



PROHIBITED PROTEST

Law Enforcement Authorities Restrict the Freedom of
Expression of Protestors against the Military Offensive in Gaza



Adalah The Legal Center for Arab Minority Rights in Israel

عدالة المركز القانوني لحقوق الاقلية العربية في اسرائيل

עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



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Protestors against the Military Offensive in Gaza

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Introduction

On 27 December 2008, Israel initiated an extensive military offensive in the Gaza Strip. The operation, named "Cast Lead", consisted of 23 days of bombings and shelling from the air, sea and land, in which the Palestinian civilian population suffered damage and injury to an unprecedented extent. Extensive damage was caused to residential houses, as well as to commercial buildings and public infrastructure.¹

Crowds of Palestinian citizens of Israel came out into the streets to demonstrate against the military operation and to protest against the severe injury to the civilian population of Gaza, which was occurring daily. The Arab citizen protestors were joined by Jewish Israelis who objected to the military operation, and who also wished to exercise their right to protest against it and demand its cessation.

This report describes the manner in which the law enforcement authorities responded to the protestors against the military operation in Gaza. **The report shows how the police, the State Prosecutor's Office, the General Security Services (GSS or Shabak), the courts and even certain academic institutions made arrest the easiest and fastest method of suppressing the protest against the military operations,** and indicates the ease with which a demonstrator's rights can be denied.

The report bases its findings on data collected from the police spokesman, on testimony collected by Adalah from political and social activists, on complaints dealt with legally by Adalah during and after the military operation, on an analysis of the court decisions regarding the arrests of detainees apprehended during the protests against the military offensive, as well as on general information published by the media and by a number of human rights organizations in Israel.

Summary

Response of the Law Enforcement Authorities:

The attitude of the law enforcement authorities - the police, the State Prosecutor's Office, the Shabak and the courts - was very severe, far beyond any reasonable criterion. For instance, on the fourth day of the operation (30 December 2008), after 200 Arab demonstrators had already been arrested, the Commanding Officer of the Northern District of the Police, Maj. Gen. Shimon Koren, declared that while allowing protests to take place, the police would continue to act against law breakers resolutely and with zero tolerance.

¹ Israel declared a cease-fire on 17 January 2009 after 23 days of bombing and shelling from the air, sea and land, in which 1,414 Palestinians were killed, including 313 children. 5,303 Palestinians were wounded, including 1,606 children and 828 women. The Palestinian Central Bureau of Statistics reported complete demolition of over 4,000 residential houses, and partial destruction of another 17,000 houses.

See: Combined Report of the UN Human Rights Council's Special Rapporteur, Human Rights Situation in Palestine and Other Occupied Arab Territories, A/HRC/10/22, 20 March 2009, p. 5; Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, *Human Rights Situation in Palestine and other Occupied Arab Territories*, 11 February 2009, A/HRC/10/20, p. 7; <http://www.ochaopt.org/gazacrisis/index.php?id=-1&Page=2&rpp=10>. On 9 September 2009, B'Tselem published slightly different figures. B'Tselem stated that in the course of the military operation, 9 Israelis were also killed - 3 civilians who were killed by Qassam and Grad rockets, and 6 military personnel. 4 additional soldiers were killed in an Israeli "friendly-fire" incident. See: http://www.btselem.org/Download/20090909_Cast_Lead_Fatalities_Heb.pdf

This report shows that in almost every arena where there were protest activities, the authorities' attitude was one of zero tolerance against dissenters to the operation. **The majority of arrests were made in places where the protests were non-violent.** The police, the State Prosecutor's Office and the courts used the arrest procedure as a means of deterring the crowds from coming onto the streets. It is well known that deterrence considerations relate to the penalties used against a person after legal conviction, and that the detention procedure must not become a tool for use by the law enforcement authorities to prevent people from performing any action, certainly not protest activity. That is not how the authorities behaved in the present matter.

The use of arrest for the purpose of deterrence, also known to us from the period of the first and second Intifadas, from the Nakba Day, the Land Day and wherever protests are held against the demolition of houses, contravenes all principles of criminal law. This report provides extensive clarification on this point.

Summary of figures:

The figures collected during and after the operation indicate a method of collective and disproportionate arrest:

- ❖ 832 persons were detained by the police during the military operation;
- ❖ 34% of the detainees were minors - under age 18;
- ❖ 80% of all detainees were held in custody until the completion of proceedings against them;
- ❖ 54% of all detainees held in custody until completion of the proceedings were minors;
- ❖ 73% of adults who were indicted were detained in custody until the completion of proceedings against them;
- ❖ 86% of minors who were indicted were detained in custody until completion of proceedings;
- ❖ All detainees in the Northern District were detained until the completion of proceedings;
- ❖ 94% of detainees in the Jerusalem district were detained until completion of proceedings;
- ❖ Not one detainee from the Tel Aviv district was detained until completion of proceedings;²
- ❖ The majority of indictments were issued for participating in prohibited gatherings, disturbing the peace and attacking a police officer. A very small number of indictments were filed for causing risk to human life on a traffic route.

The State Prosecutor's Office and the Police:

The State Prosecutor's Office and the police presented all protest events, regardless of their character, as a threat to the existence or security of the state.

² The majority of the Jewish protestors were arrested in this district.

The State Prosecutor's Office and the police appealed every decision to release a detainee from detention and won every one of the appeals they submitted. By adding a uniform introductory paragraph to all indictments submitted during the operation, the State Prosecutor's Office and the police sought to make every protest event, regardless of its character, into an existential threat to the security of the state. Use of this language created for the State Prosecutor's Office and the police an argument justifying detention for a few days or until completion of proceedings with no individual examination of each detainee and without relating to each protest and the circumstances thereof. **Paradoxically and even ironically, the police considered the protests against the military offensive a disturbance of the peace.** New grounds for arrests, such as "the protests are detrimental to public morale", were unhesitatingly used by the police. In some cases the applications for arrest exaggerated the accusations specifically in order to justify the arrest and remove the person from his environment.

The Courts:

Were it not for the courts' attitude, which legalized the holding of detainees behind bars until the completion of proceedings, including minors with no criminal record, the figures presented in this report would have been quite different. **The courts abandoned the principle of individual examination, specific to the entire criminal legal system, preferring the wholesale arrest of suspects,** claiming "offenses specific to the times" and "no change has yet occurred in respect thereof". Contrary to all criteria of domestic and international law and with the backing of the Supreme Court, the treatment of minors was identical to that of adults, with no distinction between them. Some judges did not conceal their support for the military offensive. In the Nazareth Magistrates Court, for instance, the report discloses two decisions, completely identical, word for word, concerning four different suspects.

Testimony by Demonstrators who were Arrested and Subjected to Police Violence:

This report also presents many testimonies by demonstrators who participated in totally quiet protests and demonstrations, but nevertheless encountered serious violence on the part of the police, who dispersed the demonstrators by force and unlawfully, and arrested many of them. The testimonies presented in the report shed light on the methods used by the police in dispersing legal demonstrations and protests. Demonstrators were arrested solely due to their presence on the scene. **The arrests were used as a rapid method of dispersing the demonstrations, in order to create panic and as a deterrent.**

The report reveals that specific guidelines were issued to deal with protests and detainees, which the police refused to disclose to Adalah. Guidelines of this kind will be remembered from the events of October 2000, in which the State Prosecutor's Office devoted resources and efforts to finding ways of being more severe with detainees, while altogether disregarding the question of how 13 Arab demonstrators were killed and who should bear responsibility for the killings.

In many areas where the protests were held, the police came with reinforcements and dispersed the demonstrators by force, on the pretext that they were participating in a forbidden gathering. Such was the case with the protests held at Tel Aviv University, Haifa University, Ben-Gurion University in Beer Sheva, on Ben-Gurion Blvd. in Haifa on New Year's

Eve, and the protests held in various places in Beer Sheva and Tel Aviv. These events will be described extensively in the report.

The testimonies collected show clearly that **none of the described protests required a permit from the police**, i.e. the law does not make it mandatory to obtain a permit in those cases, as shall be explained later. Nevertheless, the police made obtaining a permit a threshold condition for continuing to hold them. In many cases the police dispersed the protests based on the flimsy argument of "concern for rioting and disturbing the peace". The only reason for this action was the presence of counter demonstrators who supported the war. The demonstrations were dispersed violently, and they often suffered severe injuries. Buses on the way to a protest were confiscated and the people who had hired them were forced to return home. The police foresaw in good time and beforehand that the passengers on the buses were intending to participate in an illegal gathering.

Thus, instead of fulfilling its duty to maintain order and to ensure the freedom of expression in times of upheaval and periods of social, political and national controversy, the police chose to use force in an effort to silence the voices of protest and prevent them from being heard.

The Shabak's Harassment and Surveillance of Political Activists:

The Shabak also followed its habit of taking part in silencing the voices of protest. Dozens of political activists who organized the protests were called in for investigation by the Shabak. The police misrepresented this act to the activists, saying that it was a police investigation. Upon their arrival at the police station, they were rushed to the Shabak investigators, who began to question them and threatened to prosecute them if they did not cease their political activities. These activists testified to Adalah that the Shabak asked them political questions and threatened to prosecute them and hold them responsible for every offense that might be committed during the demonstrations, even if they had not committed them personally. The Attorney General backed the Shabak's method of questioning and threats and its involvement, arguing that it was necessary in order to calm the situation and to prevent a repetition of events such as in October 2000 and in Akka (Acre) in October 2008.

Academic Involvement in Supporting the War and Repressing Freedom of Expression:

The report exposes the manner in which academics and various academic institutions responded, or more accurately, did not respond, either to the bloody events in Gaza or to the wave of collective arrests within Israel. Very few lecturers were bold enough to protest publicly against the military operation in Gaza. Academics who had complained in the past about the collective arrest of minors from among the settlers, made no comment concerning the war crimes which the Israel army is strongly suspected to have perpetrated in the Gaza Strip, or in view of the collective arrests and extension of arrests, especially of minors.

Academic institutions such as the Haifa University declared prominently in signs installed above buildings and in paid advertisements in the press the national pride they felt from the military operation. At the same time, the University did not hesitate to organize the entry of dozens of police and horsemen into the University campus in order to violently disperse gatherings of Arab students who sought to discontinue the studies for a few hours in protest against the military operation. The exaggerated violence exerted against the students, the

false arrests and repression of their protest did not elicit any condemnation on the part of the University. On the contrary, a few days later, the University was quick to impose disciplinary action on the students due to unseemly conduct and participation in unapproved public activity!

Overall, the report shows how the wave of protest against the military operation was perceived as an intolerable nuisance by the police, the State Prosecutor's Office, the courts and some of the academic institutions in the State.

Restriction of Freedom of Expression due to a Hostile Audience:

Freedom of expression and the right to assemble, gather and demonstrate freely are two of the fundamental human rights.³ The specific expression of this right is the freedom to present opinions considered controversial, being outside the general consensus. The extent of sympathy or anger aroused by the content of the protest is not supposed to be a criterion for determining the extent of the right to express oneself.

Contrary to the tests set forth in Supreme Court judgments and the logic of common-sense, the police dispersed a protest only due to the fact that around them were a group of people considered a hostile audience. In this the police also erred in disregarding the clear rulings handed down by the court, which warned against this type of behavior by the police. Allowing a certain hostile group (the pro-War demonstrators) the key for exercising the right of demonstration and assembly, and granting them the right of veto, thus awards them a prize for their aggression.⁴

The test determined by the Supreme Court concerning the restriction of freedom of expression is the test of "near certainty" of disruption of public order.⁵ The concern for rioting and disturbance of the peace is not supposed to be a vague concern, but must be based on concrete, clear and convincing evidence. The great ease with which the demonstrations were dispersed and the demonstrators were arrested was far from indicating that the test of near certainty existed or at least that discretion had been exercised in an attempt to find a way so that the restriction of freedom of expression would be proportionate.

The next chapters elaborate on the points raised above and demonstrate our critique through actual cases handled by Adalah and other attorneys during the Gaza operation.

We wish to emphasize that the events presented in the report are only examples. They do not represent all the incidents in all arenas and focal points in the course of the war.

³ See: HCJ 8988/06, **Yehuda Meshi Zahav v. Ilan Franko, CO Jerusalem District** (unpublished, 27 December 2006); HCJ 2557/05, **Match Haruv et al. v. Israel Police et al** (unpublished, 12 December 2006); HCJ 6658/93, **Kalavie v. CO Jerusalem Station**, PD 48 (4) 793, 796 (1994); HCJ 2481/93, **Dayan v. CO Jerusalem District**, PD 48 (2) 456, 468 (1994); HCJ 372/84, **Klopper-Naveh v. Minister of Education and Culture**, PD (3) 233, 238 (1984); HCJ 153/83, **Levy v. CO Southern District, Israel Police**, PD 38(2) 393, 401-402 (1984).

⁴ HCJ 153/83, **Levy v. CO Southern District Israel Police**, PD 37(3) 393, 404 (1984).

⁵ See: HCJ 73/53, **Kol Ha'Am v. Minister of the Interior**, PD 7(1) 871 (1953); HCJ 4712/96, **Meretz Faction v. CO Jerusalem District**, ILR 50 (2) 822, 827-828 (1996); HCJ 153/83, **Levy v. CO Southern District, Israel Police**, PD 38(2) 393, 401 (1984).