

The General Staff Whitewashing Mechanism

The Israeli law enforcement system and breaches
of international law and war crimes in Gaza



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Cover: Destruction in a-Shati Refugee Camp after an Israeli bombardment, October 29, 2023.
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Introduction

On October 7, 2023, Hamas led a deadly surprise attack dubbed “Operation al-Aqsa Flood” on Israeli settlements and military bases. Approximately 1,200 Israelis and foreign nationals (most of them civilians) were killed in the attack, over 200 were captured and taken to the Gaza Strip, and thousands were injured.¹ The State of Israel declared war that same day, naming it “Swords of Iron War”, and stating its official goal was to “destroy Hamas’s military capabilities and topple its regime in the Gaza Strip.”²

Israel’s attack, which included a ground invasion of military forces and fragmentation of the Gaza Strip, has resulted in more extensive harm to innocents and civilian infrastructure compared to previous military attacks, as well as death and destruction on an unprecedented scale. Since October 2023, Israeli security forces have dropped thousands of tons of bombs across the Gaza Strip, which spans only 365 square kilometers and is considered one of the most densely populated areas in the world. Tens of thousands of civilians have been killed so far, over 1.7 million people have been displaced and hunger is spreading among those internally displaced.

Israel’s warfare in the Gaza Strip has been marked by massive bombardment, systematic destruction of civilian infrastructure and even starvation, drawing scathing criticism and allegations that Israeli security forces are breaching international humanitarian law (the laws of war). The International Court of Justice in The Hague (ICJ) is currently hearing a case brought against Israel by South Africa alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide. In proceedings conducted by the International Criminal Court (ICC), Prosecutor Karim Khan has filed applications for arrest warrants against senior Israeli officials after finding reasonable grounds to believe serious breaches of international law have been committed in the fighting in Gaza. Israel’s official position was to fully reject these accusations. Israel has claimed, inter alia, that the ICC has no mandate to investigate since Israeli law enforcement officials thoroughly examine alleged violations of international law.

This report seeks to examine whether Israel’s law enforcement system has the capacity to investigate alleged grave breaches of the laws of war during the war in Gaza and whether it has any interest in doing so. Under international law, Israel has an obligation to investigate actions by its agents suspected as grave breaches of the international laws of war. This includes launching criminal investigations into suspected war crimes and

1 This report addresses Israel’s law enforcement system and its response to breaches of international law by Israeli officials. For this reason, the report does not address the war crimes and breaches of international law committed by Hamas and other actors on and since October 7. Further reading: Ronny Linder, Rotem Shtarkman, “1,170: The Full Puzzle of Israel’s Deadliest Day Ever,” **TheMarker**, April 5, 2024 (Hebrew); OCHA, [Hostilities in the Gaza Strip and Israel - reported impact | Day 217](#), (May 2024).

2 [Israel Knesset website](#) (last accessed April 8, 2024).

prosecuting soldiers and commanders where there is evidence that they violated the laws of war. Failure to fulfill this duty constitutes a violation of the laws of war.

In May 2024, the Israeli military reported that dozens of investigations were been opened into incidents that occurred during the war in which soldiers are suspected of committing offenses. In addition, the military reported that hundreds of other incidents were forwarded to its “mechanism for the investigation of exceptional incidents,” officially known as the General Staff Mechanism for Fact-Finding Assessments (FFA Mechanism). Established in 2014, the FFA Mechanism serves as a permanent body tasked with conducting rapid preliminary inquiries into complaints and allegations of violations of the laws of war outside of the military’s routine operations and assisting the Military Advocate General’s Corps in decisions on whether to launch a criminal investigation.

It may seem impossible to predict how Israeli law enforcement mechanisms will operate in the face of such a large number of extremely grave suspicions. And yet, given the past outcomes of law enforcement, as presented in this report, it is highly doubtful whether the State of Israel is willing or able to conduct serious, effective investigations into grave allegations of violations of the laws of war during the war in Gaza. Past experience shows consistent failure on the part of Israel’s law enforcement system, which avoids investigating decision makers at the top command levels and rarely opens investigations against junior-ranking soldiers. When investigations are opened, foot-dragging is a typical practice and the rate of prosecution is extremely low, giving the impression that they merely serve as a shield against external criticism.

Based on the analysis and figures provided in this report, it is fair to postulate that Israel will not take appropriate action to investigate suspected violations of international law that occurred as part of its war in Gaza. Therefore, only an external, professional and independent investigation, including into the individuals who design Israel’s war policies and their various aspects, could meet the requirements of international law. Such an investigation must address allegations of indiscriminate bombing and use of control over the entry of humanitarian aid as an instrument of war.

Kill Zones

It is May 2024, the war is still underway and it is already considered one of the most destructive wars of the current century.³ The scale of civilian casualties is unusual compared with other 21st Century wars,⁴ and larger than previous Israeli attacks waged in the Gaza Strip.⁵ The war's outcomes have been catastrophic. According to statistics collected by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) at the time of writing, more than seven months since the war began, over 36,000 people, most of them civilians, have been killed in Gaza. Of the identified victims, 7,797 were children and 4,959 were women. More than 10,000 others are missing; most of them are likely dead and buried under the rubble.⁶ According to estimates by UNICEF (the United Nations International Children's Emergency Fund), Israel's attack has left at least 17,000 children without adult caregivers, either orphaned or separated from their parents, and more than 1,000 children have had limbs amputated.⁷ More than 60% of Gaza's homes have been damaged or destroyed in Israeli bombings and are no longer fit for human habitation. Most residents of the Gaza Strip, approximately 1.7 million Palestinians, have been displaced, and most IDPs are sheltering in temporary camps in the southern Gaza Strip. Many IDPs have been forced to flee again after the Israeli army began attacking Rafah, where they had been sheltering. Several hundreds of thousands of people remained in the northern Gaza Strip, either because they were unable to make the journey south or feared it. A joint UN World Bank report released in March 2024 stated that more than half of Gaza's residents were on the brink of starvation and that the entire population of Gaza was experiencing food insecurity and malnutrition.⁸ The dire shortage of food, medicine and aid has created a colossal humanitarian disaster that is only getting worse.

Since the beginning of the war, thousands of Gaza residents, including people who were lawfully present in Israel when the war broke out, have been imprisoned in disgraceful conditions without clear cause, without judicial review and in complete isolation from the world. At least 36 of them died in Israeli custody in the military detention center

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- 3 Imogen Piper, Evan Hill, Meg Kelly, Jarrett Ley, "Israel has waged one of this century's most destructive wars in Gaza", **The Washington Post**, December 23, 2023.
 - 4 Lauren Leatherby, "Gaza Civilians, Under Israeli Barrage, Are Being Killed at Historic Pace", **The New York Times**, November 25, 2023.
 - 5 Yagil Levy, "The Israeli Army Has Dropped the Restraint in Gaza, and the Data Shows Unprecedented Killing", **Haaretz English website**, December 9, 2023.
 - 6 OCHA, [Hostilities in the Gaza Strip and Israel - reported impact | Day 234](#), (May 2024).
 - 7 UNICEF, **Stories of loss and grief: At least 17,000 children are estimated to be unaccompanied or separated from their parents in the Gaza Strip** (February 2023); Elisa Griswold, "The Children Who Lost Limbs in Gaza", **The New Yorker**, March 21, 2024.
 - 8 World Bank, UN, [Gaza Strip Interim Damage Assessment](#) (March 2024).

"Sde Teiman".⁹ During the fighting in Gaza, looting, abuse of detainees and humiliation of women have grown rampant. These are the types of offenses that undermine the image the Israeli military has sought to uphold in the past. Soldiers have even posted videos and photos of themselves looting property, humiliating Palestinian detainees and posing in Palestinian women's underwear, in what is emblematic of further erosion in the military's commitment to the laws of war and to the Israeli ethos of the IDF being most moral in the world.¹⁰

The disaster currently unfolding is a direct result of Israel's use of force policy during the Gaza war. Upon launching the military assault, the Israeli authorities cut off the water and electricity supply to Gaza's population and restricted the entry of fuel and essential humanitarian aid into the Strip. OCHA found that Israel systematically prevented the transport of aid to Gaza residents remaining in the northern Gaza Strip, cutting off their access to food, water and medical services.¹¹ According to an investigation by Local Call and +972 Magazine, Israeli decision makers inside the government and the army significantly expanded what they consider permissible "collateral damage", meaning, harm to innocent civilians and civilian infrastructure. Tens of thousands of Palestinians were incriminated by AI systems and marked as targets for bombings, and the military frequently approved the use of one-ton bombs on inhabited residential buildings, knowing that a large number of innocent civilians and civilian infrastructure would be harmed. Hundreds of families were wiped off the face of the earth in this manner.¹² An investigation by Haaretz newspaper revealed that entire areas in the Gaza Strip were designated by Israel as kill zones, where various combat units have allegedly killed Palestinian civilians who posed no danger to their lives simply because they were previously and unknowingly marked as kill-worthy ahead of time.¹³

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- 9 For further reading: Hagar Shezaf, "Two Gazan Laborers Die in Israeli Custody, Army Fails to Open Investigation", **Haaretz English website**, November 6, 2023; Hagar Shezaf, "27 Gaza Detainees Have Died in Custody at Israeli Military Facilities Since the Start of the War", **Haaretz English website**, March 7, 2024; Hagar Shezaf, Michael Hauser Tov, "Doctor at Israeli Field Hospital for Detained Gazans: 'We Are All Complicit in Breaking the Law'", **Haaretz English website**, April 4, 2024.
- 10 Oren Ziv, "Rugs, cosmetics, motorbikes: Israeli soldiers are looting Gaza homes en masse", **+972 Magazine**, February 20, 2024; Yaniv Kubovich and Bar Peleg, "Israeli Army Conducting Criminal Investigation Into 48 Deaths of Gazans During War, Mostly Detainees", **Haaretz English website**, June 3, 2024.
- 11 OCHA, [Hostilities in the Gaza Strip and Israel I Flash Update #120](#) (February 2024).
- 12 Yuval Avraham, "'A mass assassination factory': Inside Israel's calculated bombing of Gaza", **+972 Magazine**, November 30, 2023; Yuval Avraham, "'Lavender': The AI machine directing Israel's bombing spree in Gaza", **+972 Magazine**, April 3, 2024.
- 13 Yaniv Kubovich, "Israel Created 'Kill Zones' in Gaza. Anyone Who Crosses Into Them Is Shot", **Haaretz English website**, March 31, 2024; See, for example, footage of the killing of unarmed civilians in Khan Yunis: Jack Khoury, "IDF Probes Footage of Unarmed Palestinians Struck From the Air, Killed in Gaza", **Haaretz English website**, March 23, 2024; Documentation of a soldier describing killing an unarmed civilian in the northern Gaza Strip: Emanuel Fabian, "IDF probing leaked video of soldiers appearing to discuss killing of unarmed Gazan", **The Times of Israel**, March 10, 2024; Footage of a group of people waving white flags being shot near Khan Yunis: Lottie Kilrairie, "Gaza white flag

The bombardment and siege policy, for which the decision makers and senior officials in the government and army are responsible, led to fierce criticism and heavy suspicions that the State of Israel is operating in violation of the rules of international humanitarian law during its war in Gaza. Michael Fakhri, Special Rapporteur on the right to food says that intentional starvation in Gaza is a war crime and constitutes “a situation of genocide”.¹⁴ A legal opinion presented to the British Government found that Israel is violating the rules of international humanitarian law in the Gaza Strip.¹⁵ A US State Department report from May 2024 found that it is likely that Israel violated the laws of war in Gaza, inter alia, using weapons provided by the US.¹⁶

On December 29, 2023, South Africa brought a case against Israel at the International Court of Justice in The Hague (ICJ), the United Nation’s main legal instrument for commission of the crime of genocide.¹⁷ On January 26, 2024, the ICJ found reasonable grounds that the rights of Gazans were violated under the Convention and accordingly issued a series of provisional measures obligating Israel to take measures in order to prevent genocide, prevent incitement to commit genocide and to provide humanitarian aid.¹⁸ On May 24, 2024, the ICJ indicated a measure ordering Israel to immediately halt its military offensive in Rafah that could inflict on the population in Gaza conditions that could lead to full or partial physical destruction of the Palestinian people, and a measure ordering Rafah Crossing to be opened.¹⁹

In November 2023, Karim Khan, the Prosecutor of the International Criminal Court (ICC) announced that the ICC investigation into the “situation in the State of Palestine”, which began in March 2021, was expanding following the offensive in Gaza and claims brought forth by several countries to the ICC regarding violation of international law by Israel.²⁰ On May 20, 2024, Khan announced that the evidence gathered as part of the ICC’s investigation has led to the conclusion there are reasonable grounds to believe

shooting: News analyse how the incident unfolded frame-by-frame”, **ITV**, February 9, 2024; **UN Human Rights in Occupied Palestinian Territory, Unlawful killings in Gaza City – OHCHR Press Release**, December 29, 2023.

14 Nina Lakhani, “Israel is deliberately starving Palestinians, UN rights expert says”, **The Guardian**, February 27, 2024.

15 Toby Helm, “UK government lawyers say Israel is breaking international law, claims top Tory in leaked recording”, **The Guardian**, March 30, 2024.

16 Julian Borger, “US finds Israel’s use of weapons in Gaza ‘inconsistent’ with human rights law, but will not cut flow of arms”, **The Guardian**, May 11, 2024.

17 **International Court of Justice**, [Proceedings instituted by South Africa against the State of Israel on 29 December 2023](#), December 29, 2023.

18 **International Court of Justice**, [Order respecting South Africa’s request for provisional measures](#), January 26, 2024.

19 **International Court of Justice**, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Modification of the Order of 28 March 2024, May 24, 2024.

20 [International Criminal Court website](#) (last accessed May 1, 2024).

the allegation that international law was gravely breached during Israel's war in Gaza. The Prosecutor applied to the Court to issue warrants for the arrest of Prime Minister Benjamin Netanyahu and Minister of Defense Yoav Gallant for committing war crimes and crimes against humanity, including starvation of civilians as a method of warfare as a war crime, extermination as a crime against humanity and persecution as a crime against humanity.²¹



Displaced persons on the way to Rafah, November 9, 2023. Photo: Mohammed Zaanoun, ActiveStills

The prohibition on intentionally harming civilians in the course of warfare is one of the most important guiding principles of the laws of war, obligating both the senior ranks responsible for approving the policy for military use of fire as well as the forces on the ground to avoid harming civilians and civilian infrastructure. Israel's application of force appears to be an intentional policy of mass killing, in complete contradiction of the norms governing warfare. According to the principle of proportionality, which appears in the first Protocol of the Geneva Convention, forces involved in combat have the duty to avoid attacking legitimate targets if they are expected to cause collateral harm to civilians and civilian infrastructure in such a way that would be excessive compared to the military advantage that would result from achieving the target. An additional principle of the laws of war obligates the military to make use of arms and ammunition that minimize harm to

21 The Prosecutor's statement in: [International Criminal Court website](#) (last accessed May 25, 2024).

civilian and civilian objects even when a legitimate target is being attacked. Therefore, the military is obligated to apply cautionary measures to minimize any collateral damage even if an allegedly legitimate target is attacked.²²

It is noteworthy that international bodies have jurisdiction to open an investigation and prosecute officers, soldiers or civilians suspected of committing war crimes on the condition of the absence of internal effective investigation proceedings at the domestic level that adhere to international standards of investigation and trial. The Rome Statute that took effect in 2002 sets forth the ICC's jurisdiction to itself investigate individuals' criminal responsibility in relation to the crime of genocide, crimes against humanity, war crimes and the crime of aggression. According to the principle of complementarity, a fundamental rule in the Rome Statute, the ICC's jurisdiction complements that of domestic law enforcement systems to investigate allegations regarding commission of international crimes. Therefore the ICC may only intervene in cases when local enforcement agencies in the relevant country are unable or unwilling to conduct genuine, immediate, professional and serious investigation proceedings when there are suspicions that its members committed crimes that fall under the Court's jurisdiction (including war crimes) and bring those responsible to justice.²³

The State of Israel has insofar refused to recognize the ICC's territorial jurisdiction to investigate suspected war crimes its members carried out because Israel rejects "Palestine" as a state with the legal power to accede to the Rome Statute, and because it claims it has law enforcement mechanisms that uphold the principle of complementarity.²⁴ Israeli legal experts and speakers frequently make use of the Israeli law enforcement system mainly as a means to shield Israel from criticism and reject international tribunals' jurisdiction. In this context, we note that external review of the state's duty to investigate and act to bring to justice breaches of the rules of international law are sometimes perceived in Israel as legal and political actions that fit into a broader campaign against Israel.²⁵ It was recently revealed that the former Mossad head Yossi Cohen allegedly threatened the former ICC Prosecutor Fatou Bensouda and attempted to pressure her to halt the investigation against Israel. According to The Guardian's investigation, the senior ranks in Israel approved these actions based on the assumption that the ICC operates against the State of Israel.²⁶

22 **Additional Protocol (I) to the Geneva Conventions**, 1977, Art. 48, 51, 57.

23 **Rome Statute (1998)**, Art. 17(1)(a).

24 See the Attorney General's position in: [Ministry of Foreign Affairs website](#) (last accessed May 1, 2024).

25 See for example: Lieutenant Colonel (Res.) Hagai Rothstein, Dr. Rafael Ben Ari, "The General Staff Mechanism from Vision to Reality", **Ma'archot** (2023) (Hebrew) (Hereinafter: The General Staff Mechanism from Vision to Reality), pp.14.

26 Harry Davies, "Revealed: Israeli spy chief 'threatened' ICC prosecutor over war crimes inquiry", **The Guardian**, May 28, 2024.

Israel sent an official letter to the ICC Prosecutor after the ICC launched an investigation into Israel's suspected violations of international law in the Gaza Strip and West Bank in 2021. In the letter, Israel argued that the ICC does not have a mandate to investigate, since the Israeli law enforcement system itself investigates allegations directed against Israeli security forces.²⁷ In May 2024, Attorney General Gali Baharav-Miara stated that the ICC Prosecutor's application for arrest warrants for the Prime Minister and Minister of Defense are unfounded. According to the Attorney General, Israeli law enforcement officials "thoroughly examine all credible allegations of violations of the law by state officials, and enforce the law." According to her, "Israel's legal system is prepared to examine any credible allegation both with regard to policy and specific incidents."²⁸

And yet Israel's lax policy permitting use of force, which raises heavy suspicions of grave violations of international law, will likely not be reviewed by the military law enforcement system. Yesh Din's monitoring reflects that as a rule, the Israeli law enforcement system does not address the responsibility of government and military decision makers. Thus, based on past experience, those involved in dictating Israel's bombardment and open-fire policies or who made decisions concerning how much humanitarian aid entered the Gaza Strip will not be investigated or tried. Rather, the military law enforcement system addresses (while granting near full immunity) only what it terms "exceptional cases" carried out by soldiers. In doing so, the military law enforcement system provides de facto immunity from investigation and prosecution to the senior political and military ranks despite their responsibility for dictating policy and drafting the instructions and orders during war. For example, investigations that led to indictments involved only relatively junior officers and focused on cases in which it appears the army has an interest in improving its image and maintaining a semblance of a functioning system of law enforcement. Thus, the military law enforcement system did not examine the legality of bombarding residential neighborhoods or firing live rounds at protestors, yet it did address property offenses committed by soldiers who operated independently, or in cases that were documented and harmed the army's image.

Refraining from investigating decision makers also results from an essential flaw in the structure of the law enforcement system. The Attorney General provides counsel regarding the legality of the government's policy during war, and the Military Advocate General's Corps (MAGC) approves the legality of the military's operations. The International Law Department, which is part of the Military Advocate General's Corps, is responsible for providing legal counsel for military operations that involve issues pertaining to international law.²⁹ For example, the military claims that every Israeli bombardment in Gaza during "Swords of Iron War" gained approval from legal advisors in order to ensure it conforms

27 Israel and the Prime Minister's position are available on the [Ministry of Foreign Affairs website](#) (last accessed May 3, 2024).

28 Statement on behalf of the Attorney General in: [The Israeli Government website](#) (Last accessed May 26, 2024).

29 [Military Advocate General's Corps website](#) (last accessed April 8, 2024).

with international law.³⁰ In parallel, the Attorney General heads the general prosecution and is responsible for trying suspects, while the Military Advocate General's Corps is the body supposed to investigate and try military personnel following suspected war crimes committed by soldiers. This means that in cases where grave IHL violations during the war in Gaza are suspected, the Military Attorney General will be forced to decide whether to launch an investigation of the incidents in which the MAG or her subordinates in the MAG Corps played a meaningful role. Thus, the bodies that provide counseling and investigation are one and the same, and they are inherently engaged in a conflict of interests with regards to investigation of policies they themselves approved. This is an essential flaw in the Israeli system's capacity to investigate itself impartially.

30 Julia Frankel, "Israel's military campaign in Gaza seen as among the most destructive in recent history, experts say", **AP**, January 11, 2024.

Israel's law enforcement mechanisms and the General Staff Mechanism for Fact-Finding Assessments

Every country must launch an independent investigation into allegations or reports that raise suspicions that state officials committed grave violations of the international laws of war (war crimes).³¹ Thus, the obligation incumbent on Israel to investigate suspected violations of the laws of war and war crimes complements the prohibition on violating the laws of war. Refraining from investigating constitutes a violation of international law.

The State of Israel presents itself as though it operates according to the rules of international law and flaunts its law enforcement mechanisms, which it describes as independent, impartial and compliant with international standards for investigating suspected breaches of international law. The claim that deviations from the law during the war in Gaza are being examined and investigated by the independent judiciary in Israel has assumed a central position in the Israeli legal team's arguments in the suit South Africa brought to the International Court of Justice in the Hague. During the first hearing, Prof. Malcolm Shaw of Israel's legal team sought to reject the Court's jurisdiction to hear the case and argued that "Even if soldiers violated the laws of war, it would be heard in the framework of the Israeli judiciary."³² During an additional urgent public hearing addressing South Africa's request for indication of additional provisional measures as part of the case against Israel, Dr. Gilad Noam of Israel's legal team argued that the State was committed to upholding international law and has the mechanisms necessary to investigate and examine suspicions raised against its security forces personnel in order to ensure accountability when the law is breached.³³

Despite these statements, Yesh Din has found that Israeli soldiers and officers have near immunity from prosecution in cases of harm to Palestinians. For example, every year dozens and hundreds of complaints of soldiers harming Palestinian are brought to the military's attention, yet criminal investigations are launched in very few of these instances. In the rare cases in which soldiers were convicted - even in instances when they killed Palestinians - the military courts imposed very lenient sentences, such as community service.³⁴ The culture of impunity that has developed in Israel sustains Israeli soldiers and commanders' lack of accountability.

31 **Convention (IV) relative to the Protection of Civilian Persons in Time of War**, Geneva (1949), Articles 146-147.

32 Michael Houzer Tov, Yaniv Kubovich, Ofer Aderet, Chen Maanit, "Israel responded to the claims in the Hague: The demand for a ceasefire harms our right to self-defense", **Haaretz**, January 12, 2024 (Hebrew).

33 Prof. Amichai Cohen, Dr. Eran Shamir-Borer, "The International Court of Justice in the Hague's hearings in the case of South Africa v. Israel in light of the operation in Rafah", **Israel Democracy Institute**, May 16, 2024 (Hebrew).

34 Yesh Din, [Summary of figures for 2017-2021. Data sheet: Law enforcement against Israeli soldiers](#)

In 2010, the Israeli government established the Public Commission to Examine the Maritime Incident of 31 May 2010 (the Turkel Commission) to assess alleged breaches of international law during the Israeli takeover of a flotilla that sailed from Turkey to the Gaza Strip and which culminated in the killing of nine passengers. Yesh Din submitted a legal opinion to the Turkel Commission and also appeared before it.³⁵ The second part of the Turkel Commission's report was published in 2013 and reviewed existing Israeli investigation mechanisms with respect to alleged violations of the international laws of war and how suited they were to the required international standards. The report highlighted a number of structural problems within the military law enforcement system and included several recommendations designed to improve certain aspects of its work. The Ciechanover Committee was established in 2014 and tasked with recommending ways of implementing the recommendations in the second part of the Turkel Commission's report. Two and a half years after the Turkel Commission's report was published, the Ciechanover Committee published its recommendations.³⁶

In light of the international and domestic criticism against Israeli investigation mechanisms, Israel made a number of changes designed to improve the military law enforcement system, which is responsible for investigating suspected offenses committed by soldiers against Palestinians and investigating war crimes. These changes were chiefly designed to bring Israel's domestic review and investigation mechanisms to adhere to the provisions of international law. The Turkel Commission found that according to the rules of customary international humanitarian law, a state is obligated to open an investigation when there is reasonable doubt to believe that war crimes that can never be justified were committed. However, in circumstances that do not raise a clear suspicion of war crimes, a "fact-finding assessment" should be conducted initially and subsequently used to determine whether or not to launch an investigation.³⁷

One of the main updates the military system undertook was to establish the General Staff Mechanism for reviewing exceptional cases, also known as the General Staff Mechanism for Fact-Finding Assessments (FFA Mechanism) in 2014.³⁸ The statement regarding the establishment of the FFA Mechanism noted this was "part of the process to apply the recommendations of the public commission headed by Supreme Court Justice (retired)

[suspected of harming Palestinians and their property - Summary of figures for 2017-2021](#) (December 2022). (Hereinafter: Yesh Din, [Summary of figures for 2017-2021](#)).

35 Yesh Din, [The Duty to Investigate - Position paper submitted to the Turkel Commission](#) (April 2011)

36 Yesh Din, [The Ciechanover Report - dodging the criminalization of war crimes and practical steps toward implementation](#) (October 2015).

37 The Turkel Commission, **Second Report: Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law** (February 2013), pp. 449

38 Regarding the establishment and the work of the General Staff Mechanism for Fact-Finding Assessments see: **Ibid.**

Jacob Turkel.”³⁹ This mechanism was established during the military offensive in Gaza dubbed “Protective Edge” in order to examine what the military terms “exceptional cases”. Meaning the FFA Mechanism addresses alleged breaches of international law during the course of significant military events, prior to a decision whether to launch a criminal investigation.⁴⁰

Until 2014, the Military Advocate General examined allegations of offenses committed by soldiers in the West Bank and the Gaza Strip identically. The main means the MAG employed in order to understand whether it was necessary to open an investigation or not into allegations against soldiers and commanders in the West Bank or Gaza Strip was the operational debriefing. By establishing the General Staff Mechanism for Fact-Finding Assessments (FFA Mechanism), the military created de facto a distinction between the way the military law enforcement systems handles routine incidents concerning harm to Palestinians in the West Bank and the way it investigates suspected offenses during military operations or significant incidents in the Gaza Strip.⁴¹ To the best of Yesh Din’s knowledge, at least 690 incidents were referred to the FFA Mechanism concerning soldiers or commanders suspected of violating the law between 2014, when the FFA Mechanism was established, and 2022. These include 330 incidents that took place during the military offensive “Protective Edge” in 2014, an incident in which a UNIFIL soldier was killed in 2015;⁴² 250 incidents that took place during the operation to repress mass protests by the Gaza perimeter fence in 2018-2019; 84 incidents during the military offensive “Operation Guardian of the Walls” in 2021; and 25 additional incidents following the military offensive in 2022 termed “Operation Breaking Dawn”.⁴³

The military published general annual data regarding the work of the FFA Mechanism but did not specify who its members are or their identities. According to the military’s

39 [Military Advocate General's Corps website](#) (last accessed April 8, 2024).

40 Decisions of the MAG regarding exceptional incidents that occurred during “Operation Protective Edge” - Update no. 6 (Hebrew). In: [Military Advocate General's Corps website](#) (last accessed May 15, 2024) (Hebrew).

41 By applying the FFA Mechanism, the army separated handling allegations of violation of the law during the war in Gaza which was subordinated to the laws of war only, and “routine” law enforcement work in the West Bank, which is measured according to the standards of international law, which applies to Israel as the occupying force. However, the Gaza Strip has been under Israel’s control through a military occupation regime for over 56 years and a siege that has been ongoing for over 16 years. International law recognizes that while the features of Israel’s effective control over the Gaza Strip have changed since Israel unilaterally pulled out of Gaza in 2005, the regime remains an occupation, albeit materially different from the type of control over the West Bank. Further reading: Gisha, [Gaza Up Close](#) (June 2023); Sari Bashi, Kenneth Mann, **Disengaged Occupiers: The legal status of Gaza**, Gisha, January 2007; ICRC, [What does the law say about the responsibilities of the Occupying Power in the occupied Palestinian territory?](#) (March 2023).

42 Military Spokesperson to Yesh Din, Response to Application under the Freedom of Information Act (Hebrew), August 4, 2019.

43 The General Staff Mechanism from Vision to Reality. pp. 38 (Hebrew). Yesh Din does not have any further information regarding the results of the FFA Mechanism’s work in the context of the military offensive “Breaking Dawn”.

publications, several “fact finding teams” operate as part of the FFA Mechanism and they are comprised of senior officers in active and reserve duty, as well as civilians employed by the military. According to the military, FFA Mechanism members do not participate in decision making or combat during the war and are outside of the chain of command. Pursuant to the Military Justice Act, the FFA Mechanism teams are allowed to collect information inside the military and outside of it, and by law soldiers and commander are obligated to cooperate with the work of the FFA Mechanism. According to the military, the FFA Mechanism includes officers who “hold expertise in relevant fields including intelligence, munitions, and weaponry, targeting operations, linguistic skills that assist in gathering open-source material, and are provided with legal advice.”⁴⁴ According to the military’s response to Yesh Din’s application under the Freedom of Information Act, “Members of the FFA Mechanism meet occasionally for training and meetings as needed, and address examining the incidents referred to them.”⁴⁵ According to Haaretz, the FFA Mechanism is currently headed by Major General (reserves) Yoav Har-Even, who oversaw the military’s operations directorate, and served as chair of the Israeli arms company RAFAEL.⁴⁶

In addition to the military’s vagueness regarding the composition of the FFA Mechanism and lack of information regarding its members, one of the main difficulties its work invokes is its characteristic lack of transparency. The FFA Mechanism releases no information about its work or the criteria for determining which cases are referred to it. There is currently no information publicly available regarding the quality of the FFA Mechanism’s assessments, nor on the guidelines for its work. With the exception of a few general figures about the number of incidents forwarded to the FFA Mechanism and the total number of incidents regarding which it concluded its inquiries, the military did not respond to Yesh Din’s concrete queries about the incidents transferred to the FFA Mechanism for review. It is important to note that the FFA Mechanism’s assessments are not on par with a criminal investigation. Rather, it is a mechanism for carrying out a factual review “in a short timeframe, in order to conduct a swift and effective inquiry” prior to referring to incident to the Military Advocate General.⁴⁷ The FFA Mechanism’s work is supposed to include collecting and coordinating materials and data to assist the MAG Corps’ decision whether to launch a criminal investigation or close the complaint without an investigation.

44 [Military Advocate General's Corps website](#) (last accessed April 8, 2024).

45 Military Spokesperson to Yesh Din, Response to Application under the Freedom of Information Act (Hebrew), August 4, 2019.

46 Yaniv Kubovich, “Israeli Army to Initiate Next Week Investigation Into Its Conduct During October 7 Attack and Preceding Failures”, **Haaretz English website**, February 19, 2024.

47 The MAG’s decision regarding exceptional incidents that took place during “Operation Protective Edge”. In: [Military Advocate General's Corps website](#) (Hebrew) (last accessed May 1, 2024).

The Turkel Commission recommended establishing in procedure “a timeframe of a few weeks” for the MAG to decide whether to order an investigation based on the material assembled by the FFA Mechanism for achieving compliance with the duty to investigate as it is set out in international law. Regarding the duration of the FFA Mechanism’s work, the Commission found that the MAG should “instruct the fact-finding assessment team to examine the circumstances of the incident within a shorter period of time than the timeframe set for his decision to initiate an investigation.”⁴⁸ The Ciechanover Committee recommended the FFA Mechanism provide its findings to the MAG within 30 days from the start of the assessment. The Chief of Staff or deputy Chief of Staff may extend this timeframe in increments of no more than 45 days and provide a reason for the extension.⁴⁹ With regards to the MAG’s decision whether to open an investigation or not, the Ciechanover Commission recommended that the decision regarding whether to open an investigation be limited to 14 weeks, and in exceptional cases this deadline can be extended by an additional 14 weeks.⁵⁰

Investigating suspected violations of international law during the current offensive in Gaza

Given the severe criticism against Israel, in February 2024 the military reported that it was using the “FFA Mechanism to assess exceptional cases” to examine reports and complaints of suspected breaches of the laws of war during the war in Gaza “in accordance with its obligations under Israeli and international law”. The military’s statement noted that the FFA Mechanism was in the initial stages of collecting data regarding hundreds of incidents that took place during combat.⁵¹ In addition to the incidents referred to the FFA Mechanism, at the time of writing in May 2024, the MAG has insofar ordered immediate investigations into at least 70 incidents of suspected offenses related to the death of detainees in military custody, the conditions in the incarceration base Sde Teiman, the killing of uninvolved civilians, and offenses including violent offenses, property offenses and looting.⁵²

48 The Turkel Commission, “Second Report: Israel’s Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law” (February 2013) pp. 385

49 Further reading: [Team for the Review and Implementation of the Second Report of the Public Commission for the Examination of the Maritime Incident of May 31st 2010 Regarding Israel’s Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Law of Armed Conflict According to International Law, Report](#) (August 2015), (hereinafter: [Ciechanover Report](#)), pp. 23.

50 *Ibid*, pp. 26

51 Yaniv Kubovich, “Israeli Army Probing Death of 12 Hostages in Kibbutz Be’eri House Shelled on Orders of Senior Officer”, [Haaretz English website](#), February 6, 2023.

52 Yoav Zitun, “The MAG: ‘70 MPCID investigations opened since the start of the war - including looting and the deaths of Gazan detainees’”, [Ynet](#), May 27, 2024 (Hebrew) [Military Advocate General’s Corps website](#) (last accessed April 8, 2024).

According to the military, the FFA Mechanism has already begun assessing the incidents that occurred during this war by gathering “open-source material on the incident, relevant military directives, identification of the unit that participated in the incident, operational data regarding means and methods employed during the incident, and relevant information regarding enemy conduct which may have affected the outcome of the incident or operational considerations.”⁵³ According to Israeli media reports, the incidents transferred to the FFA Mechanism for review include the killing of dozens of Gazan civilians during the distribution of humanitarian aid also known as the “flour massacre”; bombarding al-Israa University in the area of Gaza city; the killing of dozens of Palestinian civilians after striking a structure in Jabaliya where a Hamas battalion commander was present; the killing of four unarmed civilians by an unmanned aircraft in the Khan Yunis area, and the killing of dozens of Palestinians in a IDP camp in Rafah as a result of an Israeli strike.⁵⁴ The FFA Mechanism also began reviewing the incident in which 13 Israeli hostages were killed in a bouse bombarded by the army in Kibbutz Be’eri; the incident in which three Israeli civilians kidnapped to Gaza were killed by soldiers; and the deaths of 21 Israeli reserve soldiers who were inside a building, in which explosive materials set by the army were detonated.⁵⁵

A foreseeable failure

Yesh Din’s analysis of the preliminary assessments concerning “Operation Protective Edge”, the Great March of Return incidents and “Operation Guardian of the Walls”, which will be presented in detail, demonstrates that the FFA Mechanism’s work during the past decade is characterized by a slow pace that does not adhere to the deadlines recommended by the Ciechanover Committee regarding assessment and investigation following the Turkel Commission’s conclusions.⁵⁶ Moreover, the timeframe for conducting a factual assessment by the FFA Mechanism does not comply with international standards, which require incidents which give rise to suspicions of war crimes and unjustified harm to innocent persons to be investigated swiftly and effectively.⁵⁷

53 [Military Advocate General's Corps website](#) (last accessed April 8, 2024).

54 [The Military Spokesperson's website](#) (Hebrew) (last accessed April 8, 2024); Elisha Ben Kimon, “IDF Gaza Division commander reprimanded for blowing up Gaza university”, **Ynet English website**, March 11, 2024; Jack Khoury, “IDF Probes Footage of Unarmed Palestinians Struck From the Air, Killed in Gaza”, **Haaretz English website**, March 23, 2024; Yoav Zitun, “Airstrike on Hamas terror leaders was kilometer from Rafah refugee camps, IDF says”, **Ynet English website**, May 28, 2024.

55 Yaniv Kubovich, “Israeli Army Probing Death of 12 Hostages in Kibbutz Be’eri House Shelled on Orders of Senior Officer”, **Haaretz English website**, February 6, 2023. Yaniv Kubovich, “Israeli Army Investigating Dozens of Suspected Violations of International Law by Its Soldiers in Gaza”, **Haaretz English website**, February 6, 2024.

56 [Ciechanover Report](#).

57 ICRC, [Guidelines on investigating violations of IHL: Law, policy and good practice](#) (Sep 2019).

The FFA Mechanism's slow pace points to a failure that can be suspected as an intentional flaw in the military law enforcement mechanism. Long timeframes delay the criminal investigation to a later date, hindering collection of evidence and testimonies that will enable conducting a proper and serious investigation of the events. Because the FFA Mechanism proceedings for reviewing incidents are lengthy, even if the Military Advocate General decides to launch an investigation into allegations of breaches of international law, investigation bodies will find it extremely difficult to collect findings and conduct a serious and effective investigation when such a long time has elapsed since the incident occurred. The material collected by the FFA Mechanism remains confidential and cannot be used against suspects involved in cases when a criminal investigation is subsequently ordered.⁵⁸ This means that if a criminal investigation is indeed launched after the FFA Mechanism's review, it would need to begin anew by collecting all evidence and testimonies a long time after the incident occurred. It is likely that many of the soldiers who were involved in incidents that raised suspicions of breaches to international law are no longer in active duty, and it is also possible that they are no longer subject to military law.⁵⁹ For example, as will be detailed later, it is all but absurd that nearly a decade after "Operation Protective Edge", there are still incidents from this operation under review by the FFA Mechanism. In addition, the FFA Mechanism's review is confidential, allowing soldiers and commanders to "rehearse" their version of the incident prior to opening a criminal investigation into the incident, and could be used by those involved in the inquiry to coordinate their testimonies.

An additional failing Yesh Din previously pointed out is the dual role of the General Staff Mechanism for Fact-Finding Assessments.⁶⁰ The scope of the FFA Mechanism is not limited to assessing suspicions of breaches of international law. It also serves as an operational evaluation tool and for internal military purposes.⁶¹ Thus, the FFA Mechanism is also used as a means designed to improve the military's work and operational capacity, and it is not a mechanism designed exclusively for investigating suspected war crimes or crimes against humanity. This dual purpose of the FFA Mechanism's work creates a conflict of interests between a means designed for collecting data, assigning legal responsibility and opening an investigation of soldiers and commanders who allegedly

58 The Military Justice Act stipulates that inquiry materials will remain confidential and be provided only to military bodies that require them in order to fulfil their missions - "The inquiry material will not be given to any investigation body". **Military Justice Act**, 5715-1955, Art. 539 A (B)(2) (Hebrew).

59 In most of the offenses, military law ceases to apply to persons who are no longer soldiers if an indictment is not served within 180 days of the date the soldier is discharged from military service. **Military Justice Act**, 5715-1955, Art. 6 (Hebrew).

60 Yesh Din, [Investigating Themselves - Results of the military law enforcement system's examination of incidents of Palestinians killed and wounded in the Gaza Strip during "Operation Guardian of the Walls"](#) (May 2022). (Hereinafter: Yesh Din, [Investigating Themselves](#)).

61 Military Spokesperson to Yesh Din, Response to Application under the Freedom of Information Act (Hebrew), August 4, 2019.

committed offenses, and a means for collecting data in order to improve and add efficiency to the military's operational capacity.

In May 2024, an investigation by +972 Magazine, Local Call and The Guardian revealed that the FFA Mechanism collaborated with Israeli intelligence agencies so that incidents transferred to its review would be leveraged by Israel to reject the jurisdiction of international tribunals to investigate offenses against Palestinians. According to the investigation, Israeli intelligence bodies surveilled the previous prosecutor of the International Criminal Court (ICC), human rights organizations, and Palestinian victims of offenses. Surveillance was undertaken in order to reveal which incidents were referred to the ICC for investigation in order to enable Israel to "open investigations retroactively... so that they could claim complementarity". Thus, the FFA Mechanism sought and received data obtained by surveilling Palestinian organizations and victims.⁶²

Yesh Din and other organizations have concluded that the military law enforcement system's main function is whitewashing crimes committed against Palestinians by Israeli soldiers. In this sense, the State of Israel is unwilling or unable to properly investigate allegations of war crimes committed by its security forces personnel.⁶³ It is noteworthy that despite the failures that Yesh Din and other human rights organizations have pointed to, the Israeli Supreme Court has consistently backed the military law enforcement system and particularly the FFA Mechanism's work in examining suspicions of war crimes and reinforced the immunity the military extends to perpetrate war crimes.⁶⁴

62 Yuval Abraham and Meron Rapoport, "Surveillance and interference: Israel's covert war on the ICC exposed", **+972 Magazine**, May 28, 2024.

63 Yesh Din, [Investigating Themselves](#); Yesh Din, [Killing Time: The slow processing of complaints regarding Gaza Great March of Return casualties and the use of the Fact-Finding Assessment Mechanism to thwart prosecution of soldiers](#) (September, 2020) (hereinafter: Yesh Din, [Killing Time](#)); B'Tselem, [Whitewash Protocol - The so-called investigation of Operation Protective Edge](#) (September 2016); Yesh Din, [Summary of figures for 2017-2021](#); B'Tselem, PCHR, [Unwilling and Unable: Israel's whitewashed investigations of the Great March of Return protests](#) (December 2021).

64 See for example: HCJ 8008/20, '[Ataf 'Ahed Subhi Baker v. MAG](#)', judgment dated April 24, 2022; HCJ 3003/18 [Yesh Din - Volunteers for Human Rights v. IDF Chief of Staff](#), judgment dated May 24, 2019.

A full decade of the FFA Mechanism's work: The results speak for themselves

In the decade preceding the current war in Gaza, Israel undertook three significant military offensives in the Gaza Strip – “Operation Protective Edge”, repressing the Great March of Return events, and “Operation Guardian of the Walls”. The data presented here summarizes the work of the military law enforcement system with regards to suspected breaches of international law during these offensives and focuses on the length and outcomes of these proceedings. The data is based on the military's responses to applications under the Freedom of Information Act and other publications concerning complaints involving suspected breaches of the laws of war directed to the military, the majority of which were handled by the FFA Mechanism.

Hundreds of complaints that raised suspicions of violation of international law during these offensives were brought to the military's attention. A minimum of 664 incidents were transferred to the FFA Mechanism prior to a decision regarding whether to open an investigation or not. The data Yesh Din obtained from the military show that the results of work undertaken by the Israeli law enforcement mechanisms, and specifically the FFA Mechanism, concerning incidents raising suspicions of breaches of international law are incomplete. The military's responses do not provide insights into the quality of the FFA Mechanism's work because they do not include the incident details reviewed by the FFA Mechanism or the reasons underlying a decision to open or not to open an investigation into the incidents.⁶⁵ The data obtained show that the FFA Mechanism's work is characterized by lengthy timeframes that preclude the possibility of a proper investigation of incidents that raise suspected breaches of the laws of war. Additionally, in most cases the military refrains from investigating and prosecuting soldiers who harm Palestinians.

“Operation Protective Edge”

The Israeli offensive “Protective Edge” in the Gaza Strip took place in July-August 2014. During the fifty day-offensive, which included bombarding broad areas in the Gaza Strip as well as a ground invasion by military forces, over 2,000 Palestinians were killed. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), at least 1,674 civilians were killed as a result of the Israeli offensive, including 540 minors and 281 women.⁶⁶ B'Tselem concluded that at least 1,371 of the casualties did not participate in the hostilities, including 526 minors. Over 100,000 Palestinians were rendered homeless following the destruction of approximately 18,000 homes during the fighting. According

65 See for example the military's response regarding “Operation Guardian of the Walls”: Military Spokesperson to Yesh Din, [Response to Application under the Freedom of Information Act](#) (Hebrew), 26 April, 2022.

66 [UN Office for the Coordination of Humanitarian Affairs website \(OCHA\)](#) (last accessed April 8, 2024).

to B'Tselem's data, during the month of the offensive, 63 Israeli soldiers were killed, the majority during battles in the Gaza Strip. In addition, 5 Israeli civilians and a non-Israeli national were killed in an artillery strike from Gaza to Israel.⁶⁷

During the offensive, which led to an unprecedented number of casualties and destruction, heavy suspicions began to arise that Israeli security forces personnel were violating the rules of international humanitarian law. One of the prominent cases that raised suspicions of severe violation of the laws of war occurred on August 1, 2014, when the military carried out what it terms the "Hannibal directive" in response to Hamas's taking of an Israeli hostage. During the incident dubbed "Black Friday", artillery fire was so expansive that it raised suspicions of being indiscriminate and disproportionate in order to prevent Hamas from taking the Israeli soldier hostage. According to Amnesty International, this constituted a war crime that led to the killing of 135-200 civilians.⁶⁸ In December 2019, the Prosecutor of the International Criminal Court, Fatou Bensouda determined there was a basis to launch a criminal investigation against Israelis on suspicion of the commission of war crimes, inter alia in connection with several incidents that occurred during "Operation Protective Edge", in which the Prosecutor believed disproportionate use of firearms was suspected. In March 2021, the Prosecutor announced an official investigation would be opened into allegations of war crimes regarding several incidents that occurred during "Protective Edge" and it is likely that one of the incidents under investigation is "Black Friday".⁶⁹

67 [B'Tselem website](#) (last accessed May 1, 2024).

68 Amnesty International, **'Black Friday': Carnage in Rafah during 2014 Israel/Gaza conflict** (July 2015).

69 Statement by the Prosecutor. In: [International Criminal Court website](#) (last accessed May 1, 2024). The investigation is ongoing, see footnote 20.



Shujaiya, July 26, 2014. Photo: Anne Paq ActiveStills.

Then Chief of Staff Benny Gantz announced the FFA Mechanism would be used for the first time to review “exceptional incidents that occurred during the operation.”⁷⁰ According to the Military Advocate General’s Corps, a total of 500 complaints concerning 360 “exceptional” incidents that took place during “Protective Edge” were brought to the attention of the Military Prosecution. Then Military Advocate General instructed a criminal investigation be opened immediately into 24 of the incidents without a preliminary assessment. Of these investigations opened immediately, just one investigation led to indictments served against three soldiers following looting of ILS 2,420 during a search of a home in Shujaiya in the Gaza Strip. The soldiers were convicted of offenses of theft and accomplice to theft and were sentenced respectively to 60 days imprisonment as military community service, two and a half months imprisonment as military community service and a demotion. The rest of the investigations opened immediately following incidents that occurred during “Operation Protective Edge” were closed without any criminal or disciplinary measures taken against any of those involved.⁷¹

70 The MAG’s decision regarding exceptional incidents that took place during “Operation Protective Edge”. In: [Military Advocate General’s Corps website](#) (Hebrew) (last accessed April 8, 2024).

71 Decisions of the IDF Military Advocate General Regarding Exceptional Incidents that Allegedly Occurred During “Operation Protective Edge” - Update No. 6 (Hebrew). In: [Military Advocate General’s Corps website](#) (last accessed April 8, 2024).

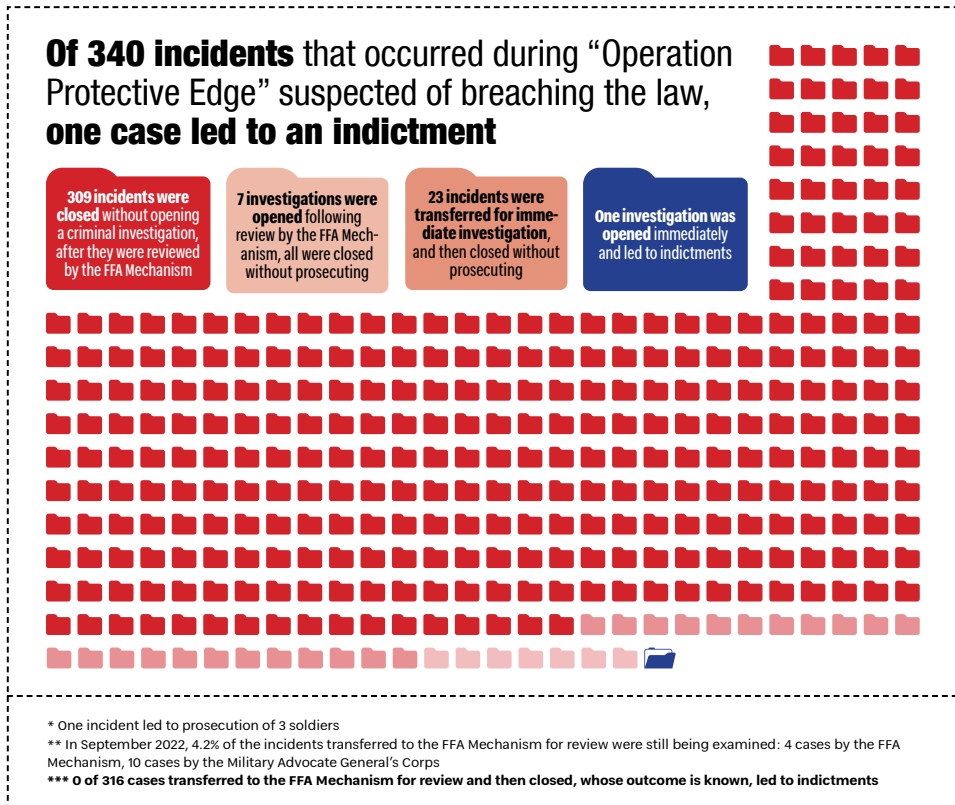
In response to the application under Freedom of Information Act dated March 2023, the military wrote that “Approximately 330 exceptional incidents that allegedly occurred during Operation Protective Edge” were transferred to the General Staff Mechanism for Fact-Finding Assessments.⁷² Of all the incidents transferred to the FFA for review, the MAG ordered criminal investigations into seven incidents (2%), and all were closed without any criminal steps taken after the investigations were concluded. According to the military’s response, in September 2022, four cases concerning incidents that occurred in 2014 were under review by the General Staff Mechanism for Fact-Finding Assessments. The FFA Mechanism’s review is supposed to be a swift factual assessment before a criminal investigation is opened or not. According to the military’s response, ten cases were still being reviewed by the Military Advocate General’s Corps in September 2022 after the work of the FFA Mechanism was concluded. Over eight years after the offensive “Protective Edge”, 4.2% of all incidents transferred to review by the FFA Mechanism were still being assessed as to whether to open a criminal investigation or not.

Such lengthy proceedings for assessment and investigation following the offensive “Protective Edge”, some of which have been ongoing for over eight years, attest to the fact that procedures for preliminary assessments and deciding whether to order a criminal investigation vastly exceed the timetables laid out by the Turkel Commission and the Ciechanover Committee. As a reminder, the military procedures determine a 30-day time period (with the possibility of extending this time period to 45 days for reasons to be reported) for the FFA Mechanism to submit its recommendations to the MAG, and 14 weeks (and in exceptional cases allowing an additional 14 weeks) for the MAG to make a decision. If a criminal investigation is opened after such a long time has elapsed, clearly it cannot be conducted seriously, effectively or properly.

The vast majority (97.7%) of cases concerning incidents that occurred during “Protective Edge” transferred for review by the FFA Mechanism were closed without a criminal investigation opened and without any type of criminal measures taken against those involved (in 309 of 316 cases whose outcome is known). In practice, the FFA Mechanism’s work in assessing incidents that took place during “Protective Edge” did not lead to prosecution of soldiers or commanders. Most of the incidents reviewed by the FFA were closed without an investigation, and the few investigations that were opened were subsequently closed without any of those involved standing trial. As noted, just one case among hundreds of cases that raised suspicions of breaches of international law transferred to the military for review led to indictments served against soldiers. In this case, an investigation was immediately opened without the FFA’s intervention.

⁷² Military Spokesperson to Yesh Din, [Response to Application under the Freedom of Information Act](#) (Hebrew), March 5, 2023. It is important to note that according to the military’s publication, since 2018 “complaints and reports relating to around 220 exceptional incidents alleged to have occurred over the course of the Operation”. See: [Military Advocate General’s Corps website](#) (last accessed April 8, 2024).

While the decisions and orders of senior military officers, who led the offensive in Gaza, were never reviewed by the military law enforcement mechanism, prosecuting three soldiers charged with looting offenses helped the military maintain its image as an ethical army.



The Great March of Return

In the period between March 30, 2018 and the end of 2019, weekly mass protests were held in the Gaza Strip by the perimeter fence separating Israel and the Gaza Strip termed the Great March of Return. Tens of thousands of Palestinian residents of the Gaza Strip participated in protests against the siege Israeli has imposed on the Gaza Strip since 2007, and for the Palestinian right of return to land in historic Palestine they fled or were expelled from in 1948. The Israeli military responded to these protests rigorously with rules of engagement that allowed soldiers to use potentially lethal force, including sniper fire at protestors they defined as “primary instigators” or “primary rioters.” The military dubbed the operation for repressing these protests “Operation Gatekeepers” This open-

fire policy permitted by the military expressed unprecedented disregard for human life by Israel, and resulted in the death and injury of protestors on a scale exceeding even the familiar standards of the Israeli occupation and the violent clashes it generates in the Occupied Territories.⁷³

Israel's lax open-fire policy in response to the protests led to hundreds of casualties and thousands of people injured, the majority of whom lost limbs. According to data collected by the UN Office for the Coordination of Humanitarian Affairs, between March 30, 2018 and July 31, 2019, 206 Palestinians were killed and no fewer than 33,687 were injured. The injuries were caused by live rounds, rubber bullets, gas canisters and other means.⁷⁴ Yesh Din and partner organizations petitioned the Israeli High Court of Justice to change the rules of engagement that permit firing at protestors who pose no danger to human life.⁷⁵ The military's response to the petition noted that use of live fire against persons it referred to as primary "instigators" or "rioters" was permitted in certain conditions even if they did not pose a clear and immediate danger to human life.



The Great March of Return, November 2, 2018. Photo: ActiveStills

73 For further reading: Yesh Din, [Lethal Weapon .22 - Deadly use of Ruger-type weapons against Palestinians in the West Bank](#) (October 2023); Yesh Din, [Killing Time](#).

74 OCHA, **Humanitarian snapshot: Casualties in the context of demonstrations and hostilities in Gaza | 30 Mar 2018 - 31 July 2019** (Aug 2019).

75 HCJ 3003/18, **Yesh Din et al. v. Chief of Staff et al.**, Urgent Petition for Order Nisi, dated April 15, 2018.

Although this instance was not a military operation of a significant combatant nature but rather incidents of a civilian nature that fall under the framework of law enforcement, the military applied a legal framework derived from the laws of war to its use of force in the context of these events. Under this framework, live fire is permitted in very broadly defined situations.⁷⁶ Accordingly, complaints submitted to the military concerning incidents that took place during the Great March of Return were transferred for review by the FFA Mechanism.

According to the military's response to an application under the Freedom of Information Act, of all incidents brought to the military's attention, three incidents led to immediate opening of a criminal investigation and 250 incidents were transferred to the FFA Mechanism for review.⁷⁷ In April 2024, the FFA Mechanism completed its assessment of 230 incidents: in 197 incidents reviewed by the FFA Mechanism, the MAG decided to close the case without ordering a criminal investigation. According to the investigation policy concerning the protests, the military opened investigations into several incidents transferred to the FFA Mechanism for review, such that 33 incidents reviewed by the FFA Mechanism led to 11 criminal investigations opened.⁷⁸ In April 2024, over four years after the protests and the killings, twenty incidents were still under the FFA Mechanism's review. According to the military's response, 11 investigations concerning 23 incidents that took place during the Great March of Return were closed without any of those involved standing trial. One investigation concerning 11 incidents was under the MAG Corps' review in April 2024. Thus, although it has been four years since the incidents took place, 12.4% of the incidents which raised suspicions of breaches of international law were still under review by the FFA Mechanism or the MAG Corps (assessed by the FFA Mechanism or reviewed by the MAG after they were investigated).

Of the hundreds of incidents brought to the military's attention, and in the total 36 incidents involving killings that led to investigations opened (14 investigations), just two investigations led to indictments served. Yet Yesh Din's examination has led to the conclusion that one of the investigations reported by the military as part of the Great March of Return protests referred to an incident unrelated to the protests, in the course of which an Israeli soldier shot dead Nawaf Ahmad Mohammad al-Atar, a 23-year-old

76 HCJ 3008/18, **Yesh Din et al. v. Chief of Staff et al.**, Response on behalf of the State dated April 29, 2018.

77 Military Spokesperson to Yesh Din, [Response to Application under the Freedom of Information Act](#) (Hebrew), June 5, 2024.

78 According to the military's response from May 2021, the FFA Mechanism reviewed only cases involving casualties and led to opening investigations. According to the military's investigation policy, in cases when several persons are killed at the focus of military activity at a certain time and place, one investigation was opened and investigated all the circumstances of the casualties that occurred at this time and place. In January 2021, the FFA reviewed 234 casualties that occurred in 118 circumstances. 36 instances of casualties led to 14 investigations opened. Military Spokesperson to Yesh Din, [Response to Application under the Freedom of Information Act](#) (Hebrew), May 10, 2021.

fisherman from Bet Lahia by the coast in Gaza.⁷⁹ The only incident involving a casualty that did lead to an indictment served and that pertains to the Great March of Return protests involved a soldier who shot and killed Othman Rami Jawad Hillis, a 15 year-old Palestinian minor during a protest by the Gaza perimeter fence in July 2018. According to a report in Haaretz, the FFA Mechanism's review did not include a recommendation to open an investigation into the killing of Hillis, but the MAG instructed an investigation be opened after suspicions arose that the soldier did not act in accordance with the open-fire regulations. Thus, the FFA Mechanism's review would have led to closing the case had the MAG not intervened.⁸⁰ It is important to note that the incident was documented and published, a fact that apparently contributed to the decision to open an investigation and serve an indictment.

According to the indictment served in September 2019, on July 13, 2018 the soldier shot the youth during a protest without his commanders' permission and in violation of the open-fire regulations and the previous instructions given to the soldiers.⁸¹ In October 2019, as part of a plea bargain the soldier was convicted of minor offenses of abuse of authority to the point of endangering life or health, an offense that is not linked to causing death or manslaughter. The soldier received a lenient sentence: 30 days military community service, a suspended sentence and a demotion.⁸²

Of 221 incidents reviewed and concluded with a known outcome (197 incidents closed without an investigation opened, and 23 closed after an investigation), just one case (0.4%) led to an indictment.⁸³ Those responsible for establishing the lax open-fire regulations - senior officials at the ministry of defense and government ministries and the commanders responsible for the military's conduct vis-a-vis the protests - were not investigated. To the best of Yesh Din's knowledge, the decisions they made during the protests and the policy they led were never reviewed by the Israeli law enforcement system.

79 The soldier was convicted of minor offenses and was punished only with military community service. See: Yesh Din, [Summary of figures for 2017-2021](#); Yesh Din, [Killing Time](#).

80 Yaniv Kubovich and Jack Khoury, "15-year-old Palestinian Was Shot to Death. Israeli Soldier Who Fired at Him Got One Month of Community Service", [Haaretz English website](#), October 30, 2019.

81 Court-Martial Case **Land Forces (District) 286/19**.

82 Yesh Din, [Summary of figures for 2017-2021](#).

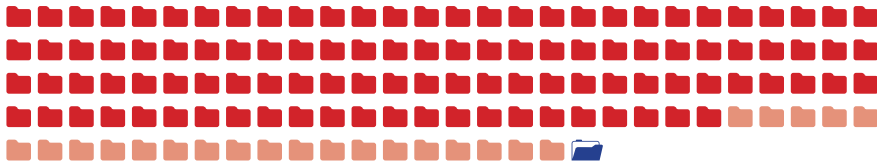
83 As noted, in addition an indictment was served that was unrelated to the Great March of Return.

Of 221 incidents that occurred during the Great March of Return suspected of breaching the law, **just one indictment was served**

197 incidents were closed without opening an investigation, after they were reviewed by the FFA Mechanism

23 incidents were transferred for immediate investigation, and then closed without prosecution

One investigation led to indictments without the FFA Mechanism's recommendation



* In April 2024, 12.4% of the incidents suspected of breaching the law were still being examined: 20 cases by the FFA Mechanism, and 11 cases by the Military Advocate General's Corps after an investigation

“Operation Guardian of the Walls”

On May 10, 2021, Israel launched a widescale military offensive in the Gaza Strip known as “Guardian of the Walls”. In the course of 11 days, Israeli security forces bombarded hundreds of sites in the Gaza Strip, including civilian infrastructure, residential neighborhoods and towers, schools and hospitals.⁸⁴ According to OCHA, 250 Palestinians were killed as a result of Israeli bombardment during May 2021, of whom 119 were civilians, including 64 children. Over 2,000 Palestinians were injured, including 685 children and 480 women. During the offensive, 2,173 homes were demolished and ten hospitals damaged. According to data collected by OCHA, one Israeli soldier and 12 civilians were killed, of whom two were children as a result of rocket fire at Israel from the Gaza Strip.⁸⁵

84 OCHA, [Gaza Strip: Escalation of hostilities 10-21 May 2021](#) (May 2021). Patrick Kingsley, “Israel and Hamas Agree to End a Brief War That Reverberated Worldwide”, [The New York Times](#), May 20, 2021.

85 According to OCHA, 77 of the casualties belonged to militant groups and there is debate regarding the affiliation of 54 of the casualties (militants or civilians). For further reading: [UN Office for the Coordination of Humanitarian Affairs website \(OCHA\)](#) (last accessed April 8, 2024). B’Tselem documented similar data and reported that during “Operation Guardian of the Walls” 233 Palestinian were killed, of whom 137 were civilians, including 54 minors and 38 children. [B’Tselem website](#) (last accessed April 8, 2024). OCHA, [The Humanitarian Bulletin - Gaza after the May escalation](#) (November 2021).

Several human rights organizations have concluded that the Israeli offensives against the Gaza Strip, in the course of which densely populated areas were bombarded, as well as broad attacks on civilian infrastructure that led in many instances to civilian casualties, particularly children, were undertaken in violation of international humanitarian law and constitute a war crime.⁸⁶ Amnesty International called on the International Criminal Court to open an investigation against Israel on the suspicion of commission of war crimes following a series of Israeli strikes directed at densely populated homes and neighborhoods.⁸⁷



A building damaged by an Israeli strike, Gaza City, May 12, 2021. Photo: ActiveStills

According to data provided by the military to Yesh Din, 84 incidents that took place during “Operation Guardian of the Walls” were transferred to the FFA Mechanism for review, while “each incident could include reference to several casualties (dead or wounded)”.⁸⁸ The data provided to Yesh Din show that in April 2023 the FFA Mechanism completed its assessment of 77 incidents: 41 incidents were transferred to the MAG for review (in 40 of these incidents, a decision whether to close the investigation file or launch an investigation was still pending) and in 36 of these incidents it was decided to conclude treatment without opening a criminal investigation after being reviewed by the FFA Mechanism. The military’s response reflects that nearly two years after the offensive,

86 See for example: B’Tselem, [Killing blockaded civilians and destroying infrastructure on a massive scale: Israel is committing war crimes in the Gaza Strip](#) (May 2021). HRW, [Gaza: Apparent War Crimes During May Fighting](#) (July 2021).

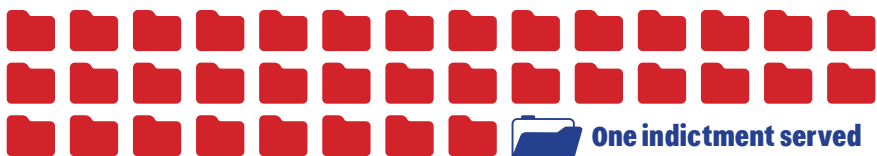
87 Amnesty International, [Israel/ OPT: Pattern of Israeli attacks on residential homes in Gaza must be investigated as war crimes](#) (May 17, 2021).

88 Military Spokesperson to Yesh Din, [Response to Application under the Freedom of Information Act](#) (Hebrew), April 26, 2022.

7 incidents transferred to the FFA for review were still in the preliminary stage of review, the sole purpose of which is to conduct a swift and preliminary assessment concerning the incidents and transferring them to the MAG for a decision. The significance of this is that two years after the Israeli offensive that led to fierce allegations regarding breaches of the laws of war, 56% of all incidents involving suspected breaches of international law and transferred to the FFA Mechanism for review were still under review by the FFA Mechanism or awaited the MAG for a decision.⁸⁹

The military's data reflects that in just one single case that occurred in the course of "Operation Guardian of the Walls" and which was transferred to the FFA Mechanism for review, a criminal investigation was subsequently opened. This refers to an incident that occurred on May 19, in which a tank platoon commander, a lieutenant, instructed firing at Palestinian farmers in violation of military orders. Hassan Sami al-Burano was killed by the strike while he was watering a field. The investigation led to an indictment served against the officer, who was charged with negligent manslaughter; yet Yesh Din does not have information regarding whether the officer was convicted and if so what he was sentenced to. In addition, Haaretz reported that the military took command measures against five officers involving in the killing of innocent civilians during "Operation Guardian of the Walls". According to the Military Spokesperson, these are "Three incidents that occurred during the operations" during which "military targets were attacked while exceeding the obligating rules determined in the matter." Following the incidents that led to the killing of civilians, officers were subject to command reprimand.⁹⁰

Of 37 incidents that occurred during "Operation Guardian of the Walls" suspected of breaching the law, **just one indictment was served**



One indictment served

36 incidents were closed without opening an investigation, after being reviewed by the FFA Mechanism

* All the incidents were reviewed by the FFA Mechanism

** In April 2023, 56% of the incidents transferred to the FFA Mechanism for review were still being examined: 7 cases by the FFA Mechanism, and 40 cases by the Military Advocate General's Corps after being reviewed by the FFA Mechanism

89 Military Spokesperson to Yesh Din, [Response to Application under the Freedom of Information Act](#) (Hebrew), July 12, 2023.

90 Yaniv Kubovich, "Israeli Army Disciplines Officers Involved in Civilian Deaths in 2021 Gaza Operation", [Haaretz English website](#), July 11, 2023.

Summary

Israel's war in Gaza is one of the most destructive military offensives in the 21st century. Tens of thousands of civilians have already lost their lives as a result of Israel's use of force policy, with artillery and air strikes at its center, many of whom are women, elderly and children. Investigative media reports have revealed that the Israeli military used a technology that incriminated tens of thousands of Palestinians and sentenced them and those surrounding them to death, entire families wiped off the face of the earth. Israel's use of force policy led to systematic destruction of infrastructure vital to civilian life in Gaza - hospitals, schools, mosques and entire neighborhoods have ceased to exist. Experts warn of the humanitarian disaster unfolding in the wake of starving the population in Gaza and preventing vital aid to it. It is possible that tens of thousands will also die of starvation and diseases.⁹¹ A number of organizations and countries have suggested the concrete possibility that Israel is committing war crimes and gravely violating the laws of war in Gaza. At the time of writing, the International Court of Justice in The Hague is hearing a case brought against Israel, charging Israel with suspected genocide. The Prosecutor of the International Criminal Court requested arrest warrants for the Israeli Prime Minister and Minister of Defense for suspected war crimes and crimes against humanity.

It is allegedly impossible to say for certain how Israeli law enforcement mechanisms will cope with such grave suspicions of breaches of international law on such a large scale. However, given the scope of the suspicions and based on prior experience, it is highly doubtful that Israel has the ability to independently and fairly investigate allegations of breaches of international law during "Swords of Iron War". Based on our work monitoring the military law enforcement mechanism with regards to military operations and significant events that occurred in the Gaza Strip during the past decade, we cannot but grimly conclude that the Israeli law enforcement system has proven it is not interested in investigating suspicions of war crimes properly, and certainly not interested in investigating decisions such as its policy on use of fire.

The question how Israel will investigate suspected commission of war crimes during the war in Gaza is shadowed by the fact that the law enforcement system evades investigating and prosecuting politicians and senior commanders who charted Israel's use of force policy. They are directly responsible for approving the use of heavy munitions in densely populated residential neighborhoods, which caused such extensive collateral damage that it is heavily suspected as disproportionate during an offensive; there are indications that they prevented vital humanitarian aid from being transported into the Gaza Strip; and they are accused of defining parts of the Gaza Strip as kill zones. Even if such a destructive policy was indeed endorsed, decision makers in the government and the military will most likely remain immune from criminal responsibility for their actions and

91 Netta Ahituv, "Epidemics, Famine, Untreated Wounds: Things Are About to Get Much Worse in Gaza", **Haaretz English website**, April 6, 2024.

their subordinates' actions. The Attorney General and the Military Advocate General's Corps, which bear the responsibility for investigating suspected breaches of international law, approved and continue to approve the blockade policy, the use of fire policy that led to mass killing, and the type of strikes that led to disproportionate killing of Palestinian civilians and raised the suspicion that they amount to war crimes. The legal counsel was apparently involved in approving strikes on homes, neighborhoods and hospitals. In this sense, the Attorney General and the Military Advocate General, who head the civilian and military law enforcement systems respectively, have a conflict of interests regarding investigating and prosecuting those responsible for the policies and actions that raise suspicions of international law violations. The Israeli High Court of Justice, a body supposed to oversee the law enforcement mechanisms, has insofar operated in the service of the culture of impunity that developed in the military and in Israel, and supported decisions made by the law enforcement system. In these circumstances, the State of Israel will not properly investigate the scope of the suspected war crimes as they were raised following the war in Gaza.

The results of the Israeli law enforcement mechanism's work over the past decade demonstrate that even the incidents that are reviewed by the military law enforcement system are not properly investigated. Ultimately, the FFA Mechanism, the body tasked with performing a preliminary assessment of suspected breaches of international law, is used primarily as a means for whitewashing soldiers' offenses. The numbers speak for themselves: to the best of Yesh Din's knowledge, of all complaints transferred to the military concerning three significant military incidents in Gaza, at least 664 complaints were transferred to the FFA Mechanism for review. 542 (81.6%) incidents were closed without a criminal investigation even opened. Just 41 incidents (6%) led to a criminal investigation (a total of 19 investigations) after the FFA Mechanism's review. At the time of writing this report, the FFA Mechanism's work over nearly a decade, addressing three military events in the Gaza Strip, resulted in just one investigation that produced an indictment. This means that just 0.17% of all incidents reviewed by the FFA Mechanism with known outcomes (573) led to prosecution. In practice, hundreds of incidents that raised suspicions of violation of international law, two military offensives, and an operation to thwart protests led to just three indictments, two of which were investigated without the FFA Mechanism's intervention.

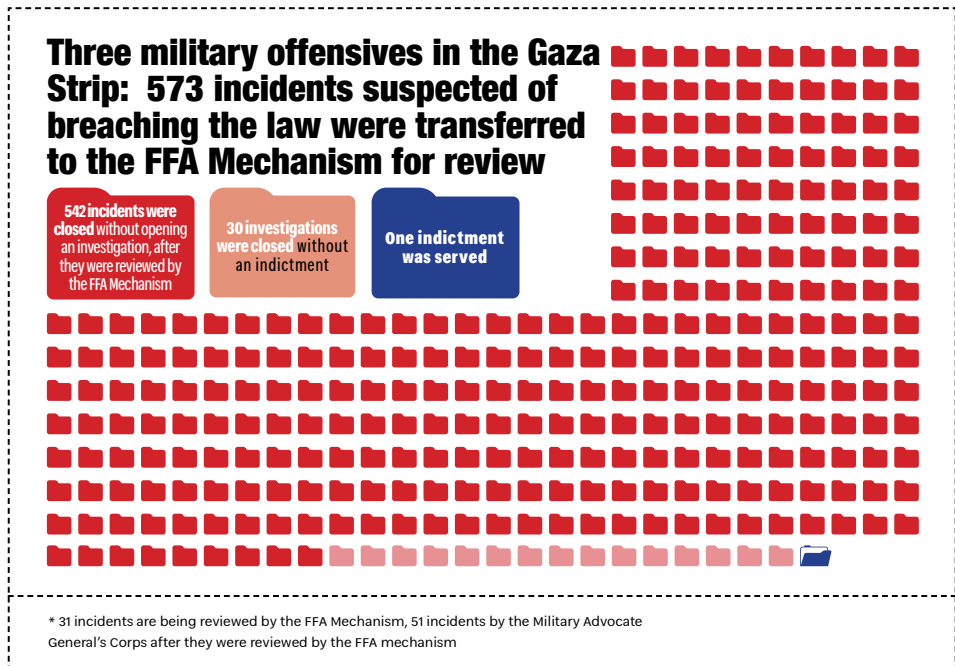
The data detailed in this report and the FFA Mechanism's limitations described above raise heavy concerns regarding the military law enforcement system's ability to contend with suspicions of war crimes during the current offensive. The work of the FFA Mechanism, which receives most of the complaints regarding suspected violations of international law, is typically very lengthy, often exceeding the timetables set by the military itself. For example, several incidents transferred to the FFA Mechanism for review in 2014 were still under review in 2022. This is the case although this mechanism is tasked with performing a swift factual assessment within just a few weeks before the MAG Corps decide whether to open an investigation or not. Such extreme deviations

from the timetables attest to the fact that it is in Israel's interest to drag its feet and refrain from genuinely and effectively investigating incidents that raise suspicions of war crimes.

Additionally, as stated, the FFA Mechanism is not used exclusively as a means for reviewing suspected war crimes but is also used by the military to improve its operational capacity. The FFA Mechanism's dual role inherently harms its ability to properly review incidents that raise suspicions of breaches of the law, which in turn questions its capacity to properly review the thousands of incidents that will be brought before it in the coming months. Finally, the FFA Mechanism's work and the decision-making process for recommending closing cases remain confidential; they are not subject to public scrutiny and cannot be used in a future investigation. Thus, investigations opened after an incident was reviewed by the FFA will require collecting testimonies, evidence and proof anew after they were previously collected by the FFA Mechanism teams.

Yesh Din's monitoring of the Israeli law enforcement system's work, and particularly the work of the General Staff Mechanism for Fact-Finding Assessments shows that Israel responds to suspicions of war crimes in this manner:

- **Refrains from investigating high-ranking decision makers and policy makers** The top ranks in government, military and Office of the Attorney General, who are responsible for setting Israel's use of force policy, are not subject to any review by the law enforcement system
- **Refrains from conducting a proper and effective assessment** The FFA Mechanism deliberately wastes precious time, and almost all the cases it assesses are subsequently closed without a decision to open a criminal investigation
- **Extends near complete immunity to commanders and soldiers who harm Palestinians** Nearly zero indictments are served relative to the number of complaints regarding soldiers and commanders who commit offenses. In rare cases when commanders or soldiers are convicted, they receive ridiculously lenient sentences compared with the severity of the offense



The military law enforcement system has never dealt with anything comparable to the current war in Gaza in terms of scale and the large number of suspected violations of international law. Allegedly, law enforcement mechanisms will now need to review thousands of incidents that took place during the past months and which raise suspicions of war crimes. Analysis of law enforcement agencies' work regarding previous military operations suggests it is highly doubtful that Israel is willing or capable of serious and effective investigations into suspected violations of the laws of war during "Swords of Iron". This is despite Israel's efforts to claim that Israel's law enforcement mechanisms are ready and willing to now effectively examine allegations of breaches of international law.

This report joins Yesh Din's previous reports which point to the military law enforcement system's ongoing failure regarding suspected offenses by security forces against Palestinians. The data presented here raise heavy suspicions that the military law enforcement system's main role - and particularly that of the FFA Mechanism - is to maintain an appearance of a functional mechanism in order to evade properly investigating suspected war crimes. This same semblance of a functioning investigation mechanism serves Israel's argument against international tribunals' intervention and for shielding itself from external criticism.

It is impossible to describe the profound disaster that residents of Gaza face. Starvation and diseases now threaten to harm residents who managed to survive the military strikes. As we have shown, Israel's military policy, which includes its use of fire policy, has been sheltered by the lack of accountability, which de facto grants soldiers and commanders immunity from prosecution. This state of affairs has left Gaza's residents without any protection. Their lives have been forfeited because of Israel's criminal disregard for human life, a policy that has gained the support of the entire law enforcement system, a system that inter alia approved attacks that raise reasonable doubt of completely contradicting international law. It is highly doubtful whether this same system that has failed so profoundly can now properly review the grave and broad suspicions raised during the current war in Gaza.

Israel must act to stop the fighting immediately, allow vital aid to enter the Gaza Strip in response to the unprecedented humanitarian disaster unfolding there, work to rehabilitate the Gaza Strip and enable proper investigation of suspected breaches of international law that occurred during the war. Yesh Din holds that an external and independent investigation of suspected breaches of the law by Israel, including decision makers and senior-ranking officers, is crucial for preventing more loss of life that continues thanks to Israel's culture of impunity, inherent to its law enforcement system. Such an investigation could significantly increase protection for Palestinian and Israeli human rights and assist in rehabilitating the region.

Appendix: Breakdown of the data

The FFA Mechanism's work

	Protective Edge in September 2022	The Great March of Return in April 2024	Guardian of the Walls in April 2023	Total
Incidents forwarded to the FFA Mechanism for review	330	250	84	664
Cases closed and whose outcome is known	316	220	37	573
Incidents closed without a criminal investigation opened after review by the FFA Mechanism	309	197	36	542
Incidents still under review by the FFA Mechanism (to the best of Yesh Din's knowledge)	4	20	7	31
Incidents still under review by the Military Advocate General (to the best of Yesh Din's knowledge)	10	11	40	61
Incidents referred for criminal investigation following review by the FFA Mechanism	7	33 (led to 11 investigations)	1	41
Incidents that led to an investigation and closed without prosecution	7	23 (11 investigations)	0	30
Investigation files that led to indictments	0	0	1	1

Incidents that led to an investigation opened without the FFA's recommendation

	Protective Edge	The Great March of Return	Guardian of the Walls	Total
Incidents investigated without the FFA Mechanism's recommendation	24	3	0	27
Investigations closed	23	Unknown	0	23
Investigations that led to indictments	1	1	0	2
Cases closed and whose outcome is known	24	1	0	25

Total number of incidents that led to criminal investigations following military operations in Gaza 2014-2021

	Protective Edge	The Great March of Return	Guardian of the Walls	Total
Incidents transferred for criminal investigation	31	36 See details on page 28	1	68
Criminal investigations closed	30	11 investigations referring to 23 incidents	0	41
Criminal investigations that led to indictments	1	1	1	3
Cases closed and whose outcome is known, after review by the FFA Mechanism or an investigation without its recommendation	340	221	37	598