

LAWYERS FOR PALESTINIAN
HUMAN RIGHTS



مركز الميزان لحقوق الإنسان
AL Mezan Center for Human Rights



Justice Denied

**Gaza human shield survivors and the systemic failure of
Israel's military investigation system to provide accountability**

September 2018

“[The human shield incident] affects every area of my life, even my daily life and my studies. Anyone who sees me says ‘you’ve changed’. My view of life is more complicated now, I’m not optimistic—not in my daily life or even the future. I’m always afraid and I have to think a lot before I do anything. A lot of people who hear my story say ‘may God help you’. A lot of close relatives said it is like a movie, something you can’t imagine.”

- High school student, Ahmed Abu Reyda, about life after being used as a human shield

Executive Summary

In the summer of 2014, during the military bombardment of Gaza that Israel termed ‘Operation Protective Edge’, at least five Palestinians in Gaza, including a child, had their lives endangered when used as human shields by Israeli military forces. These five documented incidents began within a 48-hour period in a confined geographical vicinity during the Israeli forces’ ground invasion into Khuza’a town and Wadi As-Salqa village in Gaza between 21 July and 1 August.

The five incidents, publicly catalogued together for the first time in this report, are part of a pattern of reported human shield use against Palestinian civilians by Israel’s military forces over a number of years that has effectively gone unpunished. This state of affairs is indicative of there being an established practice or policy of Israel’s military to use Palestinian civilians as human shields. The use of human shields is prohibited under international law and amounts to a war crime.

The five human shield incidents documented within this report took place within a ten-day period for the inhabitants of Khuza’a, during which:

- thousands of Palestinian civilians came under fire while peacefully attempting to flee their town on 23 July under International Committee of the Red Cross coordination at the start of Israel’s ground invasion;¹
- a medical clinic sheltering civilians and injured people was hit by missiles;²
- a grievously injured seven-year-old, Anas ‘Bader’ Qdeih, died after his medical evacuation was obstructed by Israeli military forces;³ and
- family homes⁴ and public property and infrastructure were destroyed or seriously damaged en masse.

To mark four years from this devastating scene, Al Mezan Centre for Human Rights (Al Mezan) and Lawyers for Palestinian Human Rights (LPHR) highlight the harrowing accounts of the five human shield survivors and the denial of justice for them and thousands of victims of other apparent grave violations by Israel’s military forces during Operation Protective Edge due to the well-documented systematic failings of Israel’s military criminal investigation process.

Our firm position, four years after the devastating military offensive launched on Gaza by Israel’s highest political and military leadership, is that the only viable avenue to possibly obtain justice and legal accountability for Palestinian victims, survivors and their families of apparent war crimes and crimes against humanity is through the International Criminal Court and other international accountability mechanisms.

¹Al Mezan, Physicians for Human Rights – Israel, Gaza Community Mental Health Programme, Palestinian Centre for Human Rights, ‘No Safe Place’. Available [here](#), page 9.

² Ibid.

³ As comprehensively documented by Al Mezan and LPHR in our 2015 report with Medical Aid for Palestinians entitled ‘No More Impunity: Attacks against Gaza’s Health Sector’ available [here](#).

⁴ As comprehensively documented by Al Mezan and LPHR in our 2014 submission to the UN Commission of Inquiry and UN Special Procedures concerning targeting of family homes, September 2014. Available [here](#).

This report will provide:

- A) a recent timeline on the use of human shields by Israeli military forces;
- B) an overview of Operation Protective Edge;
- C) a summary of the five grave human shield incidents solely based on victims' testimonies;
- D) an overview of the applicable legal framework;
- E) commentary on the ongoing lack of accountability for the incidents documented in this report; and
- F) the report's conclusion.



Section A: Use of Palestinians as Human Shields by Israeli Military Forces

The five human shield incidents documented in this report are not an isolated exception, but, rather, represent the egregious continuation of a pattern of the apparent use of Palestinians as human shields by Israel's military forces over a number of years.

In 2002, seven Israeli and Palestinian non-governmental organisations jointly acted to petition the Israeli High Court of Justice to address the unlawful use of human shields.⁵

The petition detailed the Israeli military's use of the so-called "neighbour procedure"⁶, which according to the petitioners, required Palestinian residents to:

"walk through and scan buildings suspected to be booby-trapped, and in which it ordered them to enter certain areas before combat forces, in order to find wanted persons there; also described are cases in which the army used residents as a 'human shield' which accompanied the combat forces, to serve as a shield against attack on those forces. Thus, residents were stationed on porches of houses where soldiers were present, in order to prevent gunfire upon the houses."⁷

The Israeli military responded by issuing:

"an unequivocal order' to its soldiers, stating that soldiers 'are absolutely forbidden to use civilians of any kind as a means of 'living shield' against gunfire or attacks by the Palestinian side, or as 'hostages'. The order states that the prohibition applies 'in houses, streets, and in every area and place in which IDF forces are acting.'"⁸

In 2005, Israel's High Court of Justice ruled that the use of human shields within the neighbour procedure was "strictly prohibited".⁹ The Court found the procedure "at odds with international law."¹⁰ The Court's president at the time, President A. Barak, "left no doubt that he considered the 'neighbour procedure' to violate article 28 of the Fourth Geneva Convention."¹¹

These developments, however, did not bring an end to the use of human shields by Israel's military forces.

⁵ Adalah Legal Centre for Arab Minority Rights in Israel et al. v. Commander of the Central Region et al., case No. 3799/02, Judgement of 23 June 2005.

⁶ The procedure has also been referred to as the "ambassador procedure" and "cousin procedure". See Breaking the Silence, 'I know that in the army at large', available [here](#). It is also referred to as the "Johnnie procedure" within the Report of The UN Fact-Finding Mission into the Gaza Conflict, 2009, paragraph 1,104.

⁷ Adalah, supra note 5.

⁸ Human Rights Watch, 'Israel: Decision to Stop Use of "Human Shields" Welcomed', 9 May 2002

⁹ Adalah, supra note 5.

¹⁰ Report of The UN Fact-Finding Mission into the Gaza Conflict, 2009, paragraph 1,100.

¹¹ Ibid.

In December 2008 and January 2009, Israel's military offensive on Gaza code-named 'Operation Cast Lead' gave rise to a number of claims of Israel's continued use of human shields despite the clear prohibition provided by both Israel's highest court and international law.

The UN Fact-Finding Mission into the 2008-09 Gaza Conflict summarised its findings on the use of Palestinian civilians as human shields at paragraph 55 of its report¹²:

“The Mission investigated four incidents in which the Israeli armed forces coerced Palestinian civilian men at gunpoint to take part in house searches during the military operations. The men were blindfolded and handcuffed as they were forced to enter houses ahead of the Israeli soldiers. In one of the incidents, Israeli soldiers repeatedly forced a man to enter a house in which Palestinian combatants were hiding. Published testimonies of Israeli soldiers who took part in the military operations confirm the continuation of this practice, despite clear orders from Israel's High Court to the armed forces to put an end to it and repeated public assurances from the armed forces that the practice had been discontinued. The Mission concludes that this practice amounts to the use of Palestinian civilians as human shields and is therefore prohibited by international humanitarian law. It puts the right to life of the civilians at risk in an arbitrary and unlawful manner and constitutes cruel and inhuman treatment. The use of human shields also is a war crime.”

Al Mezan and partners submitted criminal complaints demanding investigation into three of the incidents cited by the Fact-Finding Mission.

In February 2010, the files in regard to two of these human shield complaints¹³ were closed by the Israeli military. It stated that its investigations did not corroborate the victim's testimonies and that it faced difficulty identifying the units responsible on the ground.¹⁴

A third complaint described the use of Majdi Abed Rabbo, 43, as a human shield for three days during Operation Cast Lead, during which time he was repeatedly ordered by Israeli military forces to enter a house on his own and speak with the fighters inside. The victim's account was published in the Haaretz newspaper in February 2009,¹⁵ and was corroborated in a testimony by an unnamed soldier published by Breaking the Silence in June 2009.¹⁶ After providing a first-hand account of the human shield ordeal faced by Majdi Abed Rabbo, the unnamed soldier stated:

“It was ludicrous to [...] hear the response of the army spokesperson that the matter was investigated and there are no testimonies on the ground and that the Israeli army is

¹² Report of The UN Fact-Finding Mission into the Gaza Conflict, 2009, para 55.

¹³ Cases of Mahmoud Al-Ajrami and Abbas Halaweh

¹⁴ Al Mezan and Adalah, 'Israeli Army Closes Military Investigations into Two Human Shields Cases from the War on Gaza without Informing the Victims', 25 February 2010. Available [here](#).

¹⁵ Haaretz, "Gazans: IDF Used Us as 'Human Shields' During Offensive", Amira Hass. 19 February 2009. Available [here](#).

¹⁶ Breaking the Silence, 'Soldiers' Testimonies from Operation Cast Lead, Gaza 2009', pages 7-8. Available [here](#).

a moral army. It raises doubts about the army spokesperson's responses in general when you know for a fact that these things actually did take place [...] Sometimes the force would enter while placing rifle barrels on a civilian's shoulder, advancing into a house and using him as a human shield. Commanders said these were the instructions and we had to do it [...]”¹⁷

In July 2010, Israel’s Military Advocate General closed the complaint file on Majdi Abed Rabbo without issuing charges.¹⁸

On 21 November 2010, Israel’s Military Advocate General did find two soldiers guilty of using a Palestinian boy as a “human shield” during Operation Cast Lead. The two staff sergeants were demoted to the rank of sergeant and given suspended three-month sentences. The mild sentences, which allowed for the soldiers to serve as commanders when called for reserve duty, were clearly inadequate compared to the severity of the crime and could not serve as a deterrent from further use of human shields.¹⁹ A few months before this disturbing decision, the author of the Israeli military’s code of ethics, Asa Kasher, publicly justified the use of civilians as human shields, stating “there are situations in which the use of the enemy’s civilian population to defuse a potentially explosive situation is not only ethically permissible, it also saves lives.”²⁰

In 2016, Defence for Children International Palestine starkly reported that it had “documented at least 25 cases involving Palestinian children being used as human shields by the Israeli army”²¹ following the issuing of the military order “absolutely forbidding” its use in 2002. This finding supported the definitive conclusion of a 2009 report on human shields by the human rights organisation, Adalah-Legal Center for Arab Minority Rights in Israel, which found “it is clear that [Israel's] military has failed to respect the Supreme Court's decision delivered in 2005.”²²

The following testimony from an unnamed soldier taken from *Breaking the Silence* following Operation Cast Lead also strongly indicates that the use of human shields is an apparently officially authorised practice or policy of Israel's military forces:

“After we got out of there, we had a talk with our unit commander. All kinds of things came up and professional issues were also addressed. Some people said that the crew was not sufficiently prepared, and they also brought up moral issues that troubled them such as using civilians. He denied this, but I don't believe him when he says he's not aware of this happening on the ground. This procedure of using civilians exists, he knows about this. ‘Neighbor procedure’ is an official army procedure; it's just not called that any longer. The brigade

¹⁷ Haaretz, *supra* note 15

¹⁸ Al Mezan, ‘Two Years after Cast Lead: Lives Still Destroyed When You Beg to Be Used as a Human Shield!’, 27 December, 2010. Available [here](#).

¹⁹ Human Rights Watch, ‘Israel: Soldiers’ Punishment for Using Boy as ‘Human Shield’ Inadequate’ 26 November 2010.

²⁰ Jerusalem Post, ‘IDF’s ethics guru slams High Court ban on human shields’, 10 June 2010

²¹ Defense for Children International Palestine, ‘Israeli forces use an arrested Palestinian teen as a human shield’, 11 February 2016.

²² Adalah, *supra* note 23. “Adalah's Update Report on the Israeli military's routine use of Palestinian civilians, including minors, as human shields” 2009.

commander was on the ground the whole time. He even came to visit us one day. An official army procedure means army instructions.”²³

It is therefore evident that prior to Operation Protective Edge, there was a well-documented significant gap between the formal positions of Israel’s highest court and military establishment that recognises the prohibition on the use of human shields, and the apparent established practice or policy of its military forces to allow the recurring use of civilians as human shields.

This is the context underlying the five human shield incidents documented below in this report that occurred during Operation Protective Edge. They represent an apparent perpetuation²⁴ of the criminal activity of using civilian human shields that Israel’s military investigation system appears systemically unwilling or unable to effectively punish.

Al Mezan and LPHR maintain that the absence of legal accountability for these cases not only leaves survivors without legal remedy and justice, but dangerously emboldens the repeated recourse and normalisation of using human shields. This cycle must be broken otherwise these appalling violations that gravely endanger its victims are bound to recur.

Section B: Operation Protective Edge

Operation Protective Edge was launched by Israel on 7 July 2014, maintained for 51 days, and concluded on 26 August 2014 with the signing of an Egyptian-brokered ceasefire agreement between Israel and the Palestinian Authority backed by Palestinian armed factions.²⁵ According to the documentation by Al Mezan, in coalition with partner organisations Al-Haq and Palestinian Centre for Human Rights,²⁶ the Israeli forces killed 2,219 Palestinians—70% of whom were civilians²⁷—while mortars and rockets from the Gaza Strip killed 66 Israeli soldiers²⁸ and six civilians in Israel.²⁹

As stated by the report of the UN Commission of Inquiry into the 2014 Gaza Conflict, “a key feature”³⁰ of Operation Protective Edge was Israel’s deliberate and pervasive

²³ Supra note 15, page 107.

²⁴ See also Al Mezan’s 2009 updated report on the use of Palestinians as human shields by Israeli forces. Available [here](#).

²⁵ Israel Ministry of Foreign Affairs, ‘The Operation in Gaza: Factual and Legal Aspects’, 29 July 2009, paragraph 22.

²⁶ The coalition of Al Mezan, Al-Haq and Palestinian Centre for Human Rights is referred to in this report as “Al Mezan and partners”.

²⁷ Al Mezan Centre for Human Rights and partners, ‘Operation Protective Edge in Numbers’, published 2015. Available [here](#).

²⁸ Israeli Ministry of Foreign Affairs, ‘IDF Soldiers Killed in Operation Protective Edge’, 3 January 2017. Available [here](#).

²⁹ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, published June 2015, paragraph 66.

³⁰ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict. Paragraph 243: “OCHA found that at least 142 Palestinian families had three or more members killed in the same incident as a result of attacks on residential buildings, amounting to a total of 742 fatalities. Al Mezan and Lawyers for

military attacks against family homes. According to Al Mezan and partners' documentation, this clearly apparent targeting policy led to the killing of 1,068 Palestinians in their homes—including 370 children (amounting to 66% of all child fatalities) and 241 women (amounting to over 82% of adult female fatalities)—being 48% of the total Palestinian fatalities.³¹

In a comprehensive complaint submitted by Al Mezan and LPHR to the UN independent Commission of Inquiry on the 2014 Gaza Conflict focusing on forty incidents of military airstrikes against family homes spanning the course of the seven week offensive on Gaza, we asserted that the large-scale and systematic targeting of family homes indicated that international humanitarian law and human rights law violations were committed, which may amount to war crimes and crimes against humanity.³² Our critical legal analysis was mirrored by the UN Independent Commission of Inquiry's own legal analysis in its authoritative June 2015 report.

In regard to its ground invasion into specific areas of Gaza, the Head of the Doctrine Desk at the Infantry Corps HQ of Israel's military forces, Major Amitai Karanik, made this notable comment—as quoted in the UN Commission of Inquiry report of June 2015—on a key message sent to Israel's ground troops about how to view the civilian population:

“We don't want to confuse the troops, and that's the story. When I teach people to fight in a war, the civilian population is not supposed to be there, and if it is, I persuade it to keep away. In peacetime security, soldiers stand facing a civilian population, but in wartime, there is no civilian population, just an enemy.”³³

The scene in Khuza'a and Wadi As-Salqa during Operation Protective Edge:

The five testimonies in this report focus on incidents of the use of five civilians as human shields between 23-27 July in two districts in the Gaza Strip: Khuza'a, in the Khan Younis district, and Wadi As-Salqa in the Middle Area district.

Before Operation Protective Edge, Israel maintained a buffer zone—a no-go zone for Palestinians—in Gaza of between 300 metres and two kilometres from the separation fence on the border between Gaza and Israel, depending on the location in the Gaza Strip. During Operation Protective Edge, Israel expanded this buffer zone to three kilometres. This expansion encompassed the town of Khuza'a, which is the location for four of the five human shield incidents documented in this report.

Palestinian Human Rights reported that at least 1,066 family members had been killed inside their homes, which means that a significant percentage of civilians killed during the conflict died inside their home as a direct result of air-strikes or artillery shelling of their neighbourhoods, making attacks on houses a key-feature of the conflict.”

³¹ Al Mezan Centre for Human Rights and Lawyers for Palestinian Human Rights, September 2014 complaint to UN Special Procedures concerning targeting of family homes, September 2014. Available [here](#).

³² Ibid.

³³ BaYabasha, Ground Forces Journal. Avigail Bukobza: Involved fighting; October 2014, No. 29, page 62. Unofficial translation. Available [here](#).

As stated by the report of the UN Commission of Inquiry into the 2014 Gaza Conflict:

“Between 21 July and 1 August 2014, the IDF conducted a ground operation in and around Khuza’a, a village with about 11,000 inhabitants located on the south-eastern part of Gaza. The entry of IDF ground troops was preceded by a campaign of aerial attacks targeting a large number of residential buildings. According to the IDF, the objective of this operation was to destroy the extensive tunnel infrastructure that could be used by Palestinian armed groups to enter Israel. The IDF also claims to have found numerous weapons depots in Khuza’a.”³⁴

Describing the night of 22-23 July, Anas Al Najjar, who was later used as a human shield, said in his testimony to Al Mezan and partners taken very soon after his ordeal, “[t]he bombardment continued throughout the night and dawn. Every minute we heard non-stop explosions. At about 4:00am, I heard the sound of the Israeli tanks and vehicles getting closer. I sensed that the Israeli forces had invaded the town. The incursion was confirmed in the early morning.”

Alaa Qdeih, in his testimony given to Al Mezan and partners, describes the scene during the night of 22-23 July through until the early afternoon of 23 July, saying:

“We called the Red Cross back and they confirmed to us that the town would be evacuated at 1:00pm on Wednesday, 23 July. The bombardment continued throughout the night [...] Because of the intense shelling, we went down to the basement and we remained there until 1:00pm on Wednesday 23 July. Then we encouraged each other to get out of the basement. We were hearing some people walking in the streets. We believed that they were Red Cross crewmembers who had come to get us out of the town. I went out to the street without carrying any belongings; all I wanted was to leave the town. I headed along with thousands of the town's inhabitants to the town's entryway; our number was almost three thousand persons. Some of us were raising white flags. They were thousands of older people, women and children among the group, some were carrying wounded people. We were walking close to each other. We reached the reservoir area near the town's entryway. I was at the front of the march heading to leave the town. Suddenly, I saw Israeli tanks coming out of sandy pits. I heard heavy shooting. I saw some people falling down on the ground, and others screaming. I was scared and started to run, heading to my house. Everyone around me was screaming and running. Chaos prevailed in the area. The shooting continued. I was turning around to look for my brothers, but I could not find any of them. On the way to the house I saw many of the bombarded houses. After fifteen minutes of continuous running, I reached my uncle's house, Mohammed. I could hear continuous shooting. My relatives were arriving one after another at the house. We returned to the basement. I decided not to go out unless ambulances and the Red Cross were there.

Alaa Qdeih testimony's to Al Mezan and partners then describes the terror experienced by him and other inhabitants of Khuza'a on the following day of 24 July:

³⁴ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, paragraph 302.

“At around 9:00am, huge explosions woke me up, so I went out to the street to see what had happened because I could hear screaming outside the house. I saw many people running across the street. I saw smoke and heavy dust. I saw four people on the ground near my uncle’s house; only six metres away. The nearest one was a young man in his twenties, wearing civilian clothes. He was lying on the ground and did not move at all. About ten metres away from this young man, I saw a child lying on his back with his entrails outside his body, and asking for water. Everyone around me was so scared. I could not help anyone. I asked one of the survivors in the street, a woman, what happened. She said the Israeli forces shelled their homes. I saw many people running in the street, including women and children, toward the sandy town exit (Abu Metleq Street). My relatives and the neighbours who were with us in my uncle’s house went out and started running with the others to save themselves.”

Al Mezan and partners recorded that of the 69 Palestinians killed in Khuza’a during Israel’s military offensive, 48 were killed between 21 July and 1 August. Of the total 1,304 houses destroyed during Operation Protective Edge in Khuza’a, 1,209 were destroyed in the few days before and during the ground operation there between 23 July and 1 August.

Wadi As-Salqa is a rural village in the Middle Area—one of Gaza’s five districts—also close to Gaza’s border with Israel. During Operation Protective Edge, 19 Palestinian civilians were killed in Wadi As-Salqa, including four women, seven children, and one person with disability. Fifteen Palestinian fighters were killed and 401 housing units were either fully or partially destroyed by Israeli forces, along with 68 poultry and livestock farms and 11 water wells. The large-scale damage and destruction reflects the Israeli forces’ practice of razing areas before entering on foot.

Section C: Five Human Shield Incidents Documented During Operation Protective Edge

The following five human shield incidents documented by Al Mezan and partners, beginning within 48 hours of each other, demonstrate the clear use of human shields during Operation Protective Edge by Israeli military forces. Moreover, the frequency of their use over a short temporal period in a confined geographical vicinity is indicative of there being in existence an authorised or understood military practice or policy to use human shields.

The incidents cited in this report may not represent an exhaustive list of human shield incidents occurring during Operation Protective Edge. The sample of incidents that are included are those that Al Mezan and partners have been able to verify, and are compiled in this report in order to demonstrate the seriousness of human shield incidents from Operation Protective Edge that disturbingly have not resulted in any criminal indictments and prosecutions before Israel’s courts.

The human shield incidents briefly summarised below are taken from testimonies of the victims that were taken by Al Mezan and partners between August and October 2014. Some of these cases have been documented in the report of the UN Commission of Inquiry into the 2014 Gaza Conflict.

Anas Al Najjar

Used as a human shield on top of a moving tank and walking within a convoy of tanks

Cow trader

Khuza'a, Khan Younis

23-years-old at the time of the incident

Anas Al Najjar said that at 7:00am on 23 July 2014, a bulldozer destroyed two columns of his uncle's house where he and thirty civilians, including four of his relatives, had sought refuge. They all started screaming and ran outside of the house. Anas then heard an Israeli soldier's voice over a megaphone ordering them not to move. A number of Israeli soldiers then came over and ordered the men to stand on one side and the women and children to stand nearby. There were six men, including Anas.

Israeli soldiers ordered the men to take off all their clothes, which they all did except removing their underwear. The men, including Anas, were then handcuffed and taken to a neighbour's house where they were interrogated about tunnels.

Anas was then told to put on his clothes and they took him outside. He was ordered to climb on top of a tank by Israeli soldiers and to sit near the gun. His hands and legs were tied and he was blindfolded. He was forced to remain on top of the tank this way while the tank was moving, shelling and shooting. Some of the bullet casings hit him. He was scared and terrified, and shouted at the soldiers asking them to get him down.

Anas realised he was being used as a human shield and could get hurt if armed groups targeted them. He was on top of the moving tank for between 90 minutes and 120 minutes before the tank and other tanks stopped. After a short while the tank started moving again and then stopped in the Al Najjar neighbourhood of Khuza'a. Israeli soldiers got Anas down from the tank and he was detained amongst a group of around forty detained men.

At around midday on 23 July, Anas and the detainees were ordered by Israeli soldiers to stand in two queues. One tank was ahead of them and another tank was behind them. The soldiers then ordered them to walk behind the front tank and threatened to shoot anyone trying to escape. The front tank started to move towards the border and the detained men walked between this tank and the one behind them. They walked for about four kilometres towards the border over razed agricultural lands before being stopped. The detained men, including Anas, then had their legs and hands tied, and were blindfolded, before being placed on a bus that drove into Israel.

In Israel, Anas was interrogated about tunnels and armed groups and he responded that he had no knowledge of any of these matters. He was detained for three days outside of Gaza without food or water and was beaten. After six days in detention, Anas was

released back into Gaza through Erez crossing. The six cows that he owned had died with apparent gunshot wounds. His farm and the ground floor to his home were damaged.

Ahmed Abu Reyda

Used as a human shield to enter houses in front of Israeli soldiers

High school student

Khuza'a, Khan Younis

17-years-old at the time of the incident

Ahmed Abu Reyda said that on 23 July 2014 he was detained by Israeli soldiers when trying to leave Khuza'a as it came under attack. Israeli soldiers who spotted him on the road ordered him to undress to his underwear. He was then handcuffed and blindfolded. Ahmed was questioned about tunnels and armed groups while being beaten and verbally abused for three consecutive hours. He stated that he didn't know about them.

For the next five days, at gunpoint and while being threatened, Ahmed was ordered to walk in front of the Israeli troops and search approximately 12 Palestinian homes, entering first, with several guns at his back. The dogs entered after him and then the soldiers. When he resisted, the soldiers threatened to set the dogs on him and the dogs approached him several times. He was guided by one soldier who was staying five metres behind him while roaming the neighbourhood. He was ordered to open doors of houses, enter the houses, search houses room by room to make sure that there was no one there, and to go upstairs and downstairs. They searched the houses during the day and at dusk returned to a house to hide. One night, at 2:00am, the soldiers ordered him to dig into an unused water well, which he presumed they thought was a tunnel.

Ahmed expected that he would be killed at any moment during his five days of detention and being used as a human shield. He was interrogated several times a day about armed groups and tunnels. He was told that he is a member of Hamas and he responded that he was not. He was told that his father is a member of Hamas and he responded that his father is the General Director of Tourism and Antiquities within the government. He was verbally abused. He could not sleep except for a few minutes and would wake up terrified by the sound of explosions and shooting. He asked a soldier to let him call his family to let them know that he was alive, but the soldier refused. He did not get drinking water, and only drank water from a tap when he went to the bathroom.

There were between ten and 20 soldiers around him at all times, in shifts, and many more soldiers in the area. He was always accompanied by an Arabic-speaking soldier. The soldier who seemed to be the most senior spoke Hebrew. After Ahmed responded that he did not know where any tunnels were in response to a question, the soldier choked him for over ten seconds.

Ahmed was released at 6:00am on 27 July 2014 and ordered to leave the town. He walked alone and afraid that he would be attacked at any time in a town that was empty of residents. After approximately 90 minutes he reached Khan Younis and was reunited with his family.

Ahmed Abu Reyda's case is also documented at paragraph 321 of the report of the UN Commission of Inquiry on the 2014 Gaza Conflict.

Alaa Qdeih

**Used as a human shield in a window from behind which Israeli soldiers were firing
Civil engineer**

Khuza'a, Khan Younis

24-years-old at the time of the incident

Alaa Qdeih gave testimony that on 25 July 2014, at around 1:30pm, his 64-year-old uncle, Mohammed Tawfiq Qdeih, was fatally shot in front of him in his uncle's house by an Israeli soldier, where around twenty civilians were sheltering in the basement.

Mohammed Tawfiq Qdeih was carrying a white flag (a piece of white cloth) and speaking in Hebrew to the Israeli soldiers to inform them that civilians were inside the house when he walked up the stairs from the basement. When his uncle reached the top of the stairs with Alaa and other family members, they saw several Israeli soldiers pointing their weapons at them. Alaa describes that they all raised their hands up as a sign of surrender. His uncle was in front of his family members and spoke to the soldiers in Arabic. One of the Israeli soldiers ordered his uncle to lift his clothes up in Arabic. Alaa saw his uncle trying to lift his shirt, and then he heard gunfire. His uncle fell to the floor. Alaa raised his hands up and started to scream saying that they are civilians and have children and women with them. Alaa thought the soldiers would kill them all because his uncle did not do anything to be killed. Alaa describes that his uncle was in front of them on the floor needing help, but they could not get close to him. Alaa was ordered by the same soldier to remove his clothes down to his underwear, and then was allowed to move forward to see his uncle, before being blindfolded, handcuffed and ordered to remain standing next to a wall.

After the women and children were taken out of the house, the soldiers made Alaa enter the basement where he was severely beaten and coerced to give information on tunnels and Palestinian fighters that he stated he did not have.

A soldier then ordered Alaa to stand up, untied his hands, and ordered him to walk with him. Alaa says a number of soldiers were around him directing their weapons towards him. When he reached his uncle who was lying on the ground, the soldier told Alaa to take off his uncle's clothes. Alaa was very scared and felt they wanted to kill him over his uncle's body. He took off his uncle's clothes and saw he was not breathing. The soldier ordered Alaa to drag his uncle's body into the basement, which he did under weapon threats. After that he was handcuffed and blindfolded again. Alaa says that one of the soldiers asked, "why didn't you leave Khuza'a?" He replied, "there's no safe place in Gaza" and that they had been calling the ICRC to help but no one answered.

After around fifteen minutes, the soldiers took the blindfold off Alaa to take him upstairs. Alaa says there were between ten and 15 soldiers upstairs with weapons different from the soldiers' downstairs, as they had guns that were about two metres long. Alaa says that his cousin, Ramadan, was then brought upstairs, and that the

soldiers moved beds and removed the glass from the window panes. Alaa says they put the beds and fridge in front of the two left sides of the windows and ordered him to sit next to the window. Alaa says that he could see everything outside, including a tank and a bulldozer. He says he was at the left window (on the eastern side of the house) and Ramadan on the right.

Alaa says that Israeli soldiers then shot out of the same window from behind him at many houses in the street, including his house and his uncle Ramadan's house. He says that there was heavy shooting in the air and shrapnel hitting the house. Alaa told a soldier that he was afraid to stand in the window. A soldier ordered Alaa to keep looking forward, and not to look behind him. Alaa says the whole time the soldiers were shooting out from behind him, and that he was afraid.

After a period of time, Alaa and his cousin, Ramadan, were told to get away from the windows and sit down. At around 7:00pm an officer arrived. Alaa noticed from the way the soldiers were speaking to him that they were treating him as a higher rank. He asked Alaa and Ramadan about some houses, streets and militants. He said that their mission was completed in his uncle Mohammed's house, and that Alaa and Ramadan had five minutes to leave the town or be killed.

During the period of time that he had fled his home in Khuza'a, Alaa's home was ransacked, and a sum of \$19,350 and NIS 850 stolen.

Alaa Qdeih's testimony is supported by testimony obtained from another case of a human shield incident, Ramadan Qdeih, that is documented below.

Alaa Qdeih's testimony also appears to be supported by a witness account given by Dr Ramadan Tawfiq Qdeih, the brother of the fatally shot Mohammed Qdeih, at paragraph 323 of the report of the UN Commission of Inquiry into the 2014 Gaza Conflict. The excerpt is quoted here:

“From the window there, Ramadan Qdeih saw the men who had been held at his brother's house with Israeli soldiers standing behind them. The witness said that the men were naked with black plastic bags over their heads, handcuffed and positioned in front of the windows facing outwards.³⁵ The soldiers then started shooting from behind the naked men, using them as human shields. This went on from about 1.30 to 6 pm. The men were later told by the soldiers that they were placed by the window in order to deter Hamas fighters from returning fire.”

Ramadan Qdeih

Used as a human shield in a window from behind which Israeli military forces were firing

Employment unspecified

Khuza'a, Khan Younis

34-years-old at the time of the incident

³⁵ W050; W051;W131.

Ramadan Qdeih gave testimony that on 25 July 2014, at around 1:30pm, he was standing close to his father, Mohammad Tawfiq Qdeih, who was carrying a white flag, when he was killed by a fatal gunshot from an Israeli soldier (as described above in Alaa Qdeih's testimony).

Soon afterwards, Ramadan was beaten by the soldiers, handcuffed behind his back, and blindfolded. The beating continued while Ramadan was interrogated about resistance groups and tunnels.

Ramadan was then forced to stand in a window blindfolded in the same room as his cousin, Alaa, and realised a number of soldiers were standing behind him. He heard the sound of shooting and bullet cases dropping to the floor.

Ramadan says he was then taken out of the room and moved into another room and another window. He was also once taken to the basement where a soldier placed their weapon on his shoulder and fired into the basement, but there was no one there. Ramadan was then ordered to go to the roof to be a human shield there. He says that the soldiers were clearing the whole house and then filling it with soldiers.

At around 7:00pm, and over five hours after his father was killed, the soldiers told Ramadan that he and his family should leave the village carrying white flags.

Ramadan returned to find paraphernalia from Israeli soldiers was left behind, including ammunition and a uniform.



Photo credit: Shadi Alqarra

Ramadan Qdeih's testimony supports the aforementioned testimony given by his cousin, Alaa Qdeih. It also appears to confirm the aforementioned witness account of another Ramadan Qdeih—the brother of the fatally shot Mohamad Tawfiq Qdeih—

which is at paragraph 323 of the report of the UN Commission of Inquiry into the 2014 Gaza Conflict, and is excerpted in this report above.

Sameha Mahmoud³⁶

Used as a human shield to search private properties

Farmer

Wadi As-Salqa, Middle Area

59-years-old at the time of the incident

59-year-old Sameha Mahmoud said that on the morning of 24 July, she returned home from a shelter to feed her livestock and found Israeli soldiers staying in her house. One of the soldiers seized her mobile phone and wallet, and ordered her to remove her headscarf, before handcuffing and blindfolding her. She was then taken to one of the rooms in her house and the hand-tie and blindfold were removed.

At 9:00pm on 24 July, a soldier handcuffed and blindfolded Sameha. He led her out of the house and they walked to her cousin's house. She was taken inside the house where he said in Arabic that he had orders to shoot her. He then asked her about tunnels. She said she did not know about them. The soldier said that they will stay for eight days and that she would stay with them. Sameha told the soldier that she was a woman and all of them were men and there was no need for her to stay with them. The soldier did not reply.

The soldier took Sameha out of her cousin's house and led her to a deserted shelter located beneath the house. The soldier asked Sameha, "what's this?", and she replied that it was a basement. He then asked "is it a tunnel?" and ordered her to get into it. Sameha told the soldier that she was scared. The soldier replied it was an order. Sameha repeated that she was scared and that it was night-time and dark. The soldier gave her a torch and told her to enter. Sameha saw that Israeli soldiers were surrounding the house directing their weapons at her.

Sameha entered the basement and was ordered by the soldier to keep walking until the end of it. She held a stick and hit the walls. She said this was the boundaries of the basement. The soldier ordered her to stay there and that she could exit after a few minutes. As soon as she left the basement, she saw a soldier enter it.

Sameha was then led to an adjacent house belonging to another cousin who was the mayor of Wadi As-Salqa village. She was in the front with soldiers walking behind her. One soldier ordered her to open the door. She held the door handle to show them that it was locked.

The soldiers then entered the house from the north and Sameha entered with them. She was kept in a room for three days and brought food only twice. During the detention, Sameha describes that she couldn't sleep because of the sounds of tanks and non-stop shooting.

³⁶ A pseudonym has been used to protect the identity of this individual.

Sameha was held until early morning on 27 July when the soldiers retreated from the immediate area.

Sameha Mahmoud's case is also documented at paragraph 343-345 of the report of the UN Commission of Inquiry on the 2014 Gaza Conflict.

Section D: Legal Framework

International Humanitarian Law and International Criminal Law on the use of human shields

A fundamental principle of international humanitarian law is that civilians and civilian objects may never be the object of a military attack. A corollary of this core legal principle is that civilians, the civilian population and certain specifically protected objects may not be used to shield a military objective from attack.

The International Committee for the Red Cross affirms that customary international law prohibits the use of human shields in international and non-international armed conflict.³⁷

In the context of international armed conflicts, the prohibition on the use of human shields is expressly stated at Article 28 of the Fourth Geneva Convention (with respect to protected civilians) and Article 51(7) of the Additional Protocol I (with respect to civilians in general).

The use of human shields is explicitly criminalised within article 8(2)(b)(xxiii) of the Rome Statute of the International Criminal Court. This provision states that within international armed conflicts, "utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations," constitutes a war crime.³⁸

Article 28 of the Rome Statute of the International Criminal Court should be considered alongside any criminal offence specified under the Rome Statute. It provides that:

"A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

³⁷ International Humanitarian Law database of the International Committee of the Red Cross, Rule 97 Customary International Law. Available [here](#).

³⁸ ICC, Rome Statute, 1 July 2002, Article 8(2)(b)(xxiii).

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”

Also relevant to the context of human shield incidents is Article 147 of the Fourth Geneva Convention which provides that inhuman treatment is a grave breach that incurs individual criminal liability. This follows the important precedent set in the case of General Blaskic before the International Criminal Tribunal for the former Yugoslavia, where there was a successful international criminal prosecution against a high-ranking military officer for the offence of inhuman treatment by ordering the use of civilian human shields to protect the headquarters of the Appellant at the Hotel Vitez, on 20 April 1993, which inflicted considerable mental suffering upon the persons involved.³⁹

Al Mezan and LPHR submit that the incidents documented in this report amount to the use of civilians as human shields by Israeli military forces in clearly apparent violation of international humanitarian law and incur individual criminal responsibility.

Our position is significantly supported by a key finding in the report of the UN Commission of Inquiry into the 2014 Gaza Conflict, which found at paragraph 346:

“Based on the information available to the commission, the manner in which the Israeli soldiers forced Palestinian civilians to stand in windows, enter houses/underground areas and/or perform dangerous tasks of a military nature, constitutes a violation of the prohibition against the use of human shields contained in article 28 of Geneva Convention IV, and may amount to a war crime.⁴⁰”

The Commission of Inquiry goes on to conclude in the same paragraph of its report:

“These incidents also raise concerns that in two of the cases, the IDF may have violated the obligation to hold persons deprived of their liberty in premises that are removed from the combat zone,⁴¹ when detaining them for several days. The tasks the victims were ordered to perform by the soldiers jeopardized their lives and health. That conduct, together with the physical and/or psychological violence to which the victims were subjected by the soldiers, constitutes ill-treatment and may amount to torture.⁴²”

³⁹ General Blaskic was also indicted on the alternative charge, should he not have been found guilty of ordering the use of human shields, of “knowing or having reason to know that subordinates were about to use human shields, or had done so, and failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators”.

⁴⁰ GC IV article 28, Article 51(7) Additional Protocol I Article 8 Rome Statute of the ICC. See also rule 97 [here](#).

⁴¹ CIHL study rule 121.

⁴² CAT article 16 on degrading treatment. GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; ICC Statute, Art. 8(2)(a)(i); (ii); (iii); (viii); Art. 8(2)(b)(i); (iv); (x); (xxv) AP I, Art. 75, AP I, Arts.75(2)(a); (b).

Section E: Ongoing Lack of Justice and Accountability

Despite the clear testimony of apparent use of human shields by Israel's military forces in violation of international humanitarian law during Operation Protective Edge, there is effectively no prospect, four years on, of justice and legal accountability being secured for these incidents through Israel's accountability process.

In respect of the human shield incidents documented in this report of Anas Al Najjar and Sameha Mahmoud, it is unclear if these two incidents have been examined at all by Israel's military investigation system.

In respect of the cases of Ahmed Abu Reyda, Alaa Qdeih and Ramadan Qdeih, Israel's Military Advocate General announced in August 2018 that criminal investigations were opened and then closed without any further criminal or disciplinary proceedings. The military investigators accepted the "testimony collected from numerous IDF soldiers and commanders" that denied the use of human shields in these cases.⁴³

In Alaa Qdeih's and Ramadan Qdeih's case, Israel's Military Advocate General states that five testimonies from Palestinian witnesses were collected and, "The investigation's findings that the testimonies in this regard were inconsistent, included contradictions and were lacking in details". It does not, however, detail what these alleged inconsistencies are, whilst presenting a summary of the incident of the killing of Mohammed Tawfiq Qdeih which is glaringly inconsistent with the witness accounts given by Alaa Qdeih and Ramadan Qdeih to Al Mezan and partners, and also of the testimony of 20-year-old, Raghad Qdeih, summarised in the UN Commission of Inquiry report. In Ahmed Abu Reyda's case, his father is stated to have refused his son to meet with investigators to give testimony, which is given as a material reason for closing the case.

In this context, it must be recalled that Israel's military investigative system has been well-scrutinised as failing to meet international standards and that it systematically does not provide for a genuine and fair process leading to prosecutions and legal accountability. The empirical record clearly demonstrates that it customarily delivers impunity for Israeli military and political officials, which dangerously emboldens and normalises the recurrence of apparent serious violations against Palestinian civilians.

The UN Commission of Inquiry into the Gaza Conflict 2014 closely examined whether Israel's accountability mechanism is compliant with international standards. It stated in its June 2015 report that "the Commission is concerned about a number of procedural, structural and substantive shortcomings, which continue to compromise Israel's ability to adequately fulfil its duty to investigate. Many of these have been identified by the Turkel Commission, as well as by international human rights mechanisms."⁴⁴

⁴³ Decisions of the IDF Military Advocate General Regarding Exceptional Incidents that Allegedly Occurred During Operation Protective Edge- Update No. 6 – August 15 2018. Available [here](#).

⁴⁴ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, paragraph 618.

In regard to the key standard of independence and impartiality, the UN Commission of Inquiry starkly found: “As noted by the UN Committee of Experts in 2010 and 2011, a central failing of the investigation system stems from the dual responsibilities of the Military Advocate General, both as the legal advisor to the Chief of General Staff and other military authorities and as the supervisor of disciplinary law and of criminal investigations in the military.”⁴⁵

The UN Commission of Inquiry's report makes reference to the findings of a Government of Israel appointed commission, called the Turkel Commission, whose report in 2013 focusing on Israel's policy for investigating suspected violations of the laws of war, found: “[T]here are grounds for amending the examination and investigation mechanisms”.⁴⁶ The Turkel Commission made 18 recommendations directed at various Israeli government agencies.

A further commission—called the Ciechanover Commission—was then established by the Government of Israel to recommend practical steps towards implementing the recommendations of the Turkel Commission to improve Israel's mechanisms for investigating alleged violations of the laws of war. They published their report in September 2015, which was strongly critiqued by the leading Israeli human rights organisation, Yesh Din, who concluded:

“[T]here are still no prospects for improvement in Israel's investigation and examination mechanism or for legislative measures that would bring Israel in line with its obligations under international law [...]. [T]he Ciechanover Commission set out to buy time, create the false impression that the investigation and examination mechanism is undergoing improvements and continue to grant impunity to members of the security forces and civilian superiors who violate the laws of war under international law.”⁴⁷

In 2016, the prominent Israeli human rights organisation, B'Tselem, significantly announced it will stop referring complaints to Israel's military law enforcement system. It stated: “There is no longer any point in pursuing justice and defending human rights by working with a system whose real function is measured by its ability to continue to successfully cover up.”⁴⁸

In June 2017, the UN High Commissioner for Human Rights, Prince Zeid Bin Ra'ad, found in his ‘comprehensive review for all violations of international law in the

⁴⁵ Ibid, paragraph 619.

⁴⁶ Second Report of the Turkel Commission, ‘Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law’, February 2013. Page 49.

⁴⁷ Yesh Din position paper, ‘The Ciechanover Report – dodging the criminalization of war crimes and practical steps toward implementation’, 1 October 2015.

⁴⁸ B'Tselem press release, ‘B'Tselem to Stop Referring Complaints to the Military Law Enforcement System,’ 25 May 2016.

occupied Palestinian territory’, that Israel is “repeatedly failing to comply with the calls for accountability made by the entire human rights system”.⁴⁹

The UN High Commissioner’s authoritative and evidence-based conclusion corroborates the following striking findings of the UN independent Commission of Inquiry into the 2014 Gaza Conflict:

“The Commission is concerned that impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces.”⁵⁰

“Israel must break with its recent lamentable track record in holding wrongdoers accountable, not only as a means to secure justice but also to ensure the necessary guarantees of non-repetition.”⁵¹

“The Commission’s investigations also raise the issue of why the political and military leadership did not revise their policies or change their course of action, despite considerable information regarding massive death and destruction in Gaza, which in turn raises questions as to potential violations of international humanitarian law and criminal law by these officials.”⁵²

“Current accountability mechanisms may not be adequate to address the issue of potential violations of international humanitarian law by these officials, which may amount to war crimes”.⁵³

“Those responsible for suspected violations of international law at all levels of political and military establishments must be brought to justice.”

It is the firm view of Al Mezan and LPHR that the findings of the independent experts above, coupled with the empirical record of there being no indictments relating to clearly apparent serious international law violations in Operation Protective Edge, creates a significant and authoritative presumption that Israel is unable or unwilling to carry out genuine investigations to hold perpetrators of serious crimes accountable. This clearly applies to the specific context of the human shield incidents documented in the report.

⁴⁹ ‘Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009, Report of the United Nations High Commissioner for Human Rights’, June 2017, paragraph 69.

⁵⁰ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, paragraph 664.

⁵¹ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, paragraph 664.

⁵² Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, paragraph 640.

⁵³ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, paragraph 664.

Section F: Conclusion

This report has documented in detail the cases of five Palestinians civilians in Gaza, including a child, who had their lives endangered when used as human shields by Israeli military forces during Operation Protective Edge.

The five human shield incidents, beginning within 48 hours of each other, demonstrate the apparent use of human shields during Operation Protective Edge by Israeli military forces. Moreover, the frequency of their use over a short temporal period in a confined geographical vicinity is indicative of there being in existence an authorised or understood military practice or policy to use human shields.

This report has shown how the five human shield incidents are part of an egregious pattern of reported human shield use against Palestinian civilians by Israel's military forces over a number of years that has effectively gone unpunished. They represent the perpetuation of the criminal activity of using civilian human shields that Israel's military investigation system appears systemically unwilling or unable to effectively punish, despite the formal positions of Israel's highest court and military establishment that recognises the prohibited use of human shields. The established pattern of the apparent commission of using human shields by Israel's military forces over a number of years without legal accountability heightens the gravity of their commission.

Israel's accountability system has not made effective remedy available to the survivors of the human shields incidents in this report and there is effectively no prospect of it taking legal accountability measures against individual perpetrators, particularly at the upper echelons of command. This represents a repeated systemic failure of Israel's justice system to adequately punish or hold those responsible to account. Further, the empirical evidence shows that the systematic lack of accountability provided for by Israel's accountability system emboldens recurrence of serious violations due to the lack of providing a deterrent effect.

Al Mezan and LPHR maintain that the absence of legal accountability for the five human shield incidents documented in this report not only leaves survivors without legal remedy and justice, but dangerously emboldens the repeated recourse and normalisation of using human shields. This cycle must be broken otherwise these appalling violations that gravely endanger its victims are bound to recur.

Our position, four years on from the devastating military offensive launched on Gaza by Israel's highest political and military leadership, is that the only viable avenue to possibly obtain justice and legal accountability for Palestinian victims, survivors and their families of apparent war crimes and crimes against humanity is through the International Criminal Court and other international accountability mechanisms. This includes for the five survivors of the human shield incidents during Operation Protective Edge documented in this report.

مركز الميزان لحقوق الإنسان
AL Mezan Center for Human Rights



Al Mezan Centre for Human Rights (Al Mezan) is a Palestinian non-governmental human rights organization that works for the protection and promotion of Palestinian human rights and the rule of law in Gaza as part of occupied Palestine.

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