



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

5 April 2009

no.13152

To Mr Menachem Mazuz
Attorney General

Dear Sir,

The firing of a white phosphorous bomb on the house of the Abu Halima family, and shooting at wounded persons during evacuation, in Beit Lahia, 04 Jan. 09

Following my letter of 26 March '09, on the need of establishing an independent mechanism to investigate the conduct of the army during operation Cast Lead, I hereby approach you regarding another incident on which we have received information that gives rise to the suspicion that the army was operating in violation of international humanitarian law.

On Sunday 04 Jan. '09, at about 4pm, the army fired an artillery shell containing white phosphorous at a residential building belonging to the Sa'adalla Matar Abu Halima family in the A-Sifa neighborhood of Beit Lahia. 14 members of the family were inside the house at the time. The coordinates of the house are N31° 33' 47 , E034° 29' 22".

As a result of the shelling a fire broke out in the family home, and Sa'adalla Matar Abu Halima and four of his children were burned to death:

Sa'adalla Matar Abu Halima, 46
Abed A-Rahim Sa'adalla Matar Abu Halima, 13
Zayad Sa'adalla Matar Abu Halima, 11
Hamza Sa'adalla Matar Abu Halima, 7.5
Shahed Sa'adalla Sa'adalla Matar Abu Halima, 15 months old.

Five other members of the family were wounded:

Ghada Riad Rajeb Abu Halima, 21 (she died of her wounds in an Egyptian hospital, 29 March '09).
Farah Muhammad Sa'adalla Abu Halima, 3
Sabah Sa'adalla Abu Halima, 44
Yussef Sa'adalla Matar Abu Halima, 16
Ali Sadalla Matar Abu Halima, 5

Some family members, who resided nearby, came to assist the wounded. Some of them were taken by a cart attached to a tractor. Muhammad Hikmet Matar Abu Halima, 16, was driving the tractor. Some 200 meters from the Al-Atatra square, near the “Muawia Ibn Abi Sufeyan” school, some soldiers were standing on top of one of the buildings (the coordinates of the soldiers' position are N 31° 33' 25.52", E 034° 29' 20.51). The soldiers, only about 12 meters away from the tractor, ordered Muhammad to stop the tractor and the wounded to get off. For unclear reasons, the soldiers opened fire at the wounded, killing Muhammad Abu Halima and Matar Sa'adalla Matar Abu Halima, 17.5 years old. The coordinates of the location where the wounded had been shot are N 31° 33' 26", E 034° 29' 21".

After the shooting the soldiers ordered Muhammad Saadallah Matar Abu Halima, his wife Ghada Abu Halima (wounded at the time), and their daughter Farah, to walk by foot towards the Al-Atatara square. When they reached the square, a local resident took them by car to the A-Shifaa hospital.

Another relative, Bacher Muhammad Salman Abu Halima, 42, also reached the burned-out house in his vehicle, a Mercedes truck, to assist in evacuating the dead and wounded. Relatives assisted him to place the bodies on the truck, and four people, plus the driver, took the truck toward Al-Atatara Square. When they reached the square, they were shot at intensively (the coordinates of the square are N 31° 33' 48", E 034° 29' 22'). The five got out of the truck, grabbed the bodies and took cover in nearby warehouses.

The next day, Bacher Abu Halima approached the International Committee of the Red Cross and asked them to evacuate the bodies, but he was told that it is not possible not reach the area. The bodies were only taken to hospital on 14 Jan '09.

This incident raises several grave questions concerning the legality of the conduct of the soldiers. First, international humanitarian law does not explicitly prohibit the use of white phosphorous. However, Protocol III of the CCW, which addresses the use of incendiary weapons, states that such weapons may be used only against military targets. When the military target is located within a civilian area, the use of such weapons is completely prohibited.

Israel is not a party to this Protocol III, but the above rule reflects two customary rules which are binding upon Israel. One is the prohibition on using weapons that do not discriminate combatants from civilians, and another is the prohibition on the use of weapons that cause unnecessary suffering. The use of such weapons in a dense civilian area, like that of the Gaza Strip, violates these two principles, as well as Israel's obligation to take every possible precaution to reduce harm to civilian population. In its use of white phosphorus, the army did not target military objective but to a civilian residence and therefore there is a heavy suspicion that this was illegal.

Secondly, it is unclear what, if any, was the justification for the shooting at the individuals on the tractor and the truck, who were trying to evacuate the wounded and the dead. None of those were armed, and they were not endangering the lives of the soldiers in any way. Such firing is prohibited and it too raises grave suspicions the army was operating in violation of international humanitarian law.

Considering the severity of the incident and its grave results, I would ask you to order an investigation of the incident. This investigation should also include examining the responsibility of the command and the orders given.

Please find attached a CD with photographs and coordinates from the event.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Montell', with a long horizontal flourish extending to the right.

Jessica Montell

Executive Director