

Adalah The Legal Center for Arab Minority Rights in Israel

عدالة المركز القانوني لحقوق الاقلية العربية في اسرائيل
עדאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



1 November 2006

Professor Philip Alston
UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions
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Via Email: philip.alston@nyu.edu

Re: October 2000 Killings and Adalah's Report, "The Accused", on the Ministry of Justice Police Investigation Unit's ("Mahash") Failure to Investigate, Published October 2006

Dear Professor Alston,

Many regards to you from Adalah.

We would like to take this opportunity to update you regarding developments in the investigations into the October 2000 killings in Israel since the publication of your report in March 2006 to the 62nd session of the UN Commission on Human Rights. We also request, in your capacity as the UN Special Rapporteur, your continued involvement in and investigation into these matters.

1. We were very pleased to read the chapter in your report concerning the October 2000 killings of 13 Palestinian citizens of Israel by police and security forces, and Mahash's failures to appropriately investigate these matters. Adalah featured your report in the April 2006 edition of our electronic monthly newsletter: <http://www.adalah.org/newsletter/eng/apr06/apr06.html>.

2. We would like to bring to your attention two inaccuracies in the reporting of the October 2000 events in the letter that you sent to the state of Israel in September 2005. First, you note that the demonstrations began on 2 October 2000; however, the protests began a day earlier on 1 October 2000. Second, the letter states that, following the publication of the Official Commission of Inquiry's (Or Commission) report in September 2003, Mahash's investigators began a probe during which they interviewed hundreds of police officers and civilians. According to Adalah's correspondence with Mahash and our examination of Mahash's investigation files, however, Mahash barely conducted any investigation whatsoever (see below). As you may recall, in its report of September 2005, Mahash recommended that no indictments be issued against any police officer or commander responsible for the October 2000 killings and the injury of hundreds of others.

3. Earlier this month, Adalah published a comprehensive report, entitled "**The Accused**," and submitted it to the Attorney General, Menachem Mazuz. The 133-page report in Hebrew primarily exposes Mahash's negligent work and its failure to fulfill its duty to investigate the criminal offenses committed by police officers and commanders in October 2000. In addition, the report discloses, for the first time, how Mahash concealed significant facts from the public and issued a falsified report in September 2005 regarding the events of October 2000, in which it claimed that "it investigated the fatal events in an intensive investigation." Adalah compiled "The Accused" report after examining thousands of pages of documents

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and other evidentiary material presented to the Or Commission into the October 2000 events and collected by Mahash. The key points presented by Adalah's report include:

- Mahash did not conduct any investigation into five of the killings, against the Or Commission's recommendation that it do so. Mahash presented a falsified report to the public, suggesting that it had conducted an intensive investigation into these killings, while in fact it did not gather any evidence itself.
- Even where Mahash investigated some of the killings, it did so in a completely negligent, incompetent and superficial manner. For example, Mahash's investigators failed to question numerous police officers over contradictions that arose during its investigation compared to the testimonies they gave before the Or Commission. Mahash merely stated that the police officers had contradicted themselves, without confronting them with these contradictions, and closed the files.
- Although Mahash did not present a single shred of new evidence beyond that brought before the Or Commission, it nonetheless reached opposite conclusions in many cases. For instance, the Or Commission clearly determined, based on considerable evidence, that police officers Guy Raif and Rashed Murshid were responsible for the killing of three civilians. Conversely, Mahash cast doubt on this conclusion, without presenting any new supporting evidence.
- Mahash concealed the fact that police officers had refused to cooperate with it, including a refusal to undergo a polygraph test. On the contrary, Mahash claimed that the bereaved families had refused to assist in the investigation. Police officers who refused to cooperate with Mahash continued to serve in their positions and no measures were taken against them.
- Mahash's investigation of Alik Ron, who was found by the Or Commission to be responsible for illegally deploying snipers, covers only one page, while the Or Commission's investigation of Ron spans 801 pages.
- Mahash justified the use of sniper fire on the basis of the testimony of a police officer who was summoned as a defense witness by Alik Ron. The Or Commission reproached Ron for bringing an affidavit of support from the same police officer, and yet Mahash did not hesitate to base its findings on the same individual.
- Mahash justified the use of snipers without examining tape recordings comprising central evidence for the illegality of the sniper fire. These tape recordings were, however, viewed by the Or Commission.
- Mahash did not verify or review a police report which justified the use of snipers even in the absence of an immediate danger to police officers' lives, contrary to internal police regulations governing the opening of fire.
- Moshe Waldman, who was responsible for the deployment of snipers in Nazareth, was not questioned over an incident that occurred on 8 October 2000 in Nazareth, in which two Arab citizens were killed. In contrast, the Or Commission determined that Waldman gave the illegal order to fire at demonstrators.
- Mahash concealed the fact that in one of the fatal cases, a bullet extracted from the body of the deceased was lost after previously being in its possession.
- Mahash rejected, without any sufficient foundation, the credibility of witnesses who had been considered very credible by the Or Commission. Mahash also did not hesitate to reject the credibility of neutral witnesses without summoning them for questioning.
- The report demonstrates that Mahash's first failure began at the very outset of the events of October 2000. Thus, in Adalah's view, the law enforcement authorities violated the principle of the rule of law by failing to perform their legal duty to immediately open criminal investigations against the police officers and commanders.

In light of the above, Adalah concluded that Mahash damaged the public's confidence and breached its trust. Adalah, on behalf of the families of the deceased, demanded: (1) that an investigation be opened immediately into Mahash's grave failings; and (2) the immediate suspension of all those responsible for Mahash's failures, led by Eran Shendar, the Director of Mahash in 2000, and currently the State Attorney of Israel.

"The Accused" report received extensive coverage in the *Haaretz* newspaper, both in Hebrew and in English. For example, the editorial of *Haaretz*, published on 18 October 2006, three days after the release of our report, found that "The PID [Police Investigations Department] is not convincing". See: <http://www.adalah.org/features/october2000/haaretz181006-en.pdf>.

5. The Attorney General has criticized our decision to publish "The Accused" report, rather than submitting an appeal against Mahash's findings published in September 2005. See: <http://www.jpost.com/servlet/Satellite?cid=1161811205388&pagename=JPost%2FJPArticle%2FShowFull>

Adalah will respond to the Attorney General's letter very shortly.

6. With this letter, we are attaching a summary of our report, "The Accused", in English for your further information.

7. We also wish to draw your attention to a further development related to these matters. About 10 days after we released our report, on 24 October 2006, the Israeli Supreme Court delivered a landmark decision ordering the Public Security Minister, Avi Dichter, to cancel the promotion of senior police commander, Benzi Sau, on the grounds that it contradicts the recommendations of the official Or Commission of Inquiry. In June 2006, Adalah submitted a petition to the Supreme Court on behalf of the Committee of the Victims' Families (October 2000) and in Adalah's own name, seeking the cancellation of Sau's promotion in May 2006. Sau was in command of police forces located in and around the Arab town of Umm al-Fahem in October 2000, and was among those responsible for ordering the use of rubber-coated steel bullets and live ammunition by snipers and police officers, which resulted in the deaths of three young Palestinian citizens of Israel - Mr. Misleh Hussein Abu Jarad (19), Mr. Ahmed Jabareen (18), and Mr. Mohammed Jabareen (23) - and the injury of tens of others. The Or Commission recommended that as a result of Sau's actions in October 2000, he should not be promoted in rank or position for a period of four years or until 1 September 2007.

See Adalah's News Update: [In Landmark Decision, Supreme Court Orders Public Security Minister to Cancel Promotion of Senior Police Commander Benzi Sau as it Contradicts Recommendations of the Official Or Commission of Inquiry](#), 25 October 2006.

8. As we promised some time ago, we are also enclosing a full English translation of the State Comptroller's report (originally in Hebrew) that critically addresses Mahash's institutional failures to perform proper and complete investigations into the excessive use of fatal force by police.

We respectfully request your continued investigation into all of these matters. Please do not hesitate to contact us should you have any questions or require any additional information. We appreciate your attention to this issue and we would be grateful for information on any actions you may take in this regard.

Sincerely,

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