

10 June 2006

Mr. Ehud Olmert, Prime Minister
Mr. Amir Peretz, Minister of Defense
Via Fax

Dear Sirs:

Re: **Killing of innocent people**

The killing of a father, mother and five children yesterday on the Gaza seashore, apparently by a shell fired by the IDF, adds to an already dismal statistic: according to B'Tselem's figures, since the onset of the second intifada, 3,431 Palestinian have been killed, 698 of them minors under the age of eighteen. At least 1,645 of those killed did not take part in any fighting at the time they were killed (an additional 244 persons were targets of targeted killing operations).

The acts and omissions of the State of Israel, as reflected in these shocking figures, undermine universal principles regarding the sanctity of life and human dignity. These principles are fundamental to both international law and Israeli law, and violating them destroys the moral and legal basis of the government's actions.

These figures are the cumulative result of a number of factors: the illegal expansion of the Open-Fire Regulations, the transmission of vague and mixed messages regarding the use of force, the breach of the principle of proportionality, and the failure to carry out independent investigations into civilian deaths. In an attachment to this letter, we briefly discuss these matters. We would be glad to provide more detailed information on these issues.

The State of Israel cannot allow itself, neither morally nor from a legal perspective, to continue a policy that results in the killing of innocent people. It goes without saying that this policy also harms Israel diplomatically and stains the image of the state.

The State of Israel indeed has the duty to take every legitimate means to protect the lives and ensure the safety of its citizens in the face of the attacks by Palestinian organizations. These attacks by Palestinian groups deliberately target civilians, making them war crimes that cannot be justified. But it is inconceivable that a sovereign state would use illegal methods, some of which are themselves war crimes. In this regard, one of the central obligations imposed on Israel by International Humanitarian Law is to reduce the harm to the civilian population caused by its military operations, and to ensure the safety and welfare of Palestinian civilians, even during hostilities.

We demand that you act immediately to stop the killing of Palestinian civilians in the Occupied Territories, and to eradicate the factors contributing to these killings..

Sincerely,

Jessica Montell, B'Tselem: the Israeli Information Center for Human Rights in the Occupied Territories

Rachel Benziman, The Association for Civil Rights in Israel

Hannah Friedman, The Public Committee Against Torture in Israel

Dalia Kerstein, HaMoked: Center for the Defence of the Individual

Hadas Ziv, Physicians for Human Rights-Israel

Encl.

Appendices:

The Illegal Expansion of Open Fire Regulations

Since the outbreak of the second Intifada in September 2000, the IDF has repeatedly expanded the open fire regulations that are applicable to soldiers serving in the Occupied Territories. The expanded regulations permit soldiers to use lethal force against Palestinians even in situations which are not life-threatening for the the soldiers. The changes in the regulations were made based on the claim that since the outbreak of the Intifada, a situation of “armed conflict” prevails between Israel and armed Palestinian groups, which therefore justifies application of the laws of war. Even if this claim is correct, a significant proportion of the IDF’s operations in the Occupied Territories – dispersing demonstrators, making arrests, and imposing restrictions on movement – are essential law enforcement activities. There is therefore no justification for relating to them as acts of combat. Soldiers who carry out acts of law enforcement are not permitted to shoot to kill unless their life is in danger.

Since the outbreak of the Intifada, the IDF has classified the contents of the open fire regulations that are applicable to the Occupied Territories. However, research conducted by human rights organizations over the last few years – including testimonies from soldiers who served in the Occupied Territories, as well as information appearing in the media – revealed numerous examples of the expansion of open fire regulations.

This information indicates, for example, that soldiers who took part in operations to arrest Palestinians on Israel’s wanted list, were issued orders that permitted them to open fire with live ammunition at any individual they consider to be fleeing from the house in which they intend to carry out the arrest, without confirming the identity of the person fleeing, and without issuing any warning. In addition, in these operations, the soldiers’ orders include permission for intensive "deterrent" fire on the houses in which the "wanted" person is suspected to be hiding, even if it is known that innocent civilians are inside a particular house. It should also be noted that orders such as these are also illegal under the provisions of the laws of war. Pursuant to these regulations, since the beginning of 2004 until the present, Israel security forces have killed 168 people during operations to arrest wanted Palestinians in the West Bank. At least 40 of those killed were civilians who were not connected in any way to the military operation, and at least another 54 were defined as “wanted” but were unarmed or otherwise *hors de combat* at the time they were shot and killed.

An additional example of the illegal expansion of open fire regulations is the creation of “death zones” in territory that adjacent to perimeter fence surrounding the Gaza Strip. According to testimonies B’Tselem received, certain units have been instructed to open fire automatically on any individual who tries to cross the fence, and at times even on individuals approaching it, with no prior warning and without regard to the

specific circumstances or the identity of the suspect. It should also be noted that there are troubling indications that this situation has worsened following the completion of Israel's Disengagement from Gaza. Data gathered by B'Tselem indicates that since the disengagement, 9 unarmed Palestinian civilians have been killed in close proximity to the Barrier, of whom 5 were minors, and one an 8-year-old girl.

It is possible that the recent severe incident, in which 7 members of a Palestinian family were killed at the Gaza seashore, is also related to the expansion of the open-fire regulations. However, we cannot reach a definitive determination until the completion of the investigation into the incident.

Vagueness and Double Messages

Security personnel frequently kill Palestinian civilians in contravention of the official open-fire regulations. This phenomenon is also, to one degree or another, a result of the IDF's general policy in the Occupied Territories, and of the means by which orders are passed through the ranks from the higher military echelons to the individual soldier in the field.

During the first Intifada and in the years following, soldiers were issued with booklets explaining the open fire regulations. In contrast, during the second Intifada, the IDF did not do this. As a result, orders are issued to the soldiers orally by officers who have themselves received them orally from their superiors. By definition, this process leaves much room for interpretation, and for the partial or misleading conveying of orders. When one considers that these orders are designated to regulate situations in which it is permissible to open fire and kill a human being, it is vital that clear and unequivocal orders are conveyed, and that steps are taken to ensure that the instructions are accurately reaching every soldier in the field. However, according to numerous testimonies that we have received, reinforced by the conclusions of the IDF Internal Control Department, it appears that in many instances the soldiers are receiving double messages or vague ones, which inevitably leads to the phenomenon of "trigger happy" behavior.

Violation of the Principal of Proportionality

In the case of operations that Israel claims are subject to the laws of war, and not to law enforcement rules, the IDF is obligated to act in general accordance with International Humanitarian Law, and with the principal of proportionality, in particular. The principal of proportionality prohibits the carrying out of an attack, even when it is directed at a legitimate target, if it is liable to cause excessive harm to the civilian population that outweighs the military advantage expected from the attack. Since the outbreak of the second Intifada, the army has carried out military operations that blatantly violate this principle.

Thus, for example, in the case of targeted killings that are carried out by the IDF against Palestinians who are suspected of being involved in terrorist activity, many Palestinian bystanders who had no connection whatsoever to the target of the attack are either killed or injured. When an assassination is carried out through the firing of missiles from the air on a car that is traveling during the day in a crowded residential

area, the chance that civilians will be harmed is almost certain. Israel's claim that it does "everything in its power" to avoid injuring passersby, is mere lip service. Since the onset of the Intifada, 123 civilian passersby have been killed in the course of targeted killings (this in addition to the 235 Palestinians who were the targets of these killings).

An additional example of the violation of the principle of proportionality, is the order that was recently issued by the IDF's senior command to artillery units which fire artillery shells into the Gaza Strip in retaliation for the firing of Qassam rockets by Palestinians into Israel. This order permits a reduction of the "safety zone" for artillery fire to a distance of 100 meters from Palestinian residential areas, instead of the 300 meters that was previously in force. Since the dispersal range of artillery fire is approximately 100 meters, and artillery shells are not accurate weapons, reducing the safety zone significantly endangers the lives of civilians living near the launching sites. A High Court petition submitted by human rights organizations challenging this enlargement of the range for artillery fire remains pending.

Again, in relation to the circumstances of the aforementioned incident at the Gaza seashore, the question of whether or not the violation of proportionality is a factor in the death of the seven innocent civilians will only become apparent when the circumstances of the incident have been fully investigated.

The Absence of Independent Investigations

The policy of the Judge Advocate General's (JAG) office also contributes indirectly to the phenomenon of killing innocent civilians, in that for the vast majority of cases they do not open Military Police Investigations into the circumstances surrounding the death or injury of Palestinian civilians. It should be noted that up until the beginning of the second Intifada, the JAG's office had ordered the automatic opening of a Military Police investigation into every incident in which a Palestinian civilian was killed by an IDF soldier. Shielded by the claim that a war is being waged in the Occupied Territories, the JAG's office has ordered that investigations be opened only under exceptional circumstances.

According to claims made by the JAG's office, in every case in which a Palestinian civilian is killed, an "operational inquiry" is conducted into the circumstances of the incident, and on the basis of its findings a decision is made as to whether it is necessary to initiate a Military Police investigation. However, this form of inquiry is clearly tainted by a conflict of interest, as it is carried out by individuals who were either directly or indirectly involved in the incident, and by military personnel who are liable to bear the consequences in the event that a Military Police investigation is initiated. Moreover, the officers who carry out the investigation have not undergone the training provided to Military Police investigators, which is necessary to conduct a professional investigation. In addition to these issues of principle, it often takes months following a civilian death before a decision is made whether to open a Military Police investigation. Thus, even when a decision is made to open an investigation, the investigators find it difficult to locate the victims or the witnesses, and find it almost impossible to collect any physical evidence from the site.

As a result of the above, the chances that a soldier who killed or injured a Palestinian civilian without justification will be brought to justice and pay a personal price, is extremely remote. By way of illustration, since the beginning of the second Intifada, less than 30 indictments have been filed against soldiers suspected of illegally injuring or killing Palestinian civilians, and an even smaller number have been convicted. The policy of the JAG's office conveys to Israeli soldiers a disregard for Palestinian life, and creates an atmosphere of impunity from prosecution.

The petition submitted by ACRI and B'Tselem to the Israeli High Court of Justice, which demands that Military Police investigations be initiated in every case in which a Palestinian civilian who had taken no part in the fighting is killed by an IDF soldier, remains pending.