

**United Nations Independent Commission of Inquiry on the 2018 protests**

**in the Occupied Palestinian Territory**

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**Chair Santiago Canton**

**Remarks to the Human Rights Council**

**Geneva, 18 March 2019**

Mr. President,

Excellencies, Members of the Council, good morning.

This Commission was tasked by this Council to investigate alleged violations of human rights and humanitarian law, by all duty bearers, in the context of the large-scale protests that started in the Gaza Strip on 30 March last year.

Before you is our **report** (A/HRC/40/74) and its **longer annex**, in the form of a conference room paper (A/HRC/40/CRP.2), containing detailed factual and contextual information and legal analysis.

The Commission undertook meticulous and objective investigations of the incidents which occurred at these demonstration sites from 30 March to 31 December.

The Commission is acutely aware that the context of these demonstrations has been a long-standing blockade and an ongoing conflict in Gaza between Israel and Palestinian organised armed groups. Last year saw Israeli air strikes on Gaza, and the firing of rockets by armed groups from Gaza into Israel.

However – and it is important to emphasize this point at the outset, -- the demonstrations at the fence which occurred in 2018, and continue, were not military operations, but civilian protests. Our investigation found that the demonstrators were overwhelmingly unarmed – even if they were not at all times peaceful.

Consequently, international human rights law must be deemed the applicable legal framework. A detailed discussion of the legal issues involved in this determination is included in the report.

Regarding the applicable legal framework, let me just briefly say that the interplay between the IHL and the IHRL legal frameworks is central to understanding the law governing the use of force during the protests in Gaza.[[1]](#footnote-1) Many provisions appear similar on their face but they have different content, and they apply in different factual contexts - with consequences that are literally the difference between a life lawfully, or unlawfully, taken.

We regret that the Government of Israel did not cooperate with the Commission, nor grant us access to Israel or the Occupied Palestinian Territory. This meant we relied on thousands of images and other recordings made by demonstrators, media and Israeli forces, which were examined and verified before being analysed. We were also able to interview more than 325 witnesses, victims and other individuals – either outside Gaza and Israel, or by secure remote connections. In addition, we were able to access an abundance of open sources. The Commission has put together a solid body of over 8000 supporting documents, some of which may be shared with international and domestic authorities in the interests of international justice.

The main conclusion of the Commission is that it has found reasonable grounds to believe that the Israeli Security Forces committed serious violations of human rights and international humanitarian law.

These violations clearly warrant criminal investigation and prosecution. We call on Israel to conduct meaningful investigations into these serious violations, and to provide timely justice and reparations for those killed and injured. Considering that these alleged violations happened last year, Israel is within a reasonable time to conduct a thorough investigation, and we welcome Israel recent announcement to open additional investigations. We hoped these investigations can be expanded.

The Commission sought to investigate every killing that occurred during the demonstrations last year. We found that 189 Palestinians were killed - 183 of them with live ammunition – and included children, persons with disabilities, journalists and medical personnel.

In addition, we found that 6,106 people were wounded by Israeli snipers shooting at protestors with live ammunition. At the end of 2018, 122 of these people had suffered amputations, including 20 children.

Allow me to focus in a little more depth on the killings of children, people with disabilities, journalists and paramedics.

* A total of 35 **children** were killed during the demonstrations, 32 by live ammunition. According to verified data, 60% of these children were killed with gunshots to the head, including a 14-year-old girl who was standing 100 metres from the separation fence.
* Regarding **people with disabilities**, Israeli soldiers shot and killed a double amputee as he sat in his wheelchair. On two separate days, two people visible walking with crutches were shot in the head and killed.
* Two **journalists** were also killed during the demonstrations, and at least 39 journalists were shot. In all of the cases investigated by the Commission, the journalists wore clothing clearly identifying them as members of the press.
* We also found that **three paramedics** were killed, clearly marked as such, including one woman. Another 39 were wounded with live ammunition as they provided medical assistance to demonstrators.

We must be clear: there can be no justification for the killing of children and persons with disabilities who pose no imminent threat of death or serious injury to those around them. Journalists and medical personnel carrying out their duties must be protected, and their work facilitated.

On the Israeli side, four Israeli soldiers were injured during the demonstrations. One Israeli soldier was killed on a protest day, but not at a protest site.

We found one incident in North Gaza on 14 May that may have amounted to “direct participation in hostilities”. We also found one incident in Central Gaza on 12 October that may have constituted an “imminent threat to life or serious injury” to the Israeli security forces. But with these exceptions, the commission found reasonable grounds to believe that, in all other cases, the Israeli security forces’ use of live ammunition against demonstrators was unlawful.

This brings me to our about the “Rules of Engagement” that the Israeli forces have used in their response – and continue to use today.

These rules permit commanders in the field to designate people as ‘key instigators’ - who could be shot in the legs for behaviour such as burning tires, cutting or breaching the fence, or exhorting or leading the crowd in approaching the separation fence. Under the rules, they could be shot in the leg at any moment – at any time the sniper could get a decent shot. While in theory this ‘key inciter’ status was to be conferred only when the crowd was posing an imminent threat to life, in reality this was rarely the case. People were shot in the legs far removed, both physically and temporally, from any threat to Israel. And the result was young people maimed for life. Under these rules of engagement, 4,903 persons were shot in the lower limbs – many while standing hundreds of meters away from the snipers, unarmed.

The Commission found the targeting of an unarmed demonstrator based solely on political affiliation or membership in an armed group is unlawful. Dozens of those killed were members of Gaza-based armed groups, however they are not identified as such in this report for protection reasons. Even if such targeting were lawful, in the context of these demonstrations and given the large presence of civilians, meeting the humanitarian law-based principles of proportionality and precautions would be extremely difficult. The 1,576 people who were wounded by bullet or bone shrapnel attest to the danger of bystanders being injured by ricochets, bullet fragmentation and shots going through one body to enter another, when snipers fire high-velocity live ammunition into a demonstrating crowd.

Many of the injuries sustained were so severe as to require complex medical and surgical intervention.

The Gaza health care system is in no way equipped to deal with the scale and complexity of the medical, surgical and long term care required for these injuries.

The Commission recommends immediate action be taken to address the health care emergency in Gaza. Specifically, the Commission asks the Government of Israel to:

1. Lift the blockade on Gaza.

2. Ensure that those injured at the demonstrations are granted prompt exit permits to enable them seek medical care in hospitals elsewhere in the OPT, Israel and abroad.

3. Ensure timely access into Gaza for medical and all other humanitarian workers, to provide treatment to the injured in the context of the demonstrations.

4. Ensure efficient coordination for the entry of medical supplies and equipment into Gaza and remove the current prohibition on items and supplies with legitimate medical uses, including carbon fibre components for treatment of limb injuries.

The de facto authorities in Gaza and the Palestinian Authority should ensure timely and efficient coordination for the entry of medical supplies and equipment into Gaza.

The Commission further recommends that UN Member States and international and non-governmental organizations support the health system in Gaza, particularly with resources necessary to treat the injuries sustained at the protests.

We urge both sides to pay attention to the need to protect civilians and prevent future violations.

We recommend that the Israeli Security Forces’ Rules of Engagement permit lethal force only as a last resort, and only when the person targeted poses an imminent threat to life or directly participates in hostilities.

We also recommend that the de facto authorities in Gaza stop the use of incendiary kites and balloons – and that the Palestinian Authority and the Gaza de facto authorities uphold the right to peaceful assembly in connection with demonstrations policed by their respective security forces.

We are conscious of being but the latest in a century-long series of Commissions of Inquiry tasked by the international community to examine violent events in Middle East. The international community has thus far collectively failed to shepherd a meaningful peace process that can put an end to the violence. Until such time, it needs to take stronger action to stop the loss of lives. This means doing more than calling for a commission of inquiry every so often.

Thank you.

1. The Israeli Supreme Court, sitting as High Court of Justice, addressed precisely this issue in a ruling on the legality of the IDF’s rules of engagement, see supra FN XXX. The Court acknowledged the existence of the two paradigms and their applicability. [↑](#footnote-ref-1)