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## Human Rights Council

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**Human rights situation in Palestine and other  
occupied Arab territories**

### **Joint written statement\* submitted by the Al Mezan Centre for Human Rights, ADALAH - Legal Center for Arab Minority Rights in Israel, non-governmental organizations in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2016]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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## **Gaza 2 Years On: Impunity over Accountability Israel's unwillingness to investigate violations of international law in the Gaza Strip**

Between 7 July and 26 August 2014, Israel launched a military offensive in the Gaza Strip codenamed "Operation Protective Edge" (OPE). At least, 2,219 Palestinians were killed, the vast majority of them civilians and of whom 299 were women and 556 were children. OPE also caused massive destruction to over 31,000 homes and other civilian property, including hospitals and vital infrastructure.<sup>1</sup>

Al Mezan Center for Human Rights (Al Mezan) and Adalah-The Legal Center for Arab Minority Rights in Israel filed a series of complaints to the Israeli Military Advocate General (MAG) and the Israeli Attorney General (AG) demanding investigations into suspected violations of international humanitarian law (IHL), international human rights law (IHRL) and international criminal law (ICL), and the criminal prosecutions of perpetrators.

However, two years after OPE, the handling of these complaints by the Israeli authorities has proven what previous experience with the Israeli system has long made clear: Israel is unwilling to conduct genuine, independent investigations into suspected war crimes and does not hold those responsible to account, as required by international law.<sup>2</sup> This situation continues to be the case even after the Israeli military established its Fact-Finding Assessment Mechanism (FFAM) following OPE, which was supposed to improve its investigative thoroughness and promptness, but which in practice does nothing of the sort.

Residents of Gaza also continue to face severe barriers in accessing civil redress in Israel. The overarching challenge remains mounting legislative restrictions that shield the government from torts liability for its troops' actions in Gaza. The severe restrictions on movement imposed by Israel's nine-year blockade restrict Palestinians' access to courts in cases against the Israeli military, which leads to their cases being dismissed. Israel also imposes a short statute of limitations (two years for Palestinians whereas seven years for Israelis) and high financial guarantees<sup>3</sup> that essentially prevent Palestinians from Gaza from receiving civil remedies and compensation for injury/deaths by the military from Israeli courts.<sup>4, 5</sup>

During and after OPE, Adalah and Al Mezan filed complaints jointly to the MAG and the AG regarding 27 incidents of suspected IHL and IHRL violations during OPE, demanding that the authorities open independent criminal investigations and prosecute those responsible. Further, Al Mezan filed an additional 107 complaints to the MAG and FFAM in relation to attacks during OPE. Al Mezan also filed 278 civil compensation notifications to the compensation officer at the Israeli Ministry of Defense (MOD).<sup>6</sup>

It is suspected that the military's actions in the OPE cases concerned violated the principles of distinction and proportionality, which could amount to grave breaches of IHL, and include:

- Direct attacks on residential buildings also causing many civilian deaths and injuries;

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<sup>1</sup> See 'Operation Protective Edge in Numbers': <http://mezan.org/en/post/21255>, page 15.

<sup>2</sup> See Adalah's submission to the UN Commission of Inquiry on the 2014 Gaza Conflict: <http://www.adalah.org/en/content/view/8417>.

<sup>3</sup> The average sum of the guarantee is NIS 30,000 (USD 7,900)

<sup>4</sup> For examples of cases dismissed by denying entry, see *supra note 2*, pp 23-26.

<sup>5</sup> In December 2014, the Supreme Court contradicted a 2006 decision and upheld the onerous regulations, effectively closing the doors of the Israeli courts to Palestinian residents from Gaza for their civil compensation claims, which thereby also constitutes a serious breach of Israel's obligations under IL. See HCJ 7042/12, *Abu Daqqa, et al. v. the Interior Minister, et al.* (judgment delivered 16 December 2014)

<sup>6</sup> Briefing on Israeli investigations into criminal complaints submitted by Palestinian NGOs in Gaza on behalf of victims of attacks on Gaza in July and August 2014: [http://mezan.org/en/uploads/upload\\_center/kiWkMhPrYIZx.pdf](http://mezan.org/en/uploads/upload_center/kiWkMhPrYIZx.pdf)

- Direct attacks on children (e.g. the four Bakr children on the beach and the Shuhaibar children feeding pigeons on a house rooftop);
- Direct attacks on UNRWA schools that were sheltering civilians;
- Bombing of mosques, hospitals, ambulances, and a shelter for people with disabilities;
- Attacks on infrastructure and the municipality workers fixing them.

The results show that two years after OPE, “0” indictments have been issued concerning the cases filed by Adalah and Al Mezan, and 48% of these cases (13 of 27) still remain under examination by Israel's FFAM or have received no response.<sup>7</sup> In not one of Al Mezan's 107 complaints did the MAG or FFAM announce the opening of a criminal investigation, although as of August 2016, Al Mezan was informed that 62 of these complaints were subject to preliminary examinations by the FFAM and more information regarding incident times and locations were requested. In 12 complaints, the Israeli military police investigations unit asked for witnesses to provide their statements at Erez crossing: nine witnesses (eight men and one woman) gave their statements with Al Mezan's support. Notably, the only cases processed relatively swiftly concern incidents of looting by Israeli military personnel and the abuse of civilians in military detention, which reflects the Israeli leadership's intention to shield military personnel from prosecution for serious wrongdoing and to limit prosecution to what qualifies as 'common crimes'.<sup>8</sup>

Ten of Al Mezan's 107 complaints have been closed without further procedures or criminal investigations, and the MAG claimed not to receive another eight of the complaints, which were sent in early 2015, despite having previously sent confirmation letters and numbers to Al Mezan regarding at least two of them. The MAG's response raises serious questions about the management of the complaints.

IHL and IHRL require states to investigate allegations of suspected violations committed during armed conflict. The duty to investigate requires that any investigation follow the international standards of **independence, impartiality, effectiveness, promptness and transparency** and to prosecute those responsible in accordance with domestic and international law.<sup>9</sup>

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

- There is a lack of an independent and impartial investigatory mechanism, since the military is still the authorized body to investigate its own conduct. The MAG still performs a "dual role": it provides the military with legal advice prior to/during military operations and subsequently decides whether to initiate a criminal investigation. This dual role could lead to a situation in which the MAG would decide whether to investigate its own conduct or that of its subordinates. Such a situation would clearly violate the requirement of independence.
- The MAG dismisses complaints by providing unfounded arguments about the existence of military necessity and military targets;
- In many cases, the MAG is not investigating non-military witnesses and has stated that there is no need for such investigations;
- The MAG is unwilling to disclose information on any investigative materials, witnesses and testimonies, which reinforces concerns about the lack of transparency;
- There is no timeframe for examinations and investigations;
- There is an unreasonable amount of time stalling in the examination and investigation processes, and thus the process is not prompt, but unnecessarily lengthy;

<sup>7</sup> See Adalah-Al Mezan Report, “Gaza 2 Years On: Impunity over Accountability: Israel's unwillingness to investigate violations of international law in the Gaza Strip”, 28 August 2016:

[http://www.adalah.org/uploads/uploads/REPORT\\_Gaza\\_Obstacles\\_English\\_28\\_Aug\\_2016.pdf](http://www.adalah.org/uploads/uploads/REPORT_Gaza_Obstacles_English_28_Aug_2016.pdf) and Case List:  
[http://www.adalah.org/uploads/uploads/Adalah\\_Gaza\\_Case\\_List\\_English\\_FINAL.pdf](http://www.adalah.org/uploads/uploads/Adalah_Gaza_Case_List_English_FINAL.pdf)

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

<sup>9</sup> See *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

- There are still no guidelines under which a criminal investigation should be opened in cases involving alleged IHL and IHRL violations.

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

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

These findings clearly demonstrate Israel's unwillingness to genuinely investigate allegations of war crimes and other serious violations of international law, as well as its lack of intent to bring responsible perpetrators to justice. Even in the few cases where investigations have been conducted, it is clear that they are not done independently or impartially, and in the end fail to produce any results that ensure accountability. The Israeli law enforcement system and its flawed investigative mechanisms instead appear primarily geared towards protecting its armed forces, thus allowing impunity to prevail.

We call on the HRC and members states to:

1. Conclude that, to date, Israeli domestic investigations demonstrate an unwillingness and inability to genuinely carry out investigations or prosecutions in compliance with international standards.
2. Insist that Israeli forces' apparent excessive and intentional use of force against Palestinian civilians is subject to independent and credible criminal investigations;
3. Demand that Israel remove all barriers for Palestinians to access Israeli courts to pursue civil tort claims against the Israeli military's actions that include killings and damages;
4. Demand that Israel immediately lift the closure/blockade of the Gaza Strip and cease collective punishment of Palestinians in occupied territory;
5. Reiterate that Israeli violations of international law are rooted in Israel's prolonged military occupation of Palestine, the inherently discriminatory features of which thwart the pursuit of justice for Palestinian victims.
6. Reiterate insistence of Israel's cooperation with UN Mechanisms and implementation of all recommendations.

For the comprehensive update on the FFAM and the MAG, and the Commission of Inquiry and Board of Inquiry analyses please see: <http://www.mezan.org/en/post/21501>