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Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1* **

Summary

The present document contains the detailed finding of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1. The commission's principal findings and recommendations are provided in document A/HRC/29/52.

* Reproduced as received.

** The information contained in this document should be read in conjunction with the report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (A/HRC/29/52).

Contents

I. Introduction

1. On 23 July 2014, the Human Rights Council, in its resolution S-21/1, decided to "urgently dispatch an independent, international commission of inquiry to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after, to establish the facts and circumstances of such violations and of the crimes perpetrated and to identify those responsible, to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring that those responsible are held accountable, and on ways and means to protect civilians against any further assaults, and to report to the Council at its twenty-eighth session." Pursuant to resolution S-21/1, the President of the Council appointed three experts to the commission: William Schabas (Chair), Mary McGowan Davis and Doudou Diène.

2. The members of the commission formally began their work on 16 September 2014. Following the resignation of Professor Schabas on 2 February 2015, the President of the Council designated Justice Davis as the Chair. The Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the commission. Notwithstanding the urgency expressed by the Council to dispatch the commission, the secretariat was not fully constituted until the end of November 2014.

3. The commission repeatedly requested Israel to cooperate, including by granting it access to Israel and the Occupied Palestinian Territory, including the West Bank, East Jerusalem and the Gaza Strip. Regrettably, Israel did not respond to these requests. Subsequently, the commission learned from a press release that no such cooperation would be forthcoming. The Government of Egypt, when requested to facilitate entry into the Gaza Strip through the Rafah crossing, responded that it was not possible owing to the prevailing security situation. The commission wishes to thank the Government of Jordan for facilitating its two visits to Amman.

4. The commission received full cooperation from the State of Palestine, including the Permanent Observer Mission of the State of Palestine to the United Nations Office at Geneva. It met with representatives of Palestinian ministries in Amman, who provided a range of documents. The commission also spoke to members of the authorities in Gaza, who submitted several written reports to the commission.

5. The commission addressed to the Government of Israel and the Government of the State of Palestine a list of questions relating to specific incidents and legal and policy issues. A comparable list of questions was also sent to Hamas. Only the State of Palestine responded to the requests.

II. Mandate and methodology

6. The commission interpreted its mandate as requiring it to examine alleged violations of international human rights law and international humanitarian law occurring between 13 June and 26 August 2014 across the Occupied Palestinian Territory, in particular in Gaza, and in Israel, and to determine whether such violations had been committed. It examined existing accountability mechanisms and their effectiveness, and the immediate and continuing impact of the military operations on the affected populations and their enjoyment of human rights. The commission considered that the victims and their human rights were at the core of its mandate. Its activities were thus informed by the wish to

ensure that the voices of all victims are heard, and that the commission's recommendations will strengthen the protection of the civilian population in the Occupied Palestinian Territory and in Israel.

7. The normative framework for the commission was international law, in particular international human rights law and international humanitarian law and, where applicable, international criminal law.

8. The commission is grateful to the many victims and witnesses who shared their experiences and other relevant information. The fact that, despite its repeated requests, the commission was not granted access to the Occupied Palestinian Territory and Israel posed a challenge for conducting interviews in person with victims and witnesses and made viewing the sites where violations were alleged to have been committed impossible. Owing to the restrictions on movement preventing victims and witnesses from leaving Gaza, the commission obtained first-hand testimony by means of interviews conducted via Skype, videoconference and telephone. It conducted confidential interviews with victims and witnesses from the West Bank in Jordan (in November 2014 and January 2015) and with victims and witnesses from Israel in Geneva (in January 2015). In October and December 2014, the commission called for written submissions and at the end of January, the deadline for receiving them was extended to 15 February 2015. Notwithstanding this deadline, the commission continued to consider submissions until the finalization of the report.

9. The commission is grateful for the valuable contribution made to its work by OHCHR, United Nations agencies and programmes, non-governmental organizations and experts. It thanks those non-governmental organizations, including human rights organizations, who work tirelessly to document individual cases of alleged violations of international human rights law and international humanitarian law in the region for their invaluable support. It notes that a number of Israeli non-governmental organizations were reluctant to cooperate with the Commission of Inquiry, fearing in some cases that there could be negative repercussions on their work. In the case of some Palestinian non-governmental organizations, the decision to cooperate came at an extremely late stage of the commission's work. Some sources requested that their submissions be treated confidentially for fear of the possible consequences of testifying before the commission, including for their safety. Primary responsibility for protecting victims, witnesses and other persons cooperating with the commission rests with their States of residence and nationality.[1]

10. The commission considered holding public hearings to offer witnesses and victims from both sides the opportunity to speak directly to the international community. However, this was not feasible in the timeframe accorded to the commission. Given the delays in setting up the Secretariat, the lack of access to Gaza, Israel and the West Bank, the obstacles to freedom of movement for people in Gaza, and the importance of prioritizing the documentation of possible violations, the commission ultimately decided to focus on conducting individual meetings and interviews with victims and witnesses and issuing a public call for submissions. The commission hopes to eventually make public as much of the material received as confidentiality permits.

11. In order to document specific violations against children and the impact of the war on children, the commission interviewed representatives of local and international non-governmental organizations and United Nations agencies working on children's rights in Gaza, Israel and the West Bank. The commission also heard from medical doctors who

[1] Due to protection concerns, throughout this report witness testimony is referred to by using a witness number.

worked in hospitals in Gaza and the West Bank during last summer's hostilities, who described their impact on children's health.

12. With a view to gathering information on the impact of the 2014 hostilities on women and girls, the commission interviewed members of international and local women's rights organizations who worked directly with women in Gaza during the hostilities. In addition, local organizations submitted information and a large number of signed and verified affidavits by female victims/witnesses in the Gaza Strip and the West Bank to the commission. The commission also interviewed Israeli women.

13. Given its restricted access, its limited resources and the short time frame available for its inquiry, the commission selected incidents on the basis of certain criteria, in particular, the gravity of the allegations of violations of international humanitarian law and international human rights law; their significance in demonstrating patterns of alleged violations; access to victims, witnesses and supporting evidence; and the geographic location of the incident.

A. Assessment of information and standard of proof

14. The commission and its secretariat conducted more than 280 interviews with victims and witnesses and received more than 500 written submissions and other documentation from a wide range of sources, including eyewitnesses, affidavits, medical reports, expert weapons analyses, satellite imagery, video film footage and other photographic evidence from incident sites and injury documentation, as well as written submissions, including expert legal opinions. It reviewed information publicly available, including that on official websites of the Government of Israel.

15. The commission used the totality of this information in making its assessments, while carefully considering the credibility and reliability of sources. It gave particular weight to first-hand testimonies, recognizing the limitations resulting from the fact that the interviews were done remotely, the lapse in time since the incidents occurred, and the possibility of reprisals. In many cases, as a result of the constraints imposed on the commission, in particular in terms of access, it was not possible to establish with certainty the factual circumstances of a given incident.

16. The commission decided to use the overall fatality figures provided by the UN Protection Cluster, which are based on a variety of different sources. The methodology has been explained as follows: "The Protection Cluster is the mechanism for coordinating humanitarian action by humanitarian organizations (UN and non-UN) working in the protection sector. OHCHR leads the Protection Cluster in the OPT. OHCHR compiled figures on fatalities in its capacity as leader of the Protection Cluster. The methodology used involves the compilation of initial reports of fatalities from the media and other sources which are then crosschecked and verified in collaboration with a number of international, Palestinian and Israeli partner organizations. Where available, each individual's name, age, sex and place of death is determined, as well as their status as a civilian or combatant where possible. Multiple sources are cross-referenced, not only from media and various human rights organizations, but also information released by the IDF and by the Palestinian armed groups regarding the identity of combatants. Information from the Ministry of Health in Gaza is one, but not an exclusive, source of information. Verification of the information collected is continuing. Figures are published on the website of OCHA on behalf of the Protection Cluster."[2] While the casualty figures

[2] A/HRC/28/80/Add.1, para.24, footnote 43.

gathered by the United Nations, Israel, the State of Palestine and non-governmental organizations differ, regardless of the exact proportion of civilians to combatants, the high incidence of loss of human life and injury during the 2014 hostilities is heartbreaking.

17. In terms of fatality and casualty figures related to specific incidents, the commission, whenever possible, cross-checked information from witnesses against lists provided by different sources. However, in a number of cases, many members of the same family, often with similar names and children of more or less the same age were among the victims, which sometimes made it difficult to determine how many individuals actually were killed. In addition, divergent figures may have emerged because some people who were seriously injured during attacks died soon afterwards, either while being transported to or in a hospital or clinic.

18. In terms of determining which weapons were used in the various incidents, the lack of cooperation by Israel made viewing the scenes of incidents and gathering first hand observation of damage and other related evidence - key to assessing the veracity of witness testimonies – impossible. The commission was therefore constrained to gather and evaluate witness statements and study photographic evidence showing injuries, damage and ordnance remnants that were provided by third party sources. In addition, the commission reviewed open source information as to the weapons resources; their delivery means; and their effects. All available materials relating to specific incidents were reviewed by a military expert – who has had extensive command and operational experience during the course of a long military career – to determine what kinds of weapons were most likely to have been used and whether they may reasonably have been employed given the specific tactical situation.

19. Consistent with the practice of other United Nations fact-finding bodies,[3] the commission employed a "reasonable ground" standard in its assessment of incidents investigated and patterns found to have occurred. This means that the commission, on the basis of reliable and consistent information, was satisfied that "a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct had occurred."[4] The assessment in each case considered two elements: 1) the reliability and credibility of the source, taking into account its nature and objectivity, the quality of previously submitted information and the methodology utilized by the source, and 2) the validity and veracity of the information itself on the basis of cross-checking witness testimony against photographic evidence and other materials relating to the same incidents provided by other sources.

20. The factual conclusions formed the basis for the legal analysis of the individual incidents and their qualification as possible violations of international human rights law or humanitarian law. As the "reasonable ground" threshold is lower than the standard required in criminal trials, the commission does not make any conclusions with regard to the responsibility of specific individuals for alleged violations of international law.

21. Finally, the commission notes that "[u]nder international humanitarian law and the Rome Statute, the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime. International humanitarian law and the Rome Statute permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur. A crime occurs if there is an intentional attack directed against civilians […] or an attack is launched

[3] United Nations Office of the High Commissioner for Human Rights (OHCHR): *Commissions of Inquiry and Fact-finding-missions on international human rights and humanitarian law. Guidance and Practice*. 2015 at http://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf

[4] See also A/HRC/25/63, para.22

on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage […].”[5]

III. Legal Framework

22. The mandate of the commission is to investigate all alleged violations of international humanitarian law and international human rights law, in the occupied Palestinian territory, and to establish facts and circumstances of such violations and examine whether crimes were perpetrated. Consequently, the work of the commission was carried out within the framework of international humanitarian law, international human rights law and international criminal law.

A. International humanitarian law

23. In situations of armed conflict, all parties to the conflict are bound by the applicable rules of international humanitarian law, whether customary or treaty based.

24. With regard to treaty law, Israel is a party to the four Geneva Conventions of 12 August 1949 and its Additional Protocol III, relating to the adoption of a distinctive emblem, but has not ratified Additional Protocols I and II on the protection of victims of international armed conflicts and non-international armed conflicts. Israel is also a party to the Convention prohibiting Certain Conventional Weapons of 1980 and its Protocols I and IV on non-detectable fragments and blinding laser weapons, respectively, and amended Protocol II prohibiting, mines, booby-traps and other devices. While Israel has not ratified the Additional Protocols I and II to the 1949 Geneva Conventions, it accepts that some of their provisions accurately reflect customary international law.[6] While Israel is not a party to the Fourth Hague Convention on the War on Land and its annexed Regulations of 1907, the Government of Israel has recognized that the Regulations reflect customary international law.[7]

25. The 1907 Hague Regulations, along with the Fourth Geneva Convention of 1949 and customary international humanitarian law contain the rules applicable to Israel’s occupation of the West Bank, including East Jerusalem and the Gaza strip. Israel has stated that while it *de facto* applies the humanitarian provisions of the Fourth Geneva Convention of 1949, it does not recognize its *de jure* application to the occupied Palestinian territory.[8] This position was rejected by the International Court of Justice, which confirmed the *de jure* applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory.[9]

[5] International Criminal Court, OTP response to communications received concerning Iraq, 9 February 2006.

[6] Israel, Ministry of Foreign Affairs, *IDF Conduct During the 2014 Gaza Conflict*, p. 2. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

[7] Ibid.p.2. This is also the conclusion of the International Court of Justice in the Advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 9 July 2004, I.C.J. Reports 2004, para. 89.

[8] Meir Shamgar, *The Observance of International Law in the Administered Territories, Israel Yearbook on Human Rights*, vol. 1, 1971. When this article was published the author was Attorney General of Israel.

[9] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, para. 101

26. The Occupied Palestinian Territory is comprised of the West Bank, including East-Jerusalem and the Gaza strip. The Government of Israel adopts the position that since it withdrew its troops and settlers from Gaza in 2005 during the "disengagement", it no longer has effective control over what happens in Gaza and thus can no longer be considered as an occupying power under international law.[10] The commission agrees that the exercise of 'effective control' test is the correct standard to use in determining whether a State is the occupying power over a given territory, but notes that the continuous presence of soldiers on the ground is only one criterion to be used in determining effective control.

27. International law does not require the continuous presence of troops of the occupying forces in all areas of a territory, in order for it to be considered as being occupied. In the *Naletelic* case, the ICTY held that the law of occupation also applies in areas where a state possesses the "capacity to send troops within a reasonable time to make its power felt."[11] The size of Gaza and the fact that it is almost completely surrounded by Israel facilitates the ability for Israel to make its presence felt.[12] This principle was confirmed by the United States Military Tribunal at Nuremberg which stated:

It is clear that the German Armed Forces were able to maintain control of Greece and Yugoslavia until they evacuated them in the fall of 1944. While it is true that the partisans were able to control sections of these countries at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country. The control of the resistance forces was temporary only and not such as would deprive the German Armed Forces of its status of an occupant.[13]

28. This analysis also applies to the Occupied Palestinian Territory which is considered a single territorial unit by the international community,[14] and by Israel in the Interim Agreement on the West Bank and Gaza, which recognized the West Bank and Gaza as a single territorial unit.[15]

29. In addition to its capacity to send troops to make its presence felt, Israel continues to exercise effective control of the Gaza Strip through other means. According to the Interim agreement on the West Bank and the Gaza Strip, Israel maintains the control of Gaza's airspace and maritime areas, and any activity in these areas is subject to the approval of Israel. The facts since the 2005 disengagement, among them the continuous patrolling of the territorial sea adjacent to Gaza by the Israeli Navy and constant surveillance flights of IDF aircraft, in particular remotely piloted aircraft, demonstrate the continued exclusive control by Israel of Gaza's airspace and maritime areas which -- with the exception of limited fishing activities -- Palestinians are not allowed to use. Since 2000, the IDF has also continuously enforced a no-go zone of varying width inside Gaza along the Green Line fence. Even in periods during which no active hostilities are occurring, the IDF regularly

[10] Israel, Ministry of Foreign Affairs, *The Background to the 2014 Gaza Conflict*, p. 8. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015

[11] ICTY, *Prosecutor v. Naletilic and Martinovic*, IT-98-34-T, Judgement of 31 March 2003, para. 217

[12] Tristan Ferraro, *Determining the beginning and end of an occupation under international humanitarian law*, International Review of the Red Cross, Vol. 95, Number 885, 2012 : "any geographical contiguity existing between the belligerent states might play an important role in facilitating the remote exercise of effective control, for instance by permitting an Occupying Power that has relocated its troops outside the territory to make its authority felt within reasonable time."

[13] *The Hostages Trial, Trial of Wilhelm List and others*, United States Military Trial at Nuremberg, Law Reports of the Trials of War Criminals, Volume VIII, p. 56

[14] UNGA 64/94, 10 December 2009, which calls on Israel to respect the territorial unity of the Occupied Palestinian Territory, and refers to Gaza as part of that territory.

[15] Article XI (1) of the Interim Agreement.

conducts operations in that zone,[16] such as land levelling. Israel regulates the local monetary market, which is based on the Israeli currency and has controls on the custom duties.[17] Under the Gaza Reconstruction Mechanism, Israel continues to exert a high degree of control over the construction industry in Gaza. Drawings of large scale public and private sector projects, as well as the planned quantities of construction material required, must be approved by the Government of Israel.[18] Israel also controls the Palestinian population registry, which is common to both the West Bank and Gaza, and Palestinian ID-cards can only be issued or modified with Israeli approval.[19] Israel also regulates all crossings allowing access to and from Gaza. While it is true that the Rafah crossing is governed by Egypt, Israel still exercises a large degree of control, as only Palestinians holding passports are allowed to cross, and passports can only be issued to people featuring on the Israeli generated population registry.

30. The commission concludes that Israel has maintained effective control of the Gaza Strip within the meaning of Article 42 of the 1907 Hague Regulations. The assessment that Gaza continues to be occupied by Israel is shared by the international community as articulated by the General Assembly and has been reaffirmed by the International Committee of the Red Cross (ICRC) and the Prosecutor of the International Criminal Court (ICC).[20]

31. In view of the 2005 disengagement, Israel's obligations under occupation law are consistent with the level of control it exercises,[21]and the rules of treaty and customary law of occupation by which it is bound remain those that are relevant to the functions that Israel continues to exercise as an occupying power.[22]

32. The commission takes note that the State of Palestine, on 2 April 2014, acceded to the four Geneva Conventions of 12 August 1949 and the Additional Protocols I and II on the protection of victims of international armed conflicts and non-international armed conflicts and the Fourth Hague Convention on the War on Land and its annexed Regulations of 1907. In early January 2015 the State of Palestine acceded to Additional Protocol III to the 1949 Geneva Conventions; to the Convention prohibiting Certain Conventional Weapons of 1980 and its Protocols I and III, and to the Convention on Cluster Munitions of 2008.

33. Israel and the Palestinian armed groups that are parties to the conflict are bound alike by the relevant rules of customary international law. These rules are relevant both to the treatment of civilians and persons *hors de combat* as well as to the conduct of

[16] For example the IDF conducted 80 operations in the no-go zone in 2013, OCHA, Update on the Access Restricted Areas in the Gaza Strip, 1 July to 31 December 2013, p. 4, available at http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Occupied_Palestinian/files/oPt_PC_ARA_Update_July-December_2013_EN.pdf

[17] A/HRC/12/48, para. 278.

[18] UNSCO, *Gaza Reconstruction Mechanism Fact Sheet*, October 2014.

[19] Gisha, The Population Registry, 14 November 2011, http://gisha.org/en-blog/2011/11/14/the-population-registry.

[20] Peter Maurer, *Challenges to international humanitarian law: Israel's occupation policy*, International Review of the Red Cross, Vol. 94, Number 888, p.1506; International Criminal Court, Office of the Prosecutor, *Situation on Registered Vessels of the Comoros, Greece and Cambodia*, 6 November 2014, *Article 53 (1) Report*, p. 17; General Assembly resolutions A/Res/64/92, A/Res/64/94, to be read jointly.

[21] Peter Maurer, *Challenges to international humanitarian law: Israel's occupation policy*, International Review of the Red Cross, Vol. 94, Number 888, p. 1508.

[22] Tristan Ferraro, *Determining the beginning and end of an occupation under international humanitarian law*, International Review of the Red Cross, Vol. 95, Number 885, p. 158.

hostilities. The commission recognizes the complexity of determining customary rules of international law and therefore referred to analyses of custom by international tribunals as well as to the Study on Customary International Humanitarian Law,[23] the contents of which it considers as indicative of the existence of customary norms.[24]

34. With regard to the conduct of hostilities, rules applicable to the conduct of the IDF and Palestinian armed groups involved in the hostilities can be found in customary international law. The commission notes that there are very little substantive differences in this area of international humanitarian law between the rules applicable in international armed conflict and non-international armed conflict. In relation to the 2014 hostilities in Gaza between Palestinian armed groups and the IDF, Israel has noted that the classification of the armed conflict as international or non-international is a matter of debate. Israel further states that "under these circumstances Israel conducted its military operations during the 2014 Gaza conflict in accordance with the rules of the Law of Armed Conflict governing both international and non-international armed conflicts."[25]

35. With regard to the treatment of civilians and persons *hors de* combat, in addition to other applicable rules found in the above-mentioned treaties and in customary law, the Palestinian armed groups that took part in the hostilities and Israel are bound alike by the rules found in common article 3 of the Geneva Conventions. The International Court of Justice has held that, although common article 3 relates to "conflicts which are not of an international character," the rules contained in this article reflect elementary considerations of humanity, and apply equally to international and non-international armed conflict.[26]

36. Finally, common Article 1 of the Four Geneva Conventions of 1949, provides that all "High Contracting Parties undertake to respect and ensure respect" for the four Geneva Conventions in all circumstances. The International Court of Justice, based on this article and on the general principles of humanitarian law, declared that States are under an obligation not to encourage parties to a conflict to act in violation of international humanitarian law.[27] State practice since the adoption of the Geneva Conventions has also made clear that the obligations of common Article 1 are not limited only to those states

[23] Jean Marie Henckaerts and Louise Doswal-Beck, *Customary International Humanitarian Law*, Cambridge, 2006. The rules and the updated related practice are now available on the ICRC *Database on customary international humanitarian law*, to which this report will refer to.

[24] The Israeli High Court refers to the Study for the wording of customary norms, *Public Committee against Torture in Israel v. Government of Israel*, HCJ 769/02, 11 December 2005, para 23.

[25] Israel, Ministry of Foreign Affairs, *The 2014 Gaza Conflict: Factual and Legal Aspects*, IDF Conduct During the 2014 Gaza Conflict, p. 1. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

[26] ICJ, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports, 1986, p. 14, para 218.

[27] ICJ, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports, 1986, p. 14, para 220. In this case, owing to the fact that it was dealing with allegations of support by the United States to armed groups in Nicaragua and that Common Article 3 was applicable in the armed conflict in Nicaragua, the Court concluded: "The Court considers that there is an obligation on the United States Government, in the terms of Article 1 of the Geneva Conventions, to "respect" the Conventions and even "to ensure respect" for them "in al1 circumstances", since such an obligation does not derive only from the Conventions themselves, but from the general principles of humanitarian law to which the Conventions merely give specific expression. The United States is thus under an obligation not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of the provisions of Article 3 common to the four 1949 Geneva Conventions…"

involved in an armed conflict;[28] rather all States "must exert their influence, to the degree possible, to stop violations of international humanitarian law."[29]

37. Main principles on the conduct of hostilities:

- The principle of distinction requires that parties to a conflict distinguish between civilians and civilian objects on the one hand, and combatants[30] and military objectives on the other. Attacks may only be directed against the latter. In order for an object or building to be considered a military objective it must meet two cumulative criteria namely that (1) by its "nature, location, purpose or use [it] make[s] an effective contribution to military action" and, (2) the object's "total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite military advantage."[31]
- The principle of proportionality prohibits attacks that are expected to cause incidental loss of life or injury to civilians or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated.[32]
- The principle of precautions in attack requires all parties to take all feasible measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. This includes: verifying that the target is a military objective and that the attack respects the proportionality requirement; choosing weapons and timing for the attack with a view to avoiding or minimizing civilian casualties; issuing advance warnings when feasible; and suspending an attack if it becomes apparent that it does not respect the principle of proportionality.[33]

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[28] S/Res/681; General Assembly resolution A/Res/58/97; International Conference for the Protection of War Victims, Final Declaration, Geneva, 1993. ICRC, *Commentary on the Third Geneva Convention of 1949*, p.18: "The proper working of the system of protection provided by the Convention demands in fact that the States which are parties to it should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that it is respected universally."

[29] ICRC, *Database on customary international humanitarian law*, Rule 144.

[30] For the purposes of distinction, the term "combatants" includes members of the armed forces and members of organized armed groups with a continuous combat function. In the context of this report, when the terms 'members of armed groups' or 'members of Palestinian armed groups' are used it is meant to include only those with a continuous combat function. The Commission adopts the approach of the ICRC "Interpretative guidance on the notion of direct participation in hostilities under international humanitarian law." The Commission notes that there has been criticism of the concept of 'continuous combat function.' Some have criticized the concept, for broadening the definition of direct participation in hostilities therefore raising the risk of erroneous targeting. Others maintain that it is too restrictive and creates an imbalance between members of the armed forces of a state and members of an organized armed group. Civilians, who are not members of organized armed groups with a continuous combat function, may lose their protection from attack if they directly participate in the hostilities but only for the duration of that participation (Article 13(3) Additional Protocol II and 51(3) of Additional Protocol I).

[31] Article 52(2) Additional Protocol I. ICRC, *Database on customary international humanitarian law*, Rule 9

[32] Articles 51(5) and 57(2) Additional Protocol I. ICRC, *Database on customary international humanitarian law*, Rule 14

[33] Article 57 Additional Protocol I. ICRC, *Database on customary international humanitarian law*, Rules 15-21.

B. International human rights law

38. Israel is a state party to seven of the core human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child. It has also ratified the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, and on the Rights of the Child on the sale of children, child prostitution and child pornography.

39. Israel has maintained its position that it does not have human rights obligations in the Occupied Palestinian Territory based on two main arguments: (1) that the treaties are bound to the territory of the State party and do not apply to the extra-territorial actions of a State,[34] and (2) that the applicability of international human rights law and international humanitarian law are mutually exclusive.[35] The commission notes, however, that Israel has accepted to exercise its powers and responsibilities in the occupied territory "with due regard to internationally-accepted norms and principles of human rights and the rule of law."[36]

40. The commission adopts the widely accepted interpretation that a situation of armed conflict or occupation does not release a State from its human rights obligations. The International Court of Justice, in *Nuclear Weapons* Advisory Opinion, held that the protection of the International Covenant for Civil and Political Rights does not cease in situations of armed conflict, except if derogated from[37] in conformity with article 4 of the Covenant. This position was confirmed by the ICJ in the Advisory Opinion on the Wall, in which the Court considered that "the protection offered by human rights conventions does not cease in case of armed conflict."[38]

41. With regard to the human rights obligations of Israel in the Occupied Palestinian Territory, Israel is bound by those human rights treaties which it ratified. The ICJ concluded that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are applicable.[39] The ICJ also noted that Israel's obligations under ICESCR include "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities". [40] The position of United Nations human rights treaty bodies corresponds to that of the ICJ, namely that as a State party to international human rights instruments, Israel continues to bear responsibility for

[34] CCPR/C/ISR/4, para. 48

[35] In its report to the Human Rights Council, Israel stated: "It is Israel's view that these two systems-of-law, which are codified in separate instruments, remain distinct and apply in different circumstances." CCPR/C/ISR/4, para. 47. See also, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, para. 102.

[36] Article XIV, Agreement on the Gaza Strip and the Jericho Area, 4 May 1994.

[37] ICJ, *Legality of the Threat of Use of Nuclear Weapons,* Advisory Opinion, 8 July 1996, I.C.J Reports 1996 (I), para. 24.

[38] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, para. 106

[39] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, paras. 111-113.

[40] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, paras. 111-113.

implementing its human rights treaty obligations in the Occupied Palestinian Territory, to the extent that it continues to exercise jurisdiction in those territories.[41] The commission notes that Israel has, upon ratification of the International Covenant on Civil and Political Rights, according to article 4, derogated from its obligations under article 9 based on the State of Emergency proclaimed in 1948, which remains in force.

42. Article 1 common to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, enshrines the right of all peoples to self-determination and establishes an obligation for States parties to these human rights conventions to promote and respect the realization of that right, in conformity with the Charter of the United Nations. With regard to the Occupied Palestinian Territory, the international court of justice observed that the "existence of a 'Palestinian people' is no longer in issue" and concluded that the right to self-determination is part of the 'legitimate rights' of the Palestinian people.[42]

43. On 2 April 2014, the State of Palestine acceded to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. On 7 April 2014, the State of Palestine acceded to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict. Owing to the on-going Israeli occupation of the West Bank, including East Jerusalem and the Gaza strip, the extent of the obligations of the State of Palestine under the preceding instruments needs to be clarified by the human rights bodies established to monitor compliance with these specific treaties. The physical, legal and political context of the State of Palestine, including the fact that Palestinian territory continues to be occupied, may be of relevance. In the past, treaty bodies have recognized the obstacles faced by a State Party in implementing its obligations, when it does not have effective control over parts of its territory.[43]

44. In the past, the Palestinian Authority, which exercises its powers in the Occupied Palestinian Territory pursuant to the various Israeli-Palestinian agreements,[44] has declared its commitment to respect international human rights law in a number of public

[41] CCPR/C/ISR/CO/4. See also CCPR/C/ISR/CO/3: "The Committee therefore reiterates and underscores that, contrary to the State party's position, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the occupied territories, including in the Gaza Strip, with regard to all conduct by the State party's authorities or agents in those territories affecting the enjoyment of rights enshrined in the Covenant."

[42] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, para. 118

[43] For instance, the Committee on the Rights of the Child concluded in the case of Cyprus: "The Committee notes that the State party, as a consequence of events which occurred in 1974 and which resulted in the occupation of part of the territory of Cyprus, is not in a position to exercise control over all of its territory and consequently cannot ensure the application of the Convention in areas not under its control. The fact that no information on children living in the occupied territories is available is a matter of concern to the Committee" CRC/C/15/Add.59

[44] Agreement on the Gaza Strip and the Jericho Area, May 4, 1994, Agreement on the Preparatory Transfer of Powers and Responsibilities (Israel-PLO), August 29, 1994, Interim Agreement between Israel and the Palestinians, September 28, 1995.

undertakings.[45] These undertakings by the Palestinian Authority, the Palestinian Liberation Organisation and the Palestinian Legislative Council (PLC) have included assurances, decrees and declarations and various agreements under the Oslo Accords signed with Israel, which stated that both parties would exercise their powers and responsibilities with "due regard to internationally accepted norms and principles of human rights and the rule of law".[46] The Palestinian Basic Law[47] also contains a number of articles protecting human rights as well as a commitment to abide by major human rights instruments[48] The setting up of the Palestinian Independent Commission for Citizens' Rights in 1993 through a Presidential Decree also indicates a commitment by the Palestinian Authority to be bound by human rights.[49]

45. With respect to the authorities in Gaza, it is worth recalling that non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control.[50] Moreover, Hamas has indicated that it "is determined (...) to promote the rule of law, the respect for the judiciary, the separation of powers, the respect for human

[45] PLO chairman Yasser Arafat repeatedly stated that he and his Government were committed to respecting to all international human rights standards, for instance, to representatives of Amnesty International on 2 Oct 1993 and 7 Feb 1996.

[46] For instance through article XIX of the Protocol Concerning Redeployment of the Interim Agreement of 28 September 1995, the PA also undertook that its police would exercise powers and responsibilities with due regard to internationally accepted human rights and the rule of law, and that it would be guided by the need to protect the public, respect human dignity, and avoid harassment. In addition, the PA has undertaken to respect specific human rights obligations in the context of its membership of the Euro Mediterranean partnership, which was established in November 1995 with the adoption of the Barcelona Declaration and which contains a human rights component, stating that members should respect fundamental human rights and freedom, and act in accordance with the United Nations Charter and the UDHR, as well as with the other obligations under international law, in particular those arising out of regional and international instruments to which they are party (Barcelona Declaration, 27-28 November 1995; http://ec.europa.eu/external_relations/euromed/bd.htm).

[47] http://www.palestinianbasiclaw.org/2002-basic-law.

[48] Article 10 of the Basic Law states that "basic human rights and liberties shall be protected and respected" and that the "Palestinian National Authority shall work without delay to become a party to regional and international covenants and declarations that protect human rights". Its title two on "public rights and liberties" (articles 9 to 33) guarantee a range of civil rights to all persons (such as freedom from unlawful arrest, the right to fair trial, prohibition of torture and collective punishment, freedom of expression, freedom of religion, etc.) as well as the main economic and social rights.

[49] Furthermore, article 31 of the Palestinian Basic Law provides for the establishment by law of an independent commission for human rights. In May 2005, PICCR submitted before the PLC a draft law for discussion and approval. This draft law confirms PICCR as the National Human Rights Commission in Palestine with Ombudsman function at its core.

[50] A/HRC/10/22, para. 21. Also by way of example, in the joint report on Lebanon and Israel, a group of four Special Rapporteurs concluded that: "Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights. (…) It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure," Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari,(A/HRC/2/7), para. 19.

rights, the equality among citizens; to fight all forms of discrimination; to protect public liberties, including the freedom of the press and opinion ...".[51] Hamas has also confirmed its commitment to "respect (...) public liberties; to strengthen the establishment of democracy; to protect human rights (...); and its respect for international law and international humanitarian law insofar as they conform with our character, customs and original traditions".[52]

46. The commission also recalls the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law of 2005.[53] While they are not a binding international instrument, the fact that they were adopted by General Assembly resolution 60/147 of 16 December 2005 and have since then been referred to by multiple international, regional and national bodies[54] shows that they enjoy far-reaching support. The commission in particular stresses the provision that "victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations."

C. International criminal law

47. An international crime has been defined as an "act universally recognized as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state that would have control over it in regular circumstances."[55] International crimes can be found in treaty as well as in customary law. International crimes have existed for several centuries; however, international criminal law has, during the twentieth century, greatly evolved and today addresses mainly the issue of individual criminal responsibility for a number of serious violations of international humanitarian law and international human rights law. Therefore in recent decades, international criminal tribunals have dealt mainly with war crimes, crimes against humanity and the crime of genocide.

48. The four Geneva Conventions of 1949 establish a system to repress through penal sanctions a number of violations of the Geneva Conventions. Under article 146 of the Geneva Convention IV, the High Contracting Parties have the obligation to enact penal sanctions for these particular violations, described as grave breaches, search for those "alleged to have committed, or to have ordered to be committed" these acts and prosecute them "before their own courts," or hand over such persons to another State. Article 147 defines grave breaches as:

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[51] Speech delivered by Prime Minister Ismail Haniya at the conference organized by the PCHR on "The New Government and the Agenda for Human Rights". Gaza, June 2006.

[52] Text of the National Unity Government programme delivered by then Prime Minister Ismail Haniya before the Palestinian Legislative Council, 17 March 2007. http://www.islamicnews.net/Document/ShowDoc09.asp?DocID=91477&TypeID=9&TabIndex=2

[53] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005. At: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx

[54] See e.g.: A/HRC/24/42 A/HRC/22/52; also the Turkel Commission: p. 106.

[55] The Hostages Trial, *Trial of Wilhelm List and others*, United States Military Trial at Nuremberg, Law Reports of the Trials of War Criminals, Volume VIII, p. 54

".....those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

49. In addition to the grave breaches of the Geneva Conventions, war crimes include other serious violations of the laws and customs of war applicable in both international and non-international armed conflict. These include, *inter alia*, violations of Common Article 3 of the Four Geneva Conventions,[56] as well the grave breaches contained in Additional Protocol I to the 1949 Geneva Conventions. The war crimes defined as grave breaches in the 1949 Geneva Conventions as well as the vast majority of other serious violations of the laws and customs of war are found in the Rome Statute of the International Criminal Court.[57]

50. War crimes include crimes related to the violations of the rules on the conduct of hostilities. These include,[58] *inter alia*, directing attacks against civilians or civilian objects; launching an attack with the knowledge that incidental loss of life and damage to civilian objects would be excessive to the concrete and direct military advantage; launching indiscriminate attacks; the use of human shields; killing or wounding by resorting to perfidy; making medical units the object of an attack; making improper use of the distinctive emblems of the Geneva Conventions; declaring that no quarter will be given; the use of starvation as a method of warfare; acts whose primary purpose is to spread terror amongst the civilian population; and using a prohibited weapon. War crimes are also related to crimes against protected persons and property, which include, *inter alia*, murder or wilful killing; torture or inhuman treatment; extensive destruction or appropriation of property not justified by military necessity and carried out unlawfully and wantonly; collective punishments; and the taking of hostages.

51. Individuals are criminally responsible if they commit, attempt to commit, plan, order, or instigate war crimes. Persons are also liable for a crime if they aid, abet or otherwise assist or facilitate the commission of a crime.[59] A military commander or another superior is not only individually responsible for crimes he may have ordered or instigated, but also for those crimes committed by forces under his command or effective control, when he knew or should have known that such acts were being or were about to be

[56] Article 4 ICTR Statute, article 8 Statute of the ICC, article 3 Statute of the Special Court for Sierra Leone. See also ICTY, *Prosecutor v. Dusko Tadic*, Decision of 2 October 1995, IT-94-1-AR72.

[57] Article 8(2).

[58] While most of the acts described in the paragraph amount to war crimes in both international and non-international armed conflicts, there are some distinctions depending on the classification of the conflict (see for example article 8 of the Rome Statute of the ICC). In addition, in some cases the terminology used to describe an identical act will vary due to the classification of the conflict (for example 'murder' and 'wilful killing').

[59] Article 25 Rome Statue of the ICC, article 7(1) of the Statute of the ICTY and article 6(1) of the Statute of the ICTR. See also ICRC, *Database on Customary International Humanitarian Law*, Rule 151.

committed and failed to take all necessary measures to prevent, punish or report the perpetrators of these acts.[60]

52. The State of Palestine acceded to the Rome Statute of the International Criminal Court on 2 January 2015,[61] with the Statute entering into force on 1 April 2015. On 1 January 2015, the International Criminal Court received a declaration from the State of Palestine accepting the jurisdiction of the Court since 13 June 2014.[62] The Prosecutor of the International Criminal Court announced on 16 January 2015 the opening of a preliminary examination into the situation in Palestine in order to establish whether the Rome Statute criteria for opening an investigation are met.[63]

IV. Context

53. The hostilities of 2014 erupted in the context of the protracted occupation of the West Bank, including East Jerusalem, and the Gaza Strip, and of the increasing number of rocket attacks on Israel. In the preceding months, there were few, if any, political prospects for reaching a solution to the conflict that would achieve peace and security for Palestinians and Israelis and realize the right to self-determination of the Palestinian people.

54. The blockade of Gaza by Israel, fully implemented since 2007 and described by the Secretary-General as "a continuing collective penalty against the population in Gaza" (A/HRC/28/45, para. 70), was strangling the economy in Gaza and imposed severe restrictions on the rights of the Palestinians. Two previous rounds of hostilities in the Strip since 2008 had not only led to loss of life and injury but also weakened an already fragile infrastructure. Palestinians have demonstrated extraordinary resilience in recent years, living in an environment scarred by physical destruction and psychological trauma. In the West Bank, including East Jerusalem, settlement-related activities and settler violence continued to be at the core of most of the human rights violations against Palestinians. In the absence of any progress on the political front, the risk of a flare-up of the situation was evident.

55. In the meantime, threats to the security of Israel remained all too real. Palestinian armed groups increasingly launched rockets during June and July 2014. The discovery of tunnels leading into Israel added to the sense of insecurity. According to one witness, residents of her kibbutz experienced regular panic attacks after a tunnel discovery in March 2014 and the explosion of an alleged tunnel exit on 8 July. Several other infiltration attempts were thwarted by the IDF during July and August.

56. The events of summer 2014 were preceded by an agreement, reached on 23 April 2014 between the Palestinian Liberation Organization and Hamas, which sought to end

[60] Article 28 Rome Statue of the ICC, article 7(2) of the Statute of the ICTY and article 6(2) of the Statute of the ICTR. See also ICRC, *Database on Customary International Humanitarian Law*, Rule 152

[61] United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en

[62] International Criminal Court, *Palestine declares acceptance of ICC jurisdiction since 13 June 2014*, ICC-CPI-20150105-PR1080. Available at: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1080.aspx

[63] International Criminal Court, *The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine*, ICC-OTP-20150116-PR1083. Available at: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1083.aspx

Palestinian divisions. On 2 June 2014, President Abbas declared the formation of a Government of national consensus. The Government had yet to assume its full responsibilities in Gaza when active hostilities broke out in the Strip in July 2014, thereby leaving Hamas exercising government-like functions, as had been the case since June 2007.

57. On 12 June 2014, three Israeli teenagers were kidnapped and brutally murdered in the West Bank. In response, Israel launched an extensive search and arrest operation, which lasted until the bodies of the teenagers were found on 30 June. On 2 July, a 16-year-old Palestinian teenager from East Jerusalem was viciously murdered by being burned alive and his body discovered in West Jerusalem in what appeared to be an act of revenge for the murdered Israeli teenagers. Tensions in the West Bank, including East Jerusalem, ran high, and were further fuelled by a rise in extreme anti-Palestinian rhetoric. Widespread protests and violent clashes ensued between Palestinians and the Israel Defense Forces.

58. On 7 July 2014, the Israel Defense Forces commenced operation 'Protective Edge' in the Gaza Strip, with the stated objective of stopping the rocket attacks by Hamas and destroying its capabilities to conduct operations against Israel. The operation began during Ramadan, the Muslim month of fasting. After an initial phase focused on airstrikes, on 17 July 2014, Israel launched a ground operation, which it declared sought to degrade "terror organisations' military infrastructure, and [… neutralize] their network of cross-border assault tunnels". A third phase began on 5 August and was characterized by alternating ceasefires and on-going air strikes. The operation concluded on 26 August when both Israel and Palestinian armed groups adhered to an unconditional ceasefire.

V. Principal findings and conclusions

A. The Gaza Strip and Israel

1. Rocket, mortar and tunnel attacks against locations in Israel

59. Up to ten organized armed groups, often linked to political movements of various ideologies, were active in Gaza in the summer of 2014. However, their military capacity and their level of involvement in the hostilities against the IDF varied significantly. Several of these groups not only fired rockets and mortar shells but also participated in military engagements with the IDF.

60. During the hostilities, the two largest and best-equipped groups, the Izz Al Din Al Qassam Brigades and Al Quds Brigades, regularly issued statements regarding attacks. Security experts have noted that while the Al Qassam Brigades may have targeted civilians in the past as part of its military strategy,[64] in 2014 its declared official policy was "to focus on military or semi-military targets and to avoid other targets, especially civilians."

61. The Al Nasser Salah Al Din Brigades, which is the military wing of the Popular Resistance Committees was the third largest organized armed group operating in Gaza in 2014. The other groups with a similar type but lower level of engagement include: the Abu Ali Mustafa Brigades, the military wing of the Popular Front for the Liberation of Palestine or "PFLP"; the Gaza branch of the Al-Aqsa Martyrs Brigades, Fatah's military wing; the National Resistance Brigades;[65] and the military wing of the Democratic Front for the

[64] https://dcaf.ch/content/download/98409/1517146/file/Entry-Points(EN).pdf

[65] https://alethonews.wordpress.com/2014/04/14/dflp-militants-fire-3-mortar-shells-at-israeli-vehicles-in-gaza/

Liberation of Palestine (DFLP). Other, smaller armed groups are present in Gaza but it remains unclear whether they participated in the 2014 hostilities.

62. While the relationship between Hamas and Islamic Jihad and their respective armed wings was a competitive one in the past, during the 2014 escalation in Gaza they are reported to have coordinated their actions[66]. In addition, it appears that other armed groups coordinated their military activities to a certain degree and also conducted joint operations. In an interview, the spokesman for Abu Ali Mustafa Brigades, the military wing of the Popular Front for the Liberation of Palestine, said there was a joint operations room where each Palestinian armed group had a representative. He indicated that they had carried out operations together.[67]

63. The military capability of these groups is reported to have significantly improved in recent years. The Israel Defence Forces estimate the rocket arsenals of the Al Qassam Brigades and Al Quds Brigades at 6000 and 5500 respectively[68]. Whereas the majority of rockets can cover a range of up to 20 km, longer-range rockets appear to have been acquired by Palestinian armed groups in recent years (with a range of up to 200 km).[69]

64. Amnesty International reports that these groups "have produced, upgraded or smuggled in thousands of BM-21 Grad rockets with ranges varying from 20 km to 48 km", in addition to locally produced rockets reaching as far as 80 km, such as the M-75 and J-80[70]. The majority of rockets fired by Palestinian groups have no guidance system.[71] Mortars, reportedly with a range of up to 8 km, have been actively used along the Green Line.[72] Other weapons include rocket-propelled grenades, home-made drones, SA 7 Grail anti-aircraft missiles, Kornet 9M133 anti-tank guided missiles, and a wide array of small arms, rifles, machine guns and hand grenades.[73]

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66 Statement of W069.

67 Al-Akhbar, Abu Jamal: Military spokesman Abu Ali Mustafa Brigades, interview of 2 September 2014. http://www.al-akhbar.com/node/214694.

68 http://www.idfblog.com/blog/2014/07/10/6-million-lives-in-danger-the-deadly-rocket-arsenal-of-hamas/

69 Rockets - Qassam 1 (4 km), Qassam 2 (10 km). Qassam 3 (12 km), Grad (20 km), WS 1E upgraded Grad (45 km), Fadjr 5 or Gaza produced M75 or J 80 (75 km), M302 Khaibar or Gaza produced R 160 (100 – 212 km), 22mm Katyusha (30 km); see:
http://www.globalsecurity.org/military/world/para/hamas-qassam.htm
http://www.aerospaceweb.org/question/weapons/q0279.shtml
https://www.bing.com/images/search?q=hamas+rocket+types&id=5ECD09F1A672B81DE1194B648F144190A9CC61C3&FORM=IQFRBA

http://www.jewishpolicycenter.org/gaza-watch/data/
http://www.nbcnews.com/storyline/middle-east-unrest/hamas-firing-china-designed-syria-made-m-302-rockets-israel-n152461

70 https://www.amnesty.org/en/documents/mde21/1178/2015/en/, p.9; see also: Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law,* footnote 9
http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

71 http://www.ohchr.org/Documents/Countries/PS/A.HRC.28.80.Add.1.doc ;
http://www.foreignaffairs.com/articles/141698/mark-perry/gazas-bottle-rockets

72 Amnesty International, *Unlawful and deadly. Rocket and Mortar Attacks by Palestinian Armed Groups during the 2014 Gaza/Israel Conflict*, March 2015, p.17.

73 Gaza Conflict Task Force commissioned by the Jewish Institute for National Security Affairs (JINSA), *2014 Gaza War Assessment: The New Face of Conflict*, Report of March 2015, pp. 61-62

a. Rocket and mortar attacks

65. "There have been many operations we carried out jointly with the brothers in Al-Qassam, such as hitting Tel Aviv, Beersheba and Ashdod as well as engaging the Special Forces east of Khan Younis."

Abu Ahmad, spokesman of Saraya al-Quds[74]

66. Between 7 July and 26 August 2014, Palestinian armed groups fired several thousand projectiles towards Israel killing six civilians.[75] According to Ministry of Health statistics, up to 1600 Israelis were injured, including over 270 children.[76] Of these, Magen David Adom, Israel's national emergency medical service, reported that it treated at least 836 people for different types of injuries, including 36 people wounded by shrapnel, 33 people hurt by shattered glass or building debris, and 159 people injured in the rush to reach shelters[77]. According to the United Nations, 4881 rockets and 1753 mortars were fired towards Israel during the summer[78]. Official information available from Israel has a lower figure of 4500 projectiles fired by Palestinian armed groups during this period, but it does not provide a breakdown between rockets and mortars.[79]

67. As a result of the many projectiles fired during the 2014 hostilities, thousands of people in southern Israel left their homes[80] and moved to areas less affected by the attacks. The Government of Israel estimates that approximately 10,000 civilians were displaced, [81] and OCHA reports that as many as 70 per cent of residents in communities near Gaza left their homes.[82] Witnesses told the commission that, for instance, up to a quarter of the inhabitants of Kibbutz Nirim, located 1.7 km from Gaza, including 110 children[83], were displaced towards the north. Those who stayed had to run into shelters or safe rooms each time a siren warned them that a rocket or mortar had been fired in the vicinity.

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[74] Echorouk, *Exclusive Interview* with Abu Ahmad, the spokesman of Saraya al-Quds, 14 August 2014, carried by Free Palestine Agency, http://www.palestineafree.com/index.php?id=26436#.VYGGj_mqpHw

[75] For a list see Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law,* footnote 13 http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.; http://www.shabak.gov.il/English/EnTerrorData/Reports/Pages/Monthly0814.aspx, http://www.shabak.gov.il/English/EnTerrorData/Reports/Pages/Monthlysummary%E2%80%93July2014.aspx ; http://www.idfblog.com/blog/2014/07/19/fallen-soldiers-operation-protective-edge/

[76] Quoted in Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law,* p. 4 http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

[77] http://www.mdais.com/316/7004.htm

[78] UNDSS figures quoted by OHCHR: A/HRC/28/80/Add.1, para. 24

[79] Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law*, p. 1 http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

[80] Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law*, p. 9 http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

[81] Israel, Ministry of Foreign Affairs, *The Threat to Israel's Civilian Population and Civil Defence Measures*, p. 16. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

[82] OCHA Occupied Palestinian Territory, Gaza Emergency Situation Report, 28 August 2014. Available at: http://www.ochaopt.org/documents/ocha_opt_sitrep_28_08_2014.pdf

[83] Attachment to statement W269, a follow-up email to the interview

Communities within 2 km of Gaza were given 30 seconds or less to heed the warnings and in some cases this was reduced to as little as 3 seconds.[84]

68. As a result of Israel's lack of cooperation and denial of access to its territory, the commission faced difficulty in identifying victims who had been injured in rocket attacks and was unable to examine individual cases in detail. However, the commission was able to speak to witnesses and victims of a number of mortar attacks which were the cause of the majority of civilian deaths in Israel.

Rocket attacks

69. The Al Qassam Brigades issued a statement indicating that on 19 July 2014 they had fired three M75 rockets at the town of Dimona[85]. It appears that one of them killed Ouda Al Waj and injured at least 3 other people, including 2 children, in the nearby Bedouin settlement of Kaser Al-Ser.[86] These Bedouin settlements in the Negev Desert, which typically consist of makeshift houses, are not covered by the Iron Dome defence system or equipped with warning systems and shelters[87]. As pointed out by Amnesty International, the village of Kaser Al-Ser was recognized by the State of Israel in 1999, but its infrastructure remains rudimentary and it is threatened by demolition. According to Amnesty International, the family did not receive compensation from the authorities after the attack because the victim's home was due to be demolished anyway.[88]

70. In addition, a number of other incidents were brought to the commission's attention. According to official Israeli sources, on 26 August 2014 at 6.30 a.m. a rocket hit a home in Ashkelon, injuring at least 20 people, including 3 children.[89] On 22 August 2014, a Grad rocket struck near Gan Yavne, injuring Netanel Maman, an IDF soldier on home leave, and five other people. Netanel Maman died a week later as a result of shrapnel injuries to his head. According to Israeli sources, Hamas claimed responsibility for that attack.[90] Additional information on several incidents in which rocket attacks injured civilians was provided in documentation published by Israel's Ministry of Foreign Affairs.[91] This also included information regarding incidents in which schools and other buildings dedicated to children were hit by rockets.[92]

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84 W009; see also: Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law,* http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015. p. 7;

85 http://alresalah.ps/ar/post/97342; http://fpnp.net/site/news/25768

86 https://www.amnesty.org/en/documents/mde21/1178/2015/en/; Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law,* footnote 13 http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.
http://www.mcclatchydc.com/2014/07/20/233867/israels-bedouin-defenseless-against.html

87 http://ua.amnesty.ch/urgent-actions/2014/08/203-14/ua-203-14-english;
http://www.timesofisrael.com/negev-bedouin-defenseless-as-man-killed-4-injured-by-gaza-rocket/

88 https://www.amnesty.org/en/documents/mde21/1178/2015/en/, pp.20-21

89 MFA on 26 August 2014; at: http://mfa.gov.il/mfa/foreignpolicy/terrorism/pages/rise-in-rocket-fire-from-gaza-3-jul-2014.aspx

90 MFA on 29 August 2014; at: http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/Netanel-Maman.aspx

91 Israel, Ministry of Foreign Affairs, *The Threat to Israel's Civilian Population and Civil Defence Measures*, pp. 8-9 http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

92 *Ibid.* pp. 12-13

Mortar attacks

71. The commission examined the killings of four other people and an incident leading to one person being seriously injured by mortar fire close to the Green Line in Israel. According to information received, mortar attacks targeting Israeli towns near the Green Line increased significantly during the final week of the conflict.[93]

72. **23 July mortar attack hitting a greenhouse:** On 23 July 2014, a 36 year-old agricultural migrant worker from Thailand was killed in a greenhouse located close to the Green Line fence in Netiv Ha'sara, Ashkelon Coast Regional Council, by shrapnel from a mortar shell, apparently fired by Hamas militants. Narakorn Kittiyangkul was hit while sitting next to an Israeli co-worker enjoying his lunch break. Amnesty International reported that a total of three shells fell in the area, with the third hitting the group of workers.[94] The witnesses said that the victim had been working on the farm for only a month.[95]

73. The incident took place in a farm that borders the Israeli perimeter fence around the Gaza Strip in the north, close to the Erez crossing[96]where there is a small permanent military base. While the precise location of the strike is unknown, based on available information provided to Amnesty International by the Magen David Adom emergencies coordinator [97] and measurements on google maps, it is likely that the mortar landed in an area located between 100 and 800 meters from the military base. The commission notes that this military base appears to have been targeted by Palestinian armed groups several times during the hostilities.[98]

74. Witnesses told the commission that in another incident several weeks later, the siren sounded and an explosion was heard resulting in damage to all the cars in Netiv Ha'sara. Many residents then decided to leave, including three other migrant co-workers of the Thai victim. Witnesses identified trauma and persistent fear of the tunnels as core features of everyday life for people in the kibbutz during the hostilities, and many members are said to require therapeutic counseling[99]:

"It isn't post traumatic stress because it's on-going. It is sequential trauma, one thing after another. It wears you down and makes you more vulnerable." [100]

75. Several witnesses interviewed by the commission expressed empathy for the civilians in Gaza who they say are trapped in a warzone without access to economic opportunities and protection, such as shelters and radar systems.[101] For example, a witness stated:

93 Amnesty International, *Unlawful and deadly: Rocket and mortar attacks by Palestinian armed groups during the 2014 Gaza/Israel conflict*, 26 March 2015, p. 17

94 W010 and W011; Amnesty International submission to the CoI, page 13. See also: http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Rise-in-rocket-fire-from-Gaza-3-Jul-2014.aspx;

95 W010 and W011

96 W010 and W011; Amnesty International submission to the CoI, page 14.

97 Amnesty International, *Unlawful and deadly: Rocket and mortar attacks by Palestinian armed groups during the 2014 Gaza/Israel conflict*, 26 March 2015, p. 28

98 Mortar attack which hit Erez a military base at Erez on 15 July 2014 and mortar attack which hit the adjoining crossing on 24 August 2014

99 Refer to section VI. A. for further details.

100 W009.

101 W010, W011

"As long as the people on the other side of the border don't have security and a way to live side by side, this is going to continue. I want to tell this to the leaderships of both sides. We need to achieve dignity and liberty for the other side as well."[102]

76. **22 August mortar attack on Kibbutz Nahal Oz:** On 22 August 2014, Daniel Tregerman, aged 4, was killed by a mortar shell in his home at Kibbutz Nahal Oz in the Sha'ar Hanegev Region about 2 km from the Gaza Green Line. [103] The boy was playing with his two younger siblings inside the house when a mortar struck the family car and spread shrapnel that killed Daniel. His mother told the commission that the family had left the kibbutz one day before the start of Operation "Protective Edge" because rockets had been fired from Gaza over the previous two weeks. On 21 August, the family had returned to the kibbutz because they believed that the violence was over, although they said their, "suitcases remained ready because [they] knew that Hamas could break the ceasefire at any time".[104] As the explosion occurred only three seconds after the siren warning, the parents who had taken the two younger siblings to the safe room had no time to take Daniel with them[105].

77. In a media interview, Daniel's father said that his wife had wanted him to call for help but he knew that their son had already died. In his words, "there was no need for anyone to come […]. We are trying to leave this inferno and we are leaving Daniel behind."[106] The father realized later that he himself was injured by shrapnel in the legs.[107] Daniel's mother told the commission that on the same day her son died another woman was injured by a Qassam rocket in the same kibbutz.[108] Daniel's mother described the 2014 hostilities as more violent than previous conflicts, particularly as the civilian population was under a persistent threat of rocket and tunnel attacks. She called for an end to the violence, which continues to cause suffering to mothers on both sides:

"*We the people living in Israel want to live in peace and not under threat of terrorism. I would like our neighbours in Gaza to have a good and happy life and their children to go to school, and they can do this if they do not live under terrorism*." [109]

78. Israeli media sources report that over 90 rockets and mortar shells were fired from Gaza into Israel on 22 August and sirens sounded across southern and central Israel as a barrage of rockets was launched in the late afternoon.[110] According to OCHA, most of these rockets were fired indiscriminately and they fell in open areas or were intercepted by the Iron Dome System[111]. According to a media report of 26 August, the Al Qassam Brigades stated that they had targeted the IDF's chief of staff, Benny Gantz, in Nahal Oz on Friday

[102] W010

[103] W040; see also: http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/Daniel-Tragerman.aspx; and http://mfa.gov.il/MFA/InternatlOrgs/Issues/Pages/Letter-by-parents-of-Daniel-Tregerman-to-UN-Secretary-General-Ban-Ki-moon-4-September-2014.aspx ;

[104] W040

[105] W040; Another witness who works with trauma victims in Israel confirmed that many Israeli families with children who live close to the Gaza Green Line, evacuated the area during the 2014 hostilities. Statement of W009 to the CoI; see also http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/Daniel-Tragerman.aspx ; http://www.ynetnews.com/articles/0,7340,L-4563633,00.html and Amnesty International submission to the CoI, p 16.

[106] http://www.ynetnews.com/articles/0,7340,L-4563633,00.html

[107] Amnesty International submission to the CoI, page 16

[108] Statement of W040 to the CoI

[109] Statement of W009 to the CoI

[110] http://www.timesofisrael.com/four-year-old-boy-killed-in-mortar-attack-on-shaar-hanegev/

[111] https://www.ochaopt.org/documents/ocha_opt_sitrep_25_08_2014.pdf, p.3

22nd August. The Al Qassam Brigades had received information that a convoy including a senior Israeli officer would arrive and they believed it would be Benny Gantz and therefore directed mortar and rocket-propelled grenades at the area around the convoy.[112] The presence of Benny Gantz at Nahal Oz during the attack was confirmed and made public in Israeli media reports on 23 August.[113] According to a media article published on 24 August, Israeli security forces suspected that "Hamas has succeeded in identifying in a few incidents when and where VIP visits occur. On several such occasions, Hamas has launched rockets and fired mortar shells on the southern Kibbutzim during these visits."[114] Based on the information available, the commission cannot exclude that the intended target of the tragic attack of 22 August on Kibbutz Nahal Oz was the IDF Chief of Staff.

79. **26 August mortar attack on Kibbutz Nirim:** On 26 August, Ze'ev Etzion and Shahar Melamed were killed by a mortar as they tried to repair the electricity lines that had been damaged by Palestinian projectiles earlier in the day in Kibbutz Nirim, Eshkol region. While three other people suffered minor injuries in the attack[115], Gad Yarkoni, who travelled to Geneva to speak to the commission, had to have both his legs amputated as a result of his injuries.[116] He saw his two colleagues lying close by and realized that his legs were severely injured when the alarm went off again and he could not move. It was not possible to evacuate him immediately by helicopter because the shelling continued despite the agreed ceasefire. He said he was flown to a hospital by helicopter and when he woke up there 13 days later, he was told that he had lost both legs.[117] The Al Qassam Brigades announced that they had targeted Kibbutz Nirim and various other communities in the vicinity of Gaza with 107 mm mortars on the day of the attack[118]. The type of weapon used was consistent with the testimony of kibbutz residents.[119]

80. Residents of the kibbutz struggled to cope with the fear resulting from the loss of two community members, both of whom were said to have been key figures in the community.[120] One witness gave an account of the trauma experienced by the residents of the kibbutz during the summer as 150 mortars hit the area, despite the apparent absence of an IDF military base in the vicinity. He also said there had been no military activity in the area for two days prior to the attack.[121] However, another witness told the commission that tanks were deployed in the fields near the kibbutz at the time of the attack, although there were fewer than during the ground invasion because the IDF had already pulled out several units by 26 August.[122] This witness's house was also hit by a mortar on that day, which caused significant damage to the walls, the windows and the air conditioning system. This

[112] Ajnad News, *Qassam emphasizes target Gantz on Gaza Border*. http://ajnad-news.com/site/ajnad/details.aspx?itemid=19178

[113] Times of Israel, *IDF chief was at Kibbutz Nahal Oz when mortar shell there killed Daniel Tragerman*, 23 August 2014. http://www.timesofisrael.com/liveblog_entry/idf-chief-was-at-kibbutz-nahal-oz-when-mortar-shell-there-killed-daniel-tragerman/

[114] Amos Harel and Gili Cohen, *Israel Assess: Hamas is launching rockets on the south during VIP visit's*, Haaretz, 24 August 2014. http://www.haaretz.co.il/news/politics/.premium-1.2413881

[115] W074, see also http://www.timesofisrael.com/kibbutz-member-killed-by-mortar-shell-laid-to-rest/

[116] W074, Gad Yarkoni on 15 January 2015

[117] Statement of W074 to the CoI

[118] https://twitter.com/qassam_arabic1/status/504191347684048898; see also: http://www.timesofisrael.com/kibbutz-member-killed-by-mortar-shell-laid-to-rest/ and http://www.haaretz.com/news/diplomacy-defense/1.612741

[119] See Amnesty International submission to the CoI

[120] W074; W269; see also: http://www.timesofisrael.com/kibbutz-member-killed-by-mortar-shell-laid-to-rest/

[121] W074

[122] W269

witness claimed that the mortar attacks reflected a strategy by Hamas to target Israeli civilians living close to Gaza, once the Palestinian armed groups realized that the Iron Dome defense system was more effective in larger cities in the north. The witness confirmed that a quarter of the 400-strong population of the kibbutz had been evacuated throughout the conflict to locations in the north. The evacuation, the third of its kind since 2008, was conducted according to the kibbutz's emergency plan, and was not orchestrated by the Israeli Government.

81. **Eshkol Kindergarten:** On 21 August at 10 a.m., a number of mortars that appear to have been fired from Gaza hit a kindergarten in Eshkol, located about 2 km from the Green Line, severely injuring one person.

82. An eyewitness, Jehan Berman, told the commission that he and his wife had gone to the kindergarten to celebrate the birthday of their 3-year-old son. They first heard an alarm, followed by the sound of mortars five seconds later. They moved inside the building where 17 children and 3 female guards were present. A first mortar hit, then two minutes later, a series of mortar strikes followed.

83. "We counted 13 mortars in total. One of the mortars hit a tree next to the school and, since it exploded in the air, all the debris fell towards the ground, crossed the window, crossed my upper left shoulder and then landed on the wall, at 15 cm from my wife. The debris fractured the scapula in 5 pieces, destroyed the cartilage and touched the lung as well. I fell on the ground and started screaming because I was in so much pain, although I did not lose consciousness. I felt a massive pain in my left hand. The ambulance arrived soon after. […Later, in the hospital] I realised how lucky I was after I was informed that the debris travelled at just 2cm from a major artery in my heart. So I'm happy to be alive today. I am recovering from this nightmare but the road is long. My movements are extremely limited and I undergo daily physiotherapy sessions. […] My aim now is to tell everyone what happened and to say that this needs to stop. In Eshkol living under the constant threat from Hamas is a real suffering."[123]

Factual assessment

84. According to the Government of Israel, approximately 4,000 of the 4,500 rockets and mortars fired by Palestinian armed groups were directed at Israeli cities, towns and residential communities; 250 landed accidentally in Gaza; and the rest were directed at IDF troops in Gaza.[124]

85. The authorities in Gaza assured the commission that Palestinian armed groups did not target civilians and complied with international humanitarian law, and that any such action was not deliberate. They maintained that Palestinian rockets are 'primitive' and not very technologically advanced but nevertheless the factions attempted to direct their rockets at military targets in Israel.[125]

86. The commission requested detailed information from the Government of Israel on where the rockets and mortars fired by Palestinian armed groups in Gaza actually landed so as to make a more detailed assessment of the proportion of cases in which they were directed at densely populated areas in Israel. Unfortunately, the Government of Israel did

[123] W041

[124] Israel, Ministry of Foreign Affairs, *Hamas Violations of the Law*, p.1. Available at: http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

[125] Interview with Ghazi Hamad.

not provide a response, which made it difficult for the commission to determine the extent to which attacks directed at the civilian population in Israel.

87. A letter was sent to the State of Palestine requesting information on the objective and targets of the rocket and mortar firing, as well as information on the type of rockets used by Palestinian armed groups in Gaza. A similar letter was sent to Hamas. The commission did not receive a response to these specific requests for information.

88. The commission notes that a number of military objectives are located in various parts of Israel, in some cases in the immediate vicinity of built up areas such as the Hatzor airbase, or in the case of the IDF Headquarters, in the midst of a densely populated area. In addition, during the escalation of hostilities, the number of IDF positions in the south of Israel around Gaza, sometimes close to civilian communities, was higher than usual, as this area was used to position artillery and as a staging ground for the IDF ground operation in Gaza.[126]

89. Several statements were made by armed groups indicating that in some cases, they intended to target military objectives in Israel. For instance, in a press conference the spokesperson of the National Resistance Brigades in Gaza said that the groups had fired projectiles towards "military positions along the Gaza border."[127] The examination of messages posted between 3 and 26 August 2014 on the unofficial English twitter account of the Al Qassam Brigades clearly distinguishes between attacks directed at Israeli cities and attacks targeting military objectives in Israel.[128]

90. However, in the vast majority of individual rocket and mortar attacks, the commission does not have information on the intended targets, but notes that Palestinian armed groups announced that they intended to attack population centres in Israel[129] and declared responsibility for launches directed at different places in Israel.[130] For instance, on 7 July a communiqué of the Al Qassam Brigades stated, "Shelling military bases 'Nitifot, Ofokeem, Ashdod & Asqalan' with (35) missiles."[131] With regard to this statement the commission notes that it appears that the Al Qassam Brigades intended to target Israeli towns but decided to characterise them as military bases. On 3 August 2014, the Al Qassam Brigades issued a statement confirming their intention to target Israeli civilians in response to Israel's "targeting of Palestinian civilians in their homes and shelters."[132] On 8 August, Al Qassam Brigades tweeted, "All Zionist cities will be targeted daily until all of our demands are met."[133] In an Al Jazeera news report a member of the Al Qassam Brigades mortar unit, allegedly deployed along the Green Line in Khuza'a, declared that from their

[126] Amnesty International, *Unlawful and deadly. Rocket and Mortar Attacks by Palestinian Armed Groups during the 2014 Gaza/Israel Conflict*, March 2015, pp, 16-17.

[127] Al Watan Voice, *In a press conference for the National Resistance Brigades in Gaza: During the war, we launched 748 missiles and killed eight Israeli soldiers*, 27 August 2014. http://www.alwatanvoice.com/arabic/news/2014/08/27/583646.html

[128] @Qassam_English, account currently suspended. For instance on 25 August two tweets mention attacks on military bases: "Al-Qassam Brigades fired 3 mortars at a military base east of Nirim in response to Israel's attacks on Gaza, Palestine," or "Al-Qassam Brigades fired 2 mortars at military base Zikim in response to Israel's attacks on Gaza, Palestine"

[129] https://twitter.com/qassamenglish/status/497776823636623361 ;http://www.ohchr.org/Documents/Countries/PS/A.HRC.28.80.Add.1.doc

[130] www.saraya.ps/index.php?act=Show&id=36899, www.alqassam.ps/arabic/#!/ الأخبار;

[131] http://www.qassam.ps/statement-1506-Al_Qassam_Brigades_retaliate_with_35_missiles_on_Israeli_military_bases.html

[132] https://cintayati.files.wordpress.com/2014/08/al-qassam-no-life-is-more-precious-than-the-lives-of-our-people-3-aug-statement.jpg

[133] @qassamenglish, 8 August 2014. Account currently suspended

location they had attacked several "settlements and military concentrations."[134] During a press conference the spokesperson of the National Resistance Brigades in Gaza stated that the groups had fired projectiles towards "Israeli towns and settlements."[135] In addition, maps of some of the areas neighbouring Gaza showing the impact points of rockets and mortars provided in documentation made available by Israel, appear to indicate a concentration of impact points around built up areas close to the Green Line.[136]

91. Mortar fire by the Palestinian armed groups appears to have often been aimed at specific targets and is more precise than the rockets in the armed groups' arsenal.[137] In numerous cases mortars fired by Palestinian armed groups targeted IDF forces.[138] While some of these attacks were directed at IDF troops inside Gaza,[139] a number of mortar attacks were directed at IDF positions and troop concentrations inside Israel in the vicinity of the Gaza Strip. For instance, on 16 July 2014 IDF assembly zones close to the Erez crossing were targeted, resulting in the death of a civilian who was distributing food to soldiers.[140] The IDF acknowledges that approximately 10 IDF soldiers were killed along the Green Line seemingly in Israel, in the course of a number of attacks during which mortars appear to have been fired at IDF forces.[141]

92. In a few instances it appears that Palestinian armed groups in Gaza attempted to warn civilians in Israel of attacks that might affect them. For example, according to information provided by the Ministry of Foreign Affairs of the State of Palestine, on 12 July 2014 an armed group in Gaza announced in Arabic and Hebrew that it would carry out an attack on Tel Aviv and specified the time at which the attack was to take place.[142] On another occasion, according to media reports, the Al Qassam Brigades issued a warning to airlines not to fly to Ben-Gurion airport as it considered the airport to include a military base.[143] On 20 August 2014, the Al Qassam Brigades, through a press release issued in English, once again warned international airlines not to fly into Tel Aviv starting from the

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134 Al-Jazeera, report of 6 August 2014. Reproduced on MEMRI TV, available at: http://www.memritv.org/clip/en/0/0/0/0/239/0/4404.htm

135 Al Watan Voice, *In a press conference for the National Resistance Brigades in Gaza: During the war, we launched 748 missiles and killed eight Israeli soldiers*, 27 August 2014. http://www.alwatanvoice.com/arabic/news/2014/08/27/583646.html

136 Israel, Ministry of Foreign Affairs, *Hamas Violations of the Law*, p.8. See also *The Threat to Israel's Civilian Population and Civil Defence Measures*, p. 16. Available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed on 30 May 2015.

137 Gaza Conflict Task Force commissioned by the Jewish Institute for National Security Affairs (JINSA), *2014 Gaza War Assessment: The New Face of Conflict*, Report of March 2015, p. 40.

138 Gaza Conflict Task Force commissioned by the Jewish Institute for National Security Affairs (JINSA), *2014 Gaza War Assessment: The New Face of Conflict*, Report of March 2015, p. 40.

139 Israel, Ministry of Foreign Affairs, *Legal Aspects: Hamas Violations of the Law*, p.1. Available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed on 30 May 2015.

140 See website of the Israeli Prime Minister's Office: http://www.pmo.gov.il/English/TerrorInjured/Pages/vicDrorHanin.aspx, or the website of the Israeli Ministry of Foreign Affairs: http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/Dror-Hanin.aspx

141 IDF, *Fallen Soldiers of Operation Protective Edge*. https://www.idfblog.com/blog/2014/07/19/fallen-soldiers-operation-protective-edge/

142 Response of the State of Palestine. Israel, Ministry of Foreign Affairs, *Hamas Violations of the Law*, footnote 18. Available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed on 30 May 2015

143 Reuters, *Hamas wing says it will target Israel's main airport*, 11 July 2014. Available at: http://in.reuters.com/article/2014/07/11/palestinians-israel-airport-idINKBN0FG0S620140711

following morning, and asked residents of communities located in the vicinity of Gaza to avoid returning home, or to remain inside shelters.[144]

Legal analysis

93. Palestinian armed groups appear to have provided advance warning in a very few instances before launching attacks that may have killed Israeli civilians. In particular the commission notes that a warning was issued on 20 August 2014 through a press statement of the Al Qassam Brigades instructing residents of communities located in the vicinity of Gaza to avoid returning home, or to remain inside shelters until further notice[145]. This preceded the increased firing of mortars towards the areas in the Gaza "envelope" during the last week of the conflict.[146]

94. The customary rule of international humanitarian law reflected in article 57(3) of Additional Protocol I,[147] provides that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit." While the obligation to provide warnings is not absolute (for example if the element of surprise or the speed of response are essential in the attack), any warning issued must be effective. While international humanitarian law does not specify what the required elements are for a warning to be considered effective, the commission considers that two of the main requirements are (1) that the warning is crafted in a way that will be understood by those to whom it is addressed; and (2) that the warning can be acted upon, meaning that what the warning requires can be realistically complied with.

95. With regards to the instances of warnings mentioned above, regardless of the legality of the attacks with which they are associated, it appears that they were of a nature that could be acted upon. Airlines were warned in advance of the possible targeting of the airport, providing them with the time to suspend flights. Warning civilians in Tel Aviv that a rocket would be fired in the direction of the city at 9 p.m. provided the opportunity for residents to seek shelter. Warning civilians to evacuate communities located in the vicinity of the Green Line could also realistically be acted upon because -- unlike in Gaza -- residents could flee to other areas of Israel less exposed to threats, in great part due to the existence of the Iron Dome system. The main concern regarding the effectiveness of these warnings is whether they fulfilled the first requirement of being understood. Indeed, this presupposes that those to whom the warning is addressed actually received it. It appears that the warnings were issued through the Internet and press statements. While in some cases, the warnings or certain parts were replicated in the media, it is not clear that the methods of transmission used could ensure that they reached the intended public. However, it is also not clear what other methods of transmitting the warnings were available to armed groups in Gaza.

96. The issuing of warnings is only one of the precautionary measures described in article 57 of Additional Protocol I. Regardless of their effectiveness, the fact that warnings were issued does not relieve the attacking party of the other specific precautionary measures mentioned in article 57. The general obligation to take constant care to spare the

[144] http://www.qassam.ps/statement-1509-Press_Release_of_Abu_Obeida_Al_Qassam_spokesperson.html

[145] http://www.qassam.ps/statement-1509-Press_Release_of_Abu_Obeida_Al_Qassam_spokesperson.html

[146] See also the graph on page 5 State of Israel, *Israel's Objectives and Phases of the 2014 Gaza* Conflict. Available at: http://mfa.gov.il/ProtectiveEdge/Documents/Objectives_Phases_Operation.pdf. Accessed on 30 May 2015

[147] ICRC, *Database on customary international humanitarian law*, Rule 20

civilian population and objects remains valid throughout the attack, even if specific precautionary measures such as warnings have been implemented. Article 57(5) clearly establishes that the adoption of precautions does not modify the prohibition of attacking civilians and civilian objects or of launching indiscriminate attacks.

97. The majority of projectiles fired by Palestinian armed groups consisted of rockets that at best were equipped with only rudimentary guidance systems and in the vast majority of cases had none at all. The ICRC Commentary on Additional Protocol I describes "long-range missiles which cannot be aimed exactly at the objective" as the primary example of means of combat which cannot be directed at a specific military objective.[148] The rockets available to armed groups in Gaza are unguided and inaccurate. Estimates, confirmed by the commission, indicate that the Fajr-5[149] and similar J-80 and M-75 rockets can land as far as 3 km from any intended target. The longer range rockets, such as the R-160, can land as far as 6 km away from the target because their accuracy decreases with range.[150] Such rockets cannot be directed at a specific military objective and therefore strikes employing these weapons constitute indiscriminate attacks in violation of the customary rule reflected in article 51(4) of Additional Protocol I.[151] The limitations of the military arsenals of Palestinian armed groups was advanced[152] as a reason for their failure to attack precisely military targets. The military capacity of the parties to a conflict is irrelevant to their obligation to respect the prohibition against indiscriminate attacks.

98. While the commission cannot know what the intended target of each rocket attack was, statements made by Palestinian armed groups with regard to the firing of rockets indicate intent to direct those attacks against civilians. In addition, international tribunals have ruled that in certain circumstances, indiscriminate attacks may qualify as direct attacks against civilians.[153] The launching of rockets by Palestinian armed groups may therefore amount to war crimes.[154]

99. The impossibility for Palestinian armed groups to direct rockets towards military objectives raises the question as to what military advantage the Palestinian armed groups could expect to obtain from launching these rockets. Given the apparent absence of any possible military advantage, and statements by Palestinian armed groups that they intended to hit Israeli cities, the commission cannot exclude the possibility that the indiscriminate rocket attacks may constitute acts of violence whose primary purpose is to spread terror amongst the civilian population, in violation of the customary rule reflected in article 51(2) of Additional Protocol I and article 13(2) of Additional Protocol II.[155]

100. The commission cannot know what the intended targets of the different mortar attacks were because of the IDF military manoeuvres and the presence of numerous IDF

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148 ICRC Commentary on Additional Protocol I, p. 621, para. 1958

149 Army Recognition, *Fadjr-5 333mm Multiple rocket launcher system*, indicating that the Fajr-5 has a circular error of probability of 4 per cent.

150 Amnesty International, *Unlawful and deadly. Rocket and Mortar Attacks by Palestinian Armed Groups during the 2014 Gaza/Israel Conflict*, March 2015, p.10.

151 ICRC, *Database on customary international humanitarian law,* Rule 12

152 Interview with Ghazi Hamad

153 International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Galic,* case No. IT-98-29-T, Judgement, 5 December 2003, para. 57.

154 Article 8, Rome Statute of the ICC.

155 ICRC, *Database on customary international humanitarian law,* Rule 2. While not listed as a war crime in the Rome Statute of the ICC, the Appeals Chamber of the ICTY found that "customary international law imposed individual criminal liability for violations of the prohibition of terror against the civilian population." *Prosecutor v. Galic,* case No. IT-98-29-A, Judgement, 30 November 2006.

positions and bases in Israel in the vicinity of the Green Line during the hostilities. However, statements on unofficial twitter accounts apparently related to Al Qassam Brigades, as well as statements by members of armed groups in television news reports,[156] indicate in some cases, their intent to strike military objectives, whereas other statements clearly spell out the intent to target civilian communities.[157]

101. As mortars can be directed at a specific target, if they were used to target civilians or civilian objects this would be a violation of the principle of distinction and would qualify as a direct attack against the civilian population and therefore amount to a war crime. [158]

102. In the cases in which attacks were directed at military objectives located amidst or in close vicinity to civilians or civilian objects, mortars are not the most appropriate weapon. The imprecise nature of mortars makes it difficult for an attacking party using this weapon in an area in which there is a concentration of civilians to distinguish between civilians and civilian objects and the military objective of the attack, and to limit its effects as required by international humanitarian law. Therefore, the use of such weapons with wide area effects by Palestinian armed groups against targets located in Israeli towns and villages, and the possible indiscriminate effects, are likely to constitute a violation of the prohibition of indiscriminate attacks.[159]

103. The use of mortars against military objectives located in populated areas also raises concerns with regard to the principle of precaution in attack. Indeed parties to the conflict must take all feasible precautions in the choice of weapons with a view to avoiding or at least to minimizing incidental civilian loss of life.[160]

b. Tunnels

104. *"All the time I was living in fear. So if my husband forgot to lock a door or window I was hysterical that someone would come in and take one of the children. Eventually we decided to move."*[161]

Israeli mother

105. According to the IDF, they discovered 32 tunnels, 14 of which extended beyond the Green Line into Israel.[162] The tunnels have been described by an IDF engineer as wide tunnels, in which a man can walk upright, dug deep beneath the surface with sides reinforced by layers of concrete and with internal communication systems. [163] In one tunnel, three motorcycles were allegedly found by the IDF. One witness who had seen one of the decommissioned tunnels said she was, "struck by the complexity of the tunnel and how well-built it was with a solid cement structure and a full electricity grid."[164]

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156 Al-Jazeera, report of 6 August 2014. Reproduced on MEMRI TV, available at: http://www.memritv.org/clip/en/0/0/0/0/239/0/4404.htm

157 @Qassam_English

158 Rome Statue, article 8

159 Article 51(4) Additional Protocol I. ICRC, *Database on customary international humanitarian law*, Rule 11

160 Article 57 Additional Protocol I. ICRC, *Database on customary international humanitarian law*, Rule 17

161 W040

162 IDF: Operation Protective Edge by the Numbers at: www.idfblog.com/blog/2014/08/05/operation-protective-edge-numbers/

163 Daniel Rubenstein, *Hamas Tunnel Network: A Massacre in the* Making, Jerusalem Center for Public Affairs. http://jcpa.org/hamas-tunnel-network/

164 W076

106. The discovery of these tunnels and their use by Palestinian armed groups during the hostilities caused great anxiety among Israelis that the tunnels might be used to attack civilians. One witness told the commission, "When it's quiet we get even more afraid because we don't know what things can come from the ground. Since April, everyone was afraid and uncomfortable about the tunnels." Another witness said, "There was a tunnel just behind the greenhouses. In a way, they are more scary than rockets because with the tunnels there's no chance of being warned. Some people won't let their children go outside."[165]

107. Official Israeli sources describe "cross-border tunnel attacks" as one of "two primary means to target Israeli civilians,[166] explaining that, "Hamas placed tunnel openings close to residential communities in Israel". They provided four examples of incidents in which members of Palestinian armed groups emerged from tunnel exits located between 1.1 and 4.7 km from civilian homes. According to the Ministry of Foreign Affairs, in all these cases the members of armed groups encountered IDF troops "obstructing their ability to carry out attacks against civilians." [167]

108. The commission cannot conclusively determine the intent of Palestinian armed groups with regard to the construction and use of these tunnels. However, the commission observes that during the period under examination, the tunnels were only used to conduct attacks directed at IDF positions in Israel in the vicinity of the Green Line, which are legitimate military targets. A resident of a kibbutz located 1.7 km from Gaza told the commission, "We hear that tunnels are mostly to harm soldiers but that doesn't stop families from being afraid".[168] Another witness explained how he had not been allowed, even as an Israeli journalist following soldiers, to go into a tunnel as it was too dangerous, "because every tunnel has not one exit in and out, they have multiple hatches for Hamas to be able to surprise soldiers."[169]

109. The UN Secretary-General, briefing the Security Council following his visit to Israel and the OPT, which included a visit to a tunnel built by Palestinian armed groups, stated, "I fully understand the security threat to Israel from rockets above and tunnels below. At the same time, the scale of the destruction in Gaza has left deep questions about proportionality and the need for accountability."[170]

2. Air strikes on residential buildings in Gaza

110. *"I was sitting with my family by the table, ready to break the fast. Suddenly we were sucked into the ground. Later that evening, I woke up in the hospital and was told that my wife and children had died".*[171]

"This war was different from previous wars, especially for women. Civilians were attacked particularly in their homes. The home is the domain of the women […]. Women are dependent on the home for their purpose and existence. They are the primary caretakers of the home and responsible for raising the children, for cooking, cleaning, clothing. Without

[165] W010

[166] Israel, Ministry of Foreign Affairs *Hamas Violations of the Law,* p.1. Available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed on 30 May 2015.

[167] Israel, Ministry of Foreign Affairs *Hamas Violations of the Law*, p.12. Available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed on 30 May 2015.

[168] W006

[169] Or Heller W072,

[170] October 2014; at: http://www.un.org/sg/statements/index.asp?nid=8120

[171] W013.

this habitat the women lose their sense of purpose, and their sense of control. The outside realm, the public, is the man's sphere."[172]

111. The IDF carried out more than 6 000 airstrikes in Gaza during the 2014 Operation[173], from the first day throughout the Operation. These included targeted attacks on residential and other buildings. As a result, according to the Office for the Coordination of Humanitarian Affairs (OCHA), during the 2014 hostilities, 142 Palestinian families had three or more members killed in the same incident owing to the destruction of residential buildings, for a total of 742 fatalities.[174] An even higher figure is reported by some non-governmental organizations, which speak of 1066 people, including 370 children and 241 women, killed inside their homes.[175] In addition, IDF air strikes destroyed – in whole or in part – a significant number of houses.[176]

112. The commission examined in detail 15 strikes on residential buildings in the Gaza Strip in which a total of 216 people were killed, including 115 children and 50 women. The commission conducted 37 interviews, reviewed confidential submissions from a variety of stakeholders, governmental and non-governmental, and consulted publicly available information. These include photos, satellite imagery and video materials. All available materials relating to each incident were reviewed by a military expert to determine the type of weapons most likely to have been used. The assessment included matching testimony of witnesses to a variety of indicators, such as photographs of injuries to persons, damage to buildings and surroundings, and remnants of weapons.

113. Homes and buildings destroyed as a result of the air-land operation into Shuja'iya, Khuza'a and Rafah (often due to tank or artillery shells) are discussed in the chapter on ground operations (V.A.3). The present chapter therefore focuses on those residential buildings that were struck by what appears to have been targeted air strikes.

114. By letter dated 10 February, the commission asked the Israeli authorities for information "on several general issues and…clarifying the factual circumstances of specific incidents". The commission specifically inquired about 13 out of the 15 incidents examined in this chapter as well as the strikes on high rise buildings in late August 2014. Israel was asked to explain the specific contribution of each building to the military actions of the Palestinian armed groups and how its destruction represented a military advantage for the IDF; what were the ranks and combat functions of members of armed groups if they were the target of the attack; what precautionary measures, including warnings and the choice of weapons, were employed; what was the number of fatalities resulting from each of the

[172] W233.

[173] Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 38 available at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf, accessed on 30 May 2015.

[174] OCHA, Fragmented Lives, Humanitarian Overview 2014, March 2015, p. 6.

[175] Al Mezan Center for Human Rights, Lawyers for Palestinian Human Rights (LPHR), 22 May 2015 up-date to a complaint submitted concerning large-scale destruction and damage to family houses in the Gaza Strip with associated profound loss of life and injury to Palestinian residents, during Israel's military operation between 7 July 2014 and 26 August 2014, 30 September 2014, original complaint available at: http://lphr.org.uk/legal-projects/gaza-accountability-project/; Physicians for Human Rights comes to a similar conclusion on the basis of their interviews with injured persons. Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014, p. 36. At https://gazahealthattack.files.wordpress.com/2015/01/gazareport_eng.pdf. From now on referred to as Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014.

[176] UNITAR-UNOSAT speaks about "wide-spread destruction"; see: Impact of the 2014 Conflict in the Gaza Strip. UNOSAT Satellite Derived Geospatial Analysis, 2014, p. 11. At: https://unosat.web.cern.ch/unosat/unitar/publications/UNOSAT_GAZA_REPORT_OCT2014_WEB.pdf.

incidents; and whether any investigations had been initiated in relation to these strikes. No response was received from the Government of Israel. Therefore, to the extent possible, the commission assessed materials that are in the public domain. In particular, Israel published information on 8 attacks on homes that were examined by the General Staff Mechanism for Fact-Finding Assessments (FFAM) and the Military Advocate General (MAG), 3 of which are discussed in the present chapter[177]. The MAG's findings are referred to in the relevant sections of the text.

a. Airstrikes on buildings

(i). Al Hajj family home and neighbouring houses:

115. On 10 July 2014 at around 2 a.m., the house of Mahmoud Al Hajj in Khan Younis was bombed, and all 8 members of the Al Hajj family[178] present were killed, including 2 children and 3 women. The bombing completely destroyed the house and damaged neighbouring houses of other members of the Al Hajj family, as well as the houses of the Al Athamna, Abu Libda and Shakshak families.[179] According to the witnesses interviewed by the commission, 20 people were injured[180], including 7 women and 4 children. The injured included at least 7 Al Athamna family members, 8 Al Halbi family members, and 2 Abu Libda family members.[181]

116. The Al Hajj house was a two-storey building of 135 m^2. Photos reviewed by the commission show the complete destruction of the house and considerable damage to surrounding buildings[182]. On the basis of the available materials, which include testimonies and pictures of the site and of remnants of weapons, the commission considers that the weapon used was most likely a Joint Direct Attack Munition (JDAM)-guided bomb, either a GBU Mk 82 (500lbs) or GBU Mk 83 (1000lbs).

117. The commission interviewed two witnesses who were in neighbouring houses at the time of the attack. One, a member of the Al Hajj family who lived about 50 metres south of the house, recounted that he heard sounds from a plane[183], followed by a large blast at 1.30 a.m. A second blast followed a few seconds later[184] shattering the doors and windows of the witness' own house. The witness went outside and saw people heading north to his sister's house. When he arrived at the attacked house, he was shocked to see the Mahmoud Al Hajj family home completely destroyed, with all members of the family killed and covered by rubble and dust. According to the witnesses, twenty neighbouring houses, including those of the Abu Libda and Shakshak families were partially destroyed by the attack.[185] While 6 bodies were identified when pulled out from beneath the rubble, the remains of 2 of the

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[177] One of them, Shuja'iya market, is discussed in chapter V.A.3 on ground operations.

[178] W078 and W077. See Al Wattan News, خاص لـ "وطن": بالفيديو... مجزرة "الحاج" تودي بحياة 8 أفراد ودمار 30 بيتًا - 15 July 2015 and Gaza TV, استشهدوا و هم نيام و دون سابق تحدير, 10 July 2014, at .

[179] W078 and W077. B'Tselem, Black Flag, January 2015.http://www.btselem.org/gaza_strip/2015_black_flag/al_haj_family

[180] Palestinian Center for Human Rights (PCHR) reports 19 injured.

[181] W078 and W077. PCHR submission including list of persons killed and injured during the incident. B'Tselem, Black Flag, January 2015.

[182] See photos on B'Tselem, Bombing of al-Haj home, Khan Yunis, 28 January 2015, at: http://www.btselem.org/gaza_strip/2015_black_flag/al_haj_family and PCHR submission including pictures of the site and of the remnants of weapons, drawing of the site and affidavits from witnesses.

[183] PCHR submission.

[184] W078.

[185] W078.

children were completely obliterated as a result of the blast.[186] The witness told the commission:

"It was difficult to reach the victims because the house was totally destroyed. So, with a few other men, I kept looking for survivors. I found my sister who was thrown to what used to be the street outside her house. When I pulled her out she was unconscious and her right leg was amputated. Another man helped me and we took her to the hospital in a private car. There the doctors tried to save her life but she died aged 55. "[187]

118. The commission also spoke to another witness from the Al Athamna family, whose house is located across the street from the Al Hajj family home and also sustained damage. He was at home during the attack and described a "fire ball" from the direction of the west hitting the house of the Al Hajj family, causing enormous destruction to it and to the adjacent houses of several Al Athamna family members.[188] Several of his own relatives were injured; the wife of his brother Mahmoud, Rajaa Al Athamna, aged 29, was pulled out alive from the rubble after half an hour, but she now suffers from amnesia and cannot recognize anyone from her family.[189]

119. Both witnesses indicated that the Al Hajj house was situated in a residential area, free from any military activity and that there had been no "roof-knock"[190] warning. One of them said that about one week after the attack on the Al Hajj house, other houses in the vicinity were targeted but in those cases the families had been warned by phone calls of an imminent attack.[191] According to the Intelligence and Terrorism Information Centre, one of the persons killed on 10 July 2015 was a member of the Al Qassam Brigades[192].

120. The commission cannot determine with certainty whether or not a warning was issued, because all the people inside the house during the attack were killed.

(ii) Al Qassas family building

121. On 21 July at around 4.30 p.m., two IDF missiles launched from the air hit the top floor of the Al Qassas family five-storey building killing 9 people including 6 children and 3 women, one of them pregnant. Another 10 people were injured including 8 children and 1 woman. The youngest injured child was a baby who sustained burns to the face.[193]

122. The Al Qassas house is located in the Shuja'iya neighbourhood, close to the Al Jamal Abdel Naser street and the Al Tayam square. At the time of the attack about 41 persons resided in the building. In addition to 24 family members who habitually lived in the building, another 17 relatives were staying there having fled their homes in the al Zeitoun and Shuja'iya neighbourhoods after the IDF distributed leaflets warning residents to leave.[194] The top floor was the home of Yasser Al Qassas, his pregnant wife Somaya, and

[186] W078.
[187] W078.
[188] W077.
[189] W077
[190] See para. 235
[191] W078
[192] Intelligence and Terrorism Information Center. Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge; 28 July 2014 at http://www.terrorism-info.org.il/en/article/2070828 July 2014 , p. 17 ; at http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf
[193] PCHR submission. See also B'Tselem, Black Flag, January 2015.
[194] B'Tselem, Black Flag: The Legal and Moral Implications of the Policy of Attacking Residential Buildings in the Gaza Strip Summer 2014, January 2015, at

their nine children. The family was preparing for the *iftar* meal, the breaking of the fast at sunset, when the attack took place.[195]

123. The commission spoke with two family members. One of them, who was present at the time of the attack, told the commission that most male relatives were not actually in the building at that time because they had rushed to the Daood Tower, about 300 metres away, which had been struck a few minutes earlier.[196] The witness, who stayed on the fourth floor, said that shortly after the men had left, two missiles hit the fifth floor of the Al Qassas building within an interval of a few minutes. The same witness indicated that he was not aware that any advance warning had been given.[197] Another family member interviewed by the commission arrived at the house to find that his two daughters aged 13 and 14 had died.[198] According to information the commission received, five people who were in the stairway at the time of the attack were injured.[199]

124. None of the information collected by the commission suggests that there was a military target in the Al Qassas building. To date, the IDF has not made statements identifying the military objective of the strike, nor has it listed this incident among those under investigation.

125. According to the commission's assessment, made on the basis of an analysis of plans of the building and photos of the destroyed eastern part of the apartment and of the walls of the northern part of the building with remnants of shrapnel[200], the IDF appears to have used Hellfire missiles. The method of the projectile's entry into the building, its trajectory, the small opening it created and the blast effect visible on the eastern side of the building, along with the extensive shrapnel damage observed, are consistent with the use of Hellfire Missiles[201].

(iii) Al Najjar home

126. *"I was staying on the first floor and I was the only survivor from the first floor. When the attack took place, I was knocked out. I woke up at about 6 or so, in the hospital, and I later learnt that my sister, my mother and my children had all died. Even many of my relatives on the second floor had died. We all died that day, even those who survived."*

Witness interviewed by the commission[202]

127. At 2.53 a.m. on 26 July, the Al Najjar family home in Khan Younis in southern Gaza was bombed.[203] Nineteen members of the same family, including 11 children and 5

http://www.btselem.org/download/201501_black_flag_eng.pdf. From now on referred to as B'Tselem, Black Flag, January 2015.

195 W137.

196 W136.

197 W136. See also B'Tselem, Black Flag, January 2015.

198 W137.

199 Photo of the scene of the incident with marks of where people were killed and injured submitted by PCHR ; Ann Paq photos on B'Tselem web-site: http://www.btselem.org/download/201501_black_flag_eng.pdf

200 PCHR submission.

201 These conclusions are based on witness statements and submissions which include building plans, photos of the site and of remnants of weapons.

202 W277.

203 Note that this case is different from the one examined by the Military Advocate General, which discusses an incident that occurred on 29 July 2014; IDF Military Advocate General's ('MAG): Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During

women, were killed during the attack.[204] The youngest victim was an eight-month-old baby. Five people present in the house sustained moderate and critical injuries.[205]

128. The commission spoke with four witnesses to this attack, including three eye-witnesses, who were all taken to the hospital afterwards. One of them was a resident of Jawar, located about 1 km from the Green Line. On 18 July, the witness and his family had fled from their own home because of intensified fighting in the area and gone to his sister's house in Khan Younis. They had been at his sister's house for one week at the time of the attack. [206] The witnesses concurred that the strike took place at 2.53 a.m. Two said that they remember the precise time because it was only a few minutes after they got up to have *suhhur*, the last meal of the day during Ramadan until the breaking of the fast in the evening.[207]

129. A fourth witness, who had been in a neighbouring house when the attack occurred, said that he could not see anything because the building was covered by a cloud of dust and debris. People started walking to the house looking for survivors but they realized that the entire building had been destroyed.[208] As he was searching through the debris, the witness came across the bodies of many family members. Everyone in his family died with the exception of one of his brothers. Many of the bodies were unrecognizable when they were pulled out of the rubble.[209]

130. Two of the witnesses reported that there was no warning, no "roof-knock" missile, no phone calls, and no leaflets. According to them, no one in the family is affiliated with an armed group.[210] Another witness also denied that the house was hosting armed activity or that the attack had been preceded by warnings:

No militias or fighters walked into our home or sought refuge in our home. None of us were fighting. We were not told that we would be attacked. We all got up to do the suhhur and nobody was expecting this. We did not have any reason to believe this attack was going to take place. No warning and no information was given. The attack came just like that. And I am still trying to understand why, given that I lost all of my family in this attack while all of them were sleeping.[211]

131. Photos taken after the attack show a large crater where the house had stood before.[212] The witness testimonies all describe immense devastation. Destruction at such scale appears to be the result of a large bomb, very likely a 1000lb or 2000lb-bomb.

Operation 'Protective Edge'- Update No. 4 of 11 June 2015; at http://www.law.idf.il/163-7353-en/Patzar.aspx

204 W273.

205 PCHR: On the 19th Day of the Israeli Offensive on Gaza 26 July 2014 at: http://www.pchrgaza.org/portal/en/index.php?option=com_content&id=10539:on-the-19th-day-of-the-israeli-offensive-on-gaza-before-declaration-of-humanitarian-truce-israeli-forces-escalated-attacks-against-palestinian-civilian20-members-of-one-family-including-11-children-and-5-women-killedisraeli-forces-attack-medical-cre&Itemid=194; OCHA, Occupied Palestinian Territory: see also Gaza Emergency Situation Report (as of 26 July 2014, 1500 hrs). At http://www.ochaopt.org/documents/ocha_opt_sitrep_27_07_2014.pdf.

206 W277.

207 W 034 and W276.

208 W034.

209 W034.

210 W276 and W034.

211 W277.

212 See e.g. Huffington Post, *Shocking Photos of Destruction in Gaza as Thousands Return Home During Truce*, 26 July 2014. At http://www.huffingtonpost.com/2014/07/26/gaza-destruction-

(iv) Abu Jabr family home

132. On 29 July at 12.30 a.m., a bomb was launched on the Abu Jabr family home in the Al Buraij refugee camp. Nineteen people[213] were killed and seven injured. Seventeen family members inside the house died including 6 children aged between one and four, and six women, one of whom was pregnant. Two other people who were visiting that evening with a member of the Abu Jabr family were killed as well.[214] Out of the 7 persons injured 3 were children and 4 were women.[215] The house was completely destroyed as a result of the attack. According to B'Tselem and witnesses interviewed by the commission, several different parts of Al Buraij camp were attacked during that night.[216]

133. The Abu Jabr house is located on Abu Al Sa'ud Street in the Deir al Balah Governorate in central Gaza Strip. The 120 m^2 house had two floors and was comprised of several apartments belonging to members of the Abu Jabr family.[217]

134. The commission interviewed a witness whose father and uncles owned the building and who arrived at the scene 15 minutes after the attack.[218] Upon arrival he followed the traces of smoke and went in to look for his parents, his brother and the rest of his family. He described a 7-meter deep hole where the house had been, leaving only rubble and cement blocks piled on top of each other.[219] The witness recounted how he began to search for survivors and how he later found out that his daughter and wife were killed in the attack. What he saw was "beyond imagination":

I found the decapitated bodies of my uncle and daughter. My cousin was alive but died on the way to hospital. Another cousin's body was found sliced in two. We had ten corpses in the first ambulances. No other survivors were found. […] After having removed the cement I identified my cousin Dina's body. What I witnessed was horrible. She was 9 months pregnant and she had come from her home to her parents' house to have her baby. We could not imagine that she had passed away. Her stomach was ripped open and the unborn baby was lying there with the skull shattered. We kept searching for other corpses and found my uncle's wife. We had great difficulty removing all the pieces of cement from her body.[220]

135. The witness managed to extract some of the survivors from the ruins. Most of the family members' bodies had been cut into pieces or pulverized by the attack. The injured and dead were brought to Al Aqsa hospital. Upon arrival the witness realized that some family members were missing. He said that, to his knowledge, the area was residential and inhabited mainly by women and children. He was not aware of the family's having received any warnings to evacuate. He said that at times inhabitants are warned by small rockets but not his family.[221] These accounts, including the absence of "roof-knock" warnings, are

photos_n_5623908.html; The Guardian: *Gaza counts the cost of war: 'Whole families smashed under the rubble'*; 15 August 2014. At: http://www.theguardian.com/world/2014/aug/15/-sp-gaza-counts-cost-of-war-whole-families-smashed-under-the-rubble.

213 See also list at B'Tselem, Bombing of three houses belonging to the Abu Jaber family in al-Bureij, at http://www.btselem.org/gaza_strip/2015_black_flag/abu_jaber_family.

214 B'Tselem, Black Flag, January 2015.

215 PCHR submission. See also information available from B'Tselem, Black Flag, January 2015. Information on pregnant woman provided by W127.

216 W127.

217 W127. PCHR submission including building plans. B'Tselem describes it as consisting of two houses.

218 W127.

219 B'Tselem, Black Flag, January 2015.

220 W127.

221 W127.

supported by interviews conducted by B'Tselem with witnesses who were present in the proximity of the house during the attack[222].

136. Photos submitted to the commission by different sources, including of children showing one boy with fractures and serious shrapnel and burn injuries, indicate that the house was completely destroyed.[223] On the basis of an analysis of pictures and testimonies, the commission concluded that the house was most likely levelled by the impact of either a GBU31 JDAM equipped 2000lb bomb or a GBU32 JDAM equipped 1000lb bomb.

(v) Al Hallaq and Ammar family homes

137. On 20 July 2014 at around 6.45 p.m., several air launched projectiles hit the Al Hallaq family apartment in the Al Remal neighbourhood of Gaza city, killing 7 members of the Al Hallaq family, including 3 children (one of them a one month old baby) and 3 women (one of whom was pregnant).[224] Four children of the Ammar family who lived in the apartment underneath were also killed.[225] Five Al Hallaq family members were injured, including one child.[226]

138. The Al Hallaq apartment was located on the second floor of the Cordoba tower, Street one, in the western part of Gaza city.[227] The building has 10 floors; 5 apartments on the first and second floors were totally or partially destroyed by three missiles.[228] According to one of the witnesses, the third missile did not explode.[229] The missile strikes resulted in the collapse of the eastern wall of the building. [230]

139. Twelve people were in the Al Hallaq apartment at the time of the attack, including 9 family members who were taking shelter in the flat having fled their homes in other neighbourhoods.[231] Another 12 persons were present in the Ammar family home.[232]

140. The commission spoke to two survivors from the Al Hallaq family. One of them said that, because of intensified shelling very early that morning, his family had left the Shuja'iya neighbourhood along with many residents of the area. At 7 a.m. the family had moved to an apartment in the Al Remal neighbourhood that belonged to members of the extended family. The apartment was located on the second floor in a nine-storey building, in an area which the family perceived as the "safest place in Gaza" because it was far away from the Green Line.[233]

141. The eyewitness said that at 6.30 p.m. all 12 members of the family were at home, preparing to break the Ramadan fast.[234] While the women were busy in the kitchen, the men

222 Haniya Abu Jaber, who was present in the house at the time of the attack and Nihad Abu Jaber, who was in the house next door. B'Tselem, Black Flag, January 2015.
223 Confidential submission 49.
224 Watania Palestinian news agency footage shows the victims' evacuation: https://www.youtube.com/watch?v=ehd1kXdDtwo.
225 W082. See also: Amnesty International, Families under the rubble, November 2014. At: https://www.amnesty.org/en/documents/MDE15/032/2014/en/. From now on referred to as Amnesty International, Families under the rubble, November 2014.
226 PCHR submission.
227 PCHR submission.
228 W082.
229 PCHR submission.
230 Amnesty International, Families under the rubble, November 2014.
231 W082. See also Amnesty International, Families under the rubble, November 2014.
232 Amnesty International, Families under the rubble, November 2014.
233 W081.
234 W082.

were watching television in the living room, and some were in the bedroom. Suddenly, there was a loud explosion. The witness said that the missile, which came from the eastern side, first hit the room where the children were playing, causing a large hole of 2 meters before it landed in the apartment below and killed three children in that apartment.[235] Information concerning the damage to the building is supported by photos submitted to the commission.[236]

142. The second survivor confirmed that the family had moved to that apartment because they considered the area to be the safest place in Gaza, an assumption the family made based on leaflets and phone calls received from Israelis. The witness explained that in the first days of the conflict the family had received recorded IDF voice messages on their mobile phones directing them to move to the centre of Gaza. At the time of the attack, the witness was watching television in the living room when at around 6.45 p.m. a missile killed 7 of his family members. The witness then tried to evacuate the 4 other survivors; while he was walking down the stairs he heard a second explosion in the apartment, which he thought was the result of a second missile. [237]

143. Neither eyewitness was aware of any warnings prior to the attack and they insisted that there had been no military activity in the building. One witness said that this was the first time the area was targeted during the military operations in 2014 and that he did not know the reason for the attack. He added that the Al Remal neighbourhood is known as very peaceful and residential.[238] He also said that the area is too far from Israel to dig tunnels.[239] The same witness claimed that no family member belongs to the "Palestinian resistance".[240]

144. In the commission's assessment, based on photographs of the site and of remnants of weapons and on eyewitness testimony, the building appears to have been targeted by precision guided AGM 114 Hellfire missiles. This weapon can be programmed to penetrate a cement building before detonating and typically causes this kind of damage[241].

(vi) Balatah home

145. "*There were no warnings, no calls and no messages. Where is the humanity? Where is justice? And where is the United Nations who is meant to protect peoples' humanity?"*

A witness interviewed by the commission[242]

146. On 29 July at approximately 4 p.m.[243], the house of the Balatah family in Hay Al Qasasib Street in the Jabaliya refugee camp in North Gaza was struck. At the time of the attack, Abdel Karim Balatah was hosting his entire family as well as the family of his brother Naim Balatah and his son Nazami.[244] In total, 17 people were in the house.[245] The attack resulted in the killing of 11 members of the Balatah family, 5 of whom were

235 W082.
236 PCHR submission.
237 W082.
238 W081.
239 W082.
240 PCHR submission.
241 This is consistent with findings by Amnesty International, Families under the rubble, November 2014.
242 W125.
243 Time varies between 3 and 4.30 p.m.; B'Tselem states 3 p.m. see: B'Tselem, Black Flag, January 2015. http://www.btselem.org/gaza_strip/2015_black_flag/balata_family
244 W125.
245 W124. See also B'Tselem, Black Flag, January 2015.

children, including a one-year old baby[246], and 5 women.[247] The Balatah family house and several neighbouring houses were extensively damaged, and 41 civilians, including 17 children and 5 women, were wounded.[248]

147. The commission interviewed surviving members of the Balatah family who witnessed the strike.[249] The survivors told the commission that, at the time of the attack, the family had just finished a long meal in honour of the second day of the Eid, and most of the family members were taking a nap. At least two missiles struck the Balatah family home in the span of a few minutes.

148. One of the witnesses said that the sound of a large explosion woke him up. He then saw a lot of smoke in the courtyard, but could not identify where it originated. As he stepped out of the house into the courtyard, another missile hit the house. The explosion was so powerful that it created a large vacuum effect and the witness felt his body being pulled by a strong "suction" effect generated by the explosion.[250] The witness then quickly returned to the house to look for his family members, only to find the body of his 8-year old nephew lying unconscious on the ground with his stomach and his head cracked open and the dead body of his one-year old grandson in the room upstairs.

149. The witness tried to stop the young boy's bowels from falling out with his hands.[251] The witness also described how his wife collapsed when she saw her severely injured grandson. The witness fainted as he was accompanying his wife to a nearby school which had been transformed into a shelter. When he regained consciousness, he found himself at the Kamal Edwan hospital. The witness told the commission:

"I am 52 years old and I have lost everything I cared for. In only a few minutes, they killed everyone and everything that was dear to me. They killed my dream, and my daughter's dream who wanted to be a doctor."[252]

150. According to the witnesses, all of those killed were civilians.[253] The witnesses were not aware of any warning preceding the attack. In fact, the brother and his family had sought refuge with Abdel Karim Balatah's family precisely because the IDF had warned his family earlier in the day to evacuate his own house in Jabaliya camp.[254]

151. It appears that the eastern parts of the house were repeatedly hit. As a result, the walls between the staircase and the hallway, as well as those between the living room and bedroom were destroyed.[255] According to the information available to the commission, the damage to the building is most likely to have been caused by an AGM 114 Hellfire Missile launched by an aircraft. Given that a precision guided munition was probably used, it appears that the house was specifically targeted. This assessment is compatible with the witness's comment about being "sucked in", as the outward blast of a high explosive

246 W125.
247 See also list at B'Tselem, Black Flag, January 2015 and PCHR submission
248 PCHR, On the 19th Day of the Israeli Offensive on Gaza: 26 July 2014. At: http://www.pchrgaza.org/portal/en/index.php?option=com_content&id=10539:on-the-19th-day-of-the-israeli-offensive-on-gaza-before-declaration-of-humanitarian-truce-israeli-forces-escalated-attacks-against-palestinian-civilian20-members-of-one-family-including-11-children-and-5-women-killedisraeli-forces-attack-medical-cre&Itemid=194.
249 W124 and 125.
250 W124.
251 W125
252 W125.
253 W124.
254 W124.
255 The PCHR submission includes maps, pictures, building plans and affidavits from family members.

detonation causes a vacuum, and the air rushing back in to fill the vacuum could lead a person close by to such a perception.

152. The commission has not received any information suggesting that there was a military target in the house, and to date, the IDF has made no statement concerning the incident. It appears that no warning was issued.

(vii) Al Dali Building

153. On 29 July at around 7.30 a.m., an Israeli aircraft dropped an aerial bomb on the Al Dali building in Khan Younis, where the Abu Amr, Breikah, Al-Najjar and Mu'ammar families lived.[256] The strike resulted in the complete destruction[257] of the Al Dali building and serious damage to adjacent buildings. At least 33 people inside the house were killed, including 18 children and 6 women[258]. In addition, the damage caused by the attack to adjacent houses reportedly killed one member of the Al-Ramlawi family, a girl aged 9[259], and a member of the Abu Sitta family[260]. Another 21 people were injured, including 4 children, several of them critically.[261]

154. The Al Dali building consisted of four apartments located on three levels including a basement.[262] At least 37 people were in the building at the time of the attack, which killed 15 members of the Abu Amr family, 7 members of the Breikah family[263], 7 members of the Al-Najjar family[264], and 4 of the Mu'ammar family.

155. The commission spoke to three witnesses to this attack, all from the Abu Amr family. All indicated that there had been no warnings before the strike. One of the witnesses who lives next door and arrived at the scene moments after the attack, stated, "*I can assure you that my family received no warning of an incoming attack, or else they would have immediately informed me, given I live next door."*[265] Another witness, who was not at home at the time of the attack, told the commission that "n*obody was doing anything to threaten; nobody was resorting to violence"*. The witness kept pausing and saying that, whenever he thinks of that attack, he is reminded of the images of the bodies of children scattered everywhere. He explained that people were destroyed not only physically, but also emotionally and psychologically.[266]

256 Amnesty International, Families under the rubble, November 2014. See also B'Tselem, Bombing of al Dali Building, 28 January 2015, at http://www.btselem.org/gaza_strip/2015_black_flag/a_dali_building.

257 See e.g. photo at B'Tselem, Bombing of al Dali Building, 28 January 2015, at http://www.btselem.org/gaza_strip/2015_black_flag/a_dali_building.

258 B'Tselem, Black Flag, January 2015. See also Amnesty International, who reports 34 persons killed Amnesty International, Families under the rubble, November 2014.

259 B'Tselem, Black Flag, January 2015. See also: Amnesty International, Families under the rubble, November 2014.

260 Amnesty International, Families under the rubble, November 2014.

261 W045.

262 Amnesty International, Families under the rubble, November 2014.

263 6 according to B'Tselem, Black Flag, January 2015.

264 Note that MAG up-date 4 refers to an aerial attack that killed 8 members of the Al Najjar family in Khan Younis on 29 July. However, the number of persons killed in the Al Dali building is reported to be much higher than the figures put forward by the MAG. The commission could therefore not determine whether the MAG addressed this case. Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'- Update No. 4, 11 June 2015.

265 W275.

266 W045.

156. Given the scale of destruction visible on photos[267] and the testimonies, cross-checked with other available information, it appears that the weapon used was a large bomb, most likely a JDAM equipped 2000lb bomb.[268]

157. Amnesty International identified 33-year old Ahmad Mu'ammar, who was killed in the attack, as a member of the engineering corps of the Saraya Al Quds Brigades, the armed wing of Islamic Jihad. A relative of Mu'ammar told Amnesty that he had an office at home, and remnants of a gun and a grenade-launcher were reportedly found in the rubble after the attack.[269]

(viii) Al Batsh house

158. On 12 July at around 9.30 p.m., at the time of the evening prayer, an airstrike carried out by IDF planes destroyed the two-storey house of Majed Al Batsh in the Tuffah neighbourhood of Gaza city. Two adjacent houses belonging to two brothers of Majed Al Batsh and a third house belonging to a neighbour were also severely damaged. At least 17 people were killed immediately[270], while one person died on 24 July as a result of his injuries. The dead included 6 children and 3 women, one of whom was pregnant.[271] According to the Ministry of Health, quoted in the media, 45 people were injured.[272] Al Mezan counted 16 injured[273], while Physicians for Human Rights reports more than 50 injured[274].

159. One family member told the commission that the family had gathered in the house as is the custom during Ramadan. He had been in a nearby mosque when he heard planes, and had just come home and was praying when the attack began.[275] Another family member said that he was in the house with his cousins at the time of the strike, but he only realized what had happened when he woke up one week later in the hospital. He lost his right leg and the sight in his left eye.[276] The witnesses said that five of the women could not be

[267] B'Tselem, Black Flag, January 2015.

[268] This was also found by Amnesty International, Families under the rubble, November 2014.

[269] Amnesty International, Families under the rubble, November 2014.

[270] *W002 and W003. B'Tselem provides a list of 18, including one person who died later as a result of his injuries; at: B'Tselem, At Sa'eed al hadad relates bombing of al-Batsh home in Gaza City no prior warning, which killed 18 family members, at http://www.btselem.org/testimonies/20140716_al_batsh; According to Al Mezan, 17 persons from the Al Batsh family died. See list of those killed in press release at Al Mezan, Gaza Diaries: 1: Airstrike Wipes out 17 from Al Batsh Family; an Outright War Crime, 13 July 2014, at http://www.mezan.org/en/post/19222/Gaza+Diaries%3A+1%3A+Airstrike+Wipes+out+17+from+Al+Batsh+Family%3B+an+Outright+War+Crime; Physicians for Human Rights stated that 16 persons present inside the house and 3 in neighbouring buildings and another unspecified person died See list of those killed in press release. Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014, p. 134.*

[271] W002 and W003. See also Al Mezan, Gaza Diaries: 1: Airstrike Wipes out 17 from Al Batsh Family; an Outright War Crime, 13 July 2014, at http://www.mezan.org/en/post/19222/Gaza+Diaries%3A+1%3A+Airstrike+Wipes+out+17+from+Al+Batsh+Family%3B+an+Outright+War+Crime.

[272] Reuters, *Gaza death toll rises; Hamas fires rockets at Tel Aviv*, 12 July 2014, at http://uk.reuters.com/article/2014/07/12/uk-palestinians-israel-idUKKBN0FB08120140712.

[273] Al Mezan, Gaza Diaries: 1: Airstrike Wipes out 17 from Al Batsh Family; an Outright War Crime, 13 July 2014, at http://www.mezan.org/en/post/19222/Gaza+Diaries%3A+1%3A+Airstrike+Wipes+out+17+from+Al+Batsh+Family%3B+an+Outright+War+Crime.

[274] Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014.

[275] W001.

[276] W002.

buried because their bodies had "evaporated", indicating that the blast disintegrated the bodies. The eyewitness said that no warning was given prior to the attack[277].

160. On 14 July, the media reported that an IDF spokesperson said that the bombing was being "looked into"[278]. Some media claimed the target of the attack was the Gaza police chief, Major General Tayseer al-Batsh, who was visiting his cousin Majed at the time of the attack.[279] He was severely injured but survived. On 28 July the IDF dropped leaflets in Gaza city containing a list of persons who confronted the IDF and were killed. The list includes the names of Nahid Naim Al Batsh and Yazid Al Batsh.[280] According to the Intelligence and Terrorism Information Center, Bahaa Majed Al Batsh and Jalal Majed Al Batsh were affiliated with the Al Qassam Brigades.[281] All of them appear to have been killed during or as a result of the attack[282].

The commission does not have sufficient information to determine with certainty which weapon was employed, but, given the testimonies about its effects, it is likely that two JDAM equipped bombs (either 1000lb or 500lb) were used.

(ix) Abu Jama family home

161. On 20 July, at around 7.50 p.m., as the family was breaking the fast, a bomb was dropped on the three-storey home of the Abu Jama family in Abu Safar, an area near the al Zanneh neighbourhood of Bani Suheila, east of Khan Younis.[283] Of the 29 people who were in the house, 26 were killed, including 19 children and 5 women, 3 of whom were pregnant.[284]

162. The three-storey building in Bani Suheila, east of Khan Younis, covered 250 m2 with two apartments on each floor. Five brothers and their families lived in the building, which had a total of 60 residents.[285] At the time of the attack, the families of four brothers, Tawfiq, Tayseer, Basem and Yasser, were in the building.[286] Twenty-five Abu Jama family members died, as well as Ahmad Sahmoud.[287] Tayseer was in a nearby mosque at the time

[277] The witness's account is corroborated by Physicians for Human Rights, Findings of an independent medical fact-finding mission, 2014.

[278] Al Jazeera, *Thousands of families flee north Gaza*, 14 July 2014, at http://www.aljazeera.com/news/middleeast/2014/07/thousands-families-flee-north-gaza-2014713131352463357.html.

[279] Al Jazeera, *Thousands of families flee north Gaza*, 14 July 2014, at http://www.aljazeera.com/news/middleeast/2014/07/thousands-families-flee-north-gaza-2014713131352463357.html; Reuters, Gaza death toll rises; Hamas fires rockets at Tel Aviv, 12 July 2014, at http://uk.reuters.com/article/2014/07/12/uk-palestinians-israel-idUKKBN0FB08120140712; The New York Times, Palestinians Flee Northern Gaza as a Cease-Fire Appears Elusive, 13 July 2014, at http://www.nytimes.com/2014/07/14/world/middleeast/israel-gaza.html.

[280] Leaflet submitted to the commission. An OHCHR report also makes reference to the two Al Batsh names on this leaflet: A/HRC/28/80/Add.1 at www.ohchr.org/.../PS/A.HRC.28.80.Add.1.doc

[281] Intelligence and Terrorism Information Center. Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge; 28 July 2014 at http://www.terrorism-info.org.il/en/article/20708

[282] B'Tselem, At Sa'eed al hadad relates bombing of al-Batsh home in Gaza City no prior warning, which killed 18 family members, at http://www.btselem.org/testimonies/20140716_al_batsh

[283] Submission 5.

[284] Submission 5; B'Tselem reports 25 killed; B'Tselem, Black Flag, January 2015. Note that the MAG refers to different NGO figures that the commission was unable to confirm.

[285] Interview conducted by the commission with W013. B'Tselem stated that 37 persons living in the building.

[286] Submission 5.

[287] Submission 5.

of the attack.[288] Of the family members present in the house only the brothers Bassam and Tawfiq and 3-year-old Nour survived.[289]

163. The Abu Jama home was completely destroyed.[290] According to an Amnesty International field worker who visited the scene, there was a crater consistent with the dropping of a large bomb.[291] The civil defence and ambulance crews who had arrived at the scene shortly after the incident continued searching for corpses under the rubble until the following morning.[292]

164. The commission interviewed survivors of the attack. One of them told the commission that he was sitting with his family about to break the fast when suddenly they were all sucked into the ground.[293] He lost his wife, his eight children, his mother and a brother in the attack. The youngest child was 2 years old and the oldest 14.[294] The witness and the other two surviving family members are now homeless and receive no assistance from the United Nations Relief and Works Agency (UNRWA) or from the State.[295]

165. While the brothers claimed that they were not aware of the presence of any visitors in the house and said that there was no advance warning,[296] B'Tselem and Amnesty International refer to reports that Ahmad Soliman Mahmoud Sahmoud, an alleged member of the Al Qassam brigades, was one of the victims.[297]

166. While it is impossible to determine with certainty which weapon was used in this strike, given the reported large-scale destruction, it appears likely that it was a JDAM equipped bomb of unknown size.[298]

167. On 6 December 2014, the MAG reported that:

"In reports received by the MAG Corps, and in correspondence from various NGOs, it was alleged that on 20 July 2014, 27 civilians were killed as a result of an IDF strike on the house of the Abu-Jama family in Khan Yunis. As a result, and in accordance with the MAG's investigation policy, the incident was referred to the FFAM. The factual findings and materials collated by the FFAM and presented to the MAG, indicated the existence of grounds for a reasonable suspicion that the incident involved a deviation from the rules

[288] W014.
[289] W013 and submission 5.
[290] See also photo at B'Tselem, Bombing of the Abu Jama' home, Bani Suheila, 28 January 2015, at http://www.btselem.org/gaza_strip/2015_black_flag/abu_jame_family
[291] Amnesty International, Families under the rubble, November 2014. See also B'Tselem, Black Flag, January 2015.
[292] Submission 5.
[293] W013.
[294] W013.
[295] W013.
[296] W013 and W014. Also according to Amnesty International, surviving family members and neighbours denied knowing Sahmoud and claimed that he was not in the building at the time of the attack. One of the family members said he might have been outside the building. Amnesty International, Families under the rubble, November 2014, p. 18.
[297] B'Tselem, Initial findings: 25 members of a single family killed when their house was bombed, apparently without warning, July 2014, at http://www.btselem.org/press_releases/20140721_killing_of_abu_jame_familyand Amnesty International, Families under the rubble, November 2014.
[298] This is compatible with findings by Amnesty International, Families under the rubble, November 2014, p.17.

and procedures applicable to IDF forces. As a result, the MAG has ordered a criminal investigation into the incident."[299]

(x) Al Salam tower – Al Kilani and Derbass families

168. On 21 July, at around 8 p.m., the nine-storey Al Salam tower in Gaza city was bombed,[300] killing all members of the Al Kilani and Derbass families who had sought shelter in the tower. In total, 11 people from those two families died including 5 children aged between 3 and 11.[301] It appears that a member of the Al Quds Brigades, who was on the fourth floor, was also killed.[302] The rest of the building was empty except for the family of Abdul Karim Madder, a lawyer on the second floor, all of whom escaped before the upper floors collapsed.[303]

169. Ibrahim Al Kilani's brother told the commission that Ibrahim was an architect of German nationality, a man dedicated to his work and to his family who did not have links to militants.[304] Ibrahim, his wife and five children had left their home in Beit Lahiya after the IDF distributed leaflets instructing residents to leave the northern part of Gaza and move to the centre of the Strip. They decided to go to the house of his brother in the Tuffah neighbourhood, Gaza city. Ibrahim's brother said that because of the ongoing shelling in Tuffah, the Kilani family still felt insecure and moved to the Al Salam tower, where Inas Derbass's employer had an office.[305] Four siblings of Ibrahim's wife from the Derbass family, who were staying together with the Kilanis in the tower, were also killed.[306]

170. The Al Salam tower is one of the high-rises in the Al-Remal neighbourhood in the centre of Gaza city. The building housed offices of lawyers, engineers, and commercial companies.[307] The area was considered to be safe because IDF leaflets had encouraged people to move to the centre of Gaza city.[308] The Derbass and Kilani families had moved to the 5th floor of the tower on 19 July, two days before the attack.[309] On 21 July, they were gathered for *iftar* when the sixth floor of the tower was struck causing the upper floors to collapse on the lower floors. One witness told the commission that he did not see the tower being hit but he heard what he thought were two missiles being fired. Another witness said he heard aircraft on the day of the attack in the area.[310]

[299] Military Advocate General. Up-date of December 2014 at: http://www.law.idf.il/163-6958-en/Patzar.aspx

[300] W114 was close to the site and said that he heard the firing of two missiles from a plane; W112 was working at a neighbouring building and said he heard F16 drones in the area that day and the days before. Al Mezan told the commission that it was very likely a plane because it was a high-rise building and the top floors collapsed (meeting on 9 February 2015).

[301] B'Tselem, Black Flag, January 2015.

[302] B'Tselem, Black Flag, January 2015. See also IDF Military Advocate General's ('MAG): Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'- Update No. 4 of 11 June 2015; at http://www.law.idf.il/163-7353-en/Patzar.aspx

[303] PCHR submission; meeting with Al Mezan on 9 February; video showing a family fleeing down the stairs.

[304] W115.

[305] W115.

[306] B'Tselem, Black Flag, January 2015.

[307] PCHR submission.

[308] Meeting with Al Mezan on 9 February 2015.

[309] W114.

[310] W114.

171. Based on an analysis of photos[311], sketches and videos submitted to the commission and testimonies from eyewitnesses, and given that no explosion was reported, it appears that the tower was hit by a JDAM equipped 500 lb bomb, likely inert, as that would ensure the collapse of the floors while minimizing collateral damage.

172. Three witnesses interviewed by the commission, who either work at the tower or close to it, were not aware of any warning issued before the attack. It appears that Al Salam tower was the only building attacked in the densely populated neighbourhood and that the area was calm before the strike. The witnesses said that they were unaware of any militants or military activity in the building or in its vicinity.[312] According to a MAG statement of 11 June, the target was "Sha'aban Dachdouch, a senior commander in the Palestinian Islamic Jihad"[313]. Sha'aban Dachdouch, who was killed in the strike, reportedly had been in and out of the building several times in the days before the attack.[314]

173. A cameraman working in a neighbouring building suddenly heard the sound of a massive explosion and headed to the site of the incident. He told the commission that, when he arrived at the tower, "no single body was intact". Although it was dusty and dark, he could see a woman's body caught between two floors, and bodies that had landed on an adjacent open area, including the corpse of a woman still holding her small child, who was burned, in her arms.[315] Ibrahim Al Kilani's brother described to the commission how he went to Al Shifa hospital after the attack and saw Ibrahim's head crushed and lungs hanging out, one of his nephews decapitated, and his sister in law's corpse still holding Elias, their youngest child, burned.[316] Two ambulance drivers said they recovered children's bodies, charred and torn to pieces, and a woman holding a child.[317]

174. According to the MAG, "regrettably, after the fact, there was an unforeseen collapse in the upper floors of the building approximately half an hour after the attack. […] the MAG found that the targeting process in question accorded with Israeli domestic law and international law requirements. The decision to attack was taken by the competent authorities and aimed at a lawful target – a senior commander in Palestinian Islamic Jihad, who was indeed killed as a result of the attack. The attack complied with the principle of proportionality, as at the time the decision was taken, it was considered that the collateral damage expected from the attack would not be excessive in relation to the military advantage anticipated from it, and this assessment was not unreasonable under the circumstances. Moreover, the attack was carried out while undertaking a number of precautionary measures which aimed to minimize the risk of collateral damage. Such measures included, inter alia, the choice of munition to be used, and the method according to which the attack was carried out. The fact that, in practice, a number of civilians who were not involved in the hostilities were harmed, is a regrettable result, but does not affect the legality of the attack ex post facto. In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As

311 See also photo at: B'Tselem, Bombing of an office building in a-Rimal neighbourhood Gaza City; 12 people killed-11 members of the Dirbas and al-kilani families, and an operative of the Islamic Jihad, 21 July 2014, 28 January 2015. At: http://www.btselem.org/gaza_strip/2015_black_flag/dirbas_and_kilani_families.

312 W115 and W113.

313 IDF Military Advocate General's ('MAG): Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'- Update No. 4 of 11 June 2015; at http://www.law.idf.il/163-7353-en/Patzar.aspx

314 Submissions 5 and meeting with Al Mezan, 9 February 2015.

315 W112.

316 W115.

317 Submission 5.

a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident."[318]

(xi) Kaware family home

175. The Kaware home was a three-storey building comprised of seven apartments, in which five families lived.[319] The owner of the house, Ahmed Mohamed Kaware, lived on the ground floor with his wife and three of their younger children. The remaining apartments were inhabited by their four older sons and their families. Their son Odeih Kaware, described as a police officer, lived with his wife and four children on the second floor.

176. On 8 July around 3 p.m.[320], a guided bomb hit the Kaware family home in Khan Younis, killing 9 people, of whom 6 were children. According to the commission's assessment, on the basis of witness statements; photos of the site and of remnants of weapons; building plans;[321] the combination of damage caused; and the small amount of fragments shown; indicate that the house was most likely struck by a MPR 500 lb bomb fitted with JDAM.

177. Prior to the attack, the IDF called the wife of Odeih Kaware whose family resided in the house, warning the family of an imminent attack and directing them to evacuate the building.[322] According to a family member interviewed by the commission, 3 to 5 minutes elapsed between the phone call and the first missile (possibly a warning missile),[323] which struck the water tank. According to another witness, the bomb hit the house about 10 minutes after the phone call.[324] A B'Tselem report stated that there was about an hour between the call and the warning missile, and several people who had left the house had started to return to check the damage done to the roof.[325] As a result of the strike, the roof of the home collapsed. One witness stated that people stayed in the house after the warning and attempted to "protect" the house and warn the pilot that there were civilians.[326] An unverified youtube video points in that direction as well.[327] However, several witnesses denied that anyone remained after the warning and stated that people attempted to evacuate

[318] IDF Military Advocate General's ('MAG): Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'- Update No. 4 of 11 June 2015; at http://www.law.idf.il/163-7353-en/Patzar.aspx

[319] PCHR submission.

[320] The exact time of the attack is unclear as witness accounts vary.

[321] PCHR submission. See also photo at: B'Tselem, Bombing Family House of Activists in Armed Palestinian Groups Violates International Humanitarian Law, 9 July 2014. At: http://www.btselem.org/press_releases/20140709_bobming_of_houses_in_gaza.

[322] W133 and W052.

[323] W133 and W052.

[324] W028.

[325] B'Tselem, Bombing Family House of Activists in Armed Palestinian Groups Violates International Humanitarian Law, 9 July 2014. At: http://www.btselem.org/press_releases/20140709_bobming_of_houses_in_gaza.

[326] W133 and W132.

[327] 8 July: Al-Aqsa TV reporter: "Witnesses are talking about a large crowd. The residents are still gathering to reach the Kaware family home in order to prevent the Zionist occupation's fighter planes from striking it." Al-Aqsa TV host: "People are reverting to a method that was very successful once." Hamas spokesman Sami Abu Zuhri: "The people oppose the Israeli fighter planes with their bodies alone... I think this method has proven effective against the occupation. It also reflects the nature of our heroic and brave people, and we, the [Hamas] movement, call on our people to adopt this method in order to protect the Palestinian homes.http://palwatch.org/main.aspx?fi=111&fld_id=111&doc_id=12020

the building, but there was not sufficient time to do so. The witnesses denied that there were any organized attempts by the authorities to encourage residents to remain in the building.[328]

178. While the number of casualties varies between 8 and 9, all sources concur that 6 children were killed during the attack.[329] The number of people injured ranges from 25 to 29.[330] The 3 adults killed were men. The witnesses claimed that they were unaware of any involvement of a member of the Kaware family in an armed group or of the use of the building for military purposes. An official Israeli website however described Odeih Kaware as being a senior Al-Qassam Brigades "terrorist operative"[331].

179. On 10 September 2014, the Military Attorney General (MAG) announced that it had examined the case and indicated:

"that the aerial strike was carried out against the building due to its use for military purposes by Hamas, as was the case with numerous other residential buildings in the Gaza Strip"[332]*. The MAG stressed that "Prior to the strike, the IDF provided precautions to the residents of the building to vacate the premises. These precautions included an individual phonecall and the firing of a non-explosive projective [sic] at the roof of the premises, as part of the 'knock on the roof' procedure. Following the provision of the precautions, the residents vacated the building. Subsequently, a number of people were identified as returning to the premises for unknown reasons."*[333]

180. The MAG further stated that the pilot believed the residents had vacated the building, and subsequently dropped a bomb on the target. A short time after the projectile was launched, a number of people were seen returning to the premises; after the bomb had already been dropped, however, there was no technical possibility to divert the bomb or to cancel the attack[334]. Given that the attack was for military purposes and that a prior "individualized" warning was given:

"the MAG found that there was no fault in the actions of the IDF forces involved, and that despite the fact that the attack resulted in a regrettable outcome, it does not affect its legality post facto. In light of the above, the MAG did not find that the actions of the IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident. At the same time, the MAG

[328] The commission received information about a mosque call encouraging people to remain indoors. The commission was not able to verify this information.

[329] W128, W052, W132 and W133 and PCHR submission. B'Tselem reports 9 persons to have been killed, of whom 5 under 14. See: Bombing family homes of activists in armed Palestinian groups violates international humanitarian law, 9 July 2014. At: http://www.btselem.org/press_releases/20140709_bobming_of_houses_in_gaza.

[330] W132 and W133.

[331] Israel Ministry of Foreign Affairs, *Hamas Again uses Civilians as Human Shields*, at http://www.mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Hamas-again-uses-Gazan-civilians-as-human-shields-July-2014.aspx. According to B'Tselem, Odeih Kaware is an activist in Hamas's military wing. See: Bombing family homes of activists in armed Palestinian groups violates international humanitarian law. 9 July 2014. At: http://www.btselem.org/press_releases/20140709_bobming_of_houses_in_gaza

[332] Military Advocate General, Operation Protective Edge: Update re Individual Incidents, September 2014. At: http://www.mag.idf.il/163-6859-en/Patzar.aspx.

[333] Military Advocate General, Operation Protective Edge: Update re Individual Incidents, September 2014. At: http://www.mag.idf.il/163-6859-en/Patzar.aspx.

[334] Military Advocate General, Operation Protective Edge: Update re Individual Incidents, September 2014. At: http://www.mag.idf.il/163-6859-en/Patzar.aspx.

recommended conducting an examination of the operational procedures involved in carrying out such strikes, in order to assess the potential for reducing the likelihood of such exceptional incidents in the future."[335]

(xii) Dheir family house

181. On 29 July 2014, at approximately 4.30 a.m., a guided bomb was launched on the Dheir family house in Rafah. In total, 19 family members were killed including 9 children and 7 women[336]; one of the women was 6 months pregnant.[337] Another 3 children suffered serious injuries. Photos provided to the commission by two sources show a completely destroyed building, with only rubble and cement blocks remaining.[338]

182. The three-storey house covered 250 square meters and was surrounded by an agricultural area.[339] Two apartments were located on each of the first two floors, whereas the third floor consisted of one large apartment. Five families comprising 27 members lived in the house including 7 men, 7 women and 13 children.[340]

183. The commission interviewed two witnesses from the Dheir family who arrived at the house shortly after the attack. One of the witnesses said that only 3 of the 22 people present in the house survived, while 19 were killed. He claimed that his family had been living in that location for 20 years working as farmers, and none were members of armed groups. The witness lost his mother, his wife and his brother's entire family.[341]

184. The witness had heard from a neighbour that the house was first "hit by a drone", so the neighbours warned the family to leave. Apparently about five minutes later "a real shot" followed[342]. When they went to recover the bodies, they found that many of those killed were just outside the house and others were in the rubble of the stairs, which indicates that they were trying to flee but did not manage to do so in time.[343]

185. One witness said that the family grows vegetables and was supplying refugees in schools with food during the war, which the witness thinks might be the reason why they were targeted. According to the witness there were no fighters in the house or in the area at the time of the strike.[344] The Intelligence and Terrorism Information Centre, however, reported that Izat Dheir, a PIJ Al-Quds Battalions operative, was killed on 29 July in Rafah[345].

186. It appears that, following a warning, a first bomb collapsed the structure followed closely by a second bomb that led to the total destruction of the building. The remaining crater and debris pile show the massive effects of the blast.[346] Based on the commission's

335 Military Advocate General, Operation Protective Edge: Update re Individual Incidents, September 2014. At: http://www.mag.idf.il/163-6859-en/Patzar.aspx.

336 PCHR submission.

337 W080.

338 PCHR submission including pictures of the site, maps, building plans and affidavits. See also picture – confidential submission 49.

339 W079.

340 W079 and W080.

341 W079.

342 W079.

343 W079.

344 W079.

345 Intelligence and Terrorism Information Center. Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge; 28 July 2014 at http://www.terrorism-info.org.il/en/article/20708

346 PCHR submission including building plans, pictures of the site and remnants from weapons.

assessment of pictures of the site and of remnants of weapons and on witness accounts, it appears that two MPR 500 JDAM equipped bombs struck the building.

b. Groups of individuals with young children killed while outside

(i) Al Sayam and Abu Sanimah families' houses

187. *"A minute later […] the dust had settled and I saw my family all ripped to pieces. My family included my brothers, my wife and my children. Some were dead and others wounded. It was a very difficult thing to see. The majority of those who fell were women and children.*[347]*"*

188. On 21 July at approximately 6.15 a.m., a missile appears to have been fired at the house of Ahmed Abu Sanimah in Othman Bin Affan Street in the Al Siyamat neighborhood of Rafah. The adjacent Al Sayam building has four floors and about 35-37 people were living in the building at the time of the attack[348]. As a result of the strike on the Sanimah house, shrapnel scattered and hit the northern walls of the Al Sayam family house. Terrified by the attack, many of the building's inhabitants ran out to the street in an attempt to escape. Soon after leaving their house, another missile hit the pavement in front of the Al Sayam family home.[349] As a result, 9 members of the Al Sayam family were killed in the street, while 2 died within 24 hours from their injuries.[350] The victims included 2 women and 7 children[351] (one of them a baby).[352] According to a witness, a 14-year-old died later as a result of the injuries sustained[353], which brought the death toll to 12. Another 6 people were injured, of whom 2 were women and 3 were children.[354]

189. According to photos of the site[355], the area was hit by 3 missiles (some witnesses indicated that there were 5[356]). Within a few minutes ambulances arrived at the scene and transported the injured to Al Najjar hospital[357]. Three of those injured became disabled as a result of the attack.[358] The commission reviewed photos from the site, showing extensive damage to the Al Sayam family home caused by shrapnel.[359] Photos submitted to the commission by a journalist reveal big scars on the legs and stomach of one of the surviving Al Sayam children.[360]

190. The commission interviewed two Al Sayam family members, one of whom survived the attack and a second who was in a mosque close by and rushed to the scene when he heard what had happened. The eyewitness told the commission:

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[347] W144

[348] PCHR submission.

[349] W144. PCHR submission.

[350] W144; see list at PCHR, Weekly Report on Israeli Human Rights Violations in the Occupied Palestinian Territory (17- 23 July 2014).

[351] Indications of the age of one of the victims differ (just under or over 18 years old); since the witness interviewed by the commission said that he was 15, he is counted as a child.

[352] W144 and W145.

[353] W145. According to Physicians for Human Rights one person died later as a result of the injuries sustained. Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014, pp. 204-208.

[354] W145.

[355] PCHR submission.

[356] W144.

[357] PCHR submission.

[358] W145.

[359] PCHR submission.

[360] Photos submission 49.

I had a close look at the bodies. Only the upper part of my 9-year old daughter's body was left. My son Mohamed had his intestines coming out. My 16-year old cousin had lost his two legs. My son Mustapha, who was 5 meters away from me, had received shrapnel that almost completely severed his neck. My 16-year old nephew lost both his legs and arms. He asked for my help. I just really wanted him to die quickly. I didn't want him to go through so much suffering. There was also my one year old daughter who was in her mother's arms. We found her body on a tree… I myself lost my left arm …[361]

191. Both witnesses interviewed by the commission claimed that they were unaware of any family member's ties with armed groups or that there was any military activity in the vicinity.[362] One of the witnesses described the neighbourhood as quiet; no fighting or attacks had taken place in the area prior to the date in question. The eyewitness also stated that no warning was given in advance of the attack.[363] However, Physicians for Human Rights reports that there may have been a "roof-knock" warning, which shattered glass and killed one of the cousins.[364] According to the Intelligence and Terrorism Information Center, Mohammad Mahrous Salam Siam, allegedly affiliated with National Resistance Battalions, and Kamal Mahrous Salam Siam, allegedly affiliated with the Al Qassam Brigades, were killed in Rafah on 20 July.[365] While the date of the strike on the Al Sayam family was early in the morning on July 21, it could be that those two individuals, or one of them, may have been the target of the attack.

192. On the basis of the photos of the site, the descriptions of the events, and the resulting damage, the commission concluded that the shrapnel in the Sayam house probably was caused by missile and artillery shells. The third strike, which caused the most casualties, was most likely from a missile, probably an AGM 114 Hellfire Missile. Indications of artillery fire could also be seen from the images, although these traces may have been the result of a later incident.

(ii) Shuheibar children on the roof of the house

193. *"His daughter Afnan called for him, she said "papa". He told her that they would be in the hospital in a minute and that she would be fine. Shrapnel was all over her body. As he was going downstairs carrying her, the walls were splashed with blood as she was bleeding so much. […]What have these innocent children done?"* Father of an 8-year-old girl who died soon afterwards[366]

194. On 17 July at around 5.30 p.m., a house on 30th street in Al Sabra, a densely populated neighbourhood in Gaza city, was attacked. Two brothers, Tareq and Wessam Shuheibar, their wives and their 9 children lived in the house.[367] On the day of the attack, other family members were visiting as is the custom during Ramadan. In total, there were 23 people in the house.[368] As a result of the missile strike, 3 children of the Shuheibar

361 W144.
362 W144.
363 W144.
364 Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014, pp. 205.
365 Intelligence and Terrorism Information Center. Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge; 28 July 2014 at http://www.terrorism-info.org.il/en/article/20708
366 W178
367 W110 and W186.
368 *W110. See also B'Tselem, Wisam Shuheibar relates how a missile killed his 8-year-old daughter and her cousins, 7 and 10, while they were feeding pigeons on the roof, 17 July 2014. At:* http://m.btselem.org/testimonies/20140721_gaza_wissam_shuheibar.

family were killed and 2 were injured. A family member told the commission that the children had gone to the roof to feed the birds. The witness said that, before the war, the children used to spend a lot of time on the roof but during the conflict they would only go up to feed the birds. [369]

195. Tareq and Wessam told the commission that they were lying down before sunset when they were awakened by the sound of a loud blast. They did not know at first that the explosion had taken place in their own house, but neighbours gathering outside alerted them that their roof had been hit. Wessam said that he saw an opening in the ceiling and water mixed with blood dripping down, so he went upstairs to check what had happened and found the five children lying on the ground. Jihad, aged 11, and Wessam, aged 9, were dead. The three remaining children, all severely injured, were taken to the hospital by passing cars.[370] One of them, Afnan, aged 9, was bleeding heavily and died soon after arriving at the hospital.[371]

196. Basil, 10, was critically injured. He had four surgeries in his abdomen, his skull was fractured and his hand and shoulder shattered. After receiving treatment in Turkey, he was still not able to open his hand. Oday, 15, had fractures on his foot, wounds in his hand and underwent surgery on his abdomen.[372] Both children were suffering from the loss of the others.[373]

197. The explosion pierced the roof and two floors below, destroyed the water tanks on the roof and shattered the house's windows and doors.[374] No strikes followed the first strike on the roof.[375] Based on the information available to the commission, including pictures showing penetration and damage and of remnants of weapons, it is likely that the weapon used was a 500 pound MPR bomb, a precise bomb used to penetrate concrete and destroy targets in lower floors or underground.

198. Witnesses interviewed by the commission said that there had been no warning before the strike. They also insisted that there were no militants in the house, and that the neighbourhood was calm at the time of the attack.[376] Tareq and Wessam Shuheibar appear to have links to the Palestinian Authority police.[377]

200. Witnesses told the commission that the surviving children were visibly affected by the loss of their siblings and cousins. The uncle of one of the victims said that after the incident his 8-year old son refused to go to school on his own and showed other signs of trauma. Other children in the family were afraid to play outside and woke up in the middle of the night screaming.[378]

(iii) Al Farra family home

201. On 1 August, at around 2.30 a.m., the roof of the Al Farra's three storey family home in Khan Younis, in a residential area far from the Green Line was hit[379], possibly by a "roof-knock". As the family fled the house, a second missile struck a group of family

369 W186.
370 W186.
371 W186.
372 W110.
373 W110 and W186.
374 W110.
375 W110 and W186.
376 Meeting with Al Mezan on 9 February 2015.
377 Meeting with Al Mezan on 9 February 2015.
378 W110.
379 W186; also meeting with Al Mezan on 9 February 2015.

members who were ahead of their relatives and had reached the end of the road opposite the house. Nine family members were killed on the street, 5 of them children aged between 4 and 12 and two women, one of whom was pregnant[380]. Two other family members were injured, including a 4-month-old baby who was in critical condition after being injured by shrapnel in the abdomen[381].

202. The commission spoke with the parents of three of the children who died. On the night of 1 August, in the wake of an announced ceasefire, the Al Farra family was sleeping when they were awakened by the sound of an explosion and broken glass. As neighbours alerted them that their roof had been hit and was on fire, the children were rushed downstairs and told by their parents to run out of the house in fear that a second strike may hit the house. In their pyjamas and bare feet, the children and four adults ran down a narrow road in front of their house. They were about 70 meters away from their house waiting for the remaining family members when a missile landed at their feet. [382]

203. One witness said that he does not know whether or not the first missile was a "roof-knock". The top floor was completely destroyed so the witness thinks that it may have been struck by more than one missile, but he did not see it. [383] When the family was in the street, they were directly hit by two consecutive strikes. Although the information available in this case is limited, on the basis of an analysis of the testimonies and cross-checked expert statements, it seems likely that both the house and the fleeing family were hit by precise guided munition, probably AGM 114 Hellfire Missiles.

204. Two eyewitnesses told the commission that no other house in the vicinity was hit before or after the attack on their home. They claimed that there were no militants in the area and they do not understand why their house was hit.[384] One family member said, "When we used to hear that people were hit and killed I thought 'maybe they are militants' but when it happened to the witness, a university professor, he thought: "Why do they kill us?"[385]

205. The mother told the commission that her three other children are traumatized by the loss of their siblings and relatives who lived with them in the house. She also mentioned that her children no longer excel at school, and one of them often wakes up screaming at night.[386]

206. The commission received information indicating that one of the male family members killed in the attack worked for Hamas, but it is unclear what his functions were. He lived on the top floor of the house, which was completely destroyed, but had not stayed there regularly after the start of the conflict. He was among the group of people who were killed in the street by the second strike.[387]

[380] B'Tselem, Families Bombed at home Gaza, 11 August 2014, at http://www.btselem.org/gaza_strip/201407_families; see also Al-Haq, Field Updates from the Gaza Strip, 10 July 2014, at http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip.

[381] W097

[382] W097 told the COI that Civil Defence found two missiles: the one that hit inside the house from a drone and a second missile that hit the children on the street.

[383] W097.

[384] W097.

[385] W097.

[386] W187.

[387] Meeting with Al Mezan, 9 February 2015.

c. Attacks on residential buildings and civilian objects that did not result in the killing of civilians.

207. *"Only after causing damage to the assets of Gaza's social elite, (...) , by bombing the city's residential high rises, did Hamas's profit-loss calculus change."* Former IDF General Yair Naveh[388]

208. The commission received information about the wholesale destruction of more than 200 residential buildings targeted by air strikes, which did not result in the killing of civilians or Palestinian fighters since the buildings had been vacated before the attacks.[389] The following reports were brought to the commission's attention:

- On 12 July 2014, the house of Essam Al Da'alis in Al Nussairat refugee camp was attacked, without causing any casualties[390]. Mr Al Da'alis was described as the head of the financial and economic council of Hamas.[391] On the basis of the information available to it, the commission is unable to assess whether Mr. Al Da'alis had any combat function.
- On 16 July, in two separate incidents, a house belonging to Jamil Al Shanti[392], and the four-storey house belonging to Ismail Al Ashqar, in Jabaliya[393], both members of the Palestinian Legislative Council (PLC), were destroyed.
- On 25 July, the house of Salah Al Bardawil, also a member of the PLC, in Al Qarara village was attacked and reportedly levelled.[394]
- On 29 July 2014, the house belonging to Ismail Abdul Salam Ismail Haniya, Member of the Palestinian Legislative Council (PLC), in the west of Gaza City was destroyed[395].
- In a statement issued on 16 July 2014, the IDF Spokesperson listed the day's targets. He said: "among the targets attacked tonight was the operational infrastructure of Mahmoud Al-Za'ar, who serves as a member of the political bureau in the Gaza Strip, and head of the Political Committee and Foreign Liaison Department". B'Tselem pointed out that in this case the IDF did not mention any military activity carried out by Mr Za'ar, or how such activity might be connected to the house.[396]

209. On 8 July, the IDF spokesperson stated that the IDF had attacked about 50 "terror targets" in the Gaza strip. "Among the targets, there were four houses of senior members of the Hamas terror organization involved in terror activities and in the guidance of missile fire on Israeli territory".[397] This was the first time that the IDF provided a rationale for its attacks on residential buildings. Although Israel's Minister of Defence, on 14 July, reportedly used similar language to refer to the attacks on houses and other civilian

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388 Yair Naveh: *Deterrence against Non-State Actors: Thoughts following Operation Protective Edge*; The Institute for National Security Studies (INSS) Insight No. 663, 11 February 2015, p.3. At: http://www.inss.org.il/index.aspx?id=4538&articleid=8720

389 Submission 22.3.

390 Submission 22.3.

391 Haaretz: *IDF to the residents of northern Gaza: "evacuate until 12:00"*; 13 July 2014 at http://www.haaretz.co.il/news/politics/1.2374145

392 Submission 22.3.

393 Submission 22.3.

394 Submission 22.3.

395 Submission 22.3.

396 B'Tselem, Black Flag, January 2015.

397 IDF spokesperson. 8 July 2014. At: http://www.idf.il/1153-20876-he/Dover.aspx

objects[398], starting from 10 July, the IDF consistently argued that it was targeting terrorists, command centres, weapons caches, tunnels and munition depots located inside these houses[399]. In this context, Israel alleges that houses belonging to certain Hamas political leaders in Gaza were used for military purposes and gave examples of supposed command and control centres.[400]

210. According to information available to the commission, four multi-storey buildings in different parts of Gaza were destroyed in the last days of the hostilities. The commission reviewed and analysed video and photographic evidence, and submissions it received dealing with these incidents[401]. The following are the summaries of the information furnished the commission on these four attacks:

- On 23 August, at approximately 10.30 p.m., the IDF carried out strikes against the Municipal Commercial Centre in Rafah, which used to occupy a 1 500 m2 plot. According to Amnesty International, following two warning missiles, three air-dropped bombs targeted the lower three floors and caused the destruction of numerous shops and offices in the four-storey building, rendering it unusable. The air strikes started a large fire inside the building, which could not be extinguished until the following day. Only a concrete skeleton was left.[402]
- On 23 August, the IDF targeted the Zafer 4 Tower, a 12-storey building located in Gaza City. According to submissions received by the commission, the Tower had become home to dozens of families; more than 400 individuals had fled their homes elsewhere and resided in the tower. The attack resulted in the complete destruction of the building. According to media accounts and reports from Palestinian NGOs, around 20 residents in surrounding buildings were injured.[403] Hamas assertedly situated several command and control centres on multiple floors of the "Zafer 4" building in Sabra Tal al-Hawa. "After providing several effective advance warnings to the building's occupants and neighbours, and verifying that it was fully vacated, the IDF struck the building on August 23. No civilians were harmed in the attack."[404]

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398 According to press reports, Minister Ya'alo said: "We continue to smash Hamas and its infrastructure. They have suffered great damage. We have destroyed weapons-production capabilities, tunnels, terrorists' homes, and institutions and we will continue this activity today […] When Hamas comes out of their hiding places they will discover the extent of the destruction and the damage that we have caused the organization that will make them regret that they entered this round of fighting against Israel". *Highlighted by the commission.* In: Jerusalem Post: Ya'alon: Hamas leaders will see destruction we inflicted when they come out of hiding. 14 July 2015. At: http://www.jpost.com/Operation-Protective-Edge/Yaalon-Hamas-leaders-will-see-destruction-we-inflicted-when-they-come-out-of-hiding-362691

399 IDF spokesperson. 10 July 2014. At http://www.idf.il/1153-20893-he/Dover.aspx

400 Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 22 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf. Accessed on 30 May 2015

401 United Nations Office for the Coordination of Humanitarian Affairs: Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 26 August 2014) at: http://www.ochaopt.org/documents/ocha_opt_sitrep_26_08_2014.pdf ; Including the report of Amnesty International: Nothing is Immune': Israel's Destruction of Landmark Buildings in Gaza, December 2014. At https://www.amnesty.nl/sites/default/files/public/nothing_is_immune.pdf. From now on referred to as Amnesty International, Nothing is Immune, December 2014.

402 Submission 22.3; Amnesty International, Nothing is Immune, December 2014.

403 Amnesty International, Nothing is Immune, December 2014. Forensic Architecture's TEJKA See Video: http://www.reuters.com/article/2014/08/24/us-mideast-gaza-idUSKBN0GM11320140824

404 Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p.23 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf, Accessed on 30 May 2015

- On 25 August 2014, at about 12.05 a.m., the IDF carried out a number of strikes at the Italian Complex. The complex, located in Gaza City, is composed of a 16-storey tower with a commercial centre on the two bottom floors. The strikes severely damaged the complex when all the floors on one side of the tower collapsed. The residential part contained about 50 apartments. According to Amnesty International, the bottom two floors included a shopping mall with scores of shops, a branch office of Hamas's political wing and an office of the Ministry of Public Works and Housing of the Hamas authority. Most of the shops were severely damaged. According to the Gaza Ministry of Health, 25 people were injured in this attack. [405]
- On Tuesday, 26 August 2014, at approximately 4.30 a.m., the IDF conducted several air strikes against the 13-floor Al Basha Tower, located in the centre of Gaza City, levelling it completely. The Al Basha tower hosted about 30 apartments. According to Amnesty International, the tower was occupied primarily by businesses and news media offices, as well as by a number of educational institutions, many of which were closed during the hostilities.[406]

211. These four strikes led to the buildings' total or nearly total destruction. None of the attacks resulted in deaths as the IDF took measures to ensure that all residents left the buildings before they were targeted by using, in all cases, the "knock on the roof" procedure. In three of the cases (the Gaza City buildings), some residents also received warning phone calls, instructing them to evacuate and to tell others to leave the building. In two cases (the Al-Basha Tower and the Italian Complex), messages were sent to residents directing them to maintain a distance of 300 m between them and the building, and to inform residents of surrounding buildings to do the same. In all four cases, residents evacuated the buildings, alerted others, and assisted persons who needed help, including the elderly, but they were unable to remove their personal belongings. It appears that most inhabitants lost all of their possessions.[407]

212. Amos Yadlin, a former Israeli Air Force (IAF) General and head of the IDF Military Intelligence Directorate, stated: "[On]ly if Hamas were hit sufficiently hard would it be deterred from further fighting, and thus quiet would be restored in the south. (…) Only in the seventh week, when (…) multi-storey buildings in Gaza were struck, was Hamas hit hard enough to be deterred, and thereupon quiet was restored.''[408]

d. Patterns and legal analysis

213. *International law also recognizes the important social, historical and cultural dimensions of housing, and the critical link between access to adequate housing and recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family.*[409]

214. Based on its inquiries and on the review of submissions and publicly available information, the commission identified certain patterns with respect to IDF strikes on residential buildings. These are analysed in light of applicable international law.

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405 Amnesty International, Nothing is Immune, December 2014.

406 Amnesty International, Nothing is Immune, December 2014. Forensic Architecture's TEJKA

407 Amnesty International, Nothing is Immune, December 2014.

408 The Institute for National Security Studies, *The Lessons of Operation Protective Edge*, November 2014, p. 203. At http://www.inss.org.il/uploadImages/systemFiles/ZukEtanENG_final.pdf.

409 CESCR General Comment no. 4, paras 7 and 8.

CASE	LOCATION	DATE	WARNING	POSSIBLE MILITARY OBJECTIVE IDENTIFIED	WEAPON likely used	KILLED	WOMEN	CHILDREN	INJURED
Kaware	Khan Younis	8 July 3 p.m.	Phone call; Roof-knock	Yes	JDAM equipped 500lb or 1000lb bomb	9	x	6	25- 29
Al Hajj	Khan Younis	10 July 2 a.m.	No	Yes	JDAM equipped 500lb bomb	8	3	2	19, 7 women and four children
Al Batsh	Tuffah, Gaza city	12 July 9.30 p.m.	No	Yes	JDAM equipped bombs (either 500lb or 1000lb)	19	3	6	16- 45
Shuheibar children	Gaza city	17 July 5.30 p.m.	No	No	JDAM equipped 500lb MPR bomb	3	x	3	2
Al Qassas	Shuja'iya	20 July 4.30 p.m.	No	No	AGM 114 Hellfire Missiles	9	3	6	10 including 8 children and 1 woman
Al Hallaq and Al Ammar	Al-Remal, Gaza city	20 July 6.45 p.m.	No	No	AGM 114 Hellfire missiles	7 + 4 from Ammar Family	3	3 + 4	Ammar family : 5 children injured
Abu Jama	Abu Safar; East of Khan Younis	20 July 7.50 p.m.	No	Yes	JDAM equipped bomb, unknown size	26	5	19	3 including 1 child
Al Sayam	Rafah	21 July 6.15 a.m.	No (house next door was hit)	Yes	AGM 114 Hellfire Missiles	11	2	7	8 including 2 women and 5 children
Kilani (Al Salam	Gaza city	21 July 8 p.m.	No	Yes	JDAM equipped 500lb bomb	11	x	5	
Al Najjar	Khan Younis	26 July 3 a.m.	No	No	JDAM equipped 1000lb or 2000lb bomb,	19	5	11	6

Abu Jabr	Al Buraij refugee camp	29 July 12.30 a.m.	No	No	JDAM equipped 2000lb bomb	19	6	6	7 including 4 women and 3 children
Dheir	Rafah	29 July 4.30 a.m.	Possible roof-knock	Yes	JDAM equipped 500lb bomb	19	7	9	3 children
Al Dali Building	Khan Yunis	29 July 7.30 a.m.	No	Yes	JDAM equipped 2000lb bomb	32	6	18	21 including 4 children
Balatah	Jabaliya refugee camp	29 July 4 p.m.	No	No	AGM 114 Hellfire Missile	11	5	5	41 including 17 children and 5 women
Al Farra	Khan Younis	1 August 2.30 a.m.	Yes	Yes	AGM 114 Hellfire Missiles	9	2	5	2, 1 a baby
A total of 216 killed			**Of whom 115 children**		**And 50 women**				

Military Objectives

215. In many of the cases examined by the commission, as well as in incidents reported by local and international organizations, there is little or no information as to how residential buildings, which are *prima facie* civilian objects immune from attack, came to be regarded as legitimate military objectives. The commission recognizes the dilemma Israel faces in releasing information that would disclose the precise target of military strikes, as this information might be classified and jeopardize intelligence sources. In relation to "evidence of military use", official Israeli sources indicated that: "*In the context of wide-scale military operations, it is often extremely difficult to provide evidence demonstrating exactly why certain structures were damaged. While the IDF targets only military objectives, forensic evidence that a particular site was used for military purposes is rarely available after an attack. Such evidence is usually destroyed in the attack or, if time allows, removed by the terrorist organisations who exploited the site in the first place. It is therefore unsurprising that forensic evidence of military use cannot usually be traced following attacks. As is the case with most militaries, the IDF unfortunately cannot publicize detailed reasoning behind every attack without endangering intelligence sources and methods. The Law of Armed Conflict does not include any requirement or obligation to publicize such information.*"[410] However, in the commission's view, accepting that logic would undermine any efforts to ensure accountability. The key concept of international humanitarian law is the principle of distinction. Only once it has been established whether a specific attack distinguished between legitimate military objectives on the one hand, and civilians and civilian objects on the other hand, can compliance with the other principles, of proportionality and of precautions, be considered.

216. More specifically, the information needed to enable an independent assessment of whether a given attack complied with international humanitarian law obligations must shed light on two criteria that need cumulatively to be fulfilled in order for a building to become

[410] Israel, Ministry of Foreign Affairs, I*srael's Investigation of Alleged Violations of the Law of Armed Conflict*, p. 27. Accessed 30 May 2015.

a military objective: (1) does the object by its "nature, location, purpose or use make an effective contribution to military action" and, (2) would the object's "total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer a definite military advantage."[411]

217. This information must be released to independent and impartial mechanisms which have the effective power to ensure accountability (for a more detailed discussion of this see chapter VII below). The commission also notes that, while there may be limitations on publishing certain types of information, a minimum level of transparency is required from the point of view of assisting victims' quest for the truth and their right to effective remedies.

218. In terms of the targeted house attacks, the commission calls upon Israel, at a minimum, to release information about what constituted the military objective within each house, and how targeting that objective effectively contributed to military action.

Incidents Resulting in Deaths

219. In 6 cases examined by the commission, and in most cases reported on by NGOs, there is little or no information available as to why residential buildings, which are *prima facie* civilian objects immune from attack, were considered to be legitimate military objectives. In relation to each attack on a residential building that resulted in significant destruction and civilian deaths or injuries, the onus is on Israel to explain the factual elements that have rendered the house or the person(s) present inside a military target. In this regard, Israel should provide specific information on the effective contribution of a given house or inhabitant to military action and the clear advantage to be gained by the attack. Should a strike directly and intentionally target a house in the absence of a specific military objective, this would amount to a violation of the principle of distinction.[412] It may also constitute a direct attack against civilian objects or civilians, a war crime under international criminal law.[413] The commission wishes to emphasize that, in case of doubt, "whether an object which is normally dedicated to civilian purposes […] is being used to make an effective contribution to military action, it shall be presumed not to be so used"[414].

220. Indications of possible military objectives emerged in 9 of the 15 cases examined by the commission. In the Kaware case, the MAG indicated that "the aerial strike was carried out against the building due to its use for military purposes by Hamas"[415]. The attack on the Al Salam Tower was directed against an Islamic Jihad operative, according to the MAG. In addition, in four cases, there were possible links of family members or premises to Al Qassam (Abu Jama, Al Haj, Al Batsh, one Sayam family member); to Saraya Al Quds (Al Dali, Dheir); or to the Democratic Front for the Liberation of Palestine (one Sayam family member). In one incident, it appears that a person may have been targeted because he worked with Hamas (Al Farra). In these nine cases, while the commission is not in a position to ascertain why a residential building was attacked, the potential targets of the attack seem to have been mostly individuals who were or who could have been present in the building that was struck, indicating that one or several individuals were the likely target and not the building itself. In that context the commission underlines that the mere fact of being a member of the political wing of Hamas or any other organization in Gaza, or

411 AP I, article 52.2.
412 Additional Protocol (AP) I, articles 51 and 52.1
413 Rome Statue, article 8.
414 AP I, article 52.3, which reflects customary international law.
415 Military Advocate General. Up-date of December 2014 at: http://www.law.idf.il/163-6958-en/Patzar.aspx

working for the authorities (Al Farra case), is not sufficient in and of itself to render a person a legitimate military target. While the IDF indicated that it did not target Hamas lawmakers, politicians or law-enforcement officials because of their affiliation with Hamas, but only individuals who directly participate in hostilities or are members of organized armed groups[416], under international humanitarian law, a member of an armed group has to have a continuous combat function to constitute a legitimate military target.[417]

221. In relation to the incidents where information about possible military objectives was available, the commission examined whether the attacks were in conformity with the principle of proportionality. The commission notes the official assertion that "During the 2014 Gaza Conflict, the IDF took steps to ensure the collection of all reasonably available, timely information regarding a target's surroundings, focusing in particular on civilians and civilian objects that may be in its vicinity at the time of the attack, regardless of whether an advance warning has been given. For example, remotely piloted aircraft flew over countless targets to monitor the presence of civilians in real time. In addition, the IDF routinely used engineers and damage-assessment specialists to assist with the assessment of expected collateral damage by considering the specific circumstances of each case (including the target's surroundings, the means and methods used in the attack, and so on)."[418] In most of the incidents examined by the commission and others[419], however, given the following circumstances: the fact that the targeted buildings except one were residential in nature; that they were located in densely populated areas; that the attacks were carried out when it could be expected that most family members would be at home (in the evening or at dawn when families gathered for *iftar* and *suhhur*, the Ramadan meals, or during the night when people were asleep); and that large weapons apparently meant to raze buildings were used; it is possible to conclude that a reasonable commander must have been aware that such an attack was likely to result in a high number of civilian casualties as well as in considerable destruction. Given the absence of information suggesting in each case that the anticipated military advantage at the time of the attack was such that the expected civilian casualties and damage to the targeted and surrounding buildings were not excessive, there are strong indications that these attacks could be disproportionate, and therefore amount to a war crime.[420]

Destruction of houses not resulting in deaths

222. Other groups of cases discussed above (attacks against the houses of senior political figures and of high ranking members of armed groups when they were not present; and three high-rise buildings in the last days of the conflict[421]) also raise serious questions as to

[416] Israel, Ministry of Foreign Affairs, *IDF Conduct During the 2014 Gaza Conflict*, p. 18; at: http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed on 30 May 2015

[417] ICRC, *Interpretative Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*, p. 71.

[418] Israel, Ministry of Foreign Affairs,*IDF Conduct of Operations during the 2014 Gaza Conflict*, p.41 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf. Accessed 30 May 2015

[419] B'Tselem, Black Flag, January 2015 and Amnesty International, Families under the rubble, November 2014.

[420] Rome Statue, article 8.

[421] The commission notes that, according to an official statement, "When analysing the proportionality of an attack, the IDF takes into account not only the expected harm to civilians, but also the expected damage to civilian objects. In a few situations during the 2014 Gaza Conflict, the IDF determined that the anticipated military advantage from certain attacks on large multi-storey buildings was sufficient to justify the collateral damage to property. Because the

the respect of the principle of distinction between civilian objects and military objectives. The commission has not received any specific information about the contribution of most of these buildings to the military effort of armed groups in Gaza and how their destruction offered a military advantage to Israel. The absence of that information, combined with statements by members of the Israeli Government and the IDF to the effect that "terrorists' homes and institutions"[422] and the home of a member of the political bureau in the Gaza strip were targeted, raise questions as to whether these targets constituted legitimate military objectives. The IDF later stated that many commanders of armed groups were using their homes as command centres and that it was the command centres, rather than the homes themselves, that were targeted.[423] Although issuing operational orders may be construed as using a home for military purposes, in order for it to become a military objective, its destruction must offer a definite military advantage at the time of the attack. The mere presence of a laptop or a mobile phone used for military purposes in the apartment, or the fact that meetings of a military nature had been held there in the past, are not sufficient to turn a civilian object into a military objective owing to the extremely limited military advantage the destruction of the home would offer. Indeed, a meeting can easily be held elsewhere, and mobile phones and laptops are portable and can be replaced when destroyed. As a military expert who provided information to the commission observed, a room that has in the past been used for meetings of a military nature and may also be so used in the future, in which there are no weapons or complex equipment and where there is no one present at the time of the attack, cannot be regarded as a legitimate military objective.[424] Regarding the destruction of high-rise buildings, a statement by an IDF General seems to suggest that the objective of these strikes was to exercise pressure on the "social elite" of Gaza by destroying the high-rises;[425] this can in no manner be considered as a legitimate military advantage under international humanitarian law.

223. In the absence of precise information about the possible military use of these premises, the commission is unable to make a final assessment regarding the principle of distinction. However, the massive scale of destruction and the number of homes and civilian buildings attacked raise concerns that Israel's interpretation of what constitutes a "military objective" is broader than the definition provided by international humanitarian law[426]. Should attacks have been directed against buildings that did not constitute a military objective this may amount to a war crime.

IDF reasonably anticipated that each of the attacks would yield sufficiently significant military advantage from the destruction of multiple command and control centres and arms depots located in each building, the IDF carried out the attacks (after employing a multi-tiered system of warnings, including repeated phone calls to residents and neighbours). Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 43; at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf .Accessed 30 May 2015

422 See footnote 397

423 Lecture by MAG Major General Dani Efroni at the Institute for National Security Studies (INSS) conference: Challenges of Warfare in Densely Populated Areas, 2 December 2014, see IDF report on lecture : http://www.law.idf.il/163-6967-he/Patzar.aspx. Op. cit. note 235. http://www.idf.il/1153-20893-he/Dover.aspx

424 Meeting of the commission with Colonel (ret) Richard Kemp, 20 February 2015.

425 Yair Naveh, Maj. Gen. formerly served as Deputy Chief of Staff, as principal infantry and paratroopers commander, commander of the Gaza Division, Commander of the Home Front Command, and GOC Central Command: *Deterrence against Non-State Actors: Thoughts following Operation Protective Edge*; INSS Insight No. 663, 11 February 2015, p.3. At: http://www.inss.org.il/index.aspx?id=4538&articleid=8720.

426 Customary rule reflected in article 52 (2) API.

Weapons used

224. Many of the strikes described in this chapter, e.g. on the Al Hajj, Al Dali, Abu Jama, Dheir, Abu Jabr and Al Batsh houses, apart from causing death and injury, led to the total or partial destruction of entire buildings as described by many witnesses and illustrated by pictures. This is also noted by UNITAR-UNOSAT, which, on the basis of its analysis of satellite imagery, found that "[m]any buildings across the Gaza Strip were likely struck by laser guided air dropped munitions which are capable of collapsing a large building with relatively moderate damage to surrounding areas. […] All are obviously visibly collapsed while surrounding buildings are not, though surrounding buildings certainly experienced some form of collateral damage from the munitions impacting the primary targets. Such damage examples are widespread within the interior of the Gaza Strip."[427]

225. The cases examined and other available evidence show that large air-dropped weapons with highly destructive potential, widely employed during Operation "Protective Edge", were used in many incidents (see in particular the sections on Al Salam, Al Batsh, Al Dali and Abu Jama and the multi-storey buildings above). The commission notes Israel's assertion that "during the 2014 Gaza Conflict, whenever feasible, the IDF selected munitions that would minimise potential civilian casualties and injuries, while still achieving the objective sought. In this regard, whenever feasible, the IDF conducted pinpoint aerial strikes, using precision-guided munitions."[428] As an NGO conducting research on the use of weapons by Israel in Gaza last summer found: "Many of the aerial munitions used, while more accurate than their historic predecessors, still have a wide-area effect because of their size and power. One munition used by the Israeli Air Force is the Mk-84, a high-explosive bomb fitted with a guidance system that weighs 2,000lb."[429] Similarly, concerning the GBU-31, which appears to have been used in several of the cases described above, engineers and weapons designers reportedly stated the following:

"The explosion creates a shock wave exerting thousands of pounds of pressure per square inch. By comparison, a shock wave of 12 psi will knock a person down; and the injury threshold is 15 pounds psi. The pressure from the explosion of a device such as the Mark-84 JDAM can rupture lungs, burst sinus cavities and tear off limbs hundreds of feet from the blast site, according to trauma physicians. When it hits, the JDAM generates an 8,500-degree fireball, gouges a 20-foot crater as it displaces 10,000 pounds of dirt and rock and generates enough wind to knock down walls blocks away and hurl metal fragments a mile or more. There is a very great concussive effect. Damage to any human beings in the vicinity would be pretty nasty."[430]

226. The above analysis has been confirmed by military experts consulted by the commission. In relation to the use of the GBU-32/MK-82, 1000lb bomb or the GBU-31/MK-84, 2000lb bomb, which were used in several of the above-mentioned incidents, regardless how precise the bomb is, it remains extremely questionable whether a weapon

[427] UNITAR-UNOSAT: Impact of the 2014 Conflict in the Gaza Strip. UNOSAT Satellite Derived Geospatial Analysis; 2014; p. 11. At: https://unosat.web.cern.ch/unosat/unitar/publications/UNOSAT_GAZA_REPORT_OCT2014_WEB.pdf

[428] Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 38at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf, Accessed 30 May 2015.

[429] Action on Armed Violence, Under fire Israel's artillery policies scrutinised, December 2014, p. 15. At: https://aoav.org.uk/wp-content/uploads/2015/03/AOAV-Under-Fire-Israels-artillery-policies-scrutinised.pdf.

[430] San Diego Union Tribune, 21 March 2003 at: http://legacy.utsandiego.com/news/world/iraq/20030321-9999_1n21bombs.html (accessed on 22 April 2015).

with such a wide impact area allows its operators to adequately distinguish between civilians and civilian objects and the military objective of the attack, when used in densely populated areas. Attacks, which used this type of weapon in densely populated, built up areas of Gaza, are therefore likely to constitute a violation of the prohibition of indiscriminate attacks. [431]

Groups of civilians with young children killed while outside

227. In three cases examined by the commission, groups of individuals were struck in the street or on the roof. The groups included young children, in two cases when they fled their houses (Al Sayam – 7 children killed and 3 injured, including one baby; and Al Farra – 5 children aged under 12 killed and one baby injured) and in one case while they were on the roof (three Shuheibar children killed, all under 12 years old).

228. The commission notes that in all three cases precision weapons appear to have been used, which indicates that specific objectives were targeted. The onus is on Israel to make available information about those objectives and explain how attacking them contributed to military action. Only once that information is known can the legality of the attacks in terms of distinction, proportionality and precautions be assessed. Unless there were legitimate military objectives, the targeting of civilians not taking part in the hostilities would be a violation of the principle of distinction[432] and could constitute a direct attack against civilians, a war crime under international criminal law.[433]

229. In the event that a member of an armed group was part of the group fleeing the house, as alleged in the Al Farra and possibly the Sayam cases, the attack raises questions with regard to the principles of proportionality and precautions. The IDF's surveillance capacity, combined with the likelihood that a group of persons fleeing a house that has just been bombed in the middle of the night would include a number of civilians, are strong indications that the IDF failed in its obligations to take all feasible measures to avoid or at least to minimize incidental harm to civilians.

230. The commission notes that, according to official Israeli sources, the IDF abandoned air strikes when the presence of civilians was detected[434]. Therefore, since there are grounds to believe that the IDF had the capacity to determine the civilian nature of the (vast majority of people) in the groups fleeing the house and of the children on the roof, it may have breached its obligations to take all feasible measures to avoid or at least to minimize incidental harm to civilians. In addition, unless the anticipated military advantage of neutralizing a purported member of an armed group was such that the expected death of the civilians in the group, many of whom were children, would not be excessive, this attack could be deemed disproportionate.

Precautions

231. The IDF has repeatedly stated that it takes precautionary measures that are more stringent than those required by international humanitarian law,[435] in order to protect

[431] AP I, article 51(4).
[432] AP I, articles 51 and 52.1
[433] Rome Statue, article 8.
[434] Israel Ministry of Foreign Affairs, *Israel minimizes civilian casualties*. At http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Israel-minimizes-civilian-casualties.aspx.
[435] See IDF web-site: Aerial Strikes against Terrorists: Some Legal Aspects. At: http://www.law.idf.il/592-6584-en/Patzar.aspx, see also the lecture by MAG Major General Dani Efroni at the Institute for National Security Studies (INSS) conference: Challenges of Warfare in

civilians in Gaza. Some of the precautionary measures adopted by the IDF in the context of airstrikes during the summer of 2014 included: phone calls and text messages warning residents in targeted buildings, or those in the immediate vicinity, of an impending attack; dropping leaflets in a neighbourhood; delivering warning shots to the roof; and abandoning air strikes when the presence of civilians was detected.

Timing

232. In relation to the timing of attacks, in a number of the above incidents and incidents researched by others, the commission observes that Israeli authorities indicated that, with a view to minimizing collateral damage, "the Civil and Liaison Administration updated IDF operational entities with detailed information concerning prayer times and the iftar fast (during which times large family gatherings are held)".[436] Yet many of the attacks took place in the evening as families gathered for *iftar*, the Ramadan meal to break the fast, during the night when people were asleep; or in the early morning during suhhur, the last meal before dawn, which increased the likelihood that many persons, often entire families, were at home. If the target was an individual, it can be questioned whether the individual could not have been targeted at another time or location. This is particularly apparent in the strike on the Al Salam tower, where it appears that the target was a commander of Islamic Jihad's military wing, who, according to an eyewitness, had left the building several times in the days preceding the attack, which indicates that there may have been the possibility to target him elsewhere, when fewer civilians were in the vicinity. International humanitarian law requires that all feasible precautions must be taken to avoid or at least to minimize incidental loss of life and damage to civilian objects. This includes the choice of the timing of the attack.[437] There are concerns that this requirement may not have been complied with in some of the cases examined by the commission.

Warnings and their effectiveness

233. Warnings are reported to have been issued in two of the cases examined by the commission (Kaware and Dheir, although little is known in relation to the latter, as all persons present in the house died). In respect of two other cases (Al Sayam and Al Farra), unconfirmed reports indicate that there may have been "roof-knocks". In the remaining eleven cases, no reports of warnings were received. Similarly, Amnesty International examined eight cases of airstrikes in which civilians were killed and found that "in all cases, no prior warning was given to the civilian residents to allow them to escape."[438] Different types of warnings are reported to have been issued in advance of the strikes on three multi-storey buildings and one shopping centre in the last days of the conflict, which warnings appear to have been effective, since the buildings were vacated and nobody was killed. However, at least 25 people were injured as a result of the strikes.

234. The commission notes that attacks on more than 200 residential buildings by air strikes resulted in no civilian casualties. This indicates that specific warnings by the IDF to inhabitants of these buildings were effective in many cases. This is further illustrated by the destruction, between 23 and 26 August 2014, of three buildings each housing several dozen apartments, which did not result in any civilian deaths. Residents of the buildings, and often

Densely Populated Areas, 2 December 2014, see IDF report on the lecture: http://www.law.idf.il/163-6967-he/Patzar.aspx.

436 Israel Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 37 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf, . Accessed 30 May 2015

437 AP I, article 57(3). AP II article 13(1). ICRC, *Database customary international humanitarian law*, Rule 17.

438 Amnesty International, Families under the rubble, November 2014, p. 5.

their neighbours, received phone calls instructing them to evacuate and in some cases warning them to keep a safe distance from the targeted buildings.[439] The commission considers that the issuing of warnings concerning specific air strikes, via phone calls and text messages is a good practice, through which Israel attempted to respect its obligation to give advance warnings of attacks, where feasible, so as to minimize civilian casualties. However, in a number of cases, these phone warnings did not comply with the requirement of international humanitarian law that parties to a conflict should provide "effective" advance warning of attacks that may affect the civilian population, unless circumstances do not permit.[440] According to State practice, warnings are not required when attacks necessitate the element of surprise, when they would put the security of the attacking forces at risk, or when speedy responses are needed.[441]

"Roof-Knock" warnings

235. According to official Israeli sources, "IDF assessments show that the employment of "roof knocking" was highly effective, preventing many civilian injuries and deaths during the 2014 Gaza Conflict."[442] The commission observes, however, that some of the incidents examined in this section raise serious concerns regarding the effectiveness of "roof-knocking".

236. In some cases, it appears that concerned persons did not understand that their house had been the subject of a "roof-knock", such as the in case of the Dheir home, where the family in the house did not understand that the strike was a warning until they were told by a neighbour that they had to flee. While on their way out, 19 out of the 22 individuals present in the house died, including 9 children[443]. In two other cases,[444] families fled buildings following an air strike on the roof or top floor believing that the strike was a warning, only to be struck by a targeted missile once outside the house and on the street. On the basis of their research into large numbers of attacks of houses, many NGOs have expressed doubts about the effectiveness of the warnings issued during Operation Protective Edge.[445] For instance, B'Tselem indicated that "[t]his was especially so when the "knock on the roof" method was used while there were other attacks in progress in the vicinity and residents could not tell apart the smaller missile hitting the roof of their house. In other cases, residents who had been warned did leave the house, but people living nearby – who had not received a warning – were hurt when their homes also sustained damage in the attack."[446] The confusion caused by "roof-knocks" is understandable in such a densely populated area. Often, there are several buildings of 4, 5 or 6 floors adjoined. When a roof is hit by a strike it thus becomes very difficult for people located on the lower floors to understand whether the warning was targeting their own building, or the one to the left, to the right, behind or in front, or across the narrow street; thus the "roof-knock" warning raises the question whether fleeing might put one more at risk than staying put.

439 Amnesty International, Nothing is Immune, 19 December 2014.

440 AP I, article 57(2).

441 Jean Marie Henckaerts and Louise Doswal-Beck, Customary International Humanitarian Law, Cambridge, 2006, p. 64.

442 Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 37 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf. Accessed 30 May 2015.

443 W079 and W080.

444 See Sayam and Al Farra cases above.

445 B'Tselem, Black Flag, January 2015, p. 51, 52; see also: FIDH: Trapped and Punished: The Gaza Civilian Population under Operation Protective Edge, pp. 15-30; see also OCHA. Situation report, 14 July, p. 2, http://www.ochaopt.org/documents/ocha_opt_sitrep_15_07_2014.pdf; Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014, p. 40 ff.

446 http://www.btselem.org/download/201501_black_flag_eng.pdf, p. 51, 52

237. The short time lapse between the "roof-knock" strikes and the actual strike that resulted in the destruction of the building is also cause for concern. In cases documented by the commission[447] and by NGOs[448] only a few minutes (between 3 and 5) elapsed between the two strikes. If the "roof-knock" is the first warning, a few minutes are clearly not sufficient to allow a multi-storey building inhabited by families with children and elderly and sometimes disabled persons to be evacuated, taking into account the time required to realize that the strike was meant as a warning. In one case documented by an IDF video presenting an audio recording of a conversation between an IDF soldier and a resident of Gaza, while showing the image of a building surrounded by many others, the IDF officer only provides five minutes for the person to leave the house before a neighbouring building is destroyed.[449] The IDF video also highlights another problem that may render advance warnings ineffective. In an area with buildings all around, how can the recipient of such a "roof-knock" know which building he or she should avoid if this is not specified in the message? Based on the warning that a building close to one's own will be targeted, while a person may be willing to leave the house, he or she cannot know in what direction to escape. It seems that in such cases the phone call warnings are not effective as required by international humanitarian law. In addition, by giving a warning, the IDF accepted that the attack did not require the element of surprise; accordingly, there appears to be no reason why more time was not granted to the residents of the house to evacuate. This analysis was echoed by a military expert who provided information to the commissioners: "If you are giving a warning you know that you have lost the element of surprise and there is no reason for cutting it short".[450]

238. Furthermore, according to a former Head of the International Law Department of the MAG Corps, the "roof-knock" technique was conceived as a final precautionary measure to make it clear that the IDF was serious about previous warnings and precautions and to give persons that may be affected by the impending attack an additional and possibly last opportunity to escape.[451] The use of "roof-knocking" as a complement to other warning methods was examined in one case by the commission,[452] and in a number of cases documented by non-governmental organizations.[453] However, the commission is unable to verify whether "roof-knocking" was systematically combined with other warnings and whether there were cases in which "roof-knocking" was the only form of specific – and ambiguous – warning civilians received.

239. Based on its findings, the commission concludes that the "roof-knocking" technique is not effective, in particular if not combined with other specific warnings.

240. The commission also underlines that the extent of its efforts deployed to provide warnings to the civilian population, and of their effectiveness, does not relieve an attacking party of its obligation to respect all the other principles on the conduct of hostilities, in particular distinction and proportionality. Nor does the fact that an effective warning has been given alter the civilian status of those who have not heeded the warning.

447 See Dheir case above.

448 Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014, p. 43-44.

449 IDF video showing a warning call that was made to the neighbour of building that was about to be targeted. Available at http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Israel-minimizes-civilian-casualties.aspx

450 Meeting with Colonel (ret) Richard Kemp, 20 February 2015.

451 Video conference with Daniel Reisner, 22 January 2015.

452 See Kaware case above.

453 E.g. Physicians for Human Rights, Findings of an Independent Medical Fact-Finding Mission, Gaza 2014, p. 43

241. While the commission cannot know what precautionary measures were taken by the IDF in each attack, based on a number of cases, there are concerns that the IDF may not have done everything feasible to verify whether civilians were present in the buildings selected for attack and to assess whether the impending strike would result in civilian casualties and damage to civilian objects, which would be excessive in relation to the anticipated military advantage. The incidents examined in this section point to a potential failure by the IDF to take all appropriate measures to avoid or at the very least to minimize death and injury to civilians and damage to civilian objects.[454]

242. The limited effectiveness of these precautionary measures must have become abundantly clear during the early days of the operation, given that many buildings were completely destroyed together with their inhabitants. The apparent lack of steps taken to re-examine these measures in light of the mounting civilian toll suggests that Israel did not fully comply with its obligation to take all feasible precautions in attack.[455]

Tactics of targeting residential buildings and impact on civilians including women and children

243. OCHA found that at least 142 Palestinian families had three or more members killed in the same incident as a result of attacks on residential buildings, amounting to a total of 742 fatalities.[456] Al Mezan and Lawyers for Palestinian Human Rights reported that at least 1,066 family members had been killed inside their homes[457], which means that a significant percentage of civilians killed during the conflict died inside their home as a direct result of air-strikes or artillery shelling of their neighbourhoods, making attacks on houses a key-feature of the conflict. This is consistent with findings by Physicians for Human Rights, which on the basis of numerous interviews, including with 68 persons with injuries, described "[a] consistent picture of people injured or killed while in, or very close to, their homes.[458] They also report that around 60 per cent of the incidents they researched involved attacks that took place either at home or in someone else's home.[459] The commission notes the large number of targeted attacks against residential buildings and that such attacks continued throughout Operation 'Protective Edge', even after the dire impact of these attacks on civilians and civilian objects became apparent, and were intensified again towards the end of the operation.[460] In addition, figures show that strikes on homes and other buildings that were prima facie civilian, irrespective of whether or not civilians were killed or injured, were massive and destructive. These observations raise concern that these strikes may have constituted *military tactics reflective of a broader policy*, approved at least

454 AP I, Article 52.

455 This conclusion is supported by the ICTY in the *Kupreskic* Judgement of 2000. When discussing respect for the principle of distinction and proportionality, the trial chamber concluded that: a "pattern of military conduct may turn out to jeopardize excessively the lives and assets of civilians."

456 OCHA, Fragmented Lives, March 2015, p. 4.

457 Al Mezan Center for Human Rights, Lawyers for Palestinian Human Rights (LPHR), 22 May 2015 up-date to a complaint submitted concerning large-scale destruction and damage to family houses in the Gaza Strip with associated profound loss of life and injury to Palestinian residents, during Israel's military operation between 7 July 2014 and 26 August 2014, 30 September 2014, original complaint available at: http://lphr.org.uk/legal-projects/gaza-accountability-project/ .

458 Physicians for Human Rights, *Findings of an Independent Medical Fact-Finding Mission*, Gaza 2014, p.40.

459 Physicians for Human Rights, *Findings of an Independent Medical Fact-Finding Mission,* Gaza 2014, p.36.

460 Response to the Israeli Embassy in London's reaction to the report by Amnesty International, Nothing is Immune, December 2014. At: https://www.amnesty.org/en/documents/mde15/036/2014/en/.

tacitly by decision-makers at the highest levels of the Government of Israel[461]. Such tactics appear to have prioritized the perceived military objective over other considerations, disregarding the obligation to minimize effects on civilians. In this context, with respect to the importance of adhering to the principles of distinction and proportionality, the ICTY has ruled that in some circumstances a "pattern of military conduct may turn out to jeopardize excessively the lives and assets of civilians"[462].

244. These tactics also rendered women and children particularly vulnerable to death and injury. Out of the 216 people killed as a consequence of the strikes discussed in this chapter, 50 were women. In 11 out of the 15 cases examined by the commission the strikes on residential buildings led to the death of between 3 and 7 women. Findings of several NGOs that point to significant numbers of female casualties, in particular as a result of strikes on residential buildings[463], reinforce this assessment. It appears that, as a result of these tactics, the percentage of women killed during the 2014 hostilities significantly increased in comparison with the conflict in 2009.[464] 115 children were killed in the 15 cases examined by the commission (more than half of all fatalities). Children were killed in all 15 incidents. In the attack on the Al Dali building in Khan Younis, 18 of the 31 people killed were children; in the attack on the Abu Jama home described above, 19 out of 26 killed were children.[465]

3. Ground Operations

245. *"We don't want to confuse the troops, and that's the story. When I teach people to fight in a war, the civilian population is not supposed to be there, and if it is, I persuade it to keep away. In peacetime security, soldiers stand facing a civilian population, but in wartime, there is no civilian population, just an enemy."* Head of the Doctrine Desk at the Infantry Corps HQ, Major Amitai Karanik [466]

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461 In this context, see the ICTY's *Kupreskic* Judgement of 2000; see also: Amnesty report, p 6 and 42; see also FIDH, Trapped and Punished: The Gaza Civilian Population under Operation Protective Edge, p. 29, 30, at https://www.fidh.org/IMG/pdf/report_gaza_fidh_march_2015.pdf.

462 ICTY in the *Kupreskic* Judgement of 2000.

463 According to NGO figures, 241 women were killed inside their homes, which means that about 82 percent of the 2014 female fatalities occurred in homes, compared to 46 percent of the male fatalities. See also B'Tselem: Black Flag and the infographic "Families bombed at home, Gaza, July-August 2014" based on preliminary figures on casualties in July: http://www.btselem.org/gaza_strip/201407_families (in 72 incidents of bombing or shelling, 547 people were killed, including 125 women under the age of 60 and 29 people over the age of 60.

464 The percentage of women killed was significantly higher in 2014 (20.2 per cent of civilians) in comparison with the conflict in 2009 (14 per cent), calculated based on conservative NGO figures (B'Tselem quoted in A/HRC/12/48, p. 90). See also: PCHR, Through Women's eyes, 2014, which indicated that about 10 per cent of the civilians killed as a result of the 2008/09 escalation were women, whereas this figure rose to about 20 per cent in 2014.

465 370 of the children killed were reportedly killed inside their homes, i.e. over 66 per cent. Al Mezan Center for Human Rights, Lawyers for Palestinian Human Rights (LPHR), 22 May 2015 up-date to a complaint submitted concerning large-scale destruction and damage to family houses in the Gaza Strip with associated profound loss of life and injury to Palestinian residents, during Israel's military operation between 7 July 2014 and 26 August 2014, 30 September 2014, original complaint available at: http://lphr.org.uk/legal-projects/gaza-accountability-project/ .An infographic published by B'Tselem based on preliminary figures on fatalities as a result of "families bombed at home" in July shows that out of 547 persons killed, 250 were minors. B'Tselem, Families bombed at home, Gaza, July-August 2014, at: http://www.btselem.org/gaza_strip/201407_families.

466 BaYabasha, Ground Forces Journal. Avigail Bukobza: Involved fighting; October 2014, No. 29, p. 62 Unofficial translation. at: http://www.scribd.com/doc/249616628/29-גליון-ביבשה

246. After an initial air phase that started on 8 July, on 17 July 2015, the IDF launched a ground operation into Gaza. Official Israeli sources indicated that they did so to degrade "terror organisations' military infrastructure, and [… neutralize] their network of cross-border assault tunnels".[467] This followed what Israel described as "a militant attack inside Israel on 17 July carried out through a tunnel from inside Gaza, the launch of an unmanned aerial vehicle (UAV) into Israeli airspace, an attempted infiltration by sea into Israel by Hamas naval commandos, continued rocket fire from Gaza and Hamas's refusal to accept a ceasefire."[468] The ground operation combined the use of ground troops and armoured vehicles with the aim of destroying tunnels and debilitating Palestinian armed groups from launching attacks into Israel. The ground operation was preceded and accompanied by intense IDF shelling from the sea and from the air, as well as by fierce artillery fire.[469]

247. Israel informed the UN's Board of Inquiry that "Hamas had been better prepared and armed than at the time of Operation Cast Lead in 2009 and Operation Pillar of Defense in 2012. It had prepositioned weapons and military equipment and prepared fighting positions in various locations to allow fighters to move freely without carrying weapons and to blend into the civilian population. Mosques, schools, hospitals and other civilian objects had been used to embed rockets, weapons caches and command centers. These conditions made it difficult for the IDF to distinguish "enemy" forces and activity from the civilian population…."[470]

248. The commission focused its inquiries on the ground operations in the neighbourhoods of Shuja'iya (19-20 July), Khuza'a (20 July- 1 August), Rafah (1-3 August) and the operation targeting the market neighbourhood of Shuja'iya (30 July). The commission conducted 75 interviews in relation to the ground operations, reviewed confidential submissions from a variety of stakeholders, governmental and non-governmental, and consulted publicly available information, including satellite imagery, video and photo material.

249. By letter dated 10 February 2015, the commission of inquiry requested the Israeli authorities to furnish information "on several general issues and clarify […] the factual circumstances of specific incidents". The letter specifically inquired about the military operations examined in this chapter, including the IDF criteria for distinguishing between military objectives and civilian objects; evaluation of proportionality; what precautionary measures were taken and the timeframes when warnings were given; the IDF doctrine on the use of artillery in densely populated areas; type and quantity of ordnance used; IDF policy with regard to medical assistance to wounded persons and which measures were taken to facilitate the evacuation of wounded civilians; the number of casualties; and whether any investigations were initiated. In addition, the letter referred to many of the specific incidents that are discussed below. The commission did not receive a response. Therefore, to the extent possible, the commission assessed materials in the public domain. In particular, the MAG issued a statement about the events at Shuja'iya market on 30 July. It is referred to in the relevant sections of the text.

250. The combined impact of these ground operations has had a devastating impact on the population of Gaza, both in terms of human suffering as well as in terms of damage to the infrastructure. The four operations described below have resulted in the killing of at

[467] Israel Ministry of Foreign Affairs, *Israel's Objectives and Phases of the 2014 Gaza Conflict,* p. 3. at: http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed 30 May 2015.

[468] Quoted in S/2015/286, p. 3

[469] OCHA, Situation Report, 18 July 2014

[470] S/2015/286; p.3

least 150 civilians, the total destruction of over 2000 homes, and the partial destruction of at least 2200 homes.

a. Shuja'iya, 19 and 20 July 2014

251. *"I was there and I can tell you, the earth moved under our feet."* Israel Defence Forces (IDF) artillery Officer present in Shuja'iya [471]

252. *"The attacks were everywhere. Everything was coming under attack, the roads and the buildings; there was no safe haven in Shuja'iya. It would have been impossible. […] We walked as the missiles kept arriving. We saw bodies of people in the streets. We came across the body of [..] an acquaintance of mine from our neighbourhood. We came across several other bodies of people. The corpses were of young and old persons, women, children, etc."* Witness from Shuja'iya[472]

253. *"A hell of a pinpoint operation."* John Kerry, U.S. Secretary of State[473]

254. *"Dozens more civilians, including children, have been killed in Israeli military strikes in the Ash Shuja'iyeh neighborhood in Gaza. I condemn this atrocious action. Israel must exercise maximum restraint and do far more to protect civilians."* UN Secretary-General Ban Ki-moon, 20 July 2014[474]

255. The Shuja'iya neighbourhood is located in the northern part of the Gaza strip, east of Gaza city and close to the Green line. Shuja'iya is also one of the most densely populated neighbourhoods in Gaza, with a population of 92 000 concentrated in an area of around 6 km². The IDF alleged that numerous Palestinian armed groups had set up observation points in Shuja'iya and that the neighbourhood had developed into a significant network of tunnels and weapons caches serving as a platform for attacking Israel and resulting in "its deterioration from a civilian residential area into a terrorist fortress"[475]. The IDF also claimed that, between 8 and 20 July, Hamas fired over 140 rockets from Shuja'iya into Israel.[476] Israel's Ministry of Foreign Affairs added that ten tunnels were uncovered in the neighbourhood.[477]

256. The commission interviewed over 40 witnesses - mostly from the areas of Baghdad, Al Mansoura and Al Nazzaz Streets - in relation to the ground operation in Shuja'iya. The commission also analysed submissions from a wide range of sources, confidential and public documents, including imagery, photos and videos. Below is a description of the most salient incidents in chronological order.

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[471] Tamid Tothan, Association of artillery veteran's magazine. Yaakov Zigdon: *Shuja'iyas earth was moving*; September 2014, No. 57, Pg.18-19, unofficial translation. at: http://www.beithatothan.org.il/magazin/30_10_2014/book.html#p=19

[472] W126

[473] See video and report by the Washington Post, 20 July 2014, at: http://www.washingtonpost.com/blogs/post-politics/wp/2014/07/20/fox-confronts-kerry-with-hot-mic-comment-on-israel-hell-of-a-pinpoint-operation/

[474] OCHA: Gaza Emergency Situation Report of 22 July 2014. At: http://www.ochaopt.org/documents/ocha_opt_sitrep_22_07_2014.pdf

[475] IDF blog at: http://www.idfblog.com/blog/2014/07/20/shujaiya-hamas-terror-fortress-gaza/

[476] See IDF blog: http://www.idfblog.com/blog/2014/07/20/shujaiya-hamas-terror-fortress-gaza/

[477] Israel Ministry of Foreign Affairs. Operation Protective Edge: Israel under fire, IDF responds; 26 Aug 2014. At: http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Rise-in-rocket-fire-from-Gaza-3-Jul-2014.aspx

IDF warnings and displacement

257. Prior to launching the ground operation, the IDF issued warnings to the inhabitants of Shuja'iya about its intention to attack several targets in the neighbourhood and called on them to evacuate their homes and move to the centre of Gaza City until further notice[478] by means of leaflets, loudspeaker announcements, telephone calls, text messages and radio messages.[479] According to a witness, on 16 July, leaflets were dropped over Shuja'iya announcing the IDF's intention to intensify their raids in the area and instructing people to leave the city centre of Gaza[480].

258. On 20 July 2014, OCHA reported that by 19 July "the majority of Ash Shuja'iyeh's 92 000 residents had remained in their homes, despite Israeli warnings during the previous days. However, upon the intensification of bombardments, it is estimated that up to half of them have now fled to Gaza City."[481]

Ground operation and attack on IDF convoy

259. In the evening of 19 July 2014, the IDF's Golani Brigade started a ground operation into Shuja'iya. On 20 July at approximately 1.30 a.m., an explosive device was detonated on an IDF armoured vehicle, causing the death of seven soldiers. At the same time, in other areas of Shuja'iya, IDF soldiers came under attack from Palestinian armed groups, ultimately resulting in the death of another 6 IDF soldiers.[482]

260. According to information received by the commission, the IDF then sought to retrieve the bodies of the dead soldiers and the destroyed armoured vehicle, evacuate the injured soldiers and respond to the Palestinian armed groups' counter-offensive. At the time not all of the soldiers were accounted for, raising fear of a possible abduction. The media reported the Israeli Minister of Defense Moshe Yallon as stating that the intensified shelling aimed at rescuing a number of injured Israeli soldiers.[483] In this context, the IDF heavily shelled the area for more than six hours. Witness statements, video and photo documentation (including satellite imagery), United Nations Institute for Training and Research Operational Satellite Applications Programme (UNITAR-UNOSAT) assessments based on satellite imagery, media and IDF sources – all buttress a conclusion that extensive amounts of explosive weapons, including artillery, mortars, and rockets were fired on Shuja'iya by the Israeli Air Force. That initial shelling led to numerous casualties. A paramedic who worked at the call centre of the relevant area in Shuja'iya, which sends ambulances to people calling for help, recounted to B'Tselem that he and his colleagues received "*more than 200 calls from the neighbourhood of a-Shujai'yeh. I can say with almost absolute certainty that we received a call from every single house in the areas I mentioned [a-Nazaz Street, a-Sha'ath Street, and al-Beltaji Street]. During the calls, we*

[478] See IDF blog IDF Drops Warning Leaflets in Gaza. 17 July 2014 with texts at: http://www.idfblog.com/blog/2014/07/17/idf-drops-warning-leaflets-gaza/

[479] Ministry of Foreign Affairs web-site. Israel minimizes civilian casualties; 24 July 2014; at: http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Israel-minimizes-civilian-casualties.aspx

[480] W134; OCHA: Gaza Emergency Situation Report (as of 16 July 2014, 1500 hrs), p. 1; at: http://www.ochaopt.org/documents/ocha_opt_sitrep_17_07_2014.pdf

[481] OCHA Gaza Emergency Situation Report; 20 July 2014, p.2

[482] Israel Ministry of Foreign Affairs. Operation Protective Edge: Israel under fire, IDF responds; 26 Aug 2014. At: http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Rise-in-rocket-fire-from-Gaza-3-Jul-2014.aspx

[483] Isramedia. Statement by PM Netanyahu and DM Yaalon, 20 July 2014; at http://www.isramedia.net/forum/2/%D7%97%D7%93%D7%A9%D7%95%D7%AA?p=33557

could hear young children screaming in the background and women crying. People had been injured and killed in every home we got a call from."[484]

261. The commission examined several incidents that occurred during the IDF's operation in Shuja'iya, taking testimonies from numerous witnesses, many of whom had survived attacks on their homes.

262. **Al Helo family:** On 20 July at about 3 a.m., two missiles struck the house of Talal Mahmoud Hamed Al Helo, which is located next to Jihad Mahmoud Al Helo's house in Nasas Street in the Shuja'iya neighborhood. Shortly thereafter, Jihad Mahmoud Al Helo's own house was struck, and 11 Al Helo family members, including 4 children (among others 2 six-month old twins) and 4 women, were killed. The three-story house was totally destroyed.[485] Given the destruction caused and the witness testimonies, the weapon used was most likely a large explosive bomb.

263. Talal Mahmoud Hamed Al Helo told the commission that he was at home with his wife and children and just had gotten up for *suhhur*. Suddenly he heard noise but did not understand what it was. Then his brother Jihad called to ask how they were doing because a missile had struck the third floor of Talal's house. The witness and his family were on the second floor of the house and had not realized that the noise was from their own home being hit. Minutes later, Jihad's house was hit twice. Talal Mahmoud Hamed Al Helo said that his house was shaking as if there were an earthquake. Talal looked out of his window and saw that the house of Jihad, with whom he had been talking just moments before, had simply disappeared and been transformed into rubble.[486]

264. Talal confirmed that 11 people died as a result of the attack, and that rescuers did not arrive on the site until several hours later. The building was completely destroyed and it was extremely difficult to pull out the bodies. He added that they had not received any leaflets, calls or phone messages warning them about the imminent attack. The only thing that could have been a warning was the missile that hit their roof, which he had not noticed until his brother had called him, but to the witness it was never clear whether the projectile was a so-called "roof-knock". According to Talal, even if it was a warning, it would have given them too little time to leave.[487]

265. Talal did not believe that his brother's house was hosting any militants or military targets because "these were houses that belonged to civilians with children and women." The witness had heard in the news that an Israeli soldier was kidnapped and assumed that the attacks on his neighbourhood were revenge attacks because "every time one of theirs dies or is kidnapped, we feel the consequences of it in our homes."[488] Talal told the commission that, had he known an attack was going to take place, he would have left the house with his family:

266. "*I am not a fighter, I am a civilian and I care about the well-being of my family. Even if we had left there and then, the chances of our surviving the bombings would have been one per cent*."[489]

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[484] Witness interviewed by B'Tselem; Paramedic and photojournalist killed during an attempt to evacuate wounded people from a-Shuja'iyeh; at: http://www.btselem.org/testimonies/20140722_gaza_paramedic_ahmad_sabah

[485] W126, PCHR submission

[486] W126

[487] W126

[488] W126

[489] W126

267. **Ayyad family:** On 20 July, at 6.30 a.m., 11 members of the Ayyad family were killed by shells in Al Mansura Street, Shuja'iya, as they left their home to escape the shelling.[490] In addition to those who normally resided in the house, the Ayyad family was hosting relatives who had sought shelter after being forced to leave their homes.[491] On 20 July, the area where the house is situated was shelled from 1 a.m. onwards. The witnesses described the family in a state of complete panic as the shelling intensified and they tried to gather everyone to escape.[492] Neighbours, including the Hajaj and Abed families, were also preparing to leave.[493] At around 6.30 a.m., the family left the house. They had gone about 70 meters when a shell hit the entrance, followed by two shells that struck a group of people fleeing and killed 11 family members, including 4 children and 5 women, one of whom was pregnant[494]. Another 7 persons were injured including 3 children and one woman.[495]

268. One of the witnesses, Khalil Ahmed Ayad, recounted that he lost consciousness during the attack. When he woke up in the street, he realized that his left arm was seriously injured. It was later amputated.[496] Everyone around him was running and screaming and the air was thickened by a layer of dust. Two witnesses said that no one could move from that spot for over an hour and ambulances were unable to reach them due to ongoing IDF aerial bombings.[497]

269. A family member told the commission that they were hit by shells while fleeing. The witness's wife, six months pregnant with twins, was killed in the attack. When asked whether they had been given a warning, either at home or when they were fleeing, the witness said: [498]

270. *"I am talking only about where I used to live and I can guarantee there were no warnings. Let me tell you this. Had we known an attack was coming, we, the men, might have decided to stay back, but we would never have let the women and children be exposed to such horror… They had bombed the ambulances and we were trying to find cars to take the wounded to the hospital."*

271. The photos of the damage and of remnants of weapons received by the commission[499] are consistent with these testimonies and indicate that the weapons used were most likely 155 mm high explosive artillery shells, which have fuses set to air-burst and are designed to cause as much damage as possible to persons out in the open. The shells would have exploded just above the ground resulting in the high numbers of casualties reported and causing the shrapnel patterns displayed on the walls and vehicles, which were without signs of significant blast damage or cratering.

272**. Al Jamal and Al Sheikh Khalil families:** On 20 July, two families came under attack by Israeli forces in Baltaji Street in the Shuja'iya neighbourhood. Four family members of the Al Jamal family were killed in the street by shells as they attempted to flee Shuja'iya. Three of those killed were children aged between 10 and 12. Another 7 persons were injured including 3 children and 2 women. The youngest child injured was a two year

490 W063
491 W194
492 W194, W063
493 W063, PCHR submission
494 W063, PCHR submission
495 A/HRC/28/80/Add.1, para.42; also PCHR submission, which reports 3 children killed.
496 W194
497 W063 and W194
498 W063
499 PCHR submission.

old boy.[500] Six members from the Al Sheikh Khalil family were killed inside their home in Baltaji Street, including 2 children and 4 women. Another two children were seriously injured.[501] It appears that one daughter died at the hospital as a result of the attack.[502]

273. On 16 July, the IDF distributed leaflets in the Shuja'iya neighbourhood of Gaza City telling residents to leave the area. At around 7 a.m. on 20 July, 47503 members of the Al Jamal family fled their home in Tawfiq Street on foot to escape the heightened attacks in the area. Witnesses told the commission that they were heading towards Faray Street. As they walked, intense shelling and explosions were everywhere. Upon arrival at Faray Street, they found attacks there as well, so they continued walking trying to find a safe place. Some family members in the street were hit by mortars. Witnesses told the commission that no family members were affiliated with an armed group and that they were all civilians, most of them women and children.[504]

274. The commission interviewed one member of the Al Sheikh Khalil family who lost his wife and his 4 and 15-year-old daughters.[505] The Al Sheikh Khalil family building is located in the northern part of the Baltaji Street. It is about 200 m^2 and has three floors; on the first floor, the witness's father Mohamed Abd Al Rahman Al Sheikh Khalil lived together with his son Abdel Rahman and his family. The witness lived on the second floor; no one lived on the third floor. In total the building housed three families, including at least 16 people.[506]

275. According to a witness from the Al Sheikh Khalil family, who was inside his home during the attack, on 20 July at about 6 a.m., he heard many explosions outside in Al Baltaji Street. When he realized that mortars had struck the roof, family members went to the staircase for better protection. They attempted to request help from the Red Cross but were not successful.[507] At least five or six mortars hit the building.[508] It appears that the first shell struck the roof; a subsequent shell fell on the northern part of the house and another on the terrace on the first floor where people were standing. The witness opened the entrance door in order for the family to escape, but closed it again when he saw that the ambulances outside the building had been hit by mortars as well. The ambulances were destroyed. So the family remained inside, scared to leave the house.[509] After a few minutes a mortar struck the entrance of the house where the family was hiding. A witness and family member described to the commission that the house caught fire and some of the family members ran outside. They looked for ambulances that could take the injured to the hospital but when they found an ambulance, it was overloaded with patients.[510] According to the witness, there was a 2-hour ceasefire, but the family still had to wait for 6 hours before ambulances arrived at the scene. According to the same witness, four people died while awaiting the ambulances.[511]

[500] W134, PCHR submission.
[501] PCHR submission.
[502] W204
[503] PCHR reported 70 (PCHR submission)
[504] W134 and W135
[505] W204
[506] PCHR submission
[507] W204
[508] W 204, PCHR submission
[509] W204.
[510] W204
[511] PCHR submission

276. The witness from the Al Sheikh Khalil family claimed that the building did not house any militants, or weapons.[512]

277. The strike and shrapnel patterns reviewed on the basis of photos of the site and of remnants of weapons submitted to the commission[513] are consistent with witness statements and indicate that mortars were used during the attack.

278. At around 7 a.m. on the same day, according to another witness, a military medical aid ambulance was directly struck twice while the witness and his colleague attempted to provide first aid to victims in the area. There were four persons in the vehicle, a driver, a photographer and two paramedics. The passengers were all hit, including while trying to flee the shelling. Two of them were killed and two injured.[514]

Humanitarian pause

279. On 20 July at 1.30 p.m., a two-hour humanitarian pause jointly agreed to by the IDF and Hamas entered into force, which allowed many inhabitants of Shuja'iya to leave the area and journalists and ambulances to enter. During the humanitarian pause, members of Palestinian armed groups reportedly emerged from buildings and were seen out in the open.[515]

280. At about 3.30 p.m., Salem Shamaly, a local resident who had joined a group of international volunteers while searching for his missing cousin, was killed. As the volunteers were crossing a small alley, they heard a shot. The group immediately divided into two and took cover at opposite ends of the alley. Shortly afterwards, Salem Shamaly moved out of the area where he was taking cover and was shot. As he lay injured on the ground, he was shot twice again and killed. This incident was recorded on video[516].

281. Although most civilians left Shuja'iya on 20 July, some remained trapped as sporadic fighting continued over the following days and weeks. For instance, a video published by the IDF on 22 July shows how artillery was fired directly at the first row of houses in Shuja'iya. In the video, one officer states that these houses were being used by Hamas as observation outposts and tunnel exit points.[517] Another video, which includes statements from the commander of the Golani Brigade, demonstrates how IDF tanks and/or artillery located in Israel fired at buildings in Shuja'iya.[518] Both videos suggest that the buildings near the Green line were being targeted and heavily damaged. This is supported by satellite images, which illustrate that many buildings near the Green Line were indeed destroyed.[519]

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[512] W204

[513] PCHR submission, including building plans, photos of the site and of remnants of weapons used.

[514] PCHR submission; Ahmad Sabah; Paramedic and photojournalist killed during an attempt to evacuate wounded people from Shuja'iya; at: http://www.btselem.org/testimonies/20140722_gaza_paramedic_ahmad_sabah and Akram Al Awoor cited in PHR Report (page 46)

[515] W042

[516] PCHR submission; see also: A/HRC/28/80/Add.1, para. 43;

[517] IDF Spokesman official Video: Direct Artillery fire on Shuja'iya.; 27/07/2014. at: http://youtu.be/uAkDHIrFzHg

[518] Unofficial video produced by IDF artillery battalion 405; Minute 09:00-13:20. at: https://www.youtube.com/watch?v=R3AmCfkhX_Y

[519] Submission by UNITAR Operational Satellite Applications Programme (hereinafter: UNITAR-UNOSAT).

Casualties and damage resulting from the operation in Shuja'iya

282. The exact number of casualties cannot easily be determined because some persons died later from their injuries, and many bodies were only recovered and buried after the IDF operation had finished. According to the UN Protection Cluster, 55 civilians, including 19 children and 14 women, were killed on 19 and 20 July in Shuja'iya as a result of the IDF's actions[520].

283. Haaretz, referring to IDF sources, indicates that "On July 20, some 600 artillery shells were fired in less than an hour at […] Shujaiyeh, in order to extract troops under fire. The required safety distances were considerably reduced, IDF figures show."[521]

284. An IDF soldier interviewed by Breaking the Silence described the destruction in Shuja'iya as follows:

"We knew that by the time we got there on Friday [July 18] there were not supposed to be any people in the area, since leaflets were dispersed and also because there wasn't very much left of the place. The artillery corps and the air force really cleaned that place up. […] in previous times we had entered Gaza, a D9 (armored bulldozer) would go in and everyone drove in its trail. But in this operation they decided to do something different – just to enter as an offensive. A row of tanks go in, they spread out wide, get into position, identify 'suspicious spots', fire as required. The rules of engagement were very, very lax. […] There was no such thing as requesting authorization. Just fire."[522]

285. By the end of the operation, according to UNITAR-UNOSAT, Shuja'iya was a "razed area", "likely levelled as a result of focused IDF demolitions efforts. UNITAR-UNOSAT analysis of imagery of 25 July shows ongoing IDF combat operations as armoured groups 'sequestered' a portion of Shejaiya within a perimeter. […] The destruction visible in these areas [Shejaiya] represents 100 % of buildings and thus would have required relatively significant efforts to achieve."[523] As a result, a total of 670 buildings in Shuja'iya were completely destroyed, 608 were severely damaged, 576 moderately damaged, and there were 273 visible impact craters[524], i.e. over 1800 buildings were affected.

Statements by the IDF and Palestinian Armed Groups regarding the Shuja'iya events

286. According to press reports, Hamas accused the IDF of taking revenge on the civilian population for its military defeat in the battleground, promising to pursue the responsible leaders by all legal means[525]. Additionally, according to press reports, the Islamic Jihad

[520] UN Protection Cluster figures of 31 May 2015.

[521] Haaretz. Amos Harel and Gili Cohen: *Massive artillery shelling may have caused numerous civilian fatalities in Gaza*; 15 August 2014; at: http://www.haaretz.com/news/diplomacy-defense/.premium-1.610733#

[522] Breaking the Silence. This is how we fought in Gaza; testimony 43, p. 110; at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1

[523] UNITAR-UNOSAT: Impact of the 2014 Conflict in the Gaza Strip. UNOSAT Satellite Derived Geospatial Analysis; 2014; p. 9; at: https://unosat.web.cern.ch/unosat/unitar/publications/UNOSAT_GAZA_REPORT_OCT2014_WEB.pdf

[524] UNITAR-UNOSAT submission stressing that "Satellite imagery will only detect damage which is relatively catastrophic and affects the structural integrity of the building; damage such as bullet holes and shattered windows will not be detected."

[525] Al-Jazeera news channel's website: *Palestinian Authority condemns Shuja'iya massacre and Hamas says it's a war crime*, 20 July 2014. At http://www.aljazeera.net/news/arabic/2014/7/20/%D8%A7%D9%84%D8%B3%D9%84%D8%B7%

movement issued a statement announcing that the crimes of Shuja'iya and Al Tuffah "revealed a level of brutality and hatred, which enemy leaders are possessed with, who are trying to save their faces after the painful strikes by the resistance to the aggressor army"[526].

287. According to the same press reports, the PFLP denounced "the crimes of the occupation."[527] The Al Qassam Brigades also claimed responsibility for the killing of 14 IDF soldiers, some of them by opening the doors of the damaged APC and "finishing them".[528]

289. Israel did not respond to the commission's requests for clarifications in relation to these events. Therefore, the commission has to rely on information available in the public domain. According to press reports, the IDF itself acknowledged that civilian casualties had taken place in Shuja'iya. Commenting on these events, the IDF Chief of Staff stated the following:

"*I regret the civilian casualties, and it hurts me to see children and women injured. […] We cannot agree that Hamas will place civilians in front of us, so we warn, warn and deter. We have a moral obligation to do everything possible to avoid civilian casualties as much as possible, and we have a moral obligation to protect our citizens.*[529]"

290. In relation to targets in Shuja'iya, the IDF, by means of an infographic to explain the significant destruction caused largely by air strikes[530], indicated that there were more than two dozen "terrorists'' houses' in Shuja'iya', including rocket launcher positions, tunnels, hideouts, combat posts, and firing positions for anti-tank missiles. [531] The IDF added that it had successfully targeted most of the sites highlighted in the infographic (which also included rocket launching positions and other targets). The IDF also posted a video, apparently showing the destruction of one tunnel in Shuja'iya,[532] claiming that it was one of "the many terror sites that had been identified and targeted by the IDF in Shuja'iya".

D8%A9-%D8%AA%D8%AF%D9%8A%D9%86-
%D9%85%D8%AC%D8%B2%D8%B1%D8%A9-
%D8%A7%D9%84%D8%B4%D8%AC%D8%A7%D8%B9%D9%8A%D8%A9-
%D9%88%D8%AD%D9%85%D8%A7%D8%B3-
%D8%AA%D8%B9%D8%AF%D9%87%D8%A7-
%D8%AC%D8%B1%D9%8A%D9%85%D8%A9-%D8%AD%D8%B1%D8%A8;
http://www.aljazeera.net/news/arabic/2014/7/20/السلطة-تدين-مجزرة-الشجاعية-وحماس-تعدها-جريمة-حرب

526 Al-Hayat newspaper: "Holocaust" in Shuja'iya and al-Toffah, 70 martyrs and 400 injured, 21 July 2014. At http://alhayat.com/Articles/3702019/-
%C3%92%E2%95%90%C3%90%C3%8C%E2%95%94--%C2%A6%C3%9D-
%E2%95%90%C3%9D%C3%9D-
%C3%83%C3%9F%C3%88%E2%95%A0%C3%83%E2%94%8C%C3%9D%E2%95%94-
%C2%B5%C3%83%C3%9F%E2%95%A9%C2%A6%C3%83%E2%95%90--70-
%C3%88%C3%95%C3%9D%C2%A4%C3%83%C2%AD-%C2%B5400-
%E2%95%A0%C3%90%C3%9D%E2%95%90 http://alhayat.com/Articles/3702019/-حيي-في--محرقة-جريح-400و-شهيداً-70--والتفاح-الشجاعية

527 ibid

528 Al-Modon: Gaza: Massacre in Shuja'iya and ambushes for the enemy, 20 July 2014. At http://www.almodon.com/arabworld/9cd6f58c-cf5b-481b-b1d3-9aa1fdae2224

529 Hamodia: The Chief of General Staff Summarizes Operation Thus Far, 21 July 2014. At http://hamodia.com/2014/07/21/chief-general-staff-summarizes-operation-thus-far

530 More than 270 craters can be seen in the neighbourhood. See: UNITAR/UNOSAT submission.

531 IDF blog: A Hamas fortress in a residential neighbourhood. At http://www.idfblog.com/wp-content/uploads/2014/08/Shujaiya-terror-sites.jpg

532 Official IDF Spokesman Video: IDF Demolishes Tunnel Used to Attack Golani Vehicle; 26/07/2014; at: http://youtu.be/WqVxMKto4Q8

291. The Commander of the Golani Brigade praised the artillery support he received in Shuja'iya, including from the 405th battalion, which was in charge of artillery fire. "The artillery fired at very close range to us in order to support the rescue operations. The heavy shelling stopped the Rocket Propelled Grenade (RPG) fire," he said.[533]

292. Breaking the Silence quotes an IDF soldier as describing that, when the news of the battle in Shuja'iya broke, "One of the most senior officials in the IDF, […] just marked off houses on an aerial photo of Shuja'iya, to be taken down. […] It's not like in every building that was struck in Shuja'iya there was some Hamas militant or somebody firing at our forces".[534]

Summary legal analysis

293. The sheer number of shells fired, as well as the reported dropping of over 100 one-ton bombs in a short period of time in a densely populated area, together with the reported use of an artillery barrage, raise questions as to the respect by the IDF of the rules of distinction, precautions and proportionality. These methods and means employed by the IDF could not, in such a small and densely populated area, be directed at a specific military target and could not adequately distinguish between civilians and civilian objects and military objectives as required by IHL. The information available also indicates that during the Shuja'iya operation on 19 and 20 July the IDF violated the prohibition of treating several distinct individual military objectives in a densely populated area as one single military objective. Therefore, there are strong indications that the IDF's Shuja'iya operation on 19 and 20 July was conducted in violation of the prohibition of indiscriminate attacks and may amount to a war crime.[535]

294. The Shuja'iya operation also raises serious concerns that the IDF did not conform with its obligation to take precautionary measures in attack. The choice of the methods and means used by the IDF cannot be reconciled with the obligation to take constant care to spare civilians and civilian objects or at the very least to minimize incidental loss of civilian life and damage to civilian objects in a densely populated area. It is questionable whether the use of such immense firepower in such a short period would have allowed the IDF: (1) to respect its obligation to do everything feasible to verify that the targets were military objectives; and (2) to assess whether the attack respected the principle of proportionality. In addition, the length of the intensive shelling (more than 6 hours), together with the observation and intelligence means that the IDF had at its disposal in Gaza, would have allowed those responsible for the attack to receive opportune information as to the dire impact of the shelling on civilians and civilian objects. The fact that the attack was allowed to continue under these conditions evidences the commander's failure to comply with his

[533] Unofficial Video produced by IDF artillery battalion 405; Minute 09:00-13:20; at: https://www.youtube.com/watch?v=R3AmCfkhX_Y

[534] Breaking the Silence. This is how we fought in Gaza; testimony 110, p. 234; at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1

[535] The International Criminal Tribunal for the former Yugoslavia stated in the *Galic Case* that "indiscriminate attacks, that is to say attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks against civilians," ICTY, *Prosecutor v.Galic*, case No. IT-98-29-T, Judgement, 5 December 2003, para. 57. The International Court of Justice in the Nuclear Weapons Case linked the prohibition of indiscriminate attacks to attacks against the civilian population, by stating that: "States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets." Para. 78. Article 8 of the Rome Statute of the International Criminal Court lists intentionally directing attacks against the civilian population or civilian objects as a war crime.

obligation to do everything feasible to suspend an attack if it becomes apparent that it does not conform to the principle of proportionality.

295. While the IDF appears to have made substantial efforts, in the days prior to the operation, to warn the civilian population of its intention to intensify its attacks, this in no way alters the IDF's other legal obligations (related to the conduct of hostilities), and does not modify the protected status of civilians who remained in the area.

296. The intense shelling, combined with the use of a large number of one-ton bombs, raise serious concerns about the respect for the principle of proportionality. While shelling had started in the late evening of 19 July, it changed in nature and significantly intensified around 1.30 a.m., just after seven IDF soldiers had been killed when the APC they were riding in was destroyed. The objective of the shelling and heavy bombardment appears mainly to have been force protection. The commission observes that the issue of force protection of the attacking force as an element in assessing proportionality is still unresolved[536]. While it is certainly true that the protection of soldiers who are coming under attack represents a concrete and direct military advantage, it is an "undisputed fact that force protection is not an overriding concern that could set aside all other considerations when assessing the proportionality of an attack".[537] Although the proportionality analysis may properly take into consideration force protection and the neutralization of units of Palestinian armed groups, given the means and methods used by the IDF in Shuja'iya, it is possible to conclude that a reasonable commander would be aware of the potential for such an intense attack to result in the death of a high number of civilians. As such, it is highly likely that a reasonable commander would therefore conclude that the expected incidental loss to civilian life and damage and destruction of civilian objects would be excessive in relation to the anticipated military advantage of this attack. In addition, even if, at the moment of launching the attack, the initial assessment by the commander was that the attack was proportionate, he had an obligation to suspend the attack as soon as its disproportionate nature became apparent.

297. The circumstances of the killing of Salem Shamaly indicate that a civilian was targeted in violation of the principle of distinction. The fact that he was shot twice while lying injured on the ground is indicative of an intent to kill a protected person (either owing to his civilian status or to the fact that he was hors de combat) and constitutes an act of wilful killing.

298. The destruction and damaging of over 1800 houses in Shuja'iya alone, as a result of both targeted and indirect attacks, raise serious concerns about the IDF's conduct. This issue is addressed in detail at V.A.2.d.

299. In spite of the significant destruction and credible allegations of civilian casualties, the commission is not aware of any on-going investigation carried out by the IDF into the events that took place in Shuja'iya on 19 to 20 July.

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536 ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, 2000, available at http://www.icty.org/sid/10052#IIIwork :
"The questions which remain unresolved once one decides to apply the principle of proportionality include the following: [….] d) To what extent is a military commander obligated to expose his own forces to danger in order to limit civilian casualties or damage to civilian objects?"

537 Robin Geiss. *The Principle of Proportionality: 'Force Protection' as a Military Advantage*, Israel Law Review 45, p.74

b. Khuza'a

300. *"What happened last summer is something that I will never forget, ever. We should exist in this world in a spirit of cooperation, of love for life, of brotherhood. The situation in which we lived was incredible. My mother was injured and was bleeding and I was unable to help her because I was injured myself. They targeted the clinic with three rockets from drones. The neighbourhood of the clinic was hit by at least 25 or 30 explosions."* Dr. Kamel Qdeih, medical doctor in Khuza'a[538]

301. "*I think from here, they (the Israelis) can sleep quietly. But handling the tunnels will not be enough to bring calm. The Palestinians have to understand that this does not pay off."* Col. Ofer Winter, Commander of the Givati Brigade.[539]

302. Between 21 July and 1 August 2014, the IDF conducted a ground operation in and around Khuza'a, a village with about 11 000 inhabitants located on the south-eastern part of Gaza. The entry of IDF ground troops was preceded by a campaign of aerial attacks targeting a large number of residential buildings. According to the IDF, the objective of this operation was to destroy the extensive tunnel infrastructure that could be used by Palestinian armed groups to enter Israel. The IDF also claims to have found numerous weapons depots in Khuza'a.

303. The commission spoke with 13 eyewitnesses and others who had witnessed events in Khuza'a. Likewise, the commission considered confidential and public reports and submissions relating to the ground operation in Khuza'a.

304. The information provided by eyewitness accounts, satellite imagery and medical sources as well as third-party submissions, show high levels of destruction in Khuza'a as a result of the considerable force and firepower used in a densely inhabited civilian area. The resulting hardship experienced by the residents was exacerbated by restrictions on the movement of civilians and medical personnel, as well as by the harsh treatment of people trapped in a context of hostilities.

Warnings

305. The ground operation was preceded by warnings to the civilian population. The majority of Khuza'a witnesses who spoke to the commission stated that, during the week prior to the ground operation, they had been given warnings, mostly in the form of fliers dropped from airplanes. One of the witnesses told the commission that the family had received a recorded telephone message. Several witnesses said that they had chosen to stay despite the warnings owing to a variety of reasons. In some cases, local residents feared that there were no safer sanctuaries as other parts of Gaza were also coming under attack. In other cases, witnesses were afraid to leave because the attacks were taking place everywhere at once:

306. *"Yes, we had received warnings through leaflets that were dropped from the air. The warning was issued on that same morning, but the attacks also started on that same day so it was a difficult choice as we feared the idea of fleeing while the attacks were taking place."*[540]

538 W268

539 Channel 10 News. Alon Ben Davids: With the Givaati fighters in Gaza: 26 August 2014; at: http://news.nana10.co.il/Article/?ArticleID=1071639; Minute 12:50

540 W259

307. Witnesses estimated that about 70 per cent[541] of the population responded to the warnings and left Khuza'a in the days prior to 20 July without restrictions. Those who chose to leave the village on or after 20 July were frequently prevented from doing so by IDF troops in the streets connecting Khuza'a to the center of Khan Younis.[542]

Ground operation

308. Information received by the commission indicates that on 18 July, large numbers of IDF units comprising ground troops, tanks and bulldozers were seen approaching and taking positions along the northern outskirts of Khuza'a. On 21 July 2014, the IDF attacked the access routes from Khuza'a to Khan Younis, causing craters and obstacles in the roads that would limit Khuza'a's inhabitants' access to the outside world.[543] From that moment on, nobody was allowed to move in or out of the village. It became a zone of active fighting and everything in it was turned into a target. Eyewitnesses indicated that IDF bulldozers demolished the first home in Khuza'a - reportedly belonging to Hussein Abu Reida - in the early hours of 20 July.[544] On 19, 20 and 21 July, Israeli aircraft gradually intensified their presence over Khuza'a and carried out strikes intermittently. During these days, the IDF conducted manoeuvres apparently aimed at restricting movement in and out of Khuza'a[545]:

309. *"On 21 July, the day before the start of the massive military offensive, the IDF was preparing for the assault. They started creating barriers consisting of soldiers standing side-by-side to create a human wall. On that day, they would confront anyone trying to leave Khuza'a with gas and smoke bombs."*[546]

310. On 22 July, Khuza'a had been entirely surrounded by troops and isolated from surrounding communities and fragmented internally according to neighbourhoods, many of which were rendered inaccessible. None of its residents could move in or out of the village, the electricity was cut and reports indicate that many water tanks on the rooftops of homes were attacked and destroyed by the IDF. Neighbourhoods with homes sheltering hundreds of families came under intense fire from the air and the ground, in particular between 22 July and 25 July. [547] On 23 July, OCHA pointed to "reports that Khuza'a, east of Khan Yunis, was exposed to severe artillery fire overnight and today, as Israeli forces reportedly entered several hundred metres into the village."[548] According to the UN Protection Cluster, 68 persons, including at least 14 civlians, were killed.[549] One resident who was trapped in Khuza'a declared:

"[…] the Israeli Air Force launched an enormous bombing campaign that was to be followed in hours by the ground offensive. The IDF set up a centre between Khuza'a and Israel, at about 2 or 3 km from the centre of Khuza'a. The IDF launched several strikes from that base which principally targeted civilian homes. The attacks killed about 50 civilians - within hours after its launch." [550]

311. The following is a testimony of another survivor of the operation in Khuza'a whose pregnant wife lost her unborn child as an indirect consequence of the attacks:

541 W268;
542 Confidential submission 22
543 Confidential submission 22, PCHR submission
544 W268
545 W270
546 W270
547 Confidential submission 22
548 Figures of 31 May 2015.
549 UN Protection Cluster figures of 31 May 2015
550 W270

"The day of the attack, our house was targeted by several explosions. I cannot tell you what weapons were used or what the source of the bombs was. If I had to guess I would think they were being launched from tanks. The attacks were so intense, the sound of the explosions was so loud that we could not really distinguish each attack and from where the bombs were launched. […] My family really suffered for these attacks. Some of my family suffered injuries. My wife suffered a lot and that resulted in her pregnancy being "poisoned." We received some humanitarian assistance but it was more symbolic than anything. They distributed some medicine and food but in small amounts and infrequently. I did not receive any kind of assistance or compensation for the damage incurred by my house."[551]

312. The intensive attacks on Khuza'a continued throughout 23 and 24 July. Witnesses provided consistent accounts of heavy fire power used by the IDF and the seemingly indiscriminate nature of their attacks, which resulted in significant destruction, including of residential buildings, as well as other clinics, roads, electricity networks and public infrastructure.[552] It also appears that those civilians who did not respond to earlier warnings to abandon Khuza'a were prohibited from fleeing the village once the military operations were underway. Moreover, medical staff present in Khuza'a during the ground operation stated that medical goods and personnel were blocked from entering the village despite the urgency generated by the growing number of casualties.

Destruction

313. According to UNITAR-UNOSAT's assessment, out of the 740 structures attacked in Khuza'a, a total of 453 buildings were completely destroyed, 181 buildings were severely damaged, 106 buildings were moderately damaged, and 163 impact craters were visible.[553] Also photos in the media show large-scale destruction[554]. Most of these building were levelled during the IDF ground operation in Khuza'a between 20 July and 1 August. According to witnesses interviewed by the commission and analysis of satellite imagery, the IDF used bulldozers to demolish residential buildings in Khuza'a, in addition to artillery and airstrikes. The ground operations in Khuza'a resulted in extensive damage to public infrastructure such as the water tower that serves the civilian population.[555]

Alleged attacks on civilians trying to flee Khuza'a

314. The commission received information regarding allegations of attacks on individuals by the IDF as they were trying to flee. Some reported being fired on even when they made clear their civilian status by holding a white flag. In addition to the incidents described below, small groups of people were reported to have been fired at while trying to escape the fighting. [556]

315. The commission learned that, on 23 July, civilians holding a white flag and attempting to leave Khuza'a were confronted by a group of IDF soldiers who allegedly prohibited them from exiting the village, and reportedly opened fire on them.

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551 W259

552 See also UNITAR-UNOSAT submission;

553 UNITAR-UNOSAT submission. Note that "satellite imagery will only detect damage which is relatively catastrophic and affects the structural integrity of the building; damage such as bullet holes and shattered windows will not be detected."

554 http://www.telegraph.co.uk/news/worldnews/middleeast/gaza/11012640/Gaza-conflict-360-degree-panorama-of-flattened-town-of-Khuzaa-Gaza.html

555 Confidential submission 22

556 Confidential submission 22

316. *"I don't know precisely how many IDF tanks had been deployed to Khuza'a; however I heard there were around 150 tanks in and around Khuza'a, with the vast majority of them situated along the perimeter of the village. Since our requests to the Red Crescent and the International Red Cross did not succeed in providing us with support, we decided to make a brave attempt at leaving the city en masse, believing that they would not target the crowd if they understood it consisted of families and civilians. At about 10 a.m. on 23 July, almost all of Khuza'a's remaining residents gathered in front of the clinic. We were all civilians and unarmed, many men were bare-chested. We carried white flags to show the IDF that we were civilians. At about 11.30, we started walking down Khalid Ibn Walid Street en route out of Khuza'a."*

317. *"We moved very slowly towards a line of IDF soldiers who were waiting for us and preparing for confrontation. When we approached the soldiers, those of us who were in the front lines started calling on the soldiers telling them, "We are civilians, please don't shoot." When we were at 5 or 10 meters from the soldiers, they confronted us and told us, "Return to your homes, we warned you to leave days ago. Why did you not leave?" They did not allow anyone to leave, not even the women and children standing in front of them who obviously did not represent any threat to them. When people refused to turn around, they started using sound bombs and tightening their line. After that, we started retreating and when we were about 100 or 200 meters away, they suddenly started firing at us. "*[557]

318. According to witnesses and submissions received by the commission, 11 people were seriously injured in this incident while others suffered lighter injuries.[558] Human Rights Watch reported similar allegations: One witness stated that he had fled his house that same morning, following warnings issued by the IDF. As he walked with a group of 50 people towards the village of Abasan, the group came under small arms fire that killed his cousin and injured the witness.[559] Eyewitnesses also told Human Rights Watch that, on 24 July, a group of 16 elderly men and adolescents carrying a white flag came under fire near the Tawhid mosque, in the north-western part of Khuza'a, at around 8 p.m. One man died on the spot and another died of his injuries in the following hours.[560]

319. According to reports by the UN High Commissioner for Human Rights, on 24 July 2014, a 16-year-old girl with a disability fled her home in a wheelchair together with her family. She was found dead on 1 August near the entrance to the village. The relatives of the girl reportedly left her behind after the girl's brother – who was pushing her wheelchair - was injured as they came under fire by the IDF. The family made several efforts to retrieve the girl in the following days but were unable to do so because of the incessant attacks. When they finally recovered the girl's body, her injuries suggested that she had died as a result of shelling.[561]

House searches and human shields

320. The IDF carried out search operations in a large number of houses in Khuza'a in order to hunt for tunnels and weapons caches. On one occasion, a civilian was shot and killed. The commission also received reports of the use of human shields in the context of the search operations.

[557] W268 on 20 February 2015
[558] PCHR submission
[559] Human Rights Watch. Gaza: Israeli Soldiers Shoot and Kill Fleeing Civilians. Fighting in Khuza'a Shows Grave Dangers to Families Seeking Safety; 4 August 2014 ; at: http://www.hrw.org/news/2014/08/04/gaza-israeli-soldiers-shoot-and-kill-fleeing-civilians
[560] Ibid and confidential submission 22
[561] A/HRC/28/80/Add.1, para 44

321. On 23 July, Israeli soldiers separated a 17-year-old boy, Ahmed Abu Reda, from his family at a Khuza'a checkpoint as the family was attempting to flee the violence. The soldiers kept the boy for five days, during which time he was interrogated repeatedly by an Arabic speaking soldier about the presence of armed groups and the location of tunnels. Ahmed Abu Reda's father described to the commission that his son was forced to undertake "risky tasks such as opening doors, inspecting rooms, switching the lights on and off to test whether secret explosives were being connected to the light switches, open fridges and other devices that may have detonated explosions." The boy was also forced to look for tunnels in basements and to sleep with the soldiers at the checkpoint.[562] The soldiers also threatened to unleash their dog on him and forced him to dig for tunnels. Ahmed was also compelled to sleep for four nights between rows of Israeli soldiers. On 10 September, the MAG ordered a criminal investigation into the incident[563]. In a newspaper article, an unnamed Israeli officer confirmed that the Israeli military had suspected Ahmed of being a militant and detained him during their ground operation in Gaza. His father's affiliation with Hamas was noted, namely, he held a senior position with the Tourism Ministry of the Gaza Government.[564]

322. An eyewitness, Raghad Qdeih, told the commission that, on 25 July around 1 p.m., Israeli forces occupied the home of her uncle, Mohamed Tawfiq Qdeih, in Khuza'a. At the time of the attack, the witness, together with her uncle's extended family and friends were taking shelter on the ground floor. Most of the approximately 30 persons who had sought refuge in that house were women, children and elderly persons, including a man who was over 70 years old.[565] Both witnesses interviewed by the commission in relation to this incident insisted that these people were all civilians, and that none of them were affiliated to armed groups.[566] When the soldiers entered the house, Mohamed Tawfiq Qdeih was holding a white flag with one hand and his other hand was raised to show the soldiers that he was unarmed. He reportedly spoke to the soldiers in Hebrew, telling them that they were all civilians. Mohamed Tawfiq Qdeih was approaching the soldiers and, when he was about two meters away, the soldiers shot him twice and killed him. The women and children - among them the witness's daughter - were then ordered to leave the house, whereas all six men present were directed to stay in the building.[567] The women and children went to the house of the witness's father, Ramadan Qdeih, next door.

323. The father of Raghad, Ramadan Qdeih, described to the commission that he witnessed the forces arriving at the house of his brother, Mohamed Qdeih, at around 1 p.m., in the process of which they demolished parts of it. About an hour later Israeli soldiers came to his own house. They ordered the people in the house to return to the place where they had previously sheltered, where the women stayed on the first floor. The owner of the house was taken to the second floor. From the window there, Ramadan Qdeih saw the men who had been held at his brother's house with Israeli soldiers standing behind them. The witness said that the men were naked with black plastic bags over their heads, handcuffed

[562] W026

[563] Military Advocate General. Operation Protective Edge: Update re Individual Incidents; 10 September 2014; at: http://www.law.idf.il/163-6859-en/Patzar.aspx?pos=2&newsFromDate=01/09/2014&newsToDate=30/09/2014

[564] The New York Times, 26 August 2014, "The Israeli military confirmed that troops had suspected Ahmed of being a militant and detained him during their ground operation in Gaza, noting his father's affiliation with Hamas" and that the incident "had been sent to examination": http://www.nytimes.com/2014/08/25/world/middleeast/gaza-strip-palestinian-teenager-cites-ordeal-as-captive-of-israelis-soldiers.html?_r=0.

[565] W051

[566] W050, W051, W131

[567] W051

and positioned in front of the windows facing outwards.[568] The soldiers then started shooting from behind the naked men, using them as human shields. This went on from about 1.30 to 6 pm. The men were later told by the soldiers that they were placed by the window in order to deter Hamas fighters from returning fire. The witness also stated that when he asked the Israeli soldiers about the fate of his brother, Mohamed Tawfiq, they lied and said he had been injured and was receiving medical care in a different room.[569]

Arrest and ill-treatment while in detention

324. According to information reviewed by the commission, the IDF conducted arrests of dozens of Palestinian men and children throughout the duration of the operation in Khuza'a. Some were interrogated in locations in Gaza, while others were questioned in Israel. According to witnesses held by the IDF, detainees were interrogated about the names of Palestinian fighters, and the location of tunnels and weapons depots.

325. A resident of Khuza'a told the commission that on 23 July, at about 9.30 p.m., he heard a number of loud explosions as he was attending evening prayers at Al Farouq Mosque. The witness rushed to his home which is located near Al Bassateen Street and gathered his family in the middle of the house where everyone lay down on the floor. Attacks were intense and the witness had the impression that his neighbourhood was being shelled both from the air and from the ground. This went on until 5 a.m. on 24 July. At that time they heard shooting outside the door of his house. Ten Israeli soldiers reportedly forced themselves into the house. The witness spoke to them in Hebrew to try and calm them down, but the soldiers reportedly told him to "shut up."[570] According to the witness, the soldiers handcuffed his son who has a mental disability. The soldiers subsequently put a casserole on the boy's head and four of them started kicking and punching him. Then one of the soldiers began shooting between the legs of the boy. After a while, they took him away. When the witness asked the soldier to leave his son alone, the soldier apparently responded by saying, "shut up or we will take you." The witness said that the soldiers then forced the family to remain behind. The witness who speaks Hebrew and understood the insults that were being addressed to his family, stated "It is horrible what they said….but the children could not hear it." On 24 July at about 3 p.m., the men were all forced to undress and were taken outside. Two of his sons were then detained by the IDF. One was released six days later; the other was sentenced by an Israeli court to 45 months in prison. He is presently held in a prison in Israel.

326. According to a submission, a detainee reported that he and other detainees were woken up in the middle of the night and forced to stand while being beaten. One detainee reported that IDF soldiers splashed water on him and on other detainees' faces and verbally abused them in Arabic. Two detainees asserted that at the time of their arrest they were threatened if they refused to cooperate. One man was reportedly told that he would be killed and another one that his parents' house would be targeted. The report also documented another case in which a detainee who was held at a location within Israel was told that his house would be destroyed if he failed to cooperate.[571]

327. A resident from the neighbourhood of Zanna in Khuza'a told the commission that on 17 July at about 6 p.m., as he left his home to get some water for his chickens, he was approached by a group of Israeli soldiers who confronted him and accused him of digging tunnels for Hamas. The soldiers shined a flashlight on his face and took him away. The

[568] W050; W051;W131
[569] W050; W051;W131
[570] W225
[571] Confidential submission 22

witness could see that there were some Palestinian "collaborators" with the soldiers. The witness heard them talk and thought that the "collaborators", having realized that he was not a very important target, so informed the soldiers and they stopped harassing him, but still decided to detain him.[572] The witness stated that he was then taken to a house he recognized as belonging to Mohamed Abdel Ghafour, which was full of soldiers with dogs. It was Ramadan and after spending 48 hours blindfolded in the house, the witness asked for water and food. He reportedly was told to shut up, and a soldier went through his pockets and took 8300 Shekels from him. When the soldiers removed the blindfold, one of the soldiers showed him the vast level of destruction visible from the window and allegedly told him "look at what we did."[573]

328. Two days later, the witness was taken to a small room and interrogated about tunnels and weapons caches. The witness claims to have been beaten during the interrogation. He was then given a nylon uniform to wear and transferred to another location where he spent two weeks. He was reportedly held in a room with no windows and interrogated repeatedly about the same issues. At one point, the witness claims to have been forced to sit in a small seat, which he described as being approximately 20cm x 20cm. The soldiers then placed a bag on his face, which carried a terrible stench. He stated that for three days, the soldiers would throw cold water on his head whenever he tried to sleep.[574] The witness fell unconscious at some point and woke up several hours later, finding himself in a bigger cell with about ten other people. Finally, the witness was transferred to a court in Azabal Ashel, where he was sentenced to 28 days in prison. Having served his sentence, he was taken to the Erez crossing. When he asked about the 8500 shekels that had been confiscated earlier, he was told: "Ask Ismail Haniya."[575]

Attack against a medical clinic and preventing ambulances from accessing Khuza'a

329. According to witnesses, Khuza'a's only clinic, Dr. Kamel Qdeih's Clinic, was struck by repeated Israeli air strikes on 23 and 24 July.[576] One of the doctors running the clinic recounted the following:

"The clinic and its surroundings were hit by a number of rockets. About thirty people in total were killed, and several more injured in these attacks. They were mostly children and women. None of them were combatants. Among them was my brother who was killed before my own eyes. He was hit during that attack and collapsed. During that same night, when I was talking to the media, I told them that although this soldier killed my brother, the most precious person for me, I would still treat him (the soldier) just as I would anybody else because he is a human being and no human being deserves to be killed. I felt so much pain. It was the most painful experience of my life, being a doctor and not being able to save my brother's life. During that same night, I believe I saved the lives of numerous others."

"They targeted the clinic with three rockets from drones. There were at least 25 or 30 explosions in the neighbourhood. The attacks on the clinic continued also on the 24th. Our clinic was deprived of the most basic provisions to treat patients. […] and in all this there was no communication or warnings. We were just attacked."[577]

330. The commission similarly understands that employees from the Ministry of Health and the Palestinian Red Crescent were prevented by the IDF from entering Khuza'a.

572 W070
573 W070
574 W070
575 W070
576 Confidential submission 22
577 W268

331. *"On 22 July, attacks intensified. It was probably the most violent day for Khuza'a. I call it the black day. The attacks were carried out for the most part from the air, by F16s and drones. Tanks in and around Khuza'a were also firing intensely. The clinic was overflowing with more patients than it could handle. I spent most of that night calling colleagues from the Red Cross and other international organisations to request for help. The Red Cross informed me that they were told by the Israelis that nobody would be authorized into Khuza'a because it was a closed military zone. I immediately […] reminded them that they are a humanitarian organization that should be working to help the people who are most in need. […] On the following morning, I called our colleagues from the Ministry of Health and the Palestinian Red Crescent. They too were unable to enter. Our brothers from the Red Crescent however made a genuine attempt to enter into Khuza'a and were stopped when their ambulance came under attack."* [578] *Delays in Evacuation of Injured Civilians and Failure to Protect and Respect Medical Personnel*

"I don't want to die. Don't leave me. 7-year old Anas "Bader" Qdeih[579]

332. The commission heard testimony and reviewed submissions describing how wounded, sick and trapped civilians were deprived of medical care during the IDF incursion into Khuza'a. According to those reports, the IDF repeatedly refused access to medical teams. Palestinian Red Crescent Society (PRCS) ambulances spent a considerable amount of time on the outskirts of Khuza'a waiting for a green light to enter the village to evacuate the injured.[580]

- The commission understands that the Palestinian Red Crescent Society (PRCS) obtained access to enter Khuza'a only on 24 and 28 July, and that, on both days, the total time the medical crews were accorded to attend to the injured and recover dead bodies was between 40 and 90 minutes (after moving for several hours through destroyed streets and neighbourhoods, negotiating their way around tanks and soldiers and being subjected to searches). The delays meant that the ambulances could not transfer the injured to hospital quickly or go back to pick up more casualties.
- On 24 July, for example, according to witnesses, PRCS personnel were forced to carry the injured on their shoulders because the road was blocked, and the IDF refused to clear it. The IDF had opened the road on the way in but blocked it again while the ambulances were working inside Khuza'a. Because of delays of more than three hours, one man who had a gunshot injury in his thigh had to have his leg amputated when he got to hospital. [581]
- On 24 July, according to witnesses, the PRCS ambulance found a 7-year-old boy, Anas "Bader" Qdeih, who was critically injured. He was taken to an IDF checkpoint in order to be transferred to the closest ambulance. The ambulance was kept waiting for at least 20 minutes in spite of the evident seriousness of the

578 W268; Confidential submission 22

579 W268; see also: Physicians for Human Rights. Gaza 2014. Findings of an independent medical fact-finding mission; At https://gazahealthattack.files.wordpress.com/2015/01/gazareport_eng.pdf, p. 88; See also video at http://www.aljazeera.com/programmes/aljazeeraworld/2014/08/khuzaa-attack-aftermath-201481165544556845.html; min 13-26 (unverified)

580 Confidential submission 22; confidential submission 33.

581 Submission 22.2 See also W083.

victim's injuries and his being a child. The boy died before he could be transferred to the ambulances that were waiting at the outskirts of the village[582].

- On 24 July, when a PCRS medical team entered Khuza'a, a person who asked for their help was seriously injured by gunfire directly in front of them, according to witnesses.[583]

333. **The case of Ghalia Abu Reda:** A witness told the commission that he and his family decided to leave their home in Khuza'a in accordance with the warnings issued by the IDF prior to the launch of the ground operation.[584] As attacks were intensifying, they fled Khuza'a in a state of complete panic, leaving behind one of the family members, Ghalia Abu Reda, a woman aged about 70, in a wheelchair. Ghalia Abu Reda's cousin stayed behind, in order to look after her for as long as possible, but eventually the cousin too was compelled to leave. When the witness returned to the family home a few days later, he found Ghalia Abu Reda's dead body. She had a bullet mark in her head and blood on her face. The doctor who later examined the body told the witness that she had been shot from close range, from a distance of about two metres.[585] Another member of the Abu Reda family confirmed the above allegations to the commission. That witness stated that the house was very close to the Green Line and that, some days or weeks later, an Israeli soldier posted on twitter a picture of another IDF soldier offering water to Ghalia Abu Reda:

"The soldiers did this to pretend that they were human. They did not know that Gaza is small, and that the picture would be recognized by the family. When the family returned to Khuza'a they found Ghalia dead!"[586]

IDF and MAG statements

334. The IDF has not officially declared how many tunnels it found and destroyed in Khuza'a, nor has it stated how many weapons caches it discovered. Colonel Ofer Winter Commander of the Givati Brigade and the person in charge of the operation in Khuza'a, was reported to have said:

"There is no house that is not harbouring evil. It is amazing – every house. All these houses are full of explosives. This house here is a bunker and a Hamas command centre. (…) You see, I lost my way; the last time I was here there were still buildings here."[587]

335. In relation to the events described above, the MAG ordered criminal investigations into the 25 July killing of Mohamed Tawfiq Qdeih and two unspecified cases of abuse of Khuza'a residents on 23 July 2014. The MAG also ordered the opening of four criminal investigations into alleged looting of houses, some of which took place in Khuza'a. On 18 March 2015, the MAG closed the cases of looting, as the victims declined to testify before

582 W268 on 20 February 2015; see also: Physicians for Human Rights. Gaza 2014. Findings of an independent medical fact-finding mission. At https://gazahealthattack.files.wordpress.com/2015/01/gazareport_eng.pdf, p. 88; See also video at http://www.aljazeera.com/programmes/aljazeeraworld/2014/08/khuzaa-attack-aftermath-201481165544556845.html ; min 13-26 (unverified)

583 Submission 22.2 See also W083.

584 W251

585 W251

586 W252

587 Channel 10 News. Alon Ben David: With the Givati fighters in Gaza; 26/07/2014; at: http://news.nana10.co.il/Article/?ArticleID=1071639; minute 6:39

the IDF.[588] The commission sought but could not verify reports by the Israeli authorities indicating that Palestinian armed groups or local authorities had forced individuals to stay in the neighbourhood.

Legal analysis

336. The commission selected a number of features of the 20 July to 1 August ground operation in Khuza'a and analyzed them against international law:

337. The reported *intensity of the shelling* and air strikes in Khuza'a between 22 and 24 July, which resulted in the destruction of residential buildings, medical clinics, roads, electricity networks and public infrastructure; the bulldozing of buildings throughout the ground operation; and the destruction of water tanks on roofs of buildings; raise concerns that the IDF shelling and airstrikes were not exclusively directed at military objectives. While the commission is not in a position to verify the extent of the use by armed groups of buildings in Khuza'a for military purposes, it appears highly unlikely that the 740 buildings either destroyed or damaged all made "an effective contribution to military action"[589]. The complete razing of some areas of Khuza'a, as shown in media images,[590] as well as other available information, indicate that the IDF may have treated several distinct individual military objectives in a densely populated area as one single military objective. This would be in violation of the prohibition of indiscriminate attacks, found in customary international law and reflected in article 51(5) of Additional Protocol I.[591] Therefore there are strong indications that elements of the IDF operation in Khuza'a may qualify as direct attacks against civilians or civilian objects and may thus amount to a war crime.[592]

338. The allegations that civilians trying to flee Khuza'a on 21 July and 23 July 2014 were prevented from doing so raises significant questions as to the IDF's strict compliance with the general obligation to take all feasible precautions to avoid or at least to minimize incidental loss of civilian life. Indeed, allowing civilians to flee an area that is about to be subjected to heavy shelling and air strikes implicitly accords with the general obligation of parties to a conflict to take constant care to spare the civilian population.[593] The commission recognizes that the obligation is to take "feasible precautions", which means that not only humanitarian, but also military considerations can be taken into account when deciding on the precautions to be observed. However, in the absence of any information from Israel on the issue, the commission does not see any military consideration that could

[588] Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2; 7 December 2014; At: http://www.law.idf.il/163-6958-en/Patzar.aspx

[589] AP I article 52, para.2

[590] The Telegraph, *Gaza Conflict: 360-degree panorama of flattened town of Khuza'a, Gaza,* 5 August 2014. http://www.telegraph.co.uk/news/worldnews/middleeast/gaza/11012640/Gaza-conflict-360-degree-panorama-of-flattened-town-of-Khuzaa-Gaza.html

[591] International Committee of the Red Cross, *Customary International Humanitarian Law Database*, Rule 13

[592] The International Criminal Tribunal for the former Yugoslavia stated in the Galic Case that "indiscriminate attacks, that is to say attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks against civilians," ICTY, *Prosecutor v. Galic*, case No. IT-98-29-T, Judgement, 5 December 2003, para. 57. The International Court of Justice in the Nuclear Weapons Case linked the prohibition of indiscriminate attacks to attacks against the civilian population, by stating that: "States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets." Para. 78. Article 8 of the Rome Statute of the International Criminal Court lists intentionally directing attacks against the civilian population or civilian objects as a war crime.

[593] AP I article 57, para 1

have justified preventing civilians from fleeing. The IDF had already sacrificed any element of surprise by issuing a warning several days earlier, meaning that Palestinian armed groups were aware of the impending attack.

339. While preventing members of armed groups from fleeing by mingling with civilians is hypothetically a valid military consideration [although such an argument has not been put forward], it does not, in the circumstances at hand, outweigh the humanitarian consideration of allowing a substantial group of civilians to evacuate an area that has or will shortly be subjected to heavy bombardment. When refusing to allow civilians to flee Khuza'a on 21 and 23 July, the IDF had full knowledge of their presence and therefore should have foreseen that an attack against the town using intense shelling and aerial bombardment would very likely be indiscriminate or disproportional. This also raises concern that not all feasible precautions to minimize danger to civilians were taken by the IDF in its attack against the town of Khuza'a.

340. Article 23 of the 1907 Hague Regulations[594] proscribes the destruction of property unless such destruction is required by imperative military necessity. A similar provision in Geneva Convention IV prohibits an occupying power from destroying private or public property.[595] The extensive devastation, carried out by the IDF in Khuza'a, in particular the razing of entire areas of the town by artillery fire, air strikes and bulldozers, indicates that the IDF carried out destructions that were not required by military necessity. Article 147 of the Geneva Convention IV qualifies the extensive destruction of property "not justified by military necessity and carried out unlawfully and wantonly" as a grave breach of the Geneva Conventions. The massive destruction executed by the IDF in Khuza'a may therefore amount to a war crime, if all of these elements are met.

341. The extent of the destruction combined with the statements made during the operation by the commander of the Brigade responsible for the Khuza'a operation to the effect that "Palestinians have to understand that this does not pay off," are indicative of a punitive intent in the action of the IDF in Khuza'a and may constitute collective punishment. Article 33 of Geneva Convention IV establishes that "collective penalties and likewise all measures of intimidation or of terrorism are prohibited."

342. Information received by the commission suggests that in several cases Palestinians who had been *detained*, mostly in their homes in Khuza'a, had been insulted, beaten, threatened to be killed and otherwise ill-treated by IDF soldiers. In some cases the treatment described by some of the witnesses could amount to torture. Article 27 of Geneva Convention IV provides that "protected persons are entitled in all circumstances, to respect for their persons [and] their honour" and "shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults" and article 29 provides that irrespective of the individual responsibility of the soldiers, the party in whose hands the protected person finds himself, in this case Israel, is responsible for the treatment afforded.[596] In addition, the behaviour of IDF soldiers, as described by witnesses, if verified, amounts to a violation of article 10 of the International Covenant on Civil and Political Rights. In a number of these cases the treatment afforded to those

[594] Hague Regulations Respecting the Laws and Customs of War on Land, annexed to the Hague Convention IV of 1907

[595] Article 53, Geneva Convention IV of 1949

[596] The term "protected persons" is defined in article 4 of the Geneva Convention IV as "those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals." The behaviour described by witnesses also amounts to a violation of customary law as reflected in Common Article 3 to the four Geneva Conventions.

detained may qualify as inhuman or degrading treatment in violation of article 7 of the International Covenant on Civil and Political Rights, and article 16 of the Convention against Torture and may even amount to acts of torture as defined in article 1 of the same Convention. Such acts are described as war crimes and listed as a grave breach of the Geneva Conventions.[597]

343. In addition to the two incidents in which people were allegedly used as human shields in Khuza'a, the commission examined a similar allegation in the case of a 60-year-old woman in Wadi Al Salqa, a village south east of Deir Al Balah, who was detained on 24 July by IDF soldiers.

344. *"The soldiers interrogated me repeatedly and detained me in the house for three days, guarding me with a gun. They did not let me use the restroom and they didn't give me food or water. They took off my veil. I told them I was a widow from a long time and they told me that no one loved me, and that no one would ask about me if I disappeared. I was scared. I was told that I would remain with the soldiers, and I protested, telling them I was a woman and they were all men."*[598]

345. The victim, a widow who lived alone on a small farm, told the commission that she was detained by four armed IDF soldiers close to her home. After confiscating her keys, mobile phone and some money, the soldiers ordered her to remove her veil and go inside the house. There the victim was blindfolded and handcuffed, and, some hours later, taken eastwards to the house of her cousin, where she was interrogated about tunnels and members of the "resistance". The victim denied that she or her family had ties to any armed groups. When the soldiers told her that she would be staying with them for eight days, the victim responded that this was highly inappropriate as she is a woman and they are men. The soldiers mocked her saying that nobody would miss her anyway. Then they took her to an adjacent shack and at gunpoint forced her to enter an underground area while about 12 soldiers waited for her above. After 10 minutes, the soldiers ordered her back up and entered the underground area themselves. The victim remained captive in the home of her relative until 27 July, largely without access to water, food and a bathroom. On 27 July, at around 1.45pm, the soldiers returned her belongings and left the house. [599]

346. Based on the information available to the commission, the manner in which the Israeli soldiers forced Palestinian civilians to stand in windows, enter houses/underground areas and/or perform dangerous tasks of a military nature, constitutes a violation of the prohibition against the use of human shields contained in article 28 of Geneva Convention IV, and may amount to a war crime.[600] These incidents also raise concerns that in two of the cases, the IDF may have violated the obligation to hold persons deprived of their liberty in premises that are removed from the combat zone,[601] when detaining them for several days. The tasks the victims were ordered to perform by the soldiers jeopardized their lives and health. That conduct, together with the physical and/or psychological violence to which the victims were subjected by the soldiers, constitutes ill-treatment and may amount to torture. [602] In addition, should allegations that victims were coerced to provide information concerning armed groups and the whereabouts of relatives and tunnels be confirmed, this

[597] Article 8 Rome Statute of the International Criminal Court; article 147 Geneva Convention IV.

[598] W232.

[599] W232.

[600] Geneva Convention IV article 28, Article 51(7) Additional Protocol I Article 8 Rome Statute of the ICC. See also https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule97

[601] ICRC, *Database customary international humanitarian law*, rule 121.

[602] CAT, article 16 on degrading treatment. GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; ICC Statute, Art. 8(2)(a)(i); (ii); (iii); (viii); Art. 8(2)(b)(i); (iv); (x); (xxv) AP I, Art. 75, AP I, Arts.75(2)(a); (b)

would amount to a violation of article 31 of the Geneva Convention IV, which states that "no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."

347. With regards to the treatment of the woman who was detained in Wadi Al Salqa, international humanitarian law provides that, "women shall be treated with all consideration due to their sex".[603] The detainee's cultural background should be taken into account when ensuring the respect for physical and moral integrity.[604] The IDF would therefore be under an obligation to hold the widow in Deir Al Balah under the immediate supervision of female guards.[605]

348. Other incidents and alleged patterns of behavior in Khuza'a raise a number of concerns under international law that will be dealt with and analyzed in detail in subsequent sections of this report. These incidents include: the incidents in which civilians were allegedly shot at by IDF soldiers; attacks against ambulances; and the failure to provide medical assistance to wounded persons.

c. Rafah, 1 August 2014

349. *"Hundreds of people had returned to their homes because of the declaration of ceasefire. They have been unexpectedly confronted with a barrage of missiles so most of them started fleeing from the eastern parts. They were fleeing in the hundreds, on motorcycles, cars or simply on foot. Entire families, including elderly, women and children were being attacked by tanks. The attacks were indiscriminate. A lot of these attacks happened in Bildesi Street, where many of the people were fleeing. There was an explosion about every 10 seconds. During these hours, we came across hundreds of corpses that had been torn into pieces."*[606] Doctor, Al Najjar Hospital

350. In response to the killing of two IDF soldiers and the capture of Lt. Hadar Goldin, the Reconnaissance Unit of the Givati Brigade launched a major military operation on the town of Rafah in the morning of 1 August, or "Black Friday" as it was dubbed in Gaza. When the operation started, Israeli forces acted on the basis of the assumption that Lt. Goldin might still be alive. He was proclaimed dead several hours later, following the discovery of his blood-stained effects. There are conflicting reports about whether the capture of the Lt. Goldin occurred before or after a ceasefire that was due to come into effect. According to official Israeli sources, hostilities resumed "following a ceasefire violation by Hamas and the attempted kidnapping of an IDF officer".[607]

351. The commission spoke with 22 witnesses in relation to these events, among them victims, medical personnel and journalists. It also studied submissions, video and satellite imagery and public reports from relevant stakeholders.

352. During the operation, the IDF closed off areas of Rafah to block movement in and out, presumably to prevent the captors from leaving the area with the captive soldier. Residents returning home that morning – following the announcement of a ceasefire – found themselves trapped with no access to safer sanctuaries, as Rafah was basically turned

603 Art. 27, para 2, Geneva Convention IV.

604 Elements of Crimes for the International Criminal Court, Article 8 (2) (b) (xxi), footnote 49.

605 Article 76 Geneva Convention IV See also AP I Art. 75(5). CEDAW, General Recommendations nr. 30. http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf

606 W219

607 Israel's Investigation of Alleged Violations of the Law of Armed Conflict , p. 30; at: http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx

into a closed military zone. According to media accounts, the IDF fired over 1000 shells against Rafah within three hours[608] and dropped at least 40 bombs. Tanks and bulldozers demolished dozens of homes.[609] Inhabitants came under intense attacks in their homes and in the streets. Witnesses reported to the commission that dozens of homes were destroyed by IDF bulldozers. Ambulances and private vehicles trying to evacuate civilians from the fighting were also hit. As a result of the operation, virtually every person or building in Rafah became a potential military target.[610] Families gave accounts of dividing their children into separate groups before fleeing their homes, in the hope that only one group might be fired on and the others would survive.

353. *"Before I left, I called my neighbour and agreed with her to divide into two groups, so that, if one group were targeted, the others would survive. I left with my two younger daughters, whereas my neighbour left with her daughter and my eldest daughter Asil. We reached a place called Mashrough Amer in Salahaddin Street and found a lot of vehicles that had been recently destroyed as they were still emitting fumes. […]We later learned from the news that Shawka, our neighbourhood, had been targeted by 600 missiles in the span of one hour. The area had been totally destroyed and, as far as I can remember, the missiles I witnessed appeared to have been fired from the ground, probably a tank. I understand that Rafah city was targeted mainly from the air. Al Shawka, however, is on the margins of Rafah and very close to the border. There, all the attacks were launched by tanks. When I returned home, I found my house partially destroyed by three missiles. The house was empty and nobody had been hurt."* Saleh Hussein Abu Mohsen from Rafah[611]

354. A father described an incident in which three persons were killed and six injured, including himself, while trying to flee to safety.[612] Beginning on from 17 July, the family had moved from one refuge to another to avoid the shelling. When they arrived at Mashrou' Amer on 1 August around 11 a.m., tanks in front of the Sa'ad Sayel barracks fired at them. When they ran away in two groups, the eldest daughter was killed.[613] The commission understands that the fiercest attacks occurred during the first four hours following the rumored capture of Lt. Goldin. The bombardment was reported to have been most intense in the eastern neighbourhoods of Rafah, such as Mashru' Amer, Tannur, Hay al Jneina, Uruba Street, Al Shawka, Zallata, the Airport neighbourhood and Salahaddin street, with up to 95 per cent of the victims coming from these neighbourhoods.[614] Satellite imagery shared with the commission corroborates that the destruction was concentrated in these areas.[615]

355. Doctors working at the Abu Yousef Al Najjar Hospital in Rafah told the commission that, in the last days of July, many civilians had rushed to the hospital not to seek medical care but "*because they felt that the hospital was the safest place for their families and*

608 Haaretz. Amos Harel and Gili Cohen: *Massive artillery shelling may have caused numerous civilian fatalities in Gaza*. 15 August 2014; at: http://www.haaretz.com/news/diplomacy-defense/.premium-1.610733#!

609 The Independent. Ahron Bregman: *You might not have heard of the 'Hannibal Protocol', but it's behind one of Israel's worst atrocities yet*; 20 August 2014. At: http://www.independent.co.uk/voices/comment/you-might-not-have-heard-of-the-hannibal-protocol-but-its-behind-one-of-israels-worst-atrocities-yet-9678780.html

610 See also: Haaretz. Gili Cohen: *Dozens of innocents killed in IDF's 'Hannibal' protocol*. 4 August 2014; at: http://www.haaretz.com/news/diplomacy-defense/.premium-1.608715

611 W171

612 Confidential submission 22

613 Confidential submission 22

614 W221, para 4 and W220, para 6

615 See UNITAR-UNOSAT submission and confidential submission 22.3

children.[616] On 1 August, as the security deteriorated, patients from Al Najjar hospital were transferred to the Kuwaiti hospital.[617] According to eyewitnesses, two missiles struck the Al Najjar hospital, which caused destruction to some of the infrastructure such as the windows, doors and the air conditioning system. Ambulances were also hit. For instance, at around 3 p.m., an ambulance transporting injured civilians in the Msabbeh neighbourhood was hit. The vehicle caught fire and three crew members and 5 other people were killed. The commission spoke with two ambulance workers from Al Najjar hospital who witnessed part of the incident. They said that, earlier on that day, the Al Bir Taka Mosque in northern Rafah had been hit and they were called to rescue the wounded. Three ambulances were dispatched, one of them driven by their colleague Atef Salah Ibrahim Al Zamali, who took a short-cut in order to save time. When the other two ambulances arrived at the scene a little while later, they found Atef's ambulance enveloped in flames, about 250 meters away from the mosque. They could not approach the vehicle due to the heat. While they were there, another strike on the burning ambulance caused a second explosion. The eyewitnesses thought that this second explosion was not caused by an airstrike, but by a mortar, as fragments of shrapnel exploded around the ambulance area.[618] The intense bombardment continued.[619] After extinguishing the fire, the Civil Defence managed to extract the burned bodies from the vehicle and found inside, in addition to the three ambulance crew members, the bodies of a man, a woman and three children. They discovered that the man was an elderly patient. The woman was his daughter who had asked to accompany him in order for her children to be evacuated to a safer place.[620]

356. Dozens of shells struck the premises of the hospital, wounding a number of civilians and causing marginal damage to its infrastructure. The hospital was eventually evacuated and no other casualties were reported. The doctors also said the hospital received more than a thousand casualties on the first day of the operation alone.[621] According to the UN Protection Cluster, 100 fatalities were recorded in Rafah on 1 August 2014, including 75 civilians (24 children and 18 women). [622]

357. Leaked audio recordings of IDF radio communications suggest that the fire was indiscriminate, with one Lt. Colonel telling his troops "to stop firing like morons" and another ordering a hesitant soldier, "Go, go, go![…] Give him another shell"[623]. According to a media report, the Givati Brigade Commander invoked the Hannibal Directive in response to the capture of the IDF soldier[624]:

"[A]t 09:36, after speaking to the commander there I uttered a word no one wants to utter – Hannibal, i.e. abduction. I started planning an assault towards Rafah. I ordered all of our forces to move there, in order to prevent the abductors from moving".

358. The "Hannibal Directive" was devised in 1986 and is widely understood to be "a code word for an IDF order that states that in the case of abduction of a soldier, everything must be done to prevent the escape of the abductors or captors, using gunfire, even if it

616 W219, para 7
617 W221.
618 W257, W258.
619 W257.
620 W258
621 W258
622 Figures from the UN Protection Cluster Working Group.
623 Ynet. Yoav Zitun:*Hannibal Directive: Exclusive tapes reveal details of IDF's Black Friday*; 31 December 2014; at: http://www.ynetnews.com/articles/0,7340,L-4609436,00.html
624 Ynet. Yoav Zitun:*Hannibal Directive: Exclusive tapes reveal details of IDF's Black Friday*; 31 December 2014; at: http://www.ynetnews.com/articles/0,7340,L-4609436,00.html

endangers the life of the soldier."[625] According to official Israeli sources, the "IDF General Staff Directive for Contending with Kidnapping Attempts [also known as the "Hannibal Directive"] provides methods and procedures for preventing and frustrating attempted kidnappings of Israeli nationals (both civilians and IDF soldiers). This Directive has been in force for decades and has been amended several times. […] As an operational order, however, the Directive's specific content is classified. As with other classified directives, revealing all of this Directive's contents would provide adversaries with the ability to frustrate its very purpose."[626] It appears that the procedure is premised on a very strong political commitment by Israel to do its utmost to ensure that no soldiers are captured by armed groups to avoid substantial leverage to armed groups in subsequent negotiations with Israel.[627]

359. A press report quoting the commander of the IDF's Orev Unit provides a possible explanation for how the IDF viewed the goals of the 1 August operation in Rafah:

"In such an event you do all to prevent the country from experiencing another turmoil as it underwent in the Gilad Shalit affair"[628]

360. While the Hannibal procedure was modified several times[629] , apparently to clarify that it did not call for the killing of captured soldiers, it appears still to be unusually expansive in terms of defining what targets are legitimate military objectives.

IDF's and Palestinian armed group's version of events

361. The commander of the reconnaissance battalion of the Givati Brigade, Lieu Col Eli Gino, was reported as stating that, "The fire was proportionate, and when they kidnap a soldier, all means are kosher, even if it exacts a price"[630]. The press further quoted Col. Winter as saying that, "those who kidnap need to know they will pay a price. This was not revenge. They simply messed with the wrong brigade"[631]. The events of 1 August in Rafah are presently being considered by Israel's Military Attorney General for a possible criminal investigation.

362. Israeli media reported on 15 April 2015 that an internal investigation by the IDF had concluded that no war crimes had been committed. Instead, the findings shed light on

[625] The Association for Civil Rights in Israel reports 130 - 150. Letter to the Attorney General dated 10 August 2014.

[626] Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 44 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf , Accessed 30 May 2015.

[627] See also: Haaretz. Anshel Pfeffer: *The Hannibal Directive, Why Israel risks the life of the soldier being rescued*; 3 August 2014; at: http://www.haaretz.com/news/diplomacy-defense/.premium-1.608693

[628] Ynet News. Yoav Zitun: *Golani Commanders from the Rafah Battle – Our conscience is clear*; 24 September 2015; at: http://www.ynet.co.il/articles/0,7340,L-4568410,00.html

[629] Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 44 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf , Accessed 30 May 2015. see also: The New Yorker. Ruth Margalit: *Hadar Golding and the Hannibal Directive*; 6 August 2014; at: http://www.newyorker.com/news/news-desk/hadar-goldin-hannibal-directive

[630] The Times of Israel. Mitch Ginsburg: *Recordings shed harrowing new light on IDF's response to Gaza abduction; 30 December 2014*; at: http://www.timesofisrael.com/gaza-abduction-comes-to-life-in-recordings/#!

[631] In an interview with Yediot Ahronot quoted by AP: Karin Lau and Ibrahim Barzak: *Israeli fire on Gaza town raises war crimes claim*, 31 August 2014. At: http://news.yahoo.com/israeli-fire-gaza-town-raises-war-crimes-claim-120049238.html;

operational flaws vis-à-vis the IDF's reaction to the capture of Lt. Hadar Goldin.[632] The media cite Givati Brigade commander Col. Winter as having stated that "[t]he brigade's plan of operation took into account the cease-fire going into effect and was based on a situation in which, by 8 a.m., the forces would cease attacks and only after securing the territory, would initiate searches for tunnels. However, this was not the situation, and when the cease-fire went into effect, forces from the patrol unit entered to search an area that had not been conquered and in an unsecured sector". The IDF apparently concluded that "from an analysis of the unit's actions, it can be determined that in contrast to standard warfare and the simple instructions given during Operation Protective Edge, here, as a brigade, we managed to confuse the fighters and to put them in an unreasonable situation.[633]

363. With respect to Hamas's version of events, according to press reports, Hamas stated that "Israel pretends that one of its soldiers had been kidnapped to cover its crimes against the civilians in Gaza strip, and to divert the attention of international public opinion towards an Israeli prisoner with the Palestinian resistance." He added: "We have no information about an Israeli prisoner."[634] Also according to press reports, in a press release of 2 August, Al Qassam Brigades announced that it was not "aware of a missing soldier, nor his whereabouts or the conditions of his disappearance." [635]

Summary Legal analysis

364. Several factual elements of the shelling and bombing in the Rafah area on 1 August 2014 lead to important concerns as to the conformity of this attack with international law.

365. Information received by the commission concerning attacks on all vehicles in the area, including ambulances, as well as incidents in which groups of civilians appear to have been targeted by tank fire, raises serious concerns as to the respect by the IDF of the principle of distinction. The alleged invocation by IDF troops of the Hannibal Directive may indicate that the objective of targeting vehicles was to prevent the flight of those who had captured an IDF soldier[636]. While targeting a vehicle whose passengers are fighters and who are escaping with a captured soldier may be legitimate, the information reviewed by the commission reveals a different course of events. In Rafah, **all** vehicles appear to have been targeted, irrespective of their civilian or military use. Civilian vehicles, including ambulances, are civilian objects and cannot be targeted unless they are used in a way that makes an effective contribution to the military action. International humanitarian law provides that in case of doubt whether an object that is normally used for civilian purposes is being used to make an effective military contribution, it shall be presumed not to be so used.[637] However, based on information collected by the commission, the opposite appears to have been the case on 1 August in Rafah, where all vehicles in a certain area were

632 Ynet News: Yoav Zitun: *IDF's Gaza probe reveals Hamas outsmarted forces in Rafah*;15 April 2015; at: http://www.ynetnews.com/articles/0,7340,L-4647096,00.html

633 The Jerusalem Post, *Preliminary investigation of 'Hannibal' incident: Operational mistakes, but no war crimes*, 15 April 2015 at: http://www.jpost.com/Arab-Israeli-Conflict/Details-of-probe-into-kidnapping-of-IDF-soldier-during-Gaza-war-leaked-398046

634 http://archive.aawsat.com/details.asp?section=4&article=781630&issueno=13031#.VREy6Et5mw1

635 Sky News Arabia: Al Qassam says: we have no information about the missing Israeli soldier. 2 August 2014. At http://www.skynewsarabia.com/web/article/678484/القسام-علم-بالجندي-الإسرائيلي-المفقود

636 Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 44 footnote 67 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf , Accessed 30 May 2015.

637 Article 52(3), Additional Protocol I

targeted. This amounts to a deliberate attack against civilians and civilian objects and may amount to a war crime.

366. Statements made on IDF audio recordings, as well as the amount and types of ordnance fired at some Rafah neighbourhoods, also raise concern with regards to the respect by IDF forces of the principle of distinction. The alleged use of over 250 mortar shells, a statistical weapon with a wide impact area, in a densely populated area, as well as the firing of over 800 artillery and tank shells with wide area effects in a densely populated and built up area over the period of a few hours, indicate the use by the IDF of methods and means of combat which in the circumstances were of a nature to strike military objectives and civilians or civilian objects without distinction. This is demonstrated by the high number of shells that hit the Al Najjar hospital premises, and the number of civilians who were struck by shells in the street while attempting to flee. The attack of 1 August 2014, therefore, appears to have violated the prohibition of indiscriminate attacks.

367. In relation to the "Hannibal Directive", the IDF has stressed that: "allegations that IDF directives, and particularly, the IDF General Staff Directive for Contending with Kidnapping Attempts (also known as the "Hannibal Directive"), permit IDF forces to exercise force in a manner that does not accord with the principle of proportionality, are incorrect. […] The Directive does not grant permission to violate the Law of Armed Conflict, including the rules relating to distinction and proportionality. To the contrary, and as with all IDF directives concerning combat situations, IDF forces are required to adhere to the Law of Armed Conflict at all times when implementing the directives' provisions. The use of unrestrained force is never permitted, even in the direst of circumstances."[638]

368. Nevertheless, the attack in Rafah on "Black Friday" raises concerns with regard to the IDF's respect of the principle of proportionality. The invocation of the 'Hannibal Directive' and reported statements by IDF officers present during the attack provide a clear indication of the objective of the attack – namely preventing or putting an end to the capture by an armed group of an IDF soldier. Given the amount and type of ordnance used, as well as the likely presence of civilians in the area due to the announced ceasefire, a reasonable military commander should have known that such an attack could result in a high number of civilian casualties as well as in damage to civilian objects. In order for an attack to be considered proportionate, international law requires that the expected incidental loss of civilian life and damage to civilian objects not be excessive in relation to the concrete and direct military advantage anticipated.

369. The latter point must be examined in depth. Preventing the capture or freeing a soldier from captivity may be conceived as a concrete and direct military advantage, albeit of a limited nature, since the loss of one soldier in a large army such as the IDF does not reduce its military capability. When doing so in a manner that is highly likely to result in the soldier's death, it further reduces the concrete and direct military advantage. On the other hand, some have argued that in such a case the proportionality test must take into account the strategic consideration of denying the armed groups the leverage they could obtain over Israel in negotiations for the release of the captured soldier.[639]

370. The commission considers this an erroneous interpretation of international humanitarian law. The leverage that armed groups may obtain in negotiations does not depend solely on the capture of a soldier, but on how the Government of Israel decides to

[638] Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 44 at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf , Accessed 30 May 2015.

[639] John Merriam, Michael Schmitt, *Israeli Targeting: A Legal Appraisal*, Naval War College Review, Fall 2015, p. 13 (Forthcoming publication) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2596836.

react to the capture in the aftermath. The strategic military or political advantage sought is therefore not a concrete and direct military advantage as required by international humanitarian law. An assessment of the strategic and political advantage depends on a large number of *post facto* elements which are merely speculative for the commander on the ground at the moment he decides to launch the attack. Indeed, the proposed interpretation of the anticipated military advantage, which would allow for abstract political and long-term strategic considerations in carrying out the proportionality analysis, would have the consequence of emptying the proportionality principle of any protective element. The commission finds therefore that the IDF attack of 1 August 2014 in Rafah could have been expected to cause incidental loss of civilian life and damage to civilian objects which would be grossly excessive in relation to the anticipated concrete and direct military advantage, and may therefore amount to a war crime.

371. What is more, the commission believes that the military culture resulting from such policy priorities may have been a contributing factor for the unleashing of massive firepower on Rafah, in total disregard for its impact on the civilian population. Applying the 'Hannibal Directive' in the context of a densely populated urban environment using heavy weaponry inevitably leads to violations of the principles of distinction and proportionality

372. The nature of the attack, as well as statements reportedly made by an officer present in Rafah after the events[640], indicate that the IDF did not comply with its obligation to take constant care to spare civilians. Based on the information gathered by the commission, it does not appear that the IDF took all feasible precautions to adequately verify whether the targets of the attacks were indeed lawful military objectives and to choose the weapons used in the attack with a view to avoiding or at the very least to minimizing civilian casualties and damage to civilian objects.

373. Finally, as the IDF had aerial assets over Rafah on "Black Friday", it is very likely that commanders on the ground quickly gained knowledge of the calamitous impact of the attacks on civilians and civilian objects. This knowledge of the likelihood that the intense bombardment would lead to significant casualties is illustrated by the warning given to the doctors in Al Najjar hospital to evacuate the hospital. Yet, even though the attack lasted several hours, it was not suspended. This may constitute a violation of the obligation to do everything feasible to suspend or cancel an attack when it becomes apparent it is not respecting the principles of distinction or proportionality.

374. The strikes against the Al Najjar hospital and against ambulances in Rafah also raise concerns as to the respect by Israel of the obligation to protect medical units and transports in all circumstances.

d. Attack on neighbourhood of Shuja'iya market

375. On 30 July 2014, the Israeli authorities announced a four-hour unilateral truce from 3 to 7 p.m. The IDF stated: "The humanitarian window will not apply to the areas in which IDF soldiers are currently operating," (…) "Residents must not return to areas that they have previously been asked to evacuate."[641] The Shuja'iya market neighborhood consists of the market and shops, homes and warehouses.

[640] See para. 361

[641] Times of Israel: Itamar Sharon, Lazar Berman and Marissa Newman: *Government resolves to intensify Gaza offensive, after 3 soldiers killed*; 30 July 2014; at: http://www.timesofisrael.com/day-23-us-and-israel-deny-report-of-harsh-obama-netanyahu-call-rockets-fired-on-ta-confusion-over-truce/

376. **Al Selek family house:** On 30 July at about 3.30 p.m. according to the witnesses and 5 p.m. according to the IDF, the roof of the Al Selek family house located in the market neighbourhood was hit by shelling, killing 8 members of the Al Selek family, including 7 children aged between 3 and 9 and their grandfather aged 70.[642]. The IDF indicated that the shelling was in response to an anti-tank missile […] fired at IDF forces operating in the outskirts of Shuja'iya, at approximately 4.10 p.m. followed by "an intense and on-going burst of mortar fire, emanating from a built-up area in the neighbourhood, targeting the forces", resulting in the injury of an IDF soldier. According to the IDF, the commanders in the field believed that the shelling by Palestinian armed groups could provide cover for an attempt to capture a soldier.[643]

377. The commission interviewed three family members who were present in the house during the attack and one witness who arrived at the scene a few minutes later. The witnesses who had been at the scene said that the family children were on the terrace playing when the house was hit 4 times, with the first 2 projectiles striking the roof.[644] They told the commission that, when they heard the first explosion, they started looking for the children, only to realize that the children had been playing on the rooftop with their grandfather. The witnesses and family members rushed to the terrace, where they found that seven children and their grandfather were dead. Another child was seriously injured. Witnesses stated that the attack was entirely unexpected because they believed that the truce, which had been announced on local TV stations, would prevail during these hours.[645] The witnesses insisted that nobody in the house was affiliated with an armed group and that their family house had never been targeted before.[646]

378. The IDF fired another round of shells at the market neighbourhood, about 10 minutes after the shells hit the Al Selek family home, just as three ambulances and the paramedics arrived at the scene.[647] Many of the people who had gathered around the Al Selek house to try and help survivors came under attack by the second round of shelling. One journalist who witnessed the attack said that what stunned him was the apparent targeting of ambulances and journalists who had rushed to provide assistance to the injured and cover the incident.[648] One of the survivors said that he saw an ambulance being hit by a shell, which killed one paramedic and one journalist, and killed and injured others who were in the vicinity of the house.[649] The events at Shuja'iya market were further corroborated by a statement from a man who was injured in this incident and transferred to a hospital in Cairo.[650]

379. These allegations are corroborated by two video recordings.[651] The videos show bystanders and journalists gathering in the street after the attack on the house and three ambulances and a fire truck arriving at the scene, with the sirens clearly audible. A few seconds later a large explosion is heard, the cameraman falls to the ground and dust covers the camera. One of the videos shows the dying cameraman continuing to film after the

642 W207 and W003.
643 IDF MAG, *Decisions of the IDF Military Advocate General regarding Exceptional Incidents during Operation 'Protective Edge' – Update No.3,* Available at: http://www.law.idf.il/163-7183-en/Patzar.aspx
644 W003,W004 and W207
645 W004
646 W003.
647 W004.
648 W200.
649 W207.
650 W061.
651 Video and other materials provided by W143.

incident, and the ambulances being hit by a rocket. There are persons on the ground asking for God's help. At least eleven explosions are heard, one every few seconds, following which dozens of injured persons can be seen in the street and three persons not moving any more.

380. On the basis of the information available, it appears that the weapons the IDF used in this incident were high explosive 120 mm mortars, which have a circular error probability of 136 meters, and are therefore imprecise. Remnants of these shells were found inside and around the Al Selek house.

381. As a result of the second round of shelling, 23 persons were killed, including 3 journalists, 1 paramedic, and 2 firemen. In addition, 178 others were injured, among them 33 children, 14 women, 1 journalist, and 1 paramedic. Four are reported to have died as a result of the injuries they sustained in this attack.[652]

382. Hamas condemned the attack[653], and media reports indicate that an IDF spokeswoman stated that Shuja'iya "was not in the areas covered by its humanitarian pause."[654]

383. A MAG statement relating to the incident indicates that the IDF identified the positions from which the shells were fired, but did not return fire immediately because they were thought to be civilian sites. At about 4.40 p.m., the IDF reportedly fired a number of rounds of smoke-screening shells. As this failed to end the mortar fire from the armed groups, at approximately 5 p.m., the IDF decided to return fire towards two of the identified points with five mortar rounds, and about 18 minutes later the forces fired another ten mortar shells. The IDF explains that it chose to use mortars as no aerial alternatives were available. The IDF stated that warnings for civilians to evacuate the area had been issued; that the forces believed that the likelihood of harming civilians by their fire was low; and that their lack of available real-time aerial surveillance did not allow them to identify civilian presence at the time of the attack, whereas previous surveillance had assessed that no civilians were present in open areas of the neighbourhood. According to the IDF, six of the deceased were militants.

384. The MAG, having examined the case, "did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident."[655]

385. While the commission cannot completely exclude the possibility that misfired shells by a Palestinian armed group may have resulted in injury to civilians, it has not received or found any information to support that version of events. Witness interviews and statements by the MAG, appear rather to confirm that it was the two rounds of mortar shells fired by

[652] PCHR submission including pictures of weapons remnants;; see also figures from the Palestine Red Crescent Society which reported more than 250 people injured; 30-35 patients came to Al Quds Hospital, mostly with amputations and 4 of these people died. Quoted by: Physicians for Human Rights. Gaza 2014. Findings of an independent medical fact-finding mission. At https://gazahealthattack.files.wordpress.com/2015/01/gazareport_eng.pdf, p. 47 f

[653] Ezzat al-Risheq, member of Hamas politburo: Zionist artillery shelling of people in Shuja'iya market. 30 July 2014. At: https://www.facebook.com/Izzat.risheq/posts/820890401262272

[654] Al-Jazeera: *Mass casualties as Gaza market area bombed*. 30 July 2014. At: http://www.aljazeera.com/news/middleeast/2014/07/gaza-market-bombed-during-israel-army-pause-201473015342692260 0.html

[655] IDF MAG Corps Website: Decisions of the IDF Military Advocate General regarding Exceptional Incidents during Operation 'Protective Edge' – Update No. 3; 03 March 2015; at: http://www.law.idf.il/163-7183-en/Patzar.aspx

the IDF that resulted in death and injury to civilians in the Shuja'iya market area. The commission takes note of the IDF's assertion that it did not have real-time surveillance and that it did not have aerial weapons platforms available. However, while the commission does not have inside knowledge of the workings of the IDF, it finds it difficult to believe that the IDF, with the substantial amount of aerial means available to it and the relatively small area of Gaza to cover, would leave troops coming under constant fire without any aerial surveillance for over 50 minutes. In addition, owing to the proximity of several air bases, located merely a few minutes from Gaza, the commission also finds it difficult to understand why aerial platforms with more accurate and precise weapons than mortars were not available. The commission finds it hard to believe that the IDF had no knowledge of the presence of ambulances in the area in the aftermath of the initial strike, especially when the rescue crews, a fire truck, and three ambulances arrived at the scene with sirens blazing loudly. The commission notes that usual military practice in such cases makes use of 'forward fire controllers' who observe the target to direct artillery or air support. If this was the case in this incident, the commission cannot comprehend how the presence of many civilians and the arrival of rescue crews was not observed during an 18 minute period. Finally, the IDF assessment that the likelihood of hitting civilians was lower due to the fact that warnings had been issued two days earlier was plainly erroneous. On 20 July, 10 days earlier in the same neighbourhood, scores of civilians were killed by IDF shelling and bombing, despite warnings that had been issued in the previous days. The IDF and its commanders therefore must have been well aware that general warnings to evacuate were not automatically complied with and that civilians often refused to vacate their homes. Combined with the fact that this incident took place during a ceasefire, a reasonable military commander should have envisaged the likely presence of civilians in the area and should have carried out more extensive verifications before firing mortar shells with wide-area effects.

Summary legal analysis

386. The attack raises a number of questions as to its conformity with the principles related to the conduct of hostilities.

387. A number of elements of this incident indicate that the IDF did not respect the principle of precautions in attack. The fact that the IDF did not deploy real-time aerial surveillance for a period of over one hour points to a failure to do everything feasible to assess the presence of civilians and whether the attack could be expected to cause incidental "excessive" loss of civilian life. The decision by the IDF to use mortars, rather than availing themselves of more precise weapons, suggests that the IDF did not take all feasible precautions to choose means with a view to avoiding or at least minimizing civilian casualties. These decisions point to a failure by the IDF to take constant care to spare civilians, in violation of the customary international law principle as expressed in article 57 of Additional Protocol I.

388. Mortars are considered à wide- area weapon which, if used in a built-up, densely populated area, are likely to strike military objectives and civilians without distinction – particularly given a scenario in which over 50 per cent of the 120 mm mortar shells fired are likely to fall between 136 and 300 metres from the intended target. Combined with the impact of the blast and fragmentation of the shell, this type of weapon is likely to injure or kill persons several hundred meters from the intended target. This appears to be confirmed by the video recording of the incident in which the different levels of sound from the blasts seem to indicate that the ten shells of the second round struck locations located quite far apart. The attack on the Shuja'iya market area therefore may have violated the prohibition

of indiscriminate attacks, contained in customary law as reflected in article 51(4) of Additional Protocol I. Depending on the circumstances, this conduct may qualify as direct attacks against civilians[656] and constitute a war crime.

e. Patterns and legal analysis

389. Based on the above and on the review of submissions and publicly available information, the commission identified certain patterns with respect to the IDF's operations in Gaza in summer 2014. These are analysed against applicable international law.

Protection of civilians, force protection and the Hannibal directive

390. *"[I]n operation Cast Lead, the commanders learned they can't risk the lives of their subordinates just so New York Times reports will write a good word about them. We have to make a huge effort to protect civilian life, this is a consensus. But where does it stop? I say, if you warned the civilians that you are about to act, and many left and some stayed – you have grounds to assume that they stayed because they wanted to. Because they want to aid the terrorists by surrounding them with civilians. It is unacceptable to send soldiers inside, to separate civilians from terrorists, to risk the lives of your soldiers in order to save civilians; you have already made efforts to save them."*[657] Asa Kasher, one of the drafters of the IDF Code of Ethics

391. *"The idea was to minimize casualties on our side, and use as much of our arsenal as was needed to eliminate any chance of there being someone inside."* IDF soldier testimony gathered by Breaking the Silence[658]

392. An examination of the IDF's operations in Shuja'iya, Rafah and events near the Shuja'iya market on 30 July indicates that the protection of IDF soldiers was a major consideration for the IDF, overruling and, at times eliminating, any concern for the impact of its conduct on civilians. The examination of these ground operations leaves the commission with the distinct impression that when soldiers' lives were at stake or there was a risk of capture, the IDF disregarded basic principles on the conduct of hostilities, namely the principles of distinction, proportionality and precautions.

393. While international humanitarian law does not spell out whether the safety of the attacking force is an element to be considered in the evaluation of military advantage when assessing proportionality, and the weight to be given it when determining the precautions to be taken in attack[659], the ICRC notes that under international humanitarian law members of the armed forces "have the right to directly participate in hostilities, the corollary of which is that they may also be lawfully attacked by the adversary."[660] Therefore it is inherent in

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656 International Criminal Tribunal for the former Yugoslavia, *Prosecutor v.Galic,* case No. IT-98-29-T, Judgement, 5 December 2003, para. 57.

657 Assa Kasher. Bayabasha, Ground Forces Magazine. Tomer Meir: *20 years IDF ethical code – two of the members of the drafting committee discuss the codes relevance today*; Issue 28; January 2015, page 44 at http://mazi.idf.il/6216-he/IGF.aspx

658 Breaking the Silence. This is how we fought in Gaza; testimony 5, p. 31, at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1

659 ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, 2000, available at http://www.icty.org/sid/10052#IIIwork :
"The questions which remain unresolved once one decides to apply the principle of proportionality include the following: [….] d) To what extent is a military commander obligated to expose his own forces to danger in order to limit civilian casualties or damage to civilian objects?"

660 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, 28th International Conference of the Red Cross and Red Crescent, 2003, p. 13

any armed conflict that members of armed forces are put in danger. The law of armed conflict regulates the conduct of parties to hostilities in particular by prohibiting the targeting of civilians and by limiting the amount of harm to which they are incidentally exposed when a military objective is attacked. While military considerations are legitimately taken into account, international humanitarian law provisions "clearly emphasize the protection of civilians and civilian objects."[661]

394. The Humanitarian Policy and Conflict Research Project (HPCR) Manual on International Law Applicable to Air and Missile Warfare states that "the factoring in of such military considerations [the survival of military aircraft and their crews] may not result in a neglect of humanitarian obligations under the law of international armed conflict. This means that, whereas a particular course of action may be considered non-feasible due to military considerations (such as excessive risks to aircraft and their crews), some risks have to be accepted in light of humanitarian considerations."[662] The commission therefore affirms that military considerations, such as the safety of forces, including from capture, should not be an overriding factor for a reasonable commander weighing the proportionality of an attack. The protection of civilians must continually be taken into account and armed forces of parties to a conflict must accept some level of risk to their own fighters for that purpose.

395. The commission notes with concern the appearance of new terminology in the debate relating to respect of international law during the latest hostilities. The term "enemy civilian" has been used by Asa Kasher, the drafter of the IDF Code of Ethics.[663] The commission believes that it is important to clarify that the concept of "enemy civilians" does not exist in international law. One of the most elementary principles of international humanitarian law is the obligation to distinguish between combatants and civilians; however it never establishes different categories of civilians. The commission reiterates that a civilian is a civilian regardless of nationality, race or the place where he or she lives.

Warning and the continued protected status of civilians

396. As described above, prior to most attacks, the IDF sought to warn the population in advance by means of leaflets,[664] loudspeaker announcements, telephone and text messages and radio broadcasts, which led to the successful evacuation of some areas.[665] Several witnesses interviewed by the commission said that they had received warnings in the form of recorded telephone messages, text messages or through leaflets.

397. While these general warnings appear to have saved the lives of many people who heeded them, in other cases, inhabitants did not leave home for a number of reasons. Thus,

[661] *Ibid*

[662] Commentary to Section A, Para. 1 (q); available at http://www.ihlresearch.org/amw/manual/

[663] "I have argued at greater length elsewhere, no state has or should shoulder as much responsibility for the safety of enemy civilians as it does for its own people". Assa Kasher. The Ethics of Protective Edge, Jewish Review of Books, Fall 2014. Available at http://jewishreviewofbooks.com/articles/1104/the-ethics-of-protective-edge/

[664] See IDF blog IDF Drops Warning Leaflets in Gaza. 17 July 2014 with texts at: http://www.idfblog.com/blog/2014/07/17/idf-drops-warning-leaflets-gaza/ . See also OCHA Gaza Emergency Situation Reports of late July 2014.

[665] For a detailed discussion see also: Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*; p. 30-37; at: http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed 30 May 2015.

OCHA reported on 20 July that the majority of the 92 000 inhabitants of Shuja'iya, a very densely populated neighbourhood of Gaza city, had remained in their homes[666].

398. Based on the testimonies the commission has received, the following reasons were identified for residents' failure to leave:

- The fact that people were not sure in which direction to move as shelling and air strikes were taking place in many parts of Gaza. Some of the commission's witnesses who chose to remain despite warnings explained that they had decided to stay in their homes because they felt that they had nowhere else to go and crossings into Israel and Egypt were blocked. Others believed that certain areas would not be targeted as they were calm without military activity. One witness interviewed by the commission found the warnings in the media "confusing" and referred to them as "rumours".
- As the violence intensified, a sense of 'no safe place' spread, a factor repeatedly mentioned by witnesses interviewed by the commission and noted by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA)[667] and NGOs[668]. The commission was also told by a number of inhabitants that they had decided to move to relatives' houses inside the same neighbourhood. Also, several of the families whose cases were examined by the commission and others[669] had moved in and out of several places which, they thought, would be safer, over the days and weeks prior to when they were attacked.
- Since most of the general warnings did not provide concrete timeframes and the conditions in shelters were poor, several inhabitants returned home to collect items they and their families needed.

399. Against the backdrop of a densely populated small area such as Gaza, from which no exit or fleeing is possible, 44 per cent of which is either a no-go area or has been the object of evacuation warnings,[670] with, at times, 28 per cent of the population displaced,[671] and with severe constraints on humanitarian assistance, warnings cannot be expected to "empty" entire areas. Furthermore, the generalized and often unspecific warnings sometimes resulted in panic and mass displacement, further exacerbating the situation.[672]

400. The commission notes that official Israeli sources indicated that "[a]lthough Hamas authorities actively encouraged civilians to ignore the IDF's warnings and refrain from evacuating, the IDF did not regard civilians who heeded such advice as voluntary human shields and thus legitimate targets for attack. Nor did the IDF discount such civilians for

666 OCHA Gaza Emergency Situation Report. 20 July 2014, p.2

667 OCHA, Gaza Initial Rapid Assessment, 9 September 2014, available at: http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf , p. 7

668 "As a result, there was no guaranteed safe space in the Gaza Strip, nor were there any safe escape routes from it." Physicians for Human Rights. Gaza 2014. Findings of an independent medical fact-finding mission. At https://gazahealthattack.files.wordpress.com/2015/01/gazareport_eng.pdf, p. 38

669 See e.g. Kilani in the chapter on attacks on houses, where the family had moved from house to house. B'Tselem. Black Flag. January 2015, p. 55 and individual testimonies.

670 OCHA Gaza Emergency Situation report of 22 July. "Since the launch of the [Israeli ground offensive] over 120,000 have fled their homes and a three kilometer-wide strip, encompassing 44 per cent of Gaza's territory, has been declared by the Israeli military a 'buffer zone'.", p. 1; at: http://www.ochaopt.org/documents/ocha_opt_sitrep_23_07_2014.pdf

671 OCHA, Gaza Initial Rapid Assessment, 9 September 2014, available at: http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf , p. 3

672 See e.g. B'Tselem: Black Flag. January 2015; p. 56 at: http://www.btselem.org/download/201501_black_flag_eng.pdf

purposes of its proportionality analyses."[673] However, several IDF statements and declarations describing their military objectives and tactics provide a strong indication that civilians remaining in the areas that had been "warned" were understood as having chosen to stay and could be regarded as legitimate targets. For instance, Major Amitai Karanik, Head of the Doctrine Desk at the Infantry Corps HQ acknowledged "We try to create a situation whereby the area where we are fighting is sterile, so any person seen there is suspected of engaging in terrorist activity. At the same time, we make the utmost effort to remove the population, whether this means dropping flyers or shelling."[674]

401. The picture of "sterile" zones painted by the IDF appears to have had implications for the way in which IDF soldiers on the ground approached civilians who remained when they encountered them in Shuja'iya and Khuza'a. For example, the commission received reports of IDF soldiers asking civilians why they were still in these locations in spite of the warnings.[675] Such statements are reported to have led to the assumption by some IDF soldiers that the usual proportionality and distinction rules may have changed. Breaking the Silence, on the basis of multiple testimonies by soldiers, concluded: "The soldiers were briefed by their commanders to fire at every person they identified in a combat zone, since the working assumption was that every person in the field was an enemy. […] While official military orders allow for fire only after identifying a weapon, intent, and the enemy's realistic capability, many soldiers testified that they were told to shoot at any threat, imminent or suspected."[676]

402. The customary rule of international humanitarian law reflected in article 57(3) of Additional Protocol I,[677] provides that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit." While the obligation to provide warnings is not absolute (for example, if the element of surprise or the speed of response are essential in the attack), any warning issued must be effective. While international humanitarian law does not specify what elements are required for a warning to be considered effective, the commission considers that two of the main considerations are: (1) that the warning is crafted in a way that will be understood by those to whom it is addressed; and (2) that what the warning requires can realistically be complied with.

403. In addition, the specific circumstances in which the civilian population found itself have to be taken into consideration, in particular the lack of any area that was considered safe by the population. All areas in Gaza, including those towards which the population was directed, had been or were likely to be hit by air strikes. In addition, the leaflets instructed the 92 000 strong population of Shuja'iya to move to neighbourhoods in central Gaza, which were already densely populated, for an undetermined period of time -- uncertainty which further complicated the possibility of following such instructions. Based on extensive knowledge of Gaza and its society, as well as on the experience of previous hostilities, the IDF should have been well aware of the limitations of the warnings issued. The general warnings that instructed people from entire neighbourhoods to evacuate to other parts of Gaza do appear to have saved many lives, which the commission acknowledges. However, given the fact that in Gaza no area was considered safe, these

673 Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*; p. 13, at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf, accessed 30 May 2015.

674 Head of the Doctrine Desk at the Infantry Corps HQ, Major Amitai Karanik in BaYabasha, Ground Forces Journal; October 2014; No. 29, p. 62. *Unofficial translation*

675 See e.g. W268

676 Breaking the Silence. This is how we fought in Gaza; p. 18; at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1

677 ICRC, *Database Customary International Humanitarian Law*, Rule 20

general warnings to evacuate entire neighbourhoods did not respect the requirement of effectiveness in all cases.

404. The issuing of warnings is only one of the precautionary measures described in article 57 of Additional Protocol I. Regardless of their effectiveness, the fact that warnings were actually issued does not dispense the attacking party from observing the other specific precautionary measures mentioned in article 57. The general obligation to take constant care to spare the civilian population and objects remains valid throughout the attack even if specific precautionary measures such as warnings have been implemented. Article 57(5) clearly establishes that the adoption of precautions does not modify the prohibition against attacking civilians and civilian objects. The issuing of warnings does not signify that the subsequent attack will be lawful. The stated effort to create a 'sterile combat zone' and to consider everyone in an area that has been the object of a warning as engaging in 'terrorist activity', could be construed as an attempt to use warnings to justify attacks against individual civilians. The commission wishes to emphasize that the only way in which a civilian loses his protection from attack is by directly participating in the hostilities.[678] Failure to leave an area following a warning can in no way be viewed as directly participating in the hostilities. To infer automatically from the fact that a general warning to evacuate has been issued for a given area, that anyone found inside the zone is an enemy or a person engaging in 'terrorist activity', or issuing instructions to this effect, contributes to creating an environment conducive to attacks against civilians.

405. The commission notes the allegations that Palestinian armed groups may have told inhabitants to stay in their homes and disregard the warnings issued by the IDF[679] and addresses this issue in section V.A.5.

Use of artillery and other explosive weapons in built up areas

406. *"In the first three weeks of the conquest of Iraq, in 2003, the U.S. armed forces captured cities and destroyed 1,600 armored vehicles of the Iraqi army, half of them tanks. In Gaza, the IDF fought against an enemy that had no armored vehicles, and Israeli soldiers probably saw no more than a few hundred armed Hamas militants. On average, an Israeli tank fired seven times as many shells a day as an American tank in Iraq. We fired more antitank missiles from the ground than the Americans, and twice as many Hellfire rockets from helicopters."* Ofer Shelah, Member of the Knesset Foreign Affairs and Defense Committee[680]

407. *"The whole area gets blown up - gets hit with heavy barrage."* IDF soldier testimony collected by Breaking the Silence[681]

408. As illustrated above, the IDF's ground operation was marked by significant use of explosive weapons with wide-area effects in densely populated areas, including the use of artillery and tank shells, mortars and air dropped high explosive munitions. The IDF

678 Article 51(3) Additional Protocol I

679 Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law,* http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 19 May 2015.

680 Quoted in Haaretz, 24 April 2015: This lawmaker won't let the Gaza War be pushed under the rug.

681 Breaking the Silence. This is how we fought in Gaza; testimony 47, p. 116; see also p. 33 and 48, 49 where the same process is described; at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1

reported that during the operation, 5000 tons of munitions were supplied.[682] During Operation "Protective Edge," 14 500 tank shells and approximately 35 000 artillery shells were fired.[683] Haaretz quoted IDF information indicating that, before the end of July, after three weeks of fighting, 30 000 shells had been discharged, "four times as much as in Cast Lead in 2008".[684] The NGO "Action on Armed violence" (AOAV) observes that, while in Operation Cast Lead in 2008 3000 high-explosive artillery shells were fired, in 2014 there were 19 000, a 533% increase. Based on figures suggesting that over the course of 2014's fifty-day operation, a daily average of 680 artillery shells were fired in Gaza by the IDF (compared to 348 per day in the 2008-09 operation), AOAV questions whether the IDF policies regulating the use of artillery in densely populated areas may be too flexible and allow too much leeway to commanders on the ground.[685] The commission notes official Israeli statements indicating that artillery was used in urban areas only on an exceptional basis when neighbourhoods were known to be largely evacuated and followed stringent protocols.[686] Even with these strict conditions, the use of artillery with wide-area effects in densely populated areas resulted in a large number of civilian casualties and widespread destruction of civilian objects. The commission is therefore of the view that the use of such artillery is not appropriate in densely populated areas regardless of the legality of resorting to such weapons.

409. The explosive power of these weapons and the amount of ordnance used is not the only cause of concern. The fact that indirect-fire systems such as 155mm artillery or mortars are considered 'statistical weapons' demonstrate that the wide area dispersal of their shells is an expected outcome, as this is how these weapons were designed to work.[687] Based on research into the use of weapons in Operation "Protective Edge", AOAV concludes: "The Doher [self-propelled artillery that fires the 155mm shells] is clearly a powerful and destructive weapon system. It is capable of firing large numbers of heavy, high explosive artillery shells across great distances in a short space of time. It is not, however, capable of firing these munitions in a precise manner. As such, AOAV believes that such weapon systems should not be used by the IDF in attacks against residential neighbourhoods or near to other populated areas." [688]

410. Mortars are also considered as an area weapon which, if used in a built up, densely populated area, are likely to strike military objectives and civilians without distinction. When fired without forward observers (artillery observer or mortar fire controller guiding

682 IDF Website. Omer Shalit, Technological and Logistics Directorate: faster and more efficient: this is how munition is supplied to the fighting forces; 13/08/2014; at: http://www.idf.il/1133-21100-HE/IDFGDover.aspx

683 Bayabasha, IDF Ground Forces Magazine: 16 Facts on Operation cast led; Issue 29; October 2014 , page 47 at: http://mazi.idf.il/6216-he/IGF.aspx ;

684 Haaretz: Amos Harel and Gili Cohen: *Massive artillery shelling may have caused numerous civilian fatalities in Gaza*. 15 August 2014.

685 Action on Armed Violence: Under fire Israel's artillery policies scrutinised. December 2014, p. 14; At: https://aoav.org.uk/wp-content/uploads/2015/03/AOAV-Under-Fire-Israels-artillery-policies-scrutinised.pdf

686 Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*; p. 49, at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf, accessed 30 May 2015. See also following paragraph regarding MAG investigations;

687 Action on Armed Violence: Under fire Israel's artillery policies scrutinised. December 2014, p. 11; At: https://aoav.org.uk/wp-content/uploads/2015/03/AOAV-Under-Fire-Israels-artillery-policies-scrutinised.pdf

688 Action on Armed Violence: Under fire Israel's artillery policies scrutinised. December 2014, p. 12; At: https://aoav.org.uk/wp-content/uploads/2015/03/AOAV-Under-Fire-Israels-artillery-policies-scrutinised.pdf

the aim of these weapons), over 50% of the 120 mm mortar shells fired are likely to fall between 136 and 300 meters from the intended target. When a forward observer is used, a number of shells are nonetheless likely to fall at a certain distance from the intended target (up to several hundred meters away) due to the ranging process. Combined with the impact of the blast and fragmentation effects, this type of weapon may injure or kill persons several hundred meters from the object of the attack**.**

411. With respect to the use of mortars, the commission notes that the MAG had already in 2010 recommended the formulation of more stringent definitions in military orders to govern the use of mortars in populated areas and in close proximity to sensitive facilities when examining an incident in which 120mm were used and caused casualties amongst civilians taking refuge inside an UNRWA school. According to an Israeli report, the IDF Chief of General Staff had already in 2010 ordered work to be undertaken on this issue.[689] The commission does not know whether this work was completed, but notes the similarities between the 2009 case, following which the review of definitions was ordered by the IDF, and the 2014 attack during which the Shuja'iya market neighbourhood was hit by approximately ten 120 mm mortar shells resulting in the death of 31 persons, the vast majority of them civilians. This indicates that, despite the MAG's 2009-2010 call for more stringent rules, the practice of using mortars in densely populated areas appears to be the same 5 years later.

412. Another concern in this context is the safety distance for firing artillery near residential houses. According to Human Rights Watch, the "lethal radius for a 155mm high explosive projectile […] is reportedly between 50 and 150 meters and the expected casualty radius is between 100 and 300 meters [and] the error radius for a 155mm shell is usually 25 meters."[690] While the IDF has not so specified, its current rules appear to permit using 155mm artillery against targets located 100 metres from civilian homes (while the safety margin is 250 metres from IDF forces), as pointed out by a group of NGOs in 2006.[691] The commission notes that, according to official sources, "the IDF directives applicable to the

[689] State of Israel Ministry of Foreign Affairs, *Gaza Operation Investigations: Second Update*, July 2010, para. 66. Available at: http://www.mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GazaUpdateJuly2010.pdf

[690] Stop Shelling Crowded Gaza City. Effect of 155mm Artillery Indiscriminate in Populated Areas. 16 January 2009. At: http://www.hrw.org/news/2009/01/16/israel-stop-shelling-crowded-gaza-city

[691] On 8 November 2006, six Israeli and Palestinian human rights organizations (Physicians for Human Rights - Israel, Al Mezan Center Human Rights in Gaza, B'Tselem, The Gaza Community Mental Health Program, The Association for Civil Rights in Israel, and the Public Committee against Torture in Israel) appealed to the High Court of Justice to request that it issue a ruling regarding the decision to reduce the 'security zone' "for shells fired into the Gaza Strip. The army has made no attempt to deny the fact that a decision was taken to reduce the minimal space allowed between a civilian population and the area from which the army fires shells from 300 meters to only 100 meters. See: "B'Tselem calls for criminal investigation, on suspicion of war crimes, in the killings in Beit Hanun", 9 November 2006; at: http://www.btselem.org/press_releases/20061109; The High Court of Justice rejected the petition i.a. because the State announced "suspension of its use of the challenged method. Moreover, the State claimed that should the decision be taken to return to the use of this method there will be discussion over the relevant restrictions and regulations for its implementation. Therefore, the petition became moot and the Court decided it should not address it. Should the IDF decide to return to the use of firing artillery shells in and around Gaza, the petitioner could then ask for the HCJ to revisit this issue." Terrorism and Democracy, Issue No. 26, High Court of Justice Rejects Petition Related to IDF Use of Artillery Shells in Gaza. [HCJ 3261/06] January 31, 2011; available at: http://en.idi.org.il/analysis/terrorism-and-democracy/issue-no-26/high-court-of-justice-rejects-petition-related-to-idf-use-of-artillery-shells-in-gaza/ ; see also: Action on Armed Violence: Under fire Israel's artillery policies scrutinised. December 2014, p. 16; At: https://aoav.org.uk/wp-content/uploads/2015/03/AOAV-Under-Fire-Israels-artillery-policies-scrutinised.pdf

2014 Gaza Conflict set stringent restrictions on the use of HE [high explosives] artillery shells — restrictions that went above and beyond the IDF's obligations under the Law of Armed Conflict and which were imposed as a matter of policy. These directives generally prohibited the firing of HE shells into populated areas and required the observance of specified "safety margins," i.e. set distances from civilians. The current distances set forth for HE artillery were updated as part of the "lessons-learned" process the IDF conducted following the 2008-2009 Gaza Conflict. The IDF determined these distances on the basis of research conducted by technical experts, focusing on the accuracy of each artillery calibre and its dispersal range."[692] However, the fact that the shelling during Operation Protective Edge led to many deaths and injuries shows that the safety distance for artillery was insufficient to ensure the protection of civilians.

413 The concerns linked to the use of artillery in densely populated areas appear to be shared by some in the Israeli defence establishment. According to media reports the former Chief Legal Adviser to the Israel Defence Ministry wrote in 2008, that "Artillery fire can only be directed to relatively open areas…Artillery fire toward urban spaces is problematic if the estimation is that the chances of a shell hitting a [rocket] launcher is relatively small while the danger of many civilians being hurt is real."[693]

414. Finally, the commission observes that the way in which Operation "Protective Edge" was conducted was not modified after initial episodes where artillery shelling resulted in significant civilian casualties.[694] This seems to indicate that the manner of operating in the incidents reviewed in this section may be in accordance with the IDF's current policies governing the use of imprecise and/or inaccurate weapons in densely populated areas, including the safety distance requirement.

415. Article 51(4) of Additional Protocol I, which reflects customary international law, defines indiscriminate attacks as: "(a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction." The large impact area of some of the explosive weapons used by the IDF during the ground operations, including the large air dropped bombs and 155mm shells; the sheer volume of ordnance fired towards areas of Gaza; and the imprecise nature of artillery, including mortars; make it difficult for an attacking party using those methods and means in a densely populated and built up area to distinguish between civilians and civilian objects and the military objective of the attack, and thus to limit the attack's effects as required by international humanitarian law. Therefore, the use of weapons with wide-area effects by the IDF in the densely populated, built up areas of Gaza, and the significant likelihood of lethal indiscriminate effects resulting from such weapons, are highly likely to constitute a violation of the prohibition of indiscriminate attacks. Depending on the

692 Israel, Ministry of Foreign Affairs, *IDF Conduct of Operations during the 2014 Gaza Conflict*, p. 23at: http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf , accessed 30 May 2015.

693 Cited in Mitch Ginsburg, "*Israel's artillery corps torn between precision and power*," The Times of Israel, 12 October 2014

694 Decisions of the IDF Military Advocate General regarding Exceptional Incidents during Operation 'Protective Edge' – Update No. 3 of 22 March 2015. At: http://www.law.idf.il/163-7183-en/Patzar.aspx

circumstances, such use may qualify as a direct attack against civilians,[695] and may therefore amount to a war crime.[696]

Destruction

416. The number and types of weapons used in Shuja'iya, Rafah and Khuza'a resulted in significant destruction in those areas where fighting took place, as described in the above sections. In addition, UNITAR-UNOSAT, on the basis of an analysis of satellite imagery, observed that some areas were virtually "razed": "Concentrations of damage in the Gaza Strip are found along the Green Line with Israel where building demolition was widely apparent in the analysed satellite imagery. Specifically, 74% of all damaged and destroyed buildings, as well as craters, identified by UNOSAT analysts were found within 3 km of the Green Line. Analysis indicates that multiple districts within this area, such as Shejaiya and Beit Hanoun, were almost completely razed with the vast majority of structures completely demolished."[697] UNITAR-UNOSAT also compared the damage resulting from the escalations of 2009 and 2014, and found an increase of 273 per cent in destroyed and severely damaged structures[698]. Parts of Khuza'a also appear to have been completely obliterated. Testimonies of IDF soldiers collected by an NGO illustrate the destruction:

"I got the impression that every house we passed on our way [into the Gaza Strip] got hit by a shell – and houses farther away too. It was methodical."[699] *"The tanks are already positioned somewhere, and they are starting to pound away at anything you might need to walk across, or anything in which they think some [enemy] might be. Just blasting things away."*[700]

417. Breaking the Silence concluded: "In practice, for many combat forces, the damage to Palestinian property was not a consideration when determining the scope and force of fire."[701]

418. The IDF has argued that the high number of buildings destroyed in Operation "Protective Edge" resulted from the targeting of terrorist infrastructure and intense fighting on the ground. However, the evidence gathered by the commission, including the assessment of the episodes above, video and photo materials, observations by UNITAR-UNOSAT and anecdotal testimonies by IDF soldiers, indicate that the vast scale of destruction may have been adopted as tactics of war. While the protection of IDF soldiers and the destruction of tunnels may have played a legitimate role in this, nonetheless the concentration of the destruction in areas close to the Green Line (which, in some places,

695 International Criminal Tribunal for the former Yugoslavia, *Prosecutor v.Galic,* case No. IT-98-29-T, Judgement, 5 December 2003, para. 57.

696 Rome Statue, article 8

697 UNITAR-UNOSAT: Impact of the 2014 Conflict in the Gaza Strip. UNOSAT Satellite Derived Geospatial Analysis; 2014; p. 8; at: https://unosat.web.cern.ch/unosat/unitar/publications/UNOSAT_GAZA_REPORT_OCT2014_WEB.pdf

698 UNITAR-UNOSAT: Impact of the 2014 Conflict in the Gaza Strip. UNOSAT Satellite Derived Geospatial Analysis; 2014; p. 23; at: https://unosat.web.cern.ch/unosat/unitar/publications/UNOSAT_GAZA_REPORT_OCT2014_WEB.pdf

699 Breaking the Silence. This is how we fought in Gaza; testimony 14, p. 47; at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1

700 Breaking the Silence. This is how we fought in Gaza; testimony 40, p. 105; at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1

701 Breaking the Silence. This is how we fought in Gaza; testimony 6, p. 19; at: http://www.breakingthesilence.org.il/testimonies/database/?tzuk=1

amounted to up to 100 per cent); and the systematic way in which it appears to have been implemented subsequently in Beit Hanoun on 18-19 July, Shuja'iya on 20 and 21 July, and Khuza'a between 20 July and 1 August suggest that the IDF followed a pre-calculated pattern of wide-spread razing of neighbourhoods in certain areas.

419. Article 23 of the 1907 Hague Regulations[702] prohibits the destruction of property unless such destruction is required by imperative military necessity. A similar provision in Geneva Convention IV prohibits an occupying power from destroying private or public property.[703] The extensive destruction carried out by the IDF in Shuja'iya, Khuza'a and other localities situated in proximity to the Green Line, in particular the razing of entire areas of these localities by artillery fire, air strikes and bulldozers indicates that the IDF carried out destructions that may not have been strictly required by military necessity. Article 147 of the Geneva Convention IV qualifies the extensive destruction of property "not justified by military necessity and carried out unlawfully and wantonly" as a grave breach of the Geneva Conventions. The wholesale levelling of certain areas of Gaza by the IDF, should it qualify as "unlawful" and "wanton", may amount to a war crime.

Targeting of civilians

420. The present chapter describes a number of cases in which civilians, who were clearly not participating in the hostilities, appear to have been attacked in the street. The commission examined two incidents, in which civilians, including children, allegedly carrying white flags were fired upon by soldiers in Khuza'a. In one case, a large group of people attempting to leave the village while holding white flags was attacked in front of a clinic. In another case, a man inside a house who carried a white flag and had his other hand raised to demonstrate the absence of a weapon was shot and killed in front of a group of approximately 30 people who had sought shelter in that house, among them many women, children and elderly. In a third incident, in Shuja'iya, a wounded man, Salem Shamaly, lying on the ground was shot again two times and killed. In all of these cases, the persons or groups of people targeted, according to information gathered by the commission, were civilians who were not directly participating in the hostilities and did not represent any threat to the IDF soldiers present in the area. Directing attacks against civilians constitutes a violation of the principle of distinction and may amount to a war crime. These acts may also constitute wilful killings, defined in article 147 of Geneva Convention IV. These acts also likely amount to an arbitrary deprivation of life in violation of article 6 of the International Covenant on civil and Political Rights.

4. Incidents relating to shelters, the power plant and ambulances

a. Shelters

421. Owing to the insecurity resulting from airstrikes and ground operations throughout the Gaza Strip and following IDF instructions to evacuate, about 300 000 people moved to 85 UNRWA schools serving as Designated Emergency Shelters (DES) during Operation Protective Edge. According to reports reviewed by the commission, shelters were attacked seven times. The commission examined three incidents: the Beit Hanoun Co-educational A and D School (Beit Hanoun School) and Jabalia Elementary Girls A and B School (Jabalia School), which were directly hit, while in the case of the Rafah Preparatory Boys A School (Rafah School), a target next to it was struck by a precision guided missile. All the incidents resulted in deaths in the shelters – in total between 44 and 47 people died,

[702] Hague Regulations Respecting the Laws and Customs of War on Land, annexed to the Hague Convention IV of 1907.

[703] Article 53, Geneva Convention IV of 1949.

including 14 children and 4 women. The number of people injured in these incidents has not been firmly established, but amounts to at least 200. The commission interviewed several eyewitnesses to the incidents and reviewed affidavits from witnesses, satellite imagery and photos of the sites. The commission also received submissions, including from UN agencies, and reviewed publicly available information, in particular the summary report issued by the Board of Inquiry established by the UN Secretary-General to look into the incidents that affected UN facilities, with which inquiry the Government of Israel cooperated[704].

422. The commission also received information about damage to other UNRWA schools. On 21 July at approximately 4.50 p.m., UNRWA's Preparatory Girls A/B School in Maghazi was hit by three shells, two of which exploded, injuring one person. Despite coordination with Israeli authorities, the school was struck again on 22 July at approximately 10.15 a.m.. The attacks seriously endangered the life of the UNRWA staff members who had returned to the premises to investigate. On 23 July 2014, Deir al Balah Preparatory Girls School C was hit by a projectile, injuring one person. On 29 July, the roof of the Zaitoun Preparatory Girls School B was struck by a projectile above the southern stairwell, injuring about ten people inside the school.

UNRWA Beit Hanoun Elementary Co-educational A and D School

423. *"It was the worst day in my entire life. I will never forget it…This was hell, not war... My young daughter did not deserve to die." Father of a one-year old girl who died as a result of the attack on the school*[705]

424. UNRWA Beit Hanoun Elementary Co-educational A and D School, known as the Western school in the main urban center of Beit Hanoun, was within the extended "no-go zone" created by Israel during Operation Protective Edge706. On 18 July, thousands of Beit Hanoun residents had fled their homes and by 22 July, 4208 of them had sought shelter in the school.707 In order to deliver humanitarian assistance in that area UNRWA needed special authorization from the IDF.[708] As access was not guaranteed, UNRWA was at times unable to provide residents with food, water and other supplies for several days at a time.[709] As a result, a large number of people left the school,[710] while others resorted to bringing food and water from their homes or buying it outside the school.[711] On 24 July, at the time of the attack, approximately 450 people were in the school.[712]

425. On 24 July 2014, between 2.48 and 2.55 p.m.,[713] several Israeli artillery shells hit UNRWA's Beit Hanoun school, killing between 12 and 14[714] people, including children and women. At least 93 people were wounded[715], of whom 55 were reportedly children and

704 S/2015/286.
705 W119.
706 S/2015/286, para. 26.
707 W246.
708 W030, see also S/2015/286, para. 28.
709 W246 and submission 5.11.
710 Human Rights Watch, Israel: In-Depth Look at Gaza School Attacks, 11 September 2014. At: http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks.
711 S/2015/286, para 28.
712 S/2015/286, para. 30. Human Rights Watch (HRW) reports between 300 and 700 people were sheltered. In: Israel: In-Depth Look at Gaza School Attacks. 11 September 2014. At http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks.
713 S/2015/286, para. 32.
714 S/2015/286, para. 32.
715 S/2015/286, para. 32.

31 women.[716] The UN Board of Inquiry reported that "at least two 120 MM high explosive (HE) mortar projectiles struck the school, one hitting the middle of the schoolyard and a second the steps in front of the school's entrance."[717] Witnesses said that while they were waiting for the buses in the courtyard there was a strike on the school itself. There was general panic after the first strike with people searching for their relatives in the courtyard.[718]

426. UNRWA was in regular contact with Israeli authorities, namely the Israeli Coordination and Liaison Administration (CLA) and Israel's Coordinator of Government Activities in the Territories (COGAT), and had given them the school's coordinates on twelve occasions. On the morning prior to the attack, UNRWA reiterated that the school was being used as a Designated Emergency Shelter[719].

427. Heavy fighting between the IDF and Palestinian armed groups was reported in Beit Hanoun in the days prior to 24 July, including daily shelling in the vicinity of the school.[720] On July 23, as the security situation deteriorated, the ICRC visited the school in an attempt to evacuate it, but only 50 residents agreed to leave.[721] That night the shelling was so intense that residents moved inside the building. Eyewitnesses told the commission that on the afternoon of July 24, representatives of the municipality[722] came to the school to coordinate the evacuation of residents after they persuaded them that the school was no longer safe. Families started gathering their belongings in the courtyard so as to be ready when the buses arrived.[723] The UN Board of Inquiry refers to a witness who indicated that that same morning, the CLA had called upon UNRWA to vacate the school because an attack was imminent.[724] Owing to the security situation, UNRWA had asked the IDF for a time slot during the day during which to conduct a safe evacuation.[725] The fact that the attack occurred before implementation of an evacuation agreement indicates that the advance warning communicated to UNWRA by the IDF was not effective.

428. On 24 July, UNRWA received a call from an IDF commander who inquired whether anyone was present in the cluster of four other schools in Beit Hanoun, located about 800 m from the Beit Hanoun Elementary Co-educational A and D School. He indicated that a Hamas arsenal hidden under this cluster of schools was going to be targeted.[726] UNRWA responded that they would check to see if any residents or staff were at the other schools. As they coordinated this inspection, Beit Hanoun A and D School was suddenly attacked,[727] although UNRWA had reconfirmed at least twice with the IDF that the announcement

[716] According to W246. Human Rights Watch reports 60 persons wounded. Israel: In-Depth Look at Gaza School Attacks. 11 September 2014. At: http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks

[717] S/2015/286, para. 32. See also: Human Rights Watch, Israel: In-Depth Look at Gaza School Attacks, 11 September 2014. At: http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks.

[718] W119, W095, W108. Similar scene described by HRW.

[719] Statement by UNRWA Commissioner General Pierre Krähenbühl, 24 July 2014. At http://www.unrwa.org/newsroom/official-statements/statement-unrwa-commissioner-general-pierre-kr%C3%A4henb%C3%BChl.

[720] S/2015/286, para. 27.

[721] S/2015/286, para. 29.

[722] W246; see also S/2015/286, para. 231

[723] W030.

[724] See also S/2015/286, para. 27.

[725] W030.

[726] S/2015/286, para. 31. Also W030.

[727] W030.

about an imminent attack on schools in Beit Hanoun did not refer to the UNRWA Beit Hanoun Elementary Co-educational A and D School, which served as a shelter[728].

429. The witnesses interviewed by the commission said that they were not aware of rockets being fired from the elementary school or of militants operating in the vicinity.[729] UNRWA reported that the school guards, who monitored movements inside and outside of the school gate, had seen no suspicious activity in the area. Witnesses further told the commission that they were not aware of any attempts by Hamas to prevent people from leaving the elementary school, contrary to allegations by the IDF.[730]

430. The media reported that Israel initially alleged that the attacks had been caused by Hamas rockets misfiring.[731] However, all witnesses interviewed by the commission said that there were at least four successive strikes. Subsequently, an IDF spokesperson said that soldiers returned fire at locations from which Palestinian missiles had been fired at them. On the day of the attack, the IDF posted this comment on its blog:

"In recent days, Hamas has fired rockets from an area of Beit Hanoun where an UNRWA shelter is located. Last night, the Israel Defence Forces told the Red Cross to evacuate civilians from UNRWA's shelter in Beit Hanoun between the hours of 10 a.m. and 2 p.m. today. UNRWA and the Red Cross received the message. Hamas prevented civilians from evacuating the area during the window that the IDF gave them. Today, July 24, Hamas continued firing from Beit Hanoun. The IDF responded by targeting the source of the fire".[732]

431. According to the UN Board of Inquiry, the Government of Israel has affirmed that the UNWRA school was not the object of the attack.[733] On 7 December, the MAG announced that it had ordered a criminal investigation into this incident.[734]

432. Human Rights Watch reported that the Beit Hanoun secondary school for boys was used during the hostilities by the IDF for military purposes.[735]

UNRWA Jabalia Elementary Girls A and B School

433. *"There is nowhere to be safe in Gaza. We thought that the school would be a safe place for me and my family. This was not the case. There is no way for me to get justice, I lost my husband and now I am dependent on my parents' good will, who have limited*

728 S/2015/286, para. 31.

729 S/2015/286, para. 27.

730 W030; see also: Human Rights Watch Israel: In-Depth Look at Gaza School Attacks, 11 September 2014. At http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks

731 The Guardian, *Israeli strike on Gaza school kills 15 and leaves 200 wounded*, 27 July 2014. At http://www.theguardian.com/world/2014/jul/24/israeli-strike-un-school-gaza-kills-women-children see also , Buzz feed news, What Really Happened When An Explosion Hit A U.N. School In Gaza, 28 July 2014. At http://www.buzzfeed.com/sheerafrenkel/what-really-happened-when-an-explosion-hit-a-un-school-in-ga#1mqx2qn. See also Human Rights Watch, Israel: In-Depth Look at Gaza School Attacks, 11 September 2014. At: http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks

732 Israel Defence Forces, Hamas Fires from Populated Area, Prevents Civilian Evacuation, 24 July 2014. At http://www.idfblog.com/blog/2014/07/24/hamas/

733 32 S/2015/286, para. 33.

734 Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2. 7 December 2014. At http://www.law.idf.il/163-6958-en/Patzar.aspx.

735 Human Rights Watch, Israel, In-Depth Look at Gaza School Attacks, 11 September 2014. At: http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks.

means." Woman at Jabalia School who lost her husband and whose children were injured.[736]

434. UNRWA's Jabalia Elementary Girls A and B School, also known as the Abu Hussain School for girls, is located in the centre of Jabalia Refugee Camp. When it opened as a Designated Emergency Shelter (DES) on 16 July 2014, it was included in notifications to the Israeli CLA and COGAT. Prior to 30 July, Israeli agencies were notified 28 times in 14 days about the site's use as an UNRWA shelter, the last time on 29 July at 8.48 p.m.[737] UNRWA reported receiving confirmation of the CLA's receipt of several of the notifications. In addition, UNWRA was in contact with the Israeli agencies by email and telephone.[738] On 30 July at 4.45 a.m., according to the UN Board of Inquiry, "the school was hit by a barrage of four 155 MM high explosive (HE) projectiles, an artillery indirect fire weapon."[739] Between 17 and 18 people were killed;[740] 17 of these were internally displaced persons registered with the DES. Amongst those killed were 3 children. One of the victims was an UNRWA staff member. The UN Board of Inquiry stated that at least 99 people were injured and that the school was significantly damaged.[741]

435. At the time of the attack, the school sheltered about 3000 people from northern Gaza who had fled their homes following the shelling in their neighbourhoods and/or as a result of leaflets dropped by the IDF instructing residents to leave the area.[742] As a result, the Jabalia School was overcrowded with an estimated 50 families staying in each classroom.[743]

436. At least one projectile landed outside the school premises, followed by several explosive projectiles which landed inside the school (with at least three direct impacts) and damaged several parts of the building.[744] This was confirmed by eyewitnesses interviewed by the commission who were taking shelter inside the School.[745] Submissions, including pictures and videos and publicly available material, reinforce these findings.[746]

437. The commission was told that the area had been bombarded because on the days prior to the incident, the eastern part of the Jabalia camp had been the scene of armed

736 W058.

737 Statement by UNRWA Commissioner-General Pierre Krähenbühl, 30 July 2014. At http://www.unrwa.org/newsroom/official-statements/unrwa-strongly-condemns-israeli-shelling-its-school-gaza-serious.

738 Statement by UNRWA Commissioner-General Pierre Krähenbühl, 30 July 2014. At http://www.unrwa.org/newsroom/official-statements/unrwa-strongly-condemns-israeli-shelling-its-school-gaza-serious.

739 S/2015/286, para. 40.

740 Note that the UN Board of Inquiry reports 17 or 18 fatalities. S/2015/286, para. 40. Accounts on the exact number of victims and injured vary.

741 S/2015/286, para. 40.

742 S/2015/286, para. 37.

743 W054, W055, W056, W057, W058. See also submission 5.5 and 36. Witnesses complained about poor hygienic conditions in the school, lack of access to medical care (particularly pregnant women), lack of food, water and medicine.

744 S/2015/286, para 40.

745 W054, W055, W056, W057, W058.

746 Submission 49. See also Deadly Israeli shelling hits Gaza as peace talks continue, at http://www.dw.de/deadly-israeli-shelling-hits-gaza-as-peace-talks-continue/a-17821303. See also Temporary ceasefire allows UN to restock water, food, following another school attack, 4 August 2014. At http://www.un.org/apps/news/story.asp?NewsID=48405 and Photos: Israeli airstrike hits U.N. school. 31 July 2014. At http://america.aljazeera.com/multimedia/photo-gallery/2014/7/photos-israeli-airstrikehitsunschool.html

clashes between militants and the IDF.[747] The IDF had also shelled homes in the vicinity of the school in the weeks and days prior to the incident and, according to the IDF, Hamas had fired at Israeli armed forces from the vicinity of the school on 30 July.[748] However, the witnesses interviewed by the commission claimed that they had no knowledge about the activity or the presence of armed groups inside or in the vicinity of the school.[749] The UN Board of Inquiry was told that 29 July, the day prior to the incident, the vicinity of the school was calm.[750] On 31 July, an IDF spokeswoman was quoted in the media, asserting that "militants fired mortar shells at [Israeli] soldiers from the vicinity of the UNRWA school in Jabaliya."[751] According to witnesses, there was no advance warning of the strike.[752] This is consistent with the findings of the UN Board of Inquiry, which concluded that no warning had been given before the attack.[753]

438. The MAG announced a criminal investigation into the incident, stating that "the factual findings collated by the FFA Mechanism and presented to the MAG, indicated the existence of grounds for a reasonable suspicion that the strike was not carried out in accordance with the rules and procedures applicable to IDF forces."[754]

UNRWA Rafah Preparatory Boys A School

439. *"UNRWA is a safe place, that's why we sought shelter there…we were forced out from our homes… Enough bloodshed, why kill my children?"* Khalid Ali Ismail Abu Harba, who lost his 14 year-old son during the attack on Rafah School[755]

440. On 3 August, between 10.40 and 10.45 a.m.[756], a precision-guided missile hit the street in front of the UNRWA Rafah Preparatory Boys A School in the densely populated centre of Rafah, killing 15 people,[757] of whom at least 7 were children, some as young as three years old. One of the people killed was an UNRWA guard.[758] At least 25 people were

747 S/2015/286, para. 39.

748 CNN transcripts of 30 July 2014; at http://transcripts.cnn.com/TRANSCRIPTS/1407/30/sitroom.01.html

749 W054, W058

750 S/2015/286, para. 40.

751 Al Jazeera, *Israeli fire kills nineteen in Gaza UN school*, 31 July 2014, at http://www.aljazeera.com/news/middleeast/2014/07/gaza-un-school-hit-201473041918975321.html; see also: IDF spokesperson speaking to the BBC: Gaza school: 'Israel does not target UN facilities' says IDF. At http://www.bbc.com/news/world-middle-east-28564500

752 W055, W056

753 S/2015/286, para. 40.

754 Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2, 12 July 2014, at http://www.mag.idf.il/261-6958-en/Patzar.aspx.

755 W121.

756 S/2015/286, para. 43.

757 S/2015/286, para. 43.

758 S/2015/286, para. 43. Al Mezan reported that 14 people were killed, 12 in the school and 2 on the motorcycle, and that 25 people were injured. Meeting with Al Mezan on 9 February 2015. OHCHR reports 12 killed, including 8 children. A/HRC/28/80/Add.1, however, at least two children succumbed to their injuries after having been transferred to the hospital according to reports. See submission 5.12.

injured.[759] Approximately 2700-2900 people displaced by the conflict were sheltering at the school at the time of the attack.[760]

441. Rafah School was included in notifications to the CLA and COGAT from the time it opened as a shelter on 18 July 2014. In total, UNRWA provided at least 33 notifications to the relevant Israeli agencies listing the school in Rafah as a shelter over a 17-day span, with the last mention of its special status as an UNWRA shelter having been communicated on the morning of the incident.[761]

442. The missile appears to have hit the ground 5 metres from the school gate. Eyewitnesses told the commission that children were outside the school, near the front gate, buying sweets from street vendors when there was an explosion on the pavement across the street, about 5 to 6 meters from the school gate.[762] One witness interviewed by the commission lost his son and his nephew, both aged 15, who were hit in the head by shrapnel and died soon after arriving at the hospital.[763] The two boys were selling food to the people sheltering in the school compound.[764] In addition, one of the witness's brothers, aged 30, suffered an injury to his neck from shrapnel and, as a result, is unable to speak, while his other brother, aged 38, was hit in the spine by shrapnel and is now paralyzed from the waist down.[765] Another witness who was inside the school grounds, a few meters away from the gate and suffered minor injuries, described how he saw children's bodies strewn about and torn into pieces.[766]

443. In relation to Rafah School, the Government of Israel told the United Nations Board of Inquiry that "the IDF had fired an aerial-launched missile at the motorcycle, which had been carrying three militants from Palestinian Islamic Jihad. By the time it became apparent that the strike would coincide with the motorcycle passing by the school gate, it had no longer been possible to divert the missile."[767] The Israeli authorities announced that an examination has been undertaken at the request of the MAG.[768]

Weapons stored at UNRWA schools

444. The UN Board of Inquiry reported that weaponry was stored in three UNRWA schools (Gaza Beach Elementary Co-educational "B" School, Jabalia Elementary "C" and Ayyobiya Boys School, and Nuseirat Preparatory Co-educational "B" School).[769] None of

[759] S/2015/286, para. 43 and Human Rights Watch, Israel: In-Depth Look at Gaza School Attacks, 11 September 2014. At: http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks.

[760] S/2015/286, para. 42.

[761] Statement by UNRWA Commissioner, Pierre Krähnbühl, and Director of UNRWA operations in Gaza, Robert Turner. August 3 2014 at: http://www.unrwa.org/newsroom/official-statements/unrwa-condemns-israeli-strike-next-unrwa-school-killing-civilians

[762] Human Rights Watch, Israel, In-Depth Look at Gaza School Attacks, 11 September 2014. At: http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks.

[763] This appears to account for the disparities in numbers of fatalities reported.

[764] Submission 5.12.

[765] W121.

[766] W103.

[767] S/2015/286, para. 44; also, based on an inspection of the impact mark on the pavement, a hole in the concrete about 12 centimetres deep and 15 centimetres wide, Human Rights Watch concluded that the strike was most likely caused by a spike guided missile that produces fragments that reach up to 20 meters from impact. See: Israel: In-Depth Look at Gaza School Attacks. 11 September 2014. At http://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks

[768] S/2015/286, para. 44.

[769] S/2015/286, paras 49-82.

these schools was designated as a shelter at the time. The UN Secretary-General "was dismayed that Palestinian militant groups would put United Nations schools at risk by using them to hide their arms. […] The fact that they were used by those involved in the fighting to store their weaponry and, in two cases, probably to fire from is unacceptable."[770] The use of schools to store weapons is discussed in more detail in chapter V.A.5.

Summary legal analysis

445. Imprecise weapons with a wide impact area were used in two incidents examined by the commission: 120 mm high explosive (HE) mortar projectiles in the case of the Beit Hanoun school and a barrage of four 155 mm high explosive (HE) projectiles in the Jabalia school case. The 2009 UN Board of Inquiry into similar incidents "found that, in firing 120 mm high explosive mortar rounds, the IDF had not maintained an adequate safety distance between whatever its target point might have been and the school," and that the "means of response to an identified source of mortar fire that would have carried the least risk to civilians and property, including the UNRWA school, would have been a precisely targeted missile strike."[771] In relation to the use of 155 mm, the 2009 Board concluded that, given all the circumstances, the firing by the IDF of artillery with high explosives and projectiles containing white phosphorous into, over or in such close proximity to UNRWA headquarters as to cause injuries to persons and very substantial damage to property was grossly negligent and amounted to recklessness."[772] While in 2014, there are no allegations that the IDF used white phosphorus, the same conclusions regarding the reckless use of artillery remain valid.

446. The commission is thus of the view that, when choosing a weapon with a wide-area effects like artillery to strike a target located in a densely populated area – and adjacent to UNWRA schools being used as shelters – the IDF must have been aware that there was a strong likelihood that military objectives and civilian objects alike would be struck, raising serious concerns that the choice of means for the attack did not take into account the requirement to avoid, or at the very least minimize, incidental loss of civilian life. The commission notes that the rules on means and methods of attack do not proscribe the use of specific weapons like mortars or artillery per se, but they do impose the requirement that in choosing these means of waging an attack, the parties must consider the potential impact of such weapons on the safety of civilians. The decision by the IDF to use mortars in this incident, rather than availing themselves of more precise weapons, indicates that the IDF did not take all feasible precautions to choose means with a view to avoiding or minimizing civilian casualties.[773] The use of such weapons in the immediate vicinity of an UNRWA school sheltering civilians is highly likely to constitute an indiscriminate attack which, depending on the circumstances, may qualify as a direct attack against civilians,[774] and may therefore amount to a war crime[775].

447. International humanitarian law contains an obligation to take all precautions that are feasible in order to limit the effects that an attack ultimately has on the civilian population. While considerations related to force protection might limit the extent of feasible precautions, such measures are still required. When taking precautionary measures, factors affecting incidental loss or damage must be taken into account, including the proximity to

[770] S/2015/286 (Letter).
[771] A/63/855–S/2009/250, paras 24 and 25.
[772] A/63/855–S/2009/250, para 56.
[773] Article 51(4) of Additional Protocol I, which reflects customary international law;
[774] See also International Criminal Tribunal for the former Yugoslavia, *Prosecutor v.Galic,* case No. IT-98-29-T, Judgement, 5 December 2003, para. 57.
[775] Rome Statue, article 8.

the target of protected objects. The principle of precaution further implies an obligation to learn from previous experiences. During Operation "Cast Lead" in 2008/2009, an attack on the vicinity of an UNRWA school in Jabalia led to the death of several civilians. In that context, the 2009 Board of Inquiry concluded that "the IDF did not make sufficient efforts or take adequate precautions to fulfil the responsibilities of the Government of Israel to protect United Nations personnel and civilians sheltering on United Nations premises and to protect United Nations premises and property."[776] Even though the attack against the UNRWA schools may not have been deliberate, the IDF is bound by the obligation of precautionary measures and verification of targets "to avoid attacks directed by negligence at civilians or civilian objects".[777]

448. In terms of warnings, while the Israeli authorities was relying on the Coordination and Liaison Administration in order to facilitate communication between international organizations and the Israeli military, and while there seem to have been attempts to notify UNRWA about possible attacks in the case of Beit Hanoun, the incident suggests that communication between UNRWA and the IDF was not effective.[778] No warning appears to have been issued before the Jabalia incident. It therefore appears that the IDF may not have complied with its obligation to take all feasible precautions to avoid or at least to minimize incidental damage to civilian objects in the attacks on Beit Hanoun and Jabalia schools.

449. As these attacks struck United Nations facilities, they also raise concern relating to the protection of United Nations premises from any form of interference under the 1946 Convention on the Privileges and Immunities of the United Nations. However, the commission will not examine this issue in detail as this body of law does not fall within the purview of its mandate.

b. The Power Plant

450. The Gaza Strip has only one power plant that normally supplies about 30 per cent of the electricity in the strip, with the rest provided from Israel and Egypt. Under normal circumstances, the three sources cater to half of Gaza's overall electricity needs.[779]

451. The power plant was the subject of several attacks in July 2014[780]:

23 July 11 a.m.	Two shells hit near the administration building, 1 shell struck the water treatment plant.
24 July	The generator and the conference room were destroyed when shells hit the east side of the complex.
28 July 7 p.m.	Shells struck close to the power station control room.
29 July 3 a.m.	The power plant shut down when a section of the plant was completely destroyed.

452. As the result of shelling on 29 July 2014, one of the plant's fuel tanks exploded. The commission interviewed five witnesses to this attack and reviewed submissions and public reports. A witness explained to the commission that the civil defence force had not been

[776] A/63/855–S/2009/250, para 27.
[777] Sassòli and Quintin, 2014, op. cit., p. 88.
[778] See also: S/2015/286.
[779] OCHA: Gaza Crisis Appeal, 24 September 2014. At http://www.ochaopt.org/documents/gaza_crisis_appeal_9_september.pdf.
[780] Human Rights Watch reports on a 5th attack. http://www.hrw.org/print/news/2014/08/10/gaza-widespread-impact-power-plant-attack.

able to stop the fire spreading so that it eventually destroyed almost an entire section of the plant and damaged other parts[781].

453. In May 2015, official Israeli sources indicated that on 29 July, *"IDF tank shells unfortunately missed their intended target and hit fuel tanks serving Gaza's power plant (but not the power plant itself). In this incident, IDF tank forces had legitimately directed an attack against several individuals who were believed to be carrying anti-tank rockets intended for immediate use."*[782] While the commission is unable to verify this account, it notes that the plant had been hit three times in the days prior to 29 July. On 9 July 2014, then Deputy Defence Minister Danny Danon called on his Government immediately to cut off fuel and electricity supplies to the Gaza Strip. He added that Israel needed to use all of the levers of pressure that it had at its disposal in order to coerce Hamas to accept a ceasefire.[783] This was also not the first time the power plant had been hit by the IDF (e.g. OCHA reported that six transformers of the power plant were destroyed in 2006 by an Israeli airstrike[784] and Israeli forces also hit the power plant during 2008/09's Operation "Cast Lead"[785]).

454. Owing to the limited evidence available to the commission, it is unable to determine whether the power plant suffered incidental damage from an attack directed elsewhere, or whether it was the object of a deliberate attack. The commission notes that the electricity infrastructure servicing the civilian population constitutes a civilian object,[786] which is protected from attack unless it makes an effective contribution to military action, and its destruction offers a definite military advantage.[787] These objects are also protected by the customary law rule prohibiting parties to a conflict from attacking, destroying or rendering useless objects indispensable to the survival of the civilian population.[788] Deliberate targeting of such objects would be in violation of this prohibition.[789] The commission notes that the MAG referred the power plant incident of 29 July 2014 to the IDF's Fact-Finding Assessment Mission and its findings have been provided to the MAG. According to official

781 W068. See also: International Federation for Human Rights (FIDH): Trapped and Punished. The Gaza Civilian Population under Operation Protective Edge. March 2015 (from now on: FIDH report), page 50. At: https://www.fidh.org/IMG/pdf/report_gaza_fidh_march_2015.pdf;

782 Israel, Ministry of Foreign Affairs , *IDF Conduct During the 2014 Gaza Conflict*, p. 28. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015

783 Jerusalem Post, *Deputy defence minister demands Israel cut off fuel, electricity supply to Gaza*, 9 July 2014. At http://www.jpost.com/breaking-news/deputy-defense-minister-demands-israel-cut-off-fuel-electricity-supply-to-gaza-362035; see also: Major-General Giora Eiland, the former head of Israel's National Security Council on 5 August 2014. At http://www.ynetnews.com/articles/0,7340,L-4554583,00.html

784 OCHA: The Humanitarian impact of Gaza's Electricity and Fuel Crisis, March 2012. At http://www.ochaopt.org/documents/ocha_opt_electricity_factsheet_march_2012_english.pdf.

785 B'Tselem, Operation Cast Lead, 1 January 2011 and 28 September 2014, at http://www.btselem.org/gaza_strip/castlead_operation; FIDH report, p. 50.

786 A list of categories of military objective proposed by the ICRC only included plants producing electricity mainly for military consumption. List cited in, ICTY, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, 2000, para. 39. Available at http://www.icty.org/sid/10052#IIIwork.

787 ICRC, *Database Customary International Humanitarian law*, rules 7 and 8. See also article 51(2) Additional Protocol I

788 ICRC, *Database Customary International Humanitarian law*, rule 54.

789 The prohibition contained in IHL treaty law (article 54(2) of Additional Protocol I, and article 14 of Additional Protocol II) requires that the attack be for the specific purpose of denying them their sustenance value. However, most State practice with regards to this rule does not seem to require this purpose. See: ICRC, *Customary International Humanitarian Law, Volume I: Rules*, p. 190.

Israeli sources, the "MAG's decision whether to order the opening of a criminal investigation into this incident is still pending."[790]

455. If the strike against the power plant was accidental, as Israel claims, there remain nonetheless questions as to whether all appropriate precautions were taken by the IDF to avoid damage to a civilian object. The IDF's latest version of events concerning the 29 July incident says that it targeted several individuals alleged to be transporting weapons in the vicinity of the plant. If that is the case, the choice of means needs to be examined, namely whether tank shells were the most appropriate ammunition, and whether other types of ordnance, presenting fewer risks of incidental damage, could have been used instead. In addition, the fact that the power plant had been struck several times in the preceding days should have led the IDF to issue stringent orders to units operating near the power plant to exercise restraint, given the importance of the plant for the civilian population in Gaza. The IDF therefore appears not to have complied with its obligation to take all feasible precautions to avoid or at least to minimize incidental damage to civilian objects in the attack of 29 July that struck the power plant.

c. Ambulances

456. *"I hope you can help achieve justice for my colleague; I hope that you can persuade the Israelis to let us do our job without getting fired at." Ambulance driver*[791]

"The International Committee of the Red Cross (ICRC) firmly condemns this extremely alarming series of attacks against humanitarian workers, ambulances, and hospitals. These are serious violations of the law of war. An immediate stop must be put to them."[792]

457. Three incidents that occurred during the ground operations in Shuja'iya, in Rafah and in Shuja'iya market are detailed above (see chapter V.A.3. on ground operations). According to witnesses, a military medical aid ambulance was directly hit twice while attempting to provide first aid to victims in Shuja'iya, resulting in two people being killed, one of them a rescue worker, and two injured. Ten days later, in Shuja'iya market, in a context of intense fire, a shell struck the ground close to three ambulances in the proximity of a house that had been attacked. As a result of the shelling, a paramedic and 22 other people were killed. In Rafah, on 1 August, eight people burned to death in an ambulance that was hit.

458. In addition, the commission examined an incident that took place on 25 July, after 11 p.m., in Al Qarara village, Khan Younis. Two eyewitnesses and one witness told the commission that Mohammed Hassan Al Abadla an ambulance driver aged 26, came under fire while evacuating an injured person.[793] According to the witnesses, when the ambulance arrived at the location, the IDF instructed the crew to exit the vehicle and continue on foot. Mohammed Hassan Al Abadla and one of two volunteers got out of the ambulance and approached the patient with a flashlight on, as directed. They had walked about twelve metres when they came under fire and Mohammed Hassan Al Abadla was hit in the chest and thigh. Two ambulance teams that arrived a little later to rescue their wounded colleague also came under fire, despite earlier ICRC information that the IDF had approved their

790 Israel, Ministry of Foreign Affairs, *IDF Conduct During the 2014 Gaza Conflict*, p. 29. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015

791 W117.

792 ICRC, Gaza and West Bank: Reaching out to all victims amidst growing crisis, 27 July 2014. At: https://www.icrc.org/eng/resources/documents/update/2014/07-27-gaza-west-bank-israel-civilians-and-humanitarian-workers.htm.

793 W083, W101, W087.

entry to the area.[794] A third team was finally allowed to take Al Abadla to Nasser hospital in Khan Younis, where he died shortly upon arrival.[795] The ambulances' movements were at all times coordinated with the IDF through the ICRC.[796] According to the witnesses, all ambulances were marked with the Palestinian Red Crescent Society (PRCS)'s emblem, and Mohammed Hassan Al Abadla and his colleagues were wearing uniforms[797]. The MAG has ordered a criminal investigation into this case[798], the outcome of which is pending.[799]

459. The commission further interviewed several witnesses to an incident that occurred on 25 July, at around 4.15 p.m., when a missile appears to have hit the back of a PRCS ambulance during a rescue operation in Beit Hanoun. As a result, Aaed Al Borei, an ambulance volunteer aged 29, was killed and two other rescuers inside the ambulance were injured.[800] When another ambulance team was dispatched to respond, a missile hit the rear part of this vehicle, which caught fire. The ambulance had its siren and flashing red light on and, at the time of the strike, the street was deserted.[801] The two survivors told the commission that the missile hit the vehicle with such force that it felt as if the "explosion was inside the ambulance". They saw Aaed's body torn apart on the ground.[802] The back of the ambulance was completely destroyed.[803] During an additional rescue operation, another ambulance apparently came under fire, wounding the driver. Aaed's burned body could only be retrieved the following day.[804] On 7 December, the MAG announced that it had ordered a criminal investigation into the incident.[805]

460. In addition, in a number of instances, ambulances are reported to have been prevented from evacuating the wounded from areas where the IDF was operating (in Beit Hanoun, Khuza'a, Qarara, Shujai'ya and Beit Lahiya). According to the Palestinian Human Rights Coalition, 407 Palestinians died as a result of delays in the delivery of medical aid.[806] Some of these incidents, which occurred in Khuza'a, are discussed above. On several occasions, the authorization for ambulances to access sites of military operations where civilians were injured was delayed for days. The commission received heart-breaking testimony and reports of people who saw their injured children and family members die because ambulances arrived too late, sometimes hours or days after the attacks.

794 W083.

795 W083, W087, W101. See also WHO situation report 28 July. At http://www.emro.who.int/images/stories/palestine/documents/WHO_Sitrep_on_Gaza__5_-_July_28.pdf?ua=1

796 W083.

797 W083, W087, W101.

798 IDF MAG Corps Website, Decisions of the IDF Military Advocate General regarding Exceptional Incidents during Operation 'Protective Edge' – Update No. 3, 07 December 2014; at: http://www.law.idf.il/163-6958-en/Patzar.aspx?pos=13

799 COI interviewed two Palestinian Red Crescent Society (PRCS) ambulance workers, W087, W101, who went to Erez crossing to testify before Israeli investigators.

800 Name and age in PRCS update report at http://www.palestinercs.org/reports/14-07-27-10-46-05English%20Ops%20update%209%20-%2027%20July.pdf

801 According W180, W181.

802 W180, W181.

803 Submission 5.

804 W180, W181.

805 IDF MAG Corps Website, Decisions of the IDF Military Advocate General regarding Exceptional Incidents during Operation 'Protective Edge' – Update No. 3, 07 December 2014; at: http://www.law.idf.il/163-6958-en/Patzar.aspx?pos=13.

806 Al-Haq: Divide and conquer. A legal analysis of Israel's 2014 military offensive against the Gaza Strip. 2015, p. 50.

461. The commission notes the IDF's general allegation that Palestinian armed groups used ambulances to transport fighters, i.e. for military purposes. As no specific information was received in this regard, the commission is unable to verify this claim. In relation to the incidents highlighted above, the commission did not find any information, or receive any allegations indicating that the ambulances involved were used for a purpose other than their humanitarian function. Given the pivotal importance of ambulances and medical personnel in areas with a civilian presence where intense shelling takes place, reports of repeated strikes on ambulances that came to the rescue of injured staff are of particular concern, as they suggest that the ambulances and personnel may have been specifically targeted.

462. The commission observed that the 2014 hostilities resulted in damage to 16 ambulances,[807] the death of 23 health personnel (16 of whom were on duty), and injury to least 83.[808] At least 24 strikes[809] involving ambulances and medical personnel were reported. The "Medical Aid for Palestinians" organization reported the loss of 30 ambulances following attacks[810]. Many, if not most, of the reported strikes on ambulances that resulted in casualties, and in some cases, deaths appear to have occurred without there having been any obvious threat or military activity in the area. Furthermore, ambulances were marked with emblems, health workers wore uniforms, and the IDF had been notified repeatedly of their movements. In some incidents (Beit Hanoun and Khan Younis on 25 July and Rafah on 1 August), medical personnel and ambulances appear to have been hit by direct and targeted fire, while in other cases they were likely victims of indiscriminate shelling occurring in the area at the time.

463. The commission notes that the MAG has ordered criminal investigations into two of the cases discussed above and recommends that the MAG investigations pay particular attention to allegations relating to health personnel and ambulances.

464. Ambulances and medical personnel enjoy special protection under international humanitarian law. They are to be protected from attack under all circumstances. They only lose this protection if they are used outside of their humanitarian function to commit acts harmful to the enemy.[811] Some of the incidents above constitute a violation by the IDF of the prohibition of attacks on medical transports and medical personnel, and may amount to war crimes, in particular, if the vehicles or personnel attacked used the distinctive emblems of the Geneva Conventions.[812]

465. In addition, the many reported incidents involving the blocking or delaying of ambulances raise serious concern as to the compliance by the IDF with their obligation to respect medical transport. This obligation is not limited to the prohibition against attacking such vehicles themselves, but also includes the obligation to refrain from interfering with their rescue work. As stated in the ICRC Commentary on article 21 of Geneva Convention IV, "The enemy should avoid interfering with them, but that is not enough; he must also allow them to carry out their work." Preventing or delaying ambulances may also constitute a violation of the obligation to collect and care for the wounded and sick as provided by

807 OCHA, Gaza Initial Rapid Assessment Report, 27 August 2014.

808 World Health Organization, Report of a field assessment of health conditions in the occupied Palestinian Territory (oPt), 22 March to 1 April 2015. See also OCHA, Gaza Initial Rapid Assessment Report, 27 August 2014.

809 Al Haq: Divide and conquer. A legal analysis of Israel's 2014 military offensive against the Gaza Strip. 2015, p. 50

810 Assessment mission of MAP/IDEALS medical team – East Jerusalem and Gaza. 9-14 August 2014, p. 11s

811 Geneva Convention IV articles 20-21, Additional Protocol I articles 15 and 21, Additional Protocol II, articles 9 and 11. See also, ICRC, *Customary International Law Database*, rules 25 and 29.

812 Article 8 Rome Statute of the ICC.

Common article 3 of the Geneva Conventions and the prescription that the wounded shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition.[813] Delaying medical care may also amount to a violation of the right to health and if it is confirmed that denial of access or delays to ambulances contributed to the death of sick and wounded persons, of the right to life.

5. Impact on the population in Gaza of the conduct of Palestinian armed groups

466. The commission of inquiry also examined the conduct of Palestinian armed groups in a densely populated environment and what measures, if any, were undertaken by the authorities in Gaza to protect civilians from the effects of attacks conducted by the IDF.

467. In this context the commission notes the extensive allegations made by Israel, in some cases in great detail.[814] The commission regrets that it was unable to verify these individual allegations owing to Israel's denying the commission access to Gaza, and to Palestinian witnesses' fear of reprisals by armed groups and the local authorities if they provided information, in particular when doing so remotely.

468. These obstacles to obtaining first-hand information were compounded by the difficulties Palestinian human rights organisations face in documenting violations by Palestinian armed groups. As stated by Amnesty International:

"Palestinian human rights organizations faced huge difficulties documenting violations during the hostilities in Gaza, including cases where their researchers were killed or came under fire. Publishing information on violations by Palestinian armed groups can also be risky for local NGO's, particularly during periods of intense fighting and bombardment by Israel; human rights organizations and individual staff members have been threatened or attacked by Palestinian armed groups in the past."[815]

469. Despite these drawbacks, the commission was able to identify certain patterns of behaviour of Palestinian armed groups which may have had a negative impact on the protection of the civilian population and of civilian objects in Gaza.

Conducting military operations from within or near densely populated areas

470. The commission examined various sources of information related to the conduct of Palestinian armed groups in populated areas of Gaza, including the stockpiling of weapons and the firing of rockets, mortars and other weapons from very densely built up areas of Gaza city.

471. Several reports by foreign journalists indicated that rockets were repeatedly fired from downtown Gaza. In a France24 video of 31st July it is possible to see and hear the launch of a rocket in close proximity to the journalist while he was broadcasting live.[816] A follow-up news report by France24 indicated that the rocket launcher was located only 50 meters away from a hotel in which journalists were staying and 100 meters from a UN

[813] Article 10 Additional Protocol I. See also articles 16 Geneva Convention IV and articles 7 and 8 Additional Protocol II.

[814] See for example: Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law*. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx.

[815] Amnesty International, *Unlawful and deadly: Rocket and Mortar Attacks by Palestinian Armed Groups during the 2014 Gaza/Israel Conflict*, March 2015, p.41

[816] Rocket fire caught live as France 24 correspondent reports from Gaza Strip, 49 seconds into https://www.youtube.com/watch?v=EaqWqjb4w6s

building.[817] In another incident, a NDTV foreign press crew filmed men who appear to be preparing a rocket launcher in an area reportedly surrounded by apartment buildings, and they recorded the launch of a rocket the following morning.[818] According to Amnesty International, in one incident a home in the al-Karama neighbourhood was hit by an IDF strike immediately after two rockets had been fired by Palestinian armed groups from the vicinity of the house.[819]

472. Palestinian armed groups are alleged to have frequently placed command and control centres and firing positions in residential buildings, and to have stockpiled weapons, placed booby-traps and located tunnel entrances in prima facie civilian buildings. In particular, the commission notes the IDF asserts it found an Al-Qassam Brigades manual on urban warfare, which is said to explain the advantage of conducting military operations in populated areas and allegedly provides instructions on how to hide weapons in buildings. In a letter to Hamas, the commission requested information on the existence of such a manual and whether a copy could be made available to the commission. The commission did not receive a response. The IDF only presented a few selected pages of the manual on their website.[820] The commission was not able independently to verify the content of this manual or specific incidents.

473. International humanitarian law prescribes that parties to the conflict should take all feasible precautions to protect the civilian population and civilian objects under their control from the effects of attacks and to the maximum extent feasible avoid locating military objectives within or near densely populated areas.[821] The commission notes that this obligation is not absolute and that even if there are areas that are not residential, Gaza's small size and its population density makes it particularly difficult for armed groups always to comply with these requirements. The ICRC Commentary on Additional Protocol I notes that several delegations of the Diplomatic Conference commented that for densely populated countries, the requirement to avoid locating military objectives within densely populated areas would be difficult to apply.[822]

474. Pnina Sharvit-Baruch, a researcher at the Institute for National Security Studies, and former Head of the International Law Department of the IDF Military Advocate General, explained in a conference at the University of Haifa:

"*In a scenario like the Gaza Strip you cannot expect the other side or demand the other side to act only from empty areas, to go out of all the populated areas, fire only from there or from the beach area when no people are there, it's not something that is expected. Therefore to say that the fact that they are operating from populated areas, in itself is a war crime or is in breach of the law of armed conflict, is not a plausible argument[….] The*

[817] http://www.france24.com/en/20140805-exclusive-video-hamas-rocket-launching-pad-near-gaza-homes-un-building/

[818] http://www.ndtv.com/world-news/ndtv-exclusive-how-hamas-assembles-and-fires-rockets-641680

[819] Amnesty International, *Unlawful and deadly: Rocket and Mortar Attacks by Palestinian Armed Groups during the 2014 Gaza/Israel Conflict*, March 2015, p.41

[820] Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law*, pp.17, 40 -41 and 46-47. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015. See also Gaza Conflict Task Force commissioned by the Jewish Institute for National Security Affairs (JINSA), *2014 Gaza War Assessment: The New Face of Conflict*, Report of March 2015, p. 20

[821] These customary rules (see ICRC, *Database on Customary international humanitarian law*, Rules 22 and 23) are reflected in article 58 of Additional Protocol I. Article 13 of Additional Protocol II expresses the principle that the "civilian population shall enjoy general protection against the dangers arising from military operations."

[822] ICRC, *Commentary on the Additional Protocols of 8 June 1977, para. 2256*

point is the fact that in this densely populated area the focus was on acting from places where the maximum civilians would be harmed. Not just from a populated area, but from a school, from a hospital, from a mosque when people are there, or telling people not to leave or not enabling people to leave, there is the gist of it [….]that is the challenge that we had to face." [823]

475. As mentioned by Ms. Sharvit-Baruch, in a number of instances, Palestinian armed groups appear to have conducted military operations within or in close proximity to sites benefiting from special protection under international humanitarian law, such as hospitals, shelters and places dedicated to religion and education.[824] The United Nations Board of Inquiry into specific incidents that occurred in the Gaza Strip between 8 July and 26 August 2014 found that in some cases Palestinian armed groups conducted military operations in the vicinity of UNRWA schools. In one case, it noted military activity by both Palestinian armed groups and the IDF in the vicinity of Beit Hanoun Elementary Co-educational "A" and "B" school, which was being used as an UNRWA designated emergency shelter.[825] In the case of the Jabaliya Elementary "C" and Ayyobiya Boys School, an area adjacent to the school was reportedly used by Palestinian armed groups to fire projectiles.[826] In the case of the Nuseirat Preparatory School Co-educational "B" School, the "presence of weapons and other evidence" indicates that Palestinian armed groups may have fired 120 mm mortars from the premises of the school.[827] In another case, media reports quoted the Greek Orthodox Archbishop in Gaza as stating that the church compound, in which approximately 2,000 civilians took refuge, was used by Palestinian armed groups to fire rockets.[828]

476. Official Israeli sources also made allegations of specific incidents during which projectiles were fired from within or in the immediate vicinity of schools and mosques.[829] In addition, allegations were made to the effect that such locations were used to stockpile weapons and that tunnels led into or near these locations. [830]

477. Medical facilities were also alleged to have been used by Palestinian armed groups to carry out military activities. The Israeli government's documentation details eight cases of projectiles being fired from the immediate vicinity of or from within the premises of

[823] Pnina Sharvit-Baruch, speaking at the Conference: *The Israeli Democracy in War: Is the 'Edge' Protected?*, First Session: Legality of Military Activities during Operation "Protective Edge" According to International Law, 5 November 2014. Video recording available at: https://www.youtube.com/watch?v=Rqz3nQhoOlY&list=PLtX8ZCcA-Vap2SqfEEUBBsW0LPWs6W90M&index=1, minute 55:20. Accessed on 30 May 2015.

[824] ICRC, *Database on Customary international humanitarian law,* Rules 28, 29, 35 and 38

[825] S/2015/286, United Nations Secretary-General, *Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry Into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014*, para. 35

[826] *Ibid*, para. 65

[827] Ibid, paras 80 to 82.

[828] CBN News, *Gaza Bishop: Hamas Used Church to Fire* Rockets. Avaialble at: http://www.cbn.com/cbnnews/insideisrael/2014/august/gaza-bishop-hamas-used-church-to-fire-rockets-/

[829] Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law,* pp. 29-38. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed 30 May 2015

[830] Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law*, pp.20-25, 29-32 and 35-38. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed 30 May 2015

medical facilities.[831] In one case, it is alleged that a booby trap in a clinic exploded, resulting in the death of three soldiers and injury to 14.[832] The commission was not able to independently verify these specific allegations. The commission also notes the claims concerning the apparent extensive use of Al-Wafa hospital and its surroundings to conduct military operations.[833] All relevant witnesses interviewed by the commission, including medical staff, rejected the allegation that the hospital was being used for military purposes before its evacuation. However, the commission cannot exclude the possibility that military activity took place within or around the hospital following its evacuation on 17 July 2014. Furthermore, several allegations[834] were made concerning the alleged use by Palestinian armed groups of ambulances to conduct military operations. However, only one specific allegation was provided in the documentation available from Israel and this lacked a date or location for the incident.[835] The commission has received no additional allegations concerning the improper use of ambulances.

478. Given the number of cases in which Palestinian armed groups are alleged to have carried out military operations within or in the immediate vicinity of civilian objects and specifically protected objects, it does not appear that this behaviour was simply a consequence of the normal course of military operations. Therefore the obligation to avoid to the maximum extent possible locating military objectives within densely populated areas was not always complied with.

479. Regarding the specific incidents, while the commission cannot determine the factual circumstances of each alleged incident, if it is confirmed that in using the aforementioned locations to conduct military operations, armed groups did so with the intent to use the presence of civilians or persons *hors de combat* in locations such as shelters or hospitals to prevent their military assets from being attacked, this would constitute a violation of the customary law prohibition to use human shields, reflected in article 51(7) of Additional Protocol I. Should this intent be proven, this conduct would amount to a war crime.[836]

480. In addition, with regard to the alleged use of medical facilities and ambulances for military purposes, if the buildings or ambulances bore any distinctive emblem of the Geneva Conventions, such as the Red Crescent, this would amount to an improper use of a distinctive emblem and may, depending on the circumstances, amount to a war crime.[837] Article 7 of Protocol II to the Convention prohibiting Certain Conventional Weapons,[838] which reflects customary international law,[839] prohibits attaching or associating a booby-trap with an object entitled to special protection. Therefore the booby-trapping of a medical clinic would constitute a violation of international humanitarian law.

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831 Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law*, pp. 22-23. Available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015

832 Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law*, pp. 47-48. Available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 30 May 2015.

833 Ibid, pp.20-21

834 Ibid, p. 20, see also: https://www.idfblog.com/blog/2014/07/28/hamas-uses-hospitals-ambulances-military-purposes/

835 Ibid, p. 22.

836 Article 8 Rome Statute of the ICC

837 Article 8(2)(b)(vii). In certain circumstances the death or serious injury would have to result from a treacherous act linked to the improper use of the emblem in order to amount to a war crime.

838 Protocol II to the 1980 CCW Convention as amended on 3 May 1996

839 ICRC, *Database on Customary international humanitarian law,* Rule 80.

Measures to facilitate the removal of the civilian population from the vicinity of military objectives

481. During the hostilities the authorities in Gaza adopted some measures to assist civilians fleeing the areas most affected by the hostilities, such as setting up shelters for internally displaced persons.[840] The authorities in Gaza also informed the commission that a policy of evacuation was implemented in Beit Hanoun, Shuja'iya and Khuza'a when tensions mounted in those areas, and that more than 4,450 evacuation missions were conducted by the Palestinian civil defence.

482. However, the commission is concerned that in the days prior to the start of the IDF ground operations, different representatives of the authorities in Gaza made several public declarations requesting Gaza residents not to heed the warnings issued by the IDF instructing residents of different neighbourhoods and towns to evacuate. For instance on 16 July, Hamas spokesperson Mushir al-Masri stated, "Palestinian civilians are standing up to the enemy with their steadfastness, resilience and belief that Allah will reward them, […] Rest assured, stay put at home as you've always done, do not respond to rumours and this psychological war being waged by the Zionist enemy. It's their desperate and wretched attempt to fragment the Palestinian domestic front. We are sure of our people's steadfastness."[841] On 13 July 2014, a journalist from Al Aqsa TV reported that "..the interior ministry also urged citizens not to obey the Occupation's warnings contained in leaflets calling on people of the Gaza border area to evacuate their homes. The interior ministry called upon people to ignore these warnings and to stay put."[842] On 15 July 2014, Mo'een Abu Okal, head of the popular committee for refugees, called upon citizens who had taken refuge at UNRWA premises to return home. He stressed that "the resistance" continues to confront and foil any incursion attempts.[843] While the commission cannot conclude that in making these declarations the authorities in Gaza had the specific intent to use the presence of civilians to protect Palestinian armed groups from attack, the declarations are a clear indication that the authorities in Gaza did not take all the necessary precautions to protect the civilian population under its control as required by international humanitarian law.[844]

483. In one case of the bombing of a residential building examined by the commission, information gathered indicates that following a specific warning by the IDF that the house was to be targeted, several people went to the roof of the house in order to "protect" the house. Should they have been directed to do so by members of Palestinian armed groups, this would amount to the use of the presence of civilians in an attempt to shield a military objective from attack, in violation of the customary law prohibition to use human shields. With regard to this incident, the commission is disturbed by the reported call by the spokesperson of Hamas to the people in Gaza to adopt the practice of shielding their homes from attack by going up on their roofs. Although the call is directed to residents of Gaza, it can be seen and understood as an encouragement to Palestinian armed groups to use human shields.

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840 For example the OCHA on 13 August, mentions the existence of 27 government shelters hosting close to 30,000 internally displaced persons , *Gaza Emergency Situation report 13 August 2014*, p. 2. Available at http://www.ochaopt.org/documents/ocha_opt_sitrep_13_08_2014.pdf

841 https://www.youtube.com/watch?v=ks_nlgjfPWM

842 http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Israel-protection-and-Hamas-exploitation-of-civilians-in-Operation-Protective-Edge-July-2014.aspx

843 Al Resala Press. Abu Okal: *We call upon UNRWA refugees to return home*, 15 July 2014 at: http://alresalah.ps/ar/post/97511/أبو-عوكل-ندعو-لاجئي-الأونروا-للعودة-لمنازلهم

844 Article 58, Additional Protocol I. ICRC, *Database on Customary international humanitarian law*, Rule 22.

Rockets landing short

484. Rockets fired by Palestinian armed groups in several cases appear to have malfunctioned or were fired carelessly and fell short, in some cases in densely populated areas of Gaza, causing deaths and injuries.

485. For instance, according to OHCHR, on 20 July 2014 at 10 p.m., six civilians in locations north of the main cemetery in Al-Faluja neighbourhood of Jabalia sustained injuries when a rocket fired by Palestinian armed groups fell short and landed on a house north of the cemetery.[845]

486. In another incident, which occurred in the afternoon of 28 July on the first day of the Eid holiday, an explosive hit Swaidi street next to a children's swing in the Al-Shati refugee camp in northern Gaza. Eleven children, between 5 and 14 years old, and two adults were killed and up to 45 people were injured, some seriously and many of them children.[846] According to witnesses it was the Eid holiday and a temporary ceasefire had been declared so parents were outside in the street celebrating with their children. The street was also more crowded than usual because many people displaced during the conflict had moved to the Al-Shati camp seeking safety.[847] Between 4 and 5 p.m. an explosive landed on the street between a food store and the children's swing where children were playing. The single explosion spread a large amount of shrapnel across the area. Three eyewitnesses told the commission that the explosion threw children's bodies around and tore them to pieces.[848]

487. The MAG announced on 7 December 2014 that following a thorough review of the incident by the Fact-Finding Assessments Mechanism (FFAM), "…such a strike by IDF forces could not be identified. However, Israel's technical systems recorded in real-time the path of a salvo of missiles fired from within the Gaza Strip, seemingly by Hamas or Palestinian Islamic Jihad, which landed in the medical clinics and in the Shati Refugee Camp at the time of the alleged incident…"[849] Hamas publicly denied this allegation and the Chief of Police in Gaza told the commission that the bomb disposal team that went to the Al-Shati playground found that the remnants of the weapons were Israeli.[850]

488. The commission received information from NGO's who conducted field research and a UN source who collected information indicating that the explosion had been caused by a misfired Palestinian rocket.[851] One of them inspected the site after the attack and concluded that the impact of the explosion on the ground could not have been caused by an Israeli missile or artillery shell; the NGO also indicated that eyewitnesses had reported seeing a rescue team go to the place just after the attack, whose members did not collect the wounded but cleared and collected the remnants of the weapons.[852] In addition, two

[845] A/HRC/28/80 Add. 1, para. 69

[846] W098, W084. See also Amnesty International, *Unlawful and deadly: Rocket and Mortar Attacks by Palestinian Armed Groups during the 2014 Gaza/Israel Conflict*, March 2015, p.47.

[847] W098, W085, W084.

[848] W098, W085, W084. Also open sources' reports. http://english.palinfo.com/site/pages/details.aspx?itemid=63279. http://rt.com/news/176216-children-gaza-israel-strike/

[849] http://www.mag.idf.il/261-6958-en/Patzar.aspx, accessed 30 May 2015

[850] http://www.aljazeera.com/news/middleeast/2014/07/deaths-as-israel-resumes-gaza-strikes-20147281452469626.html. http://maannews.net/eng/ViewDetails.aspx?ID=716699\. https://news.vice.com/article/israel-denies-responsibility-for-gaza-attack-that-killed-9-children. Interview of the commission with the Chief of Police in Gaza, Mr. Al Batsh.

[851] Confidential submission. Amnesty International, *Unlawful and deadly: Rocket and Mortar Attacks by Palestinian Armed Groups during the 2014 Gaza/Israel Conflict*, March 2015, pp 51-52.

[852] Confidential submission.

journalists who spoke to the commission also suggested the attacks had been caused by Palestinian rockets misfiring. One of them said that Hamas members had gone to the site immediately after the events and cleared away the debris. The other said he had been prevented by local authorities from going to the site of the attack.

489. The commission found there was credible information pointing to the conclusion that a misfired Palestinian rocket was the source of this explosion. Given the gravity of the case, in which 11 children and 2 adults were killed in a place crowded with civilians, and the allegations that local authorities may have attempted to hide evidence of the cause of the incident, all relevant Palestinian authorities should conduct a thorough investigation of the case to determine the origin and circumstances of the attack.

6. Executions of suspected "collaborators'

490. *"There were corpses on top of each other in a pool of blood.[…] There was no respect for the body."*[853]

491. *"Life has become impossible for the family due to the rejection by society and the stigma."*[854]

492. Executions of individuals suspected of "collaborating" with Israel's intelligence services are not uncommon in Gaza. Since 2007, executions, sometimes without trial, have been used to punish alleged "collaborators". Whereas in 2010 and 2013 the local authorities in Gaza launched two major amnesty campaigns to persuade potential "collaborators" to give up this "cooperation", the 2014 hostilities were marked by an upsurge in extrajudicial executions of individuals alleged to have spied for Israel. Most of the executions were public. The fact that the majority of the victims had been arrested and detained before the conflict prompts concerns that they were executed in order to increase pressure on Gaza's population, with a view to preventing others from spying.

493. The commission conducted ten interviews with witnesses and examined other relevant materials, including official documents from the State of Palestine, NGO reports, lists with names of victims, twitter statements by Palestinian armed groups, and news items. Gathering reliable information on these executions was particularly challenging as family members of the victims and other persons with knowledge about the trials and executions generally were reluctant to give testimony.

494. Based on its research, the commission documented summary executions of at least 21 persons, including one woman,[855] committed between 5 and 22 August 2014 in Gaza City, allegedly for being collaborators for Israel.[856] Five summary executions occurred on 5 August, one on 11 August, and at least 15 on 22 August. The people executed on 5 August, and at least 11 persons executed on 22 August, were taken from Al-Katiba prison where they had been held in the custody of the local authorities in Gaza and shot by firing squad.[857] Of these 16 executions, 8 persons had trials on-going and 2 had received prison sentences after conviction. The other 6 individuals had challenged death sentences imposed

[853] W005
[854] W022
[855] W202
[856] This figure on extrajudicial executions is lower than the one reported by HRW (25 persons) http://tinyurl.com/qdh2rwy and the figure communicated by Amnesty international (23 persons). The commission's figures are based on confirmed lists of names that were furnished by various sources in Gaza. (Testimony W202).
[857] See also: Amnesty International: Strangling necks. May 2015; at: https://www.amnesty.org/en/documents/mde21/1643/2015/en/

under the PLO Revolutionary Penal Code of 1979 and were waiting for the decisions on their appeals.[858]

495. On 7 August, Al Qassam Brigades, the armed branch of Hamas, claimed responsibility for the 5 August executions, declaring that the persons executed were "found guilty of giving information on the whereabouts of fighters and civilian houses".[859] On 22 August, Al Qassam Brigades announced the execution of 11 persons in the morning[860] and 7 after the Friday prayers at Al Omari mosque[861].

496. The 22 August executions occurred a day after three Al Qassam commanders were killed by the IDF in Rafah[862] and were followed by the announcement of a security campaign against "collaborators" dubbed "Operation Strangling Necks".[863] In the morning of 22 August, 11 Al Katiba detainees were executed outside the abandoned Al Jawazat police station[864] and Hamas reportedly warned that "the same punishment would soon be imposed on others".[865] On the same morning, masked men reportedly read a Hamas statement outside Al Omari mosque announcing that several "collaborators" had been sentenced to death.[866] As worshippers were leaving the mosque, at least six persons were executed in front of them by masked men.[867]

497. Several of the commission's interlocutors mentioned that some of the above alleged "collaborators" were ill-treated and tortured while in detention or under custody, including by beatings. Others have documented abduction and torture perpetrated by Hamas during the 2014 hostilities[868]. Although the commission was unable to verify these allegations, it recalls that torture and ill-treatment are prohibited under international law and require prompt and impartial investigations. It also appears that some of the executions and cases of ill-treatment were directed against persons who had links with Fatah and the Palestinian authorities' security forces and may have been acts of revenge.

498. Representatives of the local authorities in Gaza told the commission that the executions were carried out by self-organized Palestinian factions operating in secrecy, without instructions from the authorities.[869] They informed the commission that the local

858 W024, W005, W022 and W023; see also: Amnesty International: Strangling necks. May 2015; at: https://www.amnesty.org/en/documents/mde21/1643/2015/en/;

859 News reports. http://tinyurl.com/psv72pw, http://www.ahdath.info/?p=11335, http://tinyurl.com/ms2z7lk**;** http://tinyurl.com/ots3rqd

860 https://twitter.com/qassam_arabic1/status/502741612347527168

861 https://twitter.com/kmmt727/status/502773666724052992

862 Sama news. 2 January 2015. At http://samanews.com/ar/index.php?act=post&id=223695

863 Al Majd, undated. At http://www.almajd.ps/?ac=showdetail&did=5898

864 Amnesty International: Gaza: Hamas must end summary executions as 'informers' face firing squad. 22 August 2014, at: https://www.amnesty.org/en/articles/news/2014/08/hamas-must-end-summary-executions-informers-face-firing-squad/

865 Amnesty International: Gaza: Hamas must end summary executions as 'informers' face firing squad. 22 August 2014, at: https://www.amnesty.org/en/articles/news/2014/08/hamas-must-end-summary-executions-informers-face-firing-squad/ ; BBC: Gaza: Hamas says 18 suspected informants executed. 22 August 2014. At http://www.bbc.com/news/world-middle-east-28896346

866 Amnesty International: Strangling necks. May 2015; p. 19; at: https://www.amnesty.org/en/documents/mde21/1643/2015/en/

867 Amnesty International: Strangling necks. May 2015; p. 19; at: https://www.amnesty.org/en/documents/mde21/1643/2015/en/

868 Amnesty International: Strangling necks. May 2015; p. 28-33; at: https://www.amnesty.org/en/documents/mde21/1643/2015/en/

869 W069 and W265; note also Abbas's statement quoted by Amnesty International; Amnesty International: Gaza: Hamas must end summary executions as 'informers' face firing squad. 22 August

authorities had purportedly created a body to investigate allegations of extrajudicial killings. The Ministry of Interior of the State of Palestine said that "The Palestinian President and Government have frequently condemned the arbitrary executions carried out during the attack against the Gaza Strip, describing them as illegal. The Government of National Consensus, formed just days before the attack, did not have a presence on the ground in the Gaza strip effective enough to enable its judicial organs to investigate such acts. The Palestinian Public Prosecutor's Office has still not been able to exercise its legal jurisdiction by investigating and prosecuting the perpetrators of those actions."[870] The commission learned that a draft law to strengthen judicial and procedural safeguards for the prosecution of alleged "collaborators" and pave the way for the abolition of the death penalty has been put forward by the State of Palestine.[871] Government authorities have pledged to investigate 25 cases of summary executions that were brought to its attention once it recovers control over the Gaza strip.[872]

499. The summary executions had devastating consequences that extend well beyond the acts themselves. Since they are widely perceived as evidence of the victims' guilt, the stigma that accompanies them "punishes" the relatives. Witnesses spoke of the executions as indelible stains on the family's reputation and honour, which can be long-lasting and translate into various forms of discrimination, including in terms of access to education and employment. Witnesses described how relatives of those executed face exclusion and could not find jobs as a result of the executions. They also pointed out that they did not believe that there was any chance that the perpetrators would be brought to justice. Moreover, the witnesses requested that their identities remain confidential as they feared retaliation by members of the political leadership or by society at-large for speaking out. Although the local authorities told the commission that specialized social affairs committees had been set up to support the families of persons accused of collaboration, the far-reaching effects of stigma call for a stronger response to ensure that the civil, political, social and economic rights of the relatives are fully protected.

500. With regard to the detainees taken from Al Katiba prison, where they had been in the custody of the local authorities in Gaza while their judicial proceedings were pending, the commission is concerned by the statement by the local authorities that the executions were carried out by Palestinian armed groups without any participation by the local authorities. Given that ensuring the safety of the detainees was the responsibility of the authorities, the latter appear to have been complicit in the executions.

501. The commission is of the view that inmates were transferred out of the prison and summarily executed with the apparent knowledge of the local authorities in Gaza, in violation of their obligation to protect the right to life and security of those in their custody. These extrajudicial executions, many of which were carried out in public, constitute a violation of both international humanitarian law and international human rights law. Article 6 of the International Covenant on Civil and Political Rights protects the right to life and cannot be derogated from, not even "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" (article 4). International human rights law imposes the duty on relevant authorities to investigate, prosecute and

2014, FN 20; at: https://www.amnesty.org/en/articles/news/2014/08/hamas-must-end-summary-executions-informers-face-firing-squad/

870 HRC/NONE/2015/36, p. 7

871 W167

872 W167 and HRC/NONE/2015/36; State of Palestine, Ministry of Foreign Affairs: Reply to requests for clarification from the UN CoI on the 2014 Gaza Conflict

punish violations of the right to life, in line with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions[873].

502. Because of their link to the armed conflict, the extrajudicial executions constitute a violation of article 3 common to the 1949 Geneva Conventions, which, in relation to "persons taking no active part in the hostilities […] and those placed "hors de combat" by […] detention, prohibits (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture […]; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples" and amount to a war crime. Whoever is responsible for the killings, whether the Al Qassam Brigades, other Palestinian armed groups, or the local authorities, must be brought to justice.

B. The West Bank, including East Jerusalem

503. On 12 June 2014, 19-year-old Eyal Yifrah and 16-year-olds Gilad Sha'er and Naftali Frenkel were abducted and brutally murdered. Last seen near the Israeli settlement bloc of Gush Etzion in the southern West Bank,[874] their bodies were discovered northwest of Hebron on 30 June 2014.[875] In response to their kidnapping, from 12 to 30 June 2014, Israel launched Operation 'Brother's Keeper', which the IDF stated aimed to find the three youths and simultaneously "weaken Hamas terror".[876] On 23 September 2014, the IDF declared that these objectives were met.[877]

504. The period of June to September 2014 was marked by heightened tensions in the West Bank, including East Jerusalem. Israeli security forces (ISF) conducted widespread raids on Palestinian homes and other civilian buildings, carried out mass arrests, and detained large numbers of Palestinians, including children. Israel imposed severe restrictions on Palestinians' movement within and out of the West Bank, as well as on Palestinian access to the Al Aqsa Mosque. In addition, Israel resumed its practice of punitive house demolitions.

505. During this period, there was also a stark rise in deaths and injuries of Palestinians by the ISF. These occurred in the context of protests by Palestinians in the West Bank against Israel's air and ground offensives into Gaza and ensuing clashes, as well as during confrontations between Palestinians and the ISF following the vicious murder of 16-year-old Mohammad Abu Khdeir, from the Shu'fat neighbourhood of East Jerusalem, who was found burnt to death in West Jerusalem on 2 July 2014, in an apparent act of revenge for the murdered Israeli teenagers. An increase in ISF search and arrest operations in refugee

873 adopted by Economic and Social Council resolution 1989/65; see: ohchr.org/Documents/ProfessionalInterest/executions.

874 https://www.idfblog.com/blog/2014/09/23/abductors-three-israeli-teenagers-targeted-hebron/ ; http://mfa.gov.il/MFA/PressRoom/2014/Pages/Terrorists-responsible-for-abduction-and-murder-of-teens-apprehended-23-Sep-2014.aspx (accessed on 31 May 2015).

875 Israel Ministry of Foreign Affairs, Terrorists responsible for abduction and murder of teens apprehended, 23 September 2014, at http://mfa.gov.il/MFA/PressRoom/2014/Pages/Terrorists-responsible-for-abduction-and-murder-of-teens-apprehended-23-Sep-2014.aspx (accessed on 31 May 2015)

876 https://www.idfblog.com/IDFsummary2014/ (accessed on 31 May 2015)

877 Israel Ministry of Foreign Affairs, Terrorists responsible for abduction and murder of teens apprehended, 23 September 2014, at http://mfa.gov.il/MFA/PressRoom/2014/Pages/Terrorists-responsible-for-abduction-and-murder-of-teens-apprehended-23-Sep-2014.aspx (accessed on 31 May 2015)

camps was also often the catalyst for confrontations.[878] According to information reviewed by the commission, during these clashes and confrontations, Palestinians threw stones and, in some cases, Molotov cocktails and fireworks; and in isolated instances fired live ammunition. The ISF used tear gas, rubber bullets, rubber-coated metal bullets, and regularly resorted to live ammunition.[879] There appear to have been spikes in the number of confrontations, including in refugee camps, in connection with key developments or incidents, such as the launch of Operation 'Protective Edge' and the killing of Mohammad Abu Khdeir.[880]

506. During the month of July 2014, the Israel Security Agency recorded a "sharp increase in attacks and riots" by Palestinians in the West Bank and Jerusalem,[881] with 424 attacks in the West Bank and 83 in Jerusalem.[882] According to their records, the number of incidents declined in August 2014 (241 attacks in the West Bank and 69 in Jerusalem),[883] and again in September 2014 (89 attacks in the West Bank and 25 in Jerusalem).[884] There were no statistics available in the monthly reports of the Israel Security Agency during this period on incidents of settler violence. Nevertheless, the commission received information indicating that settler violence against Palestinians and their property continued unabated[885] in an ongoing climate of impunity,[886] and that settlement related activity was ongoing.[887]

507. According to information received by the commission, after the abduction of the Israeli youths, tensions were further fueled by a rise in extreme anti-Palestinian rhetoric by some Israelis, notably in social media, inciting revenge and hatred against Palestinians; as well as reported harassment; and sometimes, attacks on Palestinians and damage to businesses employing Palestinians.[888] The anti-Palestinian rhetoric included sexual and negative references to female relatives of persons connected with armed groups and individuals killed during the conflict.[889]

878 Submission 46.2

879 UN OCHA Humanitarian Bulletin (June-August 2014)

880 Submission 46.2

881 The Israel Security Agency does not disaggregate data between East and West Jerusalem, but rather refers to Jerusalem.

882 Monthly summary – July 2014, at http://www.shabak.gov.il/SiteCollectionDocuments/Monthly%20summary%20–%20July%202014%20docx.pdf (accessed on 31 May 2015)

883 Monthly summary – August 2014, at http://www.shabak.gov.il/SiteCollectionDocuments/Monthly%20summary%20–%20August%202014.pdf (accessed on 31 May 2015)

884 Monthly summary – September 2014, at http://www.shabak.gov.il/SiteCollectionDocuments/Monthly%20summary%20–%20September%202014.pdf (accessed on 31 May 2015)

885 Joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights

886 Yesh Din, Data Sheet, November 2014, at http://www.yesh-din.org/infoitem.asp?infocatid=636 (accessed on 31 May 2015)

887 Peace Now, Unprecedented land confiscation of 4,000 dunams near Bethlehem, 31 August 2014, and Alarming Developments on the Ground, 7 July 2014, at http://peacenow.org.il/eng/GvaotDecleration and http://peacenow.org.il/eng/3-New-Outposts respectively (accessed on 31 May 2015)

888 A/HRC/28/80/Add.1, para. 7.

889 Haaretz, *Israeli professor's 'rape as terror deterrent' statement draws ire*, 22 July 2014, at http://www.haaretz.com/news/national/.premium-1.606542#!; The Daily Beast, Israeli Politician Declares 'War' on 'the Palestinian People', 7 July 2014, at http://www.thedailybeast.com/articles/2014/07/07/israeli-politician-declares-war-on-the-palestinian-people.html (accessed on 15 May 2015). The Facebook page, previously at: https://www.facebook.com/ayelet.benshaul.shaked/posts/596568183794945, has been removed.

508. The commission received information indicating that Palestinian security forces suppressed a number of protests against the hostilities in Gaza, held in the West Bank. In addition, between 13 June and end September 2014, the Palestinian Authority allegedly arrested and detained 13 suspected political opponents or persons expressing dissenting views.[890] In isolated instances, those detained reported ill-treatment.[891]

Mass arrest and detention

509. The ISF carried out mass arrests in the West Bank, including East Jerusalem, arresting over 2,050 Palestinians between June and end September 2014.[892] Many of those detained were released just a short time after their arrest, making it difficult to obtain an exact figure.[893] They included 27 members of the Palestinian Legislative Council and over 60 individuals who had been liberated as part of a 2011 prisoner exchange that secured the release of Israeli soldier Gilad Shalit.[894] The commission was informed that, in many cases, including those of children, families were not notified of the arrest and whereabouts of their relative.[895]

510. The commission heard testimony relating to the arrest of about thirty young men of the Abu Khdeir family, including a 17-year-old minor, for allegedly throwing stones and destroying public property during the funeral of Mohamed Abu Khdeir in East Jerusalem on 4 July 2014. Police allegedly forced their way into one of the houses of the Abu Khdeir family at 3.00 a.m. to look for suspects, despite the plea by eight female family members who had been sleeping in light garments and asked for time to get dressed.[896] A 15-year-old Palestinian-American member of the family, Tareq Abu Khdeir, was also arrested and ill-treated by the ISF in East Jerusalem on 3 July.[897] He was reportedly placed under house arrest until 17 July when he was allowed to leave Israel and return to the United States of America. He was cleared of wrongdoing in January 2015.[898]

511. Those arrested and detained included a significant number of children. In June, July and August 2014, the Israel Prison Service reported that 201, 191 and 200 children respectively, were in military detention.[899] Most children were reportedly held in pre-trial

890 Joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights

891 Ibid.

892 Ibid., citing Addameer

893 A/HRC/28/80/Add.1, para. 14.

894 Ibid.

895 Submission from HaMoked

896 W193

897 Addameer, Urgent appeal, 4 July 2014, http://www.addameer.org/etemplate.php?id=706 ; The Guardian, Palestinian boy Mohammed Abu Khdeir was burned alive, says official, 5 July 2014, at http://www.theguardian.com/world/2014/jul/05/palestinian-boy-mohammed-abu-khdeir-burned-alive (accessed on 10 May 2015)

898 The Jerusalem Post, *Tariq Abu Khdeir cleared of wrongdoing*, 28 January 2015, at http://www.jpost.com/Arab-Israeli-Conflict/Tariq-Abu-Khdeir-cleared-of-wrongdoing-389198 (accessed on 31 May 2015)

899 Military Court Watch, Statistics - Palestinian 'security' prisoners in Israeli detention, at http://www.militarycourtwatch.org/page.php?id=J5V0bQevz8a19020AWwFbv7lxv2 (accessed on 31 May 2015). According to information received by the Commission, the total number of children detained during this period may have been higher since detention figures are provided at the end of each month and appear to exclude children who were arrested and released in the same month.

detention until the end of the judicial proceedings,[900] in relation to accusations of stone throwing; just under half of them were housed in places of detention located in Israel.[901] All were boys, with the exception of one girl; most were between 16 to 17 years old and a significant number aged between 14 and 15.[902]

512. The detention of male family members negatively affected the well-being of the suspects' families, particularly the women and girls who were unprepared to take on the role as the head of households.[903] As a result of cultural, economic and legal inequalities, women remain dependent on male family members.[904]

Administrative detention

513. According to information received by the commission, a significant number of those arrested were placed under administrative detention, without charge or trial. Administrative detainees appear before a military court judge but are not charged with any criminal offense.[905] Based on data provided to NGOs by the Israel Prison Service, the number of administrative detainees more than doubled, from 201 in early June to 449 in early August 2014. NGO B'Tselem recorded 473 administrative detainees, as at the end of August 2014, which appears to be the highest number of administrative detainees since April 2009. According to the Israel Prison Service, over 60 per cent of them had been held for three months or less; some 10 per cent for three to six months; some 13 per cent for six months to one year; some 13 per cent for one to two years; and four detainees for over two years. Some 70 per cent of them were held in facilities located inside Israel. [906] Usually issued for one to six months, administrative detention orders can be renewed indefinitely.[907]

514. While administrative detention is not prohibited *per se* under international law, its use should be limited. Given the considerable number of people held in administrative detention, the commission is concerned that Israel appears to use this form of detention more broadly than justified by the law. Evidence on which the detention order is based is considered secret and is not disclosed to the detainees or their counsel, making it impossible for them to challenge the lawfulness of the detention and rendering any judicial review ineffective.[908] Moreover, the transfer of the majority of these detainees from occupied territory to prisons inside Israel is not only a violation of the Fourth Geneva Convention,[909] but also frequently means that family visits are not possible owing to access and movement restrictions.

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900 Submission 43; see also Haaretz, *In Israel, a different fate for detained Palestinian youths*, 23 May 2014, at http://www.haaretz.com/news/diplomacy-defense/.premium-1.592352#! (accessed on 15 May 2015)

901 See paragraphs above for legal framework regarding the transfer of detainees outside occupied territory.

902 Military Court Watch, Statistics - Palestinian 'security' prisoners in Israeli detention, at http://www.militarycourtwatch.org/page.php?id=J5V0bQevz8a19020AWwFbv7lxv2 (accessed on 31 May 2015)

903 Submission 41

904 W283

905 A/HRC/28/80, para. 33

906 Submission from HaMoked; B'Tselem, Israel holding more than 470 Palestinians in administrative detention – highest number in 5 years, 7 October 2014, at http://www.btselem.org/administrative_detention/20141007_spike_in_number_of_administrative_detainees (accessed on 31 May 2015)

907 A/HRC/28/80, para. 33

908 For further details on the use administrative detention under international law, see A/67/372, para. 26.

909 Art. 76, Geneva Convention IV

515. In its November 2014 concluding observations, the UN Human Rights Committee expressed concern "at the continuing practice of administrative detention of Palestinians, at the fact that in many cases the detention order is based on secret evidence and at the denial of access to counsel, independent doctors and family contacts (arts. 4, 9, and 14)." It recommended that Israel "[e]nd the practice of administrative detention and the use of secret evidence in administrative detention proceedings, and ensure that individuals subject to administrative detention orders are either promptly charged with a criminal offence, or released."[910]

Torture and ill-treatment of adults and children

516. No official data was available to the commission regarding interrogations by the Internal Security Agency or on the use of torture under the justification of "defence of necessity".[911] However, the commission reviewed information suggesting that cruel, inhuman or degrading treatment or punishment was used extensively during interrogations in the period under examination.[912] Indeed, such allegations were persistently raised by persons arrested and detained and by persons detained prior to the period under examination, who stated that they were re-interrogated.[913]

517. Specifically in relation to children, the commission interviewed three 14 to 17-year-old boys, who were arrested by ISF in East Jerusalem, Nablus and Jenin, in June, July and early August respectively;[914] reviewed the affidavits and testimonies of a number of minors arrested in the West Bank during this period, whose cases were documented by NGOs; and spoke to two lawyers handling cases of Palestinian children detained in the West Bank.[915] All of the children, whose testimonies were examined, said that they were subjected to multiple forms of cruel, inhuman or degrading treatment involving soldiers, interrogators, or prison guards during the various stages of arrest, transfer, interrogation and/or detention.

518. These accounts are consistent with findings of UN bodies and NGOs in recent years.[916] In November 2014, the Human Rights Committee expressed concern "at reports of the use of torture and other ill-treatment in the State party's detention facilities, including

910 CCPR/C/ISR/CO/4, para. 10

911 Torture practised under the "defence of necessity" continues to be legal under Israeli law, as noted with concern by the Human Rights Committee in November 2014 (CCPR/C/ISR/CO/4, para. 14).

912 Joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights; Public Committee Against Torture in Israel, Israel - Briefing to the Human Rights Committee for the Committee's Review of the Fourth Periodic Report on Israel, September 2014, at http://www.stoptorture.org.il/files/PCATI%20submission%20to%20HRC%202014_0.pdf (accessed on 27 May 2015)

913 Joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights; Public Committee Against Torture in Israel, Israel - Briefing to the Human Rights Committee for the Committee's Review of the Fourth Periodic Report on Israel, September 2014, at http://www.stoptorture.org.il/files/PCATI%20submission%20to%20HRC%202014_0.pdf (accessed on 27 May 2015)

914 W184; W170; W165

915 W094; W154

916 UNICEF, Children in Israeli Military Detention - Observations and Recommendations, February 2013; Military Court Watch, Children in Military Custody, 1 September 2014, at http://www.militarycourtwatch.org/files/server/CHILDREN%20IN%20MILITARY%20CUSTODY%20-%202%20YEARS%20ON%20(1).pdf; Submissions from Adalah and Aldameer Association for Human Rights; A/68/379

widespread, systematic and institutionalized ill-treatment of Palestinian children",[917] and called on Israel to "take robust measures to eradicate torture and ill-treatment against adult and child detainees".[918]

Raids on homes

519. *"At around 2 a.m., they shot a bomb and suddenly a wall collapsed. I saw blood coming out of my left arm, we were sure that we would die. At the time I didn't see the injuries in my leg… My wife tried to dial a number but she was missing one finger."* A Palestinian father of three[919]

520. In the context of search and arrest operations, the ISF allegedly raided hundreds of Palestinian homes as well as charitable associations, universities and media outlets.[920] Reports indicated that the ISF often forcibly entered homes in the early hours of the morning, while family members were asleep,[921] and that many of the raids resulted in significant damage to property, and, in some cases, theft of valuables.[922] According to OCHA, approximately 1,400 houses were raided, including at least 280 cases of reported damage; and at least 47 houses were occupied by the ISF for periods ranging from several hours to a few days.[923]

521. The homes of the Rushdi family were raided by an IDF unit shortly before 2.00 a.m. on 26 June 2014. According to eyewitness reports,[924] the Israeli authorities cut off the electricity supply to the area before launching the raid. Some 40 soldiers conducted a search into two adjacent houses belonging to the extended family. An elderly female family member, described by witnesses as frail, allegedly fell to the ground when soldiers forced their way inside the home and reportedly ransacked the furniture and equipment. The commission was informed that the victim suffered a stroke and that her calls for help went unheeded by the IDF. The elderly woman was moved to a room with her daughter-in-law, while four children, under the age of five, were held in a separate room. Family members made repeated pleas to the IDF for an ambulance, as the elderly woman's condition deteriorated, with blood emanating from her mouth; but their calls were allegedly ignored. Medical assistance finally came in the form of a doctor of the IDF over 90 minutes after the victim's collapse, and eventually of an ambulance at around 4.00 a.m., by which time the victim had died.

522. On 11 August 2014, five members of the Aza'ar family were injured during a search and arrest operation by the IDF. The children, aged six, eight and fourteen, were wounded, as were their parents, allegedly after the IDF shot and shelled their house while searching for a suspect who, the IDF told the victims, had used their family home as a base from which to shoot at the soldiers. The victims said that they were not asked to evacuate the house before the IDF began its operation.[925]

[917] CCPR/C/ISR/CO/4, para. 15
[918] Ibid.
[919] W146
[920] Submission from Addameer Prisoner Support and Human Rights Association; OCHA, Protection of Civilians, Weekly Report, 17-23 June 2014; A/HRC/28/80/Add.1, para. 6
[921] Joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights
[922] Ibid.; A/HRC/28/80/Add.1, para. 6
[923] OCHA, Humanitarian Bulletin, monthly report, June - August 2014
[924] W185; W190
[925] W146 and W147

523. The commission received information regarding the psychological impact of such operations on family members, particularly women, including stress and lack of sleep.[926] This was exacerbated in the case of raids conducted in night-time hours. In two of the incidents examined by the commission, women said that they were threatened, mistreated and interrogated by the IDF during raids on their homes,[927] and expressed a sense of humiliation as the situation challenged their physical and moral integrity. The women were questioned about male relatives and their whereabouts and connections to Palestinian armed groups without the presence of a female officer. In one of these cases, the soldiers allegedly denied the request of the women to get dressed before being questioned.[928] In the other case, the woman's brother-in-law was beaten severely in front of his children when he objected to his brother's wife being questioned on her own by male soldiers on the basis that it violated Palestinian cultural norms for a woman to be alone with men outside of her family. After the beating, the woman was allegedly taken into a separate room and interrogated by four soldiers for several hours.[929] Overall, during this period, child protection actors working in the West Bank noted a dramatic increase in psychosocial interventions to support children and their families, notably those affected by house raids.[930]

Restrictions on movement

524. The period also saw intensified restrictions on movement for Palestinians in the West Bank, with residents of the Hebron area, and notably Hebron city, particularly adversely affected. As of the outset of Operation 'Brother's Keeper', Hebron's 680,000 residents were effectively cut off from the rest of the West Bank owing to a series of closures, checkpoints and other restrictions.[931] Male residents of Hebron aged 16 to 50 were prohibited from traveling to Jordan via the Allenby Bridge, which had been their only means to travel abroad.[932] The commission was informed that the Palestinian Police Crossing Administration recorded that Israeli authorities prevented 3,393 Palestinians from crossing the Allenby Bridge between 13 June and 13 August 2014, due to security preclusions, in comparison to 1,266 who were turned away over all of 2013.[933] It appears that many of the affected individuals were visiting their families in the West Bank, while studying or working abroad.[934] Among them was an engineer from the Jenin area who was working in Qatar. On 9 August 2014, the ISF at Allenby Bridge allegedly prevented him and his seven-year-old daughter from returning to Qatar via Jordan for 'security reasons'. He was thus separated from his wife and two other children who were in Jordan, and feared losing his job if he was unable to report to work.[935] Overall, restrictions on movement

926 Women's Centre for Legal Aid and Counselling, Moving Forward despite a Precarious Existence, 31 July 2014, at http://www.wclac.org/english/userfiles/WCLAC%202014%20Semi%20Annual%20Report.pdf (accessed on 1 May 2015);

927 W193; W214.

928 W193

929 W214

930 OCHA, Humanitarian Bulletin, monthly report, June - August 2014

931 Ibid.; A/HRC/28/80/Add.1, para. 19

932 A/HRC/28/80/Add.1, para. 19; Submission from HaMoked

933 Submission from HaMoked

934 Ibid.; Joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights

935 Joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights

prevented many Palestinians from accessing services, markets, education and workplaces and generated significant economic losses.[936]

525. In relation to the right to liberty of movement, guaranteed under article 12 of the International Covenant on Civil and Political Rights, the Human Rights Committee called on Israel, in November 2014, to "take all necessary measures with a view to ensuring respect for the right to freedom of movement for Palestinians throughout the OPT, comprising the West Bank, including East Jerusalem, and the Gaza Strip, and ensure that any restrictions on freedom of movement are in line with its obligations under the Covenant."[937]

Punitive home demolitions

526. According to information reviewed by the commission,[938] on 2 July 2014, the IDF demolished a home in Ithna, Hebron, belonging to the family of a suspect accused of killing an Israeli policeman in April 2014. As a result, a mother and her five children lost their home.[939] This was followed, on 18 August 2014, by the demolition of two homes and the sealing of a third,[940] of three persons suspected of involvement in the abduction and murder of the Israeli youths. On 30 June 2014, the families had been forcibly evacuated from their homes, and the ISF had allegedly set off explosions in the houses in order to render them uninhabitable. As a result of the actions on 30 June and 18 August 2014, 21 people, including at least 9 children, were displaced.[941] Orders to demolish or seal a house were issued in November 2014 for a further six homes in East Jerusalem of Palestinian suspects alleged to have carried out lethal attacks.[942]

527. The commission notes the particular effect that home demolitions have on women and children. As a result of fixed gender roles and prevailing cultural norms, Palestinian women's lives are centred around the home and their presence in the public sphere is limited.[943] The challenges women face in relation to home demolitions are exacerbated by

[936] Submission from HaMoked; joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights; B'Tselem, Hebron District and its 680,000 residents under third day of closure: increasing reports of property damage in arrest raids, at http://www.btselem.org/press_releases/20140617_collective_punishment_in_hebron_district (accessed on 31 May 2015); OCHA, Humanitarian Bulletin, monthly report, June - August 2014

[937] CCPR/C/ISR/CO/4, para. 18.

[938] A/HRC/28/80/Add.1, paras. 17-18, submission from HaMoked; joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights; OCHA Protection of Civilians, Weekly Report, 12-18 August 2014. http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_8_22_english.pdf

[939] Submission from HaMoked

[940] Sealing involves the complete or partial closing off of rooms in a house with metal sheeting or by filling them with concrete. This can, at times, be an irreversible act.

[941] OCHA Protection of Civilians Weekly Report, 12-18 August 2014

[942] Special Rapporteurs on the situation of human rights in the Palestinian territories occupied since 1967 and on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Palestinian homes must cease to be a target, UN human rights experts say, 25 November 2014, at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15340&LangID=E (accessed on 31 May 2015); submission from HaMoked.

[943] Women's Centre for Legal Aid and Counselling, Moving Forward despite a Precarious Existence, 31 July 2014, at

discrimination within the society itself,[944] including difficulties securing tenure and managing and accessing property and other assets.[945]

528. In each case, the NGO HaMoked petitioned the High Court of Justice to challenge the legality of the home demolitions and prevent them from taking place.[946] According to the information received by the commission, the High Court of Justice repeatedly dismissed the petitions, with the exception of one case, in which it issued an order *nisi*, instructing the state to explain why it should not refrain from carrying out the demolition.[947] On 31 December 2014, the Court rejected a general public petition, presented by eight Israeli NGOs, against the policy of punitive home demolitions.[948] In its judgement, the Court accepted the State's reasoning that these demolitions were necessary on security grounds and in order to act as a deterrent.[949] The Court did add that, from time to time, State agencies should evaluate the effectiveness of such demolitions for deterrence purposes, to the extent possible, and bring data to the Court in the future, if so required.[950]

529. With the exception of the punitive demolition of two homes in 2009, Israel had effectively suspended the practice of punitive home demolitions in 2005, after a military commission recommended that Israel stop resorting to house demolitions of "terrorists" in the West Bank as a means of deterrence against attacks on Israelis, and noted their adverse effects.[951] This had been a welcome development.

530. The commission is therefore concerned about the resumption of a practice that risks further fueling hatred and the cycle of violence, rather than achieving its stated objective of deterrence. Moreover, punitive home demolitions are generally not subject to a judicial process to determine the guilt, or innocence, of the suspect or family members affected by the demolition. The impact of the punitive demolition of a home affects entire families, including those with no link to the alleged crime, and therefore constitutes collective punishment, in violation of international humanitarian law.[952] Bearing this in mind, the commission is concerned that the High Court of Justice did not accept the aforementioned petition against the policy of home demolitions, and rejected the claim that any demolition, "regardless of its specific circumstances, necessarily amounts to collective punishment".[953]

531. Home demolitions also violate Israel's obligations under international human rights law, notably the rights to adequate housing (as a component of the right to an adequate standard of living), family life, and physical and mental health. In November 2014, the Human Rights Committee called on Israel to "[i]mmediately put an end to conducting punitive demolitions given their incompatibility with the State party's obligations under the

http://www.wclac.org/english/userfiles/WCLAC%202014%20Semi%20Annual%20Report.pdf (accessed on 1 May 2015)

944 Ibid.; W283

945 Norwegian Refugee Council, at http://womenshlp.nrc.no/countries/palestine-gaza/ (accessed on 15 May 2015)

946 Submission from HaMoked

947 Ibid.

948 According to HaMoked, on 15 January 2015, the organisations applied for another hearing of the petition before an expanded panel of justices.

949 HCJ 8091/14

950 Ibid.

951 The report of the military commission was not publicly available, but a presentation of slides, submitted to the High Court of Justice, can be found at: http://www.hamoked.org.il/items/110467.pdf. See slides 30 and 29.

952 Art. 33, Geneva Convention IV

953 HCJ 8091/14

Covenant and provide effective remedies to victims of destruction of property, forced eviction and forcible transfer".[954]

Deaths and injuries of Palestinians during law enforcement activities

532. *"We were a number of young people in Bethlehem. We didn't have any arms. We were just shouting slogans. We weren't a threat to anyone, but at 8pm it happened*."[955] Palestinian human rights defender Farid Al Atrash, who was shot in the leg by live ammunition.

533. According to the UN, between 12 June and 26 August 2014,[956] 27 Palestinians, including five children,[957] were allegedly killed and over 3,100 Palestinians, including 460 children, were injured by the ISF.[958] Documentation by NGOs suggests that this figure rose again by end September.[959] Of the 27 fatalities, the UN found that 14 "were incurred in clashes that erupted following protests against the hostilities in Gaza and restrictions on access to Al Aqsa Mosque", and seven took place in the context of confrontations during search and arrest operations. Nine of the fatalities, including three of the children, were killed in the Hebron area. Casualty figures represented a three-fold increase in comparison to the first five months of 2014.[960] The commission examined 14 cases of killings, including three children, and nine cases of injuries, of which three were children. Based on information collected by the commission, young persons in their late teens and early 20's were particularly at risk, in part due to their significant presence or participation during protests and their perceived or actual involvement in stone-throwing.

534. On 20 July 2014, Farid Al Atrash, a Palestinian human rights defender, was injured in his leg after being hit by live ammunition during a demonstration in solidarity with the people in Gaza. He told the commission that he was peacefully participating in the demonstration in Bethlehem, when he was hit in the calf with live ammunition.[961] He said he heard no gunshot. Some protestors were allegedly throwing stones, and the IDF responded by using crowd dispersal techniques, such as sound bombs and tear gas.[962] Clashes between Palestinians and the IDF reportedly went on until the early hours of the morning. The victim explained that the protest had taken place near Al Qubba checkpoint (also known as checkpoint 300 near Rachel's Tomb) and that Israeli soldiers stationed behind the 'Wall' came out of the gate in the 'Wall' after the clashes intensified and confronted the protestors.

535. On 25 July 2014, three Palestinian men - Hashem Abu Maria, Sultan Za'qiq and Abdelhamid Breighith - were killed during a demonstration that took place in the village of

954 CCPR/C/ISR/CO/4, para. 9

955 W155

956 This period represents the date when the three Israeli youths were abducted until the declaration of a ceasefire in Gaza.

957 A/HRC/28/80/Add.1, para. 10

958 OCHA, Humanitarian Bulletin, monthly report, June - August 2014

959 Joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights; B'Tselem, Palestinians killed by Israeli security forces in the West Bank, after operation Cast Lead, at http://www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-death/westbank/palestinians-killed-by-israeli-security-forces (accessed on 31 May 2015)

960 OCHA, Humanitarian Bulletin, monthly report, June - August 2014 http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_10_03_english.pdf

961 W155

962 Ibid.; see also Panet at http://www.panet.co.il/article/831637

Beit Umar in the Hebron area to protest against the hostilities in Gaza. In its assessment of the incident, the commission relied on eyewitness testimony, as well as information gathered by OHCHR and NGOs.[963]

536. According to the information reviewed, Hashem Abu Maria was killed first, when standing 100-250 metres away from a group of snipers stationed on the rooftop of a building. An eyewitness, standing next to the victim, told the commission that a masked sniper pointed a "long weapon" in their direction, "even if there was no stone throwing" from where they were standing.[964] The witness stated that a single bullet traversed Abu Maria's chest, making a four centimetre hole in his back, and injured another man, Mohammad Awad, in the head, before deflecting off a wall. Hashem Abu Maria was quickly transferred by protesters to an ambulance and taken to hospital, where he was pronounced dead. Mohammad Awad survived the incident. Hashem Abu Maria was a well-known civil society activist, who worked for the NGO Defence for Children International, in the Hebron area. Eyewitness testimony received by the commission corroborates the finding by OHCHR that Hashem Abu Maria was not taking part in the clashes.[965]

537. According to the information available, Sultan Za'qiq was the second to be killed by live ammunition, after being felled by a single bullet. Abdelhamid Breighith was shot subsequently by live ammunition in his leg, as he tried to drag Sultan Za'qiq back behind a wall where they had earlier taken shelter from tear gas and rubber bullets that were fired against protestors, some of whom were throwing stones at the ISF.[966] Another shot hit Abdelhamid Breighith in the area of his abdomen.[967] The two men appeared to have been hit by a sniper stationed on a rooftop.[968] Both men were taken to hospital by ambulance, but neither survived. There was no indication that Abdelhamid Breighith had thrown stones.

538. Neither Hashem Abu Maria nor Abdelhamid Breighith appear to have posed a direct or imminent threat to the IDF soldiers or any other persons. With regard to Sultan Za'qiq, Human Rights Watch gathered information indicating that he may have been throwing stones -- with his hand rather than a sling -- but was located some 35 metres from the nearest soldiers at the time he was shot, leading the organisation to conclude that "[u]nder the circumstances, it appears extremely unlikely that Za'aqiq posed an imminent lethal threat to Israeli forces".[969]

539. In a separate incident on the same day (25 July 2014), 22-year-old Tayyeb Abu Shehadeh was killed in the village of Huwara in the Nablus area. According to eyewitness

963 W213; Human Rights Watch, Israel: Shooting Deaths after West Bank Protest Evidence Points to Unlawful Killings by Israeli Forces, 3 August 2014, at http://www.hrw.org/news/2014/08/03/israel-shooting-deaths-after-west-bank-protest-0 (accessed on 15 May 2015); B'Tselem, 13 Palestinians killed by Israeli security forces in West Bank since Operation Protective Edge began: Excessive use of live fire suspected, 29 July 2014, at http://www.btselem.org/press_releases/20140729_13_palestinian_fatalities_since_gaza_operation_begun (accessed on 15 May 2015); A/HRC/28/80/Add.1, para. 13.

964 W213

965 A/HRC/28/80/Add.1, para. 13.

966 Information provided by Al Haq; see also Human Rights Watch, Israel: Shooting Deaths after West Bank Protest Evidence Points to Unlawful Killings by Israeli Forces, 3 August 2014, at http://www.hrw.org/news/2014/08/03/israel-shooting-deaths-after-west-bank-protest-0 (accessed on 15 May 2015)

967 Ibid.; information provided by Al Haq

968 Human Rights Watch, Israel: Shooting Deaths after West Bank Protest Evidence Points to Unlawful Killings by Israeli Forces, 3 August 2014, at http://www.hrw.org/news/2014/08/03/israel-shooting-deaths-after-west-bank-protest-0 (accessed on 15 May 2015)

969 Ibid.

testimony and other material reviewed by the commission,[970] he was shot by an Israeli soldier during clashes between Palestinians and the IDF. The clashes were triggered by the killing, earlier that day, of Khaled Odeh by a settler. Eyewitness testimony indicates that tear gas was used to disperse the protestors at the beginning of the clashes. Tayyeb Abu Shehadeh apparently hid in an alley and appeared at times to throw stones at the IDF. According to the information available, a soldier aimed his weapon at the alley and shot Tayyeb Abu Shehadeh in the face when he emerged. The victim was rushed to hospital in a private vehicle, but did not survive.

540. Also on the evening of 25 July 2014, a Palestinian man sustained an injury to his leg by live ammunition fired by the IDF. The man told the commission that, in his professional capacity, he was covering a demonstration of several thousand Palestinians, who marched from the centre of Jenin towards the Jalama checkpoint in solidarity with the people of Gaza. Most of the demonstrators were dispersed by the IDF and prevented from reaching the checkpoint. A group of some 150-200 men continued to advance towards the checkpoint, and allegedly threw stones and Molotov cocktails and burnt tyres.[971] The victim said that he continued to observe the events when he felt something metallic in his leg and then felt his leg was "on fire", before falling to the ground and losing consciousness. He noted that he had heard no sound of a bullet before he was hit.[972] A number of other Palestinians were allegedly injured during the incident and 19-year-old Basem Abu Al Rub was killed on the night of 25 to 26 July.[973]

541. On the morning of 10 August 2014, 11-year-old Khalil 'Anati was killed near his house in the al-Fawwar refugee camp in Hebron. According to eyewitness testimony and other material reviewed by the commission,[974] a single live bullet, fired by an IDF solider, entered Khalil's back. Khalil was rushed to hospital in a private vehicle and died en route. Information available indicates that Khalil 'Anati was accompanied by a handful of other boys, some or all of whom may have thrown stones at military vehicles that entered the camp that morning. However, it appears that the area was calm at the time; that the soldiers in the vehicle did not use any non-lethal measures; and that they were not under any serious threat. These elements raise the question as to whether the soldier may have aimed directly at the boy.

542. OHCHR concluded that the number of Palestinians killed by the ISF during this two-and-a-half month period was equivalent to the total number of Palestinians killed in

970 W168; submission 4.2; B'Tselem, Palestinians killed by Israeli security forces in the West Bank, after operation Cast Lead, at http://www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-death/westbank/palestinians-killed-by-israeli-security-forces (accessed on 31 May 2015)

971 W281; joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights; B'Tselem, 13 Palestinians killed by Israeli security forces in West Bank since Operation Protective Edge began: Excessive use of live fire suspected, 29 July 2014, at http://www.btselem.org/press_releases/20140729_13_palestinian_fatalities_since_gaza_operation_begun (accessed on 15 May 2015)

972 W281

973 W281; B'Tselem, 13 Palestinians killed by Israeli security forces in West Bank since Operation Protective Edge began: Excessive use of live fire suspected, 29 July 2014, at http://www.btselem.org/press_releases/20140729_13_palestinian_fatalities_since_gaza_operation_begun (accessed on 15 May 2015); OCHA Protection of Civilians report, 22 July – 4 August 2014; joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights.

974 W227 and W192; B'Tselem finds: No justification for live fire that killed 10-yr-old Khalil 'Anati in al-Fawwar R.C. on 10 Aug. 2014, 21 September 2014, at http://www.btselem.org/firearms/20140921_killing_of_khalil_anati; Submission 46.2

similar circumstances in the whole of 2013.[975] According to OCHA, nearly a quarter of Palestinian injuries in the West Bank between June and August 2014 were sustained as a result of live ammunition, marking a substantial increase in absolute and percentage terms[976] --- from 2 per cent in 2012.[977] According to OHCHR, the proportion of those injured by live ammunition was much lower in East Jerusalem than in the rest of the West Bank.[978]

543. The commission is concerned about the regular resort by the ISF to live ammunition, including in situations where there is no direct or imminent threat to the ISF or other individuals. The use of live bullets inevitably raises the likelihood of death or serious injury. In this context, the commission highlights the apparent increasing trend of the ISF to use 0.22 inch calibre bullets in crowd control situations.[979] A statement made by the IDF commander in the West Bank on 9 September 2014 indicates that 0.22 bullets and other live ammunition were increasingly the munition of choice. He reportedly noted that "[i]n places where we used to fire tear-gas or rubber[-coated metal bullets], we now fire Rutger bullets and sometimes live bullets".[980] On several occasions, eyewitnesses or victims told the commission that they did not hear a bullet being fired.[981] In the aforementioned case of the man injured in the Jenin area, he was informed that the bullet removed from his leg was a 0.22 bullet.

544. The pervasive use of live ammunition, in particular 0.22 inch caliber bullets, combined with the spike in fatalities and casualties arising out of Israel's law enforcement activities in the West Bank, appears to confirm a change in policy or in the open-fire regulations guiding IDF law enforcement operations in the West Bank, despite assurances by the Military Advocate General in 2009 that 0.22 bullets were not classified as riot control means and were not appropriate methods to deal with public disturbances.[982]

545. In the West Bank, the ISF, including the IDF, act in a law enforcement capacity, and should therefore carry out their duties in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[983] Principle 9 states that the use of firearms is authorized in extremely limited circumstances, namely in "self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

975 A/HRC/28/80/Add.1, footnote 12

976 OCHA, Humanitarian Bulletin, monthly report, June - August 2014

977 OCHA, Humanitarian Bulletin, monthly report, June - August 2014

978 A/HRC/28/80/Add.1, para. 10

979 B'Tselem, Military steps up use of live 0.22 inch bullets against Palestinian stone-throwers, 18 January 2015, at http://www.btselem.org/press_releases/20150118_use_of_live_ammunition_in_wb (accessed on 15 May 2015); submission 46.2

980 Ibid. (unofficial translation)

981 E.g. W281; W155

982 B'Tselem, Judge Advocate General to B'Tselem: 0.22-caliber bullets are not crowd-control measures, 9 July 2009, at http://www.btselem.org/press_releases/20090709

983 In November 2014, the Human Rights Committee called on Israel to "[t]ake all necessary measures to prevent incidents of excessive use of force during law enforcement operations, including by ensuring that rules of engagement or open fire regulations of the State party's security forces in the West Bank, including East Jerusalem, and the Access Restricted Areas of Gaza, are consistent with article 6 of the Covenant and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", see CCPR/C/ISR/CO/4, para 13 (a).

546. In relation to the Occupied Palestinian Territory, Israel is bound by article 6 of the International Covenant on Civil and Political Rights, which prohibits the arbitrary deprivation of life. The use of firearms against those not posing a threat to life or serious injury, and modifications in policy or issuance of orders allowing for such use, constitutes a violation of this prohibition and may, depending on the circumstances, amount to an act of wilful killing. The unjustified and illegal recourse to firearms by law enforcement officials may constitute a war crime when it takes place in the context of an international armed conflict, including a situation of military occupation, and in the event that the person killed was a protected person. In addition, the commission notes that the violation of the prohibition of wilful killing includes the intent to cause "serious bodily injury which, as it is reasonable to assume [the perpetrator] had to understand was likely to lead to death,"[984] which is a clear risk when using live ammunition.

Settler violence and settlement related activity

547. Incidents of settler violence continued to be reported in the West Bank, including East Jerusalem during the summer of 2014.[985] There were allegations of physical assaults against Palestinians, stone-throwing against Palestinians and Palestinian cars, so-called "price tag" incidents,[986] and damage to Palestinian property. Cases of settlers opening fire with live ammunition against Palestinians were also recorded.[987] In one case examined by the commission, an 18-year-old Palestinian, Khaled 'Odeh, was allegedly killed by an Israeli settler during a demonstration in solidarity with the people of Gaza on 25 July 2014 in Huwara, Nablus. Some four others were also reportedly injured[988] when a settler driving past allegedly fired into the crowd.[989] Information received differed as to whether stones were thrown at the settler's vehicle by one or more of the demonstrators and if so whether the stone-throwing began before or after the shooting.[990] Eyewitness testimony indicates that Khaled 'Odeh was hit by a single bullet that entered his lower back.[991]

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984 ICTY, *The Prosecutor v. Zejnil Delalic and Others*, IT-96-21-A, Appeals Chamber Judgement of 20 February 2001, para. 422

985 OCHA Protection of Civilians Weekly Reports: 10-16, 17-23 and 24-30 June 2014; 1-7, 8-14, and 15-21 July 2014; 22 July - 4 August 2014; 5-11, 12-18, and 19-25 August 2014

986 This refers to acts by settlers seeking to exact a "price" against Palestinians and their property in response to Israeli authorities' attempts to dismantle settlement outposts.

987 E.g. OCHA Protection of Civilians Weekly Report, 12-18 August 2014. See also joint submission from Aldameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Center for Human Rights; A/HRC/28/80/Add.1, para. 22.

988 W209; OCHA Protection http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_8_08_english.pdfof Civilians Report, 22 July - 4 August 2014

989 W209; B'Tselem, 13 Palestinians killed by Israeli security forces in West Bank since Operation Protective Edge began: Excessive use of live fire suspected, 29 July 2014, at http://www.btselem.org/press_releases/20140729_13_palestinian_fatalities_since_gaza_operation_begun (accessed on 15 May 2015)

990 W209 suggests stone throwing followed the shooting, while OCHA suggests that the shooting preceded the shooting. See OCHA Protection http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_8_08_english.pdfof Civilians Report, 22 July - 4 August 2014. See also, B'Tselem, 13 Palestinians killed by Israeli security forces in West Bank since Operation Protective Edge began: Excessive use of live fire suspected, 29 July 2014, at http://www.btselem.org/press_releases/20140729_13_palestinian_fatalities_since_gaza_operation_begun (accessed on 15 May 2015)

991 W209; W018

548. On 25 August 2014, Israel's Civil Administration declared as State land some 4,000 dunams (990 acres) of land located within the boundaries of five Palestinian villages in the Bethlehem area.[992] Israeli media reported that the announcement followed a decision by the Israeli Government to take over the land in response to the abduction and killing of the three Israeli youths.[993] According to the Jerusalem Post, then Economy Minister Mr. Naftali Bennett praised the decision and said "What we did yesterday was a display of Zionism…Building is our answer to murder."[994] Once the process is complete,[995] it appears that this land may be incorporated into the Gush Etzion settlement bloc,[996] where the three Israeli youths were last seen before their abduction.

549. The commission takes note of the extensive material available on violations of Palestinians' human rights resulting from Israeli settlements and settler violence.[997] Moreover, it concurs with the finding of the UN Secretary-General and other UN bodies that the construction and expansion of Israeli settlements are illegal under international law.[998] In November 2014, the Human Rights Committee urged Israel to "take all necessary measures to prevent violence perpetrated by the State party's settlers and protect Palestinians effectively when such violence occurs."[999]

Conclusion

550. During the period under examination by the commission, the West Bank, including East Jerusalem, witnessed widespread human rights violations, including the fundamental right to life, which were overshadowed by the tragic events in Gaza. The commission considers that implementation of the 2014 recommendations by the Human Rights Committee cited above would represent a critical step towards ensuring the non-repetition of these violations in the future.

VI. Impact

551. *"We should exist in this world in a spirit of cooperation, of love for life, of brotherhood."* Dr. Kamel Qdeih, a Palestinian doctor in Gaza[1000]

552. *"As long as the people on the other side…don't have security and a way to live side by side, this is going to continue. I want to tell this to the leaderships of both sides. We need*

992 Peace Now, Unprecedented land confiscation of 4,000 dunams near Bethlehem, 31 August 2014, at http://peacenow.org.il/eng/GvaotDecleration (accessed on 31 May 2015)

993 Haaretz, *Israel appropriates massive tract of West Bank land*, 31 August 2014, at http://www.haaretz.com/news/diplomacy-defense/.premium-1.613319#!

994 Jerusalem Post, Bennett: *Building is Zionist answer to murder of 3 Israeli teens*, 1 September 2014, at http://www.jpost.com/Arab-Israeli-Conflict/Bennett-praises-decision-to-expand-state-land-in-West-Bank-Building-is-our-answer-to-murder-373087; see also quotes from several officials cited on Arutz Sheva on 4 September 2014, at http://www.inn.co.il/News/News.aspx/283300 (accessed on 28 May 2015)

995 There is a process of endorsement, including a timeframe for the consideration of objections to the declaration and review of eventual petitions to the Supreme Court. For more details, see A/HRC/28/44.

996 OCHA, Humanitarian Bulletin, monthly report, June - August 2014

997 E.g. A/HRC/28/44, paras 39-53.

998 See A/HRC/348 paras 4-5.

999 Human Rights Committee, Concluding observations on the fourth periodic report of Israel, CCPR/C/ISR/CO/4, para 16

1000 W268.

to achieve dignity and liberty for the other side as well". An Israeli woman living near the Green Line. [1001]

553. "*I see no difference between our blood and others' blood. I believe peace will eventually win."* Israeli doctor from close to Tel Aviv.[1002]

554. *"I am one of hundreds of Palestinian mothers who have lost their children. I lost my son Mohammad and he won't come back from school to sing to me….I don't want any other mother to go through what I went through".* Suha Abu Khdeir, mother of a 16-year-old boy who was murdered by being burnt alive in West Jerusalem.

555. Palestinians and Israelis were profoundly shaken by the events of the summer of 2014 and many witnesses described the trauma that resulted from the violence they experienced. In particular, children on both sides were savagely affected by the events. As a result of their lengthy displacement and fear of what the future would bring, many reportedly suffered from bed-wetting, shaking at night, clinging to parents, nightmares and increased levels of aggressiveness.[1003]

A. Israel

556. *"Thanks to our interceptor missile system, no physical damage was caused [to me], but the terrible feeling of running for your life cannot be intercepted or forgotten."* Resident of Oranit, Israel.[1004]

557. The 2014 conflict caused immense distress and disruption to Israeli civilians, particularly in the southern regions. The commission received numerous oral and written (101) testimonies and complaints addressed to the Human Rights Council (85) from Israelis who were exposed to the threat of rocket and mortar attacks and assaults from tunnels during the summer of 2014. The submissions recount the distress and anger of Israelis[1005] who point out three matters of particular concern to them: (i) the trauma caused by the constant threat of rocket attacks, infiltrations and displacement; (ii) insufficient time to carry out effective emergency procedures during attacks; and (iii) the adverse impact of the conflict on local businesses and the overall economy.

Psychological Impact

558. *"We could live so happily but instead we have tunnels […]. There was a tunnel just behind the greenhouses. In a way, they are more scary than the rockets because with the tunnels, there's no chance of being warned. Some people won't let their children go outside because of that."*[1006]

559. *"Children couldn't speak, they were shaking at night, wetting the bed. Now, a lot of the children became more violent, they say it's post-trauma, children don't know how to cope with it."*[1007]

1001 W010.
1002 Submission 26.53.
1003 Child Protection Working Group, Child Protection Rapid Assessment Report, October 2014 (available at http://cpwg.net/wp-content/uploads/sites/2/2015/03/Child-Protection-Rapid-Assessment-_-Gaza_2014.pdf).
1004 Email submission 26.15.
1005 W073.
1006 W010.
1007 W076

560. Many Israelis experienced what they describe as indelible suffering caused by the constant threat of attacks by Palestinian armed groups. The stress and trauma had serious effects on their well-being, particularly for persons who live in the south in areas near Gaza. The commission interviewed several witnesses who indicated that the sound of rockets, the running to bomb shelters and the pervasive fear was seriously affecting their and especially their children's wellbeing. A witness who lives about 1.7 km from the Green Line told the commission that, during the height of the conflict, the alarms would sound several times a day and there would be on average six explosions a day 300 yards from her house. She said that this was much more frequent bombing than during previous hostilities. Although they received warnings, there was often not enough time to gather the children and take them to the shelter.[1008]

561. While the fear of rocket and mortar strikes from Gaza has been long-standing, 2014 was characterized by the discovery of tunnels. Witnesses reported to the commission that inhabitants interpreted any sound of digging in the area near the Green Line as attempts by members of armed groups to infiltrate Israel. Moreover, members of the kibbutzim of southern Israel said that they regularly receive phone text messages from the IDF informing them of aborted infiltration attempts into their communities, and that these alerts have nurtured a persistent fear of potential attacks through tunnels linked to Gaza. For example, one witness told the commission that residents of her kibbutz continued to experience regular panic attacks after a tunnel discovery not far from where they live in March 2014, the explosion of an alleged tunnel exit on 8 July, and several other infiltration attempts that were thwarted by the army in July and August.[1009] Another witness observed that "You kind of get used to missiles and then there's this fear that people will come from the ground and hurt you. It makes no sense. And now everything is so quiet again and that's also strange."[1010] A mother described to the commission that many of the communities live in fear of the tunnels and that during the conflict the people in her kibbutz at times received "infiltration warnings". For instance, on one occasion she was walking to the kindergarten to pick up her children when an Israeli soldier stopped her and told her to return home because members of the armed groups had come out of the tunnels close to the kindergarten. The witness said she and the other mothers ran to the kindergarten and stayed there for 2-3 hours waiting, in fear for their own and their children's safety. [1011]

562. An eyewitness informed the commission that, on 30 July 2014, he personally saw a tunnel that runs between the Deir Al Balah Refugee Camp and Kibbutz Kissufim in southern Israel[1012]. According to Israeli authorities, the IDF uncovered 32 tunnels during the conflict, 14 of which penetrated Israeli territory.[1013]

563. The psychological impact of the conflict on Israeli civilians is also manifest in numerous accounts of anxiety disorders that were brought to the attention of the commission. Magem David Adom reports that 581 Israelis were treated for anxiety attacks during the conflict[1014], which placed these civilians at risk of mental health problems even after the end of hostilities. For example, a resident of Ashdod wrote to the commission

[1008] W006.
[1009] W075.
[1010] W007.
[1011] W006.
[1012] W072.
[1013] Israel, Ministry of Foreign Affairs, *Israel's Objectives and Phases of the 2014 Gaza Conflict*, p. 8-12. At: http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx. Accessed 30 May 2015
[1014] Magen David Adom in Israel, Cease fire in Operation "Protective Edge" is holding MDA sums up 50 days of saving lives, 29 August 2014. At http://www.mdais.com/316/7004.htm.

about the way in which her fear of indiscriminate attacks significantly reduced her sense of safety and well-being, making her "lose peace of mind and security of person"[1015]. The psychological consequences reported in submissions from Israelis include fear, restlessness, decreased ability to focus, Post-Traumatic Stress Disorder and other stress-related symptoms. These effects were especially observed in children, for whom the summer holiday season became a daily struggle to cope with the anxiety induced by the sound of sirens. In one case, for example, a physician who lives in the village of Savyon near Tel Aviv reported that his 11 year-old girl became unable to sleep or take showers unsupervised after she was traumatized by the sound of alarms in July and August 2014[1016]. In another case, a nine-month-old baby, who was four-months-old during the conflict, developed a form of anxiety which made him panic at the sound of any alarm for months afterwards[1017]. A witness told the commission that her two grown stepdaughters were so traumatized by the repeated conflicts that one suffered from epileptic style seizures whenever she heard a rocket, while the other suffered from severe anxiety attacks.[1018]

564. The events during the hostilities pushed entire communities in southern Israel to seek refuge in other parts of the country, and members of these communities were deeply affected by their experience of displacement. OCHA reports that 70 per cent of the 40,000 residents of the Gaza rim left their homes during Operation Protective Edge.[1019] A witness said that up to ten communities living along the Green Line were displaced[1020]. The population of a kibbutz of 500 dwindled to 15 during the hostilities according to a resident who spoke to the commission.[1021] Another witness said that no more than 55 people out of a population of 300 were left in a kibbutz at the end of August 2014.[1022] Children, particularly those who live in areas neighbouring Gaza, suffered worse mental health effects than adults as a result of the displacement. According to the Israeli authorities, over 20,000 children in southern communities migrated to the north during the conflict.[1023] A social worker who closely followed these children's experiences of displacement reported a number of symptoms, including restlessness, lack of sleep, inability to concentrate at school, and violent behaviour.[1024] Witnesses also informed the commission that some children in their communities had to undergo specialized treatment to cope with the threat of displacement.[1025] Some of the women interviewed by the commission left the southern region with their children to seek safety in northern Israel. During the displacement they had to rely on the good will of relatives, friends or strangers for accommodation and assistance. The situation was reported to have added to the burden of responsibilities on Israeli women.[1026] For instance, a mother of three in Kibbutz Sa'ad related the frightening experience of leaving her home with her children several times during the summer,

[1015] Email submission in Hebrew number 31.
[1016] Email submission 26.53.
[1017] Email submission 26.23.
[1018] W006.
[1019] OCHA Occupied Palestinian Territory, Gaza Emergency Situation Report, 28 August 2014. At http://www.ochaopt.org/documents/ocha_opt_sitrep_28_08_2014.pdf
[1020] W139.
[1021] W076.
[1022] Submission 24.2.7.
[1023] Ministry of Foreign Affairs, at http://mfa.gov.il/ProtectiveEdge/Documents/Threat_to_%20Home_Front.pdf.
[1024] W139.
[1025] W140.
[1026] W076, W006 and W008.

especially during the ground operations, when she stayed with relatives and friends in other parts of Israel.[1027]

Emergency procedures

565. *"The missile shield [Iron Dome] is a mixed blessing. It has saved lives but because there's a shield the country cares less for small communities close to […Gaza] and cares more for bigger communities.[…] There are 100 000 Bedouins in Israel living in tin shafts. They have no shelters. Israel did nothing to protect them. There should be a shield for these areas, like the shield for Tel Aviv."*[1028]

566. The majority of rockets fired from Gaza during the 2014 conflict were successfully intercepted by Israel's missile defence system, Iron Dome.[1029] According to the IDF, the system uses a combination of radars and counteracting missiles to detect rockets fired at Israel and intercept them at remote locations without creating any harm.[1030] In addition to Iron Dome, the Israeli authorities adopted what they refer to as "passive defence measures", which include a combination of early warning sirens, public awareness campaigns on how to respond to the threat of terrorism, and the construction of shelters in public and private sites.[1031]

567. In some cases Israeli authorities took steps to improve the emergency preparedness of communities in the south. For example, a resident of Moshav Netiv Ha'Asara said that an "armoured patrol vehicle was provided …by the army [and] additional bomb shelters were installed for foreign workers near their workplaces."[1032] However, Israeli witnesses told the commission that the emergency response procedures that are applied in their communities leave them little time to make their way to underground shelters or to access safe rooms within their homes during attacks. In that context, Amnesty International found that "the conflict provided renewed evidence that vulnerable communities in Israel, particularly Bedouin villages in Israel's southern Negev/Naqab region, many of which are not officially recognized by the Israeli government, lacked protection."[1033] The time available for civilians to run for safety decreases dramatically in communities located within 2 km or less from the Green Line with Gaza to less than 30 seconds in most cases, and to less than 10 seconds in some[1034]. One of the witnesses told the commission that these emergency procedures have turned into a form of "routine" for Israelis of the south rather

1027 Email submission 26.59.

1028 W006.

1029 Ynetnews, Yoav Zitun, IDF: Iron Dome intercepted 90% of rockets, 15 August 2014, at http://www.ynetnews.com/articles/0,7340,L-4558517,00.html.See also: IAF website. Nadav Berger: The team that analyses the Iron Dome, 27 July 2014. At: http://www.iaf.org.il/4410-42214-HE/IAF.aspx

1030 Israeli Defense Force, One year ago today, Iron Dome intercepts first ever rocket, 5 April 2012, at http://www.idf.il/1283-15558-en/Dover.aspx.

1031 Israel, Ministry of Foreign Affairs, *The Threat to Israel's Civilian Population and Israel's Civil Defence Measures*, at http://mfa.gov.il/ProtectiveEdge/Documents/Threat_to_%20Home_Front.pdf.

1032 Email submission 26.20.

1033 Amnesty International: Unlawful and deadly: Rocket and mortar attacks by Palestinian armed groups during the 2014 Gaza/Israel conflict; 26 March 2015; at: https://www.amnesty.org/press-releases/2015/03/palestinian-armed-groups-killed-civilians-on-both-sides-in-attacks-amounting-to-war-crimes-during-2014-gaza-conflict/

1034 Home Front command website. Map of early warning alerts at: http://www.oref.org.il/1096-en/Pakar.aspx

than an exceptional measure, making everyday life in their communities particularly challenging[1035].

568. According to Magen David Adom, 159 people were injured or traumatized as a result of stumbling or falling on their way to shelters.[1036] Israeli authorities report that two elderly women died as a result of heart failure while trying to seek cover in Haifa and Jerusalem[1037]. The commission received written submissions regarding the experience of older persons in northern cities of Israel, where most people live in apartment blocks, who suffered physical and mental traumas as they were making their way to shelters. In one case, a victim -- who refers to herself as an "old widow" living on her own -- said that she was not able to leave her home in Sderot for a month out of fear.[1038] In another, the grandson of an 89 year-old holocaust survivor, who currently lives in Ashkelon, said that his grandmother had to live through an average of 5 sirens a day during the summer and find a way to a shelter within 15 seconds without falling.[1039] The son of a 92 year-old lady who resides in Bat Yam near Tel Aviv described that his mother had to stay put during attacks, cry and pray for safety as she was too frail to even reach the staircase.[1040] Similar experiences were reported for children who were unable to reach shelters. For example, a resident of Kibbutz Be'erim in the Gaza rim told the commission that her children had to hide under the staircase and endure the stress of hearing sirens and loud explosions because 15 seconds was not enough time for them to move into an underground shelter.[1041]

Economic impact

569. According to the Bank of Israel, Operation Protective Edge caused a contraction of output in the tourism and manufacturing sectors of about 903 040 000 USD (3.5 billion NIS), which represents 0.3 per cent of Israel's GDP.[1042] This, the Bank of Israel says, is comparable to the loss incurred during the 2006 Lebanon war. The Israeli authorities report that as of 28 January 2015, 4550 claims for compensation for direct damages, including to schools and houses, had been filed with the tax authority. The tax authority estimates that total compensation for direct damages will reach approximately USD 25 million (100 million NIS). Indirect damage is estimated at 440 000 000 USD (1.7 billion NIS).[1043]

570. Some southern Israeli communities bore more significant economic costs of the conflict than others; these costs were sometimes devastating for businesses that were obliged to invest in expensive security equipment and in psychological counselling for their workers[1044]. The commission learned, for instance, that the risk of conflict continues to

1035 W009.

1036 Magen David Adom in Israel, Cease fire in Operation "Protective Edge" is holding MDA sums up 50 days of saving lives, 29 August 2014. At http://www.mdais.com/316/7004.htm.

1037 Israel, Ministry of Foreign Affairs, *The Threat to Israel's Civilian Population and Israel's Civil Defence Measures*, at http://mfa.gov.il/ProtectiveEdge/Documents/Threat_to_%20Home_Front.pdf.

1038 Complaints LB68 and LB69 to the HRC.

1039 Email submission 26.18.

1040 Email submission 26.4 and 26.5.

1041 Submission 26.58.

1042 Bank of Israel, Excerpt from the "Bank of Israel – Annual Report for 2014" to be published soon: The effect of military conflicts on economic activity, 15 March 2015. At http://www.bankisrael.gov.il/en/NewsAndPublications/PressReleases/Pages/16-03-2015-MilitaryConflicts.aspx.

1043 Israel, Ministry of Foreign Affairs, *Hamas' Violations of the Law*; p.4. http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, accessed on 19 May 2015.

1044 W140.

prevent economic actors from investing in the southern region of Eshkol.[1045] One of the witnesses who lives in a kibbutz of 500 individuals at 1.7 km from Gaza said that the local cloth factory stopped receiving orders during the conflict.[1046] Another witness reported that three migrant workers in her farming community left their jobs in the summer 2014 as they believed that the area was unsafe[1047].

571. The commission received written affidavits and more than 100 photographic materials depicting the damage incurred to buildings, cars and livestock in southern communities as a result of mortar attacks. In one testimony the witness, who chairs the emergency team of his kibbutz of 300, said that 50 out of 160 houses were damaged by debris and milk production decreased during the conflict[1048]. Another witness who lives in kibbutz Nir-am said that her photography business in Beer Sheva stopped during the war as she was too afraid to take public transport, which made her run into debt together with many other members of the kibbutz[1049].

572. The testimonies further highlight the interdependence between the social and economic fabrics of Gaza and Israel. For example, some of the Israeli witnesses and victims said that they were in contact with civilians in Gaza throughout the conflict and they exchanged expressions of support by telephone and on social media[1050]. These contacts constitute evidence of the fact that the conflict severed human and economic ties that had existed prior to the escalation of violence and the blockade that ensued in 2007 (many Palestinian men in Gaza who spoke to the commission mentioned that they – or their fathers – had worked at some point in their lives in the southern regions of Israel).

B. Gaza

573. "*Behind the figures lie multiple individual destinies now torn apart, a reality no number can translate."* Pierre Kraehenbuehl, Commissioner-General of UNRWA[1051]

Right to life and security

574. In Gaza, the scale of the devastation was unprecedented. The death toll alone speaks volumes: 2 251 Palestinians were killed, including 1462 Palestinian civilians with 299 women and 551 children.[1052] 11 231 Palestinians, including 3540 women and 3 436

1045 W141.
1046 W009.
1047 W010.
1048 Submission 24.2.7.
1049 Email submission 26.51.
1050 W009.
1051 UNRWA. Commissioner General press briefing on the situation in Gaza Strip; 14 July 2014; at: http://www.unrwa.org/newsroom/official-statements/commissioner-general-press-briefing-situation-gaza-strip
1052 United Nations Protection Cluster figures of 31 May 2015. The Protection Cluster is the mechanism for coordinating humanitarian action by humanitarian organizations (UN and non-UN) working in the protection sector. It is one of several such sectoral clusters. OHCHR leads the Protection Cluster in the OPT. OHCHR compiled figures on fatalities in its capacity as leader of the Protection Cluster. The methodology used involves the compilation of initial reports of fatalities from the media and other sources which are then crosschecked and verified in collaboration with a number of international, Palestinian and Israeli partner organizations. Where available, each individual's name, age, sex and place of death is determined, as well as their status as a civilian or combatant where possible. Multiple sources are cross-referenced, not only from media and various human rights organizations, but also information released by the IDF and by the Palestinian armed groups

children,[1053] were injured with almost 10 per cent suffering permanent disability as a result. While the casualty figures gathered by the UN, Israel, Palestine and non-governmental organizations differ, regardless of the exact proportion of civilians to combatants, the high incidence of loss of human life and injury in Gaza is heart-breaking; all the more so in the many cases in which several family members died together.

575. Remnants of war continue to pose risks to life and physical security: the UN Mine Action Service (UNMAS) estimated that a minimum of 7000 explosive items wait to be recovered, including unexploded aircraft bombs. According to OCHA, in 2014, explosive remnants of war (ERW) accidents caused 10 fatalities and 23 injuries, especially affecting male youths. [1054] Many of the ERW are likely to be in abandoned shelters, destroyed homes, schools and other public and government infrastructures.

Right to housing

576. Alongside the toll on civilian lives, there was enormous destruction of civilian property in Gaza: 18 000 housing units were destroyed in whole or in part.[1055] According to the Office of the Special Coordinator for the Middle East Peace Process, an estimated 80 000 homes and properties need to be rehabilitated.[1056] These "housing units" were not only the monetary equivalents of material investments. Many of them were homes. Obviously, owning a home is directly linked to the human rights to adequate housing and property, but losing a home also impacts on the enjoyment of a wide range of other human rights, including security, sanitation and health, privacy and family life. Moreover, having a home has an emotional dimension – the place where memories are stored – and often many other items to which inhabitants' memories relate. Having one's home destroyed or severely damaged means being deprived of more than a physical structure; it also directly impacts on the very essence of one's existence.

577. At the height of last summer's hostilities, the number of internally displaced persons reached 500 000, which is equivalent to 28 per cent of the population. Many people were uprooted from their homes or temporary shelters multiple times. They had to cope with the stress and panic associated with feeling trapped and having no safe place to go. Many fled to temporary shelters which were severely overcrowded and lacked adequate sanitary conditions. The incidents involving UNRWA shelters and resulting deaths and injuries further compounded the lack of safety and security.

578. The end of the hostilities did not necessarily mean respite: temporary and often inadequate accommodation arrangements offered little protection during the winter,

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regarding the identity of combatants. Information from the Ministry of Health in Gaza is one, but not an exclusive, source of information. Verification of the information collected is continuing. Figures are published on the website of OCHA on behalf of the Protection Cluster.

1053 Palestinian Ministry of Health, quoted in A/HRC/28/80/Add.1, para. 24.

1054 OCHA Fragmented Lives. Humanitarian Overview 2014. March 2015.At http://www.ochaopt.org/documents/annual_humanitarian_overview_2014_english_final.pdf; See also report by Handicap International, Bombs under Rubble, January 2015, at: https://d3n8a8pro7vhmx.cloudfront.net/handicapinternational/pages/1949/attachments/original/1421265536/HI_Report_Gaza_Bombs_under_Rubble.pdf?1421265536.

1055 OCHA, Gaza Initial Rapid Assessment, 9 September 2014; at: http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf, p. 4.

1056 UNSCO, Fact sheet Gaza Reconstruction Mechanism. October 2014; at: http://www.unsco.org/Gaza%20Reconstruction%20Mechanism%20Fact%20Sheet%209%20October%202014.pdf

resulting in the deaths of at least four children.[1057] In May 2015 – many months after the violence had ended, about 100 000 people remain displaced in the Gaza Strip, according to OCHA estimates.[1058]

579. In terms of the process of reconstruction, the Office of the Special Coordinator for the Middle East Peace Process reported in May 2015 that around 85 per cent of the households in need of construction materials had received materials.[1059] However, OCHA reported in April 2015 that reconstruction of six completely destroyed schools and eleven kindergartens had not yet begun, and the rehabilitation of seven Ministry of Health hospitals and 12 clinics had been slow.[1060] While there has been some progress in facilitating reconstruction through the creation of the "Gaza Reconstruction Mechanism" (GRM), created in September 2014 with a view to rehabilitating houses and infrastructure damaged during the 2014 hostilities, it has been far too slow and woefully inadequate to address the immense needs in Gaza. The mechanism has been criticized for granting Israel considerable control over the entry of humanitarian assistance, while hampering the Palestinian authorities from assuming their responsibility as duty bearers and impeding the UN's function as a neutral facilitator and humanitarian actor.[1061]

Electricity, water and sanitation

580. *"If there's no electricity, there's no water."* International Committee of the Red Cross (ICRC)[1062]

581. The Gaza Strip has one power plant that normally supplies about 30 per cent of the *electricity* in the strip, the remaining being provided from Israel and Egypt. Under normal circumstances, the three sources provide for half of Gaza's overall electricity needs.[1063] The power plant was the subject of several attacks in July 2014, and had to shut down on 29 July as a result of an explosion of one of its fuel tanks following a hit by shells, as further elaborated above (see chapter V.A.4).

582. As a result of that attack, and of damage to the electricity infrastructure more generally, including transmission and distribution lines, cabling, electricity poles and transformers,[1064] Gaza experienced power outages of 22 hours a day during the

1057 Shelter cluster report p.3. Confirmed by World Health Organization; at: http://www.maannews.com/eng/ViewDetails.aspx?id=752862.

1058 OCHA, Protection of civilians weekly highlights; Reporting period 28 April – 4 May 2015, at: http://www.ochaopt.org/poc28april-4may.aspx.

1059 UNSCO Fact sheet Gaza Reconstruction Mechanism. October 2014; at: http://www.unsco.org/Gaza%20Reconstruction%20Mechanism%20Fact%20Sheet%209%20October%202014.pdf.

1060 OCHA Humanitarian Bulletin. April 2015, at: http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_05_29_english.pdf.

1061 Submission 11.4

1062 Euro News, ICRC criticises attack on Gaza power plants, 31 July 2014, at http://www.euronews.com/2014/07/31/international-committee-of-the-red-cross-criticises-attacks-on-gaza-power-/.

1063 OCHA, Gaza Crisis Appeal; at: http://www.ochaopt.org/documents/gaza_crisis_appeal_9_september.pdf

1064 UNDP, Detailed Infrastructure Damage Assessment, Gaza 2014. 28 November 2014. At http://www.ps.undp.org/content/dam/papp/docs/Publications/UNDP-papp-research-dammageassessment2014.pdf. Bellow referred to as UNDP, Detailed Infrastructure Damage Assessment, November 2014.

hostilities.[1065] This acute shortage of power forced hospitals to operate at limited capacity; led to a drastic reduction in the pumping of water to households; and affected desalination plants and sewage treatment,[1066] which significantly impacted on a wide range of human rights, in particular the rights to health, water and sanitation. At the time, OCHA announced that Gaza was on "the brink of a public health crisis".[1067]

583. In the medium term, the extensive damage to the electricity infrastructure is estimated to have increased the pre-existing electricity deficit by almost 20 per cent, reaching about 65 per cent.[1068] According to reports from December 2014, 15–20 per cent of the Gaza population had no access to electricity. The substantial shortfall in power supply continues to undermine the living conditions of people in Gaza, affecting the delivery of water supply, and wastewater treatment, as well as livelihood and health.[1069]

584. Water and sanitation facilities in Gaza were also heavily affected by the escalation of violence[1070] with 63 water facilities damaged and 23 completely destroyed. Key sewage facilities were partially destroyed, including 60 per cent of the treatment plants, 27 per cent of the pumping stations, and 33 000 meters of water and wastewater networks were damaged[1071]. In late August 2014, OCHA reported that about half a million people were directly affected by damage to water facilities,[1072] and one million by damage to wastewater facilities.[1073] In December 2014, water supply remained irregular for 20 per cent of people with interruptions at times lasting for five days.[1074] As a result, many families had to rely on water tankers for their water supply.[1075] Overall, water-related cost increased, and doubled in some areas, decreasing access to drinking water of already vulnerable families.[1076]

1065 OCHA, Gaza Crisis Appeal; at: http://www.ochaopt.org/documents/gaza_crisis_appeal_9_september.pdf. According to the report Divide and Conquer by Al Haq, outages lasted about 18 hours per day.

1066 Human Rights Watch, Widespread impact of power plant attack, 10 August 2014, at : http://www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack , OCHA, Gaza Crisis Appeal, at: http://www.ochaopt.org/documents/gaza_crisis_appeal_9_september.pdf and ICRC, Gaza: Power plant destroyed, electricity and water supplies collapse; 30 July 2014 at: https://www.icrc.org/en/document/gaza-power-plant-destroyed-electricity-and-water-supplies-collapse.

1067 OCHA, Gaza Crisis Appeal, 9 September 2014; at http://www.ochaopt.org/documents/gaza_crisis_appeal_9_september.pdf

1068 UNDP, Detailed Infrastructure Damage Assessment, November 2014.

1069 UNDP, Detailed Infrastructure Damage Assessment, November 2014.

1070 World Bank. Gaza: Fact sheet August 1, 2014; at: http://www.worldbank.org/content/dam/Worldbank/gaza-fact-sheet-final140801-ECR.pdf

1071 Gisha. Water officials in Gaza: 40% of the population with no access to running; at: gisha.org/updates/3363. A/HRC/28/80/Add.1.

1072 According to UNDP, 97 per cent of the population had access to safe water supply networks prior to the war. However, OCHA reported that in 2013 only one quarter of the households in Gaza received running water every day, during several hours only. See UNDP, Detailed Infrastructure Damage Assessment, November 2014 and OCHA, The Gaza Strip: the Humanitarian Impact of Movement Restrictions on People and Goods, July 2013. At http://unispal.un.org/unispal.nsf/3822b5e39951876a85256b6e0058a478/c01b65b9607d31fb85257b9d0046a70a?OpenDocument#sthash.7ZpapT5l.dpuf

1073 OCHA, Gaza Initial Rapid Assessment; 27 August 2014; at: http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf

1074 UNDP, Detailed Infrastructure Damage Assessment, November 2014.

1075 UNDP, Detailed Infrastructure Damage Assessment, November 2014.

1076 Submission 43.5.

Right to education

585. Gaza's education sector was already overstretched prior to the hostilities – with a shortage of 200 schools in 2014, and almost 80 per cent of school classes running double shifts[1077]. The destruction of, and damage to 209 schools as a result of the conflict exacerbated these deficits.[1078] Three universities are reported to have been directly hit by Israeli strikes, while eight sustained collateral damage.[1079] 274 kindergartens were damaged and 11 were destroyed.[1080] Overall, the quality of education in Gaza is reported to have worsened, because classes are now larger, the time spent at school shorter[1081] and psychological and economic challenges are considerable, according to UNFPA.[1082]

Right to an adequate standard of living

586. Many of the commission's interlocutors, when interviewed between November 2014 and February 2015, gave accounts of on-going displacement, loss of jobs as a result of injury, and loss of livelihoods. These individual stories lie behind the figures:

587. The World Bank recently described the impact of the 2014 hostilities on Gaza's economy as follows: "Gaza Economy on the Verge of Collapse, Youth Unemployment Highest in the Region at 60%." The report describes how blockades, wars and poor governance have strangled Gaza's economy, noting that the unemployment rate is now the highest in the world.[1083] The report highlights the loss of economic capacity due to repair costs and the effects of the damaged infrastructure, loss of investor confidence, and an increasing trade deficit.[1084] Moreover, many inhabitants of Gaza had their agricultural lands damaged.[1085] Power and fuel shortages led to many facilities being forced to suspend production, which in turn led to the dismissal of workers. Combined with the fact that the economy was in dire straits already before the 2014 hostilities, including as a result of the blockade, these factors result in 39 per cent of the population living below the poverty line,[1086] which in turn impacts on the enjoyment of a wide range of human rights of the people in Gaza, including the rights to food, work, health, water and sanitation.

588. Food insecurity increased during the conflict and in its aftermath. According to FAO, almost the entire population of Gaza was dependent on food aid during the

[1077] OCHA, Situation report, 4 September 2014.

[1078] OCHA, Occupied Palestinian Territory Gaza emergency Humanitarian Snapshot; as of 25 August 2014; at: http://www.ochaopt.org/documents/humanitarian_snapshot_25_august_2014_opt_v4.pdf A/HRC/28/80/Add.1

[1079] Submission 43.2.

[1080] Submission 34.2-3.

[1081] 90% of UNRWA schools and 85% of public schools are operating on double shifts across the Gaza strip, and 2 UNRWA schools in Gaza city were operating on triple shifts. This means that children would spend only between 2.5 to 4.5 hours per day in the school. Information provided by the Education Cluster coordination. And http://www.ochaopt.org/documents/humanitarian_snapshot_25_august_2014_opt_v4.pdf

[1082] OCHA, 2015 Strategic Response Plan oPt. At https://www.ochaopt.org/documents/srp_2015.pdf. Below referred to as OCHA, 2015 Strategic Response Plan oPt.

[1083] The World Bank, Gaza Economy on the Verge of Collapse, 21 May 2015, at: http://www.worldbank.org/en/news/press-release/2015/05/21/gaza-economy-on-the-verge-of-collapse

[1084] The World Bank, Economic Monitoring Report to the Ad Hoc Liaison Committee, May 27, 2015, paras. 6, 28 and 44.

[1085] Food and Agriculture Organization (FAO), Gaza: Damage to agriculture will have long lasting ffects; 14 August 2014; at: www.fao.org/news/story/en/item/240924/icode/.

[1086] The World Bank, Economic Monitoring Report to the Ad Hoc Liaison Committee, May 27, 2015, par. 39.

conflict.[1087] While the estimated figures for food insecurity and persons depending on food aid has returned to a level similar to the period prior to the conflict, reaching about 57 per cent and 80 per cent respectively,[1088] this is partially due to increased imports by the private sector and the United Nations[1089] and aid inflows into Gaza.[1090] The output from the agriculture sector is estimated to have been reduced by 32 per cent compared to 2013.[1091] In this context, it should be recalled that the right to food is not primarily about food aid; it is rather about being able to feed oneself through an adequate livelihood.

589. As an immediate consequence of the hostilities, *unemployment* was estimated to amount to 47.4 per cent in the third quarter of 2014, [1092] and 42.8 per cent in the fourth quarter,[1093] on average 11 per cent higher than before.[1094] According to the World Bank, unemployment in the Gaza Strip is now the highest in the world.[1095] Youth unemployment rates more than doubled in the second quarter of 2014 compared to the previous year, reaching about 67 per cent.[1096]

Right to health

590. *Medical problems are more than the problems facing hospitals. It is difficult to maintain health without work, proper housing, food security, safe water and human security."* Dr. Mads Gilbert, a Norwegian doctor working in Gaza during the hostilities.[1097]

591. While access to health care in Gaza was precarious even before the 2014 escalation – mainly as a result of restrictions imposed by the blockade – the fighting further weakened the medical infrastructure[1098]: one hospital and 5 primary health care clinics were destroyed and 15 hospitals and 51 clinics sustained damage, while tens of ambulances were rendered useless and health care personnel were decimated. The hostilities also further reduced access to health care of persons with serious or chronic illnesses. The number of people

[1087] FAO, Gaza: Damage to agriculture will have long lasting effects; 14 August 2014; at: www.fao.org/news/story/en/item/240924/icode/.

[1088] OCHA, 2015 Strategic Response Plan oPt.. In July 2013, 57% of Gaza households were food insecure and about 80% relied on food aid. http://unispal.un.org/unispal.nsf/3822b5e39951876a85256b6e0058a478/c01b65b9607d31fb85257b9d0046a70a?OpenDocument.For numbers in 2013 see also http://unispal.un.org/unispal.nsf/3822b5e39951876a85256b6e0058a478/c01b65b9607d31fb85257b9d0046a70a?OpenDocument and http://documents.wfp.org/stellent/groups/public/documents/ep/wfp270840.pdf.

[1089] Office on the United Nations Special Coordinator for the Middle East, Report to the Committee, Brussels, 27 May 2015, par. 66.

[1090] The World Bank, Economic Monitoring Report to the Ad Hoc Liaison Committee, May 27, 2015, par. 7.

[1091] The World Bank, Economic Monitoring Report to the Ad Hoc Liaison Committee, May 27, 2015, par. 2.

[1092] Office on the United Nations Special Coordinator for the Middle East, Report to the Committee, Brussels, 27 May 2015, par. 24.

[1093] UNRWA. Gaza refugee women: A life of many faces, 1 April 2014, at: http://www.unrwa.org/galleries/photos/gaza-refugee-women-life-many-faces.

[1094] The World Bank, Economic Monitoring Report to the Ad Hoc Liaison Committee, May 27, 2015, par.4. Compare numbers in July 2013 at http://unispal.un.org/unispal.nsf/3822b5e39951876a85256b6e0058a478/c01b65b9607d31fb85257b9d0046a70a?OpenDocument.

[1095] The World Bank, Economic Monitoring Report to the Ad Hoc Liaison Committee, May 27, 2015, p. 5.

[1096] OCHA, 2015 Strategic Response Plan oPt.

[1097] W123.

[1098] Gaza Strip, Joint Health Sector Assessment Report, September 2014.

with permanent or long-term disabilities has increased; preliminary estimates indicate that up to one thousand children will be permanently disabled as a result of the hostilities in 2014.[1099]

592. The commission also notes that the complicated mechanisms for the referral of patients abroad aggravate the situation.[1100] While the number of people who are granted permission to leave Gaza has increased, the number of requests has doubled from 32,827 (March-September 2014) to 60,998 (October-March 2015). The percentage of persons whose requests were denied has increased by 6.1 per cent.[1101]

593. *"Children are afraid to die; they ask all the time if there will be another war."* Dr. Mona El Farra, a Palestinian doctor in Gaza [1102]

594. Apart from significant limitations on access to health care, the events of the summer of 2014 also left deep marks in terms of trauma: many of the witnesses interviewed by the commission described a profound sense of hopelessness brought on by the experience of death, injury, destruction and/or loss of their homes, further exacerbated by the multiple displacements and, often, the current lack of prospects. Post-traumatic stress disorder and other stress-related symptoms have increased,[1103] and about 20 per cent of the population are estimated to be in need of long-term mental health assistance[1104], among them at least 373,000 children.[1105] According to the United Nations Children's Fund, in Gaza, more than 1,500 children have been orphaned.[1106] In some cases witnesses reported that children, even teenagers, had urine retention problems and woke up screaming during the night. An inter-agency Child Protection Rapid Assessment conducted among displaced families in Gaza in the aftermath of the conflict described the prevalence of nightmares and various levels of either apathy or aggressiveness and violence towards other children. [1107]

595. The World Health Organization's mental health program coordinator in Gaza, Dr. Dyaa Saymah, told the commission that the current trauma response in Gaza was, "scattered and short term funded," while rehabilitation should be a long-term undertaking that requires sustained funding.[1108] He added:

"... accumulated exposure to traumatic experiences can cause a significant change in personality: how they perceive the outside world, how they perceive their moral system, how such accumulative exposure to trauma can affect their future directions in their lives. There is also a risk of trans-generational trauma. That means the trauma experienced as children impacts on how as adults they perceive their future, how they will raise their own children and tell their story to their children. Their children will be affected by this. It is like a revolving door".

1099 A/69/926-S/2015/409, para. 88.
1100 OCHA, 2015 Strategic Response Plan oPt.
1101 Office on the United Nations Special Coordinator for the Middle East, Report to the Committee, Brussels, 27 May 2015, par. 68.
1102 W032.
1103 The World Bank, Economic Monitoring Report to the Ad Hoc Liaison Committee, May 27, 2015, par. 39.
1104 Interview with WHO mental health program coordinator and Chief of UNICEF Gaza office. See also Joint Health Assessment report, October 2014 and OCHA, 2015 Strategic Response Plan oPt.
1105 OCHA, 2015 Strategic Response Plan oPt.
1106 United Nations Children's Fund. State of Palestine, Humanitarian Situation Report, 23 October 2014 (http://available at www.unicef.org/mena/UNICEF_SoP_SitRep_23_October_2014.pdf), p. 1.
1107 Child Protection Working Group (CPWG) assessment report, October 2014.
1108 W106.

Groups at particular risk

596. The commission observes that the above human rights restrictions have different impacts on groups with particular vulnerabilities. For instance, people with disabilities may suffer to a significantly larger extent from restrictions on access to health care than others; children are particularly vulnerable to obstacles in accessing education; women and girls, especially in the context of Gaza, may be more exposed to violence and loss of privacy than men and boys as a result of the loss of homes and displacement. Widows – almost 800 women were widowed last summer – are reported to face particular challenges.1109 Many of them face discrimination, as well as economic and social marginalization.1110 Many depend on male family members in terms of income and housing.[1111] Notably, the risk of losing custody of their children on the basis of discriminatory laws allegedly forced some women widowed during last year's hostilities to marry the brother of their deceased husband.[1112]

Summary analysis

597. The 2014 hostilities have had an enormous impact on the lives of Palestinians and Israelis. The scale of the devastation was unprecedented and the death toll and suffering from injuries and trauma speak volumes.

598. The impact of the 2014 hostilities on the Gaza strip cannot be assessed separately from the blockade imposed by Israel. In particular, the destruction and damage brought about by the escalation of violence last summer pose significant challenges to the enjoyment of the rights to an adequate standard of living, housing, food, water, sanitation, health and education of the population of Gaza. The damage to electricity infrastructure, critical for power supply and a whole range of services, including health services, water and sanitation has been devastating for the enjoyment of human rights in the short, medium and long-term. The continuing displacement of some 100 000 people deprives many of privacy, family life and may have consequences for physical security.

599. In accordance with international human rights law, all parties have obligations to respect and take steps towards ensuring the realization of these rights, including Israel, the State of Palestine, the authorities in Gaza and the international community. All relevant duty bearers and other stakeholders, including humanitarian agencies, NGOs and international donors must ensure that the relief and reconstruction efforts are based on human rights. In that context, while fully aware of the need for Israel to address its security concerns, the commission believes that the Gaza Reconstruction Mechanism, put in place with the assistance of the United Nations to accelerate efforts to rebuild destroyed houses and infrastructure, is not a substitute for lifting the blockade.

1109 Al Mezan, Press Release on Women's International Day, 7 March 2015, at http://www.mezan.org/en/post/20091/On+International+Women's+Day+Al+Mezan+Calls+for+Protection+and+Respect+for+Women's+Rights+in+Palestin.

1110 Submission from UN Women; meetings with women's rights representatives on 2 and 11 December 2014; interview with W233. The Commission also received a submission from the Palestinian Working Women's Society for Development, including affidavits, as well as women who lost their spouses as a result of the conflict.

1111 Norwegian Refugee Council, Women's Housing, Land, and Property Rights in the Gaza Strip Information, 2013, http://www.nrc.no/arch/_img/9188182.pdf.

1112 Excerpt from an interview with a local women's rights representatives in Gaza interviewed by the Commission, W233.

600. Ensuring accountability and guaranteeing the rights of all victims to an effective remedy will be a core prerequisite for breaking the cycle of violence and securing a life of peace and dignity in the region.

VII. Accountability

601. This chapter examines the issue of accountability for victims of serious violations of international humanitarian law and gross violations of international human rights law alleged to have occurred during the period under examination by the commission.

International legal framework

602. Israeli and Palestinian authorities have an obligation to investigate alleged violations of international humanitarian law and international human rights law and to hold accountable those responsible, as set out in the respective bodies of law.[1113] In order to meet this obligation, States should initiate a range of accountability mechanisms, including: criminal proceedings against suspected perpetrators of alleged serious violations of international law, including international criminal law; disciplinary measures; and commissions of inquiry. Using complementary measures can contribute to efforts to ensure that all alleged violations are met with an appropriate response; that future violations are prevented; and that victims' rights are respected.[1114]

603. In situations of armed conflict, including occupation, the authorities are required, at the very least, to "provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches" of the Geneva Conventions[1115] and other violations of international humanitarian law that amount to war crimes.[1116] In the context of law enforcement operations, at a minimum, States must investigate alleged violations of the right to life, resulting from use of force by State agents or where the responsible party may be a State agent, in accordance with international human rights law.[1117] International humanitarian law holds commanders and other superiors criminally responsible for war crimes committed by their subordinates if they "did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible."[1118] This is known as the doctrine of command or superior responsibility.

604. In relation to the duty to investigate, human rights treaties, guidelines and principles elaborate standards against which investigations are evaluated in order to determine compliance with the law. Thus, investigations are assessed against the following criteria: independence; impartiality; thoroughness; effectiveness; and promptness;[1119] transparency is also an increasingly important element.[1120]

[1113] Art. 2, International Covenant on Civil and Political Rights; Human Rights Committee General Comment No. 31, 2004; First Geneva Convention, art. 49, Second Geneva Convention, art. 50, Third Geneva Convention, art. 129, Fourth Geneva Convention, art. 146.

[1114] E.g Cohen and Shany, *Beyond the grave breaches regime: the duty to investigate alleged violations of international law governing armed conflicts*, 2012, section 5.

[1115] Art. 146, Geneva Convention IV. The grave breaches are defined in art. 147

[1116] See for example, art. 85 of Additional Protocol I and art. 8, Rome Statute of the ICC.

[1117] E/CN.4/2006/53, para. 35

[1118] ICRC, *Database Customary International Humanitarian Law*, Rule 153

[1119] For more details on these criteria, see A/HRC/15/50, paras 20-25, and The Public Commission to Examine the Maritime Incident of 31 May 2010 - Second Report – The Turkel Commission: Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of

605. While international humanitarian law does not elaborate the same level of detail concerning investigations, these human rights standards apply at all times, including during situations of armed conflict.[1121] During active hostilities, there are circumstances that may constrain the ability of a State to fully meet these standards. Such circumstances should be assessed on a case-by-case basis and may affect the manner in which an investigation is carried out, but do not discharge the authorities from their duty to investigate in a meaningful way.[1122] Fortunately, in practice, States increasingly endeavour to meet these human rights standards when conducting investigations in relation to situations of armed conflict.[1123]

606. International human rights law further sets out the obligation to ensure that individuals have accessible and effective remedies, including compensation, for gross violations of international human rights law and serious violations of international humanitarian law.[1124] Remedies include the victim's right to: (*a*) Equal and effective access to justice; (*b*) Adequate, effective and prompt reparation for harm suffered; and (*c*) Access to relevant information concerning violations and reparation mechanisms.[1125] Reparations include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[1126] Satisfaction includes a range of measures, *inter alia*: measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; a public apology; and legal reform.[1127]

A. Israel

1. Accountability mechanisms by Israel

607. The MAG is at the heart of Israel's investigation system, as detailed by the UN committee of independent experts in its 2010 report.[1128] The MAG is a central component of the IDF military justice system, which also includes the Military Police Criminal Investigation Department (MPCID).[1129] Decisions on whether to open or close an

Armed Conflict According to International Law (hereinafter: Turkel Commission), pp.118-134, at http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf. See also Cohen and Shany, 2012, section 3.

1120 A/HRC/15/50, para. 21; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989; Turkel Commission pp. 134-7

1121 Art. 3 (b), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005; E/CN.4/2006/53, para. 35; Turkel Commission, p.138. See also CCPR/C/ISR/CO/4, para. 6

1122 E/CN.4/2006/53, para. 36

1123 Cohen and Shany, 2012, sections 2.2 and 4.4

1124 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005

1125 Ibid., principle 11

1126 Ibid., principles 19 to 23

1127 Ibid, principle 22

1128 For more details on the role and functions of the MAG in relation to investigations during armed hostilities, see A/HRC/15/50, para.s 35-39

1129 Israel, Ministry of Foreign Affairs, *Israel's Investigation of Alleged Violations of the Law of Armed Conflict*, p. 3 http://mfa.gov.il/ProtectiveEdge/Documents/IsraelInvestigations.pdf (accessed on 6 May 2015) Hereinafter MoFA.

investigation lie with the MAG. In the event that the MAG orders a criminal investigation to be opened, the MPCID carries out the investigation and submits its findings to the MAG for a decision as to follow-up, which may include an indictment.

608. Recently, Israel has taken noteworthy steps towards bringing its system of investigations into compliance with international standards. The most significant development was the establishment in 2010 by the Government of Israel of the Public Commission to Examine the Maritime Incident of 31 May 2010 (hereinafter: the Turkel Commission). The Turkel Commission was, in part, charged with examining "whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict…conforms with the obligations of the State of Israel under the rules of international law".[1130] In February 2013, the Turkel Commission issued its second report, which concluded that "the examination and investigation mechanisms in Israel for complaints and claims of violations of international humanitarian law and the methods they practice, generally comply with the obligations of the State of Israel under the rules of international law".[1131] However, the Turkel Commission also found that "there are grounds for amending the examination and investigation mechanisms and that in several areas there are grounds for changing the accepted policy".[1132] Israel has implemented a number of the 18 recommendations issued by the Turkel Commission, as noted below, and established an inter-agency commission -- due to complete its work in the first half of 2015 -- to address implementation of the remaining ones.[1133]

609. The commission is also aware that NGO B'Tselem announced, on 4 September 2014, that it would not assist the current military investigation mechanism, which it considered fundamentally flawed, thereby breaking with past practice. Along with NGO Yesh Din, it asserted that "the existing investigation mechanism precludes serious investigations and is marred by severe structural flaws that render it incapable of conducting professional investigations".[1134]

Investigations into the 2014 hostilities

610. The commission notes Israel's assertion that it will investigate "fully any credible accusation or reasonable suspicion of a serious violation of the Law of Armed Conflict" in relation to complaints and other information suggesting IDF misconduct during Operation 'Protective Edge'.[1135] As of 11 June 2015, the MAG reported that the MAG Corps continued to receive complaints pertaining to incidents that took place during the operation, and to try to identify incidents that may warrant examination or investigation.[1136] The MAG Corps stated that it looks into the credibility and concrete nature of each complaint or piece

[1130] Turkel Commission, p.33
[1131] Turkel Commission, p.49
[1132] Turkel Commission, p.49
[1133] MoFA: 2014 Gaza Conflict: Factual and Legal Aspects, pp.13-14, http://mfa.gov.il/ProtectiveEdge/Documents/IsraelInvestigations.pdf (accessed on 6 May 2015)
[1134] Israeli human rights organizations B'Tselem and Yesh Din: Israel is unwilling to investigate harm caused to Palestinians, 4 September 2014, at http://www.btselem.org/press_releases/20140905_failure_to_investigate (accessed on 15 May 2015)
[1135] MoFA: 2014 Gaza Conflict: Factual and Legal Aspects, p.1, http://mfa.gov.il/ProtectiveEdge/Documents/IsraelInvestigations.pdf (accessed on 6 May 2015)
[1136] Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'- Update No. 4 (hereinafter: MAG update no. 4), 11 June 2015, at http://www.law.idf.il/163-7353-en/Patzar.aspx (accessed on 12 June 2015)

of information suggesting IDF misconduct to determine what, if any, follow-up action is appropriate.[1137]

611. In line with a recommendation made by the Turkel Commission,[1138] the IDF Chief of General Staff established a General Staff Mechanism for Fact-Finding Assessments (FFA Mechanism) to look into "Exceptional Incidents" during the 2014 hostilities.[1139] According to the MAG Corps, the FFA Mechanism is made up of a number of fact-finding assessment teams, each led by a senior IDF officer and comprising members with expertise on operational and legal issues, including on international law.[1140] A senior officer with expertise in international law was also appointed to assist the head of the FFA Mechanism.[1141] The MAG Corps noted that "[n]one of the fact-finding assessment teams' members served in the chain of command during Operation 'Protective Edge'".[1142]

612. According to the MAG Corps, "[t]he task of the FFA Mechanism is to collate information and relevant materials in order to determine the facts with respect to Exceptional Incidents that occurred during the Operation. These efforts are intended to provide the Military Advocate General…with as much factual information as possible in order to enable the MAG to reach decisions regarding whether or not to open a criminal investigation, as well as for the purpose of a 'lessons-learned' process and the issuance of operational recommendations that will assist in preventing exceptional incidents in the future. Exceptional Incidents examined by the FFA Mechanism are those incidents where the MAG has decided that additional information is required in order to determine whether there exists reasonable grounds for suspicion of a violation of the law that would justify a criminal investigation."[1143] Information collected and findings reached by the FFA Mechanism are then provided to the MAG to determine the appropriate next steps.[1144] In specific cases, the MAG can also opt to directly open a criminal investigation, without an initial fact-finding assessment.

613. Where the MAG deems the evidence before it to be sufficient to open a criminal investigation, the case is referred to "a special investigation team assembled by the Military Police's Criminal Investigation Division in order to investigate incidents alleged to have occurred during Operation 'Protective Edge'".[1145] The MAG notes that this investigation team has collected testimonies from IDF soldiers and commanders, as well as from tens of Palestinian witnesses.[1146]

614. As of 11 June 2015, the MAG reported that he had referred allegations with regard to approximately 190 incidents for examination by the FFA Mechanism. Of those, the FFA Mechanism had examined and referred 105 to the MAG for a decision on follow up action.[1147] The MAG closed the cases of 19 of these incidents without opening a criminal investigation where he "did not find that the circumstances of the incident gave rise to

[1137] Ibid; See also Decisions of the IDF Military Advocate General Regarding Exceptional Incidents During Operation 'Protective Edge'- Update No. 3 (hereinafter: MAG update no. 3), 22 March 2015, at http://www.law.idf.il/163-7183-en/Patzar.aspx (accessed on 10 May 2015)

[1138] Turkel Commission recommendation no. 5, p.425

[1139] MAG, Operation Protective Edge: Examinations and Investigation, 10 September 2014, at http://www.mag.idf.il/261-6858-en/Patzar.aspx (accessed on 10 May 2015)

[1140] Ibid.

[1141] Ibid.

[1142] Ibid.; MAG update no. 4

[1143] Ibid.

[1144] Ibid.

[1145] MAG update no. 3

[1146] MAG update no. 4

[1147] Ibid.

reasonable grounds for suspicion of criminal behavior" based on the assessment of the FFA Mechanism.[1148] However, in some of these latter cases, the MAG recommended reviewing operational methods; while in others, the MAG was unable to identify any involvement of IDF forces in the incident.[1149] In some instances, the MAG referred the case back to the FFA Mechanism for further examination.[1150]

615. In addition, the MAG ordered the opening of 15 criminal investigations "without the need for prior examination by the FFA Mechanism on the basis of allegations that indicated *prima facie* grounds for a reasonable suspicion of criminal misconduct".[1151] Two of these were closed without undertaking criminal or disciplinary proceedings, while the 13 others were either ongoing or completed and awaiting review by the MAG. The MAG ordered a criminal investigation into a further seven incidents following examination by the FFA Mechanism.[1152]

616. In April 2015,[1153] the MAG issued the first indictments in relation to the 2014 hostilities. Two soldiers were accused of looting NIS 2,420 (over USD 600) from a Palestinian home in Shuja'iya, Gaza City. A third soldier was accused of assisting them. Two of the accused are also charged with obstruction of justice.[1154]

617. Israel initiated two additional inquiries. According to media reports, the first one was conducted by the Foreign Affairs and Defense Committee of the Knesset. At the time of writing, the Committee's report was reportedly finalised, but has yet to be published.[1155] The second inquiry, announced by the State Comptroller in January 2015, is looking into "the procedure of decision- making by the military and political echelons during operation "Tzuk Eitan" (Protective Edge). The investigation will include aspects of international law, and also focus on the examination and investigational procedures within the IDF and the government".[1156] At the time of writing, the State Comptroller had not yet published his report.

Compliance of Israel's investigations with international standards

618. The commission is aware of Israel's arguments regarding the numerous practical challenges involved in examining and investigating alleged violations during the 2014 hostilities.[1157] Nevertheless, the commission is concerned about a number of procedural, structural and substantive shortcomings, which continue to compromise Israel's ability to adequately fulfil its duty to investigate. Many of these have been identified by the Turkel Commission, as well as by international human rights mechanisms.[1158] It should be noted

[1148] Ibid.
[1149] Ibid.
[1150] Ibid.
[1151] Ibid.
[1152] Ibid.
[1153] E.g. http://www.timesofisrael.com/soldiers-indicted-for-looting-during-gaza-war/#! (accessed on 5 May 2015)
[1154] MAG update no. 4
[1155] http://www.ynetnews.com/articles/0,7340,L-4630123,00.html (accessed on 31 May 2015)
[1156] Israel State Comptroller, The State Comptroller investigation of operation Tzuk Eitan- Protective at http://www.mevaker.gov.il/he/publication/Articles/Pages/2015.1.20-Tzuk-EItan.aspx?AspxAutoDetectCookieSupport=1 (accessed on 31 May 2015)
[1157] These are set out by Israel's Ministry of Foreign Affairs in MoFA: 2014 Gaza Conflict: Factual and Legal Aspects, pp.2&9, http://mfa.gov.il/ProtectiveEdge/Documents/IsraelInvestigations.pdf (accessed on 6 May 2015)
[1158] E.g. Human Rights Committee, Concluding observations on the fourth periodic report of Israel, CCPR/C/ISR/CO/4 (hereinafter: CCPR/C/ISR/CO/4), para. 6; and A/HRC/15/50, paras 90-95.

that the analysis below does not constitute a comprehensive review of Israel's system of investigations, but rather highlights a few key points, which, if addressed, would enhance the compliance of the system with international standards.

Independence and impartiality

619. As noted by the UN Committee of Experts in 2010 and 2011, a central failing of the investigation system stems from the dual responsibilities of the MAG, both as the legal advisor to the Chief of General Staff and other military authorities and as the supervisor of disciplinary law and of criminal investigations in the military.[1159] Along with the Attorney General, the MAG reportedly regularly participated in cabinet meetings regarding the 2014 hostilities.[1160] B'Tselem argues that "[m]edia reports and past experience indicate that almost all the decisions made during Operation Protective Edge were made after legal counsel was provided by the MAG and the attorney general".[1161] The MAG and the MAG Corps are also tasked with providing legal advice on operational issues before and during the hostilities, which directly influences actions taken by soldiers on the ground.[1162] The commission is aware that, since 2007, there has been an organizational separation of the units within the MAG Corps charged with law enforcement[1163] and those tasked with provision of legal advice,[1164] with a view to ensuring that "the military advocates in charge of the prosecution teams no longer engage in the provision of legal advice to the heads of the jurisdiction districts in which they operate", as noted by the Turkel Commission.[1165] At the same time, the International Law Department advises "IDF units with regard to operational activity during times of emergency and calm, including formulating a legal position on methods of warfare, operational plans and military targets".[1166] The involvement of the MAG in policy discussions concerning the hostilities, and the role of MAG Corps legal advisors in decisions taken by the IDF during combat continue to raise questions about the MAG's ability to carry out independent and impartial investigations, particularly with regard to cases where soldiers may be following commands authorised by the MAG and his subordinates, but nonetheless may be suspected of having violated international humanitarian law or international human rights law. Moreover, there is a need to ensure the robust application of international humanitarian law in the MAG's decisions as to whether to open or close criminal investigations. For example, the definition of "military objectives" has implications both for the MAG's operational guidance of troops on the ground and his later assessment of whether or not to refer a case for criminal investigation.

620. Moreover, in the context of the 2014 hostilities, the FFA Mechanism appears to have replaced the operational debriefings for the purposes of informing the MAG as to

[1159] A/HRC/15/50, para 53. See also Cohen and Shany, 2012, section 4.3.2; A/HRC/16/24, para 12. http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24_AUV.pdf

[1160] B'Tselem, Israeli authorities have proven they cannot investigate suspected violations of international humanitarian law by Israel in the Gaza Strip, 5 September 2014, at http://www.btselem.org/accountability/20140905_failure_to_investigate (accessed on 31 May 2015)

[1161] Ibid.

[1162] According to a submission received by the commission from Prof. Amichai Cohen, since Operation 'Cast Lead' (2008-09), lawyers have become more involved in the command structure and in operational decision-making.

[1163] The law enforcement sections are comprised of the military prosecution and the Military Defender's Office.

[1164] The legal advice units are made up of the Advice and Legislation Department, the Legal Advisor for the Territories of Judea and Samaria, and the International Law Department.

[1165] Turkel Commission, p.282-283. See also MoFA, p.4.

[1166] Turkel Commission, p.288

whether the circumstances of an incident of alleged violations of international humanitarian law merit opening an investigation. This is a welcome measure, given that, according to the MAG, the primary purpose of operational debriefings is as "an organizational tool in order to 'improve the performance of military units' and in order to learn lessons".[1167] This development is in line with the Turkel Commission, which recommended that "a *separate* mechanism shall be established in order to conduct a fact-finding assessment".[1168] It was unclear, at the time of writing, as to whether the FFA Mechanism will be limited to the 2014 hostilities, or whether it will also be implemented with respect to alleged violations that occurred subsequently in Gaza as well as in the West Bank.

621. While the MAG is appointed by the civilian Minister of Defense, his appointment is made upon the recommendation of the IDF's Chief of General Staff,[1169] contrary to the recommendation made by the Turkel Commission that the MAG be appointed upon recommendation of a public professional committee.[1170] In addition, the tenure and promotion of the MAG are currently dependent on the discretion of his supervisors,[1171] thereby limiting his autonomy. The Turkel Commission suggested addressing this potential difficulty by restricting the MAG's term in office to six years and instituting a predetermined rank.[1172]

622. It is important to mention that Israel has in place safeguards to preserve independence by means of civilian judicial oversight over decisions taken by the MAG, notably by the Attorney General and the Israeli Supreme Court, sitting as the High Court of Justice. With respect to the Attorney General, appeals can be made to him concerning MAG decisions, and he may intervene or examine a decision by the MAG. In April 2015, two directives were issued to this effect, and served to formalise this appeals process.[1173] In addition, to enhance the Attorney General's ability to carry out his oversight function, the Department of Special Operations (international law) was created in January 2010 in the office of the Attorney General.[1174] The Turkel Commission recommended that this be strengthened further by establishing a unit specializing in international humanitarian law in the Advice and Legislation Department at the Ministry of Justice.[1175]

623. As for the High Court of Justice, it hears petitions submitted to it regarding alleged actions of the government and its agencies,[1176] and is therefore in a position to issue rulings in relation to decisions taken by the MAG on investigations into alleged violations during hostilities.[1177] However, in the past, the High Court of Justice has taken the position that its intervention in matters relating to the chief military prosecutor "should occur only in very exceptional circumstances".[1178] According to information reviewed by the commission, in

[1167] Turkel Commission, p.381-2
[1168] Turkel Commission, p.382 (recommendation no. 5)
[1169] http://www.law.idf.il/320-en/Patzar.aspx (accessed on 10 May 2015)
[1170] Turkel Commission recommendation no. 7
[1171] Cohen and Shany, 2012, section 4.3.2
[1172] Turkel Commission recommendation no. 7
[1173] Directives 4.5003 and 9.1002 issued by the Attorney General; MAG update no. 4
[1174] Submission from Prof. Amichai Cohen
[1175] Turkel Commission recommendation no. 12, p. 428
[1176] Turkel Commission, pp.316-317; submission from Prof. Amichai Cohen
[1177] MAG, Operation Protective Edge: Examinations and Investigation, 10 September 2014, at http://www.mag.idf.il/261-6858-en/Patzar.aspx (accessed on 10 May 2015); B'Tselem, Israel's report to the UN misstates the truth, 4 February 2010, at http://www.btselem.org/gaza_strip/20100204_israels_report_to_un (accessed on 31 May 2015)
[1178] HCJ 3292/07, Adalah v. Attorney General, 2011, at http://www.shali-law.co.il/index.php?option=com_content&view=article&id=79&Itemid=37 (accessed on 6 May 2015)

the majority of cases, the High Court of Justice has approved, in principle, the policy set by the MAG, and has rarely overturned a decision by the MAG.[1179]

Promptness

624. The MAG Corps stated that the "fact-finding assessment teams were instructed to complete their assignments within a short timeframe in order to ensure prompt and effective examinations".[1180] On 22 March 2015, the MAG Corps noted the "rapid pace" of progress of investigations undertaken by the MPCID.[1181] While welcome, the vague wording leaves open to interpretation the actual timeframe in which the investigations must be completed, leaving the process vulnerable to delays.

625. As explained by the Turkel Commission, promptness "includes the obligations to quickly commence and conduct an investigation in a timely manner. An investigation conducted within a reasonable period of time contributes to the thoroughness and effectiveness of the investigation and also to public confidence in the investigative system, and to the sense that justice is achieved."[1182] On the basis of files it reviewed, the Turkel Commission found that "the duration of these investigations sometimes extends over many years."[1183] Delays in investigations can seriously compromise the collection of evidence, which is increasingly difficult to gather and may eventually be entirely lost the more time goes by. The Turkel Commission therefore recommended a timeframe of a few weeks for a decision by the MAG on possible initiation of an investigation; a timeframe to be set for conducting the actual investigation; and for the MAG, in coordination with the Attorney General, to set a period of time between the decision to open an investigation and the decision to adopt legal or disciplinary measures, or to close the case.[1184] Given that almost one year has elapsed since the end of the hostilities, questions arise regarding the promptness of the many investigations that are as yet incomplete.

Thoroughness and effectiveness

626. There is little information available as to how the relevant bodies collected or assessed evidence.[1185] The commission received indications that some attempt was made by the MAG to gather Palestinian eyewitness testimony as part of at least some investigations. However, a number of Palestinian witnesses interviewed by the commission said that they had not been contacted by an Israeli investigative team. In addition, it is unclear if other methods were used to ensure a thorough review of the facts, for example, undertaking autopsies or medical examinations, to the extent possible. As noted above, the FFA Mechanism contains staff with expertise on operational and legal issues, including on international law, but no information was available as to whether staff are trained on investigation techniques and methodology, in line with international human rights standards.

[1179] Submissions from Prof. Amichai Cohen and Adalah

[1180] MAG, Operation Protective Edge: Examinations and Investigation, 10 September 2014, at http://www.mag.idf.il/261-6858-en/Patzar.aspx (accessed on 10 May 2015)

[1181] MAG update no. 3

[1182] Turkel Commission, pp. 397-8

[1183] Turkel Commission, p. 398

[1184] Turkel Commission recommendations no. 6 and 10.

[1185] Submission 33

Transparency

627. Israel has exerted efforts to increase transparency with regard to its investigations. This has included publication of four updates by the MAG regarding the status of assessments and investigations.[1186] Israel has also made attempts to inform the international community of progress in this regard through briefings to diplomats and UN officials in Geneva and New York,[1187] and through the publication of material on the hostilities on the website of the Ministry of Foreign Affairs.[1188] In line with the recommendation of the Turkel Commission for the MAG to state his reasons for declining to open an investigation,[1189] the MAG has included information concerning certain individual incidents in his aforementioned updates. Unfortunately, the Government of Israel did not reply to a letter sent by the commission on 10 February 2015, requesting information in relation to investigations, adherence to the basic principles of international humanitarian law, and specific incidents in Gaza and the West Bank. This would have been an opportunity to provide additional relevant information for inclusion in this report.

628. However, a detailed reading of the information provided on many of the incidents in those updates provides little clarity on the assessment by the FFA Mechanism and the MAG. The MAG updates rather make brief references to military necessity, military targets, warnings provided, fulfillment of the requirement of the principle of proportionality or the targeting process, and so on, without supplying an adequate level of detail to support the reasoning justifying actions that resulted in civilian harm. Moreover, according to information received by the commission, lawyers representing complainants have been prevented from reviewing investigatory materials, on the basis of its classified nature;[1190] and complainants are often not informed of MAG decisions,[1191] despite the assertion by the MAG that he replies to individuals or organizations that have submitted complaints in writing.[1192]

629. While the IDF is understandably limited in the information it makes publicly available by legitimate security concerns, there is a need to provide sufficient information for its updates to be meaningful.[1193] Information currently made available is very welcome, but is insufficient to allow for effective public and international scrutiny. The commission recognises that "the level of transparency expected of human rights investigations is not always achievable in situations of armed conflict, particularly as questions of national security often arise".[1194] Indeed, as noted by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, "States may have tactical or security reasons not to disclose criteria for selecting specific targets….But without disclosure of legal rationale as well as the bases for the selection of specific targets (consistent with genuine security needs), States are operating in an accountability vacuum. It is not possible for the international community to verify the legality of a killing."[1195]

630**. Case study:** One of the criminal investigations closed by the MAG without further legal proceedings had looked into the killing of four children on 16 July 2014. The boys

[1186] These can be found at: http://www.law.idf.il/1007-en/Patzar.aspx
[1187] 16 and 25 February 2015 and 27 May 2015 in Geneva and 30 October 2014 in New York.
[1188] These can be found at http://mfa.gov.il/ProtectiveEdge/Documents/IsraelInvestigations.pdf (accessed on 6 May 2015)
[1189] Turkel commission recommendation no. 6
[1190] Submission from Adalah
[1191] Submission from Adalah
[1192] MAG update no. 3 and no. 4
[1193] Submission 33
[1194] A/HRC/15/50, para 32. See also Cohen and Shany, 2012, section 2.2
[1195] A/HRC/14/24/Add.6, para. 92

had been playing on a breakwater near the port in Gaza City, when they were hit by two missiles fired by Israeli forces from the air. According to the 11 June 2015 update of the MAG, the MPCID investigation found that the incident took place in an area, located on the breakwater, that was known to be a compound belonging to Hamas naval forces and was "utilized exclusively by militants".[1196] MPCID investigators learnt that an intelligence assessment indicated that operatives would gather in the compound to prepare for military activity against the IDF. Aerial surveillance then identified figures running into the compound, who were believed to be militants, and were not identified as children. On the basis of the investigation, the MAG concluded that "the attack process…accorded with Israeli domestic law and international law requirements".[1197]

631. The commission also examined the killing of the four boys. Based on its own investigation, the commission found strong indications that the IDF failed in its obligations to take all feasible measures to avoid or at least minimize incidental harm to civilians. According to the International Committee of the Red Cross, "[i]n order to avoid the erroneous or arbitrary targeting of civilians entitled to protection against direct attack, it is…of particular importance that all feasible precautions be taken in determining whether a person is a civilian and, if so, whether he or she is directly participating in hostilities."[1198] International humanitarian law provides that, in case of doubt, the person in question must be presumed to be a civilian and therefore protected against direct attack.[1199] In relation to targeting decisions, the determination of civilian status "will have to take into account, *inter alia*, the intelligence available to the decision maker, the urgency of the situation, and the harm likely to result to the operating forces or to persons and objects protected against direct attack from an erroneous decision."[1200]

632. In its evaluation of whether these criteria had been met in this specific case, the commission considered the following elements. Firstly, the boys were aged between 9 and 11 years, and were therefore small in stature in comparison to the size of an average adult. Secondly, there were no IDF soldiers in the area, as the ground operations had not commenced, nor were there any other persons in imminent danger, thus calling into question the urgency of launching the strike. From the information available, it would appear that the IDF could have more exhaustively verified whether those being targeted were taking a direct part in the hostilities or were members of armed groups with a continuous combat function. Thirdly, the compound was located in the centre of a city of almost 550,000 residents,[1201] between a public beach and an area regularly used by fishermen, and was visible from nearby hotels, where international journalists were staying. It could therefore not be ruled out that civilians, including children, might be present. These factual elements suggest that by assuming that the individuals were members of armed groups merely on the basis of their presence in a particular location, the IDF reversed the presumption of civilian status. In addition, the commission is concerned that the MAG appears to have validated this incorrect application of international humanitarian law.

633. Concerning the investigation itself, the MAG explained that testimony was gathered from a large number of soldiers, and supplemented by video footage, media images and affidavits of 3 Palestinian witnesses. International journalists and other eyewitnesses,

[1196] MAG update no. 4

[1197] Ibid.

[1198] ICRC, *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law*, 2009, p.76

[1199] Arts 50 (1) and 52 (1), Additional Protocol I.

[1200] Ibid.

[1201] Palestinian Bureau of Statistics, 2014 figures, at http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/gza.htm (accessed on 31 May 2015)

including Palestinians, do not appear to have been questioned, despite many persons having witnessed the incident. This raises questions about the thoroughness of the investigation.

Recommendations of UN Human Rights Treaty Bodies

634. The UN Human Rights Committee has consistently urged States parties to undertake criminal investigations into serious human rights violations in order to bring perpetrators to justice.[1202] In November 2014, during its periodic examination of Israel's implementation of the International Convention on Civil and Political Rights, the Committee directed several recommendations to Israel regarding accountability. They included: to "…continue reforming its investigative system, including, as an initial step, by implementing the recommendations of the second report of the Turkel Commission. It should ensure that all human rights violations committed during its military operations in the Gaza Strip in 2008-2009, 2012 and 2014 are thoroughly, effectively, independently and impartially investigated, that perpetrators, including, in particular, persons in positions of command, are prosecuted and sanctioned in a manner commensurate with the gravity of the acts committed, and that victims or their families are provided with effective remedies, including equal and effective access to justice and reparations." Other recommendations call for investigations into all incidents involving the use of firearms by law enforcement officers and prosecutions of those responsible for excessive use of force during arrest operations, as well as into allegations of torture and ill-treatment, and that victims be provided with effective remedies.[1203]

The West Bank, including East Jerusalem

635. The system of investigations into allegations of violations of international law by the IDF in the West Bank during the period under consideration by the commission differs to some degree from that in Gaza. While the MAG remains central to the system in the West Bank, the FFA Mechanism (see above) has so far only been implemented in relation to the 2014 hostilities in Gaza. Based on the information available, the process of investigations in the West Bank appears to operate as it did prior to the June 2014 Operation "Brother's Keeper."

636. Since April 2011, the MAG adopted a new investigation policy in the West Bank, whereby "every case in which uninvolved Palestinians are killed by IDF fire be investigated immediately by the Criminal Investigation Division" of the IDF Military Police Corps.[1204] According to the IDF, the policy does not apply in cases where the killing "occurred during an activity with clear elements of combat (e.g. fire exchange)".[1205] While this policy is an improvement, the broad exemption clause means that it does not yet fully comply with the legal requirement to investigate every fatality resulting from the use of force by a State agent.[1206]

637. In cases of alleged violations against Palestinians not involving death, information available to the commission indicated that, in some cases, criminal investigations are directly opened, while in others, the MAG corps may initiate a preliminary inquiry to

1202 Human Rights Committee General Comment No. 31 (2004), para. 15.

1203 CCPR/C/ISR/CO/4, paras 13 and 15

1204 Israel Defence Forces, IDF Military Advocate General Implements New Investigation Policy in West Bank, 6 April 2011, at https://www.idfblog.com/blog/2011/04/06/idf-military-advocate-general-implements-new-investigation-policy-in-west-bank/ (accessed on 15 May 2015)

1205 Ibid.

1206 See section above entitled 'International legal framework' for an explanation of the legal analysis.

determine whether a criminal investigation is warranted.[1207] Preliminary inquiries are apparently often opened when the alleged violation occurred during a military operation and rely considerably on operational debriefings.[1208] Based on the outcome of the inquiry, the MAG decides whether a criminal investigation should be opened.

638. The commission reviewed information pertaining to the use of operational debriefings as a means to inform the decision of the MAG as to whether to open a criminal investigation. The main shortcomings relate to the facts that: they are carried out by the same unit involved in the incident;[1209] they are generally based on soldiers' accounts without complementing this with evidence collected from victims and witnesses; those who carry them out are not trained investigators; there is no right of appeal against findings reached; and there is a risk that soldiers 'coordinate' their accounts of the incident.[1210] Moreover, there is no timeframe set for the finalisation of such debriefings, and, in practice, this can be a very long process,[1211] which may hamper any eventual criminal investigation. The Turkel Commission adds that "the operational debrief is not focused on questions of criminality".[1212] Also of concern is that such debriefs are not made public; complainants and victims are not informed of the outcome; and information contained therein is inadmissible as evidence in any subsequent prosecution.[1213] The commission hopes that the establishment of a FFA Mechanism with regard to the 2014 hostilities in Gaza may be a first step towards implementation of the same mechanism for incidents in Gaza thereafter and for incidents not involving death in the West Bank.

639. During the period under examination, Israel has not published updates similar to those relating to Operation 'Protective Edge' regarding its investigations in the West Bank. However, from time to time, the MAG does publish his decision on a particular case, or provides such information to a requesting NGO. The commission has analysed one such document, dated 10 July 2014, which discloses the MAG's reasoning for closing an investigation into the case of a 14-year-old boy killed on 19 March 2014.[1214] The boy was shot with live ammunition by an IDF soldier while he was trying to cross through a breach in the 'Wall' to pick wild herbs, as reportedly previously done by Palestinians in the same area during this season without ramifications.[1215] The MPCID investigation concluded that the IDF acted in full accordance with open-fire regulations, and therefore found no grounds for criminal proceedings. The MPCID found that the shot was aimed at the boy's feet but actually hit his waist. The investigation appears to have been based on information

[1207] Yesh Din, Data Sheet, September 2014, at http://www.yesh-din.org/userfiles/file/datasheets/YeshDin%20-%20DataSheet%20Metzach%209_14%20-%20Eng%20(1)%20(1).pdf (accessed on 31 May 2015)

[1208] Turkel Commission, pp.335-9

[1209] Cohen and Shany, 2012, sections 4.2.1 and 4.3.1

[1210] Turkel Commission, p.381. See also Amnesty International, Trigger-happy: Israel's use of excessive force in the West Bank, February 2014, p.62, at http://www.amnesty.org/en/documents/MDE15/002/2014/en/ (accessed on 31 May 2015)

[1211] Turkel Commission, pp.381 and 339. See also Amnesty International, Trigger Happy, p.62

[1212] Turkel Commission, p.382

[1213] Turkel Commission, p.338

[1214] The full text can be found at http://www.law.idf.il/163-6762-he/Patzar.aspx?pos=35 (accessed on 29 May 2015). Although the killing occurred just prior to the period under examination, the Commission deemed it important to include the case in order to shed light on the way investigations are handled by the MPCID and the MAG.

[1215] B'Tselem, Responsibility for killing 14-year-old Palestinian lies primarily with commanders who ordered armed ambush, 26 March 2014, at http://www.btselem.org/firearms/20140326_killing_of_yusef_a_shawamreh_deir_al_asal (accessed on 31 May 2015)

provided by the IDF, while the testimony of Palestinians present could not be obtained. An investigation by B'Tselem concluded that the boy "posed no danger to any other persons".[1216] For its part, the MPCID does not suggest that the boy was armed or that he posed a threat to the soldiers or anyone else.[1217] The reasoning outlined by the MAG gives an insight into the way in which the MPCID assesses information during its investigations. Although the MPCID did not cite any threat posed by the boy, the MAG still found no wrong-doing on the part of the IDF.

2. Other factors that may hinder achieving accountability

Investigations into the role of the political and military leadership in suspected violations of international humanitarian law and international human rights law

640. During the commission's examinations of incidents pertaining to IDF attacks on residential buildings, the use of artillery and other explosive weapons with wide-area effects in densely populated areas; the destruction of entire neighbourhoods in Gaza; and the regular resort to live ammunition by the IDF, notably in crowd control situations, in the West Bank; questions arose regarding the role of senior officials who set military policy. In many cases, individual soldiers may have been following agreed military policy, but it is the policy itself that may violate the laws of war. Currently, the FFA Mechanism focuses on so-called 'exceptional incidents' suggesting a rather narrow approach, which may fail to take into account violations of international law that result from an intentional policy or military command, which itself may fail to comply with international legal obligations.[1218] The commission's investigations also raise the issue of why the political and military leadership did not revise their policies or change their course of action, despite considerable information regarding massive death and destruction in Gaza, which in turn raises questions as to potential violations of international humanitarian law and criminal law by these officials. There is therefore a need to look into the various stages of decision-making, notably in the design, planning, ordering and oversight of the military operations.

641. By way of example, on 21 July 2014, 13 days into the hostilities in Gaza, ten Israeli human rights organisations wrote to the Attorney General requesting that he instruct the political and command leadership to refrain from taking actions that may violate the laws of war. They also asked him to act to establish a mechanism to investigate decisions and guidelines of these leaders regarding the conduct of hostilities in Gaza.[1219] In a reply of 5 August 2014, the Attorney General noted that the IDF is instructed to act in accordance with international law, and that to ensure these obligations, the Government and military receive constant legal counsel. He added that inquiry and investigation mechanisms exist within the IDF and the Ministry of Justice, and gave no indication that he would follow up on the requests made by the human rights organisations.[1220] (Calls, made by eight NGOs in a letter to the Attorney General, for investigations at all levels into alleged violations during the 2008-09 hostilities in Gaza were reportedly met with a similar response from the Attorney General.)[1221] In the latest round of violence, no action is known to have been taken by the MAG, in the case of military commanders, and by the Attorney General, with

[1216] Ibid.

[1217] http://www.law.idf.il/163-6762-he/Patzar.aspx?pos=35 (accessed on 29 May 2015)

[1218] Submission 33

[1219] http://www.acri.org.il/en/wp-content/uploads/2014/07/NGOs-Letter-to-AG-Protective-Edge-Violations.pdf (accessed on 31 May 2015)

[1220] http://www.acri.org.il/he/wp-content/uploads/2014/07/yoamash050814.pdf (accessed on 31 May 2015)

[1221] http://www.btselem.org/download/20090120_acri_to_mazuz_on_castlead_investigations_eng.pdf ; http://www.btselem.org/press_releases/20090319 (accessed on 31 May 2015)

respect to military and civilian leadership, to initiate investigations into the role of senior officials. It is therefore unclear how the Attorney General is actively and wholly fulfilling his role to provide oversight of the MAG.

642. Another accountability mechanism that the State may initiate is a public commission of inquiry to review policies and practices. As noted by the Israeli Ministry of Foreign Affairs, this was done in response to the Flotilla incident, with the establishment of the Turkel Commission.[1222] With regard to the 2014 hostilities, no such commission of inquiry has been initiated. Rather, for the time being, it is the State Comptroller who will undertake an examination of the decision-making process of the political and military echelons, with reference to international law. As noted by the Turkel Commission, it is state commissions of inquiry that would usually handle the investigation of incidents involving senior decision-makers. The commission notes that the State Comptroller does not appear in the list of bodies in Israel that investigate violations of international humanitarian law, outlined by the Turkel Commission.[1223]

643. The State Comptroller does not appear to have a specific focus on assessing compliance with international law. For example, when looking into the Flotilla incident, the Turkel Commission explained that the "State Comptroller focused on the decision–making process within the Government with respect to its handling of the maritime incident and the interaction that took place between the political echelon and the IDF; intelligence matters; and the work of the public relations authorities."[1224] To attempt to mitigate the impact of a lack of specialised expertise, the Comptroller has brought in experts to assist with his current inquiry concerning the 2014 hostilities in Gaza in order to bolster existing capacity, notably in the field of international humanitarian law.[1225] The commission looks forward to reading the report of the State Comptroller and encourages its early publication. His inquiry should be supplemented by mechanisms - including criminal proceedings and disciplinary measures - that aim, where appropriate, to hold to account individuals who may have played a role in wrong-doing, regardless of their position in the hierarchy.

644. Broadly speaking, the commission is not aware of any on-going investigations of senior officials for alleged violations of international humanitarian law or international human rights law. In this context, the Turkel Commission recommended that Israel enact "provisions that impose direct criminal liability on military commanders and civilian superiors for offenses committed by their subordinates",[1226] in line with the doctrine of command or superior responsibility.

Domestic legislation

645. As noted by the Turkel Commission, Israeli law does not include all acts defined as war crimes under international humanitarian law.[1227] Correspondingly, the Turkel Commission recommended that the Ministry of Justice "initiate legislation for all international criminal law offenses that do not have a corresponding domestic offense in Israeli criminal law."[1228] If implemented, this would be an important step towards ensuring

[1222] MoFA, p.13
[1223] Turkel Commission, pp. 387-8
[1224] Turkel Commission, p.445
[1225] The investigation will be aided by three experts: Prof. Michael Newton, Prof. Moshe Halbertal and Prof. Miguel Deutsch. Prof. Newton is an international law expert, with particular expertise on accountability, transnational justice, and conduct of hostilities.
[1226] Turkel Commission recommendation no. 2; submission from Adalah. Note also that the doctrine of command responsibility is described in the international legal framework.
[1227] Turkel Commission, pp.363-5
[1228] Turkel Commission recommendation no. 1

that when convictions regarding allegations of serious international crimes are secured, they are met with sentences commensurate to the crime. As mentioned above, the Turkel Commission also recommended enacting legal provisions to incorporate the doctrine of command or superior responsibility in domestic legislation.

Right to effective remedies and reparation

646. The commission was not in a position to thoroughly examine victims' right to benefit from effective remedies and reparation in the timeframe available. However, it would like to emphasize that victims face significant obstacles that impede the fulfilment of this right. All Palestinian victims are confronted with similar difficulties, but impediments faced by Gazan victims are compounded by the particular context of the Gaza Strip, notably the Israeli-imposed blockade - which prevents Palestinians in Gaza from exiting the Strip and from entering Israel - and the recurrent bouts of active hostilities. Some of the main challenges are summarised below.

647. A broadly defined legal exclusion within Israel's Law on the Liability of the State 5712-1952 (Civil Torts Law), known as the "combat action" exemption, prevents victims from claiming compensation from the Government of Israel for actions taken while "combat[ing] terror, hostile acts or insurrection", even when there are clear allegations of violations of international law.[1229] A further impediment for victims from Gaza to seek compensation for damages is the statute of limitations applied under the Civil Torts Law, which is reduced from the usual seven years to only two years from the day of the event during which the injury took place.[1230] Prior to this, in order to retain the possibility to make a claim, victims must submit written notice to the Ministry of Defence within 60 days. This procedure is particularly difficult to fulfil during active hostilities, especially when they last for an extended period of time, such as those of summer 2014.

648. Restrictions on movement, which are almost total in the case of Gaza's residents, severely constrain victims' ability to claim compensation, in a number of ways. Routine procedures required of claimants, such as signatures by a claimant's lawyer, are often difficult, if not impossible, to accomplish. In addition, plaintiffs and witnesses from Gaza are routinely denied access to Israeli courts in civil lawsuits concerning compensation claims for cross-examination or for examination by medical specialists, due to the blockade. This almost complete closure of Gaza also restricts the entry of lawyers from Israel to Gaza and therefore effectively prevents in-person contact with their clients.

649. High financial guarantees imposed on the plaintiff can be another factor that prevents Palestinian victims and their families from pursuing a claim in Israeli courts.[1231] The costs of making a claim include court and legal fees, as well as a guarantee that is assessed according to the likelihood of the success of the claim. Such costs are frequently beyond the means of Palestinians, especially in areas where poverty levels have risen substantially in recent years due to access and movement restrictions, such as Gaza.

Past accountability

650. Israel has failed to hold accountable those responsible for alleged grave violations of international humanitarian and human rights law resulting from IDF actions during recent past active hostilities in Gaza.[1232] According to the information available with regard to Operation "Cast Lead", of 52 criminal investigations opened into allegations of

[1229] A/69/347, paras 61-69
[1230] Submission from Adalah; A/69/347, paras 61-69
[1231] Submission from Adalah; A/69/347, paras 61-69
[1232] E.g. A/69/347, para 52.

wrongdoing, three cases were submitted to prosecution and resulted in four convictions. In three other cases, disciplinary action was taken against six officers.[1233] Those cases that were pursued before the courts were not in relation to the most serious violations alleged to have been committed during the 2008-09 operation. In relation to Operation "Pillar of Defense", as of April 2013, the MAG had not launched a single criminal investigation.[1234] In relation to both operations, policy level decisions and possible responsibility of members of the political, military and judicial establishments were not investigated. This, coupled with the very small percentage of prosecutions and convictions and the nature of the cases resulting in indictments, raise serious questions regarding the effectiveness of the current mechanisms to hold to account those responsible for the most serious alleged crimes, wherever they may have taken place.

651. The picture is equally bleak when reviewing other data available. According to the information reviewed, of 36 investigations into the killings of Palestinians in the West Bank between April 2011 and early 2015, there had only been two indictments and one conviction.[1235] Moreover, Yesh Din found that between 2010 and 2013, only 2.2 per cent of investigations into alleged IDF offenses against Palestinians resulted in indictments.[1236] In rare cases between September 2000 and mid-2013 where convictions were secured, sentences were relatively short - in some cases very short - given that these cases involved deaths of civilians,[1237] raising questions as to whether sentences handed down were commensurate with the gravity of the crimes.[1238] With regard to allegations of torture and ill-treatment, NGO the Public Committee against Torture in Israel notes that over a 15-year period (1999 to 2014), not a single criminal investigation was opened into the hundreds of complaints that it and others have presented to the relevant authorities.[1239]

B. Palestine

652. Little information was available to the commission, at the time of writing, regarding steps taken by the State of Palestine and the authorities in Gaza to conduct investigations into alleged serious violations of international humanitarian and gross violations of international human rights law.

653. The commission is aware of the challenges faced by the State of Palestine to fulfil its duty in this regard, notably relating to lack of access to Gaza and to the divisions between

1233 B'Tselem: Israeli authorities have proven they cannot investigate suspected violations of international humanitarian law by Israel in the Gaza Strip, 5 September 2014, at http://www.btselem.org/accountability/20140905_failure_to_investigate (accessed on 31 May 2015); A/HRC/28/80/Add.1, para 79

1234 Ibid.

1235 As explained above the change in policy in April 2011 regarding the automatic opening of investigations of Palestinian fatalities in incidents outside of "combat activity". See also A/HRC/28/80, para 18.

1236 Yesh Din, Data Sheet, September 2014, at http://www.yesh-din.org/userfiles/file/datasheets/YeshDin%20-%20DataSheet%20Metzach%209_14%20-%20Eng%20(1)%20(1).pdf (accessed on 31 May 2015)

1237 Yesh Din, Data Sheet, July 2013, at http://www.yesh-din.org/userfiles/file/datasheets/data%20sheet%20july%202013/ICAP%20Death%20cases%20investigations%20and%20indictments_July%202013_ENG.pdf (accessed on 31 May 2015)

1238 This concern was also raised by the UN Secretary-General, see A/69/347, para. 53.

1239 Public Committee Against Torture in Israel, Israel - Briefing to the Human Rights Committee for the Committee's Review of the Fourth Periodic Report on Israel, September 2014 at http://www.stoptorture.org.il/files/PCATI%20submission%20to%20HRC%202014_0.pdf (accessed on 27 May 2015)

the West Bank and Gaza. On 26 March 2015, the Ministry of the Interior of the State of Palestine informed the commission that, "[t]he Government of National Consensus, formed just days before the attack, did not have a presence on the ground in the Gaza Strip effective enough to enable it and its judicial organs to investigate such acts, and the Palestinian Public Prosecutor's Office has still not been able to exercise its legal jurisdiction by investigating and prosecuting the perpetrators of those actions."[1240] That said, the State of Palestine informed the commission of its willingness to conduct investigations as soon as the process of reconciliation is completed.[1241] Further, it noted that efforts are underway to unify the two judicial systems, including the Office of the Prosecutor, which have essentially been operating in parallel in the West Bank and Gaza for several years.[1242] In addition, the commission was informed that instructions were given to the Office of the Prosecutor (Gaza) to open investigations into a number of cases, with no further detail provided on the nature of those cases or what progress, if any, has been made.[1243]

654. The commission takes note of the findings of the UN Committee of Experts in 2010 concerning investigations into violations allegedly committed by Palestinian actors before and after the 2008-09 hostilities[1244] conducted by the Palestinian Authority, through the Palestinian Independent Investigation Commission.[1245] In 2010, the Council of Ministers established a Ministerial Committee to follow up on the recommendations of the Palestinian Independent Investigation Commission report.[1246] However, at the time of writing, no information was available on the implementation of its report, presented to the Council of Ministers in February 2011.

656. In its 2010 report, the Committee found that the Palestinian Independent Investigation Commission had "laid the groundwork for the commencement of proceedings against perpetrators and other measures suited to provide redress to the victims".[1247] However, the commission is not aware of any steps taken, several years on, to bring to justice the perpetrators of alleged violations connected with the hostilities of 2008-09 and 2014.[1248]

657. As for the authorities in Gaza, they provided no information to the commission on specific cases or incidents in relation to which they may have opened an investigation. They told the commission that they had created a body to investigate allegations of extrajudicial killings. However, no information was forthcoming of the details of this body or of any investigation it may have initiated, nor of any other investigations it may have conducted, such as into allegations of indiscriminate rocket and mortar fire. There appears to be no concerted effort to investigate such allegations in line with international standards. Previous assessments by UN human rights bodies indicate that the authorities in Gaza have not conducted credible and genuine investigations into past escalations of hostilities in recent

[1240] Reply to requests for clarification from the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict from the Ministry of the Interior, State of Palestine (HRC/NONE/2015/36), p.7 (translated from the Arabic)
[1241] Meeting with State of Palestine Ministry of Interior
[1242] Meeting with State of Palestine Office of the Prosecutor
[1243] Ibid.
[1244] As set out in A/HRC/12/48.
[1245] A/HRC/15/50, paras 65-75 and 96-97
[1246] A/HRC/15/50, para. 75
[1247] A/HRC/15/50, para. 98
[1248] A/HRC/16/24, paras 88-90; A/HRC/28/45, para. 30

years,[1249] and have, in particular, failed to conduct investigations into rocket and mortar attacks against Israel.[1250]

International mechanisms

658. On 1 January 2015, the Government of the State of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court (ICC) over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014". On 2 January 2015, the Government of the State of Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General. On 16 January 2015, as a matter of policy and practice, the Prosecutor of the ICC opened a preliminary examination into the situation in Palestine in order to establish whether the Rome Statute criteria for opening an investigation are met.[1251]

659. During this examination, currently underway, the ICC seeks to reach a fully informed determination as to whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the Rome Statute.[1252] The Court specifies that there are "no timelines provided in the Rome Statute for a decision on a preliminary examination",[1253] and that "[d]epending on the facts and circumstances of each situation, the Office will decide whether to continue to collect information to establish a sufficient factual and legal basis to render a determination; initiate an investigation, subject to judicial review as appropriate; or decline to initiate an investigation."[1254] The Court acts in an independent and impartial manner, examining alleged violations regardless of the identity of the perpetrator. A central consideration for the Court, in all such preliminary examinations, is to assess whether there are credible national investigations and prosecutions underway; only in the absence of genuine national processes will the Court consider taking further action.

660. On 2 April 2014, the State of Palestine acceded to seven of the nine core human rights treaties and one of the substantive protocols without reservation.[1255] The treaties entered into force on 2 May, 7 May and 2 July 2014 respectively, thereby formally

[1249] A/HRC/15/50, paras 100-101

[1250] A/HRC/16/24, para. 90

[1251] International Criminal Court, Palestine at http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/palestine/Pages/palestine.aspx (accessed on 31 May 2015)

[1252] Specifically, under article 53(1) of the Rome Statute, the Prosecutor shall consider issues of jurisdiction, admissibility and the interests of justice in making this determination. See International Criminal Court, The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine, 16 January 2015, at http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1083.aspx (accessed on 31 May 2015)

[1253] Ibid.

[1254] Ibid.

[1255] The International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of Persons with Disabilities; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict.

obligating the State of Palestine to uphold their provisions.[1256] Also on 2 April 2014, it acceded to Additional Protocol I of the Geneva Conventions of 1949. On 31 December 2014, the State of Palestine also acceded to 12 other international treaties, including the Geneva Conventions and their Additional Protocols II and III, and the 1968 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.[1257] The Commission welcomes these accessions and the commitment, thereby, of the State of Palestine to adhere to these new legal obligations and to submit to scrutiny by the bodies that periodically monitor implementation of the treaties.

661. Israel is not a State party to the Rome Statute. With regard to the ICC, a statement on the website of the State Comptroller, announcing the launch of his aforementioned inquiry (see above), states that "[a]ccording to principles of international law when a State exercises its authority to objectively investigate accusations regarding violations of the laws of armed conflict, this will preclude examination of said accusations by external international tribunals (such as the International Criminal Court in The Hague)."[1258] As elaborated in the legal framework above, Israel is bound by its obligations under international humanitarian law and international human rights law.

C. Assessment

662. In recent years, Israel has taken significant steps aimed at bringing its system of investigations into compliance with international standards. The Turkel Commission, itself an initiative of the Government of Israel, has helped to give momentum to these efforts, and has provided concrete recommendations as to how to go about it, a number of which have already been implemented by Israel. Notwithstanding progress achieved to date, significant further changes are required to ensure that Israel adequately fulfils its duty to investigate, prosecute and hold perpetrators of alleged violations of international humanitarian law and international human rights law accountable, in line with international standards, as outlined above. The prompt implementation of all the recommendations elaborated by the Turkel Commission over two years ago would go a long way to realising this goal.

663. Given that investigations into the 2014 hostilities are ongoing, it is too early to assess whether there have been appropriate prosecutions and convictions. Nevertheless, the commission is concerned that the only indictments to date, almost one year after the events, are in connection with the relatively minor offense of theft. It is further disturbed by the closure of the criminal investigation into the killing of the four boys on the beach (see paras 30-31) without further legal proceedings, despite strong indications that the actions of the IDF were not in conformity with international humanitarian law and that the investigation does not appear to have been carried out in a thorough manner. In relation to the West Bank, the commission was not in a position to examine investigations into the aforementioned 27 cases of Palestinian fatalities. Of 17 cases of killings of Palestinians between 16 June and 22 August 2014, B'Tselem was informed that a criminal investigation had been opened into 12 and a limited investigation had been launched into three cases; in

[1256] OHCHR press briefing notes on Palestine, 2 May 2014, at http://unispal.un.org/UNISPAL.NSF/0/262AC5B8C25B364585257CCF006C010D (accessed on 31 May 2015)

[1257] For more details, see International Committee of the Red Cross at https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=PS (accessed on 31 May 2015)

[1258] Israel State Comptroller, The State Comptroller investigation of operation Tzuk Eitan- Protective at http://www.mevaker.gov.il/he/publication/Articles/Pages/2015.1.20-Tzuk-EItan.aspx?AspxAutoDetectCookieSupport=1 (accessed on 31 May 2015).

one case, no response was received; and in another, the military was not aware of the incident.[1259]

664. The commission is concerned that impunity prevails across the board for violations of international humanitarian and human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture, and ill-treatment in the West Bank. Israel must break with its recent lamentable track record in holding wrong-doers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition. Those responsible for suspected violations of international law at all levels of the political and military establishments must be brought to justice. An important factor in enabling such a process will be the implementation of the Turkel Commission's recommendations 1 and 2 concerning legal reform with regard to international criminal law offenses that are currently not found in Israeli law and to the incorporation of the doctrine of command or superior responsibility.

665. The commission emphasizes that the rights of victims should be at the centre of any accountability process. Palestinian victims are systematically denied their right to effective remedies and reparation due to an array of obstacles. Victims – in some cases repeatedly suffering violations in recent years - have a right to know the truth and to receive restitution.

666. Palestinian authorities have consistently failed to ensure that perpetrators of violations of international humanitarian law and international human rights law are brought to justice, and that Israeli victims are granted their right to effective remedies and reparation. With respect to the local authorities in Gaza, no steps appear to have been taken to initiate investigations into actions by Palestinian armed groups, seemingly due to a lack of political will. The Palestinian Authority claims that its failure to open investigations results from insufficient means to carry out investigations in a territory over which it has yet to re-establish unified control. The commission is concerned that continuing political divisions also contribute significantly to impeding justice for all victims of violations by Palestinian armed groups. The absence of measures to initiate criminal proceedings against alleged perpetrators calls into question the stated determination of the Palestinian Authority to achieve accountability. In line with their legal obligations, the authorities must take urgent measures to rectify this long-standing impunity.

667. Comprehensive and effective accountability mechanisms for violations allegedly committed by Israel or Palestinian actors will be a key deciding factor as to whether Palestinians and Israelis are to be spared yet another round of hostilities and spikes in violations of international law in the future.

VIII. Conclusions and recommendations

A. Concluding observations

668. **The commission was deeply moved by the immense suffering of Palestinian and Israeli victims, who have been subjected to repeated rounds of violence. The victims expressed their continued hope that their leaders and the international community would act more resolutely to address the root causes of the conflict so as to restore**

[1259] B'Tselem, Follow-up: Military Police and MAG Corps investigations of civilian Palestinian fatalities in West Bank since new policy imposed, updated 30 May 2015, at http://m.btselem.org/accountability/military_police_investigations_followup (accessed on 27 May 2015).

human rights, dignity, justice and security to all residents of the Occupied Palestinian Territory and Israel. In relation to this latest round of violence, which resulted in an unprecedented number of casualties, the commission was able to gather substantial information pointing to serious violations of international humanitarian law and international human rights law by Israel and by Palestinian armed groups. In some cases, these violations may amount to war crimes. The commission urges all those concerned to take immediate steps to ensure accountability, including the right to an effective remedy for victims.

669. **With regard to Israel, the commission examined carefully the circumstances of each case, including the account given by the State, where available. Israel has, however, released insufficient information regarding the specific military objectives of its attacks. The commission recognizes the dilemma that Israel faces in releasing information that would disclose in detail the targets of military strikes, given that such information may be classified and jeopardize intelligence sources. Be that as it may, security considerations do not relieve the authorities of their obligations under international law. The onus remains on Israel to provide sufficient details on its targeting decisions to allow an independent assessment of the legality of the attacks conducted by the Israel Defense Forces and to assist victims in their quest for the truth.**

670. **The commission is concerned that impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture and ill-treatment in the West Bank. Israel must break with its recent lamentable track record in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition.**

671. **Questions arise regarding the role of senior officials who set military policy in several areas examined by the commission, such as in the attacks of the Israel Defense Forces on residential buildings; the use of artillery and other explosive weapons with wide-area effects in densely populated areas; the destruction of entire neighbourhoods in Gaza; and the regular resort to live ammunition by the Israel Defense Forces, notably in crowd-control situations, in the West Bank. In many cases, individual soldiers may have been following agreed military policy, but it may be that the policy itself violates the laws of war.**

672. **The commission's investigations also raise the issue of why the Israeli authorities failed to revise their policies in Gaza and the West Bank during the period under review by the commission. Indeed, the fact that the political and military leadership did not change its course of action, despite considerable information regarding the massive degree of death and destruction in Gaza, raises questions about potential violations of international humanitarian law by these officials, which may amount to war crimes. Current accountability mechanisms may not be adequate to address this issue.**

673. **With regard to Palestinian armed groups, the commission has serious concerns with regard to the inherently indiscriminate nature of most of the projectiles directed towards Israel by these groups and to the targeting of Israeli civilians, which violate international humanitarian law and may amount to a war crime. The increased level of fear among Israeli civilians resulting from the use of tunnels was palpable. The commission also condemns the extrajudicial executions of alleged "collaborators", which amount to a war crime.**

674. **The Palestinian authorities have consistently failed to ensure that perpetrators of violations of international humanitarian law and international human rights law are brought to justice. The commission is concerned that continuing political divisions contribute significantly to the obstruction of justice for victims of violations by Palestinian armed groups. The absence of measures to initiate criminal proceedings against alleged perpetrators calls into question the stated determination of the Palestinian Authority to achieve accountability. In accordance with their legal obligations, the authorities must take urgent measures to rectify this long-standing impunity.**

675. **Comprehensive and effective accountability mechanisms for violations allegedly committed by Israel or Palestinian actors will be a key deciding factor of whether Palestinians and Israelis are to be spared yet another round of hostilities and spikes in violations of international law in the future.**

B. Recommendations

676. **The persistent lack of implementation of recommendations – made by previous commissions of inquiry, fact-finding missions, United Nations treaty bodies, special procedures and other United Nations bodies, in particular the Secretary-General and OHCHR – lies at the heart of the systematic recurrence of violations in Israel and the Occupied Palestinian Territory. Bearing in mind this wealth of guidance, the commission will not elaborate an exhaustive list of recommendations, which would repeat concerns registered by other bodies. Rather, the commission calls upon all duty bearers to implement fully all recommendations made by the above-mentioned bodies without delay in order to avert a crisis similar to that of summer 2014 in the future.**

677. **The commission calls upon all parties to fully respect international humanitarian law and international human rights law, including the main principles of distinction, proportionality and precaution, and to establish promptly credible, effective, transparent and independent accountability mechanisms. The right of all victims to an effective remedy, including full reparations, must be ensured without further delay. In this context, the parties should cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened.**

678. **The commission also calls upon Israelis and Palestinians to demonstrate political leadership by both refraining from and taking active steps to prevent statements that dehumanize the other side, incite hatred, and only serve to perpetuate a culture of violence.**

679. **The commission calls upon the Government of Israel to conduct a thorough, transparent, objective and credible review of policies governing military operations and of law enforcement activities in the context of the occupation, as defined by political and military decision-makers, to ensure compliance with international humanitarian law and human rights law, specifically with regard to:**

(a) The use of explosive weapons with wide-area effects in densely populated areas, including in the vicinity of specifically protected objects;

(b) The definition of military objectives;

(c) The tactics of targeting residential buildings;

(d) The effectiveness of precautionary measures;

(e) The protection of civilians in the context of the application of the Hannibal directive;

(f) Ensuring that the principle of distinction is respected when active neighbourhoods are declared "sterile combat zones";

(g) The use of live ammunition in crowd control situations.

680. **The review should also examine mechanisms for continuous review of respect for international humanitarian law and human rights law during military operations and in the course of law enforcement activities in the context of the occupation.**

681. **The commission further calls upon the Government of Israel:**

(a) To ensure that investigations comply with international human rights standards and that allegations of international crimes, where substantiated, are met with indictments, prosecutions and convictions, with sentences commensurate to the crime, and to take all measures necessary to ensure that such investigations will not be confined to individual soldiers alone, but will also encompass members of the political and military establishment, including at the senior level, where appropriate;

(b) To implement all the recommendations contained in the second Turkel report, in particular recommendation no. 2 calling for the enactment of provisions that impose direct criminal liability on military commanders and civilian superiors for offenses committed by their subordinates, in line with the doctrine of command responsibility;

(c) To grant access to Israel and the Occupied Palestinian Territory for, and cooperate with, international human rights bodies and non-governmental organizations concerned with investigating alleged violations of international law by all duty bearers and any mechanisms established by the Human Rights Council to follow up on the present report;

(d) To address structural issues that fuel the conflict and have a negative impact on a wide range of human rights, including the right to self-determination; in particular, to lift, immediately and unconditionally, the blockade on Gaza; to cease all settlement-related activity, including the transfer of Israel's own population to the occupied territory; and to implement the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory;

(e) To accede to the Rome Statute.

682. **The commission calls upon the State of Palestine:**

(a) To ensure that investigations into violations of international humanitarian law and international human rights law, including international crimes, by the Palestinian Authority, the authorities in Gaza and Palestinian armed groups, where substantiated, comply with international human rights standards and that full accountability is achieved, including through criminal proceedings;

(b) To accelerate efforts to translate the declarations on Palestinian unity into tangible measures on grounds that would enable the Government of national consensus to ensure the protection of human rights and to achieve accountability for victims.

683. **The commission calls upon the authorities in Gaza and Palestinian armed groups:**

(a) To respect the principles of distinction, proportionality and precaution, including by ending all attacks on Israeli civilians and civilian objects, and stopping all rocket attacks and other actions that may spread terror among the civilian population in Israel;

(b) To take measures to prevent extrajudicial executions and eradicate torture, cruel, inhuman and degrading treatment; to cooperate with national investigations aimed to bring those responsible for violations of international law to justice; and to combat the stigma faced by families of alleged collaborators.

684. **The commission calls upon the international community:**

(a) To promote compliance with human rights obligations, and to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory and Israel, in accordance with article 1 common to the Geneva Conventions;

(b) To use its influence to prevent and end violations, and to refrain from encouraging violations by other parties;

(c) To accelerate and intensify efforts to develop legal and policy standards that would limit the use of explosive weapons with wide-area effects in populated areas with a view to strengthening the protection of civilians during hostilities;

(d) To support actively the work of the International Criminal Court in relation to the Occupied Palestinian Territory; to exercise universal jurisdiction to try international crimes in national courts; and to comply with extradition requests pertaining to suspects of such crimes to countries where they would face a fair trial.

685. **The commission recommends that the Human Rights Council consider conducting a comprehensive review of the implementation of the numerous recommendations addressed to the parties by its own mechanisms, in particular relevant commissions of inquiry and fact-finding missions and explore mechanisms to ensure their implementation.**