



**مركز الميزان لحقوق الإنسان**  
**AL MEZAN CENTER FOR HUMAN RIGHTS**

*UPDATE:*

**NO REPARATIONS IN ISRAEL FOR PALESTINIANS:  
HOW ISRAEL'S AMENDMENT NO. 8 LEAVES NO ROOM FOR RECOURSE**

**GAZA**

**DECEMBER 2015**

**2015 - Substantial evidence shows that Israel is unwilling to grant access to its courts to Palestinians from Gaza seeking reparations. For claimants from Gaza, there are no domestic remedies to speak of. This obstruction is the result of conscious design through a series of legislative reforms aimed at producing a specific outcome: no remedies for Palestinians as far as their claims involve violations by the Israeli military.**

Beginning at the start of the second Intifada in 2000, the Israeli legislature, Israeli military, and the Israeli courts have been setting procedural requirements and obstacles in front of Palestinian claimants, which effectively deny their right to an effective civil remedy for alleged violations of international humanitarian law (IHL) and/or international human rights law (IHRL). The violations include those that led to severe damages and fatalities, and constitute grave breaches of IHL and may amount to war crimes.

Also since 2000, the practice of the Israeli Military Advocate General (MAG) has been formulated to deny the opening of criminal investigations into the killing and injury of Palestinian civilians unless an internal investigation by a military commander discovered suspicions of criminal responsibility.<sup>1</sup> Although the MAG narrowed the scope of application of this policy in the West Bank, it still applies to deaths and other damages suffered by civilians in the Gaza Strip for attacks by Israeli forces that appear to have violated IHL and/or IHRL.

As a result of this framework, Palestinians living in Gaza, whose family members are killed, injured, or have had their property damaged or destroyed through Israeli military actions, have no access to effective remedy for their damages, and the Israeli military is not held accountable for violations of international law.

This brief, while necessarily touching on issues with the MAG and against a general backdrop of lack of access to justice, will focus on the obstacles in bringing civil claims in front of Israeli courts. The parallel briefing on criminal accountability details Israel's systematic impunity through the MAG.<sup>2</sup>

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<sup>1</sup> See Yesh-Din, Exceptions, Prosecution of IDF soldiers during and after the Second Intifada, 2000-2007 (September 2008) pp. 19-23; Yesh-Din, MPCID Investigations into the Circumstances surrounding the Death of Palestinians Convictions and Penalties (Data sheet, July 2013), both available at <http://www.yesh-din.org/prodcat.asp?prodcatid=1&topicid=2&typeid=0> (last visited on 12 March 2014). According to figures forwarded to Yesh Din by the IDF Spokesperson, during the period 2003-2012 the Israeli military police opened over 179 criminal investigations concerning suspicion of the unlawful killing of Palestinian civilians by IDF soldiers; only 16 investigation files opened from September 2000 through mid-2013 regarding incidents in which Palestinian civilians were killed led to indictments. In that period, some 5,000 Palestinians, including approximately 1,000 minors under the age of 18, have been killed by Israeli forces in occupied Palestine.

<sup>2</sup> See ' Briefing Update: Israeli investigations on criminal complaints submitted by Palestinian NGOs in Gaza on behalf of victims of attacks on Gaza in July and August 2014', available online at [http://mezan.org/en/uploads/upload\\_center/kiWkMhPrYIZx.pdf](http://mezan.org/en/uploads/upload_center/kiWkMhPrYIZx.pdf)

## AMENDMENT 8 AND SUBSEQUENT BARRIERS

**Amendment No. 8 to the Israeli Torts (State Liability) Law** is the primary legal obstacle currently faced by Palestinian victims in the Gaza Strip when bringing civil claims before Israeli courts. Amendment 8 was passed into law by the Israeli Knesset on 16 July 2012 with retroactive application to 12 September 2005 and gives the courts the power to dismiss civil cases at the preliminary stage, without hearing witnesses or considering evidence, if the damage for which the claim was submitted occurred as a result of the Israeli military's 'combat action'.<sup>3</sup> The amendment also expanded the definition of a 'combat action' to any warfare operation, "including any action against terrorism, hostilities, or uprising, and any preventative action against terrorism, hostilities, or uprising that is combatant in nature, considering all circumstances, including the action's purpose, geographic location, or the threat to the operation forces."<sup>4</sup>

Amendment 8 fails to distinguish legitimate military actions from negligent executions of military operations to suspected war crimes, and enables the State and the Israeli military to evade its legal obligation under international law to provide reparation, including compensation, for the damages resulting from its operations in Gaza.

**The restrictions on freedom of movement due to Israel's closure/blockade policy of Gaza** mean that lawyers living in Israel that are hired by Palestinians from Gaza are not permitted to enter the Gaza Strip to meet their clients, take witness statements or collect and verify relevant evidence. Nor can the Palestinian clients go to Israel to meet the lawyers and attend court hearings. As a result, the lawyers meet difficulties in collecting the evidence necessary for building the legal case against the Israeli military. In addition, since June 2007, the Israeli military has refused permission to Palestinians involved in civil cases to appear in court and testify, despite the issuance of court orders. This results in the effective dismissal of such cases, and the absolute denial of justice.

The Israeli State does not take reasonable measures to overcome these procedural obstacles in access to justice. Consequently, many cases are dismissed by the Israeli courts. Palestinian victims are deprived from effective representation, from accessing justice and are ultimately denied their right to an effective remedy, which is guaranteed under international law. On 16 December 2014, Israel's Supreme Court [rejected](#) a petition submitted by Adalah, Al Mezan, and other NGOs against Israel's policy of preventing the claimants and witnesses from entering Israel to attend their court hearings.

**The authorization of official documents**, including powers of attorney, inheritance and death certificates, medical reports of injuries and other court-required papers, must be carried out within Israel; authentications done by Palestinian government institutions or validated by Palestinian lawyers are considered invalid. An example of the serious difficulties that this poses is the consideration that due to Israel's closure/blockade policy of Gaza, claimants from Gaza must hire a lawyer in Israel to take the case in

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<sup>3</sup> Article 5 of the Israeli Torts (State Liability) Law, as amended in 2012. For more details see Adalah Center and others position paper at: <http://adalah.org/features/compensation/positionpaper-e.pdf>, last visited on 8 November 2013.

<sup>4</sup> Article 1 of the Torts (State Liability) Law, as amended in 2012, unofficial translation.

court, yet the claimant is not able to access the court in Israel in order to sign over the necessary power of attorney.

**The restrictive statute of limitations requirement** in the Israeli Torts (State Liability) Law stipulates that any non-Israeli victim suffering damages as a result of the Israeli military's 'combat action' in occupied Palestine must submit a 'civil notification' to the Israeli Ministry of Defence within 60 days of the incident if they wish to reserve the right to file a civil claim, which is then restricted to two years starting from the date of the incident that caused the damages or injuries. If such a claim is not submitted within this period, in most cases, the victim loses the right to access the Israeli court and can no longer demand effective remedy for the damages.<sup>5</sup> Importantly, the statute of limitations of most other civil claims submitted to the Israeli courts is seven years and no preliminary notification is required.

**The court guarantee** that Israeli courts require each individual victim from Gaza to pay is, on average, the equivalent of EUR 5,000. It is required to open a case and is paid to offset the State of Israel's 'defence costs' if the court does not rule in favour of the victims. The guarantee requirement is applicable to all foreign nationals and posed as a measure to ensure the payment of legal costs in the event that the claimant is unsuccessful. However such a blanket rule constitutes an obstacle to justice for foreign nationals in financial hardship with serious claims against the actions of the Israeli state and presents an undue burden to Palestinians, who are considered foreign nationals but are under Israel's effective control and impacted by Israel's actions on a daily basis.

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<sup>5</sup> Article 5A of the Torts (State Liability) Law.

### PAST: THE SALHA FAMILY

The case taken by [Fayez Salha](#), with the assistance of Al Mezan, represents a clear-cut example of dismissal based on amendment 8. Salha sought reparations and legal remedy in Israel after a devastating attack by Israeli forces in 2009 that killed his wife, four of his children, and his sister-in-law. In the middle of the night, the house was struck by a 'roof-knocking' missile by a drone. A few minutes later, as the family was frantically evacuating the home, Israeli forces struck again with a larger missile that destroyed the house and killed most of the inhabitants.

In 2009, following the submission of a compensation claim by Al Mezan on behalf of the family, the judge acknowledged wrongdoing in the actions of the Israeli military forces; however, in line with amendment 8, and without analyzing the nature or legality of the attacks, he dismissed the case and rejected liability on the part of Israel. Having failed the 'combat action' test, on Thursday, 7 February 2013, Israel's central court of Beersheba dismissed the case and ordered the claimant to pay a 20,000 ILS fee (approximately 5,000 EUR) as the court guarantee.

### PRESENT: ABU IS'AYID FAMILY

In an [ongoing case](#) with claimant Nasser Abu Is'ayid and Al Mezan, each barrier within the Israeli justice system has been clearly evidenced, although the case has not yet reached the amendment 8 test. On a July evening in 2010, the Abu Is'ayid family suffered a deadly attack by Israeli forces on their home in Gaza's access restricted area (also referred to as the 'buffer zone') near the border between Gaza and Israel. The family, who work in agriculture and have lived on and farmed the land for generations, underwent a second devastating attack by Israeli forces just over one year later.<sup>6</sup>

Seeking justice and accountability for the attacks on their home, which resulted in the death of mother of five, Ne'ma Yousif Abu Is'ayid, and the destruction of the family house, the Abu Is'ayid family initiated the legal process before the Israeli District Court in Beersheba, Israel, and with Israel's military investigative mechanisms. Shockingly, in the context of Israel's 2014 full-scale military operation on Gaza, the family was attacked a third time. Their new house was destroyed and the bodies of their livestock buried.

The Abu Is'ayid family submitted a civil complaint to the Israeli Ministry of Defence within the required, restrictive, timeframe of 60 days, and criminal complaints to the MAG regarding the first two incidents. Initial preliminary investigations were opened by the MAG into both incidents to determine whether criminal investigations would be initiated. The outcome of the preliminary investigation into the 2010 incident was communicated on 1 June 2015 and was acknowledged as being delayed beyond acceptable standards. The outcome stated that the attack was carried out in the context of 'combat action' and

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<sup>6</sup> For more information on these attacks, see Al Mezan's short-film "Waiting for Justice", available here: <https://www.youtube.com/watch?v=BqaiCzCmzGw>; and a case study, available here: <http://www.mezan.org/en/uploads/files/18470.pdf>

therefore did not merit a criminal investigation. This response suggests that the prosecution will ask the court to dismiss the case on the grounds that the damages and injuries occurred in the context of 'combat action', as per amendment 8, if the case makes it beyond the current procedural barriers. Israel's MAG stated that 'technical difficulties' led to the 2011 attack and that Israeli forces had seen a suspicious person approaching the border fence. The case was closed without a criminal investigation. There was no clarification as to what the 'technical difficulties' involved.

Meanwhile, on 11 July 2012, before the expiry of the two-year statute of limitations and with the support of Al Mezan, the Abu Is'ayid family initiated legal proceedings before the Israeli District Court in Beersheba. The case was lodged for compensation for the damages suffered by the family as a result of the first (2010) attack. The defendant, the State of Israel, unsurprisingly submitted a statement claiming that the incident took place during 'combat action'. As this would exempt the State of Israel of any legal liability according to amendment 8, the defendant requested that the court dismiss the case accordingly.

On 4 February 2013, the court issued a decision for the claimants, the Abu Is'ayid family, to pay a court guarantee of ILS 20,000 (equal to approximately EUR 5,000) in order for the civil case to proceed. This amount exceeded the financial capabilities of the victims, however, requests to reduce the fee were rejected by the court. Al Mezan exceptionally paid the court guarantee to allow for the case to continue.

During the court session of 8 April 2013, the defence lawyers for the State of Israel repeated their position, asking the court to drop the case in accordance with amendment 8 on the grounds that the damages and injuries occurred as a result of 'combat action'. The claimant's lawyer objected and asked the court to examine the evidence and witness statements provided by both parties. The lawyer also requested that the court grant him more time to prepare the case, pointing out the anticipated difficulties of conducting meetings with the victims and the witnesses in Gaza without being able to travel there.<sup>7</sup>

In the subsequent hearing, the claimant was asked to present original powers of attorney forms signed before him in court by the claimants and the lawyer. The lawyer was informed by the court that other documentation, such as inheritance certificates, must also be approved by the Israeli Judicial Coordination Office (JCO), otherwise, the case would be dismissed, the judge decided.

The JCO rejected the documents that were produced in the Gaza justice system. The proceeding requests to allow for the clients to meet with their lawyer in Erez crossing were also denied by the Israeli authorities. In July 2014, through the organization Gisha in Israel, Al Mezan filed an administrative petition to the district court again asking that the State allow members of the Abu Is'ayid family to sign over power of attorney inside the Erez crossing. On 26 October 2015, five members of the family were permitted entry to Erez crossing where they signed the documents with their lawyer who had come from Israel. The power of attorney was accepted by the public prosecution.

Five years after the attack and after exceptionally surmounting the numerous procedural and financial barriers, the case will meet a new test. The next barrier to surmount will be access to the court for the

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<sup>7</sup> According to the documents received from the family's lawyer, Hussein Abu Hussein, and an interview with Al Mezan Center for Human rights on 6 November 2013.

claimants to give witness testimonies in person, before the judge, in Israel. However, the permit, which allowed for the first meeting between the clients and their lawyer in years, appears to have been exceptionally granted on the grounds that the clients asked for the meeting to take place inside Erez crossing, not inside Israel. And, according to a record of zero permits granted for witnesses to access courts in six years, it is likely that the claimant will not appear in court and the case will at that point be dismissed. This would mean that instead of the case being decided on its merits, the Abu Is'ayid family's case for justice will likely be rejected for failing to surmount the barriers within the amendment 8 legislation. Should the case proceed, the last test will be the evaluation of 'combat action' within amendment 8.

## **FUTURE: PENDING INITIATION AFTER ISRAEL'S 'OPERATION PROTECTIVE EDGE'**

The number of compensation cases that could be pursued within Israel's courts reflects the massive amounts of death and damages caused by Israeli forces and authorities in the Gaza Strip, whether during daily incidents or full-scale military operations. Israel committed wide-scale violations of IHL and IHRL between 7 July and 26 August 2014 in the course of Israel's military operation on the Gaza Strip entitled "Operation Protective Edge" (OPE). Al Mezan Center for Human Rights is a member of a coalition of four Palestinian NGOs<sup>8</sup> that documented the impact on civilians, their property, and infrastructure of Israeli attacks conducted during OPE. The coalition documented over 50,000 individual cases.<sup>9</sup>

Key incidents were selected for further investigation and for the compilation of case-files for the purpose of pursuing legal action in Israel, i.e. [filing criminal complaints](#) and civil compensation notifications.

As of 15 November 2015, a total of 1,248 civil notifications were submitted on behalf of victims of the above-mentioned key incidents and other incidents. The notifications were filed to the Compensation Officer at the Israeli Ministry of Defense, who acknowledged their receipt.<sup>10</sup> The submission of such notifications ceased shortly after the end of the military operations due to the very short statute of limitations, as referred to above. After the civil notification has been accepted, if the case is to be pursued in court, it must be initiated within two years of the date of the attack.

As of 15 November 2015, no cases have been initiated within the Israeli justice system by the Palestinians victims of the 1,248 civil notifications. The numerous barriers that remain in place and the lack of success in past cases has led to distrust by victims that justice is worth pursuing in Israel.

## **CONCLUSION**

The [Report of the detailed findings of the independent commission of inquiry on the 2014 Gaza conflict](#) demonstrates that tens of thousands of Palestinians suffered injuries and damages due to actions that the Commission of Inquiry report deemed unlawful and likely amounting to war crimes. The Report further cited the need for accountability. However, Gaza residents have no hope of achieving accountability or accessing reparations in Israel. As the briefing on criminal investigations enclosed here details, Israel's justice system is capable of serving justice; however, the lack of will to investigate serious violations emanating from armed

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<sup>8</sup> Including the Palestinian Center for Human Rights, Al-Haq and Al Dameer Association for Human Rights.

<sup>9</sup> The documentation of the cases is being kept in a joint database.

<sup>10</sup> 173 were filed by Al Mezan and the rest by PCHR.

attacks and purposeful legislative reform as embedded in amendment 8 legislation reflects Israel's stubborn unwillingness to live up to its obligations and make available effective remedies to the civilian populations affected by its armed attacks and policies.

As far as hope for justice and redress in Israel is concerned, the outlook is bleak. Amendment 8 is legislative reform that institutionalizes the denial of Palestinian access to justice in Israel. Without access to redress in Israel Palestinian claimants from Gaza have no other option but to push for legal remedy from international justice mechanisms.

Compelling evidence is put forward in the conclusions of previous mechanisms set up by the UN Human Rights Council, including the Committee of Experts that followed up the quality of investigations after Operation Cast Lead, that determines that domestic remedies are improper and do not meet international standards. The conclusions point to the use of international mechanisms, including the International Criminal Court (ICC), and the need for support of the Office of the Prosecutor and ensuring its unimpeded access. The support of the competent ICC Prosecutor's on-going preliminary examination within this context is critical. In this context of impunity, and following three major bombardments in six years, accountability bears even greater significance in ensuring better protection of civilians in this on-going conflict.