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Israel: Requirements and procedures for a victim of crime to file a complaint with the police, including obtaining a copy of the complaint and effectiveness; mechanisms available to file a complaint against the police, including effectiveness (2012-February 2015)

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1. Filing a Complaint about a Crime

1.1 Reporting a Crime at the Police Station

According to Section 58 of the 1982 Israeli Criminal Law Procedure Law [as amended in 2002 [1]], "[a]ny person may submit a complaint to the police that an offence has been committed" (Israel 1982, Sec. 58).

In an interview with the Research Directorate, an international human rights lawyer based in Israel, [2] indicated that the "procedure of filing a complaint is standard across Israel" and that "victims, witnesses or individuals" can submit a complaint to a police station (Lawyer 24 Feb. 2015). Similarly, the website of the US embassy in Tel Aviv advises American citizens who are victims of a crime in Israel to report the incident at "the local police station, or to a local patrol or community police officer" (US. n.d.a, 1).

According to the lawyer, in the case of a more severe crime, an individual can call the police station to report a crime and, depending on the circumstances and the severity of the crime, the police report may be taken at the scene of the crime (24 Feb. 2015). The lawyer also stated that, while individuals reporting less severe crimes may call the police station to report a crime, they will be directed to go to the police station to file the complaint (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The lawyer indicated that when an individual reports a crime at a police station, there is no standard form to complete, nor are there fees associated with filing a complaint (Lawyer 24 Feb. 2015). According to him, the police officer will interview the individual and ask follow-up questions (ibid.). According to an article in Haaretz, standard police procedure requires that individuals filing complaints at a police station are "supposed" to receive an initial response by a police officer within 20 minutes (13 July 2012). The same article notes that standard police procedure also requires that the processing of urgent cases, such as sexual assault or attempted murder, be given priority over the processing of arrested suspects who have been brought into the station (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources state that a third party can file a complaint on behalf of a victim of crime (US n.d.a, 1; Lawyer 24 Feb. 2015). Sources note that this can be done without a power of attorney (ibid.; US n.d.a, 1); however, the third party would need to provide an additional explanation, since the victim is normally the main witness (ibid.). According to sources, once the complaint has been filed, the police will determine whether an investigation into a case will be pursued (Lawyer 24 Feb. 2015; US n.d.a, 2), closed or "shelved" temporarily (ibid.). According to the 1982 Criminal Law Procedure Law (amended in 2002),

59. If the police, learned that an offence was committed, either from a complaint or in any other way, then it shall launch investigation; however, in respect of an offence that is not a felony [3] a police officer of the rank of Chief Inspector or higher may order not to investigate, if he holds that the matter is not of public interest or that some other authority is competent under a statute to investigate the offense.

63. The complaint shall be given written notice of a decision not to investigate or not to put on trial, stating the reason for the decision.

64. (a) A decision not to investigate or not to put on trial- either because the investigation or the trial is not in the public interest or because sufficient evidence was not found- may be contested by the complainant, as follows:

against the decision of an investigating body or a competent prosecutor- before the District Attorney or before an attorney of the State Attorney's Office before an attorney of the State Attorney's Office appointed to head the sphere of contestations;

against a decision of a District Attorney or an attorney of the State Attorney's Office not to put on trial for lack of sufficient evidence or lack of guilt, other than a decision on a contestation under paragraph (1)- before the State Attorney;

against a decision made the State Attorney, a District Attorney or an attorney State Attorney's Office not to put on trial for lack of public interest- before the Attorney General.

(b) The Attorney General may delegate his authority under subsection (a)(3) to the State Attorney, except in respect of decisions on a decision by the State Attorney; the State attorney may delegate his authority under subsection (a)(2) to his deputy, and a District Attorney may- with the State

Attorney's approval- delegate his authority under subsection (a)(1) to an attorney of a grade not lower than Ranking Deputy to the District Attorney. (Israel 1982, Sec. 59, 63, 64)

Similarly, the website of the US embassy in Tel Aviv states that if the police do not investigate a non-felony crime based on the grounds of "lack of public interest," then the complainant may appeal the police's decision to the Attorney General's Office (US n.d.a, 2).

1.2 Obtaining a Copy of the Complaint from the Police in Israel

The lawyer indicated that, according to police procedure, the victim will "automatically receive" a "letter of confirmation" at the end of the police interview, before they leave the police station (24 Feb. 2015). The letter of confirmation, according to the lawyer, includes details such as the case number, the subject matter of the case, the date the complaint was filed and where the complaint was lodged (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.3 Obtaining from Abroad a Copy of the Complaint

Information on how to obtain from abroad a copy of a filed complaint could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.4 Effectiveness of Crime Complaint Procedure

Haaretz reported that, in early July 2012, police officers at the Ramat Gan police station refused to record a sexual assault complaint made by a young American woman living in Israel due to their reported "heavy workload" (Haaretz 13 July 2012). When Haaretz informed the senior commander of the district about the incident, he asked the complainant to come to the police station to file a complaint (ibid.) Haaretz indicates that, upon her arrival, the young woman was received by the "top-most people" at the police station and that she was able to file a police report (ibid.).

Further and corroborating information about the reception of complaints filed by victims of crime in Israel could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Filing a Complaint Against the Police

Sources note that the Israel National Police (INP) falls under the authority of the Ministry of Public [Internal] Security (US 27 Feb. 2014, 6; Haberfeld and Herzog 2013, 82). According to Profs. Maria Haberfeld of John Jay College of Criminal Justice at the City University of New York and Sergio Herzog of the Institute of Criminology at the Hebrew University of Jerusalem, in their chapter on Israel in *Comparative and International Criminal Justice Systems: Policing, Judiciary and Corrections*, the INP is commanded and directed by its commissioner, who is appointed by the Minister of Public Security (ibid.). According to the same source, the INP is headquartered in Jerusalem, is organized geographically into 6 regions or districts, 13 sub-districts and 67 local police stations (ibid.).

2.1 Filing Complaints with the Public Complaints Unit

According to the Israeli Police website, the Public Complaints Unit (PCU) deals with reports of "inappropriate conduct" of police officers or "improper conduct of the policing duties" (Israel 24 June 2014). Sources note that there is a PCU located at national headquarters, and there are units within every district and sub-district (ibid.; US n.d.b).

According to the Israel Police website, the district and sub-district PCUs manage complaints made about police officers working within the district units, and the national headquarters PCU manages reports made against police officers serving in the national units and high-ranking officials who hold positions at the chief-superintendent level or higher (Israel 24 June 2014). According to the same source, the national headquarters PCU

is the professional authority guiding the public complaints officers throughout the nationwide complaints apparatus. The Public Complaints Unit under the National Headquarters also functions as an appellate instance for the decisions of the investigating officers and the district public complaints officers. (ibid.)

The website also states that

[t]he decisions of the sub-district public complaints officer may be appealed to the district officer, and the decisions of the district public complaints officer may be appealed to the Public Complaints Unit under the National Headquarters.

The Public Complaints Unit reports to the Deputy Police Inspector-General and, along with the National Comptroller Unit makes up the National Auditing and Public Complaints Unit. (ibid.)

Information about the number and type of complaints received and handled by various PCUs, the procedure to file a complaint with the PCU, as well as the general effectiveness of the PCU complaint mechanism, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.2 Filing Complaints with Machash [Mahash] Against the Police

The website of the Department of Justice of Israel refers to Machash as the Police Internal Investigations Department (Israel n.d.a). Habermeld and Herzog refer to it as the "Department for the Investigation of Complaints Against Police Officers" (Habermeld and Herzog 2013, 84). Habermeld and Herzog write that Machash is an external civilian department that falls under the authority of the Ministry of Justice (ibid.). According to the website of the Ministry of Justice, Machash is an "independent body, at arm's length from the Police" (Israel n.d.a). According to Habermeld and Herzog, the "role of Machash is to investigate every police officer suspected of committing offences involving the illegal use of force as well as criminal offences punishable by over 1 year of imprisonment" (2013, 84). Similarly, according to the website of the Ministry of Justice, the "functions of Machash are to examine suspicions of the commission of criminal offences (only) where police personnel are suspected of committing them and where the penalty is in excess of one year's imprisonment" (Israel n.d.a). Sources state that Machash derives its operational authority from Amendment No. 11 of the Police Regulations [Ordinance] (New Version) of 1971 (ibid.; Adalah Sept. 2014, 2), which provides that, in cases of police misconduct punishable by more than one year of imprisonment, it is Machash, and not the INP, who will investigate (Israel n.d.a).

According to Habermeld and Herzog, Machash is headed by an attorney and all of its investigators are police officers who were once part of the regular police force (2013, 84). According to the Ministry of Justice website, Machash is currently in "advanced stages of preparation" to "fully civilianize" its workforce (Israel n.d.a).

Information about the procedure to file a complaint with Machash could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to Adalah, an "independent human rights organization and legal center" for Arab minority rights in Israel (Adalah n.d.), "pursuant to a decision of the Ministerial Committee for

State Control, issued on 11 October 2005, Machash must investigate complaints within three months (Sept. 2014, 7). Further information about procedural requirements for the handling of complaints by Machash could not be found by the Research Directorate within the time constraints of this Response.

According to the website of the Ministry of Justice, once Machash receives the complaint, they conduct an initial examination of the case in order to determine whether the case warrants an investigation; after this examination is completed, they determine whether they should close the file or if they should prosecute the police officer (Israel n.d.a). If the Department's decision is to discipline the police officer, the complaint is sent to the Disciplinary Department of the Israel Police (ibid.). The website of the Ministry of Justice further states that

[i]f the Department has decided that there is a basis for the filing of an indictment against the Policeman, the case is processed further in the following way: Machash cases come under the jurisdiction of the Magistrates Courts in the Jerusalem, Tel Aviv, Central and Southern Districts. Indictments are filed by the Machash Attorneys and they appear in the Courts. In the other cases the case file is forwarded to the appropriate District Attorney's Office where the file is examined in order to decide whether to bring an indictment. (ibid.)

According to Adalah, the majority of complaints submitted to Machash involve allegations of the use of excessive force by police officers (Adalah Sept. 2014, 2). According to sources, the Ministry of Justice provided the following statistics on complaints received by Machash from 2011 to 2013:

A total of 11,282 complaints against police officers were filed with Machash (ibid., 3; Haaretz 24 Sept. 2014).

Of this total, 3.3% of the complaints (373 complaints) led to disciplinary actions against police officers (ibid.; Adalah Sept. 2014, 3).

Of this total, 2.7% of the complaints (306 cases) led to criminal prosecution of police officers (ibid.; Haaretz 24 Sept. 2014). According to Adalah, "no data was provided concerning the nature of the criminal charges submitted by Machash against police officers, and/or the sentences handed down" (Adalah Sept. 2014, 3).

Of the total number of complaints received, 93% of the complaints were closed by Machash with or without an investigation (ibid.; Haaretz 24 Sept. 2014).

Of the cases that were closed, 72% were closed without an investigation on the basis of a "lack of public interest," "lack of guilt" or "lack of evidence" (Adalah Sept. 2014, 3). Sources report that cases were also closed for other reasons, including lack of identification of the suspected perpetrator (ibid.; Haaretz 24 Sept. 2014) and a lack of authority by Machash to investigate "certain cases" (Adalah Sept. 2014, 3).

Of the cases that were closed, 21% were closed after investigation, half of them because of a "lack of evidence" (ibid.).

According to a May 2012 article by Haaretz, the Ministry of Justice received complaints of police violence against individuals involved in a demonstration in Ramle (18 May 2012). According to a 17 February 2015 article by the Jerusalem Post, several police commanders are under investigation by the Ministry of Justice for allegations of sexual harassment and sexual assault against female civilians and one female police volunteer. Further and corroborating information about these cases could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.3 Assistance by Civil Society Organizations in Filing Complaints

According to the human rights lawyer in Israel, there are many civil society organizations, including Adalah, that will assist individuals wishing to file a complaint against a police officer (24 Feb. 2015).

Adalah filed several complaints with Machash on behalf of individuals in 2013 and 2014 (Adalah Sept. 2014, 1-9). Of the examples provided by Adalah, all of which occurred in Haifa, the complaints all involved police conduct towards individuals participating in demonstrations in 2013, including allegations of excessive use of force and violence (ibid.). In the examples provided, Adalah reports that complaint files were closed due to a "lack of public interest" in the file or an inability to identify the alleged police aggressor(s) (ibid.) Investigations were delayed and in one case, were still outstanding as of September 2014 (ibid., 7). Investigations were not pursued due to "the circumstances of the case" not warranting the opening of a criminal investigation, for instance, where the use of force described in the case did not exceed the limit of force that would justify taking criminal action against the officer in question (ibid., 1-9). Adalah also reports that Machash closed complaint files without obtaining testimonies from the complainants themselves (ibid., 5).

Adalah reports that, on 11 March 2014, the organization submitted a request to have access to Machash investigation material in order to submit an appeal regarding the closing of five files by Machash (ibid., 7). As of September 2014, Adalah says it had not received a response from Machash (ibid.).

2.4 Effectiveness of Machash Complaint Mechanism

According to the US Department of State's Country Reports on Human Rights Practices for 2013, civilian authorities have been effective in maintaining control over police forces, and the government has effective mechanisms in place to investigate and impose punitive measures on authorities who are guilty of abuse and corruption (US 27 Feb. 2014, 6). According to the same source, "[i]mpunity was not a problem" and "the government took steps to prosecute and punish officials who committed abuses ... regardless of rank or seniority" (ibid.).

According to a report by Transparency International (TI) entitled National Integrity System Assessment - Israel, 2013, the police have a "relatively low level of independence," owing to political pressure on the police force, especially with regard to "politically sensitive investigations" and the appointment of senior police officers (TI 11 Nov. 2014, 12). The report also states that there is a "lack of transparency in the areas of law enforcement and crime prevention" and notes that "public perception is that the police which is 'policing' itself, tends to be overly lenient with its own and therefore is seen as an agency with no integrity and no accountability" (ibid., 13).

A former senior officer in the Ministry of Justice was quoted by Haaretz as stating that in many cases where there is no evidence or witnesses, the [Machash] investigators "tend" to believe the police officer's version of the events over the complainant's statement (24 Sept. 2014). Haaretz also reports that many complainants criticized the Ministry of Justice for not keeping them informed during the complaint process and alleged that they were not asked to provide their version of the events before they received a response to their complaint (ibid.).

According to Adalah, Machash operates in a "culture of impunity and a lack of accountability" (Sept. 2014, 2). According to the same source,

[t]he vast majority of complaints submitted to Mahash are not investigated and if investigated, they are closed. In the few cases where investigations are opened, they are carried out with

substantial delays and in an unprofessional manner, resulting in very low rates of prosecution or punishment. Indictments are not issued against police officers or commanders, despite strong evidence against them. Contradicting police and investigative regulations, Mahash is still not an independent body and remains closely tied to the police. (ibid.)

2.5 Filing Complaints with the State Comptroller

According to the website of the Office of the State Comptroller and Ombudsman, in 1971, the Israeli parliament decided to expand the power of the State Comptroller to include the function of Ombudsman and established the Office of the Ombudsman (Israel 26 Mar. 2002). The website notes that, under the Basic Law: State Comptroller (amended 2005), the State Comptroller is "accountable only to the Knesset [Israeli parliament]" and is not "dependent upon the Government" (ibid. n.d.b.).

The website provides the following information about the organizational structure and mandate of the Office of the Ombudsman:

[t]he Ombudsman's Office consists of eight departments, which examine complaints against government offices, state institutions, local governments, and certain other bodies referred to by the State Comptroller's Law.

...

the Ombudsman serves as an address to any person who wishes to submit a complaint against a state or public body subject to state audit.

...

A complaint can be submitted concerning any action taken contrary to law, without lawful authority, contrary to sound administration or that involves too inflexible an attitude or a flagrant injustice. An "action" can be also be defined, for the purposes of submitting a complaint, as an omission or a delay in acting. According to the Law, complaints may be submitted only against the bodies subject to the audit of the State Comptroller, and as mentioned, there is a wide range of such bodies. The Law also indicates complaints that are not to be investigated, for example, complaints against the President of the State, the Knesset or the Government. Also not investigated are complaints on matters pending in the courts, or in which a court has given a decision with regard to their substance.... In addition, complaints relating to service arrangements and terms of service or discipline of military personnel on active service or in the reserves, police and prison officers, will not be investigated. The Ombudsman will also not investigate a complaint submitted after a year has elapsed from the date of the act to which it relates, unless he finds a special reason justifying the investigation. (ibid. 26 Mar. 2002)

According to Country Reports 2013, the Ombudsman is "entitled to use any relevant means of inquiry and has the authority to order any person or body to assist in the inquiry" (US 27 Feb. 2014, 20). The State Comptroller and Ombudsman website states that, upon completion of an investigation, the Ombudsman will inform the complainant, "stating his reasons for finding the complaint justified or for discontinuing the investigation" (Israel n.d.b). The website also explains that the Ombudsman "may also point out the need to correct a deficiency revealed by the investigation and how and by what date it is to be rectified" (ibid.).

According to the website of the State Comptroller and Ombudsman, "any person may submit a complaint to the Ombudsman" (ibid.). The website of the Office of the State Comptroller and Ombudsman states that a complaint can be submitted to the Ombudsman in one of the following ways:

by completing and submitting an online form;

by typing out the form and faxing it to the office of the Ombudsman;

by typing out the form and e-mailing it to the office of the Ombudsman's email address (ombudsman@mevaker.gov.il). (ibid. n.d.c)

The website states that complaints can also be submitted orally at any one of the municipal offices of the Ombudsman, which are located in Jerusalem, Tel Aviv, Haifa, Be'er Sheva and Nazareth (ibid. 26 Mar. 2002).

The website notes that the complaint form should include the following details:

the complainant's personal information such as name, address (ibid.; ibid. n.d.c), telephone number (ibid.), as well as the complainant's signature (ibid. 26 Mar. 2002);

the contact information of the complainant's lawyer, if applicable (ibid. n.d.c); and

information relating to the complaint, including against whom the complaint is being filed, the date of the incident, details of the incident, why the action was unjustified, what steps the complainant has taken to resolve the problem, including whether the matter has been decided upon by, or is pending before, a court or tribunal, and the relief being sought by the complainant (ibid.).

Information on complaints received by the Ombudsman from 2012-2015 could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.6 Effectiveness of State Comptroller as a Police Complaint Mechanism

According to Country Reports 2013, the State Comptroller was among those government entities that operated "effectively and independently," and was "sufficiently resourced" (US 27 Feb. 2014, 18). Transparency International similarly reports that the State Comptroller has adequate resources to conduct its activities (TI 11 Nov. 2014). Transparency International also noted that while the State Comptroller is independent in its ability to operate, in practice it is "not entirely independent," due to the fact that those bodies being audited have the opportunity to review a draft of the audit report and make comments before the report is published, which has enabled government bodies to prevent the "full implementation of the Comptroller's recommendations" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

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

Notes

[1] In correspondence with the Research Directorate, a representative of the United States Library of Congress, based on their observation of the most recent version of Israel's 1982 Criminal Law Procedure Law, written in Hebrew, "the Law underwent numerous amendments, the last one on December 21, 2014," including section 62 that was amended in 2005 and 2010 and section 62(a) that was amended in 2002 and in 2006. (US 18 Mar. 2015). Attempts by the Research Directorate to obtain a version of the 1982 Criminal Law Procedure Law more recent than the 2002 amended version were unsuccessful within the time constraints of this Response.

[2] The human rights lawyer is also a legal advisor to several Israeli human rights organizations in Israel, including Peace Now, an organization that promotes the peaceful negotiation of a two-state solution to the Israeli-Palestinian conflict (Peace Now, n.d.), and he also represents Palestinian communities and Israeli and Palestinian activists (Lawyer 24 Feb. 2015.).

[3] Felonies are crimes that carry a punishment of more than three years imprisonment (Israel 1996, Sec.24(1) ; US n.d.a, 3).

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Additional Sources Consulted

Oral sources: The following organizations were unable to provide information for this Response: Association for Civil Rights in Israel; Hamoked; Interpol; Israel Police; Yesh Din.

The following organizations were unable to provide information within the time constraints of this Response: Israel-Palestine Center for Research and Information.

Attempts to contact the following organizations were unsuccessful within the time constraints of this Response: Adalah; Interpol (Israel); Israel - Ministry of Justice, Ombudsman; Israel Palestine Center for Research and information; Law Society; Noga Legal Center; Public Committee Against Torture in Israel.

Internet sites, including: Amnesty International; Association of Civil Rights in Israel; Breaking the Silence; B' Tselem; ecoinet; Factiva; Freedom House; Hamoked; Human Rights Watch; Interpol (Israel); Israel Bar Association; Israel Democracy Institute; The Israel-Palestine Center for Research and Information; Israel - Central Bureau of Statistics, Knesset, Ministry of Foreign Affairs, Ombudsman; Lexadin; Michael Sfard Law Office; Nation Master; Noga Legal Center; Public Committee Against Torture in Israel (PCATI); REDRESS; Relief Web; United Nations - International Labour Organization, Office of the High Commissioner for Human Rights, High Commissioner for Refugees, Refworld; United States - Law Library of Congress; Yesh Din; Znet.

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