

Adalah The Legal Center for Arab Minority Rights in Israel

عدالة المركز القانوني لحقوق الاقلية العربية في اسرائيل

עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



Adalah Report

MAHASH: THE GREEN LIGHT FOR POLICE BRUTALITY

September 2014

In 2006 and 2011, Adalah released two reports entitled [“The Accused”](#) and [“The Accused - Part II”](#), which examined the work of the Israeli Ministry of Justice’s Police Investigation Unit (known as “Mahash”) regarding the killings of 13 young Palestinian citizens of Israel and the injury of hundreds of others by Israeli police during demonstrations in October 2000. The reports revealed the failures and omissions of the investigatory work of Mahash and the Attorney General’s Office regarding these important events. The reports were sent to the Ministers of Justice Meir Sheerit and Daniel Friedman, public prosecutors Moshe Lador and Eran Shendar, the head of Mahash Hertzal Shapiro, and Attorney General Menachem Mazuz, who was recently appointed as a new justice to the Israeli Supreme Court.

According to Adalah’s reports, Mahash did not investigate five of the crimes committed in October 2000, despite instructions from the Or Commission ordering it to do so. Mahash also disregarded important recommendations from the Or Commission without any evidence to support its position. The investigation conducted by Mahash in regards to the use of snipers during the events was extremely superficial. The investigations were also put on hold after the Or Commission was established. At the time of the events, Mahash failed to immediately investigate the identity of the policemen who opened fire on the Palestinian citizen protestors and caused the deaths of the 13 young men. Mahash investigators did not visit the sites where the victims were killed to collect information, and they failed to collect testimonies from police or from other eyewitnesses. “The Accused” notes that one of the police officers who was investigated stated that the interrogation sessions with Mahash were more like “sessions between friends.”

Adalah concluded that Mahash’s investigations into the October 2000 events were superficial and even a whitewash, making them a disaster in terms of the unit’s legal and ethical duties and their obligations to the public. These findings, although sent to the responsible parties through detailed reports, did not deter Mahash from continuing its practices of defending police actions and failing to perform its duties. The unit’s investigations today are still subject to long delays and are greatly mismanaged – that is if an investigation is even opened at all.

Adalah continues to monitor Mahash’s practices. In the past few years, Adalah submitted dozens of complaints on behalf of Palestinian citizen protestors who were assaulted by police during demonstrations. All the complaints filed were based on testimonies of protestors and additional evidence including video clips, pictures and medical reports. The testimonies detailed the brutal violence exercised by the police, which was also documented through videos and photographs to show the extent of violence and police repression.

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Although serious failures and shortcomings in the work of Mahash were noted in both of Adalah's "Accused" reports, Mahash continues with its poor quality of work, creating a culture of impunity and a lack of accountability. The vast majority of complaints submitted to Mahash are not investigated and if investigated, they are closed. In the few cases where investigations are opened, they are carried out with substantial delays and in an unprofessional manner, resulting in very low rates of prosecution or punishment. Indictments are not issued against police officers or commanders, despite strong evidence against them. Contradicting police and investigative regulations, Mahash is still not an independent body and remains closely tied to the police, which will be elaborated further in this paper.

1. INVESTIGATION FILES CLOSED

Mahash derives its authority to operate from Amendment No. 11 of the Police Regulations (New Version) of 1971, which stipulates that every suspicion of misconduct committed by a police officer that is punishable by more than one year of imprisonment under the law, must be investigated by Mahash.

In general, the majority of complaints submitted to Mahash concern the use of excessive force by police officers, which is defined as assault under Section 378 of the Penal Law of 1977 (hereinafter the "Penal Code"), and is a violation of law punishable by imprisonment for a term of two years. As such, the majority of complaints to Mahash require an investigation as stipulated by law.

In March 2014, Adalah sent a letter to the Ministry of Justice requesting information about the number of complaints submitted to Mahash against police officers between 2011 and 2013. In addition, Adalah requested the disclosure of: the number of files that were closed following an investigation; the number of files that were closed without investigation; and the number of files in which police were indicted, prosecuted, and sentenced. Adalah also requested that the Ministry of Justice provide data distinguishing the complainants – whether they were Israeli Jewish or Arab citizens – in order to see if there was a discrepancy in the closing of complaints submitted by Arab citizens as compared to Jewish citizens; however, the Ministry did not respond to this request.

On 1 May 2014, Adalah received the requested data from the Ministry of Justice. The findings were alarming. Between 2011 and 2013, **11,282 complaints** were filed to Mahash. This figure alone, before even expanding into its details, indicates that the practice of police violence and violations of citizens' rights were extensive and serious. Even with this high figure, there are also presumably a large percentage of complaints that were never filed for various reasons. All the same, the picture reflected by the data is extremely disturbing:

- **93%** of the complaints filed against the police were closed by Mahash with or without investigation;

- Above **72%** of the files were closed without an investigation based on one of three reasons afforded by law: lack of public interest, lack of guilt, and lack of evidence. However, Mahash also often closed files for reasons that are not accorded by the law, such as claims that there was no identification of the suspected perpetrator of the offense, that no law had been violated, and that Mahash did not have the authority to open an investigation into certain cases;
- **21%** of the files were closed after investigation, half of them for “lack of evidence”;
- **3.3%** of the cases filed (373 complaints) led to disciplinary actions against police officers; only **2.7%** of the cases (303 files) led to prosecution;
- No data was provided concerning the nature of the criminal charges submitted by Mahash against police officers, and/or the sentences handed down.

2. UNCLEAR EXCUSES FOR CLOSING FILES AND THE DUTY TO PROVIDE AN EXPLANATION

Like the police or the public prosecutors, once Mahash decides to close a case, it is required to explain the reasons for its decision, just as other administrative authorities should. The principle behind this requirement is to prevent Mahash from making arbitrary decisions, and to ensure that Mahash considers the seriousness and implications of such decisions. Even though there is no law that directly requires Mahash to explain its decisions, it is obligated to do so under a duty to act transparently, equitably and soundly, as required by every public authority. Moreover, an inability to explain the reasons behind a decision to close an investigation is legally difficult to put forward in court when the validity of the decision is questioned.

The duty to explain the reasons for the closure of a file holds utmost importance because of the possibility that a complainant will appeal the decision. However, from the data collected by Adalah, it appears that in the majority of cases, Mahash decided to close the file without explaining its decision to the complainant.

Example from Adalah’s files: G.S.

On 5 December 2013, Adalah filed a complaint to Mahash on behalf of Mr. G.S., who was attacked and beaten by the police at a demonstration in Haifa on 30 November 2013, and was beaten again when he fell to ground while being pulled to the police car. On 20 February 2014, Adalah received a response from Mahash stating its decision not to open an investigation into the complaint made on behalf of Mr. G.S., without referring to any one of the three justifications that allows them to do so under Section 62 of the Criminal Procedure Law. The decision only stated: “the circumstances of the case do not warrant the opening of a criminal investigation.” This is not a justification for the closure of files under the law.

Example from Adalah’s files: S.K.

On 5 February 2014, Adalah filed a complaint to Mahash on behalf of Ms. S.K. On 30 November 2013, the police violently assaulted S.K. and pushed her against a tree trunk during her participation in a demonstration in Haifa. One of the policemen tried to assault her again, but

she ran away. After the assault, S.K. suffered from vomiting and pain in her head, neck and back. In addition, she had to take a CT medical examination and she needed painkillers to treat the pain. On 20 February 2014, Adalah received a response from Mahash, which stated that it decided not to open an investigation into S.K.'s complaint due to the absence of a significant public interest in her file.

Example from Adalah's files: O.F.

On 23 December 2013, Adalah submitted a complaint to Mahash on behalf of O.F., who participated in a demonstration against the Praver Plan in Haifa on 20 November 2013. During the demonstration, a group of police officers attacked O.F. and knocked him to the ground, then dragged him by the hair along the street. O.F. suffered from pains in his stomach and his body showed clear signs of injuries from the attack. On 20 February 2014, Adalah received Mahash's response stating that it would not open an investigation file as, "the circumstances of this case do not warrant the opening of a criminal investigation."

3. CLOSING FILES EVEN WHEN THE USE OF EXCESSIVE FORCE IS EVIDENT

In the majority of cases, Mahash's decisions to close files were based on the claim that there was no need to conduct an investigation, even when the use of force was clearly excessive. This issue is of particular concern because some of the complaints of the police's use of excessive force constituted serious suspected criminal offenses that should have been investigated. If Mahash refuses to investigate cases where police used excessive force, then Mahash is undermining the primary purpose for which it was created.

Example from Adalah's files: L.S.

On 5 December 2013, Adalah filed a complaint to Mahash on behalf of Ms. L.S. According to the complaint, during her participation in a demonstration in Haifa on 30 November 2013, L.S. was hit by the force of a water hose that was directed at the heads of the demonstrators. The force of the hit made her fall to the ground and caused an injury above her left eye, and she was quickly taken to the hospital and had to receive stitches. Attached to the complaint were photos showing the wound that L.S. sustained. On 20 February 2014, Adalah received a response to its complaint from Mahash which stated that even if the attack described in the complaint was correct, it did not exceed the limit of force that would justify taking criminal steps against the police, and therefore the file was closed.

4. NOT DETERMINING THE IDENTITY OF THE AGGRESSOR

Another excuse that Mahash uses to close files is that the identities of the police officers who committed the alleged violations were not specified in the complaint. The main reason for this omission is that the police officers at demonstrations do not pin their names and identification cards on their uniforms, in violation of the Internal Police Regulations (1971), and as ordered by the National Headquarters of the Israeli Police on 2 December 2001, which state that it is the

duty of a police officer to make his or her name visible before the public. The absence of identification tags on uniforms makes it difficult or impossible for the complainants to know the names of the police aggressors. The result is that Mahash claims that it cannot “determine the identity of the suspect” and so it does not complete the investigation.

Despite the complaints describing this problem, Mahash has not taken any action or even made any critique against this phenomenon, nor has it tried to enforce the law and demand that police officers put identification tags on their uniforms. In addition, it appears that Mahash has not made any effort to investigate the identity of suspected police aggressors, and did not take any steps to help the complainants identify the officers. The basic methods of conducting an investigation, such as displaying pictures of the event for the complainants or examining a list of the police officers present at events in question, are never adopted and thus contradict the requirements stipulated in the Internal Police Regulations.

Example from Adalah’s files: A.T.

On 5 December 2013, Adalah filed a complaint to Mahash on behalf of Ms. A.T., editor of an Arabic newspaper and director of a women’s rights organization. During A.T.’s participation in a demonstration in Haifa on 30 November 2013, a squad of policemen attacked a group of demonstrators who were standing on the sidewalk, including herself. According to A.T.’s testimony, “The policemen came onto the sidewalk and assaulted me. They choked me with the scarf I was wearing, they pulled my hair, and they hit my face twice with their sticks, which caused me to be very nauseous. A group of 4 or 5 policemen pushed me to the ground and started to kick me, step on me and beat me with their sticks. They also beat all those who tried to help me, and did not stop kicking me until someone yelled that I was an editor of a major newspaper. Then, while I was still on the ground, the policemen walked away and a policewoman came to me claiming she was trying to help me.” As a result of the assault, A.T. suffered a loss of feeling in her neck and shoulders, internal and external bleeding in her nose, and weakness on both sides of her lower torso. The hospital deemed the level of her injuries to be moderate, and the doctor ordered her to remain at home for at least two weeks. A.T. stated that the policemen who assaulted her did not have identification tags showing their names.

A.T. gave her testimony before Mashash on 3 March 2014, and on 17 August 2014 Adalah received Mahash’s response stating that they decided to close her file because they could not determine the identity of the police officers who assaulted her. It appears that Mahash did not even take any steps to try to identify them: they did not conduct a lineup, show photographs of officers assigned to the event, or make any other effort with A.T. to reveal their identity.

5. CLOSING FILES WITHOUT HEARING THE COMPLAINANT’S TESTIMONY

Mahash closed most files without obtaining testimonies from the complainants and without investigation, in violation of the Criminal Procedures Law (Testimonies) of 1972, which allows the investigation unit to orally investigate any person holding information or facts about the

circumstances of the offence being investigated. Mahash's method of not inviting complainants to testify is another way in which the unit fails to properly investigate cases.

Example from Adalah's files: G.S.

On 5 December 2013, Adalah filed a complaint to Mahash on behalf of Mr. G.S. (mentioned earlier). He explained in his complaint that during his participation in a demonstration against the Praver Plan in Haifa on 30 November 2013, he was attacked and beaten by the police after being thrown to the ground. The police then took him and ran towards the police car, which made him fall and injure his forehead; while he was on the ground, the police hit him again. Adalah attached photos with the testimony that showed G.S.'s serious injuries.

G.S. was not invited to testify before Mahash, and on 20 February 2014, Adalah received a response from the Ministry of Justice stating that it had decided not to open an investigation into G.S.'s complaint, and that the decision could be appealed within 30 days.

Example from Adalah's files: S.M.

On 5 December 2013, Adalah filed a complaint to Mahash on behalf of Ms. S.M. The complaint explained that during her participation in a demonstration against the Praver Plan in Haifa on 30 November 2013, an officer from the Police Special Unit pushed her and struck her on her chest, which caused her to fall to the ground. When she tried to get up, five police officers attacked her and kicked her while she was still on the ground. Two of the officers then picked her up from her arms and another two officers took her from her legs; but then the officers that held her arms let go of her, making her fall to the ground again. S.M. was then dragged by the police officers that were holding her by the legs. Adalah attached photos with the complaint that showed her injuries as a result of the assault.

S.M. was not invited to testify before Mahash. On 20 February 2014, Adalah received a response from the Ministry of Justice stating that it would not open an investigation.

6. PREVENTING AN EFFECTIVE APPEAL

Although complainants are informed that they can appeal a decision to close an investigation file within 30 days, Mahash's internal working procedures do not allow for the submission of effective appeals. The appeals submitted to Mahash usually request that the unit closely re-examine the investigative material or other information in order to reconsider the reasons for the closure. However, these appeals are not considered objectively by the public prosecutor, who is in charge of handling requests to review the materials in an investigation file.

In addition, according to the law, a complainant generally has the right to access the investigation materials attached to his or her files, even if the files are closed. This process is allowed based on criteria set by the Attorney General after examining all considerations regarding the case, such as the complainant's reasons for accessing the investigation material

as well as the rights of the victim of an offense. Normally, if investigation material is requested for the purpose of submitting an appeal, it may be accessed and copied.

In many cases, however, requests submitted to Mahash to access the investigation material in order to submit appeals against the closing of files did not even receive a response. For example, on 20 February 2014, Adalah received a letter from Mahash stating that it was closing the files of the five complainants mentioned in this report. On 11 March 2014, Adalah submitted a request to examine the evidence regarding the closing of these files so that it could submit appeals. As of this writing, six months later, Adalah has not received any response from Mahash regarding this request.

7. DELAYS IN ADDRESSING COMPLAINTS

Pursuant to a decision of the Ministerial Committee for State Control, issued on 11 October 2005, Mahash must investigate complaints within three months. The purpose of setting a short and quick deadline for carrying out an investigation is to ensure that any charges and disciplinary actions are made within the valid time period of seven years as accorded by Israeli law, otherwise any decisions and actions will be rendered legally obsolete.

However, in reality, there is often a long and unreasonable amount of time spent between the submission of the complaint and the decision to close the file, which in the majority of cases exceeds the 3-month time period specified by the Ministerial Committee. This long period of time undermines the complainant's ability to appeal Mahash's decisions. When a lot of time passes from the filing of a complaint, it is more difficult to collect evidence of the events, it is more likely that details will be forgotten, and it weakens the witnesses' ability to testify, all of which undermine the investigation and the possibility to appeal a decision to close a file.

Example from Adalah's files: W.K.

On 5 December 2013, Adalah filed a complaint to Mahash on behalf of Mr. W.K. The complaint explained that at the beginning of the demonstration in Haifa on 30 November 2013, W.K. was threatened by a police officer stating that he would arrest him during the protest. After half an hour, the same officer ran towards him and arrested him, and other police officers joined and attacked W.K., shouting that he was resisting the arrest even though he did no such thing.

After the arrest, W.K. heard the officers talking about the report that they would submit against him, which would accuse W.K. of actions that he did not commit like throwing stones, making death threats to police officers and other claims as reasons for his arrest. According to W.K., the officers did this because he criticized them for attacking other demonstrators. Nine months later, Adalah has still not received any response from Mahash regarding W.K.'s complaint.

These methods adopted by Mahash constitute serious violations of the right of the complainant to an effective and professional investigation and prosecution of their complaints. As is

happening now, these methods serve only to increase police violence as there are no punitive measures being carried out against such crimes.

8. “TRIAL PERMISSION” REGULATIONS

In some cases, Mahash has deliberately closed investigation files quickly in order to take advantage of a system provided for by Attorney General regulations, No. 2.18 of 14 April 2008. This system effectively removes the chances for citizens to issue charges against police officers. According to this system, in cases where a police officer and a citizen submit counter-claims against one another over the same incident, the charges against the officer are postponed until Mahash receives the police officer’s charges against the citizen. If the officer submits his or her charges against the citizen in a short amount of time, such as during the citizen’s arrest, Mahash would examine the investigation material very quickly, often within a few hours. If, during this rapid superficial check, it appears that there is no serious material against the police officer, Mahash would give the police officer the permission to take the citizen to court and to proceed with legal action against him or her. In such cases, the investigation files against the police are closed and are not opened again by Mahash. This system provided for by the Attorney General’s regulations, described as “trial permission”, thus encourages Mahash to close investigation files against police officers as quickly as possible, so that they can charge the citizen instead.

Example from Adalah’s files: M.H.

On 15 July 2013, M.H. was arrested after participating in a protest at the Yovalim intersection. During the protest, M.H. was attacked and beaten all over his body. After he was handcuffed, the police continued to assault him until he was sent to the hospital. A few days after the incident, it appeared that M.H. was suffering from chest fractures as a result of the assault.

During his interrogation on suspicion of assaulting a police officer, M.H. spoke to the investigators about the assault against him. Despite this, a few days after the investigation, the police received a “trial permission” from Mahash, and issued an indictment against him, although the police and Mahash had videos that showed the assault and beating against M.H. by a large number of policemen during his arrest.

On 5 December 2013, Adalah submitted a detailed complaint to Mahash, which included videos and photos of the assault against M.H. The file was sent to the Attorney General to look into the evidence and to make a decision on whether he would issue charges against the police who were involved in the assault. The decision that Mahash took to grant a “trial permission” a few hours after M.H.’s arrest, which was wrong and rushed, is the direct outcome of this system. Applying this system allows Mahash to close files against police officers even before an investigation is carried out to clarify the events in question. Instead of asking to complete the investigation, Mahash decided to close it in order to speed up the process of granting the police officers permission to provide a list of charges against the citizen complainant.

CONCLUSION

It is evident from the data provided in this paper that essentially the same troubling characteristics of Mahash that were raised in Adalah's "The Accused" reports in 2006 and 2011 continue to exist in 2014. Mahash continues to provide wide immunity to the police from being held to account, and protects them from disciplinary measures for their brutal acts of violence and repression. This grants the police impunity for their actions, and is a factor that shapes the police force's use of violence against Israeli citizens, particularly against Palestinian citizens.

The Ministry of Justice must identify new methods and systems of investigation to change the current situation, in which no efforts are made to properly investigate or identify police officers suspected of committing violations of the law. Furthermore, the Ministry of Justice must set and enforce timely schedules to conduct investigations effectively and independently. It is the responsibility of the relevant state bodies to work immediately to change the current circumstances, whereby the police violate the law and human rights by assaulting citizens who participate in demonstrations. As long as these bodies do not work to change this situation, they bear the same responsibility for crimes against citizens as Mahash.