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### Human Rights Council

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Agenda item 7

#### Human rights situation in Palestine and other occupied Arab territories

### Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory\*

#### *Summary*

In the present report, submitted pursuant to Human Rights Council resolution S-28/1, the independent international commission of inquiry investigates the demonstrations held in Gaza between 30 March and 31 December 2018, the response of Israeli security forces to the demonstrations and the impact on civilians in Gaza and Israel.

The commission was mandated to focus on accountability and identifying those responsible for violations of international human rights law and international humanitarian law. The commission found reasonable grounds to believe that some violations may constitute international crimes.

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

## I. Introduction

1. In its resolution S-28/1, the Human Rights Council established the international independent commission of inquiry with a mandate to, inter alia, investigate all alleged violations and abuses of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military assaults on the large-scale civilian protests that began on 30 March 2018, and to report thereon to the Council at its fortieth session.<sup>1</sup>
2. Santiago Canton (Argentina) (Chair), Sara Hossain (Bangladesh) and Kaari Betty Murungi (Kenya) were appointed to the commission by the President of the Human Rights Council.<sup>2</sup>
3. A secretariat from the Office of the United Nations High Commissioner for Human Rights (OHCHR) was appointed to support the commission. Despite several requests, Israel did not grant the commission access to Israel or the Occupied Palestinian Territory nor did it cooperate or provide information. While the Government of Egypt indicated a willingness to provide access to Gaza for the commission, ultimately it did not, citing security reasons. The commission undertook missions to Amman in November 2018 and Istanbul, Turkey in December 2018.
4. The commission is grateful to the Governments of Turkey, Jordan, Egypt and the State of Palestine for their cooperation with the commission and for facilitating its work.

## II. Methodology

5. In accordance with its mandate, the commission focused its inquiry on the protests that began on 30 March 2018. Given the time and access limitations, the commission investigated events up to 31 December 2018, with a particular focus on three demonstration days: 30 March, the first day; 14 May, which saw the highest number of fatalities and wounded; and 12 October, one of two demonstration days with the highest number of fatalities in the latter part of 2018.
6. The commission paid special attention to the protection of civilians in both Gaza and Israel, and to groups warranting protection under international law, including children, women, health workers, journalists and persons with disabilities. It was also mandated to focus on accountability and identifying those responsible for violations and international crimes.
7. The commission investigated the response of Israeli security forces to the protests, and the policing of demonstrations by Palestinian security forces in the West Bank supporting the “great march of return and breaking of the siege” and demonstrations held inside Gaza since 30 March 2018.
8. The commission conducted 325 interviews and meetings with victims, witnesses, government officials and members of civil society, from all sides, and gathered more than 8,000 documents, including affidavits, medical reports, open source reports, social media content, written submissions and expert legal opinions, video and drone footage, and photographs.
9. As is customary practice for the fact-finding bodies of the United Nations, the commission adopted an evidentiary standard of “reasonable grounds to believe”. It employed fact-finding practices aimed at ensuring the safety and security of witnesses and victims.
10. The commission thanks all those who provided information, in particular victims and witnesses.

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<sup>1</sup> The detailed findings of the commission will be made available in a conference room paper on its webpage at [www.ohchr.org/EN/HRBodies/HRC/CoIOPT/Pages/OPT.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoIOPT/Pages/OPT.aspx).

<sup>2</sup> David Crane (United States of America), who was initially appointed as Chair, resigned on 22 August 2018 and was replaced by Mr. Canton on 20 September 2018.

### III. Applicable law

11. Both Israel and the State of Palestine are party to the International Covenant on Civil and Political Rights, other core international human rights treaties and the Geneva Conventions of 1949, and are bound by customary international law. Within Gaza, the de facto authorities led by Hamas bear human rights obligations given their exercise of government-like functions.

12. Israel and Palestinian organized armed groups (Izz al-Din al-Qassam Brigades and Al Quds Brigades, the military wings of Hamas and Palestinian Islamic Jihad respectively), as parties to the armed conflict, are bound by international humanitarian law. As the occupying Power, Israel is also bound by the rules on occupation under international treaty and customary law.

13. Substantively, the commission assessed whether these duty bearers respected, protected and fulfilled the right to life, the freedom of peaceful assembly and the freedom of expression, among other rights.

### IV. Context and background

14. The “great march” entailed weekly demonstrations by Palestinians near the fence that since 1996 has separated Gaza and Israel (along the Green Line traced by the armistice agreements of 1949), demanding that the blockade imposed on Gaza be lifted and the return of Palestinian refugees.

#### A. Blockade

15. Gaza is home to 2 million people – half of whom are children – living in a coastal strip 42 km long, with a population density that is one of the highest in the world. Their access to the outside world and to the rest of the Occupied Palestinian Territory is extremely limited owing to movement restrictions imposed by Israel since the early 1990s, increasing in the 2000s and maintained after Israel withdrew its settlements from Gaza in 2005. After Hamas<sup>3</sup> won the Palestinian legislative elections in 2006, in June 2007 Israel declared Gaza “hostile territory” and imposed an air, land and sea blockade in a campaign of “economic warfare”.

16. By 2015, the Israeli blockade and restrictions on entry and exit of goods and people had halved the GDP of Gaza and reduced it to a humanitarian case of profound aid-dependency, with the world’s highest unemployment rate (54 per cent overall, with 70 per cent youth unemployment) and 68 per cent of the population rendered food insecure. The United Nations and the International Committee of the Red Cross have both found that the blockade constitutes collective punishment.

17. In 2017, the United Nations warned that Gaza would become “unliveable”, pointing to an ever-deepening water, electricity, health, education and food crisis resulting from the blockade.<sup>4</sup>

#### B. Return of refugees

18. Some 75 per cent of Gazans are registered refugees, living in or outside one of eight cramped cinderblock refugee camps in Gaza. They are among the descendants of the 750,000 Palestinians who, during the 1948 conflict, fled or were expelled from their previous homes in today’s Israel, in what Palestinians call the *Nakba* (“catastrophe”). In 1948, the General

<sup>3</sup> Hamas describes itself as a “Palestinian Islamic national liberation and resistance movement”, and includes a political party and an armed wing (see <http://hamas.ps/en/post/678/a-document-of-general-principles-and-policies>). Hamas or its armed wing is listed as a terrorist organization by Australia, Canada, the European Union, Israel, New Zealand and the United States of America.

<sup>4</sup> “Gaza: Ten Years Later”, United Nations Country Team in the occupied Palestinian Territory, July 2017.

Assembly, in its resolution 194, recognized that refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property. Following the hostilities of 1967, when Israel occupied the West Bank, including East Jerusalem and Gaza, the Assembly reaffirmed in 1974, in its resolution 3236, the “inalienable right” of return of Palestinian refugees from both the 1948 and 1967 hostilities. In its resolution 242 (1967), the Security Council affirmed the necessity of a “just settlement” of the refugee problem.

19. While Palestinians have since urged the implementation of General Assembly resolutions 194 and 3236, Israel opposes their return, arguing that “the influx of millions of Palestinians into the State of Israel would threaten the existence of Israel as a Jewish state, obliterating its basic identity as the homeland of the Jewish people and a refuge for persecuted Jews worldwide.”<sup>5</sup>

20. The return of refugees was among the “final status” issues that the negotiations held in 1993 leading to the Oslo Accords set out to solve within five years. Some 25 years later, the issue remains unresolved and the Accords unimplemented. In the West Bank and East Jerusalem, the construction of settlements and a separation wall deemed unlawful by the International Court of Justice has contributed to what the United Nations Special Coordinator for the Middle East Peace Process called a “growing risk of a one-state reality of perpetual occupation”.<sup>6</sup>

21. On 6 December 2017, the Government of the United States of America announced its decision to move its embassy to Jerusalem, thereby reducing hopes for a two-State solution further and sparking new demonstrations across the Occupied Palestinian Territory.

### **C. The “great march of return and breaking of the siege”: background and principles**

22. On 7 January 2018, Ahmed Abu Artema, a 34-year-old Palestinian poet and journalist, posted on Facebook the idea of a non-violent march at the separation fence, to draw attention to General Assembly resolution 194 and to the dire humanitarian situation in Gaza. In the post, ending #GreatMarchofReturn, he wrote, “what if 200,000 demonstrators marched peacefully and broke through the fence east of Gaza and entered a few kilometres into the lands that are ours, holding the flags of Palestine and the keys to return, accompanied by international media, and then set up tents inside and established a city there.”

23. The idea evolved into a movement of Palestinians. Within weeks, Abu Artema, civil society activists and other stakeholders drew up a charter of 12 principles, envisaging a national march by Palestinians of all ages, genders, political and social groups.

24. A higher national committee and 12 subcommittees were subsequently established to organize and oversee the planning of the march. Its members came from all sectors of Palestinian society, including civil society, cultural and social organizations, student unions, women’s groups, eminent persons and members of clans. Representatives of several political parties, including the Democratic Front for the Liberation of Palestine, Fatah, Hamas, the Popular Front for the Liberation of Palestine and Palestinian Islamic Jihad, were also members (the armed wings of these parties were not represented on the committee). While the members of the committee held diverse political views, they stated that their unifying element was the principle that the march was to be “fully peaceful from beginning to the end” and demonstrators would be unarmed.

25. The higher national committee established demonstration sites in open land along the separation fence in all five Gaza governorates: northern Gaza Strip (Abu Safia); east of Gaza City (Malaka); central Gaza Strip (El Bureij); east of Khan Younis (Khuzaa); and in the south in Rafah (Al-Shawkah). Each site comprised a “camp of return” – a group of tents positioned

<sup>5</sup> See [https://mfa.gov.il/MFA/ForeignPolicy/FAQ/Pages/FAQ\\_Peace\\_process\\_with\\_Palestinians\\_Dec\\_2009.aspx#Refugees1](https://mfa.gov.il/MFA/ForeignPolicy/FAQ/Pages/FAQ_Peace_process_with_Palestinians_Dec_2009.aspx#Refugees1)

<sup>6</sup> See <https://unsco.unmissions.org/security-council-briefing-situation-middle-east-including-palestinian-question-2>.

700-1000 m from the separation fence, named after villages from which Palestinians were displaced in 1948.

26. Demonstrations were held at these sites every Friday and occasionally other weekdays between 30 March and 31 December 2018, and continued thereafter. Beginning in August, weekly demonstrations were also organized at the Zikim beach in North Gaza.

#### **D. Conflict between Israel and Palestinian armed groups**

27. Over the past 10 years, Gaza and Israel have experienced successive violent confrontations; these included three major escalations with massive land and air attacks by Israeli security forces on Gaza and indiscriminate rocket attacks on Israel by Palestinian organized armed groups. Nearly 1,400 Palestinians and 13 Israelis were killed during the three weeks of hostilities in 2008 and 2009, during Operation Cast Lead; 174 Palestinians and six Israelis were killed during one week of hostilities in 2012; and 2,251 Palestinians and 71 Israelis were killed during 51 days of hostilities in mid-2014, during Operation Protective Edge.

28. A ceasefire mediated by Egypt between Israel and Hamas was concluded in August 2014. Episodes of hostilities have since continued, and included Israeli airstrikes and incursions into Gaza, and indiscriminate rocket or mortar fire by Palestinian armed groups towards Israel. As these events occurred outside the time and place of the demonstration, the commission did not investigate them.

#### **E. Israeli preparations and rules of engagement**

29. Israeli security forces stated that they perceived a new security threat in the demonstrations as being closely linked with Palestinian armed groups and an attempt to mask “terror activities”. This assessment was based partly on statements by Palestinian public figures, including leaders of Hamas, speaking of return and of crossing the fence, including in ambiguous or inflammatory terms.

30. Prior to the first demonstration, Israeli forces reinforced their positions at the fence with additional troops, including more than 100 sharpshooters. They dropped leaflets in Gaza and contacted Palestinian bus companies to warn against participation. At the demonstration sites, they strengthened the separation fence and its underground barrier (to prevent and detect cross-border tunnels), installed kilometres of barbed wire coils on the Gazan side as additional barriers, cleared vegetation on both sides, dug deep trenches on the Israeli side and erected a battery of earth mounds or berms onto which snipers were positioned for better visibility and shooting accuracy.

31. The rules of engagement apparently permitted live fire at demonstrators as a last resort in the event of imminent threat to life or limb of Israeli soldiers or civilians. They permitted snipers to shoot at the legs of “main inciters” as a means to prevent a demonstrating crowd from crossing the separation fence, because the Israeli forces viewed crossing as a potential imminent threat, in part because the crowd might include militants. The rules also permitted the use of lethal force against any demonstrators “directly participating in hostilities”, such as an armed attack against Israeli forces.

#### **F. Legal assessment of the demonstrations**

32. In the commission’s view, the demonstrations were civilian in nature, had clearly stated political aims and, despite some acts of significant violence, did not constitute combat or a military campaign. Thus, the legal framework applicable to policing the protests was that of law enforcement, based in international human rights law. This assessment did not change following the commission’s investigation into the demonstrators’ affiliation to or membership in organized armed groups. Owing to the ongoing armed conflict, the rules of international humanitarian law were also in effect and operated as *lex specialis* during active hostilities. International humanitarian law only permits attacks that comply with the principles of distinction, proportionality and precaution.

33. Founded in the right to life, law enforcement rules based on international human rights law permit potentially lethal force by law enforcement agencies or security forces only in

self-defence or for the defence of others when there is an imminent threat to life. A State's use of force must be necessary to achieve a legitimate law enforcement objective, and the force used must be proportionate to the harm being averted. The use of firearms against the human body is potentially lethal force.

34. For a threat to life to be regarded as imminent, an attacker should have no remaining preparatory steps and be in sufficient geographic proximity for the attack to succeed. An imminent or immediate threat should be understood to mean a matter of seconds, not hours (A/HRC/26/36, para. 59).

35. Israeli and Palestinian non-governmental human rights organizations challenged the application of lethal force by Israeli forces at the fence in the Israel Supreme Court, contending that the rules of engagement violated international law because they were too permissive or were being applied permissively. The Court disagreed and approved the rules of engagement, holding that "the use of potentially lethal force for the sake of dispersing a mass riot – from which an actual and imminent danger is posed to life or bodily integrity – is, in principle, permitted, subject to proving necessity and proportionality." The Court declined to examine how the rules were applied on the ground, deferring to the internal investigations of Israeli security forces.<sup>7</sup>

36. The interpretation and application of the legal thresholds of "imminent threat to life" under international human rights law and "direct participation in hostilities" under international humanitarian law had a direct impact on the commission's findings, ultimately serving to distinguish between lawful and unlawful uses of lethal force. To make such an assessment was the commission's primary task when analysing whether violations had been committed against demonstrators. Here it considered the evolution of international humanitarian law and international human rights law since the Second World War, which, amid vigorous discussion, have converged in the direction of increased protection of individuals.

## G. Statistics

37. The commission focused its investigation on fatalities and physical injuries occurring in the context of the demonstrations between 30 March and 31 December 2018. See the table below.

### Fatalities and injuries between 30 March and 31 December 2018

Category	Total	Women	Children	Body part targeted				Press <sup>e</sup>	Health workers <sup>f</sup>
				Head/ neck	Torso	Upper limb	Lower limb		
<b>Gaza:</b>									
Fatalities by live ammunition <sup>a</sup>	183	1	35	70	101	0	12	2	3
Injuries by live ammunition <sup>b</sup>	6106	159	940	175	401	493	4903	39	39
Injuries by bullet fragmentation/shrapnel <sup>c</sup>	1576	59	345	-	-	-	-	5	34
Injuries by rubber-coated metal bullet	438	36	124	-	-	-	-	4	34
Injuries by direct tear-gas canister hit	1084	60	233	-	-	-	-	-	85
<b>Israel:</b>									
Fatalities <sup>d</sup>	0	0	0	-	-	-	-	-	-
Injuries by stones, explosives	4	0	0	-	-	-	-	-	-

<sup>a</sup> The commission found that 189 Palestinians were killed at demonstrations sites, 183 of whom were killed by live ammunition used by Israeli security forces; 29 were members of Palestinian organized armed groups that were parties to the conflict with Israel (of which one was killed by a tear-gas canister and 22 were shot on 14 May). The commission had insufficient information to render a finding on the membership of 18 of the other persons killed.

<sup>7</sup> See *Yesh Din – Volunteers for Human Rights and Others v. Israel Defense Forces Chief of General Staff and Others*, Case No. HCJ 3003/18, Judgment of 24 May 2018. The rules of engagement were not shown to the court.

<sup>b</sup> The commission's estimate of 6,103 persons wounded by live ammunition at demonstration sites is based on its analysis of detailed data sets and electronic patient registry extracts collected separately from a large range of health-care providers in Gaza (including eight hospitals run by the Ministry of Health, six other hospitals, and several health-care and rehabilitation centres run by international non-governmental entities and organizations). Of these, the commission tracked and corroborated more than 300 incidents in which demonstrators were wounded by live ammunition. Some 134 of those shot were hit in multiple or other parts of the body.

<sup>c</sup> Most injuries by shrapnel were the result of bullet fragmentation from live ammunition. A small number may also have been caused by metal fragments stemming from direct tear-gas canister hits.

<sup>d</sup> One Israeli soldier was killed on a Friday while demonstrations were ongoing but outside the protest sites; see para. 90.

<sup>e</sup> Incidents affecting journalists or other media workers investigated or corroborated by the commission. The total number is likely higher. See paras. 71–73.

<sup>f</sup> World Health Organization, *Attacks on health care in the Gaza Strip, January–December 2018*. See paras. 68–70.

38. The Office for the Coordination of Humanitarian Affairs has estimated that 23,313 Palestinians were injured by Israeli forces in the context of the demonstrations in 2018, including by tear-gas inhalation and canisters, contributing to the highest toll of injuries recorded in the Occupied Palestinian Territory since 2005.<sup>8</sup>

39. The commission focused on investigating incidents entailing the use of live ammunition.

## V. Inquiry into specific incidents

### A. 30 March 2018

40. The demonstrations began on 30 March 2018, and were reportedly attended that day by between 40,000 and 50,000 Palestinian men, women, children, elders, civil society and political activists, and public figures.

41. Demonstrators congregated at five main demonstration sites. The atmosphere was initially festive, with activities in tents including poetry readings, seminars, lectures and cultural and sporting activities.

42. Most gathered at their respective camp of return along Jakkar Street, which runs parallel to and is approximately 300 m from the separation fence. Smaller numbers of demonstrators moved closer to the fence, and stood, sat or lay on the ground. Some demonstrators near the fence threw stones, burned tyres and waved Palestinian flags. The commission did not find that demonstrators were armed.

43. As early as 9 a.m., Israeli security forces responded to the demonstrations with live ammunition.

44. The killings and injuries on 30 March investigated by the commission included:

(a) At the demonstration site in El Bureij:

- Mohammad Obeid (24)

Mohammad was a footballer. At approximately 9 a.m., Israeli forces shot him with a single bullet in both legs while he was walking alone approximately 150 m from the separation fence. His injuries ended his football career.

- Schoolboy (16)

Israeli forces shot a schoolboy in the face as he distributed sandwiches to demonstrators, 300 m from the separation fence. His hearing is now permanently impaired.

- Abed Hawajri (41)

<sup>8</sup> [www.ochaopt.org/content/2018-more-casualties-and-food-insecurity-less-funding-humanitarian-aid](http://www.ochaopt.org/content/2018-more-casualties-and-food-insecurity-less-funding-humanitarian-aid).

Abed was a resident of the Nuseirat refugee camp. Israeli forces killed him with a shot to the abdomen as he stood in a crowd of demonstrators approximately 150 m from the separation fence.

- Naji Abu Hojayeer (24)

Naji, a mechanic from the Bureij refugee camp, was killed with a shot to the abdomen by Israeli forces as he stood wrapped in a Palestinian flag, 300 m from the separation fence.

- Yousef Kronz (19)

Israeli forces shot Yousef, a student journalist, in the legs with two bullets in immediate succession. He was wearing a blue vest marked "Press" while photographing the demonstrations approximately 800 m from the separation fence. His right leg had to be amputated.

(b) At the North Gaza demonstration site:

- Mohammad Kamal Najar (25)

Mohammad, from Jabaliya, was killed when Israeli forces shot him in the abdomen as he approached a wounded friend approximately 50 m from the fence, and threw stones at the Israeli soldiers.

- Tha'ier Rabaa (30)

Tha'ier, from Jabaliya, was shot in the thigh by Israeli forces approximately 30 m from the separation fence. He died of his injuries a week later.

- Mohammad Ajouri (17)

Israeli forces shot Mohammad, a student athlete, in the back of his right leg as he gave onions to demonstrators to relieve tear-gas symptoms, approximately 300 m from the fence. His leg had to be amputated.

- Abdel Fatah Nabi (18)

Israeli forces killed Abed, from Beit Lahia, when they shot him in the back of the head as he ran, carrying a tyre, away from and about 400 m from the separation fence.

- Bader Sabagh (19)

Bader, from Jabaliya, was killed by Israeli forces when they shot him in the head as he stood smoking a cigarette 300 m from the separation fence.

(c) At the Gaza City demonstration site:

- Schoolboy (13)

Israeli forces shot a schoolboy in the leg as he stood in a crowd on Jakkar Street, approximately 300 m from the separation fence.

(d) At the Khan Younis demonstration site:

- Schoolgirl (13), Marwan Qudieh (45) and two wounded

Israeli forces injured a schoolgirl with bullet fragmentation. As she lay on the ground, four men attempted to evacuate her. The forces shot three of them, killing Marwan Qudieh (45) from Khuzaa village and injuring a potato seller and another man in the legs. One of the rescuers had to have a leg amputated.

- Jihad Abu Jamous (30)

Jihad, a resident of Bani Suheila, was killed by Israeli forces by a shot to the head, approximately 300 m from the separation fence.

(e) At the Rafah demonstration site:

- Ameen Abu Mo'amar (25)

Ameen, from Al-Soufi neighbourhood, was killed by Israeli forces with a shot to the abdomen as he stood in a crowd, approximately 60 m from the separation fence.



- Maryam Abu Matar (16)

Maryam, a schoolgirl from Rafah, was shot in the leg by Israeli forces as she stood with a small group of girls waving Palestinian flags, approximately 50 m from the separation fence.

- Alaa Dali (21)

Alaa, a member of the Palestinian cycling team, was shot by Israeli forces in the leg as he stood holding his bicycle, wearing his cycling kit, watching the demonstrations, approximately 300 m from the separation fence. His right leg had to be amputated, ending his cycling career.

45. Israeli security forces wounded demonstrators as far as a kilometre away from the separation fence. In one case, they shot a 21-year-old student in both legs minutes after he arrived at the Bureij demonstration site.

46. Overall, at the demonstrations held on 30 March, Israeli forces killed 18 people and wounded 703 people with live ammunition; another 62 people were wounded by bullet fragmentation or shrapnel. The youngest casualty was a two-year-old, wounded in the head; the oldest, a 71-year-old woman shot in the legs.

## **B. 31 March – 13 May 2018**

47. Over the weeks that followed, demonstrations were held every Friday at the five main sites. A minority of demonstrators slung and threw stones, burned tyres and cut and removed barbed wire coils on the Gaza side of the separation fence. From April, some demonstrators flew kites or balloons carrying burning rags or coals wrapped in chicken wire towards Israel, damaging Israeli property, including agricultural land.

48. Some activities, such as the launching of incendiary kites, cutting barbed wire or tyre burning, began to be organized by self-declared “units”, some of them through their own Facebook pages. The commission found no evidence to suggest that they were directed or coordinated by armed groups.

49. Israeli forces continued to employ live ammunition against demonstrators, killing and wounding civilians, including children, journalists and health workers, and leaving many with permanent disabilities.

## **C. 14 May 2018**

50. The demonstrations of 14 May were scheduled to coincide with the opening of the United States Embassy in Jerusalem and the seventieth anniversary of the Nakba. Under the theme “Return of a million”, between 35,000 and 40,000 people reportedly attended the demonstrations held at the five original sites and at eight additional temporary sites.

51. The day before, the Israel Defense Forces claimed in an English language video that, on 14 May, “the Hamas terrorist organization plans to send armed terrorists among 250,000 violent rioters to swarm and breach Israel’s border with Gaza and enter Israeli communities”. Hamas “plans to carry out a massacre in Israel. The Israel Defense Forces will not let them.”

52. At all sites, large crowds of unarmed demonstrators congregated around the tents and in the open space between Jakkar Street and the separation fence. Many primarily young and middle-aged men slung or threw stones, shouted slogans and burned tyres, which created a wall of smoke. Some demonstrators cut or pulled away the barbed wire coils or approached the separation fence. In one incident in the Bureij site, two demonstrators crossed the separation fence and set fire to an empty berm, and then ran back towards the fence.

53. Throughout the day, Israeli forces responded to the demonstrations with live ammunition and tear gas.

54. On 14 May, Israeli security forces shot and killed seven children: a girl, Wisal Khalil (14), and six boys: Izzedine al-Samak (13); Said al-Kheir (15); Ahmad al-Sha’ar (15); Talal Matar (15); Saadi Abu Salah (16); and Ibrahim al-Zarqa (17).

55. Other casualties included:

(a) At the demonstration sites in Gaza City:

- Yasser Habeeb (24)

Yasser, from Gaza City, was shot in the neck by Israeli forces when he was approximately 100 m from the fence, throwing stones at Israeli soldiers and burning tyres. He died on 25 May.

- Ala'a Khteeb (27)

Ala'a, from Gaza City, was among a group of young men and women who cut through the barbed wire coils and approached the separation fence shouting "God is great". Israeli forces shot Ala'a in the head. He died the same day.

- Husein Abu Aweida (41)

Israeli forces shot Husein, a food seller from Gaza City, in the back as he stood about 200 m from the separation fence. He died of his wounds two weeks later.

- Schoolboy (16)

Israeli forces shot a schoolboy from Shuja'iya, Gaza City in the leg with live ammunition when he was approximately 80 m from the separation fence. He underwent three leg amputations.

- Carpenter (58)

Israeli forces shot a carpenter in the leg as he stood 300 m from the separation fence. His leg was severed.

- Graphic designer (26)

Israeli forces shot a graphic designer from Gaza City in the abdomen when he was approximately 150 m from the separation fence. His injuries are such that he will never be able to father children.

(b) At the demonstration sites in North Gaza:

- Accountancy student (23)

Israeli forces shot the student in the leg as he stood at least 200 m from the separation fence holding a Palestinian flag. His leg had to be amputated.

- Mohammad Najjar (33)

Israeli forces shot Mohammad, a naval police officer, in the chest, killing him, as he sat on a hill with a friend, around 500 m from the separation fence.

- University student (22)

Israeli forces shot the student in the right hip as he stood alone about 100 m from the separation fence, wearing a Palestinian flag around his neck and holding another. His leg had to be amputated just below the hip.

- Mahmoud Jundya (20)

Israeli forces shot Mahmoud, a journalism student from Gaza City, in the leg as he filmed the demonstrations on his mobile phone, 50 m from the separation fence. Israeli forces then killed him with a shot to the back as he lay on the ground.

(c) At the demonstration site in Rafah:

- Ali Khafajah (21)

Israeli forces killed Ali, a university student from Rafah, with a shot to the head as he spoke on the phone about 150 m from the separation fence.

(d) At the demonstration site in Khan Younis:

- Mahmoud Abu Taima (23)

Israeli forces killed Mahmoud, a resident of Khan Younis, with a shot to the head while he was approximately 150 m from the separation fence.

56. The commission interviewed an international journalist covering the demonstrations at the Malaka site, who described the scene that day:

*What was notable was the amount of injured people. And the slow, methodical shooting. Every few minutes... you would hear a shot ring out and you would see someone fall. And then another shot and another person fell. It went on for hours...*

*I saw a man who had been shot in the throat, I didn't see it happen but I saw the immediate aftermath. He was covered in blood. I saw a man who had been shot in the head...*

*There was a constant stream of bloody bodies being carried back towards the ambulances. It was surreal and endless. It became almost normal, it was happening so often. A shot, a person falling, people carrying the body away.*

*The number of wounded was astonishing. I couldn't say how many people I saw who were shot because it was so high. I have covered wars in Syria, Yemen, Libya. I have never seen anything like this. The slow methodical shooting. It was just shocking...*

57. The commission investigated an incident that occurred during the demonstrations in the early afternoon of 14 May that may have amounted to “direct participation in hostilities”. Near Al-Shuhada cemetery (North Gaza), a person in civilian clothes, metres away from a sizeable group of demonstrators and cheered on by them, fired a rifle towards the Israeli side of the separation fence at a distance of between 50 and 70 m from the fence, amid the thick smoke of the burning tyres. It is unclear whether he was part of a group of militants. Israeli forces responded to the attack with tank and gunfire for about 40 minutes, killing 21 people, including eight alleged members of armed groups, a paramedic and two children: Said Mohammad Abu Al-Kheir (15) and Ibrahim Ahmad Ali Al Zarqa (17).

58. In total, Israeli security forces killed 60 demonstrators on 14 May, the highest one-day death toll in Gaza since their military operation there in 2014. The snipers shot at least 1,162 people with live ammunition; some 141 were wounded by bullet fragmentation or shrapnel.

59. Hospitals in Gaza were literally overwhelmed by the sheer number of deaths and injuries. Medical professionals struggled to treat the wounded. According to an international doctor working that day, “one after the other, ambulances began arriving 10 seconds after each other with one to four patients in each. Casualty and triage were completely overwhelmed, at one point there was total chaos... There was one horrific injury after another.”

60. That day one Israeli soldier was lightly wounded, reportedly by a stone.

#### **D. Mid-May – 11 October 2018**

61. The nature of the demonstrations changed after the violent events of 14 May. On most Fridays, attendance across the demonstration sites ranged between 10,000 and 15,000. The use of incendiary kites became more prevalent over the summer months. In August, following clashes between fishermen and the Israeli navy enforcing the blockade, weekly protests began to be held at the Zikim beach site.

#### **E. 12 October 2018**

62. About 15,000 people attended the demonstrations of 12 October, marking the twenty-ninth week of demonstrations, and participated in activities at the tents, flying Palestinian flags. At all sites, a minority of demonstrators burned tyres close to the fence, threw stones, flew incendiary kites and balloons and cut barbed wire coils.

- Ahmad Abu Na'im (17)

63. That afternoon, east of Bureij, a group of demonstrators cut the separation fence with machetes, axes and wire cutters. Approximately 20 demonstrators crossed the fence into

Israeli territory. Israeli forces shot at them with live ammunition. While most retreated to the Gaza side, Ahmad from the Nuseirat refugee camp remained on the Israeli side with at least one other demonstrator. Israeli forces allege that Ahmad approached an Israeli soldier with a knife, and was shot by Israeli forces at point-blank range. Eyewitness accounts are contradictory. According to one, a group of armed Israeli soldiers approached Ahmad, who was on the ground, unarmed; when he reached up to an Israeli soldier's arm, the soldier shot him multiple times in the chest and the female witness in the leg. Another witness alleged that Ahmad was shot while he was running away.

64. Given these different accounts, the commission was unable to make a finding as to whether Ahmed constituted an imminent threat to life or serious injury to Israeli forces when he was shot.

65. Across all sites that day, Israeli forces used live ammunition, rubber-coated bullets and tear gas, killing seven demonstrators. At least 136 others were wounded by live ammunition, and another 50 by bullet fragmentation or shrapnel.

## VI. Protected groups

### A. Children

66. Children enjoy special protection under international law. Israeli security forces killed 35 children during the demonstrations in 2018. They included:

- Ibrahim Abu Shaar (17)

On 30 March, Israeli forces shot Ibrahim, a candy seller from Rafah, in the back of the head as he walked away, approximately 100 m from the separation fence, after he and his companion threw stones at Israeli soldiers. He died almost instantly.

- Mohammad Ayoub (14)

On 20 April, Israeli forces shot Mohammad, from Jabaliya refugee camp, in the head while approximately 200 m from the separation fence. He died the same day.

- Mo'min Hams (16)

On 27 April, Israeli forces shot Mo'min, from Rafah, in the chest. According to one eyewitness, Mo'min was holding a Palestinian flag. According to another, Mo'min was among a group of young men and boys cutting the barbed wire coils inside Gaza. Mo'min died the following day.

- Izzedine Samak (13)

On 14 May, Israeli forces shot Izzedine, from the Bureij refugee camp, in the abdomen after he and two friends slung stones at Israeli soldiers. They shot him as he sat resting with his back to the fence 150 m from the separation fence. He died later that day.

- Wisal Sheikh-Khalil (14)

On 14 May, Israeli forces shot Wisal from the Maghazi refugee camp in the head when she was approximately 100 m from the separation fence, after she had approached it several times to hang a Palestinian flag there. She died instantly.

- Bilal Ashram (17)

On 15 May, Bilal, from the Nuseirat refugee camp, was throwing stones at Israeli soldiers when they shot him twice, in the foot and the chest, as he ran away, approximately 150 m from the separation fence. Bilal was pronounced dead on arrival at hospital.

- Haytham Jamal (14)

On 8 June, Israeli forces killed Haytham, from Rafah, with a single gunshot to the abdomen as he stood in a crowd watching Israeli forces fire tear gas at demonstrators.

- Yasser Abu Naja (11)

On 29 June, Israeli forces killed Yasser from Khan Younis with a shot to the head as he was hiding with two friends behind a bin, approximately 200 m from the separation fence. The children had been chanting national slogans at Israeli forces.

- Othman Hilles (14)

On 13 July, Israeli forces killed Othman, from Shuja'iya, with a shot to the chest as he attempted to climb the separation fence at the Malaka site. Othman had nothing in his hands. He died that day.

- Mo'min Hams (16)

On 27 April, Israeli forces shot Mo'min, from Rafah, in the chest. According to one eyewitness, Mo'min was holding a Palestinian flag. According to another, Mo'min was among a group of young men and boys cutting the barbed wire coils inside Gaza. Mo'min died the following day.

- Muath Sour (15)

On 3 August, Israeli forces shot Muath, from the Nuseirat refugee camp, in the abdomen when he was approximately 160 m from the separation fence. He died the following day.

- Suhaib Abu Kashef (16)

On 3 August, Israeli forces shot Suhaib, from Khan Younis, in the neck. According to one source, he had crossed the barbed wire coils inside Gaza, and thrown stones at Israeli forces. He died on 15 September.

- Bilal Khafaja (16)

On 7 September, Israeli forces shot Bilal, from Rafah, in the chest when he was walking towards the separation fence approximately 300 m away. He died that day.

- Ahmad Abu Tyoor (16)

Ahmad was from Rafah. On 7 September, Israeli forces shot him in the thigh as he performed a traditional Palestinian dance, alone with his hands in the air, around 15 m from the separation fence, severing his femoral artery. He died the following day.

- Mohammad Hoom (14)

On 28 September, Israeli forces shot Mohammad, from the Bureij camp, in his chest as he ran away from the separation fence. The bullet hit his heart; he died the same day.

- Nasser Mosabeh (11)

Nasser was from Khan Younis. On 28 September, Israeli forces shot him in the back of the head as he stood 250 m from the separation fence. He died the same day.

- Fares Sirsawi (13)

Fares was from Gaza City. On 5 October, Israeli forces shot him in the chest when he was approximately 10 m from the separation fence. Fares had been among a group of youths dragging tyres to the fence. He died that day.

- Mohammad Jahjough (16)

On 21 December, Israeli forces shot Mohammad, from Gaza City, in the neck as he stood in a crowd approximately 150 m from the separation fence. He died the same day.

67. The commission found that Israeli security forces used lethal force against children who did not pose an imminent threat of death or serious injury to its soldiers. Four of the children were shot as they walked or ran away from the fence.

68. Several children were recognizable as such when they were shot. The commission finds reasonable grounds to believe that Israeli snipers shot them intentionally, knowing that they were children.

## B. Medical personnel

69. The Occupied Palestinian Territory is one of the most dangerous places in the world to be a health worker. During the demonstrations, Israeli forces killed three clearly marked paramedics:

- Musa Abu Hassainen (35)

On 14 May, Israeli forces killed Musa, who was wearing a high-visibility paramedic vest, with a shot to the chest approximately 300 m from the separation fence. Shortly beforehand, he had been treating wounded demonstrators near the Shuhada cemetery in North Gaza. He died on the way to hospital.

- Razan Najjar (20)

On 1 June, an Israeli sniper bullet hit Razan, of the Palestinian Medical Relief Society and who at the time was wearing a white paramedic vest and standing with other volunteer paramedics approximately 110 m from the separation fence, in the chest at the Khuzaa site, east of Khan Younis. She died in hospital.

- Abed Abdullah Qotati (22)

On 10 August, in Rafah, Israeli forces killed Abed, who was wearing a white paramedic jacket and carrying a red first-aid kit, with a shot to the chest as he was tending to a wounded demonstrator near the separation fence. He died that day.

70. Israeli forces also injured 40 health workers with live ammunition during the demonstrations.

- Volunteer paramedic from Rafah

On 6 April, in Rafah, Israeli forces shot a paramedic in the back of the leg as he put a wounded demonstrator on a stretcher into the back of an ambulance, approximately 300 m from the fence.

- Volunteer paramedic from Rafah (38)

On 13 April, in Rafah, Israeli forces shot a male paramedic and ambulance driver, who was clearly wearing a paramedic uniform, in the back of the leg as he walked alone, carrying an empty stretcher, approximately 200 m from the separation fence.

- Dr. Tarek Loubani (37)

On 14 May, Israeli forces shot Tarek Loubani, a Canadian-Palestinian physician, as he stood with paramedics in hospital uniform. The bullet passed through both of his legs.

- Volunteer paramedic (21)

In August 2018, Israeli forces shot a female volunteer paramedic, who was wearing a paramedic uniform, in the chest with live ammunition as she approached a group of wounded demonstrators.

- Paramedic from Khan Younis

On 19 October, at the Khan Younis site, Israeli forces shot a clearly marked paramedic in the back of the leg as he treated a wounded demonstrator near Jakkar Street. His leg risks amputation.

71. The commission found reasonable grounds to believe that Israeli snipers intentionally shot health workers, despite seeing that they were clearly marked as such.

## C. Journalists

72. Between 30 March and 31 December, Israeli forces killed two journalists and wounded 39 others with live ammunition as they covered the demonstrations.

73. Israeli snipers shot four journalists in the abdomen, just under their vests marked "Press":

- Yasser Murtaja (30)

On 6 April, Yasser, a journalist from Gaza City, was shot in the lower abdomen by Israeli forces at the Khan Younis site while he was filming the demonstrations for a documentary. He was wearing a blue helmet and a dark blue bulletproof vest clearly marked “Press”. He died the following day.

- Ahmed Abu Hussein (24)

On 13 April, Ahmed, a journalist from the Jabaliya refugee camp was shot by an Israeli sniper in the lower abdomen at the north Gaza site while he was taking photographs of the demonstrations, approximately 300 m from the separation fence. He was wearing a blue helmet and a blue vest clearly marked “Press”. He died of his injuries 12 days later.

- Freelance photojournalist (24)

On 30 March, Israeli forces shot a freelance photojournalist, who was wearing a blue vest clearly marked “Press”, from Khan Younis twice, in the lower abdomen and in the back, while he was taking a break with two other photojournalists from international news agencies, standing around 300 m from the separation fence. He survived.

- Journalist (34)

On 14 May, Israeli forces shot a journalist from Khan Younis in the lower abdomen at the Malaka site while he was approximately 150 m from the separation fence. He was wearing a blue helmet and a blue vest clearly marked “Press”. He received intensive medical treatment that saved his life.

74. The commission found reasonable grounds to believe that Israeli snipers shot journalists intentionally, despite seeing that they were clearly marked as such.

## **D. Persons with disabilities**

75. Persons with disabilities are entitled to special protection under international law. The commission investigated several emblematic cases of persons with disabilities who were killed by Israeli forces.

- Fadi Abu Salmi (29, double amputee)

Fadi, from Khan Younis, had had both legs amputated following an Israeli airstrike in 2008. On 14 May, Israeli snipers shot him in the chest at the Abasan Al-Jadida protest site, where he was sitting in his wheelchair with two friends approximately 300 m from the separation fence. He died immediately.

- Ahmad Abu Aqel (24, walked with crutches)

Ahmad, from the Jabaliya refugee camp, walked with crutches, having been injured by Israeli forces during a demonstration in 2017. On 20 April, Israeli forces shot him in the back of the head as he sat on a hill approximately 150 m from the separation fence. He died that day.

- Mohammad Abdalnaby (27, walked with crutches)

Mohammad, from the Jabaliya refugee camp, walked with crutches. On 26 October, Israeli forces killed him with a shot to the head, approximately 200 m from the separation fence.

76. The commission found reasonable grounds to believe that the Israeli snipers shot these demonstrators intentionally, despite seeing that they had visible disabilities.

77. The Israeli forces also unlawfully shot other demonstrators with disabilities.

- Shadi Kashef (23, hearing disability)

Shadi was from Rafah. He was deaf. On 30 March, Israeli snipers shot him in the head. According to a witness, Shadi was standing about 150 m from the separation fence. He died on 5 April.

- Tahrir Wahba (18, hearing disability)

Tahrir was deaf. On 1 April, Israeli forces shot him in the back of the head with a single bullet at the Khuzaa demonstration site. He was at least 150 m from the separation fence. He died on 23 April.

## **E. Amputations and other life-changing injuries**

78. The use of live ammunition by Israeli forces inflicted life-changing injuries on demonstrators. Some 21 people became paralysed by injuries to the spinal cord and nine people suffered permanent loss of vision.

79. More people lost limbs during the demonstrations than during the entire Israel-Gaza conflict of 2014. As at 31 December 2018, 122 demonstrators had undergone amputations, including 20 children and a woman; of these, 98 were lower-limb amputations.

80. The commission investigated several cases of demonstrators whose limbs had to be amputated after they were shot by Israeli security forces, including the following:

- Abed Nofal (11)

On 17 April, Abed, a schoolboy from the Bureij refugee camp, was shot by Israeli forces while he was playing football near the separation fence. His leg had to be amputated.

- Bricklayer (26)

On 6 April, Israeli forces shot a bricklayer from Rafah when he was 300 m from the separation fence. His leg had to be amputated. Once the family breadwinner, he is now unable to work.

- Retired teacher (63)

On 13 April, Israeli forces shot a retired teacher in the leg in El Bureij. He was approximately 400 m from the separation fence. His leg was amputated the same day.

- Farmer (38) and construction worker (31)

Israeli forces shot two siblings, one a construction worker, the other a farmer, in the legs on two different days at the same demonstration site. Both had to have their legs amputated, with devastating consequences for their families' livelihood.

81. Israeli forces caused permanent disabilities to many of the 940 children shot during the demonstrations. The commission investigated the following cases:

- Ahmad Ghanem (15)

On 1 June, Ahmad, a schoolboy from the Bureij refugee camp, was shot in the torso by Israeli snipers while he was socializing with other demonstrators approximately 280 m from the separation fence. He subsequently had to have half of a lung and half of his liver removed. He has a 30 per cent chance of recovering the use of his right hand.

- Schoolboy (15)

On 26 October, at the maritime demonstration site in North Gaza, Israeli forces shot a schoolboy, standing some 120 m from the separation fence, with a single bullet to the testicles. He is now unable to walk more than 30 m and has been forced to drop out of school.

82. The commission found that Israeli security forces shot a number of male demonstrators in the lower abdomen and groin. It also received reports of women being shot in the groin. These victims have told the commission that they were now unlikely to be able to have children.

## **VII. Impact on the health sector in Gaza**

83. The scale and complexity of injuries – often requiring specialized, long-term medical care or orthopaedic, vascular or plastic surgery – inflicted by the Israeli security forces on Palestinian demonstrators would be a challenge to any country's health-care system. With



over 6,000 people suffering gunshot wounds from live ammunition, mostly to lower limbs, Gaza faced what Médecins Sans Frontières termed a “slow-motion health-care emergency”.<sup>9</sup>

84. According to an international doctor working at a Gaza hospital, interviewed by the commission, “It was striking the number of extremely similar injuries; massive open wounds in the legs, with skin and muscles ‘blown out’, bones smashed to pieces, and damage to blood vessels leading to vascular injury, putting the entire limb at risk.”

85. Amputations and disabilities have placed a huge burden of care on individuals, families and communities, and disproportionately affected women, mothers, daughters and sisters. Given the unprecedented degree of poverty and food insecurity in Gaza, the loss of a wage-earning family member can lead to severe financial constraints and deep psychological impact.

86. The enormous burden of injuries from the protests has affected health care for all Gazans. After the demonstrations, hospitals were forced to divert resources away from ordinary medical needs, such as cancer treatment, obstetrics and routine operations, with far-reaching effects. Approximately 8,000 elective surgeries were cancelled or postponed, resulting in a backlog that will take years to address.

87. As the health system in Gaza deteriorated owing to the blockade, doctors began to refer cases requiring equipment and expertise that were unavailable to hospitals in East Jerusalem, the West Bank and abroad. Israeli and Egyptian authorities denied, delayed or did not respond to several requests of persons to exit Gaza for medical treatment, with fatal consequences.

88. In early April, the Coordinator of Government Activities in the Territories denied exit permits for wounded demonstrators, primarily on the basis of the policy of the Minister of Defense to deny passage to any person injured during the demonstrations.

89. Although the Supreme Court of Israel subsequently rejected the above-mentioned blanket policy, those injured in the demonstrations continued to face significant challenges in obtaining medical treatment outside Gaza, as illustrated by the case below:

- Zakaria Bishbish (14)

On 30 May, Israeli security forces shot Zakaria, from the Maghazi refugee camp, in the back at the demonstration site in El Bureij, while he was at least 100 m from the separation fence. The gunshot perforated Zakaria’s stomach and colon, splintered his vertebrae and damaged his kidney. His family sought a two-week exit permit to seek life-saving treatment at Saint Joseph Hospital in East Jerusalem, which had arranged a medical appointment for 4 June. The Coordinator of Government Activities in the Territories, however, denied the request, giving no reasons. His family then attempted to secure appointments for him in Egypt and the West Bank; the Coordinator did not respond to their requests. On 18 June, Zakaria died of sepsis.

## VIII. Impact on Israel

90. No Israeli civilian deaths or injuries were reported during or resulting from the demonstrations. According to Israeli sources, four Israeli soldiers were injured during the demonstrations.

91. On 20 July, a Palestinian sniper shot Staff Sergeant Aviv Levi of the Givati Brigade while he was near the separation fence opposite Kibbutz Kissufim. According to Israeli sources, he was shot from the first line of houses in Gaza.

92. Extensive damage to Israeli civilian property was caused by hundreds of incendiary kites and balloons launched from the Gaza Strip during the demonstrations. Some landed in empty educational institutions and private houses; others burned agricultural land and crops, causing significant property damage. Civilians in southern Israel reported experiencing

<sup>9</sup> [www.msf.org/gazans-injuries-risk-permanently-shattering-lives-palestine](http://www.msf.org/gazans-injuries-risk-permanently-shattering-lives-palestine).

psychological distress related to the fires and their fear of demonstrators crossing into Israeli territory and reaching their communities.

## **IX. Findings**

93. The commission investigated all 189 fatalities and tracked more than 300 injuries caused by the Israeli security forces at the demonstration sites and during the demonstrations.

94. With the exception of one incident in North Gaza on 14 May that may have amounted to “direct participation in hostilities” and 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, the commission found reasonable grounds to believe that, in all other cases, the use of live ammunition by Israeli security forces against demonstrators was unlawful.

95. Victims who were hundreds of metres away from the Israeli forces and visibly engaged in civilian activities were shot, as shown by eyewitness accounts, video footage and medical records. Journalists and medical personnel who were clearly marked as such were shot, as were children, women and persons with disabilities.

96. The Israeli security forces killed and maimed Palestinian demonstrators who did not pose an imminent threat of death or serious injury to others when they were shot, nor were they directly participating in hostilities. Less lethal alternatives remained available and substantial defences were in place, rendering the use of lethal force neither necessary nor proportionate, and therefore impermissible.

97. The commission therefore found reasonable grounds to believe that demonstrators were shot in violation of their right to life<sup>10</sup> or of the principle of distinction under international humanitarian law.

98. The commission found that at least 29 of those killed at the demonstration sites were members of Palestinian organized armed groups. It is aware that the international legal community holds divergent views on whether organized armed group members may be targeted at any time, or only when directly participating in hostilities. In accordance with the law enforcement paradigm as informed by international human rights law and in the absence of arms and active hostilities, the commission concluded that, in this specific context, targeting individuals purely on the basis of their membership of an armed group and not on their conduct at the time was impermissible. The applicable tests remain whether an individual, at the time targeted, was directly participating in hostilities or posed an imminent threat to life. If not, targeting of such persons with lethal force was unlawful.

99. The shooting by Israeli security forces of Palestinian demonstrators with high-velocity weaponry at close range resulted in killings and long-term, life-changing injuries, including paralysis and amputations. Although this was well known as early as April 2018, Israeli forces continued this practice throughout the period under review. Using such weaponry at short range, and justifying it by the need for accuracy at long range, indicates a disproportionate use of force.

100. The right to life includes the right to a life with dignity. As the occupying Power, Israel has obligations under international law to ensure the health and welfare of the Palestinian population. The commission found that the ongoing blockade of Gaza and its impact on the health-care system in Gaza, and the ensuing deprivation of essential goods and services necessary for a dignified life, including basic medical supplies, safe drinking water, electricity and sanitation, constitute violations of the fundamental rights to life and health, in particular of wounded demonstrators.

101. International human rights law protects demonstrations under the freedoms of expression, of peaceful assembly and of association. While not all demonstrators were peaceful, the commission found reasonable grounds to believe that the excessive use of force by Israeli security forces violated the rights of the thousands who were.

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<sup>10</sup> International Covenant on Civil and Political Rights, art. 6.

102. The Convention on the Rights of the Child protects children's rights to life, peaceful assembly, expression and the highest attainable standard of health, among other rights. The commission found reasonable grounds to believe that Israel violated those rights when its forces used lethal force against children who did not pose an imminent threat of death or serious injury to others at the time they were shot.

103. Customary and conventional international humanitarian law requires that medical personnel be respected and protected. Similar protection is afforded to journalists and children who do not take part in hostilities. The commission found that the Israeli security forces shot paramedics, journalists and children who had not lost their protected status; Israel is thus in violation of international humanitarian law.

104. Some members of the higher national committee, including Hamas, encouraged or defended demonstrators' use of incendiary kites and balloons, causing fear and significant damage in southern Israel. The de facto authorities in Gaza failed in their due diligence obligations to prevent and stop the use of these indiscriminate devices.

105. The commission found that, on 14 May, at least one gunman fired a weapon at the Israeli forces from within or near the demonstrations at a temporary demonstration site in North Gaza. Firing from the vicinity of a crowd of unarmed demonstrators endangers civilian lives and risks violating the principle of distinction under international humanitarian law.

## **X. Accountability**

106. Violations of international law, such as those committed by the Israeli security forces and set out in the present report, give rise to State responsibility on the part of the State of Israel. Israel has an obligation to investigate alleged violations of international human rights law and international humanitarian law by its security forces and, where appropriate, to prosecute those deemed responsible. Victims of human rights violations are entitled to remedies, including equal and effective access to justice and adequate, effective and prompt reparation, including compensation, and guarantees of non-repetition.

107. The commission found that responsibility for unlawful deaths and injuries lay primarily on two fronts. First, those who employed lethal force, assisted with or authorized it to be deployed in specific instances, in the absence of an imminent threat to life or where the victim was not directly participating in hostilities; this includes snipers, spotters and/or commanders on site. Second, those who drafted and approved the rules of engagement. While the Supreme Court of Israel approved the rules, the commission has significant concerns about the status of "main inciters", which does not exist in international law; indeed, its use undermined the threshold of "imminent threat to life" for the use of potentially lethal force. Significantly, the Or Commission of Inquiry established by Israel in 2003 determined that "it should be made unequivocally clear that firing live ammunition, including sniper fire, is not a means to disperse crowds... This is a means to be used only in special circumstances, such as when there is a real and immediate threat to life...".

108. While some deaths may have been examined by the Israel Defense Forces' internal "fact-finding assessment", criminal investigations were opened in only five cases, including the deaths of four children. The commission's findings suggest strongly that other killings and gunshot injuries appeared factually similar and therefore also warrant criminal investigation.

109. The police force of the de facto authorities in Gaza bears responsibility for failing to take adequate measures to prevent incendiary kites and balloons from reaching Israel, spreading fear among civilians in Israel and inflicting damage on parks, fields and property. Similarly, the police force failed to prevent or take action against those demonstrators who injured Israeli soldiers.

110. The commission was given a mandate to identify those it deemed responsible for the violations it refers to in the present report. It will place the relevant information in a confidential file to be handed over to the United Nations High Commissioner for Human Rights. The commission will authorize the High Commissioner to provide access to that information to the International Criminal Court and national authorities conducting credible

investigations for the purposes of ensuring accountability for crimes and other serious violations committed, establishing the truth about violations or implementing United Nations-mandated targeted sanctions against particular individuals or institutions. The commission will request the High Commissioner to grant access only to the extent that witnesses or other sources of information concerned have given their informed consent and that any protection concerns are duly addressed.

111. To date, the Government of Israel has consistently failed to meaningfully investigate and prosecute commanders and soldiers for crimes and violations committed against Palestinians or to provide reparation to victims in accordance with international norms. Scarce accountability measures arising out of Operations Cast Lead and Protective Edge and public comments by high-ranking public officials cast doubt over the State's willingness to scrutinize the actions of military and civilian leadership who drafted, approved and supervised the implementation of the rules of engagement governing the actions of Israeli forces at the demonstrations.

112. Strikingly, the right of Gazan victims to equal access to reparation is currently being hampered. Israeli law and recent jurisprudence bar them from access to remedies in Israeli courts, irrespective of the merits of their claims for damages, on the grounds that Gazans are from "hostile" territory. The commission is not aware of any alternative mechanism employed by Israel to compensate Palestinian victims for damage caused unlawfully by the security forces. It notes with concern that the Government of Israel recently announced new measures withholding Palestinian clearance tax revenue to an amount equal to that of payments made by the Palestinian Authority to those injured or to the families of those killed. The Government also expressed its intention to increase the sum of withheld funds in the light of the damage caused by incendiary kites and balloons to the crops of Israeli farmers.

## **XI. Individual criminal responsibility**

113. Certain violations of international law attract individual criminal responsibility and are prosecutable in both domestic and international courts.

114. During armed conflict or occupation, international humanitarian law prohibits, *inter alia*, wilful killing and wilfully causing great suffering. Unless undertaken lawfully in self-defence, intentionally killing a civilian not directly participating in hostilities is a war crime. The commission found reasonable grounds to believe that individual members of the Israeli security forces, in the course of their response to the demonstrations, killed and gravely injured civilians who were neither directly participating in hostilities nor posing an imminent threat.

115. If committed in the context of a widespread or systematic attack directed against a civilian population pursuant to or in furtherance of a State or organizational policy, serious human rights violations may also constitute crimes against humanity. Murder and "other inhumane acts" that cause great suffering or serious injury qualify as such violations. In the course of the investigation, the commission found serious human rights violations that may constitute crimes against humanity.

116. Civilian and military leaders bear responsibility for international crimes they commit directly, but also as commanders where they exert effective control over subordinates, knew or should have known about subordinates' crimes, and failed to prevent or repress their commission or to submit them for investigation and prosecution.

117. The commission is aware of an ongoing preliminary examination by the International Criminal Court of alleged crimes committed in the Occupied Palestinian Territory, including East Jerusalem, since 13 June 2014, and requests the High Commissioner to refer the present report and relevant information upon which it is based to the Office of the Prosecutor.

## **XII. Recommendations**

### **A. Realization of the human rights of civilians on both sides**

118. The commission calls upon all duty bearers to implement fully previous recommendations made by United Nations human rights and fact-finding bodies. It also calls upon States Members of the United Nations to promote compliance with human rights obligations and to ensure respect for international humanitarian law in the Occupied Palestinian Territory and Israel, in accordance with article 1 common to the Geneva Conventions.

### **B. Prevention of future violations during demonstrations and protection of civilians on both sides**

119. The commission recommends that the Government of Israel:

- (a) Refrain from using lethal force against civilians, including children, journalists, health workers and persons with disabilities, who pose no imminent threat to life;
- (b) Ensure that the rules of engagement:
  - (i) Do not authorize lethal force against “main inciters” as a status; and ensure that the rules permit such force only as a last resort, where the person targeted poses an imminent threat to life or directly participates in hostilities;
  - (ii) Prohibit targeting persons based solely on their actual or alleged affiliation to any group, rather than their conduct.

120. The commission recommends that the de facto authorities in Gaza stop the use of incendiary kites and balloons.

121. The commission recommends that States Members of the United Nations employ every means to prevent further use of lethal force against civilians at demonstrations, including by demarches and by ensuring protective monitoring of the demonstrations by independent entities (United Nations entities or non-United Nations).

### **C. Ensuring access to medical services and the fulfilment of the right to health of injured persons**

122. The commission recommends that the Government of Israel:

- (a) Lift the blockade on Gaza with immediate effect;
- (b) Ensure that all those injured at demonstrations are permitted prompt access to hospitals elsewhere in the Occupied Palestinian Territory, in Israel or abroad;
- (c) Ensure timely access of medical and all other humanitarian workers to Gaza, including to provide treatment to those injured in the context of demonstrations;
- (d) Ensure efficient coordination for entry of medical items and equipment into Gaza, and remove the prohibition of entry applied to items with legitimate protective and medical uses, including carbon fibre components for the treatment of limb injuries.

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

124. The commission recommends that States Members of the United Nations and civil society support the health-care system in Gaza, particularly with the resources necessary to treat injuries incurred at the protests.

**D. Ensuring accountability and reparations for violations committed**

125. The commission recommends that the Government of Israel:

- (a) Investigate promptly, impartially and independently every protest-related killing and injury in accordance with international standards, to determine whether war crimes or crimes against humanity have been committed with a view to holding those found to be responsible accountable;
- (b) In accordance with General Assembly resolution 60/147, ensure prompt, adequate and effective remedies for those killed or injured unlawfully, including timely rehabilitation, compensation, satisfaction and guarantees of non-repetition;
- (c) Amend the law on civil liability to provide a remedy to Gazans through Israeli courts for breaches of international human rights law or international humanitarian law by the Israeli security forces.

126. The commission recommends that the United Nations High Commissioner for Human Rights manage the dossiers on alleged perpetrators, to be provided to national and international justice mechanisms, including the International Criminal Court, undertaking credible and independent investigations into alleged international crimes and violations.

127. The commission recommends that States Members of the United Nations consider imposing individual sanctions, such as a travel ban or an assets freeze, on those identified as responsible by the commission.

128. The commission recommends that States parties to the Geneva Conventions and/or to the Rome Statute carry out their duty to exercise criminal jurisdiction and arrest persons alleged to have committed, or who ordered to have committed, the international crimes described in the present report, and either to try or to extradite them.

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