



## **Summary of the Findings and Conclusions of Adalah's 'The Accused' Report**

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## INTRODUCTION

During the period of 1 to 8 October 2000, thirteen Arab youths in the Triangle and Galilee areas were killed by Israel Police forces. The killing of the youths and wounding of hundreds of other among the Arab population were carried out by police officers during protests by Arab citizens and a general strike declared by the High Follow-Up Committee for Arab Citizens in Israel. The general strike was announced for 1 October 2000 in protest against the killing of Palestinians in various locations in the Occupied Palestinian Territories (OPTs). The difficult pictures from the events in the OPTs, including documentation of the killing of the child Mohammed al-Dura, were broadcast throughout the world. As a result of the extreme reaction of Israel Police on 1 October 2000, which led to the killing of two young people from Umm al-Fahem and a youngster from the village of Jatt in the Triangle, and the wounding of hundreds of Arab citizens, the protest activity continued in various locations. The killing of the young Arab men in October 2000 is a basic and formative component in the collective memory of Arab citizens.

On 8 November 2000, “The Official Commission of Inquiry into the Clashes between Security Forces and Israeli Citizens in October 2000” (hereinafter: the Or Commission) was appointed. The commission was headed by Supreme Court Justice Theodor Or and included two other members: Nazareth District Court Judge Hashim Khatib and Professor Shimon Shamir of Tel Aviv University. The Or Commission published its findings on 1 September 2003. This report describes the material presented before it as follows:

"The material presented to the commission is very extensive. Those gathering material on behalf of the commission collected some 500 statements from various witnesses. The commission heard 434 testimonies, while some of these, 58 in number, were from witnesses who already testified during the initial evidentiary stage prior to the issuing of announcements in accordance with paragraph 15 of the Commissions of Inquiry Law. The commission received 4,275 exhibits. The total evidentiary material includes tens of thousands of pages. The commission also conducted, during the course of three days, visits to the sites of the incidents so that the members of the commission could gain a first-hand impression of the places in which the events occurred and the exact topography in each of them. These visits helped in understanding the versions of many witnesses who testified before the commission."

The Or Commission found that there was no justification whatsoever for the gunfire that caused the deaths of 13 Palestinian citizens of Israel. It discovered that in October 2000 snipers were used to disperse demonstrations for the first time since 1948, and that this sniper fire, which led to the death and injury of citizens, was illegal and certainly not grounded in the internal regulations of the police governing the use of live fire. Similarly, the Or Commission determined that the firing of rubber-coated steel bullets, which produced fatal results, was also contrary to the internal police

regulations. It also found that in none of the cases was there a real threat justifying the gunfire that led to the killing of citizens.

The Or Commission instructed the Ministry of Justice's Police Investigation Unit (hereinafter: Mahash) to continue to delve more thoroughly into the circumstances of the killing of citizens in order to determine criminal responsibility.

In September 2005, approximately five years after the events of October 2000, Mahash published its report (86 pages). This report determined that there was no reason to issue an indictment in even one of the 13 cases of killing by police officers. Upon its publication, the Mahash report elicited harsh public criticism: it was called an extreme report that justifies the use of violence against Arab citizens. Similarly, many lawyers argued that the report's conclusions are extremely unreasonable, in that they fundamentally contradict the conclusions and recommendations of the Or Commission, which examined and conducted research for three years, heard hundreds of witnesses, and viewed thousands of exhibits and evidence pertaining to the killing and use of gunfire.

Following the publication of Mahash's report, Adalah asked Mahash to receive all of the investigatory material on which its report was based. Adalah studied and reviewed all of this material. In order to compare, check and verify, Adalah studied thousands of pages of various documents and protocols brought before the Or Commission. This included listening to and viewing tape recordings relevant to the investigation into the circumstances of the killings that took place at the beginning of October 2000.

Adalah's report, entitled "The Accused," addresses the shortcomings and failures of the law enforcement authorities – first and foremost Mahash – since October 2000 in all related to the investigation into the incidents involving the killing of Israeli citizens. The report reveals Mahash's method of work, which is completely contrary to law as regards fulfilling the directives of the Or Commission to continue investigating the cases of killing. It also demonstrates how Mahash concealed essential facts from the public and issued a falsified report in which it claimed that "it investigated the fatal events." In addition, the report illuminates the masked and undeclared "collaboration" between Mahash investigators and some of the police officers under investigation concerning their criminal responsibility.

Since the report mainly addresses the investigations of police officers, conducted under the authority of Mahash, it focuses on the criminal and public responsibility of Mahash for its failures in investigating the killings, as well as the responsibility of police officers and their commanders in all things related to the killing of Arab citizens and the wounding of hundreds of other demonstrators. However, the fact that the political echelon is not addressed in this report does not exempt it from responsibility for the killing of early October 2000. We have written at length about the responsibility of the Prime Minister at the time, Ehud Barak, and the then-Minister of Public Security, Shlomo Ben Ami, in reports we issued during the course of the Or Commission's work and immediately thereafter.

## **SUMMARY OF FINDINGS**

### **A. The failure of the law enforcement authorities and Mahash following the killings in October 2000**

1. The law requires Mahash to initiate an immediate investigation of criminal offenses a police officer is suspected of committing. Paragraph 49I(A) of the Police Ordinance 1971 explicitly stipulates that:

“Nevertheless, an investigation of a crime, as specified in the first annex [of the ordinance], which a police officer is suspected of committing, will not be conducted by the Israel Police, but rather by the Police Investigation Department in the Justice Ministry.”
2. Even though it was known that the killing and injuries in October 2000 occurred as a direct result of gunfire by police officers, and despite the exposure in the media in real time of the use of snipers against demonstrators, Mahash did not fulfill its obligations under the law, as it failed to promptly conduct any investigation into any of the fatal incidents. This was despite Adalah’s explicit calls to the Attorney General at the time, Elyakim Rubinstein, and to the then-Director of Mahash, Eran Shendar, during the month of October (18 October 2000) and in early November (5 November 2000) to investigate the circumstances of the killing of three young Arab men by the police.
3. Very soon after the deaths of four of the October 2000 fatalities, Mahash was in possession of autopsy reports on four of the deceased: Rami Ghara (shot on 1 October 2000), Ahmed Jabareen (shot on 1 October 2000), Mohammed Jabareen (shot on 1 October 2000), and Misleh Abu Jarad (shot on 2 October 2000). Despite this, Mahash did not conduct any investigation immediately following the killings in these cases.
4. Furthermore, Mahash had already approved the release of four other corpses on 3 October 2000 from Nahariya Hospital: Walid Abu Saleh, who was shot in Sakhnin on 2 October 2000; Emad Ghanaym, who was shot on 2 October 2000 in Sakhnin; Asel Asleh, who was shot in Arrabe on 2 October 2000; and Ala Nassar, who was shot on 2 October 2000 in Arrabe.
5. In addition, the discussion held at the State Prosecutor’s Office on 10 October 2000 did not result in any directive to conduct an investigation into the fatal events. This discussion, entitled “Law Enforcement – The Events of Recent Days,” was led by the then-Attorney General, Elyakim Rubinstein (currently a Supreme Court Justice), with the participation of then-Director of Mahash, Eran Shendar (currently the State Attorney of Israel). Instead, directives were issued to adopt a tough approach in the policy of arresting Arab demonstrators. As noted in these directives: “A state [which respects the rule] of law must fight firmly against those who attack the foundations of its existence, as well as those who cause damage to life, vandalism and violence.”
6. Mahash argued that no investigation was conducted because this was the decision made by then-State Prosecutor, Edna Arbel, and then-Attorney General Elyakim Rubinstein, who explained that it would be improper to conduct an investigation by Mahash parallel to the Or Commission’s investigation. This argument is clearly baseless because this decision was made only on 9 May 2001, around seven months after October 2000 and around a half year after the appointment of the Or Commission. One can presume that the law enforcement authorities realize that they are responsible for conducting criminal investigations and bringing people to trial.
7. It is no coincidence, therefore, that on 1 September 2004, a year after the publication of the Or Commission’s report, former Supreme Court Justice Theodor Or severely criticized the

performance of Mahash and its failures immediately after the killings in early October 2000, during the course of the hearings of the Or Commission and following the publication of the Or Commission's report. Justice Or noted at Tel Aviv University on 1 September 2004:

"In general, Mahash did not collect evidence relating to the events surrounding the killings of the citizens, did not gather evidence at the scene and did not attempt to locate any of the police officers who were involved in the incidents shortly after the incidents occurred ... The Commission of Inquiry recommended that Mahash conduct an investigation into a number of incidents in which 13 people died. The intention was that, following the investigation, a decision would be reached over whether indictments should be filed and if so against whom. It is becoming clear that, to date, no conclusion has been reached over whether indictments should be filed and if so against whom. It is becoming clear that, to date, no conclusion has been reached over whether indictments are to be filed in relation to any of the events that Mahash was charged with investigating. The explanation given is that Mahash lacks sufficient personnel, and that only when additional manpower was provided did the pace of the investigation accelerate. In light of the grave results of the events that Mahash is charged with investigating, in light of the fact that the testimonies obtained by investigators on behalf of the Commission and by the Commission itself were always available to everyone, including Mahash investigators, as long ago as when the Commission was performing its work; and in light of the fact that over a year has passed since the Commission made its recommendations, it is regrettable that the Mahash investigation has not accomplished more."

8. This is not all. The refusal by Mahash to immediately initiate an investigation was harshly criticized by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions of the United Nations Commission on Human Rights, Professor Philip Alston, of the law faculty of New York University. In his report of 27 March 2006, the UN Special Rapporteur argues that Mahash's extreme failure is contrary to international norms requiring an immediate investigation in such cases.
9. Mahash's negative attitude regarding the importance of investigating the killing of the young Arab men is also evident in its failure to immediately initiate an investigation after the publication of the Or Commission's report in September 2003: immediately following the report's publication and before they had read it in its entirety, Mahash representatives argued that "in most of the investigations it will be difficult and even impossible to reach findings." Mahash then began to claim a lack of personnel, until April 2004, and published its report fully two years after the publication of the Or Commission's report.
10. It should be emphasized that after the publication of the Mahash report and in the wake of strong public criticism, Attorney General Menachem Mazuz, and State Prosecutor Eran Shendar (who was the Director of Mahash in October 2000), gave a press conference in which they stated their full support of Mahash. The families of those killed in October informed the Attorney General, through their legal representatives from Adalah, that this action by the Attorney General disqualifies him from acting as a neutral arbiter for adjudicating their appeal against Mahash. As a result, the Attorney General announced that he would review the report as if an appeal had been submitted to him and appointed a legal team from his office, headed by Attorney Shai Nitzan, to review the report. Adalah immediately responded to the Attorney General that this team's subordination to Eran Shendar is extremely problematic. It raises a strong and serious suspicion of a conflict of interests, and impairs a sound and fair process by violating the principles of justice regarding an independent and neutral appeal hearing. Therefore, Adalah argued that the Attorney General violated the rights of the families to due process. This position of Adalah and the families of those killed in October, which was immediately expressed upon the appointment of the legal team, remains valid until today.

## **B. Investigation regarding the snipers**

11. The use of snipers in October 2000 was one of the main issues addressed by the Or Commission, which studied it thoroughly and in depth. Snipers were first used on 2 October 2000 in the Umm al-Fahem area (Road 65 in Wadi Ara), and snipers were also used on 2 and 3 October in Nazareth. From the outset, it was clear from the discussions of the Or Commission that this use was illegal in the extreme, not only because it violates the internal regulations of the police governing the dispersal of demonstrations and because it was the first time that the police had used this measure to disperse demonstrations within the Green Line since 1948, but also due to the fatal consequences of the use of snipers. The Or Commission determined that the testimony of commanders of the Israeli Police's elite anti-terror unit (hereinafter: Yamam) indicate that the use of snipers falls within the exceptional cases in which there is an immediate need to save human life by neutralizing a person armed with an automatic weapon – for example, an armed person who is holding hostages and really threatening with this weapon to kill them. Therefore, in these extraordinary and unique instances, the gunfire must be precise and carried out by snipers.
12. The Or Commission determined that Alik Ron, the Commander of the Northern District of Israel Police, was responsible for the decision to use snipers and deploy them in Umm al-Fahem on 2 October 2000, which led to the death of one person (Misleh Abu Jarad) and the wounding of many others (Benzi Sau was the Commander of the area of Wadi Ara during the events of October 2000); and that Major General Moshe Waldman, as Commander of the Valleys Area in October 2000, was responsible for deploying snipers in Nazareth on 2 October 2000; and that Police Chief Superintendent Shmuel Mermelstein, Commander of the Police forces in the Nazareth region in October 2000, gave the order to a sniper to fire live ammunition on 3 October 2000 in Nazareth, which resulted in the serious wounding of a citizen. The Or Commission determined that the use of snipers was in violation of the law, completely unjustified, that there was no immediate danger that could have justified this use and that snipers were employed for purposes of deterrence (that is, punishment) and not to remove an immediate threat to anyone's life.
13. Contrary to the legal viewpoint and recommendations of the Or Commission, and even contrary to the testimony of police commanders and the Public Security Minister, Mahash's basic assumption was that using snipers is a very legitimate tool like any other – such as the use of rubber-coated steel bullets – for dispersing demonstrations. This conception, which guided Mahash, explains why it related to this important issue in a reckless and disdainful manner. It is no coincidence, therefore, that there is almost no mention of Mahash's investigation of the Chief of Police in October 2000, Yehuda Vilk, for his responsibility as the highest commander of the police for the firing by police officers and the resultant killings.
14. The strong desire by Mahash to prove its initial conception that there was justification for the use of snipers to disperse demonstrations led it to include erroneous facts and internal contradictions in the data it presented. For example, Mahash stated that snipers were used on Road 65 (Wadi Ara) because of a real and immediate danger to citizens traveling on this road. However, in the testimonies given before the Or Commission by the snipers who executed the shooting in Umm al-Fahem, there is not a single remark that supports Mahash's statement. In addition, an examination of the hours when Mahash claims the snipers were deployed indicates that this road was actually closed to civilian traffic during this time. Furthermore, Mahash notes in its report that the decision to bring snipers to the Umm al-Fahem area was made on 1 October 2000, explaining that they were needed to open up Road 65. This statement, which corresponds to the findings of the Or Commission, leads to the opposite conclusion to that reached by Mahash: The purpose was to open the road and not to dispel a real and immediate danger. It should be noted that Alik Ron, Commander of the Northern

District in October 2000, himself testified before the Or Commission that the opening of the road did not constitute a “red line,” and that there was no need to open it at any price.

15. Mahash completely ignored significant evidence that was used by the Or Commission and became primary evidence before it. For example, Mahash did not view a video tape recording that documents the deployment of snipers in Umm al-Fahem. Moreover, Mahash, which claimed that snipers were used when a real and immediate threat to life arose, ignored a key report written by a person referred to as “Y. T.” just after the sniper fire in Umm al-Fahem and Nazareth. “Y. T.” was interrogated by Mahash, but was not asked a single question about the report he had written. The police even documented this in a paper entitled, “Conclusions, Lessons and Summaries,” which was presented at an internal conference of police commanders on 8 November 2000. Mahash did not deem it appropriate to address this report or to ask Alik Ron a single question about it.
16. There are many examples to demonstrate the falseness of Mahash’s attempt to create the impression that it conducted an intensive investigation on the subject of sniper fire. For example, the investigation material from Mahash’s investigation of Alik Ron on 10 April 2005 covers **only a single page**, while the Or Commission’s investigation of Ron **spans 801 pages**, the vast majority of which deals with the deployment of snipers.
17. In addition, hidden “collaboration” was exposed between Mahash’s investigators and Alik Ron, a person being investigated, stemming from their common conception. For example, Mahash claims that snipers were used against demonstrators armed with slingshots. While the Or Commission did not receive any evidence on this subject, Mahash bases its arguments on the sole and central testimony of “D. S.”, the former commander of Yamam. However, Mahash does not disclose to the public that “D. S.” was **a defense witness on Alik Ron’s behalf** before the Or Commission. It should be emphasized that Justice Or reprimanded Ron for daring to present such a problematic and extremely inappropriate affidavit as that of “D. S.”, and said to Ron that: “[T]he gentleman should explain to me why he brought us this affidavit.” Further, Mahash lacked the courage, or the will, to confront Ron with the substantial contradictions in his various testimonies. For example, Ron asserted to Mahash that he always sighted the citizen targeted by the snipers before giving the order to open fire, which is inconsistent with his earlier testimony before the Or Commission. However, Mahash did not ask a single question about this significant contradiction. Moreover, Ron testified before the Or Commission that he was responsible for employing a method of having three snipers fire simultaneously at the same target, but changed this version when questioned by Mahash, claiming that “I was not aware of this.” Mahash did not attribute any importance to this contradiction in a significant part of the investigation. In addition, despite the fact that the Or Commission conducted a wide-ranging investigation around the question of whether Ron informed his superiors, including the political echelon, about the use of snipers, Mahash failed to ask him a single question on this subject.
18. The investigation of Moshe Waldman by Mahash was no less disgraceful than that of Alik Ron. Thus, during questioning on 12 April 2005, which in fact consisted entirely of a diatribe by Waldman against the Or Commission, he was not asked a single serious question about the issues that needed to be examined. Even Waldman himself was surprised by the investigation, telling a Mahash investigator, “You were very succinct, not like the commission, a number of hours, two days.” It is even graver that Mahash did not interrogate Waldman over a matter that was clear in the Or Commission report – he gave the order to police officers to shoot at demonstrators in Nazareth on 8 October 2000. As a result of the shooting, two citizens were killed and many others injured. Further, Mahash failed to question Waldman about an action constituting a criminal offense (obstruction of justice), which followed an incident in which Omar A’kkawi and Wisam Yazbek were killed on 8 October 2000, and in which Waldman was involved, Waldman formed a special investigation team and appointed his subordinates to

this team. The Or Commission stated that this action is “improper and inappropriate by any measure... the fact that he appointed an investigation team from the [police] district [under his command], creates an inherent conflict of interests... the district commander's involvement in the investigation and the fact that he received ongoing reports on its proceedings, further intensified this conflict of interests and made it serious and deep.”

19. The Mahash investigation of sniper fire in Nazareth was conducted in a similar way. But in this case, Mahash reached conclusions that not only lack an evidentiary basis, but also contradict the evidence that was presented before it and before the Or Commission. For example, Mahash states that the shooting by sniper “N. L.”, which was carried out upon Shmuel Mermelstein’s order and seriously wounded one citizen, was justified because of a real and immediate danger to the sniper’s life when he saw someone with a slingshot and iron pellets preparing to make use of them. In reality, however, “N. L.” was positioned on the roof of a building at least two stories high and was, in his words, “... about 80 meters from him.” The sniper added that he waited around 20 minutes for approval to fire and that he shot at the citizen when “he was in a static situation.” It should also be noted that when Mahash asked the commander of “N. L.”, “G.”, whether there were rocks and iron pellets on the roof, he responded: “I don’t remember such things. The roof was clean overall.” The Or Commission determined unequivocally that there was not and could not have been any, real and immediate danger to the sniper “N. L.”
20. Mahash’s conception, which reveals contempt for the lives of Arab citizens, was so extreme that Mahash was prepared to challenge basic legal norms, even those explicitly stated in the report of the Or Commission, and to violate norms that police commanders stated were in effect. Thus, for example, even though police procedures stipulate the obligation of the senior commander on the scene to issue a warning before using force against demonstrators, and in contradiction to the recommendations of the Or Commission, Mahash decided that Alik Ron acted in accordance with the law when he did not issue a warning before using snipers against demonstrators. It should be noted that Ron himself, in his first and second testimony before the Or Commission, stated that, “Perhaps it would have been proper to warn before the shooting or between each shot.” Similarly, even “D. S.”, who testified on Ron’s behalf before the Or Commission, said that in his personal opinion a warning should be issued before snipers open fire. However, Mahash reached the conclusion that there is no need to issue prior warning because, as in contract law, the demonstrators at the scene could have assumed that a warning existed in light of the way in which the police force acted toward them. It is no wonder that Mahash, which refers to injury of human life in this way, reached conclusions that are not only contrary to legal norms but also contradict the ethical norms that regard human life as a supreme value.

### C. **Investigating the fatal incidents and the severe failures of Mahash**

#### **1 October 2000**

##### **The deceased Ahmed Ibrahim Jabareen (Umm al-Fahem)**

##### ***Mahash closed the file without conducting an investigation***

21. On 1 October 2000, 18-year-old Ahmed Jabareen was shot to death by police officers situated in a house located on a hill in the city of Umm al-Fahem (“The Red House”). Jabareen was shot in the eye with a rubber-coated steel bullet. The autopsy of the deceased was sent to Mahash in October 2000. The Or Commission determined that the shooting was carried out by the police and that Mahash should investigate to discover the identity of the shooters and those responsible for the shooting. In addition, the Or Commission determined that ascent to The Red House in itself was unjustified, and thus the order to take over the house, issued by the

Commander of the Border Police Northern District at the time, Benzi Sau, was illegal. The Or Commission found Sau responsible for illegal activity that led to the death of Ahmed Jabareen and Mohammed Jabareen. Mahash did not draw any conclusion about Sau.

22. Mahash presented the false picture that it had investigated this matter. However, a review of the investigation material shows that Mahash did not investigate any police officers with regard to the killing of Ahmed Jabareen. Moreover, Mahash portrays itself in its report as having conducted an intensive investigation from which it drew its conclusions. In fact, however, all that Mahash did in this case was to read the investigatory material of the Or Commission. Therefore, Mahash violated the Or Commission's directive to investigate the incident and identify the police officers responsible.
23. Without conducting an investigation or attempting to identify the police officer who fired at the deceased, Mahash nonetheless concluded that it was impossible to find the sniper due to the large number of police officers present at the scene of the incident. The forces that ascended to The Red House and the police officers who manned this position were known to the Or Commission, so Mahash could easily have identified them and summoned them to testify before it. Without investigating, however, Mahash decided that even if the person who killed the deceased were identified, the shooting may have been justified. Mahash determined all of this without having conducted any investigation into the specific circumstances at the time Ahmed Jabareen was shot, and whether these circumstances presented a real and immediate danger to the police officers standing at the top of the hill, with the demonstrators below them. Mahash even had no qualms about disregarding the police's own internal regulations, which prohibit firing a person's head.
24. Mahash was aware that there were police officers at the scene of the incident who made excessive use of their weapon and fired dozens of rubber-coated steel bullets. Among them was police officer Ophir Elbaz, who fired 30 rubber-coated steel bullets, and police officer Rotem Biton, who fired 56 rubber cylinders. Still, Mahash did not bother to summon them to testify before it.
25. The Or Commission, which studied the entirety of evidence brought before it, questioned witnesses and visited the scenes of the incidents, determined that shooting at the deceased was unjustified in itself, as was the ascent to The Red House, from where the police officers fired. The Or Commission determined that the police officers, led by Benzi Sau, committed an unlawful act. Mahash did not conduct any investigation and thus breached its basic and statutory duty to investigate illegal actions committed by police officers.

#### **The deceased Mohammed Ahmed Jabareen (Umm al-Fahem)**

26. On 1 October 2000, 23-year-old Mohammed Jabareen was shot to death by police officers positioned in a house located on a hill in Umm al-Fahem, "The Red House." The deceased was shot in the buttocks with a live bullet. The autopsy of the deceased was sent to Mahash in October 2000. The Or Commission determined that the shooting was carried out by the police and that Mahash should investigate to discover the identity of the shooters and those responsible for the shooting. Mahash reached the conclusion that the file should be closed, citing the reason of "perpetrator unknown."
27. The evidence indicates that Mahash questioned only one police officer, Pinhas Alon, and ignored all the other police officers who testified before the Or Commission and confirmed that they had fired live ammunition. For example, police officer Eitan Azrak told the Or Commission that he knew of additional police officers who had carried out live gunfire. Mahash did not collect all of the weapons from the police officers who fired live ammunition, but only from some of them. Mahash concealed from the public that the bullet extracted from

the body of Mohammed Jabareen was lost after Mahash delivered it to the head of the weapons laboratory at the national police headquarters.

### **The deceased Rami Ghara (Jatt)**

28. On 1 October 2000, 21-year-old Rami Ghara was shot to death by police officers in the village of Jatt. A rubber-coated steel bullet penetrated Ghara's eye and killed him. The autopsy of the deceased was sent to Mahash in October 2000. The Or Commission determined that the principal suspect in the shooting of Ghara is police officer Rashed Murshid, who fired rubber-coated steel bullets at a range of about 15 meters, including in the direction of the deceased, without any justification and contrary to police orders. Mahash closed the file against Rashed Murshid.
29. Ghara was at a gas station, standing behind a wall that covered the lower part of his body. Rashed Murshid, together with another police officer, approached the gas station where the deceased was standing. Murshid was the only officer with a weapon firing rubber-coated steel bullets. Police officer Avraham Bar testified before the Or Commission that Murshid fired, without prior warning, toward the place where the deceased was standing. The shooting was carried out with the approval of his commander, Said Abu Rish. Bar added that Murshid's gunfire caused the only injury at the scene – the killing of Ghara – and that he saw a person fall to the ground as a result of gunfire from Murshid. Bar said that Murshid's commander, Abu Rish, was glad that Murshid had hit someone and even spoke about this at the base. According to Bar, everyone at the base was "pleased" [*mabsutim*] following the incident. Murshid admitted to the Or Commission that he had indeed fired in the direction of the gas station, where people were standing behind a wall. Murshid admitted that he was not under any threat to his life when he fired and that the purpose of the gunfire was to disperse the demonstration. Members of the Or Commission conducted a tour of the scene where Ghara was killed and reported that from the location where Murshid was standing, it would have been possible to see the upper half of the body of the deceased.
30. These testimonies of Murshid and Bar, the conclusions of the Or Commission and the report from the members of the Or Commission who visited the scene of the incident, however, did not convince Mahash that Rashed Murshid was the one who had shot Ghara and caused his death. All of the evidence indicates that the shooting was carried out by Murshid and that his life was not being threatened. Mahash insists that it is possible that another police officer fired the shots from a greater distance. Mahash goes as far as to say that even if Murshid was the one who carried out the fatal shooting, he should not be charged because he could not have assessed the distance from the place where he was standing. Mahash ignored the facts that the deceased was hit in the eye, that Murshid could only see the upper part of Ghara's body and that Murshid was not in any danger that would have justified the opening of fire, in violation of the police's internal regulations, at the upper body of the deceased. In complete contradiction to the findings of the Or Commission, Mahash determines that the **shooting was justified**, although it did not present a single shred of new reliable evidence to refute the Or Commission's findings.

### **2 October 2000**

### **The deceased Misleh Abu Jarad (Umm al-Fahem)**

31. On 2 October 2000, 19-year-old Misleh Abu Jarad was killed as a result of live sniper fire at demonstrators near the city of Umm al-Fahem. The autopsy of the deceased was sent to Mahash in October 2000.

32. The testimonies before the Or Commission indicated that the death of Abu Jarad was caused by live sniper fire. The Or Commission found that the sniper fire was carried out as follows: A. Three snipers simultaneously fired live rounds at the same target; B. There was no warning before the sniper fire or any warning that live ammunition would be fired. The Or Commission determined that the sniper fire was unlawful, that the method of three snipers firing at a single target was disproportionate, and that the lack of warning prior to the sniper fire only underlines the illegality of the shooting. Contrary to the findings of the Or Commission, Mahash justified the use of snipers in Umm al-Fahem on 2 October 2000, including the method of three snipers firing at the same person and the lack of warning by the police prior to the sniper fire. Mahash justified the sniper fire based on the testimony of "D. S.", who served as a defense witness on behalf of Alik Ron before the Or Commission. The Or Commission determined unequivocally that Alik Ron was responsible for deploying the snipers on 2 October 2000 in Umm al-Fahem without justification, which led to the injury of seven people and the killing of Misleh Abu Jarad. Mahash did not mention the fact that it based its justification for the sniper fire on the words of a witness who was brought before the Or Commission on behalf of Alik Ron. Mahash justified the sniper fire even without viewing the tape recording documenting the method of shooting, which was proscribed by the Or Commission. The Commission viewed these tapes. Mahash feigned that it had conducted an intensive investigation into the issue of snipers, while at most it added only a single piece of evidence and reached the opposite conclusion to that arrived at by the Or Commission.

### **The deceased Asel Asleh (Arrabe)**

33. On 2 October 2000, 17-year-old Asel Asleh was shot in the back of his neck and killed. The Or Commission determined that the shooting was unjustified and focused its suspicion on three police officers who had been chasing Asleh minutes before he was killed. These three police officers were Yitzhak Shimoni and two of his subordinates, Avi Carasso and Ovadia Hatan. On 3 October 2000, Mahash asked the Western Galilee Hospital in Nahariya to release the body of the deceased for burial. In effect, Mahash thus decided to forego an autopsy soon after the death. Mahash closed the file against the suspects.

34. The new findings discovered in examining the investigation materials indicate that Mahash was severely negligent in investigating the circumstances of Asleh's death. For example, Mahash only investigated the principal suspects on 28 June 2005. Mahash did not investigate the significant contradictions in the versions Carasso and Hatan provided to Mahash compared to what they claimed in their testimony before the Or Commission. The questions addressed to the primary suspects in polygraph tests were partial and not exhaustive. The two police officers were not asked, for example, whether Yitzhak Shim'oni was the one who carried out the shooting. The lack of this vital question in the polygraph tests raises strong doubts over Mahash's motives in the investigation. The suspicions surrounding Shim'oni are reinforced in light of the chilling fact that was exposed – that he refused to submit to a polygraph test after being summoned six times. After the sixth summons, Shim'oni arrived for the test but again refused, because he was only willing to be asked one question. Mahash concealed Shim'oni's flagrant lack of cooperation from the eyes of the public and the fact that this only strengthened suspicions against him. Mahash did not even discredit Shim'oni for his lack of cooperation. On the contrary, it closed the case against him. Besides the three aforementioned police officers, Mahash only summoned one other to testify.

### **The deceased Ala Nasser (Arrabe)**

#### ***Mahash closed the file without conducting an investigation***

35. On 2 October 2000, 18-year-old Ala Nasser was shot in his chest by the police and killed. On 3 October 2000, Mahash asked the Western Galilee Hospital in Nahariya to release the body

of the deceased for burial. In effect, therefore, Mahash decided to forego an autopsy soon after the death. The Or Commission determined that the shooting was unlawful and recommended to Mahash to conduct a thorough investigation into this matter. Mahash, however, concluded that the file should be closed, citing the reason of “perpetrator unknown.”

36. An examination of the investigation material shows that Mahash reached its conclusion without conducting any investigation of its own. It did not question any police officers or citizens who witnessed the incident. Mahash attributed the closing of the file to a lack of cooperation on the part of the deceased’s family, who refused to allow the exhumation of his body. It is unclear what purpose the exhumation would have served given that Mahash had not collected testimony from any police officer suspected of the shooting, any witness to the incident, or any citizen. The fact that Mahash did not question a single witness in this matter, however, did not prevent it from issuing conclusions, which lacked any factual or legal basis. As mentioned, Ala was shot in his chest. Mahash, contrary to the Or Commission, reached the conclusion – without conducting any investigation – that if the bullet that struck the deceased was a rubber-coated steel bullet, then the shooting was justified. In Mahash’s view, only if it was a live bullet was it unjustified.
37. Mahash was presented with a document describing a police inquiry in which the Commander of the area of Arrabe in October 2000, Yitzhak Khai, says that a Border Police officer and two other police officers arrived in Arrabe and fired live rounds and rubber-coated steel bullets at demonstrators. Mahash, though, questioned Yitzhak Khai only on 25 August 2005 (with regard to the late Asel Asleh) and was not asked about his remarks cited in the operational inquiry.
38. Mahash was negligent, did not conduct any investigation, and drew conclusions based on unfounded assumptions and no evidence. Mahash’s investigators thus breached the public’s trust and presented a falsified account, as if its conclusions were derived from a thorough investigation and the interrogation of police officers, while no police officer testified before Mahash in the case of Nasser.

#### **The deceased Eyad Lawabny (Nazareth)**

39. On 2 October 2000, 26-year-old Iyad Lawabneh was shot in his chest by police and killed. The Or Commission determined that the shooting was unjustified and that the police officers did not face any danger to justify the opening of fire. The Or Commission narrowed the suspects down to three police officers: Aryeh Zargary (who had a weapon that fired rubber-coated steel bullets), Zeev Vichner (who had a weapon that fired tear gas) and Daniel Leder (who had a weapon that fired live ammunition). Their testimonies before the Or Commission clearly indicate that no live rounds were fired in the area where Lawabny fell: only rubber-coated steel bullets were fired. In addition, the testimonies indicate that there was no danger to the lives of the three suspected police officers named above. Nevertheless, Mahash reached the conclusion that the shooter’s identify could not be ascertained. It also contends, contrary to the conclusions of the Or Commission, that even if it were proven that the deceased had been killed by rubber-coated steel bullets, the shooting would be justified.
40. Mahash only investigated the three suspects singled out by the Or Commission, and did not make an effort to look for new and supportive evidence. The investigation of the aforementioned police officers was superficial and inadequate, lacking any attempt to confront the suspects with facts on the ground or with their testimony before the Or Commission. For example, when the attention of Zargary, who fired rubber-coated steel bullets, was directed to the location where the deceased was hit, he was not asked any question about the fact that he fired without justification. Mahash notes in its conclusions that Zargary gave contradictory

statements to the Or Commission and its investigators. Nonetheless, Mahash did not confront him with these contradictions.

41. Mahash did not note in its report that Zargary, who was the principal suspect, did not cooperate with it, refusing to accompany Mahash's investigators to the scene of the incident. Mahash does not draw the obvious conclusion from Zargary's refusal to cooperate, and does not regard this as discrediting him and strengthening the case against him. Zargary told Mahash that he does not remember whether he fired or not. Mahash notes in its report that Zargary claims that he was not the only one who fired. Conversely, Zargary explicitly told the Or Commission that while he was firing in the direction of the eastern neighborhood, where Lawabny died, no one else was shooting. Mahash did not question him about the contradictions in his accounts.
42. Despite all of this, Mahash reached the conclusion that the shooting was justified, even though the police officers' lives were not under any threat and even though the deceased was struck in the upper part of his body, in violation of the internal police regulations prohibiting this.

### **The deceased Walid Abu Saleh and Emad Ghanaym (Sakhnin)**

43. On 2 October 2000, 21-year-old Walid Abu Saleh and 25-year-old Emad Ghanaym were killed by live rounds fired by the police. Abu Saleh was shot in his stomach and Ghanaym was shot in his head. On 3 October 2000, Mahash asked the Western Galilee Hospital in Nahariya to release the bodies of the two deceased for burial. In effect, therefore, Mahash decided to forego an autopsy soon after their death.
44. The Or Commission determined that the principal suspect in the shooting of the two deceased was Guy Raif, Head of Misgav Police Station during the incidents. The Commission determined that Raif fired live rounds at demonstrators and caused the deaths of Abu Saleh and Ghanaym without justification and without having been in life-threatening danger. Many witnesses appeared before the Or Commission and confirmed that it was Raif who fired at the place where the deceased were standing.
45. Police officer Musa Gadir confirmed to the commission of inquiry that Raif had stood on a rock and fired live ammunition, while he (Gadir) stood at his side and loaded his weapon for him. Erez Kreizler from the Misgav Regional Council, who met Raif on the day the deceased were killed, testified to the Or Commission that Raif had told him then that there had been a serious incident on the outskirts of the industrial zone, involving some dead and injured. Two other witnesses to the shooting carried out by Raif that hit the deceased were two residents of Sakhnin, Ala Haibi and Hamad Abu Saleh, who were judged credible by the Or Commission. Their testimonies strengthened the suspicions against Raif.
46. Based on these testimonies and additional evidence, the Or Commission concluded that Guy Raif had caused the deaths of Abu Saleh and Ghanaym. In addition, the Commission determined that the shooting was unlawful, *inter alia*, because Raif was not subject to any life-threatening danger.
47. Moreover, Mahash was presented with additional evidence that strengthened the Or Commission's conclusion. Police officer Ahmad Nia'mi testified to Mahash on 24 August 2004 that soon after Raif fired the fatal shots he (Nia'mi) met Musa Gadir (the police officer who had loaded Raif's weapon). Gadir told Nia'mi that Raif had stated that he (Raif) had killed people. Mahash does not attribute importance to Nia'mi testimony and claims that Gadir denies this, even though the statements Nia'mi made are consistent with the overall picture portrayed by other eyewitnesses.

48. All of the above evidence was not adequate for Mahash to substantiate the serious suspicions against Raif. On the contrary, Mahash reached the conclusion that it is not certain that it was Guy Raif who shot and killed the deceased. On the other hand, Mahash did determine that Guy Raif shot and wounded Hamzeh Abu Saleh, but did not find it appropriate to indict him.
49. Mahash outdid itself by rejecting the credibility of the witness Ala Haibi (whom the Or Commission found to be credible) due to a marginal detail which he testified about and which is not within his area of expertise. Mahash ignored the testimony of Hamad Abu Saleh, who stated that he saw Raif fire live rounds, despite the fact that the Or Commission found this testimony to be reliable. Mahash is not in a hurry to make any judgment about Raif and the credibility of his accounts, although the Or Commission proved that he was not telling the truth. This raises questions about Mahash's criteria for determining the credibility of witnesses. Mahash backs Raif's claim about being in life-threatening danger, despite the fact that this was refuted by the Or Commission and without supporting this with any evidence.
50. Mahash did not present any new evidence to counter the conclusions of the Or Commission with regard to the identity of the shooter. Nonetheless, it reached the conclusion that the shooting may have been carried out by a different body, a premise that was explicitly rejected by the Or Commission. Mahash did not refute the conclusions of the Or Commission, but preferred to reach a different conclusion for its own reasons.

### **3 October 2000**

#### **The deceased Ramez Bushnaq (Kfar Manda)**

51. On 3 October 2000, 24-year-old Ramez Bushnaq was shot in the head and killed as a result of police gunfire. The Or Commission determined that the shooting was carried out by a police force that charged at demonstrators in Kfar Manda. The Commission rejected the version of the police officers that they had not executed the gunfire. The Or Commission relied on the testimony of witnesses Hilmi Bushnaq, Rafea' Bushnaq and Majdi Zidan. These witnesses told the Or Commission that the deceased was struck during a charge by police officers, with massive gunfire directed at the rioters from a number of weapons, and that residents, Nidal Alam and Mahmoud Hushan, were also injured at this stage. Mahash closed the file.
52. An examination of the investigation material indicates that Mahash reached its conclusion without summoning a single police officer from those who participated in the assault and testified before the Or Commission – police officers such as Yakir Aharoni, Shlomo Ben Hamo, Dennis Davidov and Oren Zriker. The testimony of these police officers before Mahash could shed light on what transpired and even lead to other witnesses. Mahash collected the weapons of 28 police officers from the almost 40 who were present at the time of the incident, without explaining why only some of the weapons were collected. If Mahash had collected all of the weapons, it would have at least been possible to identify the police officer who wounded Mahmoud Hushan, since the bullet that struck him is in the possession of Mahash. However, this bullet did not match any of the 28 weapons that Mahash collected.
53. Mahash did not summon any citizens to testify before it, even though many appeared before the Or Commission to testify about the events in Kfar Manda, including three central witnesses: Hilmi Bushnaq, Rafea' Bushnaq and Majdi Zidan. The Or Commission based its conclusions, *inter alia*, on the testimony of these three witnesses.
54. It is important to note in this context that on the day the deceased was killed, Guy Raif was present in Kfar Manda and used live gunfire. Raif strongly denied this before the Or Commission, but the commission determined that, based on all of the evidence presented, it can be established that Guy Raif did indeed fire live rounds into the air at a time when there

was no justification to do so. The Or Commission supported its conclusions with testimony by police officers Dvir Sheetrit, Auni Atallah, David Ankonina, Oren Zriker, Ron Levy and others. The Or Commission's conclusions clearly indicate an unlawful action on the part of Raif. This mandates the initiation of an investigation against Raif on this matter, due to suspicions of the negligent and unjustified use of a weapon. Mahash, however, did not ask Raif or the other police officers who testified before the Or Commission any question about this incident.

### **The deceased Mohammad Khamayseh (Kafr Kana)**

#### *Mahash closed the file without conducting an investigation*

55. On 3 October 2000, 19-year-old Mohammad Khamayseh, a resident of Kufr Kana, was shot in the knee by live fire from the police and died a day later. An autopsy was performed at the Institute for Forensic Medicine at Abu Kabir. The Or Commission did not succeed in determining whether the shooting by the police caused Khamayseh's death, but emphasized that according to the evidence before it and the surrounding circumstances, the possibility that the gunfire came from the police could not be ruled out. Thus, the Or Commission asked Mahash to investigate the matter thoroughly in order to obtain a clear idea of the facts. Mahash did not conduct any investigation and closed the file, citing the reason of "no criminal offense." Insodoing, Mahash violated the directive of the Or Commission.
56. Mahash attempts to create the impression in its report that its conclusions are based on the investigation it conducted. As stated, however, Mahash did not conduct any investigation and did not try to gather evidence by summoning any police officers or citizens who were present at the scene of the killings at the time. Worse still, Mahash reached the conclusion that the investigatory file should be closed on the basis of the testimony of witnesses who appeared before the Or Commission but not before Mahash. With regard to two witnesses from Kufr Kana, Mahash claimed that their testimony cannot be considered credible, without having summoned them to testify before it. Conversely, concerning a witness named Rafi Cohen, a police officer, Mahash preferred to give credence to the testimony he provided to the Or Commission, even though this witness altered his account three times while speaking to the Or Commission and those who collected material on its behalf. The changes and contradictions within Cohen's versions convinced Mahash to summon him for questioning in order to obtain a first-hand impression of his credibility, but did not prevent Mahash from adopting his version (not collected by Mahash) of the incidents that occurred in Kufr Kana on the evening of 3 October 2000, including the circumstances surrounding the shooting of Khamayseh.
57. Moreover, Rafi Cohen and the witness Bahjat Khamayseh (the brother of the deceased) testified before the Or Commission that police officers who were at the scene of the shooting held weapons fitted with telescopes. These testimonies should have been sufficient to arouse Mahash's suspicion that the shots fired in Kufr Kana were sniper fire, which mandates an immediate investigation. However, Mahash did not attribute importance to them. In addition, Mahash was presented with documents containing details about police officers who had been carrying live rounds, including Rafi Cohen, Eyal Ita, Shai Tamir, Haim Azrad, David Citron and Erez Tubali. Nonetheless, Mahash did not deem it appropriate to summon these officers for questioning in order to clarify this matter with them.

### **8 October 2000**

### **The deceased Wissam Yazbak and Omar A'kkawi (Nazareth)**

#### *Mahash closed the file without conducting an investigation*

58. On 8 October 2000, 25-year-old Wissam Yazbak and 42-year-old Omar A'kkawi were killed in Nazareth, in the vicinity of the Canyon Junction. Yazbak was shot in the head from behind by live police fire while standing with others in a chain in an attempt to push demonstrators back and prevent friction with the police. The Or Commission determined that the shooting was unjustified and unlawful. A'kkawi was shot in the chest. The Or Commission determined that it is reasonable to assume that he was hit by live fire from the police. In the same incident, many residents of Nazareth sustained wounds to their upper bodies, also from live rounds. The wounded included Ahmed Abd al-Khalik, Ibrahim Krayem, Shawkat Lawabneh, Fadi Abu Naji and Sameeh Shtewi. The Or Commission determined that the gunfire was unlawful and that there was no danger to justify it. Thus, the Or Commission decided to transfer the case to Mahash for continued and thorough investigation. However, Mahash did not conduct an investigation, in spite of the Or Commission's directive to do so.
59. Regardless of the clear conclusions of the Or Commission and the many testimonies to support them, Mahash closed these files without conducting any investigation and without summoning a single police officer or citizen present at the scene to appear before it and testify. Even more grievous, Mahash presented the false impression in its report that it did conduct an investigation. Further, it did not collect any weapon of those used at the scene of the criminal offenses committed by the police.
60. Mahash determined, without conducting an investigation, that over 220 police officers were involved in the incident, and consequently that it would be difficult to identify the officers who had opened fire, and did not even attempt to do so. This argument is groundless, however, because regarding Wissam Yazbak and the five aforementioned injured citizens, the Or Commission narrowed down the suspects to 20 police officers. Therefore, it would have been perfectly feasible to summon them for questioning. These police officers stood in the police front line and opened fire at demonstrators directly after negotiations had ended between representatives of the Arab public and Commander of the Valleys Area at the time, Moshe Waldman, representing the police. Mahash had in its possession a bullet casing from the scene of the events, but did not examine it.
61. The Or Commission determined unequivocally that it was Waldman who gave the illegal order to open fire at demonstrators in this incident. Chief Superintendent Alex Dan testified before the Commission that Waldman had been in the front line and had given the order to open fire. Mahash reached the opposite conclusion, however, determining that Waldman did not in fact give the order. Moreover, Mahash made this judgment without questioning him about it: during Mahash's interrogation of Waldman, he was not even asked about the serious incident which occurred on 8 October 2000, in which Yazbak and A'kkawi lost their lives and others were injured by live gunfire and rubber-coated steel bullets.
62. In addition, the Or Commission criticized Waldman for the fact that, following this serious incident, in which he was involved, he failed to conduct an orderly investigation, against mandatory police procedures and directives, and contrary to the requirements of the situation. Instead, Waldman closely monitored the investigation of the incident that occurred at the Canyon Junction on 8 October 2000 and even gave frequent instructions to the investigators, his subordinates. Clearly, as he was personally involved in this incident as the Commander of police forces in the areas, this involved a conflict of interests. The Or Commission's severe criticism of Waldman, however, did not induce Mahash to question him on this matter.

## **Conclusions**

1. The law enforcement authorities, first and foremost Mahash, violated the principle of the rule of law by failing to fulfill their legally mandated duty to initiate an immediate investigation in October 2000 into the incidents in which 13 young Arabs were killed and hundreds of Arab citizens were wounded by illegal gunfire by police officers. This failure is extreme, considering the large number of fatal incidents, which in itself should have compelled these enforcement authorities to take immediate action.
2. This failure sends a message to the general public that the killing of Arab citizens is not “of public interest,” which would justify the initiation of some sort of investigation.
3. The failure is not limited to the non-investigation of the fatal incidents immediately after October 2000, but also continued following the publication of the Or Commission’s report. Indeed, the findings in the Or Commission report demonstrate unequivocally that police officers and their commanders committed the most serious of criminal offenses. Nonetheless, Mahash did not take any action. For example, the illegal use of snipers, leading to the deaths of citizens and the injury of hundreds of others, requires the immediate suspension of the police officers involved, led by Alik Ron, the initiation of a criminal investigation against them, and their indictment, with the greatest of urgency.
4. Mahash’s investigators violated and failed to fulfill the directives of the Or Commission, which instructed them to initiate a thorough criminal investigation into the fatal events. Not only did Mahash conduct a superficial, unprofessional and flawed investigation into the death cases, but it also failed to investigate and did not collect any evidence or findings in five of these cases (those of Ahmed Jabareen, Ala Nassar, Mohammad Khamayseh, Wissam Yazbak and Omar A’kkawi). This fact alone is sufficient to determine that Mahash misled the public, scorned the directives of the Or Commission, betrayed the public’s confidence and breached its trust.
5. The attitude of Mahash’s investigators towards the Arab community is not only reflected in the extreme conclusions contained in Mahash’s report, but also in the ideological position on which the report is based. Mahash’s report analyzes the decisions made by police officers with regard to opening fire against Arab citizens, according to the normative framework appropriate for an army engaging an enemy, and not for police facing citizens. This normative framework, which perceives Arab citizens as the enemy, accounts for Mahash’s failure to initiate an immediate investigation into the killing of Arab citizens, as well as the justifications and defenses which Mahash gave for the opening of fire and use of snipers. Thus, one can comprehend why Mahash’s report fundamentally contradicts the conclusions of the Or Commission.
6. Both the management of Mahash, including Mr. Eran Shendar, who was the Director of Mahash in October 2000, and Mahash’s investigators did not take up the Or Commissions recommendation that:

“... [I]t is important to take action in order to uproot the manifestations of negative prejudices that were revealed toward the Arab sector, even among senior and well-respected police officers. The police must instill an understanding among its police officers that the Arab general public is not their enemy and should not be treated as an enemy.”
7. The adoption of the conclusions of Mahash report’s, or any part of them, constitutes in itself an unlawful violation of both the honor of those killed and the rights of their families, who are entitled to see those who killed their children indicted.

8. The findings of this report are also being presented to Attorney General Menachem Mazuz. Based on these findings, we ask him to initiate an immediate investigation into the extreme failures of Mahash since October 2000, and to immediately suspend all of those responsible for this failure at Mahash, led by Eran Shendar, the Director of Mahash in October 2000. In addition, we demand that the Attorney General promptly issue indictments against the police officers responsible for the killing and wounding of Arab citizens in October 2000, as detailed in the findings of this report. The right to life and limb of Arab citizens requires that the law enforcement authorities take immediate steps to safeguard this right.

The author of this report is Attorney Marwan Dalal. Attorney Hassan Jabareen and Attorney Abeer Baker contributed to the writing of some sections of the report. Attorney Orna Kohn provided comments to the draft and Ran Shapira edited the report. Fathiyya Hussein assisted in its production.