

The Events of October 2000

Was the Principle of Equality Before the Law Upheld?

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Abstract

A decade has elapsed since the grave riots that erupted in the Arab sector, in the course of which thirteen demonstrators, Israeli citizens, lost their lives. The events were a watershed in the relations between Israeli Arabs and the State. In their aftermath, by reason, *inter alia*, of police conduct at the time, and the later conduct of the Police Investigations Unit (PIU), the State Attorney's Office and the Attorney General, the Israeli Arab public sensed that the State was relating to it as an enemy. The events of October and their consequences thus accelerated the processes of withdrawal and segregation on the part of the Israeli Arab community.

The outbreak of the riots was an expression of the sense of alienation of Israeli Arabs due to the systematic discrimination and oppression that they had suffered (and continue to suffer) since the establishment of the State. As noted by a number of witnesses during the deliberations of the Or Commission (the State Commission of Inquiry into the Events of October 2000), even before the events of October, "the writing was on the wall." The Arab public's feelings were reinforced and substantiated by the

* Translated by Michael Prawer

law enforcement authorities' defective treatment of the files of the killed and the injured. Following are some of the main points of this grave operational failure.

1. The unjustified failure of the PIU to undertake substantive investigative actions immediately after the events.
2. The mistaken decision of the State Attorney, Edna Arbel, six months after the termination of the riots, not to conduct an investigation of the PIU in parallel to the proceedings of the Or Commission – a decision which resulted in the opening of the PIU investigation only three years after the outbreak of the riots.
3. The PIU decision to close the files against all of the suspects for lack of evidence.
4. The immediate, blanket support given to the report by Attorney General Menachem (“Meni”) Mazuz and the State Attorney at that time, Eran Shendar.
5. The astonishing decision of the Attorney General, whereby lawyers of the State Attorney’s Office – then subordinate to the State Attorney Eran Shendar, who had been in charge of the PIU at the time of the events themselves – were to reexamine the decisions adopted in the PIU report in an objection procedure, and submit the results of the examination for the approval of the Attorney General.
6. The decision of the Attorney General to adopt the conclusions of the team of attorneys – namely that no indictments would be filed against the policemen in the wake of the events.
7. The unexplained failure of the Attorney General to appropriately criticize the defective conduct of the PIU during and after the events.

In addition:

8. An examination of the evidence in three of the files indicates that closing the files was unjustified and that the PIU, followed by the State Attorney's Office, did not exhaust the investigative process.
9. The examination indicated a tendentious investigative format in the analysis of evidence by the State Attorney's office.

The following policy study presents an in depth examination of the Attorney General's decision at its various levels, and details the evidence and the manner in which it was evaluated in three of the thirteen homicide files.

Main Conclusions

A. Failure in the operation of the law enforcement system

1. There was no justification for the failure to open a comprehensive investigation of the thirteen cases of death and hundreds of injuries already at the time of the riots, and at the very latest, immediately after the subsiding of the local riot. The investigations should have included the collection of concrete evidence that was liable to disappear from the scene, the questioning of witnesses when the events were still fresh in their memories and had not yet been influenced by external pressures, identity line-ups, examinations of injuries, and autopsies.
2. Both during and after the events, the PIU made no effort to ensure that the police would preserve the evidence. In many of the central incidents, the policemen involved failed to write operation reports, nor were reports kept regarding the use of arms. The PIU also failed to provide a satisfactory explanation for the failure to investigate the policemen immediately after each incident.

3. There was no justification for the failure to investigate for a period of six months after the appointment of the Commission of Inquiry. The PIU did not provide any explanation for its inaction during the incidents themselves, and until the decision of State Attorney Edna Arbel (with the knowledge of the Attorney General, Elyakim Rubinstein) to refrain from a criminal investigation parallel to the work of the Or Commission. In his decision on the appeal against the PIU decision not to charge the policemen, Attorney General Mazuz ignored the unjustified absence of any investigation during that period.
4. There were no grounds for the immediate support given by the Attorney General to the PIU decision to close the files with respect to all of the suspects.
5. It is highly doubtful whether State-Attorney Eran Shendar (who was the head of the PIU during the events) and the attorneys subordinate to him, were the appropriate bodies for an independent, unbiased examination of the PIU investigation in the renewed procedure declared by the Attorney General after the PIU report was filed. The Or Commission harshly criticized the PIU's conduct, and the renewed examination should also have addressed this aspect. Naturally, a team of attorneys subordinate to Shendar was incapable of conducting a critical, honest re-examination of the PIU's conduct under Shendar's leadership. Similarly, inasmuch as Advocate Shai Nitzan was subordinate to State Attorney Eran Shendar, he was not the appropriate person to manage the renewed examination, because the reputation of his superior was in the balance. No system can effectively examine itself, and all the more so in the particular situation that had emerged regarding the State Attorney's Office. The result was that the scope of the hearing was restricted to the formal

framework of an objection to the decision not to file criminal charges, and the claims concerning the faulty functioning of the PIU were not addressed. A particularly grating omission was Attorney General Mazuz's failure to respond to the criticism of the nature of the reexamination which he himself had declared. The import of his declaration was the creation of a wholly unacceptable review system in which subordinates reviewed the actions of their superiors.

6. Attorney General Mazuz supported the work of the PIU and its conclusions in a press conference conducted after the filing of the report. It is therefore doubtful whether he could be considered competent to serve as an instance of appeal against its conclusions not to charge the policemen.
7. The Attorney General's reason for supporting the PIU and the decision of the State Attorney's Office, does not stand up to examination. According to the Attorney General, the violent nature of the events justified the failure to investigate the events at the time of their occurrence, but this cannot justify the failure to investigate. Reliance on the violent nature of the events seems particularly spurious when coming from the principle enforcement body in Israel, one of the main objectives of which is the effective handling of riots, especially when the rioters were unarmed. The fact is that numerous reporters, including the representatives of international organizations, succeeded in arriving at the scene, investigating the events and reporting them. Assuming that police presence at the scene would have involved an unreasonable risk, and knowing that the events lasted only ten days, it would have been possible to send investigating teams soon after calm was restored without any cause for concern. It is similarly incorrect to claim that the violent character of the events

hindered the collecting of evidence. On the contrary, the more violent the event, the greater the quantity of evidence left behind, in the form of shell casings, blood, etc. It is likewise unclear how the dynamic nature of the events, being typical of many criminal incidents, prevented the PIU from opening an investigation. The dynamic nature of events may have hampered the investigation, but this is a far cry from a determination that an investigation was not possible.

8. Refraining from opening an investigation in order to prevent friction between the police and the local population is similarly questionable in view of the exceptionally violent response of the police to the events themselves. One can hardly assume that a team associated with the Criminal Identification Department, charged with investigating whether the deaths of citizens were the result of criminal acts by policemen, would have generated additional friction. The winds of public fury and hostility might similarly have been contained by enlisting the aid of the leadership of the Arab public and its influence as a moderating force. Even if there were grounds for the fear of friction, they would have dissipated soon after the matters had calmed down.
9. Exonerating the enforcement authorities of all responsibility, and imposing it on others (the Arab sector and civilian organizations) are inappropriate, especially when coming from the Attorney General. The PIU should have undertaken its own investigatory activities and not waited for the initiatives of the civilian organizations. It seems that the non-cooperation on the part of witnesses was less sweeping than indicated in the reasons provided by the PIU. The phenomenon of non-cooperation on the part of witnesses could have been dealt with on a variety of levels: by granting immunity from prosecution for disturbing

the peace to those agreeing to testify; to once again attempt to ensure cooperation after the initial furor had subsided; to enlist the assistance of the leadership of the Arab public in order to encourage witnesses to cooperate.

10. The Attorney General's support for the PIU decision not to investigate parallel to the investigation of the Or Commission does not stand up to review. A late investigation is not effective. Deferring a criminal investigation is tantamount to waiving it. It is unreasonable that the Government should be able to frustrate the conduct of a criminal investigation by appointing a Commission of Inquiry. This stands in contradiction to the rule of law and the principle of separation of powers.
11. The fear that the PIU investigation would dissuade witnesses from cooperating with the Commission of Inquiry was presented in the Attorney General's decision as a general concern, unsupported by any evidence, and based on the assumption that the witnesses would refrain from discharging their legal duty to testify before the Commission of Inquiry. It was also unclear what basis there was for the contention that postponing the criminal investigation (as opposed to granting immunity from prosecution) would induce potential suspects to cooperate with the Commission of Inquiry. Even if a PIU investigation could potentially hamper the work of the Commission of Inquiry, no attempt was made to assess the degree of anticipated damage, or to examine the possibility of neutralizing or minimizing it, nor was consideration given to the possibility of accepting the damage as the price of enabling the conduct of the criminal investigation.
12. It was claimed that the public importance and moral value of the governmental decision to establish a national commission of

inquiry to examine all of the issues related to the events were factors to be considered in evaluating the concern that a PIU investigation might impede the Commission's work. **This claim is not reasonable.** The establishment of a national commission of inquiry is indeed of considerable public importance, but such a commission cannot, and is not mandated to examine the criminal aspects of the events that would be the subject of the PIU investigation.

B. Inaccuracies in the opinion of Attorney General

Meni Mazuz

1. In his decision, the Attorney General assumed that the PIU began its investigation of the events soon after they occurred, and that the real objective difficulties encountered by the investigators allegedly impaired the efficiency of the investigation. The truth is, however, that the PIU did not begin any substantive, comprehensive investigation, and its actions were limited to preparatory measures in anticipation of commencing the investigation (as defined by the PIU).
2. The Attorney General mentioned at a number of points in his decision that the families refused to allow autopsies immediately after the events, repeating the findings of the PIU report that the funerals were held within hours after the deaths, leaving no possibility for the conducting of autopsies prior to burial. There are grounds for assuming that this portrayal of the events is inaccurate. There is evidence that most of the funerals took place a day or more after death, some of the families of the dead agreed to autopsies, and quite soon after the events the PIU actually had possession of autopsy reports for four of the victims.

- C. Closing the three files that we examined was not justified
1. The PIU's examination of evidence, and that of the State Attorney's office, were defective. Examination of the evidence in three of the files showed that closing these files was not justified. The PIU and the State Attorney's office did not exhaust the investigative process.
 2. The examination revealed tendentious conduct of the State Attorney's office in its examination of the evidence:
 - **Tendentious treatment of incriminating evidence in the file:** When the witnesses gave testimony that buttressed the evidence against a suspect, the State Attorney's Office altogether ignored it or failed to evaluate it realistically, preferring to disqualify it out of hand on the basis of occasional inaccuracies, without verifying the inaccuracies with the witnesses themselves. Furthermore, when witnesses presented a number of versions of events, the State Attorney's office chose to adopt the version that supported its own thesis of lack of evidence, without explaining that particular choice.
 - **Tendentiousness in interpreting and evaluating evidence in a manner that supported closing the files:** This tendency takes a number of forms in the report: Reliance on weak evidence in order to draw conclusions that served the thesis favoring the closing of the files; selecting sections of testimony out of context and relying upon them to support closing the files; and a biased approach to the testimonies.

Despite all of these problems, the Attorney General adopted the State Attorney's recommendations as presented to him, and decided to close the files for lack of evidence.

D. Was the principle of equality before the law upheld?

No one would argue that an indictment should be filed merely to satisfy the public, even in the absence of evidence that would support a criminal conviction. On the other hand, where *prima facie* evidence indicates the commission of criminal offenses, as in the files we examined, there is an obligation to prosecute. Failure to prosecute in such cases severely undermines public trust in the law enforcement system and in the perception of equality before the law. Failure to prosecute purely on the basis of hypothetical doubt, even in instances where that doubt is not supported by the evidence, means granting immunity against prosecution in any complex file. A law enforcement system that only prosecutes cases that are absolutely doubt-free betrays its duty and violates the rule of law.

In the wake of these findings one can hardly avoid asking whether the authorities would have conducted themselves in the same manner had thirteen Jews been killed in similar circumstances. Might the failure to conduct a timely investigation soon after the events, the decision to investigate at a later stage, and the decision to close the files for lack of evidence be connected to the fact that the allegations of unwarranted and lethal force concerned Israeli Arabs? Can the law enforcement system's handling of Arab rioters during the events themselves be viewed as an expression of "let's teach them a lesson that they won't forget"? Did the defective investigation adopt, or turn a blind eye to such an approach?

There is one other worrying aspect that cannot be ignored. Seven years have passed since the Or Commission submitted its report, yet the majority of its recommendations have not been implemented with respect to the narrowing of gaps between Jews and Arabs in Israel. It is not difficult to imagine the disappointment, the frustration and the alienation from the State that result from such an approach.