



Adalah – The Legal Center for Arab Minority Rights in Israel
Report to the United Nations Independent Commission of Inquiry on the 2018
Protests in the Occupied Palestinian Territory

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I. Introduction

This report reviews the failed policies, practices and investigatory mechanisms of the State of Israel in relation to the actions of its military in the 2014 Gaza War, codenamed Operation Protective Edge (OPE). According to official UN reports, Israel's attacks during OPE resulted in the killings of 2,251 Palestinians, the vast majority of whom were civilians, including 299 women and 551 children, and the destruction of 18,000 homes and other civilian property, including hospitals and vital infrastructure.¹

Adalah believes that this information is crucial to the United Nations Independent Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory (COI 2018) in fulfilling its mandate *“to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring legal accountability, including individual criminal and command responsibility, for such violations and abuses, and on protecting civilians against any further assaults.”*²

The Rome Statute of the International Criminal Court (ICC) reiterates the determination *“to put an end to impunity”* for the perpetrators of the most serious crimes of concern to the international community, *“and thus to contribute to the prevention of such crimes”*, affirming that such crimes *“must not go unpunished”*.³

Israel has demonstrated its failure to exercise its criminal jurisdiction over those responsible for the violation of such serious crimes. The lack of a sound and functional domestic investigatory system in Israel upholds the culture of impunity that permeates all echelons of Israel's military and civilian apparatus that determines policy and conduct towards Gaza. Israel's lethal, militarized response to the civilian protests in Gaza (*“The Great March of Return”*) since 30 March 2018, under investigation by the COI 2018, is a direct result of this culture, in which those responsible for violations of international humanitarian law (IHL), including suspected war crimes, perpetrated in Gaza evade accountability and the victims are left without redress.

¹ OCHA, *“Key figures on the 2014 hostilities”*, 23 June 2015, available at: <https://www.ochaopt.org/content/key-figures-2014-hostilities>.

² Mandate of the United Nations Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory, available at: <https://www.ohchr.org/EN/HRBodies/HRC/CoIOPT/Pages/OPT.aspx>.

³ Fourth and fifth paragraphs of the Preamble to the Rome Statute of the International Criminal Court.

This report draws the following main conclusions:

- Israel's system of investigating suspected international law violations by its military is unfit for purpose and falls far short of compliance with international standards of **independence, impartiality, effectiveness, promptness and transparency**;
- The chronic failings of its investigatory system allows illegal conduct by agents of the Israeli military to continue with a wide margin of impunity;
- For six years, Israeli domestic bodies have issued reports and recommendations for improvements to the investigatory system, all of which have both fallen short of the requirements international law, and remain ink on paper, in what appears to be an empty exercise designed to present a facade of action and good intentions;
- Over **91%** of the "exceptional incidents" received by the MAG Corps involving alleged IHL violations during "Operation Protective Edge" (OPE) in Gaza in 2014 have not been investigated, and no commander or soldier was prosecuted for grave violations of IHL;
- Thus, Article 17 of the Rome Statute may give authority to the ICC to open investigations into these matters, in fulfilment of the principle of complementarity;
- The ongoing situation of inaction at the domestic level and the persistent, demonstrated unwillingness of Israel to conduct genuine investigations or to initiate prosecutions create a pressing need for international actors to take action to provide remedies and accountability for Palestinian victims of the 2018 protests.

To substantiate these conclusions, this report analyzes key recommendations and other findings made by three Israeli domestic bodies, the Turkel Commission (2013),⁴ the Ciechanover Team (2015),⁵ and the State Comptroller's Office (2018).⁶ These bodies have consecutively reviewed and produced findings about the state's investigatory mechanisms, and all of them identified multiple grave flaws within that system.

Although the Government of Israel has official approved all three reports, it has not implemented the vast majority of the recommendations made. As a result, the flaws that mar the investigatory system remain in place. Overall, the pattern that emerges from these successive reviews is that there is an appearance of a serious, credible process, which contains some references to the relevant precepts of international law, but which ultimately results in no significant concrete modifications to the system.

The result is the preservation of the *status quo*: an investigatory system that is unfit for purpose, that falls far short of compliance with international standards, and that allows illegal conduct by agents of the Israeli military to continue with a wide margin of impunity.

Hence there is a pressing need for international actors to step in to provide remedies and accountability for Palestinian victims, who are currently being systematically denied them by Israel due to the ongoing

⁴ Turkel Commission, *Second Report: Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law*, February 2013, available at: <http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf> (hereinafter: Turkel Report II).

⁵ *Report of the 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*, August 2015, available at: <http://www.pmo.gov.il/Documents/ReportEng.pdf> (hereinafter: The Ciechanover Report).

⁶ The State Comptroller and Ombudsman, *Operation Protective Edge – IDF Activity from the Perspective of International Law, Particularly with Regard to Mechanisms of Examination and Oversight of Civilian and Military Echelons*, 14 March 2018, available at:

<http://www.mevaker.gov.il/En/publication/Articles/Pages/2018.03.14-international.aspx?AspxAutoDetectCookieSupport=1> (hereinafter: The State Comptroller's Report).

situation of inaction at the domestic level and the demonstrated unwillingness of Israel to conduct genuine investigations or prosecutions into suspected violations of international law by its military.

This report focuses on the most recently issued of these reports, the State Comptroller's (SC) Report, which contains a review of the Turkel Commission and the Ciechanover Team's recommendations, and the extent of their implementation. It provides evidence of chronic inaction at the domestic level regarding grave incidents that took place during OPE in 2014, drawing on analysis of Military Advocate General (MAG) Update #6, issued in August 2018 into its handling of cases brought before it, and on the lack of progress made on criminal complaints filed by Adalah and Al Mezan to the Israeli authorities.

Adalah and Al Mezan filed complaints into 28 cases of suspected IHL violations, including war crimes, committed by the Israeli military during OPE. To date, in response to these 28 complaints, filed to the MAG and the Attorney General (AG), only three investigations have been opened; of these, two have since been closed and one remains pending. Adalah received no response to date in 5 cases; 13 cases were closed without the opening of an investigation, and 7 are allegedly still under examination.⁷ All of these cases involve the killings of civilians, including women and children, and extensive damage and destruction to civilian property and infrastructure.

No indictments have been issued in any of the cases. In fact, it is clear that no genuine investigations that conform to the standards of international law have been conducted. Any investigations that were initiated were so fundamentally flawed as to render them meaningless. These conclusions are closely echoed by statements and recommendations made by numerous UN officials and experts, who have repeatedly reiterated serious concerns regarding the lack of accountability and the long-standing systematic impunity for international law violations that has allowed for the recurrence of grave violations without consequences for the perpetrators.⁸

Following the presentation of the cases, the report then examines the extent to which the domestic commissions' recommendations have resulted in improvements to Israel's investigatory system and increased accountability for IHL violations. It then analyzes the structural failings of the investigatory system.

The Three Israeli Domestic Bodies

Three different Israeli domestic bodies have examined Israel's investigatory system over the last six years: The Turkel Commission, the Ciechanover Team, and the State Comptroller. Each of these three bodies issued findings and recommendations for major improvements to Israel's domestic investigatory system, which indicates the unsound nature of that system; however, the State of Israel, despite its official adoption of all three reports, has not implemented the majority of their recommendations. As a result, the system remains dysfunctional and unable to provide accountability or redress to Palestinian victims of suspected IHL violations.

Significantly, each of these bodies has reached a contradictory conclusion: they all found the Israeli investigatory system, overall, to be in compliance with international law, even though the

⁷ See Adalah and Al Mezan, "Gaza 3 Years On: Impunity over Accountability," 28 August 2017, available at: https://www.adalah.org/uploads/uploads/Gaza_3_Years_On_27082017_FINAL_FINAL_FINAL.pdf.

⁸ See, e.g., Report of the United Nations High Commissioner for Human Rights, A/HRC/31/40, 7 March 2016, para.39; United Nations Human Rights Council, A/HRC/31/L.38, 22 March 2016; General Assembly Resolution A/RES/60/147 of 16 December 2005, which adopted the 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.

grave flaws they found at all levels in practice render it incapable of conducting genuine investigations in accordance with international law.

1. The Turkel Commission (February 2013)

Following the May 2010 Mavi Marmara Gaza Flotilla events, and in response to strong international pressure, the Israeli Government appointed a Commission of Inquiry headed by former Supreme Justice Jacob Turkel to assess the legality of Israel's closure and blockade of Gaza, and its military's raid on the flotilla. Later, in apparent response to serious doubt raised about Israel's willingness to carry out genuine investigations concerning "Operation Cast Lead" against Gaza made by the Goldstone Mission in 2009,⁹ the Turkel Commission was additionally mandated to examine, "whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident, conforms with the obligations of the State of Israel under the rules of international law" (inter alia).¹⁰ In February 2013, the Commission issued the second part of its report ("Turkel Report II") in which it addressed these issues.¹¹

The Turkel Commission found that Israel's investigatory mechanisms complied with internationally recognized standards. However, the Commission also recommended 18 "improvements" to the existing mechanisms to be made to strengthen the system.¹² The recommendations point to major shortcomings and failures in the system and highlight its dysfunctional overall nature. Recommendations include legislation for all international law offenses that do not have a corresponding domestic offense in Israeli criminal law; the establishment of a fact-finding assessment mechanism that complies with international legal requirements for a prompt and professional assessment to facilitate a potential investigation; and the establishment of a timeframe of a few weeks for a decision on whether to launch an investigation into a specific incident, among others.

To date, the Turkel Commission's recommendations have not been implemented. If implemented, they would significantly improve the function of investigative bodies and promote accountability for Palestinians harmed by the Israeli security forces. Notably, however, the recommendations do not fully comply with the international standards of the duty to investigate. For example, the Turkel Commission refrained from determining clear-cut guidelines to rectify the failure of the investigative mechanisms into suspicions of war crimes during an armed conflict, leaving such investigations open and unregulated.¹³

2. The Ciechanover Team (September 2015)

One year after the release of the Turkel Report II, in January 2014, the Israeli government appointed a team headed by Advocate Dr. Ciechanover to examine and present its recommendations regarding the practical implementation of the Turkel Report II, in accordance with recommendation #18 of the latter document.¹⁴ In September 2015 (almost one year after

⁹ UN Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, 25 September 2009, A/HRC/12/48, available at: <http://www.refworld.org/docid/4ac1dd252.html>.

¹⁰ Government Resolution No. 1796, dated 14 June 2010.

¹¹ Turkel Report II.

¹² Turkel Report II, p. 361 (recommending procedural and structural changes to Israel's current investigative procedures).

¹³ See, e.g., Adalah, *Briefing Paper on the Turkel Report, Part II*, May 2013, available at:

<https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Articles/2013/Briefing-Paper-Turkel-II-El-Ajou.pdf>.

¹⁴ The Ciechanover Report, p. 6-7.

the report was due), the Ciechanover Team presented its recommendations to the Israel Government; almost one year later in July 2016, the government adopted these recommendations.¹⁵ The Ciechanover Team completely failed in its task to provide practical, concrete steps for implementing the Turkel Commission's recommendations. Instead, it produced a series of mainly general recommendations that do little to facilitate their execution in specific cases.¹⁶ The Ciechanover Team additionally shunned the Turkel Commission's recommendations related to the need to initiate war crimes legislation in conformity with international law, and legislation to impose direct criminal liability on military commanders and civilian superiors for offenses committed by their subordinates in certain circumstances.

3. The State Comptroller's Report (March 2018)

Immediately following OPE in September 2014, the State Comptroller announced his decision to conduct an audit to "examine IDF [Israeli Defense Forces] activity from the perspective of international law regarding the examination and oversight mechanisms of the civilian and military echelons".¹⁷ In his report released four years later in 2018, he noted that the audit had been delayed by almost a year "due to lack of cooperation from the audited bodies".¹⁸ The audit was conducted from May 2015 to January 2016, and examined the Cabinet's deliberations during OPE, the implementation of the recommendations made in the Turkel Report II, the work of the Fact-Finding Assessment Mechanism (FFAM), and certain Israeli military orders, including the "Hannibal Directive". The State Comptroller's Report was released two years after the assessment was conducted. The audit brought to light a litany of flaws and failures of the Israeli government and the military investigatory mechanism, some even overlooked by human rights organizations and international bodies.

II. Assessment of the State Comptroller's Report

Overview

The State Comptroller (SC) is an independent state official with a constitutional mandate conferred on him/her via the *Basic Law: The State Comptroller*, and this position enjoys a high degree of legitimacy.¹⁹ The primary functions of the SC are to review the policies and administration of state bodies in Israel (article 2 of the Basic Law). The SC is technically independent of the Government and accountable only to the Knesset (article 6 of the Basic Law). The office is an important checking mechanism on the executive branch, and while its conclusions and recommendations are of an advisory nature, they carry weight due to the SC's independence within the state apparatus and therefore his perceived neutrality. The SC also has legal authority to demand access to documentation, explanations and other information from state bodies in the course of undertaking his work.

For his report, the SC audited the following state bodies: the Prime Minister's Office, the Ministry of Justice, the Israeli military, the Operations Directorate, the MAG Corps, the Military Police Criminal Investigations Department (MPCID), FFAM teams, the Southern Command, the Israeli Air Force, the Coordinator of

¹⁵ The State Comptroller's Report, p. 79.

¹⁶ For more information, see Yesh Din, "The Ciechanover Report – dodging the criminalization of war crimes and practical steps toward implementation", 1 October 2015, available at: <http://files.yesh-din.org/userfiles/Ciechanover%20Eng.pdf>.

¹⁷ The State Comptroller's Report, p. 6.

¹⁸ The State Comptroller's Report, p. 6.

¹⁹ Basic Law: The State Comptroller (5748-1998). Unofficial translation available at: <http://knesset.gov.il/laws/special/eng/BasicLawStateComptroller.pdf>.

Government Activities in the Territories (COGAT), and the National Security Council. These bodies are the key authorities and officials in charge of planning, executing and examining Israel's policies in the Gaza Strip, including the large-scale offensives.

The SC's audit is significant not only because of his constitutionally-mandated status and the fact that it encompasses a review of the two previous reports – Turkel II and Ciechanover – but also because his report coincides with the International Criminal Court's own preliminary examination into incidents during the 2014 Gaza War. In the context of the latter, the findings and recommendations of the SC's Report serve to highlight the flawed status of Israel's domestic investigatory system and the consequent need for international intervention to secure accountability and redress for victims of violations of the laws of war.

Moreover, in Israel, as stated in the SC's Report, "there are two independent, professional and objective mechanisms that have an important role in supervising the defense establishment and in curbing the power it exercises: the judiciary and the State Comptroller and Ombudsman".²⁰ Regarding the judicial system, in our submission to the UN Independent Commission of Inquiry on the 2014 Gaza Conflict, Adalah identified in detail to the failures of the Israeli Supreme Court to ensure legal accountability.²¹ Since that time, January 2015, nothing has changed and the Israeli courts have never issued any order to the military to open a criminal investigation or to indict any individual regarding alleged suspicions of violations of IHL, including war crimes, in Gaza.

More recently, when asked to order the Israeli military to stop using snipers and live ammunition against Palestinian protesters in the Gaza Strip from 30 March 2018, during events under investigation by the COI 2018, the Israeli Supreme Court fully adopted the military's position and unanimously rejected the petitions.²² In our petition to the Israeli Supreme Court, Adalah and Al Mezan supplied the Court with testimonies of protesters, rescue workers, journalists and doctors, as well as with video documentation and reports and statements made by international organizations. This information included evidence and testimony of the civilian nature of the protests, the arbitrary use of lethal force by the Israeli military against unarmed demonstrators, and the fatal and other serious injuries sustained by the protesters. The Court refused to view the video evidence, and failed to engage with any of the civilian witness statements and the like in its decision; rather, it fully accepted the state's version of the facts.

As will be detailed below, the SC's Report continues along the same lines as its predecessors. Although it lists many fundamental flaws in the whole military process of training, operating, examining and investigating, and indications of incidents in which IHL was violated, the SC's Report does not at any stage stress the need for conducting investigations and ending impunity. Rather, and inconceivably, the maximum it requires is the handling of these flaws and the proper allocation of resources by the Government of Israel and the military.²³ Moreover, the SC fails to make the connection between the military forces' lack of training in IHL and the implementation of orders deemed illegal, such as the "Hannibal Directive", and between the flawed examination and investigatory mechanisms and the fact that no person responsible for these violations has

²⁰ Foreword to the State Comptroller's Report.

²¹ See Adalah's Report to the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict, 31 January 2015, available at: https://www.adalah.org/uploads/2_Adalah-Submission-UN-COI-Gaza-2015.pdf.

²² See HCJ 3250/18, *Adalah and Al Mezan v. Israeli Military Chief of Staff* (petition dismissed 24 May 2018). See Adalah and Al Mezan, Briefing Paper on Israeli Supreme Court petition challenging the Israeli military's use of lethal force against Gaza protesters and the State of Israel's response, 15 May 2018, available at: https://www.adalah.org/uploads/uploads/Summary_Snipers_petition_and_state's_response_15_May_2018_FINAL.pdf See also Adalah Press Release, "Israeli Supreme Court gives green light to continued use of live fire, snipers against Gaza protesters," 25 May 2018, available at: <https://www.adalah.org/en/content/view/9522>.

²³ Foreword to The State Comptroller's Report.

yet to be held accountable. Most importantly, the SC neglects to call on the relevant domestic bodies to investigate – not to mention prosecute – those in charge of executing illegal practices that violate IHL.

A large portion of the SC's Report is dedicated to the examination of the implementation of the Turkel Commission's recommendations – and the related recommendations of the Ciechanover Team – focusing chiefly on recommendation #5 regarding the establishment of a fact-finding assessment mechanism (FFAM). The SC's Report indicates that most of the recommendations have not, or not fully, implemented and that very little has changed in practice.

This report now briefly examines the SC's findings related to the lack of incorporation of international law standards prior to OPE, and illegal conduct by the Israeli military's conduct during OPE, before analyzing in depth the failings of the investigatory system in the aftermath of the operation.

Fundamental Flaws

The SC's Report listed many fundamental flaws that illustrate that the Israeli military failed from the outset to adequately consider the needs of the civilian population in Gaza during wartime, and that it did not provide appropriate training in IHL to its forces prior to their mission, in violation of the Geneva Conventions. According to the SC, no "Operational Concept for the Civilian Component" was developed before or during OPE to improve military systems designed to prevent harm to the civilian population during wartime,²⁴ and the military admitted to the SC that "the task of the Civilian Component in Combat is not being prioritized".²⁵ Clearly, therefore, the Israeli military gave insufficient weight to the principles of distinction and proportionality,²⁶ in violation of central provisions of IHL designed to minimize harm to civilians and civilian objects.²⁷ The SC's Report additionally found that Israeli military forces were not trained in IHL,²⁸ and that no directives of the Doctrine and Instruction Division in the Operations Directorate, the body responsible for training in the military, included reference to IHL as applicable to the conduct of military activity in civilian areas. The MAG admitted to the SC that Israeli military personnel were insufficiently trained in IHL and lacked "the required awareness level" of their responsibilities under IHL.²⁹ The lack of IHL training violates the Geneva Conventions, which impose an obligation on states to integrate IHL into military training programs as part of the duty to disseminate IHL "as widely as possible".³⁰

According to information released by the military, the MAG Corps received 500 complaints relating to around 360 exceptional incidents that have occurred during OPE.³¹ The SC's Report noted 464 exceptional incidents reported to the MAG Corps. However, in his examination of military operations during OPE, the SC did not refer to the 360 (or 464) exceptional incidents involving alleged IHL violations, nor to the actual conduct of the Israeli military. Instead, he dedicated most of his report to examining "The conduct of the

²⁴ The State Comptroller's Report, p. 29.

²⁵ The State Comptroller's Report, pp. 31-32.

²⁶ The State Comptroller's Report, pp. 22.

²⁷ The State Comptroller's Report, p. 32.

²⁸ The State Comptroller's Report, p. 33.

²⁹ The State Comptroller's Report, p. 34

³⁰ See Art. 144 of the GV IV. See also Art. 47 of the First Geneva Convention; Art. 48 of the Second Geneva Convention; Art. 127 of the Third Geneva Convention; Art. 83 and 87(2) of the Protocol Additional to the Geneva Conventions (AP I); and Art. 19 of the AP II. See also Elizabeth Stubbins Bates, "Towards effective military training in international humanitarian law," *International Review of the Red Cross* 96 (2014), 795-816.

³¹ "Decisions of the IDF Military Advocate General Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge' – Update No. 6", 15 August 2018, available at: <https://www.idf.il/en/minisites/wars-and-operations/mag-corps-press-release-update-6/> (hereinafter: MAG Update #6).

political echelon during Operation 'Protective Edge' from the perspective of international law".³² The audit included an examination of the actions of the legal apparatus, the actions of the National Security Council, and the process by which military orders were approved during OPE. The SC concluded that there was no functional legal operational advisory system for the military, and that, in fact, "the legal counsel is not an integral part of the division's staff, and is not known to the division officers".³³ Therefore, the military is not functioning with knowledge or under the restrictions of IHL, and that when "lessons are learnt" after massive operations, there is no functional mechanism to ensure that they are applied. Regarding the National Security Council, the audit revealed that it "has not examined the international consequences that may arise from harm to uninvolved civilians, and the possible effects on the IDF's ability to realize its objectives in combat".³⁴ Examining the military's process of approval of orders, the SC found there was no procedure for approving the content of the operational orders, and indeed that no procedure is required, even in situations involving risking human life and orders that involve firepower, nor any legal counsel or reference to IHL.³⁵

An example of the consequences for Israel's lack of regard for civilians' lives during OPE is the implementation of the illegal "**Hannibal Directive**", defined in the SC's Report as "a General Staff order ... intended to regulate the operational orders for preventing the abduction of a soldier or a civilian and to thwart it after it occurred."³⁶ It is widely understood to mean that in case of a soldier's abduction, everything must be done to prevent the abductors' escape, even endangering the soldier's life. The SC's Report does not discuss the extremely grave, lethal harm caused by the implementation of the Hannibal Directive to civilians in Gaza, other than to note that, "the principles of distinction and proportionality are not explicitly mentioned in the 'Hannibal' Orders".³⁷ The SC's Report fails to address the Israeli military's implementation of the Directive during OPE in Rafah, Southern Gaza, on 1 August 2014, following the reported capture of Israeli soldier Hadar Goldin, in an assault that resulted in the killing of 255 Palestinians, including 85 children.³⁸

Notably, the Hannibal Directive was rescinded in June 2016, and the military's Chief of General Staff instructed a new directive to be drafted with a different name.³⁹ However, in its Update #6, the MAG revealed the closure of all complaints regarding the killings and injuries of civilians and the extensive destruction of civilian objects in Rafah resulting from the implementation of the "Hannibal Directive". In contrast, the UN Independent Commission of Inquiry on the 2014 Gaza Conflict concluded that the Israeli military had violated the principles of distinction and proportionality in implementing the directive, and that its actions may amount to a war crime.⁴⁰ Under the current failed domestic system, no Israeli military or political leaders will be held to account for the killings of civilians and the massive destruction of civilian property.

³² The State Comptroller's Report, pp. 66-77.

³³ The State Comptroller's Report, p. 50.

³⁴ The State Comptroller's Report, p. 53.

³⁵ The State Comptroller's Report, p. 64.

³⁶ The State Comptroller's Report, p. 55.

³⁷ The State Comptroller's Report, p.20.

³⁸ Adalah and Al Mezan, Press Release, "Justice Denied: Three years after Israel's deadly 'Hannibal Directive' in Gaza Strip," 1 August 2017: <https://www.adalah.org/en/content/view/9178>.

³⁹ The State Comptroller's Report, p. 60.

⁴⁰ UN COI 2015 Report, para. 364; see also paras. 368-70, 372-3.

III. The Aftermath of OPE: Impunity over Accountability

This section analyzes MAG Update #6, issued on 15 August 2018, which contains the most recent information released by the MAG on the status of the complaints received and the decisions taken concerning the 2014 Gaza War incidents. It also details the status of complaints into 28 specific incidents submitted by Adalah and Al Mezan to the MAG and the AG. Its findings reveal Israel's failure to take appropriate measures in these grave cases.⁴¹ Thus, Article 17 of the Rome Statute may give authority to the ICC to open investigations into these matters, in fulfilment of the principle of complementarity.

Much of the literature and caselaw of the ICC suggest that Article 17 of the Rome Statute, which concerns issues of admissibility, entails a "two-fold test".⁴² First, the Court must determine whether a national proceeding in fact exists. Only if this can be answered in the affirmative does it become relevant to examine whether the state is genuinely unwilling or unable to prosecute the crimes in question.⁴³ Inaction on the part of a State having jurisdiction (that is, the fact that a State is not investigating or prosecuting, or has not done so) in itself suggests that a case may be admissible before the ICC.

The following part demonstrates both **inaction** at the domestic level and a total **lack of willingness** on Israel's part to investigate and prosecute military personnel or political leaders for serious IHL violations. It further indicates that, even when Israel declares itself to be conducting investigations into alleged violations, the investigatory system is compromised by so many fundamental flaws that such investigations fall woefully short of international standards, and in the absence of genuine investigations and accountability, impunity prevails.

1. Inaction at the domestic level

a. Analysis of MAG Update #6, 15 August 2018

With Update #6, the MAG provided information about the status of complaints received by the MAG Corps concerning the 2014 Gaza War, and, as in his five previous updates, about his decisions with regard to several individual incidents. The numbers provided by the MAG clearly indicate that Israel is not conducting investigations or prosecuting perpetrators for grave IHL violations. As detailed below, most cases were closed without any investigation even being conducted, let alone the prosecution of those responsible for IHL violations that led to the death of civilians and the massive destruction of civilian objects. Moreover, in the very few cases in which the MAG ordered an investigation, there is no evidence that tangible, concrete, sequential steps, in accordance with international law standards, were taken with regard to any suspects.

A summary of the MAG's figures as reported in Update #6 follows:

- The MAG Corps received 500 complaints relating to around 360 "exceptional incidents".

⁴¹ For analysis of the gravity requirement contained in Article 17(1)(d) of the Rome Statute, see ICC-OTP, *Situation on Registered Vessels of Comoros, Greece and Cambodia, Article 53(1) Report* (6 November 2014).

⁴² See, e.g., *Prosecutor v Katanga (Judgment on the Appeal against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case)* (ICC, Appeals Chamber, Case No ICC-01/04-01/07-1497, 25 September 2009); Markus Benzing, *The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity*, *Max Planck Yearbook of United Nations Law*, 591, 593 (2003).

⁴³ Appeals Chamber, *Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case*, TCC-01/04- 01/07-1497, para. 78.

- Of these 360, the MAG ordered criminal investigations by the MPCID into 24 “exceptional incidents”, without factual findings by the FFAM.
- Of the 24, 23 were closed without any criminal or disciplinary proceedings being pursued. The only case in which the MAG issued an indictment was not for IHL violations, but for looting and for aiding and abetting looting. Notably, the looting incident involved two soldiers who were accused of stealing NIS 2,420 (about US \$635) from a home in the Shuja’iya neighborhood. In Shuja’iya more than 55 civilians, including 19 children and 14 women, were killed on 19-20 July 2014, as a result of Israeli military action that also led to the destruction of and/or damage to over 1,800 homes. Referring to this case, the COI into the 2014 Gaza Conflict found that no domestic investigation had been carried out, even though this incident raises serious concerns regarding the military’s conduct that may amount to war crimes.⁴⁴
- After an initial examination by the MAG Corps, around 220 exceptional incidents were transferred to the FFAM.
- Of the 220, 160 incidents examined by the FFAM were closed “without opening a criminal investigation, where the actions of the IDF forces involved did not give rise to reasonable grounds for suspicion of criminal behavior”. In relation to some of these incidents, the MAG recommended that operational authorities undertake an operational lessons-learned process.
- Of the 220, only seven, i.e. less than 2% of the total number of incidents, were referred to criminal investigation.
- Of the seven, five were concluded and closed, and the remaining two are still pending.
- The 53 remaining “exceptional incidents” that were referred to the FFAM are still pending.
- No information is provided about another 116 of the 360 “exceptional incidents”.

These figures indicate the following:

- The MAG investigated just 8.6% (31 of 360) of the “exceptional incidents”.
- Only one case led to an indictment, and this case concerned looting.
- No cases of gravity, involving civilian casualties or the destruction of civilian objects, led to any kind of criminal or disciplinary proceedings against those involved.
- Almost 77% (276 of 360) of the “exceptional incidents” did not lead to any investigation or any action against those potentially implicated in IHL violations.
- Over four years after the end of OPE, almost 15% (53 of 360) of the “exceptional incidents” were still undergoing examination by the FFAM.
- Thus over **91%** of the “exceptional incidents” received by the MAG Corps involving alleged IHL violations have not been investigated, and no commander or soldier was prosecuted for grave violations of IHL.

b. Criminal complaints filed by Adalah and Al Mezan

Between July and September 2014, Adalah, together with Al Mezan, filed complaints to the MAG and the AG regarding 28 incidents of suspected IHL violations during OPE. The organizations demanded that the Israeli authorities open independent investigations into each of the cases and to prosecute and hold to account those found to be responsible. These cases concerned events that resulted in the killing and serious injury of Palestinian civilians, including women and children, and the massive destruction of civilian objects. The evidence in these cases suggested that the attacks were carried out in violation of the principles of distinction and proportionality, which could amount to grave breaches of IHL. These cases concerned incidents of:

- Direct attacks on homes causing many civilian deaths and injuries;
- Direct attacks on children;

⁴⁴ UN COI 2015 Report, paras. 293-299.

- Direct attacks on five UNRWA schools that were sheltering civilians;
- The bombing of mosques, hospitals and a shelter for people with severe disabilities;
- Attacks on civilian infrastructure and the municipality workers fixing them.

The status of these 28 complaints based on the MAG's responses is summarized below:⁴⁵

- No investigation opened: 13 (46%);
- No response: 5 (17%);
- Investigations open: 3 (11%); 2 closed and 1 pending;
- Still under examination (by FFAM): 7 (25%).

No investigations have been pursued at all in 89% of these cases (25 of 28 incidents), which are based on concerns of grave IHL violations.

Below are three examples of appeals to the AG filed by Adalah and Al Mezan after the MAG closed the case files. In the first two cases – the attack on the UNRWA School in Rafah and the attack on the home of the Abu Dahrouj family – the MAG decided to not even open an investigation, despite the large number of civilians killed, and the civilian nature of the objects targeted: a school and a home. The third case, the Bakr boys, is indicative of a pattern whereby, even when the MAG orders a criminal investigation, no genuine investigative steps are taken, resulting in inaction that allows impunity to prevail.

The AG has not issued a decision on any of these appeals, despite the lengthy period of time that has elapsed since the submission of these appeals. The appeals process is not governed by clear or transparent procedures and no timeframe for a decision is set. While the AG's guideline from April 2015 sets a deadline of 60 days for submitting appeals against a decision by the MAG, it contains no provision setting a timeline for the AG to issue his decision on the appeal.⁴⁶

Case Example 1: Appeal against the MAG's closure without investigation of attack on UNRWA school in Rafah serving as a civilian shelter

For a detailed chronicle of legal actions taken in the UNRWA School in Rafah case by Adalah and partners, and relevant correspondence from the state, please refer to Annex 2, attached.

After OPE in 2014, the UN established a Board of Inquiry (BOI) OPE to review and investigate incidents affecting or involving UN personnel and premises. The Israeli Government cooperated with the UN BOI, in contrast to its refusal to cooperate with the UN COI 2015.

In the summary of its findings, the BOI concluded that Israel was responsible for striking seven UNRWA sites used as civilian shelters, in which 44 Palestinians were killed and 227 others were injured. In a cover letter accompanying the summary, the UN Secretary-General condemned the attacks, stating, "It is a matter of the utmost gravity that those who looked to them for protection and who sought and were granted shelter there had their hopes and trust denied."⁴⁷ Responding to the release of the BOI report, the Israeli

⁴⁵ See complaints submitted by Adalah and Al Mezan to the MAG and the AG and their status, attached to this document as Annex 1, below.

⁴⁶ See Attorney General Directive No. 4.5003, "Appealing the decisions of the MAG regarding the investigation of incidents in which a person was killed during operational activity of the Israel Defense Forces when it was alleged that this was a serious violation of the rules of customary international law," April 2015.

⁴⁷ See Summary by Secretary-General of the Report of the UN Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014, S/2015/286, 27 April 2015.

Government stated that the UNRWA incidents had been subject to thorough examinations, and criminal investigations had been launched where relevant.⁴⁸

Adalah and Al Mezan submitted complaints demanding criminal investigations in conformity with international law standards in five cases of attacks on UNRWA schools in Gaza. To date, four years on from these incidents, no investigations were opened in two of these cases (the UNRWA schools in Deir al-Balah and Rafah); there is still no decision about whether or not to open an investigation in one of the cases (the school in the Al Zaytoun neighborhood of Gaza City). Investigations were opened in two cases: the school in Beit Hanoun, which was closed according to MAG Update #6, without further action being taken, and the other remains “under investigation” by the MPCID (the school in Jabaliya).

One of the cases closed by the MAG concerned an attack in the vicinity of an UNRWA school in Rafah, southern Gaza, after the activation of the illegal Hannibal Directive. 15 people were killed in the incident, including eight children, and at least 25 people were wounded.⁴⁹ Approximately 3,000 people were taking shelter in the school at the time. The military announced that it was aware of the fact that the school was serving as a shelter for civilians. However, it claimed that it was targeting three military operatives riding on a motorcycle, and that at the time of firing against the motorcycle, it was “not able to discern in real-time the group of civilians that were outside the school”, and that “it was not possible to divert the munitions” after the motorcycle began to travel along the road bordering the wall surrounding the school.⁵⁰ The MAG found the process of targeting the operatives to be in accordance with both international law and Israeli domestic law, and thus concluded that there was no reasonable suspicion of criminal conduct.⁵¹

In October 2016, Adalah and Al Mezan appealed against the MAG’s decision not to open an investigation, arguing that the Israeli military had committed serious violations of IHL amounting to war crimes.⁵² Two years later, the appeal remains pending with no response from the AG. The UN COI 2015 also examined this case and found that imprecise weapons were used, concluding that:

“The use of such weapons in the immediate vicinity of an UNRWA school sheltering civilians is highly likely to constitute **an indiscriminate attack which, depending on the circumstances, may qualify as a direct attack against civilians,**⁵³ **and may therefore amount to a war crime.**”⁵⁴ (Emphasis added.)

⁴⁸ See Israel Ministry of Foreign Affairs, “Israel receives summary of UN report on Gaza conflict,” 27 April 2015, available at: <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Israel-receives-summary-of-UN-report-on-Gaza-conflict-27-Apr-2015.aspx>.

⁴⁹ UN COI 2015 Report, para. 440.

⁵⁰ “Decisions of the IDF Military Advocate General Regarding Exceptional Incidents that Allegedly Occurred During Operation ‘Protective Edge’ – Update No. 5”, 24 August 2016, available at: <https://www.idf.il/en/minisites/wars-and-operations/mag-corps-press-release-update-5-august-2016/> (hereinafter: MAG Update #5).

⁵¹ MAG Update #5.

⁵² Adalah and Al Mezan, Press Release, “Adalah and Al Mezan Appeal Israeli Military’s Decision not to Investigate Civilian Killings near UNRWA School in Gaza in 2014”, 27 October 2016, available at: adalah.org/en/content/view/8942.

⁵³ See also International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Galic*, case no. IT-98-29-T, Judgement, 5 December 2003, para. 57.

⁵⁴ UN COI 2015 Report, para. 446.

The COI 2015 further stated that, “Even though the attack against the UNRWA schools may not have been deliberate, the IDF is bound by the obligation of precautionary measures and verification of targets to avoid attacks directed by negligence at civilians or civilian objects.”⁵⁵

Human Rights Watch, which also carried out extensive documentation and investigation of three UNRWA school attacks, found that the type of munitions used by the Israeli military in this attack in fact allowed the operator to view the target, even after the missile has been launched, and to divert it mid-course.⁵⁶ Al Mezan, which has also documented this case, identified the two people (and not three as stated by the Israeli authorities) on the motorcycles as civilians and not combatants.

The gravity and complexity of this case – in which findings reached by the UN and international and local human rights organizations differ fundamentally from those made by the Israeli military – clearly calls for a more thorough and transparent investigation, and not for the closure of the case file without investigation. The findings suggest that this incident may constitute an unlawful, indiscriminate and disproportionate attack. However, the FFAM and MAG merely made assertions about the targets, the timing of the firing of the munitions by Israeli military forces, and the selection of ammunition, and subsequently come to the conclusion that the decisions made by the military were sound, and that lessons had been learned. Further, the lack of response by the AG, two years after the filing of the appeal, contradicts principles of promptness and effectiveness.

Case Example 2: Appeal against MAG’s closure without investigation of the Abu Dahrouj family case

For a detailed chronicle of legal actions taken in the Abu Dahrouj family case by Adalah and partners, and relevant correspondence from the state, please refer to Annex 3, attached.

The case of the Abu Dahrouj family provides another illustration of Israel’s failure to investigate. In this case, on the night of 22 August 2014, an Israeli warplane fired two missiles at a home belonging to the Abu Dahrouj family in central Gaza. The Israeli missile strike killed five members of the Abu Dahrouj family, including two children, and wounded multiple other civilians and caused extensive damage to neighboring homes. Although the MAG acknowledged that the missile attack had directly struck a civilian home and no combatant or military object had been targeted, no investigation was opened and the case was closed without any action been taken against those responsible.

In this case, the MAG used vague and indecisive terminology, stating that the missile hit the family’s home “for an unclear reason, likely an unexpected technical malfunction.” This wording indicates that the MAG did not conduct a thorough, independent examination sufficient to determine whether or not it was necessary to open a full investigation. The Israeli military also refused to provide any of the results of its probe or to detail the reason for its decision not to open a criminal investigation, and claimed that all case materials were classified. Adalah and Al Mezan submitted an appeal to the AG in January 2017 against the decision not to conduct an investigation, reiterating that the attack constituted a serious violation of IHL.⁵⁷ Almost two years later, the appeal remains pending.

⁵⁵ UN COI 2015 Report, para. 447.

⁵⁶ See Human Rights Watch, “In-Depth Look at Gaza School Attacks”, 11 September 2014, available at: <https://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks>.

⁵⁷ Adalah and Al Mezan, Press Release, “Israeli army admits missiles failed to hit intended target, killing five members of Gaza family”, 12 January 2017: <https://www.adalah.org/en/content/view/8990>.

Case Example 3: Appeal against the MAG's decision to close the Bakr Boys' case following an investigation

For a detailed chronicle of legal actions taken in the Bakr boys' case by Adalah and partners, and relevant correspondence from the state, please refer to Annex 4, attached.

A high-profile case in which the MAG decided to open an investigation involved the killing of four boys from the Bakr family while they were playing football on the beach in Gaza. The case garnered extensive attention from the international media and public, heightened due to its occurrence in the proximity of a hotel where a large number of foreign journalists were staying. The MAG closed the investigatory file in June 2015, contending that the area in which the boys were killed constituted a justified, military target.⁵⁸ The COI 2015 was deeply disturbed by the closure of this case, stating that there were “strong indications that the actions of the IDF were not in conformity with international humanitarian law and that the investigation does not appear to have been carried out in a thorough manner.”⁵⁹

In August 2015, Adalah and Al Mezan, and the Palestinian Center for Human Rights (PCHR) filed appeals against the MAG's decision to close the file. Despite providing the military with additional materials, sending several reminder letters, and requesting access to the investigatory materials, PCHR was also unable to obtain any response from the Israeli authorities regarding this case.⁶⁰

Prior to submitting the appeals, and following the MAG's decision to close the Bakr boys' case, PCHR, Adalah and Al Mezan requested access to the investigatory materials that formed the basis of the decision to close the case. One month later, after receiving no response, the organizations submitted the appeals, in accordance with the 60-day deadline required by the AG's guideline. After numerous reminder letters and a telephone call, the State Attorney's Office informed the organizations by letter on 4 May 2016, i.e. nine months after the submission of the appeal, that the MAG was willing to disclose certain materials from the investigation file, and that the groups should resubmit their appeals based on these materials. The three organizations gained access to these documents in December 2017.

On 28 January 2018, the three human rights organizations submitted additional arguments to the AG after reviewing the investigatory materials, which were heavily redacted. The materials included testimonies provided by military personnel only, taken over four months after the incident. The investigators, themselves members of the Israeli military, did not gather testimonies from Palestinian eyewitnesses or any of the large numbers of foreign journalists who also personally witnessed the attack. The list of materials also included a video that was classified and that the organizations were denied access to it.

The soldiers' testimonies indicated that the Israeli military personnel involved in the incident showed indifference to the risk of targeting and harming civilians, including children, and decided to attack twice on the basis of unverified assumptions.⁶¹ They operated based on the assumption that anyone entering what they defined as a “military area” was not a civilian and therefore that they could be directly attacked. There

⁵⁸ Adalah and Al Mezan, Press Release, “Israeli military closes investigation into killing of four children on Gaza beach,” 15 June 2015: adalah.org/en/content/view/8581. See also Peter Beaumont, “Gaza beach killings: no justice in Israeli exoneration, says victim's father,” *The Guardian*, 15 June 2015: theguardian.com/world/2015/jun/12/gaza-beach-killings-no-justice-in-israeli-exoneration-says-victims-father.

⁵⁹ UN COI report, para. 663.

⁶⁰ Information provided by Mohammed al-Alami, a lawyer from PCHR, on July 2017. Case on file with PCHR.

⁶¹ See, also, Robert Mackey, “Secret Israeli Report Reveals Armed Drone Killed Four Boys Playing on Gaza Beach in 2014,” *The Intercept*, 11 August 2018, available at: <https://theintercept.com/2018/08/11/israel-palestine-drone-strike-operation-protective-edge/>.

was no indication that any action was taken to verify the identity of the individuals attacked: they were, in fact, children (between the ages of 9 and 10) at play, and not militants. The attack amounts to a gross violation of the principle of distinction in IHL. Moreover, the Israeli strike was not carried out due to urgent military necessity: there were no Israeli soldiers in the area and there was no immediate danger posed to anyone. The military forces could have obtained further intelligence on the nature of the targets in order to verify whether they were combatants or not.

This case is a solid example of a situation in which there are strong indications of IHL violations, and of the state seemingly unwilling to conduct a genuine investigation. Significantly, the mere assertion by the State of Israel that an investigation was conducted is insufficient; it must be supported by concrete steps that demonstrate ongoing investigations against those suspected of violating IHL.⁶² The alleged examinations and investigations did not comply with these requirements for the following reasons, *inter alia*:

- No non-military witnesses were interviewed concerning the events. In conducting its investigation, the Israeli military did not collect testimonies from Palestinian witnesses or the many international journalists who were on site at the time of the killing.⁶³
- The investigatory materials received indicate that the MAG Corps did not refer to anyone involved in the incident as a suspect of misconduct. Adalah, Al-Mezan and PCHR were not provided with any information on whether suspects were actually questioned or not, and if so, under which charges.
- No forensic examinations were conducted and no evidence was collected from the scene, though these kinds of examinations are considered crucial investigative steps.

2. Unwillingness: Israel does not have the genuine will to try the crimes of OPE

Israel does not deny its obligation to examine and investigate allegations of IHL violations. The State Comptroller's Report details the normative basis that determines such an obligation, referring both to international law and Israeli domestic law.⁶⁴ And as noted, three different domestic bodies have all examined and assessed Israel's investigatory mechanisms.

The international law standards are not contested or denied by the Israeli governmental bodies or by the State Comptroller (SC). The SC's Report refers to them on several occasions and examines the extent to which Israel's investigatory system is in compliance with them. The investigation system in Israel, however, falls far short of compliance with international standards of **independence, impartiality, effectiveness, promptness and transparency**, and does not function in a manner conducive to the prosecution of those allegedly responsible for IHL violations, as required by international law.⁶⁵

⁶² See "Appeals Chamber Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case", ICC-01/04-01/07 OA 8-1497, 25 September 2009; "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19 (2) (b) of the Statute", ICC-01/09-02/11-96, 30 May 2011. See also decisions by the European Court of Human Rights that have clarified that a national investigation must be "effective" in that authorities must, *inter alia*, take all reasonable steps to ensure the independence of the investigators. See, for example, *Al-Skeini et al v. UK*, 55721/07, GC, Judgement, 7 July 2011, paras. 163-167. *Nachova et al v. Bulgaria*, Applications Nos. 43577/98 and 43579/98, Judgment, 6 July 2005, paras. 113-117.

⁶³ See, e.g., Peter Beaumont, "Witness to a shelling: First-hand account of deadly strike on Gaza Port", *The Guardian*, 14 July 2014, available at: <https://www.theguardian.com/world/2014/jul/16/witness-gaza-shelling-first-hand-account>.

⁶⁴ The State Comptroller's Report, pp. 82-87.

⁶⁵ See General Assembly Resolution A/RES/60/147 of 16 December 2005, which adopted the *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*.

The following section will detail several recommendations made by the Turkel Commission and the Ciechanover Team, and will then indicate their lack of implementation to date, as concluded in the SC's Report and as evidenced by the cases of Adalah and Al Mezan.

No relevant legislation

1. No War Crimes Legislation

In its first recommendation, the Turkel Commission recommended the enactment of legislation to cover all international law offenses that lack a corresponding domestic offense in Israeli criminal law, in order to enable "effective penal sanction" for those committing war crimes, as required by international law. The Ciechanover Team, by contrast, refrained from recommending comprehensive war crimes' legislation. Rather, it suggested legislation to incorporate the crime of torture into the Israeli Penal Code and new legislation dealing with crimes against humanity, where such crimes are committed as part of a largescale or systematic policy. The Ciechanover Team's more limited view means that many serious violations of IHL will remain outside the scope of Israeli domestic criminal law, such as those committed during the events of "Black Friday" in Rafah, as noted above regarding the Hannibal Directive.

The SC's Report concluded that the Turkel Commission's recommendation has not been implemented and that no bills have been submitted to fill in legislative gaps regarding the integration of international law into Israeli domestic law, not even in those areas provisions referred to by the Ciechanover Team.⁶⁶ To date, Israel has failed to adopt any war crimes legislation to facilitate the prosecution of violations of IHL.

2. No direct responsibility of military commanders and civilian superiors

As stated by the Turkel Commission in its Recommendation #2, the holding of military commanders and civilian superiors responsible for violations that were committed by their subordinates is one of the most significant obligations codified in IHL and international criminal law. Israeli law, however, does not explicitly address the responsibility of commanders and superiors and their obligation to prevent violations. The Turkel Commission recommended that legislation should be enacted to impose criminal liability on military commanders and civilian superiors for offenses committed by their subordinates in cases where the former did not take all reasonable measures to prevent the commission of offenses, or did not act to bring the matter to the attention of the competent authorities when they became aware of the offenses.

The Ciechanover Team found that the examination of this recommendation had not been finalized by the Ministry of Justice or the MAG Corps, and recommended that the matter should remain under consideration, so as to allow without delay for legal provisions governing command responsibility to be determined.⁶⁷ The SC's Report also found that this recommendation had not been implemented, and that no relevant legislation had been drawn up or enacted.

⁶⁶ The State Comptroller's Report, p. 92. In 2016, the Israeli delegation announced before the UN Committee Against Torture, that the Justice Ministry was drafting a bill to make torture a crime in Israel. Incorporating the crime of torture into Israeli law is an integral part of adopting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Israel did in 1986. However, no legislation has been enacted to date.

⁶⁷ The UN High Commissioner for Human Rights in his March 2016 report noted that "the Ciechanover Commission did not issue instructions for the full implementation of the first two recommendations of the Turkel Commission with respect to legislation incorporating international norms and standards into domestic law, including regarding war crimes, and imposing responsibility on military commanders and civilian superiors for offenses committed by their subordinates." See Report of the UN High Commissioner for Human Rights, A/HRC/31/40/Add.1, 7 March 2016.

Obstacles to investigation

3. No independent, impartial mechanism

In its recommendation #7, the Turkel Commission addressed the relationship between the MAG and the AG, stating that the MAG's professional subordination to the AG was consistent with the international legal requirement for independence. The problem, as identified by the Turkel Commission, was that this professional subordination was not sufficiently institutionalized. On this point, the Ciechanover Team recommended the adoption of the Turkel Commission's recommendation in a new directive by the AG aimed at clarifying the relationship between the military justice system headed by the MAG and the general legal system headed by the AG. In this regard, the SC's Report stressed that while the recommendation had been implemented, it had not been adopted in primary legislation. This solution is criticized below.

In its recommendation #8, entitled "The MAG's 'Dual Hat'", the Turkel Commission referred to the fact that the MAG is in charge of two arms: the military prosecution system, headed by the Chief Military Prosecutor, and the "legal advice system". The Turkel Commission was aware of the fact that a suspect might resort to the defense that he/she was acting upon legal advice that could have been provided by the MAG. However, the Turkel Commission chose to overlook the central problem: that the military system is investigating itself and the MAG has the power to close a case without investigation in which military personnel operated on the basis of his own legal advice. Instead, the Turkel Commission recommended two measures: to increase the status and independence of the Chief Military Prosecutor, which heads the military prosecution, and to codify a procedure for appealing against decision by the MAG to the AG. Thus the Turkel Commission did not promote the establishment of a genuinely independent, impartial body external to the military, to be tasked with conducting investigations into alleged violations of IHL.

The Ciechanover Team recommended means by which the independence of the Chief Military Prosecutor could be guaranteed. The SC's Report referred to these recommendations, noting that they had still not been implemented, while continuing to avoid the central problem of conflict of interests, and the attendant criticism voiced by human rights organizations and international human rights bodies, including the UN Independent Commission of Inquiry on the 2014 Gaza Conflict.⁶⁸ It is still the MAG that performs the roles of providing the military with legal advice prior to and during military operations, and subsequently deciding whether to initiate criminal investigation, and not the Chief Military Prosecutor. Thus the MAG may still find himself called upon to decide whether to investigate his own conduct or that of his subordinates. This enduring situation clearly violates the requirement of independence.

In the SC's Report, the military is cited as stating, "The legal counsel regarding the attacking of targets is one of the main areas of activity of the MAG Corps in times of emergency, and a large part of the targets that were attacked in Operation 'Protective Edge' ... were examined by the legal advisors of the MAG Corps".⁶⁹ The SC's Report additionally found that, "At the cabinet meeting on 26 July 2014, the Minister of Defense at the time, Moshe Ya'alon, informed the cabinet ministers that 'Everything we attacked was a target approved by both the MAG and the Attorney General'",⁷⁰ revealing the direct role that both the MAG and AG play in the conduct of hostiles themselves, and for which they are responsible for determining the legality or otherwise thereof. This conflict of interest is of extreme concern given that many of the complaints into incidents submitted by Adalah and Al Mezan – including the three case examples cited above – challenge the military's decisions to attack civilian targets.

⁶⁸ UN COI 2015 Report, para. 619.

⁶⁹ The State Comptroller's Report, p. 51.

⁷⁰ The State Comptroller's Report, p. 68.

On the other hand, the MAG recently reaffirmed that the decision to open or close an investigation could be appealed to the AG,⁷¹ and could additionally be subject to judicial review by the Israeli Supreme Court. However, the AG has not responded to appeals regarding incidents that occurred during OPE, as noted above, for prolonged periods of time, and there is no indication that genuine investigations will in fact be conducted into these cases. The Supreme Court, for its part, is extremely reluctant to intervene in such decisions. When called upon to order the Israeli authorities to open a criminal investigation into the killings and injury of civilians and into the extensive damage to homes in the Gaza Strip in 2004, the court declined, stating that its ability to intervene in the army's decisions not to investigate was very limited. The petition was filed after the authorities failed to respond to dozens of complaints into relevant incidents, and offered only brief or partial responses to a few others. According to the Supreme Court's ruling:⁷²

"As is well known, the principle of maximal restraint in judicial intervention in the decisions of the executive authority in regard to investigation and criminal indictment is deeply embedded in the judicial tradition of this court. Like the Attorney General, the prerogative given to the Chief Military Prosecutor on the question of whether to order the initiation of criminal proceedings is very broad... In accordance with this view, intervention in the professional decisions of the chief military prosecutor is rare, and should occur only in very exceptional circumstances."

Further, the MAG has failed to communicate decisions and the reasons therefor about investigations to complainants, which renders the appeals process ineffective in practice.

In sum, there is no independent, impartial investigatory mechanism, since the military remains the body authorized to investigate its own conduct. After years of recommendations to the contrary, the MAG still performs a 'dual role', resulting in a situation in which the MAG is called upon to make decisions about whether to investigate its own conduct or that of its subordinates.

4. No promptness, no timely decision about whether or not to investigate

The Turkel Commission recommended the establishment of a timeframe of "a few weeks" during which the MAG should decide whether or not to open an investigation.⁷³ According to the Ciechanover Team, however, *contra* the Turkel Commission, the MAG should make a decision on how to handle a complaint "within a period of up to fourteen weeks from the date of receipt of the complaint",⁷⁴ or, in time of emergency or combat, of the cessation of combat activities.⁷⁵ The Ciechanover Team also stated that the MAG may extend the period of time for such a decision without limitation (up to 90 days each time), if a large number of complaints is filed following a period of combat. This recommendation is inconsistent with the standards of international law, which requires promptness in making a decision. The lack of a timeframe causes unjustified delays in proceedings, as clearly seen in MAG Update #6 and in the cases of Adalah and Al Mezan. In MAG Update #6, issued four years after OPE, the MAG stated that, "The MAG Corps is in the advanced stages of the examination and investigation process concerning allegations of exceptional incidents."⁷⁶ Thus, the MAG itself clearly admits that examinations and investigations are yet to be conducted **over four years** after the events took place and the majority of the complaints were submitted.

⁷¹ MAG Update #6.

⁷² HCJ 3292/07, *Adalah – The Legal Center for Arab Minority Rights in Israel v. The Attorney General* (decision delivered 8 December 2011).

⁷³ Turkel Report II, p. 385.

⁷⁴ The Ciechanover Report, p. 25.

⁷⁵ The Ciechanover Report, p. 26.

⁷⁶ The MAG Update #6.

The SC's Report noted that the guidelines governing the MAG's decision-making process over whether or not to open an investigation and determining a timeframe for making a decision had yet to be published; he further noted that the principle of promptness was "one of the five principles that are designed to ensure that the examination of exceptional incidents is effective" and that "the time component influences the quality of the investigation."⁷⁷ The SC additionally recommended that, "The MAG should consider determining that in significant cases that are liable to arouse broad public criticism or to generate media or public interest, an MPID investigation be opened immediately, without transferring the incident to the examination of the FFA Mechanism,"⁷⁸ acknowledging the flawed nature of the existing system.

Concerning the decision whether or not to open an investigation, all three bodies missed the opportunity to set forth clear criteria to guide the military in the investigation of complaints of suspected violations of IHL during armed conflict, and to answer the question of when a suspicion arises that justifies the opening of an investigation, aside from the violation of an absolute prohibition. Today, it remains unclear in what circumstances an incident is considered "exceptional" (and indeed why examinations should be limited to those classified as "exceptional" prior to a review of the case), and what considerations are taken into account in making the decision whether to examine or investigate a case.

5. No investigative timeframe

The Turkel Commission proposed in its recommendation #10 that the MAG and AG establish a time period between the decision to open an investigation and the decision to either pursue legal or disciplinary measures or close the case. The Ciechanover Team recommended that a directive should be issued establishing the following fixed timeframes: nine months for the duration of an investigation, starting from the date of the opening of the investigation, with an option for the Commander of the MPCID to extend this period by an additional three months; nine months for a decision by the prosecutor in the case from the date of receipt of the investigation file, with the option for an extension of this period for an additional three months; in cases classified as complex cases, the prosecutor's decision should be made within one year from the date of receiving the file, with the option of extending this period for an additional three months.

Based on these recommendations, a decision should have been delivered on all of the complaints filed concerning incidents that occurred during OPE. However, according to MAG Update #6, at least 47% of the cases referred to the MAG are still under examination by the FFAM, or else their status is unknown, and very few are under investigation. The SC's Report found that, though essential, these recommendations had not been implemented and no associated directive had been promulgated.⁷⁹

In recommendation #13, the Turkel Commission recommended that a procedure for appealing decisions made by the MAG to the AG should be enacted into law. Such legislation would determine the timeframes for filing an appeal and for the AG to hand down a decision on the appeal. In 2015, the AG issued a guideline to regulate the appeals process, one that was discussed in the Ciechanover Report in a section entitled "Review of decisions of the MAG incidents involving the death of an individual in the course of IDF operational activity, when serious violations of customary international law are alleged". This guideline seemingly limits the possibility of an appeal against a decision by the MAG to cases involving killings, contrary to the recommendation of the Turkel Commission. The SC's Report subsequently recommended that the guideline should be amended to allow for the possibility of an appeal in all cases involving suspected serious violation of customary international law.⁸⁰

⁷⁷ The State Comptroller's Report, p. 103.

⁷⁸ The State Comptroller's Report, p. 103.

⁷⁹ The State Comptroller Report, pp. 115-116.

⁸⁰ The State Comptroller Report, p. 118.

Furthermore, while the AG’s guideline stipulates a timeframe for submitting an appeal, it does not set a time limit on the AG to decide on the appeal. Both the Ciechanover and the SC’s Reports fail to address this lacuna, which in practice has resulted in appeals not being processed, or being processed with an unreasonable delay, as evidenced by the pending appeals of Adalah and Al Mezan to the AG.

6. No transparency of proceedings

The Turkel Commission recognized that the principle of transparency helps to protect the rights of the victims and increase public scrutiny. It therefore recommended (recommendation #11) that the MAG Corps should implement a strict documentation procedure for all examination and investigation actions carried out, and for all associated decisions made, particularly in cases involving investigations of alleged violations of IHL. It further advises that the arrangements provided in *The Rights of Victims of Crime Law – 2001*, relating to the receipt of information on criminal proceedings, should also be applied, *mutatis mutandis*, to persons injured during law enforcement operations by the Israel security forces that are investigated by the MPCID. The Ciechanover Team recommended that these provisions should be incorporated into the Chief Military Prosecutor’s Guidelines.⁸¹ The SC’s Report omitted to address this recommendation.

As detailed above, 5 out of the 28 requests for investigation submitted by Adalah and Al Mezan received no response from the military, despite several reminders being sent. Furthermore, in all cases in which the MAG informed the organizations that cases had been closed without an investigation, the MAG provided vague arguments and explanations relating to the existence of military necessity and military targets, without giving any account to testimonies and other evidence submitted by the organizations. With the exception of one case (the Bakr boys case, detailed above), the MAG was unwilling to disclose information about any investigatory material, witnesses or testimonies, a fact which reinforces concerns about the ongoing lack of transparency. Moreover, the organizations learned about decisions in the cases only via the media or in periodic, general MAG Updates, and not through direct correspondence. Access to the investigatory material is crucial to understanding and assessing how an investigation was conducted. Given that, under the current system, the Israeli military is both the body that conducts military operations and that examines and investigates this conduct, accessing information about the process of examination and/or investigation offers the possibility of some level of public scrutiny and review outside of the military system. However, at present, the near-total lack of transparency leaves the victims and the public to rely on the MAG’s opaque decision-making processes and determinations.

7. A defective Fact-Finding Assessment Mechanism

The Fact-Finding Assessment Mechanism (FFAM) was established after the 2014 Gaza War (OPE), as part of the state’s limited efforts to implement the Turkel Commission’s recommendations. The purpose of the FFAM, in this instance, is to gather information about “exceptional incidents” that took place during OPE, where the MAG has determined that “additional information is required”.⁸² The gathered information is then transferred to the MAG, the body that determines whether or not to open a criminal investigation in such cases. In theory, the FFAM should work methodically and within as short a timeframe as possible from the date of the incident under examination, in order to ensure the promptness and effectiveness of the investigative process. However, the SC’s Report enumerates numerous fundamental flaws in the functioning of this mechanism that render it ineffective and in breach of international law standards.⁸³

⁸¹ The Ciechanover Report, p. 38.

⁸² UN COI 2015 Report, para. 612. The UN High Commissioner for Human Rights noted the limited scope of this mechanism. Report of the UN High Commissioner for Human Rights, A/HRC/31/40/Add.1, 7 March 2016, para. 32.

⁸³ The State Comptroller’s Report, pp. 121-165.

(i) *Lack of independence*: The SC concludes that the FFAM is not functioning as an independent body, and is not fully consistent with the Turkel Commission's recommendation in this regard. The reason cited is that the FFAM received cases for examination from the MAG, although it was supposed to be working under the Chief of General Staff.⁸⁴ The SC stated that in order to ensure the independent status of the FFAM, the appointment of the Head of the FFAM and the staffing of the working teams should be done by the Chief of Staff, in coordination with the MAG and with his consent, and that the operations of the FFAM should be in the hands of the MAG.⁸⁵ Needless to say, such an arrangement will not resolve the problem and will not make the FFAM independent. The SC's Report omits to address the central problem of the 'dual role' of the MAG, as discussed in the previous section.

(ii) *Lack of impartiality*: Impartiality on the part of the FFAM would help to ensure that an investigation is conducted objectively, unmarred by the personal bias of individual investigators. The SC's audit found that there was no directive specifying that personnel who were part of the chain of command during the fighting in which the incidents under examination occurred should not be assigned to the FFAM; in fact, the audit revealed that one member of the FFAM's fact-finding team participated in operational activities during OPE as an Israeli Air Force pilot.⁸⁶

Indeed, it appears that a number of the FFAM's staff members also took part in the fighting. The military did not deny it, and did not convey that anything was fundamentally wrong with such an arrangement in its response to the audit team, but rather stated, "although said team members took part in the fighting in the course of the operation, they did not take part in the events that were examined by the teams they were assigned to."⁸⁷ This arrangement stands in violation of international law, as well as a public statement made by the MAG in its first update regarding OPE on 10 September 2014 that, "None of the fact-finding assessment teams' members served in the chain of command during Operation 'Protective Edge'."⁸⁸ This glaring discrepancy underlines the obscure and dysfunctional nature of the investigation system. The SC concludes that the inclusion of personnel involved in combat operations during OPE as part of the FFAM "could have significantly impaired the objectivity of the factual assessment."⁸⁹

(iii) *Ineffective, unprofessional working practices*: In accordance with international standards, an investigation should be conducted professionally via the collection, documentation and preservation of evidence; the identification and questioning of all relevant witnesses; and the process of drawing conclusions based on these materials. The SC specifies that, based on the principle of professionalism, the investigation should also attempt to gather testimony from civilians concerning the incident at hand.⁹⁰ The audit team examined 120 cases involving "exceptional incidents" that occurred during OPE, and found the following faults in the work of the FFAM:

1. The SC's audit found gaps in the factual foundation of the FFAM's work. In one case, the FFAM was unable to provide details necessary for understanding the full factual picture, information that was required and requested by the Military Advocate for Operational Affairs. In another case, in which the MAG Corps determined the need for a full factual account of the incident in order to determine

⁸⁴ The State Comptroller's Report, pp. 144-147.

⁸⁵ The State Comptroller's Report, p. 147.

⁸⁶ The State Comptroller's Report, p. 148.

⁸⁷ The State Comptroller's Report, p. 149.

⁸⁸ MAG Update #6.

⁸⁹ The State Comptroller's Report, p. 150.

⁹⁰ The State Comptroller's Report, p. 150.

whether or not the entity that approved the attack had assessed anticipated collateral damage, the FFAM failed to carry out such an examination, and saw no need to do so. In other cases, the SC found that the FFAM had not included all the relevant documentation in its debriefing files. In additional cases, the SC found that the MAG Corps had requested information focused only on technical details, such as video footage and photographs documenting the attack.⁹¹

2. The SC found that the files submitted by the FFAM to the MAG Corps did not include records of the debriefings conducted by the FFAM of officials relevant to the assessment.⁹² Such an omission precludes corroboration of the findings arising from the debriefing, and also leaves the FFAM unable to compare the statements made by different personnel questioned, and thus to verify the information provided.
3. The audit found that a considerable portion of the FFAM's debriefing summaries did not bear a date and were not signed. As the SC wrote, this was not merely a technical flaw, but rather indicative of a general lack of professionalism and thoroughness in the operation of the FFAM.⁹³
4. According to the SC's Report, as of August 2015 "the debriefing teams did not question civilians, and it is possible that they did not take advantage of a very extensive range of possible evidence that would have assisted in processing of the debriefing."⁹⁴ In its response to the audit team, the MAG stated that taking testimony from civilians was not explicitly set forth in the order regulating the FFAM's work.⁹⁵ This omission provides more evidence of the flawed and ineffective nature of the factual examinations conducted by the FFAM, and contradicts the Turkel Commission's recommendation regarding the FFAM's task to "provide the MAG with as much information as possible".⁹⁶

(iv) Lack of promptness: The SC found that in more than 80% of the cases referred to the FFAM, the time required for the FFAM to complete the case examination exceeded, sometimes significantly, the timetable set forth for the inquiry.⁹⁷ The number of pending cases that the FFAM has yet to complete, according to the MAG, "is problematic and may hamper the possibility of future investigations."⁹⁸ As indicated above, approximately a fifth (5 out of 28) of the joint complaints submitted by Adalah and Al Mezan are effectively frozen under the FFAM's purview. Further, the FFAM only transfers a summary debriefing to the MAG Corps, and not the actual evidence. Thus, in the few cases in which the MAG orders an investigation to be opened, the delays in the process mean that the MPCID needs to collect testimonies months or even years after the investigated incident took place, and this lapse gives the opportunity for soldiers to coordinate their versions of events and for other potential falsifications that impair the gathering of reliable evidence.

IV. Conclusion

The evidence provided by the three domestic review bodies analyzed above – the Turkel Commission, the Ciechanover Team, and the Office of the State Comptroller – clearly demonstrates that the current system is incapable of conducting genuine investigations into alleged IHL violations by Israeli military forces that meet the minimal standards set forth in international law. Their consecutive inquiries have all revealed central,

⁹¹ The State Comptroller's Report, pp. 152-153.

⁹² The State Comptroller's Report, p. 152.

⁹³ The State Comptroller's Report, p. 156.

⁹⁴ The State Comptroller's Report, p. 158.

⁹⁵ The State Comptroller's Report, p. 150.

⁹⁶ Turkel Report II, p. 383.

⁹⁷ The State Comptroller's Report, p. 161.

⁹⁸ The State Comptroller's Report, p. 161.

fundamental flaws in an investigatory system that lacks independence, impartiality, effectiveness, promptness and transparency.

The chronic flaws inherent in the system are clearly manifested in manner in which it deals with complaints filed to it by those harmed by the Israeli military actions and their legal representatives. This report has detailed the outcomes of complaints against incidents that occurred during 2014's massive, 51-day OPE offensive on Gaza. As shown in this report, over 91% of the "exceptional incidents" received by the MAG Corps involving alleged IHL violations have not been investigated at all.

To date, complaints have resulted in no acknowledgement by any domestic body, be it the MAG, the AG, or the judiciary, of any violation of IHL on the part of the Israeli military, and not one indictment has been issued for the killing and injuring of Palestinian civilians or the targeting of civilian objects during OPE. Only one case of looting led to an indictment. No cases involving civilian casualties or the destruction of civilian objects led to any kind of criminal (or even disciplinary) proceedings.

In response to complaints filed by Adalah and Al Mezan to the MAG and the AG regarding 28 incidents of suspected IHL violations during OPE, the Israeli authorities have failed to investigate 89% of these cases (25 of 28), all of which are based on concerns of grave IHL violations. In such cases, as has been shown, there is no effective recourse to appeal.

The strongest measure that Israel has taken is to issue recommendations to the military, via the MAG, to conduct an operational lessons-learned process, "in order to assist with mitigating the risk of similar such incidents in the future",⁹⁹ as an alternative to examining individual incidents with explicit reference to the identity of the subject being examined that is liable to bear criminal liability.¹⁰⁰ The "lesson learning" approach is, however, woefully inadequate as a response to incidents concerning major loss of civilian life and crippling damage to civilian infrastructure, and given the lack, exposed by the State Comptroller, of the incorporation of basic principles of IHL, including the basic principles of distinction and proportionality, at any stage of the planning and execution of military operations, as detailed above.

Israel has been in belligerent military occupation of Palestinian land since 1967, and remains in effective control of Gaza. Over the ensuing decades, Israel has launched several major military operations in Gaza and the wider OPT, including during the past decade. It is therefore unreasonable and disingenuous for Israel to continue to claim that it remains in a perpetual state of learning lessons. This stance is indicative of its unwillingness to conduct genuine investigations that would enable it to provide accountability for perpetrators and protection or redress for victims. Moreover, there are no operative systems in place to ensure that such "lessons learned" are in fact effectively integrated into military procedures and decision-making processes, and therefore they are liable to remain ink on paper and to produce no concrete improvements on the ground.

The Israeli investigatory system as a whole, which has absolutely failed to provide accountability, is primarily geared towards protecting its armed forces. Repeated rounds of domestic assessments, reports and recommendations – all of which have fallen short of the requirements of international law – appear to be an empty exercise designed to present a mere façade of action and of an intent to make improvements, while allowing impunity to prevail.

⁹⁹ MAG Update #6.

¹⁰⁰ State Comptroller's Report, p. 128.

The wide margin of impunity granted to the Israeli armed forces, unencumbered by potential criminal or disciplinary consequences, results in the repetition of violations, including violations carried out during the 2018 protests by Palestinians that are the subject of the current UN Commission of Inquiry. According to Israeli media reports released in July 2018, an internal Israeli army investigation into the deaths of 153 Palestinians during the 2018 protests in Gaza is expected to find that none of the incidents involved violations of open-fire orders, and consequently there are no grounds for referring any of the cases to the MPCID for further investigation. The team of investigators found that demonstrators killed by army fire were not intentionally targeted, but had died as a result of “operational mishaps”.¹⁰¹

As stated above, the ongoing situation of inaction at the domestic level, stemming from the demonstrated, persistent unwillingness of Israel to conduct genuine investigations or to initiate prosecutions, is part of a wider failing on Israel’s part to fulfil its obligations under IHL at any stage of the process of launching of military campaigns in the OPT, not only after the events, but also prior to and during operations. In the absence of a mechanism for genuine improvement within the domestic system, the system continues to be unfit for purpose. It therefore falls to the international community to step in to answer the pressing need for protection, accountability and remedies for Palestinian victims, which Israel has consistently failed to do, in fulfilment of the principle of complementarity.

Adalah hopes that the UN Independent Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory will draw upon the information contained in this report about the fundamental flaws of Israel’s domestic investigatory mechanisms, and the lack of incorporation of IHL standards by the Israeli military at any stage of the process of launching military campaigns. This report makes clear that there is an urgent need to take effective measures aimed at promoting accountability and an end to impunity for violations of IHL, in order to provide protection for Palestinian civilians who remain vulnerable to future acts of aggression by Israel.

¹⁰¹ Yaniv Kubovich, “Israeli Army Probe Set to Conclude: No Violation of Open-fire Orders During Deadly Gaza Border Protests,” *Ha’aretz*, 26 July 2018, available at: <https://www.haaretz.com/israel-news/.premium-idf-probe-set-to-conclude-open-fire-orders-followed-at-gaza-protests-1.6316272>.

Annex 1

Adalah's Work on 2014 Gaza War Complaints (requests for investigation) Updated November 2018

Complaints to which the Israeli authorities have issued no response to date (5)

	Incident	Date Complaint Filed (2014)	Status of Complaint
1	Bombing of three mosques in Khan Younis in July 2014 (the al-Huda, Al-Salam, and Omar Ibn Abed al-Aziz Mosques).	10 July	No response.
2	Attack on the Adwan Hospital on 11 and 12 July 2014 (with Al Mezan).	16 July	No response. June 2015 – The UN Commission of Inquiry into the 2014 Gaza Conflict (hereinafter: UN COI 2015) (paras. 464, 479) asserted that the targeting of medical personnel, vehicles and hospitals may amount to war crimes. July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah's complaint.
3	Attack on Al-Awda Hospital on 9 July 2014 (with Al Mezan).	16 July	No response. Jun. 2015 – The UN COI 2015 (paras. 464, 479) asserted that the targeting of medical personnel, vehicles and hospitals may amount to war crimes. July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah's complaint.
4	Attack on the Balsam Hospital on 9 July 2014 (with Al Mezan).	16 July	No response. Jun. 2015 – The UN COI 2015 (paras. 464, 479) asserted that the targeting of medical personnel, vehicles and hospitals may amount to war crimes. July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah's complaint.
5	Attack on a soap and cleaning materials factory on 8 August 2014 (with Al Mezan). The factory was totally destroyed, including equipment and products worth approx. US\$ 2.9 million.	1 September	No response. July 2015 and June 2016 – Adalah sent reminder letters to the MAG asking for its response to Adalah's complaint.

Complaints resulting in no decision to open an investigation to date (7)

	Incident	Date Complaint Filed (2014)	Status of Complaint
1	<p>Demand for investigation into attack on the home of the al-Haj family in the Khan Younis refugee camp on 10 July 2014 (with Al Mezan).</p> <p>8 out of 9 family members were killed and 23 people were injured. The home was totally destroyed and severe damage was caused to neighboring houses.</p>	10 and 17 July	<p>June 2015 – The UN COI 2015 (para. 221) raised concerns that the al-Haj case violated the principle of distinction and principle of proportionality, and therefore may amount to a war crime.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah’s complaint.</p> <p>November 2015 – The MAG informed Adalah that the case was still under examination by the FFAM.</p> <p>February and June 2016 – Adalah sent reminder letters to the MAG requesting updates on the case.</p>
2	<p>Attacks on water infrastructure on 11 July 2014 (with Al Mezan).</p>	17 July	<p>July 2014 – The AG informed Adalah that the case had been transferred to the Deputy AG.</p> <p>June 2015 – The UN COI 2015 (para. 584) referred to the heavy damages and destruction inflicted on water and sanitation facilities in Gaza and the resulting reduction of access to drinking water by already vulnerable families.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah’s complaint.</p> <p>February 2016 – Adalah sent a reminder letter to the MAG requesting updates on the case.</p> <p>April 2016 – The MAG informed Adalah that the attack was still under examination by the FFAM.</p>
3	<p>The killings of two workers and a child in an attack on water infrastructure on 11 July 2014 (with Al Mezan).</p> <p>A child and a young man were also injured.</p>	17 July	<p>July 2014 – The AG informed Adalah that the case had been transferred to the Deputy AG.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah’s complaint.</p> <p>February 2016 – Adalah sent a reminder letter to the MAG requesting updates on the case.</p> <p>April 2016 – The MAG informed Adalah that the attack was still under examination by the FFAM.</p>
4	<p>Attack on the Shuheiber family home on 17 July 2014, while children were feeding pigeons on the rooftop (with Al Mezan).</p>	21 July	<p>June 2015 – The UN COI 2015 (para. 230) stated that the Israeli army may have failed to take all feasible measures to avoid or at least to minimize harm to civilians, and that this attack could be deemed disproportionate.</p>

	The three children were killed as a result of the attack. Two other people were injured and severe damage was caused to the building.		<p>July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah’s complaint.</p> <p>January 2016 – Adalah sent a reminder letter to the MAG asking for its response to the observations of the COI and to Adalah’s complaint.</p> <p>April 2016 – The MAG informed Adalah that the examination of the event was still ongoing.</p> <p>June 2016 – Adalah asked again the MAG for updates.</p>
5	<p>Attack on Al-Aqsa Hospital on 22 July 2014 (with Al Mezan).</p> <p>Three people were killed and 40 injured, including 15 medical personnel, and the hospital was severely damaged. The hospital was particularly crowded because of the admission of large numbers people injured by Israeli military attacks, often accompanied by multiple relatives.</p>	24 July	<p>July 2014 – Adalah submitted a request to Israeli AG and the MAG to open a criminal investigation.</p> <p>July 2014 – The AG’s Office informed Adalah that its request had been received and transferred to the Deputy AG.</p> <p>August 2014 – The Deputy AG sent a written response that the incident was under investigation by the MAG.</p> <p>June 2015 – The UN COI 2015 (paras. 464, 479 of its report) asserted that the targeting of medical personnel, vehicles and hospitals may amount to war crimes.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to Adalah’s request for a criminal investigation and to the COI report.</p> <p>February 2016 – Adalah sent a reminder letter requesting that the MAG follow up on the case.</p> <p>June 2016 – The MAG informed Adalah that the two cases, involving military attacks on the Al Aqsa Hospital and the Beit Hanoun Hospital, were still under FFAM examination.</p>
6	<p>Attack on the Beit Hanoun Hospital on 22 July 2014 (with Al Mezan).</p> <p>One person was injured as a result of the attack and severe damage was caused to the hospital.</p>	24 July	<p>June 2015 – The UN COI 2015 (paras. 464, 479) asserted that the targeting of medical personnel, vehicles and hospitals may amount to war crimes.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response the complaint and the COI report.</p> <p>February 2016 – Adalah sent a reminder letter to the MAG to ask for updates on the case.</p> <p>June 2016 – The MAG informed Adalah that the two attacks on the Al Aqsa and Beit Hanoun hospitals were still under examination by the FFAM.</p>
7	Attack on UNRWA school (which was acting as a shelter for 2,200 refugees) in the Al Zaytoun neighborhood of Gaza City	31 August	<p>June 2015 – The UN COI-Gaza concluded these attacks were highly likely to constitute indiscriminate attacks, which may qualify as a direct attack against civilians and therefore may amount to war crimes.</p>

	<p>on 29 July 2014 (with Al Mezan).</p> <p>8 people were injured as a result of the attack.</p>		<p>July 2015 – Adalah sent a letter to the MAG asking for its response to Adalah’s complaint and the COI report.</p> <p>November 2015 – The MAG informed Adalah that the case was still under examination by the MPCID.</p> <p>February and June 2016 – Adalah sent reminders letters to the MAG requesting updates on the case.</p>
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Complaints into which no investigations were opened (13)

	Incident	Date Complaint Filed (2014)	Status of Complaint
1	<p>Attack on the home of the Kaware family on 8 July 2014 (with Al Mezan).</p> <p>8 people were killed and 25 were injured as a result of the attack.</p>	10 July	<p>September 2014 – The MAG informed Adalah that no investigation would be opened into the case. The MAG noted that the decision was based on secret evidence. In response, Adalah sent a list of questions to the MAG regarding the decision and requested access to the materials that formed the basis for it.</p> <p>June 2015 – The UN COI 2015 (para. 221) raised concerns that the Kaware case violated the principle of distinction and principle of proportionality, and therefore may amount to war a crime.</p> <p>July 2015 – Adalah sent letters to the MAG asking for its response to the observations of the COI and Adalah’s complaint. Additionally, Adalah submitted additional affidavits and other material regarding the case to the MAG.</p> <p>November 2015 – The MAG informed Adalah that the additional materials and affidavits that Adalah had supplied in the Kaware family case had been sent to translation, and that the MAG would assess whether they constituted a basis for reexamining its previous decision that there was no need for an investigation.</p> <p>February 2016 – Adalah sent reminder letters to the MAG; no response has been received to date.</p>
2	<p>Attack on the car of journalist Hamid Shehab on 9 July 2014 (with Al Mezan).</p> <p>As a result of the attack, the journalist was killed and 8 other people were injured.</p>	10 July	<p>September 2014 – The MAG informed Adalah that no investigation would be opened into the case. In response, Adalah sent a list of questions to the MAG regarding the decision and requested access to the materials that formed the basis for it. The MAG noted that the decision was based on secret evidence. In response, Adalah sent a list of questions to the MAG regarding this case and others.</p> <p>July 2015 – Adalah sent letters to the MAG asking for its response to the observations of the COI and Adalah’s complaint.</p>

			November 2015 – The MAG rejected Adalah's request to access to the case materials. The MAG additionally informed Adalah that it had investigated no non-military witnesses, stating that its saw no need for such an investigation.
3	<p>Attack on the home of the Hamed family on 8 July 2014 (with Al Mezan).</p> <p>6 people were killed, including 3 women, and 5 others were injured, including 4 children, as a result of the attack.</p>	10 and 27 July	<p>December 2014 – The MAG informed Adalah that no investigation would be opened into the case. The MAG claimed that the attack targeted a Hamas commander and three other Hamas militants who were killed with him, and that the killing and injuring of civilians was collateral damage.</p> <p>June 2015 – The UN COI 2015 (para. 243) raised concerns that the tactics of targeting residential buildings with strikes “may have constituted <i>military tactics reflective of a broader policy</i>, approved at least tacitly by decision-makers at the highest levels of the GoI. Such tactics appear to have prioritized the perceived military objective over other considerations, disregarding the obligation to minimize effects on civilians.”</p> <p>July 2015 – Adalah sent letters to the MAG asking for its response to the observations of the COI and to Adalah’s complaint, and requested access to the case materials.</p> <p>November 2015 – The MAG rejected Adalah’s request for access to the case materials and informed Adalah that it had investigated no non-military witnesses, stating that it saw no need for such an investigation.</p>
4	<p>Bombing attacks close to the European Hospital on 9 and 10 July (with Al Mezan).</p> <p>The attacks caused panic attacks in patients and disrupted the work of the medical staff.</p>	10 July	August 2016 – The MAG informed Adalah that no investigation would be opened into the case.
5	<p>Attack on a shelter for disabled people in Beit Lahia on 12 July 2014 (with Al Mezan).</p> <p>Two mentally and physically disabled women were killed as a result of the attack. Other three disabled people and one staff member were injured.</p>	15 July	<p>December 2014 – The MAG informed Adalah that no investigation would be opened into the case, stating that the attacks targeted a weapons warehouse that was located in the home of a Hamas militant. The MAG further stated that it was aware that a kindergarten was located in the building, and that this was the main reason it had conducted the attack at night, but that it was not aware of a shelter for the disabled.</p> <p>July 2015 –Adalah sent letters to the MAG asking for its response to the observations of the COI and to Adalah’s complaint, and requested access to the case materials.</p> <p>November 2015 – The MAG denied Adalah’s request for access to the case materials and also informed it that no witnesses who were not members of the “Israeli security forces” had been investigated, and that it saw no need for such an investigation.</p>
6	Attack on the Al Wafa Hospital on 11 July 2014	16 July	December 2014 – The MAG informed Adalah that no investigation would be opened in the case. In its response, the

	<p>(with Al Mezan).</p> <p>As a result of the attack, severe damage was caused to the hospital, which is the only hospital providing rehabilitation services to people with disabilities in the Gaza Strip.</p>		<p>MAG claimed that the Al Wafa Hospital buildings had all been evacuated and that Hamas was using them for military purposes. The MAG additionally informed Adalah that only one attack was conducted without a warning, and that as there was no collateral damage the attack did not amount to a grave breach of IHL.</p> <p>June 2015 – The UN COI 2015 (paras. 464, 479) asserted that the targeting of medical personnel, vehicles and hospitals may amount to war crimes.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah’s complaint.</p>
7	<p>Attack near the headquarters of the Red Crescent in Jabaliya on 9 July 2014 (with Al Mezan).</p> <p>Three paramedics and the head of the emergency department were injured and severe damage was caused to the building and to three ambulances.</p>	16 July	<p>December 2014 – The MAG informed Adalah that no investigation would be opened into the case. The MAG claimed that rocket launchers were positioned on the land in question that were used against the Israeli military. The MAG also stated that its response was in accordance with IHL.</p> <p>June 2015 – The UN COI-Gaza (paras. 464, 479) asserted that the targeting of medical personnel, vehicles and hospitals may amount to war crimes.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to the observations of the COI and to Adalah’s complaint.</p>
8	<p>Attack on water infrastructure on 9 July 2014 (with Al Mezan).</p> <p>Mr. Adnan al-Ashhab, a worker in the facility, was killed as a result of the attack.</p>	17 July	<p>June 2015 – The UN COI 2015 (para. 584) referred to the heavy damages and destruction caused to water and sanitation facilities in Gaza and the resulting reduction of access to drinking water by already vulnerable families.</p> <p>April 2016 – The MAG informed Adalah that it could not confirm the attack.</p>
9	<p>Attack on water infrastructure on 12 July 2014 (with Al Mezan).</p> <p>Mr. Ziyad Al-Shawwi, a worker in the facility, was severely injured as a result of the attack.</p>	17 July	<p>June 2015 – The UN COI-Gaza (para. 584) referred to the heavy damages and destruction caused to water and sanitation facilities in Gaza and the resulting reduction of access to drinking water by already vulnerable families.</p> <p>April 2016 – The MAG informed Adalah that the attack is unknown to them.</p>
10	<p>Targeting of ambulances on 22 July 2014 (with Al Mezan).</p> <p>One person was killed and three ambulances sustained severe damage as a result of the attack.</p>	24 July	<p>December 2014 – The MAG informed Adalah that no investigation would be opened in the case. In its response, the MAG stated that it could not identify the attack and that the complaint was deficient.</p> <p>June 2015 – The UN COI 2015 (paras. 464, 479) asserted that the targeting of medical personnel, vehicles and hospitals may amount to war crimes.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its</p>

			<p>response to the observations of the COI and to Adalah's complaint.</p> <p>February and June 2016 – Adalah sent reminder letters to the MAG.</p> <p>June 2016 – The MAG again informed Adalah that it could not identify the attack.</p>
11	<p>Attack on the UNRWA school (serving as a shelter for 1,500 refugees) in Deir al-Balah on 23 July 2014 (with Al Mezan).</p> <p>8 people were injured as a result of the attack.</p>	31 August	<p>June 2015 – The UN COI-Gaza concluded these attacks were highly likely to constitute indiscriminate attacks, which may qualify as a direct attack against civilians and therefore may amount to war crimes.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to Adalah's complaint and to the COI report.</p> <p>November 2015 – The MAG informed Adalah that the case was still under examination.</p> <p>February and June 2016 – Adalah sent reminders letters to the MAG asking for updates on the case.</p> <p>February 2017 – The MAG informed Adalah that no investigation would be opened into the case. The MAG asked Adalah to provide a power of attorney before it would give any more information.</p> <p>February 2017 – Adalah sent the MAG a confirmation of power of attorney and requested a more detailed response, and for access to the case materials.</p> <p>May and December 2017 and September 2018 – Adalah sent reminder letters to the MAG.</p> <p>November 2018 – The MAG responded to Adalah briefly explaining its decision not to open an investigation, and informing it that had the right to appeal within 60 days.</p>
12	<p>Attack on the UNRWA school (serving as a shelter for 3,000 refugees) in Rafah (with Al Mezan).</p> <p>Two people on a motorbike, and 12 other Palestinian civilians near the school were killed as a result of the attack.</p>	13 August	See the timeline of the case in Annex 2.
13	Attack on the home of the Abu Dahrouj family in the village of Al Zuwayda on 16 and 23	1 March 2015	See the timeline of the case in Annex 3.

<p>July 2014 (this case was submitted by Al Mezan but joined at the appeals stage by Adalah).</p> <p>Five family members, including two children, were killed as a result of the attack and three other people were injured.</p>		
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Complaints regarding incidents into which investigations were opened (3)

	Incident	Date Complaint Filed (2014)	Status of Complaint
1	<p>Attack on Beit Hanoun UNRWA school (shelter for 300 refugees) on 24 July 2014 (with Al Mezan).</p> <p>15 people were killed as a result of the attack and more than 100 people were injured.</p>	27 July	<p>September 2014 – The MAG informed Adalah that it was opening an investigation into the case.</p> <p>September 2014 – Adalah sent a letter requesting access to the investigatory materials and objecting to the fact that the investigation was being conducted by the Military Police Criminal Investigation Division (MPCID) rather than the MAG.</p> <p>June 2015 – The UN COI 2015 concluded that these attacks were highly likely to constitute indiscriminate attacks, which may qualify as a direct attack against civilians and therefore may amount to war crimes.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to Adalah’s complaint and to the COI report.</p> <p>November 2015 – The MAG informed Adalah that the MPCID’s investigation was still in progress and that once completed, it would be referred to the MAG for decision. It also stated that the COI Report was included in the investigatory file.</p> <p>February and June 2016 – Adalah sent reminder letters to the MAG asking for updates on the case.</p> <p>15 August 2018 – The MAG published its Update #6, according to which this case was closed.</p>
2	<p>Attack on the UNRWA school (which was serving as a shelter for 3,200 refugees) in Jabaliya on 30 July 2014 (with Al Mezan).</p> <p>21 people were killed and 100 people were</p>	31 August	<p>June 2015 – The UN COI-Gaza concluded these attacks were highly likely to constitute indiscriminate attack, which may qualify as a direct attack against civilians and therefore may amount to war crimes.</p> <p>July 2015 – Adalah sent a letter to the MAG asking for its response to Adalah’s previous complaints and to the COI Report.</p>

	injured as a result of the attack.		<p>November 2015 – The MAG informed Adalah that it had referred the Jabaliya school case to the MPCID for investigation.</p> <p>February and June 2016 – Adalah sent reminders letters to the MAG asking for updates on the cases.</p>
3	<p>Attack on four children of the Bakr family on beach in Gaza on 16 July 2014 (With Al Mezan and PCHR).</p> <p>The four Bakr children were killed and four other people were injured as result of the attack.</p>	18 July	See the timeline of the case in Annex 4

Timeline Summaries of Case Studies

Annex 2

Appeal against the MAG's decision to close the case file without investigation regarding a complaint against an attack on an UNRWA school in Rafah

Case summary

The case involves a drone missile attack on 3 August 2014 at the entrance of the UNRWA school in Rafah during OPE. As a result of the attack two people, who were the targets of the attack, were killed while riding on a motorcycle. In addition, another 12 Palestinian civilians located in the vicinity of the school, seven of whom were children, were killed. At least 30 other people were injured. The school was being used as a shelter for around 3,000 civilians at the time.

Legal actions taken

- On 31 August 2014, Adalah submitted a request to the Attorney General (AG), the Military Advocate General (MAG), and the Minister of Defense to open a criminal investigation into the case.
- On 1 September 2014, the AG's Office sent a letter to Adalah stating that the request had been received and transferred to the Deputy AG.
- On 27 November 2014, the Deputy AG sent a written response that the incidents were under investigation by the MAG.
- On 23 February 2015, Adalah sent a request to the MAG to open a criminal investigation into the case.
- In June 2015, the UN COI 2015 concluded (paras. 421, 446 of its report) that the attacks on UNRWA schools were highly likely to constitute indiscriminate attacks, which may qualify as a direct attacks on civilians and therefore may amount to war crimes.
- On 27 July 2015, Adalah sent a letter to the MAG asking for its response to Adalah's request to open a criminal investigation and to the COI's report.
- On 9 November 2015, the MAG informed Adalah that the case was still under consideration.
- On 14 February 2016, Adalah sent a reminder letter to the MAG asking for updates on the case.
- On 7 June 2016, Adalah sent a further reminder letter to the MAG asking for updates on the case.
- On 24 August 2016, the MAG announced in its general Update #5 that it had closed the case.
- On 30 August 2016, Adalah sent a letter regarding the announcement from 24 August 2016, asking why the MAG has not informed Adalah about its decision to close the case, and asking for a specific response to Adalah's request to access the investigatory material in the case.
- In August 2016, the MAG informed Adalah that no investigation would be opened in the case, stating that although the military knew that the school was being used as a civilian shelter, the air strike itself,

which targeted riders on a motorcycle in its vicinity, did not raise grounds for reasonable suspicion of criminal misconduct.

- On 20 September 2016, Adalah sent a reminder letter to the MAG asking for updates about accessing the material.
- On 25 October 2016, Adalah and Al Mezan submitted an appeal to the AG against the decision to close the case without opening an investigation.
- On 8 November 2016, the AG's Office sent a letter confirming receipt of the appeal.
- On 1 December 2016, the MAG wrote to Adalah informing it that it would not be able to access the investigatory materials in the case because they were confidential.
- On 18 December 2016, the AG's Office sent a second letter confirming receipt of the appeal.
- On 29 May 2017, Adalah sent a reminder letter to the AG regarding its appeal.
- On 6 June 2017, the AG informed Adalah that its "correspondence" had been transferred to the State Prosecutor's Office.
- On 13 June 2017, the AG informed Adalah again that its "correspondence" had been transferred to the State Prosecutor's Office.
- On 11 December 2017, Adalah sent a reminder letter to the State Prosecutor's Office requesting a decision on its appeal.
- On 14 March 2018, Adalah sent a further reminder letter to the State Prosecutor's Office requesting a decision on its appeal.
- On 8 April 2018, the State Prosecutor's Office responded to Adalah, stating that it had not yet received the investigatory materials from the MAG and that, after Adalah's letter of December 2017, it had requested the materials again from the MAG, and informing Adalah that it would update it once the MAG responds.

Annex 3

Appeal against the MAG's decision to close the case file without investigation regarding a complaint against an attack on the Abu Dahrouj family home; 5 people killed, many others wounded, homes damaged

Case summary

The Abu Dahrouj family home in the village of Al Zuwayda in Gaza was attacked on 16 July 2014 and 22 August 2014. Five family members, including two children, were killed as a result of the attack. Three other family members were injured, including two children. Other people were also injured, and the building was extensively damaged.

Legal actions taken

- On 1 March 2015, Al Mezan submitted a request to the Military Advocate General (MAG) to open a criminal investigation.
- On 18 March 2015, the MAG informed Al Mezan that **no investigation would be opened in the case.**
- On 9 August 2016, Al Mezan requested detailed information regarding the military's decision and the disclosure of the case materials.
- On 9 November 2016, the MAG notified Al Mezan that the attack on the Abu Dahrouj home had been in error "as a result of an unforeseen technical failure", something that does not affect the legality of the attack. The MAG further stated that it could not disclose the case materials since they are classified.
- On 9 January 2017, Adalah and Al Mezan submitted an appeal to AG against the decision to close case without opening an investigation.
- On 10 January 2017, the Attorney General's (AG) Office sent a letter confirming receipt of the appeal.
- On 6 February 2017, the State Attorney's Office responded to Adalah informing it that it had asked the MAG to give its opinion on the appeal to the AG, and requested the materials on which the MAG based its decision not to open an investigation in the case.
- On 29 May 2017, Adalah sent a reminder letter to the State Attorney's Office.
- On 11 December 2017, Adalah sent a further reminder letter to the State Attorney's Office.
- On 14 March 2018, Adalah sent another reminder letter to the State Attorney's Office.
- On 8 April 2018, Adalah received a response from the State Attorney's Office that it had not yet received a response from the MAG with regard to the requested investigatory materials, and they would update Adalah once the MAG responds.

Annex 4

Appeal against the MAG's decision to close the Bakr boys' case following an investigation; 4 boys killed while playing on the Gaza beach

Case Summary

At 16:00 on Wednesday, 16 July 2014, Israeli forces fired two missiles at eight children from the Bakr family and other civilians who were present near to the Al-Shiraa café and behind the Al-Andalous Hotel on the beach in Gaza City. Four of the children were killed: Ismail Mohammed Bakr (10 years of age), Mohammed Ramez Bakr (11), Zakaria Ahed Bakr (10), and Ahed Itaf Bakr (9). Four other people were injured in the missile attack: Al-Montaserbillah Khamees Bakr (11), Hamada Khamees Subhi Bakr (14), Fahed Basem Abu Sultan (26), and Mohammed Basheer Abu Watfa (23).

Chronicle of legal actions taken in the Bakr boys case by Adalah, Al Mezan and the Palestinian Centre for Human Rights (PCHR)

- On 18 July 2014, Adalah submitted a request to launch an investigation into the case to the Military Advocate General (MAG).
- On 10 September 2014, the MAG responded that the case was being handled by the Military Police Criminal Investigation Division (MPCID).
- On 15 September 2014, Adalah responded to the MAG asking whether the investigatory process had incorporated the Turkel Commission's recommendations, and if they had gathered information from Palestinian witnesses from Gaza, and asking for access to the investigatory materials.
- On 20 October 2014, the MPCID requested that a surviving boy from the Bakr family (Al-Arabi Nasr Fadel Bakr) be brought to testify before them, accompanied by an adult from the family.
- On 21 October 2014, Adalah responded to the MAG regarding their request for Nasr Fadel Bakr to testify before them, stating that it would be arranged within a few days.
- On 28 October 2014, Adalah sent three written testimonies by three persons injured in the incident – Hamada Khamees Subhi Bakr, Fahed Basem Abu Sultan, and Mohammed Basheer Abu Watfa – to the MAG (in Arabic).
- On 10 December 2014, the MPCID requested to bring three boys who witnessed the incident for interview in order to give their testimonies: Al-Montaserbillah Khamees Bakr, Hamada Khamees Subhi Bakr, and Al-Arabi Nasr Fadel Bakr.
- On 28 January 2015, Adalah informed the MPCID that one of the witnesses (Al-Arabi Nasr Fadel Bakr) would be unable to get to the Erez border crossing, and requested that another meeting be arranged for him to give his testimony, and asked them to coordinate interviews for all the remaining witnesses.

- On 2 February 2015, Adalah sent a follow-up letter regarding the arrangement of an interview for Al-Arabi Nasr Fadel Bakr and Hamada Khamees Subhi Bakr to testify. [The children did not testify because they were scared and traumatized.]
- On 16 June 2015, Adalah sent a request for an official response following media reports of a decision to close the case.
- On 22 June 2015, the MAG sent Adalah a notice of the closure of the case and the reasons for closing.
- On 23 July 2015, Adalah sent a request for access to the investigatory materials on which the decision to close the case was based, and argued that the procedure was not in compliance with international law and the Turkel recommendations. Adalah also asked the MAG to respond the specific conclusions of the UN COI on this case.
- On 11 August 2015, Adalah sent a request to extend the appeal period to allow for the timely receipt of the investigation materials.
- On 23 August 2015, Adalah and Al Mezan submitted an appeal against the decision to close the case to the Israeli Attorney General (AG), without having been given access to the investigatory materials in the case.
- On 24 August 2015, Adalah received notification of receipt of the appeal from the AG
- On 4 November 2015, Adalah sent a reminder to the AG to follow up on the appeal.
- On 9 November 2015, the MAG responded to Adalah's letter of 23 July 2015, informing it that the decision to close the case had been made on the basis of a finding of "no wrongdoing". The MAG further stated that they would send the investigatory materials will be sent to Adalah, but on condition that there are no related security considerations.
- On 16 December 2015, 14 February 2016, and 18 April 2016, Adalah sent further reminders to the AG and the State Prosecutor to follow up on the appeal.
- On 4 May 2016, the State Prosecutor's Office responded to Adalah that it should follow-up with the MAG in order to receive the investigatory materials, and that thereafter Adalah should send it an updated appeal.
- On 19 June 2016, the MAG directed Adalah to follow up with the MPCID to gain access to investigatory materials, and on the same day, Adalah sent a request for the materials to the MPCID.
- On 19 June 2016, the State Prosecutor's Office sent a further letter to Adalah stating that there had been a technical error to explain why Adalah had not received its letter from May [factually incorrect], and again directing us to follow up with the MAG regarding the investigatory material in the case.
- On 25 July 2016, Adalah sent a reminder letter to the MPCID following up on its request to access the investigatory materials.
- On 13 October 2016, Adalah sent a notification to the MAG, the MPCID and the State Prosecutor's Office confirming that no response had been received from the MPCID to Adalah requests from 19 June

2016 and 25 July 2016 requests to access to the investigatory materials, a year after the MAG informed it that it would be provided with access to them.

- On 25 January 2017, Adalah sent a reminder to the MAG, the MPCID and the State Prosecutor's Office regarding access to the investigatory materials.
- On 30 January 2017, Adalah sent a letter to the MPCID asking why it had still not been provided access to the investigatory materials, and arguing that the delay was causing unreasonable obstacles to the appeal.
- On 5 March 2017, Adalah sent a letter to the State Prosecutor's Office to inform them that it had reverted to the MAG and the MPCID to access the investigatory materials, and that, despite multiple reminder letters, it had not yet been provided access, which was holding up its appeal in the case. Adalah asked the State Prosecutor's Office to order the MAG and the MPCID to provide the material.
- On 20 August 2017, Al Mezan, Adalah, and PCHR sent a pre-petition to the Public Prosecutor's Office to intervene in order to prevent further delays in the follow-up on the appeal, as a final step prior to resorting to the courts.
- On 18 October 2017, Adalah sent a reminder to the State Prosecutor's Office via email requesting a response to the pre-petition.
- On 30 October 2017, Adalah sent a further reminder via email to the State Prosecutor's Office requesting a response to the pre-petition.
- On 31 October 2017, Adalah called the State Prosecutor's Office, and was informed that there was no final response yet.
- On 6 November 2017, the State Prosecutor's Office sent Adalah a reply in which it apologized for the delay, and stated that effort would be made to move the process forward.
- On 13 December 2017, Adalah received a telephone call from State Prosecutor's Office informing that access to some of the investigatory materials had been granted to the case lawyers of PCHR and Adalah, and that the materials could be reviewed on 18 December 2017.
- On 18 December 2017, the State Prosecutor's Office sent a letter to Adalah to confirm that we received the phone call regarding the investigatory materials and informing that Adalah had until 31 December 2017 to submit additional arguments based on these materials.
- On 3 January 2018, Adalah wrote to the State Prosecutor's Office to request an extension (due to holidays) in which to review the materials and for permission to submit supplementary arguments based on the materials.
- On 7 January 2018, the State Prosecutor's Office sent a response to Adalah granting an extension until 28 January.
- On 28 January 2018, in light of their review of the investigatory materials, Adalah, Al Mezan, and PCHR filed supplementary arguments for our appeal to the State Prosecutor's Office.
- On 8 April 2018 Adalah sent a reminder letter requesting a response to the appeal, and to the supplementary arguments, and reminding them that two and a half years had passed since the appeal

was filed, and four years since the killing of the children, and that it took them two years to give us access to the material from the time of its request.

- On 16 May 2018, the State Prosecutor's Office sent a response to Adalah informing it that it had asked the MAG to provide it with its response to the points made in the appeal.
- To date, 22 November 2018, Adalah has not received a decision regarding the appeal.