

DATA SHEET, MARCH 2022

# LAW ENFORCEMENT ON SOLDIERS SUSPECTED OF HARMING PALESTINIANS AND THEIR PROPERTY

## YESH DIN FIGURES FOR 2019–2020

- **The odds that a Palestinian would see his or her complaint result in the prosecution of the soldier who harmed them: 2%.**
- **72%** of all complaints that were filed in 2019–2020 following suspected offenses committed by soldiers against Palestinians in which a decision was reached **were closed with no criminal investigation.**
- In the last two years, **the average number of criminal investigations opened decreased by 26%** compared to the average number of investigations opened in the previous two years (2017–2018). The decreasing trend in the number of criminal investigations opened annually on suspected offenses by Israeli soldiers' against Palestinians is ongoing. **Yesh Din estimates that the low number of criminal investigations opened is result of a deliberate policy to raise the threshold required for opening criminal investigations.**
- In 2019–2020, there was **a 36.6% decrease in the number of complaints reported by the military** compared to previous years (2016–2018). Yesh Din is aware that many complaints went unreported until an inquiry was made with the Ministry of Justice.
- As of June 2021, **only five cases (7.2%) out of the total investigations opened in 2019–2020 (69 cases) resulted in indictments being filed.**<sup>1</sup>
- **Cases documented by video that resulted in indictments:** 3 of the 5 investigations opened in 2019–2020 that resulted in indictments involve incidents that were documented with video/stills. In addition, two investigation files from previous years that led to indictments involved incidents documented with footage.
- As part of the military's efforts to implement the recommendations of the Turkel Commission, **2019–2020 data indicates a continuous trend of improving the average time taken to reach a decision on whether to launch an investigation; however, this improvement comes at the price of a significant reduction in the number of investigations opened by the military.**

The data indicates that the military law enforcement system continues to avoid investigating and prosecuting soldiers who harm Palestinians, thereby shirking its duty to prevent harm to Palestinians and their property and to prosecute Israeli commanders and soldiers who violate this duty. Yesh Din's analysis has found that despite the changes introduced by the military law enforcement system in recent years in efforts to implement the Turkel-Ciechanover recommendations, the response to criminal acts by soldiers against Palestinians has not materially changed.

<sup>1</sup> Another indictment was filed following an incident in which an off-duty soldier robbed Palestinians. The incident was not included in the data presented in this document, as it did not occur as part of operational activity and was not treated as such by the military. The military itself distinguishes between suspected criminal offenses committed as part of operational activity and those committed outside of it. Due to this distinction, this incident was not investigated by the National Unit for Operational Investigations (NUOI) and was not included in the data provided to Yesh Din by the military.

## DATA SUMMARY - OUTCOMES OF COMPLAINTS FILED IN 2019 AND 2020:

**273**

**complaints concerning soldiers harming Palestinians or their Property**

### MAGC's decision on complaints



## A | INTRODUCTION

Every year, Yesh Din publishes updated data regarding law enforcement on Israeli soldiers suspected of harming Palestinians and their property in the West Bank and the Gaza Strip... This information is based on data provided by the military to Yesh Din following freedom of information requests made by the organization under the Israeli Freedom of Information Law, as well as multi-year monitoring of military law enforcement proceedings in specific cases.

The military law enforcement system concerning soldiers is governed both by the provisions of Israeli law applicable to the army and by the obligations imposed upon the Israeli army as an occupying power under international law. The purpose of monitoring the military law enforcement system in regards to offenses committed by soldiers against Palestinians and their property is to determine to what extent Israel is fulfilling its obligation under both Israeli and international law to enforce the law on soldiers who harmed the protected population living under its control (beyond the violation of their rights that is inherent to the very existence of the occupation regime), and thus protect them from further harm.

In early 2017, the National Unit for Operational Investigations (NUOI) was established in the Criminal Investigations Division (CID), a specialized unit responsible for investigating incidents defined as operational including offenses committed by soldiers against Palestinians and their property. The Unit conducts all investigations concerning alleged harm by soldiers against Palestinians.<sup>2</sup>

Although the military law enforcement system has introduced several changes, the data presented below indicates that the changes are merely cosmetic and are **primarily designed to enable the military law enforcement system to meet measurable objectives that create the appearance of a functioning law enforcement system. These changes enable the military law enforcement system to continue to repel the allegations directed at it, without bringing offending soldiers to justice for the criminal acts they commit. The avoidance of the military law enforcement system from prosecuting soldiers who harm Palestinians is the result of deference to the public and political atmosphere in Israel, which largely opposes treating acts of violence committed against Palestinians in the OPT as criminal offenses.**

The State of Israel's failure to fulfil its obligation to enforce the law against soldiers who committed offenses against Palestinians has paved the way for the intervention of international mechanisms and tribunals, led by the International Criminal Court (ICC). In February 2021, a panel of judges of the International Criminal Court ruled, at the request of Chief Prosecutor, Ms. Fatou Bensouda, that the ICC has jurisdiction to investigate and prosecute crimes committed in the West Bank (including East Jerusalem) and the Gaza Strip.<sup>3</sup> In March 2021, Chief Prosecutor Bensouda announced the **opening of an official investigation into suspected war crimes dating back to June 2014, in relation to several incidents that occurred during the 2014 Gaza War ("Operation Protective Edge"), regarding the use of firearms against protesters in the "Great March of Return" protests that took place near the Gaza border, and the establishment and expansion of Israeli settlements in the West Bank.**<sup>4</sup>

By virtue of serving as a complementary judicial entity to the state legal system, the ICC derives its authority to open an investigation and decide to prosecute for war crimes from the absence of a parallel and functioning procedure at the state level. According to this rule, known as the Complementarity Principle,<sup>5</sup> the ICC can investigate such suspicions independently when the state in which the alleged crimes were committed is unable or unwilling to uphold investigation and prosecution procedures, even if it purports to do so. The State of Israel refuses to cooperate with the ICC investigation. In an official letter sent to the ICC Prosecutor, Israel announced that it rejects all claims against it on suspicion of war crimes and that the ICC has no authority to open an investigation against Israel. According to the

<sup>2</sup> Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/3/2021.

<sup>3</sup> ICC-01/18-143. [Decision on the 'Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine](#). 2/5/2021.

<sup>4</sup> [Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine](#). 3/3/2021.

<sup>5</sup> The principle of complementarity is a fundamental rule of the Rome Statute governing the jurisdiction of the ICC to hear and investigate independently. See: [Rome Statute of the International Criminal Court](#), Article 17.

State of Israel, the ICC has no jurisdiction to investigate it since the Israeli law enforcement system conducts its own investigations into allegations against Israeli security forces.<sup>6</sup> Yet the data presented in this data sheet indicates that due to the lack of will, the State of Israel does not uphold proper procedures of investigation and prosecution of offending soldiers.

Israel is making great efforts to convince the international community and local community that it is fulfilling its obligation to enforce the law on soldiers who committed offenses against Palestinians, who are defined as a protected population living under the control of the State of Israel. However, as will be demonstrated here, **this is merely a façade. Despite the prevailing position in Israel, in practice, Israeli soldiers enjoy near total immunity from prosecution in incidents in which they harm Palestinians.** In recent years, Yesh Din and other organizations published reports that severely criticized the military law enforcement system for the way it handles offenses committed by soldiers against Palestinian and their property.<sup>7</sup> In Yesh Din's 2021 report to the United Nations, it is alleged that "the Israeli military system seeks to avoid investigating and prosecuting soldiers who harm Palestinians, thereby failing to provide Palestinians with protection from offenses committed by Israeli commanders and soldiers."<sup>8</sup>

The changes implemented by the military have failed to resolve the difficulties Palestinian victims of soldier offenses face in their pursuit of justice. The changes have not improved the accountability of Israeli soldiers and commanders or led to substantive change in how the military law enforcement system regards harm to Palestinians by soldiers. The data presented here shows that **the military law enforcement system is still doing everything in its power to divert offenses against Palestinians away from the criminal track, and, in so doing, betrays its own role and fails to meet its obligation to protect Palestinians from offenses by Israeli soldiers and commanders.**

## B | 2019–2020 FIGURES: COMPLAINTS REGARDING ALLEGED OFFENSES COMMITTED BY SOLDIERS AGAINST PALESTINIANS

In 2019–2020, the Military Advocate for Operational Affairs (MAOA; the department within the Military Advocate General 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 a total of **273 complaints regarding suspected offenses by soldiers against Palestinians or their property.** According to the military's replies to inquiries made by Yesh Din under the Freedom of Information Law regarding law enforcement data within the military, in 2019, the MAOA received 77 complaints regarding offenses by soldiers against Palestinians and their property. In 2020, 196 complaints were received by the MAOA regarding offenses by soldiers against Palestinians and their property.<sup>9</sup> These complaints<sup>10</sup> include cases that were referred to the MAGC by various parties: 28 complaints were forwarded from the Israel Police, 36 complaints were referred by human rights organizations,<sup>11</sup> 24 complaints originated from operational reports of military units, 43 were submitted by lawyers or individuals, 102 through The Inspector for Complaints Against the Israel Security Agency

6 See the position of the Ministry of Foreign Affairs: [PM Netanyahu holds discussions on Israeli policy regarding the statement of the international court in The Hague](#), 8/4/2021.

7 B'tselem, [The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism](#) (May 2016). The Public Committee Against Torture in Israel **Systematic Failures in Investigating Violence Against Detainees** (June 2014).

8 Yesh Din, [Report to the UN Special Rapporteur - The impact of Israeli settlements on the human rights of Palestinians](#) (June 2021), p. 10.

9 Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/3/2021. Section 2. Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/3/2021. Section 2.

10 The MAGC classifies all complaints and updates it receives about suspicions of soldiers' offenses against Palestinians as "reports." This term illustrates, to a large degree, how detached the military law enforcement system is from Palestinian victims and how it handles soldier offenses against them: The information almost always comes through a third-party report or a mediator and only rarely through an active, direct demand from the victims themselves to investigate what was done to them and see justice done. In addition, the word "report" expresses separation from criminality - while the Israel Police (and any other police force in the world) receive complaints that must be investigated, reports brought to the attention of the MAGC do not necessarily warrant an investigation. In this document we will use the term "complaints" rather than "reports" as used by the MAGC

11 These complaints were filed, inter alia, via Yesh Din: in 2019, 21 complaints made by Palestinians against the Israeli security forces were filed by Yesh Din, and in 2020, 20 complaints were filed by Yesh Din. The reporting gap is probably related to the complaint having previously come from a different source.

Interrogators (ICAISA) in the Ministry of Justice,<sup>12</sup> 22 complaints were prompted by media reports, and a further 18 complaints came from sources the military defines as “other”, referring to information received through military court hearings in the OPT, information given by Palestinian suspects to the police, soldiers’ statements to the MPCID and reports from the MAGC unit in the West Bank.<sup>13</sup>

Naturally, most of the complaints received by the MAGC involved incidents in the West Bank (250 complaints), where the military interacts with the Palestinian civilian population on a daily basis, and a minority of complaints (23) involved incidents that occurred in the Gaza Strip. Nearly 75% of the complaints from the Gaza Strip (17 out of 23) involved firearm offenses by soldiers.

It is important to note that **the number of complaints received by the MAGC does not reflect the number of incidents in which soldiers acted in a manner that raises suspicion of a criminal offense against Palestinians**; it merely represents the number of cases in which the crime-victims or other parties reported such harm. Every law enforcement system contains discrepancies between the total number of complaints and the total number of offenses actually committed, however, the characteristics of the Israeli military’s law enforcement system vis-à-vis soldiers who harm Palestinians and the circumstances in which this system operates result in a more prominent discrepancy.

**Palestinians harmed by soldiers are forced to contend with an inaccessible system that makes it difficult for them to file complaints.** The MPCID has no bases in the OPT, except for one base in Anatot, which is part of a large military base where Palestinians cannot file complaints. Thus, when a Palestinian is the victim of an offense committed by a soldier, they are unable to go to the MPCID station in person and file a complaint there. In theory, crime victims can file complaints with one of the District Coordination and Liaison Offices (DCOs) operating in the West Bank,<sup>14</sup> however, Yesh Din’s experience shows that these complaints are seldom transferred to the investigating authorities, or only transferred after a long delay.

Moreover, **in many cases, Palestinians harmed by soldiers do not wish to file complaints with the army-which serves as the body that has been governing every aspect of their lives within the framework of a military occupation regime since 1967. The military is naturally perceived as an oppressive body that is not designed to serve the Palestinian people, much less to help them exercise their rights. This, in itself, is enough to generate inherent distrust and serve as a significant deterrent for crime victims from filing their complaints with that very same body. In addition, many Palestinians fear that filing a complaint will result in harm to them or their family members, and some of them are opposed to cooperating with Israeli authorities as a matter of principle.**

<sup>12</sup> For information about the unit, its functions and powers, see [ICAISA page on the Ministry of Justice website](#). See also p. 8 herein: Gaps in the reporting of Palestinian complaints by the IDF vs. the Ministry of Justice.

<sup>13</sup> The data is broken down by year: In 2019, 10 complaints originated from the Israeli police, 15 were referred by human rights organizations, 12 came from operational reports of military units, 3 through ICAISA, 18 were filed by private individuals or lawyers, 11 originated from media publications, and 8 more complaints came from other sources. In 2020, 18 complaints originated from the Israeli police, 21 were referred by human rights organizations, 12 came from operational reports of military units, 25 complaints were filed by private individuals or lawyers, 99 came from ICAISA, 11 originated from media publications, and 10 more complaints came from other sources.

<sup>14</sup> In a meeting with the commander of the NOIU on May 29, 2017, Yesh Din staff members were told that Palestinian victims of soldier offenses have access to three options for filing complaints: using mediating organizations, approaching the DCOs or calling the NOIU hotline.

## Yesh Din Case 4432/19

In early May 2019, Yesh Din representatives spoke with M.H., a 19-year-old male from Nabi Saleh. Like many people from his village and despite his young age, M.H. has been arrested several times, interrogated on suspicion of throwing stones and imprisoned by the Israeli authorities. In a conversation with him, he told a Yesh Din field researcher that in late April 2019, he was on his way home with his friends when a group of soldiers stopped their vehicle at the Halamish junction. After a short exchange, one of the soldiers hit M.H.'s face with the butt of his rifle, allegedly for no apparent reason. Following the attack, the soldiers did not detain M.H. and his friends but instead returned to their military guard post. M.H. was rushed to a hospital in an ambulance with pain and severe bleeding in his eye. In his testimony, he recounted that shortly after returning from the hospital, soldiers arrived at his house on the pretext of conducting a search. The attacking soldier, who was among those soldiers invading his home, identified M.H. and threatened that he would strike him again, this time in his other eye. M.H. sought to file a complaint against this soldier for the attack and threats. However, after careful consideration and concern that this would affect the legal proceedings in which he was already embroiled, he decided not to file the complaint. His friends who were in the car with him and witnessed the attack were also afraid to testify, for fear that it would lead to personal abuse and retaliation by Israeli authorities.

**The data in this document does not include complaints relating to the shooting of and harm to Palestinians, including numerous killings, that occurred during the “Great March of Return” protests that were held every Friday in the Gaza Strip near the Israeli border barrier between March 2018 and December 2019.**<sup>15</sup>

These complaints are examined separately by the military's “General Staff Mechanism for Fact Finding Assessments,” and are not part of the routine handling of incidents involving harm to Palestinians by the military's law enforcement system.<sup>16</sup> Yesh Din has identified failures in the way the military law enforcement system is handling incidents from the Great March of Return protests. At the time of writing of this report, three years after the Great March of Return protests, the handling of 140 of the 237 incidents turned over to the General Staff Inquiry Mechanism has not been completed, with most of them (91 deaths), still being reviewed by the General Staff Inquiry Mechanism.<sup>17</sup>

**In addition,** as of October 2019, firearm offenses committed by police officers operating in the West Bank who are in fact subordinate to the military commander, were not handled by the MAGC, but rather investigated separately by the Department of Internal Police Investigations.<sup>18</sup> Thus, **the data presented here does not include all complaints relating to offenses by Israeli security forces against Palestinians in these years, but to soldier offenses alone.**

15 See: Yesh Din, [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](#) (November 2020).

16 General Staff Mechanism for Fact-Finding Assessments (FFA Mechanism), established during the military operation in the Gaza Strip in the summer of 2014 (“Operation Protective Edge”) for the purpose of performing preliminary inquiries into exceptional incidents that occurred during the fighting. It has since served as a standing mechanism for inquiries into alleged breaches of the laws of war. These preliminary inquiries are not criminal investigations, and their findings are forwarded to the Military Advocate General (the MAG), who has exclusive authority to decide whether or not to criminally investigate the incident. See: *ibid*.

17 As of April 2021, of the 237 death incidents brought to the inspection of the Chief of Staff inquiry apparatus, 140 were still under investigation or examination, 95 were closed without investigation and one indictment was filed following the killing of the boy Othman Rami Jawad Hillis. Yesh Din, [Killing Time - Updated figures](#) (April 2021).

18 The Department of Internal Police Investigations **response to B’Tselem inquiry under the Freedom of Information Law**, 1/30/2022.

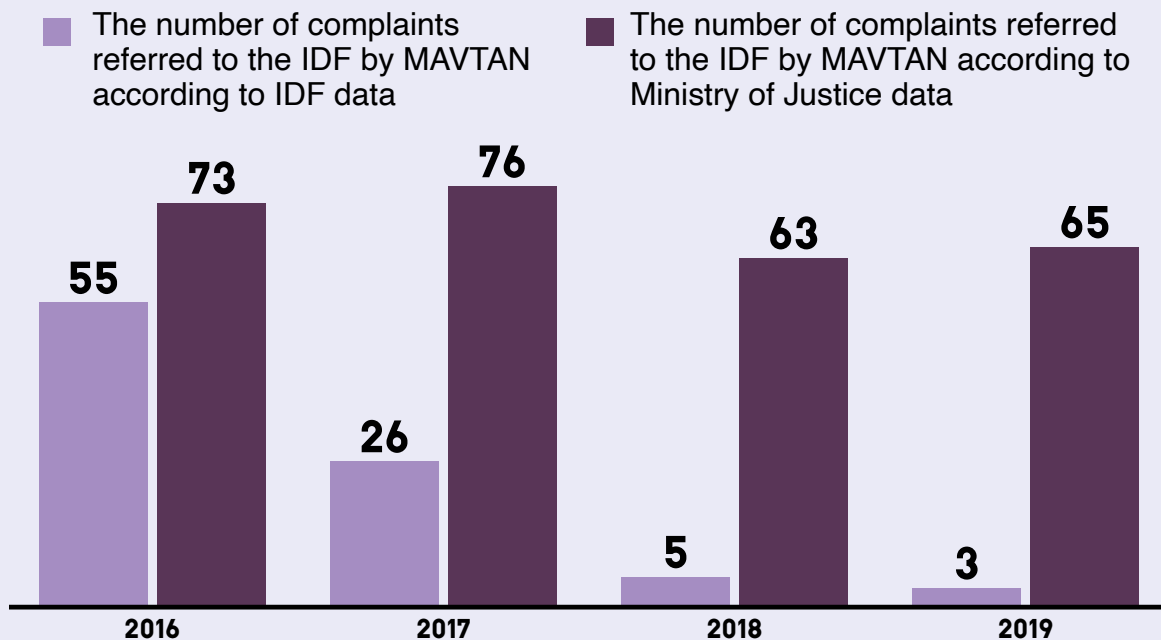


## Gaps in the reporting of Palestinians' complaints by the military vs. the Ministry of Justice

In recent years, Yesh Din has identified a significant decrease in the number of complaints reported by the military in response to inquiries made under the Freedom of Information Law. In comparison, between 2016–2018, the average number of complaints reported by the military was 243 complaints per year, while in 2019, the military reported only 77 complaints - a decrease of nearly 70% in the average number of complaints.

Due to suspicion that the military did not provide information on all complaints, Yesh Din directly contacted the Ministry of Justice, responsible for ICAISAI unit, which is one of the bodies that relays complaints to the MAGC, in order to determine the number of complaints of suspected offenses committed by soldiers against Palestinians transferred from ICAISAI (acting as a unit within the Ministry of Justice) to the military. In response to Yesh Din's inquiry, a significant discrepancy was revealed between the number of complaints that the military reported receiving from the Ministry of Justice and the number of complaints that the Ministry of Justice reported to the military from 2016 to 2019.

### IDF data vs. Ministry of Justice data



This discrepancy raises the concern that some complaints transferred to the military by ICAISAI were never handled. Alternatively, it is possible that despite the response given to Yesh Din, no complaints of suspected acts of violence by soldiers against Palestinians were transferred to the military by ICAISAI.

In a response from the Ministry of Justice from July 2020, it was stated that “there was a discrepancy between the reports transferred to the MAGC by ICAISAI and the reports received by them.” In a response from the military dated 03 May 2021, regarding offenses committed by soldiers against Palestinians and their property in 2020, the number of complaints reported to have been received from ICAISAI spiked to 99. These are most likely complaints from previous years which were not previously transferred and were only updated after Yesh Din addressed the Ministry of Justice on the matter.

19 The Ministry of Justice - Commissioner of Public Information to Yesh Din, in response to an inquiry made under the Freedom of Information Law, 8/22/2020.

## types of offenses addressed by the complaints

**Of the 273 complaints filed with the MAGC between 2019–2020, 70 complaints involved incidents of shootings, of which 54% (38 incidents) led to the killing of Palestinians. An additional 180 complaints involved acts of violence by soldiers, 57 complaints involved suspected property offenses (looting or damage to property) and 22 complaints involved other incidents.<sup>20</sup>**

Regarding the incidents counted by the military in the “additional complaints” category (other incidents), Yesh Din was previously informed that this category includes “incidents that do not fall into the other categories, for example, a soldier expressed themselves in a manner that does not conform with military values or demonstrated morally flawed behavior.”<sup>21</sup> The Military Justice Law (hereinafter: **MJL**) includes three fairly general provisions that allow a soldier to be prosecuted for disgraceful conduct (section 129 of the MJL) or unbecoming conduct (section 130 of the MJL) for soldiers at the rank of Samal (Sergeant) or higher, as well as for excess of authority (section 68 of the MJL). In many cases in which soldiers were prosecuted for offenses against Palestinians, the military prosecutors used the clauses of unbecoming conduct or excess of authority, sometimes as a supplement to other offenses for which soldiers were charged, and sometimes as the sole offense in the indictment. This is often done in cases in which a plea bargain is signed with defendants, and where the severity of the charges against them is reduced.<sup>22</sup>

## C | INVESTIGATIONS

### 1. INVESTIGATION OF OFFENSES BY SOLDIERS AGAINST PALESTINIANS

#### The fate of the 273 complaints transferred to the Attorney General in 2019–2020

Unlike complaints filed with the police following suspected offenses committed by civilians, complaints referred to the MAGC regarding suspected offenses by soldiers do not necessarily lead to the opening of an investigation. According to military law enforcement investigation policy, a criminal investigation is immediately opened only in cases where a suspected offense is committed outside the framework of operational activity, or when the suspected offense cannot be justified within the framework of operational activity, such as suspected looting or abuse of detainees. Following a petition filed by B'Tselem and the Association for Civil Rights in Israel with the High Court of Justice,<sup>23</sup> in 2011, the military introduced a rule whereby any death of a Palestinian as a result of the activities of soldiers in the West Bank requires the

20 The overall number of complaints thus divided exceeds 273, as some complaints relate to more than one type of offense. The following is a complete breakdown of the data provided to Yesh Din: In 2019, 36 reports were issued on suspicion of firearm offenses, of which 20 occurred in the West Bank and 16 in the Gaza Strip; 35 reports dealt with suspicion of violent offenses, 32 in the West Bank and 3 in the Gaza Strip; 4 reports dealt with suspected looting, all in the West Bank; 10 reports dealt with suspected criminal damage, 5 in the Gaza Strip and 5 in the West Bank; 21 reports concerned other offenses, 3 in the West Bank and 18 in the Gaza Strip. In 2020, 34 reports were relayed on suspicion of firearm offenses, of which 33 occurred in the West Bank and 1 in the Gaza Strip; 145 reports dealt with suspicion of violent crimes, of which 143 occurred in the West Bank and 3 in the Gaza Strip; 19 reports dealt with suspected looting, all in the West Bank; 24 reports dealt with suspected criminal damage, of which 22 occurred in the West Bank; one complaint concerned other offenses, which took place the West Bank.

21 Military Spokesperson to Yesh Din, **Response to a request made under the Freedom of Information Law**, 2/10/2019.

22 Military prosecution directives define the offense of unbecoming conduct as a “loose fabric” that is “widely open for interpretation” and can be “infused with meaning”. These directives set out the criteria for charging soldiers with this offense and list the cases in which soldiers charged with other offenses should be charged with unbecoming conduct as an ancillary offense. With regards to indictments on misconduct charges alone, the military prosecution vaguely notes that the correlation between the severity of the offense of which the soldier is suspected and the correct track for addressing it - disciplinary versus criminal - must be considered. The statement was made in light of the High Court ruling in HCJ 7195/08 (**Abu Rahma et al. v. Military Advocate General et al.**), according to which the decision to charge a soldier who had shot an individual who was blindfolded and in custody with unbecoming conduct only was extremely unreasonable. Yesh Din was among the human rights organizations who partnered to file the petition. See [Directive No. 2.19 of the Chief Military Prosecution, on the MAGC website](#) (Hebrew). With respect to excess of authority, see Section E herein on **Indictments filed in 2019–2020 relating to investigations conducted during this period**. In two different shooting incidents that led to the killing of Palestinians in Gaza, indictments were filed against soldiers charged with excess of authority to the point of endangering life or health (section 72 of the MJL), a minor offense considering the serious circumstances of these cases.

23 HCJ 9594/03, **B'Tselem - The Israeli Information Center for Human Rights in the OPT et al. vs. the Chief Military Advocate General**. Judgment dated 8/21/2011. To read the petition and learn more about the change in the investigation policy that followed, visit the [Civil Rights Association website](#) (Hebrew).



MAGC to order the immediate opening of a criminal investigation (without a preliminary inquiry), except in cases where the killing took place during activities of a “real combat nature.”<sup>24</sup>

In all 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 an investigation.

### Investigations opened immediately in only 8% of cases

**In 2019–2020, the MAGC ordered the immediate opening of a criminal investigation in 22 of the complaints it received (8% of 273 complaints in this period).** In 221 cases (81% of all complaints in these years), the MAGC ordered a preliminary factual inquiry before deciding whether to order a criminal investigation. 23 of these were incidents in which Palestinians were killed by soldiers and therefore the MAGC was required to order the opening of an immediate investigation without preliminary inquiry (during this period, 38 complaints relating to the killing of Palestinians were received). In 30 cases (11% of all complaints received) the MAGC ordered the closure of the complaint file without conducting a preliminary inquiry and without opening a criminal investigation.<sup>25</sup>

Many cases that were sent for preliminary factual inquiry before making a decision on whether to open a criminal investigation are still in the process of a lengthy factual assessment. As far as Yesh Din is aware, a total of 73 incidents, out of 273 complaints filed in 2019–2020, are still undergoing factual inquiry and no decision has been made on whether or not an investigation will be opened. According to the military’s responses from April 2020, no decision has been made regarding 23 of the 63 cases that were sent for preliminary factual inquiry during 2019, and from the military’s response from May 2021, 50 of the 158 cases sent for preliminary factual inquiry were still being handled and no decision has been made.

### MAGC decision on 273 complaints made by Palestinians that were filed in 2019-2020



### 72% of the complaints in which a decision was made were closed without criminal investigation

In total, **of the 273 complaints involving offenses by soldiers against Palestinians and their property that were transferred to the MAGC in 2019–2020 and subsequently decided on, criminal investigations were opened in only 56 cases (28%):**<sup>26</sup>

<sup>24</sup> 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](#) (Hebrew) (February 2013) [hereinafter: **Turkel Report B**], pp. 272–275; 318–319.

<sup>25</sup> In 29 cases, the case was closed immediately. Another complaint received in 2020 was referred to be treated by the “command level”. This complaint was not subject to a criminal investigation and therefore, throughout this document, this complaint is included in data on cases that were closed without a criminal investigation. Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#), 06/22/2021.

<sup>26</sup> Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/13/2020, paragraph 3; military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/3/2021, paragraph 3.

In addition to the 22 complaints (all of which concern incidents that took place in the West Bank) that led to the immediate opening of investigations, another **34** investigations were opened following factual inquiries ordered by the MAGC. In **114** cases, the factual inquiry led to a decision to close the case without opening an investigation.<sup>27</sup>

As of May 2021, **144 of the 200 (72%) complaints that were transferred to the military in 2019–2020 and in which decisions were made were closed with no criminal investigation.**



## 2. PROPORTION OF MPCID INVESTIGATIONS IN 2019–2020

### A low number of investigations

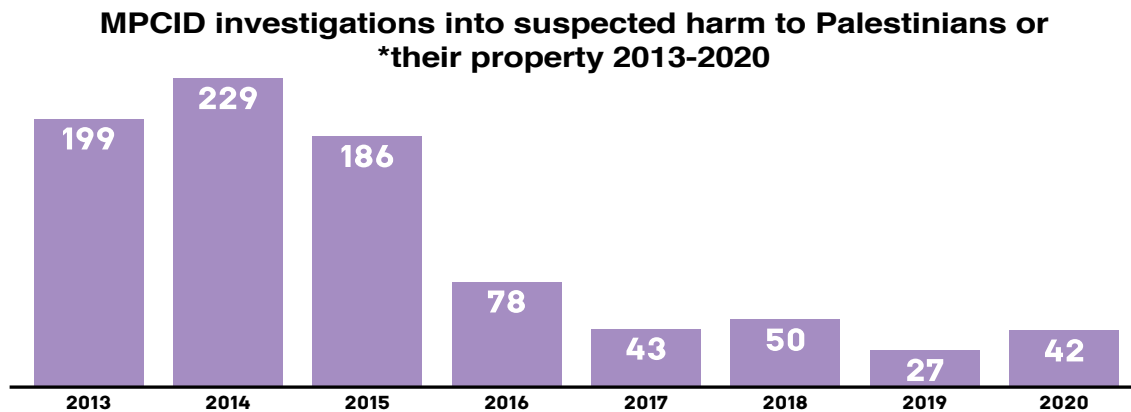
A total of **56 investigations were opened following complaints filed in 2019–2020** (as stated, 73 cases are still being reviewed and a decision whether to investigate them not yet reached). The 2019–2020 figures reflect a decrease of 26% in the number of criminal investigations that were opened on suspicion of offenses by Israeli soldiers against Palestinians compared to the number of investigations that were opened in the preceding two years; in 2019–2020, a total of 69 investigations were opened, including investigations opened following complaints filed in previous years, compared to 93 investigations that were opened in 2017–2018, including those opened following complaints from previous years.

In 2019, the MPCID opened investigations in only 27 incidents of suspected offenses against Palestinians (including 5 investigations that were opened following complaints filed in previous years). One investigation concerns an incident that occurred in the Gaza Strip, and the rest concern incidents in the West Bank. In 2020, the MPCID opened investigations in 42 incidents of suspected offenses, all of which concern incidents that took place in the West Bank (including 8 investigations that were opened following complaints filed in previous years).

**The low percentage of criminal investigations opened into suspected offenses against Palestinians by Israeli soldiers in the last two years follows a consistent decline in the number of investigations opened when compared to previous years: in the five years prior to 2019, 117 investigations were opened annually on average.<sup>28</sup>** In comparison, between 2005–2015, an average of 203 criminal investigations were opened annually on suspicion of offenses by soldiers against Palestinians or their property.

<sup>27</sup> Two cases out of a total of 114 cases that were closed without investigation were referred to be handled “at the command level”. Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 4/7/2020; military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/3/2021.

<sup>28</sup> At the end of each of these years, Yesh Din published a detailed data sheet on the number of complaints, investigations and indictments against soldiers suspected of harming Palestinians that year. For detailed information, data and Yesh Din’s analysis regarding these years, see: Yesh Din, law enforcement on Israeli soldiers suspected of harming Palestinians and their property ([December 2015](#), [January 2017](#), [March 2018](#), [November 2019](#)).



\* Including investigations opened following complaints filed in previous years

It is difficult to determine whether the decrease in the number of criminal investigations is due in part to a decrease in the number of complaints brought before military law enforcement authorities during this period. The difficulty stems from a change made by the military law enforcement system in the manner of filing and counting complaints since 2014: until 2014, complaints were lodged directly with the MPCID, and since 2014 the military has asked human rights organizations, including Yesh Din, to transfer reports relating to soldier offenses against Palestinians directly to the MAGC rather than to the MPCID.<sup>29</sup> As a result of this change, the data regarding the number of complaints filed was inconsistent in the first years after the change, with duplicate and sometimes ambiguous data being provided on the number of complaints made to the MAGC and MPCID. In addition, as stated, information concerning complaints that were transferred (or not) from ICAISAI was omitted from the report on the number of complaints received by the military, and their existence was disclosed only after an inquiry was made to the Ministry of Justice.<sup>30</sup> This raises doubts about the military's ability to track and report the actual number of complaints filed.

Yesh Din does not have sufficient information to determine the reason for the steep decline in investigations conducted, but a review of recent years compared to previous years raises the possibility that it may be the result of a policy change - i.e., a deliberate raising of the bar for opening investigations, or alternatively, diminishing resources that led to a 76.6% decline in the number of investigations opened in 2017–2020 compared to 2013–2016.

In any case, as stated above, in 2019–2020, 72% of complaints that were brought to the attention of law enforcement agencies and in which decisions had been reached were closed. In addition, only 28% of complaints in which decisions were reached led to the opening of criminal investigations. A similar trend emerges from the 2017–2018 data, where 80% of the complaints were closed with no investigation conducted.<sup>31</sup>

### 3. TYPES OF OFFENSES IN WHICH INVESTIGATIONS WERE OPENED

As stated, according to the military's data, a total of 69 investigations were opened in 2019–2020, including 13 investigations opened following complaints filed in previous years. These cases can be divided into two main, yet overlapping, types of offenses: shootings and violence against Palestinians. 29 investigations involved **shooting** incidents, 13 of which led to the killing of a person, and 28 investigations were opened on suspicion of the use of **violence** by soldiers. In addition, investigations were conducted in 17 cases involving suspected **property offenses** (5 cases of looting and 12 cases

<sup>29</sup> The policy was ostensibly aimed at expediting the process and notifying the MAGC, which is the office that orders investigations in many cases, of an incident of harm to Palestinians when the initial report is made. The policy, however, makes filing complaints directly with the investigating agency even more inaccessible to Palestinian victims of offenses and perpetuates their dependency on mediators, as the MAGC is beyond the reach of ordinary Palestinians. For more about the change of policy and the issues involved, see: Yesh Din, [Law enforcement on soldiers suspected of harming Palestinians – Figures for 2014](#) (December 2015).

<sup>30</sup> See page 8: Gaps in the reporting of Palestinian complaints by the military vs. the Ministry of Justice.

<sup>31</sup> In the past decade, the number of staff positions in the MPCID has been significantly reduced. The State Comptroller's report from May 2019, which examined the activities of the MPCID, found that the number of permanent staff in the entire unit had been cut by approximately 30%. It is possible that this is due to the relatively low number of criminal investigations opened against soldiers suspected of having harmed Palestinians in recent years. State Comptroller, [Annual Report 69b](#) (in Hebrew), (2019), pp. 2310–2307.

of property damage); one investigation involved standing idly by;<sup>32</sup> and two other investigations were included in the “miscellaneous” category.<sup>33</sup>

### **Failure to implement the investigations policy—not all deaths are investigated**

Although the official military investigation policy requires opening an immediate investigation (with no precondition or inquiry) in any case where Israeli security forces kill Palestinian civilians in the West Bank, except for in cases of “a real combat nature”,<sup>34</sup> the data obtained by Yesh Din indicates that the army has failed to investigate most of the incidents involving the killing of Palestinian civilians by Israeli security forces, and in practice, the decision to launch an investigation is far from immediate.

According to data published by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), **in 2019 and 2020, Israeli security forces killed 167 Palestinians in the OPT, including 53 Palestinians who were killed in the West Bank (including East Jerusalem).**<sup>35</sup> **According to data provided by the military, during this period, 38 complaints relating to the killing of Palestinians were filed with the Israeli security forces, but only 16 complaints led to the opening of an investigation** (including 15 investigations that were opened immediately and one investigation that was opened following a factual inquiry).

In recent years, the army has adopted a very broad interpretation of a term that has never been defined precisely: “real combat nature”. The ambiguity of this term contributes to the legitimization of the killing of Palestinians by Israeli soldiers and is used in many cases by the MAGC to avoid opening a criminal investigation against soldiers, even in cases of fatal shootings. Yesh Din’s experience in representing Palestinian victims indicates that numerous complaints relating to incidents that undoubtedly occurred within a framework of law enforcement, such as “disturbances of the peace” or “riots at checkpoints”, as referred to by the military, are being closed without opening an investigation—even when they resulted in the killing of innocent civilians. This is in clear contrast to the investigations policy that the military itself proclaimed, which explicitly states that “[...] as a rule, any case in which a civilian is killed as a result of military action in the West Bank will result in the immediate opening of an MPCID investigation (such as incidents of death during protests and riots at checkpoints).”<sup>36</sup>

The above data indicate that although the majority of operational activities in the West Bank are not of a “real combat nature”, but rather carried out within the framework of law enforcement, the military does not investigate all the incidents involving death resulting from gunfire or violence by soldiers, and even when complaints relating to the killing of Palestinians are lodged with the Israeli security forces, many of the complaints are closed with no investigation conducted.

### **The investigations policy is falling short: Failure to open investigations in cases of shooting that caused serious injury**

According to data from OCHA, in 2019–2020, shooting incidents by Israeli security forces led to the injury of 276 Palestinians in the West Bank.<sup>37</sup> According to the military’s data, in 2019–2020, 32 complaints were filed concerning non-fatal shooting incidents by soldiers, 9 of which concern shooting incidents that occurred in the Gaza Strip, and the rest concerning incidents in the West Bank. Only 17 of the complaints led to the opening of an investigation into the shootings and the rest were closed without investigation. This investigation policy, which does not require the military to

32 The term “standing idly by” refers to incidents where soldiers witness the perpetration of violent offenses by Israeli civilians against Palestinians or their property and do nothing to prevent the offense during the incident or to detain and arrest the perpetrators. For more information: [Yesh Din, Standing Idly By - IDF Soldiers’ Inaction in the Face of Offenses Perpetrated by Israelis against Palestinians in the West Bank](#) (June 2015).

33 Some investigations involved suspicions of more than one type of offense, thus the total number of investigations in this breakdown exceeds 69, the total number of investigations opened in 2019–2020.

34 See: Footnote #24

35 For more information: [The Database on the Protection of Civilians Administered by the United Nations Office for the Coordination of Humanitarian Affairs](#). Last visit to the site: 12/13/2021.

36 HCJ 9594/03, **B’Tselem et al. vs. the Chief Military Advocate General et al.**, Updated Statement on Behalf of the Respondent, 4/4/2011.

37 [The Database on the Protection of Civilians Administered by the United Nations Office for the Coordination of Humanitarian Affairs](#). Last visit to the site: 12/13/2021.

launch an immediate investigation into non-fatal shootings, leads to many shootings not being investigated at all, or only investigated a long time after the incident - even in cases in which the shooting resulted in serious and irreparable injury.

Yesh Din's experience representing Palestinian victims of offenses has shown that in cases in which Palestinians are seriously wounded, and where it is clear that they were not involved in any fighting and did not endanger the lives of soldiers, the army is often satisfied with conducting preliminary inquiries in order to ascertain suspicions of illegal use of firearms or violations of the provisions for the use of firearms, while avoiding the opening of criminal investigations. This is in spite of the fact that the purpose of the preliminary inquiry is (inter alia) to collect information that will assist a potential investigation, not to replace it or eliminate the need for its existence.

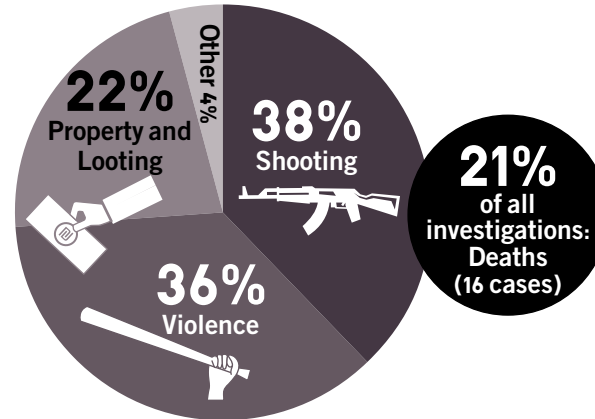
#### Yesh Din Case 4485/19

On Friday, 12/7/2019, the weekly demonstration was being held in Kafr Qaddum against the blocking the road that connects the village with Nablus, following the expansion of the nearby settlement of Kedumim. Around 2:20 p.m., a soldier opened fire with live rounds that hit the head of A.R., a 9-year-old boy, who was standing at the door of a house at least 200 meters from the center of the demonstration. After being shot, the boy was rushed to the hospital in Nablus, unconscious, where he underwent complex surgery on his head. He was subsequently transferred to the ICU at Safra Tel Hashomer Hospital in central Israel, anaesthetized and ventilated. Since then, A.R. was released to his parents' house with severe brain injury. He remains paralyzed, unable to speak, and requires intensive nursing care. Following the incident, Yesh Din filed a complaint on 8/9/2019 on behalf of the child's father. In January 2020, **four months after the incident**, the MAGC announced the opening of an MPCID investigation into the matter. **This prolonged delay ultimately impairs the investigators' ability to discover the truth and prosecute those responsible for the shooting.** On 13/1/2022, Yesh Din was informed by the MAGC Operational Affairs Office that the investigation was closed without any legal action taken against any military entity.

**It is Yesh Din's position that investigations must be opened immediately in any case of bodily harm caused by soldiers' fire, barring exceptional cases only.** In a letter sent to the MAGC on 18/8/2016, Yesh Din argued, inter alia, that the artificial distinction currently existing between obligatory investigations into deaths and cases in which shooting or other military activity "only" caused a civilian's injury in circumstances other than combat, does not stand the test of reason. Experience has shown that sometimes, the difference between causing injury and causing death is coincidental and depends on the circumstances and sheer luck—in some cases, the injury may result in death in the days and weeks following—and in any case, this difference bears no consequence on the question of the legality of the offending soldiers' behavior. The letter requested that the MAGC amend the investigation policy practiced in the military, which currently only mandates an immediate opening of an investigation in fatal cases. This request was not accepted, and the policy change has not been implemented to date.

## 69 MPCID investigations opened in 2019–2020

by type of offense:



## D | INDICTMENTS

### 1. INDICTMENTS FILED FOLLOWING INVESTIGATIONS OPENED IN 2019–2020

**A negligible percentage of complaints and investigations have led to prosecution; only five investigation files opened in 2019–2020 resulted in indictments.**

As far as Yesh Din is aware, out of all investigations opened in 2019, four investigations were closed without indictments filed (14.8%), three investigations resulted in indictments filed (11%), and the remaining investigations are in various processing stages (as of April 2020). Of the total number of investigations opened in 2020, one investigation that was opened following a shooting incident that killed a Palestinian was closed without indictment (2.3%), two investigations led to indictments (4.7%) and the remaining cases are in various processing stages (as of May 2021).<sup>38</sup>

One of the expected results of the low number of investigations conducted is the low number of indictments filed against soldiers on suspicion of offenses committed against Palestinians and their property. Despite the military's focus on investigating the most severe cases—and in some cases, investigations opened immediately might have improved the quality of the investigations—there has been no improvement in the army's ability to conduct effective investigations and bring soldiers to trial during this time period.

Unlike the civilian law enforcement system in Israel, the military system does not provide the reasons for closing investigation files. Instead, it usually cites general reasons or makes a brief statement that “no legal action was ordered” with respect to a certain case. Thus, it is difficult to determine how many investigation files were closed due to lack of culpability and how many were closed after MPCID investigators failed to identify suspects or collect sufficient evidence to support prosecution.

<sup>38</sup> Yesh Din does not have accurate information regarding the number of investigations opened in 2019–2020 that were closed without indictments; however, according to a quarterly military response regarding indictments and rulings on soldier offenses against Palestinian or their property, as of Q3 of 2021, no additional indictments were filed with the court martials that were based on investigations opened in 2019–2020, so it can be deduced that a large percentage of the investigations opened in 2019–2020 were closed without indictments.



**Yesh Din Case 4378/19**

On the night of 20/2/2019, soldiers invaded the bedroom of Mundhir Mazher, a blind and disabled man, as Israeli security forces invaded the village of al-Doha to make arrests. In his testimony to a Yesh Din field researcher, Mazher stated that he did not even know who had broken into his home and initially thought that it was thieves. Before he knew what was happening, one of the soldiers began to beat him vigorously in his face while he was lying in his bed, ignoring the pleas and cries of his wife who asked the soldier to stop the beating due to her husband's serious health condition, as he was suffering from kidney failure and diabetes. In his testimony, Mazher described how, after the soldiers had stopped beating him, he continued to bleed for about 15 minutes, and that during the entire time that the soldiers were in his house, with him sitting in his own blood, none of the soldiers offered him any medical assistance. For a long period of time, Mazher had difficulty eating due to the assault that caused, among other things, fractures in his jaw and hand. In June 2019, more than three months after the incident and following a complaint filed by Yesh Din in March 2019, the MAGC ordered a criminal investigation be opened. On 3/11/2019, following repeated inquiries made by Yesh Din regarding the status of the case, the MAGC announced the closure of the case **without indictments** against any of the soldiers involved in the beating of Mazher. After the case was closed, Yesh Din filed an appeal demanding to prosecute the offending soldier, but the appeal was rejected. In the announcement of the closure of the appeal the MAGC stated that the soldier's conduct in the incident did not justify taking legal action.

**As of June 2021, out of 69 investigations that were opened in 2019–2020, including investigations that were opened following complaints from previous years, only 5 cases (7.2%) have led to indictments filed against soldiers accused of committing offenses against Palestinians:**

an investigation that was opened in March 2019 on suspicion of violent offenses and abuse of Palestinian detainees led to indictments being filed against 6 soldiers;<sup>39</sup> an investigation that was opened in April 2019 following a complaint made in November 2018<sup>40</sup> led to an indictment filed against a soldier for a (minor) offense of exceeding authority to the point of endangering life or health;<sup>41</sup> a case that was opened in 2019 led to an indictment filed against a soldier for the offense of negligent manslaughter.<sup>42</sup> In October 2020, an indictment was filed against a soldier, following an investigation opened in 2020, on suspicion of causing damage to a Palestinian's property<sup>43</sup>, and in January 2021, indictments were filed against four soldiers following an investigation opened in 2020 on suspicion of violent offenses and abuse of a Palestinian detainee in Hebron,<sup>44</sup> after a recording of the incident had come to the attention of the Golani brigade commander.<sup>45</sup>

The rate of indictment indicates a small increase compared to the rate of indictment in recent years.<sup>46</sup> However, the number of prosecutions still remains extremely low and the improvement is minimal (5 indictments in 2019–2020 compared to 3 in 2017–2018). Additionally, these figures must be considered in the context of the overall decline in the number of complaints reported by the military,<sup>47</sup> especially in light of the low number of criminal investigations opened

39 **Central (District) Case 56/19**, filed after an incident in which five soldiers assaulted handcuffed and blindfolded Palestinian detainees on their way to a military base, in January 2019.

40 The Al Mezan Center For Human Rights, representing the Palestinian civilian who was shot and killed at this incident, reported filing a complaint with the military regarding this case on 11/27/2018. See the press release dated 6/22/2020 on Al Mezan's website: [Israeli Soldier Given Derisory Sentence for the Unlawful Killing of a Palestinian Fisherman](#). Last visit to the site: 8/16/2021.

41 **Central (District) Case 111/20**. According to the indictment, the soldier opened fire on a group of Palestinians without receiving permission from his commanders and against the rules of engagement.

42 **Home Front (District) Case 27/20**. According to the indictment, on 3/20/2019, when stationed in a military position at Nashash intersection near Bethlehem, the soldier shot at Palestinians who were present at the intersection, one of them was killed and the other seriously injured.

43 **Central (District) Case 2015/20**. Submitted following an incident in which a soldier was recorded punching the tires of an automobile in Kafr Qadum, in May 2020.

44 **North (District) Cases 15/21, 16/21, 17/21, and 36/21**. Two of the soldiers were convicted of offenses of abuse, one soldier was convicted of disgraceful conduct and the case of another soldier has not yet been concluded as of writing this document.

45 Or Heller, "4 Golani soldiers beat up a Palestinian detainee in Hebron, were removed from the brigade, and sent to prison", **News 13**, 6/14/2020.

46 Between 2013 and 2018, 785 MPCID investigations were opened concerning offenses committed by soldiers against Palestinians and their property, 33 (4.2%) of which resulted in indictments.

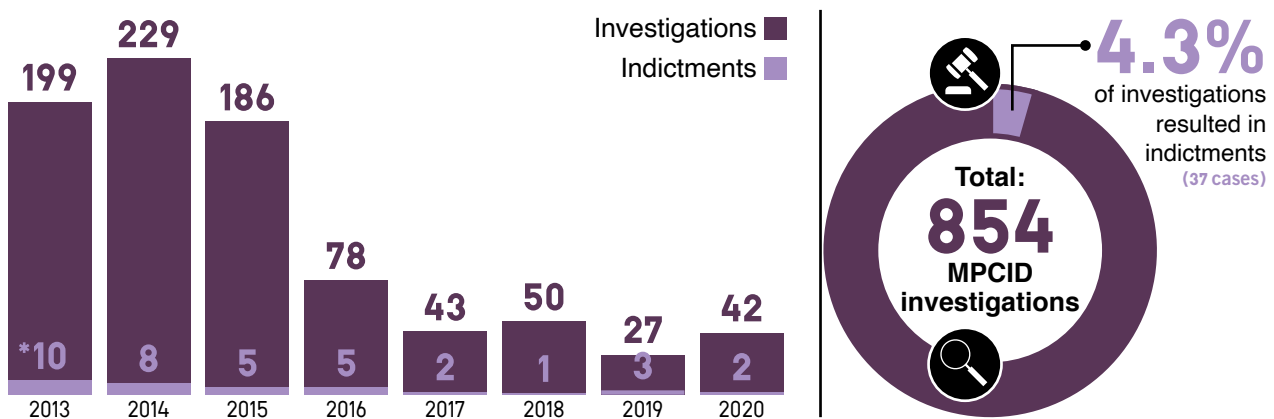
47 See p. 4: Complaints regarding alleged offenses committed by soldiers against Palestinians

by the military on suspicion of offenses committed by soldiers against Palestinians in 2019–2020. Thus, for example, in 2019, only 27 investigations were opened, and in 2020, 42 investigations were opened; as mentioned above, this represents a 26% decline compared to the number of investigations that were opened in 2017–2018.

The low rate of indictments filed in investigations involving offenses committed by soldiers against Palestinians is particularly noteworthy in light of the aforementioned policy, according to which the MAGC sorts the cases in advance and filters out those in which it decides not to open a criminal investigation. As a result of this policy, many complaints do not result in investigations being opened at all. Of all the complaints received by the MAGC in 2019–2020, **in 144 cases (52.7%) , a decision was made to close the case without opening an investigation.** The low number of investigations opened, which mainly represent the most severe cases only, naturally leads to an improvement in the ratio of investigations to indictments. It should be noted that compared to the manner in which the Israel police is required to locate suspects, it is relatively easy for the military to locate soldiers who were present at an incident that took place at a known time and location, and thus it could be expected that a law enforcement system that aims to combat delinquency and protect the Palestinian population in the OPT would be able to exhaust the few investigations it carries out and bring the suspects to justice at higher rates.

The low rate of prosecutions combined with the current trend of fewer investigations that are opened, demonstrates how unlikely it is for a Palestinian victim, who managed to overcome all the hurdles and barriers a placed before them and file a complaint, will see the offending soldier prosecuted: as of June 2021, **only 2% of the complaints that reached the MAGC in 2019–2020 (for which a decision was made to open an investigation or close the case) have led to indictments** (4 out of 200 cases).<sup>48</sup> It should be noted that many cases are still being reviewed. Yesh Din's experience shows that the chance of an investigation being opened and resulting in an indictment after such a long time is very low, therefore it can be assumed that the rate of cases that have resulted in indictments is even lower, as more cases have been closed without opening an investigation since the time this information was received.

### MPCID investigations involving harm to Palestinians and indictments filed 2019–2020



\*One indictment was ultimately withdrawn in 2018

48 Another indictment filed in 2019 was opened following a complaint made in 2018. See: Footnote 39.

## 2. INDICTMENTS FILED IN 2019 AND 2020—INCLUDING INVESTIGATIONS FROM PREVIOUS YEARS

### Lenient sentences for convicted soldiers; recorded incidents led to prosecutions

Many complaints are subject to a lengthy process of preliminary examination before a decision is made as to whether or not a criminal investigation will be opened. In addition, in certain circumstances, the MPCID investigation may take many months (up to a year, according to the recommendation of the Ciechanover Commission); this is also true for the MAGC's decision that follows. Thus, a long time may pass from the date of the decision to open an investigation until a decision is made on whether or not to file an indictment.<sup>49</sup> The long duration of handling a case often results in indictments being filed long after the incident took place and long after an investigation was opened. Thus, in 2019–2020, indictments were filed in 2 cases that occurred in 2017–2018, for which investigations were opened in previous years.

Overall, in 2019–2020, indictments were filed in 7 incidents of violence and harm to Palestinians and their property, including in investigations opened before 2019. Consequently, 11 soldiers were prosecuted in military courts:

### Indictments filed in 2019–2020 relating to investigations conducted during this period

In February 2019, an officer and five soldiers were indicted following a single investigation opened on suspicion of harming Palestinians. According to the indictments, on January 8<sup>th</sup>, 2019, following the arrest of a father and son from the Palestinian village of Abu Shukheidim, using their fists and various objects, the soldiers beat the detainees, who were handcuffed and blindfolded in the military vehicle on their way to a military base.<sup>50</sup> One of the soldiers recorded the abuse on video, and the footage was approved for publication by the military court.<sup>51</sup> In March 2019, the five soldiers were convicted of aggravated maltreatment pursuant to section 65A and 65C of the Military Justice Law (MJL), and the officer was convicted for non-prevention of an offense pursuant to article 262 of the MJL. As part of a plea bargain, the military court sentenced three of the soldiers to six months of imprisonment and demotion; another soldier convicted of abusing the detainees was sentenced to five and a half months of imprisonment and demotion; the fifth soldier was sentenced to two months of imprisonment and demotion.<sup>52</sup>

In May 2020, an indictment was filed against a soldier who, in November 2018, opened fire on a group of Palestinians on the northern coast of the Gaza Strip, as they were moving away from the separation fence. As a result of the shooting, Nawaf Ahmed Al Atar, a 23-year-old Palestinian fisherman, was killed.<sup>53</sup> In this case, as in other cases in which Palestinians were fatally shot by soldiers, the soldier was convicted as part of a plea bargain for a minor offense of exceeding authority to the point of endangering life or health (MJL section 72) and negligence causing bodily harm (MJL section 341). The soldier received a lenient sentence of 45 days' military work, probation, and demotion.<sup>54</sup>

In July 2020, an indictment was filed concerning an incident from 2019. In the evening of March 20<sup>th</sup>, a soldier in a watchtower near the south entrance to Bethlehem (al-Nashash) opened fire on a Palestinian family whose car was involved in a car accident, then continued to shoot at those who sought to assist the family. As a result of the shooting, Ahmed Manassera, who came to the aid of the family, was killed, and Ala Raida, the father of the family, whom Manassera's friends were able to extract, was seriously wounded.<sup>55</sup> As part of a lenient plea bargain, the soldier was convicted of negligent manslaughter pursuant to MLJ section 304 and was sentenced to three months' military work only.<sup>56</sup>

49 See p. 24: [Duration of case handling in 2019–2020](#).

50 **Central (District) Military Tribunal Case 56/19**.

51 ["Video documenting abuse of Palestinian detainees by soldiers from Netzach Yehudah Battalion is declassified"](#) (in Hebrew), **Maariv Online**, 3/12/2019.

52 Yaniv Kubovich, "IDF tribunal sentences two of the combatants convicted of abusing Palestinians to active prison terms", **Haaretz**, 3/11/2019.

53 **Central (District) Case 111/20**.

54 The two incidents in which Othman Rami Hillis and Nawaf Ahmed Al Atar were killed after being shot by soldiers near the fence surrounding the Gaza Strip are included in the data provided by the military regarding incidents reviewed separately by the "General Staff Inquiry Mechanism". For more information, see: [Yesh Din, Killing Time - Updated figures \(April 2021\)](#).

55 **Home Front (District) Case 27/20**.

56 The victims' legal representative petitioned the High Court of Justice against the lenient plea bargain, but the judge dismissed the petition and upheld the plea arrangement. For more information, see: Hagar Shizaf, ["Lenient plea bargain made with a soldier who fatally shot an innocent Palestinian is upheld"](#) (in Hebrew), **Haaretz**, 12/9/2020.

In October 2020, an indictment was filed against a soldier following an investigation that had been opened in 2020 on suspicion of causing damage to a Palestinian's property.<sup>57</sup> According to the indictment, the soldier, who had been recorded by a B'Tselem field researcher, punctured the tires of a vehicle owned by a Palestinian civilian during a demonstration in Kafr Qaddum.<sup>58</sup> The soldier was convicted of malicious damage (MJL section 432) and was sentenced to 30 days' military work, probation, and demotion.<sup>59</sup>

### Indictments filed in 2019–2020 relating to investigations from previous years

In May 2019, an amended indictment was filed with the military court against N.I., who in November 2017, during his military service, used his weapon to beat a Palestinian minor in the city of Hebron, while guarding a settler march on Shuhada Street in the city.<sup>60</sup> The assault, which left the minor lying in his own blood and in need of medical treatment, was recorded by a B'Tselem field researcher,<sup>61</sup> and Yesh Din subsequently filed a complaint on behalf of the minor and his family. According to the amended indictment, the soldier was charged with the offense of inflicting injury under section 344 of the Military Justice Law. In May 2019, the soldier was sentenced to 30 days' imprisonment, demotion, and 75 days' suspended sentence for three years.

In September 2019, an indictment was filed against Sergeant A.M., a veteran who, during his military service, fatally shot Othman Rami Hillis, a 15-year-old Palestinian, during the Great March of Return protests in the Gaza Strip in July 2018.<sup>62</sup> In a recording of the incident that was published by the International Association for the Defense for Children International – Palestine (DCIP), Hillis is seen trying to climb the fence and being shot immediately.<sup>63</sup> According to the indictment, the soldier shot the boy without receiving permission from his commanders, and contrary to the rules of engagement and the instructions given to the soldiers in advance.<sup>64</sup> In October 2019, as part of a plea agreement submitted to the military court, the soldier was charged with a minor offense of exceeding authority to the point of endangering life or health (MJL section 72) and received a very lenient sentence of 30 days of military work, probation, and demotion.<sup>65</sup>

57 **Central (District) Case 215/20.**

58 Maya Horodniceanu, [Recorded: "Soldiers puncturing tires and throwing a gas grenade into a house near Nablus"](#) (in Hebrew), **Walla**, 5/31/2020.

59 In addition to the indictments listed above, another indictment was filed in 2020 against a soldier accused of robbing Palestinians. According to the indictment, in March 2020, while on leave from the army, the soldier, armed and wearing uniform, stopped a vehicle near Dayr Ibzi' and began questioning its Palestinian occupants. The soldier ordered the passengers out of the vehicle and proceeded to rob the vehicle and drive away. The soldier was convicted of robbery under section 402(a) of the Penal Law. This indictment, while filed in 2020, is not included in the data presented above, due to the fact that the robbery was not committed as part of operational activity, but rather while the soldier was on leave. The case was investigated by the South District Police Unit rather than the NUOI, which is the unit responsible for investigating suspected offenses that occur within the framework of so-called operational activities. Accordingly, this case was not included in the data provided to Yesh Din by the military in relation to offenses by soldiers against Palestinians and their property. Although the aforementioned incident occurred in the West Bank and involved harm to Palestinians, we chose to conform with the separation created by the military and exclude the case from the complaints, investigations, and indictments in this document.

60 **General Staff (District) Military Court Case 107/19.**

61 Yotam Berger, ["A soldier was recorded striking a Palestinian teenager in the head using his weapon"](#) (in Hebrew), **Haaretz**, 12/14/2017.

62 See Footnote 15.

63 [DCIP submits evidence to UN investigators on Gaza protest killings](#), **DCIP**, 1/15/2019.

64 **Ground Forces (District) Case 286/19.**

65 Yaniv Kubovich, Jack Khoury, "A Palestinian boy was shot dead on the fence. The combatant who shot him was sentenced to a month of community service", **Haaretz**, 10/29/2019.

## E | FOLLOW-UP ON THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE TURKEL AND CIECHANOVER COMMITTEES

In February 2013, the second part of the Turkel Commission report was published. The Commission was established to examine alleged violations of international law during the Israeli takeover of the flotilla that sailed from Turkey to the Gaza Strip which ended with the killing of 9 passengers by Israeli soldiers. The second part of the report examined the existing mechanisms of investigation and review used in Israel in relation to complaints of violations of the international laws of armed conflict, and the extent to which these mechanisms are compatible with the required international standards. The report addressed a series of structural problems in the military law enforcement system and included recommendations meant to improve certain aspects of the system's modus operandi. In August 2015, two and a half years after the report was published, the Ciechanover Commission published its recommendations. The Commission was established to recommend methods for implementing the recommendations included in Part II of the Turkel Commission report. Upon the publication of the Ciechanover report, it became clear that the recommendations of the Turkel Commission had been significantly diluted, with some recommendations made into vague generalizations. It also became clear that the Ciechanover Commission had refrained from determining applicable and concrete measures relating to budgets and staffing requirements that would enable substantive implementation of the required changes. The generalized and watered-down recommendations of the Ciechanover Commission were adopted by the State Security Cabinet about a year later, in the summer of 2016.<sup>66</sup>

While it seems that the military law enforcement system has indeed made efforts to implement the recommendations of the Ciechanover Commission, the rate of indictments filed annually remains very low, and the number of investigations opened has decreased dramatically since the military system began adopting the recommendations of the Ciechanover Commission. The data presented in this document show that the implemented changes remain merely cosmetic have not led to a fundamental change in the way the military system operates regarding harm to Palestinians, nor resulted in enhancing the accountability of soldiers who harmed Palestinians.

### 1. ACCESS TO JUSTICE

Following the Turkel-Ciechanover recommendations, the National Unit for Operational Investigations (NUOI) was established within the MPCID in early 2017. The NUOI is dedicated to investigating incidents defined as operational, including offenses committed by soldiers against Palestinians and their property. The new unit is meant to handle all investigations concerning suspicions of criminal offenses committed during operational activities, and its soldiers undergo specific training relating to their relevant areas of activity.<sup>67</sup>

In 2017, the NUOI opened a hotline, active 24 hours a day, which can be contacted to file complaints on suspected offenses by soldiers. However, the responses the military provided to Yesh Din's questions indicate that information on the hotline has not been disseminated or published in the Arabic language to create awareness of its existence among the Palestinian population living in the OPT— the target population for which the hotline was created. **As a result, in 2017, the hotline received 6 calls from Palestinian civilians, and in 2018, only two calls were received.**<sup>68</sup> Many victims of offenses who wish to file a complaint are forced to use intermediaries such as human rights organizations or private lawyers, and it is likely that this reality contributes to the reduction in the number of complaints actually filed.

66 In July 2016, the National Security Affairs Committee (State Security Cabinet) adopted the recommendations of the Ciechanover report for the review and implementation of the second report of the Turkel Committee. Spokesperson's Unit of 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](#), 7/3/2016. For an analysis of the Ciechanover report and treatment of the deficiencies that characterize the recommendations presented therein, see: Yesh Din, [The Ciechanover Report: avoiding the criminalization of war crimes and taking practical steps toward implementation](#) (October 2015).

67 This training includes a two-week course in spoken Arabic, one day's certification regarding riot control weapons, two days' review of international law (one of them on the subject of belligerent occupation), visits to coordination and liaison units and the civil administration, a lecture by an operations officer from the Judea and Samaria Division on the subject of service orientation in the West Bank, and more. The information is based on the army's reply on this subject: Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#), 6/6/2019.

68 Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 2/10/2019.



## 2. DURATION OF CASE HANDLING IN 2019–2020

One of the issues on which the Turkel Commission focused was the duration of handling cases concerning suspected violations of international law. This is due to the fact that not every complaint results immediately in the opening of an investigation, and investigations are often preceded by a lengthy process of preliminary examination. In addition, the Turkel Commission convened against the backdrop of vehement and persistent criticism by human rights organizations regarding the dawdling and extreme foot-dragging that characterize the military law enforcement system throughout all stages of handling complaints.<sup>69</sup> The principle of speed was discussed extensively in the Commission's report and was **defined as one of the most important principles for ensuring an effective investigation and the creation of trust in the judicial system**, while referring to the work of international bodies dealing with human rights that drafted guidelines in relation to reasonable time frames for opening investigations.<sup>70</sup>

After some back and forth between the Commission and the MAGC, the Turkel Commission recommended that a timeframe be formulated that would determine the maximum allotted duration for completing each step in the process: from reviewing the complaint and deciding whether or not to open an investigation, through the completion of the investigation by the MPCID, to the completion of the case and making a decision on whether to prosecute suspects or order the case to be closed.<sup>71</sup>

Regarding the decision whether to open an investigation following a report or complaint, the Commission recommended establishing a timeframe of "several weeks". The Ciechanover Commission, which dealt with the implementation of the report's conclusions, stipulated a period of up to 14 weeks from the date of receipt of the complaint, and added that in exceptional cases, this period may be extended by an additional 14 weeks at most (a total of 28 weeks).<sup>72</sup> As for the maximum duration for conducting an MPCID investigation in these cases, the Ciechanover Commission recommended that this **be limited to nine months**, which may be extended to one year under certain conditions. With respect to the prosecutor's decision at the end of the investigation, the Commission recommended a maximum duration of nine months for this stage, except in cases classified as complex (e.g., deaths and serious injuries) in which a decision must be made within one year.<sup>73</sup>

**Data provided by the military to Yesh Din show that the military has taken steps to implement these recommendations, primarily the ability to measure the durations of the handling of cases at various stages.** In 2017, the MAGC first began using an information system that enables monitoring of the duration of each of the decision nodes discussed in the Turkel Commission, so that it can provide up-to-date data on the subject.<sup>74</sup>

Military data show that **in 2019, in 22 complaints of suspected harm to Palestinians in which a criminal investigation was launched, the average duration from the time of receiving the complaint until the decision was made to open a criminal investigation was 52.86 days (approximately 7 weeks).**<sup>75</sup> Additionally, military data indicates that in 2020, the average time to make a decision doubled compared to 2019 and exceeded the recommendations of the Ciechanover Commission by one week; **in 47 complaints received in 2020 for which an investigation was opened, the average duration from the time of receiving the complaint until the decision**

69 See for example: Yesh Din, [Alleged Investigation](#) (August 2011) pp. 61–67. B'Tselem, *The Occupation's Fig Leaf* (May 2016), pp. 30–28.

70 **Second Turkel Report**, pp. 117–119.

71 **Second Turkel Report**, Recommendation No. 6: The Decision Concerning the Opening of Investigation, p. 322; Recommendation No. 10: Determination of a Time Frame for Investigation, pp. 332–331.

72 **Ciechanover Report**, pp. 18–17.

73 In addition, the Ciechanover Committee has addressed the possibility of further extensions in a period that may not exceed six months. **Ciechanover Report**, pp. 24–23.

74 This information, as well as all the data related to the duration of handling cases by the MAGC in 2019 and 2020, was provided to Yesh Din in response to requests made under the Freedom of Information Law. The data relayed to Yesh Din differs slightly from data on the same subject that was relayed in response to other requests. Discrepancies between conflicting information relayed to Yesh Din will be explicitly specified.

75 Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 2/10/2019.



**was made to open a criminal investigation was 106.1 days (about 15 weeks).**<sup>76</sup> However, it should be noted that according to the military's responses, 20 investigations (29%) were opened immediately upon receipt of the complaint, in accordance with the military's investigations policy. Therefore, it can be assumed that, in practice, the duration of handling complaints in which the MAGC was required to conduct a factual inquiry prior to the decision to open an investigation was much longer than the average time it took to make decisions on cases.<sup>77</sup> Yesh Din has no information regarding the average time it took until an investigation was opened in those cases in which the MAGC ordered a factual inquiry, and in any case, the recommendations of the Turkel and Ciechanover Commissions referred to the **maximum** period for the completion of each of the procedural stages of the law enforcement system, not the average period of time for these cases.

Regarding complaints for which the MAGC decided not to open an investigation, according to data provided by the military, **the average time between receiving a complaint and closing the case without opening the investigation was 70.96 days (10 weeks) in 2019 and 78.8 days (about 11 weeks) in 2020.** This data indicates an increase in the average time between the date of receipt and the decision to close the case without investigation. For comparison, in 2018, the average time from receipt of a complaint until the decision to close the case without opening an investigation was 46.6 days (about 6.5 weeks).

As for the duration of MPCID investigations in cases of suspected harm to Palestinians by soldiers, the military provided data regarding 12 investigations that were opened following complaints made in 2019 and received by the NUOI (the military did not provide data regarding the other 10 investigations that were opened in 2019). The average duration of investigations **in these cases was 126 days (approximately 4 months),** including additional investigative procedures where required. In 2019, the overall duration from the moment of receiving the report, through the factual inquiry in relevant cases and MPCID investigation, to the return of the case to the NUOI for the purpose of making a decision was **140 days on average (about 4.5 months).** Regarding four cases in which a decision was made by the MAGC, the average overall duration of case handling, which also includes the decision, was 190.75 days.<sup>78</sup>

For 2020, the military provided data regarding 25 investigations (out of 47 that were opened): **in these cases, the average duration of investigation was 140 days (4.6 months),** including additional investigation procedures where required. In 2020, The overall duration from the moment of receiving the report (including additional investigation procedures), through the factual inquiry, in cases where it took place, and MPCID investigation, to the return of the case to the NUOI for the purpose of deciding was **250 days on average (about 8.3 months).** **Regarding eight cases in which the decision was made by the MAGC, the average duration of treatment was 316.12 days.**<sup>79</sup>

In general, the **processing times presented by the military are almost all within the timeframes set by the Ciechanover Commission** for each of the processing stages—making a decision on opening an investigation, conducting the investigation by MPCID, and deciding on prosecution by the MAGC. The military seems to be making great efforts to respond to the criticism it has faced by meeting measurable objectives of handling complaints.

<sup>76</sup> Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 2/10/2019. This response states that 47 of the 194 complaints filed with the MAGC in 2020 on suspicion of harming Palestinians resulted in the opening of an investigation. On the other hand, in a previous response dated 5/3/2021, the military stated that in 2020, 196 complaints were filed, 34 of which resulted in the opening of an investigation. According to the military's reply, some of the data has changed as their treatment progressed, the classification of the suspicion in the case changed, and specific errors in entering the data in the computerized system, as well as human errors, were found and corrected.

<sup>77</sup> If it is assumed that an immediate opening of an investigation is equivalent to a waiting time of 0 days, then, given that 20 investigations were opened immediately, it can be roughly determined that the average waiting time for a decision regarding the opening of an investigation in the remaining 49 cases was about 125 days.

<sup>78</sup> Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/13/2020, sections 6–7.

<sup>79</sup> Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/13/2020, sections 7–8.

**The average duration during the review and investigation stages of the military law enforcement system:**

	2019	2020
<b>The average duration from the time of receiving the complaint until a decision was made to open a criminal investigation</b>	52.86 days (about 7 weeks)	106.1 days (about 15 weeks)
<b>The average duration of MPCID investigation</b>	126 days (4 months)	140 days (4.6 months) (including additional investigative procedures)
<b>The average time from the end of the investigation until a decision was made by the MAGC on whether to prosecute or close the case</b>	142.25 days (about 4 months)	162 days (about 5.4 months)
<b>Total duration of handling (completed cases) <sup>80</sup></b>	<b>190.75 days (more than 6 months)</b>	<b>316.12 days (10.5 months)</b>
<b>The average duration from the time of receiving the complaint until a decision was made not to open a criminal investigation</b>	70.96 days (about 10 weeks)	78.8 days (11 weeks)

However, from the figures provided by the military, it is possible to discern the great variability and wide amplitude in the time it takes to process complaints. **The data provided by the military relates only to cases in which a decision was made as to whether or not to open an investigation.** Many cases are still in the processing stages with no decision reached yet, and it can therefore be concluded that the average duration of handling complaints is even longer than that indicated by the data presented by the military, which, as stated, is based on decided cases only. For example, according to the military's reply from May 2020, a decision has not yet been made on whether to open an investigation or not in relation to 23 complaints - 29% of the total number of complaints received in 2019. In the military's response from August 2021, no information was provided on the fate of 10 complaints, 5% of the total number of complaints in which a decision was made in 2020.

<sup>80</sup> As stated, the data provided by the military regarding the period between receiving a complaint and making a decision in the investigation case are incomplete and concern only 12 of the 69 investigation files (17%) opened in 2019–2020. Therefore, it is difficult to derive any conclusion from this data.

## Yesh Din Case 4747/20

On the night of 7/8/2020, most of the Samodi family were sleeping in their house in Jenin, when suddenly loud gunshots and explosions were heard from the street. In his testimony to Yesh Din's field researcher, Bassam Samodi, who was awake at the time, described how he looked out the window and saw a group of soldiers conducting a nightly invasion and he described that he saw the soldiers firing tear gas and stun grenades towards children who had thrown stones at them. Due to the high heat of August, the windows of the family's house were wide open. Bassem woke up his wife, Dalia, to help him close the windows of the house quickly, in attempts to prevent the gas from flooding their home and protect their children, including a baby of only a few weeks, from suffocation. As she approached one of the living room windows, which was illuminated at the time, the sound of a gunshot was heard, Dalia was hit in her torso, and she immediately collapsed to the ground. In his testimony, Bassem said that in her last words, she told him to "take care of the children and himself." An ambulance rushed Dalia to the government hospital in Jenin, but she died of her serious injury. It was later found that neighbors had spotted another group of soldiers who had occupied a house opposite the Samodi residence. Despite the severity of the incident, in which an innocent woman was killed within the walls of her own home as a result of the alleged shooting of live rounds by Israeli soldiers, as of the writing of these lines, **over a year after the incident, the investigation** is still underway.

Furthermore, there are several key stages in the work of the military law enforcement system that still cause delays in the processing of complaints and compromise their quality. First, the fact that more than 70% of complaints are subject to preliminary factual inquiries before a decision is made on opening an investigation continues to be a major factor in delaying the investigation of suspected harm to Palestinians by soldiers. Even if these inquiries meet the timeframes recommended by the Ciechanover Commission, in the (infrequent) cases in which the inquiry leads to a criminal investigation, it may still cause a delay in the opening of the investigation, make it difficult to gather evidence, allow suspects to align their stories, and impair the ability to enforce the law on offending soldiers due to the time elapsed since the offense was committed.

An important stage in handling complaints of suspected harm to Palestinians relates to the possibility of victims to receive the investigation or inquiry materials for the purpose of determining the possibility of appealing the MAGC's decision to refrain from opening an investigation or to order the case to be closed without prosecution. For this junction, explicit timetables have not been established in the Turkel and Ciechanover reports, although it is a crucial stage for the purpose of exercising the victims' right to appeal and therefore constitutes a key element in the entire system of law enforcement against soldiers suspected of harming Palestinians. Yesh Din's experience from the representation of Palestinian victims of offenses shows that the waiting time for obtaining investigative materials is often months, despite commitments made by the military following the High Court of Justice petition filed by Yesh Din with the Center for the Defense of the Individual (HaMoked).<sup>81</sup> This fact demonstrates that compliance with the timetables presented by the military is only valid at specific points defined by the Turkel and Ciechanover committees, but does not necessarily characterize the work of the military system in cases of harm to Palestinians and does not indicate a significant change.

Another stage that greatly delays the handling of complaints is that of reaching a decision by the Attorney General when the decision of the MAGC is contested in cases of death and serious injuries.<sup>82</sup> Here too, explicit timetables were not established following the Turkel and Ciechanover reports, and this procedure is conducted inefficiently, causing an additional and significant delay in law enforcement proceedings against soldiers. In light of this, in April 2018, Yesh Din contacted the Attorney General in efforts to make the process of handling of appeals more efficient by amending it.<sup>83</sup>

81 HCJ 6477/11, **Centre for the Defense of the Individual et al. v. Chief of Military Police Criminal Investigation Division**. To read the petition and the accompanying correspondence, visit [Yesh Din's website](#) and [HaMoked's website](#).

82 This procedure is the result of the recommendations of the Turkel Committee and is intended to enable any person who wishes to do so to submit to the Attorney General an appeal of the decisions of the CMAG regarding the treatment of deaths. In practice, the Attorney General is also willing to examine appeals relating to cases of serious injury. The procedure was defined in the [Attorney General's Guideline No. 4.5003](#) of April 2015.

83 Yesh Din to the Attorney General, 9/17/2018. In reply to this inquiry dated 4/14/2019, the Attorney General stated that "we are aware of the time it takes to handle the appeal, and despite the workload and resource constraints, we do not waste time, but are making a constant effort to improve the speed of examination."

Apart from all this, in light of the significant improvement shown by the military regarding the duration of the decision phase of whether to open a criminal investigation and the data indicating a trend towards compliance with the recommendations of the Ciechanover Commission, it is difficult to ignore the fundamental figure that is constantly in the background: a dramatic decrease in the number of criminal investigations on suspicion of offenses by soldiers against Palestinians. **It is clear that a policy of reducing the number of investigations opened may contribute to achieving a rapid improvement in the speed of handling each stage and each case.** This may imply that the significant and impressive improvement shown by the military is highly valuable in the military's fight for its image, but this comes at the price of massively reducing the number of investigations.

Ultimately, the achievements of the military law enforcement system should be examined according to the extent to which it fulfills its mission—**enforcement of the law on soldiers who have committed offenses against Palestinians—and the data indicates that this has not improved at all.**

### 3. INDISCRIMINATE USE OF OPERATIONAL DEBRIEFING IN DECISIONS ON THE INVESTIGATION OF INCIDENTS OF SHOOTINGS AND KILLINGS OF PALESTINIANS

Until 2013, when the Turkel Commission's second report was published, the military's policy on decisions regarding whether to open a criminal investigation following a complaint was that, in every case in which the MAGC did not order the immediate opening of an investigation, the relevant parties await to receive the operational debriefing of the incident, and after receiving it, the debriefing would be used in order to determine whether the case raises a suspicion of criminality and whether a criminal investigation should be opened.<sup>84</sup>

Given the recognition that the operational debriefing is a military tool designed to draw operational conclusions and improve the performance of military units, it is not suitable for determining suspected criminality. This is partly because it is prepared by non-neutral parties who lack investigative expertise. The Turkel Commission recommended **putting an end to the current practice and instituting a separate system for conducting factual inquiries.** This recommendation was formulated in light of criticism of the fact that using operational debriefings could cause unreasonable delays in making decisions on opening investigations, and moreover, may allow soldiers to match stories and obstruct investigations.<sup>85</sup>

The commission added that this recommendation did not preclude the MAGC from reviewing the operational debriefing, provided this review did not result in failure to meet recommended timelines for reaching a decision in a complaint and that the operational debriefing would not be the only source for the factual inquiry. The authors of the Ciechanover report also recommended the establishment of a mechanism that would be responsible for conducting a preliminary factual inquiry, independent of the operational debriefing.<sup>86</sup>

Notwithstanding the recommendations of the Turkel Commission, figures provided by the military indicate that the MAGC continues to rely heavily on operational debriefings when deciding whether or not to launch criminal investigations, especially in cases involving Palestinian fatalities and incidents of shootings.<sup>87</sup> In 50 of the 221 (22.6%) cases in which

84 **Second Turkel Report**, pp. 284–288. Aside from the operational debriefing, the military has an additional process, known as the “expert debriefing”, used for inquiries into special or complex incidents.

85 **Second Turkel Report**, pp.319–321. For more on the issues associated with using operational debriefings as the primary basis for a factual assessment designed to determine whether to open a criminal investigation into a complaint or a report, see also: Yesh Din, [Alleged Investigation](#) (August 2011), pp. 32–44.

86 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**], pp. 18–20.

87 In 2019, the MAGC requested to review the operational debriefing in 29 cases (all of which were shooting incidents, including 13 deaths) of the 63 complaints in which a preliminary factual inquiry was conducted to determine whether to launch a criminal investigation. In 2019, a review of the operational debriefing was requested in 21 cases (all of which were shooting incidents, including 10 deaths) of the 158 complaints in which a preliminary factual inquiry was conducted to determine whether to launch a criminal investigation. Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 4/7/2020, paragraphs 12–13; Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/3/2021, paragraphs 12–13.

the Attorney General ordered a factual inquiry, the MAGC requested the operational debrief from the unit involved in the incident. **When it comes to shooting incidents, the request for the operational debriefing is almost automatic: in 2019–2020, prior to deciding whether to launch a criminal investigation, the MAGC asked for the operational debriefing in 98% of the shooting incidents for which a preliminary factual inquiry was made.**<sup>88</sup>

Based on the information provided to Yesh Din, it is not possible to determine whether the inquiry process involves any measures other than the operational debriefing, or if the debriefing was the primary, if not the sole, factor in deciding whether or not to launch an investigation, in contradiction with the Turkel Commission recommendations. However, Yesh Din's experience in working with the military law enforcement system has shown that there are cases in which the factual inquiry does indeed amount to nothing more than receiving the operational debriefing from the relevant unit. As counsel for Palestinian victims of offenses, Yesh Din requests that the MAGC provide the materials of the factual inquiry when challenging decisions not to launch a criminal investigation. Responses received from the MAGC show that in many instances, the factual inquiry only included the operational debriefing, which is classified, and therefore no materials could be provided to Yesh Din.

Moreover, in a more general response to an appeal filed by Yesh Din regarding a decision not to investigate a case in which a resident of Kafr Qaddum suffered a head injury as a result of soldiers' gunfire in April 2018, the MAGC clarified that it considers "reviewing the operational debriefing acceptable and legitimate whenever factual inquiries are required in addition to the description provided in the complaint." The response of the MAGC also reveals that it considers the implementation of the Turkel recommendation regarding a dedicated mechanism for factual inquiries important only for complaints concerning possible war crimes. The MAGC, therefore, maintains that it may rely exclusively on the operational debriefings "where the complaint alleges an offense that is not a war crime".<sup>89</sup> This response is perplexing, given the fact that any grave offense committed by Israeli security forces against protected persons in the OPT is ostensibly a war crime, not to mention that Israeli law does not currently define war crimes—which is yet another violation of one of the major recommendations made in the Turkel Report, regarding incorporating war crimes into Israeli law.<sup>90</sup>

Yesh Din's experience further reveals that in recent years, MAGC staff have started referring to the operational debriefings themselves as "factual inquiries", lending support to the possibility that these remain the only tool the MAGC uses to make decisions in complaints against soldiers suspected of harming Palestinians. It may even imply an attempt to evade one of the most significant recommendations the Turkel Commission made with respect to investigations.

88 Broken down by year, the figures are: 29 of 29 shooting incidents examined in 2019 and 21 of 22 shooting incidents examined in 2020. Military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 4/7/2020, paragraphs 14–12; military Spokesperson to Yesh Din, [Response to a request made under the Freedom of Information Law](#) (in Hebrew), 5/3/2021, paragraphs 14–12.

89 Letter from Major Erez Rajuan, Head of Operational Matters in the MAGC to Yesh Din's legal team, **responding to an appeal Yesh Din filed against the failure to open a criminal investigation in Yesh Din Case 4133/18**, 6/12/2019.

90 For further reading on the lack of war crime legislation in Israeli law, as compared to international models, see: Yesh Din, [Lacuna: War crimes in Israeli law and in court-martial rulings](#) (July 2013). Recommendation No. 1 of the Second Turkel Report relates to war crimes and calls to fill the gaps in Israeli legislation, see **Second Turkel Report**, pp. 362–366.



## F | CONCLUSION

This data sheet presents the outcome of military law enforcement in complaints brought to the military's attention in 2019–2020 regarding suspected harm to Palestinians by Israeli soldiers in the OPT. In the relevant time period, a total of **273** complaints were made regarding offenses against Palestinians.

**Following all of the complaints that came to the attention of the MAGC in 2019–2020 regarding suspected offenses against Palestinians, 56 criminal investigations were opened, amounting to just one-fifth of the total number of complaints made during this time period and in which a decision on further action was reached.**

**The number of criminal investigations opened in 2019–2020 regarding suspected offenses by soldiers against Palestinians declined by 26% compared to the average number of investigations opened in previous years (2017–2018), reflecting a continuous trend of decline in the annual number of criminal investigations launched against soldiers suspected of harming Palestinians.** In comparison, in the five years preceding 2019 (2014–2018), **an average of 117 criminal investigations** were opened every year, and in the decade of 2005–2015, the annual average of criminal investigations opened into suspected offenses by soldiers against Palestinians or their property was 203.

Following the trend observed in recent years, **the proportion of investigations that yielded sufficient evidence and culminated in the prosecution of suspects remains low: as of June 2020, only 5 (7.2%) of all 69 investigation files opened in 2019–2020 resulted in indictments filed.**

The military law enforcement system introduced several changes in response to criticism against it and in an effort to implement the Turkel-Ciechanover recommendations. However, despite these efforts, **substantive figures on the work of the military law enforcement system and the outcomes of this work indicate that no profound change has taken place in the system's response to criminal activity by soldiers against Palestinians.** In recent years, against the backdrop of what appears to be a deliberate reduction in the number of investigations launched, it has been revealed just how unlikely it is for a Palestinian's complaint against a soldier who harmed them or their property to result in prosecution: **only 2% of all complaints made by Palestinians after being harmed by Israeli soldiers in 2019–2020 resulted in the prosecution of suspects** (4 out of 200 cases, as of June 2021).

**Four of the cases that led to indictments (including in investigations from previous years) involved incidents that were recorded, where it seems that the military law enforcement system had an interest in communicating a clear message to the soldiers and the public that such acts were unacceptable to the military. These incidents include physical abuse of detainees and damage to property.**

These isolated indictments draw a clear distinction between hundreds of incidents of shootings, violence, and damage to Palestinian property, which are seen as legitimate elements in Israel's control over the OPT—including when they are in violation of international and even Israeli law—and the interest in preserving a semblance of law enforcement and demonstrating some degree of compliance with accepted standards and a functioning law enforcement system within Israel's ongoing regime of occupation. The rare cases in which soldiers were prosecuted allow the army to repel the criticism directed at it by denouncing such acts as exceptions which are "inconsistent with military values",<sup>91</sup> even though it is an unavoidable outcome of prolonged Israeli control. At the same time, it should be noted that the few soldiers who were convicted were given very lenient, and sometimes even ridiculous, sentences, when considering the original offenses alleged in the complaints.

The small number of investigations launched and the attention given to the most extreme cases, in which prosecution is unavoidable either because the incidents were captured on camera, or because they are perceived as damaging

<sup>91</sup> The response of the military Spokesperson in relation to the incident in which soldiers hit a Palestinian detainee in Hebron. Moshe Steinmetz, "4 Golani combatants suspected of beating a Palestinian during an arrest in Hebron about a month ago", *Kan*, 6/14/2020.



to the military's image, as in the cases of infantry soldiers who were filmed beating and physically abusing Palestinian detainees,<sup>92</sup> allow the system to kill two birds with one stone: On the one hand, it is able to claim that the Israeli law enforcement system is investigating suspicions directed against Israeli security forces and thus claim immunity against the intervention of international justice mechanisms, and on the other hand, to continue to effectively grant soldiers near-complete immunity and legitimacy in cases of "routine" harm to Palestinians and their property.

The serious failures of the Israeli law enforcement system presented in this document, most notably the long durations of processing, the small number of investigations opened, the small number of indictments, the lenient punishments, along with Yesh Din's experience in representing Palestinian victims of offenses, indicate that the MPCID investigations launched following complaints of suspected harm to Palestinians are characterized by failure and are often managed negligently, leading to cases being closed. This is an ongoing trend that, in practice, enables soldiers to freely commit crimes under the auspices of **the military law enforcement system, which, in practice, is primarily concerned with preventing investigations and avoiding prosecution, rather than deterring, enforcing and punishing soldiers who harm Palestinians.**

The International Criminal Court has the power to investigate war crimes only where, due to lack of competence or will, the country in which the alleged crimes were committed fails to investigate such suspicions properly, even when it purports to do so but effectively does not practice a fair legal process. The essential failures described in this data sheet demonstrate that, although Israel is working to preserve the appearance of a functioning law enforcement system, it evades its responsibility to conduct proper and fair investigations of suspected war crimes. **Israel's avoidance of fulfilling its basic duty of enforcing the law against soldiers who have committed offenses against Palestinians is what gives the International Criminal Court the authority to investigate the violations of international law committed under the auspices of Israeli control in the OPT.**

92 In recent years the media reported on two cases of abuse of Palestinian detainees by soldiers from a particular infantry battalion, Netzah Yehuda in the Kfir Brigade. In October 2015, five soldiers from the battalion were indicted for taking part in three different instances in which they physically abused three blindfolded and handcuffed Palestinian detainees they were watching. The soldiers kicked the detainees and slammed their heads against a wall. In two of the cases, one of the soldiers electrocuted blindfolded and handcuffed Palestinian detainees using an electronic device, while another soldier was filming on his cell phone camera (**Court-Martials Center 481/15, 482/15, 483/15, 484/15, 490/15**). See for example: Gilli Cohen, "[Four Soldiers From Haredi Battalion Indicted for Abusing Palestinian Prisoners](#)", [Haaretz English website](#), 10/29/2015. In February 2019, five indictments were filed against soldiers from this unit following an incident in which they beat two Palestinians, a father and son, who had been detained and were riding with the soldiers in a car while blindfolded and handcuffed. The incident was filmed by one of the soldiers, and the court later allowed the footage to be publicized (**Court-Martials Center 78/19, 90/19, 112/19, 113/19, 117/19, 118/19**). See, e.g.: Yaniv Kubovich, "[Israeli Court Releases Footage of Soldiers Beating Detained Palestinians](#)", [Haaretz English website](#), 3/12/2019.

Indictments filed following investigations opened in 2019–2020					
Date of the incident	Year of complaint	Year in which the investigation was launched	Year in which the indictments were filed	Case	Description
8/1/2019	2019	2019	2019	<b>Central (District) Case 56/19.</b>	Five soldiers beat and abused handcuffed and blindfolded Palestinian detainees. The incident was documented and published.
20/3/2019	2019	2019	2020	<b>Home Front (District) Case 27/20.</b>	A soldier opened fire on Palestinians at an intersection near Bethlehem (al-Nashash). As a result of the shooting, Ahmed Manassera was killed and another person was seriously injured.
14/11/2018	2018	2019	2020	<b>Central (District) 111/20</b>	A soldier from the Paratroopers Brigade opened fire on a group of Palestinians on the northern beach of the <b>Gaza Strip</b> . As a result of the shooting, Nawaf Ahmed Al Atar, a 23-year-old Palestinian fisherman, was killed.
23/5/2020	2020	2020	2020	<b>Central (District) 2015/20</b>	A soldier punctured the tires of an automobile in Kafr Qaddum. The incident was recorded and published.
17/5/2020	2020	2020	2021	<b>North (District) 15/21, 16/21 17/21 36/21</b>	Four soldiers beat and abused a handcuffed Palestinian detainee in Hebron. The incident was recorded but never published.
Indictments filed in 2019–2020 following investigations and incidents from previous years, including incidents that occurred during the Great March of Return protests in the Gaza Strip					
Date of the incident	Year of complaint	Year in which the investigation was launched	Indictment Year	Case	Description
11/11/2017	2017	2018	2019 Revised Indictment	<b>General Staff (District) 107/19</b>	A soldier used his rifle to beat a Palestinian minor during a procession in Hebron. The incident was recorded and published.
13/7/2018	2018	2018	2019	<b>Ground Forces (District) 286/19</b>	During the Great March of Return protests in the Gaza Strip, a soldier fatally shot Othman Rami Hillis, a 15-year-old Palestinian minor. The incident was recorded and published.

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