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11 March 2010

### ISR103340.E

Israel: Government efforts to identify and address abuses in the military; sanctions against soldiers and officers; ethical code  
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Israel's military justice system comprises the Military Police Criminal Investigations Division (MPCID), the Military Advocate General's Corps (MAG) and the military courts (Israel July 2009, 108). In addition, the Office of the Military Advocate for Operational Affairs (MAOA) was established in October 2007 to investigate alleged offences by Israel Defence Force (IDF) soldiers against Palestinians, including actions such as the abuse of authority or use of unnecessary force (ibid., 110). The MAOA is part of the MAG headquarters (Yesh Din 4 Oct. 2009).

Allegations of criminal misconduct on the part of soldiers are generally investigated by the MPCID (Israel July 2009, 108.). In cases that "do not necessarily point to a criminal offence," the MAG will first consider the results of a "field investigation," which is "an inquiry conducted by the chain of command following operational activity" (ibid., 109). If the field investigation's findings point to a "reasonable suspicion" that a soldier has committed an offence, then MAG will launch a criminal investigation (ibid.).

As part of the criminal investigation, interviews may be conducted with people who are not part of the military, for example, eye-witnesses (ibid., 108). If enough evidence is gathered in the criminal investigation "to establish a reasonable basis for conviction," an indictment will be filed against the soldier in the Military Courts (ibid., 109).

### Field investigation / operational debriefing

Human Rights Watch has stated that the terms "field investigations," "operational investigations" or "military investigations," are "misleadingly" used by Israeli governmental officials (June 2005, 4). Human Rights Watch indicates that these investigations are actually "operational debriefings" (June 2005, 4). Similarly, the terminology "operational debriefing" is used in a 2009 Report of the United Nations (UN) Fact Finding Mission on the Gaza Conflict (UN 23 Sept. 2009). The Mission's mandate was to investigate "violations of international human rights law and international humanitarian law" relating to the military operation in Gaza that took place from 27 December 2008 to 18 January 2009 (ibid. 15 Sept. 2009).

Regarding the military system of investigation and prosecution, the UN report states that the operational debriefing lies "at the heart" of the system, adding that the debriefing is not an "effective and impartial investigation mechanism" (ibid. 23 Sept. 2009, 23). The report further indicates that the operational debriefing is

conducted by soldiers from the same unit or line of command, in collaboration with a superior officer and that it:

does not comply with internationally recognized principles of impartiality and promptness in investigations. The fact that proper criminal investigations can start only after the "operational debriefing" is over is a major flaw in the Israeli system of investigation.

The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, prompt and effective way as required by international law. (UN 15 Sept. 2009, 508)

Yesh Din - an organization composed of "volunteers who have organized to oppose the continuing violation of Palestinian human rights in the Occupied Palestinian Territory" (Yesh Din n.d.) - states that the operational debriefing is used to "evade criminal investigation" (Sept. 2008). Similarly, in a joint submission addressing the UN Mission report, various human rights organizations state that the IDF policy limits the number of cases considered for criminal investigation (ACRI et al. June 2009, 12). Investigations are opened only in response to a "well founded suspicion" that civilians were deliberately wounded or killed by IDF soldiers or officers (ibid.). The human rights groups further state that the "failure to investigate" has resulted in a "sense of impunity" among the members of the IDF (ibid.).

In contrast, the government of Israel states that the country's system for investigating soldier's misconduct is "thorough and independent" and is similar to the procedures of other Western nations (Israel July 2009, 4). The MAG's decision about whether or not to open a criminal investigation or to file an indictment can be subject to review by the Attorney General (ibid., 111). The Supreme Court of Israel "regularly" reviews the decisions of the MAG and Attorney General (ibid.). In addition, individuals and organizations can file a petition with the Supreme Court to have a MAG or Attorney General decision reviewed, including a MAG decision about whether to open a criminal investigation (ibid.). For example, in response to a petition by human rights groups, the Supreme Court reviewed an IDF decision not to criminally investigate a soldier who fired rubber bullets at a handcuffed Palestinian (Guiora13 July 2009). The Court found the IDF decision was not reasonable and that the soldier must be brought to trial (ibid.). Similarly, the Britain Israel Communications & Research Centre (BICOM) - "an independent organisation devoted to creating a more supportive environment for Israel in the UK" (n.d.) - states that Israel has a "credible," although "not perfect" system for ensuring that allegations of misconduct are investigated (BICOM 24 Sept. 2009).

### **Criminal investigations**

B'Tselem - the Israeli information centre for human rights in the occupied territory - describes criminal investigations of soldiers and officers who are alleged to have harmed Palestinians as "superficial" and as being "negligently" undertaken by the military police (11 Nov. 2009). The human rights organization further indicates that these investigations often fail to include interviews with Palestinian eye-witnesses or evidence collected from the field, even when there are no barriers to collecting such evidence (B'Tselem 11 Nov. 2009). Similarly, the UN report states that investigators are not apparently "interested" in interviewing witnesses or victims, adding that low-quality evidence is gathered (UN 15 Sept. 2009, 508).

In contrast, the Israeli government states that it faces "substantial difficulty" in gathering evidence because the Palestinian authority and/or the complainant do not cooperate or only partially cooperate (Israel July 2009, 110). The Israeli government further states it is difficult to collect physical evidence in areas where active combat is ongoing or where there may be a security risk (ibid.). Moreover, according to the government of Israel, Palestinian witnesses are interviewed in criminal investigations of alleged soldiers' misconduct, and Arab-speaking interpreters assist in the interviews (July 2009, 108).

### **Investigations and indictments of soldiers**

The government of Israel reports that from January 2002 to December 2008, 1,467 investigations into alleged criminal misconduct by soldiers were opened (Israel July 2009, 109). There were 140 indictments and 103 convictions (ibid.). Ten cases are pending (ibid.). From January to June 2009, 123 criminal investigations were opened, leading to 10 indictments (ibid.).

With respect to investigations related to misconduct by IDF soldiers against Palestinians in 2008, the Israeli government reports that the following investigations were opened: 211 investigations related to crimes of violence; 18 investigations related to civilian deaths, and 94 investigations related to crimes of property (Israel July 2009, 110).

Yesh Din reports that between 29 September 2000 and the end of 2007 ("the second Intifada"), the MPCID opened 1,246 investigations (Yesh Din Sept. 2008, 7-8). The organization reports that 78 of these investigations led to the filing of indictments (ibid.). Within the Occupied Territory (OT), 13 investigation files resulted in indictments against soldiers for killing civilian Palestinians (ibid.). Yesh Din reports that human rights groups working in the OT identified 2,000 civilians not involved in combat who were killed during the same time period (ibid.).

Moreover, Yesh Din also indicates that the speed with which complaints are processed is "so slow" that it "endangers" the investigations (n.d.). Similarly, the UN report states that there is a "pattern of delays, inaction or otherwise unsatisfactory handling by Israeli authorities of investigations, prosecutions, and convictions of military personnel" (UN 23 Sept. 2009, 543).

### **Code of conduct**

*The Spirit of the IDF* is the code of ethics of the IDF (Israel n.d.) Among other principles, the code of ethics states that IDF servicemen and women recognize the value of human life and that they should not use force to harm those "who are not combatants or prisoners of war" (ibid.). It further states they should avoid causing harm to "their lives, bodies, dignity or property" (ibid.). The research director of Yesh Din clarified, in correspondence with the Research Directorate, the following:

The "Spirit of the IDF" is indeed an ethical code and violating it does not carry by law a disciplinary, criminal or other sanctions. Disciplinary or criminal proceedings taken against IDF personnel are primarily based upon Military Jurisdiction Law and/or Israeli Penal Code. (4 Jan. 2010)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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#### Additional Sources Consulted

**Oral sources:** Representatives of the government of Israel were unable to respond to requests for information within the time frame of this Response.

**Internet sites, including:** Adalah, Al Jazeera, Amnesty International (AI), Association for Civil Rights in Israel (ACRI), Breaking the Silence, Factiva, Forward.com, The Public Committee Against Torture in Israel (PCATI), *The Guardian*, *New York Daily News*, Shomrei Mishpat, Sikkuy, *Times Online*.

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