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Adalah's Initial Analysis of the Report of the Ministry of Justice's Police Investigation Unit ("Mahash")

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Published on 18 September 2005, the report of the Ministry of Justice's Police Investigation Unit (henceforth: Mahash) regarding the events of October 2000 are an additional grave failure on the part of the law enforcement authorities in Israel to determine responsibility for the deaths of 13 Arab citizens and the injuries incurred by hundreds of others shot by police officers in October 2000.

The Official Commission of Inquiry (henceforth: the Or Commission) in its final report published on 1 September 2003 recommended that Mahash investigate the events in which 13 civilians were shot to death, in addition to a number of other incidents in which civilians were injured.¹

An initial examination of Mahash's report, undertaken prior to having the chance to study the investigation materials themselves, reveals that there is nothing in Mahash's explanations to justify its astonishing conclusions, which are the regrettable result of an erroneous moral conception, as well as of the severe and consistent shortcomings of Mahash from 1 October 2000 until publication of its report on 18 September 2005.

A. THE MORAL CONCEPTION THAT IS THE BASIS FOR MAHASH'S REPORT

1. Mahash's report analyzes the way in which the police officers suspected of carrying out the killings made decisions according to a normative framework appropriate for an army engaging an enemy, and not for police facing civilians. A well-known distinction is drawn in the legal literature between the considerations of police officers and soldiers involved in battle. This is due to the fact that the role of police officers is to keep the peace and to maintain public order, while the principal role of an army involved in battle is to defeat the enemy and cause it to surrender.
2. Mahash's report applies precedents from two judgments² that dealt with the authority of an military commander engaged in a battle, and determined that the commander can apply a wide range of considerations. In addition to the gross legal error made in employing a normative framework that is irrelevant to the matter before us, as well as in relating to the two situations as if they were identical, the very fact that Mahash relied on these legal precedents is indicative of the dangerous moral conception it applied.

¹ *The Report of the Or Commission*, p. 766, paragraph 11.

² C.A. 177/79, Lt. Avi v. The Chief Military Prosecutor (henceforth: the case of Lt. Avi); Military Court of Appeals (unpublished); and H.C. 4550/94, *Nissim Isha v. The Attorney General, et. al.* P.D. 49 (5) 859 (henceforth: the case of Isha).

3. Hence, according to Mahash's approach, the reality that the police officers and their commanders were facing at the beginning of October 2000 was the reality of a war. Director of Mahash, Attorney Herzl Shbiro, declared this to be the case in an interview published by Israeli daily newspaper *Ha'aretz* on 21 February 2005. In the interview he declared that "this was a case of semi-battling."³ Mahash's report itself states that the reality of the situation was that the police were confronting a reality of severe riots, harsh violence, and a feeling of a lack of certainty.⁴ Immediately following this, the report quotes the judgment of a Military Court of Appeals in the case of Lt. Avi, which relates to a military commander functioning under conditions of battle:

What should be particularly emphasized is the problematic factors involved in the process of choosing between options for acting and responding, and the influence of pressure on a person's functioning, and the fact that under conditions of battle a greater weight of responsibility, and with it discretion, are imposed, often decisively, on the commander at the scene. [Emphasis added]

4. Consistent with this moral conception of Mahash, the report examines the police's behavior during the events of October 2000 as if they were soldiers involved in a battle against an enemy, and it is this conception that rules the acts and failures of Mahash in dealing with the investigation of the events. This moral conception explains why Mahash did not initiate an investigation immediately following the events or even later, because the assumption was that soldiers in the midst of completing an operation against an enemy should not be disturbed, a claim that is in and of itself legally problematic.
5. Furthermore, it is this moral conception that guided Mahash in all of its dealings with the events of October 2000. It explains the legitimization of all police actions, including the shooting that caused the loss of human life. Further, it explains Mahash's legitimization of the use of snipers in order to disperse demonstrations, since, according to this conception, the goal is not only to disperse the protest, but also to defeat and cause the demonstrators to surrender.
6. It is this moral conception that enabled Mahash to adopt the version of events given by the suspected police officers that they were acting under life-threatening conditions. This is due to the fact that, if the situation is defined as a battle, then it is clear that the police officers should be believed, since, according to this subjective conception, they were acting under life-threatening conditions. This is in spite of the absence of any evidence to support this, and despite the existence of evidence to contradict the police officers' interpretation of the reality.
7. It is this conception which forms the basis for the decision not to indict any of the police officers. For example, in determining that the opening of fire by Guy Raif was justified, Mahash⁵ relies on the verdict rendered in the case of Isha, which deals with the decision-making process of a military action, and not a police action. In the case of Isha, the Supreme Court examined the issue of the criminal indictment of soldiers accused of negligence committed during an operational activity, ruling that:

³ <http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=542840>

⁴ *The Report of Mahash*, p. 35.

⁵ *Ibid.*, p. 34.

Prior to indicting a military commander for negligence in an operational activity, the general meaning given to such a step should be considered. There is real concern that using criminal procedure for an error in judgment or non-severe negligence committed during an operation will inflict harm on the army ... furthermore, imposing criminal responsibility on an officer leading a military operation may jeopardize the activity and cause it not to meet its target ... imposing criminal responsibility in such cases may lead, therefore, to imposing an additional, unjustified burden on the line of command.”⁶

8. The Or Commission warned against the moral conception that views Arab citizens as the enemy when it determined that:

... it is important to act in order to root out the existence of negative prejudices against the Arab sector that were discovered even among experienced and respected officers in the police force. The police must instill among its officers the understanding that the Arab community as a whole is not their enemy, and that it should not be treated as an enemy.⁷

In spite of the clear statements made by the Or Commission, Mahash’s report reveals that Mahash has not imparted this message, and that it continues to embrace this dangerous conception.

9. This dangerous moral conception served as fertile ground for spawning the severe failure of Mahash to carry out its legal obligation to investigate the events of October 2000, as detailed below.

B. THE SEVERE SHORTCOMINGS REVEALED IN MAHASH’S REPORT

Failure to Conduct Investigations in the Immediate aftermath of the Events of October 2000

10. Mahash did not initiate an investigation immediately after each of the incidents of death which occurred in October 2000, though it was clear that these were cases in which civilians had been shot dead by police officers. Mahash’s claim that the situation in the field at the time prevented them from doing so cannot be sustained as it applies, at most, solely to the first ten days of October.
11. Furthermore, Mahash did not initiate investigative actions regarding the police, including the identification of police officers who were involved in or present at each of the scenes at which the deaths occurred, sequestering the weapons involved, et cetera. Here it should be noted that, beginning in October 2000 and on many occasions after these events, Adalah approached the Attorney General and Mahash demanding the initiation of an investigation regarding those responsible for the killing of Arab civilians, to no avail.⁸

⁶ The case of Isha, pp. 866-868.

⁷ *The Report of the Or Commission*, p. 768, paragraph 15.

⁸ For details regarding these appeals, see: *Adalah's Correspondence with the Police Investigation Unit (Mahash) and the Attorney General since October 2000, Concerning the Investigation of the Killing of Arab Citizens of Israel by Israeli Police Officers*, and related materials at: <http://www.adalah.org/newsletter/eng/sep05-s/cores.php>

Failure to Conduct Investigations Due to the Existence of the Or Commission

12. Mahash did not undertake an investigation into any of the incidents of death in October 2000, even though, given the circumstances, it was clear that at least a suspicion existed that these were unnatural deaths caused by police officers' firing on civilians. Mahash claimed in its report that the lack of an investigation following the appointment of the Or Commission was made in accordance with the directive of then-Attorney General, Edna Arbel. Beyond the legal problems in the content of such a directive, the claim that the directive prevented the conduction of an investigation is irrational. The Or Commission was appointed only on 8 November 2000; that is, over a month after the first incidence of death. However, the discussion following which the Attorney General issued her directive took place on 9 May 2001, six months after the appointment of the Or Commission.⁹ This being the case, what, then, prevented Mahash from conducting investigations during the entire period from the beginning of October until the issuance of the directive?
13. Furthermore, as detailed above, Adalah approached the Attorney General and Mahash¹⁰ in regard to this matter, on numerous occasions from October 2000. Thus, for example, the letter which Adalah sent to the Attorney General and the Director of Mahash on 5 November 2000 firstly contained a request that they act upon their authority and order the conduction of investigations; and secondly detailed the legal obligations of Mahash to investigate each of the shooting incidents in which 13 Arab civilians lost their lives and in which hundreds of civilians were injured in October 2000. The letter stated the following:

In our opinion, there exists at least a suspicion that an offense has been committed by the police officers who opened fire and those who ordered them to shoot. In this case, the authority to open an investigation is obligatory, as was established by the Supreme Court in H.C. 297/82, Berger et, al., v. the Minister of Interior (P.D. 37 (3) 29, 45-47).¹¹

Failure to Investigate Following the Report of the Or Commission

14. No immediate and serious investigation was initiated, even following publication of the Or Commission Report. Mahash delayed action for several months, claiming that it needed to study the material received from the Or Commission.
15. Here it should be noted that some of those appointed to assist members of the Or Commission to gather materials and collect evidence were Mahash employees who had been transferred to the Commission for the duration of its activity, and later returned to work for Mahash. There can be no doubt, therefore, about their familiarity with the materials in all of their detail.
16. The total failure of Mahash to undertake an investigation following publication of the Or Commission Report was confirmed, for all intents and purposes, by a legal representative of Mahash, Advocate Lemberger, during a hearing held at the Acre Magistrate Court on 28 February 2005 with regard to Mahash's motion to exhume the body of Asel Asleh for the purpose of conducting an autopsy. There he stated that, "The factual foundation for this motion is that arrived at by the Or Commission ... we have not added anything to it."

⁹ *The Report of Mahash*, p. 5 and appendix 5.

¹⁰ See footnote 8, above.

¹¹ *Ibid.*

17. Furthermore, it should be noted that the shortcomings of Mahash were addressed on 1 September 2004, a year after the publication of the Or Commission Report, when (former) Supreme Court Justice Theodore Or stated the following during a lecture delivered at Tel Aviv University:

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.

Failure to Conduct Autopsies on the Bodies of those Killed

18. Mahash did not initiate autopsies on the bodies of those killed immediately following their deaths, in spite of its legal obligation as an investigative body to do so in every case in which there is suspicion of an unnatural death. This obligation includes the submission of a motion to the courts for the purpose of obtaining a judicial order to conduct an autopsy in the event that the victim's family does not give its permission to do so.
19. In this regard, it should be noted that, contrary to what was argued in Mahash's report that it was unable to conduct autopsies due, *inter alia*, to the fact that, "in nearly every case the families held the funerals within a few hours of the event,"¹² in fact, almost all of the funerals were conducted a full day or more after the victim's death, and in several cases the bodies were released from the hospitals for burial without autopsies having been conducted on them – by explicit written order given to the hospital by Mahash via the police.¹³
20. With regard to Mahash's claim that it was the families' rejection of Mahash's request for permission to exhume the bodies for the purpose of conducting the autopsy that prevented it from identifying those who opened fire, in fact, Mahash submitted such a request only to four of the families of those killed, and even this was done many years after the deaths took place.

¹² *The Report of Mahash*, p. 3.

¹³ <http://www.adalah.org/features/mahashpressconf/lettertohospital.JPG>. For a translation of the document into English, see: <http://www.adalah.org/features/mahashpressconf/lettertohospital-en.pdf>.

21. Further, it should be noted that in the four cases in which autopsies were conducted the autopsy reports submitted did not lead to Mahash's identification of those who opened fire. Given these circumstances, how, then, can the bereaved families be expected to agree to so distressing an action as the exhumation of the bodies of their relatives so many years after their deaths?
22. The four families did not give their permission for this severe violation of the dignity of the deceased and of their own feelings, as Mahash refused to provide them with information affirming that it had exhausted all other possible investigative acts, and that exhumation of the bodies after so long a period of time was the final investigative action; and to provide them with an expert opinion confirming that the exhumation would make it possible, with a high degree of certainty, to identify those who opened fire.
23. Accordingly, in a response submitted by Adalah in May 2005 with regard to Mahash's motion to exhume the body of Asel Asleh, it was clarified that, in addition to the enormous anguish that such an action would cause to the family of the deceased, it is difficult to assume that it would lead to the revelation of the truth, especially since Mahash's motion states clearly that it is possible that exhumation would not necessarily lead to the truth.¹⁴ Furthermore, Mahash's motion to exhume the bodies so many years after the death is without precedent and contradicts Supreme Court case law, which has consistently defended the right to dignity of the deceased, as well as the right to dignity of the deceased's family, especially in all that pertains to the exhumation of a body from a grave.¹⁵

Legitimization of the Use of Shooting by Snipers

24. The use made by the police of shooting by snipers in October 2000 cost the life of at least one person, Misleh Abu Jarad, and to the injury of many others.¹⁶
25. Among the most central and significant issues examined by the Or Commission was the use of snipers to break up demonstrations. The Or Commission stated that, "... the use of live ammunition, including shooting by snipers, is not a means to be used by the police to disperse a crowd. Live ammunition is a means of dealing with special situations, such as a situation that presents a clear and present life-threatening danger, or in order to free hostages."¹⁷
26. Beyond this normative determination, the Or Commission, composed as is well known of a justice of the Supreme Court and a District Court judge, experts in the examination of evidence, determined that in all cases in which snipers were used in October 2000, both in Umm al-Fahem and in Nazareth, it was unjustified: "there was no justification, as its use was made in circumstances in which there was no clear and present danger to life to justify the use of live ammunition."¹⁸
27. In addition, the Or Commission determined that there was no precedent for the use of snipers against demonstrators in Israel, and that the use of snipers in October 2000 was for purposes

¹⁴ See footnote 8 above.

¹⁵ H.C. 754/03, *The Family Members of the Deceased Sharkha Yusef v. The Honorable Judge David Mintz*, P.D. 57 (5) 817, 825, together with the case law mentioned therein.

¹⁶ *The Report of the Or Commission*, p. 481, paragraph 91.

¹⁷ *Ibid.*, p. 775, paragraph 32.

¹⁸ *Ibid.*, p. 500, paragraph 119.

of deterrence;¹⁹ and concluded that Alik Ron, Moshe Waldman, and Shmuel Marmelstein were responsible for the use of the snipers.

28. In contrast, with regard to the use of live ammunition by snipers in Umm al-Fahem, Mahash's report determined that, "it is not possible to refute the claim of those involved in this event that shooting by snipers was intended to confront a situation of clear and present danger at which they were present ..."²⁰ and that such was also the case in Nazareth.²¹ In addition, Mahash stated in the report that it was impossible to determine that the decision of Alik Ron to make use of snipers was illegal,²² and similarly in the cases of Moshe Waldman²³ and Shmuel Marmelstein.²⁴

Justification of the Use of Live Ammunition

29. Mahash's report also contradicts the findings of the Or Commission concerning the use of live ammunition on demonstrators by police officers. The Or Commission determined unequivocally that Guy Raif used live ammunition in Sakhnin without justification and that "it is most likely the case that the shots fired by Raif hit the two deceased, Abu Saleh and Ghanaym, and that it was he who caused their deaths."²⁵ The Or Commission also determined that Raif "was not in a situation in which there was a clear and present threat to his life that would have justified the firing of live ammunition."²⁶ Further, the Commission found that there was no basis for the claim that it was the police officers at the Teradyon junction who shot Emad Ghanaym and Walid Abu Saleh.²⁷
30. Irrespective of the findings of the Or Commission, Mahash's report concluded that, "the advance of the rioters toward Raif created a clear and present danger in which he could have been injured, as indeed occurred. We think that this danger justified the use of live ammunition, though only after use had been made of less harmful measures,"²⁸ that Raif had used live ammunition only after less harmful means had been exhausted and he "was forced to use live ammunition,"²⁹ and that "it is not possible to rule out the possibility that the deceased and another person who was injured were shot by fire that originated from the area of the junction."³⁰
31. Similarly, the Or Commission Report determined that Moshe Waldman, the Commander of the Valleys Area, "gave the order to fire to the police force without giving sufficient consideration to the danger involved in the use of life ammunition against civilians. The outcome of this failure was the use of life fire by the police officers, which caused civilians serious injuries and even the death of at least one civilian."³¹ Thus, the Or Commission determined that it was Waldman who ordered the use of live ammunition, and therefore that

¹⁹ Ibid., pp. 472-473, paragraph 75.

²⁰ *The Report of Mahash*, p. 69.

²¹ Ibid., pp. 71-72, 76.

²² Ibid., p. 72.

²³ Ibid., p. 76.

²⁴ Ibid., p. 80.

²⁵ *The Report of the Or Commission*, p. 349, paragraph 72.

²⁶ Ibid., p. 752, paragraph 267.

²⁷ Ibid., p. 353, paragraph 74.

²⁸ *The Report of Mahash*, p. 33.

²⁹ Ibid., p. 34.

³⁰ Ibid., p. 29.

³¹ *The Report of the Or Commission*, pp. 738-739, paragraph 248.

he is responsible for the death of Wissam Yazbak, and possibly also for the death of Omar Mohammad A'kkawi.

32. In spite of this, Mahash's report declares that it is not possible "to determine which commander in the field gave the order to open fire, whether such orders were given, and what exactly was included in such orders."³²

Justification of the Use of Rubber-Coated Bullets

33. With regard to the use of rubber-coated bullets in shootings that occurred in October 2000 and which led to the deaths of at least two persons and to the injuring of many others, the Or Commission determined that:

During the October events, the police force made extensive use of rubber-coated steel bullets (henceforth: rubber bullets or rubber). According to the evidence before us, it is possible to determine with sufficient certainty that the use of ammunition of this type caused the death of two persons: the deceased Rami Ghara from the village of Jatt, and the deceased Ahmed Jabareen, who was killed in Umm al-Fahem. In terms of the others who died in the October events ... it is very possible that some of them died as a result of the use of rubber bullets. This is in addition to many others who were injured, some severely, by rubber bullets.³³

34. The Or Commission pointed out the fatal potential in the use of rubber-coated bullets,³⁴ determining that:

There is not sufficient space here to describe the many pieces of evidence obtained by the Commission that reveal that the use made of rubber bullets in the events of October was undertaken in situations that were very distant from endangering life ... the entire picture is that, when confronting the disturbances to public order during the events, the police forces made use of these "measures," as they are commonly referred to in police jargon, as a matter of routine. These measures included principally, and often exclusively, rubber bullets.³⁵

35. With regard to the use of rubber-coated bullets during the events of October 2000, the Or Commission determined that "it is possible to assume with a high degree of probability that this action would contribute to a deterioration of the events and cause unnecessary injuries."³⁶ Further, the Commission found that:

We have extensive evidence that the use made of rubber bullets exceeded in many ways the framework of the binding directives regarding – the identity of those who can issue the order to use rubber bullets, the failure to observe the minimal distance required from the target according to the directives for their use, the use of rubber bullets while there were less dangerous means

³² *The Report of Mahash*, p. 86.

³³ *The Report of the Or Commission*, p. 433, paragraph 1.

³⁴ *Ibid.*, p. 604, paragraph 57.

³⁵ *Ibid.*, p. 455, paragraph 51.

³⁶ *Ibid.*, p. 605, paragraph 59.

which should have been used under the circumstances, and, finally, use of rubber bullets by those not authorized to do so.”³⁷

36. The Or Commission determined that Ehud Barak,³⁸ Shlomo Ben Ami,³⁹ Yehuda Vilk,⁴⁰ Alik Ron,⁴¹ and Moshe Waldman⁴² were aware of the fatal potential in the use of rubber-coated bullets and of the fact that during the October events rubber-coated bullets were used extensively, unjustifiably and in contradiction to the police directives, and that they did not carry out their duty to prevent all of the above.
37. In contrast, Mahash did not investigate in any manner the use of rubber-coated bullets, due to the preposterous claim that, “according to the procedures that were in force during the October events, it was allowed to use this measure under some conditions ... it is clear that this issue is not supposed to be held up for examination in the framework of a criminal investigation.”⁴³ This is in spite of the serious findings of the Or Commission with regard to the use of rubber-coated bullets that should require *prima facie* a criminal investigation for suspicion of having committed a number of offences, according to Chapter 10 of the Penal Code, including manslaughter, causing death by negligence, et cetera.

Lack of Proper Examination of the Evidence

38. Mahash’s report further reveals that in many cases Mahash preferred the versions of events of the suspected police officers, and that it was sufficient for there to be contradictions in the versions of events of police officers and Arab eyewitnesses for Mahash to declare that it was not possible to decide between the versions.
39. It should be noted that, unlike Mahash, the Or Commission had the clear expertise to examine the evidence thoroughly, because it was composed of a justice of the Supreme Court and a District Court judge. Further, while Mahash is a unit of the State Prosecutor’s Office in the Ministry of Justice, in practice the whole of its investigatory system is based upon police investigators and intelligence personnel who are transferred temporarily to Mahash,⁴⁴ and who return to the police force upon completing their work for Mahash. This creates a very problematic situation in and of itself regarding the independent judgment of Mahash’s investigators and prevents justice from being seen to be done.
40. Thus, the Or Commission’s determination with regard to the direct responsibility of Guy Raif for the deaths of Walid Abu Saleh and Emad Ghanaym was based upon the testimony of police officers, as well as testimonies provided by a number of eyewitness residents of Sakhnin, who were described by the Commission as reliable and their testimonies as accurate.⁴⁵ In contrast, Mahash’s report doubts the reliability of the witnesses and gives preference to Raif’s version of events.⁴⁶

³⁷ Ibid., p.433, paragraph 1.

³⁸ Ibid.

³⁹ Ibid., p. 634, paragraph 93.

⁴⁰ Ibid., p. 671, paragraph 152.

⁴¹ Ibid., p. 725, paragraph 230.

⁴² Ibid., p. 734, paragraph 243.

⁴³ *The Report of Mahash*, p. 6.

⁴⁴ *The Report of the State Comptroller*, 56A, p. 360.

⁴⁵ *The Report of the Or Commission*, pp. 349-350, paragraph 73.

⁴⁶ *The Report of Mahash*, p. 24.

41. With regard to the determination of the direct responsibility of police officer Rashed Murshid for the death of Rami Ghara, the Or Commission based its decision on an amalgamation of many witnesses' testimonies, from the police as well as residents of Jatt. It determined that, "the facts before us point to show that Murshid fired from the garage area and not while running toward the junction. These shots caused the death of the deceased Ghara. Given these circumstances, this firing of shots was unjustified."⁴⁷
42. Further, the Or Commission determined that evidence exists that these shots were fired at close range and that, "even if other rubber bullets were fired at exactly the same time from the junction – although no reliable evidence for that is before us – such shooting could not have been effective, and certainly not fatal, from someone who was located within the area of the petrol station, due to the distance of the petrol station from the junction (approximately 90 meters)."⁴⁸
43. In contrast, Mahash's report gives great weight to the testimony of Avi Bar, the Commander of Rashed Murshid, in relation to where the deceased Rami Ghara was located when shot, even though it stands in direct contradiction to testimonies given by residents of Jatt.⁴⁹ Insodoing, Mahash's report prepared the way for Mahash's determination that it was not possible to establish the distance from which Rami Ghara was shot,⁵⁰ since it is not possible to rule out the possibility that the shots were fired by another police officer⁵¹ and that, in these circumstances, the police officers "had the authority to fire rubber toward him ..."⁵²
44. Many questions are also raised regarding the manner in which physical evidence was examined by Mahash. Such was the case of the bullet casing found at the scene of Wassim Yazbak's killing in Nazareth, where Mahash decided not to conduct a ballistic examination.⁵³ Similarly in the extremely lengthy delay in advancing an examination of the bullet that wounded Mahmoud Hushan in Kfar Manda, the results of which Mahash did not have in order to compare it to various guns even at the time of the publication of Mahash's report.⁵⁴

Failure to Conduct Investigations into Further Infringements of the Law by Police Officers Regarding the Investigations into the October Events

45. Mahash's report totally ignores the behavior of police officers who provided contradictory versions of events, refused to cooperate with the investigation, coordinated their testimonies, undermined investigations into the events, et cetera, in spite of the clear criminal nature of such actions, and does not recommend any criminal procedures (for example, for interfering with legal proceedings) nor disciplinary action against those involved.

⁴⁷ *The Report of the Or Commission*, p. 308, paragraph 14.

⁴⁸ *Ibid.*, p. 307, paragraph 12.

⁴⁹ *The Report of Mahash*, p. 13.

⁵⁰ *Ibid.*, pp. 13-14.

⁵¹ *Ibid.*, p. 10.

⁵² *Ibid.*, p. 13.

⁵³ *Ibid.*, p. 86.

⁵⁴ *Ibid.*, p. 60.

46. Thus, for example, Mahash's report states that police officer Yitzhak Shim'oni, one of three officers who chased Asel Asleh into the olive grove where he was shot to death, refused to undertake a polygraph test,⁵⁵ but fails to draw any conclusions from the officer's actions.
47. Similarly, Mahash's report completely ignores the findings of the Or Commission with regard to the interference by Moshe Waldman in the investigation into the shooting that killed Wissam Yazbak, and possibly also Omar A'kkawi, as the Or Commission determined that, "the Regional Commander was actively involved in the investigation of an event in which his own functioning should have been examined – but in fact was not."⁵⁶ The Or Commission regarded this as a grave matter and found that Waldman had a personal conflict of interests, as he was personally involved in these events.⁵⁷
48. Here it should be noted that warnings against the existence of a culture of lies and deliberate ignorance, and against its severe implications for the rule of law and public trust were given in a report from 1993 by Avraham Eden, then-Police Internal Comptroller, who investigated the institutional treatment of the phenomenon of police violence. In this report he stated that:
- "There is a syndrome, which is manifested in the lodging of false accusations by police officers against citizens (or criminals), which is not insignificant in terms of its frequency, and especially in the damage it causes to the police and the public."⁵⁸
49. The Kremnitzer Committee appointed by the Minister of Police following the publication of Eden's report also warned in these matters and determined that, "in response to a complaint, or even when there is an intention to submit a complaint, there are cases where police officers submit a counter-complaint, the details of which do not reflect reality."⁵⁹
50. Similarly, in the most recent report of the State Comptroller published on 31 August 2005, which examined the activities of Mahash, it was stated that:

The public committees and the researchers involved in study of the phenomenon of the illegal use of force and improper behavior among police officers stated that the police gives out contradictory messages in all matters relating to police violence; this is apparent from the gap between the formal stance presented to police officers during their training, which emphasizes the limits on the use of force, and the stance of commanders in the field, who apply a policy of "deliberate ignorance and silent approval."⁶⁰

⁵⁵ Ibid., p. 47.

⁵⁶ *The Report of the Or Commission*, p. 772, paragraph 27.

⁵⁷ Ibid., p. 736, paragraph 245.

⁵⁸ *The Report of the Police Internal Comptroller (1993), Institutional Treatment of the Phenomenon of Police Violence*, p.59.

⁵⁹ The Ministry of Police, *The Report of the Committee on the Matter of the Institutional Treatment of Police Violence*, June 1994, p. 6.

⁶⁰ *The Report of the State Comptroller*, 56A, pp. 358-359.

Closing Remarks

51. The publication of the report by Mahash reveals that the severe omissions and failures in the way in which Mahash operated, which Adalah warned against repeatedly, remain in place. Mahash did not fulfill its legal obligation in any of the incidents in which civilians were killed by shots fired by police officers, from the beginning of October 2000 until publication of its report in September 2005. The directors of Mahash are responsible for these shortcomings, and these shortcomings should be investigated thoroughly, and those found responsible held to account.

52. The statement contained in the most recent report of the State Comptroller regarding the dismissal of complaints without investigation apply all the more so to the matter discussed herein: “so high a proportion of uninvestigated complaints ... [might] be interpreted by police officers as legitimizing improper behavior, and by the public as a lack of the complaints against illegal and excessive use of force being taken seriously.”⁶¹

⁶¹ Ibid, p. 362.