



בצלם - מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)
بتسيلم - مركز المعلومات الإسرائيلي لحقوق الإنسان في الأراضي المحتلة
B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

Lt. Col. Ronen Hirsch
Military Advocate for Operation Affairs
By fax
Ref.: 15390

4 Sept. 2014

Dear Sir,

**Re: Investigation of incidents that took place during recent military action in Gaza:
July-August 2014
Your letter of 11 August 2014**

In the abovementioned letter, you requested that we send you information concerning "incidents that took place during the operation in which breaches of the law are suspected".

After discussing the matter, B'Tselem has decided not to send you such information and not to assist the Military Advocate General (MAG) Corps in any matter concerning such investigations. All the information B'Tselem publishes on its website and in other publications is available to the public, and the MAG Corps is welcome to obtain the information at our disposal through those channels.

We have adopted this position in light of our experience with previous military actions in Gaza, which shows that investigations led by the MAG Corps do not promote accountability among persons responsible for such violations or reveal the truth.

This problem is certainly not exclusive to the MAG Corps: it results from structural issues affecting the Israeli law enforcement system, of which the MAG Corps is part, when it comes to investigating suspected violations of international humanitarian law.

For precisely that reason, B'Tselem and other human rights organizations wrote to the attorney general immediately after Operation Cast Lead ended, in early 2009, demanding that he establish an independent investigation apparatus to examine suspected violations of international humanitarian law during the operation. We demanded that the investigation address not only particular incidents, but also the directives that were given to the military and the policy that guided its actions. This demand was rejected, as was a repeated demand.

We believe that Israel's law enforcement system, in its present form, cannot adequately address suspicions of unlawful conduct during military action in the Gaza Strip in three major areas:

1. Investigating senior political officials and military commanders: The overall policy guiding the military's actions is laid out by senior political officials, who are also involved in making and authorizing operational decisions. Other decisions are made by senior military

commanders whose rank is either equivalent to that of the MAG or higher. In both cases, no mechanism exists for investigating the involvement of these officials in unlawful activity.

2. The MAG's dual role: On one hand, the MAG gives legal counsel to the military before and during combat; on the other hand, he is responsible for deciding whether to open criminal investigations into soldiers' conduct. This dual role creates an inherent conflict of interests in cases where orders and commands given following the MAG's counsel raise suspicion that the law was breached. In these situations, the MAG – who was responsible for legally authorizing measures suspected of being unlawful – is charged with retrospectively deciding whether to initiate a criminal investigation into his own conduct and that of his subordinates.
3. Investigating incidents in which soldiers are suspected of having breached military orders: In the vast majority of such cases, investigations focus only on the conduct and responsibility of low-ranking soldiers and commanders in the field. First, an operational inquiry is usually carried out; then, the MAG decides whether to order an investigation by the Military Police Investigations Unit (MPIU) based on the inquiry's findings. In the rare instances in which an investigation is indeed opened, its findings are passed on to the MAG Corps, where the decision is made as to which measures – if any – are to be taken against the persons involved. Carrying out an operational inquiry in the unit prior to an MPIU investigation delays the criminal investigation – sometimes by many months. Furthermore, it compromises the reliability of eyewitness accounts given by soldiers, who provide their versions in the presence of other soldiers and commanders during the operational inquiry. MPIU investigators often cannot reach the scene of the incident and have difficulty obtaining testimony from Palestinian victims or witnesses. These procedures are so lengthy that, in some cases, the MAG's decision whether or not to take steps against the perpetrators is made several years after the incident.

B'Tselem encountered these issues after Operation Cast Lead (2009) and Operation Pillar of Defense (2012), when none of the investigations carried out addressed policy or the lawfulness of orders given to soldiers. Virtually all the operational inquiries and investigations carried out following those operations related only to specific incidents and to the responsibility of individual soldiers. In the vast majority of cases, the MAG Corps determined that the soldiers had acted lawfully.

In Operation Cast Lead, at least 759 Palestinians who were not involved in the hostilities were killed; more than 5,300 Palestinians were injured, and some 20,000 people were left homeless. Based on its own statements, the MAG Corps examined more than 400 incidents, which led to the opening of at least 52 MPIU investigations. Yet to the best of B'Tselem's knowledge, in at least one case – in which five family members were killed – the Corps has still not decided whether to even open an investigation more than five years later. Only three investigations ended with indictments, and the harshest sentence (7.5 months in prison) was given to a soldier who stole a credit card from a Palestinian.

In Operation Pillar of Defense, which ended in November 2012, 167 Palestinians were killed, of whom at least 87 had not taken part in the hostilities. According to the MAG Corps, when the operation ended, the chief of staff appointed an internal military commission headed by Maj. Gen. Noam Tibon to investigate incidents that took place during the operation. The commission examined more than 80 incidents regarding which claims of illegal conduct had been made, and passed its findings on to the MAG for a decision on criminal investigations. As of April 2013, the MAG had examined some 65 of these cases and determined that no violation of the law had occurred in any of them.

The harm caused to civilians in Operation Protective Edge was massive: B'Tselem's initial investigation indicates that some 40% of Palestinians killed in the operation were minors, women, and people over the age of 60. In addition, thousands of homes were destroyed and hundreds of thousands of people were uprooted from homes that may no longer exist. This reality is, in part, the direct result of directives given to the military, some of which raise grave suspicion of unlawfulness. One such directive was to attack the homes of operatives in Hamas and other organizations as though they were legitimate military targets. Another was

to consider vast areas where residents were given ineffective warnings to leave their homes as "sterile" areas that may be bombed as though they were legitimate military targets. A third aspect is the proliferation of incidents in which many civilians were killed in a single incident – more than in previous operations – in terms of both the number of casualties in each incident and the overall number of such instances.

As no significant change has been made to Israel's law enforcement system, which includes the MAG Corps, it is safe to assume that these suspected violations will yet again go uninvestigated. There seems to be no intention to investigate the lawfulness of directives given to the military and the responsibility of senior political and military officials. B'Tselem sees no justification for investigating specific incidents only, or specific actions by individual soldiers in the field; all the more so as we find it hard to understand how the MAG Corps will be able to carry out an effective investigation. We hold this position as, once again, the military, and the military alone, is expected to investigate its own conduct during hostilities with no external supervision.

Naturally, we will be glad to assist any independent investigation apparatus established in Israel to seriously and objectively examine suspected violations of international humanitarian law during Operation Protective Edge. However, as long as the Israeli law enforcement system remains unchanged, our position remains as outlined above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hagai El-Ad', written in a cursive style.

Hagai El-Ad
Executive Director
B'Tselem