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Adalah: The Legal Center for Arab Minority Rights in Israel

عدالة- المركز القانوني لحقوق الأقلية العربية في إسرائيل
עדאלה- המרכז המשפטי לזכויות המיעוט הערבי בישראל

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PREFACE

This report presents the key issues raised in the concluding arguments submitted by Adalah: The Legal Center for Arab Minority Rights in Israel to the official Commission of Inquiry into the October 2000 protest demonstrations (hereinafter “the Commission”) on 5 December 2002. The 191-page submission was filed on behalf of Members of Knesset (MKs) Dr. Azmi Bishara (National Democratic Assembly) and ‘Abd al-Malek Dahamshe (United Arab List), and the head of the Islamic Movement in Israel, Sheikh Ra’ed Salah. These three Arab elected representatives each received a warning letter from the Commission on 27 February 2002. The warning letters advise the recipients that they are likely to be harmed by the inquiry or its results.

The pages that follow discuss the main reasons for the October 2000 protest demonstrations in Israel, which resulted in the killing of 13 unarmed Palestinian citizens of the state and the injury of hundreds of others by the police. The establishment of the Commission, its mandate, its proceedings, and the warnings it issued are also examined.

The concluding arguments relied on the exhibits before the Commission, the protocols of all of the proceedings, as well as the supporting documents presented to it. The concluding arguments were not intended to cover all of the events of October 2000, and several important issues are not presented here. These issues deserve further research and analysis.

The concluding arguments detail many of the acts and omissions of executive branch officials, both government ministers and police commanders, leading up to and during the protest demonstrations of October 2000, and the attempts made by these state authorities to cover up their failures. It also describes numerous instances of police violence against Palestinian citizens of Israel, both before and during October 2000, and refers to the central and negative role of the General Security Services (GSS) in setting state policy toward the Arab community.

The main argument advanced by Adalah is that the issuance of the warnings by the Commission against the three Arab public representatives is illegal. Adalah also comprehensively refuted the allegations set forth by the Commission against them, and therefore argued that the content of the warnings should not be included in the final conclusions and recommendations of the Commission.

Adalah published the concluding arguments in full in March 2003, with introductory remarks and other primary source documents. That volume, published in Hebrew, is also available from Adalah.

Welcome to the war game ‘Rouah Searah.’ We are hosted and hosting all of you today in the Center for Police Education, and before 52 years, this area, which we are [on] now, was conquered by Division 7 and the Golani Division. The exact date was 14 July 1948. And here, 52 years later, we are almost dealing with the same issues, although not conquering the country, but preserving it.

Police statement at the opening of the war game ‘Rouah Searah,’ Shafa’amr, 6 September 2000.

BACKGROUND

The October 2000 Protest Demonstrations in Israel

In early October 2000, Palestinian citizens of Israel staged mass demonstrations in towns and villages throughout the country to protest the government's oppressive policies against Palestinians in the 1967 Occupied Territories. These protests erupted soon after al-Aqsa Intifada began in the Occupied Territories, during which the Israeli army and security forces killed and injured scores of Palestinians. The protests in Israel developed and were directed shortly thereafter in opposition to the use of lethal force by the police against Palestinian citizens in Israel.

During these demonstrations in Israel, the police and special police sniper units killed 13 unarmed Palestinian citizens of Israel and injured hundreds more using live ammunition, rubber-coated steel bullets ("rubber bullets"), and tear gas. The firing of live ammunition and rubber bullets at protestors, including the use of snipers, are all prohibited by law and even violate internal police regulations. Israeli Jewish citizens also attacked Palestinian citizens of Israel, their property and their holy sites in early October 2000. Close to 700 Palestinian citizens of Israel were arrested in connection with these events, and hundreds, including scores of minors, were indicted and detained without bond until the end of trial.¹

The Establishment of the Commission

On 22 October 2000, then-Prime Minister Ehud Barak appointed a Committee of Examination to: "(a) examine the clashes with the security forces in the state that included the involvement of Israelis, Arabs and Jews, beginning from 29 September 2000; and (b) examine what happened in the above mentioned events and the factors that led to the occurrence of these events at that time."² The families of the 13 Arab victims worked together with the Arab political leadership, non-governmental organizations, and academics to compel the government to dissolve the Committee of Examination and to establish an official Commission of Inquiry. There was grave concern that a Committee of Examination, lacking any legal powers or independence, would be unable to fully investigate the events, which brought about the deaths of 13 Palestinian citizens of Israel and the injury of hundreds of others.

On 8 November 2000, the Israeli government decided to establish an official Commission

¹ See Rina Rosenberg, "On the Collective Criminalization of Political Protestors," 3 *Adalah's Review* 9 (2002).

² Letter of Appointment for the Committee of Examination, issued by Prime Minister Ehud Barak, dated 22 October 2000 (On file with Adalah, Hebrew).

of Inquiry in accordance with the Commissions of Inquiry Law - 1968.³ This law grants the Commission a wide range of powers to conduct the investigation, including the power to call and subpoena witnesses to appear and testify before it. On 15 November 2000, the Chief Justice of the Supreme Court, Aharon Barak, appointed three members to the official Commission of Inquiry: Supreme Court Justice Theodore Or (Chairperson); Professor Shimon Shamir of Tel Aviv University, a former Israeli ambassador to Egypt and Jordan; and Deputy President of the Nazareth District Court Judge Sahel Jarah. In June 2001, Judge Jarah resigned from his post due to health reasons and was replaced by Nazareth District Court Judge Hashim Khatib.

The Mandate of the Commission

Immediately following the establishment of the Commission, Adalah expressed its grave concern regarding the mandate that it was granted by the government, which differed considerably from the mandate afforded to the Committee of Examination.⁴ By Government Decision No. 2490, the Commission was mandated to investigate “the clashes beginning 29 September 2000 between security forces and Jewish and Arab citizens during which, *inter alia*, Israeli citizens were killed and injured.” In addition, the mandate called for an investigation into “the causes leading to their occurrence [the clashes] at that time including the conduct of the inciters, organizers, participants in these events from all sectors, and the security forces.” Adalah opposed the scope of the mandate, particularly the reference to “the conduct of the inciters,” as it was clear that the term “inciters” would be used against Arab political leaders, which indeed occurred.

Appointment of Adalah

The families of the Arab victims, as well as the High Follow-up Committee for the Arab Citizens in Israel (comprised of Arab MKs, mayors, and other leaders), appointed Adalah to represent them before the Commission. Three lawyers - Riad Anes, Azmie Odeh, and Mahmoud Shahin - were also appointed by the High Follow-up Committee to work together with Adalah lawyers as members of the legal team.

Stage 1 of the Proceedings

The hearings of the Commission began on 19 February 2001 and concluded in January 2002. During the course of the year, 349 witnesses testified before the Commission, generating nearly 16,000 pages of protocols documenting the proceedings. Witnesses included political leaders, police commanders and officers, journalists, experts, and ordinary citizens who had witnessed the events. Adalah’s legal team submitted a large quantity of evidentiary material to the Commission including over 100 affidavits of eyewitnesses, in

³ See Appendix No. 1 – The Commissions of Inquiry Law - 1968.

⁴ See Appendix No. 2 - The Mandate of the Official Commission of Inquiry, issued on 8 November 2000.

addition to photographs, medical reports, bullet casings and maps of the areas where the killings of the 13 Palestinian citizens of Israel took place. Human rights organizations and lawyers both in Israel and abroad assisted Adalah in its work before the Commission.

In accordance with past Israeli practice regarding official commissions of inquiry, neither the families of the Arab victims or Adalah had any legal standing before the Commission during this stage of the proceedings. Accordingly, during the course of these hearings, Adalah lawyers were not permitted to call or to cross-examine witnesses. Yet, by attending all of the Commission's hearings for an entire year and regularly intervening by submitting numerous legal motions challenging the procedures and the evidence, Adalah gained quasi-official status before the Commission.

The Warnings

On 27 February 2002, after one year of hearings, the Commission issued 14 letters of warning.⁵ Eleven of these warning letters were issued to high-ranking Israeli government political leaders, namely, former Prime Minister Ehud Barak and former Minister of Internal Security Shlomo Ben Ami, as well as various police commanders and officials. The Commission also issued warning letters to three elected Arab representatives: MK Azmi Bishara, MK 'Abd al-Malek Dahamshe, and Sheikh Ra'ed Salah. The warning letters advise the recipients that they are likely to be harmed by the inquiry or its results.

The warning letters to the three Arab public representatives alleged that between 1998-2000, and during the October 2000 events, they were "responsible for conveying messages supporting violence as a means to attain the goals of the Arab sector in Israel." The warning letter issued to Sheikh Ra'ed Salah also stated, among other allegations, that during 1998-2000, "he was responsible for conveying repeated messages denying the legitimacy of the existence of Israel and portrayed the state as an enemy."

On three separate occasions, Adalah sent letters challenging the mandate of the Commission, which enabled the Commission to issue these warnings.⁶ Adalah did not receive a reply to these challenges. On 12 March 2002, Adalah submitted a motion to the Commission to rescind the warning letters issued to the Arab leaders, but the motion was denied two days

⁵ See Appendix No. 3 - Decision of the Official Commission of Inquiry Regarding the Warning Letters, delivered on 27 February 2002.

⁶ See Letters of Adalah to Prime Minister Ehud Barak and Chief Justice of the Supreme Court Aharon Barak, dated 10 November 2000, regarding the legal problems raised by including the issue of incitement in the mandate; and to Supreme Court Justice Theodor Or, Chairperson of the Official Commission of Inquiry and the Members of the Commission, dated 19 November 2000, regarding the same issue. See also Letter of Adalah to the Members of the Commission, dated 28 November 2001, regarding the illegality of the Commission's investigation of incitement as it pertained solely to the Arab leaders. (Letters on file with Adalah, Hebrew).

later.⁷ One of the arguments raised in that motion was that the Commission had carried out its mandate in a discriminatory manner by singling out Arab leaders and choosing not to investigate Israeli Jewish “inciters,” including political leaders like Ariel Sharon, whose provocative visit to al-Haram al-Sharif compound on 28 September 2000 ignited al-Aqsa Intifada. The Supreme Court of Israel subsequently rejected a petition filed by Adalah on behalf of the three Arab public representatives against the Commission, which challenged the legality of the warnings.⁸

One conclusion to be drawn from the warning letters issued by the Commission is that the Commission was unsuccessful in identifying the individual police officers who shot and killed most of the Palestinian citizens of Israel in October 2000. Indeed, the Commission deemed it appropriate, at least in these initial conclusions, to warn the then-Prime Minister and Minister of Internal Security as well as several police commanders and officers. However, the warnings issued against the three Arab elected representatives cast the blame for the killing of 13 Arab citizens of Israel and the injury of hundreds of others on the entire Arab population, including its political leadership, a blame that transforms the victims into guilty parties.

Stage 2 of the Proceedings

The second stage of the Commission’s proceedings - the warnings hearings - began in June 2002 and concluded at the end of August 2002. During this stage, each of the warned individuals appeared before the Commission, represented by legal counsel. Each of them had the opportunity to call witnesses who were relevant to the warning issued and to testify a second time before the Commission to refute the initial allegations contained in the warning letter against them. Lawyers representing the other warned individuals also had the opportunity to cross-examine both the “warnees” and their witnesses. However, the right to cross-examine was limited to the content of the warning given to the individual. These hearings were conducted like “mini-trials.”

⁷ See Motion Regarding Request to Cancel Letters of Warning Given to Arab Public Representatives, submitted by Adalah on 12 March 2002 to the Members of the Official Commission of Inquiry. Reprinted in 3 *Adalah’s Review* 128 (2002). See also Decision of the Commission, 14 March 2002, rejecting this motion. (Decision on file with Adalah, Hebrew).

⁸ H.C. 6342/02, *MK ‘Abd al-Malek Dahamshe, et. al. v. The Commission of Inquiry* (decision delivered on 4 August 2002). The Supreme Court held that: the petition was submitted too late; it should have been filed against the government and not the Commission, as it challenged the government-issued mandate; and the Commission would guarantee that the warnings were based solely on disclosed materials. In its judgment, the Court failed to address several of the arguments raised by Adalah in the petition, namely that: the Commission has the power to request a change in mandate and that although Adalah asked the Commission to exercise this power, it chose not to do so without explaining why; the mandate was implemented in a discriminatory manner; the Commission was inconsistent in its position that it issued the warning letters based solely on disclosed materials; and the Commission will certainly be influenced by disclosed as well as undisclosed materials in the course of its investigation.

During this stage of the proceedings, Adalah represented MK Bishara, MK Dahamshe, and Sheikh Ra'ed Salah. At this stage, Adalah also requested that the families of the Palestinian citizens of Israel killed in October 2000 be granted standing before the Commission; the Commission denied this request.⁹ As a result of this ruling, the families were prohibited from questioning and cross-examining, through their lawyers, those who may have been directly or indirectly responsible for the deaths of their relatives. Thus, the Adalah legal team was limited in its cross-examination to questions related solely to the substance of the warnings against the three Arab public representatives.

Throughout the proceedings, Adalah attempted to convey to the Commission the underlying social processes that have taken place and continue to take place within the Arab community in Israel. Adalah tried to widen the narrow and at times ahistorical and asociological view of the events that appeared to guide the questions of Commission's members. For example, the Commission did not investigate the issue of historical discrimination against the Palestinian minority in Israel in general, or more specifically, the institutionalized racism of the police. Therefore, Adalah solicited and submitted expert opinions to the Commission by sociologist Dr. Ahmad Sa'adi (Ben Gurion University); an Arabic-language specialist, Dr. Elias Atallah (Mar-Elias College); and political geographer Professor Oren Yiftachel (Ben Gurion University). During the warnings hearings, Adalah called three academic expert witnesses to testify before the Commission: Danny Rabinowitz, Professor of Anthropology and Sociology at Tel Aviv University; Nadim Rouhana, Professor of Sociology at Tel Aviv University and Director of MADA - Arab Center for Applied Social Science Research; and Yoav Peled, Professor of Political Science at Tel Aviv University. The three academic experts adamantly rejected the Commission's claim that the October 2000 protest demonstrations were caused by alleged incitement to violence by the Arab elected representatives. They argued, each from his research and perspective, that the Arab leaders conducted themselves responsibly and democratically.

⁹ See Appendix No. 4 - Adalah's Motion for Standing for the Victims' Families, dated 19 June 2002, and Appendix No. 5- Decision of the Official Commission of Inquiry Regarding Standing for the Victims' Families, delivered on 25 June 2002.

CONCLUDING ARGUMENTS

Adalah's concluding arguments focused on two major themes: The main reasons for the October 2000 protest demonstrations and the illegality of the warnings issued by the Commission.

I. REASONS FOR THE OCTOBER 2000 PROTEST DEMONSTRATIONS

Adalah identified both direct reasons and historical, social and economic reasons for the October 2000 protest demonstrations by Palestinian citizens of Israel.

A. Direct Reasons

1. Sharon's Visit to al-Haram al-Sharif

Adalah argued that then-MK Ariel Sharon's 28 September 2000 provocative visit to al-Haram al-Sharif compound, site of al-Aqsa mosque, was the spark that led to the mass demonstrations in the Occupied Territories immediately thereafter. The violent suppression of these protests by the security forces, resulting in deaths and injuries, then led to the demonstrations in Israel and their repression in early October 2000.

Then-Prime Minister Ehud Barak claimed that Sharon's visit was coordinated with the Palestinian leadership.¹⁰ However, numerous sources document Palestinian opposition to Sharon's visit, warn of its danger, and attribute the deterioration of the situation directly to it:

- Internal police reports confirm that the police were aware that the Palestinian side was against the visit due to the personality of the individual, mainly his involvement in the 1982 massacre of Palestinians in Sabra and Shatila in Lebanon, and the sensitivity of the site. The police usually prohibit visits to the site by right-wing Israeli activists.
- Israeli army and police intelligence reports specifically warned against the danger of Sharon's visit to al-Aqsa mosque. An army intelligence report dated 27 September 2000, which was sent to the Police Commissioner Yehuda Vilk, the Army Operation's Commander, and the Jerusalem Police Commander, lists the reasons articulated by the Palestinian leadership in the Occupied Territories for their opposition to Sharon's visit. Among these reasons were Sharon's responsibility for the massacre of Palestinians in Sabra and Shatila, his provocative house purchase in the Muslim Quarter of the Old City in East Jerusalem, and his well-known actions and positions against Palestinians and Arabs.

¹⁰ Testimony of Ehud Barak before the official Commission of Inquiry on 20 November 2001 and 20 August 2002.

- On the eve of the visit, in a telephone conversation with the Commander of Operations at the Ministry of Internal Security, the Jerusalem Police Commander stated that in his opinion, it would be better if the visit did not take place.
- Journalists with leading newspapers in Israel and abroad criticized the visit and its timing.¹¹ The foreign media also condemned the harsh methods used by the Israeli security forces against Palestinian demonstrators in the Occupied Territories.¹² For example, the day after Sharon's visit, the Jerusalem Bureau Chief of *The Guardian* wrote:¹³

Dozens of people were injured in rioting on the West Bank and in Jerusalem yesterday as the hawkish Likud party leader, Ariel Sharon, staged a provocative visit to a Muslim shrine at the heart of the Israeli-Palestinian conflict. Surrounded by hundreds of Israeli riot police, Mr. Sharon and a handful of Likud politicians marched up to the Haram al-Sharif ... He came down 45 minutes later, leaving a trail of fury. Young Palestinians heaved chairs, stones, rubbish bins, and whatever missiles came to hand at the Israeli forces. Riot police retaliated with tear gas and rubber bullets, shooting one protester in the face. The symbolism of the visit to the Haram by Mr. Sharon - reviled for his role in the 1982 massacre of Palestinians in a refugee camp in Lebanon - and its timing was unmistakable ...

- The Sharm el-Sheikh Fact-Finding Committee, charged with investigating the causes and events that led to the outbreak of al-Aqsa Intifada and its immediate aftermath, issued a report that related, among other things, to then-MK Sharon's visit. According to "The Mitchell Report":¹⁴

Palestinian and U.S. officials urged then Prime Minister Ehud Barak to prohibit the visit. Mr. Barak told us that he believed the visit was intended to be an internal political act directed against him by a political opponent, and he declined to prohibit it. Mr. Sharon made the visit on September 28 accompanied by over 1,000 Israeli police officers. Although Israelis viewed the visit in an internal political context, Palestinians saw it as highly provocative to them. On the following day in the same place, a large number of unarmed

¹¹ For local media coverage, see e.g., Yossi Verter and Baruch Kra, "The Left Attacks Sharon's Visit," *Ha'aretz*, 29 September 2000; and Yoel Marcus, "The Core of Our Existence," *Ha'aretz*, 3 October 2000.

¹² See e.g., Brian Whitaker, "World Blames Sharon," *The Guardian*, 3 October 2000 (quoting world leaders such as the United States Secretary of State, the French President and Foreign Minister, and the Egyptian President, all of whom criticized the visit).

¹³ Suzanne Goldenberg, "Rioting as Sharon Visits Islam Holy Site," *The Guardian*, 29 September 2000.

¹⁴ George J. Mitchell, Chairman, "Sharm el-Sheikh Fact-Finding Committee Final Report," 30 April 2001, available at <http://usinfo.state.gov/regional/nea/mitchell.htm>.

Palestinian demonstrators and a large Israeli police contingent confronted each other. According to the U.S. Department of State, “Palestinians held large demonstrations and threw stones in the vicinity of the Western Wall. Police used rubber-coated metal bullets and live ammunition to disperse the demonstrators, killing 4 persons and injuring about 200.” According to the GOI, 14 Israeli policemen were injured. Similar demonstrations took place over the following several days. Thus began what has become known as the “Al-Aqsa Intifada.”

- United Nations Security Council Resolution 1322, adopted on 7 October 2000, also described Sharon’s visit as provocative. The Security Council stated that it: “... *Deplores* the provocation carried out at Al-Haram Al-Sharif in Jerusalem on 28 September 2000, and the subsequent violence there and at other Holy Places, as well as in other areas throughout the territories occupied by Israel since 1967, resulting in over 80 Palestinian deaths and many other casualties ...” (emphasis in original).¹⁵

2. The Use of Lethal Force to Suppress Demonstrations in the Occupied Territories

Adalah argued that the use of lethal force by the Israeli army and security forces against Palestinian demonstrators in the Occupied Territories, from 28 September 2000, was another direct reason for the October 2000 protest demonstrations in Israel. Adalah cited three main sources detailing the use of force and its lethal results:

- In a press release issued on 2 October 2000, Amnesty International: “condemned [the] indiscriminate killing of civilians following four days of clashes in Israel and the Occupied Territories which have left at least 35 Palestinian civilians dead and hundreds of others injured. The dead civilians, among them young children, include those uninvolved in the conflict and seeking safety ... The loss of civilian life is devastating and this is compounded by the fact that many appear to have been killed or injured as a result of the use of excessive or indiscriminate force.”¹⁶
- In a report issued on 29 November 2000, Mary Robinson, the then-High Commissioner for Human Rights stated: “In an attempt to disperse the demonstrations, the Israeli military authorities have used live ammunition, rubber coated steel bullets and tear gas, all of which have resulted in deaths and injuries amongst the Palestinians. Heavier weapons have also been used, including rockets fired by infantry and from helicopters, armored vehicles,

¹⁵ UN Security Council Resolution 1322, adopted on 7 October 2000, available at: <http://www.un.org/Docs/scres/2000/sc2000.htm>.

¹⁶ Amnesty International, Press Release, “Civilian Lives Must be Respected,” 2 October 2000, available at: <http://web.amnesty.org/library/Index/ENGMDE150322000?open&of=ENG-ISR>.

which have been deployed throughout the Gaza Strip and the West Bank, and heavy machine guns. The use of heavy weapons has raised the incidence of death and injury amongst non-combatants and, indeed, several such deaths occurred during the period of the High Commissioner's visit. A high percentage of the injuries sustained by Palestinians have been to the upper part of their body, including a large number of eye injuries, some caused by the firing of "rubber" bullets at close range. The result is often the loss of an eye, but can also be severe brain damage or death. In subsequent discussions senior IDF representatives accepted the potential lethality of "rubber" bullets, and also that of tear gas, if used in a confined area, as has been alleged."¹⁷

- In the UN Human Rights Inquiry Commission Report ("The Falk Report") issued in March 2001, the members stated that: "The Commission received disturbing evidence about both the rubber-coated bullets and the live ammunition employed by the IDF ... Equally disturbing is the evidence that many of the deaths and injuries inflicted were the result of head wounds and wounds to the upper body, which suggests an intention to cause serious bodily injury rather than to restrain demonstrations/confrontations."¹⁸

Adalah also referred to the killing of 12-year-old Mohammed al-Dura by the Israeli army on 30 September 2000, which was broadcast on satellite television. The global effect of these actions was manifested in demonstrations all over the world protesting against Israeli policies: "Demonstrations against Israel have also been held in Germany, Italy, France and Sweden. Most of the demonstrations were violent - although in Rome, there was a peaceful march of solidarity with the Palestinians."¹⁹

Further, Adalah noted an interview, which appeared in *Yediot Ahronot*, of a Border Policewoman who took part in the assault on al-Aqsa compound. In the interview, the Border Police officer noted that there was no immediate danger to the security forces. She also emphasized the "challenge" of shooting when joining the Border Police, as opposed to being "just a secretary in other units in the military."²⁰

¹⁷ Mary Robinson, "Report of the High Commissioner on her visit to the occupied Palestinian territories, Israel, Egypt and Jordan (8-16 November 2000)," 29 November 2000, available at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/b620f0b58038e34cc12569a7003e368a?Opendocument>.

¹⁸ Professor Richard Falk, et. al., "Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000," March 2001, para. 47, available at: http://www.palestinecenter.org/cpap/documents/un_coi.html.

¹⁹ BBC News, "Anti-Israel protests continue," 7 October 2000, available at <http://news.bbc.co.uk/2/hi/world/africa/961639.stm>.

²⁰ Shahar Ginossar, "Poisoned," *Yediot Ahronot* (Supplement), 3 November 2000.

3. Assessment Meeting on 1 October 2000 at the home of then-Prime Minister Ehud Barak

Adalah argued that evidence before the Commission showed that Prime Minister Ehud Barak was directly responsible for the escalation in the level of police violence against Arab demonstrators in Israel. The main facts that support this conclusion are statements made by Barak in a radio interview on 2 October 2000; statements he made during a 2 October 2000 government meeting; and inconsistent testimonies given by his aides regarding the lack of documentation about a crucial assessment meeting at his home on 1 October 2000, where Barak claimed that his actual orders were given.

Prime Minister Ehud Barak was the most senior government official to receive a warning letter from the Commission. In the warning letter issued to Barak, the Commission stated that he might be responsible, *inter alia*, for “ordering the police to use every means to keep the roads open, with specific reference to Route 65 (the Wadi ‘Ara Road), thus ignoring the many casualties, including fatalities, that could have, and should have, been anticipated as a result of the order, and that it was liable to further inflame the riots.”

Barak testified that such an order was never given, and that the actions taken by the police on 2 October 2000 do not reflect his orders. However, in the radio interview given by Barak on the morning of 2 October 2000, the day after the first killing of an Arab citizen of Israel, he stated that:

We cannot accept and will not accept either the blocking of roads or disruption of ordinary lives, by citizens inside the state. In a discussion which went into the night yesterday at my home, I instructed the Minister of Internal Security and the police commanders who, by the way, deserve great compliments for their self-restraint yesterday during the demonstrations, but I told them that you have the green light for any action necessary to bring about the rule of law, to preserve public order and to secure freedom of movement for the citizens of the state, anywhere in the state.

When questioned about this radio interview by the Commission, Barak testified that these statements do not reflect the actual orders given to police, but were meant to calm public concerns, seemingly only those of the Jewish public. Barak insisted that the orders he gave on 1 October 2000 were appropriate, and that the actions of the police do not reflect these orders. However, Barak’s statements made during the 2 October 2000 radio interview, as well as his statements made during the 2 October 2000 morning government meeting, indicate that the police were told to use any means to open the roads. Later on the same day, police snipers were deployed against demonstrators on the Wadi ‘Ara Road (near Umm al-Fahem) and in Nazareth, and six Palestinian citizens of Israel were killed.

There are contradictory versions of events regarding the recording of a crucial assessment meeting that took place on the night of 1 October 2000 at Barak's home. Barak referenced this meeting in his 2 October 2000 radio interview. This meeting was crucial, as Barak apparently gave the police orders to open the roads using any means necessary at that time. The Minister of Internal Security and police commanders, among others, attended this meeting. Those present at the meeting were aware that earlier in the day, one Palestinian citizen of Israel had been killed and many others injured by police on the Wadi 'Ara Road.

Barak's military secretary, Gadi Eizenkot, also attended the meeting. Eizenkot was responsible for officially documenting such meetings. During his testimony, the Commission asked Eizenkot about the documentation that he had made of this meeting. The Commission, referring to Eizenkot's personal notes, which were incomplete and difficult to decipher, seemingly included the Prime Minister's instructions to open closed or blocked roadways by force. There is no full official documentation of the 1 October 2000 assessment meeting, for which there are contradictory explanations.

Eizenkot testified before the Commission on 25 July 2001 and then again on 18 August 2002. During his testimony on 25 July 2001, Barak's military secretary stated that he was not aware of whether or not the 1 October 2000 meeting was taped. On 18 August 2002, he testified that he brought the tape for transcription, and a few days after the meeting, he was notified that there was no recording.

A third version of events regarding the lack of documentation was included in an affidavit given by Eizenkot's assistant, Amir Noiman. Barak's attorneys submitted Noiman's affidavit to the Commission on 13 August 2002. In his affidavit, Noiman claimed that at the end of the assessment meeting, Eizenkot attempted to listen to the tape and discovered that the tape recorder had malfunctioned. However, in the affidavit, Noiman actually addressed the documentation of a meeting that took place on 30 September 2000 and not on 1 October 2000.

4. The "Kessem Ha-Mangina" Order

During the October 2000 protest demonstrations in Israel, the police acted in accordance to a 1998 operational plan titled "Kessem Ha-Mangina" (literally "The Melody's Magic"). The police developed this plan to deal with mass demonstrations by Palestinian citizens of Israel in general, and specifically, in the event of an Israeli military suppression of a unilateral declaration of a Palestinian state. The plan permits the use of snipers and the heightened use of force to disperse demonstrators. In his testimony before the Commission on 14 June 2001, a Galilee region operational police officer confirmed that this plan was actually implemented in October 2000.

The police conducted several training exercises in connection with this plan culminating in the “war game Rouah Searah,” held at the police headquarters in Shafa’amr on 6 September 2000. High-ranking police commanders, as well as high-level officials from the General Security Services (GSS) and the Israeli army, participated in this “war game.” The police opened the training simulation with the following words: “Welcome to the war game ‘Rouah Searah.’ We are hosted and hosting all of you today in the Center for Police Education, and before 52 years, this area, which we are [on] now, was conquered by Division 7 and the Golani Division. The exact date was 14 July 1948. And here, 52 years later, we are almost dealing with the same issues, although not conquering the country, but preserving it.”

During this training operation, the police adopted the position that they would not allow demonstrators to block major roads, specifically mentioning the Wadi ‘Ara road, where three Palestinian citizens of Israel were later killed during the October 2000 demonstrations. The police stated during the ‘Rouah Searah’ training that they could not allow the blocking of roads “because the Jewish people must travel there,” and in order to “prevent a territorial continuity between Nablus and Lebanon.” During the exercise, the Deputy Police Commander of the Northern District, Avi Tiller, stated that the police response to demonstrations in “the Arab sector” should be quick and harsh in order to prevent demonstrators from gaining confidence and achievements, which would make it more difficult for the police to disperse them.

On 8 November 2000, the police held a commanders’ convention to evaluate their work during the October 2000 demonstrations. At the convention, they praised themselves for their approach during the demonstrations, including the use of snipers. They presented a written document on lessons to be learned, which referred to the use of snipers as “efficient for its deterrent effect.” Then-Minister of Internal Security, Shlomo Ben Ami, addressed the conference, and did not criticize the use of snipers; rather, he told the police that the political level supported all of their actions taken during the October 2000 demonstrations, and that it continued to support them.

An additional police document, “Rouah Searah - The Operational Procedures,” details the integral role played by special police units in general police preparations for demonstrations by Palestinian citizens of Israel. These procedures are completely different from those to be used in the event of demonstrations by Jewish Israelis. In this document under the title, “Police Commissioner’s Policy,” the Jewish demonstration scenario includes the instruction that: “The Jewish sector will be dealt with using extreme flexibility.” Indeed, the police treated Jewish demonstrators in a completely different way than they dealt with Arab protestors during October 2000. Despite the blocking of roads and stoning of police by Jewish demonstrators, the police reacted with “extreme flexibility,” without resorting to violent means such as the firing of live ammunition or rubber bullets or the use of snipers. By contrast, the police reacted to Arab demonstrators in a confrontational manner

in order to forcefully suppress the protests. A Border Policewoman told a *Yediot Ahronot* reporter about their wish to “exercise their training for real,” and that the central role of their work was to deter demonstrators, as opposed to preventing any harm to the public and themselves.²¹

5. Police Actions During October 2000: Use of Snipers, Live Ammunition and Rubber Bullets

On 2 October 2000, six Palestinian citizens of Israel were killed and scores of others were injured by police, the largest number of victims on a single day during the October 2000 protest demonstrations. On 3 October 2000, a meeting took place in Jerusalem attended by the Prime Minister and other government officials, as well as by representatives of the High Follow-up Committee for the Arab Citizens in Israel. On that day, two more Palestinian citizens of Israel were shot by police; one individual died the same day and the other died the following day. On 8 October 2000, Jewish residents of Natseret Illit attacked the eastern neighborhood of Nazareth. However, the police aimed their weapons only at the Arab demonstrators, who were reacting to the attack from the direction of Natseret Illit. On that day, the police shot two Palestinian citizens of Israel; one died that day and the other the following day. Many other individuals were injured. On 8 October 2000, police firing on demonstrators was massive and indiscriminate; they used live ammunition and rubber bullets.

A medical study conducted by eight Arab and Jewish Israeli doctors titled, “Blunt and penetrating injuries caused by rubber bullets during the Israeli-Arab conflict in October, 2000: a retrospective study,” and published in May 2002 in *The Lancet*, concerns the injuries inflicted as a result of police shootings.²² The research found that:

Of 152 patients with 201 rubber-bullet injuries, 35 were treated at the frontline clinic in Umm al-Fahem, 101 were admitted to two regional hospitals in Nazareth, and 16 were referred to the Rambam Medical Center in Haifa. There were 151 males and one female, with an age range of 11-59 years ... 20 (13%) patients had more than one bullet injury, and in one (0.6%) individual, 13 bullet injuries were noted (figure 2) ...

The 201 rubber-bullet injuries were randomly distributed all over the body ... Injuries were mostly located in the limbs (n=73), but those to the head, neck, and face (61), chest (39), back (16) and



Figure 2: Rubber-bullet injuries induced by MA/RA 88 bullet. In this patient, 13 blunt injuries were detected on the back.

²¹ Id.

²² The full report can be viewed on-line at: http://www.thelancet.com/journal/vol359/iss9320/full/llan.359.9320.original_research.21184.1

abdomen (12), were also frequently noted. In accordance with ISS score, 92 (46%) injuries were mild, 71 (35%) were moderately severe, and 38 (19%) severe. 116 (58%) of 201 sites of impact were detected above the umbilicus, whereas 85 (42%) were noted below this area. 123 (61%) injuries were blunt, whereas 78 (39%) were penetrating.

The study concludes that the October 2000 police shootings, specifically the firing of rubber bullets, was extremely dangerous and caused deaths and grave injuries as they were inflicted on the upper part of the body. Thus, the study recommends that the use of rubber bullets by police to control demonstrations be prohibited:

The need for authorities to control civil disturbances is well acknowledged. Techniques used by the police forces to deter such activity must be effective and able to keep serious injuries to demonstrators to a minimum. We reported a substantial number of severe injuries and fatalities inflicted by use of rubber bullets when vulnerable upper-body regions such as the head, neck and upper torso were struck. This type of ammunition should therefore not be considered a safe method of crowd control.

Dr. Stephen Males is a world-renowned policing expert. At the beginning of October 2000, he came to Israel as part of an Amnesty International delegation to be briefed first-hand on police actions taken against the demonstrators. Due to his expertise and his first-hand research conducted shortly after the events, Adalah asked Dr. Males to write an expert opinion, which was subsequently submitted to the Commission. In his expert opinion, Dr. Males discussed the combative approach taken by the police. Instead of acting to maintain order and to cause minimum injury to protestors, the police functioned as though they sought to wipe out the enemy. Dr. Males stated:²³

In many cases there seemed little or no damage to security installations or property, or immediate risk to security forces deployed behind cover. It is difficult in those instances to imagine any justification for the use of lethal force. In one location (Arrabeh), the location was in open fields, near a refuse tip, where only rocks, refuse or olive trees could have suffered. The security forces ambushed the demonstrators and two people, including a young boy, were killed. Other demonstrators were ambushed in isolated villages and settlements of different origins. Whereas measures had to be taken to protect those settlements, use of cordons, gas, baton rounds, physical barriers or other tactics might well have considerably reduced casualties. In most cases aggression has only boiled over upon appearance of police or security forces,

²³ Expert Opinion, Dr. Stephen Males, April 2001 (On file with Adalah).

and violence has been directed at them and their property rather than at others or property in general. Sometimes the security forces have not arrived at the symbolic location as expected and riots have not evolved, the crowds simply melted away...

A military commander wishes to minimize risk to his soldiers and maximize injury to the enemy. A police commander should endeavor to preserve the peace and protect public lives and property, and knows that to do so will involve taking risks, which endanger police personnel.

Amnesty International and Human Rights Watch published reports regarding the suppression of the October 2000 demonstrations. Both international human rights organizations documented the suppression of the protests in the north, and reported on the lethal actions taken by the police and their provocative presence in places such as Nazareth and Umm al-Fahem.

Amnesty International found that in responding to the October 2000 protests, the Israeli police used military methods rather than policing methods against Arab demonstrators in Israel:²⁴

In some cases, especially in northern Israel, at Nazareth, Umm al-Fahm, Sakhnin and Arrabeh, the military policing methods of Gaza and the West Bank were used: i.e., meeting demonstrators in force, rapid escalation to firing of rubber-coated metal bullets and live ammunition without attempting to use non-lethal methods of dispersal.

After conducting investigations into two days of clashes between the Israeli police and Arab citizens of Israel in Umm al-Fahem, Human Rights watch found that:²⁵

At no time on either day do the security forces appear to have faced imminent threats to their lives or serious injury. On both days wind conditions allowed security forces to use tear gas effectively to disperse the demonstrators when they wished to do so. On October 3 the crowd dispersed on its own when they arrived at the junction and found no police forces present.

²⁴ Amnesty International, "Israel and the Occupied Territories: Excessive Use of Lethal Force," October 2000 at 13, available at: [http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/MDE150412000ENGLISH/\\$File/MDE1504100.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/MDE150412000ENGLISH/$File/MDE1504100.pdf).

²⁵ Human Rights Watch, "Israel and the Occupied Territories: The Role of the Israeli Security Forces," October 2000, available at: <http://www.hrw.org/reports/2000/israel/isrlo00-02.htm>.

6. The Knowledge of Government Ministers and High-Ranking Police Commanders Concerning the Use of Live Ammunition and Snipers

Prime Minister Ehud Barak, Minister of Internal Security Shlomo Ben Ami, and Police Commissioner Yehuda Vilks claimed in their testimonies before the Commission that they were unaware of the use of live ammunition and snipers against demonstrators by the police, until the Commission's proceedings had begun.²⁶

The use of snipers took place as early as 29 September 2000 in al-Aqsa Mosque compound, with the "real time" knowledge of the Police Commissioner and the Minister of Internal Security. In addition, the "Kessem Ha-Mangina" order, discussed above, specifically included the use of snipers; this plan was implemented in October 2000. Not only did the police fail to conduct internal inquiries regarding the causes of demonstrators' deaths and injuries, but they also concluded in their evaluation reports that the use of snipers was effective due to its deterrent effect on protestors. As noted, this assessment was presented at a conference of police commanders on 8 November 2000, attended both by the Police Commissioner and the Minister of Internal Security.

In addition, on 2 October 2000, Yossef Melamed, a senior security advisor to the Minister of Internal Security, was aware of the use of live ammunition and rubber bullets by police against protestors. Melamed's knowledge of these actions can be clearly deduced from statements that he made in a letter sent to the Northern District Police Operations Commander, Dov Lutzky. In the letter, Melamed asks: "Can you say that live ammunition and rubber bullets were used due to lack of ammunition? ... Police Headquarters reports state that there was sufficient Alfa ammunition..."²⁷

Furthermore, as early as the beginning of October 2000, the Israeli media reported that the police were firing live ammunition at protestors, and that police snipers were being deployed. On 3 October 2000, *Ha'aretz* reported on the protests in Umm al-Fahem that:²⁸

75 protestors were injured during the protests in town, most were mild injuries inflicted by rubber bullets and were treated in the local clinic, but 12 were hospitalized. Many young people confronted the police and border police,

²⁶ Testimony of Ehud Barak on 20 November 2001, Shlomo Ben Ami on 19 November 2001, and Yehuda Vilks on 20 October 2001 before the official Commission of Inquiry.

²⁷ Letter of Yossef Melamed to Dov Lutzky, dated 2 October 2000 (On file with Adalah, Hebrew).

²⁸ Sharon Gal, Ori Nir and David Ratner, "In Akko and Nazareth the Arab Demonstrators Fired at the Police," *Ha'aretz*, 3 October 2000. The issue of whether or not Arab demonstrators fired at the police was raised before the Commission. In questioning police witnesses on this point, the Commission found that in fact, no such shootings ever occurred. See e.g., Protocol of the Commission at 4815, 4855-4856 (testimony of Roni Atella, Commander of the Akko Police Station, 2 August 2001) (On file with Adalah, Hebrew).

who were situated in front of the entrance to the village. The police, who used sniper rifles, attempted to prevent the blocking of the Wadi 'Ara road. Another young man was killed by police shooting, and many other young people were injured.

On 6 October 2000, *Ha'aretz* also reported on the police use of live ammunition and snipers:²⁹

How did it come about that Israeli police, within the State of Israel, shot and killed 9 Israeli citizens? How did it come about that most of the casualties and the severely injured, according to medical reports, were injured by live ammunition, and mostly, according to eyewitness statements - from direct sniper fire?

7. The “Kistoho” Cover Up Document

As noted, prior to the government's decision to appoint an official Commission of Inquiry, the government formed a Committee of Examination in mid-October 2000, which was later dissolved. In preparation for the future testimony of the Minister of Internal Security before the Committee of Examination, the Ministry's Legal Department prepared a document, which included a chapter titled, “Arguments for the Minister's Replies to the Committee of Examination in order to ‘cover [him] up’ on the moral, political and public levels.” This document included a series of arguments meant to deflect the entire blame away from the Minister, who was directly responsible for the police forces. The document details, among other things, the following false arguments:

The situation was difficult and extraordinary, and therefore the result was harsh and extraordinary. What would have happened if 13 policemen would have been shot and killed by the rioters because they did not defend themselves properly? It should be noted that the same people who were killed and injured, shot, burned, injured, and incited to murder and kill, all intentionally and in an organized manner, and actually acted as soldiers fighting an enemy, and not as citizens in their own country. This should not be ignored and dealt with naively.

The Commission cannot ignore the fact that an official document was produced by the Legal Department of the Ministry of Internal Security, which suggests that the Minister should testify falsely. The allegation that Arab demonstrators fired shots at police in October 2000 is completely without basis in fact. If this document bears witness to anything, besides the urge to make false statements to cover up the Minister's decisions and police actions, then it testifies to a distorted culture of governance. It is particularly alarming that such

²⁹ Ori Nir, “The New Israeli Arab,” *Ha'aretz*, 6 October 2000.

a document was produced by the Ministry of Internal Security, which holds the monopoly over the use of force in the country. This distorted culture of governance is dangerous to citizens in general, and to Palestinian citizens of Israel, in particular.

8. The Role of the Media

In general, the Hebrew-language media played a negative role during the protests by Arab citizens of Israel in October 2000. The coverage was predominantly hostile to the Arab public: It portrayed them using military terms such as ‘the enemy,’ and even as a cause of existential danger to the state, despite the reality of what was actually occurring on the ground. The positions expressed by the written and electronic media relied almost entirely on “security sources,” who themselves were involved in illegal actions such as ordering the firing of live ammunition and using police snipers. A *Ha’aretz* journalist acknowledged this dangerous process of vilifying the Arab minority, even prior to the protests and the media reports during October 2000:³⁰

Every once in a while, reporters are called by someone in the security apparatus, who sells them an attractive package under the title, ‘Terror Among Israeli Arabs.’ The security elements have become experts in designing these packages: They take two or three subjects with no connection between each other, they glue them together, twist a little bit, add a little bit, and promote a sticky stew with a screaming title ready for publication ... there are reporters who would swear that they would not buy a used car from certain elements in the military or the GSS but a used piece of news - why not?

Research conducted by Keshev - The Center for the Protection of Democracy in Israel, a non-governmental organization, supports this position.³¹ According to Keshev, both the written and electronic Hebrew-language media provided exaggerated and hostile coverage of the demonstrations, emphasizing the “Arab internal danger,” that did not correspond to what was actually happening. This distorted depiction of reality, described as “protection of the homeland,” relied on police and other “security sources”; these same authorities were engaged in illegal methods of suppressing the protest demonstrations. To illustrate this phenomenon, one example provided by Keshev follows:³²

On the same day (2 October 2000) during the Israeli Broadcast Authority’s Channel One 7:30 news program, Amnon Avramovich, one of the highest ranking reporters in Israel stated: “The more problematic issue is that of Israeli

³⁰ Aviv Lavie, “On a Nationalist Background,” *Ha’aretz*, 22 September 2000.

³¹ Dr. Moti Neiger, Eyal Zandberg, and ‘Assam Abu-Ra’iyeh, “Civil or Ethnic Media? - An Evaluation of the Coverage of the October 2000 Violent Clashes between the Police and Israeli Arab Citizens,” ed. Yizhar Be’er (Keshev - The Center for Protection of Democracy in Israel, March 2001) (Hebrew) available at: <http://keshev.org.il/hebrew/reports/alaksa/index.shtml>.

³² *Id.*

Arabs. One must understand that no country, neither an Arab nor a western one could agree to a violent and incited public taking over major transportation routes, taking over police stations, setting police stations on fire and injuring law enforcement personnel. I don't think we will be able to tolerate this for long. And I don't even want to think of the type of measures Israel will have to employ in order to suppress this phenomenon.”

Here as well, there are no inquiries into the deaths of Arab citizens from police shootings, rather the only issue discussed is of the police unblocking the junctions with any means possible. Avramovich draws a picture of anarchy: Police stations burned down while others are under enemy control, main traffic routes blocked disrupting the flow of traffic throughout the country, injured police personnel - while in reality the picture is different. This is a great gap between the symbolic reality and the objective one. The reality, as described by Avramovich, supposedly justifies the employment of harsh measures.

In his book, Tel Aviv University lecturer and researcher Dr. Daniel Dor conducts an in-depth and critical analysis of the Hebrew-language media during October 2000, both in its depiction of the Intifada in the Occupied Territories and the protest demonstrations in Israel. Regarding the demonstrations in Israel, Dr. Dor presented numerous examples showing that the Hebrew-language media completely ignored the various opinions and perspectives of the Arab public in October 2000. This is especially problematic, according to Dr. Dor, as these events related directly to them. Dor further argued that liberal writers also joined the chorus of demonizing the Arab public and its elected political leadership. According to Dor, in its reporting of the events, the Israeli press betrayed its professional and moral missions, allowing the feeling of collective identity to sabotage substantive reporting of the facts as they develop in the field.³³

Most of the Hebrew-language media outlets neglected to fulfill their responsibilities in a democratic society. The depiction of the entire Arab community took place through the eyes of the “security sources,” without any attempt to balance these views with other alternative sources, including Palestinian citizens of Israel. By solely reflecting the viewpoints of the security establishment, the media also blocked any possibility of transparency or accountability. In addition, the media joined the security establishment in conveying threatening messages to the Arab public, a role that is usually given to the “Arabic Department” of the government-controlled Israel Broadcast Authority (IBA). The failure of the Hebrew-language media to understand the deep social processes taking place within the Arab community in Israel and to present the reality, only increased the threat from the institution they are supposed to analyze, question, and criticize in accordance with basic democratic values: The government.

³³ Daniel Dor, *Newspapers Under the Influence* (Tel Aviv: Babel, 2001) at 168- 169 (Hebrew).

B. Historical, Social and Economic Reasons for the October 2000 Protest Demonstrations

The October 2000 protest demonstrations had deep-rooted causes that are connected to the way in which the state relates to and treats the Palestinian minority, both in the past and present. These historical, social and economic reasons for the demonstrations include the 1948 Nakba (Catastrophe) and the subsequent imposition of military rule over Arab citizens of the state; the state's land planning policy; and on-going state policies of social and economic discrimination against the Arab minority.

1. Historical Discrimination: 1948 and Military Rule

The state's relationship and attitude toward the Palestinian minority today cannot be understood without an examination of its history. There is no doubt that the imposition of military rule over the Arab population, which lasted 18 years during the period 1948-1966, was a central factor in shaping the relationship between the state and the native national minority. Under military rule, the state intervened in the public and private spheres of the Arab minority. This interference included limiting their movement, political organization, access to land, and employment in the education system. Arab citizens' lives were also often threatened.

This policy of monitoring and control was adopted during the first days following the establishment of the state of Israel in 1948. While approximately 1.3 million Palestinians lived in Palestine prior to the 1948 War, only about 160,000 people were not expelled or forced to flee the country by the Israeli forces during and after the War.

One major aspect of military rule was the harsh and ongoing interference with the political activities of Arab citizens of Israel both on the local and national levels. Sabri Jiryis described the intrusion of military rule into the lives of the Arab minority:³⁴

... [military rule] interferes in the life of the Arab citizen from the day of his birth to the day of his death. It has the final say in all matters concerning workers, peasants, professional men, merchants, and educated men, with schooling and social services. It interferes in the registration of births, deaths, and even marriages, in questions of land and in the appointment and dismissal of teachers and civil servants. Often, too, it arbitrarily interferes in the affairs of political parties, in political and social activities, and in local and municipal councils.

³⁴ Sabri Jiryis, *The Arabs in Israel*, trans. Inea Bushnaq (New York: Monthly Review Press, 1976) at 40.

The military control over the Arab minority limited the intelligentsia in such ways as the placement of restrictions on schoolteachers and principals. Military rule endangered the Arab teachers' positions on a yearly basis and limited their movement for fear they would educate for political opposition to this oppression. Majid Al-Haj detailed the control by the state and the military government over Arab teachers:³⁵

During the period of the military government, Arabs who did not comply with the official policy or did not cooperate with the military government authorities were blacklisted, and Arab intellectuals who sought a teaching job or promotion made every effort not to be included in the blacklist ... The military government also used indirect means to deal with Arab teachers described as subversive. This was through control of permits that every teacher had to get in order to be allowed to stay in the locality where he taught if he was not a local resident.

Military rule was imposed on the Arab minority directly following the 1948 War, during which the Palestinian people lost their homeland, as a result of military actions by the Zionist forces in Palestine. Rashid Khalidi emphasized the impact of the loss on Palestinian society, specifically in light of its traditional and semi-traditional character:³⁶

Given the centrality of attachment to place characteristic not only of Palestinians, but also of others in traditional and semi traditional societies, it can be imagined how powerful an impact these events must have had: by the end of the process of dispossession in 1949, more than four hundred cities, towns and villages in Galilee, the coastal region, the area between Jaffa and Jerusalem, and the south of the country had been depopulated, incorporated into Israel and settled with Israelis, and most of their Arab inhabitants were dispersed throughout the region as refugees.

Moshe Dayan described the facts of these traumatic events very well in an address that he gave before students at the Technion - Israel Institute of Technology on 19 March 1969:³⁷

... Jewish villages were built in the place of Arab villages. You do not even know the names of these Arab villages, and I do not blame you. Because those geography books no longer exist. Not only do the books not exist, but also the [Arab] villages are not there either. Nahlal was built on the same place of

³⁵ Majid Al-Haj, *Education, Empowerment, and Control* (Albany: State University of New York Press, 1995) at 167-68.

³⁶ Rashid Khalidi, *Palestinian Identity: The Construction of Modern Palestinian Nationalism* (New York: Columbia University Press, 1997) at 179.

³⁷ As quoted in *Ha'aretz*, 4 April 1969.

Mahlul; Givat in the place of Jibta; Sarid in the place of Huneifis; and Kefar Yehushu'a in the place of Tal al-Shuman. There is not one single place built in this country that was not established on the same place as a former Arab village.

One major act of state violence against the Arab minority during the period of military rule occurred on 29 October 1956, when Israeli security forces shot to death 49 people from Kufr Qassem who were returning to their village from work. These individuals did not know that a special, early night curfew had been imposed on the village by these same forces. At the time, the Ben Gurion government attempted to cover up the fact of the massacre that took place in Kufr Qassem.³⁸

There is a direct connection between what happened in 1948 and the military rule imposed on the Arab minority immediately thereafter, and the concept of citizenship for Arabs in Israel. The years of the military regime were formative for the relationship between the state and the national minority. This relationship was not based on citizenship status but on one national group's oppression of another national group. Despite the fact that the Arab minority in Israel succeeded in widening through struggle the limited space of citizenship in which it operated, the state still perceives this community as an object of control. The Arab minority in Israel has to abide by the rules of the game set by a state that grants it, at best, only a marginal status.

2. Land Planning Policy

The policy of control currently in place against the Arab minority is also implemented by the state through the use of quasi-governmental land planning and development institutions. This policy serves one community - the Jewish majority in Israel. The planning and development needs of the Palestinian minority in Israel are not addressed by the state's planning and development policies. The physical presence of Arab villages and towns is ignored on a regular basis by the planning and development authorities, and they are even considered to be an obstacle that must be overcome.

The state's oppressive land policies are uppermost in the minds of the Arab minority. This oppression is one of the elements that have constructed the identity of Palestinian citizens of the state. In his testimony before the Commission on 6 August 2002, Professor Nadim Rouhana argued that the Israeli government's policies of appropriating Palestinian-owned land and resettling the owners elsewhere have been the principal contributors to making land an essential component of Palestinian identity. As such, any threat to Palestinian land is perceived as a threat to the Palestinian national identity as whole. Illustrating

³⁸ See Ruvik Rosenthal, "Who Killed Fatma Sarsur" in *Kufr Qassem: Events and Myths*, ed. Ruvik Rosenthal (Tel Aviv: Ha-Kibbutz Hameuchad, 2000) at 14 (Hebrew).

Palestinian responses to such threats, Professor Rouhana referred to land-related protest demonstrations such as Land Day (1976), and recent events in Umm al-Sahali (1998), al-Roha (1998), and Led (Lod) (1999).

In his expert opinion submitted by Adalah to the Commission, Professor Oren Yiftachel discussed land planning and protest among Arab citizens in Israel.³⁹ He examined the inter-relationship between the exclusion and marginalization of Palestinians by land planning authorities and various protest actions taken in response to such policies. Professor Yiftachel presented data that reflects the clear inequality between Jewish and Arab citizens of the state regarding their access to land, their land rights, and their abilities to use the resource of land to develop their communities. This situation is exemplified in the following data that he presented:

- Arab citizens comprise about 18% of the total population of the state.
- They privately own about 3.5% of the total land in the state.
- The area of municipal jurisdiction for Arab municipalities covers 2.5% of the total area of the state.
- About one-half of private lands owned by Arab citizens of Israel were confiscated by the state.
- Land allocation for public purposes in all of the Arab towns and villages is under the minimum national standard.
- Arab citizens are practically blocked from purchasing or leasing land in about 80% of the area of the state.
- The Arab population has increased six-fold since 1948, but at the same time, the land under its control has shrunk. Since its establishment, the state has not allowed the Arab minority to establish new towns.
- Tens of old Arab villages are unrecognized and the state is trying to evacuate them.

3. Social and Economic Discrimination

Another deep-rooted reason for the October 2000 protest demonstrations is the grave socio-economic condition of the Arab minority, which stems from successive Israeli governments' discriminatory policies against them. These policies include the lack of investment in Arab villages and towns and their absence from the national priority list and from nearly any plan aimed at assisting weak populations with poor socio-economic characteristics. The proportion of Arab citizens in the lowest socio-economic strata of Israeli society far exceeds their proportion in the general population.

³⁹ Expert Opinion, Professor Oren Yiftachel, "The Land Question and the Development of Relations between the Arab Minority and the State of Israel," November 2001 (On file with Adalah, Hebrew).

For example, Arab children in Israel suffer from great poverty, which is a direct result of state policies of discrimination and exclusion exercised against the Arab minority. The poverty level among Arab children is considerably higher than the average poverty level among Israeli children in general, and increased during the period of 1998- 2000.

Poverty in Israel, 1998- 2000 ⁴⁰

Year	General Population of children	Arab Children	Jewish Children
1998	21.8%	42.9%	16.1%
1999	24.9%	51.4%	17.5%
2000	25.1%	52.8%	17.2%

Unemployment data for 1998-2000 consistently showed gaps between Jewish and Arab citizens of the state. According to the Central Bureau of Statistics (CBS) Labor Force Survey for 1998 and 1999, the unemployment rate for Jewish Israelis was 8.36% and 8.64%, respectively, as compared to 10.56% and 11.02% for Arab citizens of Israel.⁴¹ According to the CBS Statistical Yearbook 2002, the gaps in unemployment rates for 2000 grew to 8.5% for Jewish Israelis, as compared to 11.4% for “other religions.”

More detailed data (unavailable for the period 1998-2000) published by the Labor Office of the Ministry of Labor and Social Affairs in August 2002, shows that the 24 towns with the highest rates of unemployment in the country are Arab towns. Unemployment rates in these towns range from 17.4% in Tel el-Sebe in the Naqab (Negev) to 24.4% in Illut in the north. The average unemployment rate for the general population during the first half of 2002 was 10.5%, whereas it stood at 13.5% for Arab citizens of Israel.

Arab citizens of Israel also receive the lowest wages of all groups in the country. According to research conducted by the ADVA Center, in Arab towns in Israel during the 1993-1999 period, the average wage was 69% of the national average wage. The chart below illustrates the wage gaps:⁴²

Average Wage	Arab Towns	Jewish Development Towns	Jewish Regional Councils	Jewish Settlements in the Occupied Territories	Wealthy Jewish Towns
100%	69%	85%	96%	103%	121%

⁴⁰ National Insurance Institute, “Annual Survey 2001,” Tables 1, 9, 10 (Hebrew).

⁴¹ Data for 1998 and 1999 was provided by the Galilee Society, Rikaz Databank, available at: <http://www.rikaz.org> (Labour Force, Unemployment Rate by Nationality).

⁴² Alon Atkin, “Place of Residence and Level of Wages in Israel 1993-1999,” (ADVA Center, 2002) (Hebrew).

II. THE ILLEGALITY OF THE WARNINGS

A. GENERAL CHALLENGES TO THE WARNINGS

As noted, on 4 August 2002, the Supreme Court dismissed a petition filed by Adalah on behalf of the three Arab public representatives seeking the cancellation of the Commission's decision to issue warnings against them. In its two page judgment, the Supreme Court did not discuss the detailed arguments set forth in the petition before it, and thus, did not decide the case on the merits.⁴³ Therefore, Adalah raised these issues again in its concluding arguments to the Commission, in addition to new arguments. Adalah argued that the warnings issued by the Commission against MK Bishara, MK Dahamshe, and Sheikh Ra'ed Salah are illegal for the reasons that follow.

The Mandate of the Commission Should Include Only the Executive Branch

The inclusion of the issue of "incitement" within the mandate of the Commission violates the Commissions of Inquiry Law (1968) and contradicts experiences of past commissions. According to Israeli law, the purpose of establishing a commission of inquiry is to investigate executive branch authorities in cases in which their acts and/or omissions led to a loss of public trust. This is different from investigating the conduct of citizens, who are subordinate to other state authorities. The vast majority of past commissions of inquiry have followed this rule. For example, the second Shamgar Commission (1996), which investigated the circumstances surrounding the assassination of former Prime Minister Yitzak Rabin, focused primarily on the failure of the General Security Services (GSS) to adequately protect him. It did not investigate incitement by settlers against Rabin prior to his assassination.

Investigating the Issue of Incitement in a Discriminatory Manner and Disregarding Sharon's Visit to al-Aqsa Mosque Compound

The Commission considered the issue of incitement only in relation to the actions of the Arab elected and public representatives. By singling out the Arab leaders and choosing not to investigate Israeli Jewish rioters, the Commission carried out its mandate in a discriminatory manner. Adalah submitted ample evidence, consisting of television clips and newspaper articles, documenting the actions of Jewish rioters all over the country at that time. Jewish rioters blocked streets, burned tires, threw stones at police officers, assaulted Arab drivers, destroyed Arab property, and publicly shouted "death to Arabs." The Commission ignored the incitement of Jewish citizens against Arab citizens of Israel.

⁴³ See supra note 8.

Although the Commission was mandated to examine events beginning on 29 September 2000, it charged the Arab public representatives with supporting violence to achieve political objectives during the period of 1998-2000. By contrast, the Commission chose not to investigate or seek testimony from, let alone warn, Sharon for his provocative visit to al-Haram al-Sharif compound on 28 September 2000, one day before the beginning of the time period covered by the Commission's mandate.

The most obvious cause of the deterioration of the situation during the end of September 2000 was completely ignored by the Commission. The Commission did not deem it appropriate to call Sharon to testify regarding his decision to visit such a sensitive location at such a sensitive time. At that point, the issue of the future status of Jerusalem and al-Aqsa mosque were the focus of political negotiations between Palestinian and Israeli leaders. Police reports also clearly pointed to the potential danger of Sharon's visit, due to the opposition of the Palestinian side. In fact, this danger caused the Jerusalem Police Commander to oppose Sharon's visit on the night before it was to occur. Sharon knew how he was perceived by the Palestinians and other Arabs. He was also fully aware of the acutely tense political situation, nevertheless, he chose to go ahead with the visit.

Political Questions

As mentioned, the Commission exceeded its authority and investigated the issue of incitement in a selective and discriminatory fashion. Further, the members of the Commission also posed many questions to MK Bishara, MK Dahamshe, and Sheikh Ra'ed Salah regarding their political positions. The Commission adopted this line of questioning throughout its investigation of the three Arab leaders. The Commission had no authority to ask political questions. Moreover, it asked political questions only to Arab public representatives, and as such discriminated against them. The inappropriate questions posed by the Commission included the following:

- Professor Shamir questioned MK Dahamshe regarding the renovation of mosques by the Islamic Movement in villages destroyed by Israeli armed forces in 1948 and claimed that the renovations were undertaken for political purposes.
- Justice Or questioned MK Bishara about an interview that he gave to *Ha'aretz* in 1998, in which MK Bishara stated that in Israel, there is a contradiction between being a proud Israeli and a proud Arab. Justice Or asked MK Bishara: "Are you a proud Arab?"⁴⁴
- Justice Or questioned MK Dahamshe about the "complexity of his identity." Justice Or stated that he knew how MK Dahamshe acted as a Muslim, and he knew MK Dahamshe's

⁴⁴ Protocol of the Commission of Inquiry at 8519-8520 (On file with Adalah, Hebrew).

position against the occupation in the territories, as a Palestinian. Justice Or then asked him that given this “conflict among the three identities,” mentioned by MK Dahamshe, could he identify specific events in which he fought for his Israeli citizenship “in opposition to [his] being Palestinian or as a Palestinian.”⁴⁵

- Professor Shamir asked MK Bishara if his party is the most nationalist among the Arab political parties. He also told MK Bishara that the agenda of his political party (“a state of all its citizens”) undermines the UN Partition Plan of November 1947. Professor Shamir added that:⁴⁶ “... the legitimacy of the State of Israel was, and you [the Arabs] in fact say it, ‘al-Hoquq al-Shar’iya’ [the legitimate rights], the decision of the United Nations that called for the establishment of a state for Jews and a state for Palestinians, but a state for Jews. Now you come and operate an entire political movement that seeks to undermine this.”

- Professor Shamir asked Sheikh Ra’ed Salah about the specific political goals of the Islamic Movement and whether the movement he heads supports the Oslo Accords.

- Justice Or also questioned Sheikh Ra’ed Salah about a poem that he had written following the demolition of a mosque in the destroyed Palestinian village of Sarafand.⁴⁷

Professor Yoav Peled, in his testimony before the Commission on 6 August 2002, discussed the problematic nature of the questions posed by the Commission to the Arab leaders. According to Professor Peled, these questions were clearly inappropriate, as they centered on issues of political opinions and personal beliefs, and the right to hold them is supposedly guaranteed in any liberal-democratic society. Such questioning exceeds the mandate of the Commission, he noted, and is improper given that the Commission is an instrument of the state.

Reliance on Undisclosed and Biased Intelligence Material

The Commission relied upon a large quantity of documents provided by the Police Commissioner’s Advisor on Arab Affairs, the Northern District Police Department, army intelligence, and the GSS regarding the Arab public and its political leadership. This information included the opinions and positions of these security forces, which relate to MK Bishara, MK Dahamshe, and Sheikh Ra’ed Salah. Hardly any similar evidence was provided by these sources to the Commission regarding the Jewish public or the political factions or leaders representing the Israeli Jewish majority.

⁴⁵ Protocol of the Commission of Inquiry at 9073 (On file with Adalah, Hebrew).

⁴⁶ Protocol of the Commission of Inquiry at 8659 (On file with Adalah, Hebrew).

⁴⁷ See *infra* pages 51- 52.

The police, the army and the GSS are governmental agencies, which have a duty to operate fairly and without discrimination. The evidence supplied by these agencies to the Commission concerns only the Arab minority and the positions of the Arab political movements. This selective provision of information constitutes discrimination, whether by these specific agencies or by the Commission, if it requested only this specific information.

Professor Danny Rabinowitz, in his testimony before the Commission, discussed the production of police knowledge about Palestinian citizens of Israel and the militaristic terminology used by the police in describing the community. Based on an analysis of available police reports, Professor Rabinowitz concluded that the police view the Arab public as a “permanent threat of one million citizens which have to be dealt with and made to surrender.” From questions posed by Judge Khatib to police witnesses, it was learned that certain police orders also include the term “enemy,” in relating to the Arab minority in Israel.

The Commission attempted to give the GSS analysis an objective dimension by noting the academic sources upon which the GSS rely. Yet Professor Rabinowitz stated that in the academic world, there are different streams of knowledge production, and it does not seem that the GSS would rely on academics who would contradict its basic assumptions regarding the status of the Arab minority in Israel.

In fact, the GSS bases its analysis on a type of “hostile orientalism,” which supplies background information on the Arab community through the paradigm of “know thy enemy.” Dr. Adel Mana described this pattern of knowledge production as dominant among Israeli orientalists. According to Dr. Mana, it is based on an over-simplified, dichotomous rendering of reality:⁴⁸

The Israeli orientalism explained the political behavior of the Arabs in Israel after 1967 through the terms of ‘Palestinization’ and ‘radicalization,’ as opposed to ‘Israelization.’ This dichotomous and one-dimensional interpretation of the complex and multi-faceted behavior of the Arabs in Israel granted academic legitimacy to the continued discrimination by using security as a pretext. As a matter of fact, in the 1970s, the Arabs in Israel went through a process of political maturity and used their electoral and public power realistically and legitimately. Instead of revealing the oppression and discrimination against the Arab citizens, the Israeli orientalism recruited itself for discrediting the image of the victim. Instead of discrediting the policy of the authorities, which is

⁴⁸ Adel Mana, “Identity in Crisis: The Arabs in Israel in Relation to the Israel-PLO Agreement,” in *Arab Politics in Israel at a Crossroads*, eds. Eli Rekhess and Tamar Yegness (Tel Aviv: Tel Aviv University Press, 1995) at 81, 83.

contrary to basic rules of democracy, there was a recruitment for condemning the use of the right for political organization and freedom of expression of the Arab citizens.

In his expert opinion submitted by Adalah to the Commission, Dr. Ahmad Sa'adi also discussed the production of knowledge on Palestinians by the Israeli academia. According to Dr. Sa'adi:⁴⁹

So far, mainstream scholarship on the Palestinians in Israel has been produced by Israeli social scientists, journalists and state officials, who identify with and represent the ruling power. Any critical inquiry into the structure of the Israeli State and its relation to the Palestinian minority is fiercely attacked or silenced.

The GSS has a defined role regarding the Arab minority in Israel: It is not one of research for the sake of knowing the society and its needs. The GSS is not in search of knowledge, but in search of information. The GSS is the main state institution through which the Israeli government controls the Arab society. Therefore, it is not surprising that the GSS focuses its analysis on the political leadership, and describes any attempt to break the control of the Israeli government over the community through the practice of politics in terms such as “dangerous” and “extreme.”

One example of the state's control over the Arab minority through the GSS is in the area of education. The Ministry of Education's deputy director for Arab education is a GSS official.⁵⁰ Through this post, the GSS has the power to bar any Arab candidate from being hired without its approval. Practices such as appointing teachers in accordance with their affinity to the government, their support for the party in power, or on the basis of ideas they express, is illegal and indeed unacceptable. When asked by a journalist about this issue, former Deputy Head of the GSS and then-Deputy Minister of Internal Security Gideon Ezra confirmed that such practices exist when he stated that: “We have not yet reached a point where we can appoint Arab educators exclusively on the basis of a pedagogical consideration.”⁵¹

An additional problem with relying on GSS testimony and analysis is the reputation of the institution for lying. The testimonies provided by the GSS before investigative agencies in the past were frequently untruthful. This phenomenon was investigated and is

⁴⁹ Expert Opinion, Dr. Ahmad Sa'adi, “Social Conceptions, Citizenship Rights and Protest: The Road to the October Events,” November 2001 (On file with Adalah).

⁵⁰ Relly Sa'ar, “A Yitzhak Cohen by any other name,” *Ha'aretz English Edition*, 6 December 2001.

⁵¹ Editorial, “Suspects in education,” *Ha'aretz English Edition*, 12 December 2001.

documented in more than one report. For example, the Landau Commission that examined GSS investigatory practices, namely the use of torture, found in 1987 that GSS witnesses routinely lied before official judicial and administrative bodies and tampered with evidence. In addition, the State Comptroller investigated the activities of the GSS during 1988-1992, the period of the first Intifada, and issued a secret report on its findings. As a result of a Supreme Court petition, the State Comptroller was compelled to issue a public summary of his conclusions. The State Comptroller's Report (2000) includes this summary and notes that practices have not changed: The GSS frequently misrepresents its activities and behavior during investigations and that the norm of lying still prevails within the work culture of the GSS.

On 31 January 2002 and 6 February 2002, the Commission held closed-door hearings to receive GSS testimonies and other GSS evidence. In response to a challenge by Adalah against the holding of *in camera* proceedings, the Commission decided that it would go forward with the hearings but that it would also consider releasing portions of the GSS testimony at a later date.⁵² The Supreme Court upheld the Commission's decision.⁵³

After the warnings were issued, Adalah submitted a motion to the Commission requesting that it detail and disclose the specific evidentiary material upon which it relied in issuing the warnings against MK Bishara, MK Dahamshe, and Sheikh Ra'ed Salah.⁵⁴ In the motion, Adalah emphasized the need for this specificity in accordance with the principles of fairness and due process in order to properly represent the Arab leaders, as the warnings issued by the Commission were general and covered a two-year period of time. In response, the Commission informed Adalah that all of the disclosed information with which it was provided - more than 4,000 exhibits - would be put at the disposal of the Arab public representatives.⁵⁵ The Commission also stated in its 25 March 2002 decision that, "the warning letters that were sent to each and every one of them [the three Arab public representatives] are based **exclusively on the disclosed materials**, which exist among the exhibits before the Commission" (emphasis in the original). The Commission refused to provide a detailed list of the specific documents upon which it based its initial conclusions in the warning letters. This decision contradicts Article 15 (a) of the Commissions of

⁵² See Motion Requesting that the Commission Reconsider its Decision to Hold Closed Hearings for GSS Witnesses, submitted by Adalah on 24 January 2002 to the Members of the Official Commission of Inquiry (On file with Adalah, Hebrew). See also Decision of the Commission of Inquiry, dated 27 January 2002 (On file with Adalah, Hebrew).

⁵³ See H.C. 950/02, *The Committee of the Victims' Families (October 2000) v. The Commission of Inquiry*. On 4 February 2002, the Supreme Court dismissed a petition filed by Adalah on behalf of the victims' families demanding that the Commission hold open hearings for GSS witnesses. Adalah argued that the Commission's decision to hold hearings *in camera* violates the rights of the victims' families as well as the rest of the public to know. The Court upheld the Commission's decision to hold closed hearings and to consider releasing portions of the GSS testimony at a later date, reasoning that this decision strikes a reasonable balance between the interests of state security and the public's right to know.

⁵⁴ Motion Requesting Specification of the Evidence Re: The Warnings against the Three Arab Leaders, submitted by Adalah on 24 March 2002 to the Members of the Official Commission of Inquiry (On file with Adalah, Hebrew).

⁵⁵ Decision of the Commission, dated 25 March 2002 (On file with Adalah, Hebrew).

Inquiry Law, which provides that a commission of inquiry must place at the disposal of individuals warned by the commission, “such evidence relevant to that potential harm as is in the possession of the commission ...”

On 19 May 2002, the Commission notified the warned Arab public representatives that undisclosed GSS materials included matters, “which are relevant in order to discuss the personal responsibility of Arab public representatives - MK Azmi Bishara, MK ‘Abd al-Malek Dahamshe and Sheikh Ra’ed Salah... with regard to the warnings they were issued.”⁵⁶ The Commission then disclosed small parts of the testimonies in its possession given by Avi Dichter, the head of the GSS, and the GSS officer in charge of the northern district, as well as a few pages of GSS political analysis on the Arab minority in Israel. Thus, there is a clear contradiction between the two decisions of the Commission - that of 25 March 2002 and of 19 May 2002 - regarding the relevance of the undisclosed GSS materials to the warnings issued to the Arab public representatives.

Following-up on this issue, Adalah filed another motion to the Commission on behalf of the elected Arab representatives requesting the disclosure of all materials relevant to the warnings issued to them that to date had been partially or totally undisclosed. As the basis for this motion, Adalah emphasized the contradictory decisions that had been issued by the Commission.⁵⁷ On 15 July 2002, the Commission rejected this request.⁵⁸ Regarding the contradiction in the Commission’s decisions, Justice Or wrote that: “There is no change in the position of the Commission regarding the basis for the warning letters or for any possible findings against the Arab warnees in the final report of the Commission. This basis was and will be the disclosed material only. Having said that, delivering the undisclosed materials [decision of 19 May 2002] to the requesters [the Arab warnees] was done due to the Commission’s position that it was necessary for the requesters’ defense. There is no contradiction between the two.”⁵⁹

The Commission is an investigatory body and not a judicial forum. The Commission is actually a party to the proceedings, which are taking place before it, and not a neutral entity that weighs arguments and makes decisions. The Commission, especially following the issuance of the warning letters and pursuant to Article 15 of the Commissions of Inquiry Law, acts more like a prosecutor than a judge. Thus, the Commission’s lack of disclosure of all relevant information to the warned Arab representatives, and its contradictory decisions regarding its reliance on confidential information, work against the legitimacy of the proceedings as they relate to the warnings issued to Arab public representatives.

⁵⁶ Decision of the Commission, dated 19 May 2002 (On file with Adalah, Hebrew).

⁵⁷ Motion Regarding the Disclosure of Materials, submitted by Adalah on 5 July 2002 to the Members of the Official Commission of Inquiry (On file with Adalah, Hebrew).

⁵⁸ Decision of the Commission, dated 15 July 2002 (On file with Adalah, Hebrew).

⁵⁹ Id.

Based on the questions posed by the Commission to the Arab public representatives, it appears that the Commission clearly relied on “secret” information from the GSS and/or police intelligence. It was also apparent, Adalah argued, from the Commission’s inquiries and the path of its investigation, that no such information from these sources was provided to the Commission concerning any Jewish figures. As governmental agencies, the GSS, which is under the jurisdiction of the Prime Minister’s Office, and the police are required to act fairly, equitably, and without prejudice. However, the evidence suggests that the GSS released information to the Commission in a discriminatory manner, based solely on national identity, or that the Commission requested GSS materials only about the Arab political leadership and thus, in doing so, discriminated against them.

Freedom of Expression

The statements allegedly made by the three Arab leaders and referred to by the Commission as “incitement,” constitute political speech that should be protected under the law. The statements were directed solely at the government, and are political and religious opinions representing the viewpoints of the leaders’ constituencies. Adalah cited judgments issued by the Supreme Court of Israel, which recognize freedom of speech as a basic right.⁶⁰ Adalah also cited judgments issued by the European Court of Human Rights (ECHR); this Court generally grants wide protection to freedom of speech. These judgments, which deal with even harsher statements than those attributed to the three Arab leaders, were found to be protected political speech by the ECHR.⁶¹

The case of *Castells v. Spain* involved a senator, an elected representative from the Basque region in Spain. Castells published an article in a widely distributed newspaper criticizing the central government for its failure to investigate and punish persons associated with right-wing groups for a series of murders, while persecuting and taking harsh measures against members of ETA. In the article, he compared the Spanish government with Franco’s fascist regime. The ECHR ruled that Castells’ statements were protected free speech, especially as they were made by an elected representative:⁶²

While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of

⁶⁰ See H.C. 73/53, *Kol Ha’am Company, Ltd. v. Minister of Interior*, PD 7 (2) 871; H.C. 2/84, *Neiman v. Chairperson of the Central Elections Committee (11th Knesset)*, PD 39 (2) 225; and H.C. 14/86, *Yitzak Laor v. Council of Movies and Plays Monitoring*, PD 41 (1) 421.

⁶¹ See e.g., *Castells v. Spain*, App. No. 11798/85 (Eur. Ct. H.R., 23 April 1992); *Surek and Ozdemir v. Turkey*, App. No. 23927/94 (Eur. Ct. H.R., 8 July 1999); *Ceylan v. Turkey*, App. No. 23556/94 (Eur. Ct. H.R., 8 July 1999); and *Karatas v. Turkey*, App. No. 23168/94 (Eur. Ct. H.R., 8 July 1999).

⁶² *Id. Castells v. Spain*, paragraph 42.

parliament, like the applicant, call for the closest scrutiny on the part of the Court.

The case of *Karatas v. Turkey* is also illustrative of the ECHR's approach toward freedom of expression rights. A National Security Court in Turkey convicted Karatas, a Turkish citizen of Kurdish origin, of various offenses for an anthology of poems that he published supporting the Kurdish struggle against government oppression in the southeast of the country. An excerpt from the anthology, entitled "The Song of Rebellion-Dersim," follows: "Young Kurds, I am seventy-five years old, I die a martyr, I join the martyrs of Kurdistan..." The ECHR ruled that the poem is protected free speech, emphasizing that it is directed against the policy of the government as such.⁶³

Furthermore, the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries.

MK Immunity

The warnings against MK Azmi Bishara and MK 'Abd al-Malek Dahamshe violate the substantive immunity granted to them as Members of Knesset under the Law of Immunity of MKs, Their Rights and Their Duties (1951). Article 1(a) of this law grants immunity to MKs from any "legal action" as a result of statements or actions made in the course of fulfilling their roles as MKs. The statements allegedly made by MK Bishara and MK Dahamshe clearly fall under this category.

Article 15 of the Commissions of Inquiry Law gives the Commission the power to issue warnings to individuals whose rights may be affected by its final conclusions. Thus, by definition, the issuance of warnings by the Commission is a legal action. Pursuant to Article 1 of the Law of Immunity of MKs, Their Rights and Their Duties, MKs are shielded from legal action as a result of statements or actions made in the course of fulfilling their duties as MKs, such as that taken by the Commission against them. The statements attributed to MK Bishara and MK Dahamshe were made in the course of fulfilling their roles as MKs.

⁶³ *Karatas v. Turkey*, supra note 61, paragraph 50.

B. SPECIFIC CHALLENGES TO THE WARNINGS

1. INTRODUCTION - THE POLITICAL LEADERSHIP OF THE PALESTINIAN MINORITY

On 30 September 2000, following the killings in the Occupied Territories, the High Follow-up Committee for the Arab Citizens in Israel held a meeting during which it decided to declare a general strike and to call for marches in every Arab town and village in Israel on 1 October 2000. On the evening of 1 October 2000, the High Follow-up Committee, in protest against the killing of an Arab citizen of Israel by the police in Umm al-Fahem earlier that day and the injury of scores of other individuals throughout the country, called for a general strike again on 2 October 2000. That day, 2 October 2000, witnessed the highest level of police violence during the protests: Snipers were used against demonstrators on the Wadi ‘Ara Road and in Nazareth, and six Palestinian citizens of Israel were killed by the police. Despite this, in calling for a general strike on 3 October 2000, the High Follow-up Committee asked that it be limited to the locations in which people were killed. All members of the High Follow-up Committee, including MK Bishara, MK Dahamshe and Sheikh Ra’ed Salah, followed these decisions.

The political leadership of the Palestinian minority in Israel has undergone a fundamental process of change since the military regime period of 1948-1966. During that time, the dominant political leadership was an unelected representative group of a defeated minority in its homeland. The Arab minority was not in search of equality or justice; under military rule, the Arabs in Israel were fearful and sought security. Under these harsh conditions, the exception was a small group of intellectuals who attempted to bring about a change in Arab society and its circumstances in relation to this new, unexpected reality. These intellectuals were later the target of the military government and state authorities that sought to limit them by restricting their freedom of expression and their ability to organize politically. Many of them were deported from their areas of residence and placed in “internal exile,” and even some of their groups were declared as illegal organizations, despite their attempt to participate in Israeli politics.

Professor Danny Rabinowitz, in his testimony before the Commission, presented a historical overview of political leadership models in the Arab community in Israel. Professor Rabinowitz testified that, formerly, the leadership of the Arabs in Israel was vested primarily in the mukhtar or the village mayor, who was perceived as little more than a mediator between the Israeli military government and his own community. He was an instrument of the government who lacked any real political power. Professor Rabinowitz argued that the current political leadership is very different; they are better educated, better informed of the rights of Palestinian citizens of Israel, and more organized to pursue their own political agendas. In his testimony, he also referred to the “stand-tall generation,”

young politically active Palestinians in Israel, aged 20-29, who are aware of their identity and rights. He believes that this group of young people were the major participants in and leaders of the October 2000 protest demonstrations. He argued that the protests were not inspired by incitement from the Arab political leadership, but rather by the new political awareness of this “stand-tall generation,” and their feelings of anger and frustration towards the government.

In his testimony before the Commission, Professor Yoav Peled argued that in a liberal democratic society, the state should recognize the collective rights of ethnic and national minorities, particularly indigenous minorities. Professor Peled observed that leaders of the Palestinian minority in Israel have sought these rights in many different ways, but never by calling for violence as other oppressed minority groups have done in other countries. It is the obligation of the state, he argued, to initiate rather than to impede the establishment of independent cultural institutions for the Palestinian minority, as well as to ensure fair representation within state institutions. He argued that Israel is not a liberal democracy, but rather an ethnic democracy or ethnocracy, excluding and negating the collective rights of the Palestinian community. Professor Peled stressed that the October 2000 demonstrations were legitimate protests, and that the High Follow-up Committee and the Arab elected representatives acted responsibly and democratically.

Professor Peled also testified that he disagreed with the prevailing attitude among Commission members regarding the role of the leadership of an oppressed minority. From reading the protocols of the Commission’s hearings, he concluded that the Commission’s position regarding this issue is that the leadership should primarily contribute to maintaining public order. Professor Peled argued that a leadership that is seeking to lead an oppressed minority or is actually leading such a group, must operate primarily to promote the rights and interests of their constituents, to express their agony, and to articulate their protest.

2. SHEIKH RA'ED SALAH

i. Introduction

The Commission issued a letter of warning against Sheikh Ra'ed Salah in his capacity as head of the northern faction of the Islamic movement, as the former mayor of Umm al-Fahem, and as a public figure. The Commission charged that:

A. [In] the period before the October events, including the period 1998-2000, he was responsible for conveying repeated messages encouraging the use of violence and threats of violence as a means of achieving goals of the Arab sector in Israel. These messages also related to a goal defined as the liberation of al-Aqsa mosque. In addition, he organized mass assemblies and used inflammatory methods of propaganda to create a public outcry surrounding this sensitive issue. He thus significantly inflamed passions and the violent and widespread rioting that took place in the Arab sector beginning in October 2000.

B. [In] the period before the October events, including the period 1998-2000, he was responsible for conveying repeated messages denying the legitimacy of the existence of Israel and portraying the state as an enemy. He thus significantly inflamed passions and the violent and extensive rioting that took place in the Arab sector beginning in October 2000.

C. [In] the period before the October events, he was responsible for conveying messages regarding the existence of a purported planned massacre in al-Aqsa mosque on 29 September 2000. He thus significantly inflamed passions and the violent and widespread rioting that took place in the Arab sector beginning in October 2000. He was responsible for comments that praised the grave and extensive violent disturbances that took place in the Arab sector in the beginning of October 2000, while the events were still taking place.

Adalah refuted each of the allegations raised in the letter of warning, and argued that the warnings must be rescinded. The Commission had no factual or legal basis for drawing these initial conclusions, Adalah argued. Further, Adalah argued that the Commission failed to consider or did not give the appropriate weight to the factual material that was presented to it, which supported the arguments of Sheikh Ra'ed Salah.

ii. Sheikh Ra'ed Salah and the Islamic Movement

- Sheikh Ra'ed Salah is a graduate of Hebron University, where he received a B.A. in Islamic Studies. In the early 1980s, he and others founded the Islamic Movement in Israel. He served as Vice President of the movement until 1996, when he was elected President. In 1989, Sheikh Ra'ed Salah was elected mayor of Umm al-Fahem. He received 73% of the popular vote, and was twice re-elected, serving in the position until mid-2001, when he resigned. During his term as mayor, he also served as a member of the High Follow-up Committee for the Arab Citizens in Israel, and was Vice Chairperson of the National Committee of Arab Mayors.

One of Sheikh Ra'ed Salah's major contributions has been educating for social solidarity within the Muslim community, and developing a widespread understanding of the reformative role of the Islamic faith. He is also the President of Al-Aqsa Institution for Maintaining the Islamic Sacred Places, and of the Humanitarian Relief Association.

- Attorney Mustafa Suheil, the Deputy Mayor of Umm al-Fahem and an active member of the Islamic Movement, testified before the Commission regarding its aims and activities. He stressed that the Islamic Movement's activities are based on public solidarity, and that it seeks to improve the conditions of individuals, especially in Umm al-Fahem, where the state has failed to provide basic services to the citizens. He also emphasized the significant contributions of Sheikh Ra'ed Salah in these fields.

- Professor Danny Rabinowitz also testified before the Commission regarding the Islamic Movement in Israel, including its activities in Umm al-Fahem. His findings reveal that the Islamic Movement is a legitimate, pragmatic segment of Arab society. He stressed that the Islamic Movement is not only a religious movement but also a social movement working consistently to serve the needs of the community, especially the poor. Further, he noted that the success of the Islamic Movement has been its voluntary social welfare approach, similar to Shas (an ultra-Orthodox Mizrahi political party), which in its early days, brought a new civil-political discourse to the attention of the Israeli public. In his testimony, Professor Rabinowitz also distinguished the Islamic Movement from some Jewish social-religious movements in Israel - like United Torah Judaism and Shas in its later years - that are part of the state apparatus. In contrast to these groups, Professor Rabinowitz contended that the Islamic Movement does not operate within or with the assistance of the state apparatus, but functions despite its discrimination and marginalization by the state in order to serve its public.

iii. “Conveying repeated messages encouraging the use of violence and threats of violence as a means of achieving goals of the Arab sector in Israel - 1998-2000”

- The Commission alleges that Sheikh Ra’ed Salah conveyed messages calling for the use of violence as a means to attain the goals of the Arab minority in Israel. In his testimony before the Commission on 12 August 2002, Sheikh Ra’ed Salah adamantly rejected these claims, and declared that the principles of the Islamic Movement are to improve the life of the individual, in accordance with the teachings of the Muslim faith, while acting within the largest sphere possible under the law.

- In his testimony, Sheikh Ra’ed Salah described the struggle that he and others engaged in regarding al-Roha lands in 1998. These lands, which are owned and farmed by Umm al-Fahem residents, are a last reserve for the development of the town. In May 1998, the army chose to declare these lands, about 18,000 dunams (4,500 acres), a “closed military zone,” for the purpose of using them for military exercises.⁶⁴ Over the next few months, Sheikh Ra’ed Salah and other residents of Umm al-Fahem protested this decision by writing letters to the relevant authorities, staging demonstrations, and erecting and remaining within a protest tent on the disputed land. These protests against the land confiscation were virtually ignored by the Israeli authorities.

- In September 1998, Israeli security forces dismantled the protest tent and beat the residents who were present, and then surrounded the public high school in Umm al-Fahem and attacked the students and teachers inside with tear gas and rubber bullets. Altogether, about 400 individuals were injured as a result of police violence, approximately 70 of who were hospitalized, including Sheikh Ra’ed Salah. Dozens of residents of Umm al-Fahem were also arrested and detained during the protests. The events of al-Roha deeply scarred the residents of Umm al-Fahem, especially the students whose high school was stormed by the police. No independent committee or commission of inquiry was formed to investigate these events, although the Arab leadership called for such a body to be established.

- Intelligence documents, which were disclosed, also stress the social aspect of the Islamic Movement’s activities led by Sheikh Ra’ed Salah, such as the building of clinics and kindergartens. These documents state that the Islamic Movement is an “entity that fills a social-economic vacuum within the (Arab) sector and serves it.”⁶⁵ Despite the negative political stance against the Islamic Movement expressed in these documents, they also note the good relations that Sheikh Ra’ed Salah has with local police in the area of Umm al-Fahem.

⁶⁴ See Julia Kernochan, “Land Confiscation and Police Brutality in Umm al-Fahem,” 1 *Adalah’s Review* 49 (1999).

⁶⁵ Military Intelligence Research Unit - Internal Security Forum, 28 August 1998 (On file with Adalah, Hebrew).

- Therefore, the Islamic Movement in Israel does not convey messages encouraging the use of violence in order to “achieve the goals of the Arab sector,” as claimed by the Commission. Sheikh Ra’ed Salah is a religious, social, and political leader, who has also been the victim of state violence. He represents the suffering and articulates the protests of his community.

iv. “Liberation of al-Aqsa Mosque”

- The Commission alleges that Sheikh Ra’ed Salah conveyed messages encouraging the use of violence in order to “liberate al-Aqsa” mosque. The positions of Sheikh Ra’ed Salah and the Islamic Movement are clear: They categorically oppose the use of violence in order to achieve any goal, including the liberation of al-Aqsa mosque.

- Sheikh Ra’ed Salah testified before the Commission that he believes that al-Aqsa mosque is threatened with violence. This is evident by the violence of the Israeli occupation and Israeli soldiers on a daily basis. It is also manifested in Israel’s denial of the right of worshippers to pray in the mosque, break-ins at the mosque, and the killing and injuring of people within the mosque compound in 1990, 1996, and on the day after Sharon’s visit in September 2000. In his testimony, Sheikh Ra’ed Salah discussed the obligation to call for the liberation of al-Aqsa mosque, including the religious duty to release it from the wrongdoing caused to it by the authorities and the occupation.

- The call to “liberate al-Aqsa” is a religious duty, which Sheikh Ra’ed Salah believes in whole-heartedly. He does not call for the use of violence in order to liberate al-Aqsa mosque, yet, at the same time, he is unwilling to relinquish his right to protest against the occupation of the site; in other words, to call for the release of the mosque from the unlawful and violent control to which it is subjected.

- Sheikh Ra’ed Salah’s positions regarding the status of al-Aqsa mosque compound as occupied territory stem not only from his genuine religious conviction, but are also embodied in United Nations Security Council Resolutions.⁶⁶ Therefore, any conclusion on this matter made by the Commission in its final report would be both political and unreasonable.

v. “Al-Aqsa is in danger” Assemblies

- The Commission alleges that Sheikh Ra’ed Salah “organized mass assemblies and used inflammatory methods of propaganda to create a public outcry surrounding this sensitive

⁶⁶ See United Nations Security Council Resolutions No. 252 of 21 May 1968; No. 267 of 3 July 1969; No. 271 of 15 September 1969; No. 298 of 25 September 1971; No. 476 of 30 June 1980; and No. 478 of 29 August 1980, which support this position, available at: <http://www.un.org/documents/scres.htm>.

issue,” and in this way, set in motion the widespread violence during October 2000. This initial conclusion refers to the Islamic Movement’s “al-Aqsa is in danger” assemblies. It is surprising that the Commission deemed it necessary to warn Sheikh Ra’ed Salah concerning this issue. The Commission arrived at this initial conclusion, included in the warning letter, despite the fact that these assemblies were peaceful and well organized, even according to the police. In its questions, the Commission did not relate to any public disturbances before, during or after the assemblies took place.

- It is evident that the Commission disagrees with the content of the statements made during these assemblies. However, these statements are not and were never the basis for any accusation of violation of law. This kind of disagreement does not grant the Commission the authority to interfere with the rights of Sheikh Ra’ed Salah and other members of the Islamic Movement to freedom of belief, worship and expression, as individuals or as a community.
- Sheikh Ra’ed Salah’s belief that al-Aqsa mosque is in danger is based on his religious duty to participate in the effort to preserve it as a holy site, and from concrete information published in the Israeli press. Sheikh Ra’ed Salah detailed these dangers, which are posed by the state as well as extremist groups within Israeli Jewish society.
- The “al-Aqsa is in danger” assemblies began taking place in 1997. That year, *Yediot Ahronot* published an interview with the then-Police Commissioner Asaf Hefetz, who warned about “extremist right-wing groups planning to harm mosques on the Temple Mount.”⁶⁷ In October 1999, *Ha’aretz* reported on “right-wing activists attempting to acquire a plot within the Temple Mount.”⁶⁸ In January 2001, *Yediot Ahronot* reported again on the danger to the site from extremist Jewish groups, and in May 2001, the newspaper published an article about Sharon’s plans to build a synagogue at the same location.⁶⁹
- Al-Aqsa mosque is central to Muslims’ religious beliefs. It is one of Islam’s three holiest sites, and as such, there is great sensitivity surrounding its well-being. In his testimony before the Commission, Sheikh Ra’ed Salah clarified that all Muslims are aware of the special status of al-Aqsa mosque according to Islam, and of its political status as a holy site under occupation. Therefore, it is unclear how these assemblies would “incite” people who already hold these views. Sheikh Ra’ed Salah also testified as to his surprise regarding

⁶⁷ Doron Me’eri, “Factors in the Extremist Right Plan to Sabotage Mosques on the Temple Mount,” *Yediot Ahronot*, 26 December 1997.

⁶⁸ Nadav Sharguy, “Right-Wing Activists are Attempting to Purchase a Parcel of Land in the Area of the Temple Mount,” *Ha’aretz*, 1 October 1999.

⁶⁹ Rami Hazut, “Rabbi of the Temple Mount: There is a Danger for a Jewish Terrorist Attack in the Temple Mount,” *Yediot Ahronot*, 7 January 2001; and Ofer Pietersberg, “Sharon Adopted a Plan to Build a Synagogue on Temple Mount,” *Yediot Ahronot*, 21 May 2001.

the Commission's inquiry into his position on al-Aqsa mosque, while at the same time ignoring other relevant matters pertaining to the "incitement around such a sensitive issue" such as Sharon's visit to the mosque compound on 28 September 2000, and the granting of permission for this visit by then-Prime Minister Ehud Barak.

- In his testimony before the Commission, Professor Rabinowitz categorically disagreed with the Commission's implied position regarding the sincerity of Sheikh Ra'ed Salah's belief that "al-Aqsa is in danger." He stressed the importance of the mosque to Sheikh Ra'ed Salah and to all members of the Islamic Movement. He also emphasized that Islamic Movement members are aware of Israeli press reports about threats by extremist right-wing Jewish groups to al-Aqsa mosque. Thus, "al-Aqsa is in danger" assemblies are a genuine reflection of the perceived threat and not a means of incitement.
- The September 2000 "al-Aqsa is in danger" assembly, like prior gatherings, was attended by thousands of people, and was conducted in a very orderly manner. At this assembly, Sheikh Ra'ed Salah spoke about the governmental agencies' incitement against the Arab minority in general, and against the Islamic Movement in particular. He also told the participants that this gathering was the answer to the provocative politics and to all of the attempts to scare the people away from the assembly.
- The Commission inquired into the use of the terminology of sacrifice for al-Aqsa mosque, for example, the use of the Arabic term *Feda'*. Sheikh Ra'ed Salah, in his testimony, explained the use of metaphors and symbolism in the Arabic language in general, and that specific term in particular. Dr. Elias Atallah, an Arabic language specialist, provided an expert opinion on the Arabic language and its development, which was submitted by Adalah to the Commission.⁷⁰ Dr. Atallah stated that in his opinion, the term *Feda'* (sacrifice) is used symbolically to convey the importance of the object of sacrifice and is not a call for its actual realization.
- Evidence was presented before the Commission that there is a danger to al-Aqsa mosque, both from the state and from extremist groups within Israeli Jewish society. The entry of Israeli forces to the mosque compound on more than one occasion has resulted in the deaths of and injury to Palestinians. Extremist groups within Israeli Jewish society want to "renew the past" by building a new Temple where al-Aqsa mosque is located, and these groups can potentially have influence over government policy. Respected rabbis in Israel want to build a synagogue within al-Aqsa mosque compound in order to "guarantee Israeli sovereignty," over the area, in violation of international law.

⁷⁰ Expert Opinion, Dr. Elias Atallah, "Linguistic Expert Opinion on the Meaning of Some Arabic Terms and the Development Regarding the Changes of Meaning of these Terms," March 2002 (On file with Adalah, Arabic).

- Sheikh Ra'ed Salah and the members of the Islamic Movement are exercising their rights to freedom of religion and expression when they organize and participate in “al-Aqsa is in danger” assemblies. The assemblies were conducted in a very orderly manner and there can be no public harm from conducting these gatherings.

vi. “Conveying repeated messages denying the legitimacy of the existence of Israel”

- The Commission alleges that statements made by Sheikh Ra'ed Salah convey messages “denying the legitimacy of the existence of Israel.” In reaching this initial conclusion, the Commission ignored or did not give sufficient weight to the many testimonies and exhibits that were presented to it, which contradict the allegations in the warning letter against Sheikh Ra'ed Salah and show that they have no basis.

- On 28 August 2000, the Director General and senior personnel of the Ministry of Internal Security, as well as police officials responsible for the Umm al-Fahem area, conducted a visit to the town. Then-Mayor Sheikh Ra'ed Salah hosted them and reported on the various problems faced by the 36,000 residents of Umm al-Fahem, including the danger posed by nearby military bases, drugs, poor infrastructure, and high unemployment (about 20% at that time). The Advisor on Arab Affairs for the Ministry, who also participated in the visit, prepared a letter dated 31 August 2000, in which he summarized the meetings. In stark contrast to the letter of warning issued by the Commission, the Advisor wrote in his letter that Sheikh Ra'ed Salah welcomed the visit and the visitors, and expressed the problems faced by the town and a willingness to assist the Ministry in fulfilling its duties under the law to protect the welfare of all residents of Umm al-Fahem.

- In his testimony before the Commission, Sheikh Ra'ed Salah explained the distinction that he makes between the existence of the state of Israel and its institutions, on the one hand, and state policy on the other hand. He acknowledged that he interacts with the state and its institutions, both as an individual and as the leader of the Islamic Movement. This interaction includes participation in the management of municipalities, cooperation with school boards, and maintaining good relations with law enforcement agencies. Sheikh Ra'ed Salah testified that he does not support participation in the Knesset, as he believes that it does not practically advance the rights of the Palestinian minority, despite the fact that this forum provides an opportunity to protest state policy, if nothing else. He also testified that he does not accept the authorities' policies and the definition of the state, which exclude the Palestinians in Israel as well as their history as natives of this country. He is not willing to adhere to policies that discriminate against the community, and he is ready to challenge these policies in the widest sphere possible under the law.

- Professor Nadim Rouhana, in his testimony before the Commission, presented research concerning the different understanding of the relationship with the state of Israel between

the Palestinian minority and the Jewish majority . According to Professor Rouhana, the Palestinian minority in general, including Sheikh Ra'ed Salah, distinguishes between two basic components of the state: While they acknowledge the legal institutions that express the state's existence, they reject the state's discriminatory policies that stem from its political Zionist ideology. Conversely, the majority of Jewish Israelis do not distinguish between the state as such and its political and ideological components. For a majority of Jewish Israelis, argued Professor Rouhana, any criticism of the state's policy and ideology is interpreted as challenging the state's existence.

- Contrary to the Commission's allegations against Sheikh Ra'ed Salah in this regard, it was the actions of the police in October 2000 that undermined the civil legitimacy of the Palestinian minority in Israel in general, and the residents of Umm al-Fahem in particular. During the October 2000 demonstrations, the police and police snipers fired live ammunition and rubber bullets at Arab citizens of Israel. These lethal means were used under the direct command of the Northern District Police Commander, Alik Ron. Ron frequently incited against Arab leaders during 1998-2000, including Sheikh Ra'ed Salah, who opposed his racist and illegal methods. Ron described Sheikh Ra'ed Salah as a "pathological liar," and the Islamic Movement as a "despised movement." At his warning hearing before the Commission on 23 July 2002, Ron repeated his racist position regarding the Islamic Movement. Also, during this inquiry, Ron confirmed that he did not notify any leader in Umm al-Fahem of his intention to bring police snipers and to possibly use them against the protestors from the town.

- Therefore, the Commission's allegation in this regard is unfounded. There is a different understanding of the relationship with the state among the Palestinian minority and the Jewish majority. Most Jewish Israelis, in contrast to Arab citizens of Israel, equate the existence of the state with its Zionist political ideology. Sheikh Ra'ed Salah recognizes the state of Israel and its institutions and interacts with them. Similar to a vast majority of the Arab public in Israel, Sheikh Ra'ed Salah rejects and contests discriminatory state policies and ideologies, which aim to marginalize the community.

vii. "Portrayal of the State as an Enemy"

- Sarafand is one of the Palestinian villages destroyed by Israeli forces in 1948, and its residents were forced to leave. In July 2000, the Israeli authorities demolished the Sarafand Mosque, which had remained standing in the village. The Islamic Movement made numerous attempts to prevent the demolition of the mosque, by writing letters to the relevant government ministries and organizing demonstrations. After the mosque was demolished, Sheikh Ra'ed Salah wrote a poem in Arabic regarding this holy place, in

which he emotionally stated that the destruction reminded him of the 1948 tragedy.⁷¹

- The Commission relied on a Hebrew-language translation of this poem provided by the police to conclude that Sheikh Ra'ed Salah portrays the state as an enemy. During his testimony before the Commission, Sheikh Ra'ed Salah stated that his words as written in the poem are clear and obvious, and they cannot be misinterpreted. He explained the meaning of the poem, and that its words of protest were directed against the demolition of this holy site. He also testified that his words hold true for any demolition of any sacred place of any monotheistic religion.

- Dr. Elias Atallah, in his expert opinion, observed that this poem explores the contemporary and historical oppression and injustices against the Palestinian people. Dr. Atallah did not find any threat to any individual or group, Jewish or otherwise, in the poem. The main blame was directed at “the enemy of the good,” “the enemy of justice,” and “the enemy of God,” in the poem. According to Dr. Atallah, the poet wanted to express his anger, to clarify that his faith would not be shaken, and to affirm that the fate of injustice is retreat and eventual disappearance.

- Justice Or questioned Sheikh Ra'ed Salah about this poem, relying on an inaccurate translation of it, and failed to relate to the events which led to its writing, namely, the demolition of the Sarafand Mosque. The Commission did not investigate the authorities' conduct regarding the destruction of Muslim holy sites, although ample data concerning this issue was presented to it. The Commission did not call on any Arabic-language specialists to testify or to provide expert opinions regarding the use of different terms in Arabic or to offer interpretations of Arabic-language texts. Justice Or drew conclusions about Sheikh Ra'ed Salah, according to his understanding of a language in which he is not fluent, and he did not attempt to gain an understanding of its social-cultural context. The expert opinion provided by Dr. Elias Atallah regarding the poem clearly proves that the Commission's interpretation of this text does not correspond to its intended meaning.

viii. “Planned Massacre in al-Aqsa Mosque on 29 September 2000”

- The Commission alleges that Sheikh Ra'ed Salah was responsible for “significantly inflam[ing] passions and the violent and widespread rioting that took place in the Arab sector beginning in October 2000,” by “conveying messages regarding the existence of a purported planned massacre in al-Aqsa mosque on 29 September 2000.”

- A series of events support the conclusion that what occurred at al-Aqsa mosque compound

⁷¹ For the full text of Sheikh Ra'ed Salah's poem in Arabic, see *Sawt al Haq Wa-al-Hurriya*, 18 August 2000.

on 29 September 2000 was at least malicious negligence on the part of the Israeli security forces, which could amount to intent. Al-Aqsa mosque compound is a sensitive location; in the past, both in 1990 and 1996, it was the site of brutal actions by Israeli security forces, resulting in many deaths and injuries to Palestinians. While senior police officers acknowledged the danger of Sharon's visit to al-Aqsa mosque site, the Israeli political leadership ultimately ignored these warnings and permitted the visit to take place. As was anticipated, Sharon's visit was met by intense protests, and the security forces retaliated by using excessive force against the demonstrators, resulting in many injuries to Palestinians on 28 September 2000. Further, the security forces decided to station a large number of personnel, including police snipers, in the vicinity on 29 September 2000. The security forces used lethal means to disperse the large number of demonstrators; seven Palestinians were killed and scores of others were injured. Seemingly, the security forces did not learn any lessons from their prior lethal actions: They appear to have willfully ignored these events, which could amount to intentional disregard for human life.

- There were no facts presented to the Commission, which point to a causal connection between Sheikh Ra'ed Salah's alleged statements regarding the "massacre at al-Aqsa" and a call for violent action in October 2000. To support its contention that such a connection exists, the Commission seemingly relied on a flyer titled "Massacre at al-Aqsa," which was distributed by the Islamic Movement on 30 September 2000. However, the Commission completely ignored the actual text of the flyer. While the flyer points to the massive presence of security forces in al-Aqsa mosque compound on 29 September 2000 as an indication of intent, it does not call for violent action by Arab citizens of Israel. To the contrary, the flyer details the specific steps recommended by the Islamic Movement to its members in response to these events, including a call to join the general strike announced by the High Follow-up Committee for the Arab Citizens in Israel; to participate in marches and demonstrations; to donate blood; to visit injured individuals in hospitals; and to visit families of those killed by the security forces. There is nothing extraordinary or inflammatory about the flyer. Essentially, the flyer calls on the members of the Islamic Movement to engage in a series of solidarity protest actions as well as to take humanitarian measures in response to police violence.

- Once again, it appears that the Commission disagrees with the content of the religious and political statements made by Sheikh Ra'ed Salah and the Islamic Movement, as well as their use of specific terminology. However, the Commission failed to prove a causal connection between the alleged "planned massacre" statement and a call for violent action in October 2000. By issuing this warning, the Commission disregarded the testimonies of Sheikh Ra'ed Salah and numerous experts, without seeking or hearing any relevant experts to support its conclusions. As such, this warning is extremely unreasonable.

ix. “Praising the violent disturbances while the events were still taking place”

- The Commission alleges that Sheikh Ra’ed Salah was “responsible for comments that praised the grave and extensive violent disturbances that took place in the Arab sector at the beginning of October 2000, while the events were still taking place.”

- While it appears that the Commission relied on a flyer issued by the Islamic Movement on 5 October 2000, this flyer does not contain statements supporting the Commission’s claims. A separate flyer issued by the Islamic Movement, dated 13 October 2000, proves that the Commission’s account of what was stated in these flyers is inaccurate.

- In the 5 October 2000 flyer, the Islamic Movement condemned the governmental aggression both at al-Aqsa mosque and in Umm al-Fahem, which included the firing of live ammunition and the use of police snipers against demonstrators. In the same flyer, the Islamic Movement also makes a distinction between vigorous “civilized protest” and the destruction of public and private property; the Islamic Movement explicitly calls on its members to respect property. In its closing remarks in the flyer, the Islamic Movement praises the work of the two medical clinics in Umm al-Fahem, which were operating under huge pressure to treat the victims. It is difficult to understand how a flyer calling on residents of Umm al-Fahem to strongly protest police oppression in a civilized manner, can be used by the Commission to initially conclude that Sheikh Ra’ed Salah engaged in inappropriate conduct.

- Another flyer issued by the Islamic Movement at about the same time informs readers that the “al-Aqsa is in danger” assembly would be postponed, due to the deteriorating situation caused by the security forces’ actions in Umm al-Fahem and the many deaths and injuries that resulted. According to the Commission’s allegations, the “al-Aqsa is in danger” assemblies were one of the major factors in inciting the public and set in motion the widespread violence during October 2000. However, the Islamic Movement postponed the “al-Aqsa is in danger” assembly originally scheduled for October 2000. According to the Commission’s logic, if the Islamic Movement had wanted to “inflame passions,” it would have held this gathering. In fact, however, the Islamic Movement chose to delay the assembly. The Islamic Movement made this decision in order to protect the participants from police violence.

- Therefore, the Commission was mistaken in its interpretation of statements made by Sheikh Ra’ed Salah. He did not praise violence. Rather, he praised the steadfastness of the protestors in the face of the excessive force used by the police against the demonstrators in general, and Umm al-Fahem residents in particular.

x. Commission of Inquiry failures in investigating Sheikh Ra'ed Salah

In addition to the arguments raised above concerning the illegality of the warnings issued against Sheikh Ra'ed Salah, the Commission was negligent in its investigation of him for the following reasons:

- The Commission collected and relied upon a voluminous amount of material from the police and the GSS but did not gather or consider Sheikh Ra'ed Salah's weekly newspaper articles to learn more about the messages he actually conveyed during 1998-2000. During this period, Sheikh Ra'ed Salah published more than 100 articles, primarily about social issues affecting the Arab minority in Israel, and the need to renovate and preserve holy sites.
- The Commission also failed to investigate police violence against Sheikh Ra'ed Salah during 1998-2000. As noted, during the 1998 al-Roha demonstrations, Sheikh Ra'ed Salah was beaten by police and subsequently hospitalized. On 1 October 2000, he was shot and wounded by a rubber bullet fired by police. The Commission did not inquire into the circumstances of either of these events.

xi. Conclusion

In accordance with all of the above, Adalah requested that the Commission rescind the warning letter issued to Sheikh Ra'ed Salah, and to refrain from adopting, in full or in part, the content of the letter in the final findings, conclusions and recommendations.

3. MEMBER OF KNESSET ‘ABD AL-MALEK DAHAMSHE

i. Introduction

The Commission issued one warning against ‘Abd al-Malek Dahamshe, in his capacity as head of the United Arab List political party, Member of Knesset, and a public figure. The Commission charged that in the period before the October 2000 events, primarily the period between 1998-2000, “he was responsible for conveying messages supporting violence as a means to attain the goals of the Arab sector in Israel, thus significantly inflaming passions and aggravating the violence that took place in the Arab sector beginning in October 2000.”

Adalah refuted the allegations raised in the letter of warning, and argued that they must be rescinded, as the Commission had no factual or legal basis for drawing this initial conclusion. Further, Adalah argued that the Commission failed to give appropriate weight to the factual material that was presented to it, which supported the arguments of MK ‘Abd al-Malek Dahamshe.

ii. MK ‘Abd al-Malek Dahamshe and the Islamic Movement

- ‘Abd al-Malek Dahamshe is a lawyer, a graduate of Hebrew University, and has been an MK since 1996. He is the leader of the United Arab List (UAL) and a representative of one stream of the Islamic Movement in Israel, which is also one of the parties that comprise the list. The UAL held five seats in the 15th Knesset (1999-2002). In this Knesset, MK Dahamshe served as Deputy Speaker of the Knesset, and as a member of the House Committee, the Committee for Public Petitions, and the Parliamentary Inquiry Committee on the Issue of Water.
- The Islamic Movement was established in Israel in order to serve the Muslim population in the state. It provides much needed services such as clinics, schools, and libraries that the state fails to provide due to its discriminatory policies against the Palestinian minority in Israel. In his testimony before the Commission, MK Dahamshe spoke about these activities, as well as the ideology, political agenda and public statements of the Islamic Movement.
- In his testimony, MK Dahamshe addressed the question of an Islamic Movement working within a non-Muslim country and his participation in the Knesset. He testified that he sees no contradiction between his roles or his affiliations. He stressed that as a representative of the Islamic Movement in the Knesset, he calls on his constituents to adhere to religious directives on the one hand, and the state’s laws on the other.

- MK Dahamshe also testified about issues that the Islamic Movement is forced to act on due to the state's discriminatory laws and policies, which in a "normal" situation would not be a source of struggle. One such issue is the Islamic Movement's struggle to prevent the conversion of mosques into commercial businesses such as restaurants, as well as to prevent their demolition. The Islamic Movement views the preservation and protection of these holy sites as central to its beliefs. By contrast, a police document written by the Advisor to the Chief of Police on Arab Affairs in April 2000 and titled "No Silence in the Arab Sector," recommends that the renovation of mosques in the centers of cities in Israel be prohibited. In fact, this recommendation is illegal as it infringes on the right to freedom of religion, worship and belief. MK Dahamshe told the Commission that the actions of the Islamic Movement should be understood in this context.

- In 1989, the Islamic Movement decided to participate in municipal elections. In 1996, one stream of the Islamic Movement decided to participate in the elections for the Knesset. MK Dahamshe, as an MK representing a national minority in Israel, testified that he is forced to act differently than other MKs and public leaders, who represent the Jewish majority in the state. Therefore, in order to comprehend his actions, an understanding of the complex reality in which he acts must also be appreciated - specifically, the acute distress of the Palestinian minority in Israel and the state's treatment of the community and its leaders.

- Israeli society is divided: It is composed of individuals with a wide range of identities. The Arab MKs, due to the strong national divisions between Arabs and Jews in Israel, lack any ability to influence decision-makers or to become a part of the decision-making process. While Arab MKs and public leaders are supposed to act as representatives and raise problems before the government, they are disregarded and the problems that they raise are marginalized. In order to fulfill their duties and to protect the interests of their constituents, they must take advantage of all legal means available to them.

- It is for this reason, MK Dahamshe testified, that he is not an ordinary MK. He is compelled to write appeals to ministers and decision-makers, and often receives no reply. He is forced to use sharp language to win recognition of serious problems, which under normal circumstances would have been afforded immediate attention and could be easily solved.

- MK Dahamshe testified before the Commission that he is not happy to stand on the remains of a demolished home in an Arab village. He uses all of his abilities as an MK to stop the state's ongoing home demolition policy in Arab towns and villages in Israel. He speaks and acts in various Knesset forums, appeals to ministers, and explains the problems faced by the Arab minority in Israel and yet, his voice goes unheard. As part of his duties as an MK, he tries to protect people whose homes are threatened with demolition.

- The Commission made its initial conclusions regarding MK Dahamshe solely on the basis of statements he is alleged to have made. The Commission failed to consider the wide range of parliamentary issues on which he is active, specifically, land, employment, education, and general welfare or that he served as Deputy Speaker of the Knesset and on various Knesset committees. As an elected public representative, MK Dahamshe makes statements in the public-political domain, which express his political views on many matters, primarily those of interest to his constituents. In his testimony before the Commission, MK Dahamshe attempted to describe his parliamentary work, but the Commission informed him that it was not investigating the quality of his work. It is doubtful whether his statements and actions can be understood without understanding his Knesset activities and the main issues of concern for him and his constituency.

iii “Responsible for Conveying Messages Supporting Violence”

a. “Breaking Hands and Legs of Policemen”

- A major line of inquiry pursued by the Commission related to threats allegedly made by MK Dahamshe regarding the breaking of hands and legs of police involved in the demolition of a home belonging to an Arab citizen of Israel. As a public representative, MK Dahamshe spoke at a meeting of the High Follow-up Committee for the Arab Citizens in Israel, and his statements were later misquoted and widely publicized in the media. As a result, the misquoted statement attributed to MK Dahamshe remained fixed within the public consciousness. At the end of this process, MK Dahamshe found himself being investigated for these alleged statements, both by the police and by the Commission, which resulted in a warning being issued against him by the latter. The “breaking the hands and legs” statement attributed to MK Dahamshe is far from the actual statement made by him. The chain of events in this instance follows:

- 1) Demolition of a home in Kubsi, an unrecognized Arab village, on 13 September 2000. Family members injured by the police during the course of the demolition were later hospitalized.
- 2) Statements made by MK Dahamshe on the same day during a meeting of the High Follow-up Committee in Kufr Manda. MK Dahamshe said: “A policeman who comes to demolish my home and hurts me and Arab citizens who are trying to defend their right for a home, whoever raises his hands on us and breaks our hands and legs, as we are facing recently on more than one occasion, it is our right to defend ourselves and break his hand first. Whoever comes to break our right for existence, and breaks our hands and legs, it is our right to defend ourselves and break his hands and legs.” MK Dahamshe made these statements, immediately after meeting with the family members from Kubsi upon their release from the hospital.

3) Inaccurate quote of statement broadcast on government-controlled Arabic-language radio.

4) The media-manufactured statement becomes the basis for a police investigation against MK Dahamshe.

- MK Dahamshe did not call for the breaking of hands and legs of police, but for the right of self-defense for those who were violently attacked by police. Further, MK Dahamshe's statements were not perceived as incitement by the Arab minority in Israel. In his testimony before the Commission, Professor Danny Rabinowitz explained how such statements could be perceived differently by the Israeli Jewish majority and the Arab minority. He noted that this difference stems from the different experiences and socialization of each group. In general, Arabs in Israel perceive the police as aggressors, as in many instances, police treatment of Arab individuals and the community as a whole is very hostile (e.g., police brutality at demonstrations, home demolitions, etc.). Unlike the Arabs in Israel, most Jewish Israelis encounter the police in a more neutral context and view the police as those who maintain law and order. There is no policy of home demolition in Jewish cities and towns; for the most part, Jewish Israelis do not see the police in such confrontational situations. Thus, MK Dahamshe's remarks are not perceived by the Palestinians in Israel as incitement; it is only reasonable for people to attempt to defend their homes in the face of demolition.

b. Additional statements regarding “supporting violence”

- The Commission investigated MK Dahamshe regarding additional statements he allegedly made during various events, all of which directly relate to the prevention of harm to holy sites, the protection of land, and home demolitions. In order to understand these statements, the personal and public position of MK Dahamshe as well as the context in which the statements were made should be understood.

- MK Dahamshe is a devout Muslim, representing a movement that aims to protect Muslim religious tradition, Muslim holy sites, and cemeteries. He views the protection of holy sites and the renewal of Muslim religious traditions among the Arabs in Israel as a public mission. He also perceives these activities as his religious duty as a Muslim, in addition to his obligations as a public representative and an MK.

- Many mosques in villages destroyed by Israeli forces in 1948 and those in mixed cities in Israel have been converted into commercial businesses, such as restaurants and bars, while others have been demolished. As for Muslim cemeteries, the state fails to allocate resources to preserve them. In this grave situation, MK Dahamshe sees it as his religious responsibility to act in order to protect these Muslim holy sites. Protection includes the renovation, preservation and return of Muslim activity to these mosques, as well as the

upkeep of cemeteries. The reason for the struggle to protect mosques and cemeteries as holy places is that the state, directly and indirectly, through various agencies, local councils, and organizations connected with political parties in the government, fails to take measures to preserve these mosques and prevents their renovation.

- Presumably, Arab MKs and other public representatives who join demonstrations against home demolitions are actually protesting against the planning and building laws, and assisting in the prevention of the carrying out of legal orders to demolish “illegally built” homes. Yet, the illegal building problem in Arab villages and towns is a result of ongoing discriminatory state policies against the community. Arab villages and towns remain without infrastructure plans, and thus their residents have no ability to get permits to build homes. MK Dahamshe distinguishes between two types of “illegal building.” He agrees that demolitions of buildings erected without a legal permit, when it is possible to obtain one, should not be protested. However, he asserts his right to protest against the demolition of buildings in Arab villages and towns where the state has failed to create infrastructure development plans, and thus, there is no possibility to get permits to build. In the latter case, as people need a place to live, they are forced to build homes without a permit on their private-owned land.

iv. “Al-Aqsa is in Danger”

- The questions posed to MK Dahamshe by the Commission indicate that the warning issued against him relates to his statements regarding the danger to al-Aqsa mosque. MK Dahamshe, like many others, believes that al-Aqsa mosque is in danger, that there is an actual physical threat against it, and that there are those who would like to harm it. He also believes that the state is not doing enough to prevent harm to al-Aqsa mosque.⁷²

- Under these circumstances, MK Dahamshe perceives his work in this regard as part of his public duty and role as an MK. He warns of the danger to al-Aqsa mosque and other Muslim holy sites. He works to bring this issue and its grave ramifications to the attention of decision-makers. In this way, MK Dahamshe also acts in accordance with his obligation as a Muslim to do all that is in his power to protect al-Aqsa mosque. The statements made by MK Dahamshe regarding this issue are sincere, and stem from a genuine fear of harm to one of Islam’s holiest sites.

v. Shaheed for al-Aqsa

- The statements made by MK Dahamshe regarding his willingness to be a shaheed for al-Aqsa were placed under scrutiny during his testimony before the Commission. An additional statement attributed to MK Dahamshe regarding this issue that was investigated by the Commission appeared in a local newspaper on 26 February 2000. In this newspaper

⁷² See supra notes 67, 68 and 69.

article, MK Dahamshe allegedly called for “the protection of holy sites of Islam with body and soul.”

- In his testimony before the Commission, MK Dahamshe clarified that he did not make the statements attributed to him in the 26 February 2000 newspaper article in the way in which they were portrayed. He stressed that the circumstances under which he made these statements must be understood. MK Dahamshe was called to Tiberius, where he found the Muslim cemetery in the city being dug up by bulldozers. He described the terrible scene that he witnessed. MK Dahamshe related that as a Muslim, he was brutally hurt upon witnessing this scene, especially because state authorities were carrying out the destruction, the same agencies that time after time ignore his appeals to prevent damage to mosques and cemeteries. He spoke of the right to protect these holy sites and took action: He wrote letters both to the Minister of Internal Security and the Prime Minister. MK Dahamshe’s statements did not include any call for the use of violence.

- In his expert opinion, Dr. Elias Atallah explained the historical roots of the term *shaheed*. According to Dr. Atallah, the word was used to describe one who was killed for the sake of God, and its literal meaning, as one who sees and envisions. Later, the term was used to describe someone who was killed unwillingly, usually on the battlefield. Today, according to Dr. Atallah as well as Professor Danny Rabinowitz, the term *shaheed* is used to express sympathy, to convey the feeling that the death of the individual was not in vain or meaningless. Thus, it has the function of an expression of condolence to the family of the deceased.

- MK Dahamshe’s statements in this regard, as he explained during his testimony, were made during a visit to al-Aqsa mosque, where he met with Waqf (Muslim religious trust) personnel. His statements were a reply to extremist Jewish individuals, who were at the site of al-Aqsa mosque at the time and who were threatening that they will bring about the demolition of the mosque and the building of a house of prayer instead, or the third temple.

vi. “Planned Massacre”

- The Commission questioned MK Dahamshe extensively about a statement that he allegedly made regarding the many casualties at al-Aqsa mosque on 29 September 2000 as being the victims of a planned massacre.

- The large number of people killed and injured and the heavy presence of security forces at al-Aqsa mosque compound, including police snipers on 29 September 2000, leads to the conclusion that the deaths were not accidental. Both government ministers and the police were aware of the danger of Sharon’s visit to al-Aqsa mosque compound and the existence of a large security force at the site. This knowledge, in light of previous experiences at the

same location, places a heavy burden on government ministers and police officials to prove that the killings that took place there did not amount to intentional disregard for human life.

- As a public representative, MK Dahamshe has the duty to warn against the possibility of harm to people at prayer and damage to al-Aqsa mosque, as a holy site, and not to disregard such a blatant violation of the right to life and the denial of both freedom of religion and worship.

vii. Problems with relying on newspaper articles

The Commission was presented with and relied upon many newspaper articles as the basis for its questions to MK Dahamshe. Reliance on newspaper articles is extremely problematic, as these are not primary source documents and the statements quoted in them are often inaccurate. Newspaper articles include, among other things, reports that do not arise directly from an interview but rather from a second or third hand source or the recycling of statements published in other media outlets. Often, there is no separation between facts and analysis; the information provided is not specific, and at times, wrong. The Commission was provided with numerous examples concerning inaccuracies contained in newspaper accounts.

viii. Commission of Inquiry failures in investigating MK Dahamshe

- The Commission questioned MK Dahamshe about statements attributed to him, without referring to the circumstances under which they were made.
- The Commission failed to investigate two key issues brought to its attention by MK Dahamshe that fall squarely within the subject matter of the inquiry - police brutality and the desecration of holy sites by state authorities.
- As to police brutality, the Commission disregarded MK Dahamshe's letters to the authorities regarding police violence against Palestinian citizens of Israel during the period of 1998-2000. The Commission also failed to investigate police violence against MK Dahamshe. In November 1999, MK Dahamshe approached the Minister of Internal Security to ask for an investigation of police officers who beat him during a demonstration by Arab mayors in front of the Prime Minister's office in Jerusalem. On 25 September 2000, he also sent a letter to the Ministry concerning police violence against him and other demonstrators, who were protesting against land confiscation in the Arab village of Ein Mahel in the north. In this letter, he also noted police violence against him and other Arab citizens of Israel on 14 September 2000, during a demonstration of workers protesting against the closure of a stone quarry. MK Dahamshe mentioned the specific names of

police officers and asked for a commission of inquiry to investigate police violence against him and other Arab citizens of Israel in this letter. Although MK Dahamshe submitted all of these letters to the Commission, the latter chose to ignore this issue.

- The Commission also failed to investigate the issue of the desecration of Muslim holy sites by state authorities. MK Dahamshe provided the Commission with a large amount of data, covering a long span of time including the period between 1998-2000, and the numerous letters sent by him to state authorities in an effort to prevent the demolition and desecration of mosques and Muslim cemeteries in Arab villages and towns destroyed in 1948. The Commission did not investigate these issues, but decided instead to criticize activities related to the protection of Muslim holy sites, suggesting that this sort of action is not legitimate. The Commission failed to question anyone who appeared before it, including police, regarding the desecration of Muslim holy places or police participation in preventing the renovation of these sites.

ix. Conclusion

Based on all of the above, it is clear that MK Dahamshe's statements did not convey messages supporting violence as a means to attain the goals of the Arab minority in Israel, as alleged in the letter of warning issued by the Commission. Therefore, Adalah requested that the Commission refrain from adopting the content of the letter in its final findings, conclusions and recommendations.

4. MEMBER OF KNESSET DR. AZMI BISHARA

i. Introduction

The Commission issued one warning against MK Azmi Bishara, in his capacity as head of the BALAD (National Democratic Assembly) political party, a Member of Knesset, and a public figure. The Commission charged that in the period before the October events, primarily the period between 1998-2000, “he was responsible for conveying messages supporting violence as a means to attain the goals of the Arab sector in Israel, thus significantly inflaming passions and aggravating the violence that took place in the Arab sector beginning in October 2000.”

Adalah refuted the allegations raised in the letter of warning, and argued that the warning must be rescinded, as the Commission did not have a relevant factual basis for making this initial conclusion. Moreover, the Commission failed to give appropriate weight to the factual material that was presented to it, and which supported the arguments of MK Azmi Bishara.

Dr. Azmi Bishara has been an MK since 1996. He is one of the founders and the leader of the National Democratic Assembly(NDA) party. He is the author of many books and articles in the fields of philosophy, civil society and politics, and he writes a weekly column for the Arabic-language newspaper, *Fasl Almaqal*, which is published from Nazareth. He is invited to lecture at universities all over the world on a regular basis on issues such as the meaning and role of civil society, democratic transformation, and the political situation in Israel and the Middle East, including the Palestinian question.

ii. Lack of a relevant factual basis

- The Commission lacks a relevant factual basis for concluding that MK Bishara “convey[ed] messages supporting violence as a means to attain the goals of the Arab sector in Israel.” Principles of administrative law require that decisions of a judicial or semi-judicial body must be supported by relevant facts. In this case, the Commission failed to investigate the way in which MK Bishara conveyed his political messages. Therefore, the Commission may not adopt the contents of the warning letter issued against MK Bishara in its final findings, conclusions and recommendations.

- The Commission’s investigation of MK Bishara specifically focused on the interpretation of a few quotations, which were attributed to him by second or third hand sources. The reliability of these sources cannot be confirmed. Moreover, these sources do not accurately reflect the political ideology of MK Bishara during 1998-2000 or his views of the October

2000 events. These isolated and questionable quotations are not the means by which MK Bishara conveys his political messages to the public.

- The Commission failed to consider or inquire into any of MK Bishara's weekly newspaper articles, except for one, written between 1998-2000. During this period, MK Bishara wrote over 100 articles, published primarily in *Fasl Almaqal* and in other Arabic-language newspapers published in the Arab world. Further, the Commission did not consider MK Bishara's weekly columns published immediately before and after the October 2000 protest demonstrations.

- MK Bishara's weekly columns published in *Fasl Almaqal* analyze current affairs. This newspaper is read by most NDA supporters. For this reason, the Commission should have considered these articles as a primary source of information. These weekly columns clearly attest to the fact that the content of the warning letter is false and baseless.

- The Committee was not presented with nor did it investigate Azmi Bishara's work as an MK. His speeches made in the Knesset and the bills introduced by him are a significant, reliable source of information about his political messages. None of these sources include a single piece of evidence that supports the content of the warning letter.

- The Commission failed to investigate or give sufficient weight to MK Bishara's books, academic papers and articles, or the NDA's political agenda. None of these sources explicitly or implicitly call for or support the use of violence in order to attain political goals. These forms of communication are the direct link between MK Bishara and his constituents, and are the means through which he conveys his political messages. These communications contradict the content of the warning letter issued by the Commission.

- The Commission also failed to investigate the political messages conveyed by other prominent NDA leaders such as Dr. Jamal Zahalka. The Commission did not gather articles written by him or inquire into them. An examination of these articles, as well as those of MK Bishara and other NDA leaders, would have proven that the content of the warning letter issued against MK Bishara is blatantly untrue. Thus, the Commission failed to consider the NDA party's important political messages.

- The Commission also failed to call or to hear witnesses in order to verify whether any of them heard messages conveyed by MK Azmi Bishara calling for the use of violence. No evidence was provided by the Commission to demonstrate that any NDA supporter was arrested, indicted or convicted for politically motivated violent activities.

- Additionally, the Commission failed to consider a substantial amount of relevant complimentary evidence, which proves that the content of the warning letter issued against MK Bishara has no basis. For example, while the Commission questioned MK Bishara

about a 1998 interview that he gave which was published in *Ha'aretz*, the Commission failed to consider MK Bishara's response to his critics regarding certain statements mentioned as part of the interview. Similarly, while the Commission considered a Supreme Court decision regarding a request to disqualify the NDA party from participating in the 1999 Knesset elections, the Commission failed to inquire into a petition filed to the Supreme Court in 2001 seeking the cancellation of the Court's prior ruling.

iii. Uninvestigated Events - Lack of Factual Foundation

- The Commission failed to complete its investigation into subjects related to and raised by MK Bishara in his testimonies before the Commission. The Commission questioned MK Bishara regarding an article that he wrote about al-Roha events, in which he used the term "al-Roha Intifada."⁷³ MK Bishara was also questioned about quotations attributed to him, which related to events in Led (Lod) in 1999. In his testimony, MK Bishara described what he saw at al-Roha in September 1998, including the police firing at children and protestors. He also explained that during the events in Led, an Arab house was demolished and he and other demonstrators were injured, as a result of rubber bullets fired at them by police. In addition, he related to the issue of home demolitions in general, and the effect of the Interior Ministry's policy in this regard on the Arab minority in Israel. Further, he described the failure of the police to investigate the attack on his home in Natseret Illit in October 2000.
- The Commission questioned MK Bishara about his political positions on these events, but it failed to complete the investigation and to inquire as to the facts surrounding them. The Commission failed to investigate al-Roha events, the Led events, the attempted attack on MK Bishara's home, as well as other incidents of police violence and racism towards Palestinian citizens of Israel. Since the Commission chose to investigate MK Bishara's political positions, the facts of these events are also relevant in order to examine police treatment of Palestinian citizens of Israel during these demonstrations.
- The Commission directed many questions to MK Bishara regarding cooperation by the Arab leadership with the police during these events. In his testimony, MK Bishara spoke about police racism and violence. MK Bishara provided the Commission with copies of the many letters that he addressed to the Minister of Internal Security during 1998-2000, in which he detailed specific events of police violence directed at Palestinian citizens of Israel. In these letters, he also demanded that the issue of police brutality and racism be appropriately dealt with. Yet, despite the importance of the issues raised in these letters, the Minister or any other representative from his office did not provide MK Bishara with a substantive response.

⁷³ For a discussion of al-Roha events, see *supra* page 48.

iv. The Quotes - Questionable Factual Foundation

- The only sources that the Commission considered during its investigation are a number of quotations from second and third hand sources that were published in the press, as opposed to the direct and primary sources previously detailed. This small number of questionable quotations do not support the conclusions reached by the Commission in its warning letter. The alleged quotations fail to supersede in importance and in scope the multitude of primary messages included in the NDA's party platform, and MK Bishara's Knesset and public speeches, books, academic papers, weekly newspaper columns, and numerous interviews, which were not investigated by the Commission.

- Besides the important fact that these quotations do not support the claim that MK Bishara conveyed messages supporting the use of violence, clearly, the way in which the public perceives these political messages will be influenced by the large amount of direct, primary material and not - if at all - by a limited number of random newspaper quotations which do not reach a wide audience.

- In his testimony before the Commission, MK Bishara discussed the weakness of these quotations; the misleading way in which the press uses quotations, especially from Arab leaders in Israel; and the means through which he conveys his political messages to his constituents.

v. Failure to distinguish between analysis and actual call for action - Failure to determine the factual foundation

The warning letter was based, among other things, on MK Bishara's analysis of significant political issues. It did not distinguish between academic analysis and a call for action, or between descriptive and prescriptive statements. This can be concluded from the questions posed by the Commission to MK Bishara during his testimonies, prior to the issuance of the warning letter.

vi. Issues the Commission of Inquiry treated as conveying messages supporting violence between 1998-2000

- The Commission was not specifically mandated to investigate any acts or statements made prior to 29 September 2000. However, the Commission opted to consider the time period between 1998-2000 when questioning the Arab public representatives including MK Bishara who were issued letters of warning.

- A series of political protests took place between 1998-2000, all of which resulted in the injury of scores of Arab citizens of Israel by the police. These events, including those

that occurred at al-Roha (1998), Umm al-Sahali (1998), and Led (1999), have a direct connection to the protest demonstrations in October 2000. Despite the fact that the Commission deemed it appropriate to investigate MK Bishara's political positions on these events, the Commission failed to investigate their causes and results.

- The Commission failed to investigate any of MK Bishara's written material, such as academic papers, newspaper articles, books, NDA decisions, etc. published during the period between 1998-2000. As mentioned above, the Commission considered only one article written by MK Bishara, which was published in 1998 immediately following al-Roha events. In considering this article, the Commission focused solely on MK Bishara's use of the term "Intifada" to describe al-Roha demonstrations. As MK Bishara explained in his testimony before the Commission, he used the term "Intifada" to refer to popular struggle. In any case, and most importantly, there is no call for violent action in the article.
- The Commission considered an NDA flyer issued in March 2000 regarding the Trans-Israel Highway - Road #6, but it was not presented with all of the relevant flyers. Instead, the Commission discussed the way in which this flyer was presented in the press. In addition, the Commission read an inaccurate translation of the flyer.
- In all cases in which MK Bishara and the NDA articulated positions related to al-Roha events, an attempt to demolish a home in Umm al-Sahali, the events in Led, and Road #6, there was no call for violent struggle. Rather, the NDA called for an "al-Somoud" type of struggle - direct, non-violent action - as explained by Dr. Zahalka in his testimony before the Commission.
- Thus, there were no facts before the Commission that show that during the period between 1998-2000, MK Bishara conveyed messages to provoke the use of violence for promoting political goals in any of his writings or Knesset speeches. Moreover, there was never any call to violate the law contained in these few NDA flyers.

vii. Main messages conveyed by MK Bishara and NDA between 1998-2000

- Between 1998-2000, two major events took place during which the vast majority of NDA members were exposed to the political agenda of the party. These events assisted in affirming the NDA's position as a parliamentary party list, and in laying down its political agenda. These two events were the 1999 Knesset elections, in which MK Bishara ran for Prime Minister, and a two-day NDA conference, which took place in November 1999. This conference took place following numerous discussions and preparatory meetings in which many of the party's members participated and the political agenda of the NDA was written. Dr. Jamal Zahalka, in his testimony before the Commission, discussed the central messages conveyed by the NDA during election time and at the conference, and the importance of these two events.

- The warning letter issued by the Commission to MK Bishara proves that the most important document discussed during the conference, one that influenced the setting of the NDA's agenda - the National Democratic Manifesto - was not given sufficient weight by the Commission. This document contradicts the warning letter and proves that MK Bishara's political messages do not promote violence.
- An examination of this document, the purpose of which was to inform NDA members about the platform of the party, discredits the arguments of the police and the GSS, according to which the NDA is a separatist political party. This document elaborates the NDA's positions on the definition and articulation of the individual and collective rights of a native national minority in a liberal democracy.
- MK Bishara's replies to the questions posed by the Commission regarding the characteristics of his political messages during the period between 1998-2000 were not contradicted by any piece of evidence brought forth by the Commission.
- Therefore, the initial conclusions reached by the Commission and the content of the warning letter cannot be accepted, as the Commission did not afford the proper weight to the political messages of the NDA and MK Bishara. These messages were present in the writings and statements of both MK Bishara and the NDA, all of which are publicly distributed.

viii. "In October 2000"

- The Commission alleged that MK Bishara was responsible for "conveying messages supporting violence as a means to attain the goals of the Arab sector in Israel, thus significantly inflaming passions and aggravating the violence that took place in the Arab sector beginning in October 2000."
- The reference to this issue in the warning letter lacks any basis, as there was no evidence presented to the Commission proving that MK Bishara personally addressed the public and conveyed messages encouraging the use of violence during October 2000. The Commission was not presented with any article, speech, newspaper, television or radio interview or any second or third hand quotations from October 2000 that support the initial conclusion included in the warning letter.
- The warning letter ignored MK Bishara's weekly column published on the eve of the October 2000 events. This column constitutes an important source of information in order to examine MK Bishara's messages during the events. Specifically, this column was published in *Fasl Almaqal* on 29 September 2000, the day after Sharon's visit to al-Aqsa mosque compound, and on the eve of the call for a general strike by the High Follow-up

Committee for the Arab Citizens in Israel. The warning letter was issued without the Commission investigating or checking this article. This article was publicly distributed and related directly to Sharon's visit to al-Aqsa mosque site.

- The Commission failed to investigate statements made by NDA leader Dr. Jamal Zahalka, who also wrote an article that was published on 29 September 2000. These two articles attest to the position of NDA leaders on these events. Neither MK Bishara nor Dr. Zahalka called on NDA supporters to engage in any sort of violent action or incited any sort of confrontation.

- Additionally, the warning letter was issued without the Commission seeking articles written by MK Bishara that were published in *Fasl Almaqal* on 13 October 2000 and 20 October 2000. In these articles, he analyzes the events during the first days of the protests, the police violence, the killings of Arab demonstrators, as well as the impression these events left on Palestinian citizens of Israel. In addition to the fact that these articles contradict the content of the warning letter, they also provide an analysis of the first few days of the October 2000 events and their influence on the meaning of citizenship status for the Arabs in Israel.

- Therefore, the content of the warning letter that refers to MK Bishara's political messages during the October 2000 events as incitement has no basis. There is no relevant factual foundation to support these claims, as the only medium through which MK Bishara addressed the public during this period were his weekly newspaper articles. The Commission did not seek nor did it investigate or examine these articles. These primary source documents clearly prove that there is no justification for including the content of the warning letter in the Commission's final conclusions.

ix. "As a way to achieve the goals of the Arab sector in Israel"

- It has never been claimed that the Arab leadership in Israel conveyed violent, inciteful messages in order to obtain rights for the Arab minority in Israel. There is no evidence or any research that proves that any Arab leader in Israel has supported the use of violence in order to achieve political goals. There has never been any violent activity with the aim of obtaining rights from state authorities in Israel. All of the events during which conflicts have erupted between Palestinian citizens of Israel and the police have generally related to citizens' defensive struggles for land and development rights - to prevent a house from being demolished or land from being confiscated. Yet, there has never been a call for violence.

- Since MK Bishara dealt with these issues, their characteristics, causes, and motives in his testimony, and the Commission deemed it appropriate to view a small number of questionable

quotations as advocating for violent struggle in order to “attain goals,” the content of the warning letter should not be included in the Commission’s final recommendations prior to a comprehensive investigation into these events. Yet, the Commission failed to investigate these events and their circumstances, and therefore, the Commission cannot include these initial conclusions in its final findings and recommendations as long as it failed to seek or to consider all of the relevant information.

x. The Causal Connection

- There was no evidence presented to the Commission that points to a causal connection between MK Bishara’s political messages and the October 2000 events. No testimony was heard which points to a causal connection, and the issue of causal connection was not raised in any of the testimonies before the Commission. The political discourse of the Arab minority in Israel was not researched, and no experts were called to testify and support the allegations contained in the warning letter.
- In light of the lack of any evidence that points to a causal connection, the Commission’s declaration will remain vague and speculative, and cannot be defended. Therefore, there is no justification to include these initial conclusions in the Commission’s final findings and recommendations. In any case, there is no evidence that proves the existence of any call for violence during October 2000 or otherwise in MK Bishara’s political messages.

xi. Conclusion

Based on all of the arguments raised, Adalah requested that the Commission refrain from including the content of the warning letter in its final findings, conclusions and recommendations.

EPILOGUE

The official Commission of Inquiry in Israel cannot be described as a Truth and Reconciliation Commission (TRC), like the one established to investigate the apartheid regime in South Africa. In the case of South Africa, the TRC was formed to heal South African society from the great injustice inflicted by the apartheid regime. The Commission in Israel was not formed and did not conduct its proceedings to heal the wounds imposed on Palestinian citizens of Israel by the events of October 2000.

In addition, the Commission in Israel is unlike the second commission of inquiry established by the British government in 1998 to investigate the events of Bloody Sunday-“The Bloody Sunday Tribunal.” The Bloody Sunday events occurred on 30 January 1972, when British security forces shot and killed 13 Catholic civil rights demonstrators in the city of Derry, Northern Ireland, who were protesting against the government’s internment practices. A Commission of Inquiry (“The Widgery Tribunal”) was established immediately after the events, and reports from the security forces were submitted to it. The Widgery Tribunal’s final report was fiercely disputed by the victims’ families, as it was based almost exclusively on security forces’ reports that falsely portrayed the protestors as responsible for creating a situation that posed a threat to the lives of the British security forces. For 26 years, the families undertook a persistent struggle, which finally and successfully resulted in the unprecedented establishment of a second commission of inquiry - the Bloody Sunday Tribunal. Drawing on lessons learned from the failure of the Widgery Tribunal, two foreign judges and one British judge were appointed to serve as members of the Bloody Sunday Tribunal. A large part of the Tribunal’s proceedings, which are still underway, were held in Derry, the same town where the killings took place.⁷⁴

Professor Dermot Walsh, a prominent legal scholar, wrote extensively and critically on the Widgery Tribunal, analyzing its work, findings and conclusions. Excerpts from his paper entitled, “The Bloody Sunday Tribunal of Inquiry [“The Widgery Tribunal”] - A Resounding Defeat for Truth, Justice and the Rule of Law,” were quoted during the early stages of the proceedings of the Bloody Sunday Tribunal. Professor Walsh also authored one of the most important books examining the proceedings of the Widgery Tribunal, including the evidence submitted to it. According to Professor Walsh:⁷⁵

It was emphatically no part of the tribunal’s function to make moral judgments. Unfortunately the tribunal’s report does not always stay within its own self-

⁷⁴ For more information on the Bloody Sunday Tribunals of Inquiry, see <http://www.bloody-sunday-inquiry.org.uk>.

⁷⁵ See Dermot P.J. Walsh, *Bloody Sunday and the Rule of Law in Northern Ireland* (New York: Palgrave Macmillan, 2000) at 88-89.

imposed constraints. More disturbing, however, is the fact that on those occasions when it does stray beyond them it almost invariably makes findings or judgments which are heavily biased in favor of the army...The effect of focusing on the government's perspective of the security situation and ignoring the perspectives and experiences of the local population and the civil rights lobby was clearly biased in itself.

There are at least two faults exposed by Professor Walsh concerning the proceedings of the Widgery Tribunal that are seemingly similar to those of the Commission in Israel: (a) The adoption of a negative position against the Irish population, including its leaders, as opposed to only making factual findings; and (b) reliance on biased government information.

An additional indicator that shows that the Commission in Israel is not a transitional justice mechanism is that it was established as a second option, following the government's unsuccessful attempt to make the Committee of Examination appear legitimate to the Arab public. In the same vein, several new ministers appointed by Prime Minister Ariel Sharon following the 2001 elections, expressed open resentment towards the Commission's proceedings. The Minister of Internal Security, Uzi Landau, repeatedly expressed strong opposition to the work of the Commission, and even promoted police commanders who were involved in the events of October 2000 and whose promotions had been frozen immediately thereafter. Minister Landau was quoted in the press as stating that: "It was a big mistake to establish the official Commission of Inquiry."⁷⁶ The Minister of Justice, Meir Sheetrit, publicly supported Alik Ron, the Police Commander of the Northern District during October 2000, and was even present at the Commission's hearings during Ron's testimony.

Leading up to October 2000, police commanders and officers, with the knowledge of ministerial-level political leaders, trained in a war-like fashion for the scenario of widespread public demonstrations by Arab citizens of Israel. They knew that protests in the Occupied Territories would be harshly suppressed by the military, and would result in the deaths and injury of many Palestinians. They foresaw that this harsh policy in the Occupied Territories could likely result in protests by Palestinian citizens of Israel. They dealt with these protests in Israel in a rapid, harsh and ultimately lethal manner, in accordance with prior training exercises, orders and directives.

The firing of live ammunition and rubber bullets by police and the use of police snipers was illegal and unwarranted. It was used to deter demonstrators and to "teach a lesson," and not to protect citizens or the police from any immediate danger. As of this writing, none of the people responsible for the killings and injuries of Palestinian citizens of Israel during

⁷⁶ Baruch Kra, "Landau Promoted Officers Whose Promotions were Frozen after October," *Ha'aretz*, 17 April 2001.

October 2000 have been indicted. The police praised themselves for their efficient use of snipers, who fired live ammunition for the purpose of deterrence. These police snipers shot individually, and at times, in groups of three, aiming at one person.

Then-Minister of Internal Security Shlomo Ben Ami praised the actions of police during November 2000, one month after the demonstrations. This occurred at a conference of police commanders, during which the police drew positive conclusions about their use of snipers. Then-Prime Minister Ehud Barak has been unsuccessful, to this day, in explaining why the decisive meeting that took place at his home on 1 October 2000 was not documented. He was also unable to explain the contradictory version of events regarding the lack of documentation of this meeting provided by his aides. Yet, the information provided to the Commission clearly proves that Barak's position regarding the opening of blocked roads by all means served to escalate the level of police violence against the demonstrators. Barak expressed this position in a radio interview on the morning of 2 October 2000, and during a government meeting that same morning. In the words of then-Prime Minister Barak, he gave the police a "green light for any action necessary." This order raises the question as to why the police would need a green light from the Prime Minister, if they have the authority under the law to maintain order?

During the radio interview, then-Prime Minister Barak deemed it necessary to complement the police for its work in controlling the demonstrations. He did so despite the fact that he was aware of one death and the injury of many others in the Umm al-Fahem area. Government ministers did not fulfill their duties to prevent the killing and injury of many Arab citizens of Israel by the police, but opted instead to support the police. Thus, former Prime Minister Ehud Barak and former Minister of Internal Security Shlomo Ben Ami as well as police commanders are directly responsible for the killing of 13 Arab citizens of Israel and the injury of hundreds of others in early October 2000.

APPENDICES

Appendix No. 1

COMMISSIONS OF INQUIRY LAW - 1968

1. Decision to set up commission.

When it appears to the Government that a matter exists which is at the time of vital public importance and requires clarification, it may decide to set up a commission of inquiry, which shall inquire into the matter and shall make a report to it.

2. Definition of subject of inquiry.

a) In the decision setting up a commission of inquiry, the Government shall define the matter, which is to be subject of the inquiry.

b) The government is authorized, in accordance with an approach by a commission of inquiry, to clarify, expand or limit the subject of the inquiry.

3. Number of members of a commission.

A commission of inquiry shall consist of three members unless the Government, after consultation with the President of the Supreme Court, determines that it shall consist of a greater uneven number of members.

4. Appointment of chairman and members of commission.

a) When the Government has decided to set up a commission of inquiry, it shall notify such fact to the President of the Supreme Court, who shall appoint the chairman and other members of the commission.

b) The chairman of the commission of inquiry shall be a Judge of the Supreme Court or a Judge of a District Court. Where a commission includes more than one judge, the Judge of the court of higher rank, and where it includes more than one Judge of a court of a particular rank, the one with the greatest length of service in that court shall be the chairman of the commission.

c) The appointment of a Judge as a member of a commission of inquiry shall not require the consent of the Minister of Justice under section 19 of the Judges Law, 1953.

d) A judge who has been appointed as chairperson or member of a commission of inquiry, who has retired or withdrawn from his position, will continue his tenure as chairperson or member of the same commission of inquiry.

5. Notice of setting-up of commission.

Notice of the setting-up of a commission of inquiry, of the subject of the inquiry, as defined by the Government, and of the names of the members of the commission shall be published in *Reshumot*.

6. Changes in membership.

a) If a member of a commission of inquiry has died or is permanently unable to carry out his functions, the President of the Supreme Court shall appoint another person to be a member of the commission in his place.

b) Where the composition of a commission of inquiry has changed, then, unless the commission otherwise decides, it shall continue its work from the stage which it had reached before the change.

7. Procedure.

A commission of inquiry shall prescribe the procedure for its work and deliberations in so far as it is not prescribed by this Law or by regulations hereunder.

8. Independence as to rules of procedure and rules of evidence.

a) Save as otherwise provided in this Law or in regulations made hereunder, a commission of inquiry is not bound to follow the rules of procedure of a court and it may admit any evidence in any manner deemed by it to be expedient and lay down procedure for the examination of witnesses.

b) Save as otherwise provided in this Law, a commission of inquiry is not bound by the rules of evidence.

9. Powers of chairman.

a) The chairman of a commission of inquiry may, with the sanction of the commission –

(1) summon, and re-summon, a person to attend before the commission and to testify or to produce documents or other exhibits in his possession;

(2) require a witness to testify on oath or affirmation in accordance with the provisions of the enactment applicable to the matter in a civil court;

(3) compel the attendance of a person who without satisfactory excuse has failed to comply with a summons under paragraph (1);

(4) order the taking of evidence abroad.

b) The powers of the chairman of a committee as to these matters shall be the same as those of a court in a civil proceeding.

10. Status of witness.

a) A person summoned to testify before or to produce a document or other exhibit to a commission of inquiry shall have the same duties as a person examined under section 2 of the Criminal Procedure (Evidence) Ordinance.

b) Subsection (a) shall not derogate from sections 5A to 5F of the Evidence Ordinance.

11. Refusal to testify.

a) Where a person –

(1) having been summoned to attend before a commission of inquiry has not so attended, or has attended but has without permission left the commission's place of sitting before giving evidence; or

(2) having been required to produce a document or other exhibit in his possession has not produced it; or

(3) having been lawfully required to take an oath or make an affirmation has not done so; or

(4) having been lawfully required to answer a question has not answered it or has knowingly given an evasive answer, the chairman of the commission may, with the sanction of the commission, impose on him, even in his absence, a fine not exceeding 200 pounds.

b) Where the chairman of the commission of inquiry has imposed a fine under subsection (a) on a person in his absence, he may, on the application of that person and with the sanction of the commission, reconsider the fine and may reduce or cancel it, and he shall cancel it if he is satisfied that the applicant refrained from doing as required for reasons beyond his control.

c) Where the chairman of the commission of inquiry has imposed a fine under subsection (a), he shall immediately notify such fact, in writing, to the President of the Supreme Court, and the President or another Judge of the Supreme Court may, upon the application of the person on whom the fine has been imposed or otherwise, cancel or reduce the fine.

d) A fine imposed under subsection (a) shall be collected like a fine imposed by a court in a criminal proceeding.

e) Where a person, having failed to comply on being summoned or required as specified in subsection (a), is again so summoned or required and without reasonable excuse again fails to comply, he shall be liable to imprisonment for a term of two years. The imposition of a fine under subsection (a) shall not prevent the filing of a charge under this subsection.

12. Search warrant.

Where it appears to a commission of inquiry that a search should be made in order to ensure the production of a document or other exhibit required for the inquiry, the chairman of the commission may issue a search warrant. The warrant shall be issued and executed in like manner as a search warrant under the Criminal Procedure (Arrest and Searches) Ordinance.

13. Collection of material.

a) Where it appears to the commission that it is necessary to collect material required for the inquiry, the chairman of the commission may assign this task to a person who in the opinion of the commission is qualified for it.

b) Where the commission sees fit to entrust the collection of material to an attorney of the State Attorney's Department or to a police officer, the same shall be placed at its disposal by the Attorney-General or by the Inspector-General of the Israel Police, as the case may be.

c) Sections 9(a) (1) and 10 shall apply to the collection of material under this section.

14. Status of testimony.

Testimony given before a commission of inquiry or before a person entrusted with the collection of material under section 13 shall not be evidence in any legal proceeding, other than a criminal action in respect of the giving of that testimony.

15. Person likely to be harmed.

a) Where it appears to a commission of inquiry that a particular person is likely to be harmed by the inquiry or by its results, the chairman of the commission shall notify that person in what respect he is likely to be harmed and shall place at his disposal, in such a manner as he may think fit, such evidence relevant to that potential harm as is in the possession of the commission or of a person entrusted with the collection of material under section 13.

b) A person notified under subsection (a) may attend before the commission either himself or through an advocate, make statements and examine witnesses (even if they have already testified before the committee), and the commission may permit him to present evidence, all in relation to the said potential harm.

c) A person at whose disposal evidence has been placed under subsection (a) shall not publish any part thereof without the prior approval of the commission.

d) Despite what is stated in small paragraph (a) a commission of inquiry is authorized not to notify an individual, as aforementioned, as long as it has been convinced that the process of the investigation can not harm this individual and its conclusions will not include findings, conclusions or make any recommendations regarding this individual.

16. Attorney-General

The Attorney-General may, himself, or through his representative, attend before a commission of inquiry, within the framework of the procedure laid down under section 7 and 8, take part in the examination of witnesses and make statements, and he shall do so if the commission so requests.

17. Appointment of advocate.

A commission of inquiry may instruct an advocate not in the State Service to assist it in any matter it may think fit, including the examination of witnesses testifying before it.

18. Publicity of hearings.

a) A commission of inquiry shall deliberate in public: Provided that it may hold the whole or part of any hearing *in camera* if it deems it necessary so to do in the interest of protecting the security of the State, safeguarding morality or safeguarding the welfare of a minor.

b) The provisions of sections 38(d), 39, 40(b), (d) and (e), 41, 42 and 43 of the Courts Law, 1957, shall apply *mutatis mutandis* to a commission of inquiry, and the provisions of section 38 of the Penal Law (State Security, Foreign Relations and Official Secrets) Law, 1957, shall apply *mutatis mutandis* to a person who attends before a commission under section 15. The powers vested in the court by the said provisions shall vest in the chairman of the commission.

19. Report of commission.

a) Upon completion of its proceedings, a commission of inquiry shall prepare a report of the results of its inquiry and, if it sees fit to add recommendations, of such recommendations, and shall submit such report to the Government.

b) Where a member of the commission dissents from the commission's report, his dissenting opinion shall be attached to such report.

20. Publication.

a) A commission of inquiry shall publish its report shortly after its submission to the Government: Provided that it may refrain from publishing the whole or part of the report if it deems it necessary so to do in the interest of protecting the security of the State, safeguarding morality, or safeguarding the welfare of a minor.

b) If the commission decides not to publish anything of its report, it shall publicly announce the submission of the report to the Government and its decision not to publish it.

c) The commission may, if it sees fit so to do, publish the whole or part of the minutes of its proceedings.

21. The right of a suspect.

If the report of a commission of inquiry raises a suspicion that a particular person has committed an offence, and it has been decided not to bring him to trial for that offence, the Attorney General shall, on his application, notify him of the reasons for the decision and, on his application, publish such reasons.

22. Report not evidence.

The report of a commission of inquiry shall not be evidence in any legal proceeding.

23. Subject requiring secrecy.

Where the Government, with the approval of the Foreign Affairs and Security Committee of the Knesset, determines that the subject-matter of the inquiry, or the proceedings of the commission, requires or require secrecy, the following provisions shall apply, unless the Government, with approval as aforesaid, decides to deviate from all or part of them:

- 1) a notice of the setting-up of the commission of inquiry shall not be published;
- 2) the provisions of section 38 of the Penal Law (State Security, Foreign Relations and Official Secrets) Law, 1957, shall apply *mutatis mutandis*;
- 3) a person who attends before the commission under section 15 shall only be represented by an advocate authorized to act as defense counsel under section 18 of the Military Justice Law, 1955;
- 4) the proceedings of the commission shall be held *in camera*;
- 5) the commission shall submit its report also to the Foreign Affairs and Security Committee of the Knesset;

6) the commission shall not publish its report or the minutes of its proceedings.

24. Immunity of member of commission.

A person who serves or has served as a member of a commission of inquiry shall, in connection with his function as a member of the commission, have every immunity granted by law to a Judge, and, for the purposes of section 131 of the Criminal Code Ordinance, 1936, he shall be deemed to be a Judge.

24A. Unlawful Influence.

a) Any person who influences or attempts to influence illegally on the Commission of inquiry or on one of its members regarding its work is subject to one-year imprisonment.

b) Submitting information to the commission of inquiry or one of its members or directing its attention to a subject or an issue that relates to the work of the commission is not a crime according to this article.

25. Amendment of Criminal Code Ordinance, 1936.

In the Criminal Code Ordinance, 1936 –

1) the words “or commission of inquiry” shall be inserted after the words “or tribunal” in the fourth paragraph of section 117(1);

2) the words “or commission of inquiry” shall be inserted after the words “or tribunal” in section 119;

3) the words “and also a commission of inquiry or a person appointed under section 13 of the Commissions of Inquiry Law, 1968” shall be inserted at the end of the definition of “authority” in section 120A.

4) the words “or a commission of inquiry in accordance with the commission of inquiry law, 1968” shall be inserted following the words “in court” in section 127.

5) the words “or a commission of inquiry in accordance with the words “or a commission of inquiry in accordance with the commission of inquiry law, 1968” shall be inserted following the words “in court” in section 139.

6) the words “or a member of a commission of inquiry in accordance with the commission of inquiry law, 1968” shall be inserted following the words “or a judge” in section 144.

26. Prohibition of publication.

a) A person who, without approval, publishes any part of material placed at his disposal under section 15 or who publishes any part of the proceedings of a commission of inquiry held in camera or of any unpublished report or minutes of a commission of inquiry shall be liable to imprisonment for a term of six months.

b) The government is authorized by a decree and the confirmation of a Knesset committee, which the government has petitioned, to permit the review or publication of unpublished reports of a commission of inquiry or anything else mentioned in small paragraph (a), or part of herewith

27. Expenses and remuneration.

a) A member of a commission of inquiry is entitled to receive expenses in amounts fixed by the Director of Courts. The Director of Courts may award to a member of a commission of inquiry a remuneration of an amount fixed by him if he deems it justified to do so in the circumstances of the case.

b) Where a witness has been summoned to testify, or to produce any document or other exhibit, before a commission of inquiry, the chairman of the commission may award him traveling and lodging expenses, and a loss-of-working-time allowance, as if he were a witness summoned to testify before a court.

c) A person not in the State Service charged with the collection of material under section 13 or an advocate charged with a task under section 17A is entitled to receive, in addition to reasonable expenses, remuneration of an amount fixed by the commission.

d) Where a person has attended before a commission of inquiry under section 15, the commission may award him expenses, including representation expenses, of an amount fixed by it.

e) The amounts referred to in this section shall be paid out of the Treasury.

28. Saving of powers and adaptation of enactments.

a) This law shall not derogate from the power of a Minister to appoint an investigation commission to examine any matter within the scope of his functions so long as a commission of inquiry under this Law has not been appointed in respect thereof. Where a commission of inquiry has been appointed, an investigation committee shall not continue its activity.

b) Wherever under any enactment a person or authority is or may be granted powers of a commission of inquiry under the Commissions of Inquiry Ordinance, and wherever

a person or authority has been empowered by any enactment to collect evidence for the purpose of exercising his or its power under any law, the provisions of sections 9 to 11 shall apply to him or it *mutatis mutandis*.

29. Prevention of delegation.

The powers of the Government under this Law are not delegable.

30. Repeal.

The Commission of Inquiry Ordinance is hereby repealed.

31. Implementation and regulations.

The Minister of Justice is charged with the implementation of this Law and may make regulations as to any matter relating to such implementation, including the procedure of commissions of inquiry.

Appendix No. 2

THE MANDATE OF THE OFFICIAL COMMISSION OF INQUIRY

Government Secretariat Government Decision Number 2490 - 8 November 2000

2490 - Establishment of a Commission of Inquiry for Investigating the Clashes between Security Forces and Israeli Citizens Beginning 29 September 2000

Decision: (eight votes in favor, one vote against, one abstention)

A. To determine that the clashes beginning 29 September 2000 between security forces and Jewish and Arab citizens during which, *inter alia*, Israeli citizens were killed and injured is an issue of vital public significance at this point in time which requires clarification;

B. In accordance with the above:

- 1) To establish a commission of inquiry in accordance with Article 1 of the Commissions of Inquiry Law, 1968 concerning the aforementioned event;
- 2) The commission will investigate the sequence of events and will determine its findings and conclusions regarding what occurred during these events and regarding the causes leading to their occurrence at that time, including the conduct of the inciters, organizers, participants in these events from all sectors, and the security forces;
- 3) Following the recommendation of the chairperson of the committee of examination, former Justice Shalom Brenner, to the Prime Minister, regarding the termination of the committee of examination's activity and the appointment of the commission of inquiry, stemming from the authority of Article 28(a) of the Commissions of Inquiry Law, 1968, the committee of examination will not carry on its activities;
- 4) The commission will submit its recommendations and conclusions to the government, as it deems appropriate.
- 5) To inform the Supreme Court of this decision.

Appendix No. 3

DECISION OF THE OFFICIAL COMMISSION OF INQUIRY REGARDING THE WARNING LETTERS

DECISION

Section 15 of the Commissions of Inquiry Law, 5729 – 1968, requires a commission of inquiry to inform a person who may be harmed by the inquiry in what respect he may be adversely affected. The text of the section is as follows:

- (a) Where it appears to a commission of inquiry that a particular person is likely to be harmed by the inquiry or by its results, the chairman of the commission shall notify that person in what respect he is likely to be harmed and shall place at his disposal, in such manner as he may think fit, such evidence relevant to that potential harm as is in the possession of the commission or of a person entrusted with the collection of material under section 13. If that first-mentioned person has died or the notification cannot be delivered to him for any other reason, the commission of inquiry may, if it deems it necessary in the interests of justice, decide that the notification shall be delivered to any such relative of his as it may prescribe, and the chairman of the commission shall place the evidence at the disposal of such relative.
- (b) A person notified under subsection (a) may attend before the commission either himself or through an advocate, make statements and examine witnesses (even if they have already testified before the commission), and the commission may permit him to present evidence, all in relation to the said potential harm.
- (c) A person at whose disposal evidence has been placed under subsection (a) shall not publish any part thereof without the prior approval of the commission.
- (d) Notwithstanding the provisions of subsection (a), a commission of inquiry may refrain from notifying a person as provided in that subsection so long as it is satisfied that he is not adversely affected by the progress of the inquiry and as its report does not contain any findings or conclusions, or make any recommendations, concerning him.

During the Commission's work, some 530 statements have been taken and thousands of exhibits presented. The Commission itself has heard the testimony of 349 witnesses. The Letter of Appointment of the Commission includes several matters of importance. These matters relate to numerous events and to the acts and deeds of many persons. The Commission is unable to relate to every act and to every person who was involved in the matters under investigation, particularly because it has committed itself to present its

conclusions to the government within a reasonable amount of time. Therefore, among the many persons who were connected to, or caused, the events of October 2000, the Commission chose to deal with the persons whose responsibility and involvement were the most conspicuous in the matters to which the Commission intends to relate.

Furthermore, in some matters, the investigation material before the Commission was insufficient to place responsibility, even *prima facie*, on a specific person. Therefore, in these matters, no notices were sent pursuant to section 15 of the Law. However, because of their importance, these matters will be discussed in the Commission's final report.

Based on the aforesaid, and on the investigation material that the Commission gathered in the context of its Letter of Appointment, the Commission concluded that the following persons are liable to be harmed by the inquiry or its results, as detailed below.

1. **Mr. Ehud Barak**, former Prime Minister, is likely to be harmed if the Commission concludes that:

A. In his capacity as Prime Minister of Israel, he was not sufficiently aware of the changes taking place in the Arab community in Israel during his term in office. These created a substantial possibility that riots would break out on a large scale. One example of this failure was his disregard for the requests and recommendations to hold a meeting with all the relevant bodies and institutions regarding the matter, and he did not, in fact, hold such a meeting. As a result, he was also not sufficiently involved in the necessity of proper preparation of the Israel police force to cope with the riots. He thus failed to be sufficiently involved in a matter that is of strategic importance to Israel and to the well-being of its citizens.

B. In his capacity as Prime Minister of Israel during the events of October 2000, on October 2, he directed the police to use every means to keep the roads open, with specific reference to Route 65 (the Wadi Ara Road), thus ignoring the many casualties, including fatalities, that could have, and should have, been anticipated as a result of the order, and that it was liable to further inflame the riots. In so doing, he failed to properly balance the need to maintain law and order and the need to refrain from causing the loss of life and limb, and also did not give proper weight to the need to calm the situation and prevent the events from continuing.

C. In his capacity as Prime Minister of Israel during the events of October 2000, he was not sufficiently involved, on October 1 and October 2, in the events taking place in the country, even after he knew about the severity of the events that occurred on October 1, that a person had been killed that day, and, as a result, the riots would likely escalate the next day. On those days, he also failed to take sufficient action to prevent or limit the use of lethal means by the police, and did not do enough to calm the situation while it was

taking place. In this context, he failed to meet with Israel's Arab leadership until October 3, notwithstanding that intelligence officials had informed him, in response to his request, that such a meeting, if held without delay, would likely bring about a substantial calming of the situation.

D. In his capacity as Prime Minister of Israel during the events of October 2000, he failed to demand that the police or the persons in charge of police activity provide concrete, complete, and detailed reports as early as possible on police actions in incidents in which citizens were killed or seriously wounded, and on the reasons, in each such event, for the injury to life or limb. He thus failed to perform his duty to obtain, as early as possible, the information required to make decisions and to give intelligent directives on the handling of the events of October 2000 and their consequences.

E. In his capacity as Prime Minister of Israel during the events of October 2000, he failed to ensure adequate documentation of situation assessments that were made under his supervision on September 30 and October 1, including orderly, clear, and binding documentation of the directives that he issued in summarizing these situation assessments.

2. **Prof. Shlomo Ben Ami**, Member of Knesset, former Minister of Internal Security, is likely to be harmed if the Commission concludes that:

A. In his capacity as Minister of Internal Security during the period prior to the events of October 2000, he did not do enough to make sure the police would be ready to handle widespread riots in the Arab sector even though he was aware of the changes that were taking place in the Arab community during this period and the increased danger that such disturbances would erupt. In this context, he was not sufficiently involved in police preparations for events of this kind, did not take sufficient initiative to obtain information on the preparations that the police were making for events of this kind, and did not show sufficient awareness of the need for proper training of police forces to cope with events of this kind.

B. In his capacity as Minister of Internal Security during the period before and during the first days of the events of October 2000, he was not sufficiently aware of the dangers involved in the use of rubber-coated bullets in dispersing riots, and did not take the necessary measures to prevent or limit their use during these kinds of events. He knew, or should have known, of the great danger entailed in the use of this kind of ammunition and the grave results - the loss of life and limb - that its use would likely and did, in fact, cause.

C. In his capacity as Minister of Internal Security, he was not sufficiently involved on October 1 and October 2 in the police's preparations in the areas where violent events were likely to take place, and did not verify that the police were properly prepared in these areas.

D. In his capacity as Minister of Internal Security, he was involved in the issuance of the order that was given to the police on October 2 to use every means to keep the roads open, with specific reference to Route 65 (the Wadi Ara Road), thus ignoring the many casualties, including fatalities, that could have, and should have, been anticipated as a result of the order, and that it was liable to further inflame the riots. In so doing, he failed to properly balance the need to maintain law and order and the need to refrain from causing the loss of life and limb, and also did not give proper weight to the need to calm the situation and prevent the events from continuing.

E. In his capacity as Minister of Internal Security during the events of October 2000, he did not act with sufficient vigor and determination in supervising the police's actions, as required by his position and the severity of the events. He failed to demand that the police or the persons in charge of police activity provide concrete, complete, and detailed reports as early as possible on police actions in specific incidents in which citizens were killed or seriously wounded, and on the reasons, in each such event, for the injury to life or limb. He thus failed to perform his duty to obtain, as early as possible, the information required to make decisions and to give intelligent directives on the handling of the events of October 2000 and their consequences.

3. **Sheikh Ra'ed Salah**, former Mayor of Umm al-Fahem, is likely to be harmed if the Commission concludes that:

A. In his capacity as head of the northern faction of the Islamic movement, mayor of Umm al-Fahem, and a public figure, in the period before the October events, including the period 1998 – 2000, he was responsible for conveying repeated messages encouraging the use of violence and threats of violence as a means of achieving goals of the Arab sector in Israel. These messages also related to a goal defined as the liberation of al-Aqsa mosque. In addition, he organized mass assemblies and used inflammatory methods of propaganda to create a public outcry surrounding this sensitive issue. He thus significantly inflamed passions and the violent and widespread rioting that took place in the Arab sector beginning in October 2000.

B. In his capacity as head of the northern faction of the Islamic movement, mayor of Umm al-Fahem, and a public figure, in the period before the October events, including the period 1998 – 2000, he was responsible for conveying repeated messages denying the legitimacy of the existence of Israel and portraying the state as an enemy. He thus

significantly inflamed passions and the violent and extensive rioting that took place in the Arab sector beginning in October 2000.

C. In his capacity as head of the northern faction of the Islamic movement, mayor of Umm al-Fahem, and a public figure, in the period before the October events, he was responsible for conveying messages regarding the existence of a purported planned massacre in al-Aqsa mosque on September 29, 2000. He thus significantly inflamed passions and the violent and widespread rioting that took place in the Arab sector beginning in October 2000. He was responsible for comments that praised the grave and extensive violent disturbances that took place in the Arab sector in the beginning of October 2000, while the events were still taking place.

4. **Dr. Azmi Bishara**, Member of Knesset, is likely to be harmed if the Commission concludes that:

In his capacity as head of the BALAD political party, Member of Knesset, and public figure, in the period before the October events, primarily the period 1998 – 2000, he was responsible for conveying messages supporting violence as a means to attain the goals of the Arab sector in Israel, thus significantly enflaming passions and aggravating the violence that took place in the Arab sector in the beginning of October 2000.

5. **Mr. ‘Abd al-Malek Dahamshe**, Member of Knesset, is likely to be harmed if the Commission concludes that:

In his capacity as head of the United Arab List political party, Member of Knesset, and public figure, in the period before the October events, primarily the period 1998 – 2000, he was responsible for conveying messages supporting violence as a means to attain the goals of the Arab sector in Israel, thus significantly enflaming passions and aggravating the violence that took place in the Arab sector in the beginning of October 2000.

6. **Mr. Yehuda Vilk**, former police commissioner, is likely to be harmed if the Commission concludes that:

A. In his capacity as police commissioner, before the events of October 2000, he did not equip the police with the kind and quantity of means necessary for riot control, including a sufficient quantity of tear gas to disperse demonstrations, thus causing the extremely dangerous use of rubber-coated bullets to be the principal means available to the police to disperse the riots. He also failed to properly arrange, among the various parts of the country, the means possessed by the police for riot control, in part because he did not

allocate sufficient means to the northern district of the police department to cope with the anticipated grave events. In addition, during the same period, he did not sufficiently prepare the police, by providing proper training, for the severe riots that he could have, or should have, anticipated would take place in the Arab sector.

B. In his capacity as police commissioner, notwithstanding the grave events on the Temple Mount on September 29, in which people were killed, and despite the severe violent events that took place in Judea and Samara and in the Gaza Strip on September 29 and 30, and even though he anticipated the possibility of violent events among Arab Israelis on October 1, he did not act properly in preparation for and during October 1, and did not order the proper police readiness on October 1 to meet this possibility, primarily in the northern district.

C. In his capacity as police commissioner during the period that preceded the events of October 2000, he did not examine the implications and consequences of the use of rubber-coated bullets or of the orders to use them, even though he knew of the serious, including lethal, consequences of the use of rubber-coated bullets. As police commissioner during this period, he did not act sufficiently to develop and have the police use non-lethal measures to disperse disturbances.

D. In his capacity as police commissioner during the events of October 2000, he did not perform or ensure proper supervision and control of the use of rubber-coated bullets, and allowed their large scale use during the events. He thus acted contrary to the directive of the political echelon that was given on September 21 not to use this ammunition in incidents involving Arab Israelis, although he was aware of the serious and at times lethal danger inherent in the use of rubber-coated bullets. In addition, he did not sufficiently instruct the police forces to use the non-lethal means available to it in dispersing the disturbances.

E. In his capacity as police commissioner during the relevant period, he did not implement or ensure the implementation of the lessons that were learned from the events that took place in September 1998 in Umm al-Fahem regarding the excessive use of rubber-coated bullets, in controlling the forces during disturbances, and in properly training the forces handling disturbances.

F. In his capacity as police commissioner, he did not act properly in preparation for and during October 2 in that, even though he could have, or should have anticipated a further escalation of the grave events that took place in the Arab sector on October 1, he did not order sufficient police preparations to cope with the events, particularly in the police's northern district. In this context, he failed to order the sufficient quantity and quality of police forces to that district.

G. In his capacity as police commissioner, he ordered that every means be used to keep the roads open on and during October 2, particularly Route 65 (the Wadi ‘Ara Road), without properly considering the necessary balance between the need to reinstitute order and the need to prevent casualties following police actions, and without giving proper weight to the need to calm passions and prevent the riots from continuing.

H. In his capacity as police commissioner, he did not respond with the requisite efficiency and vigor to the initial events in which citizens were killed during the October 2000 events, to prevent further casualties, in part by failing to issue proper orders to prevent such casualties and to calm passions.

I. In his capacity as police commissioner, he did not act as soon as possible to initiate the orderly investigation of the October 2000 events, including the failure to order such investigations, particularly of the events in which the confrontations led to the use of live or rubber-coated ammunition, and of incidents that resulted in casualties.

J. In his capacity as police commissioner, he did not ensure sufficient documentation of the activity of the police and police officers in the events in which they took part during the October 2000 riots. He did not order or verify that each police officer who took part in the events prepared, at the earliest possible time, a detailed report of his actions, and of the police’s actions in which he took part. This omission reflected a failure to implement one of the lessons of the events of September 1998 in Umm al-Fahem.

K. In his capacity as police commissioner, he knew, no later than October 10, that sniper fire was used during the October 2000 events, and did not act properly as police commissioner, as follows: (a) he did not reveal the relevant facts to the political echelon; (b) he did not take any action to ensure that the requisite conclusions regarding norms and personnel be made concerning the use of snipers during the events; (c) during the learning of lessons process that was held following the October 2000 events, he expressed, by his behavior, that he retroactively agreed with the use of snipers as a means of deterrence.

7. **Mr. Alexander (Alik) Ron**, police Major General, is likely to be harmed if the Commission concludes that:

A. In his capacity as commander of the Northern Police District in the period before the events of October 2000, he contributed, by word and deed, to the ugly relations, often to the point of breaking off contact altogether, between himself and the Arab leadership in the Northern District. He thus made it difficult for him to perform his duties and for the police forces under his supervision to perform their duties in this sensitive district. During the events of October 2000, these poor relations also affected his ability to converse with these leaders to calm the situation.

B. In his capacity as commander of the Northern Police District in the period before the events of October 2000, he did not properly prepare the police district under his command for wide-scale disturbances that were likely to erupt within the district. In this context, he failed to implement directives to prepare a prospective plan that would meet such a possibility, and did not act to apply the lessons learned from the riots that had occurred in Umm al-Fahem in September 1998, including the excessive use of rubber-coated bullets and control of the forces during disturbances.

C. In his capacity as commander of the Northern Police District, he failed to sufficiently prepare the police forces in the district for and during October 1, even though he could have, or should have, anticipated disturbances on October 1.

D. In his capacity as commander of the Northern Police District, on October 1 and October 2, he was insufficiently involved in obtaining the updated, complete, and detailed information that, under the circumstances, could have been obtained on the events taking place in the district for which he was responsible. In this context, he failed to operate a mobile forward command room attached to him, as required by police regulations. The above affected his ability to direct police activity during the many events that took place in the district.

E. In his capacity as commander of the Northern Police District, he did not respond to the initial events in which citizens were killed during the events of October 2000 with the requisite efficiency and vigor to prevent further casualties. In this context, he did not issue appropriate orders intended to prevent such harm or to bring about calm.

F. In his capacity as commander of the Northern Police District, on October 2, he did not act sufficiently to employ police forces of sufficient quantity and quality to the Misgav area, though in the recent and distant past serious events had taken place in that area, and he was, or should have been, aware that it was very likely that such events were liable to take place in that area.

G. In his capacity as commander of the Northern Police District, he was responsible for the use of sniper fire during the severe confrontation between the police under his command and the rioters on October 2 in Umm al-Fahem. This shooting was unjustified. At least seven people were wounded and one was killed as a result. In this context, he personally commanded and issued instructions to the snipers to fire at stonethrowers without justification and in violation of the rules governing the use of live fire by the police. In addition to the shooting being unjustified, the following acts and omissions should be mentioned: (a) it was unjustified to employ a shooting format in which three snipers fired simultaneously at each stonethrower; (b) wide-diameter bullets were used in the firing; (c) the general circumstances indicate that the sniper fire was intended to deter

and to disperse disturbances, in violation of police directives; (d) before the sniper fire, no warning was given to the persons taking part in the riots that live fire would be used, in violation of police regulations contrary to the necessity of refraining as much as possible from creating needless risk to life and health; (e) after the sniper fire, he failed to document the sniper fire or its consequences, although such documentation was called for under the circumstances and by police regulations; (f) after the sniper fire, he did not report it to the police commissioner, the Minister of Internal Security, or during the situation assessment headed by the Prime Minister on the evening of October 2, although such report was called for under the circumstances and by police regulations.

H. In his capacity as commander of the Northern Police District, he ordered the use of snipers, or allowed sniper fire, against stonethrowers in Nazareth on October 2, without justification and in violation of the police regulations on the use of live fire. Three persons were wounded as a result. After the incident, he failed to investigate the consequences of his order to use live fire, and subsequently refrained from documenting his order to use snipers in Nazareth.

I. In his capacity as head of the Northern Police District during the events of October 2000, he did not order and failed to ensure that, in dispersing the riots, he did not use measures that would cause less injury to life and limb. During the events of October 2000, he also failed to properly supervise and control the use of rubber-coated bullets in events that took place in the northern district, and without justification allowed their extensive use, though he was, or should have been, aware of the grave risk, including the risk of causing death, inherent in the use of rubber-coated bullets.

J. In his capacity as head of the Northern Police District during the events of October 2000, he did not act to ensure, as early as possible, orderly investigations into the events in the northern district, with particular reference to the events where there were confrontations that led to the use of live fire or rubber-coated bullets, and of events where there were casualties. He thus failed to comply with the police commissioner's directive to conduct such investigations.

K. In his capacity as head of the Northern Police District during the events of October 2000, he failed to adequately document the activity of the police in the events in which they took part regarding the events of October 2000. In this context, he did not order or verify that all the police officers who had been involved prepared, as soon as possible, a detailed report on his actions and on the actions of the police forces in which he took part. This omission also prevented implementation of one of the lessons learned from the events of September 1998 in Umm al-Fahem.

8. **Mr. Moshe Waldman**, police Brigadier General, is likely to be harmed if the Commission concludes that:

A. In his capacity as commander of the Amakim Region police, in the confrontations that took place in Nazareth on October 2, he was responsible for the use of live sniper fire without justification and in violation of police regulations and directives. In this context: (a) without justification, and in violation of binding police regulations and directives, he instructed the snipers to open live fire; (b) in three instances, without justification, he ordered and personally approved live sniper fire at stonethrowers; (c) he did not adequately supervise the shooting and its execution; (d) he was responsible for the use of live sniper fire that, under the circumstances, indicates it was intended to deter and disperse disturbances; (e) did not ensure documentation of any kind of the sniper fire or its consequences, or report on the sniper fire to the head of the Northern Police District, or others, although such documentation and reporting were called for under the circumstances and by police regulations.

B. In his capacity as commander of the Amakim Region police during the events of October 2000, he also failed to properly supervise and control the use of rubber-coated bullets in events that took place in the region, and without justification allowed their extensive use, although he was, or should have been, aware of the serious risk, including the risk of death, inherent in the use of rubber-coated bullets.

C. In his capacity as commander of the Amakim Region police during the events of October 2000, he did not order and failed to ensure that, in dispersing the disturbances, he did not use measures that would cause less injury to life and limb.

D. In his capacity as commander of the Amakim Region police, on October 8, he commanded police forces in an incident in the area of the junction of the mall in Nazareth in which two citizens were killed and many wounded, five by live fire apparently by the police. In this incident, without justification and in violation of police regulations and directives, he issued the order to fire, or permitted the firing to take place. After the incident, he did not conduct an orderly investigation of the incident, as called for under the circumstances and in violation of police regulations and directives. Furthermore, he closely monitored the investigation of the incident that took place at the mall junction on October 8, and even instructed the investigators, who were under his command, despite a personal conflict of interest resulting from his personal involvement in the incident as commander of the police forces at the location.

E. In his capacity as commander of the Amakim Region police during the events of October 2000, he did not act to ensure, as early as possible, orderly investigations into the events in the region, with particular reference to the events where live fire or rubber-coated bullets were used, and to events in which there were casualties. He thus failed to comply with the police commissioner's directive of October 8 to conduct such investigations.

F. In his capacity as commander of the Amakim Region police during the events of October 2000, he failed to adequately document, including in writing, the activity of the police in the events in which they took part. In this context, he did not order or verify that each of the police officers who took part in the events prepared, as soon as possible, a detailed report on his actions and on the actions of the police forces in which he took part.

9. **Mr. Benzy Sau**, police Brigadier General, is likely to be harmed if the Commission concludes that:

A. In his capacity as Northern District commander of the Border Police, and in his capacity as commander of the Wadi Ara area during the events of October 2000, on October 1 at the Umm al-Fahem junction on Route 65 (the Wadi Ara Road), he was involved in a prolonged confrontation, which lasted several hours, against citizens who were taking part in the riots. The confrontation was unjustified and contrary to the district's policy, set that morning, to close roads where there were riots. In the confrontation that developed as a result of the actions that he ordered and commanded, two citizens were killed and many wounded.

B. In his capacity as Northern District commander of the Border Police, and in his capacity as commander of the Wadi Ara area during the events of October 2000, on October 1, without justification and contrary to the policy and directives of the district's command not to enter Arab villages during the demonstrations, he sent police forces into Umm al-Fahem to seize the building known as "The Red House." For several hours, the police forces were involved in a confrontation surrounding the house with citizens who had taken part in the riots. During the confrontation, the police fired many rubber bullets and even live ammunition. Two citizens were killed and many wounded as a result.

C. In his capacity as Northern District commander of the Border Police, and in his capacity as commander of the Wadi 'Ara area during the events of October 2000, on the afternoon of October 2, he was responsible, or jointly responsible, for unjustifiably using live sniper fire at stonethrowers at the Umm al-Fahem junction. In addition to the lack of justification for the firing and to the resultant casualties, the following acts and omissions should be mentioned: (a) it was unjustified to employ a shooting format in which three snipers fired simultaneously at each stonethrower; (b) wide-diameter bullets were used in the firing; (c) the general circumstances indicate that the sniper fire was intended to deter and to disperse disturbances, in violation of police directives and without justification; (d) before the sniper fire, no warning was given to the persons taking part in the riots that live fire would be used, in violation of police regulations and contrary to the necessity of refraining as much as possible from creating needless risk to life and health.

10. **Mr. Yaron Meir**, police chief superintendent, is likely to be harmed if the Commission concludes that:

In his capacity as police operations officer for the Galilee Region, and as commander of the Misgav area on October 2, he failed to perform his duties as required, as follows:

On October 2, contrary to the relevant orders and directives and to the needs called for under the circumstances, he did not ensure that police forces were positioned in the Tridion industrial zone. In this context, he also improperly used the police forces available to him that day, and did not properly allot these forces to meet the circumstances. The lack of police forces created a risk of escalation of the rioting. This risk was realized in an incident at that location on that day, in which two citizens were killed and many wounded.

11. **Mr. Shmuel Mermelstein**, police chief superintendent, is likely to be harmed if the Commission concludes that:

In his capacity as acting commander of the Nazareth police station, on October 3, contrary to directives and regulations, he was responsible for stationing snipers and for sniper fire in Nazareth, as follows: (a) in his capacity as station commander, he was responsible for the decision to station and instruct snipers, even though, according to the regulations and directives, such the authority is granted to persons holding the rank of regional commander and higher; (b) he gave the snipers prior authorization to fire according to the general directives he had issued to them, without instructing them that each and every shot must be approved in advance by him. The firing took place without the granting of such prior authorization; (c) he ordered the snipers to fire live ammunition also in situations that were not life threatening, in violation of police open-fire regulations and directives; (d) he did not act to obtain orderly reports at the critical time as to each shot that was fired, or when the shooting that day ceased, and only later received reports on the sniper fire that took place that day.

12. **Mr. Guy Raif**, police superintendent, is likely to be harmed if the Commission concludes that:

In his capacity as commander of the Misgav police station during the events of October 2000, he failed to act as a commander of his rank and position should have acted. In this context: (a) he repeatedly arrived at the scene of the disturbances alone or accompanied by one policeman, and without the proper means, either of personnel or of means to disperse demonstrations, to cope with the relevant events. The failures took place on October 1 at the Maslahit junction, and on October 2 at the Lotem junction and near the Tridion industrial zone. He thus failed to exercise the judgment expected of a commander holding

his rank and position, creating an unreasonable risk of escalation of the rioting. This risk was realized when he used live fire in each of the incidents; (b) on October 2, in the Tirodion industrial zone, he was caught in a situation that he could have prevented, where he entered into a confrontation with dozens of young stonethrowers. During this incident, without justification, he used, *inter alia*, live fire at the young people, causing the death of two citizens and the wounding of many others; (c) on October 3, during the disturbances that took place in Kufr Manda, without justification and in violation of police directives and regulations, he used live fire.

13. **Mr. N. Y.**, police master sergeant, is likely to be harmed if the Commission concludes that:

In his capacity as a policeman in the anti-terrorist unit, in the evening of October 2, in Nazareth, he was in charge of a team that used live fire without justification and in violation of the relevant directives, as follows: (a) without justification, he personally used live fire at a person who had thrown a petrol bomb that did not endanger him or other police officers who were involved in the action that evening at that location; (b) later that evening, he did not ensure that the forces under his command were clearly identified as police forces, and this created the risk, which was realized, that the police officers would not be identified as such by citizens who were in the area. He was the first to fire, without justification, in the incident in which three members of the anti-terror squad opened live fire at a car that was moving on the street referred to as the Banks Street, in Nazareth. A woman who was in the car was seriously injured as a result.

14. **Mr. Murshad Rashed**, Border Police officer, is likely to be harmed if the Commission concludes that:

In his capacity as a policeman in the Border Police, while performing his duty in an incident that took place in Jatt on October 1, he aimed and fired rubber bullets from a distance of about fifteen meters at the upper portion of the bodies of residents. The firing was without justification and contrary to the directives regarding the safe range for the firing of rubber-coated bullets and on the obligation to fire only at the legs, and thus created a risk of causing serious, or even lethal, injury. This shooting wounded a citizen in the head, from which he died the following day.

Given today, 27 February 2002.

s/

s/

s/

Chairperson

Member

Member

Appendix No. 4

ADALAH'S MOTION FOR STANDING FOR THE VICTIMS' FAMILIES

Adalah The Legal Center for Arab Minority Rights in Israel
عدالة المركز القانوني لحقوق الأقليات العربية في إسرائيل
עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



19 June 2002

**Members of the Official Commission of Inquiry
Supreme Court
Jerusalem**

Dear Sirs:

Re: Granting of representation before the Official Commission of Inquiry to families of the persons killed in the events of October 2000

On behalf of the families of the individuals killed in October 2000 (hereinafter: “the bereaved families”), I request that you grant the bereaved families standing and the opportunity to be represented at the hearings of the Official Commission of Inquiry. The grounds for the request are as follows:

1. The bereaved families have a direct and clear interest in the proceedings being conducted by the Official Commission of Inquiry. This interest relates particularly, but not solely, to the appearance before the Honorable Commission of the persons directly and indirectly responsible for the deaths of the relatives of the bereaved families. Therefore, the investigation itself, at least a substantial portion thereof, and its findings, insofar as they relate to the investigation of the killings, the circumstances in which they were committed, and the failure to prevent them directly, clearly relate to the families.
2. Therefore, according to the law, the bereaved families should be given standing and the right to representation pursuant to section 15 of the Commissions of Inquiry Law, 5729 – 1968, insofar as they are likely to be harmed by the “inquiry or by its results.”

3. Without derogating from the aforesaid, the bereaved families' right to be represented is also derived from the notion of principles of natural justice. In the context of the Honorable Commission, the principles of natural justice would be achieved by granting the bereaved families standing and the right to be represented by counsel, enabling them to ask questions and present evidence during the hearings in order to bring the truth to light before the Honorable Commission.
4. Failure to afford the families representation before the Commission would bar the parties directly interested in the matter from appearing and asking questions that could bring the truth to light. A result of such a decision would be that only the persons given warnings regarding their responsibility for the killing of the families' relatives, directly and indirectly, would have the opportunity to appear and to negate the warnings.
5. It is clear that the Commissions of Inquiry Law does not negate the notion of the principles of natural justice. Quite the opposite. These rules constitute a presumption that requires their implementation. The reason for this presumption is that these principles comprise a general purpose underlying each piece of legislation, unless expressly stated otherwise by statute.
6. In the present case, the objective of doing justice, including bringing the truth to light, requires that the bereaved families be given standing, particularly at the stage in which the other side is given the power to present its case. On the other hand, the statute does not deny this possibility to have standing.
7. It should be mentioned that two commissions of inquiry in Britain, which were comparable in status to the Honorable Commission, granted bereaved families standing in hearings, whereby they were able to ask questions and interrogate witnesses. The Lawrence Inquiry, established in 1999 to inquire into the matter of the murder of Stephen Lawrence, granted his parents the right to be represented by legal counsel. This included the opportunity to cross-examine the police officers and obtain disclosure of sensitive documents to enable them to conduct proper cross-examination. In a similar manner, the second inquiry into Bloody Sunday allowed the families of the individuals killed and wounded in the demonstrations in 1972 to be represented before the commission. The assumption of the commission was that these families had a direct and clear interest in the commission's proceedings.

8. It should be emphasized that these two commissions grounded their decision to grant the bereaved families standing on the principles of natural justice that grant this right, also in the absence of explicit legislation proclaiming it.

For the aforesaid reasons, the Honorable Commission is requested to allow the bereaved families to be represented by counsel in the Commission's proceedings, with counsel being allowed to ask questions on their behalf and to conduct cross-examination.

Respectfully yours,

[signed]

Marwan Dalal, Attorney
Counsel for the Bereaved Families

cc: Ilan Sofer, Attorney
Madi Daher, Attorney
Shmuel Barzani, Attorney
Tommy Nadshi, Attorney
Eli Zohar, Attorney
Yossi Ashkenazi, Attorney
Ram Shamgar, Attorney
Dan Cohen, Attorney
Yaakov Weinroth, Attorney
Amnon Zichroni, Attorney
Avigdor Klagsbald, Attorney

Appendix No. 5

DECISION REGARDING STANDING FOR THE VICTIMS' FAMILIES

OFFICIAL COMMISSION OF INQUIRY INVESTIGATING THE CLASHES BETWEEN SECURITY FORCES AND ISRAELI CITIZENS

DECISION

Before us is a motion, filed on 19 June 2002 by Attorney Marwan Dalal of Adalah, on behalf of the bereaved families whose relatives died in the events of October 2000.

1. The motion relates to the standing of the family members of those among the Arab public who were killed in the events of October 2000. It is contended that the families have a direct and clear interest in the Commission's hearings and therefore have standing and the right to be represented before the Commission. The applicants argue that this right stems both from section 15 of the Commissions of Inquiry Law, 5729 – 1968, and from the principles of natural justice. Thus, the applicants contend that the families should be allowed to be represented and be given standing that would enable them to ask questions and present evidence during the course of the hearings.

The motion is denied for the reasons set forth below.

2. It is undisputed that the relatives of the individuals hurt and injured in the events of October, and the injured persons themselves, Arabs and Jews, have an interest in the Commission's hearings. However, this fact does not create the requested standing for the applicants.

3. Insofar as section 15 of the Commissions of Inquiry Law is involved, this provision does not enshrine the right that the applicants contend. Examination of this section clearly indicates that it applies to a person against whom the Commission of Inquiry is likely to establish adverse findings or conclusions. This is evident both from the language of the provision and from its purpose, which is apparent when viewing the section in its entirety. In this context, it is possible to refer especially to section 15(d) of the Law, which restricts the rights of a person pursuant to section 15, where the Commission is convinced that, "...its report does not contain any findings or conclusions, or make any recommendations, concerning him." This restriction clearly indicates the purpose of the provision, which is to protect an individual from potential harm from the findings or conclusions of the Commission. The rights set forth in section 15 are granted to achieve this objective. These rights include the right to have the Commission place at his disposal the evidence in its

possession that relates to the said harm (section 15(a) of the Law), and also the right to appear before the Commission, make arguments, and present witnesses and evidence (section 15(b) of the Law) (See also, on this issue, H.C. 381/85, *Bank Leumi l'Israel Ltd. v. Commission of Inquiry in the Matter of the Regulation of Bank Shares*, PD 39 (4) 225; H.C. 4914/94, *Terner v. State Comptroller*, PD 39 (3) 771; Crim. App. 2910/94, *Yafet v. State of Israel*, Dinim Elyon 32, 857). The result is that section 15 provides no support for the applicants' contention that its provisions give standing also to a person who contends he is a victim of the acts being investigated by the commission of inquiry.

4. It should be observed that the legislative history of this provision also provides no support for the applicants' contention; the opposite is true. Study of the *Knesset Record* on the third reading of the Commissions of Inquiry Law, 5729 – 1968, indicates that the Knesset was presented with reservations that were intended to expand the circle of persons having the right to receive the Commission's material and to make arguments and present evidence before it. It was proposed that the test for the said right would be an objective test, and not as set forth in the Law, which gives the Commission the power to decide in accordance with its discretion. That proposal would have granted the right pursuant to section 15 to any person interested in the Commission or its results. The proposal raised the concern that, giving every person who considers himself to have an interest the opportunity to make arguments and appear before a commission of inquiry would frustrate any practical possibility of completing the commission's hearings within a reasonable period of time. This concern led to the rejection of the reservation, which was perceived as conflicting with the important goal of having the commission's hearings conducted efficiently, and to completing its hearings "as quickly as possible" (See the comments of Minister of Justice S. Shapira, *Knesset Record* 53, p. 917).

5. It is observed that standing of the kind requested by the applicants is also not recognized in law in other situations, in which the victim is likely to have an interest in the litigation in which he is not a direct litigant. Thus, the Rights of Persons Injured in an Offense Law, 5761 – 2001, which was recently enacted, states various rights of a victim of an offense in the framework of the criminal proceeding. However, it does not grant the victim standing in the hearing regarding the responsibility of the defendant, does not grant him the right to make arguments in that hearing, does not grant him the right to present evidence in the hearing, and does not grant him the right to receive all the investigative material. This is so, unlike the stages in a proceeding regarding the punishment imposed on a person during sentencing, and unlike the provisions of the law enabling cessation of a proceeding because of the action of external judicial mechanisms (pardon, stay of proceedings).

The proceeding before the commission of inquiry is not a criminal proceeding. The Rights of Persons Injured by an Offense Law does not apply to this proceeding directly. It does not grant rights to injured persons before the commission of inquiry. Moreover, it

may also be seen from this law that, in instances in which the legislature recognized the right of a person injured by an offense to a certain degree of involvement in the proceeding, the legislature did not deem it proper to allow the person so injured to be involved in the hearing of the evidence and in making statements in the stage in which responsibility is determined. We believe that this arrangement, which was recently established, teaches that also today, more than thirty years after enactment of the Commissions of Inquiry Law, it is not possible to point to any change in the legal climate that would justify interpreting section 15 in the manner suggested by the applicants, an interpretation that is completely inconsistent with the original purpose of this provision of law.

Furthermore, it appears that, as regards the motion before us, there is a similarity between a criminal proceeding and a proceeding before a commission of inquiry. In a criminal proceeding, even though the parties are the state and the defendant, the criminal judgment provides a powerful thrust for the victim to initiate a civil procedure, following the conviction (if and when the defendant is convicted) (see section 42A of the Evidence Ordinance [New Version], 5731 – 1971; see also section 77 of the Courts Law [Consolidated Version], 5744 – 1984). Notwithstanding this, neither the victim nor his relatives are given standing in the investigation of culpability during the criminal proceeding. These comments are even more applicable, ostensibly, as regards the hearings of a commission of inquiry, which does not have (neither the hearings nor their results) a direct relationship to the injured person, which is the case in the criminal proceeding. The opposite is true. Pursuant to section 22 of the Commissions of Inquiry Law, the report of a commission of inquiry may not be used in a judicial proceeding; thus, the legal standing of the report is completely different, in this matter, from the legal standing of a judgment in a criminal proceeding.

6. As for the principles of natural justice, these principles give a person who is likely to be harmed by the decision of the public authority to make his case prior to the said harm being realized. Moreover, the interest of a person who contends he is harmed, pursuant to his standing as a victim (or relative of a victim), has not been recognized as a sufficiently powerful interest to provide the said individual with the requested right in a criminal proceeding. These comments are also true both as regards the Rights of Persons Injured by Offenses Law, as well as in other contexts.

Indeed, the hearings of a commission of inquiry are not hearings in which there is a direct confrontation between the interest of the person injured, or his family, and the interest of any individual as to whom the commission found it proper to give him warning of the possibility that he will be harmed by its conclusions or findings. At the center of the commission's hearings lie "a matter that is of vital public significance" (section 1 of the Commissions of Inquiry Law, emphasis added). Even if there are individuals among the public who have some connection with the matter, this fact is not sufficient to change the nature of the function of the commission of inquiry or to move the center of gravity of its activity. Furthermore, the investigation of this matter and inquiry into the various aspects

are given to the commission of inquiry and to the organs operating on its behalf. For this purpose, the commission is given various tools and means that are intended to enable it to reach the truth. The action of the commission is not that of a body deciding between conflicting contentions, but of an inquiring and initiating body whose purpose is to make findings and conclusions on the subject that it was given to examine.

From this perspective, even though it is possible to understand the subjective motives underlying the applicants' request, the motion does not meaningfully assist the Commission in its work. It may be said with caution that the applicants do not provide any advantage in asking questions to the witnesses appearing before the Commission. It is apparent that the granting of the motion is likely, in fact, to lead to an undesirable prolongation of its hearings, contrary to one of the primary purposes of the Commissions of Inquiry Law, without, in exchange therefore, offering a likelihood of any substantial benefit toward bringing the truth to light.

7. For these reasons, we have decided to deny the motion. It remains only to make three marginally related comments.

First, a request of the kind before us was previously raised in March 2001 by Adalah, in which it relied on similar arguments to those presently before us. It should be carefully noted that, ultimately, Adalah withdrew its motion. I do not believe that any changes in circumstances have taken place since then that would justify additional examination of this matter.

Second, Adalah is given, like every citizen or organization operating in the state, the possibility of presenting the Commission with evidence in its possession that the organization considers relevant. The organization has, in fact, used this possibility and provided the Commission with much evidence. This evidence was examined by the Commission and persons operating on its behalf, and some of the evidence has even been accepted as exhibits. This decision clearly does not prevent the applicants from handing over additional evidence to the Commission that they have which is relevant to the matter and has not yet been handed over to the Commission.

Third, the Commission is aware that in certain instances, commissions of inquiry in England decided to give standing similar to that requested here to relatives of injured persons, even though the applicants do not argue that the granting of such standing is a binding norm. It may be that, in appropriate cases, consideration can be given to the granting of standing of this kind or of another kind to relatives also before a commission of inquiry operating pursuant to the Commissions of Inquiry Law. Indeed, although neither the Commissions of Inquiry Law nor the principles of natural justice require the granting of such standing, they do not prevent, in a sweeping fashion, the granting of such an motion. Ultimately, determination will be made on the basis of each individual case and its

circumstances, and we do not see the necessity to determine, in the context of this decision, a thorough list of criteria for the exercise of discretion in this matter.

However, it is possible to point out the clear distinctions between the cases to which the applicants refer and the matter before this commission. One of the English cases, in which standing was given to family members, related to a specific event (albeit with many participants), which occurred close to thirty years ago. In those circumstances, considerations of efficiency were not decisive in the decision of that commission. In contrast, with the backdrop of the lack of trust encountered by the previous commission of inquiry that had investigated the event, considerations regarding the holding of the commission's hearing in full public view and in a proper manner were extremely important in that case. The other case in which a commission of inquiry in England recognized the right in the spirit of the right requested here relates to the murder of a minister of government. In that case, too, a specific incident was involved.

Those matters are not at all similar to the commission of inquiry in the present matter. The subjects being investigated by this commission are broad in scope, multi-layered, and complex. In light of the mandate of the letter of appointment of the Commission, as a matter of course, it is presented not only with factual questions regarding the incidents that took place during the events of October, but also with questions connected to the setting of policy in sensitive and complicated areas. All these factors indicate the substantial difference between this commission and the two English commissions, on which the motion before us relies. Together with this difference, ensuring that the hearing is held efficiently is an important consideration in the Commission's work, and the Commission intends to complete its hearings as quickly as possible. In this situation, we do not think that comparison can be made with the cases on which the motion before us relies, or that we should adopt, as regards the matter presently being heard, the hearing procedures that were adopted in those cases.

In conclusion, the motion is denied.

Given today, 25 March 2002.

[signed]
Chairman

[signed]
Member

[signed]
Member

Adalah

The Legal Center for Arab Minority Rights in Israel



Adalah (“Justice” in Arabic) is an independent human rights organization, registered in Israel. It is a non-profit, non-governmental, and non-partisan legal center. Established in November 1996, it serves Arab citizens of Israel, numbering over one million people or close to 20% of the population. Adalah works to protect human rights in general, and the rights of the Arab minority in particular.

Adalah’s main goals are to achieve equal individual and collective rights for the Arab minority in Israel in different fields including land rights; civil and political rights; cultural, social and economic rights; religious rights; women’s rights; and prisoners’ rights.

In order to achieve these goals, Adalah:

- Brings cases before Israeli courts and various state authorities regarding the rights of the Arab minority.
- Advocates for legislation that will ensure equal individual and collective rights for the Arab minority.
- Provides legal consultation to individuals, non-governmental organizations, and Arab institutions.
- Appeals to international institutions and forums in order to promote the rights of the Arab minority in particular, and human rights in general.
- Organizes study days, seminars, and workshops, and publishes reports on legal issues concerning the rights of the Arab minority in particular, and human rights in general.
- Trains stagiaires (legal apprentices), law students, and new Arab lawyers in the field of human rights.

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