

# Thematic Report

## Indiscriminate and disproportionate attacks during the conflict in Gaza (October – December 2023)

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*Occupied Palestinian Territory*



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## I. INTRODUCTION

This thematic report documents concerns regarding Israel's use of explosive weapons with wide area effects in densely populated areas during the escalation in hostilities in Gaza since 7 October 2023, and how this complies with international humanitarian law (IHL), particularly in relation to the principles of distinction, proportionality and precautions in attack. It details six individual incidents from 7 October to 2 December 2023 in the context of the ongoing escalation where Israel may have failed to adhere to these principles, leading to high civilian fatalities and injuries and destruction of civilian objects.

In gathering, assessing and verifying the information contained in this note, and drawing conclusions based on international human rights and humanitarian law, OHCHR applied its global methodology. Information was gathered from multiple independent sources, including through interviews carried out by OHCHR with witnesses, military and weapons experts; open-source information, including satellite imagery, videos and photos; information gathered by credible organizations and individuals; official and other documentation. The analysis of the information involved legal and weapons expertise, including from independent experts, and a “reasonable ground to believe” standard of proof was applied in reaching factual and legal conclusions.

On 31 May 2024, the report was shared with the Permanent Missions of Israel and the State of Palestine for factual comments. Both Israel and the State of Palestine responded with comments, which OHCHR welcomes receiving.<sup>1</sup>

The report stresses that Israel must conduct prompt, independent, impartial, thorough, effective and transparent investigations into these alleged violations of IHL and international human rights law (IHRL) and bring those reasonably suspected of criminal responsibility to account through trials that comply with international standards. However, in view of Israel's well documented failure to ensure full accountability for serious violations of IHL and IHRL by its security forces, remedies at the international level are also necessary to address the accountability gap.<sup>2</sup> To this end, Israel should cooperate with accountability mechanisms at the international level, including the International Criminal Court, and ensure all victims and their families have access to effective remedies.

The scale of human death and destruction wrought by Israel's bombing of Gaza since 7 October has been immense.

According to the Israeli Air Force (IAF), between 7 October 2023 and 19 February 2024 over 29,000 targets in Gaza were attacked.<sup>3</sup> The rate at which Palestinians were killed in Gaza during this reporting period was reportedly higher than in any recent conflicts globally.<sup>4</sup> As of 13 June 2024, according to the Gaza Ministry of Health, 37,232 Palestinians

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<sup>1</sup> The responses can be read at: <https://www.ohchr.org/en/documents/comments-state/comments-israel-and-state-palestine-draft-shared-31-may-2024>

<sup>2</sup> See the latest accountability report of the High Commissioner for Human Rights A/HRC/55/28, including para. 92 c.

<sup>3</sup> <https://twitter.com/IAFsite/status/1759981689843925345>; <https://breakingdefense.com/2024/02/israeli-air-force-struck-31000-targets-in-four-months-of-war/>; <https://www.iaf.org.il/9737-61798-he/IAF.aspx>

<sup>4</sup> <https://www.oxfam.org/en/press-releases/daily-death-rate-gaza-higher-any-other-major->

have been killed, with over 85,000 Palestinians injured. In addition, several thousand are likely buried under rubble with more than 60 per cent of housing units destroyed or seriously damaged.

The war has also witnessed many tragic instances of entire families killed together, from infants to grandparents, many while in their homes (128,904 housing units have been damaged between 7 October 2023 and 1 April 2024) or in other places they had sought safety.<sup>5</sup> According to the Gaza Ministry of Health, as of 3 May 2024, more than 3,129 families have been killed or injured together.<sup>6</sup>

The majority of those killed are children and women, according to the Gaza Ministry of Health, indicating a high percentage of civilians killed. Furthermore, the Office of the United Nations High Commissioner for Human Rights' (OHCHR) ongoing monitoring and analysis has found that 87 per cent of the verified fatalities have occurred in incidents that resulted in 5 or more fatalities, and over 60 per cent were killed in incidents that resulted in 10 or more fatalities. These statistics suggest that Israel's choices of methods and means of conducting hostilities in Gaza since 7 October, including the use of explosive weapons with wide area effects in densely populated areas, have failed to ensure that they effectively distinguish between civilians and combatants. The widespread, large-scale and continuing toll of civilian deaths, notably the high proportion of women and children amongst them, and accompanying destruction of civilian infrastructure in Gaza since 7 October, raise serious concerns about the Israeli Defense Forces' (IDF) compliance with IHL, including as to patterns of systematic violation of the principles of necessity, distinction, proportionality, and precautions in attack. OHCHR's monitoring and documentation of the six emblematic cases described in this report illustrate these concerns.

Since 7 October 2023, Palestinian armed groups (PAGs) have continued to fire inherently indiscriminate projectiles toward Israel, in violation of international law.<sup>7</sup> At least two civilian fatalities in Israel from these projectiles were reported after 7 October. There were reportedly additional fatalities from these projectiles on 7 October, which OHCHR has not been able to verify.

The rules of IHL applicable to the conduct of hostilities are clear. IHL also places obligations on parties to a conflict to take all feasible precautions to protect civilians and civilian objects under their control from the effects of attack, including, to the extent feasible, by avoiding to locate military objectives within or near densely populated areas and removing civilians under its control from the vicinity of military objectives.<sup>8</sup>

Parties to the conflict remain obligated to uphold the fundamental principles of IHL when launching attacks, namely distinction, proportionality and precautions in attack, regardless of any lack of respect of the obligations by the other party to take feasible

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[21st-century-conflict-oxfam; The Israeli Army Has Dropped the Restraint in Gaza, and the Data Shows Unprecedented Killing - Israel News - Haaretz.com](#)

<sup>5</sup> UNITAR/UNOSAT, Occupied Palestinian Territory-Gaza Strip, Imagery Analysis 01 April 2024 (19 April 2024).

<sup>6</sup> <https://t.me/MOHMediaGaza/5397>

<sup>7</sup> For these and other violations committed by Palestinian Armed Groups and other armed Palestinians, see A/HRC/55/28.

<sup>8</sup> ICRC Study, Rules 22, 23 and 24.

precautions to protect civilians under their control from the effects of attacks. For instance, launching an attack is prohibited if it can be expected to cause incidental loss of civilian life or injury to civilians that would be excessive in relation to the direct military advantage anticipated.<sup>9</sup>

Furthermore, under IHL the presence of PAGs within the civilian population does not deprive the population in the Gaza Strip of its civilian character.<sup>10</sup>

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<sup>9</sup> ICRC Study, Rule 14; API, Art. 51(5)(b) and Art. 57(2)(b).  
<sup>10</sup> Art. 50(3), API.

## II. EMBLEMATIC INCIDENTS OF ATTACK MONITORED BY OHCHR

### Jabalya market, 9 October

Between 1030 and 1130 hours, massive explosions took place at Al Trance Street in Jabalya Refugee Camp, North Gaza - Gaza's largest refugee camp and an especially densely populated area. Al Trance Street forms part of Jabalya market and, as usual on a weekday, was packed with people. The explosions destroyed two multi-story buildings and severely damaged many other surrounding buildings. OHCHR verified that at least 42 people were killed, including 14 children and one woman<sup>11</sup>, and received information of an additional 18 fatalities. Reportedly, no warnings were issued, as in four of the other incidents summarized below, which is consistent with people going about their regular business in the market at the time. Due to the extent of the damage and the ground subsidence, one or two GBU-31 air-dropped munitions<sup>12</sup> were likely to have been used, indicating attribution to the IAF. The IDF has not made any public pronouncement on this attack.

### Taj3 Tower, Gaza City, 25 October

At around 1630 hours, large explosions rocked a number of residential buildings, including Taj3 Tower – a new upscale seven-floor residential building in Al Yarmouk Street, Gaza City. An area of 5,700 square metres was essentially flattened, with at least seven structures, including Taj3 Tower, completely destroyed and three other structures showing signs of significant damage. OHCHR has verified that 105 people were killed, including 32 women and 47 children, and received information of an additional seven fatalities. Based on the assessment of the size of the structures destroyed and the crater sizes, several GBU-31 munitions were likely used, indicating attribution to the IAF. On 26 October, the IDF stated that it had struck “250 targets” in “the last day” but did not reference this specific strike.<sup>13</sup>

### Jabalya Refugee Camp, 31 October

At around 1420 hours, the IDF struck a residential block in densely populated Jabalya Refugee Camp. The strike completely flattened an area of at least 2,500 square metres, destroying 10 structures. It impacted across an approximate diagonal span of 75 metres, causing damage to at least 10 more buildings. OHCHR verified 56 people killed, including 12 women and 23 children, with information of an additional 43 fatalities. Based on the

<sup>11</sup> Fatalities are assessed based on OHCHR global methodology on casualty recording.

<sup>12</sup> Guided bombs (most often referred to as Guided Bomb Units, or GBU, when fitted with precision GPS system and flight gear) are extremely large and heavy munitions that can be air dropped to penetrate through several floors of concrete. The unit munition can be precisely programmed, or guided, directly onto the target with a very high degree of accuracy. The GBU-31 (Mk84) has a total weight of 907kg (2000lbs) and a net explosive quantity (NEQ) of 429kg. The GBU-32 (Mk83) is 453kg (1000lbs) and has a NEQ of 202kg. The GBU-39 is 110kg (250 lbs) with a low NEQ designed for more specific targeting.

<sup>13</sup> <https://twitter.com/idfonline/status/1717442508563636455>

level of damage and the crater sizes, the strike likely involved at least four GBU-32s, although the larger GBU-31 cannot be ruled out. The IDF confirmed that they had undertaken the strike, claiming to have “killed Ibrahim Biari, the Commander of Hamas’ Central Jabaliya Battalion”, who was allegedly involved in the 7 October attack. Additionally, the IDF stated that “a large number of terrorists who were with Biari were killed” and that the “underground terror infrastructure” beneath the ground “collapsed after the strike.”<sup>14</sup>



Palestinians search for casualties at the site of Israeli strikes on houses in Jabalya Refugee Camp in North Gaza, 31 October 2023. REUTERS/Anas al-Shareef

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<sup>14</sup> Telegram: Contact @idfofficial. <https://t.me/idfofficial/4826>



## Al Bureij Camp, 2 November

At around 1330 hours, a massive explosion struck a residential block in Al Bureij Camp, Middle Gaza, which was similar to Jabalya Refugee Camp in population density. The strike impacted an area of approximately 6,000 square metres, destroying at least 12 buildings and severely damaging at least 9 others. OHCHR verified 15 people killed, including 5 women and 9 children, with information of an additional 7 fatalities. Based on the level of damage and the crater sizes, the strike likely involved at least four GBU-39s, suggesting attribution to the IAF. While smaller compared to the GBU-31, GBU-39s are expected to collapse buildings, such as those in Gaza, abruptly and in quick succession. The IDF has not mentioned Al Bureij Camp specifically before or after the incident. Several hours after the incident, the IDF stated that they “struck a number of military command and control centres used by senior Hamas terrorist operatives”, without making any specific reference to Al Bureij Camp.<sup>15</sup>



Site of Israeli strikes on houses in Al Bureij Camp in Middle Gaza, 2 November 2023.  
REUTERS/Mohammed Fayq Abu Mostafa

## Al Buraq school, 10 November

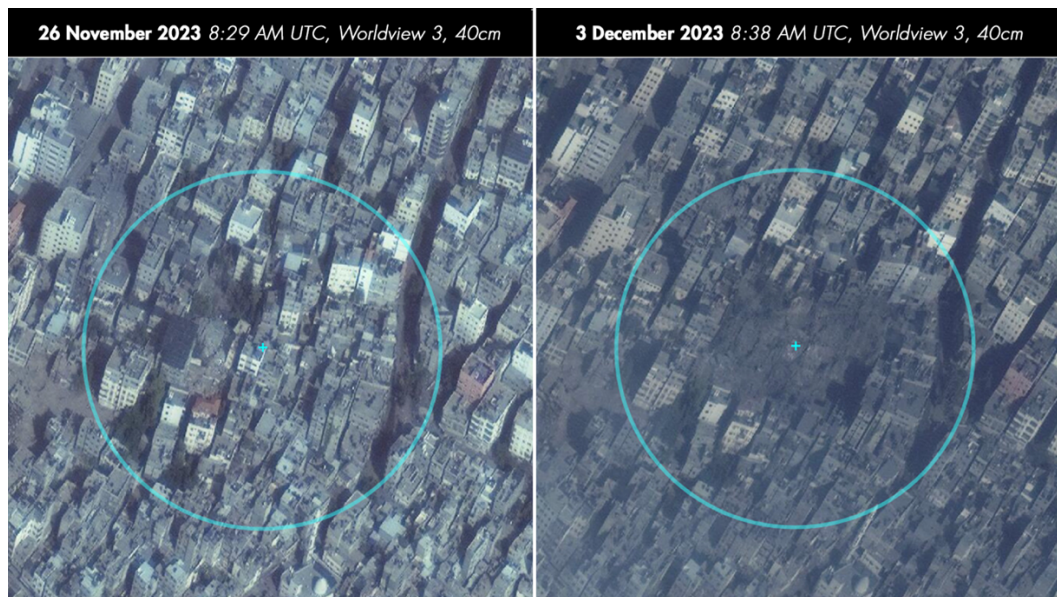
In the morning hours, the IDF struck a northern corner of Al Buraq School, in Al Nasr area, Gaza City. The attack happened while many internally displaced persons were reportedly sheltering inside the school. OHCHR received information that at least 34 people were killed. The strike destroyed a two-story section of the school, consisting of the ground floor and the two floors above, covering an area of 75 to 80 square metres. The level of damage and direction of debris indicate that the strike likely involved two GBU-39s. On 11 November, the IDF stated that “IDF aircraft struck Ahmed Siam, a company commander of the Naser Radwan Company of the Hamas terrorist organization... while hiding in the ‘al Buraq’ school, where additional terrorists” were also allegedly hiding.<sup>16</sup>

<sup>15</sup> <https://t.me/idfofficial/4895>

<sup>16</sup> <https://t.me/idfofficial/5116>

## Ash Shujai'yeh neighbourhood, Gaza City, 2 December

At 1312 hours, the IDF hit structures in two neighbouring residential blocks on Abu Al Atham street in Ash Shujai'yeh area, Gaza City - one of the most densely populated residential areas in Gaza. The explosions caused destruction across an approximate diagonal span of 130 metres, destroying 15 buildings and damaging at least 14 other buildings at the site. OHCHR received information that at least 60 persons were killed. The extent of the damage and the craters visible through verified visual evidence and satellite imagery indicates that approximately nine GBU-31s were used. Several hours after the incident, at around 2130 hours, the IDF announced that the strike had killed Wissam Farhat, Al Qassam commander responsible for Ash Shujai'yeh Brigades, without mentioning any other targets or armed Palestinians killed in the incident.<sup>17</sup>



Ash Shujai'yeh neighbourhood, Gaza City - Imagery © 2024 Maxar via NextView license

<sup>17</sup> <https://twitter.com/AvichayAdraee/status/1731038138225602628>;  
<https://t.me/idfofficial/5609>

### III. ANALYSIS

**Monitoring by OHCHR strongly indicates that the Israeli Defense Forces have systematically failed to comply with the following fundamental principles of international humanitarian law in its conduct of hostilities in Gaza since 7 October: the principle of distinction, the prohibition of indiscriminate attacks, the principle of proportionality and the principle of precautions in attack.**

#### The principle of distinction

Parties to the conflict must distinguish between civilians and combatants, and between civilian objects and military objects. Everything feasible, including the choices in methods and means of operational tactics, must be done to verify that potential targets are military and not civilian, and the presumption must be that persons and objects are civilian in case of doubt. In order for an object or building to be considered a military objective it must meet two cumulative criteria; namely that (1) by its “nature, location, purpose or use [it] make[s] an effective contribution to military action” and, (2) the object’s “total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite military advantage.”<sup>18</sup>

For the strikes on Jabalya market on 9 October, Taj3 Tower on 25 October, and Al Bureij Camp on 2 November, the IDF has not specified publicly what the military objective was, raising serious concerns over targeting. OHCHR monitoring indicates that IDF took an expansive approach to targeting, apparently considering members of *de facto* civilian administration and Hamas political structures not directly participating in hostilities, as well as civilian objects belonging to *de facto* authorities, as legitimate targets, in violation of the principle of distinction.<sup>19</sup> The IDF has also claimed that they had undertaken 10,000 airstrikes on Gaza, a relatively small and densely populated area, by 3 December, further raising concerns regarding the identification of targets.<sup>20</sup> Such policy or consistent practice<sup>21</sup> raises concerns as to systematic violation of the principle of distinction.

#### The prohibition of indiscriminate attacks

Further to the principle of distinction, IHL prohibits indiscriminate attacks which: (a) are not directed at a specific military objective; (b) employ a method or means of combat which cannot be directed at a specific military objective; or (c) employ a method or means

<sup>18</sup> Rule 8, ICRC Study; AP I art 52(2).

<sup>19</sup> <https://t.me/idfofficial/3791> and <https://bit.ly/3rzUk6V>; <https://t.me/idfofficial/3942>; <https://x.com/IDF/status/1712489646536482827>; <https://t.me/idfofficial/4549>; see also <https://www.972mag.com/lavender-ai-israeli-army-gaza/>; <https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>

<sup>20</sup> <https://t.me/idfofficial/5633>

<sup>21</sup> The International Criminal Court has found that a policy can be inferred from facts that demonstrate that “the attack follows a regular pattern,” and that, “[t]he policy need not be formalised. Indeed, an attack which is planned, directed or organized - as opposed to spontaneous or isolated acts of violence - will satisfy this criterion.” *Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-424, para. 81. See also ICTY, *Prosecutor v. Tadic*, Case No. IT-94-1-T, Judgement, 7 May 1997, para. 653.

of combat the effects of which cannot be limited as required by IHL; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.<sup>22</sup>

GBU-31, 32 and 39 - likely to have been used in all the six incidents above - are mostly large and heavy munitions used to penetrate through several floors of concrete and can completely collapse tall structures. Given how densely populated the areas targeted were, the use of such a wide area effect weapon would have in all likelihood resulted in an indiscriminate attack. Explosive weapons with such wide-area effects cannot be directed at a specific military object in densely populated areas of Gaza, and the effects cannot be limited, resulting in military objects, civilians and civilian objects being struck without distinction.<sup>23</sup> The IDF has a demonstrable capacity to use weapons with much more limited damage radius and impact, as seen in previous escalations, which can be used for a specific military objective in precision strikes, including against tunnel entrances, without bringing down entire buildings and causing such high numbers of casualties.

Examples of possible indiscriminate attacks monitored by OHCHR include the IDF's use of explosive weapons with wide area effects on Jabalya Refugee Camp on 31 October, on Al Buraq school on 10 November and Ash Shujai'yeh on 2 December.<sup>24</sup> The mere presence of one commander, or even several combatants, or of several distinct military objectives in one area, does not render an entire neighbourhood a military objective.<sup>25</sup> The use of weapons with wide area effects in densely populated areas may also amount to an attack employing a method or means of combat, the effects of which cannot be limited as required by international humanitarian law.<sup>26</sup> The use of multiple GBU-31s, for example in Ash Shujai'yeh on 2 December, may also constitute an "area bombardment", targeted at an area rather than an individual military objective - another form of indiscriminate attack. Launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or

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<sup>22</sup> Rule 12, ICRC Study; API, article 51(4).

<sup>23</sup> A/HRC/29/CRP.4, para. 415

<sup>24</sup> A/HRC/29/CRP.4, para. 226, ICRC, Customary International Humanitarian Law, Vol. 1, Rules 11 and 12; Additional Protocol I, art. 51(4). See for example ICRC, *Explosive Weapons with Wide Area Effects: A Deadly choice in populated areas*, p. 93, "the use in populated areas of large-calibre or high-payload munitions, which have a large destructive radius even when precision-guided, raises serious concerns... [regarding indiscriminate attacks] when the military objective is significantly smaller than the weapons' destructive radius, because in such situations the weapons' effects can be foreseen to be extensive both in terms of impact area and the magnitude of civilian harm likely to be caused."

<sup>25</sup> A/HRC/29/CRP.4, para. 293; see Aurel Sari, <https://lieber.westpoint.edu/israeli-attacks-gazas-tower-blocks/> for the assessment that, "co-located structures that are functionally and perhaps even physically connected, but structurally distinct," do not amount to a single military objective, even where one of the buildings does.

<sup>26</sup> A/HRC/29/CRP.4, para. 415

damage are war crimes;<sup>27</sup> in certain circumstances, it may amount to a direct attack against civilians or civilian objects.<sup>28</sup>

The requirement to select means and methods of warfare that minimize or avoid civilian harm appears to have been systematically violated in Israel's bombing campaign. The use of GBU-31s and GBU-39s in densely populated areas – including a regular market in a refugee camp in the middle of the day, in the middle of densely populated residential neighbourhoods – makes the severe destruction and high numbers killed and injured entirely foreseeable, especially as their effect and impact on civilians and civilian objects has been demonstrated on a daily basis.

These attacks of an apparent indiscriminate nature are among hundreds of a similar nature, giving rise to the appearance of a pattern of attacks over months. When, on 11 November, the IDF stated that, since the start of the ground operations, the IAF had “struck over 5,000 targets to eliminate threats in real time”, 11,078 Palestinians, including 4,506 children and 3,027 women, had already been killed according to the Ministry of Health in Gaza, with another 2,700 reported missing, including some 1,500 children, and about 27,490 reportedly injured.<sup>29</sup> These concerns are heightened by public statements from the Israeli military. An IDF spokesperson stated that “while balancing accuracy with the scope of damage, right now we’re focused on what causes maximum damage”, while another IDF official, addressing “*Hamas and the residents of Gaza*” (emphasis added), stated that “human beasts are dealt with accordingly. Israel has imposed a total blockade on Gaza. No electricity and no water, just damage. You wanted hell, you will get hell”.<sup>30</sup>

## The principle of proportionality

Any attack by parties to the conflict must be proportionate – the military advantage obtained by a particular attack must outweigh the damage caused to civilians and civilian objects. Disproportionate attacks are a special case of indiscriminate attacks.<sup>31</sup> A violation

<sup>27</sup> ICRC rule 156; A/HRC/29/CRP.4, para. 337.

<sup>28</sup> The International Criminal Tribunal for the former Yugoslavia found in the *Galic* case that “indiscriminate attacks, that is to say attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks against civilians,” ICTY, Prosecutor v. Galic, case No. IT-98-29-T, Judgement, 5 December 2003, para. 57. The International Court of Justice in its Advisory Opinion on the legality of the threat or use of nuclear weapons also linked the prohibition of indiscriminate attacks to attacks against the civilian population, observing that, as a “cardinal principle contained in the texts constituting the fabric of international humanitarian law”: “States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets”, Judgment, para. 78. Article 8 of the Rome Statute of the International Criminal Court lists intentionally directing attacks against the civilian population or civilian objects as a war crime.

<sup>29</sup> <https://t.me/idfofficial/5125> and <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-38>

<sup>30</sup> Yaniv Kubovich and Eden Solomon, ‘IDF Spokesman: Tonight There Were No Infiltrations through the Fence, There May Be a Few More Terrorists in Israeli Territory’ Haaretz (Tel Aviv, 10 October 2023). <https://www.haaretz.co.il/news/politics/2023-10-10/ty-article-live/0000018b-1645-d465-abb-16f71d060000#1720386730>.

Also <https://www.theguardian.com/world/2023/oct/10/right-now-it-is-one-day-at-a-time-life-on-israels-frontline-with-gaza>;  
<https://x.com/cogatonline/status/1711718883323752586?s=20>

<sup>31</sup> API, art. 51(5)(b).

of the principle of proportionality is “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.<sup>32</sup> IHL does not provide any justification for attacks which cause extensive civilian losses and damages. Incidental losses and damages should never be extensive.<sup>33</sup> Intentional violation of this principle is a war crime.<sup>34</sup>

The use of explosive weapons with wide area effects in densely populated areas carries a more substantial risk of causing excessive direct and indirect civilian harm, which would violate the principle of proportionality. The excessive incidental loss of civilian life, injury to civilians and damage to civilian objects, including structural foundations and structures located nearby, caused by weapons with such wide area effects in an urban setting, would have been apparent in the damage assessments undertaken by IDF. This should have been clear given the IDF's experience of prior escalations in hostilities, as well as in the time this escalation continued and more information and evidence regarding the effect of these methods and means became available – including the likely impacts of explosives with such a large destruction radius in this dense urban setting, and of the reverberating ground shock from the energy of the blast that would predictably be associated with significant additional, and likely excessive incidental damage.

In some cases, where the military objective is unknown because Israel has made no claims, it is nevertheless hard to conceive of a military advantage that would justify the predictable scale of harm to civilians and civilian objects. For instance, the strikes on Jabalya market on 9 October killed at least 42 persons, including 14 children and one woman, and Taj3 Tower on 25 October killed at least 105 persons, including 47 children and 32 women. In other strikes, where IDF has made claims regarding the targets of the attack, the harm to civilians and civilian objects appear to exceed what is permissible under IHL. In the strikes on Al Buraq School on 10 November and Ash Shujai'yeh on 2 December, the killing of as many as 60 civilians in each attack appear to be weighed against one Al Qassam commander, whether with or without other combatants. From the information available, it is difficult to see how the incidental harm to civilians and the damage to civilian infrastructure that could or should have been expected would not be excessive in relation to the anticipated “concrete and direct” military advantage of killing one commander, or even several combatants. For both strikes, the IDF had ground troops present and would therefore have had real-time information that these bombing attacks would result in a high number of civilian casualties as well as in damage to civilian objects, and the IAF had already conducted many such strikes and would therefore be aware of the disproportionate effects such a strike would have.

Moreover, these seemingly disproportionate attacks are among hundreds of a similar nature, which appear to have been committed as part of a pattern of attacks over months.

In this context, a reasonable commander must have been aware that each of these attacks was likely to result in a high number of civilian casualties as well as in considerable

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<sup>32</sup> Rule 14, ICRC Study, API, art. 51(5)(b).

<sup>33</sup> ICRC Commentary on Article 51 AP1.

<sup>34</sup> ICC Statute, art. 8(2)(b)(iv).

destruction. Given the absence of information suggesting in each case that the anticipated military advantage at the time of the attack was such that the expected civilian casualties and damage to the targeted and surrounding buildings would not be excessive, there are strong indications that these attacks may not respect the principle of proportionality.

## The principle of precautions in attack

The law of armed conflict requires attacking forces to take feasible precautions in the selection of weapons, tactics, timing and targets, in order to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.<sup>35</sup> Precautionary measures in an attack include selection of the means and methods of warfare that minimize or avoid civilian harm. As to means, which refers to the weapons used, they are subject to two overarching rules: parties must not use weapons which are of a nature to cause superfluous injury or unnecessary suffering,<sup>36</sup> and they must not use weapons which are by nature indiscriminate.<sup>37</sup> Necessary precautions must shape the planning of all attacks, based upon the best possible information and intelligence available at the time. The information considered in this evaluation must include data on concentrations of civilian persons and important civilian objects and the civilian environment of military objectives.<sup>38</sup> The adoption of precautions does not modify the prohibition of attacking civilians and civilian objects or of launching indiscriminate attacks.

Precautionary measures in planning and executing an attack include affording civilian populations effective advance warning to give them a chance to protect themselves.<sup>39</sup> To be effective, such warnings must clearly state what specific, feasible steps civilians can take to avoid harm. If civilians choose not to heed these warnings, attacking parties are not absolved from their international humanitarian law obligations regulating the conduct of hostilities. The determination of whether the circumstances permit a warning must be made in the context of a good faith attempt to adhere to the underlying duty to minimize death and injury to civilians or damage to civilian objects.

In all of the incidents described above, apart from Ash Shujai'yeh on 2 December, OHCHR did not document any issuance of warnings, effective or otherwise.<sup>40</sup> The general evacuation order issued on 13 October to the south has also not been effective, in light of the continuous strikes in the south. Prior to the strike on Ash Shujai'yeh, the IDF dropped leaflets demanding that the residents evacuate to different parts of Gaza City. However, such a warning appeared inadequate and insufficiently specific given the vast

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<sup>35</sup> Rule 15, ICRC Study; API, art. 57(2) (Israel is not a party to the API but accepts that some of its provisions accurately reflect customary international law, see "The Operation in Gaza, Factual and Legal Aspects", Report, Israeli Ministry of Foreign Affairs, July 2009, available at <http://www.mfa.gov.il>).

<sup>36</sup> Rule 70, ICRC Study.

<sup>37</sup> Rule 71, ICRC Study.

<sup>38</sup> Commentary to Customary International Humanitarian Law, Rule 15.

<sup>39</sup> API, art. 57(2)(a)(iii); Commentary to API, art 57, para. 2225.

<sup>40</sup> The effectiveness will depend on the clarity of the message, the credibility of the threat and the possibility of those receiving the warning taking action to escape the threat.

areas covered by the warning. More specific warnings could have been delivered through the use of various other available means.

As discussed above, the requirement to select means and methods of warfare that minimize or avoid civilian harm appears to have been systematically violated in the IDF's air raids with the use of explosive ordinance with wide area effects in densely populated areas. Even if a tunnel is located and serves as the military objective, there were far more proportionate methods of warfare that could have been used without resulting in the same level of civilian casualties or damage to civilian infrastructure.

In the selection of targets, "when a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects."<sup>41</sup> For instance, accepting tunnels located under Jabalya Camp or Al Bureij Camp as military objectives, there are serious concerns as to why these tunnels were targeted through dropping munitions with wide area effects on heavily populated buildings and areas, rather than through more precise means and methods of targeting.

## IV. CONCLUSION

The pattern of Israeli strikes exemplified by the six incidents above indicates that the IDF may have systematically violated the principles of distinction, proportionality, and precautions in attack – fundamental principles of international humanitarian law on the conduct of hostilities – in the course of its attacks in Gaza since 7 October 2023. Indiscriminate rocket fire by Hamas' Al Qassam Brigades and other Palestinian armed groups also raises concerns in this regard. When committed intentionally, such violations may amount to war crimes. Unlawful targeting when committed as part of a widespread or systematic attack directed against a civilian population, further to a State or organizational policy, may also implicate crimes against humanity.

Such violations must cease immediately. OHCHR calls on Israel to ensure full investigations into the specific incidents cited in this report, and to make public its findings. In its June response to OHCHR, Israel stated that, except for the strike dated to 9 October on Jabalya market, all strikes mentioned in the report were previously referred to the IDF General Staff's Fact-Finding and Assessment Mechanism and were currently being examined before submission to the Military Advocate General (MAG) corps for a decision on whether to open a criminal investigation. While welcoming Israel's indication that the majority of the incidents were being factually assessed for referral to the MAG, OHCHR remains concerned with the dual role of the MAG, as both legal adviser to the Chief of General Staff and other military authorities and supervisor of disciplinary and criminal investigations. This compromises the independence and impartiality of the investigative system, since the MAG is responsible for investigating violations carried out in operations for which the MAG provided legal advice.<sup>42</sup>

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<sup>41</sup> Rule 21, ICRC Study.

<sup>42</sup> A/HRC/35/19 para. 18.



OHCHR also notes the increasing passage of time that has now elapsed since the incidents, varying from six to eight months, without public clarity on the findings and outcomes. This length of time, coupled with the systemic concerns on the efficacy and independence of the military justice system identified in previous reporting to the UN General Assembly and Human Rights Council,<sup>43</sup> calls into serious question the compliance of these processes with international obligations to ensure prompt and effective accountability.

Beyond these specific incidents, Israel should also ensure corresponding investigations into the broad- and continuing - range of other similar incidents, with a view to identifying those responsible for these serious violations of international law, holding them to account, and ensuring all victims' rights to truth, justice and reparations. Where Israel is itself unable or unwilling to bring those responsible to account, in accordance with international standards, Member States must support accountability measures at the international level, including through the International Criminal Court.

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<sup>43</sup> A/HRC/52/38, para. 51; A/HRC/46/22, para. 8; A/HRC/43/21, para. 17; A/HRC/40/43, para. 8 and para. 9; A/HRC/34/38, para. 42; A/HRC/37/41, para. 11 and para. 14; A/71/364, para. 40