

**State of Israel
Ministry of Justice***

Office of the Attorney General

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Limor Yehuda, Attorney at Law
Association for Civil Rights in Israel
POB 35401
Jerusalem 91000

Dear Ms. Yehuda:

Re: Mechanism for investigating cases of harm to civilians in Gaza – suspicion of serious infractions of the laws of war

Your letter of January 20, 2009

I am honored to confirm the receipt of your above-captioned letter and to reply to you as follows:

First of all, with regard to your general arguments concerning the breach of basic principles of international law – as you know, Operation “Cast Lead” was directed against the Hamas organization, which controls the Gaza Strip, and not against residents of Gaza. The operation began in view of a protracted terrorist offensive which was led by Hamas against the State of Israel and its citizens, and which centered upon incessant firing from the Gaza Strip, from within concentrations of civilian population, on purely civilian targets – villages, towns and cities in southern Israel. It is not superfluous to state that this activity, on the part of Hamas, constitutes a gross breach of the provisions of international law, which prohibit any deliberate attack on civilians and civilian objectives and the use of civilians as a “human shield”.

On the other hand, the attacks which were carried out by the Israel Defense Forces in the Gaza Strip were directed against terrorist operatives and military targets related to the terrorist activity in the Gaza Strip, which endangered the security of the State of Israel. This is in line with the principles of the rules of war under international law, including strict compliance with the principle of distinction and the principle of proportionality. Furthermore, these attacks were carried out in a way which involved the taking of various measures – including general and individual warnings which were given to the civilian population prior to the attacks – which were intended to minimize, as far as possible, the harm to civilians and civilian property (most unfortunately, in many cases, that harm was inevitable in warfare of this type).

Notwithstanding that set forth above, the Establishment is, of course, aware of the extreme importance of examination of the events. In fact, upon the conclusion of the operation, the IDF began to carry out its operational briefings. These briefings will also examine various events in which civilians were harmed in the course of the fighting; they are being carried out by senior officers who were appointed for this purpose by the Chief of Staff. The results thereof will be forwarded, as is customary, to the Judge Advocate General, and insofar as appropriate, a decision will be made as to the taking of measures. The findings of the debriefings and the position of the Judge Advocate General with regard thereto will also be forwarded to the Attorney General of the Government of Israel for his perusal and examination.

With regard to the involvement of the Judge Advocate General in this team, and in various procedures of examination (with reference to that set forth in Sections 17 and 18 of your letter) – as you know, the Judge Advocate General wears two “hats”: that of legal advisor to the military authorities, and that of the person in charge of ensuring that military personnel who broke the law are tried. These two hats coexist with the system of Israeli jurisprudence – both the civilian and military system – and we cannot accept the argument which holds that, in light of the involvement of the Judge Advocate General and the relevant members of his office in providing guidance to military entities in the course of the fighting, he and the law enforcement entities of his office are enjoined from making use of the powers granted to them by law, and from examining contentions and complaints regarding breaches of the law in the course of the fighting. As set forth above, the conclusions reached by the Judge Advocate General will also be forwarded to the Attorney General of the Government of Israel for his examination.

In conclusion, we shall state that a listing of contentions regarding the general patterns of action employed by the IDF, as set forth in your letter, cannot constitute a basis for the launching of a criminal investigation. Nonetheless, insofar as you have any concrete and pertinent arguments concerning the IDF activity in Operation “Cast Lead”, you have the possibility of addressing the relevant entities, and your inquiry will be checked and examined in the customary manner.

Very truly yours,

[Signature]

Raz Nizri, Attorney at Law

Senior Assistant to the Attorney General

Copies:

Minister of Justice

Attorney General

Judge Advocate General

Deputy Attorney General (Special Functions)

** This is an Adalah translation of the original Hebrew document.*