

GAZA OPERATION INVESTIGATIONS: SECOND UPDATE

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The State of Israel

GAZA OPERATION INVESTIGATIONS: SECOND UPDATE

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I. INTRODUCTION AND SUMMARY

1. This Paper describes the progress and current status of investigations carried out by Israel into allegations of misconduct and violations of the Law of Armed Conflict¹ by Israel Defence Forces (“IDF”) during the military Operation in Gaza from 27 December 2008 through 18 January 2009 (the “Gaza Operation,” also known as “Operation Cast Lead”). It is intended as an update to the information presented in Israel’s reports related to the Gaza Operation previously released in July 2009 and January 2010.
2. Israel’s first report, from July 2009, entitled *The Operation in Gaza: Factual and Legal Aspects* (hereinafter “*Operation in Gaza Report*”),² described the events leading up to the Gaza Operation. These included Hamas’s incessant mortar and rocket attacks from Gaza on Israel’s civilians (some 12,000 such attacks in the eight years prior to the Operation) and the steadily increasing range and threat of such attacks; the abduction in 2006 of Israeli soldier Corporal Gilad Shalit, who remains in captivity incommunicado to this date; as well as Israel’s numerous attempts to address the terrorist threat from Gaza through non-military means, including diplomatic overtures and urgent appeals to the United Nations.³
3. The *Operation in Gaza Report* also described the IDF’s efforts to ensure compliance with the Law of Armed Conflict during the Gaza Operation, despite the significant operational challenges posed by the tactics of Hamas—in particular Hamas’s intentional use of Palestinian civilians and civilian infrastructure as a cover for launching attacks, shielding combatants, and hiding weapons.
4. The *Operation in Gaza Report* also set out in detail the legal framework governing the use of force and the rules—including the principles of distinction and proportionality—that apply to an armed conflict under international law⁴. The report also detailed the Israeli system for investigating allegations of violations of the Laws of Armed Conflict, and included preliminary findings (as of July 2009) of a number of the investigations already established following the Gaza Operation.

¹ As in the two previous reports, the term “Law of Armed Conflict” is used throughout this Paper in its ordinary sense—describing the legal obligations of parties to an armed conflict in the course of their military operations. International Humanitarian Law is used by many commentators and countries as an interchangeable term. Israel, like many other countries, prefers the term Law of Armed Conflict.

² *The Operation in Gaza Report: Factual and Legal Aspects* (July 2009), available at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Operation_in_Gaza-Factual_and_Legal_Aspects.htm.

³ *Id.* ¶¶ 36-81.

⁴ *Id.* ¶¶ 27-35.

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5. In January 2010 Israel released an update to the *Operation in Gaza Report* (the “*January 2010 Update*”).⁵ That update provided detailed information on Israel’s various mechanisms for reviewing allegations of violations of the Law of Armed Conflict; it also compared the Israeli investigative systems for military activities with the analogous systems of other democracies (the United Kingdom, the United States, Canada, and Australia)⁶ and explained how Israel was addressing specific complaints alleging violations of the Law of Armed Conflict during the Gaza Operation.
6. The *January 2010 Update* described in detail the multiple layers of review in Israel’s investigative system that ensure thoroughness, impartiality, and independence. At the heart of the military justice system is the Military Advocate General (“MAG”), who is legally independent from the military chain of command. When allegations of violations of the Law of Armed Conflict are identified by or brought to the attention of the MAG, in situations that suggest *per se* criminal behavior, the MAG will refer a case immediately for criminal investigation. In other cases, the MAG may first review the findings of a command investigation or in its absence request that one be conducted. The MAG will examine the information gathered in the command investigation, together with the complaint received and all additional publicly available materials, before determining whether to refer the case to criminal investigation.
7. Israel’s Attorney General provides for civilian oversight, as decisions of the MAG on whether or not to investigate or indict may be subject to his review. As noted in the *January 2010 Update*, judicial review is available through Israel’s Supreme Court sitting as the High Court of Justice exercising oversight over any decision of the MAG and the civilian Attorney General. Such Supreme Court review can be initiated by a petition of any interested party, including Palestinians who live in Gaza and non-governmental organizations (“NGOs”).⁷
8. The *January 2010 Update* reviewed progress made in the investigations as of January 2010, including updates on five special command investigations detailed in the *Operation in Gaza Report*.⁸ The *January 2010 Update* also noted that a sixth special command investigation was initiated in November 2009 to review three specific allegations in the *Report of the U.N. Human Rights Council Fact-Finding Mission on the Gaza Conflict, chaired by Justice Richard Goldstone*

⁵ *Gaza Operation Investigations: An Update* (January 2010), available at <http://www.mfa.gov.il/NR/rdonlyres/8E841A98-1755-413D-A1D2-8B30F64022BE/0/GazaOperationInvestigationsUpdate.pdf>.

⁶ *January 2010 Update* ¶¶ 71-88.

⁷ See, for example, *January 2010 Update*, ¶ 36.

⁸ *January 2010 Update* ¶¶ 96-123.

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(hereinafter “*HRCFF Report*”).⁹ Israel opened numerous other criminal and command investigations to investigate and assess allegations regarding the Gaza Operation.¹⁰

9. The current Paper provides information regarding the additional steps Israel has taken, and is taking, to conduct investigations into allegations relating to the Gaza Operation. This Paper will not repeat the extensive information previously provided in the two prior reports nor will it attempt to cover all of the investigations that Israel has opened in this regard. Instead, this report provides an overview of the progress of the major investigations over the last six months, including information on investigations relating to specific incidents discussed in the *HRCFF Report*. In addition, this Paper includes a summary of some of the changes in military operational procedures that Israel has made, or is making, to implement the lessons learned as a result of the Gaza Operation.
10. Israel’s numerous investigations have produced significant results, particularly during the last several months. Since the *January 2010 Update*, Israel’s Military Police Criminal Investigative Division (“MPCID”) has opened 11 additional criminal investigations, resulting in a total of 47 criminal investigations initiated so far into specific incidents relating to the Gaza Operation. Some of the investigations have resulted in criminal indictments and trials: two IDF soldiers were recently indicted for compelling a Palestinian minor to assist them in a manner that put the minor at risk; the MAG has also filed criminal charges in the case of an IDF soldier who is suspected of killing a Palestinian civilian who was walking with a group of civilians towards an IDF position. These cases are in addition to an earlier indictment and conviction of an IDF soldier for the crime of looting, as reported in the *January 2010 Update*.¹¹
11. Several other investigations have resulted in military disciplinary actions. An IDF Brigadier General and a Colonel have been disciplined for approving the use of explosive shells in violation of the safety distances required in urban areas. An IDF Lieutenant Colonel was disciplined for permitting a Palestinian civilian to enter a structure where terrorist operatives were present. In addition, an IDF officer was severely reprimanded and two other officers were sanctioned for failing to exercise appropriate judgment during an incident that resulted in civilian casualties in the Al-Maqadmah mosque.
12. At the same time, the MAG has concluded his review of a number of other MPCID criminal and command investigations without initiating criminal charges or disciplinary measures, after concluding that the investigations did not establish any

⁹ *Human Rights Council Fact-Finding Report* (25 September 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>.

¹⁰ *January 2010 Update* ¶¶124-27.

¹¹ *Id.* ¶ 137 & n. 112.

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violations of the Law of Armed Conflict or IDF procedures. A number of other allegations of military wrongdoing are still under investigation.

13. The IDF has also implemented operational changes in its orders and combat doctrine designed to further minimize civilian casualties and damage to civilian property in the future. In particular, the IDF has adopted important new procedures designed to enhance the protection of civilians in urban warfare, for instance by further emphasizing that the protection of civilians is an integral part of an IDF commander's mission. While the majority of the issues addressed in the new procedures were already embedded in various operational orders and guidelines in existence prior to the Operation, the new procedures demand even more comprehensive protections, such as the integration of a Humanitarian Affairs Officer in each combat unit beginning at the battalion level and above. In addition, the IDF has adopted an order defining new procedures to regulate the destruction of private property in cases of military necessity.
14. Israel has made extensive efforts to conduct thorough and independent investigations of allegations of misconduct by the IDF during the Gaza Operation. In this regard, Israel has developed mechanisms to overcome some of the challenges inherent in conducting investigations into operational activity in the context of an armed conflict, including the challenges of locating witnesses in Gaza and addressing general and often second-hand allegations of wrongdoing.
15. While the State of Israel is confident in the thoroughness, impartiality, and independence of its investigatory system of alleged violations of the Law of Armed Conflict, in light of criticism raised in certain reports regarding these mechanisms, the Government of Israel has recently mandated an independent public commission to examine the conformity of Israel's mechanisms for investigating complaints raised in relation to violations of the Law of Armed Conflict with its obligations under international law. The Commission, headed by retired Justice of the Supreme Court Yaakov Turkel, is composed of three distinguished independent experts and two renowned international observers ("Turkel Commission").
16. This paper is structured as follows: Section II outlines the progress of investigations since the *January 2010 Update*. Section III describes the results and status of several specific investigations, including investigations into incidents mentioned in the *HRCFF Report*. Section IV describes changes in military operational guidelines, based on Israel's assessment of the Gaza Operation. Finally, Section V describes the establishment of the Turkel Commission and its mandate.

II. PROGRESS OF INVESTIGATIONS SINCE JANUARY 2010

17. Over the past six months, Israel's military justice system has continued to make progress in its investigations of allegations of wrongdoing by IDF forces during the Gaza Operation. As reported in January 2010, Israel has launched over 150 military investigations, including both MPCID criminal investigations and command investigations. This Paper highlights the results of some of the investigations that have been completed and the decisions that have been made by the MAG. As previously explained, decisions of the MAG may be subject to review by the Attorney General and by Israel's Supreme Court.
18. The facts described in this Paper demonstrate that the scope of Israel's investigations into the Gaza Operation has gone well beyond focusing on individual soldiers. In addition to the criminal indictments of IDF soldiers, the MAG has not hesitated to pursue discipline of senior military officers, including a Brigadier General and a Colonel in one case, and a Lieutenant Colonel in another. In a third case, one officer was subject to disciplinary measures and two others to command sanctions, as described in more detail in Section III below. Furthermore, the IDF's six special command investigations, discussed in Israel's two previous reports, have focused on broader operational issues such as the use of weapons containing white phosphorous, the precautions taken in the vicinity of sensitive sites, and the destruction of private property. Some of these investigations have already led to substantial changes in IDF procedures, and other changes are in the process of being implemented.

A. Military Advocate General Review of Command Investigations

19. As described in the *January 2010 Update*, command investigations are important fact-finding inquiries intended not merely to examine the performance of IDF forces during military operations but also to identify and correct specific problems that may have occurred. Command investigations do not serve as a substitute for criminal investigations. Rather, command investigations compile an initial factual record, which is reviewed by the MAG together with the complaint and other relevant information before determining whether a criminal investigation is warranted. Command investigations may also recommend remedial measures, such as disciplinary actions or changes in operational procedures.
20. The MAG review of a command investigation is a rigorous procedure. During this review, the MAG considers the results of the command investigation together with the complaint received and all additional information provided by the complainant or publicly available, including reports published by human rights organizations and any additional sources of information at its disposal. The MAG also frequently asks follow-up questions of the investigators and may require them to

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perform additional fact-finding before making a decision on what course of action to take with respect to a particular complaint.

21. Even with regard to closed investigations, the MAG may reopen the review of an incident if new facts or circumstances subsequently come to light. This occurred, for instance, in the investigation of events around the el-Bader flour mill described in the *January 2010 Update*¹² (and discussed in Section III below), as well as in the investigation related to the al-Maqadmah mosque (also described in Section III).
22. Since January 2010, the Military Advocate General has completed his factual and legal review of numerous command investigations, referring some of them for criminal investigations, identifying others for disciplinary proceedings,¹³ and closing others when the investigation did not establish that IDF forces violated the Law of Armed Conflict or IDF procedures.

B. MPCID Criminal Investigations

23. Since the *January 2010 Update*, Israel has launched 11 new MPCID criminal investigations into IDF conduct during the Gaza Operation, bringing the total number of criminal investigations to 47. The latest criminal investigation ordered by the MAG relates to allegations described in several reports, including the *HRCFF Report*, pertaining to the Al-Samouni family.¹⁴
24. As explained in the *January 2010 Update*, command investigations are not a prerequisite for the initiation of a criminal investigation and therefore do not delay investigations in cases in which a *prima facie* basis for criminal behavior is clearly apparent. In fact, of the 47 criminal investigations initiated to date relating to the Gaza operation, 34—three quarters of the total—were directly referred to criminal investigations.
25. A number of criminal investigations have been concluded and their results reviewed by the MAG. In several of these cases, the MAG has referred the matter for disciplinary proceedings or ordered the issuance of a criminal indictment, as detailed in Section III below.
26. Since the conclusion of the Gaza Operation, the MPCID has focused its resources on the investigation of incidents arising out of the Operation. As previously reported, due to the volume and breadth of the investigations, a team of sixteen

¹² *Id.* ¶¶ 165-74.

¹³ As noted in the *January 2010 Update*, ¶ 55, disciplinary proceedings are reserved for less serious offenses. However, they can result in prison sentences of up to three years.

¹⁴ *HRCFF Report* ¶¶ 706-44. As stated in the *January 2010 Update*, ¶¶ 124-25, a special command investigation was established to review this incident. Upon review of the findings of the special command investigation, the MAG decided that a criminal investigation was warranted. This investigation will proceed concurrently with two criminal investigations which are underway regarding other aspects of the incident.

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investigators was dedicated exclusively to the Gaza Operation investigations. The investigators have at their disposal four Arabic-speaking translators. During a period when a particularly large volume of translations was required, the MPCID temporarily employed seven additional translators.

27. MPCID investigators traveled to various locations in order to meet with relevant witnesses, including Palestinians and IDF soldiers and officers involved in the Gaza Operation. In order to contact and coordinate meetings with Palestinian complainants in Gaza, MPCID investigators sought the assistance of human rights organizations and Israeli lawyers representing some of the complainants, which facilitated meetings between residents of Gaza and MPCID investigators (some in a facility at the Erez Crossing, one of the crossing points between Israel and the Gaza Strip). When the complainants named other potentially relevant witnesses in the course of an interview, investigators sought to interview those individuals as well.
28. In addition to collecting witness testimony, criminal investigators sought and obtained a variety of physical evidence, including IDF maps and operational logs relevant to the investigations. Investigators also gathered medical records from Gaza hospitals to assess injuries reported by Palestinian complainants. In some cases, MPCID enlisted the assistance of independent experts in order to study evidence of blast marks and attempt to identify the types of munitions used.
29. As noted in the *January 2010 Update*, MPCID investigators faced a number of difficult challenges in ascertaining the facts of rapidly evolving conflict situations.¹⁵ The first challenge was the identification of the IDF contingents operating in each area on the day in question. MPCID investigators met with representatives of the Southern Command and the Gaza Division and carefully mapped the movement of the forces in the course of the Operation. Investigators also took testimony from battalion commanders and company commanders. MPCID investigators then sought to match up particular allegations with the location of relevant forces.
30. Another challenge is that some Palestinian witnesses have refused to make any statement, even in writing, to IDF investigators. Other Palestinian witnesses have declined to provide testimony in person. While an affidavit can provide investigators with valuable information and serve as the starting point for an investigation, a written affidavit alone is generally inadmissible as evidence at trial. In the Israeli legal system, as in many others, proving a criminal case instead requires that witnesses be willing to appear in court to permit cross-examination on issues such as the witness's ability to observe the events, whether a witness has any bias, and whether there were other relevant facts not recounted in the written statement. Hence, in some cases, the unwillingness of a complainant to cooperate

¹⁵ *Id.* ¶ 93.

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in criminal investigations may deprive the investigators of the most significant evidence.

31. Despite these difficulties, the MPCID has now completed a significant number of the criminal investigations opened in relation to the Gaza Operation. The MAG, in turn, has reviewed and made a decision with regard to many of these investigations. It should also be noted that in the course of evaluating some of the more complex incidents of the Gaza Operation, the MAG has consulted with senior attorneys in the Office of the State Attorney, and, in particular, with the Deputy State Attorney for Special Affairs and the Deputy State Attorney for Criminal Matters.
32. This Paper gives further detail about a number of MAG decisions reviewing criminal and command investigations in Section III.

C. Civilian Review of the Military Justice System

33. As detailed in the *January 2010 Update*,¹⁶ decisions of the MAG may be subject to civilian review by the Attorney General of the State of Israel, an independent figure of high authority. A complainant or NGO may trigger review of the Attorney General by sending a letter to the Attorney General requesting further review of the matter. The Israeli Supreme Court has ruled that the Attorney General can order the MAG to change his position concerning whether to file a criminal indictment.¹⁷
34. Decisions of both the MAG and the Attorney General may be subject to review by the Supreme Court, sitting as the High Court of Justice.¹⁸ This would include a decision whether to open a criminal investigation, whether to file an indictment, and whether to take other disciplinary action. Palestinian residents, as well as NGOs, have filed successful petitions challenging the MAG's exercise of prosecutorial discretion in several instances, while in other cases the Supreme Court has affirmed the decisions of the MAG.¹⁹

¹⁶ *Id.* ¶¶ 31-33.

¹⁷ *Id.*

¹⁸ *Id.* ¶¶ 34-40.

¹⁹ Examples of such petitions are detailed in the *January 2010 Update*, ¶¶ 36-37.

III. REPORT ON RESULTS OF SPECIFIC INVESTIGATIONS RELATING TO THE GAZA OPERATION

35. As stated in the *January 2010 Update*, Israel has launched more than 150 investigations into allegations of misconduct or violations of the Law of Armed Conflict related to the Gaza Operation, including the allegations described in the *HRCFF Report*. The *January 2010 Update* contained a description of four investigations with regard to which the MAG had completed his review as of the date of publication of that report. The present update reports on the results of several more of the cases reviewed by the MAG.

A. Investigations Relating to Alleged Mistreatment of Palestinian Civilians and Detainees

36. The IDF operational orders emphasize the duty to protect the dignity of civilians in the course of an armed conflict and to provide detainees with humane treatment. Accordingly, the standing orders of the Gaza Operation explicitly prohibited the use of civilians as human shields, as well as the compulsion of civilians to take part in military operations, in accordance with the Law of Armed Conflict and a Supreme Court ruling on the matter.²⁰
37. Israel takes seriously any and all reports of mistreatment of Palestinian civilians or detainees during the Gaza Operation. The MAG has directly referred for criminal investigation all allegations that civilians were used by IDF forces as human shields or compelled to take part in military operations or that detainees were mistreated while in IDF custody. As the cases described below illustrate, the facts uncovered by some of the investigations differ substantially from the allegations. Nonetheless, in one case described below, the MAG found sufficient evidence of wrongdoing to prosecute two soldiers, and, in another, the MAG referred the case for disciplinary proceedings against a senior IDF commander. Furthermore, as stated in the *January 2010 Update*, the principal issues concerning the conditions of detention of Palestinian detainees during the course of the Gaza Operation are the subject of an ongoing special command investigation, headed by a senior officer outside the chain of command during the events in question.²¹
38. The following are a number of examples of the results of the MAG's review of investigations relating to alleged mistreatment of Palestinian civilians and detainees.

²⁰ *Adalah—The Legal Center for Arab Minority Rights in Israel v. GOC Central Command, IDF*, HCJ 3799/02 (6 October 2005).

²¹ See *January 2010 Update*, ¶ 125 & note 110, for the detailed mandate of this special command investigation.

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(1) M.R.

39. The complaint regarding this incident was included in a Report of the Special Representative of the U.N. Secretary General for Children and Armed Conflict and alleged the use of a Palestinian boy as a human shield by IDF forces operating on 15 January 2010 in the Tel Al-Hawa area of Gaza City.²² A similar allegation was raised by an Israeli NGO. In light of the allegations, the MAG ordered the opening of a direct criminal investigation.
40. The MPCID sought to identify the complainant, whose identity was not referenced in the report of the Special Representative of the Secretary General for Children and Armed Conflict. The military police investigators contacted the Israeli NGO and requested its assistance in identifying the complainant and coordinating an interview with him. The boy was interviewed in the presence of his mother. The investigators also collected other evidence, including the testimonies of soldiers involved in the incident.
41. The investigation revealed that while conducting a search in a building in Tel Al-Hawa, two soldiers compelled a boy to open several bags and suitcases suspected of being rigged with explosives. Based on these findings, the MAG found substantial evidence that these soldiers had failed to comply with IDF orders prohibiting the use of civilians for military operations.
42. In March 2010 the MAG issued a criminal indictment against the two soldiers. The trial, which is open to the public,²³ is currently underway in a District Military Court in Israel. As of the date of this Report, the prosecution has presented its case, which included the testimony of the boy.

(2) Majdi Abd-Rabbo

43. A complaint by an Israeli NGO asserted that a Gaza resident named Majdi Abd-Rabbo was forced to assist an IDF unit in an attempt to obtain the peaceful surrender of several armed operatives hiding in a house adjacent to his own. The MAG referred the incident directly to an MPCID criminal investigation in June 2009.²⁴ With the assistance of the NGO, the MPCID met with the complainant and took his statement. In addition, testimony was taken from 15 soldiers and officers from the unit involved in the incident, as well as several soldiers and officers from other units operating in the area at the time specified in the complaint.

²² *Human Rights Situation in Palestine and Other Occupied Arab Territories*, A/HRC/10/22, at annex ¶ 10 (20 March 2009).

²³ *See January 2010 Update* ¶ 28.

²⁴ After the MPCID investigation was already underway, the allegations were also described in the *HRCFF Report*, ¶¶ 1033-63.

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44. Following a thorough investigation, various aspects of Mr. Abd-Rabbo's testimony could not be substantiated. However, the evidence gathered in the course of the investigation did reveal that the commander of the force, a Lieutenant Colonel who was in radio contact with the IDF unit throughout the event, had repeatedly authorized the unit to allow Mr. Abd-Rabbo to enter the structure adjoining his house in order to communicate with armed men inside.
45. Although the investigation found that Mr. Abd-Rabbo had asked to enter the structure and to communicate with the men, apparently in an attempt to resolve the situation and avoid potential damage to his own house, the MAG concluded that the commander should not have allowed Mr. Abd-Rabbo to enter the structure at that time, putting him at risk, regardless of his apparent consent.
46. Therefore, the MAG referred the case for disciplinary proceedings against the commander for failing to adhere to IDF operational orders prohibiting any such use of civilians for military operations. In opting for disciplinary proceedings rather than a criminal indictment, the MAG considered a range of factors, including the commander's belief that by consenting to Mr. Abd-Rabbo's request, he was acting to minimize potential damage to Mr. Abd-Rabbo's property. An additional factor was that Mr. Abd-Rabbo was not injured as a result of the incident. The officer was subsequently disciplined.

(3) Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami

47. Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami both alleged in two separate complaints that on 5 January 2009 Israeli soldiers took them from their homes in the Al-Atatra neighborhood, mistreated them, and forced them to act as human shields.²⁵ Mr. al-Ajrami also alleged that he suffered physical injuries as a result of mistreatment by IDF forces and that his house was vandalized and looted. The MPCID opened two separate criminal investigations into the two cases that were later combined when it became apparent that they related to a single chain of events.
48. In the course of the investigation, MPCID interviewed Mr. Halawa, Mr. al-Ajrami, and Mrs. Manal al-Ajrami. Investigators later sought to interview Mr. Halawa a second time, but he refused to appear. He did, however, provide investigators with additional information by means of a written affidavit. The MPCID also collected testimonies of over 20 officers and soldiers, including commanders of the regiments and companies that operated in the area during the relevant timeframe. In addition to witness testimony, the MPCID examined a variety of documentary evidence, including medical documents presented by Mr. al-Ajrami from Shifa hospital in Gaza.

²⁵ The allegations were also described in the *HRCFF Report*, ¶¶ 1064-95.

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49. The investigation found that an IDF unit operating in the Al-Atatra neighborhood and searching for weapons and terrorist operatives²⁶ encountered the families of Mr. Halawa and Mr. al-Ajrami, who chose to stay in their homes despite the early warnings issued by the IDF, calling for civilians to evacuate the neighborhood for their safety. The force suspected Mr. Halawa and Mr. al-Ajrami of involvement with militant groups, and thus detained them for questioning and transferred them out of the battle zone to an IDF post approximately one kilometer away. For security reasons, the detainees were blindfolded while they were being transferred to the post.
50. The consistent evidence was that at no time during the incident were either of the two individuals made to walk ahead of the soldiers or used as human shields. Rather, the two detainees walked surrounded by the soldiers as required by IDF operational procedures, both in order to protect the detainees as well as to reduce the possibility of their escape.
51. The investigation found no evidence to support the complainants' contention that they were physically abused while in IDF custody. In fact, this contention was contradicted by the records of Mr. al-Ajrami's medical examination at Shifa hospital soon after the incident. Similarly, the investigation determined that there were no grounds to attribute to IDF forces the vandalism or looting that may have occurred in Mr. al-Ajrami's home. The investigation noted that Mr. al-Ajrami told investigators that his family had failed to evacuate from the area partly due to their fear of burglaries and looting by other Gaza residents.
52. After reviewing the facts of the investigations, the MAG found that there were no grounds for any additional proceedings and closed both cases.

(4) AD/03

53. The *HRCFF Report* describes an incident involving an anonymous witness, AD/03, who alleged that he and others were improperly detained and coerced into assisting IDF forces during the Gaza Operation.²⁷ In reviewing these allegations and cross-referencing them with other available sources of information, Israeli investigators were able to establish the identity of AD/03 and determine that his case had already been reported to the IDF prior to the publishing of the report and was already the subject of a criminal investigation by the MPCID.²⁸

²⁶ The Al-Atatra neighborhood in which the incident occurred was an area of heavy fighting on the date in question. The neighborhood had been the site of multiple rocket launchings into Israel, prompting the IDF to take control of the area and search buildings for militants and weapons.

²⁷ *HRCFF Report* ¶¶ 1143-63.

²⁸ Acting through his Israeli lawyer, AD/03 sent a complaint regarding the incident to Israel's Attorney General. In accordance with Israeli procedure, this complaint was forwarded to the MAG, who ordered the opening of a direct criminal investigation.

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54. At the outset of the criminal investigation, the MPCID contacted AD/03's lawyer to coordinate an interview with AD/03 at the Erez Crossing, where MPCID has taken testimony from dozens of Palestinian complainants in other cases related to the Gaza Operation, but AD/03 refused the requests. The lawyer asserted that AD/03 refused to be interviewed out of concern for his safety.
55. AD/03 continued to refuse to cooperate even though Israeli investigators explained that such testimony was essential to the criminal investigation. Taking detailed testimony from the complainant, including collection of any materials from the complainant that could be used to further the investigation, is a principal component of an MPCID investigation. The testimony is necessary not only to confirm allegations but also to identify the particular IDF unit and individuals that were allegedly involved. In the absence of a complainant's testimony, it is difficult for the military prosecution to build a sustainable criminal case, which requires proof of guilt beyond a reasonable doubt. Allegations contained in the *HRCFF Report* and various NGO and media reports would be considered inadmissible "hearsay" under the rules of evidence, and Israeli courts cannot rely on statements contained therein to prove criminal activity.
56. As of the date of this Paper, the case of AD/03 has been closed, but the IDF remains interested in interviewing him to learn more about the incident and complete the investigation. The IDF has given assurances that Palestinian witnesses who agree to come to the Erez Crossing point and provide testimony will be questioned by the MPCID only in relation to their complaints and will not be detained. These assurances are also applicable to AD/03.
57. It should be noted that some of the particular allegations cited in the complaint of AD/03, including the conditions of detention of Palestinians during the Gaza Operation, are the subject of a special command investigation described in the *January 2010 Update*.²⁹ That investigation is still ongoing.

B. Investigations Concerning the Alleged Targeting of Civilian Objects and Sensitive Sites

58. The principle of distinction is a core element of IDF standing orders. All IDF soldiers are instructed that strikes are to be directed only against legitimate military targets, combatants, and civilians directly participating in hostilities. IDF orders and doctrine strictly prohibit the intentional targeting of civilians or civilian objects. The principle of proportionality is also a core element, prohibiting attacks that are anticipated to harm civilians excessively in relation to the expected military advantage. IDF orders include the obligation to take all feasible precautions in order to minimize the incidental loss of civilian life or property,

²⁹ *January 2010 Update* ¶¶ 124-25; see also note 21, *supra*.

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such as by adjusting the timing of an attack, the means of attack, and the direction of attack, as well as aborting attacks under certain circumstances.

59. As described in the *Operation in Gaza Report*,³⁰ in conformity with the Law of Armed Conflict, IDF operational orders also instruct that medical facilities should be provided absolute protection from attacks, unless they are being used by the enemy for military activities. In addition, special precautions are to be taken when conducting military activities near U.N. premises and other facilities dedicated for humanitarian use, such as those of medical organizations and hospitals.
60. Following the Gaza Operation, the IDF reviewed complaints regarding the alleged targeting of civilian objects, as well as claims of damage caused to medical and U.N. facilities.³¹ These incidents were the subject of four special command investigations (one dedicated to damage to medical facilities, a second to U.N. facilities, a third dealing with incidents involving multiple civilian casualties and the most recent command investigation which is addressing several complex incidents).³² In two of these cases, five officers were disciplined or sanctioned, two of them for violating IDF rules of engagement and three others for failing to exercise appropriate judgment. In other cases, the MAG review revealed that the damage did not violate the principles of distinction and proportionality and has found no basis for imputing any criminal intent to the IDF soldiers in the field or to the principal actors in the operations.

(1) Al-Fakhura Street

61. The *HRCFF Report* describes an alleged Israeli mortar strike in al-Fakhura Street in Jabalia, in close proximity to a United Nations Relief and Works Agency (“UNRWA”) school used as a shelter, which reportedly caused a number of civilian casualties. This incident was discussed in the *Operation in Gaza Report*, which explained that Israeli forces fired on and eliminated a Hamas mortar squad that had fired repeatedly on them from a location approximately 80 meters from

³⁰ *Operation in Gaza Report* ¶ 224.

³¹ In the densely populated Gaza Strip there are over 750 U.N. facilities, and almost 1,900 sensitive facilities in total. Nonetheless, a relatively small number of complaints alleged damage caused to such sensitive facilities. The U.N. Board of Inquiry Report into certain incidents in the Gaza Strip found possible damage or injury by IDF action to seven U.N. facilities in the course of the Operation. Israel cooperated fully with the U.N. Board of Inquiry, sharing the results of its internal investigations and providing detailed information about the incidents in question. The Secretary General commended Israel for its extensive cooperation. Following the U.N. Board of Inquiry’s examination, and notwithstanding certain reservations it had with some aspects of the Board’s report, Israel entered into a dialogue with the United Nations to address all issues arising from the incidents examined. On 22 January 2010, the Secretary General again thanked Israel for its “cooperative approach” in these discussions and confirmed that all financial issues relating to these incidents had been satisfactorily concluded. U.N. Spokesperson Briefing (22 January 2010), available at <http://www.unmultimedia.org/radio/english/detail/89687.html>.

³² *January 2010 Update* ¶¶ 103-12, ¶¶ 124-27.

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the UNRWA school.³³ The MAG has now completed his review of the results of the special command investigation and found that IDF fire did not violate the Law of Armed Conflict.

62. The MAG found that the attack was directed against a legitimate military target and did not violate the principle of proportionality under the “reasonable military commander” test.³⁴ The MAG found that the Hamas mortar fire posed a clear and immediate threat to Israeli forces. In fact, the particular mortar rounds fired by Hamas over the course of an hour landed in very close proximity to Israeli forces. Only a day before, a mortar attack of a similar nature led to the wounding of 30 IDF soldiers.
63. The MAG also found that the commander was aware that the mortar attacks were being carried out from a populated area in the vicinity of an UNRWA school. For this reason, the commander took many precautions, including cross-verification of the source of fire by two independent means, using the most accurate weapon available, and making sure the school would not be hit by ensuring a safe buffer distance between the school and the targeted location. These precautions delayed the force’s response, prolonging its exposure to the Hamas mortar fire.
64. Ultimately, the MAG determined that the anticipated collateral damage prior to initiating IDF mortar fire was not excessive when weighed against the expected military benefit, in light of the clear military necessity of the force to protect itself from ongoing mortar fire, the force’s measured response, the relatively small area of dispersal, and the precautions taken.
65. The MAG also found that the IDF’s choice of weapons was appropriate under the circumstances. The Israeli forces employed a burst of four 120mm “Keshet” mortar rounds, fired in quick succession. The Keshet mortar contains advanced target acquisition and navigation systems and was the most precise weapon available to Israeli forces at that time. Air support was not available to the unit under attack at that moment, and the Law of Armed Conflict does not require commanders to await air support and prolong soldiers’ exposure to enemy fire.
66. Israel acknowledges that, while the strike was effective in removing the threat to Israeli forces, it also resulted in the regrettable loss of civilian lives. Although the MAG found that the IDF had not violated the Law of Armed Conflict with respect to this incident, as part of Israel’s efforts to minimize civilian casualties under all circumstances, the MAG reiterated the recommendation of the special command investigation to formulate more stringent definitions in military orders to govern the use of mortars in populated areas and in close proximity to sensitive facilities. The IDF Chief of General Staff has ordered the undertaking of staff work to draft the required orders.

³³ *Operation in Gaza Report* ¶¶ 336-40. The incident was described in the *HRCFF Report*, ¶¶ 653-90.

³⁴ *Operation in Gaza Report* ¶¶ 120-31.

(2) Al Maqadmah Mosque

67. The *HRCFF Report* and other sources alleged that on 3 January 2009 civilian casualties occurred inside the Al Maqadmah mosque in Beit Lahiya when an IDF missile struck the entrance to the mosque.³⁵ This incident was first examined in one of the original five special command investigations discussed in Israel's previous reports. This investigation could not substantiate that the mosque had been struck by IDF forces at the alleged time. However, in light of information included in other reports, the Chief of General Staff followed the MAG's recommendation that the case be reopened and reexamined in the context of a new special command investigation.
68. The new special command investigation confirmed that civilian casualties and damage to the mosque which occurred on 3 January 2009 were indeed a result of an IDF missile strike directed at two terrorist operatives standing near the entrance to the mosque.
69. These operatives, who belonged to a terrorist squad that was involved in the launching of rockets towards Israel, were initially identified standing in the vicinity of a hospital —and they were therefore not targeted at that time. The operatives were later identified at a different location in Beit Lahiya. At this point, the IDF began to deploy its assets for an immediate attack against the two terrorist operatives.
70. In the course of the preparations for the attack, the area of the strike was monitored closely and observed for several minutes. During this time, no civilians were visible in the surrounding streets, except for one who entered the building adjacent to the operatives. Since the location appeared to be clear of civilians, the strike against the operatives was initiated. The missile was directed at the operatives and struck the ground near the entrance to the building.
71. The investigation revealed that the military commanders planning the strike were not aware that the building next to the operatives was a mosque. The building did not have a minaret that might have identified it as a mosque and it was not marked as such on the operational maps used by the commanders. The commanders were also unaware that one of the entry doors to the building was open, since this could not be discerned from the observation. The investigation disclosed that, as a result of the open door, shrapnel from the missile flew into the mosque, resulting in a large number of casualties inside the mosque.
72. Based on these findings, the investigation concluded that the commanders who authorized the attack were not aware that the building adjacent to the target was a mosque and did not anticipate that there would be any civilian casualties as a result of the strike.

³⁵ The incident was also described in the *HRCFF Report*, ¶¶ 822-43.

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73. Nevertheless, the investigation found that an IDF Captain involved in the preparations for the strike had learned, just before the strike, but after it had already been approved, that the building might be a mosque. The officer gravely erred in exercising his judgment in failing to bring this information to the attention of his superior commanders so that they could reconsider the strike. In light of this finding, the officer was disciplined by means of a severe reprimand, taking into account the fact that he had not anticipated harm to civilians and given the time-sensitivity of the attack, which required quick action under extreme pressure. In addition, it was decided that the officer would not be allowed to serve in positions of a similar nature and responsibility in the future.
74. The command investigation also determined that two officers responsible for the selection of ammunition used in the air strike had also exercised poor professional judgment and deviated from professional guidelines when they used a more powerful missile than they had been directed to use. This was done because the requested missile was not available on short notice and the operation was highly time-sensitive. As the officers did not anticipate any civilian casualties from the strike, they did not foresee any additional risk to civilians resulting from using the selected missile. The officers were both sanctioned and temporarily suspended from taking part in operational activity.
75. After reviewing these findings, the MAG concluded that the strike did not target either civilians or civilian objects, since it was aimed at the terrorist operatives. As such, it abided by the principle of distinction.
76. The MAG also concluded that the strike did not violate the principle of proportionality because the decision makers in the operation did not expect harm to civilians, based on their observation of the area several minutes before the strike, and the information they possessed regarding the nature of the building. They also did not know and could not discern that the door to the building was open. In light of this, the anticipated incidental harm to civilians was low and the expected military advantage of the strike—targeting terrorist operatives involved in the launching of rockets towards Israel—was high.³⁶ The MAG further concluded that the negligence of some of the officers involved in the attack did not alter the good faith of the senior commanders in seeking to abide by the key norms of distinction and proportionality.
77. The MAG also determined that the disciplinary measures taken against the negligent captain, as well as the command sanctions against the officers in charge of munitions, were sufficient under the circumstances. The officers had not expected harm to civilians based on their observation of the area and were operating under extreme pressure due to the time-sensitivity of the strike.

³⁶ On that day alone, 39 rocket and mortar shells were launched from Gaza towards Israeli towns.

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78. Even though no criminal proceedings were initiated in this case, the MAG has recommended a revision of IDF procedures and its implementation through additional training to ensure that the errors that led to this result will not be repeated.

(3) Hamas “Police” Stations in al-Sajaiyeh and Deir al-Balah

79. The legality of targeting Hamas’s “police” force was extensively discussed in the *Operation in Gaza Report*.³⁷ As detailed in that report, Hamas military forces in Gaza were comprised not only of the Izz al-Din al-Qassam Brigades (Hamas’s official military wing), but also included the internal security apparatus of Hamas in Gaza, which performed, in addition to their regular law enforcement tasks, significant military functions. One such force—and the most substantial in size—was the police force.
80. Extensive information gathered by the IDF prior to the Operation substantiated the military function of the police force in Gaza based on its military, operational, logistic and administrative ties and cooperation with the military wing of Hamas, both as a matter of routine and particularly during a state of emergency, for instance during an Israeli military operation inside the Gaza Strip.³⁸ This military function rendered the police force a legitimate military target.
81. Additional information gathered by the IDF both in the course of the Operation³⁹ and following its completion—including public statements made by Hamas officials—further confirmed that the police force in Gaza was intertwined with the military wing of Hamas. In fact, even the current minister of the Interior and National Security of the Hamas regime in Gaza—responsible for the internal security forces of Hamas, including the police—in listing the “achievements” of his predecessor, Sayid Siyyam, said that:

“among the minister’s greatest achievements was the creation of the cooperation and coordination between the current security services and the Palestinian resistance...against the Zionist enemy...and for that reason [the enemy] attacked the headquarters of the security services [during the Gaza Operation]”.

³⁷ *Operation in Gaza Report* ¶¶ 77-81, 237-48.

³⁸ Routine military activities by the Palestinian police in Gaza included: the gathering of intelligence about IDF activities, including surveillance; the provision of weapons to assist in the capabilities-building of Hamas’s military wing; and participation in a variety of military training exercises. In a state of emergency, the police force was institutionally planned to be involved in fighting Israeli forces. The police have been observed performing this function during past operations of the IDF in the Gaza Strip.

³⁹ According to information gathered by the IDF, just before the beginning of the Gaza Operation, the internal security forces in Gaza prepared for re-deployment in anticipation of the fighting with the IDF. In the course of the operation, the internal security forces shared “operations rooms” with the military wing, cooperated with the intelligence units of the military wing, and gave preference to their military functions over law enforcement tasks.

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(Hamas police website, May 7, 2009)⁴⁰

82. The MAG has recently completed his review of the findings of command investigations into two aerial strikes on police stations reported in the *HRCFF Report*—one in al-Sajaiyeh and the other in Deir al-Balah—which allegedly resulted in civilian casualties.⁴¹ These strikes were part of the Israel Air Force (“IAF”) aerial campaign at the commencement of the Gaza Operation, aimed at weakening Hamas’s terrorist and military strongholds and capacity by targeting its operational infrastructure. The MAG concluded that the strikes were mounted against legitimate military targets and thus complied with the principle of distinction.
83. The police station in Deir al-Balah was part of the “internal security” apparatus of Hamas, and was occupied by armed operatives. It was struck on the first day of the aerial campaign, as part of a coordinated IAF opening strike, intended to substantially weaken the military force available to Hamas during the Operation by concurrently attacking numerous military locations.
84. It was alleged that, as a result of the strike on the Deir al-Balah station, six civilians were killed, five of them while attending a nearby vegetable market. The investigation found that the IAF was not aware of the existence of the vegetable market, as the market’s location had not been reported to the IDF in the past and thus was not marked as a “sensitive site” on IAF maps, which could have affected the planning of the air strike. In addition, it was not observed as a gathering place of civilians in aerial photographs analyzed by the strike’s planners before the operation.
85. The IAF took several measures in order to minimize collateral damage, including the use of munitions with a warhead of reduced size and strength, equipped with a delay fuse.⁴² Advanced warnings could not be given due to the timing of the strike, which required the element of surprise.
86. The al-Sajaiyeh police station served as the central station of the police force in that area, and was also occupied by armed Hamas operatives. It was attacked on the second day of the aerial campaign, intended to further destroy Hamas’s operational and command infrastructures. Similar precautions to the ones implemented in the strike against the station in Deir al-Balah were used in this strike as well. Nevertheless, as a result of the attack, four civilians were reportedly killed in an adjacent street.

⁴⁰ Intelligence and Terrorism Information Center, *Hamas and the Terrorist Threat from the Gaza Strip: The Main Findings of the Goldstone Report Versus the Factual Findings*, at pp. 271 (March 2010), available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/g_report_e1.pdf.

⁴¹ *HRCFF Report* ¶¶ 405-07.

⁴² Unlike a regular warhead, which will normally detonate upon impact with an object, a warhead with a delayed fuse will detonate within a structure, and thus will typically cause a more contained explosion with less debris and shrapnel.

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87. The MAG reviewed the findings of the command investigations and concluded that both strikes were planned and executed in accordance with the Law of Armed Conflict. The MAG noted that, despite the unfortunate death of civilians, in both cases the anticipated collateral damage to civilians was not excessive in relation to the expected military advantage of the strike, due to the strategic importance of the strikes conducted on the first days of the Operation against Hamas's operational and command infrastructures and their substantial contribution to the ability of the IDF to achieve the goals of the Operation as a whole. Accordingly, the MAG decided not to refer either of the cases for additional proceedings.
88. Nonetheless, the findings of the command investigations will be studied as part of the operational "lessons learned" analysis, in order to consider measures which can minimize the danger to civilians in future military actions. In this regard, the MAG has recommended improvements regarding the mapping of "sensitive sites." Currently, these sites are identified by the IDF based on information received from various sources regarding certain types of facilities, such as: hospitals, schools, mosques, and U.N. facilities. In light of the findings of the investigation of the Deir al-Balah station strike, the MAG recommended the broadening of this list to include places of large civilian gatherings, such as open markets.

(4) Hamas Security Force Building adjacent to the Main Prison

89. The IDF investigated allegations that on 28 December 2008 the main prison complex inside the al-Saraya compound in Gaza City was deliberately targeted in an air strike.⁴³
90. The command investigation of this incident confirmed that an IAF aerial attack on 28 December caused damage to prison facilities within the al-Saraya compound. However, the damage occurred because the prison was located immediately adjacent to the barracks building used by Hamas internal security forces. The barracks—which were the object of this strike—were a legitimate military target.⁴⁴ Incidental damage occurred to several smaller structures within the prison complex and led to the collapse of several prison walls. The central structure of the prison remained standing. The damage also led to the death of one prison guard and injury to several other guards. No prisoners were injured in the attack.
91. Upon review, the MAG found that the attack did not violate the Law of Armed Conflict. The IDF attack targeted a specific military facility, taking precautionary measures, including the use of precision technology. Under these circumstances, the MAG determined not to pursue any further proceedings.

⁴³ HRCFF Report ¶¶ 365-70.

⁴⁴ See ¶¶ 79-81, *supra*, and accompanying notes.

(5) UNRWA Field Office Compound

92. One of the most widely reported incidents during the Gaza Operation involved the UNRWA field office compound, where three individuals were injured and significant property damage resulted from the use of smoke-screen munitions containing white phosphorous. Additional damage occurred due to the use of high explosive shells in the vicinity of the compound.⁴⁵
93. A special command investigation, devoted to examining claims of damage to U.N. facilities by IDF forces, included an investigation of the UNRWA incident, and factual findings of that investigation were reported in the *Operation in Gaza Report*.
94. With regard to the use of high explosive shells in the incident, based on the findings of the investigation, the Commander of the Southern Command disciplined two senior commanders, a Brigadier General and a Colonel, for authorizing the use of the shells in violation of the safety distances required in urban areas set forth in IDF operational orders. The MAG reviewed the results of the investigation and concurred with the decision to discipline the two officers. He also determined that, even though the shelling was carried out in violation of IDF operational orders, no criminal charges were appropriate because the shelling was aimed at military targets, and because precautions were taken which proved effective in avoiding civilian casualties.
95. With regard to the use of the smoke-screening munitions, the MAG found that the investigation did not demonstrate any violations of the Law of Armed Conflict or IDF procedures. As explained in the *Operation in Gaza Report*, this type of munition is not prohibited under international law, even in urban areas.⁴⁶ In the particular circumstances of this case, the MAG determined that the use of these munitions was needed to protect Israeli forces from Hamas operatives armed with anti-tank missiles⁴⁷ and complied with the requirement of proportionality, as the anticipated risk to civilians and civilian objects stemming from their use was not excessive in relation to the expected military advantage.
96. The investigation did find that the actual damage to the compound as a result of the smoke-screening shells was more extensive than the IDF had anticipated. Following reports of the damage, the IDF immediately imposed revised restrictions on the use of smoke-screening munitions containing white phosphorous near sensitive sites (including the requirement of a several hundred meters buffer zone). These restrictions were in place through the remainder of the Gaza Operation.

⁴⁵ This incident was also described in the *HRCFF Report*, ¶¶ 543-98.

⁴⁶ *Operation in Gaza Report* ¶¶ 405-30.

⁴⁷ *Id.* ¶¶ 341-47.

97. The use of smoke-screening munitions containing phosphorus during the Gaza Operation was also addressed in a special command investigation dedicated to the issue. This investigation determined that the policy of using such munitions was consistent with Israel's obligations under the Law of Armed Conflict. Nonetheless, following that investigation, the Chief of the General Staff ordered the implementation of the lessons learned from the investigation, particularly with regard to the use of such munitions near populated areas and sensitive installations. As a consequence, the IDF is in the process of establishing permanent restrictions on the use of munitions containing white phosphorus in urban areas.

C. Investigations Concerning the Alleged Targeting of Civilians

98. As mentioned above and also detailed in the *Operation of Gaza Report*,⁴⁸ IDF standing orders incorporate the principle of distinction and prohibit the intentional targeting of civilians. This section discusses the results of several investigations of incidents in which IDF military operations resulted in the death of civilians, allegedly in violation of the Law of Armed Conflict and the IDF standing orders. In one of the cases, an indictment has been filed against a soldier suspected of killing a civilian. Other cases have not uncovered evidence justifying disciplinary proceedings or a criminal indictment but nevertheless resulted in lessons learned and operational adjustments by the IDF intended to further minimize the possibility of similar events happening in the future.

(1) Juhr ad-Dik Incident

99. Following information received by the MAG, a criminal investigation was opened into an incident involving a soldier who opened fire, killing a civilian who was walking with a group of civilians carrying white flags in the village of Juhr ad-Dik on 4 January 2009.
100. According to the investigation, the soldier discharged his firearm in a manner inconsistent with orders given to him by his superior officer.
101. In light of the time and place of the incident, investigators believed that the case corresponded to allegations regarding the deaths of Majda and Rayya Hajaj described in the *HRCFF Report*.⁴⁹ There were, however, a number of inconsistencies between the two accounts, which prevented the investigators from making a positive identification of the civilian killed.
102. Nonetheless, since the evidence gathered in the course of the investigation implicated the soldier in a shooting incident of a civilian in deviation from orders,

⁴⁸ *Id.* ¶¶ 222--23.

⁴⁹ *HRCFF Report* ¶¶ 764-69.

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the MAG has ordered the indictment of the soldier on the charge of manslaughter for the killing of a civilian during the Gaza Operation.

(2) Rouhiya al-Najjar

103. This incident—involving the death of Rouhiya al-Najjar on 13 January 2009 in the village of Khuza'a—was reported to the Israeli authorities by several human rights organizations.⁵⁰ After examining the results of a command investigation regarding this incident, together with the complaints that had been received, the MAG determined that the facts available led to a significant suspicion of criminal behavior, and referred the case for an MPCID criminal investigation. The MPCID investigation included interviews with eight Palestinian residents of Gaza, including members of the al-Najjar family. Investigators also questioned more than fifteen IDF soldiers and officers regarding the incident, and studied aerial and ground photographs.
104. The investigation found that the IDF unit operating in the Khuza'a area on 12 January 2009 was involved in active combat with terrorist operatives. The operatives launched a rocket-propelled grenade ("RPG") missile towards the building occupied by the IDF unit in the early morning hours of 13 January.
105. Later that morning, the soldiers were still carefully monitoring the area adjacent to the building in order to prevent additional rocket attacks. The soldiers observed suspicious activity in the street leading to the building: a woman was identified repeatedly approaching the building carrying an unidentified package, which she placed near the building. Immediately after she returned and entered a house down the street, a group of local women unexpectedly began approaching the IDF position, and the soldiers suspected a tactic that could conceal a gunman or suicide bomber. One of the soldiers fired a warning shot to prevent the group from advancing further. A ricochet from this warning shot apparently struck Rouhiya al-Najjar, killing her.
106. The MAG reviewed the testimony collected in the course of the investigation and concluded that, under the circumstances, the soldier who fired the shot was not criminally liable. The MAG concluded that the soldier fired his weapon in light of the security need to keep the group from approaching the IDF post and his shot was not intentionally directed to hit or harm civilians. Thus, while acknowledging the lamentable results of the incident, the MAG closed the case without filing a criminal indictment against the soldier.
107. However, the MAG did find that a lapse in effective communication between IDF units may have played a part in the soldier's perception of the group as a threat. This led the MAG to recommend certain changes to IDF operational procedures, which could assist in improving the manner in which evacuation instructions are

⁵⁰ The incident was also described in the *HRCFF Report*, ¶¶ 780-87.

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given to the civilian population by the IDF, as well as to the method for relaying such information among the different forces in the field.

(3) Amal, Souad, Samar, and Hajja Souad Abd Rabbo & Adham Kamiz Nasir

108. This incident involved the alleged shooting of four Palestinian civilians on 7 January 2009 in the neighborhood of Izbat Abd Rabbo, and was reported to Israeli authorities by several human rights organizations.⁵¹ The MAG referred the complaint to a direct criminal investigation which was recently concluded. In the course of this comprehensive investigation, the MPCID collected testimony from eleven Palestinians who witnessed the events. Some of them were unable or unwilling to testify before MPCID investigators, but provided detailed affidavits. In addition, the investigators reviewed medical reports and death certificates, as well as aerial photographs provided by an Israeli NGO, which helped identify the different units involved in the incident. More than fifty commanders and soldiers from these units were also questioned by the MPCID. Some were questioned multiple times in order to clarify the circumstances of the case.
109. The evidence collected in the course of the investigation could not confirm the description of the incident by the complainants, who claimed that a soldier standing on a tank had opened fire at a group of civilians. The substantial discrepancies between the complaint and the findings of the investigation—in particular, the identity of the force and the sequence of events—led the MAG to conclude that the evidence was insufficient to initiate criminal proceedings.
110. A second part of the complaint alleged that the IDF fired at a horse-driven carriage attempting to evacuate the civilians injured in the first shooting incident and subsequently killed the carriage's driver.
111. The investigation confirmed that the carriage was fired upon by an IDF unit operating in the Izbat Abd Rabbo neighborhood. The unit had received a concrete warning that Hamas planned to send such a carriage loaded with explosives to detonate near an IDF position. The soldiers fired warning shots at the approaching carriage, which was loaded with bags that the soldiers thought contained explosives. When the carriage did not respond to the warning shots and continued its approach, the unit fired in its direction.
112. Under these circumstances, the MAG determined that the soldiers who fired at the carriage were not criminally liable. The MAG found that the soldiers' decision to fire was made in light of their belief, at the time, that the carriage posed an immediate threat to the force. (The investigation revealed that the bags did not contain explosives.) Thus, despite the unfortunate results of the incident, the MAG decided to close the case.

⁵¹ The incident was also partially described in the *HRCFF Report*, ¶¶ 770-79.

(4) Abd al-Dayem

113. This incident, involving an alleged attack on the Abd al-Dayem condolence tents in Beit Hanoun on 5 January 2009 using flechette munitions, and resulting in the deaths of civilians, was reported to Israeli authorities by several human rights organizations.⁵² After examining the results of a command investigation regarding this incident together with the complaints that had been received, the MAG referred the case for an MPCID criminal investigation, which was recently concluded.
114. In the course of this investigation, the MPCID collected testimony from eighteen Palestinian witnesses and a number of soldiers from the relevant force. Investigators also obtained and considered physical evidence such as medical reports and photographs received from an Israeli NGO. Two technical experts were consulted regarding the munitions used in this incident and their effects. Investigators also reviewed technical manuals regarding the operation of the munition.
115. The investigation revealed that a tank crew operating in Beit Hanoun had visually identified a squad of terrorist operatives in open terrain, loading a “Grad” rocket⁵³ onto a launcher. (Many such rockets were launched towards Israel before and during the Operation.) During the Gaza Operation, this was an area frequently used by terrorist operatives to launch rockets towards Israel. The tank commander immediately began preparing a strike to prevent the imminent terrorist attack on Israeli civilians.⁵⁴ Since the operatives were at a distance of approximately 1,500 meters away from the force, the use of machine guns would be ineffective. The tank commander therefore decided to use flechette shells, based on an assessment that they would be the most effective in open terrain. The tank crew observed the area surrounding the terrorist squad and did not identify any civilians in the vicinity. Hence two successive flechette shells were fired at the operatives, killing them.
116. The investigation found that, although the shells were aimed at and hit the terrorist squad in open terrain, darts from the flechette shells could have incidentally struck civilians near the Al Dayem condolence tent. However, the investigation confirmed that the soldiers did not identify any civilians in the vicinity of the terrorist squad, and therefore did not foresee the harm to the civilians near the tent.
117. The MAG reviewed the findings of the investigations and determined that the actions of the tank crew did not violate the Law of Armed Conflict. The flechette shells were launched against a military target in order to prevent an imminent

⁵² The incident was also described in the *HRCFF Report*, ¶¶ 867-85.

⁵³ A “Grad” is a 122mm foreign manufactured artillery rocket with a range of 20 kilometers.

⁵⁴ Thirty-two rocket and mortar shells were fired at Israel in the course of that day.

threat to Israeli civilians. The force did so in the reasonable belief that no civilians were present in the immediate vicinity of the terrorist squad. The use of these munitions is not prohibited under international law, as confirmed by Israel's Supreme Court and discussed in the *Operation in Gaza Report*.⁵⁵ The force acted in accordance with the applicable rules of engagement, which allowed the use of flechette shells against military targets located in open terrain. Therefore, despite the tragic consequences of the incident, the MAG determined that no further proceedings were required.

D. Investigations Concerning Damage to Private Property

118. As described in the *Operation in Gaza Report*, IDF's operational orders for the Gaza Operation mandated that private property must be respected. In accordance with the Law of Armed Conflict, the destruction of civilian property was prohibited, except in cases of imperative military necessity which required that the damage be proportional to the military advantage. The destruction of property for deterrence or retribution was strictly forbidden.⁵⁶
119. Immediately after the cessation of hostilities, Israel launched a special command investigation into the manner in which the IDF carried out this mandate during the conflict.⁵⁷ In addition, the IDF has conducted specific command investigations to examine particular incidents of destruction of property. The MAG has carefully reviewed the results of the investigations completed so far.
120. The following are three specific cases of significant property damage discussed in the *HRCFF Report* in which the MAG has completed his review of the facts and issued a final opinion. In addition, a further investigation of the el-Bader flour mill case (described in the *January 2010 Update*) is presented below.
121. These incidents highlight the difficulties posed by terrorist groups that operate within densely populated civilian areas and near economic facilities. During the Gaza Operation, Israeli forces made extensive efforts to avoid civilian casualties and unnecessary damage to civilian property. Even so, fighting an adversary that deliberately made use of civilian buildings to store ammunition, mount attacks, and conceal combatants—as well as booby-trapping civilian buildings with explosives along the expected path of advancing forces—created enormous operational dilemmas. Israel has acknowledged that significant damage was caused to civilian property as a result of the events of the Gaza Operation. As described in more detail in Section IV, Israel is adapting and revising its military procedures to further minimize damage to civilian property in the future.

⁵⁵ *Physicians for Human Rights v. OC Central Command*, H CJ 8990/02 (27 April 2003); *Operation in Gaza Report* ¶¶ 431-35.

⁵⁶ *Operation in Gaza Report* ¶ 226.

⁵⁷ *Id.* ¶¶ 318, 436-45; *January 2010 Update* ¶¶ 113-16.

(1) The Sawafeary Chicken Coops

122. According to allegations included in the *HRCFF Report*,⁵⁸ in January 2009 IDF forces bulldozed several chicken coops owned by the Sawafeary family in Zeytoun, purportedly as part of a deliberate strategy of destroying civilian infrastructure.
123. The command investigations conducted with regard to this incident reveal that the Sawafeary chicken coops were destroyed for reasons of military necessity.
124. Specifically, the investigations revealed that the area around the Sawafeary chicken coops was occupied by an IDF ground force beginning on 4 January 2009, as part of the ground maneuver, with the intention to take control of rockets and mortar launching sites and reducing the number of terror attacks on Israeli territory. The force took positions in several houses, including one house that was adjacent to the chicken coops. This positioning was necessary to secure the area for military operations against Hamas and to protect the IDF troops in those operations. The IDF's defense plan for this area needed to meet three serious threats to the safety and security of the IDF troops: the firing of anti-tank and RPG missiles on IDF positions; sniper fire; and infiltration of terrorist operatives into the immediate vicinity of the forces in order to plant and detonate explosive devices, including by suicide bombers.
125. The terrain in the area made this location more dangerous for IDF forces. The area was agricultural in its original use and thus included many orchards, groves, and greenhouses, located between and around the houses occupied by the IDF. This made it harder for the IDF to identify Hamas positions and fighters. The threat was not theoretical—on 5 January 2009, an RPG missile was launched at one of the IDF positions in that area. In addition, several shooting incidents occurred originating from the orchards located to the south of the chicken coops.
126. In order to overcome these threats, the IDF decided to create a security zone around each of the IDF positions with a perimeter of 20–50 meters around each post, which would allow uninterrupted observation and firing capabilities for the force in each position, as well as joint protection among the different IDF outposts. These security zones allowed IDF forces to anticipate at an earlier stage the approach of terrorist operatives.
127. The Sawafeary chicken coops were located only a few meters away from one of the key IDF positions. The IDF position was, itself, dictated by the lay of the terrain in the area. As the command investigation determined, this IDF position could not be adequately secured if the chicken coop structures were left intact. The demolition of these structures was needed to allow a clean line of sight for protection of IDF forces. The investigation also determined that the decision to

⁵⁸ *HRCFF Report* ¶¶ 942-61.

destroy the coops was consistent with the demands of the principle of proportionality: there was a compelling military need for the area to be cleared for the safety of the IDF forces and for the success of IDF operations against the Hamas forces operating in the area. The local commanders determined that these advantages outweighed the damage to private property that would result from the demolition. The commanders avoided the destruction of residential buildings or other facilities in the area, when such destruction was not required by military necessity or appeared to be disproportional.

128. The MAG reviewed the findings of the command investigation and concluded that the destruction of the chicken coops was lawful, as it was necessary to protect IDF forces operating in the area. It did not violate the limitation on destruction of private property because it was justified by military necessity. The MAG also found that the destruction of the chicken coops did not violate the ban on destroying any object that is indispensable to the survival of the civilian population. It was dictated by the location of specific operations against Hamas, and not part of a campaign to interfere with the production of food supplies in Gaza. It was not intended to deny the civilian population in Gaza access to essential commodities.⁵⁹ As a result of these findings, the MAG determined that no further proceedings were necessary.
129. Although the MAG found no violation of the Law of Armed Conflict in this incident, he recommended several changes to IDF procedures in cases involving destruction of private property, which are detailed below in Section IV of this Paper. In particular, the MAG found that the decision to destroy the chicken coops was made by a relatively junior IDF officer, and that such decisions were more appropriately and typically made at more senior levels. While the MAG found that the particular rank of the officer making the decision did not indicate wrongful or criminal conduct (as neither the Law of Armed Conflict nor IDF procedures at the time required that such decisions be taken by an officer of any particular rank), he has recommended that the IDF's procedures for destruction of civilian property be reviewed in several respects, as detailed in Section IV below.

(2) The Abu Jubbah Cement-Packaging Plant

130. According to allegations included in the *HRCFF Report*,⁶⁰ in January 2009, the IDF wrongfully destroyed a cement-packaging plant owned by Mr. Atta Abu Jubbah, utilizing both aerial and ground attacks. This was allegedly part of a deliberate strategy of gratuitous destruction of civilian infrastructure in Gaza.

⁵⁹ In particular, during the course of 2009, over 230 truckloads of fertilized chicken eggs (intended to hatch) were transported by Israel to the Gaza Strip, in addition to immunizations and food for chickens. More than 130 more trucks carrying fertilized chicken eggs have been transported to Gaza since the beginning of 2010.

⁶⁰ *HRCFF Report* ¶¶ 1012-17.

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131. The incident was investigated by both IDF ground forces and the IAF.⁶¹ These investigations concluded that the cement plant was not the target of any aerial attacks, nor was artillery fire directed at it. Instead, it was damaged in the course of intense fighting that took place in the immediate area of the plant, including IDF efforts to locate and destroy an intricate tunnel system that was dug by Hamas. These tunnels were intended both to strengthen Hamas's operating capabilities and to help it execute plans to attack or capture IDF soldiers.
132. The investigation also concluded that the IDF soldiers believed that the plant was being used by Hamas operatives to position themselves to attack and kidnap Israeli soldiers.
133. While artillery shells were neither directed at the plant nor landed inside it, operations in that area did involve IDF artillery fire at military targets near the factory, and the shrapnel from these shells may have caused structural damage to the plant. In addition, IDF tanks and bulldozers entered the plant while searching for tunnel infrastructure, causing damage to some of the pillars holding the factory's roof. As a result, the factory roof partially collapsed.⁶²
134. The MAG reviewed the results of the command investigations and determined that the damage caused to the cement-packaging plant was incidental to the combat activities in the area and proportionate to the military need under the circumstances. As a result of these findings, the MAG determined that no further proceedings were necessary.

(3) The Al-Wadiyah Group's Factories

135. According to allegations made in the *HRCFF Report*,⁶³ the IDF gratuitously destroyed factories belonging to the al-Wadiyah Group which were engaged in the manufacture of a variety of snacks. The *HRCFF Report* cites the incident as evidence of a deliberate strategy to deprive the population of essential commodities.
136. This allegation was also investigated by the IDF. As the command investigation found, the factories were in the area of Izbet Adb Rabbo, where Hamas had concentrated significant military resources. The IDF forces encountered a constant

⁶¹ This kind of parallel investigation would take place whenever concerns regarding the activities of various branches of the military are raised in an investigation. A similar dual-track investigation took place in the case of the investigation of damages at the Al-Bader flour plant, discussed in detail in the *January 2010 Update*, ¶¶ 163-74.

⁶² Contrary to some reports, the IDF investigation revealed that the damage to the factory was limited. For instance, while several reports alleged that the IDF destroyed a silo used to contain large amounts of cement, IDF aerial photos indicate that it was still standing at the end of the Operation. While this does not rule out the possibility that damage was caused to the structure, it does support the finding that the plant was not targeted intentionally and that the damage caused to the plant was incidental.

⁶³ *HRCFF Report* ¶¶ 1018-20.

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barrage of hostile fire from the area, reflecting Hamas's control of the surrounding neighborhoods. The area is also close to the Gaza border with Israel and has served as a base for terrorist attacks directly against Israel. The area was therefore a focus of IDF operations.

137. As the command investigation concluded, IDF forces fighting in the area near the factories discovered a well-prepared military infrastructure, including an extensive network of underground tunnels used by Hamas operatives to fight the IDF forces. The military infrastructure in that area also included booby traps and improvised explosive devices ("IEDs") planted under the main roads and in civilian buildings, as well as in the civilian buildings used by Hamas as its military posts.
138. An IDF unit encountered military operatives leaving one of the al-Wadiya factories. In response to the attack, and in light of the concern about the use of the factories and the tunnels in their vicinity as a continuing threat to IDF forces in the immediate area, the IDF force decided to demolish the buildings. The investigation found that the IDF forces did not know the structures were used to produce food products.
139. The MAG reviewed the findings of the command investigations and concluded that the demolition of the buildings was lawful, as it was necessary to protect IDF forces operating in the area. The MAG found that it did not violate the rules on protection of private property since it was justified by military necessity.⁶⁴ The MAG also found that the destruction of the factories was not intended to deny the civilian population in Gaza commodities indispensable to its survival. The purpose of the demolition was instead to protect IDF forces operating in the area and not to prevent the civilian population from having access to essential commodities (regardless of whether the products made in the factories qualify as essential). Based on these findings, the MAG determined that no further proceedings were necessary.
140. Although the MAG found no violation of the Law of Armed Conflict in this incident, he recommended several changes to IDF procedures in cases involving destruction of private property, as detailed below in Section IV.

(4) The El-Bader Flour Mill

141. The case of the el-Bader flour mill was discussed in the *January 2010 Update*. It concerns allegations that the mill had been targeted with precision weapons in the course of a pre-planned air strike, as part of a systemic destruction of industrial infrastructure and with the purpose of depriving the civilian population of Gaza of food supplies. The IDF investigation into the matter concluded instead that the mill was been struck by a tank shell in the course of active combat activities, in order to neutralize immediate threats to IDF forces.

⁶⁴ See *Operation in Gaza Report* ¶ 436.

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142. Following the publication of the *January 2010 Update*, various news media stated in February 2010 that the U.N. was in possession of evidence that contradicted the findings of the IDF investigation. Specifically, it was reported that an unexploded IAF bomb was found in the mill, even though the command investigation had concluded there had been no aerial strike.⁶⁵
143. Upon reviewing these reports, the MAG requested and received additional evidence from the U.N. and ordered the IAF to re-open its investigation of the incident. The MAG also initiated a meeting with U.N. representatives, who had visited the site of the mill, to discuss their findings. The follow-up investigation confirmed the earlier finding that the mill had not been targeted by the IAF in the course of a pre-planned attack. The new reports, photographs taken by U.N. officials, and video footage examined appeared inconsistent with an airborne strike, particularly given the absence of entry holes in the roof of the mill; the lack of trace marks on the floor where the shell was allegedly found (such trace marks would normally be expected when such a munition penetrates a building); and the fact that the fire which damaged the machinery in the mill broke out on the second floor while the ordnance was found on the first floor.
144. Furthermore, the IAF examined every aerial attack in the vicinity of the mill in the course of the Gaza Operation and found that none of them could have resulted in a hit on the flour mill. Of the seven strikes conducted within a one-kilometer radius of the mill using the particular munitions identified, five had hit their precise target (the closest one being approximately 300 meters away from the mill). The impact sites of the two additional strikes were visible in the IAF aerial footage of the operation, and the closer of the two landed a full 350 meters from the mill.
145. After reviewing the findings of this additional investigation, the MAG could not affirmatively determine how the ordnance had found its way into the mill, but reaffirmed that the flour mill had not been intentionally targeted by the IAF. He was also unable to rule out the possibility that the ordnance had been deliberately planted in the mill. Accordingly, the MAG determined that there was no basis for additional proceedings in this matter.

⁶⁵ This discrepancy was important not only because of its effect on the credibility of the IDF command investigation, but also because of the perception of a pre-planned air strike intended to destroy the mill.

IV. SUMMARY OF CHANGES TO MILITARY OPERATIONAL GUIDELINES AS A RESULT OF INVESTIGATIONS OF GAZA OPERATION

146. The Gaza Operation presented complex military challenges in protecting civilians from the hazards of battle. Urban warfare and the cynical choice made by Hamas to imbed itself in civilian urban areas and to use civilian structures as shields contributed to the great challenges for Israeli air and ground forces. The IDF nonetheless made extensive efforts to avoid civilian casualties and limit damage to private property, as well as to ensure that Israeli military activities were conducted in compliance with the Law of Armed Conflict and Israel's own stringent ethical and legal requirements.
147. Israel recognizes that, despite these efforts, the Gaza Operation resulted in numerous deaths and injuries to Palestinian civilians and considerable damage to private property. The Government of Israel did not wish these losses. Israel believes that the fact that Hamas chose to conduct its military operations from urban areas and to put its own civilian population at risk significantly contributed to the number of casualties and extent of harm to civilian property in the course of the Operation.
148. Israel will continue to conduct comprehensive investigations into every allegation of misconduct by the IDF during the Gaza Operation. Aside from the review conducted by the MAG of legal aspects of such investigations, the factual findings will be valuable in drawing "lessons learned"—a self-scrutiny conducted by the IDF as a responsible and professional military. The effort to protect civilians and avoid damage to civilian property is a core concern, and will remain such in any future military operations.
149. In particular, the IDF has issued two new Orders designed to further increase the protection of civilians and civilian property during armed conflicts.

A. New Written Procedures Regarding Protection of Civilians in Urban Warfare

150. The IDF has adopted important new written procedures and doctrine designed to enhance the protection of civilians in urban warfare, including by further emphasizing that the protection of civilians is an integral part of a commander's mission. In addition, the procedures require increased attention to civilian matters in operational planning. Although protection of civilians during military operations has long been part of IDF training and doctrine, the new procedures mandate additional comprehensive protection. These revised procedures stem from general understandings and lessons learned both in Gaza and other military operations conducted by Israel in recent years.

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151. The new procedures and doctrine also specify steps to better insulate the civilian population from combat operations and to limit unnecessary damage to civilian property and infrastructure, and require integration of civilian interests into the planning of combat operations. This involves advance research into and the precise identification and marking of existing infrastructure, including that pertaining to water, food and power supplies, sewage, health services, educational institutions, religious sites, economic sites, factories, stores, communications and media, and other sensitive sites as well as cultural institutions.
152. Furthermore, the new written procedures mandate the planning for a number of additional provisions aimed at safeguarding the civilian population. This includes: safe havens for civilians to take refuge; evacuation routes for civilians to safely escape combat areas; medical treatment for civilians; methods for effectively communicating with and instructing the population; and provisions for humanitarian access during curfews, closures and limitations on movement. Finally, the new written procedures require the assignment of a Humanitarian Affairs Officer integrated in each combat unit beginning at the battalion level and up,⁶⁶ with responsibilities for advising the commanding officer and educating the soldiers with regard to: the protection of civilians; civilian property and infrastructure; the planning of humanitarian assistance; the coordination of humanitarian movement; and the documentation of humanitarian safeguards employed by the IDF.
153. While the majority of these issues were already addressed in various operational orders and guidelines in existence prior to the Gaza Operation, the new revised procedures are important because they are comprehensive and applicable to all stages of military operations, including the crucial stage of planning.

B. New Order Regulating the Destruction of Private Property for Military Purposes

154. In the aftermath of the Gaza Operation, the destruction of private property and infrastructure by ground forces was the subject of one of the five special command investigations ordered by the IDF Chief of General Staff. One of the lessons learned from this investigation was that there should be a set of clear rules and guidelines to assist commanders in making such decisions.
155. Accordingly, upon the Chief of the General Staff's instructions, a new Standing Order on Destruction of Private Property for Military Purposes was formulated. This new standing order, entered into force in October 2009, and addresses in clear terms when and under what circumstances civilian structures and agricultural

⁶⁶ This is supplemental to other humanitarian mechanisms which were established in the past and were in place during the Gaza Operation, such as a 24-hour operations room by the Gaza Coordination and Liaison Administration to facilitate communication between IDF and international organizations, as described in the *Operation in Gaza Report*, ¶¶ 266-82.

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infrastructure may legitimately be demolished in circumstances of imperative military necessity. It clarifies the applicable legal criteria and limitations and allocates specific command responsibility and hierarchical authority for decision-making.

156. Following the issuance of this new Standing Order, the IDF continues to study the issue of protection of private property and to consider additional changes to its procedures. For instance, the MAG, in the course of his review of a specific incident involving destruction of property, has recommended several additional clarifications to the new order, including: (a) identifying more clearly sites that are considered to be especially “sensitive” and whose destruction should require more senior level of approval; (b) analyzing and addressing how the issue of proportionality should be implemented in different situations; and (c) better incorporating the new Standing Order at all levels and regions of command.

* * *

157. Israel’s prior reports on its investigations of the Gaza Operation described other operational changes that the IDF is considering or implementing based on lessons learned in the command investigations. These include:
- a. In connection with the review of operations affecting incidents involving harm to U.N. and other international facilities, the IDF Chief of General Staff re-emphasized the importance of better familiarizing IDF units at all levels with the location of sensitive facilities within their assigned combat zones. He ordered that regulations regarding safety distances from sensitive facilities be highlighted, specifically with regard to the use of artillery, and also ordered that additional steps be looked at to improve the coordination between the IDF and U.N. agencies in the field.
 - b. The IDF Chief of General Staff has ordered improvement in training and procedures, including practice by all forces in “incidents and responses” drills with specific humanitarian aspects, including involving prevention of harm to medical crews, facilities and vehicles. He also ordered an examination of the operation of the humanitarian corridors opened for the benefit of the local population during the fighting. The formulation of a new operational order on this topic is underway.
 - c. The IDF Chief of General Staff ordered the establishment of a clear doctrine and orders on the issue of various munitions which contain white phosphorous. These instructions are currently being implemented.

V. THE TURKEL COMMISSION MANDATE TO EXAMINE ISRAEL'S SYSTEM OF INVESTIGATIONS

158. While the State of Israel is confident in the thoroughness, impartiality, and independence of its investigatory system, in light of recent criticisms concerning Israel's mechanisms for examining and investigating complaints raised in relation to violations of the Law of Armed Conflict, the Government of Israel has mandated an independent public commission to examine the conformity of these mechanisms with Israel's obligations under international law, as detailed below.
159. On 14 June 2010 an independent public commission was set up by the Government of Israel to address issues pertaining to a maritime incident involving the IDF which occurred on 31 May 2010, and which is unrelated to the Gaza Operation. The Commission is headed by retired Justice of Israel's Supreme Court Yaakov Turkel, joined by Professor Shabtai Rosenne, a leading expert in international law, and Amos Horev, a retired general and former president of the Technion—Israel Institute of Technology. In addition, two international observers, Nobel Peace Prize Laureate Lord William David Trimble from Northern Ireland and former Canadian Judge Advocate General Kenneth Watkin, were appointed to participate in the Commission's hearings and proceedings.
160. In addition to its responsibilities related specifically to the maritime incident, the Commission's scope of responsibility includes a broad mandate that goes beyond the events of 31 May 2010 and includes examining:
- the question of whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident, conform with the obligations of the State of Israel under the rules of international law.⁶⁷
161. Thus, one of the central tasks of the new independent public commission is to examine and assess the current mechanisms in place in Israel for investigating allegations of a violation of the Law of Armed Conflict. The mechanisms under review are the same mechanisms that are implemented in the investigations relating to the Gaza Operation and which were discussed in detail in this Paper and the two previous reports.
162. The Government's decision sets forth that every relevant governmental body will cooperate fully with the Commission and will make available to the Commission information and documents required by it for the purposes of performing its

⁶⁷ Israeli Ministry of Foreign Affairs, *Government Establishes Independent Public Commission* ¶ 5 (14 June 2010), available at http://www.mfa.gov.il/MFA/Government/Communiques/2010/Independent_Public_Commission_Maritime_Incident_31-May-2010.htm.

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function. Furthermore, the Commission has the power to subpoena witnesses, to enforce their appearance before the Commission, and to compel their testimony.

163. Upon completion of its work, the Commission will submit a report to the Government of Israel, by way of the Prime Minister. The report will also be made available to the public.

VI. CONCLUSION

164. Since the *January 2010 Update*, Israel has made significant progress investigating allegations of misconduct by the IDF during the Gaza Operation. Israel has devoted extensive resources to conducting thorough and independent investigations, including interviews of hundreds of IDF soldiers and Palestinian civilians.
165. The IDF has conducted numerous command investigations of operational activity in the course of the Operation. The MPCID has opened 47 criminal investigations, and the MAG has initiated criminal prosecutions of four soldiers in separate incidents. Six officers have been disciplined or subject to command sanctions.
166. In other cases, the MAG has concluded that IDF actions did not violate the Law of Armed Conflict or IDF orders. Israel's investigations are ongoing, and Israel remains committed to investigating allegations regarding violations of the Law of Armed Conflict.
167. As part of its continuous learning process, the IDF has also made numerous changes to its operational procedures and policies in order to further enhance the protection of civilians from the hazards of battle and the protection of private property during military operations.