



**State of Israel
Ministry of Justice**

The Legal Counseling and Legislation Department (International Law)

**Mechanisms of Review and Supervision of Law Enforcement Agencies with
Regard to Alleged Cases of Excessive Use of Force and Ill Treatment**

Israel is deeply committed to standards of international law regarding the prevention of the excessive use of force and ill treatment. This is exemplified by the comprehensive supervision and review mechanisms to which every relevant state authority is subject. These mechanisms ensure that every complaint or report of torture, ill-treatment or excessive use of force is investigated promptly, thoroughly and meticulously, in accordance with relevant international norms and standards.

Following are the main oversight and complaint mechanisms operating in Israel, which supervise the work of security forces and law enforcement personnel, such as the Israel Police, the Israel Defense Forces, the Israeli Prison Service and the Israel Security Agency.

In addition to the mechanisms that will be outlined below, the Israeli High Court of Justice, Israel's highest judicial instance, is empowered to engage in judicial review of all State activities, irrespective of the identity and nationality of the petitioner.

The Israel Police

The Department for Investigation of Police Officers (DIPO)

The DIPO is specifically designated to investigate complaints of police misconduct, including the unlawful or excessive use of force and related offences. As part of the efforts made to strengthen its impartiality and independence, the DIPO operates as part of the State Attorney's Office, entirely independent of the Police.

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Upon completion of an investigation, the DIPO is authorized to initiate and handle criminal proceedings and its lawyers appear before all relevant instances in this regard. The DIPO may also recommend that the Police initiate disciplinary proceedings against a police officer and in cases concerning the illegal use of force, it is authorized to direct them to do so.

Any person, whether a national of Israel or otherwise, may file a complaint with the DIPO, directly or via mail, fax or e-mail. The department has various branches situated throughout the country (Jerusalem, Nazareth, Netanya, Haifa, Tel Aviv-Jaffa, Rishon Le'Zion, Ashkelon, Be'er-Sheva and Eilat).

Israel Prisons Service (IPS)¹

Every prisoner or detainee under the care of the IPS has access to the following complaint mechanisms concerning grievances regarding the staff and wardens, including claims of wrongful use of force:

- filing a complaint to the Director of the prison;
- petitioning the relevant District Court in a prisoner's petition, in accordance with Section 62A of the *Prisons Ordinance*, and the *Procedures (Prisoners Petitions) Regulations 5740-1980*;
- filing a complaint to the National Unit for Investigation of Wardens (hereinafter: "UIW"), through the IPS or directly to the Unit. This Unit is part of the Israel Police, and its members are police officers. The findings of the UIW are subject to the scrutiny of the State Attorney's Office, which decides whether the institution of disciplinary measures or criminal proceedings is warranted;

¹ Additional information on human rights and the Israeli Prison Service can be found at <http://www.justice.gov.il/Units/InternationalAgreements/HumanRightsAndForeignRelations/Faq/Compendium%20of%20Sources%20-%20Human%20Rights%20and%20the%20Israeli%20Prison%20Service%20-%20Feb%202014.pdf>

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The UIW is connected to the IPS computer systems to enable it to access videos and photographs of the public areas of various prisons. This measure ensures that the UIW has access to the material needed to investigate any misconduct by prison wardens. Additionally, over the past few years, digital cameras have been placed in all IPS medical clinics, and according to prison orders, any prisoner who complains about physical injury resulting from alleged use of force (by another prisoner or by a warden) is photographed by the medic, and the documentation is maintained in the IPS computer system.

According to IPS Directives, in any case where a prisoner alleges she/he has been harmed through use of force, she/he is almost immediately questioned by the Prison Director or the Deputy Director, and any claim of the unlawful use of force is immediately and directly reported to the UIW, and to the relevant staff. Furthermore, when the UIW opens an investigation against a warden pursuant to a complaint by a prisoner, immediate measures are taken to guarantee the separation between the complaining prisoner and the warden.

- filing a complaint to the Prisoners Complaint Ombudsman, which is part of the Ministry of Public Security's Internal Comptroller Unit. Following the inquiry of such a complaint, and based on its findings, the complaint may be forwarded to the UIW or to the IPS for disciplinary procedures;

In addition, Section 71 of the *Prisons Ordinance, 5732-1971* establishes rules for Official Visitors to prisons. These Visitors are appointed by the Minister of Public Security and are comprised of lawyers from the Ministry of Justice as well as a number of representatives of the Israel Bar Association who are appointed on a yearly basis, either for a specific prison, or nationwide. Section 72 of the *Prisons Ordinance* grants Official Visitor authority to Supreme Court judges, the Attorney General, the Chairpersons of the Internal Affairs and Environment Committee and the Constitution, Law and Justice Committee of the Knesset in prisons throughout Israel; to District and Magistrates Courts judges, in prisons in their jurisdiction. Official Visitors are allowed to enter the prisons at any given time (unless special temporary circumstances apply), to inspect the state of affairs, prisoners' care, prison management, etc. During these visits, the prisoners may approach the visitors and present their complaints, including grievances pertaining to use of force and may also

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request an interview with such a visitor. Attorney General's Guideline (No. 4.1201. (1.5.75), updated - 1.9.2002) broadened the Official Visitors' remit to include detention cells in police stations and courts.

Additional monitoring is conducted by means of visits of ICRC personnel and Non-Governmental Organizations.

Israel Defense Forces (IDF)

To ensure full compliance with the rule of law, including International Law and the Law of Armed Conflict, the IDF has a military justice system which examines and investigates allegations of misconduct. This system, like that of other Western militaries, includes multiple components and layers of review by civilian authorities and the judiciary.

The IDF Military Justice System

The IDF maintains a multi-layered investigations structure, with numerous checks and balances. The three main components of the military justice system are the Military Advocate General's Corps ("MAG Corps"), the Military Police Criminal Investigation Division ("MPCID"), and the Military Courts.

The MAG Corps consists of highly-trained lawyers who are responsible for two main functions: the enforcement of the law (both military and criminal) throughout the IDF and the provision of legal advice to all military authorities. The head of the MAG Corps ("the MAG") is appointed by the civilian Minister of Defense and "subject to no authority but the law." On professional matters, the MAG is guided only by Israel's Attorney General.² The MAG's professional independence extends to every subordinate military attorney serving as an officer within the MAG Corps, and no commanders outside of the MAG Corps are part of this legal chain of command.

² Attorney General's Directive No. 9.1002 details the relationship between the military legal system headed by the MAG and the general legal system headed by the Attorney General, and details the principal circumstances in which the Attorney General will intervene, or provide guidance, with respect to legal matters pertaining to the military legal system. See: <http://index.justice.gov.il/En/Units/AttorneyGeneral/Documents/AGDirectiveMilitaryAdvocateGeneral.pdf>

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The MPCID is the IDF's primary entity for investigating allegations of criminal offences. With regard to professional decision-making, the MPCID enjoys independence and is guided only by the MAG.

The Military Courts — which are independent of both the MAG and the IDF chain of command — adjudicate charges against IDF soldiers for military and other criminal offenses related to their military service. The Military Court system includes regional courts of first instance, as well as a Military Court of Appeals. Professional military judges (selected by an independent commission³) and regular IDF officers (who have no connection to the cases they hear) serve on these Military Courts. The Presiding Judge is always a professional legal officer. Under the *Military Justice Law 5715-1955*, “[i]n judicial matters, a military judge is not subject to any authority save that of the law, and is not subject in any way to the authority of his commanders.”⁴

Mechanisms for Investigating Complaints

The IDF has multiple avenues for obtaining information regarding alleged misconduct by IDF soldiers. First and foremost, as an open and democratic society, Israel has a free press and an active community of domestic and international non-governmental organizations, which are a source of many of the allegations of misconduct. Such allegations may also come from victims, their family members, attorneys or witnesses of the conduct at issue. In fact, any person can file a complaint alleging misconduct by IDF soldiers at any civilian police or MPCID station, either by appearing in person or through written communication. Residents of the Gaza Strip also can - and indeed do - file complaints directly to the MAG through Israel's liaison mechanism with the Palestinian Authority, through a non-governmental organization acting on their behalf, or through an attorney (who need not be Israeli).

In addition, Israeli commanders, soldiers, police, or other law enforcement officers who witness an offence being committed are required to report the incident. Under the

³ Military commanders do not appoint professional military judges. Rather, an independent commission comprised of the Minister of Defense, the Minister of Justice, the General Chief of Staff, the Head of Manpower Directorate in the IDF, members of the Israeli Supreme Court and the Military Court of Appeals, and a representative of the Israeli Bar Association, is responsible for selecting judicial appointees. See *Military Justice Law*, § 187(a).

⁴ *Id.* § 184.

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Military Justice Law, 5715-1955 any IDF “commander ... or soldier who knows or has reasonable grounds to believe that another soldier committed an offense” *must* prepare a complaint and present it to a competent officer.

Indeed, a new Operational Standing Order came into force in July 2014 which extended the reporting duties of military personnel regarding incidents that occur during operational activity.⁵ This Order replaced an earlier Reporting Procedure, significantly broadening its scope. It also sets out the method of reporting, the relevant timeframes and the framework for monitoring the status of the various reports and their handling.

Unlike in the past, the Order requires reporting certain events, even in cases where the IDF has no specific information, according to which the event was caused by its forces, but also on events with respect to which it has been alleged (but not yet confirmed), that the incident was caused by IDF forces.

The MAG Corps regularly reviews any complaints and other information that may suggest IDF misconduct, regardless of the source. The MAG Corps then determines whether the information is sufficiently concrete to merit further review by the MAG. In certain cases, where the known facts are sufficient to indicate that the alleged wrongdoing could be criminal in nature (such as looting or abuse of detainees), the MAG immediately refers the complaint to the MPCID for criminal investigation. In other cases, for example when an allegation is partial or circumstantial, the MAG may require additional information in order to decide whether to open a criminal investigation. In such cases, the IDF will conduct a preliminary fact-finding assessment in order that the MAG can make a fully informed decision as to whether there is a reasonable suspicion of criminal misconduct that justifies opening a criminal investigation.

In July 2014, the IDF established a specialized permanent Fact Finding Assessment Mechanism to examine all exceptional incidents referred to it. This was initially established during operation 'Protective Edge' by the IDF Chief of General Staff who ordered that a General Staff Mechanism for Fact-Finding Assessments (FFA) examine

⁵**Order of the Operations Division – the Operations Branch 4.7** “Providing a preliminary report and debrief to the Military Advocate General's Corps” (June 9th 2014)

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exceptional incidents that occurred during the operation. This mechanism was subsequently made permanent and remains in place.

The FFA is headed by a senior officer with the rank of Major General and is comprised of a number of fact-finding assessment teams. Each team is led by a senior IDF officer (in active service or in the IDF reserves), with a rank ranging from Colonel to Major General. The teams are comprised primarily of IDF reservist officers required to possess expertise in a range of relevant areas. Ongoing legal advice from legal officers in the IDF Military Advocate General's Corps, who have particular expertise and experience in international law, is also available to the teams. The fact-finding assessment teams' members are external to the chain of command of the incident being examined. All IDF soldiers are required by law to cooperate with the fact-finding assessment teams, and to provide any relevant information they may possess. Statements provided to the fact-finding assessment teams, as well as any materials these teams may produce, are privileged under the law.

If so directed by the MAG, the MPCID must conduct a criminal investigation. MPCID staff may investigate any IDF soldier or officer, collect evidence from a wide range of sources (for example, witness testimony of civilians, including Palestinians), and seek guidance from military prosecutors. When the MPCID concludes its investigation, it transfers the case file to the MAG Corps for review.

Following a criminal investigation, the MAG decides whether to initiate criminal or disciplinary proceedings. Military prosecutors may file an indictment with the Military Courts if the evidence is sufficient to establish a reasonable chance of conviction.⁶ The Military Prosecution may appeal an acquittal or a sentencing decision to the Military Court of Appeals, and may subsequently request to appeal the decision of the Military Court of Appeals to the Israeli Supreme Court.

Civilian Supervision

In order to further bolster Israel's mechanisms for examining allegations of wrongdoing by its military personnel, the IDF's military justice system is subject to

⁶ Under Israeli Supreme Court precedent, a criminal indictment may only be filed where a "reasonable chance to convict" exists in light of all evidence collected, including exculpatory evidence. *See, e.g., Yahav v. State Attorney*, H CJ 2534/97 (30 June 1997).

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civilian supervision. The Attorney General of Israel, who heads the public prosecution system and is the chief legal advisor to the Israeli government, provides civilian supervision of the military justice system. The professional directives of the Attorney General bind all state authorities, including the IDF.

The Attorney General may review any decision of the MAG that he/she considers to be of special public interest.⁷ Moreover, a complainant or non-governmental organization can challenge the MAG's decision not to conduct a preliminary inquiry into a complaint, open a criminal investigation or file an indictment in cases concerning alleged violations of the Law of Armed Conflict, before the Attorney General.⁸

Further review is available through Israel's Supreme Court either as an appeals court, or as a court of judicial review over any decision of the MAG or the civilian Attorney General. Under the Military Justice Law, the Supreme Court may hear direct appeals from a judgment of the Military Court of Appeals "concerning an important, difficult, or innovative legal question."⁹ In addition, complainants or non-governmental organisations may also petition the Supreme Court, sitting as the High Court of Justice ("HCJ"), against a decision of the MAG or the Attorney General.¹⁰ The Supreme Court may review and reverse decisions of the MAG and the Attorney General, including decisions as to whether to open a criminal investigation, whether to file a criminal indictment, whether to bring certain charges, or whether to appeal a decision of the Military Courts.

⁷ See, for example, *Avivit Atiyah v. Attorney General*, H CJ 4723/96 (29 July 1997), where the Supreme Court ruled that the Attorney General could order the MAG Corps to change its position concerning whether to file a criminal indictment.

⁸ In light of the recommendations of the Turkel Commission (see below under "*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*"), this procedure was set forth in a new directive issued by Israel's Attorney General on April 2015. According to this directive, an interested individual can file an appeal with the Attorney General challenging a decision made by the MAG with respect to certain incidents. See Attorney General Directive 4.5003 – "The right of appeal with respect to decisions of the MAG regarding incidents involving the death of an individual in the course of Israel Defense Forces operational activity, when serious violations of customary international law are alleged".

See: <http://index.justice.gov.il/En/Units/AttorneyGeneral/Documents/AGDirectiveRightofReview.pdf>

⁹ Military Justice Law, §440I(a),(b).

¹⁰ Paragraph 15(D)(2) to the Basic Law: The Judiciary.

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The scope of the Court's review is very broad. According to the jurisprudence and practice of the High Court of Justice, any interested party (including non-governmental organisations) — or any person (including those who are neither Israeli citizens nor residents) who is affected or potentially affected by the actions of a government authority — is entitled to petition the HCJ as a court of first instance on any claim that a government action or an action of the IDF is *ultra vires*, unlawful or substantially unreasonable. Indeed, on numerous occasions the Supreme Court has reviewed the legality of IDF operational conduct, including while active hostilities were taking place.

Supervision by the Executive Branch: As with other Western militaries, the IDF's chain of command culminates with the Chief of General Staff, who is appointed by the civilian Government.¹¹ The IDF and the Chief of General Staff are subject to the authority of the civilian Government, with the Minister of Defence responsible for overseeing the activities of the IDF.¹²

Activities and policies of the IDF may be also subject to civilian supervision by commissions of inquiry appointed by the government (when necessary and at its discretion).¹³ In addition, the government and any Minister in the government can also appoint a commission of assessment, provided that no State commission of inquiry has been appointed to examine that same matter.

The Legislative Branch: The Knesset and the State Comptroller: The IDF is also subject to the supervision and inspection of the State Comptroller, who carries out external audits and reports and fulfills the function of a Public Complaints Commissioner (Ombudsman). The Comptroller is accountable only to the Israel's Parliament (Knesset) and enjoys unrestricted access to the accounts, files and staff of all bodies subject to an audit. The Comptroller's activities are carried out in cooperation with the Knesset Committee for State Audit Affairs, which under special circumstances has the power to decide to appoint a State commission of inquiry.¹⁴

¹¹ Basic Law: the Military, 1976, LA 806.

¹² Basic Law: the Military, 1976, LA 806.

¹³ The Commissions of Inquiry Law, 5729–1968, LA 548, at Article 1; The Government Law, 5761–2001, LA 1780

¹⁴ The State Comptroller Law, 5718–1958, LA 248, at Article 14B.

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In addition, the Knesset can also appoint a parliamentary committee of inquiry.¹⁵ Also on behalf of the Knesset, the Foreign Affairs and Defense Committee, comprising Members of Knesset from various parties, acts to supervise the activities of the IDF. The committee is mandated to deal with issues regarding the state's foreign affairs policy, its armed forces and its security.

Israel Security Agency (ISA)

The ISA and its employees must act within the limits of the law and are subject to both internal and external supervision and review. This includes review by the Inspector for Complaints of Interrogatees, by the State Comptroller, the State Attorney's Office, the Attorney General, the Knesset and the judiciary, including the High Court of Justice.

These mechanisms aim to ensure that the ISA acts according to its mandate and within the scope of its legislated functions, and that its members do not engage in ill-treatment or excessive use of force.

Inspector of Complaints of Interrogatees

According to Section 49(9)(1) of the *Police Ordinance*, an investigation against an ISA employee is opened at the discretion of the Attorney General, the State Attorney or one of her/his deputies. Where the complaint concerns an interrogation, the decision to conduct an investigation is reached following a preliminary inquiry undertaken by the Inspector for Complaints against ISA Interrogators (hereinafter: the "Inspector"). The Inspector's findings are transferred to a senior advocate in the State Attorney's Office, who examines the evidence and makes a recommendation in this regard. An investigation, if opened, is conducted by the DIPO.

Following comprehensive intergovernmental deliberations, as well as several NGOs petitions to the High Court of Justice, the Attorney General announced in November 2010 that the Inspector, who had previously been an employee within the ISA, would be transferred to the Ministry of Justice and would be subordinate to the Director General of this Ministry.

¹⁵ Basic Law: the Knesset, LA 1958 244.

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This reform, which essentially severed all structural and organizational ties between the Inspector and the ISA, was finalized in 2014. The former Chief Military Prosecutor was appointed to serve as the Inspector. The New Inspector assumed her responsibilities in February 2014 and began operating in May 2014.

Upon the assumption of her responsibilities, and following complaints in the past of lengthy examinations, the new Inspector decided to prioritize the completion of inquiries that had been ongoing for a prolonged period of time and to shorten the timeframe for current examinations. To this end, the Inspector is working, *inter alia*, to complete the examination of all open complaints and the overwhelming majority of cases are dealt with in less than one year.

In addition, the Inspector conducts regular meetings with representatives of the ICRC and several non-governmental organizations.

In 2014, the new Inspector also began to collect testimonies from former detainees who were interrogated and released. In addition, also for the first time, and with the consent of the complainant, representatives of the NGO "The Public Committee Against Torture in Israel" were present in a meeting between the Inspector and a complainant –with the aim of increasing the transparency of this process.

Allegations of Torture, Ill-Treatment and Excessive Use of Force Made before a Prosecutor or Judge

If a complaint of abuse is raised before a **judge**, it is documented in the court records and referred to the Police (in cases where the complaint is raised against a civilian), or to the DIPO (in cases where the complaint is raised against a police officer).

If the complaint of abuse is raised before a **prosecutor**, State Attorney Directives require that the prosecutor document the complaint in an official memo and refer it to the Police or to the DIPO, as appropriate. Furthermore, according to Israeli Law and court rulings, where the complaint is made by a **suspect or a defendant** against the ISA, IPS or the Police, and subsequently investigated by the DIPO, the prosecutor must disclose all material obtained from the DIPO investigation to the defense lawyer, as part of the handling of the criminal case.

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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

On 14 June 2010 the Government of Israel established a Public Commission of Inquiry mandated, among other responsibilities, to assess whether the mechanisms for examining and investigating complaints and claims raised in relation to violations of the Law of Armed Conflict conform with the obligations of Israel under the rules of international law.

The Commission was headed by former Supreme Court Justice Jacob Turkel and included prominent Israeli experts and international observers: Nobel Peace Prize laureate from Northern Ireland, Lord David Trimble, and former Judge Advocate of the Canadian Forces, Brigadier- General (ret.) Kenneth Watkin. Upon his appointment as Stockton Professor of International Law at the United States Naval War College, Brigadier-General Watkin resigned as a foreign observer to the Commission and on 23 June 2011, Professor Timothy McCormack, Professor of Law at Melbourne Law School and the Special Adviser on International Humanitarian Law to the Prosecutor of the International Criminal Court replaced him. The Commission examined evidence provided by Israeli officials, academics and human rights NGOs, and consulted several international law experts.

The Commission submitted its comprehensive report in February 2013. The wide mandate provided to the Turkel Commission and the cooperation it enjoyed in compiling its Report provide further testament to Israel's commitment to international law and its willingness to examine its domestic mechanisms in light of international standards, notwithstanding the difficult security challenges which it faces.

The Commission concluded that Israel's mechanisms for examining and investigating complaints and claims of violations of the rules of the Law of Armed Conflict generally comply with its obligations under International Law.

The Commission nevertheless made several recommendations for strengthening the Israeli system, including, *inter alia*, the adoption of domestic legislation, a number of structural changes and the anchoring of existing policies in written directives and procedures. Some of these recommendations relate to matters in which Israel had

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already initiated, on its own accord and before the issuance of the report, changes and modifications. The reform mentioned above concerning the Inspector of Complaints of Interrogatees is but one example.

In detailing its recommendations, the Commission emphasized that the recommendations made in its report are not indicative of flaws in the current mechanisms and methods of operation, but rather, that such steps could further improve the capabilities of Israel's mechanisms.

It also noted that States have broad discretion when selecting tools and mechanisms to fulfill their obligations under international law, according to the circumstances, institutions and legal systems of each country.

Following the report, the Government of Israel appointed a professional inter-agency team of experts, headed by Dr. Joseph Ciechanover, an esteemed former public official. Following its appointment in January 2014, the Team thoroughly reviewed the recommendations of the Turkel Commission and considered the most effective measures for their implementation. In September 2015, the Team submitted its recommendations to the Prime Minister¹⁶ and in July 2016 the Israeli Cabinet adopted the Team's recommendations with a few minor changes. The Cabinet also decided to appoint a team that will follow up on the continued implementation process and report to the Prime Minister biannually on the matter. The Cabinet also instructed the relevant bodies to examine the necessary budgetary requirements needed in order to complete the implementation process.

A number of the recommendations of the Turkel Commission have been mentioned in this document. For example, as mentioned above, in accordance with Recommendation No. 5 of the second part of the Turkel Report, a permanent General Staff Mechanism for Fact-Finding Assessments (FFA) charged with examining exceptional incidents, is now operational.

¹⁶ The report of the Team for the Review and Implementation of the Second Report of the Public Commission for the Examination of the Maritime Incident of May 31st 2010 Regarding Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Law of Armed Conflict According to International Law Report may be found at <http://www.pmo.gov.il/Documents/ReportEng.pdf>.

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So, too, in accordance with Recommendation No. 3 of the second part of the Turkel report, a new Operational Standing Order came into force in July 2014 which extends the reporting duties of military personnel regarding incidents that occur during operational activity.

Also, in accordance with Recommendation No. 7 of the second part of the Turkel report, it was decided to make changes to the appointment process of the MAG and the Military Prosecutor in order to further strengthen their professional independence.

All relevant authorities are continuing to work on implementing the recommendations, although, as reflected in the Implementation Team's Report, a significant part of this important process has already been completed.