



**Lawyers for Palestinian Human Rights' briefing:
Assessing Israel's compliance with UK Government criteria for
an effective investigation into alleged international crimes
against civilians during the 'Great March of Return' protests**



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, Fiona McKay, Tessa Gregory and Nusrat Uddin.

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Executive Summary

- Four years ago saw the beginning of the Great March of Return protests by Palestinians living under imposed closure in Gaza. In response to these demonstrations, Israel's military implemented a policy that permitted the use of live fire against unarmed Palestinian demonstrators.
- The UN Human Rights Council voted to initiate a Commission of Inquiry to investigate all alleged violations of international humanitarian law and international human rights law. The Inquiry's report was published in March 2019. However, the UK Government abstained from voting on this international investigatory and accountability mechanism, instead calling on Israel to conduct its own investigation and setting certain criteria that should be fulfilled.
- The UK Government initially set out its criteria in 2018. They were then revised in 2021. Neither the initial or revised criteria fully conform with recognised international standards, which require that an effective investigation into alleged international crimes be: independent, impartial, thorough, prompt, transparent and have fair trial guarantees.
- Four years on, this briefing empirically assesses whether Israel's investigation has complied with the UK Government's stated criteria for an effective investigation. It is our assessment that they have not met any of the UK's criteria. This strongly suggests that the UK government must give urgent consideration to whether its policy position on accountability in the specific context of Israel/Palestine, which appears to amount to an *anti-internationalisation* policy, is fundamentally incompatible with its general official commitment to "*promote international criminal justice and the rule of law... [and to] deliver justice for victims and accountability for the most serious crimes of international concern*".
- We strongly suggest that it is incumbent on the UK Government to remove this evident policy incoherence. The UK Government should review its position on the sufficiency of such investigations, conducting and publishing its own assessment of whether or not they meet UK Government criteria. Solely relying on Israel's military investigation system to carry out effective military investigations amounts in practice to promoting effective impunity, and the associated greater likelihood of recurrent violations.



Introduction

1. Four years ago saw the beginning of the Great March of Return protests (“**Great March of Return**”) by Palestinians living under imposed closure in Gaza. Starting on 30 March 2018 and ending in December 2019, a series of widespread, civil society-initiated demonstrations took place to demand the lifting of the prolonged closure of Gaza, and to emphasise the right of return of Palestinian refugees to lands that they were expelled or fled from in 1947-1948.
2. In response to the Great March of Return demonstrations, Israel's military forces implemented a policy that permitted use of live fire against unarmed Palestinian demonstrators. According to the Palestinian Centre for Human Rights (“**PCHR**”) and B'Tselem, [Israel's forces killed](#) 223 Palestinians, 46 of them minors under the age of 18, and injured over 8,000 with firing of live ammunition.
3. The March 2019 [report](#) of the UN independent Commission of Inquiry into the 2018 Gaza Protests (“**Commission**”) found that, “*the use of live ammunition by Israeli security forces against demonstrators was unlawful*” in all the cases it investigated – 189 fatalities and over 300 injuries – with the possible exception of two incidents. (para. 693 of the UN report)
4. The Commission further found “*demonstrators who were hundreds of metres away from the Israeli forces and visibly engaged in civilian activities were intentionally shot. Journalists and health workers who were clearly marked as such were shot, as were children, women and persons with disabilities*”. (para. 692 of the UN report)
5. In making these findings, the Commission [found](#) “*reasonable grounds to believe that some violations constitute international crimes*”, including war crimes and crimes against humanity.
6. The UK Government, at the UN Human Rights Council, abstained from voting on both the creation of the independent Commission of Inquiry and its report. The UK Government instead called upon Israel to carry out its own investigation into the conduct of its forces at the Gaza border. It further expressly set-out criteria that should govern Israel's investigation.
7. Four years on, this briefing is aimed at empirically assessing whether Israel’s investigation into the Great March of Return protests has complied with the UK Government's stated criteria for an effective investigation.
8. Our findings may help inform the UK Government whether it should revise its apparent *anti-internationalisation* policy – consolidated by Prime Minister's Johnson's 14 April 2021 statement [opposing](#) the International Criminal Court's investigation into the Situation in Palestine - that it is specifically applying to the issue of justice and legal accountability for Palestinians, in contrast to its general [official position](#) on promoting international justice.
9. To guide our following assessment, we have carefully reviewed material reports, data and information from relevant sources, including the Government of Israel.



The UK Government's criteria for Israel's investigation into the Great March of Return

10. On 18 May 2018, while the Great March of Return protests with accompanying prolific incidents of use of live ammunition against Palestinian protesters were taking place, the UK abstained from the UN Human Rights Council resolution creating an independent Commission of Inquiry. The [UK's statement](#) stated it *"cannot support an international investigation that refuses to explicitly call for an investigation into the action of non-state actors such as Hamas"*.
11. As noted by LPHR in our [letter](#) dated 7 June 2018 to the then-UK Minister for the Middle East, Alistair Burt, the UK's justification appeared to overlook the wording of the resolution which instructed the Commission of Inquiry to investigate *"all violations of international humanitarian and human rights law"*, and the fact that the prior UN independent Commission of Inquiry – into the 2014 Gaza Conflict – was impartial and thorough.
12. On 22 March 2019, the UK abstained from voting on the resolution for the Commission of Inquiry's report. It [stated](#) at the UN Human Rights Council that it *"cannot support a resolution that fails to address the actions of all actors, including non-state actors"*.
13. LPHR responded to the UK's stated justification by [letter](#) dated 28 March 2019 to the then- UK Foreign Secretary, Jeremy Hunt, in which we noted:

"In our letter to the then Minister Alistair Burt dated 8 June 2018, we expressed LPHR's suggestion that the UK government should, in principle, support the report of the Commission of Inquiry if it is impartial and thorough. We take the considered view that the 252-page report of the Commission published this month met these two tests in accordance with international standards for a genuine investigation. In relation to the principle of impartiality, the Commission investigated the involvement of Hamas in the weekly civilian protests, and made the following critical findings at paragraph 896: Hamas encouraged or defended the use of incendiary kites and balloons; failed in due diligence obligations to prevent and stop the use of these incendiary devices; and is obliged to investigate these failures of international human rights law. It cannot reasonably be affirmed that the Commission's investigation and report was not 'impartial, fair or balanced', which is the criteria raised by UK last week when stating its expectation about how accountability should be pursued. We reaffirm that the UK should, as a matter of principle, have voted for the report of the Commission of Inquiry on the basis that it was impartial and thorough in accordance with international standards.

"Finally, we would be grateful for clarification of the statement made by Ambassador Julian Braithwaite last Friday, that Hamas bears 'principal responsibility' for all Palestinians killed and injured at the protests. Bearing in mind the fact that Israeli forces carried out these killings and injuries, this seems like a mistaken gross misstatement."



14. Whilst the UK Government declined to support the UN independent Commission of Inquiry into the 2018 Gaza Protests, it placed emphasis on Israel carrying out its own investigation into the conduct of its forces using live ammunition against Palestinian protesters in Gaza.
15. LPHR has collated the UK Government's responses to relevant written parliamentary questions between 2018 and 2021 which illustrate this position. An examination of these responses show that the UK had identified and expressed certain criteria that it expects Israel's investigation to fulfil. The following is a top line summary of the UK's position:
 - There is initially consistent [language](#) used by the UK Government on the need for Israel's inquiries to be "**transparent and independent**". There is also explicit language on the "**importance of accountability**", and the need for "**findings to be made public and, if wrongdoing is found, those that are responsible are held to account**".
 - In July 2018, the UK Government made an innovative [further call](#) for Israel's investigation to include "**international members**". It is unclear what motivated this additional suggestion. It is, however, compatible with a recognition that Israel's military investigative mechanism has been firmly and credibly critiqued for its lack of genuineness. For example, it has been repeatedly described as a "[whitewashing](#)" mechanism by Israel's leading human rights organisation, B'Tselem.
 - In March 2019, the UK Government [welcomed](#) five criminal inquiries into 11 Palestinian fatalities that had been recently announced by Israel's Military Attorney General. Israel's announcement appears to have included the criminal investigation opened into the killing by live ammunition of [Razan al Najjar](#), a 21-year-old female volunteer paramedic in the Palestinian Medical Relief Society. On 1 June 2018, Razan was fatally shot by Israel's forces whilst wearing a visibility vest identifying her as medical personnel. Her killing received international media attention. On 29 October 2018, the MAG announced it had launched a criminal investigation, which is specifically described as "[welcome news](#)" by the UK Government in November 2018. As of 30 March 2022, there has been no subsequent update from the MAG on this specific criminal investigation.
 - In 2021, with a new Conservative Prime Minister and ministerial team, there appears to have been a slight but distinct change in language. The UK Government then [stated](#) that investigations need to be "**transparent, swift and comprehensive**". This formulation omits the prior-stated criterion of "*independence*", and the reference to "*international members*".
16. It should be noted that the first iteration (2018) and second iteration (2021) of the UK Government's stated criteria for Israel's investigation do not fully conform with recognised international standards, which provide that an [effective investigation](#) into alleged international crimes must be: independent, impartial, thorough, prompt and have fair trial guarantees. It further should be transparent as far as possible, taking into account the circumstances.



Summary analysis assessing Israel's compliance with the UK Government's stated criteria for an effective investigation into the Great March of Return

17. The following summary analysis, grounded in authoritative sources, presents a factual picture raising clear and serious concern that Israel's military investigation system does not comply with the UK Government's stated criteria for an effective investigation into the Great March of Return.
18. The system **lacks independence and impartiality** given the existence of apparent material conflicts of interest and that the non-military layers of appeal do not provide real independent oversight. The investigation process further **lacks promptness** as over half of fatality cases are still under initial assessment, supervisory review, or criminal investigation, according to data released nearly four years after the start of the Great March of Return. And there is a **lack of transparency** because there has been no public disclosure of material details relating to decision-making in specific cases; the military roles of FFA Mechanism personnel; and the open-fire regulations.
19. Finally, Israel's military investigation process into alleged international crimes committed during the Great March of Return **lacks thoroughness**, due to:
- only a few criminal investigations have been opened contrary to the substantial findings of the UN independent Commission of Inquiry;
 - injury cases are reportedly not subject to specific assessment or criminal investigation;
 - there has been no investigation into the lawyers/civilian superiors/commanders who drafted, approved and supervised the implementation of the open-fire regulations that governed the actions of soldiers against protesters during the Great March of Return; and
 - there is an overarching deficiency of the materially limited framework of Israel's domestic law for prosecuting war crimes and crimes against humanity.

Independence and impartiality

- **Apparent material conflicts of interest of the FFA Mechanism and the MAG**
- **Non-military layers of appeal do not provide real independent oversight**

20. Complaints regarding the Great March of Return incidents are first forwarded to the Fact Finding Assessments Mechanism ("**FFA Mechanism**") for the [official purpose](#) of undertaking "*the most comprehensive and substantial factual information possible*" into what are classified as "*exceptional incidents*". The outcome of this assessment is then forwarded to the Military Advocate General corps ("**MAG**") to inform their decision on whether or not to launch a criminal investigation to be conducted by the Military Police Criminal Investigation Division ("**MPCID**"). When the MPCID investigation is over, the MAG decides whether to charge and prosecute suspects, or to close the case.



21. Israel states that the FFA Mechanism shall be constituted by teams that “*lay outside the chain of command*”, for the purpose of ensuring impartiality. However, with reference to official sources, there are serious questions to be asked about whether the FFA Mechanism is sufficiently independent and impartial from Israel's military. In its section on “*Investigations*” within a Q&A produced by the Government of Israel on “Gaza Border Events”, the FFA Mechanism is described as being a team that is “*headed by a Major General*” and “*comprises of senior active duty and reservist officers with relevant professional military expertise... accompanied by legal advisors*”. The predominant use of active and reservist military personnel raises an evident conflict of interest concern over whether or not there is adequate independence built into the FFA Mechanism.
22. Further, as noted by B'Tselem and PCHR in its December 2021 report, [Unwilling and Unable](#), the MAG, which is in charge of the Great March of Return investigations, “*has a conflict of interests with respect to investigating the open-fire policy during the protests. On the one hand, he is responsible for providing the military with legal counsel before and during the events that took place [...] and approves policy implementation in real time. On the other hand, the MAG is tasked with deciding which cases to investigate and what actions to take once the investigation is concluded*”. Thus, in cases in which suspected breaches of law relate to orders he personally approved, the MAG “*would be ordering his own and his subordinates' investigation*”. This dual role leads B'Tselem and PCHR to conclude there is a “*lack of independence*”.
23. The decisions of the MAG can be appealed to Israel's Attorney General, and his/her decision can be appealed to Israel's High Court of Justice. However, as noted by B'Tselem and PCHR in [Unwilling and Unable](#), the Attorney General had already “*personally approved the regulations employed during the protests, making him an interested party and precluding him from functioning as an instance of independent oversight*”. Furthermore, Israel's High Court of Justice has long placed a virtually insurmountable bar for intervention in the decisions of the MAG; in its May 2009 [decision \(3292/07\)](#) relating to Israel's military hostilities that it code-named “Operation Cast Lead”, the Court asserted that “*intervention in the professional decisions of the MAG is implemented only rarely, in extremely exceptional circumstances*”.
24. This existing apparently deferential position of Israel's highest court to the conduct of Israeli forces' use of military force in Gaza, can be further identified in its significant unanimous [decision 3250/18](#), handed down on 24 May 2018. Here, the Court fully adopted the military's position when dismissing a petition by local human rights organisations to order the Israeli military to stop using snipers and live ammunition against Palestinian during the Great March of Return. Please see LPHR's [submission](#) to the UN Commission of Inquiry, which examines this consequential decision, and the Court's fundamentally flawed understanding of the applicable international law framework governing the use of force in the context of a civilian protest.



Promptness

- **Slow pace of FFA Mechanism contrary to stated purpose at time of its establishment**
- **As of 08 December 2021, 120 fatalities are still under FFA Mechanism assessment, MAG review, or MPIU investigation.**
- **No apparent decision on criminal investigation opened on 28 October 2018 into the killing of female 21 year-old volunteer paramedic, Razan al-Najjar**

25. As noted in the '[Killing Time](#)' report by the Israeli human rights organisation, Yesh Din, one of the key reasons for the establishment of the FFAM in 2014, was to ensure a “*quick and efficient assessment*” of allegations. However, after setting out data relating to the assessments being carried out by the FFAM, the conclusion made by Yesh Din in its initial September 2020 report is stark: “*The most striking conclusion arising from these figures is the extremely slow pace of the FFA Mechanism.*”
26. Yesh Din did not amend this statement in its [June 2021 update](#) that presented updated investigations data obtained from Israeli authorities to 25 April 2021. This data showed that of the 234 fatality cases submitted by the MAG to the FFA Mechanism, 143 fatality cases (61 per cent) had a completed assessment. This left 91 fatality cases still left without an initial assessment. Of the 143 fatality cases in relation to which an assessment had been completed, the MAG had ordered a criminal investigation into 33 fatality cases. Another 95 had been closed by the MAG without launching a criminal investigation. 15 were still under MAG review.
27. In relation to the opened criminal investigations, the Unwilling and Unable report also cites official data from 25 April 2021, stating, “*The MAG ordered the MPIU to investigate 33 of the cases, as well as three other cases not handled by the FFA Mechanism... In one more MPIU investigation – into the killing of 14-years-old Othman Hillis – that was completed, a soldier was charged with abuse of authority to the point of endangering life or health, and sentenced to one month’s military community service*”.
28. Just days after Unwilling and Unable was released, Israel's military updated its 'Gaza Border Events: Questions and Answers, “[Investigations](#)”’ section. With reference to the 33 criminal investigations by the MPIU, it states that as of 8 December 2021, “*Thirteen of these [criminal] investigations regarding 22 of the fatalities have been completed, while one criminal investigation regarding 11 of these fatalities is currently being conducted*”; and that the three launched directly by the MAG without FFA Mechanism assessment are ongoing.
29. Thus, almost four years later, 120 fatalities are still under FFA Mechanism assessment, MAG review, or MPIU investigation. As of 8 December 2021, 14 fatality cases are subject to criminal investigation, whilst 22 fatality cases have been closed after a criminal investigation. No details have been given for the reasons for the closure of the 13 criminal investigations into these 22 fatality cases. There has only been one sentence for a fatality case, which was for a 30 day sentence following a disciplinary charge rather than a criminal charge, for the killing of a 14-year-old child, Othman Hillis. This process and sentence was described by the Gaza-based Al Mezan Centre for Human Rights as “*woefully derisory*”. It is probable that the investigation into



the killing of Razan al-Najjar is one of the three ongoing of those criminal investigations launched directly by the MAG without prior FFA Mechanism assessment.

30. Finally, it is important to note that the lack of promptness arising from the FFA Mechanism assessment process has potentially substantial adverse repercussions for the ability to conduct an effective criminal investigation. As summarised by Adalah in its November 2018 [Report](#) to the UN independent Commission of Inquiry, *“the FFA Mechanism only transfers a summary debriefing to the MAG Corps, and not the actual evidence... [this means that] in the few cases in which the MAG orders an investigation to be opened, the delays in the process mean that the MPCID needs to collect testimonies months or even years after the incident investigated took place”*. (p.22)

Transparency

- **Lack of detail provided to public on decision-making in specific cases**
 - **No public disclosure of specific military roles of FFA Mechanism personnel**
 - **No public disclosure of the open-fire regulations**
31. There are two aspects of transparency in criminal investigations that run in parallel: providing information to victims and their next of kin regarding ongoing criminal investigative processes, and providing information on such processes to the general public for overall accountability purposes. The general public will include international and domestic organisations and bodies, civil society, the media, and others. This briefing focuses on transparency provided to the latter aspect.
32. The government of Israel's Q&A on 'Gaza Border Events' has a [section](#) explaining its mechanism for investigations. This section, however, does not provide details on any of the specific cases where a criminal investigation has been launched; nor on any of the specific cases where a criminal investigation was closed; nor any of the specific cases where no criminal investigation was ordered after an FFA Mechanism assessment. In sum, it lacks material detail on the decision-making and reasoning in specific cases that would provide meaningful transparency.
33. Lack of transparency is also evident with reference to the information provided on the personnel working within the FFA Mechanism. As aforementioned, there is disclosure that they comprise senior active duty and reservist officers with relevant professional military expertise. However, the Unwilling and Unable report notes, *“the military does not disclose the names and qualifications of its members”*. This is a material non-disclosure, as it is not possible to ascertain whether the FFA Mechanism personnel have a fundamental conflict of interest, for example through having an existing relationship with military personnel subjected to an FFA Mechanism assessment, which would undermine their independence and impartiality.
34. Finally, the core civilian protection issue arising from the Great March of Return protests was Israel's implementation of open-fire regulations against protesters who were not posing an imminent threat to life or serious injury. These regulations, however, have been kept classified, as highlighted in the aforementioned Israeli Supreme Court case in 2018. B'Tselem and PCHR



confirmed this is still the case in their Unwilling and Unable report: *“Israeli officials have declined to disclose the details of the open-fire regulations, keeping to general, vague statements about their content”*. This constitutes a material lack of transparency.

Thoroughness

- **Only a few criminal investigations opened contrary to the substantial findings of the UN independent Commission of Inquiry**
- **Injury cases are reportedly not subject to individual assessment or criminal investigation**
- **No assessment or criminal investigation into the potential liability of commanders/civilian superiors/lawyers who crucially drafted, approved and supervised the implementation of the open-fire regulations**
- **Materially limited framework of Israel's domestic law for prosecuting war crimes and crimes against humanity**

35. As aforementioned, the MAG has opened criminal investigations in respect of 33 out of 234 fatalities following an FFA Mechanism assessment, plus three further cases decided directly by the MAG. This number raises immediate concern in light of the UN independent Commission of Inquiry's headline finding in March 2019 that, *“the use of live ammunition by Israeli security forces against demonstrators was unlawful”* in all the cases it investigated – 189 fatalities and over 300 injuries – with the possible exception of two incidents.
36. The Government of Israel's 'Gaza Border Events Q&A' in the section [“IDF's Operational Response”](#), provides apparent justification for this marked discrepancy between the MAG's decision-making and the findings of the UN independent inquiry, by highlighting that its open-fire regulations implemented during the Great March of Return protests had been approved by military legal advisors, by Israel's Attorney General, and by Israel's High Court of Justice. The implicit suggestion made is that the implementation of the open-fire regulations on its own will not provide a ground for the opening of a criminal investigation. For the reasons outlined in the Independence and Impartiality section, this reasoning is highly controversial.
37. This controversial nature of this position can be highlighted by the MAG's decision-making in the killing of 16-year-old, Suhayb Abu Kashef, which is detailed in [Unable and Unwilling](#). Suhayb's mother describes Suhayb as having a *“cognitive disability and his behavior was very childish. He would take a soccer ball with him to the Great March of Return protests.”* During a Great March of Return protest east of Khuzaa' village, Khan Younis, on 3 August 2018, Suhayb, threw stones in the direction of Israeli soldiers. Then, with other youths, he crossed the concertina wire that Israel's military had placed on the ground, but did not cross the perimeter fence. At that point, the military opened fire, and Suhaib was shot in the neck by a live bullet.
38. Suhayb died on 15 September 2018, after about six weeks in hospital having been paralysed in all four limbs. On 28 October 2018, PCHR filed a complaint with the MAG, providing evidence of this fatality incident. Nearly 18 months later, despite the compelling evidence that Suhayb was



killed through use of excessive force, the MAG decided not to open a criminal investigation. It justified its decision in a letter to PCHR dated 24 February 2020, stating “*no evidence has been found to establish reasonable suspicion that Abu Kashef was hit as a result of deliberate fire or as a result of non-deliberate fire **that deviated from the open-fire regulations***”.

39. Widespread catastrophic injuries to thousands of Palestinians as a result of the use of live ammunition by Israeli forces remains a fundamental issue of concern going to the heart of Israel's militarised response to the Great March of Return protests. Just three weeks into the protests, Mediciens San Frontieres (“**MSF**”) issued an alarming [update](#):

“MSF surgeons in Gaza report devastating gunshot wounds among hundreds of people injured during the protests over recent weeks. The huge majority of patients – mainly young men, but also some women and children – have unusually severe wounds to the lower extremities. MSF medical teams note the injuries include an extreme level of destruction to bones and soft tissue, and large exit wounds that can be the size of a fist.

“Half of the more than 500 patients we have admitted in our clinics have injuries where the bullet has literally destroyed tissue after having pulverized the bone”, said Marie-Elisabeth Ingres, Head of Mission of MSF in Palestine. “These patients will need to have very complex surgical operations and most of them will have disabilities for life.”

40. Two years later, the UN tragically underscored the initial assessment made by MSF, stating:

“Over 7,000 of the live ammunition injuries (some 88 per cent) were limb injuries, followed by injuries to the abdomen and pelvis. Hundred-fifty-six (156) of the limb injuries have resulted in amputations (126 lower limb and 30 upper limb). Out of these, at least 94 cases involved secondary amputations, due to subsequent bone infections.

“The latter usually occur when a limb injury is compounded by more extensive damage to the skin, tissue, nerves and blood vessels. It is estimated that between 25 and 40 per cent of patients with such complications go on to develop some form of bone infection over a 12-month period following the injury. In other cases, the injury leads to an open fracture that is either non-healing or leaves bone gaps, which also require specialized orthopedic plastic-reconstructive surgery. The World Health Organization (WHO) estimates that over 1,200 of those who sustained limb injuries have begun, or are waiting for, specialized limb reconstruction treatment.

“Limb reconstruction treatment and rehabilitation usually extends from six months to three years, depending on the severity of the case, and involves two to eight surgeries and 12 to 30 physiotherapy sessions. The cost of each individual treatment may reach as much as \$ 40,000.

“The lives of people with such complex injuries are dramatically impacted. Most have lost their jobs due to their disabilities and posed an additional burden on already vulnerable



households. The majority would not be able to recover without the support of public services and the humanitarian community.”

41. Given the large scale of catastrophic injuries resulting from the implementation of Israel's open-fire regulations, it is a glaring deficiency that specific injury cases are reportedly not being subjected to FFA Mechanism assessment and MAG-ordered criminal investigation. In *Killing Time*, Yesh Din says it is “*disturbed*” by a “*policy of non-investigation of injuries*”. In *Unable and Unwilling*, B'Tselem and PCHR provide further illuminating detail on this apparent policy:

“The military only investigated cases in which Palestinians were killed by security forces. The thousands of incidents in which Palestinians were injured, sometimes so severely they were left paralyzed or needed amputation, were not investigated at all. PCHR representatives were informed of this in a meeting held on 1 October 2018 with representatives of the Gaza DCO. In the meeting, PCHR was told the military would investigate exceptional cases of serious wounds – yet B'Tselem and PCHR are not aware of any such investigations. PCHR continued to refer cases of wounding to the military and demand an investigation after the meeting, but was asked for further information only regarding fatalities.

“The fact that the military only investigated deaths also emerges from B'Tselem's and Yesh Din's correspondence with the IDF Spokesperson, who provided them with data on the investigation of deaths only, despite being asked the same questions about the investigation of incidents that resulted in injury to protesters.

“Choosing which cases to investigate based on the final outcome of the shooting rather than on the soldiers' conduct is based on an arbitrary distinction, as the difference between injury and death is often a matter of pure chance.”

42. The Government of Israel seems to suggest in its Gaza Border Events Q&A that injury cases are subject to some form of FFA Mechanism assessment as part of an “***in-depth assessment of each of the sectors in order to determine the causes of exceptional injuries to individual persons***”. However, this does appear to differ from the clearer language used prior in its Q&A of “***examining specific incidents in which Palestinians have died during the events***”. If Yesh Din, B'Tselem and PCHR are correct that specific incidents of serious injury cases have not been subjected to FFA Mechanism assessment or MAG-ordered criminal investigation, it would amount to a glaring lack of thoroughness.
43. Responsibility for determining the open-fire regulations, for giving orders and for its widespread lethal and serious injury outcomes, rests with Israel's civilian and military leadership. However, as aforementioned, only so-called “*exceptional incidents*” fall within the scope of Israel's investigative process, while the policy decided by military commanders and civilian superiors is deemed to be legal, even if it enabled using live gunfire at protesters who posed no danger to life. This means there is a gaping absence of an investigation into the potential liability of lawyers/civilian superiors/commanders who crucially drafted, approved and supervised in the implementation of the open-fire regulations. This is a material omission



when considering the criterion of thoroughness. B'Tselem and PCHR indeed strikingly asserts in Unable and Unwilling that, *“the fact that Israel does not examine policy or those responsible for drafting and implementation renders its investigations meaningless”*.

44. A further overarching deficiency arises in the materially limited framework of Israel's domestic law for prosecuting war crimes and crimes against humanity. The reports of the Turkel Commission and the [Chiechanover Commission](#), have highlighted that Israel's domestic law still does not legislate for: i) crimes against humanity; ii) offences committed during the time of war; and iii) special responsibility on military commanders and civilian superiors for offences committed by their subordinates.

Conclusion

45. In sum, Israel's investigation fails to meet any of the UK Government's stated criteria for an effective investigation. The empirical data of no criminal charges, prosecutions and convictions four years on from the start of the Great March of Return protests for any of the Palestinian fatalities – aside from the *“woefully derisory”* disciplinary charge and 30 day actual sentence for the killing of 14-year-old Othman Hillis - substantially supports the principal conclusion of our evidence-based assessment.
46. Furthermore, our careful assessment aligns with serious concerns posited by Palestinian and Israeli human rights organisations, and the UN independent Commission of Inquiry in the 2014 Gaza Conflict, that instead of implementing a genuine investigation system, *“impunity prevails across the board for violations of international humanitarian and human rights law allegedly committed by Israeli forces”*. (p. 175 of the [UN report](#))
47. Our assessment strongly suggests that the UK government must give urgent consideration to whether it's policy position on accountability in the context of Israel/Palestine, which appears to amount to an *anti-internationalisation* policy - particularly following Prime Minister Johnson's 14 April 2021 statement [opposing](#) the International Criminal Court's investigation into the Situation of Palestine - is fundamentally incompatible with its [official](#) commitment to *“promote international criminal justice and the rule of law... [and to] deliver justice for victims and accountability for the most serious crimes of international concern”*.
48. We strongly suggest that it is incumbent on the UK Government to remove this evident policy incoherence, particularly in light of a due assessment of Israel's lack of compliance with the UK's stated criteria for an effective investigation into widespread civilian fatalities and serious injuries during the Great March of Return protests. The UK Government should review its position on the sufficiency of such investigations, conducting and publishing its own assessment of whether or not they meet UK Government criteria. Solely relying on Israel's military investigation system to carry out effective military investigations amounts in practice to promoting effective impunity, and the associated greater likelihood of recurrent violations.