

Israel is not fighting against Hamas but against civilians, implementing a criminal policy of bombings

Saturday 9 December 2023, by [B'Tselem](#) (Date first published: 5 December 2023).



Photo: the site of the bombardment of the Shuja'iyyeh neighborhood in Gaza City on December 2, 2023. Al Jazeera.

On Saturday, 2 December 2023, Israel bombed the neighborhood of Shuja'iyyeh in Gaza City. The IDF Spokesperson declared that the goal was to kill Wissam Farhat, defining him as "the commander of Hamas' Shuja'iyyeh Battalion" who "led the battalion in Operation Protective Edge," participated in planning attacks on Israelis, "took part in planning the ruthless attack in Israeli territory on 7 October, and sent the Nukhbah terrorists to the kibbutz and outpost of Nahal Oz that day."

According to initial reports, the strike killed dozens of people and destroyed scores of residential buildings. Hundreds of people are still buried under the rubble. Given the outcome, there is no doubt the strike was unlawful. Every attack – even against a legitimate military target – must comply with the principle of proportionality, which requires an attack to be aborted if existing information indicates the expected harm to civilians outweighs the anticipated military advantage. Interpreting the outcome of this bombing as proportionate empties this principle of meaning.

Israel relies on two main arguments to justify the extensive criminal harm to civilians caused by its policy. Both arguments are unfounded and detached from international humanitarian law and from its objectives.

First, Israel claims that it is doing everything in its power to avoid harming civilians, but, since Hamas is hiding behind civilians and using them as human shields, any strike against it entails harm to civilians through no fault of Israel's. This would mean that Israel is under no limitation and that any action it takes, however horrifying the consequences, is legitimate. Hamas is violating international humanitarian law, and especially the obligation to distinguish between civilian and military targets, by firing at Israeli civilians from within the civilian population in Gaza, hiding weapons in civilian homes and digging tunnels under them. However, this does not release Israel of its own obligations under international law. The interpretation put forward by Israel completely overlooks the rule that one party's violation of these provisions does not release the other party from its obligation to uphold them.

Second, Israel says it has warned all civilians in areas it attacks to evacuate to areas it has designated as "safe." This implies that Israel assumes no civilians are left in the areas it ordered evacuated, meaning it is free to operate without taking care not to harm civilians. This claim has no

foothold in reality. The fact is that many civilians have remained in their homes, either because they cannot reach southern Gaza for various reasons or because they choose not to leave. Also, even if civilians had evacuated, this would not justify unlimited bombing of their homes, which are civilian targets – unless proven otherwise.

When the war broke out, Prime Minister Benjamin Netanyahu declared Israel would retaliate forcefully, and the IDF Spokesperson was quick to make clear that “the emphasis is on damage, not precision.” These statements clearly align with Israel’s policy since the start of the war: hundreds of tons of bombs have been dropped on the Gaza Strip so far, leading to a horrifying death toll of more than 15,000 people, including more than 6,000 babies, children and teenagers and approximately 4,000 women. Entire residential neighborhoods have collapsed, including high-rises, and the streets are scenes of destruction. Many people are still buried under the rubble, their fate unknown. Some 1.8 million people have been displaced from their homes and are crowding together in inhumane conditions, without enough food, water or medication.

The chief prosecutor of the International Criminal Court in The Hague, Karim Khan, who recently visited Israel and the West Bank, emphasized that Israel must act according to the rules that always apply to armed conflicts. He noted that warfare in densely populated areas, where armed individuals are allegedly hiding among civilians in breach of the law, is indeed complex and challenging, yet cannot justify disregarding the provisions of international humanitarian law. Khan stressed that Israel must comply with the clear legal principles of distinction, proportionality, and precaution, to ensure that “the protection of the law is rendered meaningful for those who need it.” He emphasized that complying with the letter of the law is not enough – its spirit must be upheld: “International humanitarian law and the provisions of the Rome Statute are there to protect the most vulnerable.”

Israel, however, adheres to the letter of the law, relying on an interpretation far removed from the purpose of the law. It claims to warn civilians before attacks – yet ignores the fact that they have no real way to protect themselves; it claims to attack only military targets – yet turns a blind eye to the thousands of civilian homes bombed since the war began; it claims to implement the principle of proportionality – yet provides an interpretation that is far from reasonable and according to which thousands of dead children are “collateral damage.”

Since the ceasefire ended, Israel has been threatening to escalate the fighting in southern Gaza, purportedly, to protect its citizens. There is no dispute that Israel must provide such protection, certainly as long as Hamas continues to fire rockets at Israel and its leaders repeatedly declare that the 7 October attack was merely “a prelude.” However, Israel relies on this claim to justify its criminal policy of indiscriminate bombings in Gaza, which primarily harms the civilian population.

More than two million people are currently crowded into the southern Gaza Strip with nowhere else to go. Continuing to implement this bombing policy will almost certainly result in the killing of thousands more civilians. In these circumstances, Israel must immediately stop implementing this policy, which is sowing more and more death and destruction, and worsening the humanitarian catastrophe in the Gaza Strip.

B’Tselem

The Gaza Strip, 05 December 2023

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https://www.btselem.org/gaza_strip/20231205_israel_is_not_fighting_against_hamas_but_against_civilians_implementing_a_criminal_policy_of_bombings