

## **Frequently Asked Questions**

### **What is the mandate of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel?**

On 27 May 2021, the Human Rights Council held a special session on “the Grave Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem” and adopted the resolution “Ensuring respect for international human rights law and international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel”.

Through its resolution,<sup>1</sup> the Human Rights Council decided to “urgently establish an ongoing, independent, international commission of inquiry to investigate, in the occupied Palestinian territory, including East Jerusalem, and in Israel, all alleged violations and abuses of international human rights law leading up to and since 13 April 2021”. The resolution further requested the commission of inquiry to “investigate all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity”. The commission of inquiry was mandated to report to the Human Rights Council and to the General Assembly on an annual basis as from June 2022 and September 2022, respectively.

### **What is the scope of the mandate?**

The Human Rights Council decided that the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel shall:

- Investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021;
- Investigate all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity;
- Establish the facts and circumstances that may amount to such violations and abuses and of crimes perpetrated;
- Collect, consolidate and analyse evidence of such violations and abuses and of crimes perpetrated, and systematically record and preserve all information, documentation and evidence, including interviews, witness testimony and forensic material, in accordance with international law standards, in order to maximize the possibility of its admissibility in legal proceedings;
- Document and verify relevant information and evidence, including through field engagement and by cooperating with judicial and other entities, as appropriate;

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<sup>1</sup> <https://undocs.org/A/HRC/RES/S-30/1>

- Identify, where possible, those responsible, with a view to ensuring that perpetrators of violations are held accountable;
- Identify patterns of violations over time by analysing the similarities in findings and recommendations with and of previous United Nations fact-finding missions and commissions of inquiry on the situation;
- Make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring legal accountability, including individual criminal and command responsibility, for such violations, and justice for victims; and
- Make recommendations on measures to be taken by third States to ensure respect for international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and in fulfilment of their obligations under articles 146, 147 and 148 of the Fourth Geneva Convention, including by ensuring that they do not aid or assist in the commission of internationally wrongful acts.

The commission of inquiry shall report on its main activities on an annual basis to the Human Rights Council and to the General Assembly, commencing in June and September 2022 respectively.

### **What is the composition of the Commission?**

The Commission is comprised of three independent and impartial experts, Navi Pillay (South Africa), Miloon Kothari (India) and Chris Sidoti (Australia), who were appointed by the President of the Human Rights Council, with Ms Pillay selected as Chair. The Commissioners are appointed on a *pro bono* basis and therefore are not paid for their work. The Commissioners will be supported by a secretariat with the necessary expertise for the implementation of the mandate, including professional investigators and legal analysts.

### **How does this Commission differ from previous United Nations fact-finding missions and commissions of inquiry on Palestine?**

The Commission differs from previous bodies in three core ways:

(i) Geographic scope:

The mandate of the Commission is to “investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel”. The Commission will therefore investigate violations of international humanitarian law, and violations and abuses of international human rights law committed in the Occupied Palestinian Territory, including East Jerusalem, or in Israel. Given the extra-territorial applicability of the applicable bodies of international law, and taking particular note of the jurisprudence of the International Court of Justice on the applicability of international human rights law in occupied territory, the Commission’s investigation will also include territories that are not part of the *de jure* territory of the concerned states but that fall within the effective control of one of them.

(ii) Temporal scope:

This Commission is not restricted in its mandate to a specific incident or time period. Rather, the Human Rights Council has asked it to investigate “all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and all underlying root causes [...]”. The Commission will therefore be able to consider

investigating both incidents leading up to and following 13 April 2021, as well as all underlying root causes of recurrent tensions, instability and protraction of conflict.

(iii) The ongoing nature of the investigation:

The Human Rights Council has decided to establish an “ongoing independent, international commission of inquiry [...]” that will report on a continuing yearly basis to both the United Nations Human Rights Council in Geneva at its June session, and to the United Nations General Assembly at its yearly session in New York, starting in 2022.

**Does the Commission investigate all alleged violations and abuses?**

The Commission will examine alleged violations of international humanitarian law and alleged violations and abuses of international human rights law committed by any party without distinction in the Occupied Palestinian Territory, including East Jerusalem, and in Israel, along with territories under the effective control of the concerned states. This will include actions by both states and non-state entities. It will also include identifying individuals responsible for such violations and abuses, where possible, with a view to ensuring that perpetrators are held accountable by national and international mechanisms.

**Given the heavy focus on supporting judicial accountability measures, can the Commission initiate legal proceedings against alleged perpetrators?**

No. While having a mandate to collect, consolidate, and analyse evidence of violations and abuses, and crimes perpetrated, as well as to identify, where possible, those responsible with a view towards ensuring perpetrators are held accountable, the Commission is neither a court nor a tribunal. In exercising its mandate however, the Commission will seek to work with judicial accountability mechanisms that adhere to internationally accepted due process and fair trial standards towards ensuring accountability for suspected perpetrators of international crimes. As part of these efforts, it may provide information to national, regional or international courts and tribunals of competent jurisdiction, subject to baseline requirements of fairness, due process, non-applicability of the death penalty and compliance with other applicable human rights standards. The UN has well-established internal processes for such cooperation in judicial and non-judicial contexts, and the Commission will fully apply those same policies and standards in this work.

**How does the Commission collect information and what will happen with the information collected?**

The Commission will undertake first hand interviews with witnesses and victims of alleged violations of international humanitarian law and alleged violations and abuses of international human rights law. It will also seek to collect information and documentation relevant to its inquiries from states, relevant bodies and agencies of the United Nations system, civil society, the media, and other relevant stakeholders. Both inculpatory and exculpatory information and evidence will be treated on the same basis. Information and evidence collected will be reviewed and analysed by the Commission and stored securely in accordance with international best practice standards in order to maximize the possibility of its admissibility in legal proceedings. Consistent with the standard practice of Human Rights Council mandated commissions of inquiry, the consent of information providers to further external use(s) pursuant to the mandate is fundamental in the handling of such information.

### **What kind of information will the Commission be reporting on?**

In investigating “all underlying root causes of recurrent tensions, instability and protraction of conflict”, and “patterns of violations over time”, the Commission shall give priority to broad questions. What this means is that rather than conducting solely incident based investigations or responding immediately to every incident, the Commission will seek to identify overall patterns, policies, historical legacies and structural inequalities that may have or continue to impact the enjoyment of human rights of all individuals in territories covered by its mandate, and have led to instability and protracted conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity.

### **What roles do victims and survivors play in the Commission’s work?**

Victims and survivors are key to each aspect of the work of the Commission. The Commission will adopt a victim-centred approach in all of its work. Victims and survivors’ testimonies, evidence and information will be protected and maintained safely and securely, in accordance with international practice standards in this area. The Commission will work closely with victims and survivors, and their representatives, to enable and facilitate their informed participation in the relevant work of the Commission, including in the development of recommendations on accountability measures with a view towards ensuring justice for victims. The Commission will be sensitive and alert to any protection concerns that victims and survivors may have as a result of its engagement with them, further to the cardinal principle of “do no harm”. Specific concerns will be considered and addressed as they arise, in conjunction as appropriate with affected persons. The Commission however does not have any capacity to afford physical or legal protection to those who provide information to it.

### **How can victims and survivors, as well as civil society organisations, interact with the Commission?**

In addition to conducting first hand interviews with witnesses and victims, and examining available secondary and open source materials, the Commission invites individuals, groups and organizations to submit information and documentation relevant to its mandate. In particular, the Commission welcomes information concerning:

- Underlying root causes of recurrent tensions, instability and protraction of conflict in and between the Occupied Palestinian Territory, including East Jerusalem, and Israel; as well as systematic discrimination and repression based on national, ethnic, racial or religious identity;
- Facts and circumstances regarding alleged violations of international humanitarian law and alleged violations and abuses of international human rights law leading up to and since 13 April 2021;
- Identification of those responsible;
- Recommendations on accountability measures, with a view to avoiding and ending impunity and ensuring legal accountability, including individual criminal and command responsibility;
- Recommendations on measures to be taken by third States to ensure respect for international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and Israel.

Given the ongoing nature of its mandate, the Commission may choose to examine specific “themes” in some of its reports, and will therefore issue targeted calls for submissions on specific areas under investigation. The Commission may also hold roundtables, consultations, and public hearings with

victims, witnesses, experts and other relevant partners as it would find helpful in the implementation of its mandate.

**How is the Commission funded?**

Being mandated by a resolution of the UN Human Rights Council, funding for the Commission is through the regular budget of the United Nations. The General Assembly has authorised the establishment of 18 positions to staff its Secretariat, including investigators, analysts, and legal experts. A budget of US \$ 4,151,800 for the year 2022 was allocated to it, following a close review of the mandate by its Fifth Committee. This committee is charged with overseeing the budget of the entire United Nations and is guided by the UN Charter, and in particular Chapter IV, Article 17.

**How do the Commission’s resources compare to that of other United Nations Investigative bodies?**

The Commission has the most comprehensive mandate of any commission of inquiry set up by the Human Rights Council to date, given its temporal and geographic scope, along with the call to collect, consolidate and analyse evidence of all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law, and of crimes perpetrated, and systematically record and preserve all information. This notwithstanding, the current staffing level of the Commission’s Secretariat reflects the standard size for Human Rights Council commissions of inquiry, and is comparable in size to similar investigative bodies set up by the Human Rights Council. Furthermore, other UN bodies set up to facilitate prosecutions in other geographical contexts have staffing tables more than two to three times the size of the Commission’s Secretariat.

**What is the relationship between the Commission, other United Nations bodies working on documenting and reporting on the situation, and the International Criminal Court?**

The Commission is an independent United Nations body and has no hierarchical relationship with other UN bodies or agencies or the International Criminal Court, apart from its operational accountability to the body that established it, the Human Rights Council. While its secretariat is composed by personnel employed or engaged by the Office of the United Nations High Commissioner for Human Rights, they report solely to the three independent commissioners. As an independent body, the Commission conducts its own investigations independently and separately from the Office of the High Commissioner for Human Rights and other United Nations offices and agencies. However, in doing so, the Commission expects to receive the full cooperation of all United Nations Member States, departments and bodies, and of all other relevant national and international institutions and actors in the delivery of its mandate. The Commissioners form their own conclusions and make their own recommendations entirely independently of any other body or agency, inside or outside the UN, of any state or non-state entity, and of civil society.

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