27 Dec. '09: One and a Half Million People Imprisoned

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Between 27 December 2008 and 18 January 2009, the Israeli military carried out an attack on the Gaza Strip named Operation Cast Lead. The magnitude of the harm to the population was unprecedented: 1,385 Palestinians were killed, 762 of whom did not take part in the hostilities. Of these, 318 were minors under age 18. More than 5,300 Palestinians were wounded, of them over 350 seriously so. Israel also caused enormous damage to residential dwellings, industrial buildings, agriculture and infrastructure for electricity, sanitation, water [1], and health, which was on the verge of collapse prior to the operation. According to UN figures, Israel destroyed more than 3,500 residential dwellings and 20,000 people were left homeless.

During the operation, Palestinians fired rockets and mortar shells at Israel, with the declared purpose of striking Israeli civilians. These attacks killed three Israeli civilians and one member of the Israeli security forces, and wounded dozens. Nine soldiers were killed within the Gaza Strip, four by friendly fire. More than 100 soldiers were wounded, one critically and 20 moderately to seriously.

As an Israeli organization, B'Tselem focuses on Israel's acts and its responsibility for human rights violations. However, it should be noted that Hamas also committed serious violations of international humanitarian law during the operation. Hamas's practice of operating within Palestinian civilian communities undoubtedly affects the legality of Israel's attacks that caused civilian casualties. This, however, does not legitimize every military action during the operation, nor does it prove that Hamas bears sole responsibility for all the harm to civilians.

One year after the operation began, extensive areas in the Gaza Strip have yet to be rebuilt. Israel's sweeping prohibition on the entry of construction materials prevents the rebuilding of houses that were destroyed and damaged, and more than 20,000 persons continue to live in overcrowded conditions in rented apartments, with relatives, or in tent camps. The prohibition also prevents rehabilitation of the infrastructure that was damaged: 90 percent of Gazans suffer electricity black-outs for four to eight hours a day, a result of the damage to infrastructure and of the severe shortage of industrial fuel. Some ten thousand Palestinians in the northern section of the Gaza Strip have no access to running water, and 80 million liters of raw and partially-treated sewage flows daily into open areas. The health system is unable to function properly due to the lack of medical equipment, and seriously ill patients have difficulty receiving necessary medical treatment.

The extensive harm to the civilian population and the enormous damage to property do not indicate, in and of themselves, that the military breached international humanitarian law. However, investigations B'Tselem made during and after the operation, and information from many other sources, raise doubts regarding the declarations of Israeli officials that the military acted lawfully. The suspicions regarding breach of international humanitarian law relate not only to the conduct of one soldier or another, but primarily to policy. In some cases, there is a well-founded suspicion that the harm to civilians resulted from breach of the principles of distinction and proportionality, which are intended to ensure that civilians remain outside the cycle of the hostilities.

Therefore, Israel is obligated to open an independent, credible investigation, and not rely on internal operational debriefings or isolated investigations that focus on a limited number of incidents and the responsibility of relatively low-ranking commanders. An independent and credible investigation is not only required by law, but is also vital in order to fulfill the public's right to know what the state did in its name in the Gaza Strip.

When the operation ended, human rights organizations, among them B'Tselem, wrote to the attorney general [2], demanding that an independent investigation be established to examine the military's conduct during the operation, but were refused [3]. In March 2009, the organizations repeated their request, but were again rejected. Following the publication of the Goldstone report, in

September 2009, they made a joint call [4] for Israel to conduct an independent and effective investigation.

To date, no independent-investigation apparatus, which can also investigate the responsibility of the political and military decision-makers, has been established. As far as B'Tselem knows, 19 Military Police investigations have been opened into cases in which a suspicion arose that soldiers in the field violated army regulations. Only one soldier has been prosecuted regarding actions taken during Operation Cast Lead; he was convicted of stealing a credit card and was sentenced to seven months' imprisonment.

The Military Police investigations currently under way do not meet Israel's obligations and are insufficient. Even if they lead to the filing of indictments, low-ranking soldiers alone will be prosecuted, while the persons responsible for formulating the policy will not be held accountable. Also, the investigations are being carried out by a body that is an integral part of the military and therefore, by definition, are not independent.

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