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GAZA'S GRAVEDIGGERS

AN INQUIRY INTO CORRUPTION IN HIGH PLACES

II

The UN Commission of Inquiry

Several months after publication of the Patten report, an Independent International Commission of Inquiry chaired by former UN high commissioner for human rights Navi Pillay released a triptych of reports regarding attacks that occurred on 7 October 2023 and thereafter.³⁴ The Commission devoted extensive space to “sexual and gender-based violence” perpetrated by both sides. Its findings were simultaneously more professional and, in a desperate bid to pin the “sexual predator” label on Palestinian armed groups, more unprofessional than the Patten mission. To be sure, the Commission did adduce an abundance of credible evidence that rape and other forms of sexual violence were routinely perpetrated since 7 October—*by Israel*.

34. *Detailed Findings on Attacks Carried Out on and After 7 October 2023 in Israel* (10 June 2024, A/HRC/56/CRP.3; <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session56/a-hrc-56-crp-3.pdf>; hereafter *Detailed Findings I*). *Detailed Findings on the Military Operations and Attacks Carried Out in the Occupied Palestinian Territory from 7 October to 31 December 2023* (10 June 2024, A/HRC/56/CRP.4; <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session56/a-hrc-56-crp-4.pdf>; hereafter *Detailed Findings II*). *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel* (11 September 2024, A/79/232; <https://documents.un.org/doc/undoc/gen/n24/262/79/pdf/n2426279.pdf>; hereafter *Report of the Independent International Commission*). The *Report of the Independent International Commission* focused on treatment of detainees and hostages and attacks on medical facilities and personnel.

II A

Rape

The Commission stated that it “was not able to reach a definitive conclusion with regards to rape” allegedly committed by Palestinian armed groups on 7 October 2023.³⁵ In its fullest statement on the subject, the Commission discreetly circumvented Israel’s “evidence” and distanced itself from Pramila Patten’s “findings.” (See Box A.) That said, the Commission’s “not able to reach” finding was understated. The proof of rape before it did not reach its declared evidentiary threshold: “the Commission has found the standard of ‘reasonable grounds to conclude’ to have been met when information has been corroborated by one or several witnesses interviewed by the Commission, and supported by *digital evidence* that demonstrates similar patterns and descriptions to those identified by witnesses” (emphasis added).³⁶ The Patten mission already established that, even as it had at its disposal a massive trove of digital evidence from 7 October, it didn’t find *any* digital evidence of rape. If Israel couldn’t produce such digital evidence, and the mission itself couldn’t locate any, then the reasonable inference is that it didn’t exist, while, absent such evidence, the standard of “reasonable grounds to conclude” wasn’t met. The Commission should therefore have unequivocally found that *no reasonable grounds exist to conclude that rape occurred on 7 October*. In the most exhaustive analysis to date of the events of 7 October, Human Rights Watch stated that it “did not document any cases of rape.”³⁷

35. *Detailed Findings I*, para. 275; see also *ibid.*, para. 154.

36. *Ibid.*, para. 14.

37. Human Rights Watch (HRW), “*I Can’t Erase*,” p. 186; see also pp. 7, 187, 229. Alas, this bare seven-word acknowledgment got buried in an avalanche of text insinuating the opposite conclusion. *First*, the report repeatedly cited without caveat the findings of the Patten mission which, *inter alia*, alleged that there are “reasonable grounds to believe” that multiple rapes occurred on 7 October (*ibid.*, pp. 8, 70, 99–100, 160, 186, 229). If the Patten report reached a conclusion manifestly at odds with HRW on a critical point of contention, and if HRW conducted 144 interviews in preparing its report, it’s most odd that HRW was so lacking in curiosity to the point of apparently not even bothering to query Patten as to what these “reasonable grounds” consisted of. It couldn’t be public survivor testimony or digital evidence or forensic evidence. It’s been firmly established that none exists. If Israel possessed dispositive evidence and made Patten privy to it, and if it had nothing to lose and everything to gain, why then didn’t Israel just hand over this evidence to the UN Commission of Inquiry and HRW? So what was it—and if no such “reasonable grounds” existed, why then did HRW keep deferring to Patten in its report? *Second*, HRW referenced in detail one allegation after another that rape occurred on 7 October, only to keep repeating that it “was unable to independently corroborate this account” (*ibid.*,

Box A

*Did Palestinian Militants Commit Mass Rape on 7 October?
The Commission's Cautious Response*

“[T]he Commission has seen open-source reports stating that Israeli civilians were subjected to rape and other forms of sexual violence at various sites in southern Israel on 7 October. The Commission has reviewed testimonies obtained by journalists and the Israeli police concerning rape but has not been able to independently verify such allegations, due to a lack of access to victims, witnesses and crime sites and the obstruction of its investigations by the Israeli authorities. The Commission was unable to review the unedited version of such testimonies. For the same reasons, the Commission was also unable to verify reports of sexualized torture and genital mutilation. Additionally, the Commission found some specific allegations to be false, inaccurate or contradictory with other evidence or statements and discounted these from its assessment.

“The Commission has viewed reports asserting that documents found on militants who were killed or arrested contain alleged instructions to undress civilians and/or commit rape or other forms of sexual

pp. 68–70, 192–96). But then it could simply have stated: “There were numerous allegations of rape, none of which HRW could corroborate.” Why did it keep recycling uncorroborated allegations? The *reductio ad absurdum* was the testimony, placed under HRW’s heading “possible sexual and gender-based violence,” of a woman who feared being raped but, according to her own attestation, never was (*ibid.*, p. 196). At some point, this piling on of uncorroborated allegations couldn’t but be construed as the smarmiest of smear campaigns. *Third*, HRW went on at inordinate length purporting that the absence of evidence of rape didn’t prove that rape didn’t occur (*ibid.*, pp. 8, 196–200). This recalled US Secretary of Defense Donald Rumsfeld’s infamous response at a news conference regarding Iraq’s alleged weapons of mass destruction: “There are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don’t know we don’t know.” It’s a sorry day indeed when a human rights organization starts sounding like this. If there’s no corroborative evidence, there’s no corroborative evidence, full stop. Even as HRW couldn’t document one single instance of rape, that didn’t prevent it from recommending that Palestinian armed groups be investigated not just for the war crime but, audaciously, for the crime against humanity—that is, not discrete instances but the systematic perpetration—of rape (*ibid.*, pp. 10, 211, 235). It would appear that a dearth of evidence has transubstantiated into a superabundance of it: is less now more? For HRW’s less-than-stellar record when it comes to the Israel-Palestine conflict, see Norman G. Finkelstein, *Knowing Too Much: Why the American Jewish romance with Israel is coming to an end* (New York: 2012), pp. 123–54, and Norman G. Finkelstein, *Gaza: An inquest into its martyrdom* (Oakland: 2018), pp. 114–15, 235, 238, 287.

violence during the attack on 7 October. The Commission was unable to obtain copies of these documents and was unable to verify their authenticity.

“The Special Representative of the Secretary-General (SRSG) on Sexual Violence in Conflict, Pramila Patten, found after a mission to Israel in January to February 2024 reasonable grounds to believe that conflict-related sexual violence occurred at several locations, including in the form of rape and gang rape. The SRSG also found credible circumstantial information indicative of some forms of sexual violence, including genital mutilation, sexualized torture, or cruel, inhuman and degrading treatment. The SRSG noted that the specific attribution of these violations would require a fully-fledged investigation and recommended that the Israeli authorities grant access to the Office of the High Commissioner for Human Rights and the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. The Israeli Government has refused to permit access by the Office or the Commission.”*

* *Detailed Findings I*, paras. 138–40.

The Commission separately reported on acts of rape allegedly perpetrated against Israeli hostages. One Israeli held in captivity testified after her release by Hamas in a prisoner exchange that she had been victim to a sexual assault. When no one else was around, she was allegedly coerced by her guard into committing a sexual act on him. The Commission tersely stated that “[o]ne released female hostage reported that she had been raped.”³⁸ It did not cite any corroborating evidence. In her detailed accounts to the media of the purported incident, the hostage did not allege that Hamas leaders authorized or approved or were even aware of the rape.³⁹ Indeed, pace the Commission, *she*

38. *Report of the Independent International Commission*, para. 82.

39. Patrick Kingsley and Ronen Bergman, “Israeli Hostage Says She Was Sexually Assaulted and Tortured in Gaza,” *New York Times* (26 March 2024; <https://www.nytimes.com/2024/03/26/world/middleeast/hamas-hostage-sexual-assault.html>). This article alleged that the hostage’s testimony was confirmed by two doctors and a social worker who had spoken to her right after her release.

did not even allege that she was raped! On the contrary, she avowed having *successfully resisted* her guard's rape attempts: "I prevented him from doing what he really wanted to do. He did sexually assault me, but not in the way he wanted to. . . . I was able to fight him off."⁴⁰ Whatever transpired, then, it would have been at most a solitary act of sexual violence—but not rape—by an abusive guard. Further, it would have been most odd if Hamas was privy to the incident yet still freed her to publicly recount the sexual assault when it could so easily have disposed of her instead—so many other hostages having died in captivity, who would know? Still, on the basis of this single alleged act of sexual violence against, but not rape of, a hostage committed by a single guard and almost certainly without the foreknowledge or subsequent approval of anyone else, the Commission proceeded to accuse "Hamas and other Palestinian armed groups" of the "war crime" of "rape."⁴¹ Readers can decide for themselves whether this finding traced back to an objective investigation or a rigged jury.

II B

Other Forms of Sexual Violence

The Commission reported that, even as it confronted "active attempts by Israeli authorities to obstruct the Commission's access to information related to sexual violence," and even as it "notes the absence of forensic evidence of sexual crimes committed on 7 October," and even as it had "not met any survivors of sexual violence committed on 7 October"⁴²—notwithstanding this formidable array of impediments, it nonetheless "concludes on reasonable grounds that perpetrators committed sexual violence on 7 October."⁴³

To establish the legal basis of its inquiry, the Commission referenced conventional and customary law granting women "special protection and respect in terms of treatment due to their sex."⁴⁴ This body of law includes:

40. Jane Prinsley, "Released Hostage Amit Soussana Says Trump's Words Offer 'Hope,'" *Jewish Chronicle* (3 December 2024; <https://www.thejc.com/news/israel/released-hostage-amit-soussana-says-trumps-words-offer-hope-jptcwijg>).

41. *Report of the Independent International Commission*, para. 112.

42. *Detailed Findings I*, paras. 17–19.

43. *Ibid.*, para. 291.

44. *Ibid.*, para. 302.

- “The specific protection, health and assistance needs of women affected by armed conflict must be respected.” (ICRC, *Customary International Humanitarian Law*)⁴⁵
- “Women shall be treated with all consideration due to their sex.” (Geneva Conventions I and II)⁴⁶
- “Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.” (Geneva Convention IV)⁴⁷
- “Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.” (Additional Protocol I to the Geneva Convention)⁴⁸
- “[T]he following acts . . . are and shall remain prohibited at any time and in any place whatsoever: . . . Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.” (Additional Protocol II to the Geneva Convention)⁴⁹
- “[S]erious violations of the laws and customs applicable in international armed conflict . . . [include] any of the following acts: . . . Committing outrages upon personal dignity, in particular humiliating and degrading treatment; Committing rape, sexual slavery, enforced prostitution. . . .” (ICC Rome Statute)⁵⁰

It merits notice that defining “special protections” such as of a woman’s “honor” and “dignity” eludes fixed definition not least because these notions can be culture-specific.⁵¹ *It further merits notice* that certain of these “special protections” clash with a modern sex-egalitarian sensibility. The ICRC

45. Rule 134.

46. Article 12.

47. Article 27.

48. Article 76.

49. Article 4(2)(e).

50. Article 8(2)(b)(xxi), (xxii).

51. See *Detailed Findings II*, para. 446 (“The Commission particularly notes that female victims were forced [by Israeli Security Forces] to strip down to their underwear and remove their veils in public and in front of the community that has strict religious and cultural dress codes, particularly for women and girls”). See also *ibid.*, para. 384.

commentary on these protections states that “women . . . have an absolute right to respect for their honor and their modesty, in short for their dignity as women.”⁵² It can be a tricky business where defense of a woman’s “honor” and “modesty” crosses into defense of a chivalrous-chauvinist double standard anchored in invidious sex stereotypes. It gets murkier still when retrograde “special protections,” otherwise ridiculed as throwbacks to a benighted sexist past, are weaponized such that not treating a woman like a “lady” constitutes criminal conduct. *It further merits notice* that a war crime can contain a sexual aspect without constituting a crime of sexual *violence*. The Commission stated that it “considers the term ‘sexual violence’ to cover a range of physical and non-physical acts of a sexual nature against a person or causing a person to engage in such an act, by force, or by threat of force or coercion.”⁵³ Still, if a perpetrator intentionally exposes or mangles the genitalia of a corpse, it would uncontroversially constitute an act of sexual desecration or an outrage upon personal dignity but, as it couldn’t in the nature of things cause pain or injury to body or mind, the act wouldn’t constitute sexual *violence*. The Commission itself acknowledged this distinction: it conceptually juxtaposed “desecration of women’s bodies” against “sexual violence”;⁵⁴ it determined that, not the war crime of sexual violence, but rather the “war crime of outrages upon personal dignity can be committed against the dead”⁵⁵ and “include[s] the desecration of undressed bodies”;⁵⁶ it separated out the “war crime of outrages upon personal dignity”⁵⁷ from the “[w]ar crime of rape and other forms of sexual violence.”⁵⁸

Alas, the Commission was *not* mindful of the above strictures as it proceeded to inventory the nature and magnitude of sexual violence committed by Palestinian armed groups on 7 October. *First*, the Commission classified the exposure or mangling of female body parts as sexual violence even as in instances it forthrightly acknowledged that it “could not determine” whether the violent act occurred “before or after the victim’s death,”⁵⁹ or even

52. ICRC, *Commentary, IV Geneva Convention* (1958 edition), p. 206.

53. *Detailed Findings I*, para. 134n52.

54. *Ibid.*, para. 275.

55. *Ibid.*, para. 286.

56. *Ibid.*, para. 290.

57. *Ibid.*, paras. 286–90.

58. *Ibid.*, paras. 291–92. But cf. *ibid.*, para. 15.

59. *Ibid.*, paras. 134, 135, 137 (“could not determine”), 152–53. The video evidence examined by Human Rights Watch is suggestive that sexual desecrations took place after the

as it acknowledged that the desecration did occur after the victim's death.⁶⁰ The Commission purported that "a pattern of sexual violence . . . has been corroborated by the digital evidence it collected and preserved."⁶¹ But the Patten mission had established the *absence* of "digital evidence specifically depicting acts of sexual violence," while Amnesty International reported *after* the Commission's findings were published that it "has neither obtained nor heard of images or video footage depicting acts of sexual violence."⁶² How to resolve this discrepancy? The Patten mission differentiated between "acts of sexual violence," of which it could adduce no digital evidence, versus "circumstantial elements such as naked or partially naked bodies," of which it did find "some digital material."⁶³ If the UN (Pillay) Commission laid claim to "digital evidence" of sexual violence, that was apparently because it disingenuously conflated these distinct categories of evidence, construing digital proof of the latter ("circumstantial") as digital proof of the former ("acts"). Relatedly, the Commission concluded that "acts of torture and mistreatment were widespread" on 7 October even as it "could not conclusively determine whether victims were subjected to mistreatment before or after death."⁶⁴ But if it wasn't able to make this determination, then the Commission couldn't conclude that torture was "widespread": a corpse can be desecrated; it can't be tortured.

victim's death:

The videos also indicate Joshua Molle's attackers stripped him of his clothing. In the first video, he is seen alive and clothed, in the second he is dead and clothed, and in the third he is dead and his shirt is pulled up near his head and his pants are mostly removed as the gunman steps on his corpse. A fourth video shared to Telegram shows Molle's body, bloody and without pants, in the back of a moving truck. (*I Can't Erase*, p. 146)

60. *Detailed Findings I*, paras. 142 ("a pair of scissors was inserted in the groin area after death"), 157 ("the body of a mutilated and undressed civilian woman . . . was paraded in the back of a truck . . . through a cheering crowd").

61. *Ibid.*, para. 134.

62. *Amnesty International's Research into Hamas-Led Attacks of 7 October 2023 and Treatment of Hostages* (2 December 2024; <https://www.amnesty.org/en/wp-content/uploads/2024/12/MDE1588032024ENGLISH.pdf>), p. 6.

63. *Mission Report*, para. 77.

64. *Detailed Findings I*, paras. 116–17.

Second, the Commission conflated alleged acts of physical violence per se with *sexual* or *gender-based* violence. Consider this paragraph in the section titled “Gender-based violence in kibbutzim and on road 232”:

Most of the 90 women and girls abducted to Gaza on 7 October were from the kibbutzim in southern Israel. The Commission found that several of them were subjected to physical and psychological violence in the process of their abduction. The Commission received many reports and verified digital evidence that hands and sometimes feet of women were bound, often behind the victims’ backs, during the abduction or prior to their killing. The perpetrators mainly used plastic zippers, but the use of rope and electric cables has also been documented.⁶⁵

It’s hard to fathom how this constitutes “gender-based violence.” Zip-tie handcuffs can be painful, even excruciating, for everyone—women *as well as men*. Is the Commission purporting that a woman’s wrist is inherently daintier and therefore warrants “special protection” under the law? In a paragraph devoted to “sexual and gender-based violence against female [Israeli] soldiers in the Nahal Oz outpost,” the Commission noted “the inherently unequal circumstances of these soldiers in age, sex and combat capacity,” as well as their visibly “distressed” state before being captured. It perplexes on what basis it is deduced that female combatants are “inherently unequal” to male combatants *in anything*; and under which laws of war do combatants get special dispensations based on their “age, sex and combat capacity” or on feeling “distressed”; and why would a UN body committed to ending discrimination against women invoke imagery harkening back to “damsels in distress.”⁶⁶ Bizarrely, the Commission observed that the Nahal Oz military outpost included “25 unarmed female ‘Tazpitanyot,’ a *non-combat* role observing a portion of the fence and reporting on any security concerns, *as well as operating a remote shooting system* called ‘See-Shoot’” (emphases added).⁶⁷ Is the remote-control operator of a highly sophisticated weapons system filling a “non-combat” role? (See also Box B.)

65. Ibid., para. 145.

66. Ibid., paras. 162, 163.

67. Ibid., para. 106. On the “See-Shoot” weapons system, see Philip Alston, “Lethal Robotic Technologies: The implications for human rights and international humanitarian law,” *Journal of Law, Information, and Science* (2012).

Box B
Is This "Gender-Based Violence"?

"The Commission viewed CCTV footage of a woman being abducted by eight men. . . . The footage shows the men carrying and dragging the woman against her will while she continuously struggles to get free. One attacker is carrying a white sheet that he is trying to place on the woman. At one point she falls on the ground and a man in military uniform slaps her in the face. The woman was later taken to Gaza where she was held captive for almost two months. She described after her release how she was beaten badly when she tried to escape her abductors and that her feet and hands were eventually tied when she was brought to Gaza. She also described feeling that she was being treated like an object during her abduction. The Commission considers that this violence by eight men, some armed, on a woman was inherently threatening and degrading and denied the woman the protection to which she was entitled under international law. The Commission considers she was subjected to gender-based violence."*

It is unclear how being "beaten badly when she tried to escape her abductors and . . . her feet and hands were eventually tied" constitutes "gender-based violence." Is it okay to beat and bind male but not female hostages trying to escape; is the infliction of "violence by eight men . . . on a woman . . . inherently threatening and degrading," but the infliction of violence by eight men on a man not "inherently threatening and degrading"? Even were it to be presupposed per the Commission that the "gentler sex" is inherently less robust and resilient, if it's not permissible to manhandle women, then it's also not permissible to manhandle men; the violence either is or isn't prohibited, the legal threshold is sex-blind. It would appear that the Commission, chaired by the redoubtable Navi Pillay, was trucking in the hoariest sexist stereotypes in order to prosecute an otherwise flimsy case. It might further be wondered what, pray tell, was the legal relevance of the victim "feeling that she was being treated like an object" any more than if she felt as if she was being treated like a potato.

* *Detailed Findings I*, para. 146; see also *ibid.*, para. 164.

Third, the Commission wrongly imputed acts of sexual violence in other situations that, *prima facie*, didn't warrant such an imputation. It stated that "[m]ilitants posed with bodies in videos and photos, violating the personal dignity of the dead persons by humiliating or degrading treatment. In several of these cases there was a clear gendered element to the crime, where the bodies were displayed undressed as a means of humiliation and disrespect."⁶⁸ It went on to document incidents of this female corporeal desecration. But it also reported incidents such as "the body of a partially undressed man wearing boxers [that] is seen disrespected once brought to Gaza, with a mob kicking and hitting the lifeless body," of another dead man who is "almost completely undressed; his jeans have been pulled down and there is partial tearing of his underwear," and of another "man, most likely deceased, [who] was dragged on the ground by two men in military uniform on a motorbike. . . , his trousers pulled down to his ankles and only wearing underwear."⁶⁹ If the corpses of not only female but also male bodies were desecrated, how is this a "clear gendered" crime and not a crime of sexual desecration, *tout court*?⁷⁰ It's almost certain that Palestinian armed groups committing these criminal acts didn't give a darn what "gender" they were. The martyred people of Gaza loathed Israeli men and women without distinction as they experienced them without distinction as their tormentors. The Commission reported an incident of "a woman being humiliated and degraded by many male perpetrators . . . who subjected her to degrading language, including referring to her as a Jewish female dog," and it recalled the woman's fraught testimony that "I was a trophy. They brought people from outside so they could look at me."⁷¹ But can it be doubted that male captives were also subjected to degrading epithets and treated like trophies? However it might disappoint, these were not gender-based but, something very different, *tormentor*-based crimes.⁷² (See also Box C.)

68. *Ibid.*, para. 148.

69. *Ibid.*, paras. 149–59; see also *ibid.*, para. 290.

70. The Commission also asserted that "women [were] the primary but not the only target" of this "gender-based crime" (*ibid.*, para. 156). It is a puzzle on what evidentiary basis the Commission deduced which sex was the "primary" victim.

71. *Ibid.*, para. 159.

72. Human Rights Watch trod the path carved out by the UN report as it collapsed the distinction between sexual violence and postmortem outrages against personal dignity, as well as by classifying any physical violence perpetrated on a woman as gender-based violence ("*I Can't Erase*," pp. 186–88, 192–96). To be sure, it also desperately conjured up novel forms of

Box C
Is This “Gender-Based Violence”?

“The Commission reviewed video footage of the abduction of several women to Gaza on motorbikes and other vehicles. The abductees were forced to sit very close to their abductors and filmed during their abduction; in some cases the women were placed between two men on a small motorbike, forcing them to coerced intimacy with their abductors. The Commission found that women were disproportionately affected by this type of gender-based crime and documented multiple cases with the same pattern, from both kibbutzim and the Nova festival. In a video viewed by the Commission, a woman is abducted by two men in civilian clothes. The woman is seen trying to move her head and one of the perpetrators forcibly turns her head in his direction. In another case a woman at the Nova festival was abducted by force on a small motorbike by two men in civilian clothes. She is seen struggling to get free from the perpetrators and pleading for her release. In another video, the man behind her is seen covering her face with a black piece of cloth while almost sitting on top of her, and she is heard crying out loud in fear and anguish.”*

Taking civilians hostage is wrong; it’s a war crime. But does international law mandate that, when taking women hostage, the abductors must book an Uber to avoid “coerced intimacy”? It is most lamentable that the Commission conjured disgusting racist stereotypes of the horrors of “coerced intimacy”—or is it bestiality?—as Israeli belles are forced—G-d forbid!—to sit between dark-hued Arabs. If white women are crammed into subway cars full of *Nee-groes* at rush hour, then are they also victims of the “gender-based crime” of “coerced intimacy”? And if women were “disproportionally affected,” mightn’t it be because those beasts, seating themselves on both sides of the women, sought to specially *protect* them?[†] Or maybe it was simply that, as motorcycles entered Israel seemingly “most with two people on each,”[‡] it was easier or safer to squeeze a female than a male body

(continued)

sexual violence. For example, male hostages whose *shirts* were possibly removed counted as potential victims of sexual violence (ibid., pp. 193–94).

between the militants as they returned to Gaza, neither man willing to stay behind and get shot dead just to avoid “coerced intimacy.” Not everything traces back to the sexual repression of Arab males. The other examples of “gender-based crimes” denoted by the Commission—“one of the perpetrators forcibly turns her head in his direction”. . . —don’t even rise to the risible. Incidentally, the Commission reported that “photos depict” a male abductee “sitting on a motorbike between two men in civilian clothes.”[§] Wasn’t this Israeli also the victim of “coerced intimacy” as he suffered revolting propinquity to an A-rab body? In another paragraph it is reported that “the perpetrators used white sheets and blankets to wrap or cover female victims.”[¶] Why is this gender-based violence? It’s not established whether or not men were also wrapped in white sheets. And perhaps this was another special *protection* that the abductors afforded female captives? It’s anyone’s guess. But *prima facie*, it makes no more sense to label this sexual violence than coercive conscription into the Ku Klux Klan.**

* *Detailed Findings I*, para. 160; see also *ibid.*, para. 289.

† For indications that female Israelis benefited from special dispensations during the 7 October attack, see Human Rights Watch, “*I Can’t Erase*,” pp. 65, 66, 93, 144, 171.

‡ *Ibid.*, p. 49.

§ *Detailed Findings I*, para. 59.

¶ *Ibid.*, para. 161.

** The Commission’s obsession with “gender-based crimes” resulted in “findings” that can only be described as misandrist. In a section purporting to document the “disproportionate impact on children and women in Gaza” of the Israeli assault, the Commission observed that “large numbers of children and women [were] killed and injured” because “Israeli bombardment has utterly destroyed apartment buildings housing members of one or more extended families, killing or injuring almost all of them” (*Detailed Findings II*, paras. 51, 54). Were the deaths of adult males during these bombardments less criminal? Or it observed that “consuming water from brackish agricultural wells poses a significant risk to communities, exposing them to harmful chemicals and elevated saline levels. This is a particular threat to the health of vulnerable groups such as newborns, children, and women” (*ibid.*, para. 308). How are harmful chemicals and elevated saline levels less of a threat to men? Or it observed under the subhead “Gender specific impact on women and girls” that “women spoke to the Commission about the suffering caused by being separated from their children” (*ibid.*, para. 318). Do men suffer less from being separated from their children?

The Commission separately reported that, besides the alleged rape of an Israeli hostage, it “received credible information about some hostages being subjected to sexual and gender-based violence while in captivity, including sexualized torture and abuse against men and women when they were held in tunnels.”⁷³ In notable contrast to its detailed findings of rape and sexual violence committed against Palestinian detainees (more on which presently), the Commission did not describe even one specific incident, let alone provide corroborative evidence, for this serious allegation against Palestinian armed groups. Instead, it limited itself to the bare, single, unreferenced sentence just quoted. This being the case, and in light of the Commission’s manifest bias, the allegation must be adjudged speculative at best. But undeterred, the Commission proceeded to accuse “ Hamas and other Palestinian armed groups” of having committed the “war crime” of “sexual violence” against the hostages.⁷⁴

The Commission convincingly demonstrated that acts of sexual desecration or outrages to the personal dignity of the dead occurred on 7 October. But its evidence of sexual *violence* perpetrated by Palestinian armed groups on 7 October and thereafter didn’t persuade; and if it didn’t persuade, that’s because it wasn’t persuasive; indeed, it was nonexistent, grasping at straws.

73. *Report of the Independent International Commission*, para. 82.

74. *Ibid.*, para. 112.