

# Alleged Investigation

THE FAILURE OF INVESTIGATIONS INTO OFFENSES  
COMMITTED BY IDF SOLDIERS AGAINST PALESTINIANS

התעודת העבאית החוקרת  
של ד"ר הקידה/ מידע/ תאונת דרכים

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# CONTENTS

ACRONYMS	7
PRINCIPAL FINDINGS AND RECOMMENDATIONS	8
<hr/>	
INTRODUCTION	14
ABOUT THE PROJECT AND THE METHODOLOGY OF THIS REPORT	16
<hr/>	
CHAPTER 1: THE MILITARY LAW ENFORCEMENT SYSTEM AND THE INVESTIGATION OF OFFENSES IN THE OPT	19
THE MILITARY POLICE CRIMINAL INVESTIGATIONS DIVISION	19
THE MILITARY ADVOCATE FOR OPERATIONAL AFFAIRS UNIT	21
STAGES IN THE INVESTIGATION OF OFFENSES IN THE OPT	23
NOTICES, INVESTIGATIONS AND INDICTMENTS: FIGURES	25
Opening Investigations And Submitting Indictments, 2000-2010	26
Lack Of Data Regarding Grounds For Closure	28
Notices	28
Convictions, Acquittals, And Cancellation Of Indictments	30
Conviction Of Soldiers In Connection With Civilian Deaths	30
<hr/>	
CHAPTER 2: OPERATIONAL DEBRIEFING HINDERS CRIMINAL INVESTIGATIONS	32
THE PLACE OF THE OPERATIONAL DEBRIEFING IN THE “INQUIRY” PROCESS	32
THE OPERATIONAL DEBRIEFING IS A STUDY TOOL	34



“INQUIRY” PRIOR TO INVESTIGATION: A PROLONGED PROCESS THAT IMPAIRS THE EFFECTIVENESS OF THE INVESTIGATION	36
ADDITIONAL EXAMPLES	39
Yesh Din File 1515/08: The “Inquiry” Process Dragged On For More Than Three Years Without Collecting A Single Testimony	39
Yesh Din File 1588/08: Yesh Din Is Asked To Present Evidence As A Condition For Considering An Investigation	40
Yesh Din File 1702/09: The Differences Between The Versions Of Palestinians And Soldiers Requires Investigation	42
<hr/>	
CHAPTER 3: THERE ARE NO MPCID BASES IN THE WEST BANK	45
THE UNIT THAT INVESTIGATES EVENTS IN THE OPT HAS NO BASES THERE	45
DIFFICULTIES IN LODGING COMPLAINTS AT DCO’S	46
LOSS OF COMPLAINTS DURING TRANSFER FROM ISRAEL POLICE TO MILITARY POLICE CRIMINAL INVESTIGATIONS DIVISION	48
USE OF DCO’S TO COLLECT STATEMENTS	52
FAILURE TO APPEAR TO COLLECT STATEMENTS	53
LACK OF ACCESS HINDERS INVESTIGATIONS	60
<hr/>	
CHAPTER 4: KEY FLAWS IN CRIMINAL INVESTIGATIONS	61
DELAYS AND HOLDUPS IN THE START OF AN INVESTIGATION AND ITS PROGRESS	61
INTERPRETERS	67

IDENTIFICATION LINEUPS, CONFRONTATIONS AND POLYGRAPH	74
FAILURE TO QUESTION KEY WITNESSES	77
INVESTIGATORS DO NOT VISIT THE SCENE	79
RELIANCE ON THE UNITS TO IDENTIFY IMPLICATED SOLDIERS	80
REFRAINING FROM INVESTIGATING SENIOR OFFICERS AND EXAMINING THE LEGALITY OF ORDERS	81
Yesh Din Files 1366/08 And 1626/08: Collective Punishment At Al-Arrub	83
Northern Court Martial File 497/03: A Tank Commander Stood Trial But The Responsibility Of Superior Ranks Was Not Sufficiently Investigated	84
DELAYS IN MAGC DECISIONS AFTER THE CONCLUSION OF INVESTIGATIONS	86
Data From Yesh Din's Monitoring	86
Yesh Din File 1581/08: More Than Two Years After The Soldier Was Released From Detention The Magc Still Hadn't Reached A Decision Regarding The Outcome Of The Investigation	87
Yesh Din File 1366/07: Policeman-Witness Not Questioned; The Suspect Doesn't Remember; The Case Was Closed	89
Yesh Din File 1853/09: The Investigation File Is Passed From Hand To Hand Until Its Closure	91
Yesh Din File 1631/08: Investigation Material Passed From Mpcid To Piu To Israel Police And Then Disappears	93
<hr/>	
CHAPTER 5: REFUSAL OF VICTIMS AND WITNESSES TO FILE COMPLAINTS AND TESTIFY	96
LACK OF TRUST IN LAW ENFORCEMENT AGENCIES	97
COMPLAINANTS RECAT ON THEIR COMPLAINTS FOR FEAR OF BEING HARMED	98
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CONCLUSION AND RECOMMENDATIONS	101
RECOMMENDATIONS	103

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APPENDIX: ADDITIONAL DATA	105
DELIVERERS OF NOTICES THAT LED TO THE OPENING OF MPCID INVESTIGATIONS, 2006- 2009	105
INVESTIGATION FILES BY TYPE OF OFFENSE, 2003- 2009	106
INVESTIGATION FILES OPENED BETWEEN 2007- 2010 BASED ON THE LOCATION OF THE OFFENSE	106
INCIDENCE OF MPCID INVESTIGATIONS INTO OFFENSES AGAINST PALESTINIANS IN THE OPT OUT OF ALL MPCID INVESTIGATIONS	107

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## TABLES

Table 1: Status of complaints and investigations monitored by Yesh Din, April 30, 2011	17
Table 2: The opening of investigations by the MPCID and resulting indictments, 2000-2010	27
Table 3: The ratio between the number of notices given to the MPCID, the number of investigation files opened and subsequent indictments served, 2000-2010	29
Table 4: Notices received by the MPCID categorized by the person giving the notice, 2008-2009	46

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# ACRONYMS

**DCO** - District Coordination Office

**HCJ** - High Court of Justice

**IDF** - Israel Defense Forces

**OPT** - Occupied Palestinian Territories

**MPCID** - Military Police Criminal Investigations Unit

**MAG** - Military Advocate General

**MAGC** - Military Advocate General's Corps

**MAOA** - Military Advocate for Operational Affairs



## PRINCIPAL FINDINGS AND RECOMMENDATIONS

Only three and half percent of complaints received by the Military Police Criminal Investigations Unit (MPCID) and the Military Advocate General's Corps (MAGC) of criminal offenses allegedly committed by soldiers against Palestinian civilians and their property in the West Bank ultimately lead to indictments. In other words, **a complaint made to the military law enforcement bodies of offenses by soldier against Palestinians have a 96.5% chance of being dismissed without an indictment being filed against the suspected soldiers.** This report attempts to examine the reasons why so few of the cases examined and investigated by the IDF result in indictments.

The report is based upon Yesh Din's monitoring of the military law enforcement agencies' processing of 192 separate complaints made on behalf of Palestinian complainants, and on the study of the contents of 67 investigation files opened by the MPCID and closed by the MAGC without indictments being filed against defendants. The report's findings are also based on information and figures the IDF provided Yesh Den in response to the organization's requests over the past years.

There is no way of knowing how widespread the phenomenon of offenses by soldiers against Palestinians is: how many times over the past years soldiers looted property from homes they entered for the purpose of searches, shot civilians in defiance of the rules of engagement and with no operational justification, beat and humiliated passersby at checkpoints and on roadsides. It is reasonable to assume that in many of these incidents the victims of the offense refrained in advance from complaining to the Israeli Army so that it could investigate the offenders and place them on trial. Nonetheless, from the beginning of the second intifada to the end of 2010, the MPCID received 3150 complaints (also known as "notices") of criminal offenses allegedly committed by soldiers against Palestinians in the territories. The complaints cover a wide spectrum of offenses including severe harm to Palestinians and their property: acts of killing and wounding, looting, theft and other damage to property, violence, abuse of passersby and detainees and other similar offenses. In 38% of the notices made concerning suspected criminal acts by soldiers against Palestinians, no criminal investigation was started following the notices. The reasons for this could be the policy of the MAGC not to investigate offenses committed under "operational" circumstances, the decision by parties within the MPCID that that the complaint did not

indicate the commission of an offense or even, in some instances, the loss of data gathered in an investigation. The report's findings indicate that of the 3150 notices made to the MPCID between the years 2000-2010, 1949 resulted in investigations but only 112 of the investigation files – **3.5% of the notices** – have resulted, so far, in indictments against suspects.

In the last decade, the MAGC instituted a policy known as the **“investigation policy.”** According to this policy, investigations into certain offenses (such as looting or abuse) are started immediately upon receipt of a complaint. However, the opening of a criminal investigation into alleged offenses committed during operational actions is conditional upon holding a preliminary “inquiry” that is generally based on an “operational debriefing.”

The operational debriefing, a tool used by commanders in order to draw operational conclusions and learn from operational failures and mishaps, is not intended to gather evidence or to determine individual criminal responsibility. For the most part, the operational debriefing is held by **parties within the chain of command of the unit involved** in the alleged offense; those carrying out the debriefing are not investigators and they lack both the appropriate training and the proper tools to unearth evidence. Indeed, figures recently provided by the MAG show that in 30 of the 267 debriefings reviewed by the Military Advocate for Operational Affairs (MAOA) (since the end of March 2007) a decision was made to start a criminal investigation. In other words, **in 89% of the cases** in which an operational debriefing was held following the receipt of a complaint, it was decided not to open a criminal investigation.

Additionally, **the very conducting of an operational debriefing may undermine an effective investigation:** the decision to open a criminal investigation is put on hold until the completion of the “inquiry” process. This process, as shown by figures appearing in the report, takes, in many cases, a very long time, which harms the effectiveness of an MPCID investigation, if and when it opens, because the time that goes by enables evidence to be destroyed or concealed and impairs witnesses' memories. Conducting operational debriefings prior to a criminal investigation also harms the prospective investigation as there is a very real possibility of the soldiers involved in the incident coordinating their versions of the events, with questioning by their commanding officers being used as a “dress rehearsal” for the criminal investigation.



The MPCID has no base within the territories and not even a permanent facility that complainants can approach themselves to give their complaints to MPCID investigators, so that the investigators can gather all the required information and decide, for themselves, the credibility of the complaint. If such a base existed, then the MPCID and the MAGC would be able to reach prompt decisions regarding the necessary investigatory procedures. Failing this, military law enforcement units rely on various intermediaries – primarily officers from the Israel Police and human rights organizations in the territories – in order to obtain, through them, complaints regarding offenses by IDF soldiers against Palestinians. They use these intermediaries in order to facilitate the often complex coordination required to arrange the time and place for collecting testimonies. In many instances, different problems and mishaps that arise on the way prevent the giving of testimonies and often cause complainants to withdraw their complaints.

Chapter 4 of the report, based on the examination of dozens of investigation files, reviews the main failures and flaws in MPCID investigations that make a significant contribution to the failure rate in the investigation of offenses committed by IDF soldiers against Palestinians and their property. Among other things, investigation logs in MPCID files indicate **significant delays in conducting investigation procedures** following the receipt of the original notice (complaint). In many instances, the very opening of an investigation is delayed for many weeks until the appointment of an investigator to the case.

As the vast majority of MPCID investigators neither speak nor read Arabic, they rely on the services of **translators who are not members of the MPCID**. This problem often causes delays in collecting complainants' testimonies and in some cases even impairs the possibility of obtaining a full version of the events from complainant and witnesses.

MPCID investigators **hardly ever make use of conventional investigation tools: polygraph** tests of subjects were held in only a few of the files in which suspects were located and whose contents were examined by Yesh Din. However, in many cases suspects who agreed to polygraph examinations were never sent to take them. **Confrontations** between Palestinian eyewitnesses and suspects are never held. **“Live” identification lineups** – those in which the eyewitness is allowed to identify by sight suspects presented before him – are not held either. Instead, in certain cases MPCID investigators make use of “photographic lineups,” in which the identification of suspects is considered less effective than in “live” lineups and, as a result, photographic lineups are of lesser evidentiary value.

**In many instances, central witnesses are not questioned: both Palestinians and military personnel. Many investigation files include only the complainant's testimony, and lack the testimony of Palestinian eyewitnesses. In some cases, it appears that investigators made no effort whatsoever to summon additional Palestinian eyewitnesses who could add details to the complainant's testimony and thereby either facilitate the location of suspects or strengthen the evidence against them. At the same time, in many cases neither soldiers nor their commanding officers, whose evidence it is reasonable to assume could shed light on the incident, were interrogated.**

As a rule, MPCID investigations of offenses committed against Palestinians are conducted from the investigators' offices and the investigators **rarely go out into the field**. This failure applies both to the scene of the incident – the delay in the opening of investigations into complaints in itself usually hinders the collection of relevant findings from the scene – and also to the bases of the units involved to perform searches, locate documents etc. Because the investigators rarely go themselves to the bases of the units suspected of involvement in criminal offenses and fail to locate and impound documents that could assist in the identification of the soldiers involved, they **rely, in many cases, on the military units themselves to locate and identify the soldiers involved** in the incident. This systematic reliance on the cooperation of elements within the units involved raises suspicions that those same elements may, on occasion, frustrate the assistance that the investigators require.

As a rule, in the investigation files examined by Yesh Din, MPCID investigators refrained from questioning senior officers under warning, both field officers and staff officers. Even in those files where the investigation raised suspicions as to the existence of illegal policies or procedures, investigators failed to widen their investigation in order to **determine the responsibility of senior officers**.

Even following the conclusion of a criminal investigation and the transfer of the investigation material to the MAGC for a decision, **the final decision regarding the fate of an investigation file is delayed for many months**. In the files monitored by Yesh Din, on average almost 14 months passed from the initial transfer of the investigation file to the MAGC to the decision by the MAGC whether to close the file or to press charges. Among the files monitored by Yesh Din and for which a decision by the MAGC has yet to be received, there are many in which more than two years have passed with no decision being made regarding their fate.

One of the most difficult obstacles that prevent law enforcement upon IDF soldiers suspected of criminal offenses against Palestinians in the Occupied Palestinian Territories (OPT) is



**the reluctance of the victims of the offenses and eyewitnesses to testify before the investigatory bodies.** This results from victims' fears that they may come to harm, either from the soldiers who discover they filed a complaint or by the denial of various permits. The victims of offenses also doubt the sincerity of the intention of Israeli law enforcement agencies to investigate complaints against Israeli military personnel.

This combination of factors, the main points of which are reviewed in this report, results in the negligible number of cases in which notices of alleged offenses led to criminal investigations which, in turn, resulted in indictments against defendants: only 3.5%. **The chances that a criminal offense committed by an IDF soldier against a Palestinian will successfully navigate the obstacle course of lodging a complaint, an MPCID investigation and a decision by the MAGC before finally resulting in an indictment, are almost nil.** The barriers on the road to law enforcement, the major ones of which are detailed in this report, are not works of nature but rather the result of conscious decisions, of the non-allocation of resources and the lack of adequate oversight of the investigators' work.

**It is the position of Yesh Din that, under these circumstances, the State of Israel is not meeting its obligation to protect the civilian population living in the area it occupied through the proper and effective investigation of suspicions of criminal offenses committed by soldiers.**

## **RECOMMENDATIONS**

1. The MAGC must stop making the opening of criminal investigations conditional on a prior inquiry procedure and the MPCID must launch criminal investigations into all complaints that, prima facie, indicate suspicion of a criminal offense. In those instances where it becomes apparent that the incident reported by the complainant occurred under circumstances that do not involve criminal intent the investigation file should be closed, even at its early stages. However, the fact that an incident occurred within the framework of an operational activity must not, in itself, provide immunity from investigation.
2. The MPCID must maintain a permanent presence at least in the north and the south of the West Bank to make it easier for those wishing to lodge complaints to do so and be received by MPCID investigators who will take their complaints and testimonies directly.

3. The MAGC must train the MPCID investigators who investigate offenses against Palestinians in the laws of armed conflict and the obligations arising from them. A special emphasis should be placed on the investigation of crimes concerning collective punishment and other similar offenses that arise from the illegitimate policies of field commanders.
4. The MPCID must make a serious and concerted effort to ensure that a large number of its investigators, at least those who come into direct contact with Palestinian complainants and eyewitnesses, speak Arabic and are capable of working in that language.
5. The MAGC must make efforts to allay Palestinians' fears that they will be harmed if they lodge complaints against members of the security forces. Among other measures, in certain cases the MAGC should consider granting the victims of crimes immunity from prosecution if they were involved in light offenses and take firm action in cases when the MPCID or MAGC learn of the harassment of complainants.
6. The MAGC must increase the size of its establishment and allocate sufficient, trained personnel for the needs of the MAOA unit.



## INTRODUCTION

Only 3.5% of the complaints received by the Military Police Criminal Investigations Division (MPCID) and the Military Advocate General's Corps (MAGC) regarding alleged criminal offenses committed by soldiers against Palestinian civilians and their property in the West Bank result in indictments. In other words, complaints made to military law enforcement authorities regarding offenses committed by soldiers against Palestinians have a 96.5% chance of being closed without an indictment being filed against the suspected soldiers. This finding emerged from Yesh Din's continuous monitoring over the past few years of the IDF's law enforcement apparatus that is supposed to protect the civilian population in the Occupied Palestinian Territories (OPT) from criminal offenses carried out by its soldiers. This report attempts to identify the reasons that such a small number of investigations and examinations carried out by the IDF yield criminal indictments.

The IDF maintains an apparatus to enforce the law on its soldiers both by virtue of the provisions of Israeli law that apply to it and by virtue of its obligations as an occupying force in a territory subject to belligerent occupation set forth in international law. International humanitarian law (the laws of war) and the laws of occupation (which are a branch of international humanitarian law) require the occupying power to respect the lives, dignity and property of residents of the occupied territory. Along with the “negative” responsibility to refrain from harming the lives, dignity and property of the civilian population in an occupied territory, international law imposes a “positive” obligation on the occupying power to take active measures to ensure the protection of that population from injury that was not instigated by the occupying force. A central tool in the realization of this “positive” duty is the investigation of criminal offenses committed by soldiers against the civilian population living in the occupied territory and its property and the prosecution of those responsible for them.<sup>1</sup>

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1. The sources of the duty set forth in international law to investigate offenses by IDF soldiers in the OPT and the professional standards resulting from these sources were discussed in detail in a number of documents recently submitted to the Public Commission to Examine the Maritime Incident of May 31, 2010 (henceforth: the Turkel Commission). The commission's letter of appointment authorizes it, among other things, to examine “whether the examination and investigation apparatus relating to complaints and allegations raised regarding the infringement of the Law of Armed Conflict, in effect in Israel in general [...] are compatible with the obligations of the State of Israel with regard to International Law” (Section 5 of Israeli government decision number 1796 from June 14, 2010). Among the documents presented to the Turkel Commission that dealt at length with the obligation to investigate and the standards resulting from such obligation: the Military Advocate General (MAG), *A Second Position Paper on Behalf of the Military Advocate General's Corps*, (MAG Headquarters, 19

Military law enforcement authorities stress that conducting criminal investigations in the occupied territories is no simple task: “As opposed to other investigations, conducting an investigation in the [OPT] is to a large extent like scoring a goal from your penalty box,” according to the commander of the MPCID and the Chief Military Police Officer.<sup>2</sup> The former MAG, Brigadier General Menachem Finkelstein, explained:

*“[...] There are inherent difficulties: it is difficult to recreate the scene, it is not always possible to locate witnesses, and in many cases we lack witnesses from the other side. We can not always obtain medical documents – which we could do during the first intifada, when we controlled the area and we had access to all the data – so sometimes people avoid justice. We don’t ignore these difficulties; we are trying to deal with them.”<sup>3</sup>*

In the past decade, according to figures produced by Yesh Din, **only 6% of investigations opened by the MPCID regarding alleged criminal offenses committed by IDF soldiers against Palestinians in the territories produced indictments.** The MPCID and the MAGC do not collect data regarding the reasons for the closure of the 94% of investigation files that did not result in indictments. This failure denies the public access to figures regarding the number of investigations closed due to the suspicions being refuted as opposed to the number of investigations closed due to the failure of the investigators to locate suspects in committing the offenses or to locate sufficient to indict the offenders. This failure also prevents the possibility of identifying and repairing systemic failures in the law enforcement systems.

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December 2010); Yesh Din, *The duty to investigate: Comparing examination and investigation procedures relating to complaints raised regarding infringements of the Law of Armed Conflict to the obligations of the State of Israel according to international law* (position paper, March 23, 2011); The Association for Civil Rights in Israel, *Does the Procedure in Force for the Investigation of Infringements of the Law of Armed Conflict Meet the Obligations of the State of Israel?* (Position Paper, 28 March, 2011) [Hebrew]. The documents are available on the web sites of the various organizations.

2. Quoted by Amir Rappaport, “The MPCID does not know its job.” *Maariv*, January 1, 2005.
3. Protocol number 157, meeting of the Knesset Constitution, Law and Justice Committee, February 3, 2004.



## ABOUT THE PROJECT AND THE METHODOLOGY OF THIS REPORT

As part of a multi-year project conducted by Yesh Din to reinforce law enforcement procedures upon security personnel who commit offenses against Palestinians and their property, the organization represents the Palestinian victims of such offenses, aids the law enforcement authorities and monitors investigation and prosecution procedures relating to the complaints lodged by the victims of the offenses.

Yesh Din volunteers, accompanied by the organization's field researchers, collect testimony from Palestinians who were victims of criminal offenses allegedly committed by members of the security forces. As much as possible, Yesh Din's volunteers collect documents that could assist in the investigation. Victims of offenses who wish to do so, give the organization's legal advisor power of attorney to represent them in monitoring the progress of the investigation into their complaint. Due to the lack of an MPCID "reception desk" in the territories, Yesh Din assists many victims of offenses in making their complaints either by telephone or in writing. Based on the power of attorney given the organization, Yesh Din monitors the progress of MPCID investigation procedures and the MAGC's decision-making process.

When necessary, Yesh Din offers to help the law enforcement authorities arrange the collection of testimonies from complainants and eyewitnesses. All dealings with law enforcement authorities are documented by the organization and have been used in the compilation of this report. The report is based on Yesh Din's monitoring of the MPCID and MAGC's processing of **192 discrete complaints** that were made against IDF soldiers in which Yesh Din represents the complainants before military law enforcement authorities. The following table presents the status of the complaints and investigations Yesh Din has been monitoring:

**Table 1: Status of complaints and investigations monitored by Yesh Din, April 30, 2011**

Responsible agency	Status	Number of incidents
Closed	Indictment served	4
	File closed but soldiers involved were subjected to disciplinary action	2
	File closed following criminal investigation	48
	File closed without criminal investigation	15
	File shelved by MPCID	11
Handled by MAGC	"Inquiry" procedure	11
	Under review following investigation	56
Handled by MPCID	Under investigation	8
	Under investigation completion	9
Complaints cancelled/lost	The complainant requested that the complaint be cancelled	23
	The complaint/investigation materials were lost	5
<b>Total</b>		<b>192</b>

Alongside Yesh Din's documentation of its contacts with the law enforcement agencies, the organization also examines the actual investigations by reviewing the investigation files themselves. As part of the research for this report, Yesh Din examined **67 MPCID investigation files** from recent years. In 44 of the investigation files Yesh Din represented the complainants and, following the decision to close the investigation, a copy of the file was made available to Yesh Din. An additional 23 files were provided to Yesh Din for examination by HaMoked - Center for the Defense of the Individual, which represented the complainants in the cases, and one additional file was provided by Rabbis for Human Rights.

The examination of the investigation files revealed significant faults and failures in investigation procedures and these were documented in a data base prepared especially for this purpose. We should point out that the research carried out by Yesh Din does not take the place of



the reasoning of the military advocate who decided to close the investigation file and that this report does not deal with the question of whether one military advocate or another was “right” or “wrong” when they decided to close a specific investigation file. The aim of this research is to identify repeated failures that significantly harm the chance of MPCID investigations producing evidence against suspects and leading to indictments against the perpetrators of crimes.

In addition to monitoring investigations and examining investigation files, Yesh Din was aided by information provided by the IDF spokesperson in response to a series of questions. The requested information related to procedures, personnel in the units responsible for law enforcement in the army and other figures. The information we received is included in the report’s various chapters. The IDF spokesperson has also assisted Yesh Din for some years in obtaining copies of judgments handed down by courts martial concerning soldiers accused of harming Palestinians and their property, and also copies of the indictments served against them. This assistance enables Yesh Din to publish reliable data regarding the number of investigation files that are ultimately translated into indictments. Yesh Din has been publishing such data since 2008.

Chapter 1 of this report contains current data from Yesh Din’s research regarding the number of complaints that became investigations and other data on this matter. Chapter 2 deals with the use of operational debriefings as part of the criminal procedure, and how the use of operational debriefings undermines the chance of conducting a proper criminal investigation. Chapter 3 deals with the difficulties resulting from the fact that the MPCID does not have an investigation base in the OPT. Chapter 4 reviews key failures Yesh Din identified in MPCID procedures, based on an analysis of the investigation files it examined and information it has about the investigations the organization has been monitoring over the past years. Chapter 5 discusses an additional aspect of the difficulty to conduct investigations in the territories: the unwillingness of many Palestinians to lodge complaints regarding offenses that they claim security personnel committed against them, both because of fear they will be harmed and because of their lack of faith in Israel’s law enforcement agencies. The final chapter summarizes the report’s conclusions and Yesh Din’s recommendations resulting from them.

# CHAPTER 1

## THE MILITARY LAW ENFORCEMENT SYSTEM AND THE INVESTIGATION OF OFFENSES IN THE OPT

*“I am aware of the fact that the percentage is not high, somewhere in the region of 6% to 9%, that result in filing indictments or disciplinary action.”*  
*(Chief Military Police Officer in testimony to the Turkel Commission).<sup>4</sup>*

The military law enforcement system consists of three main bodies: the Military Police, the Military Advocate General's Corps (MAGC) and the Courts Martial Unit. Offenses are investigated by military police who are authorized by the Military Advocate General (MAG) to act as criminal investigators and who act within the framework of the Military Police Criminal Investigations Division (MPCID). In some cases, military prosecutors acting on behalf of the MAGC accompany investigations and they are the ones who decide on the future of the investigation file once the investigation is completed: they have the authority to order the case closed, to order an indictment or to return the file for additional investigation of matters they think were not investigated fully. In the report **Exceptions: Prosecution of IDF soldiers during and after the second intifada** (henceforth: “**Exceptions**”) Yesh Din reviewed the results of indictments served in courts martial concerning offenses allegedly committed against Palestinians in the OPT from the start of the second intifada to 2007. The report presented figures on the numbers of complaints (“notices”) and the investigations that led to indictments. This chapter includes current figures and background information about the first two links in the chain of military law enforcement upon IDF soldiers in the OPT: the MPCID and the Military Advocate for Operational Affairs (MAOA) Unit.

### THE MILITARY POLICE CRIMINAL INVESTIGATIONS DIVISION

The Military Police Criminal Investigations Division (MPCID) is a military unit commanded by a Colonel and is part of the IDF's Military Police. The MPCID's commanding officer is subordinate to the Chief Military Police Officer. Some 500 soldiers and officers serve in the MPCID, 400 of which serve in various investigation and intelligence capacities.<sup>5</sup> Alongside

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4. Minutes of the testimony of Brig.-Gen. Meir Ohana, Chief Military Police Officer, to the Turkel Commission, April 14, 2011, p. 9.

5. *Ibid.*, p. 3.



investigators doing their regular army service, the MPCID also uses investigators on reserve duty, unit veterans who do their reserve service there.<sup>6</sup>

Most of the MPCID's activity is within three sub-units, divided by geographical parameters: MPCID North, MPCID Center and MPCID South. Each unit is commanded by a Lieut.-Col., and each consists of several bases (MPCID North and South have three bases each and MPCID Center has four bases) commanded by junior officers ranking between Lieutenant and Major.<sup>7</sup> These investigation units deal with offenses related to drugs, property, unlawful use of weapons, violence and offenses against Palestinians in the OPT.

Additionally, each of the regional MPCID units has a central investigations unit that deals with the more complex and sensitive cases as well as a regional base for the investigation of traffic accidents. Alongside the regional units, MPCID also includes two national units: The Central Unit for Special Investigations that deals with especially sensitive cases, and has surveillance capacity and the power to use undercover agents, and the Fraud Investigation Unit.<sup>8</sup>

Except for a single base near Jerusalem, the MPCID has no investigation base in the West Bank and had none in the Gaza Strip in the years preceding the withdrawal of Israeli forces from the Strip in 2005 (the “disengagement”). One investigation base was expanded in February 2005 in order to deal with Palestinian complaints – the “Sharon and Samaria” MPCID base, which is also located outside of the West Bank, on an IDF base near Netanya (the Beit Lid Base). However, investigations regarding offenses committed in the OPT are also conducted by designated teams on other bases, by geographical location: the MPCID bases Sharon and Samaria and Jerusalem belong to MPCID Center and the Beersheba and Urim bases are part of MPCID South.<sup>9</sup> The division of labor between the bases is also

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6. The IDF spokesperson declined to provide Yesh Din with figures regarding the number of investigators assigned to investigations in the OPT (whether on regular or reserve duty) and the number of reserve days allocated for that purpose. IDF spokesperson's response to a query by Yesh Din, October 28, 2007.
  7. Minutes of the testimony of Brig.-Gen. Meir Ohana, Chief Military Police Officer, to the Turkel Commission, April 14, 2011, p. 3-5. A description of the structure of the MPCID can also be found on the Military Police web site: <http://www.aka.idf.il/chamatz/klali/default.asp?catId=38988&docId=39596> (henceforth: Military Police website). Viewed on March 3, 2011.
  8. Letter from the MPCID Commanding Officer to MAG, **The Turkel Commission Report – the Investigations and Examination Apparatus**. 29th March 2011. Available on the commission's web site: <http://www.turkel-committee.gov.il/files/wordocs/9482kamtzar.PDF> [Hebrew].
  9. IDF spokesperson's response to a query made by Yesh Din, October 28, 2007.

decided according to geographic location with each base being responsible for investigations in the areas covered by specific regional brigades. The number of investigations the MPCID conducts in the OPT is not large in relation to the unit's total activities: by multi-year average, in the years 2000-2010 the number of MPCID investigations of offenses committed by soldiers against Palestinian was only 6% of the unit's total number of investigations.<sup>10</sup>

As a rule, MPCID investigators are conscripted soldiers who have been drafted to serve in the Military Police. Male investigators are chosen from among the conscripts drafted into the Military Police during basic training, whereas female investigators are selected prior to their conscription into the IDF. MPCID investigators go through a short basic training followed by a ten-week criminal investigators' course at the Military Police College.<sup>11</sup>

The training of MPCID investigators provides them with basic investigation skills – questioning, collecting evidence and so on – and prepares them to conduct criminal investigations on the range of investigations the MPCID handles. Upon completion of the training, they are authorized by the MAG to act as criminal investigators. During their military service, investigators take an “advanced investigation course” that lasts for one month. However, the MPCID provides no additional formal, specialized training for investigators who handle complaints by Palestinians regarding offenses against them. The supplementary training of investigators in this area is provided by the coaching and mentoring of veteran investigators on the bases they are assigned to and in periodic training days.<sup>12</sup>

## **THE MILITARY ADVOCATE FOR OPERATIONAL AFFAIRS UNIT**

The purpose of the MAGC is “to assist the IDF in fulfilling its missions according to law and to establish within the IDF the rule of law and the importance of a fair trial.”<sup>13</sup> The MAGC consists of three divisions: the law enforcement division including the Military Prosecution and Military Advocacy; the Legal Advisory division that includes the Advisory and Legislation departments, the Legal Advisor for Judea and Samaria (West Bank) and the International

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10. See full data in the appendix.

11. Military Police website. Viewed March 3, 2011.

12. IDF spokesperson's response to a query made by Yesh Din, October 28, 2007; Minutes of the testimony of Brig.-Gen. Meir Ohana, Chief Military Police Officer, to the Turkel Commission, April 14, 2011, p. 23.

13. MAG, query from the Committee on the investigation and examination apparatuses in Israel concerning complaints and allegations regarding violations of the Law of Armed Conflict. Letter from the MAG to the secretary of the Turkel Commission, March 29, 2011.



Law Department; and the Training and Research Division, including the School of Military Law.<sup>14</sup>

The Chief Military Prosecutor is responsible for the Military Prosecution and has the rank of Colonel. His duties include the supervision of the MPCID and providing it with professional direction, and ordering the opening of investigations and completion of investigations.<sup>15</sup> Towards the end of 2007, a section for Operational Affairs was established within the Military Prosecution system with the aim of “combining and concentrating matters relating to operational affairs under one roof while creating the added value of specialization, uniformity, efficiency, improvement and betterment of the treatment of this area.”<sup>16</sup>

The “Operational Area” the MAOA unit was founded to deal with includes, among other things, handling investigations of IDF training accidents, providing investigation summaries to the families of soldiers killed in action, and handling offenses by IDF soldiers against Palestinians in the OPT. Until the unit was established, following a comprehensive restructuring of the MAGC, the various regional military advocates were responsible for decisions about investigations of offenses by soldiers against Palestinians in the OPT.

The MAOA unit’s workload is huge. In 2008 alone, the unit received in all the aforesaid areas 441 criminal investigation files from the MPCID, over 400 complaints and some 20 operational investigations.<sup>17</sup> In 2009 the unit handled 939 “operational complaints” that were reviewed, 333 of which became MPCID files.<sup>18</sup> The MAOA, which has only a small number of subordinate lawyers, is responsible for handling all of those cases.

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14. This division is the result of a restructuring of the MAGC in 2007. Among other things, the change was aimed at separating the role of the legal advisor from responsibility for prosecution, previously the dual responsibility of the military advocates of the various judiciary districts (at regional command bases and the various military arms). Despite the said structural separation, the MAG still wears “two hats”: the Legal Advisor and the Chief Military Prosecutor. For Yesh Din’s criticism of this situation, see: “The Duty to Investigate: Compatibility of Israel’s Duties under International Law with the Examination and Investigation of Complaints regarding Violations of the Law of Armed Conflict Law of Armed Conflict (Position Paper 23 March 2011) (henceforth: “the Duty to investigate”), pp. 36-37 [Hebrew].

15. MAG, query from the Committee on the investigation and examination apparatuses in Israel concerning complaints and allegations regarding violations of the Law of Armed Conflict. Letter from the MAG to the secretary of the Turkel Commission. March 29, 2011.

16. MAGC, Operations Report for 2008, p. 14 [Hebrew].

17. Ibid., ibid.

18. MAGC, Operations Report for 2009, p. 21 [Hebrew].

Prior to issuing an indictment, the MAOA unit's powers concerning offenses by soldiers and officers against Palestinian civilians and their property in the OPT concentrate on the two following critical stages of the law enforcement process:

- a. Deciding whether to open a criminal investigation following complaints of offenses allegedly committed by soldiers and officers, concerning incidents that occurred during operational activity (in other cases the investigation is supposed to be opened by the MPCID without the need for authorization of the MAOA). According to the procedures developed by the MAG, he makes the decision whether to open investigations in such cases, based on the recommendations of the MAOA unit, only after an "operational debriefing," usually by parties in the chain of command of the units involved in the case and after the findings of the aforesaid debriefing are passed on to the MAOA unit.<sup>19</sup>
- b. Deciding whether or not to take legal action following the conclusion of an MPCID investigation. The MAOA is empowered to authorize the closing of an investigation file or the return of the file to the MPCID for further investigation, as well as recommending that the MAG press charges against suspects in the cases it handles.

## STAGES IN THE INVESTIGATION OF OFFENSES IN THE OPT

General Staff Order 33.0304 entitled "MPCID Inquiries and Investigations" details the rules and actions regarding criminal investigations in the IDF as well as other examinations that are not part of criminal proceedings.

A criminal investigation is preceded by a complaint, known in the MPCID as a "notice." This statement may be given to the MPCID by a Palestinian complainant or a proxy – human rights organizations or private attorneys; by the MAGC, to which organizations and attorneys often direct their complaints; by representatives of IDF field units, required by IDF standing orders to pass on to the MPCID complaints of certain offenses allegedly committed by their soldiers; and by other parties.<sup>20</sup>

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19. For more detail regarding the use of operational debriefings and the problems arising from the MAG's policy to base decisions regarding the opening of criminal investigations on their findings, see Yesh Din report, **Exceptions: Prosecution of IDF Soldiers During and After the Second Intifada, 2000-2007** (henceforth: "Exceptions"), pp, 20- 23; B'Tselem, **Void of Responsibility: Israel Military Policy Not to Investigate Killings of Palestinians by Soldiers** (September 2010) (henceforth: "Void of Responsibility").

20. See data in Table 4 below.



However, giving a notice does not necessarily mean that an investigation will be launched. Over the past decade, since the start of the second intifada in 2000, the opening of criminal investigations into alleged offenses committed during operational activities has been conditional upon the holding of a preliminary inquiry. This inquiry process is usually based on the operational debriefing held by elements in the chain of command of the unit involved in the alleged offense.

Based on the examination of the findings of the operational debriefing by the MAGC (and in the event of death, by the MAG), a decision is made as to whether to open a criminal investigation by the MPCID.<sup>21</sup> If the incident of which the complaint was made did not occur during an operational action, or if it was an offense that could not be justified as part of an operational action (for example, offenses of looting or abuse of a prisoner), an investigation is supposed to open immediately, without the need for authorization from the MAOA.

In those cases when the MAGC decides, after completion of the “inquiry” process and examination of the material collected therein, not to open a criminal investigation into the circumstances of the event, that ends the criminal processing of the notice (although there could be an order to put the involved soldier on disciplinary trial, whose gravity is less and does not constitute part of a criminal proceeding).

In the event that a decision is taken to instigate a criminal investigation, the investigation will be held at the MPCID base in the geographic location under whose responsibility the offense was committed. Upon completion of the investigation, the file will be summarized and transferred to the MAGC (until the end of 2007 the military advocate of the jurisdiction and since then to the MAOA). A Military Advocate then will review the investigative material and decide whether to close the case (due to lack of sufficient evidence to prosecute or because the investigation showed that the event in question did not constitute a criminal offense);

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21. On April 6, 2011, the State Advocacy informed the High Court of Justice (within the framework of a petition by B'Tselem and the Association for Civil Rights in Israel regarding investigation policies) of a change in policy so that any case in which a civilian was killed by the fire of IDF forces in the West Bank (so long as the death was not the result of a “clear combat situation”) would lead to the opening of a criminal investigation, as had been customary prior to the second intifada. However, in his testimony before the Turkel Commission a few days later (April 11, 2011), the MAG explained that the change of policy related only to cases of death and that cases in which Palestinians were injured (and not killed) by IDF fire would not require the opening of an immediate investigation but merely an inquiry and that, in that respect, there was no change in the prevailing policy since the start of the second intifada. The MAG further explained that the new policy was still in development. Minutes of the testimony of Military Advocate General Maj.-Gen. Avichai Mandelblit to the Turkel Commission, April 11, 2011, pp. 16-17.

to order the soldiers involved be put on disciplinary trial or take other command measures against them; to return the investigation file to the MPCID to complete the investigation with other necessary measures or to issue an indictment against the suspects.

## NOTICES, INVESTIGATIONS AND INDICTMENTS: FIGURES

For some years, Yesh Din has been collecting figures on the opening of criminal investigations against members of the security forces and the number of indictments submitted on offenses allegedly committed against Palestinians and their property in the OPT. These figures, which were not available to the public beforehand, enable us to deduce the extent to which the IDF fulfils its duty to protect the civilian population of the OPT against criminal offenses committed by its soldiers.

The figures are examined from a multi-year perspective, since the start of the second intifada in late September 2000, when the IDF changed its criminal investigation policy on some of the complaints of alleged offenses by soldiers against Palestinians, particularly shootings incidents.<sup>22</sup> We published our first figures on this issue in 2008, in the **Exceptions** report. The figures in the report included the number of criminal investigations that led to indictments from the outbreak of the second intifada in September 2000 to the end of 2007. The fact sheet published in February 2010 presented updated figures, as of the end of 2009. This chapter contains current figures on the number of investigations that yielded indictments, as well as additional figures concerning law enforcement in the IDF upon soldiers and officers allegedly involved in criminal offenses against Palestinian civilians and their property.<sup>23</sup>

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22. For a description of the investigation policy since the start of the second intifada and the MAGC's explanations of its necessity, see the **Second MAGC Position Paper** (MAG Headquarters, December 19, 2010) (henceforth: **Second MAGC Position Paper**), pp. 8-19 [Hebrew]. See also B'Tselem, **Void of Responsibility**, pp. 13-16.

23. The source for all information and data in this chapter is the IDF. Most of the figures were provided to Yesh Din by the IDF spokesperson, following requests made by the organization to the IDF based on the Freedom of Information Act. The IDF spokesperson also provides Yesh Din, upon its request, with copies of indictments and judgments concerning offenses committed by soldiers against Palestinians and their property in the OPT. These documents facilitate the monitoring of a number of investigation files that led to indictments and the result of the legal proceedings in those files.



## OPENING INVESTIGATIONS AND SUBMITTING INDICTMENTS, 2000-2010

From the beginning of the second intifada to the end of 2010, the MPCID opened 1949 criminal investigations into suspicions of offenses committed by soldiers against Palestinians and their property. This figure includes a wide range of serious offenses against Palestinian civilians and their property: killing and injury, looting, theft and other property damage, violence and abuse of passersby and detainees and so forth.

According to the figures as well as the analysis of the indictments and judgments available to Yesh Din, at the time of writing this report at the end of April 2011, **only six percent (6%)** of these investigations led to indictments. This multi-year figure is identical to the corresponding figure we published in the **Exceptions** report about investigations opened up to the end of 2007.<sup>24</sup>

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24. *Exceptions*, p. 17.

**Table 2: The opening of investigations by the MPCID and resulting indictments, 2000-2010<sup>25</sup>**

Year	Investigation files opened by the MPCID	Investigation files that yielded indictments	
		Number of files	Percentage of investigation files opened
2010	143	3	2%
2009	236	7	3%
2008	323	19	6%
2007	351	10	3%
2006	153	9	6%
2005	155	5	3%
2004	189	12	6%
2003	146	16	11%
2002	155	23	15%
2001	82	7	9%
2000	16	1	6%
<b>Total</b>	<b>1,946</b>	<b>112</b>	<b>6%</b>

25. The source of the information on the number of investigation files opened: a letter from Capt. Tal Bernstein, aide to the Chief Military Police Officer, to Atty. Hoshea Gottlieb, Secretary of the Turkel Commission, April 17, 2011. The letter can be accessed on the Turkel Commission web site at <http://www.turkel-committee.gov.il/files/wordocs/9482kamtzar.PDF> [Hebrew]. The source of the figures on indictments served: Yesh Din's research based on indictments and judgments provided to the organization by the IDF spokesperson. The figures represent indictments served based on investigation files actually opened for each of the years in question (even if the indictment was submitted at a later date). The figures are current for the end of April 2011 and it is entirely possible that additional indictments will be submitted at a later date, based primarily on investigation files opened in the years 2009 and 2010.



## LACK OF DATA REGARDING GROUNDS FOR CLOSURE

In response to repeated demands by Yesh Din to receive figures on the grounds for closure files, the MAGC said, through the IDF spokesperson, that it does not collect data regarding the grounds for closing investigation files in which investigations have been completed and, as a result, it cannot provide data on their distribution.<sup>26</sup> Therefore, even though it is clear that some of the investigation files were closed after the investigators and military advocates who examined the evidence were convinced there was no criminal offense at the basis of the complaint, it is impossible to know how many investigation files were closed due to lack of guilt and how many cases were closed after the investigators failed to collect sufficient evidence to place suspects on trial.

As we pointed out in the **Exceptions** report, the lack of reliable information from the MAGC about the scope of the failure of MPCID investigators in the investigation of offenses makes it very difficult to instruct investigators and prosecutors on how to correct repeated system failures.<sup>27</sup>

## NOTICES

In 38% of the notices given concerning suspicions against soldiers of offenses against Palestinians, no criminal investigations are opened following the notice. The reasons for this could be the MAGC's policy not to investigate complaints of certain types of offenses committed under "operational" conditions, as well as the decision by MPCID officials that the complaint does not indicate a criminal offense and, in some cases, even the loss of investigation materials.

An examination of the disparity between the number of notices given to the MPCID over the last years and the number of investigations that opened and the number of indictments

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26. The IDF spokesperson's response to queries from Yesh Din from March 10, 2011 and April 26, 2010. The spokesperson gave similar answers to previous queries from Yesh Din. See: **Exceptions**, p. 18, footnote 14.

27. This criticism is not new. In the **Exceptions** report, Yesh Din criticized the MAGC and MPCID's failure to collect data on the grounds for closing investigation files about offenses against Palestinian civilians. Unfortunately, the military law enforcement agencies still refrain from collecting the aforementioned information.

served on the basis of those investigations shows that the chance of a notice given to the MPCID ultimately resulting in an indictment against the suspects is minimal: 3,150 notices given to the MPCID in the years 2000-2010 resulted in 1,949 investigations, but only 112 of the investigation files – representing just **3.5% of the notices** – have so far resulted in indictments against suspects.

**Table 3: The ratio between the number of notices given to the MPCID, the number of investigation files opened and subsequent indictments served, 2000-2010<sup>28</sup>**

Year	Notices given to the MPCID	Investigation files opened		Investigation files that led to indictments being served	
		Total	Percentage of notices	Total	Percentage of statements
2010	201	143	71%	3	1.49%
2009	415	236	57%	7	1.69%
2008	432	323	75%	19	4.4%
2007	477	351	74%	10	2.1%
2006	323	153	47%	9	2.79%
2005	292	155	53%	5	1.71%
2004	469	189	40%	12	2.56%
2003	236	146	62%	16	6.78%
2002	194	155	80%	23	11.86%
2001	90	82	91%	7	7.78%
2000	21	16	76%	1	4.76%
<b>Total</b>	<b>3,150</b>	<b>1,949</b>	<b>62%</b>	<b>112</b>	<b>3.56%</b>

28. The figures represent indictments based on investigation files that opened each year (even if the indictment was presented at a later date). The source of the data for number of notices given to the MPCID: a letter from Capt. Tal Bernstein, aide to the Chief Military Police Officer, to Atty. Hoshea Gottlieb, Secretary of the Turkel Commission, April 17, 2011. The letter can be accessed on the Turkel Commission website at <http://www.turkel-committee.gov.il/files/wordocs/9482kamtzar.PDF> [Hebrew]. The source of the figures on indictments served: Yesh Din's research based on indictments and judgments provided to the organization by the IDF spokesperson.



## CONVICTIONS, ACQUITTALS, AND CANCELLATION OF INDICTMENTS

Indictments are served by the MAGC in regional courts martial. According to Yesh Din's information, as of April 30, 2011, 190 soldiers and officers had been indicted by the MAGC for offenses of harming Palestinians civilians and their property. In the case of nine defendants, legal proceedings are still pending or their results have not yet been provided to Yesh Din.

Of the 181 defendants the results of whose legal proceedings are known to Yesh Din, the vast majority (163 defendants, 90%), were convicted at the end of the legal proceedings in their matter. Nine of the defendants were acquitted (5%) and indictments submitted against 11 defendants were either cancelled or commuted to disciplinary trials.

### CONVICTION OF SOLDIERS IN CONNECTION WITH CIVILIAN DEATHS

Between the years 2002-2009, the MPCID opened 173 investigations into suspicions Palestinian civilians were unlawfully killed by IDF soldiers.<sup>29</sup> Only 14 of these investigation files resulted in indictments against 19 defendants.

By April 2011, legal proceedings against 18 of the 19 defendants were completed. One was acquitted, the charges against one defendant were dropped and the remaining 16 defendants were convicted of various offenses.

The indictments issued dealt with incidents in which 17 Palestinian civilians had been killed since the beginning of the second intifada. In the last indictment issued in this matter, St.-Sgt. S., a soldier in the Givati Brigade, was charged with manslaughter and unbecoming conduct. The indictment charged the accused with the manslaughter

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29. The Israeli government published figures showing that between 2002- 2008 the MPCID opened 162 investigations in to the deaths of Palestinian civilians (source : State of Israel: The Operation in Gaza: Factual and Legal Aspects, July 2009, p. 110, para. 295). An additional 11 investigations were opened in 2009 (source: IDF spokesperson's reply to a query from Yesh Din, April 26, 2010). The IDF spokesperson refrains from providing data on the distribution of MPCID investigations opened in 2010 by category. As a result, we do not have the figures for the number of investigation files opened into the deaths of Palestinians in 2010.

of a person whose identity was unknown during Operation Cast Lead, while the deceased was walking close to a group of people of whom at least one was raising a white flag.<sup>30</sup>

Even though 16 defendants have so far been found guilty of various offenses following investigations opened to clarify the circumstances of the killing of civilians, only five were convicted of offenses explicitly associated in the verdict with the deaths of civilians: three Palestinians and one British citizen.<sup>31</sup>

In the cases of other defendants, the courts martial specifically stated that the MAGC had failed to prove the connection between the defendants' acts and the civilian deaths under the circumstances attributed to the accused in the original indictments.<sup>32</sup>

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30. General Staff/816/10 **The Military Prosecutor v St.-Sgt. S.**
31. Two additional defendants were convicted of offenses connected with attempts to disrupt investigations. One officer was convicted of causing the death of a 16-year-old due to negligence (LAC/135/03 **Military Prosecutor v. Capt. Zvi Koratzky** and appeals judgment 64/04; a soldier was convicted of killing a British citizen and other offenses and his fellow soldier was convicted of offenses relating to attempts to disrupt the investigation (South/10/04 **Military Prosecutor v. Sergeant Tayseer Heib** and appeals judgment 96/05; South/7/04 **Military Prosecutor v. Sgt. Imad Atawna**); two soldiers were convicted in connection with the killing of a resident of the village of al-Yamun, one of causing death by negligence and both of them for the offense of giving false information and unbecoming conduct (North/450/04 **Military Prosecutor v. St.-Sgt. D.G.A.**, North/451/04 **Military Prosecutor v. St.-Sgt. R. A.** and appeals judgment 154/04; two junior officers were convicted of negligence for their part in the death of an infant due to an accidental burst of fire from a heavy machine gun (North/186/04 **Military Prosecutor v. Sec.-Lt. Zvi Winik and Sec.-Lt. David Glazel** and appeals judgment in the case of **Sec.-Lt. Zvi Winik** 59/09). See **Exceptions** pp. 54-59.
32. For further details on this issue, see **Exceptions**, pp. 49-72. Since the publication of **Exceptions** judgments have been given in the cases of two additional defendants that were initially charged with the deaths of two Palestinian civilians. In both of these cases, the defendants were convicted of different offenses without their conviction being linked to the deaths of the deceased. In the file Central Court Martial 186/04/C Sgt.-Maj. G. A. was charged with offenses relating to the death of the youth Omar Matar, 14, and the wounding of his 16- year- old friend in March 2003 (See **Exceptions**, p. 60 ). The accused admitted to the charges in a revised indictment and was convicted of illegal use of a weapon and given a three-month suspended prison sentence and a demotion to the rank of Private. St.-Sgt. L.I. was convicted in case C/158/03 (see **Exceptions**, p. 55 ) of exceeding authority to the extent of risking life or health and sentenced to a seven- month suspended prison term and a NIS 1000 fine.



## CHAPTER 2

### OPERATIONAL DEBRIEFING HINDERS CRIMINAL INVESTIGATIONS

*"I say once again that the issue of the debriefing and the investigation involve an inherent tension between them [...] and we are aware also of the possibility that there can sometimes be some form of coordination between the soldiers and this could disrupt, delay or harm our investigations. But this is the challenge we face as investigators, the challenge of finally reaching the truth, based on the current policy. In other words, I can't change the policy. So, some of the policies are now changing. In incidents involving death, I have no doubt that this will have some effect, but we are still subject to certain policies..."*

*(Chief Military Police Officer in testimony to the Turkel Commission)<sup>33</sup>*

#### THE PLACE OF THE OPERATIONAL DEBRIEFING IN THE "INQUIRY" PROCESS

When a complaint made to the MPCIP or the MAGC concerns an incident that occurred during operational activity, the established policy is to hold an "inquiry" procedure before the MAGC orders a criminal investigation. In those instances where the complaint is made to the MPCIP, its processing is put on hold until the MAGC has completed the inquiry process. As stated by the MAGC, the main element of the inquiry is its examination of the "operational debriefing" held by military personnel who are usually part of the chain of command within the unit involved.

*"[...] At first a preliminary inquiry into the circumstances of the incident will be held as part of an operational debriefing – **primarily from the point of view of the forces involved** – and based on its findings (and other available data) a decision will be made*

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33. Minutes of the testimony of Chief Military Police Officer Brig.-Gen. Meir Ohana to the Turkel Commission, April 14, 2009, p. 36.

*as to whether there is suspicion of a criminal offense that warrants the opening of an MPCID investigation.”<sup>34</sup>*

Yesh Din has, over the past few years, asked the IDF spokesperson a number of times for figures from the MAGC on the number military debriefings examined by the MAGC and the number of such debriefings in which, after examination, the MAGC ordered the MPCID to conduct a criminal investigation.<sup>35</sup>

The recurrent answer of the IDF spokesperson to Yesh Din’s requests is that such data are not collected by the MAGC,<sup>36</sup> but in his testimony before the Turkel Commission, the MAG presented figures on this issue from recent years: in 30 instances of the 267 debriefings examined by the MAOA unit (since the end of 2007) it was decided to open a criminal investigation.<sup>37</sup> In other words, in **89% of the incidents** in which MAGC examined an operational debriefing held following an event for which a complaint had been lodged it decided not to launch a criminal investigation.

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34. Military Advocate General, **Second MAGC Position Paper**, p. 13 (our emphasis). For criticism of this procedure see: Yesh Din, **The Duty to Investigate**; B’Tselem **Void of Responsibility**; The Association for Civil Rights in Israel, **Does the Procedure in Force for the Investigation of Infringements of the Law of Armed Conflict Meet the Obligations of the State of Israel?** (Position paper, March 28, 2011) [Hebrew]; Prof. Yuval Shany, Dr. Amichai Cohen and Atty. Ido Rosenzweig, **Response to the Military Advocate General’s Position Paper on the Investigation of Allegations of Violations of International Humanitarian Law** (February 10, 2011); Human Rights Watch, **Promoting Impunity: Israel’s failure to investigate wrongdoing** (June 2005).
35. The question was included in requests for information from Yesh Din to the IDF spokesperson on March 15, 2007, December 28, 2009 and February 2, 2010.
36. Only recently did the IDF spokesperson answer our request thus: “In the MAGC’s internal computer system there is no specific reference to the required details, for example: [...] the number of operational debriefings examined by the MAGC and the number of debriefings following which criminal investigations were opened. Because of the aforesaid, it is not possible to quantify the number of debriefings passed on from the various units to MAGC departments following which a criminal investigation was opened by year and type of offense [...]” The IDF spokesperson pointed out that considering the aforesaid, our questions in this matter as part of our requests for information would not be answered because their handling would demand “an unreasonable investment of resources,” according to the reservation on information delivery in the Freedom of Information Act (IDF spokesperson’s response to Yesh Din, March 10, 2010). A similar answer was provided by the IDF spokesperson to an identical request on April 26, 2009.
37. Minutes of the testimony of Military Advocate General Maj.-Gen. Avichai Mandelblit, to the Turkel Commission, April 11, 2011, p. 34 [Hebrew].



## THE OPERATIONAL DEBRIEFING IS A STUDY TOOL

The centrality of the operational debriefing in the “inquiry” process makes it, in many cases, the only investigation tool used in a complaint. Even though the MAGC claims that the “inquiry” process includes, apart from the operational debriefing, the collection of evidence by the MPCID and receiving press clips or materials from human rights organizations, experience shows that the collection of testimony from Palestinians during the “inquiry” process is rare. In many cases in which MPCID investigators invited Palestinian complainants to give statements, this invitation was later cancelled due to an order from the MAGC to freeze the MPCID investigation until the completion of the “inquiry.”<sup>38</sup>

The High Court of Justice recognized the army’s use of the operational debriefing in order to draw conclusions:

*“The operational debriefing is, in general, the appropriate means of investigating events that occurred during operational activities. It is, usually, carried out by professional parties acquainted with the events in the area and who have an understanding of operational activities. It happens close to the time of the event when the event is still fresh in the minds of those taking part in the debriefing. It is facilitated in a direct and uncomplicated fashion and has constituted an integral part of IDF operational procedures since the inception of the IDF.”<sup>39</sup>*

However, both the HCJ and the Military Appeals Court state that the operational debriefing is, first and foremost, a tool for drawing conclusions and that it is not intended for use in criminal proceedings:

*“The operational debriefing in the IDF has always been seen as an essential part of the learning process that examines the planning and performance procedures of the studied event and the relationship between the planning and what actually occurred. These relationships and procedures should be examined for every military operation – routinely, during training and during operational activity – by, among other tools, debriefings. The debriefing allows conclusions to be drawn for immediate implementation while examining constantly the basic assumptions and axioms that govern the operations of military units.*

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38. See examples below.

39. HCJ 6208/96 Mor Haim et al v the IDF et al (PDI 52(3) 835, 834).

*“[...] These characteristics of the operational debriefing place it firmly, therefore, in the realm of study. This is a different and separate realm from the criminal realm. The criminal realm deals with defined issues, its components are past-oriented with an affinity to the future, but from a criminal perspective. Criminal tools and sanctions are concerned with the past, with ‘what happened.’ Their purpose and aims are unmistakably different from the aims of the study process that has the debriefing at its core. The debriefing – all military debriefings including the operational debriefing, the subject of this discussion – is future-oriented and its main focus is the question ‘what will be’ from now on. In the light of fears of those being investigated that they may implicate themselves, a condition for the implementation of the debriefing is, therefore, its removal and separation from the criminal realm; in that sense, the roots of the debriefing are in the event that took place in the past, but its outlook and peak, and especially its goal, are aimed forward, towards the future. ‘Truth springeth out of the earth’ (Psalm 85:12). The condition for the growth of truth is a suitable climate. If the cloud of criminality hovered from above it would damage its habitat and prevent it from establishing strong roots and flourishing.”<sup>40</sup>*

The operational debriefing, therefore, is not an instrument meant for the collection of evidence or for the determination of individual criminal responsibility but rather an instrument to be used by commanders designed to assist in the drawing of operational conclusions and to study operational failures and faults. The characteristics of the operational debriefing and the way it is conducted are derived from these goals.

**Internal examination:** Other than in exceptional cases, the people who perform operational debriefings are commanders within the chain of command of the units involved in the operation under examination or their commanders from superior units. To this, we must add the fact that within the framework of the operational debriefing no statements are taken from Palestinian victims of the offenses or from eyewitnesses who are not military personnel. Thus the inquiry procedure, in effect, constitutes an “internal examination” that lacks any independence and that is, for the most part, conducted by the body that is suspected of allegedly committing the offense, even if the final decision whether to open an investigation is taken by the MAGC.

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40. The Military Appeals Court, BS/42/03 *Chief Military Prosecutor v Sgt. Eldad Binyamin*, paragraphs 27 -29. See also HCJ ruling 2366/05 *Al-Nebari v the Chief of Staff et al.*



**The person conducting the debriefing is not an investigator:** An operational debriefing is not conducted by investigators. Those in charge of the operational debriefing are not people who were trained to conduct investigations and they lack the necessary investigatory and forensic tools to find evidence and expose the truth.

**The debriefing is not public:** According to section 539a (b)(2) of the Military Justice Law “debriefing materials will be confidential to all persons and provided, in part or in whole, only to those military bodies who need the debriefing for the fulfillment of their duties.” The fact that all debriefing materials and conclusions are kept secret from all non-IDF parties prevents victims of offenses, human rights organizations or any other interested parties from appealing against the conclusions of the operational debriefing, especially when those conclusions fail to lead to the opening of an investigation.

**A debriefing can thwart an investigation:** As aforesaid, criminal investigation are put on hold until the conclusion of the “inquiry” process. In this situation, if the inquiry by way of an operational debriefing is prolonged, the effectiveness of the MPCID investigation is impaired, if it opens at all. Not only is the debriefing unprofessional but, during the period of the debriefing, which is conducted by military officials who have not been trained to deal with suspicions of criminal offenses, the future criminal investigation is damaged:

- A. First and foremost, there is a very real concern of the coordination of testimonies between the soldiers involved in the incident;
- B. Interviews with the soldiers involved in the incident constitute a sort of “dress rehearsal” for the criminal investigation;
- C. The time that elapses until the opening of a criminal investigation makes it possible to destroy or conceal evidence found at the scene of the incident with no possibility of reconstruction, so that in many cases an investigation opening at a later stage is unable to gather evidence at the scene;
- D. The time that elapses until the opening of an investigation can cause witnesses’ memories to fade and provides an opportunity to fabricate evidence.

**“INQUIRY” PRIOR TO INVESTIGATION: A PROLONGED PROCESS THAT IMPAIRS THE EFFECTIVENESS OF THE INVESTIGATION**

Another important dimension of the harm the “inquiry” procedure can do to the chance of conducting a comprehensive and thorough investigation is its prolongation. In 80 notices

out of the 192 cases whose processing by the military law enforcement authorities Yesh Din is monitoring, the MAGC or the MPCID made the final decision whether to close the file with no investigation, to close a criminal investigation that had opened or to press charges.

For 15 of the aforementioned notices, the MAGC decided, after an “inquiry” procedure, not to open a criminal investigation. In these 15 cases, the **average** length of time between the time that notice of the event was given to the MPCID and the announcement of the MAGC’s decision<sup>41</sup> to close the file without a criminal investigation was **close to a year and four months**.

- On the January 5, 2008, soldiers in an armored jeep in the village of Azoun fired live ammunition, apparently in response to stones thrown at their vehicle. As a result, M.S., 16, who was at the scene, was hit in the leg. On March 30, 2008, Atty. Natalie Rosen asked the MAOA on behalf of Yesh Din to investigate the incident and specifically, why the soldiers fired live ammunition even though they were in an armored vehicle, without using less lethal riot control methods. On May 19 2009 – a year and two months after contacting the MAGC – the MAOA answered Yesh Din that following an operational debriefing the MAG had ordered the opening of a criminal investigation. Over a year and half from the announcement of the opening of the investigation, and three years after the actual event, the MPCID informed Yesh Din on December 28, 2010 that the file had been passed on to the MAOA. As of the end of April 2011 the MAGC has yet to reach a decision regarding the outcome of this investigation file.<sup>42</sup>
  
- On March 21, 2010, the cousins Salah and Muhammad Qawarik, residents of the village of Awarta, were shot and killed by soldiers while they were on family land close to the village. According to the shooters, soldiers from the Nachshon Brigade, and as was reported in the media, the cousins had tried to attack them with a broken bottle and a pitchfork.<sup>43</sup> The very next day Yesh Din gave a notice to the MPCID Sharon and Samaria unit on behalf of the deceased’s families and on March 23, 2010, Atty. Michael Sfard, on behalf of Yesh Din, asked the MPCID’s chief investigations officer,

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41. This refers to cases in which an “inquiry” was conducted and a decision was made by the MAGC not to open an MPCID criminal investigation. It does not refer to those incidences when, after the MPCID received a notice it decided not to investigate the complaint. Yes Din has dealt with about ten such cases.

42. Yesh Din File 1390/08 (MPCID File Sharon and Samaria 210/09).

43. See, for example, Hanan Greenberg, “A terrorist attack with a pitchfork is thwarted: two Palestinians killed at a checkpoint”, *Ynet*, March 21, 2010, <http://www.ynet.co.il/articles/0,7340,L-3865706,00.html> [Hebrew].



the MAOA and the Chief Military Prosecutor to decide to open an MPCID investigation as soon as possible. Since the operational debriefing was not concluded for months and Yesh Din's reminders of its requests to order the opening of a criminal investigation remained unanswered, on August 25, 2010, Yesh Din petitioned the HCJ on behalf of the deceased's parents requesting that the court order the MAG to open a criminal investigation into the circumstances of their deaths.<sup>44</sup> In the State's Response, given on September 2, 2010, the MAG decided to open a criminal investigation that the State claimed was unrelated to the petition before the court.<sup>45</sup>

As of April 30, 2011, Yesh Din was monitoring 11 cases in which there was an ongoing "inquiry" process and in which the MAGC had not decided yet whether to open a criminal investigation. Between the time notices of these incidents were given and April 30, 2011, an average of 702 days had gone by – **almost two years**. Six of these files had been awaiting decision for more than two years, in three cases between one and two years had gone by since the original notice was given and the decision on two other notices had been delayed for a little less than a year.

- On December 12, 2008, Y.K., then 14, was on his way to his home in Hebron when a soldier, hidden behind barrels about five meters from the boy, called him, in Hebrew, to come closer. When the boy turned around and faced him, the soldier fired a rubber bullet that hit Y.K. in his forehead. Y.K. fell to the ground and lost consciousness. Yesh Din gave the MPCID a written notice of the 12th of January 12, 2009. From then until the time of writing – two years and three months after the delivery of the notice – no decision had been made yet by the MAOA whether to open a criminal investigation of the event.<sup>46</sup>

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44. HCJ 6246/10 **Faisal Qawarik et al v MAG et al**. The petition is available on Yesh Din's site: <http://www.yesh-din.org/userfiles/file/Petitions/other%20petitions/Qawarik-bagatz.pdf> [Hebrew].

45. Yesh Din agreed to withdraw the petition because it had achieved its goal of leading to the opening of a criminal investigation, but made a motion to award legal expenses because of the behavior of the respondents over the more than five months that had passed from the incident until their announcement they were opening the investigation, which left the parents no recourse other than to petition the court. The court ordered the petition canceled and awarded expenses to the petitioners. Yesh Din File 2067/10 (MPCID Sharon and Samaria File 130/10).

46. Yesh Din File 1686/08 (Notice 1237/08, MPCID Beersheva).

## ADDITIONAL EXAMPLES

### YESH DIN FILE 1515/08: THE “INQUIRY” PROCESS DRAGGED ON FOR MORE THAN THREE YEARS WITHOUT COLLECTING A SINGLE TESTIMONY

July 6, 2008 at 11 a.m. two tear gas grenades were thrown into the family home of K.N. in the village of Ni'ilin through two windows facing different directions. At the time there were nine people in the house including four children. The tear gas dispersed throughout the house and caused panic among the residents. In testimony to Yesh Din K.N. stated that at the time of the incident there were no demonstrations in the area around the house and that he suspected soldiers manning a nearby post. On July 17, 2008, Yesh Din gave a telephone notice on behalf of K.N. to the Jerusalem MPCID. An investigator from the Jerusalem asked Yesh Din's representative, Atty. Natalie Rosen, to assist him to coordinate a date for K.N. to give his testimony. However, this request was later cancelled on grounds that “the file was not being investigated.”<sup>47</sup>

The investigation into the incident by the MAOA was completed only two years and ten months after notice of the incident was given to the MPCID: on May 8, 2011 the MAOA informed Yesh Din of its decision not to open an investigation. A full version of the MAOA statement follows:

*“1. Your telephone notice to the Jerusalem MPCID (Notice 650/08), on the afternoon of July 6, 2008 said that rubber bullets and gas bullets were fired at the home of [...], and, after a few minutes, two windows in his home were broken and two tear gas grenades were thrown into the house while his wife, his children and his nephews were in the house. On the day of the incident, a curfew lasting several days was in force in the village. Following the shooting, it became apparent that an additional four bullets were fired that broke the windows of the vehicle and caused damage to its trunk.*

*2. Examination of the complaint and a review of the operational documents show that within the framework of a curfew imposed on the village of Ni'ilin following grave disturbances that took place there, controlled use was made of measures for the*

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47. Documentation of a conversation between Yudit Avidor, Yesh Din's volunteer coordinator and Y., an MPCID Jerusalem investigator on September 2, 2008. Yesh Din File 1515/08.



*dispersal of violent demonstrations that included the throwing of stones and Molotov cocktails and the igniting of tires directed against security forces – the IDF, the Border Police and the Israel Police. Also, from the language of the complaint, it is apparent that the firing of gas and rubber bullets was not originally directed at the inside of the house but rather the outside. Likewise, the damage allegedly caused to the vehicle and its trunk by the four bullets was not necessarily caused by the security forces' shooting and it is impossible to say with certainty that the bullets were fired intentionally.*

*3. Therefore, I have found no suspicion of criminal action in this case that warrant the opening of an investigation.”<sup>48</sup>*

So, the “inquiry” process that lasted for almost three years was based solely on the basic details provided by Yesh Din’s representative in a telephone call to the MPCID and on an examination of “operational documentation.” The complainants were not given the opportunity to lay their complaint in full detail before an MPCID investigator (despite the initial intention to do so) and the MAGC reached its decision regarding the outcome of the case based on military documents, without having questioned a single person: a soldier, a complainant or any other witness. Of special interest is the fact that, according to the MAGC, the incident occurred in the afternoon during “grave disturbances” in the village, whereas according to the complainant, the incident occurred at 11 a.m. and that there were no disturbances in the area. After examining the details and materials, Yesh Din’s legal team decided that, due to the length of time that had passed since the event, there was no point in demanding the opening of a criminal investigation and attempting to locate the soldiers involved in order to question them.

## **YESH DIN FILE 1588/08: YESH DIN IS ASKED TO PRESENT EVIDENCE AS A CONDITION FOR CONSIDERING AN INVESTIGATION**

On September 13, 2008, H.H., a resident of the village of Tuqu’ in the Bethlehem area, was walking from his parents’ to his uncle’s home, a distance of some 20 meters. While he was walking, a military jeep drove past him and, according to eyewitnesses at the scene, when the jeep passed the youth one shot was heard and H.H. collapsed. He was taken to the town’s clinic and from there to a Beit Jala hospital where he was declared dead from a gunshot to his heart.

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48. Letter from Deputy MAOA Major Dorit Tuval to Atty. Emily Schaeffer from Yesh Din’s legal team, May 8, 2011. Yesh Din File 1515/08 (Notice 650/08 to Jerusalem MPCID).

On September 21, 2008, after Yesh Din had recorded the testimony of an eyewitness and been given power of attorney by the deceased's father, Yesh Din volunteer Prof. Joseph Morin gave a telephone notice to the MPCID Jerusalem unit with general details of the incident.<sup>49</sup> On February 16, 2010 – a year and a half after the incident – Lt.-Col. Sigal Mashal-Shechori, the MAOA, informed Yesh Din that the MAG had decided that “there was no cause to order an MPCID investigation.”<sup>50</sup> This decision was based on the “inquiry” procedure, which examined the general details passed on by Yesh Din in its notice (and perhaps also details provided by other human rights organizations) as well as “operational materials” (which is to say, the operational debriefing) that were provided by the unit involved in the incident. The MPCID investigators did not collect testimony from witnesses – neither Palestinians nor soldiers – nor from the family of the deceased.

The MAG's decision not to investigate the death of H.H. was justified by the results of the operational debriefing (that was based, as already pointed out, solely on written materials and not on collecting any testimonies and assessing their weight), that showed that on the day of the event a military force entered the village following the throwing of stones at the nearby road that caused the injury of two tourists. According to the version of the “relevant military officials,” following the military force's entry into the village a violent public disturbance began and, “when the force found itself in a situation that could deteriorate to the endangerment of the lives of its soldiers, the force responded by firing a single bullet, **not in the direction of the demonstrators**, so as not to endanger anybody.”<sup>51</sup>

Following this statement, Yesh Din appealed the MAG's decision. Among other matters addressed, Atty. Emily Schaeffer stated:

*“It is our belief that the decision not to open an investigation into the **death by shooting** is not a reasonable one insofar as it is based on one version while conflicting, incriminating versions are available, and in the absence of an a priori reason to prefer one of them. The very fact that, in the incident in question, there are different versions regarding the events that took place, and the fact that eyewitnesses describe an unnecessary*

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49. Notice 857/08 to MPCID Jerusalem.

50. However, the MAOA gave B'Tselem notice of the MAG's decision not to open an investigation into the event on October 11, 2009.

51. Statement by Lt.-Col. Sigal Mashal-Shechori, the MAOA, to Atty. Michael Sfard, the legal advisor for Yesh Din, February 16, 2010. Emphasis in the original.



*lethal shooting that is contradicted only by the suspected soldiers' version, create the threshold that requires investigation of the incident. We should add to this what is evident, that without questioning the various eyewitnesses (civilians and soldiers) to the incident, with the aid of maps and diagrams of the area, it is impossible to draw final conclusions regarding the circumstances of the death.”<sup>52</sup>*

In her reply to the appeal, received almost one year after its submission, the Chief Military Prosecutor stated that from the general details provided by Yesh Din in its telephone notice to the MPCID Jerusalem investigator “it was not apparent that that there were witnesses to the event” and that the “operational materials” examined by the MAG were based upon eyewitness accounts. The military prosecutor also stated that a condition for reconsidering the decision not to open a criminal investigation of the incident was that Yesh Din provide the MAGC with “the initial versions of the eyewitnesses to the event.” The prosecutor also demanded an explanation of why “their existence (the eyewitnesses) had been unknown until now.”<sup>53</sup>

## **YESH DIN FILE 1702/09: THE DIFFERENCES BETWEEN THE VERSIONS OF PALESTINIANS AND SOLDIERS REQUIRES INVESTIGATION**

On December 28, 2008, a demonstration took place in the village of Ni'ilin during which A.H. was killed by a gunshot to his heart and another youth, M.H., was seriously injured by a gunshot wound to his head of which he died three days later. Palestinian and Israeli eyewitnesses who were present at the scene claimed in their testimonies to Yesh Din that the gunshots were of live ammunition, aimed directly from a range of 150 meters and fired when the military force was not in a life-threatening situation. The witnesses also stated that lethal shots were fired without any non-lethal riot-control measures being used beforehand.

A notice of the incident was given to MPCID Sharon and Samaria investigator P. on January 18, 2009 (Notice No. 30/09). On February 8, 2009, the head of the MPCID investigation inspection unit wrote, in reply to a query from Yesh Din, that “the case has been passed on

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52. Appeal against the decision not to open an MPCID investigation into the circumstances surrounding the death of H.H. in the village of Tuqu' on September 13, 2008. Letter from Atty. Emily Schaeffer to Atty. Sigal Mashal-Shechori, the MAOA, April 18, 2010. Emphasis in the original.

53. Letter from Col. Zhenia Modzghavershvilli, the Chief Military Prosecutor, to Atty. Emily Schaeffer. March 29, 2011.

to the MAOA for its decision.” Repeated inquiries by Yesh Din to the MAOA for information regarding the status of the file were either not answered at all or answered that “the matter is under consideration.”

On October 14, 2010, as part of an answer to Yesh Din regarding the status of 89 different files being handled by the MAOA, Maj. Dorit Tuval, the Deputy MAOA, informed Yesh Din of the decision not to open a criminal investigation into the incident:

*“The file has been closed following an examination of the treatment by the military officials. On December 28, 2008, a demonstration in Ni’ilin escalated to such an extent that the military force felt that it was in a life-threatening situation as heavy stones and rocks were thrown at them by an enraged mob. One of the soldiers used a blank cartridge and later on fired a live round into the air. When this did not help, fire was directed at a stop butt – fire that led, apparently, to the injury of Palestinians standing behind the wall. Considering the aforementioned, it was decided not to open an MPCID investigation.”*

Yes Din appealed the decision not to open an investigation, a decision that was given to the organization a year and ten months after the notice of the incident was given to the MPCID. Advocates Michael Sfar and Emily Schaeffer wrote, amongst other things:

*“As can be seen, the differences between the eyewitness accounts and those of the soldiers are large and aptly demonstrate the absurdity of the methodology used in the work of the MAOA: your decision is based on an operational debriefing that doesn’t include the testimony of civilian eyewitnesses and it is clear that, when only the soldiers’ version of events is heard, the impression is given that there is no justification for an investigation. However, this is not the case. [...] The fact that there are significant differences between the versions only supports the obligation to open an investigation into the circumstances of the incident in order to discover the truth. All the more so when this refers to an incident with such serious results.”<sup>54</sup>*

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54. Appeal against the decision not to open an investigation into the circumstances of the deaths of A.H. [...] and M.H. [...], MPCID Jerusalem Notice 30/09. Letter from Atty. Michael Sfar and Atty. Emily Schaeffer to Lt.-Col. Ronen Hirsch, MAOA, November 15, 2010.



Yesh Din's advocates further demanded an explanation for the long period of time – over a year and a half – that was required by the MAOA to reach a decision following the submission of the notice to the MPCID. The reply from the MAOA, who rejected the appeal, was spurious:

*“The decision not to open an MPCID investigation was reached during September 2010 by the MAG (note that the period in question is that of the High Holidays). Soon after the decision, you were informed as to the rationale behind the decision. Therefore, your claim that you were informed of the decision only after a year and a half is fundamentally mistaken. Although a number of days after the incident a notice of the incident was given to the MPCID Jerusalem base by Mr. Elhanan of Yesh Din, the handling of the notice was put on hold due to the examination of the event by the MAOA, as derived from its operational characteristics.”*

As to Yesh Din's claims regarding the reasonability of not opening a criminal investigation in order to examine the disparity between the soldiers' versions and those of eyewitnesses at the scene, the MAOA answered thus:

*“The claims raised regarding the suspicion of a violation of the rules of engagement were examined carefully, based on the examination of the event by the military officials, and also in the light of the information included in your statement and those of other human rights organizations. After an in-depth and meticulous examination of all the allegations and the conclusions of the military officials, and once it was proven unequivocally that the forces were in a life-threatening situation, then they were authorized to use live fire to remove the danger. Accordingly, as no suspicion of a criminal offense by anyone involved in the incident has been found, it was decided that there is no case for opening an MPCID investigation.”<sup>55</sup>*

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55. Answer from Lit.-Col. Ronen Hirsch, MAOA, to an appeal lodged by Yesh Din, December 1, 2010.

## CHAPTER 3

### THERE ARE NO MPCID BASES IN THE WEST BANK

*“And I don’t think that we actually need to be in the area itself and to establish bases there, just so complainants can have access. After all, we aren’t talking about big numbers here”*

*(Chief Military Police Officer in testimony to the Turkel Commission)<sup>56</sup>*

#### **THE UNIT THAT INVESTIGATES EVENTS IN THE OPT HAS NO BASES THERE**

The MPCID has almost no bases in the OPT.<sup>57</sup> The lack of bases in the areas where the events occur that the MPCID is supposed to investigate constitutes a very real barrier that stands in the way of Palestinians who wish to lodge a complaint or give testimony to MPCID investigators.

Lacking the option of physically coming to a “reception desk” at an MPCID base, the only possibility available to Palestinians who seek to bring about the opening of an investigation to examine the circumstances of offenses against them, is to send a letter to the MPCID or the MAGC, to telephone a MPCID base or to appear in person and lodge a complaint with the police officer stationed at the area District Coordination Office (DCO) or at an Israel Police station.

As a result, only in a very few cases – some nine percent (9%) of all the notices received by the MPCID between the years 2008-2009 – do the complaints of Palestinian civilians reach the MPCID without the aid of outside elements and other supporting agencies.

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56. Minutes of the testimony of Chief Military Police Officer Brig.-Gen. Meir Ohana to the Turkel Commission, April 14, 2011, p. 42.

57. Even though the Jerusalem MPCID base was transferred, a few years ago, from the Schneller base within the city to the nearby Anatot base that is situated in the West Bank, most Palestinian complainants are not summonsed to this base, which is located within a large military base. In none of the files Yesh Din is monitoring were Palestinian complainants summonsed to the MPCID Jerusalem base in Anatot.



**Table 4: Notices received by the MPCID categorized by the person giving the notice, 2008-2009<sup>58</sup>**

	2009	2008
Palestinian civilians	44	34
Human rights organizations	104	142
Israel Police	96	107
Military unit	101	72
MAGC	64	74
The Palestinian Authority	6	3
<b>Total</b>	<b>415</b>	<b>432</b>

In those instances when MPCID investigators need to interview Palestinian complainants and witnesses, the invitation is made by telephone – in many cases by the DCO’S found throughout the West Bank – and in other cases by human rights organizations or private legal organizations that represent the victims of the offense.<sup>59</sup>

## **DIFFICULTIES IN LODGING COMPLAINTS AT DCO’S**

Complainants arriving at DCO’S in the hope of lodging a complaint often discover that the police officer stationed at the DCO is not present that day and are forced to leave empty-handed. In some cases, the police officer may be absent for an extended period of time with no replacement.

- On July 9, 2008, Yesh Din’s legal advisor, Atty. Michael Sfar, wrote to the Commanding Officer of the Samaria Region after it became apparent that the police officer stationed at the DCO in Hawara, C.H., had gone on vacation until July 20, 2008. As no relief

58. Source of figures: reply from the IDF spokesperson to a Yesh Din inquiry, April 26, 2010. The IDF spokesperson denied (in his letter of March 10, 2011) Yesh Din’s request to be given corresponding figures for 2010, claiming that acceding to this request would “entail a manual examination of files that would require the allocation of unreasonable manpower.”

59. Answer of IDF spokesperson to an inquiry by Yesh Din, October 28, 2007.

officer was appointed to take his place, the Palestinians who came to the DCO to lodge complaints of offenses committed against them by Israeli civilians or security personnel were unable to do so. As the result of Yesh Din's intervention, and after the organization's representatives had been rebuffed repeatedly with no solution for the problem of lodging complaints at the Nablus DCO during that period, on July 17, 2008, an investigator came to the DCO in order to take statements from complainants whose visits had been scheduled. After C.H. returned from his vacation, on July 29, 2008 six Palestinians asked to lodge complaints at the DCO. However, from an inquiry by Yesh Din to C.H. it became apparent that due to the DCO personnel going on a two-day excursion it would be impossible to lodge complaints on that date.<sup>60</sup>

- In the afternoon of Saturday, August 18, 2007 a military vehicle stopped near the home of A.H. in the village of Beit Iba in the Nablus District. A few minutes later a tear gas grenade was thrown into A.H.'s house where he was with three of his children, aged 10 to 13. The members of the household ran outside suffering from the effects of the tear gas that had filled the house and A.H. saw that the vehicle had left the area. On the same day, A.H. reported the incident, by telephone, to the Palestinian DCO. Of his continued attempts to lodge a complaint regarding the incident A.H. told Yesh Din:

*"The following morning I went to the checkpoint and spoke to the officer there, but he refused to listen to me. By chance, there were two women there from Machsom Watch who heard me talking to the soldiers and who asked to hear the story. On the same day, I went to the Palestinian DCO in Nablus and gave testimony. The Palestinian DCO passed my complaint to the Israeli DCO.*

*"Yesterday, August 25, 2007, I received a phone call from the Palestinian DCO at 9 a.m. and they told me to go to the [Israeli] DCO at Hawara to lodge a complaint. I went to Hawara at 10 a.m. [When I got there] I told the two soldiers at the gate that I wanted to meet C. [a police officer stationed there]. A soldier asked me if I spoke Hebrew. I answered that I didn't and then I was told 'If you don't know how to speak Hebrew, go home.' I left and went home. I told the Palestinian DCO about the event and they asked*

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60. Letter from Atty. Michael Sfarid to Asst.-Cmdr. Albert Ohayon, Commander of the Samaria Region of the SJ District, Israel Police, July 29, 2008.



*me if I was still interested in making a complaint. I said that if somebody would come with me then I was prepared to go.”<sup>61</sup>*

On August 28, 2007, a Yesh Din volunteer made a telephone statement to the MPCID Sharon and Samaria base regarding the throwing of the tear gas grenade into the family’s home. At the request of A., an MPCID investigator, and with the agreement of the complainant, Yesh Din provided the MPCID with the complainant’s phone number to arrange a meeting to collect testimony. Only on the 28th of September 2007 did someone on behalf of the MPCID telephone A.H. to request that come to the Nablus District Coordination Office near Hawara to give testimony.

## **LOSS OF COMPLAINTS DURING TRANSFER FROM ISRAEL POLICE TO MILITARY POLICE CRIMINAL INVESTIGATIONS DIVISION**

Palestinians lodge complaints with the police office stationed at the regional DCO, the police officer who takes the complaint is supposed to pass it on to the MPCID. However, in some of the cases documented by Yesh Din, complaints lodged by Palestinians with the DCO police officers were lost and never reached their destination. As a result, the efforts made to determine the status of investigations in a number of complaints made in 2005 to Israel Police officers and that were supposed to have been passed on to the MPCID, ultimately revealed that the complaint had been lost and, according to the MPCID, had never been received by them.<sup>62</sup>

→ One such incident occurred on March 18, 2005 when four residents of Deir Nidham were arrested following a confrontation between them and settlers from the Halamish settlement who had occupied a plot of land belonging to residents of the village. The encroachers uprooted orchards, fenced in the plot in a manner that prevented the owners’ access and also did work on a spring on the plot. One of the residents, in his testimony to Yesh Din, described the course of events after the arrival of an army unit at the site:

*“The soldiers stood us all facing the fence by the spring. They asked for the identity cards of everybody there with me, checked them and told them to leave. One soldier*

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61. From testimony given by A.H. in Yesh Din File 1310/07. The testimony was taken by Rachel Afek on August 26, 2007 in the village of Beit Iba.

62. Letter from Col. Meir Ohana, MPCID Commanding Officer, to Atty. Michael Sfard, September 10, 2006.

*approached me and began to beat me. I can identify him but don't know his name. At the same time, the commander came and told the soldier to stop hitting me. The commander told me to lie on the ground and then handcuffed my wrists. They took three of my friends who were with me: B., M. and N. and handcuffed them as well. They put us all into a jeep.*

*"Two soldiers got into the jeep with us, blindfolded us with our shirts and began to hit us. My eyes were blindfolded and I couldn't see who was hitting us. We arrived at the army base next to Halamish and they put us in a room. They pushed us into the corner and began to beat us. Every soldier who passed through there hit us. I don't know how many soldiers. During that time, people came into the room and asked the soldiers why they were hitting us. I understood what they said. The soldiers told the people that we had been throwing stones at them. We were there, I think, from 3 p.m. until 7 p.m. All the time we were blindfolded and handcuffed. They never asked us anything. They took two of us, N. and B., in a jeep. M. and I were left behind. After maybe an hour, soldiers came and put their feet on my shoulder and beat me with their rifles. They spilled water on us, on me and M. The soldier who hit me told another soldier to photograph me. I saw the flash and heard the camera's click. [Later they took me in a jeep and] dropped me off at the junction, next to the last house in the village."<sup>63</sup>*

A few days after taking the testimony, Yesh Din volunteers accompanied the four victims of the abuse to the Binyamin police station in the "Shaar Binyamin" industrial area to lodge a complaint regarding the seizure of the land and the abuse by the soldiers. An officer at the station refused to accept the complaint about the soldiers' behavior as, according to him, he had no authority to do so and the complainants should go to the MPCID. After an argument, the officer agreed to accept the complaint from one of the complainants only. Only after a prolonged argument and a few days later did the other three complainants manage to lodge their complaints.<sup>64</sup> Attempts by Yesh Din to clarify the progress of the investigation into the complaints failed completely, and in September 2006 – almost a year and a half after the complaints were lodged – the head of the MPCID answered Yesh Din that the complaints by the residents of Deir

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63. Testimony given by R.T. in Yesh Din File 1005/05. The testimony was taken by Ofra Katz and Dina Goor on March 31, 2005.

64. The sequence of events is described in a letter from Yesh Din's legal advisor, Atty. Michael Sfard, to the attorney general and the inspector general of the Israel Police, April 20, 2005.



Nidham never reached the MPCID and, therefore, were never investigated.<sup>65</sup> In one of the conversations Yesh Din held in an effort to locate the lost complaints, A., an MPCID Jerusalem officer, stated that the problem of complaints lost on the way from the Israel Police to the MPCID was “a known and familiar problem.”<sup>66</sup>

Following the loss of the complaints and the testimony in this and a number of other complaints during the same period, representatives of Yesh Din met with the supervision officer for investigations at the MPCID headquarters and with a number of commanding officers of MPCID bases in order to agree on a procedure for receiving telephone notices from Yesh Din directly at MPCID bases. This significantly reduced the phenomenon of lost complaints – at least regarding those complainants assisted by Yesh Din – but did not prevent it totally. In those cases where Palestinians lodge complaints with the Israel Police, the complaint may still “disappear” and fail to reach the MPCID.

→ Close to 1 a.m. on the night of Friday, August 15, 2008, soldiers broke into the home of the Z. family in Hebron, searched the house and arrested one of the family members. According to M.Z., during the course of the search valuable items were stolen from the house including cigarette lighters and valuable belt buckles along with cigarettes and a large sum of money that had been concealed in an identity card that had been taken for examination. On the same evening, M.Z. went to the Israel Police station in the Givat Ha-Avot neighborhood of Hebron and asked to lodge a complaint. However, according to him, the police officers refused to allow him to enter the police station and told him to come back the following day.

The next day M.Z. returned to the police station at around noon where he waited until 14 p.m. until his complaint was taken. He was told that the complaint would be investigated by the MPCID.<sup>67</sup> However, an MPCID investigation into the complaint was only started following a statement made by a Yesh Din volunteer at the Beersheba MPCID base on August 21, 2008. The original complaint taken by an Israel Police investigator in Hebron was not found in the investigation file and apparently was never delivered to the MPCID. The complainant’s testimony was taken by an MPCID investigator on October 7, 2008 – almost two months after the original complaint was made at the Hebron police station. During this meeting, the MPCID investigator received from the

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65. Letter from Col. Meir Ohana, MPCID Commanding Officer, to Atty. Michael Sfarid, September 10, 2006.

66. The conversation between Atty. Natalie Rosen and A. is documented in Yesh Din File 1005/05.

67. Complaint Confirmation No. 326722/2008 signed by Warrant Officer A.A.

complainant a copy of the Israel Police confirmation of filing the complaint where, in the police officer's handwriting it said: "Your complaint will be dealt with by the MPCID."<sup>68</sup>

- Another example of a case where a complaint that was supposed to be passed on to the MPCID by the Israel Police disappeared is the case of 15-year-old A.H. On February 9, 2009 he was shot and wounded in the leg while he was in the street close to his home in the village of Husan. A week later, on February 16, the boy's father lodged a complaint regarding the incident at the Etzion police station (Complaint No. 63389/09) and it was passed on to the MPCID the following day.<sup>69</sup> Yesh Din's inquiry to the head of the MPCID investigation inspection unit, Maj. Yaniv Horesh, was answered as follows: "Following an extensive search carried out in the MPCID's computer system, no report regarding the incident was found." Following a repeated request by Yesh Din to look into the matter again, Maj. Horesh gave the same reply and added that "additionally, an examination was held at the MPCID bases in Jerusalem and in Beersheba but no testimony or data were found regarding the incident. The complaint can be lodged through the normal channels at the relevant MPCID base."<sup>70</sup> On August 12, Yesh Din once again approached the Hebron Police in order to obtain additional details regarding the parties in the MPCID to whom the complaint was delivered. When no reply was received, Yesh Din gave another notice to the Jerusalem MPCID base on August 30, 2009 – some six and a half months since the complaint made by the injured boy's father was, according to the Hebron Police, passed on to the MPCID. Subsequently, and after an "inquiry" procedure, the MAOA ordered the MPCID to open a criminal investigation.<sup>71</sup>

The loss of investigation materials that should have been passed on by Israel Police SJ District units to the MPCID is not restricted to complaints made at police stations and to policemen stationed at DCO'S.

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68. Yesh Din File 1559/08 (MPCID Beersheva File 277/08)

69. Answer from Superintendent Meir Avital to an inquiry from Yesh Din, April 2, 2009.

70. Reply from Maj. Yaniv Horesh, head of the MPCID investigation inspection unit, to an inquiry from Yesh Din, July 27, 2009.

71. Yesh Din File 1731/09 (MPCID Jerusalem File 260/10). On March 21, 2011 Maj. Dvir Shimon, head of the MPCID investigation inspection unit, informed Yesh Din that the investigation had been concluded and that the materials gathered during the investigation had been passed on to the MAOA unit for their decision.



- On August 27, 2005, a large group of Israeli teenagers attacked a Palestinian taxi close to the Ginot Shomron junction, threw stones at the taxi and injured a pregnant passenger. The taxi driver asked for help from a group of soldier located some tens of meters from the incident. The soldiers, however, told him to leave and failed to provide medical assistance for the injured woman. An investigation into the incident, following a complaint by the injured woman, was closed on the grounds that “the offender is unknown.” On January 9, 2006, Yesh Din, after examining the investigation file, requested that the material gathered in the investigation be passed on by the Samaria Region Police to the MPCID in order to investigate the failure of the soldiers to provide assistance to the injured woman. Two days later, Yesh Din was informed that the material had been passed on to the MPCID. Repeated inquiries to the MPCID revealed that the investigation material never arrived at its destination. Almost a year after Yesh Din’s request that the investigation material be passed on to the MPCID, and after it became apparent that the MPCID was unable to locate the material, on January 1, 2007, the head of the MPCID investigation inspection unit ordered the Jerusalem MPCID base to obtain the investigation materials from the Israel Police and to open an investigation into the behavior of the soldiers in an event that had occurred a year and four months earlier.<sup>72</sup>

## USE OF DCO’S TO COLLECT STATEMENTS

The fact that no MPCID bases exist in the West Bank forces MPCID investigators to take statements in alternative locations. MPCID’s bases are located within the State of Israel, and if it wanted to summon complainants and witnesses to these bases it would have to issue them entry permits. In order to avoid this, MPCID investigators take Palestinian statements in facilities inside the West Bank, usually DCO’S distributed throughout the area, and by prior arrangement. This often causes problems.

- For example, as part of the investigation into the aforementioned incident, when soldiers failed to provide assistance to a taxi passenger who was injured in an attack by settlers, the taxi driver was summoned to give his testimony at the Qalqiliya DCO, close to the settlement of Kedumim, but there was no available room in the DCO to take his testimony. Yesh Din volunteers who accompanied the driver described the solution the investigator:

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72. Yesh Din File 1070/05 (Samaria Region Police I.D. 6710/05; MPCID Sharon and Samaria File 79/07).

*“On Monday, March 12, 2007, Rachel Afek and I were escorting A., a taxi driver, to the Kedumim DCO so that he could give testimony in the MPCID investigation. The investigator, a young soldier from the MPCID who was not serving at the DCO but had arrived especially for this interview, was waiting for us at the entry gate to the DCO. When he realized he had nowhere to hold the interview, he accepted the suggestion of the soldier guarding the gate, a very large soldier [...] who suggested that we hold the interview in the guard’s shelter. The guard left the shelter but not before providing us with four chairs. Then we were left in the shelter, just the four of us: the investigator, the complainant, Rachel Afek and myself. The investigator began to ask the driver, A., who had been hurt in the incident, what had happened. At points where we saw that the investigator was missing important details, we allowed ourselves to advise him. For example: When A. told how the settlers blocked the road on which his taxi was travelling, the investigator failed to ask where this was and how many settlers were involved.*

*Eventually, however, the two of us became responsible for the DCO gate. After all, the guard had left the four of us alone and the investigator and the complainant were the busy ones among us. Therefore, every time a vehicle approached the gate, I pressed the green button and the DCO gate would open. When the vehicle entered the parking area, I pressed the red button to close the gate. This went on until a vehicle with two officers approached the gate. The officers were surprised when they saw me operating the gate, and after they drove in and parked their vehicle they came straight to the guard shelter. The sight they saw – an MPCID investigator, a Palestinian and two women from a human rights organization using the guard shelter as if it were their own – was definitely not to their liking. [...]”<sup>73</sup>*

## **FAILURE TO APPEAR TO COLLECT STATEMENTS**

Collecting statements from complainants at DCO’S requires complicated coordination between the investigator and representatives of the DCO on the one hand, and the complainant and victims on the other. Various failures can often prevent the taking of statements and result in a waste of time both for the investigators, the complainants and the witnesses. In some instances, the result of such failures is the cancellation of the complaint by the complainant.

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73. Documented by Yesh Din volunteer Racheli Merhav in Yesh Din File 1070/05.



- The teenagers, F.S. and A.S., aged 15, were arrested by soldiers in their village of Urif during an incident where rocks were thrown by teenagers at a military jeep. The teenagers were driven out of the village in a military jeep where an officer and soldier got out of the jeep and left the site. What happened next was described by A.S. in testimony that he gave to Yesh Din:

*"The other two soldiers stayed with us. One of them was the only one who beat us. The other soldier had a camera and he kept taking photographs.*

*"The soldier [the first] took a pipe and started hitting us. Real blows with the pipe. He hit us for about forty-five minutes; sometimes with his rifle, sometimes with the pipe. I was hit in the face, on my head, my forehead, legs and arms. At some stage he handcuffed me and began hitting us again. After he handcuffed us, he started hitting our arms, mine and F's. He hit me and F. and didn't spare us.*

*"Later, the soldier took us out of the jeep and hit me in the face with the pipe. The blow was so strong that I fell to the ground. He also hit F. in the head and F. fell down as well, and then he pushed F. into the jeep. While he was pushing F. into the jeep he hit me in the head again and then put me back in the jeep too. He went on hitting me with the pipe and also hit me on the forehead. Then, he got out of the jeep, picked up a stone from the ground and tried to get me to hold it. The other soldier was photographing all the time. I felt that they were trying to make it look as if I was the attacker, so I dropped the stone. He tried to do the same with F. and F. also dropped the stone. We were both bleeding. The second soldier photographed us bleeding. At some point, the soldier who had beaten us started pointing his gun at us and cocking it, and his hands were shaking.*

*"At some stage, F.'s father arrived and he [the soldier] got out of the jeep and began to aim his gun at him and ordered him to leave. Then my father came with a member of the council, an officer and another soldier. When the officer saw us, beaten and bleeding, he spoke to the soldier who had beaten us and from what I could understand, he asked him what he had done. I also understood that F.'s father was very annoyed. They spoke Hebrew to each other. All this time I was very fuzzy-headed, unfocused and on the verge of fainting and losing consciousness."<sup>74</sup>*

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74. From testimony of A.S., born 1992. The testimony was taken by Hanna Aviram at the village of Urif on April 17, 2007. Yesh Din File 1254/07.

The two boys were taken to a Nablus hospital for medical treatment.

On May 1, 2007, a Yesh Din representative telephoned an investigator at MPCID Sharon and Samaria in order to give a notice of the incident on behalf of the victims. At the investigator's request, the following day Yesh Din volunteers brought to the MPCID Sharon and Samaria base at the Beit Lid army base a computer disc with photographs of the victims taken when they were transferred to hospital as well as medical documents concerning the treatment they received. Arrangements were made for the teenagers and their fathers, who witnessed part of the incident, to testify on May 7, 2007, at 11 a.m.

On the appointed day, the two teenagers, their fathers and the Yesh Din volunteers who accompanied them, presented themselves at the Nablus DCO. The teenagers and their fathers were admitted into the DCO but waited in vain for the investigator to appear. Only after an hour of waiting, when a lawyer acting on behalf of Yesh Din contacted the MPCID base, did it become apparent that, due to a mistake on the part of the MPCID, no investigator had been sent to the DCO and the complainants had no choice but to leave empty-handed. Yesh Din contacted the MPCID a number of times over the following weeks in an attempt to arrange another date for the victims to give their testimonies. However, these requests were rejected on the grounds of an excess workload at the MPCID Sharon and Samaria base. Eventually, the teenagers and their fathers decided not to return and give testimony to MPCID investigators and their complaint was not investigated.

- On September 3, 2008, A.T., 39-years-old and a resident of Nebi Elias, arrived at the military checkpoint near the village of Azzun Atma. He said he had been detained at the checkpoint from 3 p.m., beaten a number of times and released only around the checkpoint's closing time at 10 p.m. While he was detained at the checkpoint, he said, an official from the Qalqiliya DCO, A., arrived at the checkpoint and told the soldiers that they should let A.T. go on his way. However, the complainant felt the DCO representative did not act firmly enough to have him released because of previous complaints he had made against officers serving there. At the time, A.T. was engaged in legal action, through his lawyer, concerning the revocation of a permit he had to drive through the separation barrier in order to access his lands on its east side. An additional complaint made by A.T.



prior to this incident was that an officer with the rank of Major serving at the Qalqiliya DCO had demanded bribes from Palestinians in return for granting permits.<sup>75</sup>

A.T. was summoned to give testimony at the Qalqiliya DCO on January 10, 2009. When he entered the room, in addition to an MPCID investigator, there was also a police officer and a representative of the DCO, S. The presence of the two, and especially the representative of the DCO against one of whose colleagues A.T. had complained on suspicions of bribery, inhibited A.T.'s ability to provide a full testimony. At his request, Yesh Din contacted the MPCID and informed them that, due to the presence of the DCO representative, A.T. had given only a partial account and he wished to complete it.<sup>76</sup>

Yesh Din's request was approved and a new appointment for A.T. to give testimony was scheduled for February 15, 2009, at 2:30 p.m. In order to give testimony, A.T. lost a day's work and travelled to the meeting at the DCO. However, one hour before the scheduled testimony, MPCID investigator D. called Yesh Din to announce that the meeting to collect testimony had been cancelled. The investigator suggested that the testimony be taken the following day but at such short notice this was not convenient for A.T. and another meeting to collect the testimony was scheduled for February 18. In a conversation between Atty. Emily Schaeffer, on behalf of Yesh Din, and the MPCID investigator, it was agreed that representatives of the DCO would not be in the room when A.T. gave his testimony in order to allow him to tell the full story without any pressure.<sup>77</sup>

Despite the agreement, when A.T. entered the room at the Qalqiliya DCO where he was supposed to give his testimony to the MPCID investigator on February 18, 2009, a representative of the DCO, S., was present. At the request of the complainant, the MPCID investigator agreed to adjourn to another room. However, a short time after A.T. began to give his testimony, another DCO representative by the name of T. entered the room. When the complainant complained to the MPCID investigator, the reply was that there were no other rooms available at the DCO where they could collect the

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75. Testimony of A.T. in Yesh Din File 1633/08. The testimony was taken by Hadas Shintel and Edna Kaldor on November 6, 2008 at Nebi Elias.

76. Letter from Atty. Michael Sfard, Yesh Din's legal advisor to Maj. Yaniv Horesh, head of the MPCID investigation inspection unit, January 21, 2009.

77. Letter from Atty. Michael Sfard, Yesh Din's legal advisor, to Maj. Yaniv Horesh, head of the MPCID investigation inspection unit, February 19, 2009.

testimony.<sup>78</sup> In a conversation between Yudit Avidor, a representative of Yesh Din, and the responsible MPCID investigator, S., the investigator stated that he thought that A.T. had refrained from detailing all of his complaints regarding persons from the Qalqiliya DCO due to the presence of a DCO representative in the interview room.<sup>79</sup>

- On October 13, 2008, M.A. and R.A., a married couple from the village of Qadum, went to the Qalqiliya DCO as had been previously arranged between Yesh Din and the MPCID base Sharon and Samaria so that the couple could provide their testimony. Their complaint dealt with the beating of the couple and some of their children by four soldiers who had evicted them from their land while they were harvesting their olive trees. When they arrived at the DCO they learned that the office was closed as it was the eve of Succoth. Paul Kedar, a Yesh Din volunteer accompanied the couple to the DCO, sent, that same day, a letter of protest to the Commanding Officer of the Sharon and Samaria MPCID base and the following day he received a telephone call from MPCID investigator R. who apologized, saying that he had not known that the DCO would be closed on the eve of Succoth and asked to schedule a date for the couple to give their testimony a few days later.<sup>80</sup>
  
- On May 3, 2008, wheat fields on land belonging to the village of Asira al-Qibliya in the Nablus area were set on fire. Residents rushed to the scene, next to which there were also some settlers. A.H, one of the villagers, claimed he was attacked by soldiers who arrived at the scene while he was helping to put out the fire. On May 11, 2008, Yesh Din gave a telephone notice on his behalf to S., an investigator at the Sharon and Samaria MPCID base, regarding A.H.'s complaint. At the time of the telephone call, the MPCID investigator asked Yesh Din to coordinate with the complainant his visit to the Nablus DCO to give his testimony two days later, on May 13, 2008, at 11 a.m. However, just 10 minutes before the time arranged to take A.H.'s testimony, the investigator telephoned Yudit Avidor of Yesh Din and apologized that she had just found out that the DCO was closed for the day and that A.H. would not be able to give his testimony. As a result, A.H. was forced to return home and a new date for the presentation of his testimony was set.<sup>81</sup>

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78. Documented in Yesh Din File 1633/09 (MPCID Sharon and Samaria File 459/08).

79. Documented in Yesh Din File 1633/09, a telephone conversation between Yudit Avidor, Yesh Din's volunteer coordinator and MPCID investigator S. on February 1, 2009. On October 14, 2010, Maj. Dorit Tuval, Deputy MAQA, informed Yesh Din that the investigation had been closed on April 22, 2010, but did give the reason for closing the file.

80. Documented in Yesh Din File 1597/08 (MPCID Sharon and Samaria File 386/08).

81. Yesh Din File 1460/08 (MPCID Sharon and Samaria File 163/08).



- M.A. is 63-years-old and a resident of the village of a-Zababda in the Jenin area. On Friday, September 11, 2009, M.A. arrived at the Qalandia checkpoint hoping to attend Friday prayers on the Temple Mount. According to M.A., whose mobility impaired and uses a walking stick, thousands of people were crowded at the checkpoint and, at some stage, the pressure of so many people caused him to fall, unintentionally, against a soldier. In his testimony to Yesh Din volunteers M.A. said the following:

*“When I was on the ground, lying on my back, the soldier I had fallen on began to hit me in the stomach and chest with his rifle butt. Two soldiers ran in my direction, one of them picked me up and the other hit me in the back. Then the three soldiers dragged me away and threw me onto the barbed wire fence and told me that I didn’t stand a chance of getting through the checkpoint. Because of the barbed wire fence, my trousers were torn.*

*I dragged myself back to Qalandia, aching and humiliated because of my torn clothes. My brother-in-law, who saw me come home in such a state, took the day off work, took me back to Ajja and from there we went to my village. Because the pain was very bad, I went to a private x-ray clinic. I don’t have the money to go to an emergency room. The technician told me that I was suffering from fractured ribs and that an infection had developed in the area of the fracture which was causing the extreme pain. I buy pain-relief plasters and stick them where it hurts, but I still have difficulty breathing.”<sup>82</sup>*

The day after M.A. gave his testimony to Yesh Din, on October 12, 2009, the organization gave a telephone notice to MPCID Jerusalem. Only after Yesh Din sent a written reminder was the complainant summoned to give his testimony at the Jenin DCO on December 9, 2009. However, due to a misunderstanding between the parties, the complainant arrived at the Palestinian DCO in Jenin and waited three hours for the arrival of the investigator, while the MPCID investigator had arrived at the Israeli DCO in Jenin, located in the Salem military base.

On January 10, 2010, Yudit Avidor, Yesh Din’s volunteer coordinator, telephoned A., an investigator from MPCID Jerusalem. A. requested to schedule a new date for the complainant to present his testimony and asked that M.A. come to one of the DCO’S

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82. From testimony given by M.A. The testimony was taken by Edna Kaldor, Rohale Chayut and Azmi Bdeir on October 11, 2009 at the Reihan checkpoint. Yesh Din File 1920/09. (MPCID Jerusalem File 50/10).

in the Jerusalem area – either near Hebron or Ramallah. After consulting with the complainant, Ms. Avidor replied that the complainant had no other alternative but to come to the DCO at Salem, which was relatively close to his home in the Jenin area. A. answered that this was “a problem” and promised to see what could be done. Eight days later A. once again telephoned Ms. Avidor and told her that after looking into the matter, it was apparent that they could not go to the Salem DCO and that if the complainant failed to come to one of the DCO’S in the Jerusalem area, the complaint would be cancelled.<sup>83</sup>

After the above exchange, Yesh Din’s legal advisor, Atty. Michael Sfard, wrote to the Commanding Officer of MPCID Jerusalem. The MPCID legal advisor stated in his answer that the investigator’s previous visit to the Jenin DCO had been a “gesture of good faith” and had caused a “considerable waste of time.” “We will not allow further delays in the progress of the investigation nor the waste of the investigator’s time that could be used to pursue other cases,” wrote the MPCID legal advisor and added: “As to the difficulties your client has in reaching the meeting point due to his advanced age, if you have documentation that testifies to a real difficulty, medical or otherwise, that prevents him from appearing at the new meeting place, I would suggest that you supply such documentation and the matter will be considered.”<sup>84</sup>

Following this reply, an MPCID investigator telephoned and suggested that the complainant’s testimony be given at the Nablus DCO. However, M.A. answered Yesh Din and said that, due to the time that had passed since the incident and because of the distance he would have to travel, he had decided not to make a complaint. This answer was passed on to the investigator. In April 2010, the MPCID informed Yesh Din that “the file has been cancelled due to lack of cooperation on the part of the complainant. Since he is unable to reach the Hebron DCO and due to the length of time that has elapsed, the complainant has no interest in giving his testimony.”<sup>85</sup>

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83. The conversations are documented in Yesh Din File 1920/09.

84. Letter from Captain Guy Conforti, MPCID Legal Advisor to Atty. Michael Sfard, Legal Advisor to Yesh Din, from February 7, 2010.

85. Letter from Maj, Dvir Shimon, head of the MPCID investigation inspection unit,, to Atty. Michael Sfard, April 27, 2010.



## **LACK OF ACCESS HINDERS INVESTIGATIONS**

The MPCID has no investigation base in the territories, nor even a permanent facility where complainants can come personally in order to relay their complaints to an MPCID investigator who could obtain all of the required details and judge for himself the credibility of the complaint. If it did, parties within the MPCID and MAGC could reach prompt decisions regarding required investigatory procedures.

Instead, the military law enforcement agencies rely on the use of various intermediaries – mainly Israeli police officers and human rights organizations operating in the territories – in order to receive, through them, complaints of offenses by IDF soldiers against Palestinian civilians and also use these same parties to assist in the complex coordination required to set the time and place for collecting testimony. Various problems that occur during this process – as we illustrated above with several representative examples – in many cases prevent the giving of testimony and often cause complainants to rescind their complaints.

Even when complainants give testimony, the time that passes until the complainant meets the MPCID investigator tends to be very long. Even in the “simplest” of cases, cases of violence or looting where there is no need to wait for authorization from the MAGC in order to start a criminal investigation, long periods of time are likely to pass from the delivery of a notice regarding the incident until the first meeting between the victim of the offense and the investigator assigned to collect his detailed testimony. These long periods of time, resulting from the fact that the MPCID works from bases outside of the territories, substantially impair the ability of complainants and witnesses to clearly and incisively describe the offenses and thereby make an effective investigation all the more difficult under conditions that are in any case not conducive to this type of investigation.

# CHAPTER 4

## KEY FLAWS IN CRIMINAL INVESTIGATIONS

This chapter will describe the key failures and flaws of MPCID investigations that make a significant contribution to the scope of the failure to conduct criminal investigations of offenses committed by IDF soldiers against Palestinians and their property.

It is given that criminal investigations differ one from the other and that investigations demand different actions depending on the type of offense being investigated, the information available to the investigator and the legitimate choice to prioritize particular actions due to the investigating bodies' limited resources, etc. However, Yesh Din's monitoring of the investigation of complaints against soldiers who allegedly committed offenses against Palestinians in the OPT points to systematic flaws and a repeating pattern of failures in all types of investigations.

### **DELAYS AND HOLDUPS IN THE START OF AN INVESTIGATION AND ITS PROGRESS**

Investigation logs of MPCID investigations show significant delays in the actual start of an investigation following the original complaint. In many instances, the start of an investigation can be delayed by many weeks until an investigator is assigned to the case. Even if such delays are the result of a lack of manpower and workload, some of these delays frustrate the investigation.

→ On June 15, 2002, M.M., a resident of Abawein in the Ramallah area, arrived at the Jaba junction where he, along with a group of other Palestinians, was detained by two soldiers in a military jeep. One of the soldiers ordered the Palestinians to approach the jeep and then, according to M.M., the soldier smashed his (M.M.) head against the jeep, threw him to the ground, kicked him and hit him in the back with his gun. M.M. stated that the soldier beat other Palestinians present in a similar fashion. His and the others' identity cards were taken and only returned in the evening at a nearby checkpoint. On June 25, 2002, HaMoked made a complaint regarding the incident on behalf of M.M. to the military advocate of the Central Command with a request to start an investigation. However, the complaint only reached Jerusalem MPCID on August 30, 2002. It was only on October 13, 2002, a month and a half after the complaint reached Jerusalem



MPCID and three and a half months after the original complaint made by HaMoked, that a reserve duty investigator called G. was appointed to deal with the complaint.

However, this was not the end of the delay in handling the case. Four different investigators were assigned to deal with it with extensive periods of time elapsing between the end of one investigator's work and the assignment of another investigator: reserve investigator N. was appointed to the case on October 13, 2002, and worked on it until October 28, 2002. On November 17 another reserve investigator – G. – was assigned to the case, which he dealt with until December 1. An additional 11 days passed with no progress until, on December 12, the case was passed on to R. who dealt with the case for one week, until December 19. Once again, the case lay dormant, without an investigator until January 5, 2003, when T. was assigned the investigation, which he worked on until the conclusion of the MPCID investigation on February 12, 2003. The investigation file was closed.<sup>86</sup>

- On May 25, 2007, soldiers beat M.H., one of the leaders of the demonstrations against the separation barrier in the village of Bil'in, when he was arrested during a demonstration. A video filmed at the time showed M.H.'s arrest. Two days after the incident, on May 27, 2007, a Yesh Din representative gave a telephone notice regarding M.H.'s complaint to Jerusalem MPCID and, a few days later, on May 31, Yesh Din provided the Jerusalem MPCID investigator with a disc containing the film of M.H.'s arrest. In other words, the MPCID had video evidence of the incident and M.H.'s complaint just one week after it occurred. Nevertheless, MPCID investigators took their time before viewing the film. An MPCID investigator noted in the case's investigation log in the file that only on August 1, 2007 – two months after the disc was received - the disc was forwarded to the "computer section" at the MPCID to be copied to tape and that he was waiting for the tape. According to the investigation log, the tape was returned to the investigator on August 20 (almost three weeks after its transfer) but an additional three months went by before investigator A. watched the tape on November 26, 2007.<sup>87</sup>
- According to a complaint made by S.S. on August 3, 2003, he and a friend arrived in a truck at the "Khirbet Klaks" checkpoint, near the Beit Haggai settlement near Hebron. A soldier, part of a group of soldiers on a jeep at the checkpoint, ordered S.S. to unload goods from another truck but S.S. refused. The soldier called another soldier, who hit

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86. HaMoked - The Center for the Defense of the Individual File 17865 (Jerusalem MPCID File 348/02).

87. Yesh Din File 1377/07 (Jerusalem MPCID file 253/07). The case was closed on the grounds of lack of guilt.

S.S., shook him, kicked him and pushed him to the ground. S.S. was then taken, with his hands tied and his head covered with a shirt, to a military facility, where he was held handcuffed with his head covered all night. He was released the following morning.

On September 23, 2003, HaMoked sent the Central Command's military advocate a complaint on behalf of S.S. and asked that the military advocate order the opening of a criminal investigation. The "inquiry" process lasted a year and four months, during which time the Central Command's military advocate waited in vain for the Commanding Officer of the 96th Battalion to deliver the findings of the operational debriefing ordered by the Commanding Officer of the Judea Brigade. Only on January 31, 2005, did the Central Command's military advocate order the MPCID to open a criminal investigation into the circumstances of the event. The letter from the Central Command's military advocate reached MPCID offices on February 13, 2005, two weeks after its dispatch. The order from the MPCID's Commanding Officer to open a criminal investigation reached the Jerusalem MPCID base after an additional three weeks, on March 7, 2005. This was not the end of the delays in the investigation. Only on April 26, 2005, over a month and a half after Jerusalem MPCID received the order from the Central Command's military advocate to begin a criminal investigation, was an investigator appointed to the case – S., whose first action – contacting a representative of HaMoked to arrange a date for S.S. to give testimony – was taken more than a month later, on May 30, 2005.

The date for S.S. to give testimony was coordinated by HaMoked for the afternoon of June 15, 2005. However, that morning the investigator informed the representative that the testimony collection would have to be postponed by a few days due to "internal problems at the base." A new date was arranged and S.S. finally gave his testimony to the MPCID investigator on June 22, 2005, **over a year and ten months** after the incident in which he was beaten and held in custody overnight.<sup>88</sup>

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88. HaMoked – The Center for the Defense of the Individual File 28628 (MPCID Jerusalem File 155/05). On September 5, 2006 the Central Command's military advocate informed HaMoked that the investigation had been closed due to the failure to locate those responsible for the incident and that, because of the amount of time that had passed since the incident, no reason could be found for opening an additional criminal investigation. HaMoked appealed the decision to close the investigation.

- HaMoked twice approached the MAGC on behalf of Y.F., a resident of the Askar refugee camp. According to the first complaint, on July 19, 2002, soldiers arrived at the Askar refugee camp in order to blow up the home of Y.F.'s neighbor. Y.F. and his family were required to evacuate their home. During the detonation of the neighbor's home the home of Y.F. and his family was also blown up and destroyed with no prior warning and without the family being given the opportunity to remove their possessions from the building. According to the second complaint, on January 21, 2003, an IDF unit searched Y.F.'s home while ordering Y.F.'s brother, F.F. to walk ahead of the soldiers' while carrying Y.F.'s two-year-old daughter. The second complaint related to the use of the two as a human shield for the soldiers during their search of the house.

Only on July 11, 2004, some 11 months after HaMoked made the second complaint, did the Central Command's military advocate order the opening of a criminal investigation into the two incidents. On November 29, 2004, testimony was taken from two officers from Battalion 202 of the Parachute Brigade, who were questioned about three separate incidents that were under MPCID investigation at the time: theft of money during an arrest, wounding of a Palestinian medic by gunfire and the use of members of Y.F.'s family as a human shield in January 2003. The two officers were not questioned in relation to the explosion that destroyed Y.F.'s home, despite the fact that the orders from the military advocate to open an investigation also included this incident. Only later, on January 10, 2005, did K., an MPCID investigator, take testimony from Y.F., the complainant, and his brother, H.F. with the assistance of a Nablus DCO police officer who acted as an interpreter. Y.F. gave testimony relating to the first incident, the destruction of his home on July 17, 2002. The investigator, who apparently related to the two complaints as if they happened on the same occasion, asked Y.F. if the soldiers had held the baby and Y.F. answered that they had not. In the investigation log, the investigator noted that: "From his [Y.F.'s] testimony it is not evident that the soldiers used the baby as a human shield," this despite the fact that the incident in which Y.F.'s baby and his brother, H.F. were, allegedly, used as a human shield was a completely separate event that occurred some months later. Indeed, in his testimony, H.F. noted that on a date that he could not remember soldiers had ordered to lead them through his home while he was holding his brother Y.F.'s daughter. H.F. also noted that the soldiers used himself and the child as a "human shield."

Later on, the investigators continued to relate only to the second event and not the first. At the end of May 2005, the investigator was informed that an officer named Guy was the company commander of the unit identified as having been involved in the second incident. The investigator spoke with Guy, who replied that he had not been

in command of that specific company. After further investigation, it became apparent that the company involved had indeed been commanded by Guy and the investigator arranged a meeting to take his testimony. The meeting took place on June 8, 2005, but Guy's testimony was not collected as he claimed that he had to leave the meeting due to a meeting with the area's commanding officer. The following day the investigator telephoned Guy a number of times but with no reply. From that day on, for a month, the investigator repeatedly attempted to arrange a new meeting with Guy to collect his testimony. During this period, these were the only actions taken to advance the investigation. The events were recorded in the investigation log as follows:

- June 9, 2005, 14:00: Unsuccessful attempts to locate Guy. I left a voice message.
- June 9, 2005, 15:35: I telephoned Guy but there was no answer.
- June 12, 2005: I telephoned Guy but there was no answer. I left a voice message.
- June 14, 2005, 08:56: Unsuccessful attempts to contact Guy. Tel: [...]
- June 14, 2005, 11:32: I telephoned Guy a number of times [...] but there was no reply. I left a voice message.
- June 14, 2005, 14:40: I spoke with Guy and he informed me that he would not be in the central area this week but only next week. However, it is possible to go to Beersheba and collect his testimony there. I told him that I would let him know as soon as possible.
- June 19, 2005: Unsuccessful attempts to locate Guy [...].
- June 22, 2005: I telephoned Guy but there was no answer. I left a voice message.
- June 23, 2005: I spoke with Guy who informed me that in all likelihood he would be in Tel Aviv next week or at his home nearby and that he would contact me on Sunday.
- June 26, 2005, 08:50: I telephoned Guy in order to arrange a date this week for him to give his testimony but there was no reply.
- June 26, 2005, 11:18: I telephoned Guy but there was no answer. I left a voice message asking him to get back to me as soon as possible.
- June 26, 2005, 16:24: Unsuccessful attempts to locate Guy.



- June 28, 2005, 08:52: I telephoned Guy a number of times but there was no reply. I left a voice message.
- June 28, 2005, 12:51: Unsuccessful attempts to locate Guy.
- June 29, 2005, 09:43: I telephoned Guy but there was no reply. I left him a voice message.
- June 29, 2005, 14:03: Unsuccessful attempts to locate Guy.
- June 30, 2005, 09:15: A number of unsuccessful attempts to locate Guy.
- June 30, 2005, 11:06: I telephoned Guy but there was no reply.
- June 30, 2005, 14:13: I telephoned Guy but there was no reply.
- July 3, 2005, 09:55: I telephoned Guy but there was no reply. I left him a voice message.
- July 3, 2005, 12:21: Unsuccessful attempts to locate Guy.
- July 4, 2005: I telephoned Guy but there was no reply.
- July 5, 2005: I telephoned Guy but there was no reply.

Then, finally, on July 10 the investigator reached Guy:

- July 10, 2005, 15:40: I spoke with Guy and he informed me that he could meet me tomorrow at 10:30. I told him that I would inform him if I was coming to take his testimony.
- July 10, 2005, 20:53: I spoke with Guy and informed him that I was unable to meet him tomorrow in order to take his testimony and that I would contact him during the week.

Guy's testimony was finally collected on July 13, 2005. The investigator questioned him regarding procedures in force during the demolition of the house and the use of civilians while the house was being searched. The investigator, once again, referred to two separate incidents as one incident. Guy replied that he could not remember the specific operation but did describe all the operations in which his company was involved. Four days later, almost a year after the order to open a criminal investigation, the investigation was summarized at the order of the MPCID base commander and transferred to a prosecutor from the Central Command's advocacy. In the orders issued

by the Central Command's military advocate to complete the investigation, it was clearly stated that the case dealt with two separate incidents occurring on different dates. The order also stated that the first incident had not been investigated sufficiently. Even after the completion of the investigation (and after attempts to locate operational logs and interview the commanding officer of another company who also said that he couldn't remember the incident) the investigation file was closed.<sup>89</sup>

## INTERPRETERS

The vast majority of MPCID investigators can neither speak nor read Arabic. Even though it appears that, over the past few years, an effort has been made to assign to the relevant MPCID bases at least one Arabic-speaking investigator or interpreter,<sup>90</sup> the lack of Arabic-speakers within the MPCID forces investigators, in many cases, to request the assistance of parties from outside of their unit – primarily those working with or for human rights organizations and DCO personnel – in order to contact complainants and witnesses and to schedule meetings for the presentation of testimony to the investigators. While human rights organizations represent the complainants, are in contact with them and can schedule meetings for giving testimony quickly and efficiently, the reliance on DCO personnel, who are not subordinate to the MPCID, can cause complications. Documentation in Jerusalem MPCID File 199/05 illustrates this.

- On December 6, 2004, Rabbis for Human Rights (RHR) approached the commander of the SJ police district and the legal advisor for the Judea and Samaria area demanding that an investigation be opened into a string of incidents regarding the abuse of Palestinian shepherds in the Southern Hebron Hills area that involved, allegedly, both soldiers and Israeli civilians. On March 15, 2005, MPCID Jerusalem File 199/05 was opened to investigate one of those incidents. The investigation related to an event that occurred in March 2004 when a shepherd, N.A., was allegedly beaten after being taken from his grazing area to a nearby army base. He claimed he had been beaten for four hours by a soldier guarding him while he was handcuffed and blindfolded inside the base. A few hours later, the shepherd was released.

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89. HaMoked - The Center for the Defense of the Individual File 27262 (Judea and Samaria MPCID File 65/05).

90. In response to a question from Yesh Din, the IDF spokesperson said that an Arabic-speaking investigator had been posted at each of the bases dealing with Palestinian complaints. IDF spokesperson's reply to Yesh Din inquiry, October 28, 2007.



On April 26, 2005 – almost a month and a half after the Jerusalem MPCID received the order from the MAGC to open an investigation, Sgt. S. was appointed to deal with the case. A few days later, on May 1, 2005, the investigator, S., noted in his investigation log that the “investigation is being held up because of other incidents and statements.” Only a month later, on May 31, 2005, did S. document in the investigation log his first, concrete action: “I sent Matan, from the Hebron DCO, a request to locate the complainant so that I could take his testimony.” In the investigation log, Sgt. S. documented the drawn- out handling of his request for assistance in locating the Palestinian complainant from the commander of the DCO.

- June 8, 2005: I spoke with Matan, the commander of DCO in the Judea Territorial Brigade, who informed me that he was trying to locate the complainant and that he would get back to me after the holiday so that we could arrange a date and place to collect the complainant’s testimony. He also informed me that we would have to arrange for an interpreter and, in the event that we couldn’t get an interpreter, we should contact him and he would try to obtain an interpreter so that we could take the testimony.<sup>91</sup>
- June 14, 2005: Pvt. M.T. spoke with Matan [...], the Commander of the DCO in the Judea Territorial Brigade, who told him that he was due to meet with the officer responsible for locating the complainant today. The contact informed him that he had not succeeded in locating the complainant but that he hoped that in the near future he would succeed in making contact with him to find out if he was willing to meet and give his testimony.
- June 15, 2005: Pvt. M.T. spoke with Matan [...], who said that he had spoken with his contact, who was supposed to locate the complainant, yesterday. The contact informed him that he had not yet found the complainant but that he hoped that in the near future he would succeed in making contact with him to find out if he was willing to meet and give his testimony.
- June 19, 2005: Pvt. M.T. spoke with Matan [...], who said that there were no new developments and that his contact had still not located the complainant.
- June 22, 2005: I telephoned Matan numerous times [...] in order to find out if there had been any progress in locating the locals – however, Matan was unavailable all day.

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91. These notes are quoted verbatim from the investigation log of MPCID Jerusalem File 199/05.

- June 28, 2005, Pvt, M.T. telephoned Matan numerous times. However, Matan was unavailable all day long.
- June 30, 2005: Pvt. M.T. telephoned Matan [...] who said that he had obtained the telephone numbers of all the complainants and that at the beginning of next week he would start to phone the complainants to arrange [a date of] their giving testimony.

So, a month after the initial contact with the DCO's commander, Matan, the latter announced that he had managed to obtain the telephone numbers of the complainants. However, as described later in the investigation log, this still did not pave the way for the complainants in this case and other cases of which RHR complained to present their testimony.

- July 6, 2005: I telephoned Matan [...] to find out what was happening with regard to locating the complainants – Matan informed me that he was unable to talk to me at the moment and that he would call me back later on in the evening.
- July 11, 2005: Pvt. M.T. telephoned Matan [...]. Matan informed him that he was very busy at the moment and that when he had a free moment he would call Pvt. M.T. back.
- July 12 2005: I spoke to Matan [...] and asked him about the progress in locating the locals and said if he was unable to help me, then he should tell me so. Matan informed me that they were on the shooting range today but that he had passed on all the materials connected to the request to his officer and that within the next two days everybody would be located and summoned.
- July 18, 2005: I spoke to Matan who informed me that his contact, who was locating the locals, had lost the request form that I had sent him. Matan then asked me to send him the form again and that the matter would be dealt with within the next two days.
- July 20, 2005: I spoke to Matan [...] who informed me that he would work on locating the locals all day long and also asked me to phone him tomorrow morning in order to arrange a date and time for a meeting.
- July 24, 2005 (11:00): Pvt. M.T. spoke to Matan who informed him that some of the complainants would arrive today, at 3 p.m., at the Hebron DCO in order to give



their testimony and that he would arrange an escort for us to the DCO<sup>92</sup> and for an interpreter.

- July 24, 2005 (14:30): Matan phoned the base and announced that he could not provide an escort to the DCO. On orders from Base Commander Maj. Ariel we informed him that without an escort for a light vehicle we would be unable to travel to the DCO. We arranged with him that the testimony would be given on Tuesday this week.
- July 27, 2005: I spoke to Matan and arranged with him that on Monday, August 1 at 2 p.m., the local would come to give his testimony at the DCO.
- August 1, 2005: After arriving today at the Hebron DCO in order to take the local's testimony, I was informed [that] the complainant had said that he would come but had failed to appear. [As a result] I spoke to Matan, the Commander of the DCO, who told me that the moment his officers returned from the excursion they were on this Wednesday, he would provide me with the telephone numbers of the locals whose testimony had not yet been collected.
- August 4, 2005 (09:22): I spoke to Matan regarding the telephone numbers that I want him to give me. Matan informed me he would only be able to provide me with the telephone numbers in a few hours, when his commanding officer finished a meeting and gave him the telephone numbers.

Only on August 4, 2005, did investigator S. approach RHR – who had made the complaint in the first place – asking them to assist him in obtaining the complainant's testimony. Representatives of RHR arranged with N.A. that he would come to give his testimony. The investigator S., approached a police officer stationed at the DCO, who said that he would free up a few hours on August 16 to translate the testimony. Thus, five months after MPCID Jerusalem received the order from the MAGC to open an investigation into the complaint, the victims' testimony was finally taken.

Apart from assistance in arranging meetings to collect testimony, representatives of human rights organizations are sometimes asked to assist in the translation of conversations between investigators and witnesses.

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92. This refers to an armed escort for MPCID Jerusalem investigators who would be travelling from their Jerusalem base to the DCO inside an army base next to Hebron.

- M.Q., a resident of Kafr Aqab in East Jerusalem, approached HaMoked with a complaint regarding his beating, on September 18, 2003, by two soldiers at the Qalandia checkpoint.<sup>93</sup> The complainant (as stated – a resident of East Jerusalem) was summoned to the Jerusalem MPCID base, located in the Schneller Camp in the city, in order to give testimony. He was accompanied by an employee of HaMoked, Georgina Saria, who assisted the investigator in the translation of the complainant's testimony from Arabic to Hebrew. Another employee of HaMoked, Muhannad Anati, was asked to act as an interpreter for the complainant during a photographic line up, a few months later.<sup>94</sup>
- On October 18, 2010, an MPCID investigator, B.S., approached Yudit Avidor, Yesh Din's volunteer coordinator, in order to arrange with her, the taking of testimony from a complainant. Avidor asked the investigator when testimony from other complainants, also represented by the organization and whose testimony had not yet been heard, would be taken. After checking, the investigator replied that the specific complaints were not under her treatment. At the same time, A. asked Avidor to "do her a favor" and assist her in arranging meetings to take the testimony of other complainants whose cases were not being represented by Yesh Din as "A. lacked an Arabic-speaker" who could do it for her.<sup>95</sup>

DCO police officers who are asked to act as interpreters for MPCID investigators do not, of course, answer to the MPCID. This can often lead to friction and in some cases undermine the possibility of obtaining a complete version of an incident from the complainant and the witnesses.

- Jerusalem MPCID file 315/09 refers to the investigation of an incident in which a Palestinian was wounded by soldiers' gunfire during a melee between a group of settlers and residents of the village of Safa on village lands. On April 8, 2009, a group of settlers held a mass prayer meeting in memory of Shlomo Nativ, a teenager who had been killed seven days earlier in a terrorist attack on the nearby settlement of Bat Ayin. During the course of the prayers, a few dozen Israeli youths began to throw stones at residents of the Palestinian village who, for their part, began to throw stones at their attackers.<sup>96</sup>

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93. HaMoked - The Center for the Defense of the Individual File 28688 (Jerusalem MPCID File 135/04).

94. MPCID memorandum in File 135/04.

95. Documentation of the conversation can be found in Yesh Din File 2055/10.

96. Amos Harel and Jonathan Liss, "16 Palestinians wounded, one severely, in a clash with settlers from Bat Ayin; Israeli citizen slightly wounded," [Haaretz website](#) [Hebrew], April 8, 2009.



During the incident a number of Palestinians were injured by soldiers' gunfire. Some of them made a complaint to the Jerusalem MPCID with the aid of Yesh Din.<sup>97</sup>

In accordance with the policies laid down by the MAGC regarding incidents where there is a suspicion of criminal offenses during operational activity, no investigation of complaints may be started by the MPCID until a decision has been made by the MAGC. Only on June 30, 2010 – over a year after Yesh Din gave notices of the shooting to the MPCID – did Jerusalem MPCID investigators contact Yesh Din and ask the organization to summon the three complainants in order for them to give their testimony.

On the scheduled date, July 5, 2009, the three complainants arrived, at the appointed time, 11 a.m., at the Etzion DCO accompanied by Yesh Din field researcher Muhannad Anati. Nonetheless, the investigation did not begin due to the late arrival of M., an Israel Police officer stationed at the Etzion DCO, who was supposed to act as an interpreter. M. finally arrived at 1:45 but even after his arrival, he attended to his own work, refused to translate the complainants' testimony and they [the complainants] were forced to return home.<sup>98</sup>

The three complainants were summoned again to give their testimony on August 18, 2009, and arrived accompanied by Yesh Din at the appointed time – 11 a.m. Also summoned at the same time were two complainants in another investigation (Yesh Din File 1731/09) and complainants in another incident accompanied by representatives of rights group B'Tselem. The meeting to collect the testimony lasted all day with the last complainant being sent home close to 5 p.m.<sup>99</sup>

- On April 8, 2008, M.G., 14, was wounded in the face and the shoulder by a rubber bullet fired by soldiers at the al-Arrub refugee camp. According to the teenager, a soldier fired at him from a range of just a few meters and hit him in the head and chest.<sup>100</sup> Yesh Din investigators met the youth and his father almost a year after the incident, on March 25, 2009. After taking their testimony, Yesh Din gave a notice to the Jerusalem MPCID

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97. Yesh Din File 1820/09 (Jerusalem MPCID Files 358/09, 386/09).

98. Documented in Yesh Din File 1820/09.

99. Documented in Yesh Din File 1820/09. At the time of this report's writing a reply has yet to be received from the MAOA regarding the outcome of this investigation.

100. The testimony was taken by Maya Bailey and Muhannad Anati on March 25, 2009, at the al-Arrub refugee camp. Yesh Din File 1762/09.

base. It was only on June 17, 2010, a year and three months after the notice was given and over two years after the incident, that investigator B. from Jerusalem MPCID stated that the MAGC had ordered the opening of an investigation and requested to be provided with copies of the medical documents concerning M.G's treatment. After being provided with copies of the medical documents, B. once again approached Yesh Din on June 28, 2010 and asked, once again, to be provided with copies of the medical documents, as the original copies had been lost. Yudit Avidor documented attempts to arrange a date for the taking of testimony in Yesh Din File 1762/09:

- On July 13, 2010 I arranged with [MPCID investigator] B. a summons for July 22, 2010 at 10 a.m. It was agreed, in the light of problems experienced the previous week with the same interpreter ( Etzion DCO policeman M. ) in relation to [complainants summoned to give testimony in] Yesh Din File 1820/09, that I would telephone beforehand in order to confirm that an interpreter would be available. B. informed me that the interpreter M. only works from Sunday through to Wednesday. Since we had been unable to find another day during the week when all the parties were available, B. asked M. about [the possibility that] another interpreter [would be available on Thursday July 22]. M. told her that he might stay on Thursday and that he would give her an answer on Tuesday, July 20.
- On July 20 I telephoned B. at the Jerusalem MPCID. [B.] Informed me that M. would not be available on July 22. We set a new date for July 27 and agreed that on July 25 she [B. ] would provide final confirmation [of the date]. Today, July 25, I spoke to her. At first she wanted us to arrive at 11 a.m. and we finally agreed on July 27 at 11:30 or 12:00.
- Today, July 27, B telephoned me at 11:00. She asked what was happening with the complainant. I told her that they [the complainant and his father] were on their way [to the Etzion DCO]. Fifteen minutes later, B. telephoned me again and asked me the exact time they would arrive. I informed her that they would arrive at 12:00. A few minutes later, B. once again telephoned me and said that M., the interpreter, couldn't wait and that the meeting to collect testimony would have to be cancelled. A new date was arranged for August 3 at 11:00.<sup>101</sup>

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101. Documented in Yesh Din File 1762/09 (Jerusalem MPCID File 220/09). At the time of the writing of this report a reply had yet to be received from the MAOA regarding the outcome of this investigation.



→ On November 1, 2009, M.N., a resident of the village of Madama south of Nablus, was grazing a flock of goats on a plot of land belonging to his family some 200 meters to the south of the village. According to the testimony he gave Yesh Din, three soldiers approached him from the nearby settlement of Yitzhar and beat him on the upper half of his body using, among other things, their rifles. M.N.'s abuse continued, according to his testimony, at the army base to which he was taken – the Samaria Brigade base at Hawara – where he was pelted with stones while he was sitting handcuffed and blindfolded. After being examined by a doctor at the military base, M.N. was transferred to a hospital within Israel and after a series of examinations, he was returned to the military base. He was held, handcuffed, throughout the night, outside of a building on the base, in the cold without even being given the opportunity to relieve himself. As a result, he was forced to relieve himself in his trousers. In the morning, he was made to sign a document in Hebrew that he was unable to read and sent on his way.<sup>102</sup>

On November 4, 2009, just three days after the incident, Yesh Din volunteer Ruthie Kedar gave a notice of the incident to a Sharon and Samaria MPCID investigator named A. The investigator A. stated that M.N. would be summoned to give his testimony only the following week as “at the moment they lack translators into Arabic.”<sup>103</sup> It was only after a great effort that the MPCID informed Yesh Din that an interpreter had been found and that M.N.'s testimony had been taken by investigator A., on November 22, 2009 – three weeks after the event.

## **IDENTIFICATION LINEUPS, CONFRONTATIONS AND POLYGRAPH**

Yesh Din's monitoring of MPCID investigations and the examination of the contents of investigation files show that within the framework of investigations into offenses against Palestinians, MPCID investigators make almost no use of standard investigation tools: Polygraph examinations of those suspected of offenses were used in only a small number of the cases in which the suspects were located and that were examined by Yesh Din. However, in many cases where the suspects agreed to take a polygraph examination, the examination was never administered.

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102. Synopsis of testimony given by M.N. in Yesh Din File 1937/09. The testimony was taken by Ruthie Kedar and Rina Plesser on November 4, 2009 in the village of Madama.

103. Documentation of a conversation from November 4, 2009, Yesh Din File 1937/09 (Sharon and Samaria MPCID File 374/09). At the time of writing this report a reply had yet to be received from the MAOA regarding the outcome of this investigation.

→ On October 8 two brothers were arrested at their home in the village of Salem and taken to the Hawara check point where they were held in a cell. The two claimed to have been beaten by soldiers at the check point. Volunteers from Machsom Watch who were stationed at the check point heard shouts from the cell. A field worker for RHR saw the two when they were released from the cell and took them for treatment in hospital.

Four soldiers, who were questioned on suspicion of being involved in beating the brothers, signed forms agreeing to undergo polygraph examinations to check their versions of events, but they were never given polygraph tests and the investigation was summarized at the orders of the MPCID base commander prior to its closure on November 16, 2006. Approximately a year after the summation of the investigation file and apparently within the framework of a completion act required by the MAGC, an MPCID investigator called the four suspected soldiers on the telephone, and suggested they take a polygraph test. All four refused.<sup>104</sup>

Face to face confrontations between Palestinian eye witnesses and suspects are not held at all. In many cases, suspects signed forms presented them by MPCID investigators agreeing to a face to face confrontation. However, in none of the cases monitored by Yesh Din and in none of the cases examined by Yesh Din for the purposes of this report, was such a confrontation held by MPCID investigators to either support or refute either the complainants' complaints or the suspects' versions. Nor were confrontations held between the suspects and Israeli eye witnesses – civilians or soldiers – in any of the cases that we examined.

→ On March 21, 2008, three young shepherds from the village of al-Sawiya in the Nablus area were beaten by a security officer from a nearby settlement and some soldiers. The MPCID located those suspected of involvement in the incident and an officer confirmed that the security officer admitted to him that he had beaten the complainants. The officer agreed to hold a face to face confrontation with the security officer – but the confrontation never occurred.<sup>105</sup>

“Live” lineups’ – those in which a witness can identify with his own eyes suspects appearing before him – are not held either. However, MPCID investigators do, in some instances,

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104. Jerusalem MPCID File 210/06

105. Yesh Din File 1422/08 (Jerusalem MPCID File 118/08). The case was closed. Yesh Din lodged an appeal against the decision to close the case.

use a “photographic lineup”: they show witnesses photographs of soldiers, including the photographs of certain suspects, so that they can identify the suspects. The identification of suspects through a photographic lineup is considered less effective than a “live” lineup and, as a result, the evidential value of a photographic identification in cases where an indictment is made is lower than the value of an identification made through a “live” lineup.<sup>106</sup>

- M.Z. and Y.Z, a couple from the village of Qabalan, made a complaint regarding the theft of NIS 12,000 worth of jewelry during a search by IDF soldiers of their home. An MPCID investigation led to the identification of a number of suspects. Despite the fact that it appeared as if MPCID investigators had spared no efforts to solve the case, no “live” lineup was held. Instead, the couple participated in a photographic lineup where they were shown photographs of soldier including those of the suspects. The couple was unable to identify anybody from the photographs and the woman added that “during the search, the soldiers were wearing helmets with straps.”<sup>107</sup>
  
- In the afternoon of October 4, 2007, M.M., 12, was arrested at his home in the village of Bil’in. He was taken to an army base where an investigator tried to get him to provide the names of children involved in throwing stones at IDF forces. During his transfer [from his home to the base] M.M. was hit, according to his testimony, in the stomach by one of the soldiers and at the base he was, according to his testimony, slapped a number of times. He was released in the evening and during his journey home he had a helmet placed on his head and somebody hit the helmet over and over. M.M. testified to an MPCID investigator that he could identify, in a lineup, one of the soldiers who had hit him. Despite the fact that during the investigation MPCID investigators identified a number of soldiers suspected of being involved in the beating, no “live” lineup was held. A photographic lineup was held for M.M. where he failed to identify anybody.<sup>108</sup>

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106. The internal directives of the Military Police Corps state that “there are different ways to prove the identity of an offender, however, conducting a live (formal) lineup of witnesses, who claim to have seen the offender while committing the offense and can identify him, is the best means of identification” (Orders of the Chief Military Police Officer, **Order No. 5305: Conducting a lineup**, Section 3).

107. Yesh Din File 1325/07 (MPCID Sharon and Samaria File 288/07). The investigation file was closed on the grounds of lack of evidence.

108. Yesh Din File 1320 (Jerusalem MPCID File 252/07). According to a statement by the MAOA ( February 12, 2009): “The case was closed after no evidence was found against any of the soldiers present, because of the inability to identify the soldiers who allegedly beat the complainant and due to the denial of any violence on the part of the IDF soldiers in the military force present in the area.”

## FAILURE TO QUESTION KEY WITNESSES

Many investigation files include only the testimony of the complainant with no testimonies from other Palestinian eye witnesses – even when there were other such witnesses. In many cases, this is the result of the reluctance of Palestinians to give testimony before military investigators and, as stated previously, the systematic lack of MPCID bases in the territories and the shortage of interpreters also make the collecting of testimony problematic even from the complainants themselves. But even in other incidences, it appears that investigators make no effort to summon additional Palestinian witnesses who could add to the details provided by the complainant and facilitate the locating of suspects or support the evidence against them.

In many investigation files, MPCID investigators make great efforts to identify the military unit involved in the incident to which the complaint refers. In some instances, the investigation file will even include the testimony of many soldiers who were interviewed either as suspects or as eye witnesses. However, in many cases, soldiers or officers whose testimony and version of events could shed light on the incident are not interrogated, even though the investigation can not be considered complete without hearing and checking their testimony.

- S.S., the delays in the opening of an investigation into whose beating at a check point in the Hebron area are described above (p. 51), gave, in his statement, the name and the telephone number of a friend who witnessed his beating. Nonetheless, the MPCID investigator failed to contact the witness and the friend's testimony was never heard.<sup>109</sup>
- On June 3, 2002 a large military force came to G.H.'s home in the Ein Beit al-Ma refugee camp in Nablus. The members of the household were forced out and soldiers searched the house for three hours without being accompanied by any member of the family. Even before the soldiers had left, the family's mother discovered that the sum of NIS 11,000 and 40 Jordanian dinars had been stolen from a cupboard.

She spoke to an officer who claimed to have asked the soldiers, but they denied having taken the money. G.H. was able to provide the name of the officer, T., and those of the three soldiers, V., T. and K. Three of G.H.'s children were arrested that same night and released the following morning. On April 18, 2004, the Central Command's military

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109. HaMoked - The Center for the Defense of the Individual, File 28628 (Jerusalem MPCID File 155/05).



advocate informed HaMoked that the case had been closed as “neither the officer nor the three soldiers whose names had been mentioned could be located and that, in addition, there was no evidence to support the complainant’s claim that her children had been arrested.”

Despite this, an examination of the investigation file showed that in the two Battalions located during the MPCID investigation and identified as the battalions operating in the area on the day of the incident – Battalion 202 of the Paratroop Brigade and the “Egoz” Battalion of the Golani Brigade – there were officers by the name of T. and in one of their company’s there was a soldier called V. Still, none of the three soldiers were summoned for questioning.

As for G.H.’s three sons who were arrested on the night of the incident and who could have shed light on the identity of the soldiers involved, they were not summoned either to give their testimony. Moreover, the decision of the military advocate to close the case is based upon the fact that the investigators failed to find documentation relating to the arrest of the three boys. But the material in the investigation file shows that the search was carried out in the Ofer detention center and not in another detention center (at the brigade), besides the fact that the investigation material also shows that in cases where detainees are released soon after their arrest, their names are not documented at the detention center. In any event, this issue could also have been clarified if the detainees’ testimony had been collected.<sup>110</sup>

- On November 25, 2007, two shepherds from the village of Umm al-Safa were arrested by soldiers. The soldiers beat the two in the field and then brought them to a nearby army base where they continued to beat them. Later on, the two shepherds were released. The investigation concentrated on attempts to identify the military unit involved. One of the shepherds, Z.A., testified that the security officer of the nearby settlement of Ateret, who knows him, intervened with the soldiers on their behalf and asked that they be released, but to no avail. Despite the fact that the testimony indicated that the security officer might be able to identify the unit involved, no attempt was made to summon him to give testimony. The MAOA closed the case on December 20, 2009 on the grounds of insufficient evidence.<sup>111</sup>

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110. HaMoked - The Center for the Defense of the Individual, File 22893 (Jerusalem MPCID File 163/03).

111. Yesh Din File 1569/08 (Jerusalem MPCID File 1/09).

## INVESTIGATORS DO NOT VISIT THE SCENE

In general, MPCID investigations into offenses against Palestinians are conducted out of the investigators' offices. From investigation files and the associated logs examined, it would appear that MPCID investigators rarely go out into the "field." This failure refers both to the scene of the incident – although the delay in opening investigations into complaints usually prevents the gathering of any real information from the scene anyway – and at the bases of the units involved. As a rule, MPCID investigators fail to leave their offices for the crime scene or suspects' bases and, as a result, rarely engage in actions that can only be performed at those locations: searches, locating documents etc.

→ On Saturday, May 24, 2008, three residents of the village of al-Zawiya were arrested by soldiers. The three were taken to a nearby check point where, according to two of them, they were severely beaten. One of those beaten, A.S. was taken from the checkpoint to Beilinson Hospital where he was hospitalized. Two female soldiers witnessed at least some of the abuse and demanded that the beating stop and called for medical assistance. The remaining two detainees were released a few hours later. The next day, when the two released detainees returned to the checkpoint to find out what had happened to their friend, the two female soldiers told them that if they made a complaint, they would testify about the incident.

On June 11, Yesh Din faxed a notice, on behalf of the complainants, to Sharon and Samaria MPCID and on July 3, 2008, an MPCID investigation was started. On July 7, 2008, Atty. Natalie Rosen, on behalf of Yesh Din, spoke with MPCID investigator L., in charge of the file. In response to Atty. Rosen's question, L. answered that he "was aware of the matter of the two soldiers." However, when Atty. Rosen suggested that MPCID investigators go to the checkpoint in order to locate the two soldiers, he answered that this was not possible and that MPCID investigators don't work like that. L., who remained unconvinced even when Atty. Rosen explained that the two soldiers who witnessed the incident were apparently stationed at the checkpoint permanently, suggested that if the complainants saw the two female soldiers again, they should take their details down and send them to him.

On March 9, 2011, the MAOA informed Yesh Din that the case had been closed as the suspects had not been located and also because contradictions had been found in the complainants' testimony.<sup>112</sup>

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112. Yesh Din File 1473/08 (Sharon and Samaria MPCID File 227/08).



## RELIANCE ON THE UNITS TO IDENTIFY IMPLICATED SOLDIERS

Attempts to discover the identity of military units involved in incidents, can, in many cases, take a long time. Even when the units are identified, MPCID investigators will, for the most part, request that elements within the units themselves locate and pass on to the MPCID details regarding soldiers who may have been involved in the incidents under investigation. Thus, investigators do not, generally, visit the bases of units suspected of involvement in criminal incidents themselves and do not themselves locate and gather documents that could attest to the identity of the soldiers involved. The systematic reliance on the cooperation of parties in the units suspected of involvement raises concerns that those very parties might prevent the investigators from getting the assistance they requested.

- Following a complaint HaMoked made to the MAGC, the MPCID investigated the detention of three family members in a house occupied by a military force, as hostages (“human shields”) to prevent an attack on the house. On the night between August 31 and September 1, 2005, a military force entered the home of the R. family in Hebron. The soldiers ordered all the members of the family to gather in one room and, later on, allowed some of them to leave on the condition that, at any one time, three members of the family would stay in house.

During the investigation, the MPCID investigator asked Lt. L., suspected of being the officer who ordered his soldiers to keep three family members in the house at all times, to summon the soldiers from the unit that was with him at the time for questioning. Lt. L., who explained that close to the date of the incident he and his unit had transferred from Gaza to Hebron and that he had operated in Hebron according to the protocols he knew from Gaza, coordinated a date for three of his soldiers to give testimony. L. told the investigator that an additional five soldiers had been discharged from the army and that another two were on sick leave. The three soldiers who were questioned testified that they had not been instructed of their duty to allow all members of the household to leave it.<sup>113</sup>

- M.Q., 52, a resident of Kafr Aqab, arrived at the Qalandia checkpoint on September 18, 2003, on his way to Jerusalem for medical treatment. When he felt sick, M.Q. turned to one of the soldiers, showed his identity card and asked the soldier to let him through. In response, so claimed M.Q., the soldier attacked him and beat him until he

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113. HaMoked - The Center for the Defense of the Individual File 396 13 (Jerusalem MPCID File 285/05).

lost consciousness. According to the complaint, after he recovered, M.Q. asked the soldier to return his identification card. But, as described in the complaint, the soldier and another soldier attacked the complainant, kicked him, placed his hands behind his back and forced him to stand with his legs apart for a few minutes after which they allowed him to go on his way. With the aid of passersby M.Q. went to the Neve Yaakov police station to make a complaint about the incident. While at the police station, he collapsed and was taken to Hadassah Mt. Scopus Hospital by ambulance.

On November 16, 2003, some two months after the incident, investigator A. spoke by telephone to Pvt. D., who served in the operations room of the Military Police company that mans the checkpoint on a permanent basis. According to the soldier, there was no documentation in the operations room regarding soldiers from the company serving at the check point on the date of the incident.

On November 19, 2003, investigator A. spoke by telephone to the company commander of the unit that had secured the checkpoint on the date of the incident. The investigator's request to receive a list of the soldiers stationed at the checkpoint that day was denied on the grounds that such lists were not kept for long periods of time and that neither he nor his company had records of soldiers at the checkpoint on that specific day.

On December 1, 2003, investigating officer D. spoke by telephone with the Military Police company commander, who told him that the list of soldiers' postings to the various assignments on the date of the incident had "not yet been found."<sup>114</sup>

## **REFRAINING FROM INVESTIGATING SENIOR OFFICERS AND EXAMINING THE LEGALITY OF ORDERS**

The main concern of criminal investigations is the identification of those directly responsible for the commission of a criminal offense designated as such by the relevant criminal code. As such, the MPCID investigation is a particularly problematical tool when there is a need to examine the legality of existing policies and of orders given by senior officers.

MPCID investigations, designed to locate suspects in criminal offenses, do not, for the most part, lead to the indictment of senior officers for issuing illegal orders to their soldiers or for illegal policies under Israeli criminal law or the Law of Armed Conflict. A study by Yesh Din

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114. HaMoked - The Center for the Defense of the Individual, File 28688 (Jerusalem MPCID File 135/04)



of indictments issued since 2000 for offenses committed against Palestinians in the OPT shows that no criminal indictments were made against senior officers with the ranks of Colonel or higher,<sup>115</sup> and that the highest ranking officers indicted for criminal offenses by the MAGC were three Lieutenant-Colonels.<sup>116</sup>

Officers with the rank of Lt.-Col. and Col. are sometimes asked to give testimony to MPCID investigators. However, in the case files examined by Yesh Din, MPCID investigators, as a rule, refrained from questioning senior officers under warning. This includes field officers and staff officers. Even in those incidents when an investigation raised suspicions that procedures or policy appeared to be illegal, the investigators refrained from investigating the issue in depth in order to evaluate the responsibility of senior officers.

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115. Of the 190 soldiers and officers indicted from the start of the second intifada to the end of April 2011, 67 were soldiers with the rank of Private or Corporal; 87 were soldiers with the rank of Sergeant and Sergeant-Major and six were non-commissioned officers with the rank of Sergeant-Major. 19 of the accused held the rank of Second Lieutenant and Lieutenant, 5 the rank of Captain and only one officer held the rank of Major. Indictments were issued against three officers with the rank of Lieutenant-Colonel. Yesh Din lacks information regarding the ranks of two additional defendants but it is known that they are not officers.

116. In one instance an officer was convicted for an offense that he had committed himself: Lt.-Col. (Res.) Geva Saguy was convicted of conduct unbecoming an officer after committing two offenses. One related to severe abuse of a Palestinian civilian he was questioning, and the other when he used a Senegalese citizen as a human shield while searching the home in which she was employed (Center/1/02 **Military Prosecutor v Lt.-Col. Geva Sagi**; Appeals/03/153 **Lt.-Col. Geva Sagi v the Chief Military Prosecutor**. See also **Exceptions** pp. 81-82 ). In two cases, officers with the rank of Lt.-Col. were convicted following orders they had given their subordinates. Lt.-Col. Omri Borberg, a battalion commander in the Armored Corps, was convicted of attempted threat and of conduct unbecoming an officer for threatening a bound and blindfolded Palestinian prisoner that he would shoot the prisoner in the leg with a “rubber” bullet, and ordering his subordinate to cock his rifle. The soldier did, indeed, fire a “rubber” bullet at the prisoner’s leg but the court ruled that the shooting was not the result of an order from the officer (Center/5/08 **Military Prosecutor v Lt.-Col. Omri Borberg and St.-Sgt. Leonardo Corea**). In another incident, the commander of an armored battalion with the rank of Lt.-Col. was convicted, following a plea bargain, of negligence after he ordered one of his subordinates, an officer with the rank of Lieutenant, to fire tank shells and heavy machine guns in order to enforce a curfew in a city. Within the framework of the plea bargain, the prosecution withdrew the original charges of causing the death of four residents of the city – including three children – and the wounding of another five. An MPCID investigation found that the battalional commander’s order to open fire in order to enforce the curfew was based on an order given him by his superior officer, the commanding officer of the Golani Brigade, Col. M.T. The MAGC decided not to put Col. M.T. on criminal trial but rather on a disciplinary trial before the Commanding Officer of the Israeli Navy. Col. M.T. was acquitted in the disciplinary trial (Center /04/3 **Military Prosecutor v Col. Anonymous and Lt. Anonymous** [publication of their names was forbidden]. See **Exceptions**, pp. 53-54).

## YESH DIN FILES 1366/08 AND 1626/08: COLLECTIVE PUNISHMENT AT AL-ARRUB

In two separate cases in which business owners at the entrance of the al-Arrub refugee camp complained of alleged attacks on them by soldiers when they were told to close their shops, IDF officers stated in their testimony before MPCID investigators that there is a procedure, which one of the officers ascribed to the regional brigade, whereby in cases of stone-throwing on vehicles travelling on the road next to the al-Arrub refugee camp, nearby business owners should be “punished.” In both cases the attempt by the military forces to close the shops led the incident to deteriorate in to violence.

In one incident, Maj. (Res.) A. gave testimony in a case concerning a complaint made by A.H., owner of a puncture repair business at the entrance to the al-Arrub refugee camp, that he had been attacked and a gas grenade had been thrown at him.<sup>117</sup> In answer to a question from the MPCID investigator as to why he had ordered the closing of the shop, Maj. A. replied: “That was the brigade directive. Because of the increased incidents of stone-throwing there is something called a ‘price tag’ that orders the closing of businesses on the route.”<sup>118</sup>

In the second incident, the owner of a shop in the same area complained that he had been beaten after being ordered to close his shop. Subsequently, the incident deteriorated and R.G., the shop owner, was arrested and charged with assaulting a soldier. During the investigation, Lt. M. stated that after being pelted with stones, he and his soldiers ordered the Palestinians in the area to move away and that the order to close the shops was meant to serve as “part of the deterrent”: “At first we spoke with them, told them to move away, not to be there because stones had been thrown. We told them to close their shops – as part of the deterrent procedure we use in the village we also close the entrance and exit of the village whenever there is an incident.”<sup>119</sup>

In both incidents the officers were not under warning when they gave their testimony, neither as witnesses nor as suspects, and in both incidents the MPCID investigators failed

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117. The complaint and the investigation referred to here can be found on pages 73-75 below.

118. From testimony of Maj. A., p. 4. The testimony was taken on May 27, 2008. Jerusalem MPCID File 26/08 (Yesh Din File 1366/08).

119. From the testimony of Lt. M., p. 2. The testimony was taken on December 2, 2008. Jerusalem MPCID File 261/08 (Yesh Din File 1626/08).



to examine the legality or the source of the directive to punish shop owners for the throwing of stones by others.

## **NORTHERN COURT MARTIAL FILE 497/03: A TANK COMMANDER STOOD TRIAL BUT THE RESPONSIBILITY OF SUPERIOR RANKS WAS NOT SUFFICIENTLY INVESTIGATED**

On March 1, 2002, M.T., aged 7, was killed by tank fire while playing with a group of children in an area in the north of the Gaza Strip that had been declared a “Special Security Area” (SSA) into which Palestinians were forbidden entry. Following an MPCID investigation, an indictment was served for causing death through negligence against tank commander St.-Sgt. D.S. The indictment charged St.-Sgt. D.S. with giving an order to one of the tank’s crew to open fire close to the group of children in the SSA, and that heavy machinegun fire was opened accordingly, resulting in the child’s death. According to the indictment, the order to open fire was “against the rules of engagement, without authority and/or without taking the necessary safety measures [...].”<sup>120</sup>

The court martial gave the accused the benefit of the doubt and acquitted him of the charges leveled against him, convicting him of the less serious charge of negligence instead. The court martial stated in its decision that a series of failures and flaws in the work of investigation and prosecution bodies had led to the accused being acquitted of the charge of causing death out of negligence. Among other things, the court noted the decision by MPCID investigators not to collect the testimony of Palestinian witnesses but to make do with statements the witnesses to the human rights organization B’Tselem. Furthermore, the court severely criticized both the MPCID investigators and the military prosecution for their failure to carry out an in depth examination as to the responsibility of the accused’s superiors:

*“This is a serious and tragic event in which an innocent eight- year- old- child [sic] lost his life. On the face of it, this should have required an intensive and comprehensive investigation in order to learn the full chain of events and to evaluate the question of responsibility for the tragic outcome. Also, it would have been appropriate if the prosecutor had spared no effort in order to present the court a full picture so that the court could make an informed and just decision. However, this was not how things were. [...] It was enough to hear the testimony presented before us, or to be more precise,*

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120. See *Exceptions*, pp. 62-63.

*the evidence presented before us, and to listen to the prosecutor's explanations in response to our surprise at the way the file and investigation were managed, to draw the conclusion that the investigation and prosecution bodies were not operating as they are required to operate in a case of this type.*

*"[...] We find it difficult to accept the prosecution's claim that it was impossible to locate the officials, both in the brigade and the sector, responsible for briefing the tank crew. Even though the investigation into this incident took place quite some time after the event, it is inconceivable that an officer fulfilled a clearly defined function in the sector yet there is no documentation to that effect in the army's files [...] or that none of the officers in the brigade know anything about him at all.*

*"Moreover, the rules of engagement, both of the Southern Command and the Gaza Division, in force at the time of the incident, place responsibility on the brigade commanders to give clear and individual explanations regarding the rules of engagement and to document this in writing. [...] From the prosecutor's reply to our question on this matter we learn that no examination was made by the MPCID regarding the existence of written directives, as the brigade commander is required to provide. [...] In our opinion, when examining the question of responsibility for a tragic incident, it is necessary to examine not only the responsibility of the tank commander, who gave the order to open fire, but also the responsibility of the command structure in place at the time as well as the reasons the tank commander was not familiar with the rules of engagement. [...] We thought it only proper to mention our surprise with regard to the aforementioned issues at the outset of our judgment in order to stress that the picture laid out before the court is not a complete picture and that, in so far as we are dealing with the responsibility of higher command levels than those of the accused, this subject was not examined in full by this trial."<sup>121</sup>*

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121. North/497/03 Military Prosecutor v St.-Sgt. D.S. Judgment given on July 12, 2005.



## DELAYS IN MAGC DECISIONS AFTER THE CONCLUSION OF INVESTIGATIONS

### DATA FROM YESH DIN'S MONITORING

Of the 48 cases in which a criminal investigation was held and a decision taken by the MAGC to close the investigation file without filing an indictment, the MAGC provided Yesh Din with information regarding the date of the decision to close the case in only half of the cases. In these 24 cases, the average time that elapsed between the time the material from the investigation was transferred from the MPCID to the MAGC for examination and decision and the time of the decision to close the file was close to **14 months** (414 days).

In an additional 56 cases that were monitored by Yesh Din and in which the MPCID investigation had been concluded, as of April 30, 2011, the MAGC had yet to reach a decision regarding the outcome of the case. In 16 of these cases more than two years had passed between the end of the MPCID investigation and the transfer of the material to the MAGC for its examination and April 30, 2011. In one of the cases, over three years has passed and 17 other cases have been waiting for a decision by the MAGC for between one and two years.

- On January 20, 2007 a confrontation occurred between Palestinians from the village of Amatin and settlers after Palestinians removed a pipe laid by the settlers on village land. Soldiers who arrived on the scene after the confrontation ended confined the Palestinians to the site at gunpoint and took one of them, R.B., aged 33, somewhere nearby where they beat him until he lost consciousness. The following day, the brother of the injured man made a complaint to a police officer at the Qalqiliya DCO and a few days later, a representative of the Samaria Region Police informed Yesh Din that the complaint had been passed on to the Sharon and Samaria MPCID base. On February 4, 2008 – about a year after the incident – the head of the MPCID investigations and inspection unit informed Yesh Din that the investigation had been concluded and was transferred to the MAOA. On April 14, 2011, the MAOA informed Yesh Din that the case was still being considered after being returned from the MPCID where it was sent for investigation completion. Thus, more than four years after the incident and over three years since the main MPCID investigation ended and the materials were transferred to the MAOA, no decision had been made yet as to the outcome of the investigation.<sup>122</sup>

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122. Yesh Din File 1237/06 (Sharon and Samaria MPCID File 67/07).

- On November 10, 2006, A.S., a resident of al-Sawiya, was on his way back to the village from the olive harvest on his family's land when he was detained by soldiers, along with a group of other Palestinians. A.S. and the others were handcuffed and beaten by the soldiers. At some stage, A.S., still handcuffed, lost consciousness as a result of the blows. On November 14, 2006, A.S. made a complaint to the police officer stationed at the Qalqiliya DCO and an MPCID investigation was started. The investigation material was passed on to the MAGC on December 3, 2007. After repeated reminders, the MAOA answered that the case was under its consideration. Only some three years after the announcement that the investigation material had been passed to the MAGC and over four years after the incident, the MAOA informed Yesh Din on December 19, 2010 that the investigation file had been closed due to lack of evidence.<sup>123</sup>

### **YESH DIN FILE 1581/08: MORE THAN TWO YEARS AFTER THE SOLDIER WAS RELEASED FROM DETENTION THE MAGC STILL HADN'T REACHED A DECISION REGARDING THE OUTCOME OF THE INVESTIGATION**

The car carrying N.A., who was in labor, to the hospital in Nablus, was stopped at the Hawara check point despite the pleas of pregnant women's family. A few hours later, a paramedic pronounced the baby, born in the check point's area, dead. N.A.'s husband told Yesh Din about that night:

*"At about 00:30, on the night between Friday and Saturday, September 6, 2008, my wife, N., who was seven months pregnant, got severe stomach pains. I don't have a car or a driving license. My brother A., aged 24, has a car and lives with my parents just a two- minute drive away. I telephoned him and asked him to come and to bring my mother. He and my mother arrived straight away and we left for Nablus hospital fast! My wife was screaming from the pain. [...] We got to the Hawara check point at around 1 a.m. and stopped by the plastic barriers designed to prevent vehicle access before their inspection. There were no cars in front of us and a soldier was standing about 20 meters away from where we had stopped. As soon as we arrived I opened the door and asked the soldier to come to the car while I explained to him that my wife was in the car and in serious condition. The soldier approached us slowly, ignoring the panic in my voice. I said [to the soldier] that my wife was suffering and that her condition was getting worse. I begged him to let us through so that we could get to the hospital*

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123. Yesh Din File 1233/06 (Sharon and Samaria MPCID File 117/07).



as fast as possible. He said to me: "Wait here, I have to ask my officer" and left us for about 20 minutes.

During that time, my wife's suffering got worse and she began bleeding. The soldier came back with another soldier and an officer. The officer asked what the problem was. I answered him that I had already explained to the soldier about my wife's serious condition and that since then, it had gotten worse. I was holding in my hand all four of our identity cards. I begged him to speed up the examination and to let us go. I know that at the entrance to Nablus they don't check, they only check on the way out of Nablus and not when entering. In reply to my pleas that he let us pass so we could get my wife to hospital he answered that he couldn't let us through without getting authorization. I asked why authorization was needed in a case like this. I showed him my authorization [to pass through] the Jordan Valley area and he said that: "authorization for the Jordan Valley isn't valid here." I suggested that I, my mother and all of our ID cards be kept at the checkpoint, if only he let my brother take my wife to the hospital. But the officer refused to accept any solution.

Another 25 minutes passed, 45 minutes since we arrived at the Hawara check point. The soldier and the officer were standing about three meters away from us and could hear my wife's screams. While we were pleading with the officer, my wife screamed out in anxiety that she was going to die. I felt helpless and was in a state of panic. My wife began to give birth with my mother helping her. I begged him to come and see that the child was being born and he looked at me as if I was a dog barking at the door. When I saw what was happening, I called my other brother who had stayed at home and asked him for the telephone number for the Red Crescent. My brother called the Red Crescent and also gave me the phone number. I called them and they said that they were on their way to us. By now, the head and half of the baby's body were out. My mother and I tried to help my wife give birth, we supported the baby and checked his pulse. We didn't try to pull him out, just supported him but then his head dropped. The ambulance arrived; it was already 2 a.m. The ambulance that had come from Nablus stopped on the other side of the check point. I said to the officer, "You didn't help me. At least let the ambulance through." I felt like I was going mad [...] I moved the plastic barrier myself. When the paramedic saw my wife's condition he said that he had to deliver the baby then and there because it was impossible to move her without endangering both my wife and the baby's lives. He delivered the baby, gave him to me

*and told me that the baby was dead. We took the clothes out of the bag and put the dead baby in. The soldiers just stood by and looked at us.”<sup>124</sup>*

Yesh Din volunteers helped the family file a complaint and give their testimony at the DCO. A few days later the press reported that one of those involved in the incident, a squad commander, had been sentenced in a disciplinary action to 14 days detention.

In an urgent appeal to the MAG, Yesh Din demanded that a criminal investigation be started into the circumstances of the incident and that, until a decision were taken in the matter, the detention sentence passed against the soldier in a disciplinary trial be stayed. In its appeal, Yesh Din stated that “the hasty disciplinary action taken directly after the complaint to the MPCID raises suspicions that this was a step taken to prevent criminal proceedings.” In reply, Lt.-Col. Sigal Mashal-Shechori, the MAOA, informed Yesh Din that, as the result of Yesh Din’s demand, the MAG had ordered the results of the disciplinary action against the soldier canceled (he was released from the military detention center as a result) and for an MPCID criminal investigation to be opened.

On February 25, 2009 the head of the MPCID investigation inspection unit informed Yesh Din that the investigation into the case had been concluded and that the investigation had been transferred to the MAOA. By the end of April, 2010, some two years and two months since the transfer of the materials to the MAOA was reported, no decision as to the outcome of the case had been reached: whether to close it or serve an indictment.<sup>125</sup>

### **YESH DIN FILE 1366/07: POLICEMAN-WITNESS NOT QUESTIONED; THE SUSPECT DOESN’T REMEMBER; THE CASE WAS CLOSED**

As part of Jerusalem MPCID File 26/08, an investigation was held into the complaint made by 51- year- old A.H., the owner of a shop at the entrance to the al-Arrub refugee camp. According to the complaint, in December of 2007, a tear gas grenade was thrown at him and his friend while they were sitting in the entrance to the shop, and then A.H was beaten. In testimony he gave to Yesh Din he said:

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124. From testimony given by M.A., born 1979, a resident of the village of Qusra. The testimony was taken by Azmi Bdeir, Yehudit Avidor and Maya Rothschild on September 11, 2008 at the Tapuach Checkpoint. Yesh Din File 1581/08.

125. Yesh Din File 1581/08 (Jerusalem MPCID File 313/08)



*“On Sunday December 23, 2007 I was in the shop with M.W. We were sitting in the shop’s entrance, drinking coffee and talking. Opposite us were three army jeeps with soldiers standing next to them, talking. Two of them suddenly got into a jeep and left in the direction of Gush Etzion. One jeep remained there. Three soldiers, whose faces I know, got out of the jeep. Next to the shop there’s a taxi stand, where taxi drivers stop to let off passengers and wait for new ones. The army has been harassing those drivers for years. One of the soldiers [...] stopped the taxis that wanted to drop people off and threatened them with his rifle. In his hand he had a tear gas grenade. At some stage, the soldier ran in the direction of the shop. We were sitting facing the shop and didn’t notice him. The soldier came into the shop and shouted “Come on, you bastards, close the shop” and threw the teargas grenade onto the ground between the two chairs we were sitting on. My friend ran away and I picked up the grenade and threw it out. My eyes were streaming with tears, I could hardly breathe and my mouth was dry. People came who wanted to help me. It was at this stage that another Hummer appeared from the direction of Hebron. In the Hummer was an officer with the rank of Captain [...]. I wanted to explain to him what had happened but then he pushed me, told me to shut my mouth and told the soldiers to handcuff and blindfold me – but they didn’t. The soldiers could see that my eyes were streaming and that I could hardly breathe. The officer kicked me and I fell on the floor and stayed there until the soldiers went away.”<sup>126</sup>*

Later on, an Israel Police jeep arrived at the scene which the complainant said he stopped. However, the jeep went on after the soldiers fired into the air. In his testimony, the complainant pointed out that he recognized one of the policemen sitting in the police jeep and knew him by his first name, Y. An MPCID investigator contacted A., a policeman in the Gush Etzion Police investigation section, who told him that while there was a policeman serving with them called Y, “there’s no way that Y. would have been in the patrol jeep outside of the offices because he’s been an investigator for some two years and there is no way he would have been in a jeep on Highway 60 in the al-Arrub [area] in December 2007.”<sup>127</sup> However, in the investigation log the investigator noted that A. had explained to him “they have no patrol policeman named Y.” In any event, the MPCID investigator did not contact the police officer, Y., who served in the area at the time, and made no attempt to take his testimony.

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126. Testimony given by A.H. The statement was taken by Hanna Barag and Muhannad Anati on December 30, 2007 at the al-Arrub refugee camp. Yesh Din File 1366/07 (Jerusalem MPCID File 26/08).

127. Memorandum in the investigation file, February 26, 2008.

After taking the complainant's testimony, a representative of Yesh Din was asked, on February 13, 2008, to assist in coordinating the arrival of two Palestinian witnesses at the Etzion DCO (in the Bethlehem area) so that they could give their testimony. The date was set for February 18. However, a day before the date set to collect the testimony, MPCID investigators were forced to cancel the arrival of the witnesses because the Chief Military Police Officer had ordered a "travel curfew" in the Military Police Corps. Testimony was collected from the two witnesses one week later.<sup>128</sup>

The testimony of two army personnel was taken during the investigation: that of a battalion commander and of a company commander with the rank of Captain, who were on reserve duty serving in the area at the time of the incident. Both of them denied the allegations completely and both said that they couldn't remember that specific event. Apart from these two testimonies, no other soldier was questioned as part of the investigation and there is no documentation in the investigation file of attempts to locate additional soldiers involved in the incident. Even though the complainant said in his testimony that he could identify the soldier involved, and despite his having stated in his testimony that one of his attackers was an officer with the rank of Captain, no lineup was held, live or photographic, and the complainant was not given the opportunity to identify the officer who was questioned.

On February 14, 2010, the MAOA, Lt.-Col. Sigal Mashal-Shechori, announced that the case had been closed on the grounds of insufficient evidence.

## **YESH DIN FILE 1853/09: THE INVESTIGATION FILE IS PASSED FROM HAND TO HAND UNTIL ITS CLOSURE**

On July 1, 2009 S.A., a resident of Jerusalem, attempted to return to the city with her husband after a family visit to Hebron. When they arrived at the al-Azariya check point she discovered that she did not have her identity card with her and tried to use another document instead. However, this was discovered immediately. In her testimony to Yesh Din, S.A. said:

*"A female soldier ordered me to get out of the car to search me in the examination room. I understood that she wanted to confirm that I didn't have an identity card. Then another female soldier joined her and they did a body search and didn't find an identity card. They asked me to come with them to the toilets so that they could perform a*

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128. Documentation from February 17, 2008 in the investigation log of Jerusalem MPCID File 26/08.



*more thorough search. They ordered me to undress and I refused. The two soldiers began to hit me, the first soldier with a rifle butt and the second with her hands. They hit me in the stomach, on my shoulders and in every part of my body. During the search they pulled my hair and pushed me against the wall. They stripped me naked, totally. All this time they asked me where my identity card was. This carried on for, I think, about an hour. At some point, they hit me hard on my right arm and I fell to the floor. The soldiers stopped and told me to get dressed, washed their faces and told me to return to the West Bank. They brought my husband, spoke to him and let us go. I returned to my family in Hebron suffering from strong shoulder pains. I went to a doctor who x-rayed my shoulder and discovered that it was broken. He also saw the bruises from the beating all over my body and he gave me some pain killers and told me not to move my right arm for three weeks.”*

Two days after the incident, on July 3, 2009, Arie Magal, a Yesh Din volunteer, gave a telephone notice on behalf of S.A. to the Jerusalem MPCID. The Jerusalem MPCID first passed the statement on to the Beersheba MPCID<sup>129</sup> but after learning that the incident occurred close to Jerusalem it was decided that the notice would be dealt with by the Jerusalem MPCID.<sup>130</sup>

After S.A.'s testimony was taken, with the interpretation of the police officer at the Etzion DCO and during which he documented her testimony that the soldiers who beat her wore “blue uniforms,” an MPCID investigator telephoned a Police Investigation Unit (PIU) investigator in order to arrange the questioning of the police officers. In response, the PIU investigator stated that he wanted the MPCID to first interview the soldiers at the check point and only then would testimony be taken from the policewomen.

The investigation material was transferred to the PIU without any additional testimony being taken by the MPCID. On September 3, 2009, a PIU investigator spoke by phone to A.S. and her husband and they described the identifying characteristics of the Military Policewomen who were at the scene. A.S. confirmed that she had not mentioned in her testimony that they were Border Policewomen.<sup>131</sup> The following day the PIU investigator informed Yesh Din that after he had examined the circumstances of the incident it had been discovered that

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129. Notice 533/09 at the Beersheva MPCID.

130. Jerusalem MPCID File 193/09

131. PIU File 3810/09.

the women were soldiers ( Military Policewomen) and so the responsibility for the case was going back to the Jerusalem MPCID.

On October 19, 2009, a Jerusalem MPCID investigator spoke to S.A. on the telephone and as a result of the conversation was convinced that the soldiers described by the complainant were Military Policewomen. Therefore, the investigation material was transferred to the office of the Chief Military Police Officer and on November 3, 2009 he ordered an “inquiry” by the Military Police Unit for Internal Investigations (MPUII).<sup>132</sup>

The commander of the Military Police company manning the check point told the MPUII investigator that no female soldiers (Military Policewomen) had been stationed at the check point at the time of the incident, five months previously. The investigation file contains no documentation of the results of the inquiry procedure if indeed it ever took place.

On December 6, 2009, the “inquiry” process was concluded without the soldiers involved being located. Only on November 29, 2010 did Maj. Dvir Shimon, the head of the MPCID investigation inspection unit, inform Yesh Din that the case had been closed. The reason was not provided. So, even though the notice of the incident had been made to the Jerusalem MPCID just two days after it occurred, the treatment of the case can be characterized by attempts to pass it from one investigatory body to another so that any chance of locating those involved in the severe beating of the complainant was lost.

## **YESH DIN FILE 1631/08: INVESTIGATION MATERIAL PASSED FROM MPCID TO PIU TO ISRAEL POLICE AND THEN DISAPPEARS**

On October 30, 2008, N.N. was arrested at his home in the village of Auja. During his arrest, the soldiers searched the four apartments in his family’s building and caused them considerable damage. In the apartment of N.N. – a hunter whose hunting rifle was taken away from him at the time of his detention – the cabinets and cupboards of the bedroom were broken, as well as the sofas on the terrace, an instrument to measure blood sugar levels and a satellite TV receiver, among other things. Furniture was also broken in N.N.’s mother’s apartment in the same complex.

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132. Military Police Unit for Internal Investigations File 20/09.



About a week later, on November 6, 2008, Yesh Din volunteers took testimony from the residents of the household and submitted a complaint through Yesh Din to the Jerusalem MPCID (Complaint No. 968/08). On January 20, 2009 the head of the MPCID investigation inspection unit informed Yesh Din that it had been decided not to open an MPCID investigation and that the materials had been passed on to the PIU since the MPCID inquiry had revealed that those involved in the incident were policemen and not soldiers.

On February 16, 2009, the PIU secretariat replied to an inquiry by Yesh Din that it had decided not to open a criminal investigation into the incident for reasons of lack of public interest and that the materials had been transferred to the Public Complaints division of the Israel Police. In response, Yesh Din appealed the PIU's decision not launch a criminal investigation into the complaint. In the appeal, Yesh Din's legal advisor, Atty. Michael Sfarid, stated that:

*"It is not clear how, following such a serious incident, no investigation was begun on the grounds of "reasons concerning consideration of the overall public interest in investigating this file." This is a classic case where the public interest in conducting criminal proceedings in order to deter and uproot violent behavior by those who have been given governmental power and who work ostensibly on behalf of the public, is paramount. Moreover, closure of the case due to "lack of public interest" sends a dangerous message that the property of Palestinians is not worthy of legal projection and that police officers have nothing to fear from unjustified misbehavior when their victims are Palestinians."*<sup>133</sup>

On February 10, 2010, Yesh Din received the State Advocacy's response, according to which those involved in the incident had been soldiers after all, and so the case had been returned to the Jerusalem MPCID. Atty. Emily Schaeffer wrote on March 8, 2010 to the head of the MPCID's investigation inspection unit inquiring as to the status of the case. The officer replied that, based on an inquiry he made with the Jerusalem MPCID, it appeared that the case had been transferred to the PIU, where it had been closed on the grounds of lack of public interest and passed on to the Israel Police Public Complaints Division. After Atty. Schaeffer once again wrote that the State Advocacy and the PIU had informed her that the case had been returned to the Jerusalem MPCID did the head of the MPCID's investigation inspection unit inform her, on May 25, 2010, that the PIU and the Israel Police

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133. Appeal of the decision not to investigate MPCID File 5863/08. Letter from Atty. Michael Sfarid to the Head of the PIU, March 15, 2009.

Public Complaints Division had not acceded to his request to provide him with proof that the materials had been transferred to the Jerusalem MPCID and that the Jerusalem MPCID had informed him that they had not received any investigation materials from the aforementioned bodies. “Extensive searches” were made, according to the head of the MPCID’s investigation inspection unit, in MPCID archives but revealed nothing. “In the light of the aforesaid, we are unable to assist you in this matter. As always, I will be happy to assist you in all other matters,” Maj. S. ended his letter.<sup>134</sup>

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134. Yesh Din File 1631/08 (Jerusalem MPCID Notice 968/08).



## CHAPTER 5

### REFUSAL OF VICTIMS AND WITNESSES TO FILE COMPLAINTS AND TESTIFY

*"[...] There can be no doubt that there is a correlation between the increase in the number of investigation files that end up being closed and the number of investigation files whose processing goes on for extended periods of time and the waiving of the right to make a complaint. The reality of the situation points to a vicious circle in which incidents are not investigated on the grounds that no complaint has been made and, on the other hand, complaints are not made due to the failure to suitably investigate them. The rule of law and public order do not benefit from this issue."*

*(Ministry of Justice, report by the monitoring team on the investigation of suspicions against Israelis in Judea and Samaria, 1982)<sup>135</sup>*

One of the most difficult barriers standing in the way of law enforcement upon IDF soldiers for offenses against Palestinian civilians in the OPT is the reluctance of victims of offenses and of witnesses to testify before the investigation bodies.

Of the 192 complaints that were monitored by Yesh Din, in 23 cases – about 12% of all cases – the victims chose not to complain at all or cut off contact with the law enforcement agencies after filing a complaint. Palestinians who choose not to make a complaint regarding offenses committed against them or those asking to cancel a complaint already made, give a number of reasons for this: fear that they will be harmed either by soldiers who find out about the complaint or by the revoking of various permits they may have. In other cases the Palestinians indicate their lack of faith in the sincerity of the Israeli law enforcement agencies' desire to deal with their complaints against Israel soldiers. This lack of faith is especially conspicuous in those cases where investigations are significantly and unjustifiably delayed (foot-dragging).

Following are some examples.

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135. Yehudit Karp (Chairwoman). *Investigation of suspicions against Israelis in Judea and Samaria – Report by the monitoring team*, Ministry of Justice, 1982, p. 26 [Hebrew].

## LACK OF TRUST IN LAW ENFORCEMENT AGENCIES

- At the beginning of March 2010, a military force entered the home of a family in the village of Burin, searched the house and arrested one of its residents. During the search, the soldiers caused damage to property in the house and, later on, the mother discovered that a purse containing NIS had been stolen.

A few days later, the mother made a complaint at the Sharon and Samaria MPCID through Yesh Din and a week later gave her testimony to an MPCID investigator at the Nablus DCO. It was only after an additional seven months had passed that MPCID investigators asked Yesh Din to arrange for the complainant's husband to come and give his testimony. However, when asked by Yesh Din he replied that he didn't want to testify because he didn't believe that the investigation would produce any results.<sup>136</sup>

- In August 2008, two teenage Bedouins were grazing their flock near the Palestinian village of Ras Karkar when a group of armed Israeli civilians appeared on the scene. According to the teenagers, the Israelis forced them, at gunpoint, to go with them to an olive grove close to the Zayit Ra'anana outpost, where the two youths were handcuffed, blindfolded and forced to crawl on the ground through thorny undergrowth. Then they beat them and kicked them all over their bodies for about ten minutes. From there, the two were taken to a small shack at the entrance to the nearby settlement. After a while, IDF soldiers arrived in a military vehicle. The soldiers offered them something to drink and then one of them tied the two teenagers together. Tied together, the soldiers sent the youths on their way.

Apart from a complaint made to the Israel Police with regard to the involvement of the Israeli civilians in the incident, Yesh Din made a complaint to the Jerusalem MPCID, on September 9, 2008. The MPCID complaint was cancelled as the MPCID base commander failed to understand that the complaint referred to the actions of the soldiers who had released the two teenagers while they were tied together. After the MAGC ordered the investigation reopened, Yesh Din was asked, on June 7, 2010, to arrange for the two youths to come and give their testimony. On the day scheduled for the interview to give testimony, when the Yesh Din researcher arrived at the teenagers' home in order to escort them where they were supposed to give their testimony, the two youths informed Yesh Din that, at this stage, after the incident had not been investigated

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136. Yesh Din File 2050/10 (Sharon and Samaria MPCID File 65/10).



for nearly two years, they were not prepared to give testimony.<sup>137</sup> Accordingly, Yesh Din put its monitoring of this case on hold.

## COMPLAINANTS RECANT ON THEIR COMPLAINTS FOR FEAR OF BEING HARMED

- On April 6, 2008, three vehicles whose drivers had lost their way arrived at the Shaar Ephraim check point in the Tulkarm area. The drivers of two of the vehicles were on their way back to their village, al-Zawiya, after taking people to a wedding in Ramallah and were following the driver of the third vehicle who was supposed to be showing them the way. Unfortunately, the lead driver, Q., made a mistake and that is how the three vehicles arrived at the check point. The check point serves as a crossing point from the West Bank into Israel. The events that followed their arrival at the check point were described by R. to Yesh Din researchers:

*"We arrived at the check point. A soldier came up to me and asked 'Where are you going?' I answered him that we had gotten lost. Then the soldier said to me that there was no such thing as 'getting lost' and hit me in the jaw with his rifle butt. I told the soldier not to hit me, I'm not a child, let me explain. If you hit me then I'll hit you, just let me explain how I got lost.*

*The soldier told us to go through the check point and park the vehicles. The soldier took our identity cards and car keys. Apart from us and our three vehicles there was nobody else in the parking area. After we parked the cars, the soldier began to hit A. (the third driver). I said to the soldier: Have you no heart? The soldier said: No, I don't have a heart. I said to him: It's because I'm an Arab and the soldier answered: Yes, because you're an Arab. A. doesn't speak Hebrew well, that's why I spoke. The soldier cursed and swore at us, our mother and so on. Then two other soldiers came from the check point and started to beat us. The first soldier told them to stop. The soldiers stood us in the detainee's area and told us to stand with our hands behind our backs. I was very tired because I hadn't slept all night. I told the soldier that I couldn't stand with my hands behind my back. The soldier told me that he didn't care. The three of us stood there while a soldier stayed to watch us. The soldier ordered us to look straight ahead, not to turn our heads and not to talk. We stood like this for about half an hour.*

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137. Yesh Din File 1564/08 (Jerusalem MPCID File 192/10).

*All of a sudden, somebody tapped me on my shoulder and told me: 'Police.' The officer said to me: 'What are you doing here? How did you get here? How did you lose your way?' Then he began to curse me. I told him that there was no sign to warn me. The policeman took each of us in turn to start his vehicle and then to immediately return and stand in the same place and in the same position. After all three of us had done this, the policeman returned with three reports. For each one of us he signed a police report carrying a NIS fine for 'exhaust fumes that could be a nuisance to passersby' even though there was nothing wrong with our vehicles. After that, the policeman got into a police jeep and left." <sup>138</sup>*

At some stage volunteers from Machsom Watch arrived on the scene and, after their intervention, the three drivers were released. When they returned to their vehicles they discovered that they had been severely damaged: their tires had been punctured, the seat upholstery had been ripped and the vehicle bodies had been severely damaged. The vehicles weren't fit to drive and the drivers were forced to order a tow truck to tow them away.

After Yesh Din had taken the testimony from one of the drivers, a complaint was made, in his name, on April 10, 2008 to the Sharon and Samaria MPCID.<sup>139</sup> A., an MPCID investigator, asked to summon the driver to give his testimony to the MPCID at the Tulkarm DCO on April 16. That day, the complainant informed Yesh Din that he would not be coming to the DCO to give his testimony as he was afraid that he would lose his livelihood. The other two drivers also informed Yesh Din that they would not give testimony at the MPCID: one because he was afraid that this would harm his livelihood and the other for fear of being harassed by soldiers. At their request, Yesh Din froze its handling of their complaint.

- In October 2007, a car carrying two brothers aged 19 and 21 arrived at the Qalqiliya check point. The two brothers were forced to get out of the vehicle they were travelling in and, according to the testimony they gave Yesh Din, they were led away by soldiers to a spot a few hundred meters from the check point where they were beaten at gunpoint. After consideration, the brothers and their father decided not to complain at

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138. Testimony of R. in Yesh Din File 1439/08. The testimony was taken by Tair Zvulon, Yudit Avidor and Azmi Bdeir on April 24, 2008 at the village of al-Zawiya.

139. Notice 307/08 at Sharon and Samaria MPCID.



the MPCID. The father of the two explained to a Yesh Din researcher that this was from fear that they would be harmed if they made a complaint.<sup>140</sup>

- In February 2008, while A. was in his shop in the village of Azoun, two military jeeps entered the village and announced the enforcement of a curfew. According to A. the soldiers in the jeeps used a loudspeaker to shout insults and denigrating remarks in Arabic. At some stage, the soldiers stopped by A.'s car that was parked outside of his shop, and damaged it. A. hid in his shop and heard them breaking in the door of a building next door and breaking windows. The cost for repairing the damage to the car was NIS 1,500.<sup>141</sup>

After a Yesh Din volunteer made a complaint in A.'s name to the Sharon and Samaria MPCID, A. was summoned to the Qalqiliya DCO, where his testimony was taken by an MPCID investigator. Among other things the investigator asked the complainant questions that had nothing to do with the complaint but rather sought to evaluate his "security" record: was he a member of a terrorist organization, had he been involved in a terrorist attack on the IDF in the past and had he been arrested in the past. After giving his testimony, the complainant decided to withdraw his complaint and explained to a Yesh Din researcher that this was due to fear that the soldiers, who enter the village regularly, might seek to take revenge on him for making the complaint. In a statement to Yesh Din, the MAGC said that the case had been closed due to lack of evidence and the decision by the complainant not to cooperate in the investigation.<sup>142</sup>

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140. Yesh Din File 1333/07.

141. Testimony of A.S. The testimony was taken on March 10, 2008 by Tzvia Shapira and Azmi Bdeir at the village of Azoun. Yesh Din File 1408/08 (Sharon and Samaria MPCID File 106/08).

142. Letter from MAOA Lt.-Col. Sigal Mashal-Shechori, August 4, 2009.

## CONCLUSION AND RECOMMENDATIONS

The chances of a criminal offense carried out by an IDF soldier against a Palestinian successfully navigating the obstacle course of the complaint procedure, an MPCID criminal investigation and the MAGC's decision- making process and finally resulting in an indictment are almost nil. There is no way to know the scope of criminal offenses committed against Palestinians by IDF soldiers – how many times in the past few years soldiers looted property in homes they entered in order to conduct searches, shot civilians in contravention of the rules of engagement and with no operational justification, and beat and humiliated passersby at check points and on roadsides. It is safe to assume that in many of these incidents, the victims waived their right to make a complaint and to demand that the IDF investigate the offenders and bring them to justice.

**The figures available to us show the minute number of cases in which complaints of alleged offenses actually resulted in criminal investigations and the indictment of those responsible: only three and one half percent (3.5%).** It would appear, therefore, that a Palestinian who approaches a human rights organization or makes his way to the police officer at the DCO will need special luck to receive a measure of relief from the military law enforcement system.

This stems from a combination of factors, the highlights of which we have examined in this report: since September 2000 the “investigation policy,” as introduced at that time, has thwarted the investigation into suspicions of serious offenses that caused the death and injury of civilians who were not involved in acts of hostility, including children. The few criminal investigations that were carried out suffered from the fact that the summoning of victims and eye witnesses to give testimony is, in many cases, a very complicated procedure, often hampered by the restrictions and constraints of the DCO'S, the SJ District Police and other bodies external to the MPCID and the MAGC; the lack of Arabic- speaking investigators serving in the MPCID forces investigators to use translation services provided by external bodies; MPCID investigators – who are usually soldiers performing their mandatory military service or reserve soldiers working for a limited period of time – suffer from professional failures and investigations are often tainted by recurring professional failings, the key ones of which we have examined in the report.



To this we must add the tendency of soldiers to observe a “code of silence” in order to protect their comrades and the very definite lack of faith of the Palestinian civilian population of the OPT in the Israeli army’s willingness to investigate and indict those of its soldiers involved in offenses against them. Indeed, the minute number of complaints that eventually result in indictments does nothing to elicit more faith in the military law enforcement agencies.

Alongside the faults and failures in the work of the investigators, the long delays at the junctures of decision by the MAGC also harm the law enforcement process. These delays can fatally impair the ability to hold or complete an investigation and hold trials in courts martial. The time that goes by affects witnesses’ memories, causes the disappearance of evidence at the scene of the event and, as a result, the chance to obtain forensic evidence. The time that goes by also affects the victims’ sense of justice, their faith that there is a real intent to investigate their complaints and the deterrence of other potential offenders. The delay in law enforcement procedures prevents the administration of justice to both the victims and the suspects.

The delay of cases by the MAOA raises a very real suspicion that many incidents that could have resulted in an indictment of those involved in the offense end with a decision to close the file without an indictment being filed, due to the evidential damage caused by the passage of time.

One of the main goals behind the establishment of the MAOA unit was, as stated before, to increase the efficiency and improve IDF law enforcement procedures within the OPT. However, Yesh Din’s monitoring shows that the extended length of time that passes between making a complaint, the decision as to whether or not to open an investigation (in those cases involving the use of weapons) and from the end of the criminal investigation by the MPCID until the decision by the MAOA as to the outcome of the investigation (in relation to all offenses), is a severe fault that significantly and negatively affects the quality of law enforcement within the IDF. As a result, both the IDF and the State of Israel fail in their duty to protect the Palestinian civilian population in the OPT.

A partial explanation for the length of time taken to reach a decision can be found in the inadequate manpower available to the MAOA: only a handful of lawyers, who, in addition to their duties of law enforcement upon IDF soldiers suspected of offenses in the OPT, also have other responsibilities.

Another significant cause of the long delays in the MAOA’s decision-making process is the need to return some of the cases to the MPCID to complete the investigation. Sometimes

the completion of an investigation takes considerable time, during which no decisions can be made regarding the prosecution's continued processing of the case. It is difficult not to feel that, if the victims came from another social group, one that has greater power and status in Israeli society, the pressure on the IDF to conclude investigations within a more reasonable length of time would bear fruit. However, since the victims are Palestinians, who have no influence on either political decision-makers or military commanders, the serious situation described here is both possible and long-lasting.

The position paper Yesh Din recently presented to the Turkel Commission, which was asked to examine the correlation between law enforcement procedures and Israel's duties according to international law, presents Yesh Din's criticism of Israel's legal interpretation of these duties and the way they ought to be implemented. This report details the practical obstacles that stand in the way of law enforcement, obstacles that are not works of nature but rather the result of decisions, the failure to allocate sufficient resources and the lack of adequate oversight over the work of the investigators.

**Yesh Din's position is that, under these circumstances, the State of Israel is failing to meet its obligations and duties to protect the civilian population living in the territory it occupied by appropriate and effective investigations into allegations of suspected criminal offenses by soldiers.**

## **RECOMMENDATIONS**

1. The MAGC must stop making the opening of criminal investigations conditional on a prior inquiry procedure and the MPCID must launch criminal investigations of all complaints that, prima facie, indicate suspicion of a criminal offense. In those instances where it becomes apparent that the incident reported by the complainant occurred under circumstances that do not involve criminal intent the investigation file should be closed, even at its early stages. However, the fact that an incident occurred within the framework of an operational activity must not, in itself, provide immunity from investigation.
2. The MPCID must maintain a permanent presence at least in the north and the south of the West Bank to make it easier for those wishing to lodge complaints to do so and be received by MPCID investigators who will take their complaints and testimonies directly.



3. The MAGC must train the MPCID investigators who investigate offenses against Palestinians in the Laws of Armed Conflict and the obligations arising from them. A special emphasis should be placed on the investigation of crimes concerning collective punishment and other similar offenses that arise from the illegitimate policies of field commanders.
4. The MPCID must make a serious and concerted effort to ensure that a large number of its investigators, at least those who come into direct contact with Palestinian complainants and eyewitnesses, speak Arabic and are capable of working in that language.
5. The MAGC must make efforts to allay Palestinians' fears that they will be harmed if they lodge complaints against members of the security forces. Among other measures, in certain cases the MAGC should consider granting the victims of crimes immunity from prosecution if they were involved in light offenses and take firm action in cases when the MPCID or MAGC learn of the harassment of complainants.
6. The MAGC must increase the size of its establishment and allocate sufficient, trained personnel for the needs of the MAOA unit.

# APPENDIX

## ADDITIONAL DATA

### Deliverers of notices that led to the opening of MPCID investigations, 2006-2009<sup>143</sup>

	2006	2007	2008	2009	Total
Palestinian civilians	14	23	23	21	81
Human rights organizations	10	39	80	56	185
Israel Police	40	104	70	41	255
IDF units	14	26	54	58	152
MAGC	74	158	59	56	347
Ministry of Defense	0	1	0	0	1
Palestinian Authority	0	0	3	4	7
<b>Total</b>	<b>152</b>	<b>351</b>	<b>289</b>	<b>236</b>	<b>1,028</b>

143. The figures in this table relate only to those complaints following which a criminal investigation was started by the MPCID. The source for the 2006-2007 figures is the IDF spokesperson's reply to an inquiry from Yesh Din on April 15, 2008. The source for the 2008-2009 figures is the IDF spokesperson's reply to an inquiry from Yesh Din on April 26, 2010. With regard to the figures for 2008, the IDF spokesperson pointed out that 34 investigations started in 2008 resulted from complaints made in 2007. The IDF spokesperson refused to provide data regarding the breakdown of investigations by type of offense for 2010 (his letter from March 10, 2011).

### Investigation files by type of offense, 2003- 2009<sup>144</sup>

	2003	2004	2005	2006	2007	2008	2009	Total
Death	17	22	15	19	54	7	11	155
Violence	75	104	109	96	223	218	153	978
Property	54	63	31	37	74	88	72	419
<b>Total</b>	<b>146</b>	<b>189</b>	<b>155</b>	<b>152</b>	<b>351</b>	<b>323</b>	<b>236</b>	<b>1,552</b>

### Investigation files opened between 2007- 2010 based on the location of the offense<sup>145</sup>

	2007	2008	2009	2010	Total
The West Bank	325	313	195	325	959
The Gaza Strip	26	10	41	17	94

144. The source for the 2003-2006 figures is the IDF spokesperson's reply to an inquiry from Yesh Din on January 9, 2008. The source for the 2007-2009 figures is the IDF spokesperson's reply to an inquiry from Yesh Din on April 26, 2010. The IDF spokesperson refused to provide data regarding the breakdown by type of offense for 2010 (his letter from March 10, 2011). The breakdown by categories displayed here (death, violence and property) is the breakdown according to which the IDF spokesperson provided the figures. These categories differ from those generally used by Yesh Din: shooting, violence, property, other.

145. The source of the figures is the IDF spokesperson's answer to an inquiry from Yesh Din on April 26, 2010 and March 10, 2011.

**Incidence of MPCID investigations into offenses against Palestinians in the OPT out of all MPCID investigations<sup>146</sup>**

<b>Year</b>	<b>Total MPCID investigations</b>	<b>Investigation of offenses in the OPT</b>	<b>Incidence of investigations in OPT out of total investigations</b>
2010	3,600	143	4%
2009	3,287	236	7%
2008	3,500	323	9%
2007	3,246	351	11%
2006	3,533	153	4%
2005	2,911	155	5%
2004	2,874	189	7%
2003	3,173	146	5%
2002	3,122	155	5%
2001	2,873	82	3%
2000	3,134	16	1%
<b>Total</b>	<b>35,253</b>	<b>1,949</b>	<b>6%</b>

146. The source of the figures is a letter from Capt. Tal Bernstein, assistant Chief Military Police Officer, to Atty. Hoshua Gottlieb, Secretary of the Turkel Commission, April 17, 2011. The letter can be accessed on the Turkel Commission web site: <http://www.turkel-committee.gov.il/files/wordocs/9482kamtzar.PDF> [Hebrew].

