



مركز الميزان لحقوق الإنسان
AL MEZAN CENTER FOR HUMAN RIGHTS

UPDATE:

Briefing on Israeli investigations into criminal complaints submitted by Palestinian NGOs in Gaza on behalf of victims of attacks on Gaza in July and August 2014

JULY 2015



Photo: Yaser Qdeih

Introduction

This is a briefing on the legal interventions that were submitted by Palestinian human rights NGOs in Gaza on behalf of Palestinian victims of Israeli armed attacks, which resulted in alleged violations of international humanitarian law (IHL) and human rights law (IHRL). The incidents occurred between 7 July and 26 August in the course of Israel's military operation on the Gaza Strip codenamed Operation Protective Edge (OPE)).

The interventions, submitted on behalf of civilian victims of the military attacks on the Gaza Strip, were based on documentation and investigations conducted by Palestinian human rights organizations. The criminal complaints were filed to the competent Israeli military authorities according to the procedures established under the Israeli military justice system.

The legal representation of victims consists in filing 'civil compensation notifications' to the complaints unit at the Israeli Ministry of Defense (MoD) and filing criminal complaints with the Israeli Military Advocate General's office (MAG) as well as the newly established Fact-Finding Assessment Mechanism (FFAM).

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

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

1 - Documentation and investigations

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

Key incidents were selected for further investigation and the compilation of case-files for the purpose of pursuing legal action in Israel, i.e. filing criminal complaints and 'civil compensation notifications'. As of 31 May 2015, the organizations concluded the documentation and investigations into 610 cases. Case-files include a description of the incident, the type of attack, and details on the casualties, damages and injuries, GPS coordinates of the location, Powers of Attorney from the victims and/or their family members, and official documentation attesting to injury and loss of life or property. Testimonies of the witnesses, eyewitnesses and survivors are also included in the case-files.

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

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

2 - Submission of civil notifications to the Israeli MoD

This is a necessary procedure that is provided for in Israeli law and establishes that Palestinians who claim to have suffered injuries or damages as a result of the military activities of the Israeli forces are obliged to submit 'civil compensation notifications' to the compensation unit at the Israeli MoD within 60 days from the date of the incident. Given the massive number of attacks leading to injuries and damages, the organizations focused on a relatively small number of cases to ensure credible documentation to support a proper complaint.

Notifications were submitted on behalf of victims of the above-mentioned key incidents. A total of 1,248 civil notifications were filed to the Compensation Officer at the Israeli MoD, which acknowledged their receipt.³

3 - Criminal Complaints

A total of 354 criminal complaints were submitted to the MAG and the FFAM. The cases submitted involved 2,205 individuals who lost family members to death or injury or loss of civilian property as a result of Israeli military attacks during OPE.

The cases focused on incidents that strongly suggest that the attacks violated international law, including those resulting in severe damage to civilian property and/or loss of civilian life.

Nine complaints demanding criminal investigations in 16 cases referred to incidents of serious attacks on homes, children, health facilities/personnel, IDP shelters, and other facilities that are indispensable for the survival of the civilian population. These files were submitted during the military operation in cooperation with Adalah – the Legal Center for Arab Minority Rights in Israel.

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

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

4 - Outcomes of the criminal complaints filed

Lawyers communicated with the FFAM and, when needed, provided additional information and harmonized files as per the FFAM requirements. The MAG and FFAM communicated their responses to the two NGOs in 23 letters. Out of the 23 letters three confirmed receiving the criminal complaints and opening files for them. Nine of the 23 letters informed

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

that preliminary investigations would be initiated into nine cases. Another eleven letters informed lawyers that the MAG/FFAM decided not to initiate criminal investigations.

Further information was published by but MAG without communication with the lawyers who submitted the complaints. In its latest update published on 11 June 2015,⁴ the MAG confirmed the closure of further cases, including the killing of four children on the Gaza beach on 16 July 2014.

As part of the engagement with the MAG and the FFAM and upon request of Israeli authorities, the organizations facilitated the access of 14 individuals to Erez Crossing in order to attend interviews with the Investigations Unit with the Israeli Military Police. Eight of these witnesses testified on some of the criminal complaints filed by the organizations.

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

Out of the nine complaints demanding criminal investigations in 16 cases filed by Adalah and Al Mezan (see above), the MAG has informed that four cases would be dismissed without investigation and five cases regarding attacks on UNRWA schools and facilities would be opened for investigation in conjunction with the UN Board of Inquiry's investigation, which was released in April 2015. Another case - of the children killed on Gaza beach - was also opened for an investigation, but was quickly closed in June 2015 (as noted above). No response has been received concerning the other six cases.

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

5 - Analysis of the outcomes of filing criminal complaints against the conduct of the Israeli forces

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

Promptness: almost a year after OPE and only a few cases have been investigated and concluded. Glaringly, in the vast majority of the cases there has been no response from the Israeli authorities as to whether preliminary examinations or criminal investigations are to be opened.⁵ A large number of criminal complaints against alleged violations that occurred in the 2008-09 Operation Cast Lead are yet to be responded to by MAG.

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

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

As another example, on 1 June 2015, the MAG sent a letter to the lawyers representing the victims of one of two attacks that occurred on a family in 2010 and 2011. The criminal investigation by the MAG in the 2010 attack was concluded in 2013. The second investigation was concluded in May 2015, as conveyed by the above-mentioned letter. The letter informed that the attack - the second on the same family - was carried out in the context of combat action and therefore did not merit a criminal investigation. While the MAG acknowledged that the investigation took a very long time, beyond the acceptable standard of promptness, it asserts that the injuries and damages occurred as a result of 'combat action'. The significance of this conclusion lies not only in that the MAG makes it clear that no soldiers or commanders would be subject to any criminal charges, but also in that the compensation claim being considered by an Israeli court currently would most likely be dismissed by the court as per Amendment No. 8 to the Israeli State Liability Law.⁶

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

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

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

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

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

6 - Conclusion:

Palestinian human rights NGOs have engaged positively with the Israeli military authorities and justice system for nearly a year. Israel has a duty to investigate and apply punishments for violations committed by its military and other state agents. Investigations must be carried out to the internationally accepted standards as described above.

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

Under such circumstances, and as the thousands of Palestinian victims continue to be denied justice or redress, Al Mezan calls on the international community to condemn the endemic impunity that is still prevailing in Israel, and to support international mechanisms to secure justice and ensure non-repetition for grave violations of international law. This is especially important in the Gaza Strip where civilians also continue to be victimized by an 8-year-long illegal regime of closures and the implementation of the buffer zone (also referred to as access restricted areas) with excessive use of force.

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