in the context of law enforcement activities. Unlike the law enforcement context, the death or injury of a civilian during the conduct of hostilities does not automatically give rise to a duty to investigate. However, a fact-finding assessment is required wherever there is a need to clarify the circumstances in order to establish whether there is a reasonable suspicion of an unlawful act [...] This assessment may lead to a subsequent investigation. Conversely, where force causes any serious injury or death of an individual in the context of law enforcement activities there is a duty to investigate.” **Turkel Report**, The Duty to Investigate Law Enforcement Activity in Armed Conflict, p. 106.

26 See, Data Sheet, [Law enforcement against Israeli soldiers suspected of harming Palestinians and their property, summary of figures for 2017-2018](#), Yesh Din, (November 2019), particularly pp. 9-10.

27 In 40 additional Palestinian fatalities, the deceased were considered by the military to be “terrorists involved in terrorist activities” and the cases were never forwarded for assessment by the FFA Mechanism and never examined. According to the military’s responses to Freedom of Information Applications filed by Yesh Din, see footnote no. 18.

In addition to the 14 cases in which the MAG ordered a criminal investigation following the FFA Mechanism assessment, three more cases of Palestinian fatalities during the protests resulted in a criminal investigation without the involvement of the FFA Mechanism following information provided to the military and a review of operational inquiries. **This brings the number of criminal investigations into suspected offenses linked to the death of Palestinian protestors to 17.**

As of March 2020, **one of the 17 criminal investigations ordered by the MAGC has been completed, and a soldier has been indicted.** The figures the military provided to Yesh Din stated a soldier had been summoned for a pre-indictment hearing in another case, but further inquiries by Yesh Din revealed the case was unrelated to the GMR protests.²⁸ The remaining 15 criminal investigations are still at various stages of assessment and processing.

The most striking conclusion arising from these figures is the **extremely slow pace of the FFA Mechanism:** Although one of the key reasons for setting up the FFA Mechanism was the need to ensure investigation and enforcement agencies look into allegations quickly and efficiently, the figures largely indicate the process of assessment and investigation is unreasonably long. **Two years after the GMR protests began, about 80% of the incidents forwarded to the FFA Mechanism for assessment are still under review or investigation.** According to figures provided by the military, its law enforcement system has completed its work in only 45 cases: 43 in which the MAG ordered the case closed with no investigation and two criminal investigations the military alleges have been completed, although, as noted, one had nothing to do with the GMR protests but rather concerned an incident in which a Palestinian fisherman was killed in the northern Gaza Strip in an area where there were no protests (for more details see footnote no. 28).

28 Inquiries with Al Mezan Center for Human Rights, which is representing the Palestinian who was shot and killed in this incident, revealed **it was entirely unrelated to the Great March of Return protests.** The incident occurred on November 14, 2018, near the beach in the northern Gaza Strip. A soldier from the paratroopers brigade shot and killed Nawaf Muhammad al-Attar, a 23-year-old fisherman from Beit Lahiya. This information is also consistent with B'Tselem fatality figures ([Palestinians killed by Israeli security forces in the Occupied Territories, since Operation Cast Lead](#)) posted on its website. The soldier was indicted following the hearing, and Israeli media reports about the case repeated the false message that this was the second indictment related to firing at protestors. See: Moshe Steinmatz, "[Soldier who shot Palestinian to death against regulations sent to community service](#)", **Kan Israeli Public Broadcasting Corporation**, June 4, 2020 (Hebrew). According to information provided by the military in response to the media report, the soldier who was indicted had fired at a group of Palestinians after they had already backed away from the fence without authorization from his commander and contrary to the rules of engagement. The soldier was charged with a disciplinary offense, abuse of authority to the point of endangering life or health, as well as the offence of negligent harm. The reports also indicate that the case ended in a plea bargain conviction and a lenient sentence, with the soldier, who had completed his military service in the meantime, sentenced to 45 days of community service and a demotion to the rank of private. See press release dated June 22, 2020 on the Al Mezan website: [Israeli Soldier Given Derisory Sentence for the Unlawful Killing of a Palestinian Fisherman](#). Last accessed August 12, 2020.

The FFA Mechanism is **still processing 135 incidents (58% of the reports forwarded for assessment)**. The full significance of this figure comes into sharper focus when taking into account that the FFA Mechanism assessment is not the end of the investigation and enforcement process. The assessment is only the first, preliminary stage, designed to allow an effective investigation according to the rules of international law. Once this stage is completed, more time will be needed until the MAG makes a decision on whether or not to open an investigation, which, in Yesh Din's experience, may take months and, in exceptional cases, even years. If an investigation is eventually ordered, it will take time to fully complete and will be followed by more waiting for a MAG decision on whether to close the case or file an indictment.

The sluggishness of the FFA Mechanism means that if further investigations are later ordered into cases of protestor deaths, it is difficult to imagine how they could be serious, thorough and effective so long after the incident. Another point to remember is that the material gathered by the FFA Mechanism remains confidential, meaning that if a criminal investigation is ordered, it would have to begin from square one.²⁹ It is likely that many of the soldiers who were on duty during the protests and are responsible for fire that killed protestors are no longer in active service, and even in cases involving soldiers who are still in the military, investigation authorities would be hard-pressed to collect findings and evidence to support a serious investigation of the incidents.

The Turkel Commission, which investigated the compliance of Israel's investigation policy with the principles of international law, recommended establishing in procedure "a timeframe of a few weeks" for the MAG to decide whether to order an investigation based on the material before him for achieving compliance with the duty to investigate as it is set out in international law. Where a fact-finding assessment is required prior to a decision on investigation, the Commission held that the MAG should "instruct the fact-finding assessment team to examine the circumstances of the incident within a shorter period of time than the timeframe set for his decision to initiate an investigation."³⁰

The Ciechanover Commission, established to recommend how to implement the Turkel Commission conclusions, took a more concrete stance and recommended that the head of the FFA Mechanism send his findings to the MAG **within 30 days** from the start of the assessment, with the Chief of Staff or his deputy having the power to extend this time for **no more than 45 days** at a time, citing the reason for the extension. The Ciechanover Commission added that should the MAG believe more information is required to reach a decision on the issue of investigation, he would be permitted to require the FFA Mechanism

29 Because the findings made by the FFA Mechanism are also used for operational debriefings, they remain confidential in order to ensure the full cooperation of soldiers and commanders taking part in the assessment. Section 539a of the Military Justice Act stipulates that inquiry materials will remain confidential and provided only to military agencies that require them for the fulfilment of their missions. Section 539a(b)(2) explicitly states that: "inquiry materials will not be provided to the investigating body."

30 **Turkel Report**, Recommendation No. 6: The Decision on Whether to Open an Investigation p. 384.

to respond to his comments within no more than **30 days**.³¹ The Ciechanover Commission further recommended instituting a timeframe for a decision on a criminal investigation, suggesting limiting it to 14 weeks from the date on which a complaint was received and adding that in exceptional cases, this period could be extended by a maximum of 14 additional weeks.³²

The time it actually takes to process complaints does not even meet the generous timelines established in consultation with the MAGC and with its consent. The work of the FFA Mechanism evidently fails to fulfill the main purpose for which it was established, which, according to the Turkel Commission, was to create a separate factual assessment mechanism that would allow the MAGC to make a decision that is based on “an assessment that complies with the international legal requirements [...], i.e., a prompt and professional assessment, which facilitates a potential investigation and does not hinder it.”³³

The fact that the assessment and investigation of incidents that occurred during the Gaza protests - some of which have been in progress for more than two years - take so long evinces that neither the preliminary assessment nor the process leading up to a decision on an investigation by the MAG meet the general timeframes laid out by the Turkel Commission. This casts doubt on Israel's ability to conduct serious, effective investigations into complaints about suspected violations of the laws of war following the death of hundreds of Gaza residents during the GMR protests. If Israel's interest is to impede genuine, effective investigations into the killing and injury of hundreds of protestors, it appears that the clock is working in its favor.

31 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, Report (August 2015), (hereinafter: [Ciechanover Report](#)), p. 23.

32 [Ciechanover Report](#), pp. 24-27.

33 [Turkel Report](#), Recommendation No. 5: Fact-Finding Assessment, p. 383.

D. One indictment and a lenient sentence following the killing of a protestor

Of the 17 GMR incidents in which the Military Advocate General ordered a criminal investigation, **only one case** has been concluded, and a soldier was indicted after a review of the investigative materials.

The indictment was filed on September 26, 2019, against a soldier from the Givati brigade, for an incident in which Othman Rami Jawad Hillis, a 14-year-old boy from Gaza City, was shot and killed as he was climbing the fence during a protest held east of the city on July 13, 2018.³⁴ According to the indictment, as Hillis approached the fence and began climbing it, the accused soldier fired at him without clearance from his commander and in defiance of the rules of engagement and the directives given to the soldiers. Hillis was pronounced dead on scene.

Human rights organization Al Mezan helped file a complaint regarding Hillis' death to the MAG Corps on September 4, 2018, and a military police investigation was launched about two months later.³⁵ The complainants were notified of the investigation's outcome after the fact, in a letter dated October 29, 2019, in which the MAGC stated the investigation had concluded, and the soldier had been prosecuted and convicted of abuse of authority.³⁶ An Israeli media report about the conviction stated that the army "hid the decision to try the soldier, or any details of the proceedings and ruling" and that the military refused to divulge the original charges against the soldier, before they were reduced as part of the plea bargain.³⁷

The indictment reveals that following the incident, in which, as stated, a 14-year-old was killed, the soldier was charged with a disciplinary offense as part of a plea bargain, and any reference to an offense related to the killing itself was removed. The MAGC said that "the investigation did not uncover evidence meeting the required threshold in criminal proceedings to establish a causal relation between the soldier's fire and the harm to

34 Court-Martial Case Homefront (District) 286/19, **Military Prosecutor v. Sergeant A.M.**

35 According to a media report, the General Staff Mechanism for Fact-Finding Assessments, which looked into the incident, did not recommend an investigation into Hillis' death. The investigation was ordered by the Military Advocate General in light of suspicions the soldiers defied the rules of engagement when they fired. See: Yaniv Kubovich and Jack Khoury, "[15-year-old Palestinian Was Shot to Death. Israeli Soldier Who Fired at Him Got One Month of Community Service.](#)" **Haaretz English website**, October 30, 2019.

36 See report about the case on the Al Mezan website: <http://mezan.org/en/post/23599>. Last accessed, August 12, 2020.

37 Yaniv Kubovich and Jack Khoury, "[15-year-old Palestinian Was Shot to Death. Israeli Soldier Who Fired at Him Got One Month of Community Service.](#)" **Haaretz English website**, October 30, 2019. The English version of the story did not say the military hid the trial but rather opted for a more understated description saying it "had not publicized" it.

the rioter.”³⁸ The plea bargain was accepted, and on October 28, 2019, the soldier was convicted of abuse of authority to the point of endangering life or health (Section 72 of the Military Justice Act). He was sentenced to 30 days of military work, a suspended prison sentence and a demotion to the rank of private.

The prosecution for a disciplinary rather than criminal offense, the lenient sentence, and, to a certain degree, the effort to keep the legal proceedings out of the public eye, all contribute to the message the military law enforcement system gives soldiers: full immunity and lack of accountability for taking Palestinian lives.



Israeli soldiers shoot tear gas and live ammunition, as Palestinians burn tires during a protest near the Israeli-Gaza fence, April 13, 2018 (Photo: Oren Ziv, ActiveStills)

38 Military Advocate General's Corps, [Annual Report - 2019](#), p. 15 (Hebrew).

E. Conclusion

More than two years after the Great March of Return (GMR) protests in the Gaza Strip began, with 215 Palestinians killed and thousands injured, much remains unknown about how the military handles complaints regarding the killing and wounding of protestors. The total number of complaints submitted to the army is unknown; the criteria for forwarding complaints for assessment by a mechanism established to examine the circumstances of the event prior to a decision whether to launch a criminal investigation are unknown; who serves in this mechanism is unknown; and, on top of all that, when the examination of the incidents will be completed is unknown.

Figures the military provided to Yesh Din indicate that the FFA Mechanism received 231 incidents in which Palestinian protestors were killed for assessment. As of March 2020, **80% of these incidents are still undergoing assessment by the FFA Mechanism or investigation by the military law enforcement system.** On top of the military's slow pace, the figures also reveal that the FFA Mechanism never examines the circumstances leading up to protestor injuries – some severe – in hundreds of cases in which protestors were wounded by soldiers' live fire, and never even tries to assess whether the fire that caused the injuries had been legal.

The sole indictment filed over the killing of a 14-year-old and the extremely lenient outcome of the legal proceedings resulting from his killing, given the overall data on the work of the FFA Mechanism and the law enforcement system, uncovers a string of flaws at every stage of the process: FFA Mechanism inquiries that are selective (injuries are never examined) and protracted (96 of 231 inquiries completed); slow decisions from the MAGC on whether to launch investigations (56 of the 96 incidents forwarded for a decision); a small number of criminal investigations (14 following FFA Mechanism inquiries and three more independently of it for a total of 17 investigations), which yielded only one indictment; and, at the end of the line – failure by the military prosecution to pursue an offense related to causing death and producing a conviction on a lesser, disciplinary charge. These findings are in addition to information previously published by Yesh Din and many others, attesting to the incompetence of the law enforcement system and the immunity given to Israeli soldiers from prosecution over harm to Palestinians.

The combination of permissive rules of engagement regarding firing at unarmed protestors and a law enforcement system that prevents genuine, effective investigation of protestor deaths is a lethal one. The result is the unfortunate, unnecessary loss of many lives, a lack of accountability for harming innocents and the abandonment of Gaza's residents who remain defenseless against the specter of losing their lives.