

**Flygtningenævnets baggrundsmateriale**

|                                 |                                                                                                                                            |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Bilagsnr.:</b>               | <b>685</b>                                                                                                                                 |
| Land:                           | Gaza-Vestbredden                                                                                                                           |
| Kilde:                          | UN General Assembly                                                                                                                        |
| Titel:                          | Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel. |
| Udgivet:                        | 5. september 2023                                                                                                                          |
| Optaget på baggrundsmaterialet: | 28. februar 2024                                                                                                                           |
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# General Assembly

Distr.: General  
5 September 2023

Original: English

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## Seventy-eighth session

Item 73 of the provisional agenda\*

### Promotion and protection of human rights

## Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel

### Note by the Secretary-General\*\*

The Secretary General has the honour to transmit to the General Assembly the report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, submitted in accordance with Human Rights Council resolution [S-30/1](#).

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\* [A/78/150](#).

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



## **Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel**

### *Summary*

The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel hereby submits its second report to the General Assembly. The report examines the use of force by Israel and the de facto authorities in Gaza.

## I. Introduction and methodology

1. In its previous report to the General Assembly (A/77/328), the Commission found reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful under international law, owing to its permanence and to actions undertaken by Israel to annex parts of the land de facto and de jure. The Commission focused the present report on the use of force in the Occupied Palestinian Territory and in Israel, examining practices and policies, analysing the human rights and legal consequences of force used and identifying root causes of recurring violence and protracted conflict.

2. The report is based on interviews conducted with primary and secondary sources up to 31 July 2023, open-source research, meetings with stakeholders, public hearings and submissions received following a call issued on 2 November 2022.

3. In selecting cases for in-depth analysis in the present report, the Commission identified emblematic cases that took place on or after May 2021 that are representative of a wider trend. Information that met the criteria of reliability and authenticity was included and analysed under the standard of proof of “reasonable grounds to conclude”.

4. The Commission sent requests for information to Israel, the State of Palestine and the United States of America. The State of Palestine provided the Commission with information. No response was received from Israel or the United States. In articulating the Israeli position on actions reviewed in the present report, the Commission relied only on available official documents and open sources. Israel continues to fail to respond to the Commission’s request to grant access to its territory and to the Occupied Palestinian Territory.

## II. Applicable legal framework

5. In its terms of reference<sup>1</sup> and in its previous reports to the General Assembly and Human Rights Council,<sup>2</sup> the Commission laid out the applicable international legal framework in the Occupied Palestinian Territory and in Israel. The Commission reiterates that the Occupied Palestinian Territory, including East Jerusalem and Gaza, and the occupied Syrian Golan are currently under belligerent occupation by Israel, to which international humanitarian law applies concurrently with international human rights law.<sup>3</sup> The Commission emphasizes that those two legal frameworks apply, notwithstanding the Israeli Government’s justification of its conduct as defence against “terrorism”.<sup>4</sup> The Commission considers that Israeli security forces operations in the West Bank, including East Jerusalem, analysed in the present report fall under the law enforcement paradigm, governed by international human rights law, and operations in Gaza fall under the conduct of hostilities paradigm, regulated by international humanitarian law and international human rights law.

<sup>1</sup> Available at [http://www.ohchr.org/sites/default/files/2022-01/TORs-UN-Independent\\_ICI\\_Occupied\\_Palestinian\\_Territories.pdf](http://www.ohchr.org/sites/default/files/2022-01/TORs-UN-Independent_ICI_Occupied_Palestinian_Territories.pdf).

<sup>2</sup> See A/77/328, para. 7, and A/HRC/50/21, paras. 14–25.

<sup>3</sup> See A/77/328, para. 7; A/HRC/50/21, paras. 16 and 20; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at p. 178, para. 106.

<sup>4</sup> The Commission notes that the term “terrorism” is not clearly defined under international law.

### **The use of force in law enforcement under international human rights law**

6. Israel, as the occupying Power, is obligated to restore and ensure, as far as possible, public order and safety in the occupied area and, accordingly, is authorized to conduct law-enforcement operations, including policing activities.<sup>5</sup> The use of excessive or disproportionate force is prohibited, deriving from, inter alia, the right to life, the right to physical and mental integrity and the prohibition of torture and cruel, inhuman or degrading treatment or punishment, as provided in the International Covenant on Civil and Political Rights, to which both Israel and the State of Palestine are parties.<sup>6</sup> In the absence of active hostilities in the cases examined, the Commission applies international human rights law governing the law enforcement paradigm.<sup>7</sup> Law enforcement officials may use force only when it serves a legitimate law enforcement purpose, when it is strictly necessary and when it is proportionate.<sup>8</sup> Reasonable precautions should be taken to prevent loss of life and injury.

7. The use of lethal force by law enforcement officials, that is, the use of a firearm, is permissible only in self-defence or to protect life.<sup>9</sup> When using firearms in circumstances permitted under international law, law enforcement officials must exercise restraint in order to minimize damage and injury and to preserve human life.<sup>10</sup> The use of deadly force in law enforcement should be exceptional and is permissible only under the narrowest prescribed circumstances.

### **The use of force in conduct of hostilities under international humanitarian law**

8. The Commission applies international humanitarian law to incidents related to the conduct of hostilities. The three fundamental principles are distinction, precaution and proportionality.<sup>11</sup>

9. The principle of distinction requires parties to an armed conflict to distinguish between civilians and civilian objects on the one hand and combatants and military objectives on the other.<sup>12</sup> It prohibits direct attacks against civilians and the means and methods of warfare that may lead to indiscriminate attacks.<sup>13</sup> The principle of precaution requires that the parties take all feasible measures to minimize the loss of civilian life and damage to civilian objects, including providing effective advance warnings to the civilian population prior to an attack.<sup>14</sup> The principle of proportionality requires that the parties ensure that the expected incidental loss of

<sup>5</sup> See Regulations respecting the Laws and Customs of War on Land of 1907, art. 43 and Fourth Geneva Convention, art. 64. See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, at p. 231, para. 178.

<sup>6</sup> International Covenant on Civil and Political Rights, arts. 6 (1) and 7.

<sup>7</sup> Nils Melzer, *Interpretative guidance on the notion of direct participation in hostilities under international humanitarian law* (Geneva, International Committee of the Red Cross (ICRC), 2009), pp. 59 and 71.

<sup>8</sup> See United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (1990), principles 4 and 5; General Assembly resolution 34/169, annex, art. 3; and CCPR/C/GC/36.

<sup>9</sup> See United Nations, Basic Principles on the Use of Force and Firearms, principle 9.

<sup>10</sup> See *ibid.*, principles 5 (a) and (b).

<sup>11</sup> These principles apply to international and non-international armed conflicts. See ICRC, Customary International Humanitarian Law database, rules 1, 7, 14 and 15.

<sup>12</sup> See *ibid.*, rules 1, 7 and 71; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 48; and *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, at p. 257, para. 78.

<sup>13</sup> ICRC, Customary International Humanitarian Law database, rules 11 and 12.

<sup>14</sup> Protocol I Additional to the Geneva Conventions of 1949, art. 57 (2) (a) (ii); ICRC, Customary International Humanitarian Law database, rule 20.

civilian life and damage to civilian objects are not excessive when compared with the military advantage of an attack.<sup>15</sup>

10. Should an incident initially governed under the law enforcement paradigm rise to the level of conduct of hostilities, the legal framework governing the law enforcement paradigm for use of force continues to apply to civilians who do not directly participate in the hostilities. However, combatants and civilians directly participating in hostilities may be targeted, taking into account the core principles of international humanitarian law and only for the duration of their participation in hostilities.

11. The Commission notes that Israel has invoked Article 51 of the Charter of the United Nations, citing self-defence against an armed attack, to justify its military operations. In 2004, the International Court of Justice held that Israel is unable to rely on Article 51 in relation to an attack emanating from the Occupied Palestinian Territory, given that the whole of the Territory is under its effective control.<sup>16</sup> The Commission reiterates the important distinction between *jus ad bellum* and *jus in bello*, and notes that Israel is obliged to follow international humanitarian law in all its military operations.

### III. Demonstrations

#### A. Occupied Palestinian Territory, including East Jerusalem<sup>17</sup>

12. Palestinians living in occupied territory since 1967 have legitimately asserted their right to self-determination in various ways, including through demonstrations. The Commission reviewed Israeli security forces responses to such demonstrations and analysed cases from 2021 to 2023.

13. During the military Operation Guardian of the Walls, conducted over 11 days in May 2021, Israeli security forces used live ammunition to suppress demonstrations held across the West Bank, including East Jerusalem, killing 15 Palestinians, including 3 children, and injuring 774, including 64 children.<sup>18</sup> Israeli security forces reportedly used lethal force, including live ammunition, to suppress protests when there was no danger posed to the lives of members of Israeli security forces or civilians present at the scene.<sup>19</sup> The Commission observes that the routine use of excessive force by ISF in these demonstrations in the West Bank, including East Jerusalem, has been documented in United Nations reports for decades.

14. In April 2022 and April 2023, Israeli security forces used excessive force to disperse Palestinians gathering to protest at the Aqsa Mosque. On 22 April 2022, violent demonstrations erupted in the early morning hours at the Aqsa Mosque compound. According to information verified by the Commission, Israeli security forces, including the Police Counter-Terrorism Unit (Yamam) and Israeli Security Agency (Shabak), entered Al-Aqsa Mosque, sparking protests, with calls by protesters for the preservation of the Mosque's sanctity. Palestinian protesters gathered in front of the Mughrabi gate at the entrance of Aqsa Mosque compound and threw stones at Israeli security forces personnel entering through the gate to confront the protesters. Israeli security forces used large amounts of 40 mm black-tipped

<sup>15</sup> Ibid., rule 14.

<sup>16</sup> See *Legal Consequences of the Construction of a Wall*, at p. 194, paras. 138–139.

<sup>17</sup> The use of force by Palestinian duty bearers in the context of demonstrations held in June 2021 following the killing of Nizar Banat was examined by the Commission in [A/HRC/53/22](#).

<sup>18</sup> [A/76/333](#), para. 13. The Commission has included disaggregated data in the present report when available.

<sup>19</sup> Ibid.

sponge bullets, stun grenades and tear gas.<sup>20</sup> Black-tipped sponge bullets have high kinetic energy and are capable of causing serious injury. This resulted in serious injuries to civilians, including journalists, who were clearly identifiable as such. At least two journalists were injured. Some protesters were hit by projectiles above the knee or waist. Reportedly, 57 persons were injured that day.<sup>21</sup>

15. In one specific incident, a Palestinian protester from East Jerusalem was injured during the protests and, weeks later, died in hospital. A video from the incident showed him running away from Israeli security forces in the Aqsa Mosque compound and collapsing mid-run.<sup>22</sup> Israeli authorities initially stated that the victim had fallen as he was running, hitting his head on the ground.<sup>23</sup> However, one Israeli official later admitted in a media interview that the victim had been shot.<sup>24</sup> The Commission verified and analysed video footage and has reasonable grounds to conclude that the victim was hit by a projectile, likely a black-tipped sponge bullet, which led to his collapse on the ground. The victim was admitted to Hadassah Hospital at Mount Scopus and later transferred to Hadassah Hospital at Ein Karem where, after 21 days in a coma, he was declared dead on 14 May. The Commission's investigation into this incident is continuing. A medic was also shot in the head with a sponge bullet and injured while trying to provide assistance.<sup>25</sup>

16. The Israeli police's demonstration dispersal procedure, published in June 2021,<sup>26</sup> lists 24 permitted "less-lethal" demonstration dispersal means.<sup>27</sup> The procedure lists sponge bullets as an acceptable means for demonstration dispersal, but the rules of engagement for their use are redacted in the version accessed by the Commission.<sup>28</sup> The Commission has documented information that, in 2014, Israeli police started using reinforced sponge bullets, known as "black bullets", which has resulted since in greater harm to victims.<sup>29</sup> The Association for Civil Rights in Israel, an Israeli non-governmental organization, documented 30 cases of injuries as a result of the use of sponge bullets between July 2014 and August 2016, 17 of which involved loss or damage to eyesight.<sup>30</sup> The Commission notes that lawful use of force and firearms must minimize damage and injury and respect and preserve human life.<sup>31</sup>

<sup>20</sup> Interviews on file. See also para. 16 of the present report and Vice News, "Death of a protestor", 17 March 2023, available at [https://www.vicetv.com/en\\_us/video/death-of-a-protestor/63bc8f4f998d95260906c987](https://www.vicetv.com/en_us/video/death-of-a-protestor/63bc8f4f998d95260906c987).

<sup>21</sup> See <https://www.facebook.com/watch/?v=1856579334549459>.

<sup>22</sup> See Vice News, "Death of a protestor", available at [https://www.vicetv.com/en\\_us/video/death-of-a-protestor/63bc8f4f998d95260906c987](https://www.vicetv.com/en_us/video/death-of-a-protestor/63bc8f4f998d95260906c987).

<sup>23</sup> Document and interviews on file.

<sup>24</sup> The official later reportedly retracted the comment. See Hind Hassan, "Death of a Palestinian protestor: how did Walid al-Sharif die?", Vice News, 18 March 2023. See also Vice News, "Death of a protestor", available at [https://www.vicetv.com/en\\_us/video/death-of-a-protestor/63bc8f4f998d95260906c987](https://www.vicetv.com/en_us/video/death-of-a-protestor/63bc8f4f998d95260906c987).

<sup>25</sup> Interviews and document on file. See also Vice News, "Death of a protestor", available at [https://www.vicetv.com/en\\_us/video/death-of-a-protestor/63bc8f4f998d95260906c987](https://www.vicetv.com/en_us/video/death-of-a-protestor/63bc8f4f998d95260906c987).

<sup>26</sup> See [https://www.police.gov.il/menifa/90.220.010.11\\_3.pdf](https://www.police.gov.il/menifa/90.220.010.11_3.pdf) (in Hebrew). The procedure is applicable to occupied East Jerusalem but not to the occupied West Bank, where military law applies.

<sup>27</sup> See also A/HRC/40/CRP.2, paras. 278–293. See also para. 15 of the present report.

<sup>28</sup> See [https://www.police.gov.il/menifa/90.220.010.14\\_2\\_P.pdf](https://www.police.gov.il/menifa/90.220.010.14_2_P.pdf) (in Hebrew).

<sup>29</sup> See [https://www.police.gov.il/menifa/90.220.010.11\\_3.pdf](https://www.police.gov.il/menifa/90.220.010.11_3.pdf) (in Hebrew); B'Tselem, "Palestinian 10-year-old loses eye after Border Police unlawfully fire sponge round at him, East Jerusalem", 15 July 2015; and Association for Civil Rights in Israel, "Injuries caused by sponge bullets in East Jerusalem", 16 March 2016.

<sup>30</sup> Association for Civil Rights in Israel, "Accounts of injuries from sponge-tipped bullets in East Jerusalem, July 2014–February 2016". Available at <https://law.acri.org.il/en/wp-content/uploads/2016/03/List-of-people-wounded-by-sponge-bullets-July-2014-to-February-2016.pdf>.

<sup>31</sup> United Nations, Basic Principles on the Use of Force and Firearms, principle 5 (b).

“Less-lethal” methods, if used in a manner that causes serious injury or death, may amount to serious human rights violations.<sup>32</sup>

17. In the West Bank, all demonstrations by Palestinians involving more than 10 persons require the permission of the Military Commander, which is rarely granted. Such demonstrations are therefore seen as unlawful under Israeli military law.<sup>33</sup> On that basis, at the discretion of the Military Commander, Israeli security forces have consistently employed lethal force to disperse Palestinian demonstrations whether they involved violence or not.<sup>34</sup> The Commission has no access to the classified Israeli security forces procedures on demonstration dispersal applicable to the West Bank. However, the Commission notes significant evidence that Israeli security forces use lethal force, including small-calibre rifles, to suppress demonstrations in situations where there is no reasonable threat to life.

18. Israeli security forces routinely use live ammunition to disperse Palestinian demonstrations in the West Bank, including “Ruger”<sup>35</sup> rifles loaded with small arms .22 LR rimfire ammunition.<sup>36</sup> In November 2021, the Israeli Ministry of Defence released data indicating that 12 Palestinians had been killed by Rugers between 2016 and 2021, 8 in 2021 alone.<sup>37</sup> Rugers have been used routinely against Palestinian demonstrators in the West Bank<sup>38</sup> despite admissions by Israeli security forces that the rules for using the Ruger are comparable to the rules for opening fire with live ammunition<sup>39</sup> and despite repeated incidents of killing of protesters and shooting of soldiers through “friendly fire”.<sup>40</sup> The Commission notes that live ammunition should only be used in situations where there is a serious threat to life.

19. Some Palestinian protesters in the West Bank, including East Jerusalem, have thrown stones at armed Israeli security forces during demonstrations. The Commission understands most cases of stone-throwing in these contexts to be aimed at expressing protest, including as a result of Israeli security forces soldiers entering places of worship, villages and towns during funerals of persons killed by Israeli security forces, or as a general form of protest against the occupation. A January 2023

<sup>32</sup> *Guidance on Less-Lethal Weapons in Law Enforcement* (United Nations publication, 2020), section 7.5.

<sup>33</sup> Military Order No. 101 (1967), arts. 1 and 3 (a). The Order applies to Palestinians only and not to settlers.

<sup>34</sup> See <https://law.acri.org.il/he/wp-content/uploads/2014/10/right-to-demonstrate-OPT2014.pdf> (in Hebrew), p. 26.

<sup>35</sup> “Ruger” is a colloquial term used by Israeli security forces referring to small-calibre rifles that use small-arms .22 LR ammunition.

<sup>36</sup> See <https://twitter.com/idfonline/status/1660875308818472961> (in Hebrew); see also <https://www.kan.org.il/content/kan/kan-11/p-12043/%D7%A2%D7%95%D7%A0%D7%94-5/132715> (accessible with a virtual private network (VPN), with Israel as the location).

<sup>37</sup> See (in Hebrew) [https://twitter.com/gaby\\_lasky/status/1457313073337864193?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1457313073337864193%7Ctwgr%5E0b3c045f2733c3af99fce20e7a5b489e533e848a%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fwww.i24news.tv%2Fen%2Fnews%2Fmiddle-east%2Fpalestinian-territories%2F1636299412-deaths-caused-by-low-caliber-rounds-in-west-bank-rose-in-2021](https://twitter.com/gaby_lasky/status/1457313073337864193?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1457313073337864193%7Ctwgr%5E0b3c045f2733c3af99fce20e7a5b489e533e848a%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.i24news.tv%2Fen%2Fnews%2Fmiddle-east%2Fpalestinian-territories%2F1636299412-deaths-caused-by-low-caliber-rounds-in-west-bank-rose-in-2021). See also <https://www.kan.org.il/content/kan/kan-11/p-12043/%D7%A2%D7%95%D7%A0%D7%94-5/132715> (accessible with a VPN, with Israel as the location).

<sup>38</sup> Including in situations categorized by Israeli security forces as disturbances of the peace. See, for example, <https://twitter.com/idfonline/status/1691324777405771776> (in Hebrew).

<sup>39</sup> See [https://www.btselem.org/hebrew/firearms/20090301\\_use\\_of\\_ruger\\_rifle\\_in\\_demonstrations\\_prohibit](https://www.btselem.org/hebrew/firearms/20090301_use_of_ruger_rifle_in_demonstrations_prohibit) (in Hebrew); Avichai Mandelblit, Judge Advocate General of Israel, “Shooting at demonstrators”, faxed letter to Jessica Montell, B’Tselem, 2 July 2009, available at [https://www.btselem.org/download/20090702\\_jag\\_response\\_to\\_letter\\_on\\_use\\_of\\_ruger\\_rifles\\_against\\_demonstrators\\_eng.pdf](https://www.btselem.org/download/20090702_jag_response_to_letter_on_use_of_ruger_rifles_against_demonstrators_eng.pdf). See also <https://www.idf.il/media/nunohb4e/%D7%91%D7%A7%D7%A9%D7%94-%D7%A2%D7%9D-%D7%9E%D7%A2%D7%A0%D7%94-14.pdf> (in Hebrew).

<sup>40</sup> See, for example, <https://www.maariv.co.il/news/military/Article-875222> (in Hebrew).



clarification to the rules of engagement of the Israeli security forces in relation to stone-throwing clearly acknowledges that not all stone-throwing is an “imminent and real danger” to the life of soldiers. The clarification noted that “it is forbidden to shoot towards stone-throwers, unless there is a situation of imminent and real danger to life”.<sup>41</sup> The clarification distinguishes between situations in which there is an imminent and real danger to life and those in which there is not. As nearly half of Palestinians killed between November 2021 and October 2022, including several children, were killed in the context of stone-throwing (see [A/HRC/52/75](#), para. 20), this clarification was arguably issued to reduce such cases. The Commission observes that stone-throwing does not normally pose an imminent threat to the lives of heavily armed and armoured military forces.<sup>42</sup> The Commission concludes that, in most cases in which Israeli security forces used lethal force against stone-throwers, there was no imminent threat to life and that the use of lethal force was not a necessary or proportionate response to the actions of the protesters, especially children.

20. Many of those killed by Israeli security forces in demonstrations have been targeted because Israeli security forces have labelled them “key instigators”. Israeli authorities have publicly acknowledged the policy of targeting “key instigators” with live fire during demonstrations following the Great March of Return in 2018. In that context, the Supreme Court of Israel dismissed a petition challenging the use of live ammunition against “main inciters” even if said inciters did not pose an immediate threat.<sup>43</sup> The Court held 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 to proportionality”. The Court declined to examine how the rules were applied on the ground, deferring to the internal investigations of the Israeli security forces.<sup>44</sup> In 2019, the Israeli Army clarified its definition of “key instigators” as “persons who direct or order activities within the mob, such as coordinating the tactical placement and setting on fire of tires, coordinating people to contribute towards pulling back parts of the security infrastructure and so on”.<sup>45</sup> The Commission notes that the classification and targeting of an individual as a “key instigator” does not exist in international human rights law or international humanitarian law.

21. The Commission affirms the right of the Palestinian people to protest against the occupation. The Commission considers that dispersal of demonstrators by Israeli security forces in the West Bank should follow the international human rights law framework governing law enforcement and is concerned with the wrongful conflation of the law enforcement paradigm, which is governed by international human rights law, and the conduct of hostilities paradigm, which is governed by international humanitarian law. This conflation offers less protection to civilians and civilian objects when the operations are clearly law enforcement operations.

## B. Israel

22. Over the 11 days of the Guardian of the Walls operation in May 2021, Israeli security forces dispersed demonstrations in mixed Jewish-Palestinian cities with the

<sup>41</sup> Document on file.

<sup>42</sup> The Commission is not aware of a single Israeli security forces soldier being killed as a result of stone-throwing.

<sup>43</sup> See Elena Chachko and Yuval Shany, “The Supreme Court of Israel Dismisses a Petition Against Gaza Rules of Engagement”, *Lawfare*, 26 May, 2018.

<sup>44</sup> High Court of Justice of Israel, petition HCJ 3003/18, judgment of 24 May 2018, available at <https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts/18/030/030/k08&fileName=18030030.K08&type=4>. See also [A/HRC/40/74](#), paras. 35–36.

<sup>45</sup> Israel Defense Forces Editorial Team, “IDF Use of Potentially Lethal Force”, 13 February 2022.

use of lethal force. The Commission viewed ample evidence indicating that groups of armed settlers and other armed civilians were also directly involved in attacking Palestinians and suppressing demonstrations and that Israeli police failed to protect Palestinians from such attacks.<sup>46</sup> Hundreds of Palestinians with Israeli citizenship were arrested during and following the May 2021 escalation, while a significantly smaller number of Jewish Israelis were arrested for taking part in attacks against Palestinians. No fewer than 616 persons were indicted; of these, 545 were Palestinians with Israeli citizenship and 71 were Jewish Israelis.<sup>47</sup>

23. On 12 May 2021, Mohammad Kiwan, a 17-year-old Palestinian citizen of Israel, was shot and killed by Israeli police in Umm el Fahm in close vicinity to ongoing protests. Following an investigation by the Department of Internal Police Investigations (“Machash” in Hebrew), the family was informed on 15 September 2021 that the investigation found no evidence of wrongdoing. The Department noted that police forces had chased “rioters” into a car park, where the deceased and two others entered a car and drove towards the exit, hitting a police officer as they sped away. At that point, a second police officer fired two shots at the vehicle, one to the wheels and one to the back windscreen that hit Kiwan in the back of his head. The Department claimed that the shooter felt he was in imminent danger, as he thought that it was a “terror” attack and that that assessment was justified.<sup>48</sup> Despite this statement, available information on the case indicates that the shooting occurred while the vehicle was pulling away, with the police officer aiming at least one bullet at the level of the car’s windscreen and not at the wheels. On that basis, the shooting could not have been justified by the claim of imminent danger to the police officers.

24. Prime Minister Netanyahu and other Israeli Government officials framed these demonstrations as “a nationalistic incident”, insinuating that it was terrorism-related, thus reinforcing the idea that it was a situation that required a heavy response with Army involvement to suppress demonstrations.<sup>49</sup> Israeli authorities, relying on the 2016 Counter-Terrorism Law, charged 189 people with charges related to “terrorism”, 168 of whom were Palestinians with Israeli citizenship.<sup>50</sup>

25. Since January 2023, country-wide demonstrations have been held weekly to protest the proposed legislation by the Netanyahu Government intended to weaken judicial independence.<sup>51</sup> As at 30 July 2023, 123 Israeli citizens have reportedly been injured in these demonstrations, the majority from stun grenades, direct hits to the head by water cannons fired from close range and trampling by police horses. Some 702 demonstrators have reportedly been arrested.<sup>52</sup> In April 2023, the Association for Civil Rights in Israel requested that police stop using stun grenades against demonstrators, highlighting the inaccurate nature of the grenades and the indiscriminate harm they cause to groups of protesters.<sup>53</sup> The Association also noted the widespread use of stun grenades in the May 2021 demonstrations. The use of excessive force against largely peaceful assemblies violates the right to peaceful assembly and the prohibition on the excessive or disproportionate use of force by law enforcement.<sup>54</sup> On 6 July 2023, the Chief of Police for Tel Aviv resigned, noting that

<sup>46</sup> Documents on file.

<sup>47</sup> See [https://fs.knesset.gov.il/25/agendasuggestion/25\\_asg\\_bg\\_2622383.pdf](https://fs.knesset.gov.il/25/agendasuggestion/25_asg_bg_2622383.pdf) (in Hebrew).

<sup>48</sup> Interview and documents on file.

<sup>49</sup> See <https://www.facebook.com/watch/?v=488360188948464> (in Hebrew).

<sup>50</sup> See [https://fs.knesset.gov.il/25/agendasuggestion/25\\_asg\\_bg\\_2622383.pdf](https://fs.knesset.gov.il/25/agendasuggestion/25_asg_bg_2622383.pdf) (in Hebrew).

<sup>51</sup> See A/HRC/53/22, para. 12.

<sup>52</sup> See <https://13tv.co.il/item/news/domestic/internal/sdchi-903644433> (in Hebrew).

<sup>53</sup> See [https://01368b10-57e4-4138-acc3-01373134d221.usrfiles.com/ugd/01368b\\_845936dfeab24e698b4ca6b516729d18.pdf](https://01368b10-57e4-4138-acc3-01373134d221.usrfiles.com/ugd/01368b_845936dfeab24e698b4ca6b516729d18.pdf) (in Hebrew).

<sup>54</sup> International Covenant on Civil and Political Rights, arts. 4 and 21. See also United Nations, Basic Principles on the Use of Force and Firearms, principles 4, 8 and 12–14; and CCPR/C/GC/37, para. 17.

he had been removed from his role owing to his reluctance to use excessive force against demonstrators. In a statement, he said: “I encountered an absurd reality in which ensuring calm and order was not what was required of me, but precisely the opposite.”<sup>55</sup>

#### IV. Search and arrest operations

26. Israeli security forces routinely conduct search and arrest operations to arrest Palestinians in the West Bank that result in death, injury and destruction of civilian property. The Commission has been informed that such operations have increased in number, frequency and force used since Operation Break the Wave was launched by Israeli security forces in March 2022 following several attacks by Palestinians against Israeli civilians.<sup>56</sup> In April 2022, then Prime Minister Naftali Bennett declared that there would be “no restrictions” on Israeli forces’ actions.<sup>57</sup> Data from the Office for the Coordination of Humanitarian Affairs indicate that 2022 was the deadliest year for Palestinians in the West Bank since data collection began in 2005.<sup>58</sup> Moreover, 2022 was the deadliest year for Palestinian children in 15 years.<sup>59</sup> According to the Secretary-General’s annual report on children and armed conflict for 2022, 34 out of 42 children who were killed by Israeli security forces in the West Bank were killed using live ammunition, including during law enforcement operations and associated clashes (see [A/77/895-S/2023/363](#), para. 88).

27. The first six months of 2023 continue that trend, with a 160 per cent increase in fatalities in the entire Occupied Palestinian Territory compared with the same period in 2022. In that period, 141 Palestinians, including 24 children, were killed in the West Bank, including East Jerusalem, the vast majority killed by Israeli security forces.<sup>60</sup>

##### Nablus operation of 22 February 2023

28. On 22 February 2023, Israeli security forces conducted a search and arrest operation in Nablus targeting three Palestinians suspected of planning and carrying out shooting incidents against Israeli security forces.<sup>61</sup> The three suspects were hiding in an empty building in the centre of town. They were killed following an exchange of fire with Israeli security forces that also involved members of Palestinian armed

<sup>55</sup> Maayan Lubell, “Tel Aviv police chief quits, citing government meddling against protesters”, Reuters, 6 July 2023.

<sup>56</sup> See, for example, Al-Haq, “Israel’s destructive attacks in the West Bank: infiltrating the Palestinian urban fabric to suppress resistance”. Available at <https://raids.alhaq.org>.

<sup>57</sup> Office of the Prime Minister of Israel, “PM Bennett’s statement at the Kirya in Tel Aviv with Defense Minister Gantz and Public Security Minister Barlev”, 8 April 2022.

<sup>58</sup> Office for the Coordination of Humanitarian Affairs, “Protection of civilians report, 8–12 November 2022”, 25 November 2022.

<sup>59</sup> See Save the Children, “2022 becomes the deadliest year for Palestinian children in the West bank in over 15 years – Save the Children”, 23 November 2022. See also Human Rights Watch, “West Bank: spike in Israeli killings of Palestinian children”, 28 August 2023.

<sup>60</sup> Office for the Coordination of Humanitarian Affairs, “OPT: key facts and figures, January–June 2023” (on file).

<sup>61</sup> See (in Hebrew) <https://www.idf.il/%D7%9B%D7%AA%D7%91%D7%95%D7%AA-%D7%95%D7%A2%D7%93%D7%9B%D7%95%D7%A0%D7%99%D7%9D/2023/%D7%A4%D7%91%D7%A8%D7%95%D7%90%D7%A8/%D7%A0%D7%98%D7%A8%D7%95%D7%9C-3-%D7%9E%D7%97%D7%91%D7%9C%D7%99%D7%9D-%D7%A9%D7%9B%D7%9D-%D7%A4%D7%A2%D7%99%D7%9C%D7%95%D7%AA-%D7%90%D7%99%D7%95%D7%A9-%D7%99%D7%94%D7%95%D7%93%D7%94-%D7%95%D7%A9%D7%95%D7%9E%D7%A8%D7%95%D7%9F-%D7%92%D7%95%D7%91-%D7%94%D7%90%D7%A8%D7%99%D7%95%D7%AA-%D7%9C%D7%95%D7%97%D7%9E%D7%99%D7%9D>.

groups firing from nearby locations.<sup>62</sup> The operation resulted in the killing of 10 Palestinians, including at least 3 civilians, injury to 453 more and destruction of civilian property and infrastructure.<sup>63</sup>

29. Additional confrontations between Palestinian residents and Israeli forces developed in response to the operation, with Israeli forces reportedly firing live ammunition, rubber bullets and tear-gas canisters towards Palestinians, some of whom engaged in the throwing of stones and Molotov cocktails at the forces. At around 1 p.m., a 72-year-old Palestinian man was killed by Israeli security forces in the Qaysariyah neighbourhood in the old city of Nablus.<sup>64</sup> When two Palestinian men tried to retrieve his body from the road, they were shot and injured by Israeli security forces. While the Israeli security forces vehicles were withdrawing from the area, they were pelted with stones, rocks and other objects.<sup>65</sup> In the vicinity of the Rahmah medical clinic, one of the Israeli security forces vehicles slowed down and opened fire on a group of Palestinians standing in front of the clinic gate.<sup>66</sup> As a result, two Palestinian civilians were killed: a 65-year-old man and a 16-year-old boy. Three others were injured.

30. According to several sources, Israeli security forces fired at least 14 times at this group in front of the clinic. The forces claimed that they were returning fire at an armed man who had shot at them and then escaped into the group of civilians.<sup>67</sup> After viewing video footage from the incident, the Commission verified that an armed man had been shooting at the Israeli security forces convoy and then escaped in the direction of a mosque situated in the same building as the clinic. However, the armed man was no longer posing a threat to the lives of the Israeli security forces, and the shooting was carried out in the direction of a clear civilian location,<sup>68</sup> where civilians were hiding from the violence. The Commission finds that the use of force was disproportionate to the law enforcement purpose of the operation. In addition, the use of lethal force was not strictly necessary, given the number of civilians in the area and given that less lethal means were available to effect arrests. The Commission reiterates that law enforcement must exercise restraint to protect lives and minimize damage.

### **Jenin operation of July 2023**

31. On 3 July 2023, Israeli security forces initiated Operation Home and Garden in Jenin refugee camp, whose stated objectives were to “neutralize terrorist infrastructure in the refugee camp, target terrorists, apprehend wanted individuals, neutralize command centres, dismantle weapon workshops and ammunition factories”. Israeli security forces claimed that at least 50 “terror” attacks had been

<sup>62</sup> Interviews on file.

<sup>63</sup> Office for the Coordination of Humanitarian Affairs, “Protection of civilians report, 14–27 February 2023”, 4 March 2023.

<sup>64</sup> Interviews on file.

<sup>65</sup> See Miriam Berger, Evan Hill, Imogen Piner and Meg Kelly, “3D analysis shows how Israeli troops fired into group of civilians”, *The Washington Post*, 10 March 2023.

<sup>66</sup> Interviews on file.

<sup>67</sup> Office for the Coordination of Humanitarian Affairs, “Protection of civilians report, 14–27 February 2023”.

<sup>68</sup> Interview on file.

launched from Jenin refugee camp since the start of 2023.<sup>69</sup> This followed at least two other, larger-scale “search and arrest” operations in Jenin, carried out in June 2023, which saw substantial resistance to Israeli security forces.<sup>70</sup> During the two-day operation, conducted in July, Israeli forces launched air attacks and ground raids in the largest military operation in the West Bank in 20 years.<sup>71</sup> According to the Palestinian Ministry of Health, 12 Palestinians, including 5 children, were killed during the operation and at least 143 were injured. This is the highest number of Palestinian fatalities in a single operation in the West Bank since 2005.<sup>72</sup> Israeli security forces claimed that none of the fatalities was a civilian<sup>73</sup> and that it arrested 30 people during this operation.<sup>74</sup>

32. In addition to carrying out arrests, as noted above, Israeli security forces were guided by a clear objective of targeting persons they defined as “terrorists”. The Commission verified one incident during the operation in which an unarmed 16-year-old boy was killed by Israeli security forces. In a statement to the British news publication *The Times*, the Israeli Army’s spokesperson claimed that the boy was armed with an automatic weapon and that he was a combatant.<sup>75</sup> A video of the incident, verified by the Commission, shows that he was not armed when he was killed. On 9 July 2023, the spokesperson published photos and screenshots collected by Israeli security forces as the justification for targeting the boy. The photos included images of the boy carrying weapons, posted on social media. The Commission has reviewed the social media posts suggesting that the boy was likely affiliated with Palestinian Islamic Jihad. Under international law, an individual’s affiliation with an armed group, even if proven, cannot be the sole basis for targeting and killing the person. The Commission acknowledges that the level of violence in Jenin between Israeli security forces and armed groups has increased in recent years. However, according to international human rights law applicable to the West Bank, lethal force

<sup>69</sup> See (in Hebrew) <https://www.idf.il/%D7%90%D7%AA%D7%A8%D7%99-%D7%99%D7%97%D7%99%D7%93%D7%95%D7%AA/%D7%A4%D7%99%D7%A7%D7%95%D7%93-%D7%94%D7%9E%D7%A8%D7%9B%D7%96/%D7%9B%D7%9C-%D7%94%D7%9B%D7%AA%D7%91%D7%95%D7%AA/2023/%D7%9E%D7%91%D7%A6%D7%A2-%D7%9E%D7%97%D7%A0%D7%94-%D7%A4%D7%9C%D7%99%D7%98%D7%99%D7%9D-%D7%91%D7%92-%D7%A0%D7%99%D7%9F-%D7%98%D7%A8%D7%95%D7%A8-%D7%A4%D7%99%D7%92%D7%95%D7%A2%D7%99%D7%9D-%D7%99%D7%94%D7%95%D7%93%D7%94-%D7%95%D7%A9%D7%95%D7%9E%D7%A8%D7%95%D7%9F-%D7%97%D7%9E%D7%90%D7%A1-%D7%92%D7%90%D7%A4-%D7%A6%D7%94%D7%9C-%D7%A9%D7%91%D7%9B>.

<sup>70</sup> See para. 35 of the present report.

<sup>71</sup> United Nations, Office of the United Nations High Commissioner for Human Rights, “Israeli air strikes and ground operations in Jenin may constitute war crime: UN experts”, press release, 5 July 2023. See also United Nations, Office of the United Nations High Commissioner for Human Rights, “Comment by the UN Human Rights Chief Volker Türk on Israeli-Palestinian violence”, press release, 4 July 2023.

<sup>72</sup> Office for the Coordination of Humanitarian Affairs, “Israeli forces’ operation in Jenin: situation report #1 as of 17:00, 6 July 2023”, 6 July 2023.

<sup>73</sup> <https://twitter.com/IDF/status/1676525337344081921>.

<sup>74</sup> See (in Hebrew) <https://www.idf.il/%D7%9B%D7%AA%D7%91%D7%95%D7%AA-%D7%95%D7%A2%D7%93%D7%9B%D7%95%D7%A0%D7%99%D7%9D/2023/%D7%99%D7%95%D7%9C%D7%99/%D7%9E%D7%91%D7%A6%D7%A2-%D7%91%D7%92-%D7%A0%D7%99%D7%9F-%D7%92%D7%A0%D7%99%D7%9F-%D7%99%D7%94%D7%95%D7%93%D7%94-%D7%95%D7%A9%D7%95%D7%9E%D7%A8%D7%95%D7%9F-%D7%97%D7%9E%D7%90%D7%A1-%D7%92%D7%99%D7%94%D7%90%D7%93-%D7%9B%D7%9C%D7%99-%D7%98%D7%99%D7%A1-%D7%9C%D7%95%D7%97%D7%9E%D7%99%D7%9D-%D7%A6%D7%94%D7%9C-%D7%A9%D7%91%D7%9B-%D7%9E%D7%97%D7%A0%D7%94-%D7%A4%D7%9C%D7%99%D7%98%D7%99%D7%9D/>.

<sup>75</sup> <https://twitter.com/LtColRichard/status/1678154988382560258>.

can only be used in situations where the person poses an imminent threat to life.<sup>76</sup> Additional precautions must be taken when the person is a child.

33. According to several sources, during the operation, Israeli tear-gas canisters and sound grenades landed on the premises of health facilities.<sup>77</sup> Israeli security forces severely damaged civilian objects such as roads, the main water pipeline and the electricity grid.<sup>78</sup> At the end of the two-day operation, most parts of Jenin refugee camp were left without electricity and drinking water. According to the Office for the Coordination of Humanitarian Affairs, 460 homes in the camp were damaged; of those, 23 were destroyed and 47 made uninhabitable.<sup>79</sup> The widespread, sometimes intentional,<sup>80</sup> destruction by Israeli security forces of civilian infrastructure, including roads, water and electricity, may amount to a war crime.

34. Israeli forces carried out over 20 air strikes using armed drones, including Hermes 450 (referred to by Israeli security forces as “Zik”<sup>81</sup>), on many targets inside the Jenin camp. The aerial attack was followed by the ground operation, conducted by the Israeli Security Agency and elite units of the Israeli security forces, including Duvdevan, Egoz, Sayeret Tzanhanim, Sayeret Haruv and Maglan, as well as border police and the Police Counter-Terrorism Unit (Yamam).

35. The use of combat units and aerial attacks in the Jenin operation and the rhetoric used by Israeli security forces indicating that the operation had wider objectives than strictly “search and arrest”<sup>82</sup> reflect the increasing militarization of such operations and a growing reliance on large-scale military power by the Israeli security forces in the West Bank. This also indicates a complete disregard for adhering to the international human rights law obligations governing law enforcement activities. Immediately before the Jenin operation, on 19 June 2023, in another operation targeting two suspects, the Israeli security forces deployed helicopters to facilitate the retrieval of its personnel following an exchange of fire with Palestinian armed groups and following those groups’ use of improvised explosive devices. On 21 June 2023, Israeli security forces carried out a targeted killing of three suspects in Jenin using an armed drone. The Commission notes that that type of drone had been used in the past

<sup>76</sup> United Nations, Basic Principles on the Use of Force and Firearms, principle 9.

<sup>77</sup> Office for the Coordination of Humanitarian Affairs, “Israeli forces operation in Jenin: flash update #2 as of 16:30, 4 July 2023”, 4 July 2023. See also <https://twitter.com/MSF/status/1676248475191717890>.

<sup>78</sup> Office for the Coordination of Humanitarian Affairs, “Israeli forces’ operation in Jenin: situation report #1”.

<sup>79</sup> Office for the Coordination of Humanitarian Affairs, “Israeli forces operation in Jenin: 40 per cent of households in Jenin Refugee Camp still lack access to water as of 17:00 Jerusalem time, 11 July 2023”, 11 July 2023.

<sup>80</sup> According to statements of the Israeli security forces. See, for example (in Hebrew), <https://www.idf.il/%D7%9B%D7%AA%D7%91%D7%95%D7%AA-%D7%95%D7%A2%D7%93%D7%9B%D7%95%D7%A0%D7%99%D7%9D/2023/%D7%99%D7%95%D7%9C%D7%99/%D7%9E%D7%91%D7%A6%D7%A2-%D7%91%D7%92-%D7%A0%D7%99%D7%9F-%D7%92%D7%A0%D7%99%D7%9F-%D7%99%D7%94%D7%95%D7%93%D7%94-%D7%95%D7%A9%D7%95%D7%9E%D7%A8%D7%95%D7%9F-%D7%97%D7%9E%D7%90%D7%A1-%D7%92%D7%99%D7%94%D7%90%D7%93-%D7%9B%D7%9C%D7%99-%D7%98%D7%99%D7%A1-%D7%9C%D7%95%D7%97%D7%9E%D7%99%D7%9D-%D7%A6%D7%94%D7%9C-%D7%A9%D7%91%D7%9B-%D7%9E%D7%97%D7%A0%D7%94-%D7%A4%D7%9C%D7%99%D7%98%D7%99%D7%9D>.

<sup>81</sup> See <https://www.iaf.org.il/217-24418-he/IAF.aspx> (in Hebrew).

<sup>82</sup> See paras. 31 and 32 of the present report.

primarily for aerial attacks in Gaza.<sup>83</sup> The Commission is concerned that Israeli authorities are increasingly applying the conduct of hostilities paradigm to the West Bank, causing West Bank operations to increasingly resemble those carried out in Gaza.

### Withholding bodies

36. The Israeli authorities withhold the bodies of deceased combatants or persons suspected of having posed a threat to Israeli security. Israeli authorities are currently withholding the bodies of 142 Palestinians, including 14 boys and 5 women.<sup>84</sup> The de facto authorities in Gaza are currently withholding the bodies of two Israeli soldiers.<sup>85</sup> Israeli authorities routinely withhold the bodies, including those of children, of those killed in incidents linked to search and arrest operations and those killed in the context of attacks against Israelis. These withheld bodies are used as bargaining chips in negotiations.<sup>86</sup> In 2020, then Minister of Defence Bennet explained the policy as follows: “We [also] hoard the bodies of terrorists to hurt and put pressure on the other side.”<sup>87</sup>

37. This practice has caused severe trauma to the families and has a particularly gendered impact on female relatives. One female relative told the Commission that widows face difficulties on every level: financially, socially and emotionally. Those difficulties have been exacerbated by not being provided enough information about the bodies’ location and the difficulties encountered in registering deaths. A Palestinian widow described the trauma she experienced in 2021 when her husband’s body was returned to the wrong family in a numbered plastic bag and subsequently returned to Israel without the authorities providing her with any information. Families described this as an extension of the occupation policies of Israeli, which fragment and collectively punish the Palestinian people. The withholding of bodies is a violation of customary international humanitarian law, which requires the parties to “endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin”.<sup>88</sup>

### Gender impact

38. Fewer women and girls are killed and injured by Israeli security forces compared with men and boys. This should be seen within the social context in the Occupied Palestinian Territory, where women and girls participate less frequently in

<sup>83</sup> See (in Hebrew) <https://www.idf.il/%D7%90%D7%AA%D7%A8%D7%99-%D7%99%D7%97%D7%99%D7%93%D7%95%D7%AA/%D7%96%D7%A8%D7%95%D7%A2-%D7%94%D7%90%D7%95%D7%95%D7%99%D7%A8-%D7%95%D7%94%D7%97%D7%9C%D7%9C/%D7%9B%D7%9C-%D7%94%D7%9B%D7%AA%D7%91%D7%95%D7%AA/2022/%D7%9E%D7%A2%D7%A8%D7%9A-%D7%94%D7%9B%D7%98%D7%9E%D7%9E%D7%99%D7%9D-%D7%A0%D7%97%D7%A9%D7%A4%D7%AA-%D7%99%D7%97%D7%99%D7%93%D7%94-52-%D7%96%D7%99%D7%A7/>. See also <https://www.youtube.com/watch?v=V-H6KPdGZv4&t=3s> (in Hebrew).

<sup>84</sup> Documents on file.

<sup>85</sup> See A/76/333, para. 41.

<sup>86</sup> Documents and interview on file. See also A/HRC/53/59, paras. 75–78; Defense for Children International Palestine, “Withheld bodies: no closure for Palestinian families waiting for their child’s remains”, 3 August 2020; Budour Hassan, The Warmth of Our Sons: Necropolitics, Memory, and the Palestinian Right to Mourn, Jerusalem Legal Aid and Human Rights Center (Jerusalem, 2019); and Adalah: Legal Center for Arab Minority Rights in Israel, “Adalah responds to Israeli Defense Minister Naftali Bennett’s order to withhold all Palestinian bodies”, 27 November 2019.

<sup>87</sup> See <https://103fm.maariv.co.il/programs/media.aspx?ZrqvnVq=HLJFGH&c41t4nzVQ=FJE> (in Hebrew).

<sup>88</sup> ICRC, Customary International Humanitarian Law database, rule 114.



the public domain (see [A/HRC/40/CRP.2](#), paras. 592–598). These gender dynamics result in a disproportionate burden on women who have had to become caregivers to injured family members and primary breadwinners when men are killed, injured or detained, underscoring the context of intersecting forms of discrimination and violence against Palestinian women and girls (see [A/HRC/35/10](#)).

### Case of Shireen Abu Akleh

39. The Commission has collected, analysed and preserved information relevant to the killing of Shireen Abu Akleh, a Palestinian-American journalist for Al-Jazeera who was shot and killed on 11 May 2022 in Jenin. The Commission has conducted open-source investigations; collected and preserved videos, photographs, reports and social media posts; and reviewed the investigations conducted by Bellingcat,<sup>89</sup> the Associated Press,<sup>90</sup> CNN,<sup>91</sup> *The Washington Post*,<sup>92</sup> *The New York Times*,<sup>93</sup> Forensic Architecture and Al-Haq,<sup>94</sup> Al-Jazeera<sup>95</sup> and the Committee to Protect Journalists.<sup>96</sup> In addition, eight individuals testified at the Commission's public hearings in November 2022 and March 2023. The Commission sent formal requests for information to the Governments of Israel, the State of Palestine and the United States and did not receive responses from the Governments of Israel or the United States.

40. On the basis of its investigation, the Commission outlines the key facts of the morning of 11 May 2022. At around 5 a.m., Israeli security forces soldiers entered Jenin to arrest members of the Al-Hosari family at their house in the Jabriyat neighbourhood. Members of the media, including Ali Sammoudi (a freelance producer for Al-Jazeera), Majdi Bannoura (a cameraman for Al-Jazeera), Shatha Hanaysha (a journalist) and Shireen Abu Akleh, gathered at the Awda roundabout on Balat al-Shuhada' Street by 6:24 a.m. to cover the events. The journalists wore blue protective vests labelled "press" and helmets. There were Palestinian civilians in the area, but it was calm and there were no clashes or gunshots in the immediate vicinity. The journalists began walking west on Balat al-Shuhada' Street towards the intersection with New Camp Street. An Israeli security forces convoy was approximately 200 m south on New Camp Street. Hanaysha and Sammoudi both stated that the usual practice was to identify themselves as journalists to the Israeli security forces by showing their "press" vests. The Commission was informed that normally, if the Israeli security forces did not want the journalists to approach, soldiers would respond by throwing tear gas or stun grenades or by shooting the ground near the journalists as a warning. There was no warning to these journalists that morning.

41. At 6:31 a.m., the journalists, including Abu Akleh, started walking south on New Camp Street towards the convoy. A few seconds later, six shots were fired, as confirmed in a video analysed by the Commission. As Sammoudi ran back towards

<sup>89</sup> Bellingcat, "Unravelling the killing of Shireen Abu Akleh", 14 May 2022.

<sup>90</sup> Joseph Krauss, "Review suggests Israeli fire killed reporter, no final word", Associated Press, 24 May 2022.

<sup>91</sup> Zeena Saifi and others, "'They were shooting directly at the journalists': new evidence suggests Shireen Abu Akleh was killed in targeted attack by Israeli forces", CNN, 26 May 2022.

<sup>92</sup> Sarah Cahlan, Meg Kelly and Steve Hendrix, "How Shireen Abu Akleh was killed", *The Washington Post*, 12 June 2022.

<sup>93</sup> Raja Abdulrahim and others, "The killing of Shireen Abu Akleh: tracing a bullet to an Israeli convoy", *The New York Times*, 28 June 2022.

<sup>94</sup> Forensic Architecture and Al-Haq, "Shireen Abu Akleh: the extrajudicial killing of a journalist", 4 November 2022.

<sup>95</sup> Al-Jazeera, "The killing of Shireen Abu Akleh", available at <https://www.aljazeera.com/program/fault-lines/2022/12/1/the-killing-of-shireen-abu-akleh>.

<sup>96</sup> Committee to Protect Journalists, "Deadly pattern: 20 journalists died by Israeli military fire in 22 years. No one has been held accountable" (New York, 2023).



Balat al-Shuhada' street, witnesses heard Abu Akleh screaming, "Ali's been hit! Ali's been hit!" Sammoudi fled to a nearby car and was later taken to the hospital. Approximately 10 seconds later, another seven gunshots were heard. Hanaysha took cover next to a concrete wall and behind a tree near Abu Akleh. She saw Abu Akleh fall to the ground. A few seconds later, three more gunshots were heard, and someone yelled "Shireen! Medic, medic! Stay where you are, don't move, don't move." Hanaysha remained behind the tree next to a concrete wall near Abu Akleh and shouted that Abu Akleh's head had been shot. Abu Akleh remained motionless, face-down on the ground.

42. Sharif Al-Azab, a resident of Jenin who was at the scene, climbed over the concrete wall and attempted to move Abu Akleh to safety. Another gunshot was heard, and Al-Azab took cover. Al-Azab helped Hanaysha climb over the concrete wall to safety and went back to Abu Akleh, who was still motionless. As he started to carry Abu Akleh, two more gunshots were heard, and he ducked for cover. As he carried Abu Akleh away, she remained motionless, with blood covering her head and hair. Al-Azab and others placed Abu Akleh in a car and took her to Ibn Sina Hospital. Abu Akleh was declared dead at the hospital.

43. Later that day, the Ministry of Foreign Affairs of Israel posted a video on Twitter and stated that "Palestinian terrorists, firing indiscriminately, are likely to have hit Al-Jazeera journalist Shireen Abu Aqla".<sup>97</sup> Two days later, Israeli security forces released findings of a preliminary investigation into the incident, concluding that it was not possible to unequivocally determine the source of the gunfire that hit and killed Abu Akleh. They provided two possible scenarios: first, that "hundreds of bullets" were fired by Palestinian gunmen from a number of locations, making them a possible source of the gunfire that hit and killed Abu Akleh; second, that, during an exchange of fire between Palestinian gunmen and Israeli security forces soldiers, Abu Akleh, who was standing nearby, behind a Palestinian gunman, was hit by a soldier's fire towards the Palestinian gunmen.<sup>98</sup> In July 2022, the United States Security Coordinator stated that it could not reach a definitive conclusion regarding the origin of the bullet that killed Abu Akleh; in addition, after reviewing the investigations of both the Israeli security forces and Palestinian Authority, it found that gunfire from security forces positions was likely responsible for the death of Abu Akleh, but that it was not intentional.<sup>99</sup> On 5 September 2022, the Israeli security forces released their final conclusions on their investigation, stating that, while it was not possible to unequivocally determine the source of the gunfire that killed Abu Akleh, there was a high possibility that Abu Akleh was accidentally hit by security forces gunfire, fired at armed Palestinian gunmen during an exchange of fire.<sup>100</sup> The report reiterated the two possibilities as stated in its preliminary investigation. The Military Advocate General found that there was no suspicion of a criminal offence that justified the opening of a Military Police investigation. The Palestinian Authority conducted its own investigation, which included an autopsy and a forensic examination of the bullet. The report stated that the cause of death was a "tear of the brain tissue caused by a penetrating gunshot injury into the cranial cavity". It identified the ammunition and type of rifle used and concluded that the shots that were fired by the Israeli security forces, one of which killed Abu Akleh, were deliberately targeted at the upper body region of the journalists with the intent to kill. In November 2022, the United

<sup>97</sup> [https://twitter.com/IsraelMFA/status/1524279111547596805?itid=lk\\_inline\\_enhanced-template](https://twitter.com/IsraelMFA/status/1524279111547596805?itid=lk_inline_enhanced-template).

<sup>98</sup> Israel Defense Forces announcement, "Findings from the initial investigation into the shooting incident in which the journalist Shireen Abu Akleh was killed", 13 May 2022.

<sup>99</sup> Ned Price, Senior Advisor to the United States Secretary of State, "On the killing of Shireen Abu Akleh", United States Department of State press release, 4 July 2022.

<sup>100</sup> Israel Defense Forces Editorial Team, "Final conclusions of Shireen Abu Akleh investigation", Israel Defense Forces press release, 5 September 2022.

States Department of Justice informed the Ministry of Justice of Israel that the Federal Bureau of Investigation had opened an investigation into the case. On 6 December 2022, in response to the request of Al-Jazeera to the International Criminal Court to investigate the death of Abu Akleh, the then Prime Minister of Israel, Yair Lapid, stated: “No one will investigate IDF [Israel Defense Forces] soldiers and no one will preach to us about morals in warfare, certainly not Al-Jazeera.”<sup>101</sup>

44. The Commission has analysed all the evidence that it collected relevant to this killing. It has concluded, on reasonable grounds, that: (a) prior to the shooting of Abu Akleh, the area in and around the Awda roundabout, Balat al-Shuhada’ Street and New Camp Street was calm and there were no clashes or gunfire there; (b) there were no visibly armed Palestinians in the area; (c) Abu Akleh and the journalists were wearing vests marked “press” and helmets that clearly identified them as journalists; (d) immediately prior to the shooting of Abu Akleh, there was no exchange of gunfire or warnings from the Israeli security forces; (e) the Israeli security forces convoy was located approximately 200 m south of Abu Akleh on New Camp Street; (f) the gunfire came from the area where the Israeli security forces convoy was located; (g) the gunfire targeted the upper bodies of the journalists; and (h) after Abu Akleh was shot and remained on the ground, face-down and motionless, the man who attempted to retrieve her was shot at.

45. The Commission sought to identify the military unit involved in the killing of Abu Akleh on the basis of the forensic examination of open-source material, including Israeli security forces videos published on the army spokesperson’s website relevant to the Break the Wave operation in Jenin. The open-source investigation was conducted in compliance with international standards for digital open-source investigations. Technical examinations were carried out on forensically preserved evidence and involved video authentication, geolocation, chronolocation and frame-to-frame comparative analysis. The State of Israel did not cooperate with the investigation and did not respond to the Commission’s request for information. On the basis of its investigation, the Commission concludes on reasonable grounds that the Duvdevan Unit of the Israeli security forces participated in the operation in Jenin on 11 May 2022 and that soldiers of the Duvdevan Unit were likely to have been in the vehicle from which the shot that resulted in the death of Abu Akleh was fired. The Commission has also established the name of the individual who was the commander of the Duvdevan Unit in May 2022.

46. During law enforcement operations, lethal force is only permissible in self-defence or to protect the lives of others. In the case of Abu Akleh, the Commission concludes without doubt that Abu Akleh and the other journalists did not pose an imminent threat of death or serious injury to anyone and that there was no gunfire originating from Abu Akleh’s location or from near her. The Commission concludes on reasonable grounds that the Israeli security forces used lethal force without justification under international human rights law and intentionally or recklessly violated the right to life of Shireen Abu Akleh.

47. In an occupation, the wilful killing of a protected person constitutes a grave breach of article 147 of the Fourth Geneva Convention and is a war crime.<sup>102</sup> Abu Akleh and other journalists, who were clearly identifiable as journalists, were protected persons. Furthermore, under the doctrine of command responsibility, a military commander may be held criminally responsible for crimes committed by subordinates under his effective command and control, where the commander knew or should have known that the subordinates were committing crimes and he failed to

<sup>101</sup> Office of the Prime Minister of Israel, “PM Lapid responds to publication of Al Jazeera Appeal to the ICC to Investigate the death of Shireen Abu-Akleh”, press release, 6 December 2022.

<sup>102</sup> Rome Statute of the International Criminal Court, art. 8 (2) (a) (1).

prevent the commission of the crimes or to submit the matter to the competent authorities for investigation and prosecution.<sup>103</sup>

## V. Recurring escalations of hostilities in Gaza

48. Israeli security forces have carried out repeated military incursions and aerial attacks in Gaza prior to and since Israel launched its disengagement plan in 2005. Israeli security forces carried out at least five large-scale military operations (2006, 2008–2009, 2012, 2014 and 2021) through ground incursions and/or heavy artillery shelling and air-to-surface missile attacks in one of the most densely populated areas in the world. Israeli security forces have also conducted targeted air-strike campaigns with the objective of killing specific persons associated with Hamas and Palestinian Islamic Jihad (including in 2012, 2019, 2022 and 2023). Violence has recurred periodically at the land and sea borders of Gaza, including during the 2018 Great March of Return protests along the perimeter fence.<sup>104</sup>

49. These incursions and attacks are directly linked to the larger context of the Israeli occupation and the blockade of Gaza. Israel's occupation policies, described in depth in the Commission's previous report to the General Assembly, such as systematic discrimination, coercive environment, settlement expansion and impunity for settler violence, evictions and displacement of Palestinians from their homes, as well as the 16-year blockade of Gaza, have all served as a backdrop and catalyst for attacks on Gaza.<sup>105</sup> The blockade, which constitutes a collective punishment of the residents in Gaza, has significantly weakened the capacity of the population and public sector to respond to the devastation caused by repeated attacks. More than 600,000 people have been internally displaced as a result.<sup>106</sup> The impact of displacement, death and injuries of family members has been particularly dire for women, as it has been compounded by gendered dimensions of the economic hardship and by increased risks of sexual and gender-based violence. Displacement has also caused children to lose access to education, health care and other essential services.

50. According to the Office for the Coordination of Humanitarian Affairs, since the beginning of 2008, incursions and attacks by Israeli security forces have killed 2,749 Palestinian civilians in Gaza, including 388 women, 240 girls and 606 boys. Of those, 2,198 were killed as result of Israeli aerial attacks and 393 by live ammunition.<sup>107</sup> In addition, 62,850 have been injured (including 7,214 women, 1,749 girls and 14,653 boys). More than 52,000 houses have reportedly been totally or partially destroyed and over 1,500 education facilities have been damaged. Crucial infrastructure vital to the health, energy, industrial, commercial, media and agricultural sectors in Gaza has also been damaged.<sup>108</sup>

<sup>103</sup> Rome Statute, art. 28 (a).

<sup>104</sup> See [A/HRC/40/CRP.2](#).

<sup>105</sup> See [A/77/328](#). See also [A/HRC/49/83](#); [S/2021/584](#); [A/HRC/46/63](#), para. 7; and [A/HRC/50/21](#), para. 69.

<sup>106</sup> See [A/HRC/29/52](#), para. 23. See also Office for the Coordination of Humanitarian Affairs, "Overview: November 2021", Humanitarian Bulletin: Gaza after the May escalation – November 2021, 3 November 2021.

<sup>107</sup> Office for the Coordination of Humanitarian Affairs, "Data on casualties". Available at <https://www.ochaopt.org/data/casualties>.

<sup>108</sup> See Al Mezan Center for Human Rights, "Destruction of residential houses between 2000 – 28 Feb 2023". Available at <https://www.mezan.org/en/page/20/Destruction-of-Residential-Houses>. See also Al Mezan Center for Human Rights, *The Gaza Bantustan: Israeli Apartheid in the Gaza Strip* (2021), pp. 26–28; and Safeguarding Health in Conflict Coalition and Insecurity Insight, *Unrelenting Violence: Violence Against Health Care in Conflict* (2021), p. 72.

51. Since 2008, Palestinian armed groups have launched more than 20,000 projectiles, including rockets and mortars, indiscriminately towards Israel, resulting in the death of more than 35 civilians in Israel<sup>109</sup> and the injury of 3,230 others.<sup>110</sup> The Izz al-Din al-Qassam and Al-Quds Brigades have acknowledged targeting cities and towns in Israel.<sup>111</sup> According to Israeli authorities, the attacks have damaged 4,508 buildings in several locations since 2021.<sup>112</sup> These attacks have caused constant anxiety, trauma and stress to the residents of affected areas of Israel, especially those living close to Gaza.<sup>113</sup> Over the years, armed groups have significantly improved their capacity in terms of stockpiles and range of weaponry, which has increased rates of fire and longer ranges of up to 250 km, although it still lacks precision capabilities.<sup>114</sup> Palestinian armed groups may also be responsible for killing at least 34 Palestinians in Gaza, including 4 women, 11 boys and 4 girls, through rockets that fell short in May 2021 and August 2022.<sup>115</sup> The targeting of civilian populations and the indiscriminate firing of munitions are war crimes.

<sup>109</sup> Data on file. These only include people killed as a result of direct hits.

<sup>110</sup> Office for the Coordination of Humanitarian Affairs, "Data on casualties".

<sup>111</sup> See (in Arabic)

<https://www.alqassam.ps/arabic/%D8%A8%D9%8A%D8%A7%D9%86%D8%A7%D8%AA-%D8%A8%D9%84%D8%A7%D8%BA%D8%A7%D8%AA-%D8%A7%D9%84%D9%82%D8%B3%D8%A7%D9%85/5493/%D9%85%D8%B9%D8%B1%D9%83%D8%A9-%D8%B3%D9%8A%D9%81-%D8%A7%D9%84%D9%82%D8%AF%D8%B3-%D9%86%D8%B5%D8%B1%D8%A9-%D9%84%D8%A3%D9%87%D9%84%D9%86%D8%A7-%D9%81%D9%8A-%D8%A7%D9%84%D9%85%D8%AF%D9%8A%D9%86%D8%A9-%D8%A7%D9%84%D9%85%D9%82%D8%AF%D8%B3%D8%A9>. See also (in Arabic) <https://www.alqassam.ps/arabic/%D8%A8%D9%8A%D8%A7%D9%86%D8%A7%D8%AA-%D8%A8%D9%84%D8%A7%D8%BA%D8%A7%D8%AA-%D8%A7%D9%84%D9%82%D8%B3%D8%A7%D9%85/5745/%D8%A7%D9%84%D8%BA%D8%B1%D9%81%D8%A9-%D8%A7%D9%84%D9%85%D8%B4%D8%AA%D8%B1%D9%83%D8%A9-%D8%AA%D9%86%D9%81%D8%B0-%D8%B9%D9%85%D9%84%D9%8A%D8%A9-%D8%AB%D8%A3%D8%B1-%D8%A7%D9%84%D8%A3%D8%AD%D8%B1%D8%A7%D8%B1-%D8%B1%D8%AF%D8%A7-%D8%B9%D9%84%D9%89-%D8%AC%D8%B1%D8%A7%D8%A6%D9%85-%D8%A7%D9%84%D8%A7%D8%AD%D8%AA%D9%84%D8%A7%D9%84>.

<sup>112</sup> See (in Hebrew) <https://www.gov.il/he/departments/news/sa060621-1>; <https://www.gov.il/he/departments/news/sa100822-3>; and <https://www.gov.il/he/departments/news/sa120523-3>.

<sup>113</sup> See Ministry of Foreign Affairs of Israel, "Operation Guardian of the Walls", 10 May 2021. See also Meir Amit Intelligence and Terrorism Information Center, "Escalation from the Gaza Strip – Operation Guardian of the Walls – Summary", 24 May 2021; Office for the Coordination of Humanitarian Affairs, "Gaza Strip: escalation of hostilities as of 3 June 2021", 6 June 2021; and (in Hebrew) <https://www.phr.org.il/%D7%94%D7%99%D7%A9%D7%92-%D7%9C%D7%9E%D7%96%D7%97-%D7%95%D7%A8%D7%9C%D7%90-%D7%94%D7%9B%D7%A8%D7%94-%D7%91%D7%98%D7%A8%D7%90%D7%95%D7%9E%D7%94-%D7%9E%D7%AA%D7%9E%D7%A9%D7%9B%D7%AA-%D7%A9%D7%9C>.

<sup>114</sup> Document on file.

<sup>115</sup> See A/HRC/49/83, para. 11, and A/HRC/52/75, para. 10.

52. The Military Advocate General of Israel has failed to ensure meaningful accountability for victims, despite the gravity of many incidents relating to Gaza.<sup>116</sup> The Palestinian Centre for Human Rights has submitted 1,067 criminal complaints to the Military Advocate General and 2,891 civil complaints to the compensation office of the Ministry of Defence of Israel in relation to the killing and injury of Palestinians in Gaza during several attacks since 2008. Some 273 complaints have been referred for further examination to the General Staff Mechanism for Fact-Finding Assessments, established in 2014. The Commission is not aware of any measures taken by the State of Palestine to investigate and prosecute violations of international humanitarian law by Palestinian armed groups.

53. The Israeli strategy of carrying out repeated incursions in Gaza to weaken Palestinian armed groups has been referred to as “mowing the lawn” by some Israeli officials.<sup>117</sup> Israeli authorities routinely justify operations in Gaza by invoking security justifications and the need to defend Israel from rocket fire by Palestinian armed groups.<sup>118</sup> Israeli officials have also increasingly admitted to using preventive strikes intended at deterrence, including in the 2022 and 2023 operations.<sup>119</sup>

54. From 10 to 21 May 2021, Israeli security forces conducted the largest-scale attack since 2014, with air strikes and shelling from land and sea in response to rockets fired by armed groups in Gaza.<sup>120</sup> According to United Nations reports, Hamas and Palestinian Islamic Jihad fired 3,240 rockets and 1,158 mortar rounds into Israel, and Israeli security forces fired 1,768 missiles and 2,455 shells into Gaza. The escalation was triggered by protests against occupation policies such as evictions and dispossession in East Jerusalem.<sup>121</sup> Operation Guardian of the Walls was stated by

<sup>116</sup> A/HRC/49/25, paras. 8 and 10. See also (in Hebrew) <https://www.idf.il/media/xopltjsi/%D7%9E%D7%A2%D7%A0%D7%94-%D7%9C%D7%91%D7%A7%D7%A9%D7%94-%D7%91%D7%A0%D7%95%D7%A9%D7%90-%D7%90%D7%9B%D7%99%D7%A4%D7%AA-%D7%94%D7%97%D7%95%D7%A7-%D7%91%D7%A0%D7%95%D7%92%D7%A2-%D7%9C%D7%A2%D7%91%D7%99%D7%A8%D7%95%D7%AA-%D7%97%D7%99%D7%99%D7%9C%D7%99%D7%9D-%D7%A0%D7%92%D7%93-%D7%A4%D7%9C%D7%A1%D7%98%D7%99%D7%A0%D7%99%D7%9D-%D7%95%D7%A8%D7%9B%D7%95%D7%A9%D7%9D-%D7%91-2021.pdf>; and (in Hebrew) <https://www.idf.il/%D7%90%D7%AA%D7%A8%D7%99-%D7%99%D7%97%D7%99%D7%93%D7%95%D7%AA/%D7%94%D7%A4%D7%A8%D7%A7%D7%9C%D7%99%D7%98%D7%95%D7%AA-%D7%94%D7%A6%D7%91%D7%90%D7%99%D7%AA/%D7%A2%D7%93%D7%9B%D7%95%D7%A0%D7%99-%D7%A6%D7%95%D7%A7-%D7%90%D7%99%D7%AA%D7%9F/%D7%A2%D7%93%D7%9B%D7%95%D7%9F-%D7%9E%D7%A1-6>.

<sup>117</sup> For example, in 2018, then Minister of Education, Naftali Bennett, stated, “If you don’t mow the lawn, the lawn will mow you”, referring to the need to carry out routine operations in Gaza to curb the activity of armed groups. See video (in Hebrew) available at <https://www.ynet.co.il/articles/0,7340,L-5340781,00.html>.

<sup>118</sup> See S/2021/463. See also (in Hebrew) <https://www.idf.il/%D7%90%D7%AA%D7%A8%D7%99-%D7%99%D7%97%D7%99%D7%93%D7%95%D7%AA/%D7%A2%D7%9C%D7%95%D7%A-%D7%94%D7%A9%D7%97%D7%A8/%D7%9B%D7%9C-%D7%94%D7%9B%D7%AA%D7%91%D7%95%D7%AA/%D7%A8%D7%9E%D7%98%D7%9B%D7%9C-%D7%91%D7%99%D7%A7%D7%95%D7%A8-%D7%9E%D7%91%D7%A7%D7%A8-%D7%A4%D7%99%D7%A7%D7%95%D7%93-%D7%93%D7%A8%D7%95%D7%9D-%D7%94%D7%93%D7%A8%D7%95%D7%9D-%D7%A2%D7%9C%D7%95%D7%AA-%D7%94%D7%A9%D7%97%D7%A8/>.

<sup>119</sup> See, for example, Office of the Prime Minister of Israel, “Statements by PM Lapid and Defense Minister Gantz”, 8 August 2022 and Office of the Prime Minister of Israel, “Statement by PM Netanyahu”, 9 May 2023.

<sup>120</sup> See A/HRC/49/83, para. 7.

<sup>121</sup> See *ibid.*, para. 3.

Israeli authorities as intended to target armed groups and military infrastructure.<sup>122</sup> According to United Nations reports, the escalation resulted in the deaths of at least 241 Palestinians, including 60 children and 38 women, and 10 Israeli citizens and residents, including 3 women, 1 boy and 1 girl. At least 18 Palestinians, including 5 boys, 1 girl and 3 women, were killed, seemingly by rockets fired by Palestinian armed groups that fell short inside Gaza.<sup>123</sup>

55. On 16 May 2021, Israeli security forces launched approximately 150 air strikes on Gaza, targeting the Rimal neighbourhood and Wahdah Street, a densely populated area in central Gaza City. At approximately 1 a.m., 25 to 30 strikes hit the area in quick succession,<sup>124</sup> resulting in the complete destruction of three residential buildings belonging to the Abu al-Aowf and al-Kolak families in Wahdah Street. Witnesses reported to the Commission that the residents in these buildings were not given prior warnings.<sup>125</sup> At least 44 civilians were killed in these attacks, including 18 children (9 girls and 9 boys) and 14 women, and dozens were injured.<sup>126</sup> The neighbourhood suffered extensive damage, including to eight multi-storey buildings, ministerial buildings and electricity, water and communication networks.<sup>127</sup>

56. Reportedly, Israeli security forces sought to target underground tunnels and an underground command centre used by Hamas.<sup>128</sup> The Commission reviewed information indicating that Israeli security forces used the MK 84, guided by the Joint Direct Attack Munitions (known as GBU-31), a precision-guided air-delivered bomb, for this attack.<sup>129</sup> These bombs are “bunker busters” with deep penetrative and destructive capabilities that hit the streets close to buildings, leading to their collapse. The Commission notes that, under international law, Israeli security forces should have provided sufficient warning before using heavy-payload bombs in a densely populated area, on the presumption that these may cause extensive damage, including the destruction of buildings.

57. The Palestinian Centre for Human Rights has filed a complaint with the Israeli Military Advocate General, who has referred the case to the General Staff Mechanism for Fact-Finding Assessments for further examination. On the basis of the damage to civilian objects and the number of casualties, the Commission concludes that the attack by Israeli security forces in Wahdah Street resulted in incidental effects on civilians that were disproportionate to the expected military advantage. The Commission also notes that Israeli security forces failed to take proper precautionary measures to provide effective advance warning of their attacks.

58. On 9 May 2023, Israeli security forces launched Operation Shield and Arrow, during which it targeted three commanders of Al-Quds Brigades, the military wing of

<sup>122</sup> See *ibid.*, paras. 7–8. See also (in Hebrew) <https://www.youtube.com/watch?v=pacxbPF1XNM>.

<sup>123</sup> See A/HRC/49/25, para. 11.

<sup>124</sup> See A/76/333, para. 7.

<sup>125</sup> Interviews on file.

<sup>126</sup> A/HRC/49/83, para. 9, and documents on file.

<sup>127</sup> See A/76/333, para. 7.

<sup>128</sup> Israel Defense Forces Editorial Team, “Operation Guardian of the Walls”, Israel Defense Forces, 14 June 2021. See also <https://www.youtube.com/watch?v=rrYHge7tqsQ> and (in Hebrew) <https://www.idf.il/%D7%9B%D7%AA%D7%91%D7%95%D7%AA-%D7%95%D7%A2%D7%93%D7%9B%D7%95%D7%A0%D7%99%D7%9D/2021/%D7%A4%D7%A8%D7%95%D7%99%D7%A7%D7%98-%D7%9E%D7%98%D7%A8%D7%95-%D7%AA%D7%A7%D7%A6%D7%99%D7%91-%D7%97%D7%9E%D7%90%D7%A1-%D7%9E%D7%A0%D7%94%D7%A8%D7%95%D7%AA-%D7%98%D7%A8%D7%95%D7%A8-%D7%A2%D7%9C%D7%95%D7%AA-%D7%9E%D7%97%D7%99%D7%A8-%D7%A2%D7%96%D7%94/>.

<sup>129</sup> Documents on file and Dor Palkovic, “Flying with JDAMs”, Israeli Air Force, 20 May 2019.

Palestinian Islamic Jihad in Gaza.<sup>130</sup> Over a five-day period, Israeli security forces conducted 323 air strikes on several sites across Gaza.<sup>131</sup> Palestinian armed groups launched over 1,200 rockets and more than 250 mortars towards Israel. Almost 300 were reported to have fallen short within Gaza, while approximately 400 were intercepted by the Israeli Iron Dome.

59. The aerial attack resulted in the deaths of 33 Palestinians, including at least 12 civilians. Reportedly, at least three of the Palestinian fatalities were caused by rockets fired from Gaza that had fallen short.<sup>132</sup> Some 100 housing units were destroyed and another 125 severely damaged. Essential infrastructure, such as schools, health-care facilities and electric and water lines, was also damaged.<sup>133</sup> More than 1,100 Palestinians were displaced.<sup>134</sup> The Rafah crossing between Gaza and Egypt was closed and Israeli authorities closed both crossings between Gaza and Israel, preventing the entry of food, medical supplies and fuel for the Gaza power plant.

60. One Israeli security forces attack, at 2 a.m. on 9 May 2023, targeted the Dawli apartment building, killing Tariq Ezz al-Din, a commander of Al-Quds Brigades, and his two children (a boy and a girl), who resided on the fifth floor.<sup>135</sup> Israeli security forces dropped three bombs on the building, one detonating in Ezz al-Din's apartment and another detonating in an apartment on the sixth floor, killing another three civilians (two men and one woman). The third bomb landed in the building's basement but did not explode. Six other persons were injured in the attack, including two boys and two women. The residential building was severely damaged, particularly the fifth and sixth floors, leaving it uninhabitable.

61. The Commission heard accounts from residents that they did not receive warnings prior to the attack. According to documents reviewed by the Commission, the building was hit with three GBU-39B bombs,<sup>136</sup> which are designed to limit collateral damage and should be capable of making pinpoint strikes.<sup>137</sup>

62. Prime Minister Benjamin Netanyahu stated shortly after the attacks that the senior leadership of Palestinian Islamic Jihad had been targeted in Gaza in a pre-emptive attack to prevent future terrorist attacks in Israel, adding that the offensive could be expanded if needed.<sup>138</sup> The Israeli security forces announced that measures

<sup>130</sup> See United Nations, "Recent deadly escalation between Israeli forces, Palestinian armed groups 'another reminder' of volatile situation, Special Coordinator tells Security Council", press release, 24 May 2023. See also (in Hebrew) <https://twitter.com/netanyahu/status/1655958518543818753?s=20>; and Israel Defense Forces, "Operation Shield and Arrow – live updates", press release, 9 May 2023.

<sup>131</sup> See United Nations, "Recent deadly escalation".

<sup>132</sup> See Office for the Coordination of Humanitarian Affairs, "Protection of civilians report, 2-15 May 2023", 19 May 2023.

<sup>133</sup> See Office for the Coordination of Humanitarian Affairs, "Humanitarian situation in Gaza: flash update #5 as of 17:00, 15 May 2023", 16 May 2023. See also United Nations, "Recent deadly escalation".

<sup>134</sup> See United Nations, "Recent deadly escalation".

<sup>135</sup> Interview on file.

<sup>136</sup> See Amnesty International, "Israel/OPT: investigate possible war crimes during Israel's military offensive on Gaza in May 2023", 13 June 2023.

<sup>137</sup> See Israel Defense Forces Editorial Team, "Israeli Air Force: bombing Gaza or pinpoint strikes", Israeli Air Force, 11 March 2012.

<sup>138</sup> See Office of the Prime Minister of Israel, "PM Netanyahu's remarks at the start of the Security Cabinet meeting", press release, 9 May 2023. See also Office of the Prime Minister of Israel, "PM Netanyahu Speaks with Southern Local and Regional Council Heads", press release, 10 May 2023.



had been taken to prevent harm to “uninvolved” individuals.<sup>139</sup> Palestinian Islamic Jihad stated that 11 of its members had been killed during the operation.<sup>140</sup>

63. On the basis of the evidence before it, the Commission considers that Israeli authorities and Palestinian armed groups have failed to take effective precautionary measures to avoid civilian casualties wherever possible. Taking into account the military targets and the incidental effects of the air strikes, the Commission concludes that as the damage and casualties caused by the actions of Israeli security forces were not proportionate to the military advantage, said actions constitute a war crime.<sup>141</sup> The Commission finds that preventing the entry of food and medical supplies into Gaza is a violation of international humanitarian law.<sup>142</sup> The Commission also concludes that the use by Palestinian armed groups of rockets and mortars that are inherently indiscriminate in their nature constitutes a violation of the prohibition of indiscriminate attacks and is thus a war crime.<sup>143</sup>

64. In relation to the attack on the Dawli apartment building on 9 May 2023, the Commission finds that, although Israeli security forces have the capacity to ensure that civilian casualties are avoided, such means were not employed, therefore causing disproportionate incidental effects on civilians, including unnecessary deaths and injuries.

## VI. Conclusions

65. **The Commission finds that the increasingly militarized law enforcement operations of Israel and repeated attacks by Israel on Gaza are aimed at maintaining its unlawful 56-year occupation and serve (or are used) to weaken opposition to the occupation, fragmenting Palestinian political, economic and social cohesion, denying Palestinian self-determination and ultimately preventing the establishment of a free Palestinian State. The devastating results of regular military incursions and aerial attacks on Gaza and militarized law enforcement operations in the West Bank, including East Jerusalem, fall primarily on civilians, with an increasing number of deaths and injuries. These disproportionately affect men and boys as the primary victims but also affect**

<sup>139</sup> See (in Hebrew) <https://www.idf.il/%D7%90%D7%AA%D7%A8%D7%99-%D7%99%D7%97%D7%99%D7%93%D7%95%D7%AA/%D7%9E%D7%91%D7%A6%D7%A2-%D7%9E%D7%92%D7%9F-%D7%95%D7%97%D7%A5/%D7%9B%D7%9C-%D7%94%D7%9B%D7%AA%D7%91%D7%95%D7%AA/%D7%9E%D7%91%D7%A6%D7%A2-%D7%9E%D7%92%D7%9F-%D7%95%D7%97%D7%A5-%D7%9E%D7%91%D7%A6%D7%A2-%D7%A2%D7%95%D7%98%D7%A3-%D7%A2%D7%96%D7%94-%D7%94%D7%A0%D7%97%D7%99%D7%95%D7%AA-%D7%A4%D7%99%D7%A7%D7%95%D7%93-%D7%94%D7%A2%D7%95%D7%A8%D7%A3-%D7%A1%D7%99%D7%9B%D7%95%D7%9C%D7%99%D7%9D-%D7%92%D7%99%D7%94%D7%90%D7%93-%D7%90%D7%A1%D7%9C%D7%90%D7%9E%D7%99-%D7%A4%D7%9C%D7%A1%D7%98%D7%99%D7%A0%D7%99-%D7%92%D7%90%D7%A4-%D7%AA%D7%A7%D7%99%D7%A4%D7%95%D7%AA-%D7%9E%D7%98%D7%95%D7%A1%D7%99-%D7%A7%D7%A8%D7%91-%D7%A1%D7%99%D7%9B%D7%95%D7%9C-%D7%AA%D7%A7%D7%99%D7%A4%D7%94-%D7%A2%D7%93%D7%9B%D7%95%D7%A0%D7%99%D7%9D-%D7%91%D7%9C%D7%99%D7%99%D7%91-%D7%9E%D7%AA%D7%92%D7%9C%D7%92%D7%9C%D7%AA/>.

<sup>140</sup> See (in Arabic) <https://saraya.ps/post/66382>.

<sup>141</sup> ICRC, Customary International Humanitarian Law database, rule 14.

<sup>142</sup> Fourth Geneva Convention, art. 55.

<sup>143</sup> ICRC, Customary International Humanitarian Law database, rules 11–13.



women and girls, who bear the burden of becoming primary breadwinners and caregivers.

66. In its previous report to the General Assembly, the Commission stated that, while Israel has legitimate security concerns, these must be considered within the context of occupation and the severe power imbalance between the occupiers and the occupied. The prolonged occupation by Israel of the Palestinian territory has given rise to protests in which Palestinians have asserted their right to self-determination throughout the West Bank, including East Jerusalem, and Gaza. The Commission has reviewed extensive information on actions undertaken to suppress demonstrations and concludes that the force used against Palestinian demonstrators as a crowd control measure is regularly excessive and is neither strictly necessary nor proportionate. Law enforcement officials must exercise restraint to protect lives and minimize injury and damage.

67. The Commission stresses that lethal force may be used only against demonstrators in strictly prescribed circumstances where necessary to prevent an imminent threat to life. When demonstrators are killed as a result of the use of lethal force even though they did not pose an imminent threat to life or serious injury, such actions violate the rights to life and to physical and mental integrity and may amount to arbitrary killing and, within the context of occupation, to the war crime of wilful killing.

68. The Commission finds that Israeli police use excessive force and indiscriminate means to disperse demonstrators in Israel and in the West Bank, including East Jerusalem, resulting in serious harm to persons, including death and permanent injuries. The Commission observes that Israeli authorities are guided by a distinct hierarchy of methods in dispersing demonstrations, with the most lethal response, including live ammunition, used against Palestinians in the West Bank. Although Jewish Israeli demonstrators have been injured by police in demonstrations inside Israel, these have largely been non-life-threatening injuries.

69. Israel is increasingly applying the framework governing conduct of hostilities to its law enforcement operations, including to the suppression of peaceful demonstrations, despite an obligation to apply the framework governing law enforcement under international human rights law in these circumstances. The Commission emphasizes that Israel, as the occupying Power, is bound by international law to protect the population under its occupation. Israeli authorities must end the occupation immediately, unconditionally and totally and cease preventing the Palestinian people from exercising its right to self-determination.

70. The continuing unlawful occupation of the Palestinian territory has had an overwhelming impact on the lives of Palestinian children, who experience serious human rights violations, some of which may amount to international crimes. The Commission notes that 2022 was the deadliest year for Palestinian children in the West Bank in over 15 years. The Commission cannot understand why, despite the Occupied Palestinian Territory being classified as a “situation of concern” for the past 16 years, Israel has never been listed in the annexes to the Secretary General’s report on children and armed conflict.

71. Large-scale search and arrest operations aimed at disrupting networks of armed groups in the West Bank are increasing, and there have been hundreds of smaller-scale operations targeting particular individuals. Several search and arrest operations of the Israeli security forces in Jenin in 2023 appear to have included the unnecessary and disproportionate use of force. Israeli authorities’ use of war-related terminology, armed helicopters, aerial drone attacks and

military combat units, and the amount and types of firepower used are evidence that they apply the framework governing conduct of hostilities to law enforcement operations in the West Bank, contrary to international law.

72. The Commission observes that Israeli authorities' broad application of the framework governing conduct of hostilities to law enforcement operations appears intended to attribute the concept of direct participation in hostilities to all Palestinian civilians engaged in any form of oppositional activities, including legitimate peaceful protest. The failure to distinguish between law enforcement operations and armed conflict results in far more permissive rules of engagement, which in turn lead to the killing and injury of more Palestinian civilians. The Commission finds that the application of the framework governing conduct of hostilities is also intended to diminish accountability and exempt the State from responsibility for the payment of compensation to victims under Israeli law.

73. The increasing use of force in Israeli security forces operations in the West Bank perpetuates cycles of protraction of conflict, fuelling endless killings and harm. These operations trigger protests, encourage greater armed resistance and lead to further attacks by Palestinian armed groups against Israelis or Israeli security forces, which in turn lead to more military operations. The use of force against the Palestinian population is thus both a driver and a root cause of conflict.

74. Israeli authorities often justify military operations in Gaza and the West Bank as necessary for security and deterrence, invoking the "mowing of the lawn" strategy.<sup>144</sup> Accordingly, operations are increasingly pre-emptive in nature, launched without an immediate threat and aimed at removing or reducing the capabilities of Palestinian armed groups, while harming entire populations in dense civilian locations in the process. The Commission finds that this was the motivation behind the July 2023 operation in Jenin and the 2023 attack on Gaza.

75. The Commission is deeply concerned by the persistent lack of accountability by all duty bearers and their failure to provide effective remedies to victims for violations of international law, including human rights and humanitarian law, committed in and from the Occupied Palestinian Territory, especially Gaza. All parties to an armed conflict, including armed groups in Gaza, must abide by the rules of international humanitarian and human rights law.

76. In relation to military incursions and aerial attacks on Gaza, the Commission rejects Israeli authorities' use of pre-emption or deterrence as the legal basis justifying these actions. The Commission finds that such operations have had a devastating effect on civilians, civilian objects and structures. Specific attacks carried out during incursions into Gaza in 2021 and 2023 were disproportionate to the military necessity and lacked necessary precautions.

77. The Commission concludes that the repeated military incursions and aerial attacks on Gaza, which are now an annual occurrence, must be seen within the broader context of the Israeli occupation, which Israel has no intention of ending.<sup>145</sup> Such operations underpin the separation and isolation policies of Israel relating to Gaza and are a continuation of its de facto annexation policies in the West Bank. The political rift between Hamas and the Palestinian Authority has been used by Israeli authorities to further promote their policies of

<sup>144</sup> See para. 53 of the present report.

<sup>145</sup> See [A/77/328](#), paras. 76–77.

separation, isolation and fragmentation, with the objective of deflecting attention from the permanent occupation and the killing of civilians, who bear the brunt of this conflict.

## VII. Recommendations

78. The Commission recommends that the Government of Israel:

(a) Recognize and respect the Palestinian people's right to self-determination;

(b) Comply fully with its international law obligations and end without delay its 56 years of occupation of the Palestinian territory and the occupied Syrian Golan;

(c) End all settlement construction and expansion in the West Bank, including East Jerusalem, and act effectively to prevent violence by settlers against Palestinians, including by holding settlers accountable for their acts of violence;

(d) Clearly distinguish between law enforcement operations and conduct of hostilities, and apply the framework governing international human rights law to law enforcement operations in line with its obligations as an occupying Power and under relevant treaties;

(e) Provide effective remedies for violations of international human rights law, including compensation, restitution, rehabilitation, public apologies and guarantees of non-repetition, and ensure that all those responsible for violations of international humanitarian and human rights law are held accountable;

(f) Publish in full the rules of engagement of the Israeli security forces and the Israeli police, in particular as they relate to the dispersal of demonstrations, and review and reform the rules of engagement with a view to strictly limiting and regulating the use of force and the use of lethal force in line with the international human rights law obligations of Israel;

(g) In relation to its military operations in Gaza, comply fully with its international humanitarian law obligations, including the fundamental principles of distinction, precaution and proportionality, and prohibit forms of combat that indiscriminately target civilians and civilian objects or that cause disproportionate harm to civilians or civilian objects;

(h) Ensure independent, impartial and thorough investigations into possible violations of international humanitarian law in Gaza;

(i) Release all withheld bodies of Palestinians and end the practice of withholding bodies and information from family members;

(j) Fully cooperate with the investigation by the Federal Bureau of Investigation into the death of Shireen Abu Akleh and with the International Criminal Court investigation into the *Situation in the State of Palestine*.

79. The Commission recommends that the State of Palestine ensure that all those responsible for violations of international humanitarian and human rights law are held accountable, and that it provide effective remedies for such violations.

80. The Commission recommends that the de facto authorities in Gaza, along with armed groups:

(a) Comply fully with international humanitarian and human rights law, including the fundamental principles of distinction, precaution and proportionality, and prohibit using means and methods that indiscriminately target civilians and civilian objects or that cause disproportionate harm to civilians or civilian objects;

(b) Stop all indiscriminate firing of rockets, mortars and other munitions towards civilian populations;

(c) Release all bodies of Israeli citizens held in Gaza;

(d) Ensure that all those responsible for violations of international humanitarian and human rights law are held accountable.

81. The Commission recommends that the International Criminal Court prioritize the investigation into the *Situation in the State of Palestine*, including the identification of those exercising command responsibility in the killing of Shireen Abu Akleh, and in all incidents that fall within the Court's jurisdiction.

82. The Commission recommends that the States Members of the United Nations refrain from recognizing, supporting, encouraging, aiding or assisting in any violations of international law committed in the Occupied Palestinian Territory, including East Jerusalem, by Israeli authorities or other groups, in line with Member States' obligations under common article 1 of the four Geneva Conventions, articles 146–148 of the Fourth Geneva Convention and the human rights treaties to which the State of Israel and the State of Palestine are parties.

83. The Commission recommends that the Secretary-General list Israel in the annexes of the next annual report on children and armed conflict, in accordance with Security Council resolution [1379 \(2001\)](#) and subsequent resolutions, and institutionalize the country task force on monitoring and reporting in the Occupied Palestinian Territory.

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