

# Special Inquiry

## The Editors

In mid-October 2000, then Prime Minister Ehud Barak appointed a Committee of Examination to “examine the functioning of the police during the clashes with Arab demonstrators” earlier that month. The families of the 13 Palestinian martyrs who were killed during these “clashes,” worked together with political figures, NGO activists, and academics to compel the government to dissolve the Committee and to establish a legally-sanctioned Commission of Inquiry. There were serious concerns that this Committee lacked the necessary legal powers and independence to fully investigate the events that led to the deaths of 13 Palestinian citizens and the injury of hundreds more.

As a result of mounting pressure by the Palestinian community as well as concern about the upcoming elections and the “Arab vote,” on 8 November 2000, the Israeli government established the Commission in accordance with the Commissions of Inquiry Law (1968). This law gives the Commission various authorities including the power to subpoena witnesses and to compel their attendance. On 15 November 2000, Supreme Court Chief Justice Aharon Barak appointed the three-member Commission: Supreme Court Justice Theodore Or (Chair); Tel Aviv University Professor and former Ambassador to Egypt and Jordan, Shimon Shamir; and Deputy President of the Nazareth District Court, Judge Sahel Jarah. Judge Jarah resigned from his post for health reasons in June 2001, and Nazareth District Court Judge Hashim Khatib was appointed in his place.

Immediately after the establishment of the Commission, Adalah raised concerns about its mandate. According to Government Decision No. 2490, the Commission’s mandate is to investigate the clashes between the security forces and Arab and Jewish citizens culminating in the death and injury of Israeli citizens, starting from 29 September 2000. Its mandate further calls for an investigation into the “behavior of the inciters, organizers and participants in the events from all sectors, as well as the actions of the security forces.” One of Adalah’s main concerns was the reference to “the behavior of the inciters,” which appeared to implicate Arab public representatives. Israeli law dictates that commissions of inquiry are to be established solely in order to investigate executive branch authorities in cases in which their behavior created a loss of public trust. An investigation into the behavior of citizens is beyond the role of

commissions of inquiry.

Adalah was appointed by the High Follow-up Committee for the Arab Citizens in Israel (comprised of Arab MKs, mayors, and community leaders) to represent its interests as well as the Palestinian martyrs' families before the Commission. Three Palestinian lawyers - Riad Anes, Azmie Odeh and Mahmoud Shaheen - were also appointed by the High Follow-up Committee to work together with Adalah as members of the legal team.

On 21 January 2001, the High Follow-up Committee, the Committee of the Martyrs' Families, and Adalah held a press conference in Jerusalem to present an indictment against the State of Israel charging the political establishment, the field commanders and the Israeli security forces with using excessive lethal force against Palestinian citizens. The title of the indictment, presented in full on these pages is "The Arab Citizens of the State of Israel v. The State of Israel." The martyrs' names, ages, and towns were also read out to the press and for the record by Mahmoud Yazbak, who was the spokesperson of the Committee of the Martyrs' Families. The text of this statement is also included in this collection.

Immediately following the press conference, all of the participants and the family members of the martyrs traveled to the Supreme Court, the site of the future hearings of the Commission. The hallway of the Commission was turned into a theater to publicly demonstrate the Palestinian community's sense of loss and pain. Over one hundred relatives and friends of the Palestinian martyrs killed by Israeli security forces filled the Commission's hallway. They held pictures and remembrances of their loved ones and recollected the details surrounding their deaths.

The family members of the martyrs came to the Commission to present eyewitness testimonies, photographs, videotapes and hospital records, collected for over three months by Adalah's legal team. They came to present as complete a record as they could, realizing that such a record could never be fully complete.

The lawyers and the family members were called up to the podium town by town - Umm al-Fahem and Jatt, Nazareth and Kufr Kanna, Kufr Manda, Sakhnin and Arrabe; these were the towns in which Palestinian citizens were killed. Together, the lawyers and the family members presented the record of evidence, binders and binders of materials, to the assistant of the Commission's members. They opened each binder to show



her the photos, maps, and tens of testimonies collected in each town. They talked to her about each of the martyrs, attempting to leave an unforgettable imprint in her mind about the pain and suffering of each family with each loss.

The relatives of the Palestinian victims are not alone in their grief; family members of the Bloody Sunday victims share with them similar experiences. As in Israel, in 1972, the British army killed 13 Irish civil rights marchers in Derry, Northern Ireland, who were protesting against the government's internment policy of political activists. These events became known as Bloody Sunday. Tony Doherty, the son of one of the Bloody Sunday victims, wrote an open letter, included in this issue, to the Palestinian martyrs' families. In his letter, Mr. Doherty encourages them to go forward with their demands for a full and fair investigation into the deaths of their loved ones.

Adalah's representatives met Mr. Doherty and other family members of the Bloody Sunday victims during a study tour to Northern Ireland and England in early February 2001. To best represent the Palestinian community before the Israeli Commission, Adalah's representatives sought the consultation of lawyers, human rights NGOs, and activists working before tribunals of inquiry in England and Northern Ireland. The Israeli Commissions of Inquiry Law is closely modeled on English law and practice. Hosted by the Committee on the Administration of Justice, British-Irish Rights Watch and the law firm of Madden and Finucane, Adalah's representatives attended the hearings of the Bloody Sunday Inquiry, which is investigating the killings in Derry. They also briefed the Bar Human Rights Committee of England and Wales about the Israel's Commission of Inquiry. At Adalah's request, prominent members of the Bar Human Rights Committee prepared a legal opinion based on their experience in working before tribunals of inquiry. The opinion covers issues such as the right of access to all materials collected by tribunals; the right to cross-examine witnesses and to present evidence; and the right to publicly-funded legal representation for victims' family members and other interested parties. Excerpts from this opinion are included in this collection.

Pursuant to Israeli practice regarding commissions of inquiry, Adalah has no legal standing before the Commission. Accordingly, when the

Commission opened its hearings on 19 February 2001, Adalah's lawyers could not cross-examine witnesses who appeared before it, were not entitled to discovery of all documents and other evidence, and did not receive public funds to represent the High Follow-up Committee and the Palestinian martyrs' families. However, through its daily work, presence and consistent legal interventions over one year, Adalah gained some quasi-formal status.

During the first stage of its proceedings, 349 witnesses appeared before the Commission, and thousands of pages of protocols were generated documenting various aspects of police violence against Palestinian citizens. After one year of hearings, on 27 February 2002, the Commission issued 11 warning letters to former Prime Minister Ehud Barak, former Minister of Internal Security Shlomo Ben Ami and police officials. In addition, the Commission issued warning letters to three Arab public representatives, MK Dr. Azmi Bishara, MK 'Abd al-Malek Dahamshe, and Sheikh Ra'ed Salah. The warning letters indicate that each of these individuals will likely be affected by the inquiry or its conclusions. The warning letters to Palestinian public figures charge that these leaders, between 1998-2000, were "responsible for conveying messages supporting violence as a means to attain the goals of the Arab community in Israel." The Commission chose not to investigate any of the inciters in the Israeli Jewish community, including Ariel Sharon, whose provocative visit to al-Haram al-Sharif compound sparked the beginning of the Intifada. The warning letters to the three Palestinian leaders lay blame on the entire Palestinian community and its political leadership for the killing of 13 Palestinian citizens and the injury of hundreds more. This blame turns the victim into the guilty party.

Adalah challenged the mandate of the Commission that enabled it to issue such warning letters on three separate occasions. Adalah did not receive a reply to any of its motions. On 12 March 2002, Adalah submitted an additional motion to the Commission demanding that it rescind these warnings against the Arab public representatives. This motion is included as the final piece in this volume. It highlights many of the problematic aspects of the Commission, originally, when it did not attempt to amend its mandate to meet the legal requirements of the Commissions of Inquiry Law, and more recently, during the course of its hearings, when it

breached its powers and acted in a discriminatory manner toward Palestinian public representatives. The Commission denied this motion on 14 March 2002. The second stage of the Commission's proceedings - the warnings hearings - began in mid-June 2002.

Whether the Commission will reach final conclusions concerning the power relations organizing the relationship between Palestinian citizens and the state, which gave birth to the Intifada and to state violence, is an open question. However, by issuing warnings against Arab public representatives together with the Israeli political leadership, it seems that the Commission is masking power relationships and distributing responsibility in a politically symmetrical manner between the victim and the perpetrator.