

LAW ENFORCEMENT ON ISRAELI SOLDIERS SUSPECTED OF HARMING PALESTINIANS

FIGURES FOR 2016

- **79% of the complaints received by the Military Advocate General's Corps (MAGC) in 2016 (for a which a decision was reached) concerning soldiers' offenses against Palestinians were closed without the opening of a criminal investigation.**
- **As of March 2017, only 1.6% of the complaints that reached the MAGC concerning soldiers' offenses against Palestinians in 2016 led to the filing of indictments.**
- **Between 2011 and 2016, the Military Police Criminal Investigation Division (MPCID) opened 948 investigation files concerning soldiers' offenses against Palestinians. Only 3.4% of the investigations led to the filing of an indictment.**
- **For complaints filed with the MAGC by Palestinians via Yesh Din between 2014-2017, it took the MAGC, on average, over 25 weeks to reach a decision about whether to open an investigation.**

1 | INTRODUCTION

As in previous years, Yesh Din publishes a data sheet regarding law enforcement on Israeli soldiers suspected of harming Palestinians and their property in the West Bank and the Gaza Strip. Most of the information presented in this document is based on data provided by the Israeli army to Yesh Din following requests for information, as well as on multi-year monitoring of this data. The updated information presented here is based on data regarding the treatment of Israeli soldiers' offenses against Palestinians in 2016, data which was received by Yesh Din only in October 2017. A request for information regarding data for 2017 has not yet been answered. Information on indictments is also based upon actual copies of the indictments and rulings, which were delivered to Yesh Din. In addition, Chapter 6 of the data sheet presents information based on Yesh Din's ongoing work representing Palestinians harmed by Israeli soldiers.

The Israeli military law enforcement system regarding 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. The purpose of monitoring the enforcement of the law regarding soldiers' offenses against Palestinians and their property is to determine the extent to which Israel is fulfilling its obligation under international law to enforce the law with regard to soldiers who harm the Palestinian population living under its control (beyond the severe injuries resulting from the military occupation itself) and thus to protect Palestinians from further harm.

From a normative perspective, monitoring the manner in which the army handles complaints by Palestinians provides a window into the system's perception of the boundaries regarding the use of force. Does the military law enforcement system conduct comprehensive and effective investigations that hold offenders accountable, distinguishing between harm to Palestinians that is a byproduct of the military control system, and other violations that deviate from the legal framework within which this system operates? Or does it operate under a semblance of law enforcement while normalizing soldiers' offenses against Palestinians through improper treatment, turning these offenses in practice (albeit not formally) into a legitimate component of Israeli military control system?

In recent years, Yesh Din and other organizations have published reports critical of the military law enforcement system and its treatment of soldiers' offenses against Palestinians or their property. Yesh Din's 2014 report contends that: "the Israeli military investigation system is marred by structural failures that render it incapable of conducting serious investigations into offenses committed by soldiers against Palestinians."¹ A 2016 B'Tselem report states that: "The current military law enforcement system does not allow for justice to be done, because in effect, it absolves those responsible for the commission of offenses [...] of accountability for harm to Palestinians and unlawful acts." It was further argued that this system does not even strive to carry out the limited mandate assigned to it – the task of investigating specific incidents wherein soldiers have been suspected of acting in breach of orders or directives they were given.²

The 2013 Turkel Commission Report, titled "The Examination and Investigation in Israel of Complaints and Claims of Violations of the Laws of War under International Law," also addressed a number of structural problems in the military law enforcement system and included recommendations aimed at improving certain aspects of its operation. Two years after the report's publication, in August 2015, the Ciechanover Commission, which was tasked to examine and implement the second report of the Turkel Commission, published its recommendations. These were adopted by Israel's Security Cabinet (a ministerial committee on National Security Affairs) only a year later in the summer of 2016.³

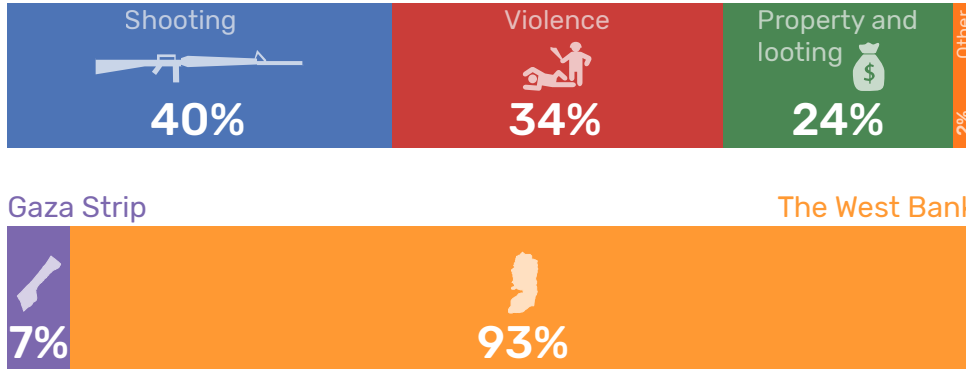
Although the Israeli military law enforcement system has taken certain steps to implement the Turkel and Ciechanover recommendations, the data presented below reveals that at the present time, from the perspective of results, no significant change is discernable in its treatment of soldiers' offenses against Palestinians and their property. Yesh Din's conclusion is that today – as in the past, the military law enforcement system does not fulfill its obligation to provide protection to Palestinians against offenses committed by Israeli soldiers and commanders.

2 | 2016: COMPLAINTS OF SOLDIERS' OFFENSES AGAINST PALESTINIANS

In 2016, the Legal Service for Operational Matters (the department within the Military Advocate General's Corps [MAGC] charged inter alia with handling offenses involving soldiers who harmed Palestinians or their property in the West Bank and the Gaza Strip) received **302 complaints or reports concerning suspected soldiers' offenses against Palestinians or their property**. The MAGC classifies all complaints and updates it receives about suspicions of soldiers' offenses against Palestinians as "reports." These include, inter alia, cases it received from military authorities or the Israel Police, as well as cases in which Palestinian victims filed complaints with the help of human rights organizations or private lawyers. In this document we will use the term "complaints" rather than "reports" as used by the MAGC.

- 1 Yesh Din, [Shadow Report to the Fourth Periodic Report of Israel, 112th Session of the Human Rights Committee](#) (September 2014), pp. 2-3. Another comprehensive report by Yesh Din stated that "the State of Israel is not meeting its obligation to protect the civilian population living in the area it occupied through the proper and effective investigation of suspicions of criminal offenses committed by soldiers." Yesh Din, [Alleged Investigation: The failure of investigations into offenses committed by IDF soldiers against Palestinians](#) (August 2011), p. 12.
- 2 B'Tselem, [The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism](#) (May 2016), p. 36. A report by the Public Committee against Torture in Israel dealing with Palestinian complaints of soldiers' violence against detainees also stated that "in spite of the great gravity of these cases, CIU (Military Police Criminal Investigation Unit) and the MPC (Military Prosecutor Corps) obviously belittle the complaints against such violence," and even stated that "Ultimately, the message being communicated to the residents of the Occupied Territory is that their blood is cheap." The Public Committee against Torture in Israel, [Prosecutorial Indifference-Systematic Failures in the Investigation of Soldier Violence against Detainees in the Palestinian Occupied Territory](#) (June 2014), p. 53.
- 3 In July 2016, the Ministerial Committee for National Security Affairs (the Security Cabinet) adopted the recommendations of the Ciechanover Commission for review and implementation of the Turkel report. Spokesperson for the Prime Minister's Office, [Security Cabinet Approves Recommendations of the Ciechanover Team on Evaluating and Implementing Part II of the Turkel Commission Report on Israel's Examination and Investigation Mechanisms](#), July 3, 2016. For an analysis of the Ciechanover Report and of the shortcomings that characterize the recommendations presented therein, see Yesh Din, [The Ciechanover Report – dodging the criminalization of war crimes and practical steps toward implementation](#) (October 2015).

302 complaints concerning soldiers' harm to Palestinians and their Property in 2016



The majority of complaints received by the MAGC in 2016 dealt with suspicions of offenses committed in the West Bank (282), while a few dealt with incidents that occurred in the Gaza Strip (20).⁴ **Over 70% of the complaints concerned claims of violent offenses or shootings** (103 cases were classified as suspected violent offenses and 120 as suspected shooting offenses), **approximately 24% concerned claims of suspected property offenses** (72 cases, half of which involved property theft), and the rest concerned other offenses. It should be noted that unlike in previous years, the information given to Yesh Din did not include a breakdown of the complaints, which would have made it possible to distinguish between fatal and non-fatal shooting incidents.⁵

It is important to remember that the number of complaints received by the MAGC does not reflect the number of cases in which soldiers acted in a manner that raises suspicion of a criminal offense against Palestinians, but only the number of cases in which crime victims or other bodies reported such harm. While a gap between the total number of complaints and the total number of offenses actually committed exists in every law enforcement system, in this context, the character of the military law enforcement system regarding soldiers who harm Palestinians and the circumstances in which it operates lead to an even larger gap.

Palestinians who were harmed by soldiers are forced to contend with a system that creates obstacles for them to file their complaints. The Military Police Criminal Investigations Division (MPCID) does not have a base in the Occupied Territories, except for a base in Anatot, located within a large military base, where Palestinians cannot file complaints. Thus, if a Palestinian is harmed by a soldiers' offense, he cannot approach an MPCID station himself and file a complaint.

4 About one-third of the complaints and reports received by the MAGC came from military sources (92 reports were transferred from the "Operations Division" and 8 from other military units); 78 cases were reported by the Israel Police; 55 cases were recorded as "allegations raised by interrogees"; 61 complaints were filed by human rights organizations or private lawyers, and the rest were incidents reported in the media. Some of the reports were received by the Military Police Criminal Investigation Division (MPCID) and transferred to the MAGC. Letter from the IDF Spokesperson's Office to Yesh Din, [Your application under the Freedom of Information Law regarding soldiers' offenses against Palestinians and their property in 2016](#), 1.10.2017 [Hebrew] [hereafter - Army Spokesperson letter, 1.10.2017]. It should be noted that the information given by the army to Yesh Din regarding the treatment of soldiers' offenses against Palestinians in 2014 and 2015 did not include precise data on the number of reports or complaints received by the MAGC for those years. In 2016, the MAGC changed its method of documentation in a manner that enables monitoring the number and nature of the reports it received following soldiers' offenses against Palestinians or their property.

5 The following are the full details delivered to Yesh Din: 120 reports dealt with suspicion of shooting offenses, 16 of which dealt with events in the Gaza Strip and the rest in the West Bank; 103 reports concerned suspected violent offenses, 3 of them in the Gaza Strip; 36 reports concerned "property taking" (theft or looting) in the West Bank; and 36 reports concerned property damage, one occurring in the Gaza Strip and the rest in the West Bank. One report concerned suspected misconduct and 6 reports concerned other offenses. Army Spokesperson letter, 1.10.2017. On October 23, 2017, Yesh Din sent the army spokesperson unit a request for clarification regarding the number of reports submitted to the Legal Service for Operational Matters in 2016 concerning incidents of death. No response was received so far.

On the face of it, victims of an offense may file a complaint with one of the District Coordination and Liaison Offices (DCOs) operating in the West Bank,⁶ but Yesh Din's experience shows that these complaints are usually not transferred to the investigating authorities or are transferred only after a very long time. Another option that is ostensibly available to Palestinians harmed by soldiers' offenses is contacting a call center that the MPCID began operating in the past year. At this point in time, Yesh Din does not have information with which to determine whether the center is used for the filing of complaints, and how effective the center is if it does fulfill its purported function. As far as Yesh Din is aware, as a rule, Palestinian crime victims are not aware of the call center's existence. It follows that many victims who wish to file a complaint are forced to use intermediaries such as human rights organizations or private lawyers, which aren't accessible to all people. It is also reasonable to assume that this reality contributes to a reduction in the number of complaints actually filed.

Moreover, **in many cases, Palestinians harmed by soldiers' offenses do not wish to file a complaint with the army.** For example, **from 2016 to 2017, in 40 cases where Yesh Din staff met with Palestinians who reported being harmed by soldiers' offenses** (reports included violent incidents, damage to property, and other incidents), **the victims said that they did not wish to file a complaint with the Israeli army.** Half of them cited that their decision was made out of a fear that filing a complaint would harm them or their families (20 cases). Others explained that they do not believe in Israeli law enforcement agencies and do not believe that filing a complaint would help.

At the beginning of February 2017 Yesh Din representatives spoke with YS, a 23-year-old, from Kafr Qadum. YS regularly participates in demonstrations by villagers on Fridays, was arrested in the past, and was imprisoned on charges of throwing stones. He informed Yesh Din representatives that in January 2017, a group of about 50 soldiers arrived at his home at 1:00 am. The soldiers accused him of throwing stones, beat him for about 40 minutes, after which one soldier threatened to kill him. When asked whether he was interested in help filing a complaint with the military authorities, YS said to Yesh Din's representatives: "I do not want to file a complaint because I do not want to go to jail, and a complaint will not help anything."⁷

In July 2017, Yesh Din representatives spoke with AA, a resident of the Deheishe refugee camp. AA said that at the end of June, soldiers arrived at his home in the early hours of the morning and arrested his 21-year-old son. According to him, when he followed the soldiers out of the house in order to locate the officer in charge and to find out who ordered the arrest of his son, the soldiers beat him unconscious. Following the incident, AA was hospitalized for seven days. When asked whether he is interested in help to file a complaint, he said: "I do not want to file a complaint because I am afraid that they will come back to my house. Although I am blacklisted by the ISA (Israel Security Agency also known as Shabak), I do not want to be prevented from traveling abroad and they will surely close my case, say things against me, and won't pay me damages, so what is the point? These incidents happen every day in our refugee camp and I never heard that a complaint helped anyone or gave him back his rights."⁸

6 According to the commander of the National Unit for Operational Investigations in the MPCID, Palestinians who were harmed by soldiers have three ways to file a complaint: with the help of intermediary organizations, by contacting the District Coordination Offices, and with the help of a new call center. Meeting between the commander of the National Unit for Operational Investigations in the MPCID and Yesh Din representatives, 29 May 2017. The Unit was established in early 2017 as part of the implementation of the Turkel and Ciechanover recommendations and is responsible for investigating events defined as operational, including offenses by soldiers against Palestinians or their property. See also: Yochai Ofer, ["Going to the Field: A Look at the IDF Operational Investigations Unit," nrg website](#), July 3, 2017 [Hebrew].

7 Yesh Din file 3831/17.

8 Yesh Din file 3959/17.

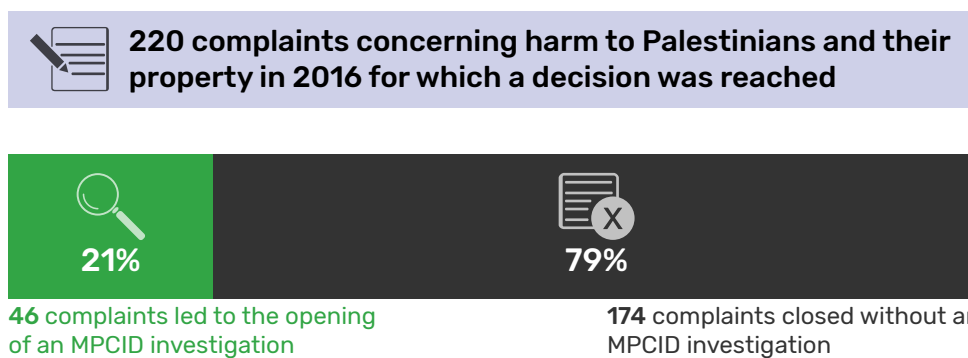
3 | 2016: INVESTIGATING OFFENSES OF SOLDIERS WHO HARMED PALESTINIANS

THE EXAMINATION OF COMPLAINTS AND THE DECISION OF WHETHER TO OPEN AN INVESTIGATION OR CLOSE THE FILE

Unlike complaints submitted to the police following offenses by civilians, a complaint filed with the Military Advocate General's Corps regarding the offense of a soldier does not necessarily lead to the opening of an investigation. The MAGC has an obligation to order the immediate opening of a criminal investigation under specific circumstances, e.g. in cases of suspected looting, abuse, and illegal use of a weapon in the event of injury to a person, threat or intentional risk to a person, as well as other offenses specified in the relevant General Staff order.⁹ In addition, according to the investigation policy that is supposed to guide the military law enforcement system since 2011, in every incident of death of a Palestinian as a result of the activity of soldiers in the West Bank, the MAGC must order an immediate opening of a criminal investigation, except in cases where the killing took place during activities of a "real combat nature."¹⁰

In other instances, the MAGC is authorized to order the closure of the complaint file without further inquiry and without conducting a criminal investigation (for example, in cases where the MAGC determines that the preliminary report did not raise suspicion of a criminal offense), or to conduct a preliminary factual inquiry, at the end of which a decision will be made as to whether to open a criminal investigation or close the case without opening such an investigation.

In 2016, the MAGC ordered the immediate opening of a criminal investigation in only 10% of the complaints received (29 cases). In 220 cases (73% of complaints), the MAGC ordered a preliminary factual inquiry before deciding whether to close the case or to order a criminal investigation. In 53 other cases (approximately 17% of complaints), most of which were cases of violence (37 cases), the MAGC ordered the closure of the complaint file without conducting a preliminary inquiry and without opening a criminal investigation.¹¹



MPCID INVESTIGATIONS IN 2016

Of all the complaints regarding soldiers' offenses against Palestinians and their property that were transferred to the MAGC in 2016 and for which the MAGC reached a decision, only 21% led to the opening of a criminal investigation. As of the date on which Yesh Din received information from the MAGC, the MAGC had reached a decision on 220 of the 302 complaints it received that year. Of these, **only 46 reports or complaints led to the opening of an investigation.** In the remaining cases (174 cases), the MAGC decided to close the file without ordering a criminal investigation.¹²

⁹ The circumstances in which the MAGC is obligated to order the immediate opening of a criminal investigation are detailed in General Staff Order 33.0304.

¹⁰ 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], pp. 319-323.

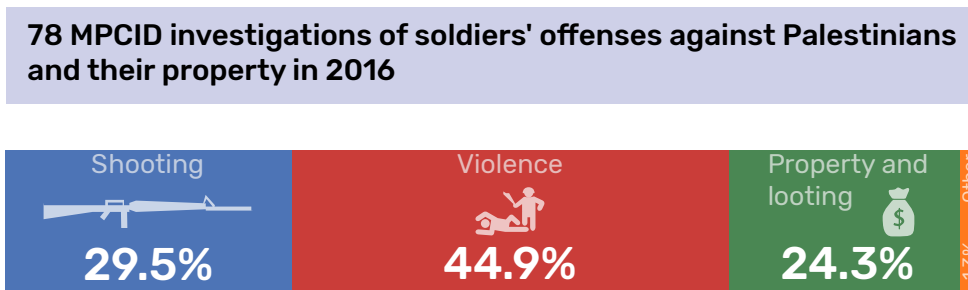
¹¹ Army Spokesperson letter, 1.10.2017, Sections 8, 9, 10.

¹² Army Spokesperson letter, 1.10.2017, Sections 8 and 9. It should be noted that according to Section 2 of the letter to date, 43 reports have led to the opening of an



In 2016, a total of 78 investigations were opened by the Military Police Criminal Investigations Division (MPCID) on suspicion of soldiers' offenses against Palestinians or their property (including 32 investigations opened following complaints filed in previous years). Two of these investigations concerned incidents in the Gaza Strip and the rest involved incidents in the West Bank. **This figure reflects a significant decrease in the number of investigations opened by MPCID** when compared to the number of investigations it opened in previous years.¹³ In 2015, the MPCID opened 186 investigations concerning instances in which soldiers allegedly committed offenses against Palestinians or their property (164 of which dealt with incidents in the West Bank and the rest followed events in the Gaza Strip). **Between 2013 and 2015, the MPCID opened an average of 205 such investigations annually.**¹⁴

The rate of investigations concerning violent or shooting offenses of all investigations opened in 2016, is similar to the rate of complaints dealing with these offenses. **About 74% of the investigations opened in 2016 involved violence or shooting** (35 investigations were opened following violent incidents and 23 after shootings). 24% of the investigations concerned property offenses, most of which involved suspicion of theft or looting (14 investigation files), and a minority related to property damage (5 investigation files). The information given to Yesh Din did not include a breakdown of investigations of fatal and non-fatal shooting incidents.



4 | INDICTMENTS

Only 6.4% of the investigation files opened by the MPCID in 2016 regarding suspected soldiers' offenses against Palestinians or their property led to the filing of indictments by the end of the first quarter of 2017 (5 out of 78 files).¹⁵

investigation, in contrast to the data appearing in sections 8 and 10, according to which 46 investigations have so far led to the opening of an investigation. A request for clarification regarding this discrepancy was sent on October 23, 2017, but to date no response has been received.

- 13 It is important to note that the decline in the number of investigations opened does not necessarily indicate a decrease in the number of offenses committed by soldiers against Palestinians, and Yesh Din does not have sufficient information to determine the cause of the change. The decline in the number of investigations may indicate a decline in the willingness of Palestinians to file complaints after they were harmed by soldiers. It may indicate that a smaller proportion of the complaints filed this year led to the opening of an investigation, or it may indicate that this year in comparison to prior years, there were fewer incidents of soldiers harming Palestinians to the extent that justified filing a complaint.
- 14 Of the investigations opened by the MPCID in 2014, 209 dealt with cases in the West Bank and 20 dealt with cases in the Gaza Strip. Among the investigations opened in 2013, 19 dealt with cases in the West Bank and 9 dealt with the Gaza Strip. In 2012, the MPCID opened 103 investigations into suspected soldiers' offenses against Palestinians or their property (83 of them followed events in the West Bank). In 2011, 153 such investigations were opened in the MPCID (159 of them followed events in the West Bank). This is according to data provided to Yesh Din by the IDF Spokesperson in response to freedom of information requests on the following dates: March 24, 2016; June 25, 2015; April 3, 2014; January 23, 2013; and April 1, 2012.
- 15 The data presented in this chapter regarding indictments filed in 2016 is based on information given to Yesh Din by the IDF Spokesperson in response to a freedom of information request on October 1, 2017, as well as on copies of indictments filed against soldiers accused of harming Palestinians or their property and decisions reached in these cases, by the end of March 2017. On June 27, 2017, Yesh Din received copies of indictments and decisions in such cases from January-March 2017. Requests for copies of indictments and decisions from April-December 2017 have not yet been answered. It should also be noted that the information that was received by Yesh Din in June 2017 included four indictments filed in the first quarter of 2017 following investigations files opened in 2016. Additionally, the information included two indictments filed during this time, following an investigation file whose opening date is unknown to Yesh Din but it can be estimated to have been opened during 2016. Lastly, the information included three indictments filed in the first quarter of 2017, following an investigation file which was opened at a date unknown to Yesh Din. The details presented in the following paragraphs will include only the indictments for which Yesh Din knows or believes that they were filed following investigations opened in 2016.

Most of the investigations opened in 2016 are still under examination and therefore the number of resulting indictments is subject to change. **In the period between 2011 and 2016, the MPCID opened 948 investigation files of soldiers' offenses against Palestinians or their property. Only 3.4% (32 files) led to the filing of indictments.**

Although it is incorrect to set a minimum threshold of indictments from investigations, the low rate of indictments in files dealing with soldiers' offenses against Palestinians is particularly notable in light of the aforementioned policy, according to which the MAGC filters in advance the cases for which it decides to open a criminal investigation, and therefore many of the complaints do not lead to the opening of an investigation. As noted, of the complaints and reports that reached the MAGC in 2016, in 174 cases (approximately 79% of the complaints in which a decision was reached), the MAGC decided to close the file without opening an investigation. As of March 2017, **only 2.3% of the complaints that reached the MAGC in 2016 (for which a decision was reached to open an investigation or close the file) led to an indictment (5 out of 220 files).**

In these circumstances, given that it is often relatively easy for the army to locate perpetrators involved in incidents at a determined time and place (as compared with police search for suspects), and in light of the critical analysis of Yesh Din and other organizations regarding the military law enforcement system, **the low annual rate of indictments can be said to reflect a systemic trend of non-exhaustive investigations and a systemic tendency to grant immunity to offenders.**

In 2016, three indictments were filed in military court against four defendants who harmed Palestinians or their property. One indictment was filed following an investigation that began in 2015 and two indictments were filed as a result of two investigation files opened in 2016.¹⁶ In addition, in the first two months of 2017, four indictments were filed in military court following two investigation files opened in 2016. Two additional indictments were filed as a result of an investigation opened at a date unknown to Yesh Din. Nevertheless, we believe that this investigation was opened during 2016. Thus, to the best of Yesh Din's knowledge **as of March 2017, five investigation files opened in 2016 resulted in the filing of eight indictments.**

In April 2016 an indictment was filed against the soldier Elor Azaria, who was charged with manslaughter after killing Abd al-Fattah a-Sharif on March 24, 2016 in Hebron, after a-Sharif and another man stabbed a soldier.¹⁷ A-Sharif was lying on the ground wounded when he was shot to death. A video recording of the incident was filmed by a B'Tselem photographer. In January 2017, the military court convicted Azaria of manslaughter and inappropriate conduct and sentenced him to only eighteen months in prison.¹⁸

The accumulated experience and long-term research of Yesh Din and other human rights organizations show that the indictment against Azaria was an exception. From September 2000 until the end of 2016, only 18 investigation files concerning deaths of Palestinians as a result of the actions of Israeli soldiers led to the filing of indictments (including the Azaria case). As part of these indictments, 25 soldiers were charged with offenses concerning the deaths of 20 Palestinians in the West Bank. Some of the defendants were charged with offenses related to the obstruction of investigation proceedings rather than the actual incident. Only eight soldiers were convicted of offenses related to the act which caused the death – two were convicted of manslaughter, four of negligent manslaughter, and two were convicted of negligence. 12 soldiers were convicted of various offenses not directly related to the fatality itself, 2 soldiers were acquitted of the charges against them, and in one case the indictment was canceled.¹⁹

¹⁶ Army spokesperson letter, 1.10.2017, Section 6.

¹⁷ **Central Military Court Case 182/16.**

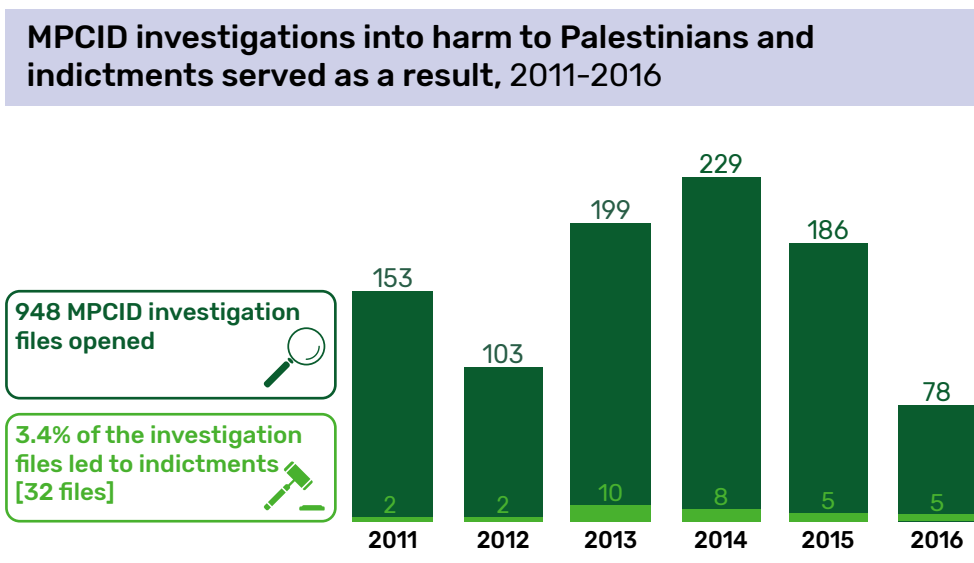
¹⁸ The military court convicted Azaria on January 4, 2017 and sentenced him on February 21, 2017. On July 30, 2017, the military court of appeals rejected the appeals of the defense and the prosecution regarding Azaria's conviction and the punishment.

¹⁹ In one case, an indictment was filed on a reduced charge only after the family and B'Tselem petitioned the High Court of Justice demanding that the Military Advocate General make a decision in the case. For details, see B'Tselem website: [Soldiers who shot 16-year-old in the back charged with "reckless and negligent act"; COs who ordered the stakeout will not be held accountable](#). For details regarding investigations and indictments in cases of Palestinian killings, see also: Yesh Din, [Data Sheet: MPCID Investigation into the Circumstances surrounding the Death of Palestinians: Convictions and Penalties](#) (July 2013). For examples of failures



A second indictment was filed in 2016 against two soldiers who were accused of exceeding authority to the point of endangering life or health after setting fire to a timber warehouse in Nablus in October 2016.²⁰ Additionally in 2016, an indictment was filed against an officer of the Civil Administration who was charged inter alia with grievous sex offenses, bribery, fraud and breach of trust, following an investigation that was opened in 2015.²¹

In January and February of 2017, four indictments were filed in military court against five defendants following two investigation files opened in 2016. One indictment was filed against a soldier accused of abuse and inappropriate conduct after slapping a Palestinian who was at the time detained, bound, and blindfolded.²² Three indictments were filed against four soldiers charged with taking bribes and other offenses after they were part of a group that allowed Palestinians to pass through checkpoints without a permit in exchange for bribes.²³



5 | DECISION TO OPEN CRIMINAL INVESTIGATIONS INTO KILLING AND SHOOTING CASES

FAILURE TO IMPLEMENT THE INVESTIGATION POLICY REGARDING INCIDENTS OF KILLING

The formal military investigation policy states that when a Palestinian is killed as a result of a soldier's actions in the West Bank, the MPCID must immediately open a criminal investigation into the circumstances of the incident, except "in cases where it is **clear** that the operations during which the Palestinian inhabitant was killed were of a **real combat nature** [emphasis added]."²⁴ In accordance with this policy, in cases when the killing of Palestinians is defined as having taken place during

in investigation files that dealt with the killing of Palestinians as a result of soldiers' activity and were closed without indictment, see: +972 Magazine website, [License to Kill](#).

20 **Southern Military Court Case 445/16**. The soldiers Corporal Jonathan Poshmonski and Corporal Hagai Zelitzky were convicted and sentenced to 60 days in prison, 30 days imprisonment in the form of military works, probation, demotion and compensation of 5,000 NIS each to be paid to the owner of the burned timber warehouse.

21 **General Staff Military Court Case 82/16**. The officer was convicted and sentenced to 11 years in prison and other penalties.

22 **Home Front Military Court (District) Case 7/17**. The soldier was convicted and sentenced to 50 days imprisonment by way of military works, a 30-day probation, a demotion and a compensation of 500 NIS to the victim.

23 **General Staff Military Court Cases 174/17, 175/17, 176/17**. Two additional indictments were filed against two soldiers accused of exceeding authority, after they let Palestinians cross checkpoints without a security check in return for "gifts." These indictments were filed following an investigation file opened at a date unknown to Yesh Din but we believe the investigation was opened during 2016. **General Staff Military Court (District) 53/17, 54/17**.

24 **Turkel Report**, p. 321-322. The Turkel report quotes from a letter from Avichai Mandelblit, the Military Advocate General in 2011, to Yehuda Weinstein, then the Attorney General. Letter from the Military Advocate General to the Attorney General, **Investigation Policy of IDF operations in the West Bank**, April 4, 2011.

operations of "a real combat nature," a preliminary factual inquiry into the circumstances of the incident will be carried out, on the basis of which a decision will be made as to whether to open a criminal investigation.

Between 2000 and 2011, the army pursued a different investigation policy, which did not necessitate opening investigations into Palestinian deaths resulting from soldiers' actions. In a position paper presented to the Turkel Commission, the Military Advocate General (MAG) explained the application of this policy in the years 2000-2011, stating that during that period the nature of the Israeli army's actions in the West Bank had changed. According to him, at that time it was wrong to classify Israel's military activity in the West Bank and Gaza Strip as activity meant "to ensure public order and to enforce law under the laws of belligerent occupation," rather it was more appropriate to classify Israel's military activity as "'combat' activity carried out in the name of a party to an armed conflict against the forces of the other side."²⁵

Subsequently, in a 2011 letter announcing a change in the investigation policy and the application of the policy that formally guides the military law enforcement system to this day, the MAG determined that the policy change stemmed from "a significant change in the nature of the operational activity of the IDF forces in the West Bank that, generally, no longer bears a clear combat character."²⁶ In other words, in explaining the change in the investigation policy, the MAG stated that, unlike in the past, most of the Israeli military operational activity in the West Bank is now directed towards ensuring public order and law enforcement. Although the Israeli military law enforcement system did not define exactly which events were of "a real combat nature," it is possible to determine that this category does not include events taking place in the framework of law enforcement activity, such as soldiers' activities during events defined by the Israeli army as "disturbance of the peace" or as "riots at checkpoints," for which the army has itself determined are not events of a real combat nature.²⁷

A comparison between the number of Palestinians killed by Israeli soldiers in the West Bank in 2015 and 2016 and the number of investigations opened in these years shows that **the Military Advocate General Corps adopted a very expansive definition of "a real combat nature," and in light of this definition ordered an immediate investigation of only a minority of the killings of Palestinians by soldiers in the West Bank.**

According to B'Tselem data, in 2016, 57 Palestinians were killed by Israeli soldiers in the West Bank in 48 separate incidents, and in 2015, 69 Palestinians were killed in 63 similar incidents. In 32 cases in 2016 and in 35 cases in 2015, Palestinians were killed while stabbing, committing vehicular violence, or attempting to carry out such attacks against civilians, soldiers or policemen.²⁸ Recall that in the final months of 2015 a wave of such violent incidents began known as "the knife intifada."

In 2016, the MAGC ordered the immediate opening of a criminal investigation, without waiting for a preliminary factual inquiry into the circumstances of the incident, for only 10 complaints regarding harm to Palestinians following shootings by soldiers.²⁹

25 Letter of the Military Advocate General to the Public Commission to Examine the Maritime Incident of May 31, 2010 [The Turkel Commission], **Second Position Paper on behalf of the MAG Corps**, 19 December 2010, p. 12 [Hebrew].

26 Turkel Report, p. 321. A quote from the letter of the Military Advocate General to the Attorney General, April 4, 2011.

27 The Military Advocate General's statement, which presented this policy to the High Court of Justice in 2011, did not include a clear definition of the nature of an activity of "a real combat nature." However, the statement did include two examples: A situation in which "there was an exchange of fire, where a civilian who was not involved in combat was wounded" was presented as an example of death in the context of an activity of a "real combat nature," whereas "incidents of death in the context of disturbances of the peace or events of riots at checkpoints" were presented as an example of deaths not taking place during such activity. HCJ 9594/03, **B'Tselem and the Association for Civil Rights in Israel v. The Military Advocate General**, Update of Respondent, 4.4.2011 [Hebrew]. The Turkel Commission drew a similar distinction regarding the duty to investigate harm to a person in the framework of law enforcement activities. "In summary, the 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. [...] 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**, p. 106.

28 B'Tselem website, [Palestinians killed by Israeli security forces in the West Bank, after operation Cast Lead](#). It should be noted that a data sheet published by Yesh Din in January 2017 referred to a slightly different figure regarding the number of Palestinians shot and killed in the West Bank by Israeli soldiers in 2015. The document incorrectly states that in 2015 76 Palestinians were shot and killed by soldiers in the West Bank, while the exact number of fatalities known to have happened under these circumstances, according to B'Tselem's figures, is 69.

29 Army spokesperson letter, 1.10.2017, Section 8.

Yesh Din does not know how many of these complaints dealt with cases of a fatal shooting. However, this figure indicates that in 2016 **at least 79% of the incidents in which Palestinians were killed in the West Bank by soldiers' gunfire were determined by the MAGC to have occurred under circumstances of "a real combat nature."** In at most 21% of these incidents, the MAGC determined that the incident did not take place in circumstances of "a real combat nature" (10 cases in which an investigation was opened immediately following a complaint concerning shooting, compared to 48 incidents in which Palestinians were killed).³⁰

With regard to 2015, Yesh Din does not know the number of cases in which the MAGC ordered the opening of an immediate criminal investigation. However, in 2015 the MPCID opened a total of 21 investigations into the killing of Palestinians in the West Bank,³¹ indicating **that this year at most one-third of Palestinian deaths by soldiers in the West Bank led to an immediate investigation (21 investigations, compared to 63 incidents in which Palestinians were killed). It follows that for at least 66% of the Palestinian killings in 2015, the MAGC determined that these were incidents that took place amid activities of "a real combat nature."** The figure for the number of investigations opened this year also includes investigations opened after a preliminary factual inquiry and may include investigations opened following complaints filed in 2014. It is therefore reasonable to assume that the percentage of fatal incidents in 2015 that the MAGC determined had occurred within the context of activities of "a real combat nature" was even higher.

These figures probably indicate that the MAGC classifies most killing incidents which happen in the context of attempts by individuals to attack soldiers, policemen, or civilians (e.g. stabbing, running over with a vehicle, or other types of injury) as incidents of "a real combat nature." Yesh Din's position - as expressed in a petition it filed in December 2017, demanding an investigation into the death of Samah Abdallah who was killed by Israeli soldiers' gunfire in November 2015 - is that such incidents are "civil incidents, governed by the normative framework of law enforcement and not of combat," in light of international law and following the interpretation of the Turkel Commission, as well as in accordance with the investigation policy that has formally guided the Israeli army since 2011.³² The petition further argues that **the MAG's position, as it emerges from the data presented here, undermines "the distinction between events requiring a response from law enforcement forces, such as disturbances of the peace, grave as they may be, and 'real combat' events, significantly diminishes the importance of the policy change that was announced in 2011, and clearly deviates from the principles of international law."**³³

Underlying the formal investigation policy that has guided the Israeli military law enforcement system since 2011 is the assertion that most of the operational activity in the West Bank does not constitute activity of "a real combat nature" and that in such a situation any killing of a Palestinian justifies opening a criminal investigation on suspicion that an offense has been committed, excluding exceptional circumstances. Such an investigation may lead to the conclusion that the soldiers acted in accordance with the law or violated it (yet data indicates that the vast majority of cases result in the closing of the investigation file without

30 As stated, the information given to Yesh Din does not include a distinction between fatal and non-fatal shooting incidents. For the purposes of the analysis presented here, we treated the data in the most expansive manner, as if all investigations opened immediately in cases of shooting dealt with fatal incidents.

31 Letter of the IDF Spokesperson to Yesh Din, **Your letter to the IDF Spokesperson regarding soldiers' offenses against Palestinians and their property during the year 2015 under the Freedom of Information Law**, March 24, 2016, Section 9.

32 HCJ 10167/17, **Abd al-Muamen Abdallah v. the Attorney General et al.**, Petition for Order Nisi, December 28, 2017, p. 25 [Hebrew]. The 18-year-old girl, Samah Abdallah, was shot with live bullets by soldiers while passing with her family in a car in the area Huwarah in November 2015. According to a media report, while the family was passing through the area, a Palestinian tried to stab civilians who were standing at a transport station and he was shot by soldiers. Abdullah died of her wounds about three weeks after being shot. Following the incident, her father filed a complaint at the Huwarah district coordination office. Only about a year later, in December 2016, did the Military Advocate for Operational Matters inform Yesh Din that the MAG decided that there was no basis for opening a criminal investigation into the incident, among other things because his examination revealed that the circumstances were "of a clear operational nature." Yesh Din appealed the decision to the Attorney General and when no response was received, petitioned the High Court of Justice a year later on behalf of the girl's father, demanding that it order an investigation and issue a declarative order stating that the incident in which Abdallah was killed was not an event of "a real combat nature" as defined in the army's investigation policy. On February 15, 2018, more than two years after the incident, the Chief Military Prosecutor informed Yesh Din that the MAG had decided to order the opening of a criminal investigation into the case "in light of arguments brought in the appeal to the Attorney General and in the framework of the petition you filed with the HCJ." Letter of Chief Military Prosecutor to Yesh Din, **Death of Samah Abd al-Muamen Ahmad Abdallah - Update on the opening of an investigation**, February 15, 2018.

33 HCJ 10167/17, **Abd al-Muamen Abdallah v. the Attorney General et al.**, Petition for Order Nisi, December 28, 2017, p. 13 [Hebrew].

indictment), but the immediate opening of an investigation expresses the recognition of the military law enforcement system that the killing of Palestinians by soldiers is not part of the acceptable aspects of military activity in the occupied West Bank.

Nevertheless, the findings presented here show that the ambiguity of the concept of activities of "a real combat nature" actually serves the military law enforcement system in a way that robs the investigation policy of its substance and contributes to the normalization of the killing of Palestinians as a result of the actions of soldiers in the West Bank.

USE OF OPERATIONAL DEBRIEFING IN THE PRELIMINARY FACTUAL INQUIRY OF SHOOTING CASES

In 2013, at the time of the publication of the Turkel Commission's second report, the Israeli army carried out the following policy for deciding whether to open a criminal investigation following a complaint: In every case where the MAGC did not order an immediate investigation, the parties involved in the process would wait for the operational debriefing of the incident. After receiving it, the debriefing would be used to determine whether the case raised suspicion of criminal activity and whether a criminal investigation should be opened.³⁴

The Turkel Commission recommended changing this practice and **establishing a separate mechanism for carrying out the preliminary factual inquiry** meant to substantiate the decision of whether to open a criminal investigation or to close the complaint file. The commission added that this recommendation does not prevent the MAGC from reviewing the operational debriefing, provided that this review does not lead to a deviation from the recommended timeframe for deciding on the complaint.

The basis for the recommendation was the recognition that the operational debriefing is not an instrument meant for the examination of suspicions of criminal activity, but rather a tool to draw operational conclusions and improve the functioning of the military units. Additionally, the recommendation was based on the critique that noted, among other things, that the use of the operational debriefing may delay the decision to initiate a criminal investigation and thereby harm it.³⁵ Other critiques of the use of the operational debriefing presented to the Turkel Commission included the claim that the debriefing itself is tainted by a conflict of interest, because it is carried out by commanders in the chain of command of the relevant unit, and the claim that the operational debriefing may damage future investigations as it may facilitate the coordination of testimonies.³⁶ Subsequently, the authors of the Ciechanover report also recommended the establishment of a mechanism that would be responsible for conducting a preliminary factual inquiry, separate from the operational debriefing.³⁷

In November 2016, the Military Advocate for Operational Matters informed Yesh Din's staff that the preliminary factual inquiry (used to decide whether to open a criminal investigation concerning a complaint involving soldiers who harm Palestinians) could be conducted by the General Staff Mechanism for Fact-Finding Assessments or be based on a preliminary examination of the incident carried out by the MPCID.³⁸

34 **Turkel Report**, pp. 335-341. In addition to the operational debriefing, another procedure applied by the Israeli army is the "expert debrief", which is used to investigate special or complex events.

35 **Turkel Report**, pp. 380-383.

36 **Turkel Report**, pp. 380-381. For further details on the problematic nature of the use of operational debriefing as the main basis for the factual assessment intended to determine whether to open a criminal investigation following a complaint or report, see also Yesh Din, **Alleged Investigation**, Chapter 2.

37 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) [hereafter - **Ciechanover Report**], pp. 21-24.

38 Meeting between the Military Advocate for Operational Affairs, Adoram Rigler, and Yesh Din's representatives, November 24, 2016. During the military operation in Gaza in the summer of 2014 known as operation "Protective Edge", a "General Staff Mechanism for Fact-Finding Assessments" was established. The announcement of the establishment of the mechanism stated that it would be responsible for examining "Exceptional Incidents that occurred during Operation 'Protective Edge,'" but that it was "established as a permanent mechanism, as part of the process of implementation of the recommendations outlined by the Public Commission chaired by Supreme Court Justice (ret.) Jacob Turkel." The MAGC website, [Operation Protective Edge: Examinations and Investigation](#), September 10, 2014. For an analysis of the conduct of the military law enforcement system regarding suspected violations of international humanitarian law during the military operation in Gaza termed "Protective Edge," see

Nevertheless, the information given to Yesh Din by the army spokesperson unit regarding the use of operational debriefings as part of the preliminary factual inquiry process regarding complaints filed with the MAGC in 2016 shows that the MAGC continues to use information from the operational debriefing as part of the inquiry process. In 2016, in 61% of the cases in which the MAGC ordered a preliminary inquiry to decide whether to open a criminal investigation, it requested information from the operational debriefing as part of the inquiry (135 out of 220 complaints).³⁹

A breakdown of the data according to offense types shows that most of the cases in which the preliminary inquiry used the contents of the operational debriefing were shooting cases. **In the vast majority of cases dealing with shooting incidents in which a preliminary inquiry took place (or is taking place), the MAGC requested information from the operational debriefing.** The MAGC decided to conduct a preliminary inquiry regarding 108 complaints concerning shooting incidents in 2016. In 97 of these complaints (89%), the MAGC used information from the operational debriefing of the incident.

As of the date of the transfer of information to Yesh Din, 46 of the shooting complaints in which the MAGC used the operational debriefing were still being processed. 48 complaints were closed without opening a criminal investigation, and only three complaints led to the opening of a criminal investigation by the MPCID.⁴⁰

The data shows that **despite the recommendation of the Turkel Commission to conduct preliminary factual inquiries (aimed to determine whether to open a criminal investigation) separate from the operational debriefing, the MAGC continues to use the operational debriefing systematically as part of its preliminary factual inquiry of complaints concerning shooting incidents.** Based on the information given to Yesh Din, it is not possible to determine whether other means were used in the preliminary inquiry aside from the operational debriefing, or whether the operational debriefing constitutes the central means for determining the fate of the complaints, contrary to the Turkel recommendations. In any case, the mere use of the operational debriefing - which is not intended to determine criminal responsibility and is not an appropriate tool for examining such questions - may delay and harm the investigation, even in those few cases in which a decision is finally made to conduct an investigation.

6 | YESH DIN'S DATA: THE DURATION OF HANDLING COMPLAINTS AND INVESTIGATIONS

Yesh Din assists Palestinians harmed by Israeli soldiers in filing complaints with the MAGC if they so wish. Following the filing of the complaint by Yesh Din, the organization's legal team monitors its processing until a decision is made as to whether to open an investigation, and if one is opened, until the file is closed or, in a very small minority of cases, until an indictment is filed. In appropriate cases Yesh Din's legal team files appeals to challenge decisions not to open an investigation or to close an investigation file without filing an indictment.

Legal aid to Palestinian crime victims enables Yesh Din to collect data regarding the length of the processing of their complaints and the length of investigations that are sometimes opened following these complaints. It is important to note that Yesh Din's data does not constitute a representative sample of cases handled by the MAGC, but it can be used to obtain some indication of how the MAGC and MPCID handle complaints by Palestinians.

B'Tselem, [Whitewash Protocol: The So-Called Investigation of "Operation Protective Edge"](#) (September 2016).

39 Army Spokesperson letter, 1.10.2017, Section 11.

40 Army Spokesperson letter, 1.10.2017, Section 12. It should be noted that Section 11 of the letter states that in 2016 the MAGC requested materials from the operational debriefing in 96 cases, whereas in Section 12, which details the results of handling these cases, there are 97 shooting cases in which the MAGC requested information from the operational debriefing.

The data presented below relates to complaints filed by Yesh Din with the Legal Service for Operational Matters between the years 2014 and 2017. All complaints were submitted after the publication of the Turkel Commission report (in the summer of 2013), which included clear recommendations regarding the duration of processing complaints as well as the duration of investigations. Some of the complaints were submitted prior to the publication of the Ciechanover Commission's recommendations (summer 2015) and before their adoption by the Israeli Security Cabinet (summer 2016). Nevertheless, the Ciechanover recommendations will be used here in order to examine the work of the MAGC in these years compared to the standard set by the State in cooperation with the MAGC.

The method according to which a complaint does not lead to an immediate investigation inevitably delays the investigation of complaints regarding suspected offenses by soldiers against Palestinians or their property, and thus harms the effectiveness of such investigations. In addition, over the years, Yesh Din and other organizations have pointed out that **the constant delays and the slow conduct** of the Israeli military law enforcement system in processing complaints have impaired the quality of investigations and have actually reduced the chances that soldiers suspected of offenses will be prosecuted.⁴¹ This violation is particularly grave in view of the fact that the Military Justice Act states that an indictment cannot be filed against a soldier suspected of committing an offense if more than 180 days have elapsed since the date of his release, or a year in cases of more grievous offenses.⁴² The Attorney General has the authority to order the filing of an indictment even in cases where the Military Justice Act no longer applies to an accused, but in practice this authority is reserved only for very rare cases.

PROCESSING COMPLAINTS: DURATION OF THE DECISION TO OPEN A CRIMINAL INVESTIGATION OR TO CLOSE THE COMPLAINT WITHOUT AN INVESTIGATION

The Turkel Commission stated that one of the conditions for holding an effective investigation under international law is the **principle of promptness**. In light of this principle, the commission recommended that a "few weeks" timeframe be set within which the MAG would decide whether to open an investigation following a complaint.⁴³ The Ciechanover Commission recommended that the MAGC make a decision on complaints within 14 weeks from the date of their receipt, and added that in exceptional cases this period could be extended by a maximum of 14 weeks with the approval of the Military Advocate General.⁴⁴

Between 2014 and 2017 Yesh Din's legal team filed 103 complaints with the Legal Service for Operational Matters on behalf of Palestinians harmed by soldiers' offenses.⁴⁵ 48% of the complaints dealt with violent incidents, including 11 filed following the killing of a Palestinian. About 40% of complaints dealt with cases of damage to property or suspected looting, and the rest were filed following incidents of soldiers standing idly by (while witnessing an offense against Palestinians) and other offenses.⁴⁶ To date, the MAGC has processed the complaints and decided whether or not to open an investigation in 85 of these complaints. In 77 cases, the information available to Yesh Din has allowed us to determine the length of time between the filing of the complaint and Yesh Din's receipt of the MAGC decision regarding the complaint. In 45 of these cases, a decision was made to open an investigation and in 32 cases a decision was made not to open an investigation.

41 Yesh Din, **Alleged Investigation**, 36-38, 61-67. B'Tselem, **The Occupation's Fig Leaf**, pp. 33-35.

42 **Military Justice Act**, 4715-1955, Section 6.

43 **Turkel Report**, Recommendation no. 6 - The Decision on Whether to Open an Investigation, p. 384-386. Principle of promptness, pp. 132-134.

44 **Ciechanover Report**, pp.24-26.

45 Yesh Din does not have accurate information regarding the total number of reports and complaints submitted to the Legal Service for Operational Matters during this period (see footnote 4 regarding the collection of data on complaints and reports in the years 2014 and 2015). In 2016, 302 complaints and reports arrived at the Legal Service for Operational Matters.

46 Unless stated otherwise, the data in this chapter is correct according to the information Yesh Din had as of December 24, 2017. Of the 101 complaints filed by Yesh Din, 11 dealt with the killing of Palestinians as a result of soldiers' activity (10.7%), 38 complaints dealt with cases of violence (including cases of injury from gunfire, beatings and threats) (36.9%), 41 complaints dealt with cases of suspected damage to property or looting (39.8%), 8 complaints dealt with cases in which soldiers stood idly by and did not act to stop Israeli civilians who were attempting to harm Palestinians (7.8%) and 5 complaints dealt with other cases (4.8%).

In these 77 cases, it took the MAGC an average of 177 days (more than 25 weeks) to inform Yesh Din of its decision regarding the complaint.⁴⁷ MAGC decisions were delayed for longer periods of time in cases that ended in a decision not to open an investigation than in cases where an investigation was opened.

In the 45 cases where an investigation was opened, Yesh Din received notice of this decision within an average of 77 days (11 weeks) from the time in which the complaint was filed, indicating that on average – the MAGC acted within the timeframe recommended by the Ciechanover Commission. Nevertheless, in 12 of these complaints the MAGC deviated from the timeframe recommended by the commission and in these cases the MAGC delivered its decision on average more than 17 weeks after the filing of the complaint.⁴⁸

On the other hand, **in the 32 cases in which the MAGC decided not to open a criminal investigation, Yesh Din received notice of this decision on average only 317 days (approximately 45 weeks, almost 11 months) after filing the complaint.⁴⁹** In half of these cases (16 complaints), the announcement of the decision was delivered to Yesh Din a year or more after the complaint was filed, and in these cases the average response time was 495 days (almost a year and a half).

This conduct clearly deviates from the recommendations of the Turkel Commission published in 2013 and the recommendations of the Ciechanover Commission published in 2015.⁵⁰ More importantly, this conduct seriously **impairs the ability of Palestinian crime victims to effectively challenge the MAGC's decision not to open an investigation following their complaints.** Even if they succeed in changing the MAGC's decision to not open an investigation, the time that has passed will significantly harm the quality of the investigation and the chances of prosecuting the offenders.

In July 2015, Yesh Din filed a complaint with the Legal Service for Operational Matters on behalf of Ursula Dar-Ayub, a 24-year-old resident of Nabi Saleh. In July 2014, Ayub passed through the Qalandiya checkpoint on her way home, while a demonstration took place there. As soon as she passed through the checkpoint, Ayub was hit by soldiers' gunfire on both legs. She was hospitalized, underwent surgery, and needed restorative treatment. **Only two years after the complaint was filed** in July 2017, did the MAGC inform Yesh Din that it had decided to close the file without opening a criminal investigation.

In August 2017, Yesh Din filed an appeal with the MAG demanding that it open a criminal investigation instead of satisfying the inquiry into the complaint only by relying on information received from military sources in the field. In the appeal it was argued that the internal inquiry – which was based on the soldiers' version of events – rendered

47 Cases in which a response was received from the MAGC indicating that an investigation had been opened immediately following the incident were calculated as cases in which an investigation had been opened within two days. Taking into consideration that the MAGC is required to inform the victims of the offense or their representatives when decisions are made in their case, the data presented here is based on the date on which Yesh Din received notice of the decision regarding the complaint. However, it is not possible to rule out the possibility that there were cases in which this notice was delayed and a decision regarding the complaint was made earlier.

48 In total, Yesh Din has handled 53 complaints that have ended in the decision to open an investigation since 2014. In 45 of these complaints Yesh Din can determine the length of time between the submission of the complaint and the MAGC's notification of the decision regarding the complaint. In ten cases dealing with the killing of Palestinians, the decision to open an investigation was made on average within five days; in 17 complaints concerning violent offenses, the decision to open an investigation was received on average within 79 days; in 15 complaints regarding damage to property or suspicion of looting, the decision to open an investigation was received by Yesh Din on average within 128 days. Of all complaints that resulted in the decision to open an investigation, 10 dealt with death, 19 dealt with violent offenses, 20 dealt with cases of damage to property or suspicion of looting, and 4 dealt with cases of soldiers standing idly by or other offenses.

49 Of the complaints that resulted in the decision not to open a criminal investigation, 12 dealt with violent offenses, 13 dealt with cases of damage to property or suspicion of looting, 1 dealt with an incident of death, and 6 dealt with soldiers standing idly by or other offenses. It should be noted that among the complaints regarding suspected lootings, 8 complaints resulted in the MAGC finding that the property was not stolen but rather seized by soldiers. When the army seizes property without providing documentation to the Palestinian owners, the owners have no way of knowing whether their property was stolen by soldiers in violation of the law or seized by the army. It should also be noted that in three of the cases in which a decision was made not to open a criminal investigation, the cause of the decision was the lack of cooperation of the Palestinian victims of the offense. The decision of Palestinian crime victims not to cooperate with law enforcement authorities, similar to the decision not to file a complaint, often is an expression of a concern that such cooperation will eventually harm the complainants or a lack of trust in these authorities. See also: **Alleged Investigation**, pp. 96-100.

50 As noted above, although some of the complaints examined here were submitted prior to the publication of the Ciechanover Report, the Commission's recommendations are used here to examine the MAGC's operation in these years in comparison to the standard that the State established for itself in cooperation with the MAGC.

the shooting of Ayub "a mystery," since it did not examine any theories that could explain how it happened. The appeal also stated that "the forces in the field claimed that they did not identify any injuries at all, so it is not clear how they can shed light on the incident." In January 2018, Yesh Din received a response from the MAG who decided to reject the appeal.⁵¹

The period during which the MAGC decides whether to open a criminal investigation into a complaint against soldiers who harmed Palestinians is only a preliminary stage in the process of handling such complaints. Even when this decision is made relatively quickly, this is a stage that necessarily affects the quality and effectiveness of the investigations, since "time is a major factor that affects the ability to collect and preserve evidence."⁵² Despite this, data collected by Yesh Din regarding complaints filed in the years 2014-2017 indicates that this preliminary stage actually goes on for many weeks: An average of 11 weeks from the filing of the complaint in cases in which it was decided to open an investigation and 45 weeks in cases in which it was decided not to open an investigation.

Average duration of decision to open an investigation or close a case without an investigation in Yesh Din complaints, 2014-2017

11 weeks for a decision to open an investigation



45 complaints led to the opening of an MPCID investigation

45 weeks for a decision to close a case without an investigation



32 complaints closed without an investigation

25 weeks for a decision regarding the complaint



77 complaints total

INVESTIGATING THE OFFENSES OF SOLDIERS WHO HARMED PALESTINIANS: DURATION OF THE TREATMENT OF INVESTIGATION FILES

In recognition of the fact that an effective investigation is conditional on a prompt process, the Turkel Commission recommended to set a maximum length of time for the investigation, as well as for the stage in which the MAGC decides whether to close the investigation file or take legal or disciplinary action.⁵³ The Ciechanover Commission recommended that the length of the investigation into a case involving allegations of violations of rules of international humanitarian law should be limited to nine months and added that this period could be extended up to a year under certain conditions. The Commission also recommended that the timeframe for a prosecutor's decision regarding the investigation file should be limited to nine months, with the exception of files classified as complex (e.g., deaths and serious injuries) in which the duration of the decision will be limited to one year.⁵⁴

51 Yesh Din file 3376/15. Letter from the Legal Service for Operational Matters to Yesh Din, **Your request regarding the shooting injury of Ursula Dar-Ayub, near Qalandiya checkpoint**, July 26, 2017. Letter from Yesh Din to the MAG, **Appeal against a decision not to open an investigation**, August 27, 2017.

52 **Turkel Report**, p. 132.

53 **Turkel Report**, Recommendation No. 10: Establishing the Investigation Timeframe, pp. 397-399.

54 In addition, the Ciechanover Committee referred to the possibility of additional extensions in a period not exceeding six months. **Ciechanover Report**, pp. 35-36.



Among the cases opened by Yesh Din since 2014 are 25 cases in which the MAGC decided to open an investigation, the investigation was completed, and it is possible to determine the duration between the notice of its opening and the announcement of the final decision.⁵⁵ In addition, Yesh Din is currently monitoring 17 cases in which a decision was made to open an investigation, but the investigation file is still open.

Below we present data on cases handled by Yesh Din, divided into complaints concerning fatalities and complaints involving violence and looting. The data indicates that **in the few investigations into the of killings of Palestinians - which were and still are being monitored by Yesh Din - the Israeli military law enforcement system has barely adhered to the timeframe set in the Ciechanover recommendations, which limited the duration of handling complex investigation files to one year and nine months (two years under certain conditions). Moreover, there are cases whose handling exceeds the recommended timeframe.**

The data also shows that in closed investigation files monitored by Yesh Din involving violent offenses (including beatings and cases of shooting injuries) and looting, the duration of the handling of the investigation files is shorter and lasts about one year on average. However, it is important to remember that in these cases it often takes the MAGC longer to decide whether to open an investigation, thus the overall duration of the handling of the case may reach years.

INVESTIGATION OF KILLING INCIDENTS

Of the files that led to the opening of an investigation, nine concern the killing of Palestinians by soldiers. In three cases, the MAGC had already informed Yesh Din that the investigation file had been closed without an indictment. In these cases, **the period between the announcement of the opening of an investigation and the MAGC's announcement of its decision to close the file stood at an average of 605 days** (86 weeks, which is about a year and eight months). **In two of these cases, the decision to close the investigation file was reported to Yesh Din only two years after its opening**, and in one case, the announcement came almost a year after the investigation was opened.

In six other cases, Yesh Din has still not received the MAGC's decision regarding the investigation file. In five of these cases, more than a year elapsed since the decision was made to open an investigation (as of the end of 2017).⁵⁶ **Of these, one case has been awaiting a decision for more than two years. In another case more than three years have elapsed since the complaint was filed and the opening of an investigation was announced**, nevertheless, the MAGC has still not made a decision on the case.

On March 10, 2014, Saji Grab'a, 20, was shot and killed in the area of the village of Beitin near Road 60. According to the MAGC's announcement following the incident, an MPCID investigation was immediately opened. On March 1, 2015 (about a year and three months after the incident), Yesh Din received a notice stating that the investigation file was transferred to the MAGC for examination. Two and a half years have passed since then, but the investigation file is still on the desk of the MAGC awaiting its decision. **Since the incident, 1,385 days have passed, more than three and a half years.**⁵⁷

⁵⁵ Of the files handled by Yesh Din since 2014, one case ended with the MAGC's decision to prosecute defendants. In the rest of the cases, the investigation file was closed without an indictment being filed. In appropriate cases, Yesh Din filed an appeal against the decision.

⁵⁶ The data is correct as of December 24, 2017. In another case of a killing, the MAGC decided not to open an investigation about a year after the complaint was filed. More than two years after the incident, following Yesh Din's appeal to the Attorney General and a petition filed with the High Court of Justice, the Chief Military Prosecutor informed Yesh Din of an investigation into the case. For further details, see footnote 32.

⁵⁷ Yesh Din file 3074/14.

INVESTIGATION OF INCIDENTS OF VIOLENCE AND LOOTING

In 18 complaints related to violent offenses (including beating incidents as well as incidents of shooting that resulted in injury) or suspicion of looting, Yesh Din received notice of the MAGC's decision to close the investigation file without an indictment. In these cases, an average of more than 11 months (339 days) passed between the date of the announcement of the opening of the investigation and the notice of its closing without filing an indictment. In addition, in one case in which an indictment was filed concerning a violent offense, only 18 days passed between the date of the incident and the date of filing the indictment.

Yesh Din is currently monitoring 11 investigation files concerning violent incidents or suspected lootings, in which an investigation was opened but a final decision has not yet been made. In three of these cases, the investigation was opened over a year ago. On average, these three investigation files have been open for 468 days (about a year and four months). Moreover, in these cases, the decision to open an investigation was made an average of 222 days (approximately 32 weeks) after filing the complaint, and hence, an average of 690 days (about a year and 11 months) passed since the filing of the complaints and the end of 2017. In another investigation file concerning suspected looting, Yesh Din has not received notification of when the investigation was opened. However, the complaint was filed in the summer of 2014, more than three years ago.

7 | CONCLUSION

In 2016, the Military Advocate General Corps received 302 complaints of soldiers' offenses against Palestinians in the West Bank and the Gaza Strip. **In 73% of the complaints, the MAGC held a preliminary factual inquiry into the circumstances of the incident** before deciding whether to open a criminal investigation into the incident or to close the complaint file without an investigation. Consequently, the treatment of most of the complaints that reached the MAGC in 2016 was delayed due to waiting for a decision at the preliminary stage of processing the complaint. As of the date on which Yesh Din received information, 37% of the cases in which a preliminary inquiry was scheduled were still awaiting a decision (82 cases). **For complaints submitted by Yesh Din between the years 2014 and 2017, the average length of time between filing the complaint and receiving notice of the MAGC decision of whether to open an investigation was more than 25 weeks.**

79% of the complaints filed to the MAGC in 2016 regarding soldiers' offenses against Palestinians and their property, for which a decision was reached, were closed without opening a criminal investigation (174 out of 220 files). Only 46 complaints (21% of the complaints for which a decision was reached) led to the opening of an investigation. In investigation files opened following complaints filed by Yesh Din since 2014, the average length of time for an MPCID investigation and a MAGC decision was approximately 361 days.

As far as Yesh Din is aware, **as of March 2017 indictments were filed in 5 of the investigation files opened in 2016 - comprising 2.3% of the complaints for which a decision was reached, and 6.4% of the investigations opened this year. Between 2011 and 2016, the MPCID opened 948 investigation files on soldiers' offenses against Palestinians. Only 3.4% of the investigations resulted in indictments.** The persistent low indictment rate, together with the analysis and criticism from Yesh Din and other human rights organizations, attests to a **systemic trend of non-exhaustive investigations as well as a systemic tendency to grant immunity to offenders.**

In recent years, following the recommendations of the Turkel and Ciechanover Commissions, the Israeli military law enforcement system has made some changes to the mechanisms for handling complaints regarding soldiers' offenses against Palestinians or their property. The data presented in this document indicates that these alterations did not result in a fundamental change in the manner in which these offenses are handled, nor do they indicate a real shift in the system's approach to soldiers' harming of Palestinians or their property. **Yesh Din's conclusion is that today, as in the past, the Israeli military law enforcement system does not fulfill its obligation to protect Palestinians from offenses committed by Israeli soldiers and commanders.**

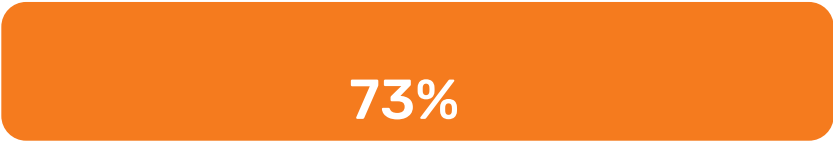


302 complaints concerning harm to Palestinians and their property in 2016

MAGC decision regarding the complaint [percentage out of the total complaints]



53 complaints closed without further inquiry

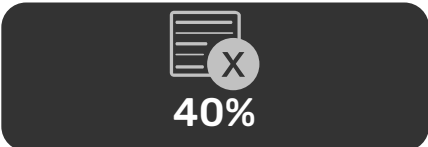


220 complaints led to a preliminary factual inquiry

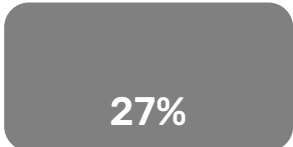


29 MPCID investigations opened immediately

Outcomes of the preliminary inquiry [percentage out of the total complaints]



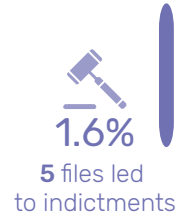
121 complaints closed without an MPCID investigation



82 complaints are still being processed



17 investigations opened



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