**Gaza: the Stain Remains on Israel’s War Record**

April 5, 2011

By: Kenneth Roth

Human Rights Watch

https://www.hrw.org/news/2011/04/05/gaza-stain-remains-israels-war-record

The Netanyahu government is doing everything it can to interpret a recent [Washington Post op-ed article](http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html) by Justice Richard Goldstone as vindication of Israel's conduct in the 2008-09 Gaza conflict. It is nothing of the sort. Israel's reluctance to confront that reality finds a parallel in its refusal to date to conduct credible investigations into the serious violations of the laws of war that it committed in Gaza. The Goldstone article does not relieve it of the obligation to pursue those investigations.

As is well known, Goldstone led a UN commission that issued a detailed and damning report on the [Gaza war](https://www.hrw.org/en/features/israel-gaza), finding that both Israeli and Hamas forces committed war crimes. In his article, Goldstone backed away from a particularly controversial charge in the report – the allegation that Israel had an apparent high-level policy to target civilians. He now says that information from Israeli investigations indicates "that civilians were not intentionally targeted as a matter of policy".

Goldstone was right to make that amendment. Human Rights Watch also investigated some of the cases in which Israeli troops fired at and killed Palestinian civilians. In seven cases, for example, Israeli troops killed a total of 11 Palestinian civilians who had been [waving white flags](https://www.hrw.org/en/reports/2009/08/13/white-flag-deaths-0) to signal their civilian status. In six other cases, Israeli drone operators fired on and killed a total of 29 Palestinian civilians, including five children, even though drone technology offers the capacity and time to determine whether the targets were combatants. Deeply troubling as these cases were, they were too isolated for us to conclude that the misconduct of individual soldiers reflected a wider policy decision to target civilians.

But Goldstone has not retreated from the report's allegation that Israel engaged in large-scale attacks in violation of the laws of war. These attacks included Israel's indiscriminate use of heavy artillery and [white phosphorus](https://www.hrw.org/en/reports/2009/03/25/rain-fire) in densely populated areas, and its massive and deliberate destruction of civilian buildings and infrastructure without a lawful military reason. This misconduct was so widespread and systematic that it clearly reflected Israeli policy.

What has Israel done to redress these violations? Mainly, it has investigated the common soldier while leaving the top brass and policymakers untouched. Israel's investigations look good only by comparison with Hamas, which has done nothing at all to investigate its war crimes. The Hamas justice minister responded to the Goldstone article by attempting to justify deliberate rocket attacks on populated areas of Israel as part of the "right of self-defence of the Palestinian people" – a position wholly at odds with the laws of war.

As for Israel, a recent UN report mentioned in Goldstone's article found that the Israeli military has examined the conduct of individual soldiers in about 400 cases of alleged operational misconduct in Gaza. But the report raised serious questions about the thoroughness of these investigations. When Human Rights Watch scrutinised Israel's investigative response, we found that military prosecutors had closed some cases in which the evidence strongly suggested violations of the laws of war.

To date, Israeli military prosecutors have indicted only four soldiers and convicted three. Only one soldier has served jail time – seven and a half months for stealing a credit card.

Most important, Israel has failed to investigate adequately the policy-level decisions that apparently lie behind the large-scale indiscriminate and unlawful attacks in Gaza. Those decisions are obviously the most sensitive because they involve senior officials, not just troops on the ground.

Part of the problem is that the military has been asked to investigate itself – never an ideal way to arrive at the truth. Moreover, the person leading the military investigations – Israel's military advocate general – probably took part in the policy decisions that should be investigated. That's why a genuinely independent investigation is needed, as Israeli human rights groups have requested.

The Netanyahu government's eagerness to bury the Goldstone report is understandable, but the report will live on. Even after Goldstone's article, the report still represents a serious indictment of the way Israel and Hamas chose to fight the war in Gaza. The open question is whether the two sides will live up to their duty to investigate these charges credibly and to bring violators to justice. We all know that Hamas hasn't done what is needed. The theatrics in Jerusalem cannot hide the fact that so far Israel hasn't either.