



مركز الميزان لحقوق الإنسان
AL MEZAN CENTER FOR HUMAN RIGHTS

BRIEFING UPDATE:

15 November 2015

Israel's investigations on criminal complaints submitted by
Palestinian NGOs in Gaza on behalf of victims of attacks on
Gaza in July and August 2014

Introduction

This is a briefing on the legal interventions made by Al Mezan Center for Human Rights (Al Mezan) on behalf of Palestinian victims of Israeli armed attacks, which allege violations of international humanitarian law (IHL) and human rights law (IHRL). The incidents occurred between 7 July and 26 August in the course of Israel's military operation on the Gaza Strip entitled Operation Protective Edge (OPE). In certain cases, the briefing refers to similar work carried out by sister Palestinian human rights NGOs in Gaza.

The interventions, submitted on behalf of civilian victims of the military attacks on the Gaza Strip, were based on documentation and investigations conducted by Palestinian human rights organizations. The criminal complaints were filed to the designated Israeli military authorities according to the procedures established under the Israeli military justice system: the Military Advocate General's office (MAG) and the newly installed Fact-Finding Assessment Mechanism (FFAM).

The legal representation of victims consists of two steps: 1) filing 'civil compensation notifications' to the complaints unit at the Israeli Ministry of Defense (MoD) and 2) filing criminal complaints with the MAG and/or the FFAM.

This update aims to report on the progress of these complaints approximately 15 months after the end of OPE. This information is to be considered in conjunction with the outcome of complaints submitted in the aftermath of previous military operations, including Operation Cast Lead (2008/9) and Operation Pillar of Defense (2012).

The effectiveness of the Israeli complaints mechanisms is assessed according to international standards regarding the duty to investigate, which, as recently reiterated by the UN Independent Commission of Inquiry on the 2014 Gaza Conflict (CoI), must fulfill the criteria of "independence; impartiality; thoroughness; effectiveness; and promptness; transparency is also an increasingly important element".¹

1 - Documentation and investigations

Two Palestinian human rights NGOs, Al Mezan Center for Human Rights and the Palestinian Center for Human Rights, are members of a coalition of four Palestinian NGOs² that documented the impact on civilians, their property, and infrastructure of Israeli attacks conducted during OPE. The coalition documented over 50,000 individual cases, the documentation being kept in a joint database.

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 July 2015, the organizations concluded the documentation and investigation of 610 cases and prepared case-files for them. Case-files include a description of the incident, the type of attack, and details of loss of life, injuries, damage to

¹ A_HRC_CRP_4, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1**: Paragraph 604.

² The other two member organizations of the coalition are Al-Haq and Al Dameer Association for Human Rights.

property, GPS coordinates of the location, Powers of Attorney from the victims and/or their family members, and official documentation confirming injury and loss of life or property. Testimonies of the witnesses, eyewitnesses and survivors are also included in the case-files.

2 - Submission of civil notifications to the Israeli MoD

Israeli law establishes that Palestinians who claim to have sustained injuries or damages as a result of the military activities of the Israeli forces are obliged to submit a civil notification to the compensation unit at the Israeli MoD within 60 days of the date of the incident. Given the significant number of attacks leading to injuries and damages, the organizations focused on a relatively small number of cases in order to ensure thorough documentation to support a comprehensive complaint.

As of 31 May 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 MoD, who acknowledged receipt.³ The submission of such notifications ceased shortly after the end of the military operations due to the very short limitation period, as referred to above.

3 - Criminal Complaints

As of July 2015, the two organizations had submitted a total of 354 criminal complaints to the MAG and the FFAM. The cases submitted involved 2,205 individuals who had lost family members or who had sustained injury or loss of property as a result of Israeli military attacks during OPE. Of those, Al Mezan submitted 102 complaints (about 108 incidents) where Al Mezan's investigations concluded that Israeli military attacks had violated IHRL and/or IHL.

Nine of Al Mezan's complaints sought criminal investigations into 16 of the key incidents of serious attacks on homes, children, health facilities/personnel, IDP shelters, and other facilities that are indispensable for the survival of the civilian population. These complaints were submitted to MAG during the military operation (7 July - 26 August 2014) in cooperation with Adalah – the Legal Center for Arab Minority Rights in Israel.

Another six criminal complaints were filed by Al Mezan on behalf of individuals whose property was allegedly stolen by Israeli soldiers; one of those six complaints was later withdrawn.

Al Mezan also represented 24 individuals who had been arrested by the Israeli forces during the military operation. 14 of these individuals were sentenced and one was declared to be an 'unlawful combatant' and held without charge or trial. There is evidence that ill-treatment and/or torture was commonly used against Palestinians in custody. Al Mezan submitted criminal complaints on behalf of five alleged victims of torture and/or ill-treatment.

³ 173 were filed by Al Mezan and the rest by PCHR. See 'Update on the progress of legal interventions on behalf of victims of Israeli attacks on Gaza in July and August 2014', available online at <http://mezan.org/en/post/20952> for more details.

4 - Outcomes of the criminal complaints filed

Lawyers communicated with the FFAM and, when requested, provided additional information as per the FFAM requirements. The MAG and FFAM office communicated their responses to Al Mezan in eight letters and in telephone calls. Three letters confirmed receipt of the criminal complaints and the opening of files for 68 of the 108 complaints. Telephone calls were received by Al Mezan's lawyer in Israel confirming receipt of the balance of the cases and informing him that criminal investigations would be initiated in relation to another eight cases. One of the letters informed Al Mezan that preliminary examinations would be initiated into 63 cases. A further letter stated that criminal investigations would be opened into four cases.

Finally, three letters were received from the MAG which stated that cases had been discontinued as the MAG had decided not to initiate criminal investigations. The MAG/FFAM sent dozens of emails and communicated with Al Mezan's lawyer by telephone to request additional information about 91 cases.

Information on cases was also published by the MAG without communication with the lawyers who submitted the complaints. In its latest update published on 11 June 2015,⁴ the MAG confirmed the closure of several cases.

As part of the engagement with the MAG and the FFAM and upon request of Israeli authorities, Al Mezan facilitated the access of nine individuals to Erez Crossing to attend interviews with the Investigations Unit of the Israeli Military Police. They gave testimonies on eight files. One of the witnesses was a woman, and the rest were men. In total, 13 witnesses, including one child, were requested to attend interviews with the same Investigations Unit; however, four of them, including the child in question, declined for fear of going to Erez crossing and of meeting with the Israeli military, and because they were frightened that contact with the Israeli military would cause anguish and anxiety related to their original trauma. Eight of these witnesses testified in cases involving criminal complaints filed by Al Mezan in relation to theft of property by soldiers (five cases) and torture and abuse of detainees by soldiers (three cases).

Oral communications between Israeli military police investigators and the FFAM and Palestinian lawyers occurred occasionally; mostly in order to obtain specific information about individual incidents, such as details of locations.

Out of the nine complaints seeking criminal investigations in 16 cases filed by Adalah and Al Mezan (see above), the MAG has stated that four cases would be dismissed without investigation and five cases regarding attacks on the UN Relief and Works Agency schools and facilities would be opened for examination in conjunction with the UN Board of Inquiry's investigation, the conclusions of which were released in April 2015. On 22 June 2015, a letter from the MAG to Adalah stated that a preliminary examination into the case of the four Bakr children killed on Gaza beach had been closed; the letter stated that the attack occurred due to the false-determination of identity as the commander had relied on intelligence

⁴ See 'Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'- Update No. 4 -', 11/06/2015. <http://www.law.idf.il/163-7353-en/Patzar.aspx> (accessed 24 June 2015)

information that fighters were *expected* to come to the alleged location of the attack, which occurred on 16 July 2014. No response has been received concerning the other six cases.

Regarding the complaints of theft of civilian property by Israeli soldiers, the MAG decided to initiate investigations into five cases; one of the cases was later closed; four remain under investigation. Al Mezan facilitated the access of four witnesses to Erez Crossing in the context of those five investigations.

This table indicates the outcomes of the complaints submitted to the MAG by Al Mezan and Adalah for cases in OPE as of 15 November 2015	
# of complaints	108
Confirmation communications	3 letters 15 'phone calls
Request for information communications	91 calls and emails
Communications informing of preliminary examination	1 letter
Communications informing of criminal investigation	1 letter 8 'phone calls
Communications informing of closing files	3 letters
Communications informing of indictment or criminal charge	0

5 – Analysis: outcomes of filing criminal complaints regarding conduct of Israeli forces

The following points are relevant for the analysis of Israeli military investigations into criminal complaints submitted to the MAG, and later to the FFAM, since 2008:

Promptness: Over 15 months have passed since the end of OPE and only a few cases have been investigated. Fewer cases have been concluded. It is striking that in the vast majority of the cases there has been no response from the Israeli authorities beyond a mere confirmation of receipt. Preliminary examinations were initiated in relation to 63 cases, many of which were already closed. Criminal investigations were opened into 12 cases; some were closed quickly and without the provision of information on the conduct and procedures of the investigations. The outcomes thus far reflect a continuation of the same approach adopted by the MAG in the past, especially in connection with the 2008/9 Operation Cast Lead (OCL), the 2012 Operation Pillar of Defence (PoD), and in connection with Israel's armed attacks in-between its larger operations on the Gaza Strip. Hundreds of criminal complaints alleged violations that occurred during OCL and almost all the 17 complaints submitted following PoD are yet to be responded to by the MAG.

By way of a further example, on 1 June 2015, the MAG sent a letter to the lawyers representing the victims of one of two attacks that occurred on a family in 2010 and 2011. The criminal investigation by the MAG into the 2010 attack was concluded in 2013. The second investigation was concluded in May 2015, as communicated by a letter from the

MAG dated 31 June 2015. The letter stated that the attack - the second on the same family - was carried out in the context of combat action and therefore did not warrant a criminal investigation.⁵ While the MAG acknowledged that the investigation took a very long time, beyond the acceptable standard of promptness, it concluded that the injuries and damages had occurred as a result of 'combat action'. The significance of this conclusion lies not only in that the MAG makes it clear that no soldiers or commanders would be subject to any criminal charges, but also in that compensation claims currently being considered by an Israeli court would most likely be dismissed by the court as per Amendment No. 8 to the Israeli State Liability Law.⁶ This lack of prompt action, or of action at all, for a long period of time reflects a lack of procedure to due process standards, and clearly violates the criteria of promptness concerning the obligation to investigate.

Transparency: despite the MAG's responses and/or decisions on a few cases, there is no information about how the investigations were conducted or how the conclusions were reached. Although Al Mezan, Adalah, and other NGOs requested further information from the MAG about the investigations, there has been no substantive response. It is almost impossible to challenge the decisions by the MAG, or lack thereof, without a certain degree of transparency; namely without knowing how decisions are taken. Similarly, queries about complaints that were submitted to the MAG on cases closed that date back to Operation Cast Lead have not been clarified by the MAG to date.

Selectivity: as with the complaints submitted after Operation Cast Lead, a trend that appears clearly in the MAG's investigations is the prioritization of cases that involve lack of discipline by Israeli soldiers. For example, the single indictment of an Israeli soldier for wrongdoing during Operation Cast Lead was when a soldier was sentenced to seven months in prison for stealing and using a credit card from a Palestinian resident of Gaza. For the sake of sentencing comparison, three soldiers were sentenced to three months' suspended imprisonment for using a Palestinian child as a human shield. Notably, the charges against the soldiers in the human shield case were not about IHL related criminal conduct, but instead, for unbecoming conduct.

Another soldier was sentenced to six months' suspended imprisonment for killing two Palestinian women upon the charges being reduced to 'unlawful use of weapon' from 'manslaughter'.⁷ Similarly, Al Mezan's six complaints against misconduct of Israeli soldiers who appeared to have stolen jewelry and money from Palestinian houses seem to have been going on a fast track in terms of investigations, while other criminal complaints are mostly closed or delayed for years.

6 - Conclusion:

⁵ In the case submitted in 2011, the investigation was concluded in May 2015 after it was prompted by a compensation claim filed on behalf of the victims. The State prosecutor informed the court that the investigation was held because a key witness, a soldier, was on travel. Moreover, Al Mezan is yet to receive a response from the MAG about the status of 17 complaints submitted in early 2013 following Operation Pillar of Defence as well as the vast majority of complaints submitted in 2009 following Operation Protective Edge.

⁶ For more information about this amendment, please consult the enclosed "Update - No Access to Justice and Effective Remedy for Palestinians in Gaza", available online at <http://mezan.org/en/post/20954>, which details the obstacles Israeli law erects before Palestinians' access to reparations.

⁷ See Haaretz, 'When War Criminals Walk Free', 14 August 2012; available at <http://www.haaretz.com/opinion/when-war-criminals-walk-free-1.458055> (accessed 24 June 2015).

Palestinian human rights NGOs have engaged proactively with the Israeli military authorities and justice system for over a year following OPE. Israel has a duty to investigate and apply punishments for violations committed by its military and other state agents. Investigations must be carried out to international standards.

Recent history shows that Israel, while clearly capable of effectively investigating and prosecuting its own nationals for actions allegedly amounting to war crimes and crimes against humanity, is unwilling to investigate and/or prosecute. The debate in Israel suggests that the prosecution of wrong-doing might lead to weakening the deterrence power of the Israeli military. Al Mezan asserts that the lack of domestic remedies constitutes a strategic Israeli policy that aims to sustain Israel's occupation of the occupied Palestinian territory - the enforcement of which seems to demand actions that violate international law. Despite the international community's countless calls to secure accountability and access to justice, including by commissioning a committee of experts by the Human Rights Council, the Committee of Experts report still maintains inadequacy of Israeli investigations.

Under such circumstances, and as the thousands of Palestinian victims continue to be denied justice or redress, Al Mezan calls on the international community to condemn the impunity that is still prevailing in Israel, and to support international mechanisms to secure justice and ensure non-repetition for grave violations of international law. This is especially important in the Gaza Strip where civilians also continue to be victimized by an 8-year-long illegal closure regime and maintenance of a "buffer zone" (also referred to as access-restricted areas or no-go areas) with excessive use of force.

The UN Human Rights Council, European Union, United States and other influential actors in the international community are called upon to condemn the culture of impunity that permeates the Israeli-Palestinian conflict and to support the work of the international justice mechanisms, including the International Criminal Court and universal jurisdiction. The international community of states must exert pressure to ensure compliance with international law, unconditionally and immediately.