

AMNESTY INTERNATIONAL

MEMORANDUM: LETHAL FORCE AND ACCOUNTABILITY FOR UNLAWFUL KILLINGS BY ISRAELI FORCES IN ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORIES

28 September 2016

Index: MDE 15/4812/2016

INTRODUCTION

This memorandum sets out some of Amnesty International's concerns about the use of lethal force by the Israeli army, Border Police, Israel Police and private security guards over the period from 22 September 2015 until 6 September 2016. It provides details of 20 cases of evidently unlawful killings of Palestinians, including 15 possible extrajudicial executions, carried out by Israeli forces, and seeks clarification about the investigations carried out by the Israeli authorities into these killings and the policies governing the use of lethal force by Israeli forces.

Over the past year, Amnesty International has continued its work to promote human rights in Israel and the Occupied Palestinian Territories (OPT) against the background of a sharp increase in the levels of violence. As an impartial organization committed to human rights for all, we have been vocal and active in condemning attacks by Palestinian armed groups and individuals against Israeli civilians. Such attacks can never be justified, and Amnesty International has been consistent and clear on this matter.

In the face of such attacks, however, the conduct of Israeli forces is bound by Israel's obligations under international law, in particular as regards upholding the right to life and security of person. Especially relevant are international standards on the use of force by law enforcement officials. Where evidence exists that lethal force has been used unnecessarily or disproportionately – and that therefore the resulting death is an unlawful killing – the Israeli authorities are required by international human rights standards to conduct prompt, independent, impartial, thorough, effective and transparent investigations.

Amnesty International has previously documented the Israeli military's use of excessive force and failure to investigate unlawful killings, most recently in the 2014 report *Trigger happy: Israel's excessive use of force in the West Bank*.¹ The report examined 19 cases in which Palestinians were killed by Israeli forces but did not appear to be posing an imminent threat to life. In three cases there was evidence that they were victims of wilful killings, which constitute war crimes. Yet in only one of the cases was an indictment served against a soldier for the minor crime of a "reckless and negligent act using a firearm". This confirms the report's other main finding – that Israeli forces carry out unlawful killings with near total impunity. Previous correspondence on the subject from Amnesty International to the Israeli authorities has gone unanswered, and the Israeli Ministry of Foreign Affairs dismissed the findings of the report without offering any evidence of its own.²

1. UNLAWFUL KILLINGS

Since 1 October 2015, Israeli forces have killed more than 200 Palestinians in Israel and the OPT. Most of these killings – more than 150 of them – came during alleged, attempted, or actual attacks by Palestinian individuals against Israeli soldiers, police and civilians. In the same period, Palestinians

¹ Amnesty International, *Trigger happy: Israel's use of excessive force in the West Bank* (Index: MDE 15/002/2014), February 2014, available at <https://www.amnesty.org/en/documents/MDE15/002/2014/en/>

² Israel Ministry of Foreign Affairs, "Amnesty warps reality, promotes Palestinian propaganda", 26 February 2014, (accessed 30 August 2016), available at <http://embassies.gov.il/london/NewsAndEvents/Pages/Amnesty-warps-reality-promotes-Palestinian-propaganda-26-Feb-2014.aspx>

have killed 35 Israelis and two foreign nationals in attacks in the same period, the majority of them civilians.

While Israel has a duty to protect the people under its control, a number of actions carried out by Israeli forces appear to have violated Israel's obligations under international law. Beginning with the Israeli army's killing of Hadeel al-Hashlamoun, 18, on 22 September 2015 in Hebron, Amnesty International and other human rights groups have documented a pattern of unlawful killings carried out by the Israeli forces in Israel and the OPT. These unlawful killings included cases – some of which are detailed below – where Israeli forces used intentional lethal force against Palestinians who were not, or were no longer, posing an imminent threat to the lives of Israeli soldiers, police or civilians. Other killings took place during the policing of protests in which stones, and occasionally firebombs, were thrown, but these incidents do not appear to have threatened the lives of the Israeli forces present, making the killings unlawful.

For all these incidents, listed below, we would like to know whether investigations are being carried out and to obtain full details of any investigations that have been conducted in these cases and information about the status of the cases which remain under investigation. In particular, we would appreciate clarification as to:

- whether a criminal investigation has been opened into each case;
- which bodies, if any, are carrying out each of the investigations;
- whether any indictment or conviction has resulted from the investigations;
- what steps those conducting the investigations have taken in order to interview or obtain information from victims, witnesses or complainants, or whether the investigations have been limited to seeking information only from army and Border Police personnel and records;
- when the outcome of investigations will be made public, and all the material relating to the progress of the investigation, if they have not already been released, and what steps will be taken to inform complainants, alleged victims or their families about the findings;
- what means, if any, are or will be available to complainants or alleged victims to challenge the findings or conclusions of these investigations.

KILLINGS BY THE ISRAELI ARMY

- **Hadeel al-Hashlamoun**, 18, was killed on 22 September 2015 in Hebron. Hadeel al-Hashlamoun was shot at Checkpoint 56 in Hebron by Israeli soldiers. She was holding a knife, but was separated from the soldiers by a metal barrier, and at no point did she pose a sufficient threat to the soldiers to make their use of deliberate lethal force permissible.³ The Israeli newspaper *Haaretz* reported that the Israeli army's Judea Brigade commander, Colonel Yariv Ben Ezra, had concluded in an initial review of the incident that Hadeel al-Hashlamoun could have been detained by the soldiers, and not killed.⁴ Amnesty International is not aware of the existence of any criminal investigation into her death. Her death should be investigated as a possible extrajudicial execution.
- **Hudhayfa Suleiman**, 18, was killed on 4 October 2015 near the city of Tulkarem. Hudhayfa Suleiman was shot and killed by the Israeli military with live fire during clashes at a checkpoint near Tulkarem. The Israeli army said that it had opened fire at three Palestinians who were throwing firebombs, but did not release information to suggest that the lives of Israeli troops had been in immediate danger. The use of live fire therefore appears to have been unjustified, and Hudhayfa Suleiman's death should be investigated as an unlawful killing.⁵ According to information

³ Amnesty International, *Evidence indicates West Bank killing was extrajudicial execution* (Index: MDE 15/2529/2015), September 2015, available at www.amnesty.org/en/documents/mde15/2529/2015/en/

⁴ Gili Cohen, "IDF Inquiry: Shooting of Palestinian Girl in Hebron Could Have Been Avoided", *Haaretz*, 1 November 2015 (accessed 30 August 2016), available at www.haaretz.com/israel-news/.premium-1.683193

⁵ Amnesty International, *No justification for deliberate attacks on civilians, unlawful killings by Israeli forces, or collective punishment of Palestinians* (Index: MDE 15/2633/2015), October 2015, available at www.amnesty.org/en/documents/mde15/2633/2015/en/

received by the NGO B'Tselem, the Military Advocate General (MAG) has opened a criminal investigation into the killing of Hudhayfa Suleiman.

- **'Abd al-Rahman Obeidallah**, 13, was killed on 5 October 2015 in Bethlehem. 'Abd al-Rahman Obeidallah was shot by an Israeli soldier armed with a .22 Ruger rifle in Aida Refugee Camp, and died in the hospital shortly afterwards; doctors said he was killed by a gunshot wound to the chest. Eyewitnesses told researchers from Defense for Children International - Palestine that 'Abd al-Rahman Obeidallah and another boy were standing about 70 metres from clashes between Israeli forces and Palestinian youths. As he was not posing an imminent threat of death or injury to Israeli soldiers or others, the shooting of 'Abd al-Rahman Obeidallah was unlawful. The fact that he appears to have been killed as a result of the intentional lethal use of a firearm means his death should be effectively investigated as a possible extrajudicial execution.⁶ An initial army probe reported by *Haaretz* on 5 October 2015 found that the killing had been "unintentional".⁷ According to information received by the NGO B'Tselem, the MAG has opened a criminal investigation into the killing of 'Abd al-Rahman Obeidallah.
- **Muhammad Youssef al-Atrash**, 20, was killed on 26 October 2015 in Hebron. The Israeli police labelled this incident an "attempted stabbing" but an eyewitness watching the events unfold from her balcony said Muhammad Youssef al-Atrash had posed no threat when he was shot. One of the soldiers had asked him for his ID and, as he reached into his pocket to remove his card, another soldier standing behind him shot him on his right side, she told Amnesty International. As he was not posing an imminent threat to the lives of the soldiers or others, his killing was unjustified and should be investigated as a possible extrajudicial execution. Witnesses also reported that the soldiers denied medical treatment to the wounded Muhammad Youssef al-Atrash for 40 minutes.⁸ It is a basic duty under international law to provide medical aid to the wounded, and failure to do so – especially intentional failure – violates the prohibition on torture and other cruel, inhuman and degrading punishment. As such, failure to provide medical aid should be investigated as a criminal offence. Amnesty International is seeking information about any criminal investigations launched into the denial of medical aid to Muhammad Youssef al-Atrash. The organization is not aware of the existence of any criminal investigations into his killing.
- **Tharwat al-Sharawi**, 72, was killed on 6 November 2015 in Hebron. The Israeli military alleged that she intended to ram them with her car. A video of the incident shows the car she was driving heading towards the soldiers at a speed slow enough to allow the soldiers to jump out of the way and then begin shooting heavily at the car. Tharwat al-Sharawi's son has said that his mother was on her way to lunch when she was killed. Amnesty International believes that, even if Tharwat-al-Sharawi did intend to carry out a ramming attack, the military has itself acknowledged that soldiers only began firing after jumping out of the way of the car. This means that the imminent danger to them had passed. She also did not appear to be posing a threat of death or serious injury to others. Accordingly, the use of lethal force seems to have been unlawful and the killing should be investigated as a possible extrajudicial execution.⁹ Yet, according to information received by B'Tselem, the MAG has decided that no criminal investigation will be opened into her killing.

⁶ Amnesty International, *No justification for deliberate attacks on civilians, unlawful killings by Israeli forces, or collective punishment of Palestinians* (Index: MDE 15/2633/2015), October 2015, available at www.amnesty.org/en/documents/mde15/2633/2015/en/

⁷ Nir Hasson and Jack Khoury, "13-year-old Palestinian Said Killed by Israeli Troops Fire Near Bethlehem", *Haaretz*, 5 October 2015, available at www.haaretz.com/israel-news/premium-1.678885

⁸ Amnesty International, "Israeli forces in Occupied Palestinian Territories must end pattern of unlawful killings", 27 October 2015, available at www.amnesty.org/en/latest/news/2015/10/israeli-forces-must-end-pattern-of-unlawful-killings-in-west-bank/

⁹ Amnesty International, "Investigate apparent extrajudicial execution at Hebron hospital", 12 November 2015, available at www.amnesty.org/en/latest/news/2015/11/israel-opt-investigate-apparent-extrajudicial-execution-at-hebron-hospital/

- **Lafi Yusuf Mostafa Awad**, 22, was killed on 13 November 2015 in Budrus. A witness told Amnesty International that Lafi Yusuf Mostafa Awad was shot in the back after running away as soldiers tried to arrest him during clashes near the fence/wall that passes near the village. He had already been shot with a rubber bullet as part of his arrest, the witness said. According to the witness version of events, he was not posing any danger to the lives of soldiers or others. There does not therefore appear to have been any justification for the use of lethal force. On 12 August 2015, *Haaretz* reported that the Israeli army had refined its orders to soldiers and reminded them that fleeing suspects were not to be shot if they were not posing or no longer posed a mortal danger.¹⁰ It therefore appears that Lafi Yusuf Mostafa Awad was killed in contravention of the army's own open fire regulations. Awad's death should be investigated as a possible extrajudicial execution. Yet, according to information received by B'Tselem, the MAG has decided that no criminal investigation will be opened into his killing.

- **Abdullah Azzam Shalaldah**, 28, was killed on 12 November 2015 in Hebron. Eyewitnesses reported that a large group of Israeli soldiers and police entered the al-Ahli hospital at 2.43am disguised as Palestinian civilians, with some wearing kaffiyehs – traditional Palestinian scarves – and fake beards and one being pushed in a wheelchair dressed as a pregnant woman. According to two witnesses Amnesty International spoke to, the soldiers entered a room on the third floor of the hospital, where 20-year-old Azzam Azmi Shalaldah was a patient, to arrest him on suspicion of stabbing an Israeli civilian on 25 October 2015. When they entered the room where the patient was in bed, they immediately shot his cousin, Abdullah Azzam Shalaldah, at least three times, including in the head and upper body. The Israeli army claimed that he had attacked the soldiers. But witnesses said that Abdullah Azzam Shalaldah was unarmed and had not attacked the soldiers. Shalaldah's killing should be investigated as a possible extrajudicial execution.¹¹ Amnesty International is not aware of the existence of any criminal investigations into his death.

- **Mahmoud Muhammad Ali Shaalan**, 16 was killed on 26 February 2016 at Beit El checkpoint, near Ramallah. Mahmoud Muhammad Ali Shaalan was a dual Palestinian-American citizen. According to his family, he was on his way from his home in Deir Dibwan to visit his aunt in the city of El Bireh. In order to avoid a long detour, Mahmoud Muhammad Ali Shaalan was attempting to pass on foot an Israeli military checkpoint that is usually closed to pedestrian traffic. His family says that he had been allowed through the checkpoint a number of times previously. According to a witness account provided to Amnesty International by B'Tselem, the soldiers did not allow Mahmoud Muhammad Ali Shaalan through the checkpoint on this occasion, and he turned back. As he was walking away from the soldiers, one soldier shot Mahmoud Muhammad Ali Shaalan from some distance away with around three bullets. He immediately fell to the ground, and the soldier then approached and shot him twice more, according to the witness. An autopsy carried out at the request of the family by a doctor from the State of Palestine's Medico Legal Center at Al-Quds University, Abu Dis, found six entry wounds, five in the upper right side and back of the chest, and one in the right thigh. There was no evidence that the bullets had been fired from close range. The Israeli military stated that Mahmoud Muhammad Ali Shaalan had stabbed a soldier.¹² The Israeli army told *Haaretz* that the results of an after action report would be passed to the MAG for review. Shaalan's family, through a lawyer, has asked the Israeli authorities to open a criminal investigation into the killing, but none has been opened until this time. The family have also asked to see the footage of the incident taken by the checkpoint's security cameras. According to the family, at first the army said that the cameras had not been working on the day of the incident, but then changed their answer and said that the cameras did not cover the area where the killing took place. Given

¹⁰ Gili Cohen, "IDF Refines Orders: Soldiers Not to Fire at Fleeing Palestinian Attackers", *Haaretz*, 12 August 2015 (accessed 30 August 2016), available at www.haaretz.com/israel-news/premium-1.670796

¹¹ Amnesty International, "Investigate apparent extrajudicial execution at Hebron hospital", 12 November 2015, available at www.amnesty.org/en/latest/news/2015/11/israel-opt-investigate-apparent-extrajudicial-execution-at-hebron-hospital/

¹² Gideon Levy and Alex Levac, "For Palestinian-American Teen's Family, Home Is Where the Body Is Buried", *Haaretz*, 12 March 2015 (accessed 30 August 2016), available at www.haaretz.com/israel-news/premium-1.708155

the account of the witness and the autopsy results, Amnesty International believes this killing should be investigated as a possible extrajudicial execution.

- **Abed al-Fatah al-Sharif**, 21, and **Ramzi Aziz Qasrawi**, 21 were killed on 24 March 2016 in Hebron. Abed al-Fatah al-Sharif and Ramzi Aziz Qasrawi were shot after stabbing and wounding an Israeli soldier. An Israeli soldier was filmed by a volunteer cameraperson from B'Tselem shooting Abed al-Fatah al-Sharif in the head as he lay wounded on the ground.¹³ Witnesses to the incident interviewed by B'Tselem also allege that Ramzi Aziz Qasrawi was shot and killed while lying wounded.¹⁴ While an Israeli soldier has been indicted and is currently on trial for the manslaughter of Abed al-Fatah al-Sharif, no investigation has been launched into the killing of Ramzi Aziz Qasrawi as far as Amnesty International is aware. This second alleged extrajudicial execution should be urgently investigated. *Haaretz* reported on 25 March 2015 that three Israeli soldiers were reprimanded for their failure to provide medical aid to Abed al-Fatah al-Sharif and Ramzi Aziz Qasrawi.¹⁵ It is a basic duty under international law to provide medical aid to the wounded, and failure to do so – especially intentional failure – violates the prohibition on torture and other cruel, inhuman and degrading punishment. Failure to provide medical aid should therefore be investigated as a criminal offence.
- In addition, there have been at least 21 Palestinian males, including a child aged 10, killed by the Israeli army in 10 separate incidents during demonstrations at and near the fence that separates **Gaza** and Israel since October 2015. The demonstrations took place near Nahal Oz, Abbasan, al-Tuffah, al-Bureij, Khan Younis, and Shuja'iyya. During these demonstrations Palestinian protesters threw stones at Israeli soldiers. However, as the Israeli soldiers were tens or hundreds of metres from the protesters and generally well protected by concrete emplacements or other obstacles, they were not apparently in danger of death or serious injury. The use of lethal force against the protesters therefore appears to be unjustified, and their deaths should be investigated as unlawful killings. Amnesty International is not aware of any investigations into their deaths by the MAG.

KILLINGS BY THE BORDER POLICE AND ISRAEL POLICE

- **Fadi Alloun**, 19, was killed on 4 October 2015 in West Jerusalem. Israeli police said that he tried to stab a 16-year-old Israeli boy who was slightly injured, and had a knife in his hand when he was shot. But video of the incident shows him being chased up a Jerusalem street by a group of Israeli civilians before an Israeli police patrol arrives, after which a policeman shoots Fadi Alloun in the upper body from some metres away, without attempting to arrest him. The killing of Fadi Alloun therefore appears to have been an extrajudicial execution.¹⁶ A letter sent by the Police Internal Investigations Department in the Justice Ministry (known as Mahash) to Fadi Alloun's legal representative at the NGO Adalah on 7 April 2016 stated that the investigation had been closed. Adalah has still not received the case materials from Mahash explaining this decision, and cannot appeal the decision to the State Prosecutor until it does.
- **Wissam Farraj**, 20, was killed on 8 October 2015 in East Jerusalem. Israeli police forces shot Wissam Farraj during clashes with Palestinians in the Shu'afat refugee camp. Medics reported that

¹³ B'tselem, "Video: Soldier executes Palestinian lying injured on ground after the latter stabbed a soldier in Hebron", 24 March 2016 (accessed 30 August 2016), available at http://www.btselem.org/firearms/20160324_soldier_executes_palestinians_attaker_in_hebron

¹⁴ B'tselem, "Testimonies: Prior to incident for which Elor Azaria is facing charges, Ramzi al-Qasrawi was also executed", 6 June 2016 (accessed 30 August 2016), available at http://www.btselem.org/press_releases/20160606_claims_of_additional_execution_in_hebron_incident

¹⁵ Gili Cohen, "IDF Officers Reprimanded for Not Aiding Hurt Palestinian Before He Was Shot Point Blank", *Haaretz*, 25 March 2016 (accessed 30 August 2016), available at www.haaretz.com/israel-news/premium-1.710942

¹⁶ Amnesty International, *No justification for deliberate attacks on civilians, unlawful killings by Israeli forces, or collective punishment of Palestinians* (Index: MDE 15/2633/2015), October 2015, available at www.amnesty.org/en/documents/mde15/2633/2015/en/

he was shot with .22 ammunition in his chest.¹⁷ An Israeli police spokesperson told *The Jerusalem Post* that a riot had taken place after Border Police attempted to search a house in the refugee camp, and that stones, pipe bombs and firebombs had been thrown at the police, to which they had responded with live fire.¹⁸ The spokesperson's statement did not specify what lethal threat Wissam Farraj was posing at the time of his death, but B'tselem reported that he was throwing stones at police from a rooftop when he was killed.¹⁹ Given Amnesty International's concerns about the policies governing the use of live fire in Jerusalem, outlined below, we are concerned that this killing may have been unlawful. Amnesty International is not aware of the existence of any criminal investigation into his killing.

- **Mustafa Khatib**, 17, was killed on 12 October 2015 in East Jerusalem. The Israel Police said that two Border Police officers stopped Mustafa Khatib after they became suspicious of him. The police say that Mustafa Khatib then tried to stab one of the officers, but his protective vest prevented injury. In a video of the incident, taken by a municipal security camera and released by the Israel Police, two Border Police officers walk over to where Mustafa Khatib is, hidden behind a wall. One of the officers then falls back and Mustafa Khatib starts to run away. When Mustafa Khatib is some distance from the two officers, he is shot and falls to the ground.²⁰ As Mustafa Khatib was running away at the time he was shot, and was not close enough to anybody else to pose an imminent danger to them, the Border Police's use of lethal force was unjustified, even if Mustafa Khatib had tried to stab a police officer previously. Mahash closed an initial complaint into Mustafa Khatib's killing, saying that "no factual foundation was established suggesting a criminal offense on the part of any of the officers during the incident." However, Mahash's investigation appears to have lacked thoroughness. Among other issues, a police report pertaining to a completely different incident was included in the investigation file.²¹ Amnesty International is calling on Mahash to urgently reopen their investigation and investigate the killing of Mustafa Khatib as a possible extrajudicial execution.
- **Dania Jihad Hussein Ershied**, 17, was killed on 25 October 2015 in Hebron. Shortly before Dania Jihad Hussein Ershied was killed, she had passed through a checkpoint equipped with a metal detector and two revolving gates, between which Israeli forces frequently lock people they deem suspicious. At a second checkpoint in front of Hebron's Ibrahimi Mosque she was called for a second inspection by more than five Border Police officers, who began searching her bag and yelling at her to show her knife. Warning shots were fired at her feet, prompting her to step back and raise her hands in the air. She was shouting at the police that she did not have a knife and still had her arms raised when police again opened fire, shooting her six or seven times. Even if Dania Jihad Hussein Ershied had a knife in her possession, eyewitness accounts clearly indicate she was not posing a threat to Israeli forces when she was shot and her killing was therefore unjustified and a possible extrajudicial execution.²² Amnesty International is not aware of the existence of any criminal investigation into her death.

¹⁷ Amnesty International, *No justification for deliberate attacks on civilians, unlawful killings by Israeli forces, or collective punishment of Palestinians* (Index: MDE 15/2633/2015), October 2015, available at www.amnesty.org/en/documents/mde15/2633/2015/en/

¹⁸ Daniel K. Eisenbud, "Palestinian man reported killed in Shuafat clashes", *The Jerusalem Post*, 8 October 2015 (accessed 30 August 2016), available at www.jpost.com/Arab-Israeli-Conflict/Report-Twenty-year-old-dies-in-clash-with-police-in-east-Jerusalem-421353

¹⁹ B'tselem, "Palestinians killed by Israeli security forces in the West Bank, after operation Cast Lead" (accessed 30 August 2016), available at www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-event/westbank/palestinians-killed-by-israeli-security-forces

²⁰ YouTube, "Israeli police shooting of Mustafa Adel Al-Khatib", 9 August 2016 (accessed 30 August 2016), available at www.youtube.com/watch?v=OONC69Mrrpg

²¹ Adalah: The Legal Center for Arab Minority Rights in Israel, "Adalah, Addameer appeal closing of Mahash probe into killing of Palestinian minor rife with serious investigative failures", 16 August 2016 (accessed 30 August 2016), available at www.adalah.org/en/content/view/8885

²² Amnesty International, "Israeli forces in Occupied Palestinian Territories must end pattern of unlawful killings", 27 October 2015, available at www.amnesty.org/en/latest/news/2015/10/israeli-forces-must-end-pattern-of-unlawful-killings-in-west-bank/

- **Mahdi al-Muhtasib**, 23, was killed on 29 October 2015 in Hebron. Mahdi al-Muhtasib was shot by Israeli forces after reportedly lightly wounding an Israeli soldier in a stabbing attack, according to the Israeli army.²³ Video of the aftermath of the incident shows Mahdi al-Muhtasib writhing in pain on the ground before an Israeli border police officer, standing a distance of some metres away, shoots him again.²⁴ The video shows that Mahdi al-Muhtasib was plainly wounded, and posed no threat whatsoever to the officer or anyone else. The killing should be investigated as an extrajudicial execution. Moreover, shooting a wounded protected person is a wilful killing, a grave breach of the Fourth Geneva Convention.²⁵ Amnesty International is not aware of the existence of any criminal investigation into his death.
- **Mohammed Abu Khalaf**, 20, was killed on 19 February 2016 in East Jerusalem. An Al Jazeera camera crew captured this incident on film and, in this footage, it can be plainly seen that the Border Police fire many bullets at Mohammed Abu Khalaf after he is already wounded, lying on the floor and posing no danger whatsoever.²⁶ However, *Haaretz* reported on 26 July 2016 that the Mahash had decided that no charges would be filed as the Border Police involved had acted in accordance with their “instinctive operational response”.²⁷ While it is the case that the police had been attacked, they have a responsibility under international law to use proportionate force. Once an assailant has been injured and is no longer posing an imminent threat, the use of intentional lethal force is prohibited. The Israeli government has a responsibility to ensure its forces are held to account, and Amnesty International is calling on the Mahash to reopen its investigation into this case a possible extrajudicial execution.
- **Bashar Masalha**, 22 was killed on 8 March 2016 in Jaffa. A video of this incident reviewed by Amnesty International, appears to show an injured Masalha lying on the ground. He had been shot by a policeman, after having stabbed at least 10 civilians, killing one of them. A second policeman, reportedly a volunteer, can then be heard on the video firing another shot at the prone Bashar Masalha, and being admonished by his colleague for doing so.²⁸ In the *Times of Israel*, on 1 May 2016, it was reported that, despite the police initially saying that they would investigate the shooting, the volunteer had been nominated for a Certificate of Commendation.²⁹ The shooting of a wounded person who was no longer posing a threat can have absolutely no justification. Amnesty International is calling on Mahash to reopen its investigation into his killing as a possible extrajudicial execution, and also calling on the Israel Police to suspend the policeman in question pending the outcome of the investigation.

KILLINGS BY PRIVATE SECURITY CONTRACTORS

- **Maram Saleh Hassan Abu Ismail**, 23, and her brother **Ibrahim Taha**, 16, were killed on 27 April 2016 at Qalandia checkpoint. The Israel Police said in a statement that the two were shot and

²³ Twitter, @IDFSpokesperson, 29 October 2015 (accessed 5 September 2016), available at <https://mobile.twitter.com/IDFSpokesperson/status/659621413012287488>

²⁴ YouTube, “Exclusive: The moment of the execution in cold blood of the martyr Mahdi al-Muhtasib in Hebron”, 29 October 2015 (in Arabic, accessed 30 August 2016), available at www.youtube.com/watch?v=1x4X1rd7jsA

²⁵ Amnesty International, “Investigate apparent extrajudicial execution at Hebron hospital”, 12 November 2015, available at www.amnesty.org/en/latest/news/2015/11/israel-opt-investigate-apparent-extrajudicial-execution-at-hebron-hospital/

²⁶ YouTube, “Al-Jazeera camera documents the occupation killing a Palestinian youth”, 19 February 2016 (in Arabic, accessed 30 August 2016), available at www.youtube.com/watch?v=W22rtTpiBQQ

²⁷ Sharon Pulwer, “Israeli Cops Filmed Shooting Prone Palestinian Attacker in Jerusalem Won't Be Charged”, 26 July 2016, (accessed 30 August 2016), available at www.haaretz.com/israel-news/1.733428

²⁸ YouTube, “Jaffa terrorist shooting”, 8 March 2016 (in Hebrew, accessed 30 August 2016), available at www.youtube.com/watch?v=aXy50JgYd1I

²⁹ Stuart Winer, “Cop who shot disabled terrorist recommended for medal”, *Times of Israel*, 1 May 2016 (accessed 30 August 2016), available at <http://www.timesofisrael.com/cop-who-shot-incapacitated-terrorist-recommended-for-medal/>

killed after they approached the checkpoint in a lane reserved for vehicular traffic and ignored orders to stop before Maram Saleh Hassan Abu Ismail threw a knife at a police officer. Maram Saleh Hassan Abu Ismail and Ibrahim Taha's father told Amnesty International that neither she nor her brother had been involved in politics, and that his daughter, accompanied by her younger brother, had gone to the checkpoint – which she had never passed through before – in the hope of accessing a hospital in East Jerusalem. In a witness account provided to Amnesty International by Human Rights Watch, the witness says that Maram Saleh Hassan Abu Ismail did not have anything in her hands, and did not appear to understand instructions shouted at her in Hebrew by a private security contractor, who then shot her and her brother. The witnesses also said that Maram Saleh Hassan Abu Ismail appeared to be alive for around half an hour after she was shot, as her leg and hand were moving, but that Israeli forces did not provide any medical help and prevented a Palestinian ambulance from accessing the scene. *Haaretz* reported on 5 May 2016 that the killings were being investigated by Israel police, and that those suspected of firing the fatal shots were civilian contractors employed by the Public Security Ministry.³⁰ Information passed to B'Tselem shows that the Judea and Samaria district of the Israel Police has opened a criminal investigation. On 30 August, *Haaretz* reported that the Israel Police had completed the investigation, but “in a highly unusual occurrence, did not include a recommendation whether or not to indict any suspects.”³¹ The decision to prosecute is therefore now with the State Attorney.

2. INVESTIGATIONS INTO ALLEGATIONS OF UNLAWFUL KILLINGS

MILITARY INVESTIGATIONS

Despite a considerable amount of evidence of wrongdoing by Israeli forces, Amnesty International is only aware of one case in the past year in which a member of the Israeli forces has been indicted for their role in an unlawful killing. While we note the military's prompt investigation and indictment of Elor Azaria, the soldier charged with manslaughter for the killing of Abed al-Fatah al-Sharif on 23 March 2016 in Hebron, in the OPT, this appears to be an exception. In so many other cases, including those detailed above, there is similarly compelling evidence of unlawful killings by Israeli forces that have either gone unpunished or have not been investigated.

Amnesty International's research shows that the military justice system consistently fails to deliver justice for Palestinian victims of unlawful killings and their families. Our 2014 report *Trigger happy* examined 19 cases in which Palestinians killed by Israeli forces did not appear to have been posing an imminent threat to life. In three cases there was evidence that they were victims of wilful killings, which are war crimes. As of July 2015 – the last date for which B'Tselem posted an update on pending military investigations, and two years after the most recent cases in the report – there had been an indictment in only one of the 19 cases. Six other investigations had been closed, eight others were still under review by the MAG, two were still being investigated, and there had been no investigations into two of the killings.³² Amnesty International has previously found that Israel's military investigations are neither independent nor impartial.³³

Amnesty International has a number of concerns regarding what appears to be a dilution of the policy of automatically investigating civilian deaths at the hands of the Israeli army in the occupied West Bank. The MAG wrote in March 2016 to the Association for Civil Rights in Israel (ACRI) that the policy in

³⁰ Chaim Levinson, “Israel Investigating Suspected Violations in Shooting of Palestinian Siblings at Qalandiyah Checkpoint”, 5 May 2016 (accessed 30 August 2016), available at www.haaretz.com/israel-news/premium-1.718192

³¹ Yotam Berger, “Israel Extends Gag Order on Footage of Palestinian Siblings' Death for Fourth Time”, *Haaretz*, 30 August 2016 (accessed 30 August 2016), www.haaretz.com/israel-news/premium-1.739417

³² B'tselem, “Follow-up: Military Police and MAG Corps investigations of civilian Palestinian fatalities in West Bank since April 2011”, 30 July 2015 (accessed 6 September 2016), available at http://www.btselem.org/accountability/military_police_investigations_followup

³³ For a full summary of Amnesty International's view on the military investigations system with regard to its investigations of evidence of Israeli military wrongdoing in the 2014 Gaza-Israel conflict, see Amnesty International, “*Black Friday: Carnage in Rafah*”, August 2016, available at www.blackfriday.amnesty.org/investigations.php

effect since 2011 – whereby every death of a Palestinian in the occupied West Bank that does not take place during combat is automatically investigated by the military police – was still in place.³⁴ The MAG, writing to the Attorney General in 2011 to announce the change of policy instituting automatic investigations, had defined combat situations as those where fire is exchanged.³⁵ However, the combat exemption to automatically opening investigations is apparently being applied more broadly.

In *Haaretz*, the MAG reported that, in August 2016, there were 20 open investigations of possible wrongful shootings carried out by the Israeli military.³⁶ Given that more than 150 of the 200 Palestinians killed by Israeli forces since 1 October 2015 were involved, or suspected to be involved, in attacks that, in the majority of cases, did not involve firearms, the small number of investigations opened appears to indicate that the combat exemption to automatically opening investigations applies in cases where there has been an alleged, attempted, or actual attack with, for example, a knife or a car. There is a precedent for this: the MAG told B'tselem that there would be no criminal investigation in the case of Zakaria Jamal Muhammad Abu Arram, killed by the Israeli army in Hebron on 8 March 2012 after he had stabbed a soldier. The MAG cited the combat activity exemption as their reason for not opening a criminal investigation.³⁷

In Amnesty International's view, however, an individual attack with a knife or a car should not be treated as combat taking place as part of an armed conflict.

In cases where a criminal investigation is not automatically opened, one would only be launched by the MAG if the army's own operational report found evidence of criminal wrongdoing, according to the MAG's letter to ACRI. Amnesty International and other NGOs have long believed that the army's own operational reports are not fit for the purpose of determining if criminal wrongdoing has taken place. In many of the incidents where lethal force has been used in response to alleged, attempted, or actual attacks, Amnesty International has found credible evidence of unlawful killings and extrajudicial executions. It is therefore not enough that the MAG is relying on the army's own operational reports to determine if there is evidence of criminal wrongdoing.

Amnesty International is also concerned that there do not appear to be any investigations into the killings of Palestinians in Gaza by the Israeli army, discussed above.

Amnesty International therefore makes the following recommendations to the Israeli authorities:

- Make public the definition of “combat activity” used by the MAG to determine whether a criminal investigation is to be opened.
- As a first step towards bringing Israeli accountability mechanisms closer to international standards, implement all the recommendations of the Turkel Commission.
- Ensure prompt, thorough, independent and impartial criminal investigations are automatically initiated into all killings by Israeli forces.
- Where sufficient admissible evidence exists, prosecute Israeli personnel responsible for unlawful killings according to fair trial standards.

³⁴ Letter from MAG to ACRI, dated 14 March 2016 (accessed 30 August 2016), available at <http://www.acri.org.il/he/wp-content/uploads/2016/03/pazar140316.pdf>

³⁵ Quoted in B'tselem, *The Occupation's Fig Leaf: Israel's Military Law Enforcement System as Whitewash Mechanism*, May 2016, p. 11, available at www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf

³⁶ Gili Cohen, “Israeli Army Investigating 20 Possible Cases of Wrongful Shootings of Palestinians”, *Haaretz*, 11 August 2016 (accessed 30 August 2016), available at www.haaretz.com/israel-news/.premium-1.736260

³⁷ B'tselem, “Follow-up: Military Police and MAG Corps investigations of civilian Palestinian fatalities in West Bank since April 2011”, 30 July 2015 (accessed 30 August 2016), available at www.btselem.org/accountability/military_police_investigations_followup

- Ensure that those suspected of extrajudicial executions or other unlawful killings are prosecuted in fair trial trials on charges that adequately reflect the gravity of the offence.
- Ensure criminal investigations are launched retrospectively into all cases where Palestinians have been killed by Israeli forces during attempted, alleged or actual attacks.
- Apply the policy of automatic criminal investigation of non-combat deaths to killings by Israeli forces in the Gaza Strip as well as the West Bank.

CIVILIAN INVESTIGATIONS

The conduct of the Police Internal Investigations Department (known as Mahash) with regard to allegations of unlawful killings carried out by the Israel Police also raises serious questions about their ability to carry out impartial and independent investigations. Given that, in a number of cases covered by the period of this memorandum, such as that of Mustafa Khatib above, the investigation file released by Mahash contains incorrect information, Amnesty International has serious concerns about the thoroughness of the investigations. Other cases, such as that of Mohammed Abu Khalaf, described above, where strong evidence of wrongdoing has not led to any indictments, raises concerns about whether Mahash's investigations are impartial. The routine failure to disclose the contents of the investigatory files also means Mahash's investigations are not transparent. These serious shortcomings mean the investigations fall short of international standards and Israel has an obligation to ensure they are addressed,

Israeli Border Police forces often operate under the command of the Israeli military in the OPT. Currently, responsibility for investigating killings carried out by Border Police under the military's command lies with the Judea and Samaria district of the Israel Police. In the Turkel report, the recommendation was made that these investigations should be transferred to the responsibility of the Military Police, because the current situation – where police are investigating police conduct – is not independent. However, the Ciechanover Committee decided not to implement this recommendation, instead recommending a shared responsibility for investigating between the Mahash and the military. As far as Amnesty International is aware, however, this handover of responsibility has so far not taken place, and the Judea and Samaria police are still responsible for investigating the killings in the period that this memorandum covers.

While killings by the army of Palestinians in the occupied West Bank outside of combat activity ostensibly necessitate the automatic opening of a criminal investigation into the incident, Amnesty International is not aware of a similar requirement for killings carried out by the Israel Police or Border Police. As the use of lethal force during non-combat operations is governed by the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which represent a rigorous application of the right to life and are therefore binding,³⁸ there is no reason why investigatory procedures should differ across the different areas over which Israeli authorities have jurisdiction.

Amnesty International therefore makes the following recommendations to the Israeli authorities:

- Institute a policy that means a non-combat death at the hands of a member of the Israeli forces is grounds for the automatic opening of a criminal investigation, wherever it occurs, and whichever force is involved.
- Ensure prompt, thorough, independent and impartial investigation into killings by Police, Border Police and private security guards working for the state.

³⁸ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

- Where sufficient admissible evidence exists, prosecute Israeli personnel responsible for unlawful killings according to fair trial standards.

3. POLICIES GOVERNING LETHAL USE OF FORCE

Amnesty International is concerned that the policies governing the use of lethal force by the Israeli army, police, Border Police and private security contractors are not sufficiently strict to meet Israel's obligations under international law. As enumerated above, many of the instances of the use of lethal force by the Israeli army since October 2015 appear to have been unlawful, that is they have led to arbitrary deprivation of the right to life in violation, inter alia, of Article 6 of the International Covenant on Civil and Political Rights.³⁹ These cases point to a regular failure to meet relevant international standards, in particular the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which are an authoritative statement of how law enforcement officials should uphold human rights in policing. In the cases detailed above, intentional lethal force or lethal force was used when there was no imminent threat to life or without exhausting less lethal means of neutralizing a perceived threat. Such widespread, persistent failure to uphold the "protect-life" principle⁴⁰ gives rise to concerns that the Israeli authorities are not properly training their forces in the use of lethal force, or that the policies governing its use are not strict enough.

Although parts of the army's open fire regulations have been made public either in the press or in the courts over recent years, the Israeli army has not published them in full.

In September 2015 Prime Minister Netanyahu asked then Attorney General Yehuda Weinstein to approve the use of .22 "Ruger" live fire against stone throwers in Jerusalem. This request was approved and the Israel police fired .22 ammunition at Palestinians in Jerusalem over the weekend of 19-20 September. Its use was "effective" according to the Attorney General.⁴¹ The Prime Minister also acknowledged the use of .22 ammunition in Jerusalem, telling a cabinet meeting on 20 September that, "already over the weekend [the police] used the new measures under the new orders and immediately hit those throwing stones and firebombs."⁴² Yet on 22 September it was reported that the use of .22 ammunition in Jerusalem would be suspended pending proper training of the police officers using the weapon.⁴³ This raises serious questions about whether its use on 19-20 September was lawful, and follows a pattern in which the Israel police have introduced potentially lethal weapons without training their forces or setting out clear guidelines for their use, as was the case with their use of the black "sponge" bullets.⁴⁴ Forces under the command of Israel Police resumed using live fire

³⁹ Although Israel has argued that its obligations under the ICCPR and other international human rights treaties to which it is a party are not applicable in the OPT, this position has been rejected by the Human Rights Committee, other UN treaty monitoring bodies and by the International Court of Justice. See *Concluding Observations of the Human Rights Committee, Israel*, 3 September 2010, CCPR/C/ISR/CO/3, para. 5: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004.

⁴⁰ The protect-life principle, which is elaborated in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principle 9) is fundamental to human rights compliant policing. It requires that states ensure, by enshrining in law, that any force by law enforcement officers that involves a high likelihood of lethal consequences, in particular use of firearms, may only be used for protecting against a threat of death or serious injury.

⁴¹ Barak Ravid, "AG Opposes Legislating Mandatory Minimum Sentences for Stone-throwers", 20 September 2015 (accessed 30 August 2016), available at www.haaretz.com/israel-news/.premium-1.676873

⁴² Prime Minister's Office, "PM Netanyahu's Remarks at the Start of the Weekly Cabinet Meeting," 20 September 2015 (accessed 30 August 2016), available at www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeStart200915.aspx

⁴³ Jack Khoury and Yaniv Kubovich, "Israel Police Suspend Sniper Use After East Jerusalem Riots", 22 September 2015 (accessed 30 August 2016), available at www.haaretz.com/israel-news/.premium-1.677095

⁴⁴ Nir Hasson, "Israel Police Using New Anti-riot Gear Without Training", 5 February 2015 (accessed 30 August 2016), available at www.haaretz.com/israel-news/.premium-1.640883

against stone throwers on 2 October, according to media reports.⁴⁵ Yet the new open fire regulations were not distributed to the officers in the police until December 2015, which raises serious questions about the oversight of the police's use of live fire in the intervening period.

On 29 June 2016 the Israel Police published some sections of these updated open fire regulations in response to a court petition by the NGO Adalah.⁴⁶ The published regulations raise serious concerns about the legality of the Israel Police's use of lethal force. Under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, firearms may only be used to in self-defence or defence of others against an imminent threat of death or serious injury if less extreme means are insufficient to neutralize that threat. While the throwing of stones, firebombs and fireworks may pose such a danger on rare occasions, the new open fire regulations appear to allow the use of live fire in all such situations as a first resort without consideration of the risks to the police or others. This blanket approval does not meet with the Israeli authorities' obligations under international law.

Amnesty International therefore makes the following recommendations to the Israeli authorities:

- Ensure that the Israeli army, Police, Border Police and other security forces policing demonstrations or performing other law enforcement duties at all times comply fully with the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Publish immediately and in full the open fire regulations for the Israel Police, Border Police and private security contractors, as well as for the army for all the areas in which it operates, including Gaza.
- Ensure that all Israeli forces are properly trained in the use of any lethal or less-lethal weapons before they are introduced into use.
- Urgently replace the new open fire regulations introduced in December 2015 for the Israel Police with regulations that are in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁴⁵ Jerusalem Post, "Molotov cocktails thrown at Jerusalem hospital; no injuries", *The Jerusalem Post*, 2 October 2015 (accessed 30 August 2016), http://www.jpost.com/Breaking-News/Molotov-cocktails-thrown-at-Jerusalem-hospital-no-injuries-419784?utm_source=dlvr.it&utm_medium=twitter

⁴⁶ Adalah: The Legal Centre for Arab Minority Rights in Israel, "Israeli police reveal new open-fire regulations in response to Adalah's court petition", 5 July 2016 (accessed 30 August 2016), available at www.adalah.org/en/content/view/8845