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January 19, 2012

Three years after Operation Cast Lead, the Israeli military's argument against independent investigation of its conduct during the operation has proven to be hollow. The military has completely failed to investigate itself, regarding both policy choices and the conduct of the forces in the field in particular cases.

From 27 December 2008 to 18 January 2009, the Israeli military carried out an offensive dubbed Operation Cast Lead in the Gaza Strip. The resulting damage to the civilian population in Gaza was colossal: Israeli security forces killed 1,391 Palestinians, at least 759 of whom (including 318 minors under age 18) were civilians who had not been taking part in the hostilities. More than 5,300 Palestinians were injured, at least 350 of them seriously. The operation also caused extensive damage to homes, industrial plants and the agricultural sector, in addition to the electricity, sanitation, water, and health infrastructure that had already been on the brink of collapse due to Israel's siege on Gaza. According to UN estimates, the military destroyed more than 3,500 homes, leaving some 20,000 persons homeless.

After the operation ended, B'Tselem and other human rights organizations wrote to the attorney general, demanding that he establish an independent body for investigating the military’s actions during the operation. The attorney general rejected the demand, stating that the military had acted in accordance with international humanitarian law. In addition, he stated that military units were holding operational inquiries into incidents in which civilians had been harmed, and that the findings would be forwarded to the military advocate general and to the attorney general for a decision whether to pursuer further action in each case. The attorney general added that organizations holding concrete information on incidents in which civilians had been harmed could send the details to the relevant officials, who would examine their claims.

The demand was rejected a second time when the organizations wrote again, in March 2009.

B'Tselem’s complaints to the Military Advocate General Corps

Following the attorney general’s response, B'Tselem wrote to the MAG Corps demanding that he order criminal investigations into 20 cases in which the organization's research indicated suspected breaches of international humanitarian law. In total, these cases involved the killing of 92 Palestinians and the use of three Palestinian civilians as human shields.

No substantive reply was received. However, the Military Police Investigation Unit (MPIU) contacted B'Tselem to request assistance in advancing its investigations. It was only through these requests that B'Tselem learned that MPIU investigations had been opened in nine of the 20 cases, and that another investigation had been opened into a case published on the organization’s website but not sent to the MAG.

At the MPIU's request, B'Tselem helped arrange the arrival of witnesses for questioning in each of the ten cases. The organization also provided investigators with medical reports and other documents relating to the cases. Only in September 2010, more than a year and a half after the operation, did the MPIU request assistance in arranging the questioning of members of the Samuni

family, regarding the incident in which 21 members of their family, including children, had been killed. Since then, B'Tselem has received no requests from the MPIU regarding any of the cases.

The MAG Corps recently informed B'Tselem that another investigation had been opened, raising the total number of investigations opened into cases researched by the organization to 11.

View full list of cases [2].

MAG Corps updated B'Tselem on investigations – three years after the operation

In the two years after Operation Cast Lead, B'Tselem wrote several times to the MAG Corps and the IDF Spokesperson requesting information on the status of its demands for investigation, but received no reply.

It was not until 1 January 2012, almost three years after the end of the operation, that the MAG Corps sent B'Tselem an update regarding hundreds of complaints that that organization had submitted over the past decade and more, including those relating to Operation Cast Lead. The responses regarding the latter follow:

- In nine cases, the MAG Corps did not order an investigation. Regarding five of them, the response repeated the update sent more than two years ago, after B'Tselem's initial complaint: “The file has been sent to the relevant military officials for response”. The cases are: 1) the killing of five members of the Abu ‘Easheh family, 2) the killing of five members of the ‘Aleiwa family, 3) the killing of 11 members of the Dib family, 4) the killing of Ibrahim and Muhammad Abu Dakah and Ibrahim Abu Tir, and 5) the killing of five members of the Ermelat family. “The file is being handled” was the response regarding two other cases: 1) the killing of five sisters from the Bau’lusha family, and 2) the killing of the baby Wiam al-Kafarneh. In the two remaining cases, “the request was not located”: 1) the killing of eight persons in the bombing of a truck carrying oxygen tanks, and 2) the killing of three children of the al-Astal family.
- The MAG's Corps did not respond at all regarding another case that B'Tselem had submitted, and the decision regarding it is unknown: the killing of ‘Atiyyah a-Samuni and his four-year-old son.
- Of the 11 cases in which an MPIU investigation was opened:
    - In four cases, the file was closed with no legal proceedings against the persons involved. The cases were: 1) the use of Shafiq Daher as a human shield, 2) the killing of the eight members of the Abu Halimah family, 3) the killing of Rawheyeh a-Najar, and 4) the killing of six members of the ‘Abd a-Dayem family.
    - In five cases, the investigation was completed, but the Corps had not yet decided whether to file an indictment or close the file. The cases: 1) the use of Sami Muhammad and Ra’d Abu Seif as human shields, 2) the killing of 21 members of the Samuni family, 3) the killing of a father and two of his sons from the ‘Azzam family, 4) the killing of Mustafa Barakeh and Rasmi Abu Jarir, and 5) the killing of four members of the Haji and ‘Arafat families. Three of these cases have awaited a decision for more than a year and a half, as the MPIU informed B'Tselem in July 2010 that they had been forwarded to the MAG Corps. Regarding the killing of 21 members of the Samuni family, the media reported that the MPIU had questioned Col. Ilan Malka, the Givati Brigade commander at the time of the operation, on suspicion of negligence for having ordered the bombing of the house in which the army had gathered about 100 members of the family. This is one of the few instances in which a senior commander was questioned regarding Operation Cast Lead, to the best of B'Tselem's knowledge. A recent media report [3] stated that the file against Malka was likely to be closed, and that his promotion would not be further delayed.
    - The status of one case, involved the killing of Jihad Ahmad and Rida 'Ali, is unknown to B'Tselem. The MPIU opened an investigation into the case, apparently based on a testimony published on B'Tselem's website. The MPIU's last update regarding the case was in July 2010, when B'Tselem was informed that the investigation was still

under way. On 1 January 2012, the MAG Corps replied to B'Tselem that "a complaint was received regarding this case; we do not know of an MPIU investigation into it."
- In another file – the one involving the killing of Majedah and Rayah Abu Hajaj – the investigation led to the filing of an indictment against a soldier for the manslaughter of an anonymous civilian. According to the MAG's Corps, during the investigation, the testimonies given by Palestinian witnesses conflicted with those given by soldiers regarding the killing of the two women. However, the soldiers' testimonies also indicated that soldiers had fired their weapons unlawfully, which caused the death of a person. The indictment was based solely on the soldiers' version. As far as B'Tselem knows, the MPIU made no effort to reconcile the conflicting testimonies, and the Palestinian witnesses were not summoned to give further testimony after the problem arose. According to media reports, prosecution of the soldier for "manslaughter of an anonymous person" has been suspended until another investigation, regarding cover-up of the incident, is completed.

Foreign Ministry: We are investigating

Two official documents issued by Israel's Foreign Ministry, in January 2010 and in July 2010, provided figures on the number of MPIU investigations that had been opened regarding the military's conduct in Operation Cast Lead, without detailing specific cases. To the best of B'Tselem's knowledge, the most updated data was published on the MAG Corps' website in March 2011, according to which 52 MPIU investigations had been opened. No other Israeli entity has ever published which cases were investigated, what the status of the investigations was, or how many of the investigations led to filing indictments.

Conclusion: No accountability for the military's actions during Operation Cast Lead

Three years after the end of the operation, the dozens of MPIU investigations opened into cases of harm to civilians have yet to yield results. The Military Advocate General Corps has created a haze around them, preventing any possibility of examining their effectiveness. The Corps' responses to B'Tselem, combined with media reports, indicate that three indictments have been filed against soldiers who took part in the operation: for theft of a credit card from a Palestinian civilian, for use of a nine-year-old Palestinian child as a human shield, and for "manslaughter of an anonymous person."

In three other cases, disciplinary action alone was taken. Two officers were disciplined for firing explosive shells that struck an UNRWA facility [4]; three officers were disciplined for shelling the al-Maqadmeh Mosque, in which 15 Palestinians were killed, nine of them civilians; and one officer was disciplined for the use of Palestinian civilian Majdi 'Abd Rabo as a human shield, after the Adalah organization wrote to the MAG Corps demanding an investigation into the case.

These meager results are not surprising. The investigations were all opened at a very late stage – the first, to B'Tselem knowledge, in October 2009, a full ten months after the operation had ended. At present, three years after the operation, there is hardly a chance that investigations will lead to further indictments.

There has never been a serious investigation into the suspicions raised by B'Tselem and additional Israeli, Palestinian and international organizations regarding breaches of international humanitarian law by the military during the operation. Most of B'Tselem's demands for investigation were not met. The investigations that were opened did not, to B'Tselem's knowledge, address the responsibility of high-ranking commanders, but rather focused on the conduct of individual soldiers.

Israel's choice to investigate only isolated incidents, and not the military's conduct as a whole during the operation, gives cause for concern that persons responsible for extremely grave breaches of law have not been questioned. Among the issues that have not been investigated are the following:

- The policy that guided the forces during the offensive;
- the legality of the orders given to the soldiers;

- the choice of targets for bombing;
- the means taken to protect the civilian population.

These questions lie at the very heart core of international humanitarian law. Their resolution is vital to examining the legality of the military's conduct during Operation Cast Lead.

related topics:

- Gaza Strip [5]

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