

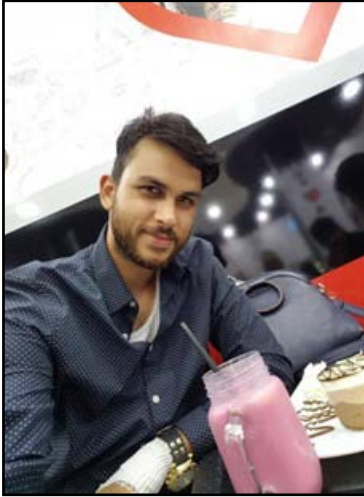
SPECIAL FOCUS

**“Mistaken” Killings: IOF kill
Palestinian civilians Mustafa
Nimer and Iyad Hamed
despite posing no threat or
danger to anyone**

19 SEPTEMBER 2016

MUSTAFA NIMER

On 5 September, Mustafa Nimer, a 27-year-old from Shufat refugee camp



in Occupied East Jerusalem, was shot dead by Israeli Occupation Forces (IOF). The IOF alleged Mustafa was attempting a car ramming attack.¹ Video evidence and eyewitness testimony emerged showing that Mustafa posed no threat to the IOF at the time of the shooting and the IOF police quickly retracted their story claiming that his killing was a mistake.² There has been no prosecution initiated against the Israeli forces who fired the deadly shots. Instead, the driver of the car, Ali Nimer, is being charged with involuntary manslaughter for the death of his cousin.³

Mustafa was riding in the passenger seat of his brother-in-law Ali Nimer's car, while his brother Mohammad Nimer was in a car behind them with along with their cousin Husam Nimer and Mustafa's girlfriend, Khan. No more than three meters separated the two cars. They were returning to Shufat refugee camp from Anata after having purchased food from a local bakery. According to Al-Haq's investigation, the cars were traveling at a normal speed of 60 kilometers per hour. It was a little before 2am and there were no cars or people visible on the dark and unlit road. All of the sudden Mohammad heard heavy firing and noticed that the shots were being directed at Mustafa and Ali's car. Mohammad then watched as Mustafa and Ali's car spun twice and hit a car parked on the left side of the road before coming to a stop. The car that Mohammed was in immediately stopped and he emerged from the car with Mustafa's girlfriend in a state of shock. A group of six to seven IOF members, dressed in black, wearing

1 <http://www.haaretz.com/israel-news/1.740266>

2 <http://www.haaretz.com/israel-news/.premium-1.740677>

3 <http://www.haaretz.com/israel-news/.premium-1.742213>

face masks, and holding machine guns, emerged and started shooting near Mustafa and Khan's feet, yelling at them in Hebrew to turn around. They had no choice but to return to Anata. (Al-Haq affidavit no. 558/2016)

In a state of shock, Mohammad repeatedly tried to reach Ali and Mustafa on their mobile phones. After several failed attempts, a man answered Mustafa's phone stating that one person in the car had died, the other was injured, and both were sent to the hospital. (Al-Haq affidavit no. 558/2016) An eyewitness to the scene told Al-Haq's field researcher that neither Mustafa nor Ali were provided with medical attention for at least 30 minutes after the shooting. She witnessed Ali being transported in military vehicle despite his injuries. (Al-Haq affidavit no. 556/2016)

Mohammad and his family went to the hospital immediately. After waiting for four hours, an Israeli officer approached Mohammad and his family and informed them of Mustafa's death. The officer claimed that Mustafa and Ali were shot at because they failed to heed the warnings of the IOF who shined a flashlight on them and shot rubber bullets in their direction to tell them to stop. (Al-Haq affidavit no. 558/2016)



Al-Haq investigation confirmed that the IOF provided absolutely no warning before opening fire at Mustafa and Ali's car. Mohammed noted that only light that lit the street was the heavy fire from the IOF directed at Mustafa and Ali's car. (Al-Haq affidavit

no. 558/2016). Al-Haq field investigation also confirmed that most of the shots fired at the car entered through the front windshield, suggesting the intent to kill or severely injure the driver and passenger. The IOF made no attempt to stop the car and contain the alleged suspects therein prior to firing the deadly shots.

After the killing, the Israeli police released a statement that the young men



were shot at because they were traveling at a high speed and attempted to run over the Israeli forces in the area.⁴ The following day, on 6 September, the police retracted their claim stating that the killing of Mustafa was a mistake and that the car posed no threat to the forces. Around that time, video and eyewitness evidence emerged that Mustafa and Ali posed no threat to the Israeli forces.⁵ On 7 September, Israeli police shifted the blame for Mustafa's death to his cousin Ali who was being investigated on manslaughter and involuntary manslaughter charges as well as traffic violations.⁶ While Ali remained in police custody for traffic violations, a Magistrate Court rejected the police's allegation that Ali's driving caused his cousin's death.⁷ Despite this, on 15 September, Ali was indicted on charges of negligent homicide for the death of his cousin who was shot and killed by the IOF.⁸

4 <http://www.haaretz.com/israel-news/1.740266>.

5 <http://www.haaretz.com/israel-news/1.740880>.

6 <http://www.haaretz.com/israel-news/.premium-1.740741>.

7 <http://www.haaretz.com/israel-news/.premium-1.740938>.

8 <http://www.haaretz.com/israel-news/.premium-1.742213>.

IYAD HAMED



10 days earlier, on 26 August, Iyad Hamed, a 38-year-old father of two who suffered from a mental disorder, was shot dead by the IOF in his village of Silwad. The IOF alleged that Iyad was armed with a gun and was attempting an attack.⁹ An initial Israeli investigation resulted in a retraction of the forces' allegations of an attempted attack and an admission that Iyad was not armed and posed no threat at the time of his killing.¹⁰ His killing was also deemed a mistake.

Despite an initial investigation into involuntary manslaughter, no one is being prosecuted for Iyad's death.¹¹

On the morning of 26 August, the IOF had erected a flying checkpoint of concrete blocks near the military watchtower located at the western entrance of the village of Silwad. Four members of the IOF were stopping each car entering and exiting the village and checking the IDs of the individuals in the cars. The IOF dismantled the checkpoint at approximately 11am, and according to eyewitness testimony, the IOF walked in the direction of the military watchtower, which is located on a dirt hill surrounded by trees overlooking bypass road 60. Around 11:30pm, an eyewitness saw Iyad walking near the watchtower. The eyewitness yelled for him to leave the area, but Iyad appeared not to have heard him because he did not look up and remained in the area. Iyad appeared panicked and afraid and began running back and forth on the dirt road near the watchtower. Iyad was approximately 15 to 20 meters away from the watchtower and continued to pace, moving erratically as if he were searching for a way out of the area. This lasted for approximately 5 to 7 minutes. When Iyad was approximately 10 meters away from the watchtower, shots rang out. Iyad was then seen running away from the watchtower toward the main road. When he was approximately 120 meters from the watchtower, an eyewitness heard

⁹ <http://www.haaretz.com/israel-news/1.738860>.

¹⁰ <http://www.haaretz.com/israel-news/1.738903>.

¹¹ <http://www.haaretz.com/israel-news/1.739126>.



another shot. The shot entered Iyad's back and the eyewitness saw blood gushing from Iyad's chest. Iyad fell to ground violently. (Al-Haq affidavit no. 579/2016). A few minutes after the shooting, several Israeli forces surrounded Iyad's body. At around 12:30pm, an Israeli ambulance arrived on the scene. A few minutes later, a Palestinian Red Crescent ambulance arrived but the Israeli forces did not allow its crew to approach Iyad. (Al-Haq affidavit no. 580/2016).

Reports by doctors at Ramallah Hospital who examined the body the following day confirmed that the bullet entered through the upper left portion of Iyad's back and exited through the left portion of his chest, puncturing his lungs and part of his heart, killing him.

Al-Haq field investigation confirmed that Iyad was not armed and was not holding anything in his hands leading up to the killing. (Al-Haq affidavit no. 578/2016). Nonetheless, the IOF released an initial report that Iyad was armed and shot at them, and only after that did they return fire. Israeli radio then reported that Iyad did not heed the warning shots of the IOF and continued to run toward the watchtower at which point the IOF fired the deadly shots.¹² The IOF then retracted these statement, admitting that Iyad was not armed when he approached the watchtower and posed no threat to the IOF. As stated above, Al-Haq field investigation confirmed that Iyad was not armed and was running away from the watchtower when he was shot.

The IOF member who fired the deadly shot was questioned for negligent manslaughter but returned to duty the following day. His defense attorney stated: "The soldier carried out what was demanded of him and acted in accordance with military instructions in light of the behavior of the Palestinian that aroused his suspicion and the risk he appeared to be posing."¹³ No one is being prosecuted for Iyad's "mistaken" death.

¹² <http://www.timesofisrael.com/idf-opens-probe-into-death-of-palestinian-said-to-have-charged-at-troops/>.

¹³ <http://www.ynetnews.com/articles/0,7340,L-4847512,00.html>.

CHANGING NARRATIVES

This has become an established pattern for Israel: use of unjustified excessive force aimed at killing unarmed Palestinian, claim Palestinian was armed or committing a terrorist attack, quickly retract allegation and alter narrative once evidence of truth emerges. The significant alterations in the stories provided by the IOF in the murders of Mustafa and Ali raise serious questions regarding Israel's claims of necessary use of force, not just in the cases cited above, but also in many other [cases](#) where Israel has monopolized the narrative. In many such [cases](#), Israel has refused to provide any evidence of the validity of their claims. As a result, it has become routine for Palestinians to be “mistakenly” killed in the Occupied Palestinian Territory.

EXCESSIVE USE OF FORCE

Over the last year, it has become increasingly clear that Israel has fully implemented a [shoot to kill policy](#) in the OPT. There have been over 250 Palestinians killed since October 2015, and in several of the cases, Israel has displayed an excessive use of force contrary to international law. At least some of these cases may amount to [unlawful killings](#).

Israel's continuous indiscriminate and disproportionate use of force against Palestinian civilians deprives them of their fundamental right to life. As an Occupying Power, Israel must respect the right to life of the occupied population. Moreover, the IOF must be guided by the international law principles of necessity and proportionality when using force and firearms. Non-violent means should be used whenever possible in order to minimize injury and death.

International standards hold that the use of lethal weapons is permitted only in extreme and highly exceptional circumstances, where there is a real, imminent danger to human life and all other means have been exhausted.¹⁴ More specifically, *The United Nations Basic Principles on the*

¹⁴ See UN General Assembly, *Code of conduct for law enforcement officials*, 5 February 1980, A/RES/34/169, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx> ; and United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Basic Principles), 27 August to September 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.

Use of Force and Firearms by Law Enforcement Officials (Basic Principles) provide that all security forces should apply non-violent methods before resorting to firearms.¹⁵ In cases in which firearms are employed, it must be in self-defense or defense of others against the imminent threat of death or serious injury.¹⁶ In such cases, firearms must be used in a manner that minimizes damage and injury and respects and preserves human life.¹⁷

In both of the cases cited above, it is clear that neither Mustafa nor Iyad posed any real or imminent threat to the IOF. Indeed, the IOF *admitted* that neither one of the men posed any danger to their lives or the lives of others. And yet lethal force was used showing complete disregard for the right to life.

The IOF's routine use of lethal forces puts into question Israeli military open-fire regulations. Since the eruption of the second intifada in 2002, these regulations have expanded the meaning of "life threatening."¹⁸ The IOF has refused to publish the regulations, but given the routine excessive use of force and the apparent shoot to kill policy that has been employed by the IOF over the last year, as well as media reports and testimony from former soldiers, it is clear that the regulations are very flexible, allowing the IOF to use live ammunition in cases where there is no immediate threat to life.¹⁹ This is in clear violation of the *Basic Principles*.²⁰

¹⁵ *Basic Principles*.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ B'Tselem, The Israeli Information Center for Human Rights in the Occupied Territories (B'Tselem), *Trigger Happy- Unjustified Gunfire and the IDF's Open-Fire Regulations during the al-Aqsa Intifada, March 2002*, March 2002, available at http://www.btselem.org/publications/summaries/200203_trigger_happy.

¹⁹ *Id.*

²⁰ The Basic Principles apply to Israeli forces in the OPT, as the Code of Conduct For Law Enforcement Officials 1979 clarifies it in its commentary on Article 1: "In countries where police powers are exercised by military authorities [...] the definition of law enforcement officials shall be regarded as including officers of such services."

NO ACCOUNTABILITY

Even where there are admissions by the IOF that the use of force was unjustified and the Palestinian killed was unarmed and posed no threat to the life of the forces, Israeli forces are not held accountable for the “mistaken” killings.

Article 7 of the *Basic Principles*, affirms that “governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.” Article 11(d) goes on to state that regulations on the use of arms should include guidelines that regulate “procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them.”

Despite these clear rules, a culture of impunity prevails in the OPT where the IOF are not held accountable for the murder of Palestinian civilians. According to Israeli human rights organizations, the existing investigation mechanism is incapable of conducting professional investigations, and that the military law enforcement system is a complete failure.²¹ Since 1987, no Israeli soldier or commander has been convicted of willfully causing the death of a Palestinian in the OPT.²²

This culture of impunity not only results in the breach of both the *Basic Principles* and the United Nations Code of Conduct on the Use of Firearms on the use of force and firearms by Law Enforcement Officials, but also constitute a breach of Article 2 of the International Covenant on Civil and Political Rights which guarantees legal recourse to the person whose rights or freedoms protected by the Covenant have been violated.

Al-Haq strongly condemns the killing of Palestinian civilians, which in some instances may amount to unlawful killings. Unlawful killing is a grave

²¹ B'Tselem, *Israeli human rights organizations B'Tselem and Yesh Din: Israel is unwilling to investigate harm caused to Palestinians*, 4 September 2015, available at [_](#)

²² *Id.* See also Al-Haq, *A Demonstration of Power Israel's Excessive Use of Force Resulting in the Killing of Non-Violent Palestinian Protestors and Demonstrators during 2014 and 2015*, May 2016, available at <http://www.alhaq.org/publications/papers/Excessive.Use.of.Force.pdf>.



breach of the Geneva Conventions and is listed as a war crime by the Rome Statute of the International Criminal Court. Unfortunately the cases cited above are not isolated incidents; the killing of Palestinian civilians is the result of the prevailing climate of impunity granted to the IOF, who are rarely held responsible for violations committed against the occupied Palestinian population.

Therefore, Al-Haq calls for immediate, transparent and impartial investigations to clarify the circumstances that lead to Mustafa and Iyad's deaths, with a view to prosecuting the Israeli soldiers responsible for the killing, including those responsible for issuing the orders to kill and those behind the shoot to kill policy. Additionally, Israel must provide full reparation to the families of the victims.