

בצלם - מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)

**B'Tselem** – The Israeli Information Center for Human Rights in the Occupied Territories

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## **B'Tselem's investigation of fatalities in Operation Cast Lead**


Following a lengthy investigation, B'Tselem has published data on the Palestinians and Israelis killed in Operation Cast Lead, which took place in the Gaza Strip from 27 December 2008 to 18 January 2009.

B'Tselem did everything within its capability to verify the data. Its field researchers in the Gaza Strip collected testimonies from eye-witnesses and spoke with relatives of the dead. The organization cross-checked the information with investigations carried out by Palestinian and international human rights organizations and with information on various websites and blogs, including those of the military wings of armed Palestinian groups and of the Palestinian police. B'Tselem also cross-checked its information with [announcements](#) made by the IDF Spokesperson, with media reports of army investigations, and with information included in the [report](#) issued by the Israeli Ministry of Foreign Affairs regarding the operation. As part of its investigation, B'Tselem requested the army's list of fatalities in order to cross-check the names with its own list, but the army refused to provide it.

Given the large number of fatalities and the army's refusal to allow B'Tselem's Israeli and West Bank staff to enter the Gaza Strip to supplement the work of field-researchers there, in some instances the organization was not able to establish whether the person killed took part in the hostilities. B'Tselem continues to investigate these cases.

B'Tselem provided the list to the IDF Spokesperson and initiated proceedings under the Freedom of Information Law to obtain the army's list of fatalities.

### **Palestinian fatalities (all figures relate to the Gaza Strip during the period 27 December 2008 to 18 January 2009)**

Israeli security forces killed 1,387  Palestinians during the operation. The breakdown is as follows:

<b>Did not take part in the hostilities</b>		<b>773</b>	
Of them, women (over 18)	107		
Of them, minor boys & girls (under 18)	320		
<b>Took part in the hostilities</b>		<b>330</b>	

Women	0		
Minors	19		
<b>Police officers killed at police stations</b>		<b>248</b>	
<b>Unknown if took part in the hostilities</b>		<b>36</b>	
Women	0		
Minors	6		
<b>Total</b>		<b>1387</b>	

**Minors killed who did not take part in the hostilities, by age and gender**

Age	Total	Boys	Girls
<b>Under 6</b>	60	33	27
<b>Under 11</b>	119	68	51
<b>Under 17</b>	290	195	95
<b>Under 18</b>	320	221	99

**Adults killed who did not take part in the hostilities, by age and gender**

Age	Total	Men	Women
<b>18-29</b>	176	141	35
<b>30-39</b>	74	55	19
<b>40-49</b>	90	69	21
<b>Over 50</b>	113	81	32

**Israeli fatalities (all figures relate to the Gaza Strip and southern Israel during the period 27 December 2008 to 18 January 2009)**

During the operation, Palestinians killed nine Israelis, as follows:

- Three civilians, who were killed by Qassam and Grad rocket fire
- Six members of the security forces

In addition, four soldiers were killed by friendly fire.

### **Palestinian attacks on Israel civilians**

Three Israeli civilians and one member of the security forces were killed by rocket fire into southern Israel during the course of the operation. Rocket fire at civilian targets is a breach of the laws of war, as is firing from within populated areas.

First, the Palestinian organizations firing rockets and mortars openly state that one of their aims is to harm Israeli civilians. Attacks aimed at civilians undermine all principles of morality and law. The intentional killing of civilians is classified as a grave breach of the Fourth Geneva Convention and therefore a war crime. As such it cannot be justified, whatever the circumstances. Furthermore, rockets and mortars are unlawful weapons, even if aimed at military objects: they are not precise and by their nature endanger civilians in the area from which they are launched and where they land, thus contravening fundamental principles of the laws of warfare: distinction and proportionality.

In addition, in a significant number of cases, Palestinians fire from within areas in which civilians live. International humanitarian law forbids attacks from inside civilian houses or from areas adjacent to civilian houses, and also prohibits using civilians as human shields. Palestinian organizations that fire rockets at Israeli communities from inside or near populated areas contravene this prohibition, too. In doing so, they show not only their desire to injure Israeli civilians, but also their indifference to the lives of Palestinian civilians.

All persons who take part in planning and carrying out these actions commit grave breaches of the laws of warfare and bear personal criminal responsibility for their acts.

#### **The army's figures**

The IDF Spokesperson announced that, "1,166 names of persons killed in the course of Operation Cast Lead have been collected, of which 709 are terrorists from the Hamas terror organization, and some from other terrorist organizations. In addition, there are 162 males aged 16-50 as to whom final determination has not been made. Also, we are aware of 295 persons who were killed and were not involved, 89 of them under age 16, and 49 women."

Since the army refused to provide its list to B'Tselem, we were unable to examine the army's claims regarding the number of combatants and their identity.

B'Tselem's figures contradict those presented by the army. The discrepancy is particularly blatant concerning minors. According to B'Tselem's findings, 252 minors under age 16 (boys and girls) who did not take part in the hostilities were killed, and 111 women and girls over

16 were killed. B'Tselem has copies of birth certificates and death certificates along with other documents regarding the vast majority of the minors who were killed. Also, the organization received photos of 45 of them from the parents.

### **Classification of Palestinian fatalities**

The classification of fatalities according to whether the person took part in the hostilities is based on the [new approach](#) of the International Committee of the Red Cross. The ICRC formulated the approach following six years of study involving experts in international humanitarian law. The study was intended to provide a response to the growing phenomenon of armed conflicts around the world in which civilians play a central role. Given this reality, the ICRC considered it necessary to clarify the circumstances in which a person loses civilian immunity, in order to strengthen the protection of civilians who are not directly participating in hostilities, and are thus not a legitimate object of attack.

Based on the findings of the study, the ICRC determined there are two categories of persons who lose the protection given them as civilians during an armed conflict between a state and an organized armed group. B'Tselem included both categories under the classification “took part in the hostilities.”

1. Persons who fulfill a “continuous combat function.” Such persons are legitimate objects of attack, even if at the moment of attack they are not taking a direct part in the hostilities. This category includes persons who are involved on an ongoing basis in the preparation, execution, or command of combat acts or operations. An individual recruited, trained and equipped by such a group to continuously and directly participate in hostilities can be considered to assume a continuous combat function even before he or she carries out a hostile act. On the other hand, persons who continuously accompany or support an organized armed group but whose function does not involve direct participation in hostilities maintain their status as civilians and are not legitimate objects of attack. Thus, recruiters, financiers and propagandists may contribute to the general war effort, but as long as they do not directly participate in hostilities, they are not a legitimate object of attack.
2. Persons who do not fulfill a “continuous combat function” but take a direct part in hostilities (for example, on their way to fire a rocket, during the firing of the rocket, and on the way back).

The fact that persons who were killed during the operation belonged to an armed Palestinian group does not constitute, in and of itself, proof that they took part in the hostilities, or that

they lost the protection granted them as civilians. Only persons who carry out a continuous combat function are deemed to be taking part in hostilities at all times.

### **Palestinian police**

On 27 December 2008, the first day of the operation, the army bombed the main police headquarters in Gaza City, killing 42 police cadets who were standing in formation. The same day, Israel also bombed some 18 police stations in the Gaza Strip. In total, 248 police officers were killed that day.

Israeli officials stated, in interviews with the media and in official announcements, that attacks on the police were justified because police officers would in the future take part in hostilities against Israel, and that every object belonging to Hamas was a legitimate target, regardless of the actions of the persons attacked.

B'Tselem knows that many police officers in the Gaza Strip are also members of the military wings of Palestinian armed groups, and might take part in hostilities against Israel. However, without concrete information on integration of police officers in the combat forces of Hamas, and taking into account the assumption that persons are deemed civilians unless proven otherwise, B'Tselem is unable to determine that all the police officers were legitimate targets and that the Palestinian police in Gaza, as an institution, is part of the combat forces of Hamas, all of whose members carry out a continuous combat function.

For these reasons, police officers that Israel killed in an attack aimed at police or police stations were listed in a separate category. Where B'Tselem knows a police officer was affiliated with an armed group, the fact is noted. If a police officer was killed during combat, or if he was killed when not taking part in hostilities and not in an attack aimed at police, it is mentioned that he was also a police officer, if B'Tselem knows this was the case.

### **Minors taking part in the hostilities**

Among the fatalities were 19 minors aged 16-18 who took direct part in the hostilities. International humanitarian law prohibits all parties from recruiting children under 15 into combat forces, and requires them to take all necessary means to ensure that children under 15 do not take part in hostilities. It should be mentioned that human rights organizations around the world, B'Tselem among them, think that the prohibition should apply to all minors, that is, persons under 18.

### **Suspicion of breach of law**

The fact that a person is listed among the fatalities, or noting that a person was a civilian or that he or she was not taking part in hostilities at the time of death, does not indicate that a

breach of law was committed, or that the person killed was innocent. The data does not, in and of itself, lead to legal or moral conclusions.

However, every military attack must accord with the rules of international humanitarian law, primarily the principles of distinction and proportionality. Under these principles, it is forbidden to attack civilians, and all feasible precautions must be taken so that the anticipated injury to civilians resulting from an attack on legitimate military objects is not excessive in relation to the anticipated concrete and direct military advantage from the attack. Under the laws of warfare, if there is a doubt as to whether a person is a combatant or a civilian, the planners of the attack must consider the person a civilian. Both the perpetrators of the attack and their commanders bear personal criminal responsibility for breach of these principles.

In all cases in which the person killed did not take part in hostilities, the attacking force has the obligation to conduct an independent and effective investigation into the circumstances of the incident in order to determine if their forces acted lawfully.

To promote accountability and the opening of investigations, B'Tselem provides all its relevant information to the appropriate investigative authorities. In the months following Operation Cast Lead, B'Tselem sent Israel's Attorney General and the military's Judge Advocate General some 20 cases that raise suspicion of breaches of law. These cases involved, for example, the killing of some 90 Palestinians (about half of them minors) who, as far as B'Tselem knows, did not take part in the hostilities, and soldiers' use of civilians as human shields. To date, B'Tselem has received only one substantive response, in which the Judge Advocate General's Office indicated that it had ordered a Military Police investigation into the use of civilians as human shields.

### **Complete list of letters to Israeli authorities demanding accountability**

[More on the database of fatalities and their classification](#)

### **Fatalities in inter-Palestinian violence**

In the coming weeks, B'Tselem will publish the list of Palestinians killed by Palestinians in the Gaza Strip during the operation.