



**Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'**

**Update No. 5**

**24 August 2016**

This Press Release concerns additional information cleared for publication concerning decisions reached by the IDF Military Advocate General's (the 'MAG') with regard to a number of alleged exceptional incidents occurring during Operation 'Protective Edge' (7 July – 26 August 2014; the 'Operation'). This Press Release is in accordance with the MAG's policy to ensure transparency with regard to the examination and investigation of exceptional incidents alleged to have occurred during the Operation, and follows previous Press Releases on the subject.

The MAG Corps continues to examine and investigate claims regarding allegations of exceptional incidents. Many of these claims arose out of complaints that were transmitted to the MAG Corps on behalf of Palestinian residents of the Gaza Strip as well as by non-governmental organizations ('NGOs') – Israeli, Palestinian, and others. Other allegations arose in media reports, or in the reports of international organizations and NGOs, as well as in internal IDF operational reports.

All in all, as of to date, the MAG Corps has received around 500 complaints and reports, relating to around 360 incidents alleged to have occurred over the course of the Operation. The number of complaints and reports that were received is higher than that of the corresponding incidents, since with respect to some of the incidents the MAG Corps received several complaints and reports.

Each complaint received by the MAG Corps, which suggests misconduct by IDF forces, undergoes an initial examination. If the allegation is deemed credible, *prima facie*, and is sufficiently concrete, it is referred to the MAG, for a decision, as to whether an immediate criminal investigation is warranted without further examination, or whether the incident should be referred to the General Staff Mechanism for Fact-Finding Assessments (the 'FFA Mechanism'), for a prior factual examination before making a decision on whether to open a criminal investigation.

To date, in the wake of allegations that indicated *prima facie* grounds for a reasonable suspicion of criminal misconduct, the MAG has ordered the opening of criminal investigations without the need for prior factual examination with regard to 24 exceptional incidents. Of these criminal investigations, the MAG decided to issue indictments against three IDF soldiers, accused of looting and of aiding and abetting looting, as reported in a previous update. The legal proceedings regarding these charges are underway at the present time. As regards 13 other criminal investigations, the MAG has closed the cases without undertaking any criminal or disciplinary proceedings, as detailed herein and in previous updates. The remainder of the investigations are still ongoing – some are still underway, and some have been completed with their findings having been submitted to the MAG for review.

Other allegations, which did not indicate *prima facie* grounds for a reasonable suspicion of criminal misconduct, were referred to the FFA Mechanism for examination. This mechanism, which was initiated while the Operation was still underway, collates information and relevant materials and undertakes enquiries, in order to assess the facts of exceptional incidents. These efforts are intended to provide the MAG with as much factual information as possible in order to reach decisions regarding whether or not to open a criminal investigation, as well as for the purpose of a 'lessons-learned' process and the issuance of operational recommendations that will assist in mitigating the risk of exceptional incidents occurring in the future. All in all, to date, around 360 complaints and reports relating to around 220 exceptional incidents alleged to have occurred over the course of the Operation, have been transmitted to the FFA Mechanism for examination, after undergoing an initial examination by the MAG Corps.

To date, after reviewing the factual findings and the material collated by the FFA Mechanism, the MAG has referred seven incidents for criminal investigation. One of these investigations has already been the subject of a decision by the MAG, as reported in a previous update. Other investigations have been completed and are awaiting review of their findings by the MAG, or are currently ongoing. With regard to around 80 additional incidents that were examined by the FFA Mechanism, the MAG decided to close the case without opening a criminal investigation, where the actions of the IDF forces involved did not give rise to reasonable grounds for suspicion of criminal behavior. However, in relation to some of these incidents, the MAG recommended reviewing operational methods in order to assess whether any changes should be made. In certain cases that were closed, the MAG found that no involvement of IDF forces could be identified in regard to the incident.

All criminal investigations are carried out in a thorough and prompt fashion by a special investigation team assembled by the Military Police's Criminal Investigation Division (the 'MPCID'). This team has collected testimonies from many IDF soldiers and commanders, as well as testimony from many Palestinian residents of the Gaza Strip as well as from other persons who were witnesses to some of the incidents in question.

Where a complaint had been submitted in written form, and a decision has been made in regard thereto, a response is forwarded to the complainant, who is entitled to challenge the MAG's decision before Israel's Attorney General. Additionally, a request may be made to the MAG for reconsideration of a decision, should new facts come to light that were not available at the time of the MAG's original decision.

Pursuant to previous updates, information regarding a selection of decisions reached by the MAG in relation to some of the remaining exceptional incidents, and which has been cleared for publication, is detailed below.

For further information regarding the examination and investigation process of claims regarding exceptional incidents alleged to have occurred over the course of the Operation, please refer to the Israeli Government's Report in regard to Operation "Protective Edge" ('The 2014 Gaza Conflict: Legal and Factual Aspects', Chapter VII), available online at: [www.protectiveedge.gov.il](http://www.protectiveedge.gov.il).

## **Cases Closed by the MAG Following Examination by the FFA Mechanism**

### **1. Allegation Concerning Disturbance to the Functioning of the Hospital in Khan Younis (9-10 July 2014)**

In a report received by the MAG Corps from an NGO during the course of the Operation, it is alleged that attacks carried out by the IDF, apparently over the course of the period from 9-10 July 2014, in the area adjacent to the hospital in Khan Younis, known as the "European Hospital", impeded the day-to-day functioning of the hospital and resulted in patients suffering from anxiety. The incident was subsequently referred to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG indicate that the location of the hospital was known to IDF forces operating in the area, and was designated as a "sensitive site" on the relevant operational systems of the IDF. In accordance with the IDF's operational instructions, any military operation to be conducted in the vicinity of such sites requires the adoption of special precautions.

The findings further indicated that terror organizations had embedded numerous rocket launchers in the area surrounding the hospital, from which launches were carried out against the State of Israel, including on 9 July 2014. On that day, the IDF carried out aerial strikes on seven of the abovementioned rocket launchers (at a distance of around 120 meters or more from the hospital). On 10 July 2014, aerial strikes were carried out against an additional four launchers (at a distance of over a kilometer from the hospital).

All of the strikes in question were carried out after undergoing an orderly authorization process, and after the potential for collateral damage to civilian buildings in the vicinity had been taken into consideration in the strike planning process. Because of the considerable distance between the hospital and the targets that were struck, no damage was expected to result to the hospital. Indeed, no such damage is known to have occurred in regard to the hospital building as a result of the aforementioned strikes (and no claims have arisen regarding the occurrence of any such damage).

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes accorded with Israeli domestic law and international law requirements.

The decisions to strike were taken by the competent authorities, and the objects of the attacks were military targets – launching pits and the weaponry stored therein. The attacks complied with the principle of proportionality, as at the time the decisions to attack were taken it was considered that no collateral damage to civilians or adjacent civilian structures was expected to occur as a result of the strikes. The location of the hospital was known at the time of the strikes' planning, but no damage was expected to be caused thereto, in light of the distance between the hospital building and the targets that were the objects of the strikes. As noted above, no damage is reported to have been caused to the hospital building as a result of these strikes.

Nonetheless, it may be the case that as a result of some of these strikes, the routine functioning of the hospital was impaired and patients suffered from anxiety, as alleged. However, to the extent that this did occur, it would be a regrettable but unavoidable consequence of the military necessity to neutralize the firing pits and rockets that terror organizations embedded in the area surrounding the hospital.

In light of these findings, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered

the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.



**2. Allegation Regarding the Death of Seven Individuals as the Result of a Strike on a Building in Al-Bureij (20 July 2014)**

In media reports it was alleged that on 20 July 2014, at around 14:00, seven members of the Ziyadeh family were killed as the result of an IDF attack on a building in Al-Bureij. The incident was subsequently referred to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG indicate that on 20 July 2014, the IDF carried out an aerial strike on a structure that was being used as an active command and control center by the Hamas terror organization. The attack aimed to neutralize both the command and control center and the military operatives who were manning it, and who, according to information received in real-time, were involved in terror activity which threatened IDF forces operating in the area. It was further indicated, that the structure was also utilized by the military operative Mohammed Muqadama, a senior figure in Hamas' military observation force.

In the course of the strike planning process it was assessed that the extent of the harm expected to result to civilians as a result of the attack would not be excessive in relation to the significant military advantage that was anticipated to result from a strike on the military command and control center and the military operatives who were manning it. The strike was planned for execution by means of a precise munition, and in a way which would allow for the strike's objective to be achieved, whilst limiting the potential for collateral damage to surrounding buildings. It was further found, that it would not have been possible to provide a warning prior to the strike on the building, as such a warning was expected to frustrate the objective of the attack.

As noted above, it is alleged that as a result of the strike seven people were killed. Findings indicated that among the casualties were three military operatives in the Hamas and Palestinian Islamic Jihad terror organizations, who were members of the Ziyadeh family, as well as the senior military operative mentioned above, Mohammed Muqadama.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements.

The decision to strike was taken by the competent authorities, and the objects of the attack were military targets – an active command and control center and military operatives affiliated with the Hamas terror organization. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated to result from it. This estimation was not unreasonable under the circumstances.

Moreover, the attack was carried out in conjunction with various precautionary measures which aimed to mitigate the risk to civilians in the vicinity of the structure and minimize damage to adjacent structures. These measures included the selection of the munition used to carry out the strike, as well as the method by which the strike was carried out. It was also found that the provision of a warning to the residents of the building was not required by law, as such warning would have frustrated the objective of the attack. The fact that, in practice, civilians who were uninvolved in the hostilities were harmed, is a regrettable result, but does not affect the legality of the attack ex post facto.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case

to be closed, without opening a criminal investigation, and without any further steps to be taken against those involved.

**3. Allegation Regarding the Death of 12 Members of the Siyam Family in Rafah (21 July 2014)**

In media reports, as well as in a complaint and in reports of NGOs and international organizations, it was alleged that on 21 July 2014, 12 members of the Siyam family were killed as the result of an IDF aerial attack in Rafah. According to the principal allegation raised by the abovementioned complaint and reports, members of the Siyam family left their residence and went into the street after the family home was damaged as the result of an aerial strike on an adjoining building. It was alleged, that at the time that the family was evacuating their residence, and while they were in the road, aerial fire was carried out against a number of the family members, resulting in their deaths. The different sources were not consistent as regards the various details relating to the event, or in regards to the type of munition alleged to have struck the family members. The incident was subsequently referred to the FFA Mechanism for examination.

The factual findings and the material collated by the FFA Mechanism and presented to the MAG indicate that no attack – aerial or otherwise – that could have resulted in a strike on the family as alleged was carried out by IDF forces in the area in question and on the relevant date. The FFA Mechanism also ruled out the possibility that the types of munition described in a number of the reports had been utilized.

Nonetheless, it was found that at the relevant time, and in close proximity to the Siyam family's residence, terror organizations in the Gaza Strip fired a series of mortars, aimed at the territory of the State of Israel. A number of these launches were "failed launches", wherein the mortar shells that were aimed at Israeli territory, fell within the territory of the Gaza Strip. Images showing the points of impact of the munitions that struck the Siyam family and the surroundings of their residence, which were provided to Israel by one of the organizations and transferred to the FFA Mechanism for examination, also indicate that the strike in question was not caused as the result of an aerial attack as alleged in the majority of the reports. The FFA Mechanism and the MAG Corps made representations to the legal representative of the organization which had claimed that the strike on the Siyam family had been caused by IDF munitions, in order for them to present evidence that would support such an allegation. These representations did not receive a response.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found, that contrary to the allegations, it could be concluded, with reasonable certainty, that the members of the Siyam family were not harmed as a result of IDF activity. As such, and in the absence of a reasonable suspicion of criminal misconduct, the MAG ordered the case to be closed, without opening a criminal investigation.

**4. Allegations Regarding Strikes on the Power Plant in Nusseirat (22-29 July 2014)**

In media reports, in IDF operational reports, and in the reports of international and non-governmental organizations, it was alleged that over the course of the period from 22 – 29 July 2014, the Gaza Strip's power plant facilities, located in Nusseirat, were struck a number of times, as a result of IDF operations (the different sources refer to different events, and the allegations and figures contained therein are not consistent). It was further alleged, that as a result of the strike on the power plant on 29 July 2014, the plant ceased to function for a significant amount of time. Subsequently, the incident was referred to the FFA Mechanism for examination.

The factual findings, collated by the FFA Mechanism, and presented to the MAG, indicated that the power plant in Nusseirat was designated as a "sensitive site" on the relevant operational systems of the IDF. In accordance with the IDF's operational instructions, any military operation to be conducted in the vicinity of such sites requires the adoption of special precautions. The findings further indicated that, in the course of the military activity taking place in the area, the power plant was struck four times over the course of the period from 22-29 July 2014 (the difficulty in specifying the precise dates of the strikes results from differences between the various reports, which provide different dates for the same strikes).

In regard to the first three incidents of damage to the power plant, it was found that the damage did not occur as the result of any direct or intentional attack, aerial or otherwise, by IDF forces. The FFA Mechanism could not rule out the possibility that the power plant facilities may have been damaged by shrapnel, or artillery fire that went off course during the combat. This, in light of the considerable military activity that took place in the vicinity of the plant, between IDF forces and squads affiliated with terror organizations. As well as in light of the fact that terror organizations located a large number of terror assets adjacent to the power plant – at times at a distance of mere tens of meters (such assets included launching pits in which rockets and mortars were stored, medium range rocket launchers, the openings of combat tunnels, weapons caches and more). Evidence has also been obtained which indicates that a portion of the damage may have been caused as the result of rocket fire by Palestinian terror organizations.

After reviewing the factual findings and the material collated by the FFA Mechanism in regard to the three incidents of damage referred to above, the MAG found that the damage to the power plant in Nusseirat had not occurred as a result of a direct or intentional attack by IDF forces operating in the area. In light of the above, and since all avenues for the further examination of these incidents had been exhausted, the MAG ordered these cases to be closed without opening a criminal investigation, in the absence of a reasonable suspicion of criminal misconduct by IDF forces.

As regards the fourth incident of damage, which occurred on 29 July 2014, the FFA Mechanism found that on the day of the incident, an IDF armored force operating in the area identified a squad of terror operatives, bearing anti-tank weaponry ("anti-tank squad"). The anti-tank squad was identified while it was close to what would later turn out to be the fuel tanks of the power plant. In light of the imminent threat posed by the squad to the armored force, the force fired, in a measured and direct manner, at the anti-tank squad, using the most precise munition the force had at its disposal. It appears, that as a result of this fire, one of the power plant's fuel tanks was damaged (the power plant itself was not hit). It was further found, that the IDF force which carried out the fire, did not make the connection between the facilities, in proximity to which it identified the anti-tank squad, and the power plant, and was not aware that the structures in question contained flammable material.

After reviewing the factual findings and the material collated by the FFA Mechanism in regard to this incident, the MAG found that the targeting process carried out with regard to the anti-tank squad accorded with Israeli domestic law and international law requirements.

The fire which was carried out by the IDF force over the course of the incident was aimed at a military object – an anti-tank squad of the terror organizations, which posed an immediate threat to the force. The attack on the squad complied with the principle of proportionality, as at the time the decision to attack was taken, it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated from it. This estimation was not unreasonable under the circumstances, when taking into consideration the immediacy of

the threat posed to the force by the anti-tank squad, and in light of the fact that the force was not aware of the nature of the facilities in proximity to which they identified the squad.

Moreover, the attack was carried out in conjunction with various precautionary measures, including the selection of the munition used (taking into account the distance between the force and the anti-tank squad, and the weaponry that was at the force's disposal), and the way in which the fire was carried out. These measures were carried out in order to minimize, to the extent possible under the circumstances, the collateral damage expected to result to structures and facilities in the vicinity of the target. In light of the immediacy of the threat, and the danger which was posed to the IDF force, the force did not have any latency in which to enquire into the nature of the facilities in proximity to which it had identified the squad, and the potential consequences, immediate, or long term, of collateral damage thereto.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation.

At the same time, the MAG made a recommendation to the relevant operational authorities that they review the processes for the integration of the operational instructions concerning operations carried out in proximity to "sensitive sites", as well as the ways in which IDF forces' ability to locate and identify such sites might be improved.

**5. Allegation Regarding Failure to Provide Medical Treatment to a Resident of Khirbeit Khuza'a (23-26 July 2014)**

In a complaint received by the MAG Corps from an NGO, it was alleged that on 23 July 2014, a resident of Khirbeit Khuza'a was wounded in her legs by shrapnel, as a result of the military activity that was taking place in that area. According to the complaint, IDF soldiers reached the building in which the injured woman and her husband were present, and refused, for four days, to allow the injured woman to receive medical assistance, and prevented her from leaving the house to receive assistance from the Palestinian Red Crescent. The incident was subsequently referred to the FFA Mechanism for examination, for the purpose of clarifying the allegations described above, regarding the failure to provide medical treatment.

The factual findings, collated by the FFA Mechanism and presented to the MAG, indicate that on July 23, 2014, IDF forces operating the area of Khirbeit Khuza'a identified an older man waving a white cloth next to a structure. Consequently, the commander of the force ordered his troops to hold their fire, and initiated contact with the individual in question, who informed the commander that he and his spouse had remained in the structure, which served as their home, and had been unable to evacuate due to his spouse's injury. In light of the above, the force entered the house, and in accordance with the orders given by the commander of the force, the force's medic provided the injured woman with medical treatment for the injuries on her legs.

It further arose, that after the provision of the medical treatment, when it became clear that the couple had access to a working mobile telephone, the commander of the force advised them to contact the Palestinian Red Crescent, in order to coordinate their evacuation from that location. Over the course of the period in which IDF forces were operating in Khirbeit Khuza'a, IDF forces coordinated, on a regular basis, a number of temporary cease-fires in order to allow for the evacuation of civilians from that area. The findings further indicated, that shortly after the conclusion of the provision of medical treatment to the injured woman, the IDF force left the house and continued onwards, such

that the troops were present in the house for a short period of time only. No other IDF forces were present in the house from that point onwards.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that no evidence whatsoever could be found to support the allegation that the forces prevented the injured woman from receiving medical treatment, or evacuation by medical services, and as such the actions of the IDF forces did not give rise to grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation and without any further steps to be taken against those involved.

**6. Allegation Concerning the Death of Approximately 15 Individuals During a Strike on the House of the Zouarob Family in Rafah (1 August 2014)**

In media reports, in IDF operational reports received by the MAG Corps, and in complaints and reports received by the MAG Corps from NGOs, it was alleged that on 1 August 2014, at around 23.00, approximately 15 members of the Zouarob family were killed as the result of an aerial attack conducted by the IDF on the family's house (the precise number of fatalities varies from report to report), and others were injured. The incident was subsequently referred to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG, indicate that on August 1, 2014, the IDF carried out an aerial strike on a building, which was an active command and control center of the Hamas terror organization. The attack aimed to neutralize both the command and control center and the military operatives who, according to assessments, were manning it, with special regard to Nazmi Zouarob, a senior military operative in the Hamas, who was carrying out military operations from within the structure.

During the planning stages of the strike, it was assessed that the extent of the collateral damage expected to result from the attack would not be excessive in relation to the significant military advantage that was anticipated to result from a strike on the command and control center and the military operatives manning it. The strike on the building was planned for execution by means of a precise munition and in a way which would allow for the attack's aim to be achieved whilst minimizing harm to an adjacent building. It was further found, that it would not have been possible to provide a warning prior to the strike on the building, as such a warning would have frustrated the objective of the attack.

In practice, it became clear in the wake of the strike that there had been discrepancies between the information on the basis of which the strike was carried out and the facts which were revealed in its wake. As such, it is alleged that as a result of the attack, around 15 individuals were killed (as mentioned above, the precise number of the fatalities varies from report to report). It appears that a number of the fatalities had been residents of the building, while others were visiting the premises. According to the FFA Mechanism's findings, among the deceased was the senior military operative, Nazmi Zouarob.

It was further found, that contrary to the claims made by various entities, the strike was not connected to the efforts to locate Captain Hadar Goldin, who was kidnapped and killed by Hamas forces on that morning, but rather constituted part of the ongoing military operations that were being undertaken in the Rafah area at that time.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements.

The decision to strike was taken by the competent authorities and the attack was aimed at military targets – an active command and control center of the Hamas terror organization and the military operatives who were manning it, among them a senior military operative of that organization. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated from it. This assessment was not unreasonable under the circumstances, despite the discovery, in the wake of the strike, of discrepancies between the reality prevailing on the ground and the information available at the time when the decision to strike was made.

Additionally, the strike was carried out alongside precautionary measures, including *inter alia*, the choice of munitions, which aimed to minimize the potential for harm to civilians in the vicinity of the structure, or to an adjacent building. It was also found that the provision of a warning to the persons present in the building was not required by law, and would have been expected to frustrate the objective of the attack. The fact that, in practice, a number of civilians who were not involved in the hostilities were harmed, is a difficult and regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of these findings, the MAG did not find that the actions of IDF forces gave rise to reasonable grounds for suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.

**7. Allegation Regarding the Death of Civilians as the Result of a Strike in the Vicinity of a School in Rafah (3 August 2014)**

In media reports, as well as in the complaints and reports of NGOs and international organizations, it was alleged, that on August 3, 2014, at around 10:45, a number of civilians were killed and others injured, as the result of an IDF aerial strike in proximity to a Rafah school run by UNRWA. The number of fatalities varies from report to report, and ranges from seven to fifteen fatalities. According to the main allegation arising in the aforementioned complaints and reports, the strike took place a few meters from the gate of the school, which was at that time serving as a shelter for civilians who had evacuated their homes, at the exact moment when the gate was open, and was aimed at a motorbike that was passing through the area and its riders. The incident was subsequently referred to the FFA Mechanism for examination.

The factual findings, collated by the FFA Mechanism and presented to the MAG, indicate that the school was designated as a "sensitive site" on the relevant operational systems of the IDF. In accordance with the IDF's operational instructions, any military operation to be conducted in the vicinity of such sites requires the adoption of special precautions. The fact that the school was serving at the time as a shelter for civilians who had evacuated from their homes was also noted on the relevant systems.

It was further found, that on 3 August 2014, the IDF observed three people riding on a motorbike, who were identified, on the basis of up-to-date intelligence information, as military operatives. From the moment that the decision to strike the operatives was made, the IDF carried out aerial surveillance on the motorbike's path, and surveyed a wide radius of the estimated continued route of the motorbike, in order to minimize the potential for harm to civilians on the route or in proximity thereto. The final destination of the military operatives was not known to the operational authorities. The strike on the military operatives was planned for execution by means of a precise munition, with a reduced explosive load, in a way that would allow for the strike's objective to be achieved, whilst minimizing the potential for harm to civilians or passing vehicles.

It was further found, that a period of time after the munition had been fired, and mere seconds before it reached its target, the motorbike entered a traffic circle with a number of different exits, and left it via one of them. The FFA Mechanism's findings indicate that with the means that were at their disposal, and under the visibility conditions prevailing at that time, the operational authorities were not able to discern in real-time the group of civilians that were outside the school, in proximity to the route along which the aforementioned motorbike was travelling. It was further found that, in any case, at the moment upon which the motorbike exited the traffic circle and started to travel along the road bordering the wall which surrounded the school, it was no longer possible to divert the munition which had been fired at the motorbike.

The strike on the motorbike riders occurred immediately after the motorbike passed by the gate of the school. As mentioned above, it is alleged that as a result of the strike between seven and fifteen people in the vicinity of the school's gate were killed (as indicated above, the number of fatalities varies from report to report). According to the findings of the FFA Mechanism, three military operatives were among the fatalities.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting process in question accorded with Israeli domestic law and international law requirements.

The decision to strike was taken by the competent authorities, and the object of the attack was lawful – military operatives. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated to result from it (essentially, it was considered in real-time that the strike would only harm the military operatives targeted). This assessment was not unreasonable under the circumstances, in light of the fact that aerial surveillance of the routes which the motorbike was predicted to take, which had commenced when the decision to strike was taken, had not shown any civilian presence on those routes.

Moreover, the attack was carried out in conjunction with various precautionary measures, such as the selection of the munition used to carry out the strike, which aimed to mitigate the risk to civilians and passing vehicles. It was also found that under the circumstances, the operational authorities had not foreseen that the strike on the motorbike would take place in the vicinity of the school, and that, in any case, at the time at which it became clear that the strike would occur in proximity to the school, they did not have the capacity to prevent the strike from taking place in that location. The fact that, in practice, civilians who were uninvolved in the hostilities were harmed, is a tragic and regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation, and without any further steps to be taken against those involved.

In the wake of the incident, a number of operational lessons-learned were implemented by the IDF, as regards the methods for carrying out aerial strikes in similar circumstances, with the aim of minimizing the risk of reoccurrence of similar incidents in the future.

## **Incidents in Regard to which the MAG Ordered a Criminal Investigation Without Requiring Prior Examination by the FFA Mechanism – Updates**

### **1. Allegation Concerning Abuse of a Resident of Khirbeit Khuza'a under Detention and Looting of his Property (17 July 2014)**

In a report released by an international organization it was alleged that a resident of Khirbeit Khuza'a (who remains anonymous in the report) was detained by IDF soldiers and questioned, and that during the course of said questioning, he was physically struck. Additionally, it was alleged that the soldiers took a cash sum from his pocket, which was not returned to him after his release. In response to these reports, the MAG ordered the opening of a criminal investigation into the incident.

### **2. Allegations Concerning the Intentional Discharge of a Weapon; Harm to Civilians; and Intentional Damage to Property, in Breach of the IDF's Operational Instructions**

In a report released by an NGO, anonymous allegations were made regarding tens of exceptional incidents that were alleged to have occurred over the course of the Operation. Examination of the report revealed that the allegations regarding the majority of the alleged exceptional incidents were insufficiently concrete, and did not, in any event, raise grounds for a reasonable suspicion of criminal misconduct by IDF forces.

Nonetheless, in regard to eight of the allegations, which relate to six alleged incidents, additional information was found which gave rise to a suspicion that IDF forces had acted in a manner that was not in accordance with the rules and instructions applicable to IDF forces. These incidents include: fire aimed at civilian buildings and cars in violation of IDF's operational instructions; harm to civilians in violation of IDF's operational instructions; damage intentionally inflicted to property in violation of IDF's operational instructions; and looting. Subsequently, the MAG ordered the opening of criminal investigations into these incidents.

## **Criminal Investigations which were Completed and in Regard to which the MAG has Decided to Close the Investigation File**

### **1. Allegation Concerning the Abuse of a Resident of Khirbeit Khuza'a under Detention (23 July 2014)**

As reported in a previous update, subsequent to a complaint received by the MAG Corps from a resident of Khirbeit Khuza'a, via his legal representative, in which it was claimed that after his capture by IDF forces he had been struck by IDF soldiers, on a number of occasions, the MAG ordered the opening of a criminal investigation into the incident.

Over the course of the investigation, testimony was collected from the complainant, as well as from numerous soldiers and officers who were involved in the various stages of the complainant's detention and in his questioning (nonetheless, the investigation team was unable to identify the soldiers who had escorted the complainant from the detention facility in Israeli territory back to the Gaza Strip). The investigation also reviewed numerous documents pertaining to the complainant's detention, including forms that documented the medical examinations that he had undergone, and the statement that he had made during the course of his questioning.

From the factual findings collected by the criminal investigation, no support whatsoever could be found for the claims of the complainant. This includes the medical examination

forms, from which it arose that no injuries or bruising were found on the body of the complainant during his examination that would be consistent with the complainant's claims. It also includes the documentation of the complainant's questioning, according to which, the complainant did not allege that any violence had been used against him.

The criminal investigation recently concluded, and after the MAG had reviewed its findings, he ordered the closing of the investigation file, in the absence of a sufficient evidentiary basis to establish the commission of a crime by IDF soldiers. An update regarding this decision has been sent to the legal representative of the complainant.

**2. Allegation Concerning Unlawful Fire towards a Structure which included a Medical Clinic in Shuja'iyya (23 July 2014)**

As previously reported, in the wake of media reports alleging that IDF forces intentionally and without operational justification fired tank shells towards a structure which included a medical clinic, from which there had emanated fire resulting in the death of an IDF officer the day prior, the MAG ordered the opening of a criminal investigation into the incident. The MAG Corps did not receive any complaints concerning this incident or other reports concerning harm to civilians or damage to a medical clinic.

The criminal investigation has recently been concluded. During the investigation, testimonies were taken from a number of soldiers and officers involved in the incident, as well as expert testimonies from senior officers. A large amount of material concerning the incident was also reviewed, including intelligence material, information from the IDF's operational systems and aerial photography.

From the factual findings collected by the MPCID investigators it arose that on the day of the incident and the days prior to the incident, on the basis of intelligence information, an armored force was operating in a part of Shuja'iyya in which the said structure was located, in order to locate a combat tunnel. According to information obtained in the past, the structure included a medical clinic within it. On this basis, the structure was designated as a "sensitive site" on the relevant operational systems of the IDF. In accordance with the IDF's operational instructions, any military operation to be conducted in the vicinity of such sites requires the adoption of special precautions.

The day prior to the incident, fire was executed from the structure towards the IDF force, which caused the death of an IDF officer from the force. It arose from the investigation that on the day of the incident, the force's commander, a Lieutenant Colonel, ordered the firing of tank shells towards the structure. Prior to ordering the fire, while talking to his subordinates over the communications channel, the commander presented the fire as "in memoriam" for the officer who was killed the previous day by fire emanating from that structure. This statement was made without also clarifying the operational rationale in ordering the fire.

The main question in the investigation was whether the fire was ordered solely "in memoriam" for the officer killed, or whether it served an operational rationale and was conducted in accordance with the law of armed conflict. According to the commander, he concluded that the structure constituted a lawful military objective, on the basis of up-to-date intelligence information on the enemy's movement in the area, the military use that had been made of the structure in order to conduct fire against IDF forces, and the risk that the commander perceived as emanating from the structure in real time. In addition, the commander's assessment was that the attack was not expected to cause harm to civilians, as there was no civilian population in the area at the time due to the intensive hostilities. According to the commander, his words over the communications channel

were intended to raise the spirits of his subordinates for the continuing hostilities, after an officer from the force was killed the previous day – and did not reflect the operational rationale for ordering the fire.

Additional testimonies gathered as part of the investigation supported the commander's version of events, and the evidence as a whole did not refute his explanations. Further, senior officers who provided expert testimony during the investigation, concluded after examining the incident that under the operational circumstances extant at the time of the incident, the decision to conduct the fire was reasonable. The investigation did not lead to any findings as to whether the structure towards which the fire was executed actually included a medical clinic, and if it was damaged as a result of the fire. As previously noted, the MAG Corps did not receive any complaints concerning this incident or other reports concerning harm to civilians or damage to a medical clinic.

After reviewing the investigation's findings, the MAG found that insufficient evidence existed that would justify legal action – criminal or disciplinary – against the commander as a result of the fire towards the structure.

At the same time, the MAG found that the commander's remarks to his subordinates on the communications channel prior to executing the fire were inappropriate, as they imply that executing fire "in memoriam" or as an act of revenge is legitimate. Such a message might blur the boundaries between permitted and forbidden, and induce failure in soldiers and commanders exposed to such message, especially during combat. Such a message does not accord with IDF values and the remarks constitute a failure in command. As a result, the MAG recommended to the Deputy Chief of Staff that he conduct a reprimand procedure against the commander. The MAG also recommended that the results of this procedure be taken into consideration when considering any future deployment and promotion of the commander. These recommendations were adopted by the Deputy Chief of General Staff, and the reprimand procedure was carried out.

### **3. Allegation Concerning the Abuse of a Child in Khirbeit Khuza'a (24 July 2014)**

In a report released by an international organization it was alleged, that after IDF soldiers entered the house of a resident of Khirbeit Khuza'a (who remains anonymous in the report), they handcuffed his son, who suffers from a mental illness, covered his eyes, hit him, and fired shots between his feet. Subsequently, the MAG ordered the opening of a criminal investigation into the incident.

Although the report provides only partial details regarding the identity of the family, by virtue of the considerable efforts of the investigation team, the relevant family in Khirbeit Khuza'a was identified, with what is considered to be a high degree of certainty, and testimony was collected from the family members who were present in the house at the time when it was entered by IDF forces, during the course of the Operation. Additionally, testimony was collected from the commanders who were present at the time at which, according to the allegation, the incident occurred. All of the interviewees, including the father of the family, testified that no violence had been used by IDF forces against the young family member.

The criminal investigation recently concluded, and after the MAG had reviewed its findings, he ordered the closing of the investigation file, in the absence of a sufficient evidentiary basis to establish the commission of a crime by IDF soldiers.

**4. Allegation Concerning Looting in Khan Younis (the second half of July 2014)**

As reported in a previous update, subsequent to a complaint received by the MAG Corps from a resident of (Greater) Abbasan in Khan Younis, via his legal representative, in which it was claimed that IDF soldiers had looted his property (a cash sum of around 60,000 NIS), during a time in which the complainant had vacated his home, the MAG ordered the opening of a criminal investigation into the incident.

Over the course of the investigation, testimony was collected from the complainant as well as from a number of commanders who had been in command of the forces which had been operating in the neighbourhood in which the complainant's house is located. The investigation team also gathered information from the IDF's operational systems. From the factual findings collected by the investigation team it was found that IDF forces did not enter the house in question at any point.

The criminal investigation recently concluded, and after the MAG had reviewed its findings, he ordered the closing of the investigation file, in the absence of a sufficient evidentiary basis to establish the commission of a crime by IDF soldiers. An update regarding this decision has been sent to the legal representative of the complainant.

**5. Allegation Concerning Looting in Deir Al-Balah (the second half of July 2014)**

As reported in a previous update, subsequent to a complaint received by the MAG Corps from a resident of Deir Al-Balah, via his legal representative, in which it was claimed that IDF soldiers had looted his property (a cash sum of around 85,000 NIS), during a time in which the complainant had vacated his home, the MAG ordered the opening of a criminal investigation into the incident.

Over the course of the investigation, testimony was collected from the complainant as well as from all of the relevant soldiers and commanders, who had been present in the structure referred to in the complaint over the course of the Operation. From the factual findings collected by the investigative team it arose, that an IDF force had found a sum of cash in the structure (a sum of around 2,500 NIS, rather than as alleged in the complaint). This sum was transferred to the commander of the force, who safeguarded it until the force vacated the property. Upon the force's departure, the commander concealed the cash sum in a discreet location in the structure, in order to prevent its theft. The testimony of the soldiers in this regard was substantiated by a number of objective findings.

The criminal investigation recently concluded, and after the MAG had reviewed its findings, he ordered the closing of the investigation file, in the absence of a sufficient evidentiary basis to establish the commission of a crime by IDF soldiers. An update regarding this decision has been sent to the legal representative of the complainant.