

Gaza Impunity Crisis: Israel's continued unwillingness to thoroughly and credibly investigate alleged serious violations of international law in the Gaza Strip

Lawyers for Palestinian Human Rights (LPHR) and Al Mezan Centre for Human Rights (Al Mezan) call on the Human Rights Council (HRC) and its member states to fully support the enforcement of international justice mechanisms in light of Israel's continued unwillingness to thoroughly and credibly investigate alleged serious violations of international law in the Gaza Strip. This call is issued in light of the imminent publication of the OHCHR's comprehensive review on implementation of human rights recommendations. We expect the review's findings to correspond with our analysis and conclusions.¹

Between 7 July and 26 August 2014, Israel launched a military offensive in the Gaza Strip codenamed "Operation Protective Edge", which led to the death of at least 2,219 Palestinians. The vast majority of those killed were civilians, and included 299 women and 556 children. During the 51-day bombardment, the Israeli forces caused massive destruction to over 31,000 homes and other civilian properties, including vital infrastructure², which remains largely unrepaired today.

Monitoring of the military assault gave rise to serious concern that Israel's actions had violated, *inter alia*, the principles of distinction and proportionality—actions that would amount to serious violation of the laws of war and human rights standards. Among Al Mezan's documented cases are direct attacks on residential buildings, causing civilian deaths, injuries and vast destruction; on children³; on UNRWA schools that were sheltering civilians; on hospitals, ambulances, mosques, and a shelter for people with disabilities; and on civilian infrastructure and the workers attempting to repair damage to it.

Al Mezan submitted 107 serious complaints to Israel's Military Advocate General (MAG) and other relevant authorities demanding that they conduct credible investigations and prosecute those responsible. Another 28 additional complaints were filed jointly with partner organization Adalah, concerning similarly grave incidents. Under international law, states involved in such attacks are under an obligation to investigate and to hold perpetrators to account. The duty to investigate requires that the international standards of independence, impartiality, effectiveness, promptness, and transparency guide investigation processes.⁴ The Israeli investigative mechanisms are instead geared towards shielding Israel's armed forces and allowing impunity to remain the *status quo*.

1 For a comprehensive briefing on this legal analysis please refer to Al Mezan-Adalah accountability update: <https://www.adalah.org/en/content/view/9082>

2 See 'Operation Protective Edge in Numbers': <http://mezan.org/en/post/21255>, page 15.

3 See Al Mezan's press release regarding the Bakr children: <http://www.mezan.org/en/post/20956>
See ACAT press release regarding the Shuheibar children: <https://www.acatfrance.fr/communiquede-presse/plainte-pour-complicite-de-crimes-de-guerre-a-gaza-contre-lentreprise-francaise-exxelia-technologies>

4 See *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

Israeli authorities have not opened a single criminal investigation into any of Al Mezan's 107 complaints, and among the additional 28, not a single indictment has been issued. The only incidents prosecuted involve Israeli soldiers looting, which reflects the Israeli leadership's stated position of investigating and prosecuting what qualify as 'common crimes'.⁵ Investigations into a few of the serious attacks on UNRWA shelters and civilian targets were closed without serious procedures taken and the rest of the complaints were either promptly rejected or remain unanswered.

Nearly three years after the bombardment, Israel's handling of Al Mezan and Adalah's complaints has proven what previous experience has long made clear: Israel is unwilling to conduct genuine, independent investigations into suspected war crimes and does not hold those responsible to account, as required by international law.⁶ This situation continues to be the case even after the Israeli military established its Fact-Finding Assessment Mechanism (FFAM) following OPE, which was supposed to improve its investigative thoroughness and promptness, but which in practice does nothing of the sort.

Residents of Gaza also continue to face severe barriers in accessing civil redress in Israel. The overarching challenge is rooted in legislative restrictions that shield the Israeli government from tort liability for its troops' actions in Gaza when those activities are defined as 'combat action' according to legislation. Within the context of its ten-year illegal closure, Israel restricts Palestinians' access to court in cases against the Israeli military, which leads to those cases being dismissed. The State also imposes a two-year statute of limitations for Palestinians (seven years for Israelis) and prohibitively high financial guarantees (averaging EUR 7,600).^{7,8}

Although Al Mezan filed 278 civil compensation notifications to the Israeli Ministry of Defense after the 2014 attacks⁹ these barriers mean that in practice, claimants from Gaza are unable to access domestic remedies. The obstructions are the result of conscious design through a series of legislative reforms aimed at producing a specific outcome: no compensation for Palestinians when their claims involve violations by the Israeli military.

Israel's investigations into OPE fall far short of international standards. The handling of the complaints submitted by Al Mezan and Adalah clearly indicate the following:

- There is a lack of an independent and impartial investigatory mechanism, since the military is still the authorized body to investigate its own conduct. The MAG still

5 See " Defense Minister Ya'alon: No Place for Criminal Probe of Gaza War's Black Friday", Haaretz, 8 January 2015, available at <http://www.haaretz.com/israel-news/.premium-1.636074>, last accessed on 29 August 2016.

6 See Adalah's submission to the UN Commission of Inquiry on the 2014 Gaza Conflict: <http://www.adalah.org/en/content/view/8417>.

7 For examples of cases dismissed by denying entry, see *supra note 2*, pp 23-26.

8 In December 2014, the Supreme Court contradicted a 2006 decision and upheld the onerous regulations, effectively closing the doors of the Israeli courts to Palestinian residents from Gaza for their civil compensation claims, which thereby also constitutes a serious breach of Israel's obligations under international law. See HCJ 7042/12, *Abu Daqqa, et al. v. the Interior Minister, et al.* (judgment delivered 16 December 2014)

9 Briefing on Israeli investigations into criminal complaints submitted by Palestinian NGOs in Gaza on behalf of victims of attacks on Gaza in July and August 2014: http://mezan.org/en/uploads/upload_center/kiWkMhPrYIZx.pdf

performs a "dual role": it provides the military with legal advice prior to/during military operations and subsequently decides whether to initiate a criminal investigation. This dual role could lead to a situation in which the MAG would decide whether to investigate its own conduct or that of its subordinates. Such a situation would clearly violate the requirement of independence.

- The MAG dismisses complaints by providing unfounded arguments about the existence of military necessity and military targets;
- The MAG has not investigated policy issues, including the policy of targeting inhabited family homes, which resulted in the Israeli military killing hundreds of people; the policy of indiscriminate artillery fire at inhabited areas; and the policy of destroying farmland and thousands of homes;
- The MAG has not investigated government officials nor senior military commanders, who devised the aforementioned policies, were responsible for the orders and made operational decisions during the fighting;
- The MAG is unwilling to disclose information on any investigative materials, witnesses and testimonies, which reinforces concerns about the lack of transparency;
- There is no timeframe for examinations and investigations;
- There is an unreasonable amount of time stalling in the examination and investigation processes, and thus the process is not prompt, but unnecessarily lengthy;
- There are still no guidelines under which a criminal investigation should be opened in cases involving alleged IHL and IHRL violations.

These observations from OPE add to a longer experience that shows that:

- To date, the Israeli Supreme Court has never issued any order to the MAG to open a criminal investigation or to indict any individual regarding alleged suspicions of the commission of war crimes in Gaza, and in a 2011 decision stated that such intervention in military decisions is rare and exceptional;
- There is still an absence of war crimes legislation in domestic Israeli law and there is no Israeli penal law imposing direct criminal liability on military commanders and political leaders for international law violations;
- Israel refused to cooperate with international investigating bodies and thus, UN and independent investigators have no access to Israel and Palestine. This lack of cooperation thwarts attempts to gather information first-hand and view the scenes of relevant incidents.

These findings clearly demonstrate Israel's unwillingness to genuinely investigate allegations of war crimes and other serious violations of international law, as well as its lack of intent to bring those responsible at all levels of political and military establishments to justice. Even in the few cases where investigations have been conducted, it is clear that they are not done independently or impartially, and in the end fail to produce any results that ensure accountability.

LPHR and Al Mezan expect our objectively necessary and disturbing conclusions to be borne out by the OHCHR's pending significant comprehensive review on implementation of human rights recommendations. Now is the time for all states to conclude that Israel's "lamentable track record

in holding wrongdoers accountable”¹⁰ requires the necessary intervention of international mechanisms so as to provide overdue justice for victims and to ensure the necessary guarantees of non-repetition.

We call on the HRC and members states to:

1. Conclude that, to date, Israeli domestic investigations demonstrate an unwillingness and inability to genuinely carry out investigations or prosecutions in compliance with international standards;
2. Insist that Israeli forces’ apparent excessive and intentional use of force against Palestinian civilians is subject to independent and credible criminal investigations;
3. Demand that Israel remove all barriers for Palestinians to access Israeli courts to pursue civil tort claims against the Israeli military’s actions that include killings and damages;
4. Demand that Israel immediately lift the illegal closure of the Gaza Strip and cease collective punishment of Palestinians in occupied territory;
5. Reiterate that Israeli violations of international law are rooted in Israel’s prolonged military occupation of Palestine, the inherently discriminatory features of which thwart the pursuit of justice for Palestinian victims;
6. Reiterate insistence of Israel’s cooperation with UN Mechanisms and implementation of all recommendations;
7. In accordance with previous accountability resolutions adopted by the HRC and the pending findings of the OHCHR’s publication of its comprehensive review, to fully support the preliminary examination into the situation of Palestine being undertaken by the Office of the Prosecutor for the International Criminal Court so as to ensure that those responsible are held to account.

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Para 664, UN independent Commission of Inquiry on the 2014 Gaza Conflict