



**Lawyers for Palestinian Human Rights' briefing:
Chiechanover Commission findings and its material relevance
to the ICC's assessment of Israel's accountability mechanisms**

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About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

Author of this LPHR briefing:

Tareq Shourou is the director of LPHR. Before becoming LPHR's first director in 2013, he worked as a human rights solicitor in London representing asylum claimants, unaccompanied children and survivors of human trafficking, and led the public legal advice service of the human rights organisation, Liberty. He holds a master's degree in Public International Law from King's College London.

Contact

Tareq Shourou
Director of LPHR
Email: contact@lphr.org.uk



1. The Israeli human rights organisation, Yesh Din, has just published an important [analysis](#) on the recent report of the Ciechanover Commission. The commission was appointed by the Government of Israel to recommend practical steps towards implementing the recommendations of the Turkel Commission to improve Israel's mechanisms for investigating alleged violations of the laws of war.
2. One major significance of the [Ciechanover Commission report](#) relates to the vital issue that the sufficiency of Israel's mechanisms for investigating and prosecuting alleged war crimes is currently being assessed by the Office of the Prosecutor of the International Criminal Court in its "[preliminary examination on the situation of Palestine](#)".
3. This "complementarity" assessment relates to whether genuine investigations and prosecutions have been or are being conducted in Israel in respect of the cases identified by the International Criminal Court. It is one of the key issues that the Office of the Prosecutor has to assess in determining whether there is a reasonable basis to proceed with an investigation.
4. A [policy paper](#) published by the Office of the Prosecutor notes that the first question in assessing complementarity is empirical: whether there are or have been any relevant national investigations or prosecutions. The absence of national proceedings is sufficient to make the case admissible.
5. Domestic inactivity in relation to a particular case may result from many factors. Those cited in the policy paper include: "*The absence of an adequate legislative framework; the existence of laws that serve as a bar to domestic proceedings, such as amnesties, immunities or statutes of limitation; the deliberate focus of proceedings on low-level or marginal perpetrators despite evidence on those more responsible; or other, more general issues related to the lack of political will or judicial capacity.*" (Paragraph 48)
6. Against this background, relevant excerpts of the [Yesh Din analysis](#) are published below (with key sentences highlighted for emphasis):
 - "On the issue of incorporating war crimes into Israeli domestic law (Turkel Recommendation No. 1), the Ciechanover Commission chose to advise the preparation of draft bills on the incorporation of the crime of torture and crimes against humanity into Israeli law, when such crimes are committed as part of a systematic or widespread policy. The fact that in addressing legislative measures, the Ciechanover Commission glossed over offenses that are commonly committed in the West Bank and may amount to war crimes, yet are not committed in the context of systemic use of force, such as beating restrained detainees and other violent offenses, is a cause for concern. **The Commission also ignored offenses committed during times of war, leaving the current lacuna in Israeli law unchanged.** While Israeli criminal law contains offenses that may



be used against soldiers who beat civilians in checkpoints or harm property (though, these soldiers cannot be charged with war crimes) when it comes to offenses committed during combat, criminal law offers no parallel offenses that allow charges."

- **"The Ciechanover Commission entirely circumvented the implementation of Recommendation No. 2 of the Turkel report with respect to imposing special responsibility on military commanders and civilian superiors for offenses committed by their subordinates.** The Ciechanover Commission opted instead to recommend that: "[T]he question of the explicit anchoring of the responsibility of military commanders and civilian superiors in Israeli law would continue to be examined by the relevant parties before being decided". **This means that the current situation, whereby there are no criminal tools for imposing liability on commanders and superiors for the actions of subordinates will remain as it is. Refraining from incorporating war crimes and liability of commanders and superiors into Israeli law has grave implications for Israel's claim that the principle of complementarity is fulfilled, thus shielding it from prosecution in international tribunals."**
 - "Twenty months after the establishment of the Ciechanover Commission (January 2014), and five years and four months after the establishment of the Turkel Commission, with the wars and military operations such as Pillar of Defense and Protective Edge that took place in the interim, **there are still no prospects for improvement in Israel's investigation and examination mechanism or for legislative measures that would bring Israel in line with its obligations under international law."**
 - "The long wait for the publication of the Ciechanover Commission report and the recommendations it finally made suggest that instead of effecting the changes in the investigation mechanism recommended by the Turkel Commission, **the Ciechanover Commission set out to buy time, create the false impression that the investigation and examination mechanism is undergoing improvements and continue to grant impunity to members of the security forces and civilian superiors who violate the laws of war under international law."**
7. This striking analysis by Yesh Din strongly suggests that despite the existence of the recommendations of the Turkel Commission, very significant concerns remain in place relating to the basic issue of inactivity of national proceedings in Israel concerning alleged laws of war violations, due to, a) the absence of an adequate legislative framework for investigations, b) the deliberate focus of proceedings on low-level or marginal perpetrators despite evidence on those more responsible, and c) more general issues relating to lack of political will.
 8. The Office of the Prosecutor should carefully consider the Ciechanover Commission report and Yesh Din's critical analysis when assessing complementarity in its preliminary examination on the situation of Palestine.