



Activity Report 2011-2012

“All human beings are born free and equal in dignity and rights.”

Universal Declaration of Human Rights (1948), Article 1

Activity Report 2011-2012

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Introduction

This report covers the activity of HaMoked: Center for the Defence of the Individual in the years 2011-2012, when the Israeli occupation of the Palestinian territories entered its 46th year. During this period, HaMoked focused most of its activity on defending the human rights of individuals. Since its inception, HaMoked has handled more than 75,000 applications by individuals relating to various issues, and has made precedential achievements that affect hundreds of thousands more.

In 2011-2012, Israel continued its efforts to separate between the Palestinian territories it occupied in 1967 – East Jerusalem, the West Bank and the Gaza Strip. It also continued its attempts to divide the Palestinian population into separate groups according to geographic location, and thereby undermine the integrality of the Occupied Palestinian Territories (OPT). This policy makes it difficult for Palestinians to travel from one part of the OPT to another. In fact, Palestinians' right to freedom of movement – inside the OPT, between its various parts and abroad – is almost completely dependent on military approvals and permits, which are granted in small numbers and according to strict criteria, primarily the absence of a security preclusion. Often the right to freedom of movement is denied based on classified material that the state presents to the court *ex parte* and *in camera*. And so, petitioners are denied any possibility of reviewing and challenging the allegations against them. HaMoked's work in this area has a high rate of success, both in its advocacy efforts vis-à-vis the military and in legal action in the form of petitions to the High Court of Justice (HCJ). This indicates that the denial of Palestinians' right to freedom of movement on the basis of alleged security preclusions is often arbitrary and indiscriminate, as further evidenced by the fact that many such preclusions are swiftly removed when the authorities fear their decisions would not stand up to the scrutiny of the court.

In 2012, HaMoked wrote a report entitled **The Permit Regime: Human Rights Violations in West Bank Areas Known as the “Seam Zone”**, detailing the apparatus behind the human rights violations suffered by Palestinians in the areas trapped between the Green Line and the separation wall. The report was written following the HCJ's decision of April 2011 to dismiss the general petitions, including one by HaMoked, demanding to revoke the section of the route running inside the West Bank and the permit regime declared in the “seam zone”. The court ruled that closing off the “seam zone” and imposing the permit regime were lawful and justified on security grounds and therefore, the military's demand that Palestinians, and only Palestinians, obtain special permits in order to remain in their homes and on their land did not constitute collective punishment and was not even discriminatory.

In another ruling issued in January 2012, the HCJ also dismissed the general petitions filed back in 2007 against the “Temporary Order” that prevents full family unification between Israelis and their spouses from the OPT. The court gave its seal of approval to a law that violates the rights to equality and to family life for racist-demographic reasons. In early 2013, the Israeli parliament, the Knesset, extended the validity of the ostensibly temporary law, sending it into its 11th year. HaMoked's legal advocacy on East Jerusalem residency issues, striving – through its work on individual cases – to find ways to cut through the complex web of restrictive laws and protocols instituted by the Ministry of Interior, has resulted in a number of precedents that mitigate, even if marginally, the difficulties Israelis who are married to OPT residents face in registering their children in the population registry or starting a family-unification procedure with residents of the OPT.

In 2011-2012, HaMoked intensified its work on defending the social security rights of East Jerusalem residents. Following HaMoked's important achievements on issues of principle, the National Insurance Institute (NII) has revised some of its protocols pertaining to these residents, inter alia, protocols relating to upholding children's right to health insurance.

With respect to OPT residency, through its applications under the Freedom of Information Act, HaMoked has uncovered alarming information according to which Israel revoked the OPT residency status of a quarter million Palestinians between 1967 and 1994; Israel also revoked the permanent-residency

status of more than 14,000 Palestinians from East Jerusalem between 1967 and 2012.

In 2002, habeas-corpus petitions filed by HaMoked led to the exposure of a secret detention and interrogation facility, "Facility 1391", operating in violation of international law. In January 2011, the HCJ rejected HaMoked's petition to have the facility shut down. In an exceptional move, an arrangement proposed by the state, allegedly aimed at reducing the use of Facility 1391 for the purpose of detention, was incorporated as a classified annex into the judgment, forming a secret part of the judgment itself. The judgment, with its classified annex, seemingly brings Facility 1391 into the realm of legal protections, but in fact, it allows the state to conceal everything that goes on inside the facility and avoids direct review of the facility's legality. In 2011-2012, HaMoked continued its work to protect the rights of detainees and their family members – tracing the whereabouts of detainees, promoting improvements in holding conditions and processing requests for family visits to prisoners. At the same time, it continued working on petitions and civil claims filed as part of an extensive project, launched in 2010, against torture and ill-treatment during detention and interrogation.

HaMoked also continued working on civil claims filed by Palestinians from the OPT seeking compensation for bodily harm and property damage caused by security forces and settlers. The claims proceed under the shadow of yet another legislative amendment to the Civil Wrongs Law (Liability of the State) – Amendment No. 8, passed by the Knesset in July 2012. This amendment, like those before it, is designed to advance Israel's efforts to absolve itself from liability for damage caused by security forces in the OPT and hinder Palestinians from suing for compensation for damage caused to them, their loved ones, or their property.

Overall, the Knesset persisted in its attempts to restrict the work of human rights organizations through anti-democratic legislation. In March 2012, HaMoked joined forces with other organizations in a petition to the HCJ against the "Anti-Boycott Law" which allows penalizing legitimate political speech.¹ Other bills also threaten to curtail fundamental rights such as freedom of speech and political protest, and undermine values such as equality and social solidarity. One such bill seeks to interfere with donations

1 HCJ 2072/12 **Coalition of Women for Peace et al. v. Minister of Finance et al.**

from foreign countries by limiting donation amounts and imposing high taxes on donations. Another bill seeks to establish political-parliamentary commissions of inquiry into the activities of organizations. Perhaps naively, still we hope that the 19th Knesset, elected in early 2013, and the new government that took office thereafter, will change the course set by their predecessors.

In early 2012, Justice Asher Grunis began his term as president of the Supreme Court: this year was marked by high costs orders issued against human rights organizations and other public petitioners. The trend subsided in early 2013, and we hope that the attempt to deter organizations from taking to the courts issues related to human rights violations will cease completely. In this report, we present various statements made by Supreme Court justices on the recognition of human rights in general, and the human rights of Palestinian residents of the OPT in particular. It seems, however, that statements are one thing and judgments, quite another. In 2011-2012, the Supreme Court continued its tradition of judicial passivism, and all but avoided making rulings on issues of principle that could have an effect on Israel's policy regarding the OPT and its respect for human rights in them.

In conclusion, it seems that the remark made by the former head of the Israel Security Agency, Carmi Gillon, sums up Israel's policy toward the Palestinian residents of the OPT: "We are making the lives of millions intolerable, a continuous ordeal of human suffering, and we leave the decision of what's proportionate and what's disproportionate in the hands of a soldier who's only been in the military for a few months."²

2 From the documentary **The Gatekeepers** (2012), directed by Dror Moreh.



The Right to Freedom of Movement

Every policy must make sense, and this decision makes no sense. Why is it impossible to let a mother see her children whom she has not seen for several years? If you tell me it is a security problem, I will understand, but I need a solution and not a policy that does not make sense.

Edmund Levy, Supreme Court Justice³

The right to freedom of movement is the central expression of a person's autonomy, free choice and fulfillment of abilities and rights. Freedom of movement propels the entire fabric of the individual's rights and its restriction inevitably leads to the curtailment of other human rights in all areas of life, such as the rights to family and social ties, the rights to health care and education, culture and religion, and the right to access work and trade places. Israel has been restricting the right to freedom of movement of the Palestinian population in the Occupied Palestinian Territories (OPT) since 1967; and in doing so, Israel has also been limiting their ability to exercise other human rights enshrined in international humanitarian and human rights law.

3 HCJ 272/11 **Dr. Abu 'Amara et al. v. GOC Southern Command et al.** (2011), hearing transcripts, June 1, 2011.

The West Bank, the Gaza Strip and the Separation Policy

The West Bank and the Gaza Strip are two geographical regions of a single integral political unit. Despite the lack of territorial contiguity between them, they maintain manifold reciprocal ties – economic, social, cultural, ethnic, political, administrative, legal ties, and so on. The shared family ties, social organizations, and the education and health systems – all these and more, further reinforce the ties between the Gaza Strip and the West Bank. Israel has acknowledged the integrality of the West Bank and Gaza Strip, as emerges from the agreements it has signed with the Palestinian Authority that were meant to guarantee freedom of movement between the two regions: the 1995 Interim Agreement (the Oslo Accord) and the 2005 Agreement on Movement and Access, signed under international auspices upon the disengagement from Gaza.⁴ In 2002, the Israeli Supreme Court, sitting as the High Court of Justice (HCJ), validated Israel's recognition of the unity of the two OPT parts in its judgment in the 'Ajuri petition, filed by HaMoked.⁵

Regardless, for over a decade, since the outbreak of the second intifada, and more so since the 2005 disengagement from Gaza and the September 2007 declaration of the Gaza Strip as a “hostile entity”, Israel has been implementing a policy aimed at separating between the Gaza Strip and the West Bank. This policy has become increasingly restrictive over the years, and leaves Palestinians scant possibilities to travel between the two OPT parts. Israel currently sorts Palestinians into “West Bankers” and “Gazans” according to their registered address in the population registry, treating them as two entirely separate groups. Those who are defined as Gazans are not allowed to live in the West Bank and if they do, they are treated as illegal aliens liable to be arrested and removed to the Gaza Strip. Israel established extremely narrow criteria for switching from the “Gazan” to the “West Banker” category, and the process resembles immigration. Moreover, thousands of Palestinians who live in the West Bank with a registered address in the Gaza Strip have

4 Interim Agreement available at: http://www.knesset.gov.il/process/docs/heskemb_eng.htm; Agreement on Movement and Access available at: <http://mfa.gov.il/MFA/ForeignPolicy/Peace/MFADocuments/Pages/Agreed%20documents%20on%20movement%20and%20access%20from%20and%20to%20Gaza%2015-Nov-2005.aspx>.

5 HCJ 7015/02 **'Ajuri v. Commander of IDF Forces in the West Bank** (2002). For more details, see HaMoked, **Activity Report 2002**, pp. 15-20, 58-59.

suddenly discovered that Israel considers them illegal aliens and so they live under the constant threat of losing their personal liberty and being removed from their homes.⁶

Israel's policy aimed at splitting the parts of the OPT has severe repercussions for the human rights of Palestinians. First and foremost, it impacts the rights to freely travel and choose where to live in one's country of residence; rights whose violation, as stated, can lead to infringements on the rights to family life, health, education, freedom of occupation, freedom of choice and human dignity and also undermine social and cultural life.



Israel's Control over the Gaza Strip

The removal of the Jewish settlements and Israeli military forces from the Gaza Strip in 2005 did not bring an end to the violation of Palestinians' right to freedom of movement. Despite Israel's claims that its control over the Gaza Strip ended with the implementation of the disengagement plan, and with it, its legal obligations toward the Palestinian population living there, Israel continues to have almost full control over central aspects of life in Gaza, including border crossings, sea and air spaces and the population registry.

An alarming example of Israel's control over the Gaza Strip came to light in August 2011, when the Coordinator of Government Activities in the Territories (COGAT) announced "measures and gestures towards the Gaza Strip in honor of the Ramadan month";⁷ including an increased supply of water from Israel to Gaza, "in order to improve the quantity and quality of drinking water for the population in the Gaza Strip". The announcement implies that when no "gestures" are made, Israel limits the quantity and quality of Gaza's drinking water. A deliberate disruption in the provision of essential supplies is not simply an economic sanction, but rather collective punishment of the civilian population, which is expressly prohibited under international law.

Travel between the West Bank and the Gaza Strip

In countries where internal travel from one region to another involves passage through another country, the transited country is obligated under international law to reach an arrangement that allows passage of people and

6 For more details, see *infra* pp. 67-74.

7 Document available at: <http://www.cogat.idf.il/1043-9240-en/Cogat.aspx>.

goods through its territory.⁸ As stated, Israel and the Palestinian Authority signed agreements and devised ways to guarantee free travel for Palestinians between the two OPT parts.⁹

In May 2011, in a joint petition filed by three human rights organizations, HaMoked, Gisha, and Physicians for Human Rights-Israel, the state presented a document that details what it calls the “restrictive policy”.¹⁰ The document states that travel from the West Bank to the Gaza Strip and vice versa will be permitted only in “exceptional humanitarian” cases that meet one of the following criteria: attending a funeral or wedding of an immediate relative, or visiting an immediate relative who has a severe, life-threatening illness or requires prolonged hospitalization; in addition, passage from the West Bank to the Gaza Strip will be permitted for the purpose of “settling” in the Gaza Strip;¹¹ passage from the Gaza Strip to the West Bank will be permitted for “life-saving medical treatment or medical treatment without which quality of life is entirely altered”, provided such treatment is not available in the Gaza Strip; visitors may be accompanied by their children up to age six only.

Thus, according to Israel, even immediate family relations are not seen as reason enough for travel between the Gaza Strip and the West Bank, let alone travel for academic studies, business meetings, visits to friends and more. This document makes a mockery of the word humanitarian by severely limiting cases that qualify as such, while expressly stating that “members of the Palestinian soccer team” may leave the Gaza Strip to participate in training and matches.

Moreover, Israel uses its strict policy to pressure Palestinians who have close relatives in both parts of the OPT: in such cases, the military only allows one-way travel – from the West Bank to the Gaza Strip – and only after the

8 A relevant example is the pre-1967 arrangement between Israel and Jordan on travel to the Mt. Scopus enclave. On the “right of transit” in international law, see, e.g., HCJ 2088/10 **HaMoked: Center for the Defence of the Individual v. Commander of West Bank** (2012), Petition for *Order Nisi*, March 15, 2010, §§ 149-161. English translation of document available at: <http://www.hamoked.org/Document.aspx?dID=Documents1099>.

9 For more details, see HaMoked, **Activity Report 2006** (in Hebrew), pp. 16-17.

10 AP 22775-02-11 **Gisha et al. v. Coordinator of Government Activities in the Territories et al.** (2013). English translation of document available at: <http://www.hamoked.org/Document.aspx?dID=Documents1741>.

11 Israel uses the term “settlement” as part of its policy of separating between the West Bank and the Gaza Strip. However, as stated, despite the lack of territorial contiguity, the two geographic regions form two parts of a single integral political unit.

applicant undertakes to settle in the Gaza Strip permanently and relinquish any intention of ever returning to the West Bank. Israel cynically presents this as giving Palestinians the freedom to choose whether to move to the Gaza Strip or remain in the West Bank. Israel thus makes travel to the Gaza Strip contingent on a pledge to settle in that part of the OPT, while sparing no effort to prevent relocations from the Gaza Strip from to the West Bank.

I.A. a physician living in Ramallah and working at a hospital in Jerusalem, wanted to enter the Gaza Strip to visit her children whom she had not seen for four years, who live there with her former husband. I.A., who has permits to enter Israel, requested – via HaMoked – to have her entry to Gaza through Erez Crossing coordinated in advance, simply to avoid delays during passage. The military refused.

In January 2011, HaMoked petitioned the HCJ demanding the military allow I.A. to visit her children in Gaza. HaMoked argued that as an OPT resident, she did not require a permit to enter the Gaza Strip, but only one to enter Israel for transit; and as she worked in Israel, she already had permits to enter Israel.¹² In response to the petition, the state argued that I.A. could not enter Gaza due to Israel's policy of separating between the West Bank and the Gaza Strip and limiting movement between the two areas to "exceptional humanitarian cases only [...], while family ties are not sufficient grounds for granting passage". Still, the state suggested that I.A. could permanently relocate to the Gaza Strip if she so wished.

At the hearing, the HCJ severely criticized Israel's policy. Among other things, Justice Edmund Levy said that "Every policy must make sense, and this decision makes no sense. Why is it impossible to let a mother see her children whom she has not seen for several years? If you tell me it is a security problem, I will understand, but I need a solution and not a policy that does not make sense".

In June 2011, the state said it had decided "beyond legal requirement", to allow the mother to enter the Gaza Strip to see her children. **(Case 64802)**

The opening of Rafah Crossing after the Gaza flotilla incident in 2010, has somewhat eased West Bank residents' ability to reach Gaza: Palestinians who are registered in the West Bank may travel through the Allenby Bridge border

12 See *supra* note 3.

crossing to Jordan, on to Egypt and the Sinai Desert, and enter through Rafah Border Crossing into the Gaza Strip – and return the same way. This route not only entails a long, complicated and expensive journey, but is also restricted as Israel controls the Allenby Bridge border crossing and prohibits Palestinians registered in the Gaza Strip from entering the West Bank this way.¹³

In 2011, HaMoked processed 110 cases concerning travel between the Gaza Strip and the West Bank, 44 of them opened in that year. In 2012, HaMoked processed 120 such cases, 47 of them new. In these years, HaMoked filed 57 individual petitions to the HCJ regarding the military's refusal or non-response to such permit applications; in 44 of them (77%), the permit was granted; one petition is still pending.

F.S. lives in Nablus and suffers from osteoarthritis. In December 2011, she applied for a permit to travel to the Gaza Strip to visit her sister, a cancer patient undergoing chemotherapy. She had not seen her sister for more than 12 years. Because of her medical condition, F.S. asked that her son accompany her on the visit. The military refused, stating the application "has not been deemed humanitarian".

HaMoked petitioned the HCJ, demanding F.S. and her son be permitted to visit the Gaza Strip.¹⁴ In the state's response, the State Attorney's Office admitted that there was no security reason to prevent the visit, but said the application was not "humanitarian" because "the petitioner's sister has indeed undergone a lumpectomy, but she is not in lengthy hospitalization in a medical facility, and her condition does not pose an imminent risk to her life". Only after HaMoked sent the State Attorney's Office documents showing that the sister's cancer was spreading, that the state conceded the visit was a "humanitarian necessity". However, the State Attorney's Office determined that the son's application would be considered separately. F.S. received the permit a few days later, but the military denied her son's application on the grounds that he was "not an immediate relative of his sick aunt".

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- 13 In January 2012, the state's response to a petition by HaMoked revealed that this arduous route serves Israel as a means to burden families from Israel and the West Bank seeking to visit ex-prisoners who had been forcibly removed to the Gaza Strip as part of the deal for the release of captive Israeli soldier Gilad Shalit. For more details, see *infra* p. 24.
- 14 HCJ 1155/12 **S. et al. v. West Bank Military Commander et al.** (2012).

In a hearing of the petition, the justices recommended the state reconsider its position and noted that if the two ailing sisters were to meet without someone to assist them they would likely be unable to assist each other. On July 11, 2012, more than 6 months after the application was filed, the military said it would allow F.S.'s son to accompany her on her visit to Gaza. **(Case 71161)**

In 1999, R.S. moved to live with her husband in the Gaza Strip. Since then, because of Israel's separation policy, she has been cut off from her parents and ten siblings, who all live in the West Bank.

In May 2012, R.S. filed an application to visit the West Bank with her husband and two young children, in order to attend her sister's wedding in late June. After the military failed to respond for more than a month, HaMoked filed an urgent petition to the HCJ, demanding R.S. be allowed to visit the West Bank.¹⁵ Just four days later, the military approved the application.

In early September 2012, R.S. applied for another visit to the West Bank, this time to attend her brother's wedding on the second week of October. Again, the military delayed its response and issued the permit only after HaMoked filed another petition.¹⁶ **(Case 68033)**

In January 2012, I.A., a resident of Jericho, filed an application to enter the Gaza Strip to visit his brother who was recovering from a heart attack followed by cardiac catheterization. The brothers had not seen each other for seven years. The military denied the application and in March 2012, HaMoked filed a HCJ petition on I.A.'s behalf.¹⁷ The state sought the dismissal of the petition based on the "restrictive policy", as, following the catheterization, "[the brother] is in good health" and "visiting a sick relative does not constitute sufficient humanitarian grounds, if there is no danger to the life of the relative and his illness does not require prolonged hospitalization".

In June 2012, the court dismissed the petition, after Justice Edna Arbel said in the hearing that "cardiac catheterization is not surgery". In the

15 HCJ 4808/12 **Sweir et al. v. West Bank Military Commander et al.** (2012).

16 HCJ 7113/12 **Sweir et al. v. West Bank Military Commander et al.** (2012).

17 HCJ 1912/12 **Aqr'a et al. v. West Bank Military Commander et al.** (2012).

judgment, the justices accepted the state's position without question and noted that "if and to the extent that the circumstances change, the petitioner may submit a new application which will be examined by the competent authorities in accordance with prevailing policy". That is, only if the patient's life is in danger again, the brothers might succeed to meet in hospital. **(Case 71920)**

Entry of Israelis to the Gaza Strip

Palestinians living in Israel have familial, cultural, social and various other ties with Palestinians living in the Gaza Strip. Israel's efforts to isolate the Gaza Strip are also expressed in its policy regarding entry into the Gaza Strip by Israelis, be they citizens or residents of East Jerusalem. Until 1994, Israel allowed Palestinian citizens and residents of Israel to enter the Gaza Strip without restriction. Following the Oslo Accords, the Gaza Strip was fenced off and Israel adopted a policy designed to reduce freedom of movement between Israel and Gaza. This policy became stricter with the outbreak of the second intifada and has intensified since the removal of settlements and military bases from the Gaza Strip. In January 2012, in response to one of HaMoked's petitions, the State Attorney's Office clarified that "the legal premise is that **no Israeli has a right to enter the Gaza Strip**".¹⁸ This Israeli policy infringes on the rights to freedom of movement and family life not only of individuals living in the Gaza Strip, but also of Israeli citizens and residents.

Divided Families

Once Israel closed off the Gaza Strip to Israelis, Palestinian residents and citizens of Israel who are married to Gaza Strip residents and wish to live with their spouses and children found themselves requiring military approval in order to live in their homes in Gaza or visit there. Since Israel does not allow family unification between Gaza residents and Israelis,¹⁹ the Israeli spouses in such families, known as "divided families", now face a choice: live with their families in the Gaza Strip and forsake their ties with their relatives in Israel, or try to divide their time between the Gaza Strip and Israel.

18 HCJ 527/12 **Hamadah et al. v. GOC Southern Command** (2012), Preliminary Response on behalf of the Respondents, January 22, 2012; emphasis in original.

19 See *infra* pp. 83-84.

Following HaMoked's legal activity, which began in the early 1990s, Israel undertook to implement an arrangement that would allow women²⁰ from "divided families" to maintain normal family lives in Gaza without losing their ties with their families in Israel. Over the years, particularly following the outbreak of the second intifada, the military introduced frequent and arbitrary changes and restrictions to the procedure, without notifying the population in the Gaza Strip, mostly as a means of collective punishment following terrorist attacks on Israelis. The restrictions included shorter permit duration, requiring permit seekers to pledge not to leave Gaza for a specified period, and even blanket suspension of the procedure. At the time of writing, the arrangement stipulates that women from "divided families" can receive Gaza entry permits that are valid for only six months.

I.A., an Israeli citizen, has been living in the Gaza Strip with her husband and children since the 1970s. Since the 1990s, when Israel first imposed the closure on the Gaza Strip, I.A. has diligently renewed the permits she received as part of the "divided families" procedure in order to visit her family in Israel. In June 2012, she entered Israel to visit her sick father, but then the military refused to let her return to her family in Gaza due to an unexplained "security objection". In February 2011, HaMoked petitioned the HCJ, demanding the military be instructed to allow I.A. to return to her husband and children in the Gaza Strip.²¹ Following the petition, the state agreed to let I.A. return to her family, stipulating that "insofar as the petitioner leaves the Gaza Strip, an additional application by her to enter the Gaza Strip will not be approved within the coming year". **(Case 67109)**

In June 2012, Y.A. and her five children (the oldest 11 years old and the youngest 18 months old) entered Israel for a short visit to relatives. A few days later, the mother and children applied through HaMoked to renew the Gaza entry permit in order to return home, to the father and husband who remained in Gaza; but there was no response from the military. The state finally responded about two months later – and only after HaMoked

20 In the vast majority of "divided families" the woman is the Israeli resident or citizen and the man is the Gaza resident, hence the reference to women.

21 HCJ 1330/11 **Abu Nimr et al. v. GOC Southern Command** (2011).

filed a petition²² – that the permit would be granted provided that “should the petitioner enter Israel thereafter, a further application by her to enter the Gaza Strip will not be approved for two years”. **(Case 63576)**

Children from “divided families” who are under the age of 18 and have status in Israel are permitted to enter Gaza with their mothers, as accompanying minors.²³ Once they turn 18, the children lose their right to enter Gaza and may visit their father and other relatives in Gaza only in “exceptional humanitarian cases”, according to Israel’s strict criteria. Children registered as Gaza residents in the OPT population registry are worse off. Israel does not allow them to accompany their mothers on family visits to Israel (with some exceptions, mostly for children under six years old); even when it comes to children and toddlers, Israel relies on general and sweeping security considerations. The court sanctions Israel’s policy in most cases; and in some, it does so in an outrageously disrespectful manner. For example, in August 2010, in HaMoked’s petition to the Beer-Sheva Court for Administrative Affairs to allow an East Jerusalem resident to enter Israel from Gaza with her five children, ages three to 14, Court President Yosef Alon, wrote: “leaving the Gaza Strip to Israel for a summer vacation is not a humanitarian necessity”.²⁴ Thus, with court approval, Israel’s policy has reduced the right to family life into nothing more than “a summer vacation”.



Income Support for “Divided Families”

Under the Income Support Law, individuals entitled to income-support benefits will stop receiving them if they travel abroad twice in the same calendar year in order to prevent frequent travelers abroad from receiving income-support benefits that are meant to ensure a minimal standard of living, rather than provide luxuries. In 2011-2012, HaMoked received complaints from Israeli women from divided families who depend on income-support benefits for their livelihood, who had been warned by officials in the National Insurance Institute (NII) that if they travel to Gaza more than once a year, their entitlement would be at risk. In November 2012, HaMoked wrote to the NII, stating that the trips to

22 HCJ 5122/12 **Abu Samhan et al. v. GOC Southern Command** (2012).
23 Children between the ages of 16 and 18 receive permits subject to what the military calls a “security diagnosis”.
24 AP 50482-07-10 **Abrika v. Gaza Strip Commander et al.** (2010).

Gaza made by these women and their children should not be considered as foreign travel; they did not travel there for pleasure, but were forced to do so in order to exercise, in the narrowest sense, their right to family life, because their families cannot live together in Israel. HaMoked added that denying income-support benefits to these women missed the purpose of the Law and exacerbated the financial difficulties of families who were already in a dire situation. A month later, the NII announced that it accepted HaMoked's arguments, and that "According to a legal opinion [...] the NII does not view exits to Gaza by women as travel outside Israel that precludes income-support benefits". The NII added that "following your communication, and in light of the review findings, the branch staff members have been debriefed". **(Cases 75122, 75123)**

Additionally, in March 2013, HaMoked contacted the NII about Israeli residents who traveled to Gaza to visit immediate relatives for humanitarian reasons according to the military's strict limitations on Israelis' entry into Gaza. In this case, too, the NII accepted HaMoked's arguments and determined that travel to Gaza for family visits would not serve as grounds for denying NII benefits. **(Case 76842)**

Visits to Gaza for Humanitarian Reasons

Israel's efforts to isolate the Gaza Strip are also expressed in restricting the grant of visit permits for humanitarian reasons. As stated, in May 2011, in the context of a petition filed by three human rights organizations, HaMoked, Gisha, and Physicians for Human Rights-Israel, the state revealed the procedure detailing the "Policy on Movement of People between the State of Israel and the Gaza Strip".²⁵ This document indicates that the only reasons Israel recognizes for entry of Israelis into Gaza are those it defines as "exceptional humanitarian need": attending an immediate relative's wedding or funeral, or visiting immediate relatives who are seriously ill – when the patient's life is at risk or prolonged hospitalization is required.

For nine years, F.A., an Israeli citizen, had not seen her parents and siblings who live in the Gaza Strip. The military denied all her requests to visit Gaza, despite the fact that F.A. had never been arrested or interrogated. In July

25 See supra note 10.

2012, HaMoked contacted the military with an urgent request to approve F.A.'s entry to Gaza to visit her sick mother. HaMoked enclosed medical documents attesting to the mother's severe illness. The military briefly responded that the request had been denied "due to security objections". In August 2012, HaMoked petitioned the HCJ demanding F.A. be allowed to visit her sick mother and exercise her rights to family life and freedom of movement.²⁶ Just three days after the petition was filed and without a court hearing, the "security objections" disappeared as if by magic, and the State Attorney's Office announced that F.A. would be permitted to enter Gaza for a week-long visit. **(Case 73595)**

A.A., an Israeli citizen, sought to enter the Gaza Strip with his wife and children to visit his elderly mother. He had not seen his mother for five years due to Israel's restrictive policy. In September 2012, HaMoked sent the Gaza DCO a document from the physician who treated the mother in hospital, listing her severe chronic medical conditions and attesting to her inability to function independently at home. Without any explanation, the military's response simply stated, "Your clients will not be permitted to leave for the Gaza Strip".

In October 2012, HaMoked filed a petition to the HCJ,²⁷ which included another document from the physician, attesting that the mother's condition remained unchanged. Two months later, after various delays on the part of the State Attorney's Office, and without a court hearing, the military announced that A.A., his wife, and his children, would be allowed to enter the Gaza Strip for three days; the approval, the military explained, was given due to the submission of "new medical documentation" – which was identical to the documentation included in the original application. **(Case 74495)**

In February 2011, HaMoked wrote to the Gaza DCO, asking to allow A.S., a 79-year-old East Jerusalem resident, suffering from advanced cancer, to enter the Gaza Strip to visit his sister and her family. Although medical documents were attached to the request, and despite reminders HaMoked later sent, the military did not respond.

26 HCJ 6043/12 **al-Qadifat et al. v. GOC Southern Command** (2012).

27 HCJ 7390/12 **Abu Hamed et al. v. GOC Southern Command** (2012).

On May 20, 2011, A.S. succumbed to cancer. Two weeks after he passed away and four months after the request was sent, the military's response arrived, approving A.S.'s entry to Gaza for a three-day visit to his family.

(Case 11813)

Holiday Visits

Until 2007, following HaMoked's legal work,²⁸ Israel had allowed Israelis to visit family in Gaza during the Muslim holidays of Id al-Fitr and Id al-Adha, and the Christian holidays of Christmas and Easter. This enabled relatives to meet – even if infrequently – irrespective of humanitarian circumstances as defined by Israel. But beginning in 2007, Israel has stopped allowing holiday visits to the Gaza Strip by Israelis, confining their entry strictly to cases of “exceptional humanitarian need”. The cancellation of the holiday visits severely infringes on the right to family life and creates an unacceptable situation in which children, siblings, parents, grandchildren and grandparents cannot see each other for years.

On July 22, 2012, HaMoked petitioned the HCJ to instruct Israel to allow its residents and citizens, together with their children and spouses, to visit their relatives in Gaza during Id al-Fitr, and exercise their right to family life.²⁹ This was the third petition HaMoked had filed since 2007 for the renewal of family holiday visits to Gaza. The HCJ deleted the first petition and dismissed the second without ordering the renewal of visits, ruling nonetheless that the prohibition on family visits “infringes on protected rights and causes severe harm”.³⁰ On August 16, 2012, three days before Id al-Fitr, the HCJ dismissed the third petition too. The court accepted the state's claim that any opening of Erez Crossing put the lives of the soldiers and civilians present there at risk; this, despite the fact that the crossing operates routinely and is open on weekdays. “We regret the prolonged separation between the petitioners and their relatives”, said the justices, “the pain is understandable and touches our hearts, however, we cannot assist the petitioners”. The justices added that, “considering the actual risks involved in allowing the visits and the fact that the respondents review their policy from time to time – there is no room for

28 For more details, see HaMoked, **Activity Report 2004**, pp. 20-23.

29 HCJ 5649/12 **Hamdan et al. v. GOC Southern Command et al.** (2012).

30 See HCJ 8250/07 **HaMoked: Center for the Defence of the Individual v. GOC Southern Command et al.** (2007); HCJ 7235/09 **HaMoked: Center for the Defence of the Individual v. GOC Southern Command et al.** (2009).

our intervention. Indeed, the petitioners' relatives are just a short trip away – almost within reach. So near, yet so far away". **(Case 40552)**

Family Visits to the Shalit-Deal Deportees

In October 2011, as part of the deal struck for the release of captive Israeli soldier Gilad Shalit, about 160 Palestinian prisoners, from the West Bank and East Jerusalem were released by Israel from prison and forcibly removed to the Gaza Strip. On October 31, 2011, HaMoked requested the military to allow these ex-prisoners' relatives to visit them in the Gaza Strip, but the military did not respond. Israel's policy on the matter was revealed through HaMoked's petition to the HCJ to allow the relatives of one such ex-prisoner to attend his wedding in Gaza. In response to the petition, the State Attorney's Office said that "It has been agreed between the Israel Security Agency and the relevant officials in Egypt and in Hamas [...] that Israel would allow relatives of prisoners released to the Gaza Strip as part of the Shalit deal to visit them in the Gaza Strip; this, **provided that entry into the Gaza Strip for the purpose of said visit shall not be made through Erez Crossing and departure for the visit be made only through the Jordan bridges** [i.e. Allenby Bridge], and subject to the absence of a security preclusion specific to making the visit".³¹ Thus, Israel demands that relatives, from Israel or the West Bank, travel through two more countries, Jordan and then Egypt, in order to reach Gaza – a territory that shares a border with Israel, arguing that "the very meeting between the released prisoners and their relatives contains the risk of being used for terrorist activities". According to Israel, the risk involved in the family visits requires "placing restrictions on such meetings [...] such restrictions primarily mean restricting the conditions under which such visits take place". Given Israel's declaration that it has no principle objection to allowing the family visits, its position that a long and arduous journey minimizes the risk contained in the "very meeting", is perplexing at the very least, calling into question the real purpose behind this demand. **(Case 71304)**

31 See supra note 18; emphasis in original.

Travel Abroad from the OPT

Every person has a right to leave his or her country. Limiting the right of an Israeli citizen to exit the country for security reasons, for instance, is done only in rare and exceptional cases, by a signed order of the Minister of Interior, subject to a hearing, and mostly for no more than six months. In the OPT, however, Israel acts to curtail this right and limit it based on “security preclusions”. The violation of the right to travel abroad leads to encroachment on other basic human rights, such as the rights to health, family life, education, livelihood, and freedom of religion and worship.

In 2010, following the Gaza flotilla, Egypt opened the Rafah Crossing for travel into and out of the Gaza Strip, and in May 2011, it announced the crossing would remain permanently open. Since then, Palestinians from the Gaza Strip have been able to travel abroad relatively regularly, subject to restrictions set by Egypt; whereas the West Bank remains a closed zone that no one may leave without Israeli approval. Thus, every year, Israel prevents hundreds and thousands of West Bank Palestinians from traveling abroad – without any signed order or time limit. The ban is executed without a hearing, and in most cases, people discover they are “banned from travel” only once they arrive, with their luggage and planned schedule, at Allenby Bridge Border Crossing, the only gateway abroad Israel allows West Bank residents to use.

In 2011-2012, HaMoked continued to battle against Israel's efforts to prevent Palestinians from traveling abroad. In June 2011, the court partially accepted HaMoked's petition under the Freedom of Information Act, seeking to compel the Coordinator of Government Activities in the Territories to provide information regarding individuals precluded from traveling abroad from the West Bank.³² After holding an *ex parte* hearing, Justice Dr. Michal Agmon Gonen accepted that revealing the exact number of individuals the military banned from travel abroad could jeopardize national security. However, during proceedings, the state revealed that in 2008-2009, the number of banned Palestinians dropped sharply and was now below one percent of the population – still a fairly large number. **(Case 63926)**

32 AP 16439-02-10 **HaMoked: Center for the Defence of the Individual v. Coordinator of Government Activities in the Territories et al.** (2011).

In December 2012, HaMoked had to file another petition under the Freedom of Information Act regarding the military's procedures for imposing restrictions on OPT residents' freedom of movement, having waited in vain for over 18 months for the military's response to HaMoked's information request in the matter.³³ Following the petition, the state provided some of the sought information and in March 2013, during a court hearing, HaMoked and the State Attorney's Office agreed on the wording of another set of questions that the military undertook to answer in response to a new information request by HaMoked. The petition was therefore withdrawn. **(Case 69041)**

In 2011, HaMoked processed 267 cases regarding travel from the OPT abroad, including 144 new cases; in 2012, HaMoked processed 459 such cases, 118 of them new; note that HaMoked often processes such cases over many years, such as when a person's application to travel abroad is repeatedly refused, or when a person previously allowed to travel abroad, is banned from travel. In 2011-2012, HaMoked filed 236 petitions to the HCJ on this issue.

In 2011-2012, as in previous years, HaMoked had a high success rate, both in correspondence with military authorities and in legal action; processing was completed in 326 cases: in 183 of these (56%), Israel lifted the security ban and the applicants received a permit or a conditional permit to travel abroad;³⁴ in 62 of them (19%), the ban was lifted without legal intervention. The figures include cases in which applications were initially rejected by the military, as well as cases in which court petitions were filed following prolonged non-response on the part of the military. The success rate of HCJ petitions remains high in cases where the military kept refusing travel "for security reason": in about half of these cases (47.9%), the ban was lifted completely or conditionally following the state's change of position before the court hearing, or, rarely, following pressure from the justices during the hearing. These figures indicate that "security" travel bans are often placed indiscriminately and arbitrarily, and many are quickly removed when the authorities fear their decision would not stand up to court scrutiny.

33 AP 20672-12-12 **HaMoked: Center for the Defence of the Individual v. Coordinator of Government Activities in the Territories et al.** (2013).

34 Usually this is an undertaking by the State Attorney's Office to remove the travel ban within a few months subject to the absence of new intelligence information and the applicant's consent not to return to the West Bank for long periods of time, or an undertaking to provide an alternative for travel abroad (such as medical treatment in Israel). See *infra*, e.g., pp. 31-33.

HaMoked's experience shows that the military often uses "security reasons" by default, denying travel abroad without any supporting evidence and without examining applications in depth, as required. Security forces often exploit the vulnerability of those who seek to travel abroad in order to force them to collaborate with Israel; if they refuse, the travel ban is used as punishment without trial.

W.A., a young man from Bethlehem, an economics student at a university in Amman, spends all his vacations at home in the West Bank visiting his family. In September 2011, after he spent several days in the West Bank to attend his uncle's funeral, W.A. arrived at Allenby Bridge on his way back to Jordan, but the soldiers on duty denied his exit without explanation, and told him to go to the Israeli DCO³⁵ to a "meeting" with "Captain Gideon" from the Israel Security Agency (ISA). At the meeting, W.A., who had never been arrested or interrogated, was asked a few questions about his family, and at the end of the meeting, the ISA agent told W.A. that there was no security material against him and that the travel ban would be lifted. W.A. returned to Allenby Bridge a few days later, but again the soldiers did not let him leave. He had to go home and have another meeting with "Captain Gideon". This time, the ISA agent said, "I'm sorry. You're precluded, but there are two ways you can solve it. Either we bring a car, go together to Tel Aviv, have some coffee and settle some things, or you could go find a lawyer". W.A. declined to collaborate and filed an objection against the preclusion. A month later, the objection was denied without explanation.

In December 2011, HaMoked petitioned the HCJ on W.A.'s behalf, asking he be permitted to go to Jordan to continue his studies, without conditioning it on collaboration with the ISA.³⁶ A few days later, before a court hearing was held, the State Attorney's Office stated in a brief letter that, "Security officials have notified us that the security ban on the petitioner's travel abroad has been removed". **(Case 70643)**

Procedure for Advance Inquiry regarding Travel Bans

Despite the obligation to notify a person in advance of the intent to infringe

35 The Israeli District Coordination Office (DCO) is the military unit in charge of communications between the military and Palestinian Authority representatives and of coordination between the Israeli and Palestinian sides.

36 HCJ 9535/11 **al-Diriyah et al. v. West Bank Military Commander** (2012).

on one of his or her fundamental rights, for years, OPT residents could not find out in advance whether the military would allow them to leave their country and cross the border. Those who were banned from travel discovered this only once they arrived at the border crossing with their luggage, trying to catch flights, get to scheduled surgeries, start the academic year, visit a sick relative or attend a wedding or a funeral. Following a HCJ petition filed in 2006 by HaMoked, the Association for Civil Rights in Israel (ACRI) and Physicians for Human Rights-Israel, the military formulated a procedure ostensibly to allow OPT residents to find out in advance whether they are “precluded”.³⁷ In 2010, the procedure, which requires individuals seeking to know in advance whether they are precluded from travel to arrive in person at the DCO, was upheld by the HCJ, subject to the military's pledge that applicants arriving at the DCO would receive written responses on the spot. The procedure also stipulates that individuals who are told they are “precluded” may file an objection against the preclusion, to be answered within eight weeks.³⁸ However, since the procedure was formulated, HaMoked has received numerous reports from West Bank residents who arrived at Allenby Bridge with a DCO confirmation that they were not banned from travel abroad, but were told by the soldiers to turn back because they were listed as “precluded”. In most cases, the military said these were “errors”, and in some, that the ban was new, issued after the DCO confirmation was given.

In July 2009, M.Q. arrived at Allenby Bridge Border Crossing en route to Jordan. But the soldiers there prevented him from leaving without any explanation, and he had to turn back. When M.Q. went to the DCO to file an objection against the travel ban, the Israeli coordination officer told him there was no ban against him and gave him a written confirmation to that effect. The next day, M.Q. returned to Allenby Bridge with the DCO confirmation he received, only to find that the soldiers again would not let him leave for Jordan.

Thus, despite the DCO confirmation, HaMoked had to file an objection against the travel ban. After banning M.Q. from traveling abroad for two

37 HCJ 8155/06 **Association for Civil Rights in Israel et al. v. IDF Commander in the Judea and Samaria Area et al.** (2010). For more details, see HaMoked, **Activity Report 2007**, pp. 11-12 of the online version, pp. 12-14 of the printed version.

38 The procedure underwent several transformations; see HaMoked, **Activity Report 2008-2010**, pp. 118-122.

months, the military said that it had been an error and that there was no longer any preclusion.

HaMoked represented M.Q. in a civil suit against the State of Israel for the damage he suffered because he could not travel abroad.³⁹ In the statement of claim, HaMoked argued that the preclusion was unjustified and unlawful and that it had been placed due to either negligence or foreign considerations. HaMoked also argued that the military's conduct violated M.Q.'s right to freedom of movement and freedom of occupation and caused him financial losses and distress. On March 30, 2011, the parties reached a settlement, which was given the validity of a judgment, whereby the State of Israel would pay M.Q. ILS 17,000 in compensation for the damage it caused him. **(Case 47432)**

Note, this is a rare occurrence; the vast majority of Palestinians prevented by Israel from travel abroad are not compensated for the damage they incur by the denial of their right to leave their country.

The problems emanating from the military procedure have been noted by the justices of the Supreme Court. In a judgment in one of HaMoked's petitions, then Supreme Court President Dorit Beinisch wrote:

We see fit to direct the respondent's [the military] attention to the fact that in this petition, it is again revealed that the procedure [...] with respect to preventing residents of the Territories from leaving the country and the schedules stipulated for responding applicants, including to objection filed against a refusal to permit travel, is not followed properly and there seem to be errors, the prevention of which should be sought.⁴⁰

In March 2011, after HaMoked's repeat demands that the military check into the complaints and arrive at the necessary conclusions, the military decided to formulate a new procedure for handling advance inquiry-requests regarding travel bans;⁴¹ but instead of correcting the flawed system, the military made the people who must comply with its directives pay for its

39 CivC 46106-07-10 **Qaisy v. State of Israel et al.** (2011).

40 HCJ 9402/10 **al-Mekhraq v. West Bank Military Commander** (2011), Judgment, March 23, 2011.

41 English translation of the procedure available at: <http://www.hamoked.org/Document.aspx?dID=Documents1502>.

ineptitude. Under the new procedure, an answer is given on the spot only to individuals who appear on the military's computer database as banned from travel; those who are not, must return to the DCO four business days later to get an answer. HaMoked demanded the military retract this blatant departure from its undertaking to the HCJ that the procedure would include only one stage. As no pertinent response arrived, HaMoked and ACRI petitioned the HCJ.⁴²

On April 18, 2012, the HCJ dismissed the petition. The court ruled that the change the military had introduced procedural would eliminate the provision of incorrect information and noted that there was no room to intervene in the military's decision, given that the change added "only four business days" to a procedure which, in the court's view, served a relatively small number of people. The court ignored the fact that the change contradicts the procedure the military had formulated and the state's undertaking, which had been given the validity of a judgment. The court stated that the petitioners' claim that the procedure concerned hundreds of thousands of individuals was misleading, as figures presented by the state showed that such inquiries were made by 200-250 individuals each year; thus it ignored the fact that the procedure was expressly meant to serve all the hundreds of thousands of West Bank residents who wish to travel abroad and have no other way of knowing in advance whether or not they are precluded from travel. At best, the (relatively) low numbers presented by the state suggest that the procedure is cumbersome and inaccessible. The court thus legitimized a procedure that compels Palestinians wishing to travel abroad to undergo an arduous bureaucratic process, which exacerbates the violation of their basic rights to freedom of movement and due process.

On January 10, 2012, HaMoked received a letter from the Civil Administration public liaison officer,⁴³ stating that, as of that date, lawyers representing Palestinians from the West Bank may fax the DCO inquiries regarding travel abroad – both advance inquiries and applications to remove travel bans – and would also receive the military's answers by fax. The letter did not explain why Palestinians must use the services of lawyers and cannot fax their requests to the military themselves. **(Case 69151)**

42 HCJ 4340/11 **HaMoked: Center for the Defence of the Individual et al. v. West Bank Military Commander et al.** (2012).

43 The Civil Administration is the military body in charge of administering civilian affairs in the OPT.

Removing Travel Bans

As stated, in 2011-2012, as in previous years, HaMoked had a very high success rate in removing travel bans: applicants were often permitted to travel following correspondence with the authorities, and in some cases the state lifted the ban following a petition to the HCJ, before a hearing took place. The high success rate signifies that travel bans remain, as before, largely arbitrary, and that the authorities do not stand by a considerable number of them.

On March 22, 2011, M.M. arrived at Allenby Bridge on his way to Jordan and from there to Saudi Arabia. M.M. was traveling for business and also to attend to some urgent private matters. Although, for many years, he had traveled abroad several times a year, and had never been arrested or interrogated, the Israeli soldiers did not let him cross the border, without reason or explanation.

The next day, M.M. filed an objection against the travel ban at the Hebron DCO. The military procedure offers no recourse for individuals whose matters must be resolved in less than eight weeks, so when no response arrived for more than a month, HaMoked petitioned the HCJ to allow M.M. to travel abroad.⁴⁴

A few days after the petition was filed, on May 3, 2011, the state announced unequivocally that it would not lift the travel ban as “according to current information held by security officials, foreign travel by the petitioner, who is known to be involved in bringing Hamas funding into the Area, poses a risk to the security of the public and the Area”. Nine days later, following the justices’ recommendations at the hearing – after they reviewed classified material *ex parte* – the state suggested that M.M. would travel abroad and not return to his home in the OPT for four years. One week later, after the court issued an *order nisi*, the state changed its position for the third time. This time the State Attorney’s Office stated: “The petitioner will be permitted to travel abroad, one time only, for no more than four days [...] upon his return, he will not be permitted to travel abroad for at least two years”. On May 26, 2011, the state said it had extended the period to five days, and three days later, offered an entire week. After two more weeks, the state reversed its position entirely, stating in court

44 HCJ 3279/11 **Mansi et al. v. West Bank Military Commander** (2011).

that “Following further information they received, security officials have retracted their refusal to allow the petitioner to travel abroad” – this, after claiming repeatedly that his departure would put public security at risk.

(Case 68737)

For many years, H.S. had no trouble traveling out of his country through Allenby Bridge Border Crossing. But in 2007, when he arrived at the border crossing on his way to visit his daughter in Jordan, he was surprised to discover that the military refused to let him go abroad. When H.S. contacted the DCO to find out why he had been denied travel, an ISA agent pressured him to collaborate with Israeli security forces, making it clear that if H.S. wanted to see his daughter, he would have to meet with him once a week. H.S., who had never been arrested by the military, refused. He has been denied exit abroad “for security reasons” ever since.

In late 2010, after he underwent unsuccessful surgery in the West Bank, H.S.’s doctors concluded that he must undergo repeat surgery in a specialized hospital in Jordan in order to prevent permanent disability. H.S. filed an objection against the travel ban, but it was rejected by the military. In February 2011, HaMoked petitioned the HCJ to allow H.S. to travel for surgery in Jordan.⁴⁵ In its response, the state argued that his travel abroad “would be used to promote terrorist activity”. The state also said that the Civil Administration’s health coordinator – who is not a physician – had decided that although two prior surgeries had failed, H.S. could receive continued care and follow-up treatment in the West Bank. At the hearing, the state accepted the court’s suggestion to let the petitioner undergo surgery in Israel. Thus, Israel allowed into its own territory a man whom it keeps banning for years from traveling to Jordan, “for security reasons”, claiming he promotes terrorist activity (or perhaps his refusal to collaborate with the ISA is the real “security” reason?). **(Case 67795)**

In December 2011, HaMoked petitioned the HCJ for the third time on behalf of W.H., who had been denied exit abroad by the military for many years.⁴⁶ W.H. wanted to see his wife and daughters who live in Jordan, after

45 HCJ 1332/11 **Sarouf v. West Bank Military Commander** (2011).

46 HCJ 9660/11 **Hudali et al. v. West Bank Military Commander** (2012). The previous petitions were filed in 2006 and 2009.

he had not seen them for more than ten years. The state refused to lift the travel ban due to “security reasons”. After examining the classified material in an *ex parte* hearing the justices dismissed the petition, accepting in their judgment the state's offer that “should no further information arrive regarding the Petitioner within six months, his departure for six hours in order to meet with his relatives will be favorably considered”. After more than a decade of separation, the state suggested W.H. meet with his wife and daughters for six hours (!).

In October 2012, six months after the judgment was given, HaMoked requested the State Attorney's Office to approve W.H.'s request to travel to Jordan to meet with his family. A month later, the state magnanimously responded that “Subject to a declaration that he will not engage in terrorism, W.H. may travel to Jordan for 48 hours to see his wife and daughters”. **(Case 46246)**

Classified Material

One of the main difficulties in defending Palestinians' right to travel from the OPT abroad stems from the fact that the military usually issues travel bans without explanation and bases them on classified information. It is only when a travel ban is challenged, and sometimes only following a HCJ petition, that the state provides reasons for the ban, mostly in a brief statement that conceals more than it reveals.

When classified information is presented in court, the authorities have a special duty to examine the evidence carefully for any errors, and ascertain the veracity of the information provided to the petitioners and then to the court – which must act as the petitioners' mouth and ears in such proceedings. Still, in the isolated cases in which slightly more detailed information was provided regarding the travel ban and the evidence behind it, HaMoked has often succeeded to undermine the travel ban and have it lifted.

In late 2009, H.Q. wished to perform the Umra pilgrimage to Mecca, but, without explanation, the military refused to let him across. In April 2010, again the military prevented H.Q. from traveling to Saudi Arabia. The objection he filed against the travel ban was denied without explanation or reason. In November 2010, HaMoked petitioned the HCJ on H.Q.'s behalf.⁴⁷ On February 10, 2011, four days ahead of the scheduled hearing, the State

47 HCJ 8678/10 **Qatash v. West Bank Military Commander** (2011).

Attorney's Office announced that "the petitioner's exit from the Area is prevented because he is a Hamas activist who has had organizational and security contact with officials inside the Revolutionary Guards in Iran". In a telephone conversation with HaMoked on that day, a state attorney representative said that, contrary to HaMoked's assertion in the petition, "the petitioner served a total of five years in prison". Surprised by this statement, HaMoked contacted the Israel Prison Service, which confirmed H.Q. had never been incarcerated. At HaMoked's insistence, the State Attorney's Office checked again, and discovered that a mistake had been made: the information attributed to H.Q. related to another person (!). In a letter sent to HaMoked on February 13, 2011, the State Attorney's Office related that "security officials have stated that they would not object to the petitioner's travel to Jordan", subject to an undertaking that he would not engage in terrorism. **(Case 65325)**

Certificate of Privilege

Disclosure of the reasons and the evidence behind the denial of freedom of movement is critical for defending human rights. However, as stated, in most cases, the state does not present the evidence supporting its decision to deny freedom of movement openly in court, but claims instead that the denial is based on "classified information", which it concedes to produce only *ex parte* and *in camera*. In such cases, the state does not present a certificate of privilege, which requires the consent of the petitioners. Israeli law stipulates that a litigant has a right to review all documents on which the opposing party intends to rely in court, except for documents legally deemed privileged – under a certificate of privilege issued by the minister in charge.

The issue of privileged material was rarely debated in court, and the parties followed a tacit understanding: the state did not issue a certificate of privilege and the opposing party treated the material as "privileged", as if a certificate of privilege had indeed been issued. With time, such *ex parte* and *in camera* hearings became an almost inseparable part of the proceedings in petitions in which the state claimed security grounds and classified information, without producing a certificate of privilege; the exceptional proceeding of *ex parte* hearings had become the norm, to the extent that there was no real oversight on how much information was considered classified.

In 2009, HaMoked began challenging this dangerous practice. In several cases in which the state claimed that the evidence was classified and should be heard *ex parte*, without having presented a certificate of privilege, HaMoked asked for the relevant materials or alternatively, that a certificate of privilege be produced. In a hearing in one of HaMoked's petitions, the court sided with HaMoked's position and told the state that unless it issued a certificate of privilege, it could not rely on the alleged "classified" material without disclosing it to HaMoked.⁴⁸ The state argued it was entitled to maintain the material was classified even without a certificate of privilege and that the demand for a certificate placed a "heavy burden" on the Prime Minister and the Minister of Defense.

In September 2011, the court issued an *order nisi* in two of HaMoked's travel-ban petitions, ordering the state to provide the grounds for the military's decision and present the evidence supporting it. The first petition concerned a West Bank merchant whose request to travel abroad on business was denied based on the obscure claim that there was "classified information that gives rise to concern that his exit abroad would put the security of the Area at risk";⁴⁹ the second petition concerned the military's refusal to allow a businessman to travel abroad to conduct business and meet with relatives due to classified material indicating the petitioner was a member of the Palestinian Islamic Jihad organization.⁵⁰ Following the court's injunctions, the state ultimately issued a certificate of privilege in both petitions.

In both petitions, HaMoked subsequently filed motions for disclosure of evidence, demanding the court lift the privilege from the alleged evidence on the basis of which the state denied the petitioners' rights.⁵¹ In March 2012, the court rejected these motions, having been satisfied that "the nature of the material in question justifies privilege". Following a long legal battle, one petition ended with the state lifting the travel ban subject to the petitioner's undertaking to "avoid engaging in any terrorist activity" – this, after more than four years of denying him right to leave his country. In the other petition, the court's judgment endorsed the state's undertaking that in six months'

48 HCJ 1000/10 **al-Atrash v. West Bank Military Commander** (2013).

49 HCJ 747/09 **Asa'id v. West Bank Military Commander** (2013).

50 See *supra* note 48.

51 HCJApp 719/12 **al-Atrash et al. v. Minister of Defense et al.** (2012); HCJApp **Asa'id et al. v. Minister of Defense et al.** (2012).

time, “in the absence of negative security information, the requested permit would be issued”. **(Cases 50667, 58195)**

On the legal issue of principle, the court's judgments clarified that relying on classified material requires either the petitioners' consent or the provision of a certificate of privilege.



Filing Applications in Arabic at the DCO

In January 2011, HaMoked petitioned the HCJ demanding the military be instructed to allow OPT residents to file applications at the DCO in Arabic.⁵² The petition came after HaMoked received a letter from the office of the head of the Civil Administration in the West Bank in a case involving a travel ban imposed on a Palestinian woman. The letter stated that according to a new policy introduced by security officials, Palestinians were required to fill out their applications in Hebrew only, otherwise the applications would not be processed.

In the petition, HaMoked argued there was no legal basis for the refusal to process applications and documents OPT residents filed in Arabic, and that it contradicted the military's obligations in the OPT under international humanitarian law, international human rights law and Israeli law. In response, the State Attorney's Office said that this was an “isolated error” and that “the petitioners were given incorrect positions, which did not reflect the respondents' policy”; it went on to declare that OPT residents may fill out their applications in Hebrew, Arabic, or English “according to their wishes and abilities. All requests will be properly processed”; and when security screening is required, the DCO will be responsible for translating the applications into Hebrew.

A week later, it turned out that court statements were one thing, and actual practice, quite another. On February 15, 2011, a Palestinian resident arrived at the Hebron DCO to file an objection against a travel ban issued against him. The soldier who received him, told him to use the services of the “typists”.⁵³ HaMoked telephoned the DCO and spoke to the same officer who had handled the case that prompted the petition. She insisted the applicant should employ a “typist” and that anyhow, “there are no objection

52 HCJ 86/11 **Shalaldeh et al. v. West Bank Military Commander et al.** (2011).

53 This is a private service offered by Palestinian residents who sit outside DCOs and fill out forms in Hebrew for a fee.

forms at the DCO". Only after HaMoked contacted the Civil Administration public liaison officer, the correct form suddenly "turned up" and the DCO soldiers allowed the applicant to fill it out himself, in Arabic. **(Case 57554)** On March 3, 2011, the general relief sought in the petition was validated in a judgment: soldiers must now allow OPT residents to file applications in Arabic, their native tongue and the official language in the OPT; if a Hebrew translation is needed, the DCOs must arrange for it; OPT residents applying to the DCO must be provided with all the required forms and never be referred to the services of typists. **(Case 66994)**

The Separation Wall, Checkpoints and Roadblocks

In 2011-2012, HaMoked expanded its work on freedom of movement inside the OPT, focusing mainly on helping Palestinians whose rights were violated as a result of the permit regime Israel imposed on West Bank areas it calls "the seam zone"⁵⁴ – areas trapped between the Green Line and the separation wall. HaMoked also continued working on petitions against military roadblocks on West Bank roads, and operating its emergency hotline, providing real-time assistance.

In 2012, HaMoked wrote a report entitled **The Permit Regime: Human Rights Violations in West Bank Areas Known as the "Seam Zone"**.⁵⁵ Based on HaMoked's work, the report presents the mechanisms that lead to the violation of rights of Palestinians who live in or wish to go to the "seam zone", and shows that they cannot be justified on security grounds and that the fatal impact of the permit regime on the local population is an inevitable result.⁵⁶

54 The term "seam zone", coined by Israel, seeks to obfuscate the fact that this area is an integral part of the West Bank. In the absence of an accepted alternative, this term will be used in this report with the caveat that herein it refers to the West Bank areas that have been trapped between the separation wall and the Green Line, excluding East Jerusalem to which Israeli law has been applied, and the Gush Etzion area, exempted by Israel from the permit regime. Under international law, the so-called "seam zone" is occupied territory like all other parts of the West Bank. As Israel also considers it as a territory under belligerent occupation, and as such, it is administered by the military and Israel avoids applying its domestic law to it or granting its residents Israeli status.

55 Hereinafter **The Permit Regime**.

56 The report focuses on HaMoked's activities in 2011-2012 regarding the "seam zone" and the permit regime. Report available at: <http://www.hamoked.org/Document.aspx?dID=Documents2133>.

The Permit Regime in the “Seam Zone”

Contrary to the principles of international law, Israel has built most of the separation wall inside the OPT rather than on the Green Line. Thus, the wall does more than separate between Israelis and Palestinians, it also splits the Palestinian population of the West Bank. Since 2003, the Israeli military has been employing a draconian permit regime inside the West Bank area located between the Green Line and the separation wall, declaring it off-limits to Palestinians. Although it is an integral part of the West Bank, Palestinians who live or wish to go there, must first obtain a military-issued permit for this purpose. The permit regime applies only to Palestinians; none other – Israelis or tourists of whatever nationality – require any sort of permit to enter and remain in the “seam zone”.

It is a well established principle of both Israeli and international law that everyone has a right to be anywhere within his or her country, unless there are exigent circumstances that justify restricting this right for a limited time. The permit regime is founded on the opposite premise: Palestinians may not enter or remain in the West Bank area known as the “seam zone”, unless the military recognizes their need to enter it, upon proof of very specific ties to the area. All permits issued to individuals who live in or wish to enter the “seam zone” are temporary and of short duration. Permit holders must apply for the permit's renewal ahead of expiry in order to remain in the “seam zone”, and must repeat the process every time their permit's expiry nears. The permits' short validity, coupled with the procedural complexities involved in obtaining them and the military's arbitrary, if not negligent, processing of such applications, often result in gaps between one permit and the next.

The Permit Regime report includes a detailed review of the increasingly limited criteria and extensive bureaucracy the military imposes on Palestinians wishing to enter the “seam zone”. These inevitably result in a dramatic drop in the number of Palestinians who reach this area of the West Bank, trapped beyond the separation wall, and even cause fundamental changes there. Israel's policy has clear and present outcomes: the physical separation of Palestinians living in the “seam zone” from the rest of the West Bank, and their economic, familial, social and cultural isolation; a change in agricultural patterns, including a sharp decline in the overall farmed area within the “seam zone”, causing severe harm to 150 or so communities that are located east of

the separation wall with farmland trapped on the other side. The attendant concern is that the drop in both the scale of farming and the number of Palestinians entering the “seam zone” are welcomed by those in charge of Israel's West Bank land policy.

The General Petitions

The severe human rights infractions caused by the separation wall were foreseen as soon as its planned route was publicized. In November 2003, HaMoked petitioned the court with a general demand to revoke the section of the route that runs inside West Bank, and the permit regime declared in the “seam zone”.⁵⁷ Another petition on this was filed in 2004 by ACRI.⁵⁸ In 2006, after the HCJ approved building the wall inside the occupied territory, the general petitions shifted their focus to the permit regime. In its amended petition, HaMoked argued that the military's permit regime in the “seam zone” was a regime of separation based on nationality and as such, it violated the basic tenets of international humanitarian and human rights law, as well as Israeli administrative and constitutional law. HaMoked contended that the permit regime created a legal apartheid and could be regarded as a war crime. HaMoked also argued that the permit regime constitutes collective punishment and wrongful discrimination and that it violated the OPT residents' right to freedom of movement, particularly to free travel in their own country. The violation of freedom of movement, HaMoked added, led to severe violations of the rights to equality and dignity as well as other human rights such as the rights to family life, health, education, property, livelihood, culture, and social and communal life.

In April 2011, the HCJ dismissed the general petitions, holding that: “the decision to close the seam zone and apply the permit regime thereto meets the test of lawfulness”, and was justified on security grounds; and therefore the military's demand that Palestinians obtain a special permit in order to remain in their homes and on their lands, was neither collective punishment nor discrimination; and that although security checks upon entry to the “seam zone” could reduce the harm to the Palestinian population, they would not be sufficient.

57 HCJ 9961/03 **HaMoked: Center for the Defence of the Individual v. Government of Israel** (2011).

58 HCJ 639/04 **Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** (2011).

Nonetheless, in dismissing the petitions, the court did note that the permit regime, “Leads to a grave impingement on the rights of the Palestinian residents”. As then Supreme Court President Dorit Beinisch wrote in her opinion:

Applying the permit regime and requiring a permit in order to enter and exit the area, clearly constitutes a restriction on the freedom of movement of residents of the area, limiting their access to their homes, lands and businesses inside the seam zone. As we shall expound below, this situation has created a reality that impedes maintaining a routine in terms of family life, social life, trade and employment both for residents living inside the seam zone and for residents connected with them who live outside the area.⁵⁹

The court ruled that the military must relax both the rules pertaining to Palestinians living in the “seam zone” who wish to leave and return there, and the rules for relocating into the “seam zone” or visiting a person residing there. The court also instructed the state to set a clear and effective schedule for processing permit applications, ensuring that Palestinians who live in and access the “seam zone” would be able to maintain a reasonable routine. The court left the door open for petitions on behalf of individuals and on localized issues regarding “seam zone” areas or the permit regime. **(Case 28482)**

The Bureaucratic-Legal Process of Obtaining a Permit

The implementation of the permit regime has made it impossible for Palestinians to maintain normal daily lives in the West Bank. In the “seam zone”, even everyday actions, such as commuting to work, coming home from school or visiting relatives, come up against a wall of red tape. In 2011-2012, HaMoked helped 586 Palestinians who have had difficulties dealing with the military’s complex bureaucracy to obtain the permits that would allow them to go on with their daily lives. Most of these individuals were from rural communities in the northern West Bank, in the districts of Qalqiliya, Tulkarm and Jenin. The majority applied for access to “the seam zone” for the purpose of farmland cultivation; others sought access for relocation, family

59 See supra note 57, Judgment, April 5, 2011, §22 of the opinion of Supreme Court President Beinisch.

visits or work. Most applicants contacted HaMoked on this issue by phone, but since early 2012, complaints have also been made to HaMoked's field researcher.

HaMoked assists individuals whose rights have been violated from the initial permit application to the end of the relevant administrative or judicial proceedings. In 2011-2012, HaMoked opened 430 new cases, which joined the 35 pending cases opened in previous years. In the course of processing these cases, HaMoked sent the military 618 applications and reminders, and filed 80 court petitions. Note, HaMoked's work on this issue in no way signifies a retreat from its principled position that the permit regime is inherently unlawful, nor should it be construed as acceptance that Palestinians need a military-issued permit to access the "seam zone".



Representation by HaMoked

In December 2011, HaMoked contacted the head of the Civil Administration following a "scolding" the officer heading the Efrayim DCO, a lieutenant colonel, gave Palestinian residents who were assisted by HaMoked in entering the "seam zone". The Israeli officer demanded that the residents explain and justify why they had turned to a human rights organization, and state whether they intended to continue receiving HaMoked's assistance or were willing to withdraw the complaints they had filed through HaMoked. In its letter, HaMoked noted that an attempt to intimidate OPT residents was particularly grave when made by a senior official who was responsible for the routine lives of so many and in a position of control over their lives.

In 2012, the military began raising other gripes about HaMoked's representation of OPT residents. For example, in the case of A.Y. – a farmer who only received a permit to work his land in the "seam zone" following HaMoked's intervention – the military wrote to the lawyer working for HaMoked: "regrettably, we recurrently find that residents, on whose behalf HaMoked and your office apply for a permit, unlawfully enter the seam zone and Israel meanwhile". HaMoked responded in a letter, sent October 2012, to the military's West Bank legal advisor, recalling that the vast majority of the applications were sent to the military after the military failed to meet the deadline for response stipulated in its own orders on the

express instructions of the HCJ in the general petitions. Were it otherwise, many applications would have been unnecessary. HaMoked noted that the numerous delays in the issuance of permits impeded the farmers' ability to farm their lands continually, leaving them no choice but to let harm come to their crops or "unlawfully" enter the "seam zone" – which, as stated, is part of the West Bank.

HaMoked added that the claims against it were all the more baseless given the fact that the military did everything in its power to impede HaMoked's ability to represent residents. Thus, the military constantly refused to notify HaMoked about the responses given to its clients; routinely ignored HaMoked's requests for copies of the refusal letters it should provide to the applicants; and continually refused to provide HaMoked with reliable and up-to-date information regarding its applications – or provided it with unreliable information. **(Case 72312)**

Ostensibly, obtaining a "seam zone" permit is just a simple process: a Palestinian – recall, only a Palestinian – who wants to go to a part of the West Bank that lies beyond the separation wall, must apply in writing; if the application is rejected, he or she may submit an administrative appeal to a military committee; and if the committee upholds the rejection, the resident may petition the HCJ. However, everyday reality has shown that behind this simple set of the steps lies a Sisyphean process that consumes a substantial amount of both time and money. The military protocols for issuing permits are complicated and intricate, and hamper the applicants' ability obtain a permit, more so, as the military often fails to follow its own procedures.⁶⁰



Standing Orders for the Seam Zone

The military orders on Palestinians' entry and stay in the "seam zone" are detailed in a military document entitled "Standing Orders for the Seam Zone" (hereinafter: Standing Orders).⁶¹ The Standing Orders were first published in 2009, as part of the proceedings in the general petitions by HaMoked and ACRI. The document contains dozens of pages of rules, forms, tables and flow charts. Although the Standing Orders are meant

60 For more on the process of obtaining a "seam zone" permit and the problems associated with it, see HaMoked, **The Permit Regime**, pp. 22-54.

61 The Standing Orders (in Hebrew) are available at the Military Advocate General's website, <http://www.law.idf.il/163-4906-he/Patzar.aspx>.

to serve the Palestinian population, they are published only in Hebrew, and since they are complex and use a legalistic language, even Hebrew speakers find them hard to decipher. The Standing Orders have been amended twice since their initial publication, first in September 2010 and again in November 2011, this time, following the court's comments in the judgment in the general petitions, issued seven months earlier.

In its response to an individual petition filed by HaMoked, the state pledged that the military would issue a new, fourth, version of the Standing Orders by September 1, 2012,⁶² and its undertaking was entered in the judgment. However, as at June 2013, the new version has yet to be published.

Moreover, the military implements provisions of the Standing Orders even before they are published. In December 2010, HaMoked requested the military to issue M.S., a farmer from the Tulkarm District, a permit to enter his family's plots inside the "seam zone". In response, the Civil Administration public liaison officer said that "As known, according to the Seam Zone Standing Orders", a new application may only be filed six months after the date of the hearing. HaMoked was unfamiliar with this provision of the Standing Orders. When it asked for clarification, the military explained that it "appears in the revised Seam Zone Standing Orders, which have not yet been made public".

In February 2011, HaMoked contacted the West Bank legal advisor and the State Attorney's Office, demanding the military stop using secret legislation. In response, the military said that this was not "secret legislation", because under the law in the OPT "it is the military commander who decides on the appropriate form of publication", and that the applicants were advised of the changes when they arrived at the Israeli DCO or the Palestinian Liaison Office. And so, many Palestinians who applied for a permit to enter their lands, waited for weeks only to find that their application had been denied because it was filed contrary to a procedure they did know existed.

(Case 66864)

Applying for a Permit

Palestinians who wish to enter the "seam zone" must file their applications through the Palestinian Liaison Office. When they go to the Israeli DCO to inquire about their application, they are often told: "no application has

62 HCJ 261/11 **Yussef et al. v. West Bank Military Commander et al.** (2012), Response on Behalf of the State, July 9, 2012.

been received". Sometimes, the military gives this answer even though the applicants have the Palestinian Liaison Office's written confirmation that their applications had been transferred to the military; and in many such cases, the applicants have to submit a new application. It is all the more absurd when the military denies receiving the application, even though the applicant has an official confirmation of the application's receipt signed by an Israeli DCO officer. In some cases, the military provides information that is inaccurate, unreliable and even patently incorrect; such as when the military claims "no application has been received", but a few days later, issues the requested permit or summons the applicant to a hearing.

In December 2011, L.A. applied to renew his permit to enter his land inside the "seam zone". In response to HaMoked's request to expedite processing, the military stated: "Our inquiry in this matter indicates that no application has been received by the Israeli side". But just a day later, L.A. received the military's refusal, inscribed on the application form he had filed. The military's incompetence continued when L.A. tried to appeal against the refusal at the DCO, only to be told that he could not request a hearing committee as "no application had been filed". **(Case 67944)**

In August 2011, T.O., a farmer from a village near Qalqiliya, applied through the Palestinian Liaison Office for a permit to enter the "seam zone" in order to cultivate the olive grove he had leased. Two months later, when HaMoked contacted the military to inquire about the application, the military responded that "no application has been received by the Israeli side", so T.O. had to file another permit application. Again, when it was contacted by HaMoked, the military said: "no application has been received by the Israeli side". This time, the military recommended that T.O. apply directly to the Israeli DCO. T.O. had no choice but to go to the Israeli DCO and apply for the third time to access his leased plot. Though T.O. handed his application to an Israeli officer, the military again told HaMoked "no application has been submitted with respect to your client". Still, two weeks later, T.O. received a one-year permit to enter the "seam zone" – six months after his initial application. **(Case 70566)**

Permit Types

Applicants must state the type of permit they need when they apply. While there are 13 types of permits, the fact that they exist and the differences between them are not clear to most Palestinian residents. For example, most farmers do not know whether the military defines their “need” to access the land as “farming” or “employment”, and unsurprisingly, most assume they should apply for a “farming” permit. Another difficulty arises when an individual does not have a single definite tie to the “seam zone”, as obviously many people both work and have family or social ties there; but, absurdly, because the military only issues permits for one specific need, even those who have received a permit to cross the wall for one purpose, must obtain another permit to cross it for another purpose.

A.Z. who lives near Jenin, works in his brother’s shop in Barta’a inside the “seam zone”, and receives “employment entry permits”. In June 2010, A.Z. got engaged to a woman from Barta’a. The wedding was to be held at the home of the groom’s parents in September 2011 with the Henna ceremony taking place two days earlier at the bride’s family home inside the “seam zone”. In July 2011, two months before the wedding, without explanation or reason, the military did not renew A.Z.’s work permit. He applied to have the permit renewed, and at the same time, also applied to enter the “seam zone” for “personal needs” to attend his own Henna celebration. As both applications received no response, HaMoked contacted the military with an urgent request to approve A.Z.’s entry into the “seam zone” in order to participate in his Henna ceremony with his fiancée. The military responded that it had approved the “employment entry permit” to enter the “seam zone” – though it never bothered to inform A.Z. of this – but stressed that “in order to enter for the Henna referred to in your letter, your client must obtain a permit to enter the seam zone for personal needs and may not use the employment permit for this purpose”. **(Case 69983)**

Application Processing Time

The “needs” Palestinians have for going to West Bank areas beyond the wall, usually require quick, daily access; “needs” such as residing in the “seam zone”, operating a business there, cultivating farmland, tending to livestock, supplying essential emergency services, and visiting relatives who have fallen ill, given birth or lost a loved one.

In April 2011, in dismissing the general petitions against the permit regime, the court did recognize that quick access to the “seam zone” was necessary. In the judgment, the court held that Israel should institute clear and efficient timetables for processing permit applications. Seven months later, the military amended the Standing Orders and stipulated that a decision on applications by individuals who do not live in the “seam zone” must be made within 14 days of the DCO's receipt of the application; applications by “seam zone” residents must be answered within two weeks to a month, depending on the type of application. Applications for renewal may be submitted three weeks before the permit expires.

In reality, the provisions for expediting processing are not followed, at least with respect to application by individuals who do not reside in the “seam zone” but seek regular access there. Of 274 cases handled by HaMoked in 2012 which resulted in the issuance of a permit, the military met its own two-week deadline in only 22 cases (8%); 31 cases (11%) were processed between two weeks to a month; and in 221 cases (81%), processing took more than a month.

After following all the legal procedures comprising “exhaustion of remedies”, applicants who use the services of a lawyer or human rights organizations, can petition the HCJ for non-response to the application. However, HaMoked's experience shows that filing a petition does not guarantee a speedier response, and sometimes, even leads to further delay, because once the petition is filed, the court grants the state time to formulate its position, and it often takes quite a while before a hearing is scheduled. Still, in most cases, shortly after a petition is filed – and solely because of it – the petitioner receives the requested permit.

A.A. is a farmer who requires military-issued permits to cultivate his family's farmland located west of the separation wall. A.A. had filed many applications for a “seam zone” permit, but the military never issued him one. In early 2010, HaMoked contacted the military with a demand to issue A.A. a permit or, alternatively, to allow him to present his case. Consequently, the military held an oral hearing and, in August 2010, issued A.A. his first permit to access his land, valid for three months. At the end of this period, A.A. applied to renew the permit, but, as before, received no answer from

the military. HaMoked had to write the military again. More than seven months later, another hearing was held and A.A. received another three-month permit.

In October 2011, A.A. applied to renew the permit, but, again, the military did not bother answering. This time, HaMoked's letters were also of no avail, so there was no choice but to file a petition to the Supreme Court to instruct the military to respond to the application.⁶³ In December 2011, two weeks after the petition was filed, the State Attorney's Office notified HaMoked that the permit had been renewed for another three months.

What followed seems obvious. In February 2012, A.A. again tried to renew the permit and again was met with sustained silence from the military. It took two more months before he was allowed to access his land. Thus, for 18 months out of the 28-month period between early 2010 and mid-2012, the military denied A.A. access to his land – land located inside the West Bank – not because of security reasons or any other pertinent reason, but simply because of arbitrary bureaucracy. **(Case 65808)**

The Decision Process

Permit applications are decided in an internal military process at the DCOs. At this point in the process, applicants cannot present their case before the officials who make the decision. According to administrative norms, in the absence of special circumstances, a hearing should be held before a decision is made, but HaMoked's experience shows that in the vast majority of cases, the military does not hold a hearing before deciding in an application for a "seam zone" permit. This unjustified practice is highlighted by the fact that when administrative appeals are filed against rejections, the DCOs convene hearing committees which often overturn the previous decision made by the very same DCOs. It is safe to assume, that if hearings were held as part of the initial review process, rather than at the appeal stage, the applications could have been approved in the first place.

In early March 2012, N.A. filed an application to renew the permit allowing him to cultivate his farmland in the "seam zone". When he did not receive an answer for two months, HaMoked asked the military to expedite processing of the application, and was told that same day that the application had

63 HCJ 8642/11 'Alian et al. v. West Bank Military Commander (2011).

been rejected for “failing to meet criteria. Small plot of land”. N.A. had to file an administrative appeal with the DCO. At the hearing, attended by a lawyer sent by HaMoked, the DCO – the same body that reviewed the original decision – now decided that “the size of the plot was examined [...] and a decision was made to grant the applicant a permit for farming employment”. **(Case 72831)**

Classified Intelligence Information

Meeting the criteria set by the military is just a prerequisite for the application's transfer for security screening by the ISA and the Israel Police. The military is charged with balancing between the security agencies' recommendations and the rights of the applicant and deciding whether to approve the application, reject it, or, as part of its discretion, grant a permit of shorter duration. Issued permits are sometimes revoked when new incriminating or security related material crops up. Assessments that a person's entry into the “seam zone” presents a security or criminal risk are almost impossible to refute and very hard to challenge, because in most cases, the applicants themselves are never told the reason for the refusal.⁶⁴

H.Z., who lives in a village near Jenin, asked the military for a permit to participate in his daughter's wedding in the “seam zone” on June 1, 2011. The military rejected the application for “security reasons”. Two months after the wedding, H.Z. filed another application. When no response arrived, HaMoked contacted the military and was told that the application had been denied and that H.Z. could apply for a hearing. H.Z. went to the DCO, and after hours of waiting, was told by the soldiers that he was not entitled to appeal because his application had been approved and a permit had been issued and already expired (a permit H.Z. never received). The DCO soldiers refused to allow him to file a new application. In correspondence with HaMoked, the military later claimed that the permit had been issued “in error”. Prior to taking legal action, HaMoked contacted the West Bank legal advisor, whereupon, the “security reasons” vanished, and the military granted H.Z. a permit that allowed him to visit his daughter. **(Case 69624)**

B.K., a farmer, married and father of two, from a village near Jenin, had received “seam zone” permits from the military ever since the separation

64 For more on the use of classified information, see *supra* pp. 33-36.

wall cut off his home from his family's land. In 2009, the military suddenly stopped renewing the permits and did not answer B.K.'s applications. In November 2010, B.K. was summoned by the ISA to the Barta'a checkpoint, where he was questioned for four hours by an ISA agent who introduced himself as "Captain Ayub" and suggested B.K. "work" with the ISA in return for Israeli work permits for him and his family. B.K. declined. The military prevented B.K. from reaching his land in the "seam zone" for another year. In October 2011, following a letter from HaMoked, the military renewed the permit for two months only; B.K. then had to continue battling the military bureaucracy for his right to access his land. **(Case 70390)**

Appealing to the Hearing Committee

A person whose "seam zone" entry application is rejected is not automatically summoned to appear before a hearing committee; under the Standing Orders, the applicant must "request a hearing" (in other words, submit an administrative appeal). Unlike the permit application which the military insists must be submitted via the Palestinian Liaison Office, the appeal is filed directly at the Israeli DCO. However, because of additional requirements made by the military, this phase is also treacherous. Thirty such hearings took place in HaMoked's cases in 2011, and 67 in 2012.

A Palestinian who submits an appeal at the DCO does not receive an instant hearing or a hearing date, and must wait for the military's notification. In practice, most applicants do not receive a hearing-date notice and are forced to wait indefinitely, or return to the DCO to find out whether their appeal request has been processed. Occasionally, HaMoked has to contact the DCOs by phone in order to find out the appeal's status and hearing date. Needless to say, the option of contacting the military by phone is not available to Palestinians.

In November 2011, following the HCJ's instruction in its judgment in the general petitions, the military instituted timetables according to which the DCO must convene the hearing committee within a month of the appeal's submission date. This lengthy period adds considerably to the processing times in appeals and doubtfully meets the court's demand for an efficient timetable; more so, as hearings are not always scheduled within this time frame. Furthermore, even when a hearing is scheduled within a month, applicants are often not notified about it; and occasionally, it is only after

the hearing date has passed that the military's notice of the hearing date finally arrives.

On January 12, 2012, M.A. applied to renew his permit to enter the "seam zone" to cultivate his family's farmland. As no response arrived for three weeks, HaMoked contacted the military demanding expedited processing of the application. At 11:50 a.m., on February 23, 2012, HaMoked received a faxed notice from the Civil Administration public liaison officer advising – note the date – that M.A. "has been summoned for a hearing scheduled for February 23, 2012, at 10:00 a.m.". It soon came out that M.A. had never been notified about the rejection, or summoned to the hearing; he first learned about the hearing from HaMoked, which was only notified after the scheduled time of the hearing. **(Case 68686)**

The Hearing

Hearing committee sessions should be conducted by at least two military personnel, one of whom a senior DCO officer, in a serious and professional manner. The appellants may arrive with a lawyer, but the military impinges on the right to counsel by forbidding the lawyer from arguing or taking any part in the hearing. Hearing minutes are taken by soldiers, but the few that were provided to HaMoked, suggest that the soldiers note, at their discretion, just a brief and partial summary of the hearing that does not reflect all of the arguments made by the parties. Sometimes, the minutes contain incorrect information and even statements attributed to the Palestinian appellants that they did not make.

The separation wall in the Qalqiliya area cuts off M.A.'s home from his land. In 2010, following HaMoked's intervention, he began receiving temporary permits for the "seam zone". However, a new application filed on September 5, 2011, was denied, and he only found out about it a month after the fact from the Palestinian Liaison Office. That same day, M.A. went to the Israeli DCO to submit an appeal, but the soldier refused to accept it. When HaMoked inquired, a military representative said that M.A.'s permit application had not been refused and moreover, that according to military computer records, no such application had ever been submitted. M.A. had to file a new permit application.

It took another month and two letters from HaMoked for the military to proceed with processing. On November 10, 2011, a DCO soldier called M.A. and summoned him to a hearing scheduled for three days later. The hearing was held before the head of the Qalqiliya DCO only, a lieutenant colonel who speaks Arabic. At the start of the hearing, the officer showed M.A. a permit which he said had been prepared for him. He placed it on the desk and said “but first, let’s have a little chat”. He then asked M.A. for some personal details and specifics regarding the land he owned – all information the military already had – and finally picked up the permit, telling M.A. that he would not receive a permit for security reasons, which he did not specify. Thus, on top of needing a military permit to reach his own land, the military’s protracted delay and refusal, M.A. now had to suffer humiliation and disrespect from the DCO head himself. Contrary to the Standing Orders, no other soldier was present, no protocol record was made, and no confirmation of the hearing was provided.

A few days later, HaMoked petitioned the court requesting it instruct the military to renew M.A.’s permit.⁶⁵ Almost a month after the petition was filed, M.A. received a temporary permit allowing him to enter the “seam zone” and he went back to working his land. **(Case 69287)**

Waiting Time in Appeal Decisions

The Standing Orders stipulate that an appeal must be answered within a week from the date of the hearing. In practice, many of the decisions that are not given on the spot are not given within a week either, and applicants must again wait for an answer. In 2011-2012, 97 hearings were held in HaMoked’s cases, and only in 54 of them (55%) answers were given within a week of the hearing. The average response time was about 20 days.

Legal Action

In 2011-2012, HaMoked filed 76 petitions to the HCJ in matters concerning “seam zone” permit applications that were rejected or left unanswered by the military. Most of the petitions were filed on behalf of Palestinian farmers who live outside the “seam zone” and have lands trapped inside it. HaMoked argued that the military’s refusal to allow the petitioners to access their lands inside the “seam zone”, constituted a severe, unreasonable and

65 HCJ 8857/11 **al-Sheikh et al. v. West Bank Military Commander et al.** (2013)

disproportionate violation of their rights to property, freedom of occupation and freedom of movement, and was in breach of Israeli and international law and the rulings of the Israeli Supreme Court, and contrary to the state's express declarations in court and the military's orders and protocols.

In most of the petitions filed against the military's permit refusals, the petitioners ultimately receive the requested permits, whether due to a court decision or a retraction by the state once the petition was submitted. Thus, many petitions, which could have been avoided, needlessly cost significant amounts of time and money to both the court and the petitioners. As at late 2012, of the 86 concluded petitions⁶⁶ HaMoked had filed over permit refusals or non-response, only nine (10%) were withdrawn or dismissed without a permit being issued (following new petitions, permits were later issued to two of the petitioners); whereas 74 petitions (86%) ended with the petitioners receiving the requested permits.⁶⁷

In March 2012, M.B. filed an application for a permit to enter his family's farmland inside the "seam zone". When he received no answer, he went to the DCO, where he was told his application had been rejected by the ISA. M.B. applied for a hearing, and one was held in early May. Instead of stating the result, the military summoned M.B. to another hearing (a proceeding that does not appear in the Standing Orders). The second hearing resulted in a rejection due to the ISA's position.

In July 2012, HaMoked petitioned the HCJ against the military's refusal to allow M.B. to cultivate the family's land.⁶⁸ In its response, the state informed that "On an *ex gratia* basis, an employment permit for the 'seam zone' may be issued to the petitioner". **(Case 72920)**

The Supreme Court justices have also noted the problematic practices of the military. Thus, for example, wrote Supreme Court Justice Rubinstein in a decision to grant a motion to cancel a hearing following the state's announcement – one day ahead of the scheduled hearing – that the petitioners would receive permits:

66 Including 15 petitions filed back in 2010.

67 Of the remaining petitions, two were deleted after it was determined that the petitioners would get a second military hearing on their appeal; another petition was withdrawn after it became clear that following the wall's altered route, the petitioner's plot was no longer inside the "seam zone".

68 HCJ 5515/12 **Bdir et al. v. West Bank Military Commander et al.** (2013).

It is a great pity that a matter that could have been resolved without a petition and without wasting my secretarial and judicial time and all that this entails – is resolved at the very last moment before the hearing. I request that this comment be brought to the attention of the relevant officials, inasmuch as they care, and I hope that they do.⁶⁹

Justice Rubinstein focuses on the cost incurred by the court due to the military's conduct, but it is important to recall that the main victims remain all those petitioners who are entitled to reach their lands but must wait for extended periods to get permits to do so, as well as the numerous others who lack the knowledge, time, strength or wherewithal to fight the draconian permit-regime apparatus through petitions to the Israeli court; all the while, more often than not, the state itself does not defend the military's rejection or lack of response and approves the permit even before the matter is heard by the court.

Permits Types, Restrictions and Crossing Conditions

“Permanent Resident in the Seam Zone”

In July 2012, some 7,500 Palestinian residents were living in 12 communities situated in the areas declared as the “seam zone”.⁷⁰ The permit regime forbids Palestinians who have been living in the area for generations from living on in their homes and on their land, unless they have a military-issued permit; and although it is titled a “permanent-resident certificate”, like all other “seam zone” permits, it is also temporary. Still, the case of “permanent residents in the seam zone” is unlike that of those who seek access for specific purposes (agriculture, employment, personal needs) – the Standing Orders expressly stipulate that negative security information cannot justify refusing to issue a permit to “seam-zone permanent residents”.

When a person applies for a “permanent-resident certificate” the military checks if the applicant's center-of-life is indeed in the area defined as the “seam zone”. To prove center-of-life, an applicant must produce many different

69 HCJ 5205/11 **Kabha et al. v. West Bank Military Commander et al.** (2012), Decision, July 20, 2011; emphasis in original.

70 See United Nations Office for the Coordinator of Humanitarian Affairs (OCHA), occupied Palestinian territories, **The Humanitarian Impact of the Barrier**, July 2012.

documents; the DCO's comprehensive examination sometimes also includes house-calls intended to establish beyond doubt that the applicant really does live at home. Even those only wish to renew their permit undergo exhaustive examination, during which military records are checked to see whether the applicants sleep in the "seam zone" and remain there over time.

This intrusive monitoring of the movements of Palestinians living in the "seam zone" has severe ramifications. The area has been transformed into a kind of cage that traps the residents, who are afraid that if they leave, they might not be allowed back. Israel's permit regime in the "seam zone" has isolated these residents from the rest of the West Bank population, and transformed them into a distinct group, stranded in their villages, unable to leave.

S.K. and R.K., a couple from the Jenin area, were married in November 2009. Their childhood homes are only a few hundred meters apart, but they are separated by the Israeli separation wall. The couple intended to make their new home in the wife's village in the "seam zone", so immediately after the wedding, the husband updated his address in the population registry to his wife's address and applied for a "new seam-zone permanent-resident certificate". But the military rejected the application because the applicant "is not a permanent resident" – in other words, he was denied a permit because he did not have one. A second application received the same answer.

At the same time, in order to see his new wife, the husband requested a permit to visit the "seam zone". In February 2010, the military issued him a "personal-needs permit" which allowed him to visit his wife for just three days over a period of three months, and only during the daytime.

In July 2010, HaMoked filed a third application for a "new seam-zone permanent-resident certificate". Following a delay in processing, HaMoked phoned the Israeli coordination officer at the Jenin DCO, only to be told by the latter: "I know him... It's not urgent. He's not living on the streets. He can wait".

When no answer came for three weeks, HaMoked petitioned the Supreme Court to instruct the military to issue a "new seam-zone resident certificate" for R.K.⁷¹ In the petition, HaMoked argued that preventing the couple from living together was a gross violation of their right to family life and the

71 HCJ 6158/10 **Kabha et al. v. West Bank Military Commander et al.** (2012).

petitioner's right to freedom of movement in his country. In October 2010, ten months after the first application was filed, the husband received a six-month entry permit for the "seam zone", as the first stage in the graduated process toward becoming a "seam-zone permanent resident". Six months later, after all the different documents required were filed once again, the military renewed the permit for six more months. But the legal-bureaucratic battle overwhelmed the couple: as of the summer of 2012, they have been living east of the separation wall, in the husband's home, and the wife divides her time between her home in the husband's village and her parents' home in the "seam zone". **(Case 65164)**

Agricultural Permits

In 1968, following the occupation, Israel stopped the "land settlement" process of registering plots of land in the central land registry, which was carried out during Ottoman rule, the British Mandate and Jordanian rule. By then, only one third of West Bank lands had been registered in the land registry, mostly lands located outside the area now defined as the "seam zone".⁷² In fact, registered ownership is all but non-existent in the "seam zone", other than in isolated cases of land registered in the land registry, or cases of landowners still alive today who were registered prior to 1967 on property tax forms (known under Ottoman rule as *ikhraj qayd*).⁷³

Agriculture in the West Bank largely follows a traditional pattern of joint cultivation of the family plot by members of the extended family. Thus, most farmers are relatives of the "right holders" in the property rather than direct "right holders" themselves. The military considers them to be "hired labor" rather than "farmers"; thus, they must apply for an "employment permit" and are often required to attach an employment contract between them and their "employer", who is in fact their relative, and a declaration from the "employer" of the intent to hire them. Although under the Standing Orders, "employment permits" are valid for six months, many are issued for much shorter periods.

72 In theory, the law currently in effect in the OPT allows for "first registration" of land, a process similar to "land settlement". However, this process is long, requires many documents, and is costly for the farmer who must pay for it himself (unlike land settlement which was financed by the state); moreover, it applies only to small plots of land. On the limitations inherent in this process, see B'Tselem, **Under the Guise of Legality – Israel's Declarations of State Land in the West Bank**, February 2012, p. 34.

73 For more details on land ownership in the West Bank, see HaMoked, **The Permit Regime**, pp. 65-66.

M.G., a Palestinian farmer, had been receiving military issued permits to work his family's farmland in the "seam zone". But in 2011, the applications he filed to have his permit renewed, were either unanswered or rejected by the military. Once HaMoked petitioned the Supreme Court,⁷⁴ the State Attorney's Office requested that M.G. file another application and attach, as per the Standing Orders, an employment contract and the employer's undertaking of lawful employment in the cited sector only. In practice, the requirement meant that M.G.'s 76-year-old grandmother was to attest that she had signed an employment contract with her grandson and that they had an employer-employee relationship. Only after HaMoked clarified to the State Attorney's Office that the grandmother-grandchild bond "was even stronger than an employer-employee relationship" did the state retract its demand. **(Case 68108)**

Since the relatives who do not have property rights in their family's farmland are considered by the military to be "laborers", they can only reach the family's land when the military considers it essential, based on various factors, among them, the type of crop grown there and the season. For this purpose, the military has prepared a table that lists the various crops and their seasons, based which "laborers" are allowed to reach the land in the "seam zone". Olives, for example, justify entry for farming only between October and March. In HaMoked's experience, during the olive harvest, which takes place from October to December, the military tends to allow many Palestinian farmers to reach their family plots using "employment permits", but not during the rest of the year. The military presumes that outside the harvest season, work should be done only by those who have formal rights to the land even if they cannot do so due to their age, health or inability to devote their time to farming. This policy has had a severe impact on the scope of agricultural production in the "seam zone". A 2011 UN report estimated that the olive tree yield in plots located west of the separation wall was 60% lower than the yield in plots located on the other side of the wall, which were accessible to farmers year-round.⁷⁵

74 HCJ 4035/11 **Ghanem et al. v. West Bank Military Commander et al.** (2012).

75 OCHA, **The Monthly Humanitarian Monitor**, December 2011, p. 8.

M.A., age 41, married and father of six, lives in the village of a-Zawiya near Tulkarm. Until the separation wall was built, M.A. and his relatives worked their family's land, registered to his late grandfather, where they grew wheat and olives. Initially, after the wall was built, trapping the farmland in the "seam zone", the military allowed village residents to cross the wall and work their lands, provided they presented their identity cards. In 2009, the military began requiring permits for crossing the wall. M.A. applied repeatedly for a "seam zone" permit but received no written answer, and the same went for HaMoked's letters, sent on his behalf. On July 6, 2011, HaMoked petitioned the Supreme Court to instruct the military to issue M.A. a permit that would allow him to continue working his family's land.⁷⁶ To its response to the petition, the State Attorney's Office attached a letter addressed to HaMoked – a letter that had never arrived – which stated that "Your client's application for a permit to enter the seam zone for employment purposes has been denied because it has been determined there was no need for him to have a permit." – determined based on the "Agricultural Staff Officer Table" and on the fact that four of M.A.'s siblings had permits.

The court ruled that the state's refusal to issue M.A. a permit to enter his land "cannot be upheld". Five months after the petition was filed, the State Attorney's Office announced that M.A. would receive a permit to access his family's land. **(Case 68290)**

Farmers who lease their farmland are in a worse position. Military orders contain no specific provisions on such lessees. In January 2012, following HaMoked's petition demanding the military grant "seam zone" permits to a Palestinian who was leasing farmland, the state declared that it would introduce into the Standing Orders a "section that will specifically regulate the type and manner of issuance of a seam zone entry permit for residents leasing farmland in the seam zone".⁷⁷

Limited Permit Validity Period

Since permit renewal is a long and complicated process which requires a significant amount of time, and often also money, the validity period of the

76 HCJ 5078/11 **Abu Zer et al. v. West Bank Military Commander et al.** (2011).

77 See supra note 62. The State undertook to introduce the new section by September 1, 2012, but as at June 2013, the new section has not yet been introduced.

permit is extremely importance. The longer the permits' validity, the longer it is until their holders must file a new application, with all the attendant difficulties, and the better is their ability to make (relatively) long term plans, or maintain sustained cultivation of farmlands.

The maximum validity period of each type of permit is stipulated in the Standing Orders, but, in practice, most are given for shorter durations. The military uses various pretexts to reduce permit validity periods: sometimes the DCO decides that the shorter validity satisfies the applicant's "needs"; sometimes, it reflects a "balance" between the "need" for the permit and classified intelligence information about the applicant. Sometimes it is done in error, but mostly, the reason seems to be sheer arbitrariness. Whatever the reason, over the years, fewer and fewer long-term permits have been issued,⁷⁸ so that even those who receive permits must soon re-apply for renewal.

The Israeli separation wall has left R.Y.'s home cut off from his olive grove. The military issued R.Y. "seam zone" entry permits valid for only three months, forcing him to renew them often. In November 2012, HaMoked requested the military to issue R.Y. a permit of longer validity. Just two days later, the military replied that R.Y.'s permit would be renewed for a period of 14 months. **(Case 72492)**

Gate and Crossing-Point Restrictions

In February 2004, in the proceedings held in ACRI's general petition against the permit regime, the State Attorney's Office told the Supreme Court that Palestinian farmers would be free to pass through the "crossings that are open 24 hours-a-day, seven-days-a-week, in case they wish to enter or leave the seam zone to cultivate their land".⁷⁹ This pledge has remained a dead letter.

Traveling between the "seam zone" and the rest of the West Bank is done via dozens of different types of gates installed in the wall. By no coincidence, the only two gates that operate continuously throughout the day and week, are the gates that also serve Israelis, especially settlers. Most gates are opened only briefly, two or three times a day. The restricted opening hours hamper access to the "seam zone" for work, and especially harm farmers: farmers who miss the opening times cannot reach their land on that day; those who

78 For more details, see HaMoked, **The Permit Regime**, pp. 82-84.

79 See *supra* note 58, Response on behalf of the State, February 4, 2004, §36.

do, are trapped in the “seam zone” until the gate reopens. Inevitably, the restricted opening hours also affect the ability to lead normal lives in the “seam zone” – not least, access to hospitals and emergency services.

In theory, the military is supposed to quickly open the gates in case of an emergency, but in practice, the soldiers' inaccessibility and the bureaucratic complexity prevent swift response, which could result in severe harm to life and property. Crossing the wall is not just limited to certain times of day, but also to certain gates. Every permit specifies the name of a single gate, the one closest to the community in which the applicant lives. The permit holder may cross the separation wall only through this gate. Individuals who have several “needs” in various parts of the “seam zone” must file a special application for two different permits allowing them to cross at two different gates. In response to the general petitions, the state announced that when the gate closest to the applicant's community is not operated on a 24-hour basis, another gate that allows daily access would be listed as well.⁸⁰ As of June 2013, this pledge has not been implemented.

On June 6, 2012, at 1:00 p.m., a fire broke out in the fields of the village of Aqqabah that are trapped inside the “seam zone”. Palestinian firefighters who arrived at the separation wall, found the gate locked. The farmers contacted the Palestinian Liaison Office, but waited in vain for another hour. HaMoked's emergency hotline asked the head of the Tulkarm DCO to open the gate immediately. It took another 50 minutes for the soldiers to open the gate and allow the firefighters to reach the scene of the fire.

(Case E. 8537)

On October 20, 2011, M.T., a 70-year-old farmer, entered the “seam zone” through a gate in the separation wall in order to harvest his olive trees. After a few hours of work, one of his eyes was injured; he was bleeding and in severe pain. Since the military opens the gate near M.T.'s lands for a few minutes only, three times a day, HaMoked's emergency hotline urgently contacted the military's “humanitarian desk”.⁸¹ It took an hour before the

80 See *supra* note 57, Response on behalf of the State, November 13, 2006, §48.

81 The “humanitarian desk” (or “humanitarian hotline”) is a military office operating under the Civil Administration, established during the second intifada to provide emergency assistance to OPT residents.

soldiers opened the gate to allow M.T. to seek medical assistance.

(Case E. 8520)

In the judgment issued in the general petitions, the HCJ ruled that holders of “permanent-resident certificates” are entitled to enter and leave the “seam zone” through any gate. The rationale is that if these individuals are allowed to be present in their homes beyond the wall, there is no reason to restrict them to a specific gate; yet, though this reasoning holds true for all permit holders, the court applied it only to “permanent residents”. In any event, it seems that the military does not uphold even this court instruction: as of June 2013, “permanent residents”, like all others, may enter or leave the “seam zone”, only at the gate listed on their permit.

Crossing Conditions

As a rule, a permit to enter the “seam zone” allows crossing on foot only, without vehicles. Crossing in a vehicle requires a specific application (which may be filed separately or together with the application for entry), and the permit can only be used by the owner of the vehicle. Military orders do not require a special permit for bringing agricultural equipment and commercial goods into the “seam zone”, but many Palestinians who have contacted HaMoked reported difficulties in bringing such cargo through the gates due to arbitrary demands and requirements made by the soldiers on duty. They are often told they cannot bring their goods into the “seam zone” because the concern is that they plan to take the merchandise into Israel and compete with Israeli products.

Y.W., a 70-year-old farmer from the village of Jayyus near Qalqiliya, owns land that is trapped inside the “seam zone”, and requires permits from the military to access his own land. In November 2012, Y.W. arrived at the military DCO, asking to reach his land in his car because of his medical condition. The soldier at the DCO reception window began registering the car, but then a senior DCO officer arrived and told the soldier to stop. The officer told Y.W. that he would not be allowed to enter the “seam zone” by car, and there was no point in applying, adding that Y.W. would be “better off buying a donkey”. HaMoked contacted the West Bank legal advisor, demanding he allow Y.W. to access his land in his car and look into the DCO officer's arbitrary and disrespectful conduct. **(Case 75684)**

S.A., a farmer from the village of Qaffin, wanted to bring 30 olive saplings to his farmland trapped in the “seam zone”. At 6:00 a.m. on November 16, 2011, he arrived at the gate listed on his permit, but the soldiers refused to let him bring in the saplings. HaMoked's emergency hotline contacted the military's “humanitarian desk” and was told that S.A. was entitled to bring the saplings into the “seam zone” without prior coordination.

Because the military opens this particular gate for only one hour, three days a week, S.A. had to wait. But when he returned two days later, the soldiers again refused to let him bring in the saplings. S.A. tried his luck for the third time two days later. This time, just as arbitrarily, the soldiers allowed him to bring the saplings to his plot. **(Case E. 8527)**

A person seeking to travel through any of the gates must undergo a security check. Palestinians living west of the wall have complained to HaMoked about lengthy checks and delays lasting up to three hours. Many reported being strip searched. Searches and delays routinely take place at every gate for no apparent reason. In all of HaMoked's petitions regarding the security checks performed at the separation wall gates, the state declared that the petitioners would henceforth be checked using ordinary methods. A change was indeed felt following these announcements. Yet, this suggests that there was no justification for the delays and harassment in the first place, certainly no security justification.

A.S., a father of eight, lives near Qalqiliya in a village trapped inside the “seam zone”, and receives two-year “permanent-resident” permits from the military. In March 2012, security forces began delaying S.A. and subjecting him to humiliating treatment whenever he sought to cross the checkpoint in the wall separating his home from the rest of the West Bank. A.S., who drives his young children to their schools on the other side of the wall, was detained at the checkpoint for up to three hours each time, sometimes more than once a day. He was frisked, and sometimes strip searched, time and again. HaMoked contacted the military with an urgent demand to put an end to this harassment. A few weeks later, the Ministry of Defence responded briefly that “The system has received instructions from the ISA to perform an ordinary search”. As of June 2013, the abuse has stopped and S.A. crosses the checkpoint after an ordinary security check. **(Case 72491)**

Checkpoints and Roadblocks

Palestinians have a limited ability to travel through the West Bank. Movement is restricted, among other things, by checkpoints and roadblocks of various kinds. According to UN figures, in June 2011, 522 different barriers blocked Palestinian movement within the West Bank; 87 of them staffed by soldiers, either permanently or as needed. In June 2012, the number of barriers rose to 542, of them, 86 staffed. These figures do not include separation-wall checkpoints, or flying checkpoints: between June 2010 and the end of June 2011, 490 flying checkpoints were set up in the West Bank every month; and about 410 every month from July 2011 to July 2012.⁸² In addition, according to B'Tselem figures, as of February 2013, more than 67 kilometers of West Bank roads have been allocated for exclusive (or near exclusive) use by Israelis, and prohibited for travel by Palestinians.⁸³

HaMoked provides assistance to Palestinians who encounter difficulties in traveling in the West Bank. For example, in 2012, legal proceedings concluded in a petition filed by HaMoked to have a permanent roadblock removed.

The two parts of the village of Shufa in the Tulkarm district are connected by a short stretch of road, intersected by the access road to the settlement of Avne Hefetz. For years, the Israeli military blocked this road with two dirt obstructions, effectively turning it into a Jews-only road, used exclusively by settlers from Avne Hefetz and soldiers from the nearby military base. As a result, the car ride from one side of Shufa to the other went from being one kilometer long to 25. The military also blocked Shufa's north-eastern exit, which leads to the village's agricultural land.

In August 2010, HaMoked petitioned the HCJ on behalf of Shufa residents, to instruct the military to remove the roadblocks.⁸⁴ In February 2011, in response to the petition, the state said that "the roadblock was erected due to clear security considerations". However, in early August 2011, while the parties were awaiting the hearing, the military removed the roadblock and cars were once again allowed to travel the short distance between the two parts of the village without security checks or obstructions. But a month

82 OCHA, **West Bank Movement and Access Update**, August 2011, p. 6; OCHA, **West Bank Movement and Access Update**, September 2012, p. 32.

83 See http://www.btselem.org/sites/default/files2/forbidden_roads_table_eng.pdf.

84 HCJ 6115/10 **Head of Shufa Local Council et al. v. West Bank Military Commander et al.** (2012).

later, the military blocked the road once again. The state claimed that the block had been removed only for the month of Ramadan and put back when it ended. HaMoked told the court that the roadblock's removal for an entire month proved that it did not serve a security purpose. Despite this, on February 29, 2012, the HCJ decided that the road connecting the two parts of the village should remain blocked.

One month after the judgment was issued, on March 29, 2012, the military removed the roadblock without explanations or any reference to "clear security considerations". **(Case 64082)**

The Emergency Hotline and Real-Time Assistance

In addition to its routine work, HaMoked also operates an emergency call center which offers real-time assistance.

The separation wall cuts off the village of Arab Abu Fardah from the rest of the West Bank. On February 24, 2011, S.A., who lives in the village and has a "seam-zone permanent resident" permit, arrived at the checkpoint in the separation wall in order to take two cows to his house. The soldiers did not let him through and told him that livestock could be brought through only on Sundays, Mondays and Thursdays, following advance coordination and subject to written veterinary approval.

S.A. doubled back, obtained the required documentation, arranged the crossing, and returned with the cows on the "right" day; still, HaMoked's emergency hotline had to intervene, and S.A. had to wait for three hours until the soldiers let him through with the cows.

Four days later, nothing changed: again, the soldiers did not let S.A. cross, HaMoked had to intervene again, and four more hours of the Palestinian farmer's time were wasted until he could get home.

Four months later, it turned out that the military had tightened the restrictions: on yet another occasion, S.A. was detained by soldiers when he tried to bring cows through the checkpoint. When HaMoked inquired, it emerged that now livestock could be brought through only once a week, on Tuesdays. **(Cases E. 8493, E. 8494, E. 8497, E. 8509)**

On March 14, 2011, a military foot patrol stopped three Palestinian farmers who were going home at the end of a workday on their farmland near

Nablus. Two hours later, the three were still detained, so they called HaMoked's emergency hotline. HaMoked had to make dozens of phone calls to various military officials to get the soldiers to allow the three to continue on their way, after they were detained for more than five hours for no reason. **(Case E. 8500)**



Residency in the Occupied Palestinian Territories

[W]e have no doubt in our hearts that the restrictive policy declared by the respondents [the State] has a particularly harsh result for residents who are not involved in terrorist activities and are forced to be disconnected from their relatives. [...] we clearly understand that this policy separates – and sometimes artificially – between Palestinians who live in the two areas and who wish to maintain or form normal family and kinship relations.

Dorit Beinisch, Supreme Court President⁸⁵

Family Unification and Child Registration

The right to family life is a fundamental human right. The Israeli Supreme Court has acknowledged that this right encompasses a person's right to build a family in his or her country with a foreign spouse and their shared children.⁸⁶ However, Israel's conduct suggests that where Palestinian residents of the Occupied Palestinian Territories (OPT)⁸⁷ are concerned, the right is only

85 HCJ 2088/10 **HaMoked: Center for the Defence of the Individual et al. v. West Bank Military Commander** (2012), Judgment, May 24, 2012, §19.

86 See HCJ 7052/03 **Adalah v. Minister of Interior et al.** (2006).

87 All occupied Palestinian territories except for East Jerusalem, discussed in the next chapter.

available if it promotes Palestinian emigration outside the OPT, whereas immigration of their relatives into the OPT is considered a “demographic threat”.

With the outbreak of the second intifada in 2000, Israel froze all OPT residency processes, including family unification and child registration. Since then, for nearly 13 years, Israel has also been preventing Palestinians' relatives living abroad from visiting the OPT. In 2005, following HaMoked's intense legal efforts, the military lifted the freeze on the registration of children in the OPT population registry, and began implementing a relatively routine procedure for granting OPT visitor visas for the registration of children under age 16.⁸⁸ In 2008, after filing dozens of petitions, HaMoked also achieved a breakthrough relating to family unification.⁸⁹ In January of that year, the state informed the court that it would approve 12,000 applications for family unification with foreign spouses (namely, non-OPT residents), as a diplomatic gesture to the Abu Mazen government during negotiations. In October, ahead of the joint hearing of several of HaMoked's petitions, the state announced it had raised the quota to 50,000. Included in the gesture, were all of the families on whose behalf HaMoked had petitioned – all of them with spouses who were living in the OPT pursuant to visitor visas; the “gesture” did not include applications by spouses who were away from the OPT at the time, or any new applications. According to HaMoked's information, in practice, some 35,000 people received status in the OPT as part of the Abu Mazen “gesture” – about 23,000 in the West Bank and 12,000 in the Gaza Strip. In 2009, following the Israeli elections and the change of prime minister and government, Israel stopped approving family-unification applications and reinstated the freeze policy.

More than three years later, in June 2012, the military informed HaMoked that the Southern Command had recommended approving 4,818 applications for family unification with foreign spouses in the Gaza Strip as part of “easing measures for the month of Ramadan”. The military also said that 11,245 applications had already been approved as part of the “gesture”. HaMoked asked the military for clarifications on these figures, but received no response.

88 A visitor visa is in essence a tourist visa issued exclusively for entry to the OPT. For more details, see joint report by HaMoked and B'Tselem, **Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories**, July 2006.

89 For more details, see HaMoked, **Activity Report 2007**, pp. 144-145 of the online version, pp. 114-121 of the printed version; HaMoked, **Activity Report 2008-2010**, pp. 64-70.

The family-unification approvals that were granted solved the residency issues of many, but the general problem remains: the OPT is still a closed military zone, off-limits to foreigners. OPT residents married to non-residents who are not present in the OPT still have no remedy, and their right to conduct their family life in their own country is still denied. Moreover, isolated diplomatic gestures cannot substitute a regular mechanism for processing applications to visit and settle in the OPT that is guided by the law and the principle of respect for human rights, rather than shifting political interests. The family life of OPT residents continues to be used as a political bargaining chip. **(Case 31450)**

The Right to Choose One's Place of Residence

As part of Israel's separation policy, aimed at disjoining the Gaza Strip and the West Bank, Palestinian residents of the OPT are sorted according to their registered addresses in the population registry into "West Bankers" and "Gazans", that Israel treats as two entirely separate groups. Thus, registration in the West Bank or Gaza is viewed as a type of nationality, and relocation from one part of the OPT to the other is perceived in terms of immigration policy.⁹⁰

This policy is one-directional: the military approves relocation only from the West Bank to Gaza, and only if the applicants undertake to "settle" there permanently, whereas, applications seeking relocation from the Gaza Strip to the West Bank are mostly rejected outright. Moreover, in recent years, Palestinians living in the West Bank with a Gaza address are treated as illegal aliens in their own homes – unless they have a special permit – and as such, face possible arrest and expulsion as if they were infiltrators. This policy has been implemented gradually, with the legal justifications and attendant legislative tools always following implementation on the ground. The process has not yet been completed and could have a disastrous effect on the lives of hundreds of thousands of Palestinians.⁹¹

HaMoked processed 86 individual cases relating to this issue in 2011, and 85 cases in 2012; 31 of them were opened in these two years. Additionally, in

90 For more details, see *supra* pp. 12-18.

91 For more on the requirement for "stay-permits" and forcible transfers from the West Bank to the Gaza Strip, see HaMoked, **Activity Report 2008-2010**, pp. 90-100.

2012, judgments were delivered in two general petitions HaMoked had filed in 2010 on issues with broad implications for Palestinian residency in the OPT. One petition addressed the “settlement procedure”, affecting Palestinians who live in the Gaza Strip and wish to relocate to the West Bank; the other concerned address updates for Palestinians living in the West Bank but listed with Gaza addresses in Israel's copy of the OPT population registry.

“The Settlement Procedure”

In 2009, the military published a procedure that allows Palestinians from the Gaza Strip to relocate to and “settle” in the West Bank only in extreme and exceptional humanitarian cases, and provided they meet a string of highly stringent prerequisites.⁹² Thus, for example, the procedure precludes a three-year-old who lives in the Gaza Strip with one parent from moving to live with the other parent in the West Bank, unless the Gaza Strip parent dies, and even then, only if there is no other relative who can care for the child in the Gaza Strip. Statistics provided by the military support the claim that the procedure is impracticable: according to official figures, up until December 2012, Israel had not approved a single relocation from the Gaza Strip and “settlement” in the West Bank under the procedure.⁹³

In March 2010, HaMoked, with 12 other human rights organizations, petitioned the High Court of Justice (HCJ) demanding to revoke this procedure, known as the “settlement procedure”.⁹⁴ In the petition, HaMoked argued that in this procedure, Israel rendered the term “humanitarian” meaningless and effectively revoked the right to family life of Palestinians from the Gaza Strip and the West Bank. HaMoked added that the procedure, which violates a long list of fundamental rights and is entirely contrary to both Israeli and international law, was another facet of Israel's policy of consolidating the separation between the West Bank and the Gaza Strip, and that it was not created for security reasons, but for political ones.⁹⁵

92 English translation of the procedure available at:
<http://www.hamoked.org/Document.aspx?dID=Documents1234>.

93 Response of the Spokesperson of the Coordinator of Government Activities in the Territories to Gisha's freedom-of-information application, December 2, 2012, §7d.

94 See *supra* note 85.

95 For more on the “settlement procedure” and what it entails, see HaMoked, **Activity Report 2008-2010**, pp. 87-89.

In May 2012, the HCJ dismissed the petition, subject to comments regarding the procedure and its implementation. The HCJ held that employing a restrictive policy was in itself reasonable, but that the military should use discretion and act to expand the criteria for relocation from the Gaza Strip to the West Bank and mitigate the injury to Palestinians' rights. The court noted that, "the restrictive policy [...] has a particularly harsh result for residents who are not involved in terrorist activities and are forced to be separated from their relatives"; and that "this policy separates – sometimes artificially – between Palestinians who live in the two areas and wish to maintain or form normal family and kinship relations". The court ruled that movement from the Gaza Strip to the West Bank should not be completely blocked and that Israel's practice of limiting passage to a minimal number of "humanitarian exceptions", was "highly restrictive, and in certain circumstances, overly rigid". The court added that the military should not automatically refuse relocation applications by married couples with one spouse living in the Gaza Strip and the other in the West Bank, but should rather examine each application on its merits, taking into consideration the overall circumstances of the couple in question. **(Case 64709)**

When the judgment in the general petition was delivered, HaMoked had several pending petitions regarding the relocation of spouses from the Gaza Strip in order to unite with their partners in the West Bank. In February 2013, the state announced in one of these petitions that the relevant officials were "currently reviewing the judgment that was handed down in the general petition and examining the possibilities for revising the procedure for handling settlement applications. [...] Once the review is completed, and according to its conclusions, a decision will be made about processing individual cases."⁹⁶ However, by June 2013, more than a year from the judgment in the general petition – in which the court recommended that the military amend the procedure – no amendments had been made. Palestinians' right to family life can wait.

S.A and Y.A. were married in the Gaza Strip in 2005. Both are residents of the OPT, and have the same ID cards; except that S.A.'s card states her address is in Gaza, whereas Y.A.'s states his address is in the West Bank.

96 HCJ 1891/10 **Jarb'u et al. v. West Bank Military Commander et al.**, Preliminary Response on behalf of the Respondents, February 18, 2013.

After living in the Gaza Strip for a few months, Y.A. had to return to the West Bank for his work, before the birth of their first son in 2006. The couple filed a number of applications to allow the family to reunite in the West Bank, but the military refused them. In March 2010, in response to HaMoked's inquiry on behalf of the family, the military claimed that the application for "a family visit" had been denied because it "fails to meet the criteria"; note, the couple never sought a "family visit" when they applied.

In February 2011, HaMoked petitioned the HCJ demanding, based on Israeli and international law, to allow the couple and their child to exercise their right to family life.⁹⁷ The court held off hearing the petition pending the delivery of a judgment in the general petition on the "settlement procedure". Following the judgment in the general petition, in June 2012, HaMoked asked the State Attorney's Office to reconsider the family's unification in the West Bank in view of the court's comments in the judgment. In June 2013, more than a year after the judgment in the general petition, the state's position had still not arrived and the petition was still pending.

Y.A. met his firstborn son for the first time in 2010, when the boy was four years old. This was the one time in six years that Israel allowed the couple to meet in the Gaza Strip. In 2011, their second son was born. At the time of writing, the child is two years old. He has never met his father. **(Case 64568)**

Change of Address between the Gaza Strip and the West Bank

In recent years, thousands of Palestinians have been living under the imminent threat of expulsion from their homes. These are mostly OPT residents who had moved from the Gaza Strip to the West Bank, made a home there, started families and live their lives there. Others were born in the West Bank and have lived there all their lives, but are registered with a Gaza address because of their parents' original address.

The population registry of the OPT includes both the Gaza Strip and the West Bank. In the Interim Agreement between Israel and the Palestinian Authority (PA) (the Oslo Accord), the authority to manage the population registry was transferred to the PA. The PA was to update addresses and retroactively notify

97 HCJ 1333/11 **Abu Shitah et al. v. West Bank Military Commander et al.**

Israel – which keeps a copy of the OPT population registry – of the changes. However, in 2000, Israel stopped updating the addresses of Palestinians in its copy of the population registry and directed the military to rely exclusively on the outdated information. In June 2010, the military provided HaMoked with statistics showing there were 34,681 Palestinians listed with Gaza addresses in Israel's copy of the population registry who were living in the West Bank.⁹⁸

Over the years, Israel's outdated copy of the OPT population registry has caused many problems to Palestinians in encounters with occupation forces, particularly at border crossings and checkpoints; and, as stated, Israel has progressively toughened its policy toward those who are left with an incorrect registered address in the outdated copy. Thus, the military considers tens of thousands of Palestinians to be “illegal aliens” in their own homes, and forcibly transfers Palestinians from their West Bank homes to the Gaza Strip every year.

In November 2009, in proceedings in one of HaMoked's individual petitions, the military pledged it would not forcibly transfer to Gaza Palestinians still registered there who entered the West Bank before the outbreak of the second intifada in October 2000.⁹⁹ However, Israel still refuses to update their addresses in its copy of the population registry.

In May 2010, HaMoked petitioned the HCJ with 15 other human rights organizations, demanding Israel be instructed to update its copy of the OPT population registry and desist from forcibly removing Palestinians from the West Bank to the Gaza Strip based on addresses listed in its outdated copy.¹⁰⁰ HaMoked argued that in denying people's right to freely choose where to live in their own country, Israel was violating both Israeli and international law.



Forcible Transfer in International Law

In 2011, as part of the general petition on updating Israel's copy of the OPT population registry, HaMoked submitted two opinions by renowned experts on international law, analyzing Israel's policy and

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- 98 English translation available at: <http://www.hamoked.org/Documents.aspx?dID=Documents1223>.
- 99 HCJ 6685/09 **Kahouji et al. v. West Bank Military Commander** (2012), Response on behalf of the Respondent, November 18, 2009, §28.
- 100 HCJ 4019/10 **HaMoked: Center for the Defence of the Individual v. West Bank Military Commander** (2013).

pointing to the overt illegality of the military's conduct.¹⁰¹ Dr. Noam Lubell, a lecturer in international human rights law at the National University of Ireland, held that according to international law, Palestinians living in the West Bank are protected persons in an occupied territory and may not be forcibly removed either inside the occupied territory or outside it, regardless of their registered address. Dr. Lubell added that the forcible transfer of a protected person is a grave breach of the Fourth Geneva Convention and may give rise to criminal liability and a duty to prosecute the perpetrator. In the other brief, Dr. Yutaka Arai, a reader in international law at the University of Kent and a world-renowned expert on humanitarian law, particularly the law of occupation, demonstrated that the forcible transfer of Palestinians from the West Bank to the Gaza Strip contravenes international law, is considered a grave breach thereof, and may also amount to a war crime carrying criminal liability. Dr. Arai pointed to Israel's obligation to update its copy of the OPT population registry and emphasized that the right of protected persons to continue living in their country is conferred by international law, and cannot be denied through legislation enacted by the occupying power.

In March 2011, the State Attorney's Office notified the court that "as part of a political gesture extended by the Government of Israel [...], it has been decided to allow the settlement, and hence, the address change of 5,000 Palestinians whose registered address is in the Gaza Strip." Therefore, the state argued, the petition was "no longer relevant". HaMoked refused to withdraw the petition, arguing that the "gesture" would provide relief to only a small part of the population discussed in the petition and recalled that changing the addresses of OPT residents was in no way a "gesture" but rather a duty incumbent upon Israel, and that any political or diplomatic considerations in this regard were inherently extraneous and unacceptable.

In May 2012, after lengthy hearings in the petition, the court issued an *order nisi* instructing the state to explain why it would not apply its policy of not expelling Palestinians who entered the West Bank prior to October 2000 also to those who arrived there before the disengagement from Gaza in September 2005. Five months later, the state announced it accepted the

101 Documents available at: <http://www.hamoked.org.il/files/2011/112452.pdf>,
<http://www.hamoked.org.il/files/2011/112453.pdf>.

court's position and that henceforward, no Palestinian still registered in the Gaza Strip who had moved to the West Bank before September 2005 would be forcibly transferred to Gaza. HaMoked insisted that Israel should do more than pledge not to remove these individuals from their homes – it must also change their addresses in its copy of the population registry, given that these tens of thousands of people were being detained and interrogated every time they crossed one of the many checkpoints in the West Bank, and had to submit a special application proving “humanitarian need” every time they wished to travel abroad, and another application in order for the military to allow them to return to the West Bank. At a hearing held in April 2013, HaMoked withdrew the petition after the court advised the state to consider including in the revised procedure¹⁰² mitigating measures for Palestinians who moved before September 2005 and wish to change their address from Gaza to the West Bank. HaMoked retained the right to argue its case once the new procedure was published. **(Case 65425)**

Despite HaMoked's achievements in the general petition, tens of thousands of OPT residents continue to live in the West Bank while registered with a Gaza address in Israel's copy of the population registry, without any assurance that the military will not expel them, suddenly and indefinitely, from their homes to the Gaza Strip.

F.M. has been living in the West Bank with his family since the age of three. In April 2011, when he was 16, he got his first identity card. To his surprise, the card listed “Khan Yunis-Gaza” as his official address, and a PA official told him it was because his birth certificate was issued in the Gaza Strip. A few days later, F.M. asked the Palestinian Ministry of Interior to deliver to the Israeli military commander a notice of change of address with his correct address in the West Bank. Later in response to HaMoked's letter, sent with a copy of the confirmation of notice F.M. had received in an effort to verify the request was being processed, the military stated it had never received the change-of-address notice. The second request F.M. had to submit, also did not receive a pertinent answer for many months. F.M. was afraid that with his identity card showing a Gaza address, he could be detained and forcibly removed to Gaza, so he was reluctant to go through the many military checkpoints in the West Bank; he avoided

102 See *supra* pp. 68-71.

leaving his village, and chose to stay at home rather than join his high-school field trips and study outings or go on holiday to Jordan with his friends.

In January 2013, after the military did not respond to F.M.'s requests for many months, HaMoked petitioned the HCJ to instruct Israel to update the boy's address in its copy of the OPT population registry.¹⁰³ HaMoked argued that ignoring F.M.'s request for so long violated his right to freedom of movement, subjected him to long delays at military checkpoints in the West Bank and en-route abroad, and put him at constant risk of expulsion from his home to the Gaza Strip. Following the HCJ petition, the court issued an *order nisi* prohibiting the military from forcibly removing F.M. to Gaza pending a hearing in the petition. Several days later, F.M. went on a field trip to Nablus for the first time in years. **(Case 72663)**

Residency Revocation

In 2011-2012, two freedom-of-information applications filed by HaMoked uncovered that until 1994, Israel had revoked the OPT residency of about a quarter of a million Palestinians from the West Bank and Gaza Strip.

In March 2011, the military's response on residency revocation in the West Bank arrived – only after HaMoked was forced to file an administrative petition.¹⁰⁴ The response indicated that under a military procedure in force until 1994, anyone who had been absent from their home in the West Bank for a period of more than three years (extendable by three more years through three one-year extensions) was considered by Israel as having “moved their center-of-life abroad” and their status in its database was changed to “ceased residency” – in other words, Israel revoked their residency.¹⁰⁵ Thus, without a hearing, individual case review, or any advance or retroactive notice, Israel left 140,000 West Bank Palestinians without status in their homeland.

In June 2012, HaMoked received the military's response on status revocation of Gaza residents. Here too, the military relied on a technical-bureaucratic

103 HCJ 580/13 **Masri et al. v. West Bank Military Commander et al.**

104 AP 28741-02-11 **HaMoked: Center for the Defence of the Individual v. Coordinator of Government Activities in the Territories et al.** (2011).

105 English translation available at:
<http://www.hamoked.org/Documents.aspx?dID=Documents1449>.

procedure, whereby Palestinians who left Gaza and remained abroad for seven years, or were absent during one of the censuses held by the military in the Gaza Strip in 1981 and 1988, were also automatically assigned “ceased residency status”.¹⁰⁶ Thus, Israel left 108,878 Palestinians from Gaza without status in their homeland. (To these, one must add the more than 14,000 East Jerusalem residents whose residency status in Israel was revoked by the Ministry of Interior from 1967 through to 2012.)¹⁰⁷

Over the years, the military reinstated the residency of a few thousand of them (or, in military parlance, switched them back from “ceased-residency status to active status”). However, as a rule, Israel does not allow those who were “late to return” to regain status in their homeland. This is an arbitrary procedure that contravenes international law and violates the right of protected persons to live in their homeland. **(Case 66504)**

HaMoked calls on Israel to reinstate the status of all Palestinians whose OPT residency was revoked in this manner and allow them to return to their homes in the West Bank and Gaza Strip.

106 English translation available at:
<http://www.hamoked.org/Document.aspx?dID=Documents1840>.

107 For more details, see *infra* pp. 99-104.



Residency in East Jerusalem

The provisions of the Citizenship and Entry into Israel Law [...] create a reality whose clear result is the curtailment of the rights of Israelis simply because they are Arabs. They legitimize a concept that is foreign to our fundamental beliefs – discrimination against minorities simply because they are minorities. Being based, as they are, on an arrangement of classification by category, which contains everything but an individual examination of the threat posed by a person, they obscure the image of the individual, any individual, as a world unto himself, and as someone who bears responsibility for his own actions. They open the door to further legislative acts that have no place in a democratic ideology.

Edmund Levy, Supreme Court Justice¹⁰⁸

In 1967, Israel annexed more than 70,000 dunum of West Bank land in East Jerusalem and surrounding areas north, east and south of the city, and applied Israeli law to them. Thirty Palestinian villages and refugee camps were annexed to the jurisdiction of the Jerusalem municipality. A census was held, and residents who were present at the time, received the status of permanent residents in Israel. Although the annexation was carried out in contravention of international law, so long as Israel controls this area –

108 HCJ 466/07, 5030/07 **MK Zahava Gal-On, HaMoked: Center for the Defence of the Individual et al. v. Attorney General, Minister of Interior et al.** (2012), Judgment, January 11, 2012, §29 of the opinion of Justice Levy.

herein referred to as East Jerusalem – it must guarantee the human rights of its Palestinian residents.¹⁰⁹



Permanent Residency

Permanent residency status is different from citizenship. Despite its literal meaning, this status is not permanent and “expires”, among other things, if the status holder has been absent from Israel for seven years or acquired permanent status in another country. Permanent residents do not have the right to vote for the Knesset; do not have Israeli passports; and their children do not receive residency status automatically.

In fact, Israel applies to the residents of East Jerusalem the same arrangements it applies to foreign immigrants, even though East Jerusalem residents are the original population of the area. They never immigrated to it from elsewhere – it is rather their Israeli status that was forced upon them as part of the occupation and annexation.

The annexation created an artificial separation between East Jerusalem and the rest of the Occupied Palestinian Territories (OPT). This separation has been exacerbated by the closure Israel has been imposing on the OPT since the early 1990s and the separation wall that splits between East Jerusalem and the rest of the West Bank. Still, despite the many obstacles mounted by Israel, Palestinians from East Jerusalem and from the rest of the OPT maintain close family, business, social and cultural ties.

Israel's policy in Jerusalem since 1967 has been guided by political considerations designed to maintain what Israel calls a “demographic balance” in the city, in other words, maintaining a solid Jewish majority in Jerusalem. This goal is pursued through various measures that drive Palestinians away from Jerusalem: land expropriation; restrictions on building and planning; “administrative” house demolitions; neglect and systematic discrimination in the provision of services, the development of infrastructure, and in budget allocation for education, culture, health, welfare and more. In addition, Israel revokes the residency of Palestinian residents who live outside the city for a number of years and severely limits the grant of status to Palestinians from the OPT or neighboring countries who marry East Jerusalem residents, as well as to their shared children.

109 For more on the status of this area under international law, see HaMoked, **Activity Report 2007**, pp. 109-110 of the online version, pp. 90-91 of the printed version.

East Jerusalem residents who marry OPT residents and wish to live with them in the city, must apply to the Ministry of Interior to begin the process of family unification, which should initially provide their spouses with Israeli stay-permits and ultimately with residency status. Israel froze this process in 2002. A year later, the Knesset passed the Citizenship and Entry into Israel Law (Temporary Order) – a racist law that for a decade has been fatally violating the right to family life of East Jerusalem residents, separating Israeli residents from their OPT spouses, and children and from their parents.

In 2011-2012, HaMoked opened 124 new cases relating to status issues of East Jerusalem residents and their relatives. Most cases concerned more than one relative. East Jerusalem residency cases typically remain open for many years; in the period covered in this report, HaMoked also continued working on 236 cases that were opened before 2011. Of these, 57 cases were opened back in the 1990s and 73 were opened between 2000 and 2005. In 2011-2012, HaMoked helped more than 1,000 East Jerusalem residents and their relatives obtain status.

In the period covered in this report, HaMoked conducted 101 legal actions in East Jerusalem cases, including 48 that were launched before 2011. Most of these actions were administrative petitions to the District Court; the rest were appeals to the Supreme Court, petitions to the HCJ, applications to Family Court and other related proceedings. In many cases, HaMoked had to pursue more than one legal action per case. In this period, HaMoked also handled 181 quasi-legal proceedings, of them 144 new ones, consisting of administrative appeals to the Ministry of Interior, appeals to the Appellate Committee for Foreigners, and applications both to the Interministerial Committee for Humanitarian Affairs and to the Humanitarian Committee under the Citizenship and Entry into Israel Law.

The Citizenship and Entry into Israel Law (Temporary Order)

In 2011-2012, as in previous years, issues of status in East Jerusalem were addressed under the shadow of the Citizenship and Entry into Israel Law (Temporary Order), whose main objective is to deny OPT residents the possibility of receiving status in Israel through family unification with Israeli

citizens and residents. The Law was passed ten years ago as a provisional “temporary order”, but has since been extended every few months. In January 2012, the Supreme Court dismissed a second series of general petitions challenging the Temporary Order, including one by HaMoked, and upheld the Law for a second time.

Until 2002, once applications by Israeli spouses for their OPT spouses were approved, the OPT spouses, like foreign spouses, could enter the graduated family-unification procedure that regulated their presence in Israel – initially giving them Israeli stay-permits (issued by the military in their case¹¹⁰) for a period of 27 months, subject to security screening and center-of-life¹¹¹ examinations. They would then receive temporary residency status¹¹² for three years, and finally, permanent status. However, since May 2002, when Israel froze all family unification processes,¹¹³ full family unification, culminating in permanent status in Israel, is no longer available to spouses from the OPT (defined as “residents of the Area”¹¹⁴), and since 2007, also to spouses from countries Israel defines as “enemy states”.¹¹⁵ The 2003 Temporary Order stipulated that OPT residents would not receive Israeli residency or citizenship status, with the exception of children under the age of 12 who have one Israeli-resident parent. In addition, a spouse whose family-unification application was approved before the freeze would continue receiving whatever permit he or she was issued when the freeze was announced, without progressing to the next phase, or ever receiving permanent status in Israel.

In 2005, the Temporary Order was amended for the first time, allowing for female OPT residents over the age of 25 and male OPT residents over the age of 35 who marry Israeli residents to legalize their presence in Israel, but only through renewable military-issued permits (DCO permits). The Amendment also raised the cut-off age for children's eligibility for Israeli status to 14. However, children between 14 and 18 cannot receive Israeli status, and must remain in their homes by virtue of DCO permits only.

110 For details on DCO permits, see following page.

111 For details on the requirement to prove center-of-life, see *infra* pp. 90-91.

112 For details on temporary residency, see *infra* p. 81.

113 Government Resolution No. 1813, May 12, 2002.

114 For details on “resident of the Area”, see following page.

115 The 2007 Amendment to the Temporary Order lists four countries whose residents come under the Law: Iran, Iraq, Lebanon and Syria.



Resident of the Area

The Temporary Order applies to anyone Israel defines as a “resident of the Area”. The interpretation of this term has been the focus of many petitions and judgments since 2003.

In the Temporary Order, the term “Area” is defined as the West Bank and the Gaza Strip. The original 2003 version defined “resident of the Area” as anyone living in the OPT, whether they were registered as residents there or not, with the exception of Israeli settlers. In the 'Aweisat judgment of 2008, the Supreme Court accepted the position presented by HaMoked and other petitioners and ruled that prior to the 2005 Amendment, the proper interpretation of the term “resident of the Area” applied to individuals who were actually living in the West Bank or Gaza, rather than to all individuals listed in the OPT population registry, as the state contended.¹¹⁶

The 2005 Amendment expanded the definition of “resident of the Area” to encompass “any individual registered in the population registry of the Area, as well as anyone residing in the Area”. In 2008, in the Khatib case, the District Court ruled that even after the definition was amended, the Temporary Order should not be automatically applied to anyone listed in the OPT population registry; instead each applicant’s ties must be examined: such as where they lived for most of their lives, where their family lived, where they studied, etc.¹¹⁷

The state appealed this judgment, and in January 2011, the Supreme Court accepted the appeal, overturning the District Court’s judgment. The court ruled that following the 2005 Amendment, the term “resident of the Area” includes any person who is listed in the OPT population registry, even if they never lived there.¹¹⁸



DCO Permits

A “DCO permit” is a military-issued temporary stay permit given to the OPT spouse (the “sponsored spouse”) and to children age 14 and up, upon approval of the family-unification application filed for them by an Israeli resident (the “sponsor”). According to procedure, the Ministry of Interior issues the sponsored individuals a referral to the military’s District

116 AAA 5569/05 **'Aweisat et al. v. Minister of Interior et al.** (2008).

117 AAA 817/07 **Khatib et al. v. Ministry of Interior** (2008).

118 AAA 1621/08 **State of Israel v. Khatib** (2011).

Coordination Office (DCO) in the West Bank or at Erez Crossing, where they are given a permit that allows them to remain in Israel for one year. They must repeat the process every year, provided they pass center-of-life examinations and security and criminal background checks.

DCO permits allow their holders to live in Israel lawfully, but do not give them status in the country or entitlement to social security rights, such as disability pensions, unemployment benefits and health insurance. It also does not allow them to get an Israeli driver's license.¹¹⁹ Following a petition filed by HaMoked, as of January 2013, Israel allows all Palestinians who live in Israel with DCO permits given as part of the family-unification process to work in Israel.¹²⁰



Temporary Residency (A/5 Visa)

Temporary residency is temporary status that affords its holders Israeli identity cards, entitles them to work and drive in Israel and gives them access to social security rights. It must be renewed every year at the offices of the Ministry of Interior, subject to center-of-life examinations and security and criminal background checks. Individuals who received temporary status prior to the 2002 freeze, continue to hold it, but cannot receive permanent status.

In 2006, the Supreme Court dismissed the petitions filed in 2003 by HaMoked and other human rights organizations to repeal the Temporary Order.¹²¹ Though a majority of the justices accepted the position that the Law violated the constitutional rights to equality and family life, the court did not repeal the Temporary Order and allowed the state to replace it with another arrangement within a set period of time.¹²² In 2007, after the state repeatedly extended the Temporary Order, more petitions were filed against it, including one by HaMoked, which focused on the severe harm the Law was causing to the children of East Jerusalem residents.¹²³

119 In May 2013, HaMoked filed an HCJ petition demanding DCO-permit holders be permitted to drive in Israel. See HCJ 3544/13 **Qweidar et al. v. Coordinator of Government Activities in the Territories et al.**

120 For more details, see *infra* pp. 110-111.

121 Overall, there were seven petitions which were joined by the HCJ for hearing. See *supra* note 86.

122 For more details, see HaMoked, **Activity Report 2006**, pp. 107-108 (in Hebrew); HaMoked, **Activity Report 2007**, pp. 71-80 of the online version, pp. 91-103 of the printed version.

123 See *supra* note 108.

As stated, the Temporary Order denies status in Israel to children with one Israeli-resident parent if they are over age 14 and defined as “residents of the Area”. Such children may live in Israel only with DCO permits, deprived of health services, other social security rights and any sense of security in their ability to continue living in their homes. This law, that denies status but sanctions permits, cannot be justified on security grounds, as argued by the state, given that the permits allow the allegedly dangerous children freedom of movement inside Israel. The provisions relating to children can only be understood as the state's attempt to save money and promote demographic goals.

In January 2012, the HCJ dismissed the second series of petitions against the Temporary Order by a single vote. Though the majority of the justices acknowledged that a constitutional right to family life does derive from the right to dignity, they ruled that it did not necessarily have to be exercised inside Israel. The court further ruled that though the Temporary Order does impinge on constitutional rights, including the right to equality, the impingement is proportionate and, therefore, the Law is constitutional and should not be repealed.

In her opinion, Justice Miriam Naor addressed at length the issue of the harm caused to children of East Jerusalem residents, the focus of HaMoked's petition, and held that it was sufficient that the state had pledged to allow children who turned 18 to continue living with their parents in Israel pursuant to DCO permits, so long as they maintained a center-of-life in Israel; this although this pledge was not enshrined in law. Other justices concurred with this position, ignoring the fact that children over 14 living in Jerusalem by virtue of DCO permits have no status, social security rights or health insurance. Justice Elyakim Rubinstein also held that this policy was “at least appropriate” and that it was sufficient that parents and children were given the opportunity to live together.

In contrast, the five dissenting justices noted that although the previous petitions had been rejected subject to amendment of the Temporary Order making it more “proportionate”, the amendments had in fact expanded the restrictions and intensified the infringement on human rights; therefore, the dissenting justices maintained, the Law should be repealed. They also noted that despite the fact that the Law was purportedly temporary, it had been

extended 13 times since 2003, remaining in effect for many years, with no end in sight. Justice Edmund Levy held that “The injury caused by the Law is severe. Its damage is resounding.” and wrote further in his opinion:

The continued existence of the Citizenship and Entry into Israel Law (Temporary Order) 5773-2003, casts a dark shadow over the chances of democracy in Israel to withstand the challenges it has braved so far. Mistaken are those who believe that the majority, by whose decisions this law came into being, would be able to withstand its dire effect in the long run. [...] At the end of the day, this harm, as distant and as creeping as it may be, as authoritative as it may seem, is no less dire than the harm of the terrorist acts from which we seek to defend ourselves.¹²⁴

The majority of the justices expressed dissatisfaction with the mechanism that was meant to answer exceptional humanitarian needs, and noted that it operated inefficiently and according to inadequate criteria, and had benefited very few people until that time. Ultimately, the court dismissed the petitions by six votes to five. The judgment legitimizes a shameful law, which, for demographic-racist motivations, violates the rights to equality and family life. With the Supreme Court's seal of approval, the children and spouses of Israeli residents will continue to live in the country pursuant to military-issued permits, without social security rights or permanent legal status. **(Case 50717)**

Ten days after the HCJ gave its ruling, the Knesset extended the Temporary Order by another year, and again in April 2013, bringing the Temporary Order into its 11th year.

Family Unification with Gaza Residents

If the disastrous effects of the Temporary Order were not enough, in June 2008, the government decided that family unification with individuals residing or registered in Gaza would no longer be approved under any

124 Ibid., §§ 45, 29 (respectively) of the opinion of Justice Levy. In the 2006 judgment given in the petitions against the Temporary Order, Justice Levy had ruled that the Law impinged on constitutional rights, but that the petitions must be dismissed as the state should be given nine months to come up with an alternative arrangement.

circumstances.¹²⁵ According to the resolution, the prohibition would take effect “henceforth and shall not apply, in any case, to individuals whose initial application has been approved”. In November 2011, HaMoked filed an administrative petition, asking the court to instruct the Ministry of Interior to continue processing pending family-unification applications for Gaza residents that were filed prior to the government resolution.¹²⁶ HaMoked argued, among other things, that the government resolution took effect retroactively and applied to individuals who had complied with the law and filed applications long before the resolution was passed. This resulted in an absurd situation, in which applications people had filed according to the law remained undecided for a protracted period of time due to foot dragging by the Ministry of Interior – until the government changed its policy and decided that all applications should be automatically rejected. In July 2012, the District Court dismissed the petition, finding no cause to intervene in the state’s decision.¹²⁷ HaMoked appealed to the Supreme Court in October 2012. The appeal is still pending. **(Case 65476)**

In July 2012, following the HCJ’s dismissal of the petitions against the Temporary Order, HaMoked sent a letter to the Prime Minister, the Minister of Interior and the Attorney General, demanding the revocation of the government resolution prohibiting family unification between Israelis and Gaza residents. In its letter, HaMoked argued that the government resolution failed to meet fundamental constitutional principles and that it was an extreme departure from the provisions of the Temporary Order. HaMoked noted that while according to the HCJ’s judgment, the Minister of Interior had discretion to reject family-unification applications for security reasons, according to the government resolution, all applications for family unification with Gaza residents would be automatically refused, regardless of any specific security allegations against any individual applicant. In so doing, the government resolution attributes a “security risk” to all individuals listed as Gaza residents in the OPT population registry (even if they do not live there at all) irrespective of their actions, in disproportionate violation of basic rights, primarily the right to family life.

125 Government Resolution No. 3598, June 15, 2008.

126 AP 10144-11-11 **Ahmad et al. v. Minister of Interior et al.** (2012).

127 AAA 7212/12 **Ahmad et al. v. Minister of Interior.**

In June 2013, after receiving no pertinent response from the authorities, HaMoked petitioned the HCJ.¹²⁸ Despite the urgency of the matter, the hearing has been scheduled for April 2014. **(Case 73866)**

Family Unification and Child Registration

Ever since the annexation of East Jerusalem, families in which one spouse is an Israeli resident and the other an OPT resident, have been facing almost insurmountable bureaucratic obstacles in obtaining status for the OPT spouse or children. The Temporary Order and the attendant interior ministry protocols complicated the situation further and only a few manage to find their way through the tangle of sections, subsections, protocols and guidelines.

The interior ministry's overall conduct in East Jerusalem over the years is characterized by rigidity and reluctance to implement the already limited civil status procedures still available to the city's Palestinian residents. The ministry's policies are vague and its procedures are cumbersome, complicated and costly. It processes applications negligently and with incessant foot-dragging, and it denies applications as much as possible, using various pretexts. Thus, bureaucracy is used as a weapon in Israel's demographic war against East Jerusalem's Palestinian population. While the Ministry of Interior boasts the slogan "the Ministry of Interior – Looking Ahead – At Your Service", the Palestinian population's encounters with it involve distress, humiliation and endless uncertainty. Residents who manage to bear this must wait months and years for an answer to their application. The Ministry of Interior answers applications at an excruciatingly slow pace, disrespecting applicants' time and dignity.

Obtaining permanent status for spouses and children often involves a battle that could take more than a decade. In many cases, several bureaucratic and legal proceedings are required in a single application, until the Ministry of Interior deigns to grant the spouse or child the status they are entitled to. A refusal can be appealed to the Ministry of Interior. If the appeal is denied or unanswered, an objection can be submitted to the Appellate Committee for Foreigners. Only if the objection is denied or left unanswered, can a person

128 HCJ 4047/13 **Khadri et al. v. Prime Minister et al.**

file an administrative petition to the District Court, and if it is dismissed, appeal to the Supreme Court.



The Appellate Committee for Foreigners

The Appellate Committee for Foreigners is an internal quasi-judicial body at the Ministry of Interior charged with reviewing decisions made by other departments inside the ministry. Despite its title, it is in fact a one person body.

As stated, when the Ministry of Interior rejects child-registration or family-unification applications, applicants may appeal the decision to the Ministry of Interior. If the appeal is also rejected, or if the Ministry of Interior fails to answer, applicants may submit an objection to the Appellate Committee for Foreigners – a prerequisite for taking legal action. The proceedings of the appellate committee rely exclusively on the written submissions of the resident (or counsel) and of the Ministry of Interior (through specially appointed counsel).

The committee was established in late 2008 by the decision of the Minister of Interior and the Attorney General, in response to the backlog in the courts. But in practice, not only is the committee just an added stage in the exhaustion of administrative remedies required before taking legal action, but its own conduct is marred by unreasonable foot-dragging. According to the committee's working protocol, the Ministry of Interior must submit its response within 30 days from the objection submission date; and the committee must give its decision within 60 days of receiving the interior ministry's response. But in most cases, the Ministry of Interior fails to meet the deadline and receives – sometimes without asking – one extension after another from the committee chair, an appointed interior ministry official¹²⁹. In 2011-2012, 60 objections filed by HaMoked were resolved; the average decision time was 5.8 months. Fifteen additional objections filed by HaMoked in this period are still pending, all for more than six months.

129 The chair and only member of the Appellate Committee for Foreigners is subordinate to the Ministry of Interior and makes decisions according to ministerial protocols; at least in Jerusalem, the chair's office is in the same location as the ministry's lawyers, and uses their secretarial and office services – all contrary to the Ministry of Interior protocols that require “separation between the chair of the appellate committee and the Population Administration, including the location of his office and other administrative aspects of his work” in order “to ensure his impartiality and independence.” See Population and Immigration Authority, Protocol No. 1.5.0001, **Appellate Committee for Foreigners at the Ministry of Interior – Jerusalem and Tel Aviv Districts**, Sect. 9b.

As stated, the general petitions against the Temporary Order were ultimately rejected, but in 2012, as in 2011, HaMoked continued its extensive legal work in cases affecting the fate of hundreds and thousands of families in East Jerusalem. Individual cases have often resulted in significant changes in the implementation of the Temporary Order and in new guidelines being introduced into interior ministry protocols.

“The Effective Age”

Children with only one Israeli-resident parent are subject to “child registration” procedures (if they are born in Israel) or to the “family unification” procedure (if they are born outside Israel). Originally, the 2003 Temporary Order stipulated that children who are defined as “residents of the Area”, who have one Israeli-resident parent, could receive status in Israel up to age 12 only. In the 2005 Amendment, the Knesset raised the “effective age” to 14. But, following the Amendment, the Ministry of Interior took further initiative and revised its own protocol to deny these children permanent status following approval of the application for their registration. Instead, they are first given temporary status for two years, and only then permanent residency. The revised protocol also stipulated that if the child turned 14 during this two-year period, the Ministry of Interior would not upgrade the child's status to permanent residency, and he or she would continue living in Jerusalem with temporary residency status that must be renewed annually, subject to stringent examinations. In this, the ministry essentially brought the “effective age” for status back down to 12, despite the 2005 Amendment.¹³⁰

Since 2008, the District Court has ruled against this protocol in several judgments, on the grounds that it frustrated the purpose of the Amendment.¹³¹ The court ruled that the effective date for receiving permanent-residency status should be the filing date of the child-registration application, namely if the application is filed before the child turns 14, the child should receive permanent residency after two years of temporary residency, even if he or she turns 14 in the interim. For many months, the Ministry of Interior ignored

130 The protocol was first published as “Decision table regarding the granting of status in Israel to a minor only one of whose parents is registered as a resident of Israel (update August 1, 2005)”. See Population and Immigration Authority, Protocol No. 2.2.0010, **Procedure on registration and granting of status to a child only one of whose parents is registered as a permanent resident in Israel.**

131 See, e.g., AP 8295/08 **Mashahara v. Minister of Interior** (2008).

these judgments; neither appealing nor complying with the rulings, it continued to implement the protocol that had been struck down, depriving children of the permanent status they were entitled to receive. In June 2009, in an administrative petition filed by HaMoked on behalf of the Srur family, the District Court once again ruled against the protocol.¹³² The state appealed to the Supreme Court, claiming, among other things, that there was no obligation under the Temporary Order to grant permanent status to children who have just one resident parent, and that temporary residency was enough to prevent their separation from their parents.¹³³ In April 2011, the Supreme Court dismissed the appeal and ruled that the interior ministry protocol could not stand, since it “denies the minors the possibility of receiving status directly given to them in the primary legislation. This is a direct and substantive violation of their right, and it does not conform to the statutory arrangement”. The justices added that “The Minister of Interior is not authorised to create out of nothing a distinction between minors under the age of 12 and minors between the ages of 12 and 14 for the purpose of receiving status in Israel. Such a distinction has no mention in the language of the Temporary Order Law and Regulation 12 or in the legislative history that preceded them, and it is also inconsistent with their underlying objectives”. The court ruled that granting children permanent residency was required not only in order to prevent their separation from their parents, but also in order to equalize the status of both parent and child, thereby serving the child's best interest and upholding the right to family life. Ultimately, the court ruled the Temporary Order should be interpreted such that the “effective age” for receiving status is the child's age at the filing date of the application.

(Case 38247)

In September 2012, almost a year and a half after the Supreme Court's ruling – and only after HaMoked filed a motion under the Contempt of Court Ordinance on this issue¹³⁴ – the Ministry of Interior finally changed the protocol. Yet, even before the protocol was changed, following the Supreme Court ruling, judgments were issued in individual petitions filed by HaMoked.

132 AP 8890/08 **Srur et al. v. Minister of Interior** (2009).

133 AAA 5718/09 **Minister of Interior v. Srur et al.** (2011).

134 AP 727/06 **Nofal et al. v. Minister of Interior et al.** (2011).

R.J., a permanent resident of Israel who divorced her spouse, a resident of the West Bank, has been raising her five children in East Jerusalem on her own since 1999. The three older children were registered in the population registry of the OPT shortly after birth. The two younger children, who were born in Jerusalem, were not registered in the OPT and received permanent residency in Israel.

In August 2000, R.J. contacted the Ministry of Interior, asking for a grant of status for her three older children. The Ministry of Interior did not bother answering the request or the reminders sent over the years. It was only in 2006 that the Ministry of Interior decided, based on the determination that the children were “residents of the Area”, that the youngest of the three would be registered in Israel with temporary status and his two older brothers would receive DCO permits.

In September 2006, HaMoked filed an administrative petition to instruct the Ministry of Interior to grant all three children permanent-residency status in Israel.¹³⁵ HaMoked argued, inter alia, that when the application was filed, the children were under age 14. The proceedings in the petition were suspended pending the rulings in the Supreme Court appeals. On May 1, 2011, based on the Supreme Court's judgment in the Srur case, the Jerusalem District Court accepted the petition and ruled the three children should be granted permanent status in Israel. The court determined that for the purpose of granting status, the Ministry of Interior must consider the age of the children according to the date it accepted as the submission date of the application, namely, May 2002 (when the family had been in Israel for two years); at that time, the Temporary Order had not yet been passed, and in any event, R.J.'s children were then under the age of 14, so there was no reason not to grant them permanent residency, provided they completed the graduated procedure. **(Case 36661)**

The Wadi Hummus Neighborhood, Sur Bahir

In 1967, Israel annexed most of the land belonging to the village of Sur Bahir, located southeast of Jerusalem, and gave its residents status in Israel. But about a tenth of the village lands – including the area of the Wadi Hummus neighborhood, built later-on – was arbitrarily left outside the annexation boundaries. For years, this demarcation line appeared only on maps, and had

135 AP 938/06 **Joulani et al. v. Minister of Interior et al.** (2011).

no practical meaning. However, Israel's planned route for the separation wall in West Bank lands around Jerusalem threatened to split Sur Bahir in two on the basis of this arbitrary line. In 2003, the village residents petitioned the HCJ against the route of the wall.¹³⁶ In the proceedings in the petition, the state acknowledged that the residents of Sur Bahir formed "a single organic community", and therefore changed the route of the wall so it did not cut through the village. Thus, all the residents, including those living in Wadi Hummus, remained on the western – "Israeli" – side of the wall.

In 2004, the National Insurance Institute (NII) began sending Wadi Hummus residents letters informing them that their status as residents under the National Insurance Law had been revoked because they were residing outside the area annexed by Israel.¹³⁷ Around the same time, health funds also began sending these residents letters informing them of the cancellation of their health insurance. The residents filed a claim with the Jerusalem Regional Labor Court, whereupon, the NII – under the instructions of the Attorney General – announced it retracted its decision: Sur Bahir "is a single homogenous village" and so long as the wall separates it from the rest of the West Bank, all its residents would be recognized as Israeli residents for the purpose of their social security rights and come under the National Insurance Law and the National Health Insurance Law.¹³⁸



"Center-of-Life"

One of the major conditions for family unification or child registration is that the family maintained a center-of-life in Israel for the two years prior to submitting the application, and in each subsequent year during the long process leading up to approval of the application.

As part of the examination-cum-investigation conducted by the ministry, the family is required to produce many documents that prove it resides in Jerusalem (homeownership papers, lease agreements, household bills such as property tax, electricity, water and more), work in the city (payslips), receive medical services in the city (health fund documents, confirmations of treatments received), and raise their children in it (birth certificates, immunization records, daycare and school enrollment documents, etc.).

136 HCJ 9156/03 **Jabur et al. v. Seam Line Administration et al.** (2003).

137 For more on residency under the National Insurance Law, see *infra* pp. 106-107.

138 NI 10177/05 **Sur Bahir Village Committee et al. v. National Insurance Institute** (2005).

In addition, the Ministry of Interior summons the applicants for a hearing, in which it confronts them with the various documents, and even relies on the findings of NII investigations, despite the misgivings surrounding them.¹³⁹

Even after the application for family unification or child registration is approved, the family must continue proving, year after year, that its center-of-life remains in Jerusalem by submitting all the required documents, in order for the Ministry of Interior to renew the visa or permit of the sponsored individuals. Any doubt regarding the family's center-of-life a Ministry of Interior clerk might have could lead to the rejection of the application or the cessation of the procedure.

In 2008, HaMoked petitioned the court on behalf of a permanent resident of Israel from Wadi Hummus to instruct the Ministry of Interior to register two of the man's children in the Israeli population registry, like their nine other siblings.¹⁴⁰ The Ministry of Interior refused to register the children because the family lived in Wadi Hummus, outside the annexed area. HaMoked argued that the children's center-of-life had been and still was in Jerusalem and therefore, they should be registered as permanent residents of Israel. The District Court dismissed the petition, having accepted the state's position that the family resided outside Israel's sovereign territory, and therefore, its center-of-life was outside Israel.

HaMoked appealed to the Supreme Court, arguing, inter alia, that the finding that the children did not maintain a center-of-life in Israel was unreasonable, especially considering the circumstances that were created after Israel built the separation wall trapping the children on the "Israeli" side – the very same circumstances that had led the state to recognize, in two different court actions, that Wadi Hummus was an inseparable part of Sur Bahir.¹⁴¹ In November 2011, the Supreme Court dismissed the appeal by a majority vote. Justices Edmund Levy and Asher Grunis ignored the complex reality Israel imposed on the residents of Wadi Hummus, giving Regulation 12 of the Entry into Israel Regulations¹⁴² a narrow interpretation, namely, that a person whose home is not in Israel will not receive status in Israel. The

139 For details on NII investigations, see *infra* pp. 113-115.

140 AP 8350/08 '**Attoun et al. v. Minister of Interior et al.**' (2009).

141 AAA 1966/09 '**Attoun et al. v. Minister of Interior et al.**' (2011).

142 For more on this regulation, see *infra* pp.93-94.

justices also cited the state's allegations regarding the "broad ramifications" of granting the children status in Israel, allegations which had no support either in the state's submissions or the judgment. Supreme Court President Dorit Beinisch, in a dissenting opinion, accepted HaMoked's arguments and held that the separation wall erected by Israel severed Wadi Hummus from the rest of the West Bank, creating a situation whereby "the Appellants' center-of-life is effectively in Israel". Beinisch noted that "clearly, a reality where in a single family unit the parent's status differs from the children's status, could undermine the stability and balance which are so vital for the formation of a normal family unit, and thus to the proper development of a minor [...]. This situation, in which the children have no status either in the Area or in Israel, is improper [...]".¹⁴³

On December 7, 2011, HaMoked petitioned the Supreme Court for a further hearing in the appeal before an extended panel.¹⁴⁴ In the decision, Supreme Court Vice President Eliezer Rivlin noted that, "Indeed, the petition points to a complex reality in which the center-of-life of the Petitioners' entire family is in Israel while their home is located outside it, and this against the backdrop of the difficulty to establish a center-of-life outside Israel given the existence of the separation fence". Nonetheless, Vice President Rivlin held that there was no room to accept the petition.¹⁴⁵ The court's ruling left the two children without status anywhere in the world, without social security rights or health insurance, trapped in a small area between the separation wall and the municipal boundary of Jerusalem. **(Case 53836)**



Child Registration Procedure

The Ministry of Interior policy on the registration of children who have only one Israeli-resident parent was made public in 2007 following HaMoked's petition, filed a year earlier.¹⁴⁶ Until then, the procedures governing the ministry's conduct had been kept from the public. Following HaMoked's comments during the hearings in the petition, the Ministry of Interior updated the procedure several times.

143 See supra note 141, Judgment, November 22, 2011, §§ 25, 20, 22 respectively of the opinion of Supreme Court President Beinisch.

144 AFH 9081/11 **Attoun et al. v. Minister of Interior et al.** (2012).

145 Ibid., Judgment, January 17, 2012.

146 See supra note 134, and also supra note 130, Population and Immigration Authority, Protocol No. 2.2.0010.

In May 2011, the court issued its judgment, instructing the Ministry of Interior to change three aspects of its procedures: when the Ministry of Interior fails to meet the six-month deadline for reaching a decision in matters relating to children, it must give the children temporary status in Israel which affords social security rights, pending a final decision; the ministry must continue processing applications for children, even if a corresponding application for another family member has been denied; lastly, the ministry must notify the family both orally and in writing – and also in Arabic, if needed – when it is time to upgrade the temporary status to permanent status.

A year went by and still the Ministry of Interior did not implement the court's instructions. In late May 2012, HaMoked filed a motion under the Contempt of Court Ordinance, asking the court to issue an injunction ordering the Ministry of Interior to amend the procedure. The state replied that it was taking steps to amend the procedure “without delay” and that the formulation of the amended procedure was in “its final stages”. In September 2012, the amended procedure was finally published.

(Case 25474)

As stated, unlike citizenship, temporary residency in Israel is not automatically passed down from parents to children. Regulation 12 of the Entry into Israel Regulations stipulates that a child born in Israel will have the same status as the parents.¹⁴⁷ The HCJ has ruled that the purpose of Regulation 12 is to prevent disparity between the status of child and parent, thus preserving the integrity of the family unit and serving the child's best interest.¹⁴⁸

However, the law does not regulate how children born outside Israel to Israeli-resident parents are to be granted status. In April 2011, HaMoked filed an administrative petition on this issue; in December 2011, the Jerusalem District Court gave the force of a judgment to the parties' agreement in principle whereby children living in Israel but born outside it to two Israeli-resident parents would receive permanent residency immediately.¹⁴⁹

In cases where only one parent is an Israeli resident, under interior ministry protocols, if the child is born in Israel, he or she will be registered as a

147 Regulation 12 of the Entry into Israel Regulations, 5734-1974.

148 HCJ 979/99 **Carlo et al. v. Minister of Interior et al.** (1999).

149 AP 22556-04-11 **Arafat et al. v. Minister of Interior** (2011).

permanent resident of Israel pursuant to Regulation 12, subject to proving center-of-life,¹⁵⁰ and subject to the Temporary Order restrictions concerning children defined as “residents of the Area” (namely, children above age 14 receive DCO permits only); if the child is born outside Israel, the parents must submit a family-unification application for their child, who will receive temporary residency for two years, to be followed by permanent residency – subject to proving center-of-life and the Temporary Order restrictions. Confused? Now try understanding this tangle of procedures that are only published in Hebrew, when you do not speak the language.¹⁵¹

Stateless Individuals

Many Palestinians who live in East Jerusalem have no civil status anywhere in the world. The reasons for this are varied, mostly originating in the many obstacles Israel places in the path of Palestinians from East Jerusalem who seek to register their children in the population registry, especially when the registration is not done shortly after birth. Some stateless individuals are the children of East Jerusalem families that returned to live in Jerusalem when they were over 18, who by then, had missed the chance to be registered as residents. Some are residents whose residency had been revoked by the Ministry of Interior. The inaccessibility of the Ministry of Interior, the hard line attitude of its staff and their tendency to avoid handling out-of-the-ordinary cases, combined with the fact that many Palestinian families are afraid to

150 It is important to note in this context, that the Ministry of Interior requires proof of center-of-life in Israel in the two years prior to submitting the application. Therefore, a child who returns to Israel at age 13 will not be able to file an application for status until age 15, by which point, he or she will no longer be eligible for residency status, but only DCO permits. A child who returns to Israel at age 16 and a month will not receive any sort of permit to live with his or her family in Jerusalem, because the Ministry of Interior requires the family to wait for two years before they can file the application. In October 2011, the District Court rejected an administrative petition filed by HaMoked on this issue. See AP 41294-05-11 **Radwan et al. v. State of Israel - Minister of Interior**. HaMoked appealed this decision to the Supreme Court, AAA 8630/11 **Radwan et al. v. State of Israel - Minister of Interior**. The appeal is pending.

151 In June 2011, HaMoked wrote to the Ministry of Interior asking it to translate its documents – procedures, forms, letters, particularly those used by the East Jerusalem office which serves only Palestinians – to Arabic, an official language in Israel. Two years later, the situation is unchanged, with the exception of a handful of forms that were translated into Arabic (**Case 68242**). Thus, for example, despite the state’s pledge to post an Arabic translation of the child registration protocol at the East Jerusalem office, a pledge that was given the validity of a judgment in the Nofal Case (see supra note 134), as at mid-2013, this has not yet been done.

assert their rights in encounters with Israeli authorities, all join to promote the creation and consolidation of this situation.

The right to civil status is a condition for exercising many other rights, which stateless individuals are denied. People who have no status in Israel are not eligible for the services and benefits provided by the NII, or for medical treatment through health funds; they cannot enroll in schools, open bank accounts, work lawfully, own property, get a driver's license or travel documents; and in every encounter with security forces, they may end up under arrest. Therefore, it also becomes difficult for them to start a family and maintain social ties.

The Convention relating to the Status of Stateless Persons determines that the country where stateless individuals reside is responsible for their naturalization and must make efforts to expedite this process. Though Israel signed the Convention in the 1950s, the Ministry of Interior has no procedures regulating the grant of status to Palestinians who have been living in Israel for many years without status.¹⁵² Only through an application to the Humanitarian Committee under the Citizenship and Entry into Israel Law (Temporary Order), or to the Interministerial Committee on Humanitarian Affairs can stateless individuals seek to remain in their homes legally.



The Humanitarian Committee under the Citizenship and Entry into Israel Law

This is a Ministry of Interior committee established pursuant to the 2007 Amendment to the Temporary Order. The committee may advise the Minister of Interior to issue stay-permits or grant temporary status for “special humanitarian reasons”. It receives applications only from OPT residents or subjects of states defined as enemy states, whose right to obtain status in Israel through family unification or child registration has been denied by the Temporary Order.

152 Until 2007, individuals who were absent at the time of the 1967 census were granted permanent residency if they proved that they had lived in the city continually since before the census. In 2007, Government Resolution No. 2492 put an end to this practice. According to the resolution, West Bank residents who have been living in Jerusalem without status continually since at least 1987, and applied for residency by the end of April 2008, would receive DCO permits, which are not status. For more details, see HaMoked, **Activity Report 2008-2010**, pp. 50-51.

The Law prescribes narrow criteria for the types of applications that may be brought before the committee and the types and duration of permits it can recommend. The Ministry of Interior may also cap the number of humanitarian cases that are approved – which is antithetical to the concept of a “humanitarian exception”.

The committee accepts applications from individuals suffering from serious physical or mental conditions who cannot obtain status in Israel because of the Temporary Order, or individuals who require Israeli status in order to care for immediate relatives suffering from such conditions. Under the Temporary Order, the committee must decide on applications within six months. But in practice, the committee does not follow its protocols and set schedules, and HCJ petitions on non-response are often required to get the committee to expedite processing.

In 2011-2012, HaMoked filed 21 applications to the humanitarian committee. By June 2013, in only ten of them, the committee had reached a decision, with an average response time of more than 14 months. Only one decision was given within the stipulated six-month timeframe. Eleven applications are still pending.

The committee's deficiencies go beyond failure to meet deadlines. No protocols are taken during hearings, only short summaries; worse still, though the Law empowers it to grant temporary status, the committee does so very rarely, usually only after legal action is taken. The response to HaMoked's freedom-of-information application (filed in January 2012), asking how many times the committee had exercised its power to grant temporary status, was that “no information on this is available.” (**Case 68654**)

Note that in the judgment given in the general petitions against the Temporary Order, the Supreme Court justices criticized the committee's operation and the fact that it avoided using its powers to the full extent. In her opinion, then Supreme Court President Beinisch wrote: “Although it has been argued before us that an attempt to restrict the Law's applicability was made by establishing a review committee for special humanitarian cases, in practice, the small number of permits the committee has granted thus far, indicates that its formation did not shift the balance toward specific examination, as opposed to generalized examination, as we deemed proper in the first judgment.”¹⁵³

153 See *supra* note 108, Judgment, January 11, 2012, §2 of the opinion of Supreme Court President Beinisch.



The Interministerial Committee on Humanitarian Affairs

The Interministerial Committee on Humanitarian Affairs is an advisory committee to the Ministry of Interior. It reviews humanitarian applications for grant of Israeli status to foreign nationals who do not meet the criteria stipulated in the Entry into Israel Law 5712-1952, excepting those who are ineligible for status due to the Temporary Order (whose matters are reviewed by the Humanitarian Committee discussed above). The committee is headed by the director of the Population and Immigration Authority, and among its members are representatives of the NII, the Israel Police, the Ministry of Health and the Ministry of Welfare.¹⁵⁴

Applications to this committee are submitted to the branch offices of the population authority where it is decided upon review whether to forward them to the committee. Many applications are rejected at this preliminary stage, mostly without substantive explanation. Moreover, criteria guiding the committee are unknown; it is the committee members who give meaning to the word “humanitarian” – or rather, empty it of meaning. The committee's session dates and session minutes are not made public and it is impossible to request to attend these sessions or appear before the committee.

Over the years, the functioning of both the Ministry of Interior and the interministerial committee was the subject of severe criticism, directed, inter alia, at the arbitrary decisions of the ministry not to transfer applications to the committee, the committee's inaccessibility, its lack of transparency, the absence of clear criteria for granting status, the denial of the right to argue before the committee, its arbitrary unreasoned decisions, and the protracted time it takes for it to issue its decision, which forces many applicants to remain in Israel without a permit.

The criticism has led to changes in the committee's work protocol in March 2011. The updated protocol stipulates that applicants must be summoned to a hearing at the Ministry of Interior, and allowed to present their case there, and that any visas they may have should be extended pending a decision. The protocol sets a timetable for the various stages of processing, but no deadline for final response.

154 Population and Immigration Authority, Protocol No. 5.2.0022, **Protocol Regulating the Work of the Interministerial Advisory Committee on Determination and Grant of Status in Israel for Humanitarian Reasons.**

Yet, even after these revisions, foot-dragging continues. In 2011-2012, HaMoked filed ten applications to the interministerial committee, but until June 2013, only in five was a decision made, with an average response time of more than a year. Five applications are still pending – more than 14 months on average after they were submitted.

HaMoked's applications to the Interministerial Committee on Humanitarian Affairs include severe humanitarian cases of statelessness: a motherless child who spent her entire childhood in institutions, whose status was not attended to until she became an adult; a divorced woman without status who takes care of her daughter and grandchildren in Jerusalem; a stateless young woman who has been living in Jerusalem since she was five. The interministerial committee rejects many of the applications it receives, forcing stateless individuals to live on in their homes without rights and without official records as to their identity. But sometimes, the bureaucratic-legal battle ends in success.

A.D., a Jordanian citizen, married a permanent resident of Israel in 2000. For years, she and her three children were victims of abuse and violence at the hands of the family's father. As part of his violent control over A.D., her husband refused to apply to the Ministry of Interior for status for her as his spouse. After many years, A.D. found the courage to complain to the police about her husband, and moved to a shelter with her children. In March 2011, HaMoked submitted an application to the Interministerial Committee on Humanitarian Affairs on A.D.'s behalf, asking to grant her status in Israel. The submission was made pursuant to the Ministry of Interior protocol enabling battered spouses without Israeli status to obtain status without having to depend on the abusive partner. Under the protocol, which applies only to abuse victims who have entered the graduated procedure, the Ministry of Interior should extend the Israeli visa of those who apply to the interministerial committee.

Therefore, HaMoked also asked the Ministry of Interior to grant A.D. temporary Israeli status until the committee made its decision, to allow her to remain with her children lawfully, without fear of deportation, find work and begin the recovery process. HaMoked stated in the application that A.D. had no Israeli visa because, as part of his abuse, her husband had refused to apply for family unification with her. When the application

was not answered, HaMoked contacted the Appellate Committee for Foreigners. In January 2011, the committee rejected the appeal.

In February 2012, HaMoked petitioned the court against the ministry's refusal to grant A.D. temporary status.¹⁵⁵ HaMoked also asked that the protocol be amended to afford temporary status in Israel to any foreign national seeking status in Israel due to abuse by her Israeli spouse, while her application to the interministerial committee is pending.

In the hearings, the Ministry of Interior pledged to "give utmost priority to addressing the matters of victims of violence who do not have a valid visa and meet the prerequisites of the violence protocol". This priority would not be restricted and would apply throughout the stages of processing. The court did not accept HaMoked's request to change the protocol but gave the pledge of the Ministry of Interior the validity of a judgment, while leaving the matter open for future review.

Shortly after the petition was filed, the interministerial committee informed HaMoked that A.D. would receive temporary status in Israel. **(Case 67755)**

Status Revocation

Israel's treatment of the Palestinian population of Jerusalem, living in the city with permanent-residency status since the annexation, is unlike that of other Israeli residents. As stated, permanent residency is essentially different from citizenship. In a judgment given in 1988 in the 'Awad case,¹⁵⁶ the Supreme Court ruled that permanent residency under the Entry into Israel Law may "expire" if its holder leaves Israel for more than seven years or receives permanent status in a different country. The Ministry of Interior has used the 'Awad rule as a major tool in a policy known as the "quiet deportation", designed to deny the rights of Jerusalem's Palestinian residents and change the city's demographic composition.¹⁵⁷ The "quiet deportation" is supported by discrimination and neglect of East Jerusalem residents' needs in infrastructure, housing, education, health care and welfare. The resulting housing shortage and low standard of living drive residents out of the city. As stated, those who transfer their center-of-life to other parts

155 AP 13110-02-12 **D. et al. v. Minister of Interior et al.** (2012).

156 HCJ 282/88 '**Awad v. Prime Minister et al.** (1988).

157 For more details, see joint report by HaMoked and B'Tselem, **The Quiet Deportation – Revocation of Residency of East Jerusalem Palestinians**, 1997.

of the OPT or abroad, lose their permanent-residency status in Israel. The “quiet deportation” was blocked in 2000, following legal work by HaMoked and other human rights organizations, and for several years, the number of status revocations declined. However, beginning in 2006, the scope of status revocation rebounded and eventually surpassed that of the second half of the 1990s.

Between 1967 and 2010, the Ministry of Interior revoked the Israeli status of 13,987 Palestinians from East Jerusalem. In 2011, the ministry revoked the status of 101 more residents, including 51 women and 20 minors. In 2012, it revoked the status of 116 residents, including 64 women and 29 minors.¹⁵⁸

O.A. was born in East Jerusalem in 1960 and suffers from a debilitating mental illness from a young age. He had lived with his family in East Jerusalem until his thirties. In the early 1990s, he had a relationship with a British tourist who was visiting Israel. When she told him she was pregnant, he joined her in the UK. Their daughter was born with severe cerebral palsy. The UK health care system allowed for the child to receive care at her home rather than in an institution, and so the couple decided to stay in there. Initially O.A. received a UK visa on humanitarian grounds and later citizenship.

The couple separated in 2007. O.A.'s physical and mental condition deteriorated and he returned to his family in East Jerusalem. In September 2008, he went to the UK to visit his daughter, but when he returned to Israel, he was told at the airport that he had no status in Israel and that he had lived there illegally. He was deported to the UK and told he could not enter Israel for ten years. HaMoked petitioned against the Ministry of Interior's decision and the court ruled that O.A. must be allowed into the country and that he could then act to have his status restored.¹⁵⁹ O.A. returned to Jerusalem, and HaMoked filed an application to have his permanent residency in Israel reinstated. The application was processed by the Interministerial Committee for Humanitarian Affairs. More than a year later, the committee rejected the application, stating that it “found no humanitarian basis for his request. He can receive medical care in his

158 According to figures provided by the Ministry of Interior in response to HaMoked's freedom-of-information application.

159 AP 1063/09 **A. v. Minister of Interior** (2009).

country of origin.” – His country of origin? O.A. was born in East Jerusalem in 1960, seven years before the Israeli occupation began; he lived there continuously until 1993, and returned in 2007, under difficult personal circumstances.

In October 2010, HaMoked petitioned the court to have O.A.'s status in Israel restored.¹⁶⁰ HaMoked argued that the ministry's decision to disregard O.A.'s difficult personal circumstances and refrain from reinstating his status was unreasonable, to say the least. HaMoked recalled that O.A., like the rest of his family, had not decided to immigrate to Israel and get status in the country. He was born in East Jerusalem; grew up there and had never lost his connection to the city.

In response to the petition, the state said it would “reconsider” O.A.'s case and reevaluate whether there were “sufficient humanitarian grounds”. Indeed, in September 2011, after a third hearing, the Ministry of Interior announced that it would reinstate O.A.'s permanent-residency status.

(Case 59480)

The 'Awad ruling, from 1988, has caused severe harm to the Palestinian population of Jerusalem, women especially. According to interior-ministry policy in effect until 1994, unlike men from East Jerusalem, who could apply for status for their non-resident spouses, women were outright denied family unification with their foreign spouses. Consequently, these women had to leave the city and raise their families in the OPT or abroad, which led to the revocation of their status. In cases of divorce or widowhood, the denial of the women's right to return to their families in East Jerusalem diminished their ability to decide on their own fate to the point of helplessness.

H.J. was born in 1965 to a family that had lived in East Jerusalem for generations. After the annexation, she received permanent-residency status in Israel. In 1982, she married a resident of the city and three years later, the couple moved to live in the USA. In time, H.J. and her husband received status in the USA, first, a stay and work permit, then citizenship. They had four children. In 1996, H.J. returned to her native city with her children, and the husband remained in the USA. Except for two visits, the last one in 2001, they did not meet again.

¹⁶⁰ AP 60780-10-10 **A. v. Minister of Interior** (2011).

In 2002, H.J. found out that the Ministry of Interior had revoked her status because she had lived in the USA for more than seven years, and acquired US citizenship. H.J. contacted a lawyer to help her regain her status in Israel, but three administrative petitions filed on her behalf between 2006 and 2011 were rejected or withdrawn.

In September 2012, H.J. filed an application via HaMoked to have her status in Israel reinstated. The application stated that H.J. had been living in Israel continuously for 16 years, and that she was willing to relinquish her American citizenship. Two months later, the Ministry of Interior rejected the application and held that H.J.'s long stay in Israel "did not establish a right to a permanent-residency visa" and that she "must leave the country immediately".

In November 2012, HaMoked appealed the ministry's refusal to reinstate H.J.'s residency. HaMoked argued that the decision had been made without considering all the facts of the matter, and that it was based on incorrect information, such as H.J.'s length of stay in the USA and the number of visits she made to Jerusalem in that period. The ministry also failed to assess her ties to Israel compared to the USA, or to evaluate her intention to settle in Israel permanently. HaMoked argued that H.J. had rights as a native of the country. She was born and raised in the country, had family and roots in the country and therefore should not be treated as an immigrant. HaMoked added that the Ministry of Interior had ignored a long list of current judgments addressing similar issues and noted that there were no security- or criminal allegations against H.J.

The Ministry of Interior held a hearing for H.J. in December 2012. Five months later, HaMoked was notified by letter that the appeal had been denied, because neither the appeal nor the hearing "provided new information that could alter our decision".

In May 2013, HaMoked filed an objection against the dismissal of the appeal. At the time of writing, the objection is still pending. H.J. continues to live in her East Jerusalem home, subject to the appellate committee's interim injunction forbidding her deportation pending conclusion of the proceedings, but still without legal status in her own country.

(Case 73478)

In addition to assisting individuals, in 2011-2012, HaMoked continued its efforts to effect a change in the laws and rules governing the civil status of

East Jerusalem residents. In April 2011, HaMoked and the Association for Civil Rights in Israel (ACRI) petitioned the HCJ claiming that the residency-revocation policy implemented by the Ministry of Interior (following the 'Awad rule), effectively traps East Jerusalem residents in their city, denying them the freedom of movement available to all and binding them to the narrow confines of their birthplace.¹⁶¹ HaMoked and ACRI asked the court to rule that since the territory of East Jerusalem was occupied and annexed by Israel and its residents were forced to become permanent residents of Israel, their status cannot expire even if they live abroad for some time or obtain status in another country, and that they have a right to return to their homeland whenever they choose – a right that should be read as an inherent condition of their permanent-residency visas. The organizations said that East Jerusalem residents are not just “residents of Israel” under Israeli law but also “protected persons” under the international law of occupation, and therefore, they are entitled to continue to live in the occupied territory. Moreover, an individual's right to return to his or her own country is an accepted norm in international human rights law, so that even if the civil status of East Jerusalem residents is regulated – as ruled in the 'Awad case – by the Entry into Israel Law, it is unlike the status of any other resident, least of all immigrants to Israel.

The petition followed HaMoked's and ACRI's attempt in 2010 to join proceedings as *amicus curiae* in the Khalil appeal against the District Court's decision to uphold the revocation of status of an East Jerusalem resident.¹⁶² During the appeal, the bench instructed the organizations to present their general arguments regarding the policy to the Ministry of Interior directly, and, should the response prove unsatisfactory, they could pursue the matter through a court petition focused on the subject. The organizations complied, and as no pertinent response was given by the Ministry of Interior, filed the petition.

On March 21, 2012, the organizations withdrew the petition on the advice of the Supreme Court bench, headed by President Asher Grunis. The justices refused to review the petition on its merits, since, as they claimed, “there is no reason for the court to grant theoretic relief just to enable a person

161 HCJ 2797/11 **Qarae'en et al. v. Minister of Interior** (2012).

162 AAA 5037/08 **Khalil et al. v. Minister of Interior**.

to consider his or her actions in advance”.¹⁶³ The justices advised as such despite the petitioners' assertion that the petition was filed on behalf of a specific petitioner who was clearly harmed by the Ministry of Interior's policy, that put him between a rock and a hard place, pitting his right to a home and a homeland against his right to leave his home for a certain period to pursue his potential, start a family, acquire an education, gain employment, or simply participate in modern social life. The organizations emphasized that the petitioner's fundamental rights were violated when he had to choose his path, knowing that any choice involving an extended period away from the city, entailed punishment – the revocation of his status. **(Case 66284)**

After the judgment, HaMoked and ACRI rejoined the Khalil appeal as amicus curiae. In a hearing held in March 2013, the justices urged the state to “handle these cases focally, using a flexible interpretation of the rules, in order to resolve these cases on a concrete basis”.¹⁶⁴ As at June 2013, the appeal is still pending. **(Case 63863)**

It seems that the court prefers not to make a ruling on the issue of principle, and in so doing it leaves East Jerusalem residents trapped inside a legal cage that violates their human rights. The sanction Israel imposes on Palestinians for leaving the city for a limited period of time and for receiving status elsewhere means the loss of a home and the possibility of returning to the homeland.

The Interior Ministry Branch Office

East Jerusalem residents must go to the Ministry of Interior offices often to attend to various matters – not just to file applications and receive services, but also to obtain travel documents, submit center-of-life documents in family-unification and child-registration procedures, and more. The congestion and overcrowding at the ministry's East Jerusalem branch office and the difficult conditions at the building's entrance, considerably added to the foot-dragging characterizing the processing of civil status matters at this office. In 2006, following HCJ petitions filed since 1999, a new East Jerusalem office was opened; but a few months later, the employment service office moved into the same building, and the congestion and overcrowding at the entrance returned. Standing in the lineup to enter the building was again a long, humiliating, and sometimes dangerous experience.

163 See supra note 161, hearing transcripts, March 21, 2012.

164 See supra note 162, hearing transcripts, March 13, 2013.

In a letter to the Ministry of Interior of March 2007, HaMoked described access conditions at the new East Jerusalem branch office: the lineup at the entrance to the building was extremely long and many of those waiting have no shelter from the elements. The congestion forced them to crowd into remotely operated electric turnstiles. The security guards treated people who were waiting to enter the building rudely and disrespectfully, contrary to the most basic standards of public service in state institutions. There were no benches, drinking fountains or bathrooms anywhere in the waiting area, where people had to spend many hours.

In September 2011, as part of HaMoked's correspondence with the authorities, the employment service acknowledged the congestion and its effects, explaining the reason for this was that people arriving at the building for the employment service must stand in line with the people arriving for the Ministry of Interior. The employment service said it would move the automated employment service sign-in terminals outside the building and that the awning over the outdoor waiting area would be extended to "provide the waiting public with shelter from the sun, rain and terrible congestion". However, the employment service noted these steps did "not purport to resolve congestion entirely, but rather to minimize it".

In January 2012, as no improvements had been made despite the assurances, HaMoked petitioned the HCJ.¹⁶⁵ HaMoked argued, inter alia, that the waiting conditions were intolerable and unreasonable and that they were violating the rights to dignity and equality of the service seeking public. Only a year later, in early 2013, the employment service finally removed the automated sign-in terminals from the building. The lines did get shorter, but no benches, drinking fountains or bathrooms were installed. HaMoked withdrew the petition, and continues to monitor the conditions and any changes in them.

(Case 68323)



The Right to Pray at the Interior Ministry Branch Office

At some point, a sign, in Arabic only, was posted in the Ministry of Interior East Jerusalem branch office, which read: "To all visitors, please do not perform the duty of prayer while on the office premises. With apologies".

165 HCJ 176/12 **al-Batash et al. v. Senior Division Manager, Population Authority, Ministry of Interior et al.** (2013).

In March 2011, HaMoked contacted the Ministry of Interior demanding the prayer ban be retracted. HaMoked said that the prohibition on prayer in a government office violated the fundamental human right to freedom of religion and worship, to which individuals seeking the office's services were entitled. HaMoked added that freedom of religion is a basic tenet of Israel's constitutional system, enshrined in the Declaration of Independence. HaMoked noted that posting the notice in Arabic only raised real concern of wrongful religious discrimination.

The response of the director of the regional population administration office in East Jerusalem, arriving two days later, oddly stated that the notice "was written out of consideration for those wishing to pray, to allow them to perform the rite in a dignified manner [...]". The director added that the Ministry of Interior did not forbid prayer and that no one had ever been disturbed during prayer; however, "prayer is impossible inside the building, in areas used as public passageways, as usually people pass through there". When Haaretz newspaper asked the ministry to comment on the issue, the response changed: "The notice is a small sign which was apparently posted in the past, and did not form any official instruction on our part [...] once we were made aware of its existence, the sign was removed". Indeed, several days after HaMoked's communication, the notice was removed from the wall of the Ministry of Interior office. **(Case 31490)**

Social Security Rights in East Jerusalem

Most social security rights in Israel are given only to people who reside in the country, maintaining a center-of-life inside the Green Line or the area annexed to Israel, so long as they have permanent or temporary status in Israel; special legislation confers these rights also on settlers. The National Insurance Institute's definition of "Residency" is different from that of the Ministry of Interior. The NII determines residency according to the person's permanent place of residency, and strictly for the purpose of granting social rights, including health insurance. Therefore, a person can be registered as a permanent resident in the population registry, but lose his or her residency status with respect to social security rights under the National Insurance Law.

HaMoked provides assistance to Palestinian residents of East Jerusalem whose entitlement to social security rights has been revoked by the NII, on the claim that they live outside the annexed area of Jerusalem. The NII is required to inform these residents of its intention to revoke their residency recognition under the National Insurance Law and must allow them to present their case. But most people who have sought HaMoked's assistance discovered they had been disqualified only after their pensions and benefits were not deposited in their bank accounts, or when they needed medical care only to find their health insurance had been cancelled. The NII often reverses its decisions after a Labor Court claim is filed, even before the action is concluded. This strengthens the suspicion that the revocation of social benefits and health insurance entitlements – which could be disastrous for their recipients – is done in a perfunctory manner. Thus, court intervention is often required.

S.A. is a resident of Israel who lives in the Old City of Jerusalem. In 2008, she married a resident of Hebron, who has another wife. After the wedding, S.A. continued to live in Jerusalem with her mother, who needs constant medical assistance, and her daughter, born in 2009. S.A. works full time as a teacher in a special education school in the Old City and sees her husband in Hebron once a week, from Thursday night to Friday night (Friday is not a school day in East Jerusalem).

In September 2009, the NII informed S.A. of its intention to disqualify her as a resident for the purpose of social security rights, subject to a written objection, because her center-of-life was in the home her husband rented for her in Hebron. HaMoked filed a written objection on S.A.'s behalf. No response was provided, but the NII cancelled her health insurance.

In March 2010, HaMoked filed a claim against the NII on her behalf, demanding her health insurance be reinstated along with her other social security rights.¹⁶⁶ HaMoked argued that S.A.'s center-of-life had been and remained in the Old City of Jerusalem, where her mother and daughter were living, and where she was working. In its statement of defense, the NII said that "S.A. resides permanently in a rented apartment in Hebron, rented by her husband", and that it was aware that S.A. "sleeps in her parents' home, but this is only temporary". The NII based its claims on an

166 NI 10415/10 **A. v. National Insurance Institute** (2011).

investigation it conducted in 2009, in which, inter alia, the investigator did not find “a crib, stroller, car seat and toys for the two-month-old baby” in the Old City home.

In November 2011, the Regional Labor Court accepted the claim, ruling that S.A.'s center-of-life remained in the Old City of Jerusalem even after her marriage. The judge ruled that the NII must retroactively reinstate all social security rights, including withheld benefits, for the entire period.

(Case 63118)

In 2011-2012, HaMoked processed 185 cases regarding social security rights in East Jerusalem, including 65 new cases opened in that period. As part of its work on these cases, HaMoked handled 143 legal actions, including 71 new ones. The individual cases have resulted in a number of precedential achievements that have a significant impact on thousands of families in East Jerusalem.

Children's Health Insurance

The National Health Insurance Law stipulates that “any resident is entitled to medical services”.¹⁶⁷ However, the obstacles the Ministry of Interior places in the path to child registration in East Jerusalem most severely impact children's eligibility for health insurance, given the NII's position that individuals who are not registered in the population registry are not entitled to health insurance. A child who has two resident or citizen parents is given an identity number by the Ministry of Interior immediately after birth, and can be immediately registered in the NII's health insurance database. In the case of children who have only one Israeli resident parent, the parents must prove that their center-of-life was in Israel in the two years preceding the child's birth. Therefore, registering such children in the population registry and obtaining identity numbers for them takes a very long time, from months to years, delaying their registration in the health insurance database. Thus, despite having an Israeli resident parent who has national health insurance coverage, these children are left without health insurance.

In 2001, following an HCJ petition¹⁶⁸ filed by human rights organizations, including HaMoked, an expedited protocol was formulated, whereby the NII

167 National Health Insurance Law 5754-1994.

168 HCJ 2100/89 **Physicians for Human Rights-Israel et al. v. Minister of Health et al.** (2001).

would give children who have only one Israeli resident parent a temporary number within a week of birth (or immediately after birth in urgent medical cases), enabling them to exercise their right to health insurance. Once the child is registered with the Ministry of Interior, the NII temporary number would be replaced with a permanent identity number. However, over the years, the NII has eaten away at this HCJ-endorsed arrangement: though the protocol refers to “children” without any age restriction, the NII began claiming that it relates only to infants under 12-months-old. Accordingly, the NII stopped issuing temporary numbers to children older than 12 months, – thus denying them health insurance – unless an application for their registration had been submitted to the Ministry of Interior. In 2009, the NII issued a new protocol, making this practice official. The new protocol stipulated that the NII would revoke the temporary numbers – and the health insurance – of children who reach the age of 18 months at most (or earlier, depending on the circumstances of their registration).

The breach of the HCJ-endorsed arrangement prompted numerous claims against the NII, many by HaMoked, concerning children's eligibility for health insurance and the issuance of temporary numbers. Given the large number of claims, in 2011, the Jerusalem Regional Labor Court decided to hold a general review of the issue of health insurance for children not yet registered in the population registry who have one Israeli resident parent.¹⁶⁹ HaMoked argued that children are entitled to health insurance pursuant to the National Health Insurance Law which does not subject the right to health services to registration in the population registry; moreover, the NII's conduct not only constitutes a blatant unilateral breach of the HCJ-endorsed arrangement, it also violates the right to health services – a fundamental right as part of the right to life and bodily integrity – and the right to equality of Israeli residents' children. HaMoked added that the violations are particularly grave, given that delay in registration does not depend only on the parents or child, but also on the Ministry of Interior's manner of processing registration applications, which is often protracted. This results in an absurd situation in which a child who lives in Israel with a parent whom the NII recognizes as a resident entitled to health services, is not entitled to health services.

In its response, the NII argued that children over the age of 12 months who were not registered in the population registry were not “residents of Israel”,

169 NI 10382/10 **Khalaileh et al. v. National Insurance Institute.**

hence, not entitled to health insurance; nonetheless it announced a change of policy, extending the validity of the temporary number to age two; if the families prove that a child registration application had been submitted to the Ministry of Interior and that processing was protracted “due to matters unrelated to the resident parent”, the temporary number would be extended to age 2.5. Given the change in the protocol, the NII asked that the claims be dismissed. Judgment is still pending at the time of writing.

The extension of the temporary numbers to age 2 or 2.5 is a welcome change, but it is not enough. HaMoked continues its efforts to ensure that every child who has at least one Israeli resident parent insured under the National Health Insurance Law will have continuous health insurance coverage from the moment of birth. Such an arrangement would be consistent with the National Health Insurance Law and would uphold human rights and Israeli basic rights. **(Case 63700)**

Work Permits

As stated, the Temporary Order and the preceding 2002 government resolution freezing family-unification procedures with OPT residents have halted all status upgrades for OPT residents living in Israel with their Israeli spouses as part of a family-unification procedure. Since then, many of them have been living in their homes with DCO permits, which are issued by the military and do not confer any civil status in Israel. DCO permit holders have difficulty finding work in order to support their families, because the permit they receive bears the inscription: “This permit does not constitute a permit to work in Israel”. To get an Israeli work permit they have to follow a complicated process to obtain an Israeli entry permit – though they live in Israel lawfully – and their potential employers to file an application to employ them, through a protracted procedure involving the Ministry of Interior and the military; employer-approvals are given to a few sectors only and subject to quotas placed on the employer; and the permits also bind the workers to the specific employer. This procedure was designed for Palestinians living in the West Bank and the Gaza Strip who must return to their homes at the end of the workday in Israel, but is imposed also on spouses of Israeli residents who live in the country lawfully.

This bureaucratic hurdle forced DCO-permit holders to work in Jerusalem without work permits, or, for lack of choice, seek work away from their families in the West Bank – thus jeopardizing the family-unification procedure, as the Ministry of Interior might conclude that they had moved their center-of-life to the West Bank. HaMoked contacted the Ministry of Interior and the military many times on this issue, but received no pertinent response to its arguments of principle. In September 2011, HaMoked petitioned the HCJ demanding that individuals who lived in Israel with DCO permits after their family-unification applications were approved, be allowed to work and earn a living in Israel without restrictions or additional processes.¹⁷⁰ HaMoked argued that the Ministry of Interior policy was arbitrary and unreasonable and that it was violating the principle of equality by unlawfully discriminating against Palestinians compared to other foreign nationals undergoing family unification, whose visas also constitute work permits unrestricted to specified sectors; denying Palestinians who were living in Israel lawfully for many years the option of working as part of their stay-permit and subjecting them to the work-permit procedure designed for Palestinians living in the OPT violated their rights to dignity, equality, a livelihood and freedom of occupation, and served no legitimate purpose.

In November 2012, in its response to the petition, the state announced that as of January 1, 2013, the stay-permit given to Palestinians whose family-unification application had been approved would state: “This permit allows the holder to work in Israel”, and that they could be hired to work in all sectors, without further processes. The new permit will affect the lives of many families of Israeli residents and citizens who married OPT residents, suffering, inter alia, from the economic consequences of the Temporary Order. **(Case 66601)**

Professional Training Courses

Living in Israel with DCO permits greatly limits options for professional development. In January 2011, HaMoked contacted the Ministry of Trade and Labor about a Palestinian woman who has been living in East Jerusalem since 1993 with DCO permits given to her as part of a family-unification procedure with her Israeli resident spouse. The woman had finished with honors a family daycare management program in a Jerusalem college. But

170 HCJ 6615/11 **Salhab et al. v. Ministry of Interior et al.** (2013).

when she went to take the Ministry of Trade and Labor accreditation exam, she was told she could not do so, not having an Israeli identity card.

HaMoked argued it was unreasonable that an individual who was living in Jerusalem lawfully for many years with Israeli stay-permits and could not upgrade her status due to the Temporary Order, could not get professional training, build a professional future and support herself and her family with dignity, inter alia, by studying and taking the accreditation exams of the Ministry of Trade and Labor. HaMoked stressed that denying access to government accreditation exams did not serve the alleged security purpose of the Temporary Order and disproportionately harmed the individuals falling within its scope. HaMoked further claimed that limiting people's ability to study and receive vocational training in their chosen profession, fulfill themselves, pursue their talents and provide for their families with dignity, limits their freedom of occupation, freedom of expression and their right to dignity which is enshrined in Basic Law: Human Dignity and Liberty – a law which applies to all individuals inside Israel.

In August 2011, HaMoked received the response of the Ministry of Trade and Labor: “Individuals living in Israel due to a family-unification procedure [...] will be able to take professional training courses and professional exams”.

(Case 65710)

Language Interpretation in Medical Committees

Palestinian residents of Israel who live in East Jerusalem are entitled to all social benefits provided by the NII, including disability pensions. However, although many East Jerusalem residents are not fluent in Hebrew, the NII's medical-review committees that determine pension eligibility almost always conduct their sessions in Hebrew. The NII allows applicants to bring their own interpreter, but this is an ineffective solution, given that in most cases the interpreter is unskilled and is not proficient in both languages – much less in their medical terminologies; and this interpretation or mediation often causes misunderstandings and confusion.

In March 2012, HaMoked requested the NII to attach an accredited interpreter to the medical review committees in East Jerusalem. In the request – made on behalf of the Forum for the Development of Mental Health Services in East Jerusalem, composed of civil society organizations, community institutions

and local activists – HaMoked stated that disability benefits were pensions intended to guarantee a basic dignified existence to those who lost their earning capacity through disability, leaving them unable to provide for themselves and their families. Holding medical review committees in a language the applicants did not understand violated their rights to social security, dignity and equality; more so given that Arabic is an official language in Israel that should be available for use in all government institutions.

In its response to HaMoked, the NII agreed that “the Arabic speaking public should also be provided with translation services during medical review committees”, but did nothing to that effect. In November 2012, HaMoked, together with Physicians for Human Rights-Israel and the Israel Religious Action Centre, petitioned the HCJ to instruct the NII to assign a professional interpreter to the committees reviewing disability-pension claims of East Jerusalem residents.¹⁷¹ HaMoked appended to the petition an expert opinion by Dr. Michal Schuster of Bar-Ilan University, discussing language gaps and their impact on the diagnosis and treatment of members of linguistic minorities; the danger of relying on untrained interpreters; and the importance of professional interpretation in medical encounters. A hearing is scheduled for December 2013. **(Case 72335)**

National Insurance Institute Investigations

When the NII has doubts as to residents' eligibility for social security rights, it appoints investigators to check whether those residents actually live inside Israel. In East Jerusalem, these investigations are a matter of routine, particularly in the case of families in which one spouse is an Israeli resident and the other an OPT resident. Investigation files HaMoked has obtained reveal that the NII is not selective in choosing its methods of investigations, whether open or surreptitious. NII investigators enter homes without prior notice, take statements from the occupants and their neighbors, demand documents, and even inspect and photograph rooms and their contents – all in order to determine whether the family members actually live in the home. NII investigators also go to West Bank homes belonging to relatives of the spouse from the OPT, questioning family and neighbors and checking the contents of the homes. Thus, for example, children's toys found in

171 HCJ 8031/12 **HaMoked: Center for the Defence of the Individual et al. v. Director General of the National Insurance Institute et al.**

grandparents' homes in the OPT may be cited by investigators as undeniable proof that the couple and their children live outside Israel. Often, the NII determines that individuals do not have a center-of-life in Israel based on a single attempt to enter their homes, or on statements given by neighbors, without seeking supporting evidence or cross checking the information. Moreover, in the investigation files obtained, HaMoked has often found discrepancies between the investigators' conclusions and the statements made by the individuals under investigation in their conversations with the investigators – transcribed by the investigators themselves.



NII Investigations Conducted by Private Companies

In May 2011, HaMoked sent the NII an application under the Freedom of Information Act for information about the investigation of residents. The NII's response revealed that of all its branch offices across the country, only the East Jerusalem office enlists private investigators to perform such investigations. This practice is problematic on many levels: first, private investigators do not receive the same training as investigators who are public servants, and abide by different norms. The same holds true for oversight and disciplinary action in case of complaints against investigators. Second, private investigators do not provide the NII with all the materials collected during an investigation, only a summary report. The NII's decision as to the residents' social security rights is not based on the raw material in the investigation file, but rather on partial, processed information which is often biased. Third, hiring private investigators raises concerns that decisions on social security rights could be based on extraneous considerations, economic perhaps, prompting private investigators to produce results beneficial to their client, the NII – the institution paying the pensions. **(Case 68995)**

Usually, from the day the claim is filed and until the investigation is concluded, many months pass by, during which the resident does not receive benefits and has no health insurance coverage. Additionally, these investigations are also used outside the NII, in matters unrelated to benefit eligibility. The Ministry of Interior often relies on them in considering applications for family unification or child registration. Thus, the NII, entrusted with advancing a

social security policy, along with the private firms it employs, serve as a tool for achieving Israel's demographic vision of reducing the number of Palestinians living in the city.



Detainee Rights

There is no dispute that granting requests for family visits to prisoners is an expectation that warrants acknowledgment by the competent authority in Israel, as part of the exercise of the right to family life [...]. As part of his powers, the commander of the Area has an obligation to see to the safety and welfare of the residents of the Area. This includes allowing them to realize their family ties with faraway loved ones, and providing proper protection of constitutional human rights.

Ayala Procaccia, Then Supreme Court Justice¹⁷²

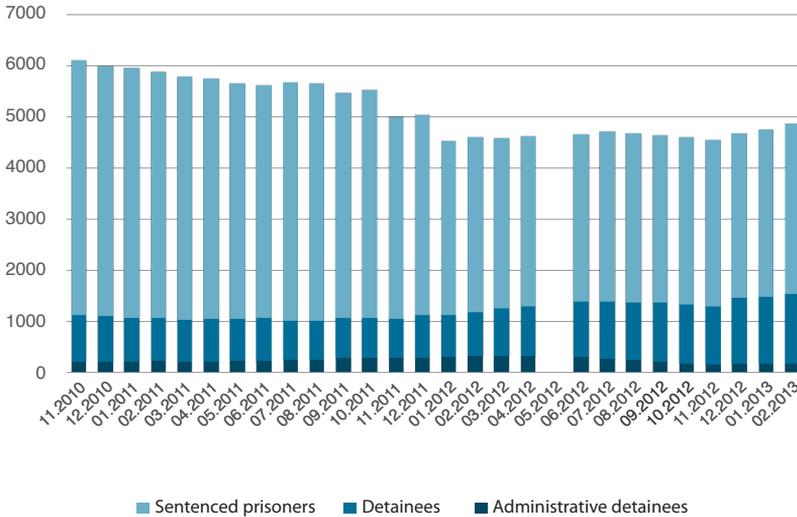
Prison walls restrict inmates' freedom of movement, with all that this entails, but they do not take away their other fundamental rights, except those denied by an explicit statutory provision. HaMoked provides assistance to thousands of prisoners and their relatives whose rights are violated by Israel; rights that are enshrined in international and Israeli law, among them the right to due process, including the right to counsel, the right to proper prison conditions, the right to family visits, and the right to be free of torture and inhuman or degrading treatment.

Every year, the Israeli military detains thousands of Palestinians in the Occupied Palestinian Territories (OPT). In 2011, for example, Israel made 9,587 arrests of Palestinians.¹⁷³ Thousands of Palestinian inmates defined as “security prisoners” are held in prisons inside Israel: detainees awaiting trial, sentenced prisoners and administrative detainees.

172 HCJ 7615/07 **Barghouti et al. v. West Bank Military Commander** (2009), Judgment, May 25, 2009, §12.

173 Response from the Israel Police, dated January 30, 2013, to HaMoked's freedom-of-information application. Figures for 2012 have not yet been received.

Security Prisoners Held in Israeli Prisons¹⁷⁴



Detainee Tracing

The right to notification about a person's arrest and place of detention is part of the right to human dignity of both the detainees and their relatives. Registration of detainees in the place of detention is imperative for their ability to exercise their other rights. The obligation to notify families of detainees of the place of detention is enshrined both in the military legislation applied in the OPT and in Israeli law, in the Prisons Ordinance and the Police Ordinance. Despite this, Israel does not notify families about the arrest and whereabouts of their loved ones.

Following HaMoked's High Court of Justice (HCJ) petitions on this issue, filed since 1989, in 1995, the military established a control centre that collates – and should provide – up-to-date information regarding detainees and

¹⁷⁴ Figures provided by the Israel Prison Service. Figures include a dozen or so Jewish prisoners and an almost absolute majority of Palestinian prisoners – residents of the OPT, including East Jerusalem, and Israeli citizens. Figures also include prisoners held at Ofer Prison located in the West Bank. No figures were provided for May 2012. In October 2011, Israel released 477 security prisoners as part of the first phase of the deal for the release of captive Israeli soldier Gilad Shalit; 550 additional prisoners were released in December 2012 as part of the deal's second phase.

their whereabouts, collected from the incarcerating authorities – the military, the police, and the Israel Prison Service (IPS). In practice, families can learn where their loved ones are held only by contacting the control centre. The center usually responds within 24 hours, but sometimes days pass before the detainee's whereabouts are disclosed. This may happen for various reasons: the arresting authorities may fail to duly register the detainee, the incarcerating authority may refuse to divulge the whereabouts, or computer records may not reflect the actual place of detention.

In 2011, HaMoked processed 2,775 new requests to trace detainees. HaMoked also traced the current place of incarceration of 937 inmates it had traced previously, usually because their relatives wanted to visit them. In 2012, HaMoked processed 3,630 new tracing requests and 1,858 repeat tracing requests.

On the night of May 18, 2011, the military arrested A.J., a young man, in his home in Hebron. His family contacted HaMoked to help trace him. The IPS and the military told HaMoked that A.J. did not appear in their databases. HaMoked's call to the military's "humanitarian desk"¹⁷⁵ revealed that A.J. had probably been taken to the Etzion detention facility, but further inquiry revealed he was not registered there. On the following day, the military still did not inform HaMoked or A.J.'s family of his whereabouts. Only about 100 hours into the detention, did security forces manage to find out that they were holding the detainee at the Hebron police station. **(Tracing case 69207)**

On July 11, 2011, T.A. was detained at a military flying checkpoint near Ramallah. His relatives asked HaMoked to trace him. HaMoked contacted the IPS and the military, but their responses indicated that T.A. was not registered in any detention facility. The military's "humanitarian desk" went so far as saying that it could not divulge T.A.'s whereabouts for "security reasons". Only after HaMoked contacted the West Bank legal advisor, were T.A.'s whereabouts quickly disclosed. Despite HaMoked's complaint about the odd response it received from

175 For more on the military's "humanitarian desk", see *supra* note 81. On March 29, 2012, HaMoked received a letter from the Civil Administration liaison officer, notifying that the "humanitarian desk" would no longer assist in detainee tracing. **(Case 31701)**

the “humanitarian desk”, less than three weeks later, HaMoked received the same response while tracing the whereabouts of A.A., a young man from Tulkarm detained by the military. In this case too, only contacting the West Bank legal advisor was needed for the disclosure of the place of detention. HaMoked again contacted the military to remind it of its duty to give notice of a person's arrest and whereabouts. The response of the Civil Administration public liaison officer stated “this procedure has been terminated and the required information will be provided”. No similar cases have since occurred. Still, the military's response suggests that such a procedure, or at least, practice of concealing detainees' whereabouts “for security reasons” had indeed existed.

(Tracing cases 69708, 69868)

On May 2, 2012, relatives of M.H. requested HaMoked to find out if M.H. was still being held at Qetzi'ot Prison or had been transferred to a different prison. The control centre told HaMoked that M.H. was “in transit to Ohalei Kedar Prison”, but five days later, he was still not registered there, or in any other IPS facility. HaMoked contacted the State Attorney's Office, but still, it took two more days before the military entered M.H.'s location into the computer system as required. **(Tracing case 71973)**

In February 2012, HaMoked contacted the control centre in order to trace a detainee from Jericho. The control center said the man had been detained by the Erez unit of the border police, and his whereabouts were unknown. The control-center commander told HaMoked that the center was not obligated to trace those classified as “criminal detainees”. HaMoked then contacted the Erez unit commander, who answered that “It's none of HaMoked's business where I store [s'ic] this detainee”. HaMoked sent clarification letters to the control center and the border police, reminding them that the Supreme Court had ruled that it was the control center's duty to collate and provide information about the whereabouts of all detainees from the agencies involved in detention and incarceration, that is, the military, the police (including the border police) and the IPS. Since then, these agencies have not refused to divulge the whereabouts of criminal detainees.

(Tracing case 71765)

Unrecognized Detention Facilities

In 2011, HaMoked exposed the fact that Israel was unlawfully holding Palestinian detainees in an unrecognized detention facility in inadequate conditions. This came to light when HaMoked tried to trace OPT residents who had been detained at the Allenby Bridge border crossing and then “disappeared” for several hours, during which their detention and whereabouts were not recorded. HaMoked's inquiries uncovered that the detainees had been held unrecorded at the Mul Nevo military base near Jericho, which is not an official detention facility. Testimonies collected from detainees who were held at Mul Nevo base indicate that the minimum detention conditions prescribed by international law¹⁷⁶ and Israeli law are entirely ignored there, as is relevant military legislation. The detainees at Mul Nevo are kept sitting for many hours on a chair or on the ground, blindfolded, handcuffed, and exposed to the elements; they receive no food or drink for hours, are deprived of basic sanitary conditions, cannot relieve themselves in privacy, and more.

From the affidavit of M.A., held at Mul Nevo on February 8, 2011: “They never took me to the washroom in all the hours I was there. Only when the Nahshon soldiers came to take me, I asked to go to the washroom before we left. They said there was no washroom. In the end, they agreed, and took me to some corner on the base. They left me handcuffed while I relieved myself. A soldier undid my belt.” **(Tracing case 68049)**

From the affidavit of H.A., held at Mul Nevo on November 13, 2011: “They put me in a square meter cell. It had no roof, and no place to sit. I sat on the ground. I was blindfolded and handcuffed the whole time. I was left like that for about 15 hours, during which, I heard soldiers passing by and laughing at me.” **(Tracing case 70744)**

From the affidavit of J.A., held at Mul Nevo on September 20, 2012: “After five hours of waiting, I asked for some food and drink. I asked several times. They brought me water and a soldier let me [drink]. As for food, they said they didn't have any [...] I didn't eat until I got to Ofer, after nine more hours.” **(Tracing case 74697)**

176 UN's standard minimum rules on holding conditions available at: http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

Once the injurious and unlawful detention practices were discovered, HaMoked contacted security officials to ask how a person could “disappear” for one or two days, be kept in harsh conditions, and only “reappear” when he arrived at an IPS prison facility. Except for an indirect confirmation that this unacceptable practice existed, the security officials' responses left HaMoked's question unanswered. HaMoked repeated its complaint, and in April 2012, more than six months after the initial communication, it received the response of the West Bank legal advisor, stating, among other things, that “since the Mul Nevo base has not been declared a detention facility, detainees will no longer be held at that base”.

But despite the military's express assurance, HaMoked kept receiving testimonies about the prolonged holding of detainees at Mul Nevo. HaMoked again contacted the military demanding it cease the blatant breach of its own undertaking, which causes severe violations of the detainees' basic rights. In February 2013, the military changed its position and said that the military base – a base not recognized as a detention facility – would continue to serve for holding detainees, while they “wait for a while” before being transferred to proper facilities. On March 18, 2013, HaMoked contacted the Military Advocate General, asserting that holding detainees at Mul Nevo was a slippery slope and that despite the official assurance, the military kept holding detainees for up to 12 hours unregistered and in substandard conditions. HaMoked clarified that Israel must seek an appropriate, permanent systematic solution for individuals arrested at Allenby Bridge. HaMoked continues its efforts to have this issue resolved. **(Case 71733)**

Petitions for a Writ of Habeas Corpus

In 2011-2012, HaMoked filed five petitions for a writ of habeas corpus demanding the state disclose the whereabouts and legal reason for the detention of individuals. Habeas corpus petitions serve as a safeguard against arbitrary and unchecked use of the state's powers of arrest. They are filed when people who were most likely detained cannot be traced in official records, in order to compel the state to fulfil its legal obligation and provide the information needed to allow these detainees to exercise their rights, and alleviate their families' concerns.

On December 19, 2011, a family from the Nablus area asked HaMoked to trace the whereabouts of T.D., their 17-year-old son who was arrested the day before, at his workplace. HaMoked's inquiries with the military revealed that T.D. was being held in a military base that was not a recognized detention facility. The soldiers there said they were waiting for a police officer to arrive and did not know "what to do with the detainee" until then. About 30 hours after the arrest, during which no official information was given as to the minor's whereabouts HaMoked filed a habeas corpus petition.¹⁷⁷ After the petition was filed, the State Attorney's Office said that T.D. was being held in a military temporary holding facility near Nablus. But when HaMoked contacted the facility, it was told that T.D. was not there. After being contacted again by HaMoked and making further inquiries, the State Attorney's Office stated that the military had misled it, giving it incorrect information. It appeared that throughout this time, the minor was still being held at a military base. In its response to the court, the State Attorney's Office admitted that T.D. had been held "in breach of regulations, in a facility which is not a detention facility", but it did not impart T.D.'s whereabouts before his transfer to police custody. T.D. was released to his home about 50 hours after his arrest. **(Case 71145)**

On the night of April 8, 2012, soldiers arrested Y.A. in his home in Hebron. As, for over 24 hours, the military made no effort to inform the family of the detainee's whereabouts, HaMoked contacted the IPS, the police and the military in an effort to trace him. The authorities claimed that Y.A. had been transferred for questioning, but did not know where to. After more than 50 hours, HaMoked filed a habeas corpus petition to compel the authorities to immediately disclose the detainee's whereabouts.¹⁷⁸ A few hours after the petition was filed, the State Attorney's Office told HaMoked that Y.A. was being held in the Russian Compound detention facility in Jerusalem. However, only on April 15, 2012, a week after he was detained and five days after the petition was filed, did the IPS record Y.A. in the incarceration database. The IPS claimed the delay was due to "infrastructure work". **(Case 72649)**

177 HCJ 9441/11 **Dawidi et al. v. West Bank Military Commander et al.** (2011).

178 HCJ 2912/12 **al-Qawasmeh et al. v. West Bank Military Commander et al.** (2012).

Family Visits to Prisoners

As stated, Israel holds in its incarceration facilities thousands of Palestinians defined as “security prisoners”, among them detainees awaiting trial, sentenced prisoners and administrative detainees. The vast majority of Palestinian inmates are held in prisons located inside Israel, in breach of international law which prohibits an occupying power from transferring population from the occupied territory into its own for the purpose of detention and imprisonment.¹⁷⁹ Consequently, their relatives must apply to the military for an Israeli entry permit in order to visit their loved ones in prison. Israel scarcely issues such permits, and it does so under narrow criteria and stern qualifications.

The right to family visits in prison is a fundamental right of both the inmates and their relatives. This right is rooted in the perception of the human being as a social creature, living in families and communities. It is enshrined in a number of Israeli and international legal sources, including the Fourth Geneva Convention, according to which: “Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible”.¹⁸⁰ However, Israel does not allow Palestinians living in the OPT to travel independently to prisons, and offers no alternative. The right to visits can be denied by the military, which prohibits the entry of visitors into Israel, or by the IPS, which denies visits to individual prisoners or family members. In addition, since 2007, Israel has placed a blanket ban on visits by relatives who are residents of the Gaza Strip.¹⁸¹

In 2011, 174 new cases concerning prison visits were opened by HaMoked. In 2012, an additional 202 cases were opened. During these years, HaMoked also continued its work on 365 cases opened in previous years. As part of its work in this area, HaMoked filed 191 new court petitions during 2011-2012 and continued its work on 18 legal actions launched in previous years.

Beginning in 2000, and for three years following the outbreak the second intifada, Israel banned all visits to Palestinian security prisoners. The visits were

179 **Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949**, Arts. 49 and 76. For more details, see HaMoked, **Activity Report 2008-2010**, pp. 166-167.

180 **Fourth Geneva Convention**, Art. 116.

181 For more details, see *infra* p. 130.

gradually renewed, beginning in March 2003, following legal advocacy by HaMoked.¹⁸² Visits are organized, funded and operated by the International Committee of the Red Cross (ICRC), which serves as a mediator between the Israeli military and the inmates' relatives. The narrow criteria stipulated by Israel, allow only immediate relatives to visit prisoners – spouses, children, parents, grandparents and siblings. However, even when the ICRC visit arrangement operates regularly, the process is long and cumbersome.

Israel places further restrictions on inmates' sons (as opposed to daughters). Sons between the ages of 16 and 35 may visit an incarcerated parent only twice a year; brothers (but not sisters) in the same age group may visit their sibling only once a year. In 2011-2012, HaMoked appealed to the military both in individual cases and with a general demand to lift the restrictions on visits by sons and brothers of prisoners. Some individual cases were resolved as exceptions, but the military gave no explanations for its policy and offered no general solution to the problem. In June 2013, HaMoked petitioned the HCJ on this issue.¹⁸³ The Supreme Court scheduled the hearing in the petition for April 2014. **(Case 78048)**

“The Preclusion Arrangement” and Failure to Respond

Until November 2004, Palestinians Israel defines as “precluded from entering Israel” did not receive permits to enter Israel for the purpose of family visits in prisons.¹⁸⁴ In 2004, HaMoked's efforts resulted in an arrangement that was meant to allow individuals who are “precluded from entry” to visit loved ones incarcerated in Israel. Under this “preclusion arrangement”, the security forces review the application, and if approved, the applicant is issued a permit that allows a single entry into Israel strictly for visiting prison and only with the ICRC shuttle. The permit is valid for 45 days from the date of issuance. Once the permit is used for a visit, or, if unused, once it expires, the visitor may submit another application. In contrast, regular prison-visit entry permits are valid for one year and for an unlimited number of visits within this time (subject to IPS protocols and the frequency of ICRC shuttles to the various

182 For more details, see HaMoked, **Activity Report 2004**, pp. 34-37.

183 HCJ 4048/13 **Arashid et al. v. West Bank Military Commander et al.**

184 According to figures provided by the military in August 2011 in response to HaMoked's freedom-of-information application, in 2009 there were 1,587,483 (more than 1.5 million!) “security preclusions” to entering Israel. In 2010, the number dropped to 544,776 preclusions. In October 2012, HaMoked asked for similar figures for 2011, but has not received the information. **(Case 67658)**

prisons). Moreover, the “preclusion arrangement” is marred by severe foot-dragging which results in highly infrequent visits.

In early 2006, in response to a petition by HaMoked, the military pledged to process applications for permits and permit renewals made as part of the “preclusion arrangement” within eight to ten weeks.¹⁸⁵ But in 2011-2012, as in previous years, the military consistently failed to uphold its undertaking to the Supreme Court. Thus, for example, in 2011, of the 370 permits approved in applications filed by HaMoked, only eight (2.1%) were issued within the required ten-week period, and the average processing time was more than 5.5 months; in 2012, of the 387 permits approved in HaMoked's applications, only 21 (5.5%) were issued in time, and the average processing time was more than 11 months (!). As a result of the military's deficient conduct, immediate relatives of security prisoners who are banned from entering Israel cannot visit their incarcerated loved ones more than once or twice a year.

Note that as part of its correspondence with HaMoked, in October 2012, the military announced that “Given the absence of effective means of monitoring final processing of permit applications after their receipt from the ICRC and transfer for screening by the security agencies, the processing of applications made by about 3,000 residents, has been delayed”. The military provided neither the reason nor the solution for this mass “delay” of thousands of applications. **(Case 31708)**

The military's deficient processing of prison-visit entry applications has forced HaMoked to file 53 administrative petitions for non-response in 2011, and 107 in 2012. In the petitions, filed with the Court for Administrative Affairs, HaMoked argued that non-response to applications resulted in a severe violation of the fundamental right to family life of both the inmates and their relatives, as well as other rights enshrined in Israeli and international law. In most cases, once the petition was filed, the state provided its response to the entry-permit application within a few weeks, after months of delay.

185 HCJ 10898/05 **Fatafteh v. West Bank Military Commander** (2006). For more on the “preclusion arrangement” see HaMoked, **Activity Report 2007**, pp. 56-58 of the online version, pp. 47-48 of the printed version; HaMoked, **Activity Report 2008-2010**, pp. 166-172.

M.D., the mother of a prisoner, filed an application to enter Israel to visit her son in October 2011. The military did not answer for many months, so M.D. contacted HaMoked. Since HaMoked's communications to the military yielded no pertinent response, in November 2012, HaMoked filed an administrative petition against the military.¹⁸⁶ Just two weeks later, and before the petition was heard, M.D. received a permit to visit her son – more than a year after she submitted her application. **(Case 71634)**

Prevention of Visits by the Military

As stated, because Palestinians are incarcerated inside Israel, in breach of international law, their relatives must seek an Israeli entry-permit from the military in order to visit them in prison. When the military refuses to issue the permit, HaMoked's intervention often results in its issuance. If the military refuses to change its decision, HaMoked petitions the court. Sometimes, filing a petition is enough to move the military to issue the permit. In petitions that do get heard by the court, the military often argues a “security preclusion” exists, but does not inform the petitioner of the reason or the basis for the preclusion, leaving the petitioner little choice but to agree that the judges review the classified material *ex parte* in a classified hearing.¹⁸⁷ In the vast majority of these cases, since a real hearing cannot be held, the court upholds the position of the state, as presented to it.

D.B. had not seen his brother, who is incarcerated in Israel, since the brother's arrest in June 2002. In September 2011, D.B. applied once again for an Israeli entry permit to visit his brother. In July 2012, after the military failed to respond for ten months, HaMoked petitioned the court.¹⁸⁸ HaMoked argued, inter alia, that imprisonment restricts an inmate's freedom of movement, with all that is entailed, but it does not deny his other fundamental rights, including the right to family life and the right to receive family visits in prison. In the hearing of the petition, held four months later, the state presented the court with classified material, *ex parte*. That same day, the court issued a brief judgment rejecting the petition. **(Case 71235)**

186 AP 24411-11-12 **Daud et al. v. West Bank Military Commander** (2012).

187 For more on the use of classified information in court hearings, see *infra* pp. 33-36.

188 AP 19381-07-12 **Bsharat et al. v. West Bank Military Commander** (2012).

Prevention of Visits by the IPS

The IPS defines the right to family visits as a “privilege which may be granted or denied”.¹⁸⁹ It routinely imposes individual visit bans on prisoners or visitors. In addition, the Prisons Regulations stipulate that a person previously incarcerated in an IPS facility may not visit prisoners, except by special permit. In 2009, in a petition filed by HaMoked and the Association for Civil Rights in Israel, the state introduced a string of regulation changes, stipulating, inter alia, that individuals who had been incarcerated for civil offences would no longer be banned from prison visits and those who had been released without charge could visit prisoners six months after their release.¹⁹⁰ The power to cancel the automatically imposed preclusion against a former inmate lies with prison commanders; such requests must be answered within 14 days.

In early 2011, J.A. wished to visit his son who was incarcerated in Israel. Since J.A. is a former prisoner, HaMoked contacted the prisoner liaison officer at Eshel Prison for a visit approval. At the end of the two-week response deadline, stipulated in the IPS orders, HaMoked contacted the prisoner liaison officer again. The officer replied that he did not know when the answer would arrive, saying “security officials have more important things to do”. After two more weeks, HaMoked again contacted the officer, who, again, said there was no response. When HaMoked insisted the IPS follow its own orders, the officer said, “No problem. We’ll send the answer right away”. Shortly after that, HaMoked received a brief response stating the request had been denied. HaMoked complained to the prison commander, who, on the very same day, approved J.A.’s visit and apologized for the behavior of the prisoner liaison officer. **(Case 55739)**

HaMoked’s intervention is also required when relatives are rejected for failing to meet the narrow criteria for visiting “security prisoners”, despite the state’s pledge to give special consideration to exceptional humanitarian cases. In HaMoked’s experience, such applications are rejected out of hand, and in most cases, even HaMoked’s intervention or legal action achieves no result.

189 Israel Prison Service, Commissioner’s Ordinance 03.02.00, **Rules regarding Security Prisoners**, Sect. 17e.

190 HCJ 5154/06 **HaMoked: Center for the Defence of the Individual et al. v. Minister of Public Security** (2009). For more details, see HaMoked, **Activity Report 2008-2010**, pp. 172-175.

A.H. is serving a 12-year sentence in an Israeli prison. His wife and children live in Jordan. Since his arrest in 2006, Israel has refused to allow their entry into Israel to visit him in prison. In 2011-2012, A.H. received only four visits, all by his mother and sister. In March 2012, HaMoked petitioned against the IPS' refusal to allow his aunt to visit him.¹⁹¹ In the judgment, the Nazareth District Court held that "allowing visits outside the criteria should be considered in exceptional circumstances", yet proceeded to reject the petition. **(Case 70639)**

In December 2012, HaMoked contacted the commander of Gilboa Prison with a request to allow an 18-year-old to visit her incarcerated grandfather, whom she had never met. HaMoked asserted that as IPS protocols regarding "security prisoners" allow grandparents to visit incarcerated grandchildren it stands to reason that visits to incarcerated grandparents by grandchildren should also be allowed. The IPS refused the request briefly, saying "the inmate does not meet the criteria". **(Case 14469)**

The Visit

Visits to "security prisoners" are conducted with a thick partition separating between the inmates and the visitors. They converse using telephone receivers, with prison guards constantly present. According to IPS protocols, children under the age of 8 are allowed to have physical contact with their imprisoned parent for a few minutes at the end of the visit, once every two months. This type of visit, referred to as an "open visit", is rarely allowed to other visitors.

A.T. and N.T., both defined as security prisoners, were married in prison in 2005. Since the wedding, the IPS has allowed the couple to meet only once, and this, too, with a partition between them. In May 2011, HaMoked contacted the IPS requesting it to allow the spouses an "open visit", with prison guards present, but without a partition so they could make physical contact and exchange gifts. Two months later, the IPS refused this request and approved another visit, the second only in six years, also with a thick partition and without physical contact. **(Case 68363)**

191 PP 53967-03-12 **Hamad v. Israel Prison Service** (2012).

H.A. has been serving a prison term in an Israeli incarceration facility since early 2003. His eldest son was 4-years-old and the younger twins were one year old at that time. Despite IPS protocols, for the next nine years, the children were not allowed to have physical contact with their father at the end of visits. In early 2012, HaMoked asked the prison commander to allow the children an “open visit”, despite their being over eight years old. In April 2012, the children got to hug their father for the first time since his arrest. **(Case 55708)**

A.A., the mother of a prisoner, is bound to wheelchair due to a stroke. In October 2012, HaMoked asked the commander of Gilboa Prison to allow her an “open visit” to her son, as IPS protocols prescribe in cases of a sick relative. The IPS approved the request a week later. In September 2012, HaMoked sent a similar request in the case of A.K., the mother of a prisoner in Shita Prison, who is also bound to a wheelchair. Two months later, the request was denied. In February 2013, HaMoked had to petition on the prisoner's behalf, in the hope that the court would instruct the IPS to allow him to see his mother.¹⁹² **(Cases 12641, 74466)**

Conditions of Imprisonment

The right of inmates to decent, humane incarceration conditions is rooted in the governing perception in both international and Israeli law, that detention or imprisonment does not invalidate the inmate's fundamental rights.

In April 2012, thousands of Palestinians in Israeli prisons went on a hunger strike to protest their imprisonment conditions. The hunger strike ended a few weeks later, when the prisoners and the Israeli authorities arrived at certain understandings. These included Israel's consent to move prisoners long held in solitary confinement back to the general wards, and to reinstate their right to family visits. Most were in fact taken out of solitary confinement; but under various pretexts Israel still denies many of them the right to visits.

192 PP 24334-02-13 **Qasem v. Israel Prison Service.**

Z.H., an 82-year-old resident of Ramallah, has a son who is incarcerated in Israel. Despite her many applications to the Israeli authorities, she has not seen her son since his arrest in 2006. At the end of May 2012, following the understandings reached between security prisoners and the Israeli authorities with respect to the right to visits, Z.H. submitted another application to visit her son. Months later, HaMoked filed a petition demanding the mother be allowed to visit her son,¹⁹³ but in March 2013, the military responded briefly that the prisoner was precluded from receiving visits. **(Case 68477)**

Other understandings reached following the hunger strike included a reduction in the number of administrative detainees and the renewal of family visits from Gaza.¹⁹⁴ For a few months, Israel did reduce the number of administrative detainees.¹⁹⁵ In May 2012, it also began a limited test run of family visits from Gaza. The military did not publish the details or scope of the test run, but HaMoked has learnt that the military provides the ICRC with short lists of relatives exclusively approved by Israel for visiting loved ones in prisons. These lists name only parents and spouses, but no children or other relatives.

The Prison Canteen

Every inmate may buy items sold at the prison canteen. Family members and others may deposit money in the postal bank for that purpose. The money is then transferred to the prisoner's virtual bank account, managed by the prison treasurer. The canteen helps prisoners maintain their wellbeing, through the purchase of basic supplies such as soap, toothpaste, cigarettes, tea, coffee and sugar, without which, the basic standard of living prisoners are entitled to is undermined. Despite this, in IPS protocols, the right to buy in the canteen is defined as another "privilege that can be denied".¹⁹⁶

The postal bank has no branches in the OPT (excluding Jerusalem and the

193 AP 27920-02-13 **Hamed et al. v. West Bank Military Commander** (2013).

194 As of the end of 2012, 500 prisoners whose families live in the Gaza Strip are incarcerated in Israeli prisons. Since 2007, as part of the siege on Gaza, Israel has been preventing Gaza residents from visiting relatives incarcerated in Israel. For more details, see HaMoked, **Activity Report 2008-2010**, pp. 176-178.

195 For more details, see *infra* pp. 138-141.

196 Israel Prison Service, Accounting Department Protocols, Protocol 07-1003 **Canteen Purchases by Prisoners**, Sect. 1.1.

settlements, to which Palestinians normally have no access). OPT residents must use intermediaries who have Israeli ID cards or entry permits – sometimes for a fee – in order to send money to relatives incarcerated in Israel. Due to the various difficulties encountered by depositors, HaMoked, seeking to protect the rights of both prisoners and depositors, requested a copy of the protocols relating to the management of prisoner bank accounts, but to no avail. The Israel Postal Company claimed the accounts were managed pursuant to IPS guidelines, and the IPS never bothered answering HaMoked on this issue. In December 2010, HaMoked petitioned the court under the Freedom of Information Act for pertinent answers from the authorities.¹⁹⁷

On May 29, 2011, two years after HaMoked's initial request, and just three days before the scheduled hearing, the response of the IPS arrived, stating that deposits for security prisoners are capped at ILS 1,300 per month per account, and that, under IPS regulations, each depositor is also only allowed to deposit up to ILS 1,300 per month, even if depositing into more than one prisoner's canteen account.¹⁹⁸

In July 2012, HaMoked contacted the IPS, demanding it remove the monthly cap on depositors – who often deposit money on behalf of several families at the same time – because it violated the rights of the prisoners and their relatives for no real purpose. HaMoked also demanded the IPS stop discriminating between “security” and “criminal” prisoners and set an equal deposit cap for all prisoners, by allowing families of “security” prisoners to deposit up to ILS 2,500 per month into their loved ones' canteen accounts. Despite repeated reminders, no answer has yet arrived. **(Case 67371)**

197 AP 3243-12-10 **HaMoked: Center for the Defence of the Individual v. Israel Prison Service et al.** (2011).

198 *Ibid.*, Preliminary Response on behalf of the Respondents, May 29, 2011; Israel Prison Service, Accounting Department Protocols, Protocol 07-1008 **Deposits by Family Members and Others into Prisoner Accounts.**

Torture and Ill-Treatment during Detention and Interrogation

In October 2010, HaMoked and B'Tselem published a comprehensive report entitled **Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikva Interrogation Facility of the Israel Security Agency**.¹⁹⁹ The report, part of a large-scale project against the torture and ill-treatment of Palestinian detainees in detention and interrogation, exposed systematic violence during the initial arrest stage and during interrogation; cruel holding conditions in small windowless cells and in isolation; substandard sanitary conditions, prolonged binding in interrogation rooms with no movement possible; sleep deprivation and other forms of harm to detainees' physical and mental wellbeing. The use of each of these measures – separately, and certainly in combination – constitutes cruel, inhuman and degrading treatment, often amounting to torture; and they are all subject to a non-derogable, absolute prohibition under both Israeli and international law.

Following publication of the report, HaMoked continued its legal advocacy against torture and ill-treatment of detainees. Complaints about the conduct of interrogators working for the Israel Security Agency (ISA, formerly known as the General Security Service, GSS, or Shin Beit) were sent to the supervisor of the ISA interrogee-complaints inspector, who is a Ministry of Justice official.²⁰⁰ Complaints regarding soldier violence were sent to the Military Advocate General. In 2011-2012, HaMoked concluded its work on two HCJ petitions filed in 2010 as part of the project, and filed three more HCJ petitions regarding torture and ill-treatment of detainees.

The first concluded petition was filed after HaMoked received no response in 17 complaints it had made about the conduct of ISA agents during interrogations at the Petah Tikva interrogation facility.²⁰¹ Only after the petition was filed, did the State Attorney's Office deliver its decisions to HaMoked, rejecting all 17 complaints, mostly for being found "unsubstantiated" (**Case**

199 Report available at: <http://www.hamoked.org/Document.aspx?dID=Documents1308>.

200 The inspector, who is an ISA employee, and the inspector's supervisor at the Ministry of Justice are responsible for reviewing complaints made by interrogees against ISA interrogators.

201 HCJ 6138/10 **HaMoked: Center for the Defence of the Individual v. Attorney General** (2011).

65978). In the second concluded petition, HaMoked sought to receive the full medical records of 19 complainants it represented, after the IPS provided only partial information, which did not cover the entire detention period.²⁰² HaMoked also demanded that in future, the authorities respect the principle that all prisoners and ex-prisoners are entitled to receive their full medical records. In June 2012, HaMoked withdrew the petition, after the state pledged that prisoners' medical files would include all medical records obtained from all agencies that had held the prisoner from the moment of the arrest. **(Case 65760)**

The other three petitions were filed in October 2011. The first petition addressed the extreme delay on the part of the military's law enforcement branches, both the Military Police Investigation Unit (MPIU) and the Military Advocate General (MAG) Corps, in processing HaMoked's demands to launch investigations into seven complaints regarding soldiers' severe ill-treatment of Palestinians during the arrest and transfer to interrogation.²⁰³ Many months after the petition was filed – and two to four years after the complaints were first made – the MAG Corps responded that it had decided to close all seven investigation files “without taking legal measures against any military official” as “no sufficient evidence was found”. **(Case 66964)**

The second petition addressed the disgraceful holding conditions at the Petah Tikva detention facility, which fall short of both international minimum standard rules and Israeli guidelines.²⁰⁴ The petition was based on affidavits by detainees who had been held at the Petah Tikva facility at different times and for various durations. It painted a harsh picture: the cells are extremely small and have exposed concrete walls, lights are kept on 24 hours a day, cold air is forced into the cells, there are not enough blankets, sanitary conditions are extremely poor and food is of insufficient quality and quantity. In its response to the petition, the State Attorney's Office notified the court that the Petah Tikva detention facility was undergoing renovations and infrastructure upgrades. As at June 2013, HaMoked has not withdrawn its petition, waiting for the state to update on the outcome of the renovations. **(Case 61344)**

202 HCJ 4677/10 **HaMoked: Center for the Defence of the Individual v. Israel Prison Service** (2012).

203 HCJ 7990/11 **HaMoked: Center for the Defence of the Individual v. Military Advocate General et al.** (2013).

204 HCJ 7984/11 **HaMoked: Center for the Defence of the Individual v. Israel Prison Service.**

A third petition was filed following a refusal by the supervisor of the ISA interrogee-complaints inspector to provide HaMoked with the information on which he had based his decision to close the files he received for review.²⁰⁵ These were investigation files into complaints by Palestinians about violence, humiliation and ill-treatment they suffered at the hands of ISA agents while at the Petah Tikva interrogation facility. As stated, in all of these cases, a HCJ petition was required for the inspector's supervisor to finally respond that all the complaints had been found unsubstantiated and all files closed. HaMoked asked for the material on which the decisions to close the files were based, but received no response. In December 2012, though the petition was based on 12 individual complaints by Palestinians, the court ordered the petition be deleted for being general, without considering or ruling on the substantive issue HaMoked had raised.²⁰⁶ **(Case 69715)**

In 2011, HaMoked also launched two civil actions against the state, the military, the ISA and the IPS with respect to unlawful conduct toward detainees both during the arrest and while held at the ISA interrogation facility in Petah Tikva. Four such claims were filed in 2010.²⁰⁷ The civil claims document cruel, inhuman and degrading treatment, including acts of torture and ill-treatment, and point to a systemic failure of all relevant authorities in protecting detainees' rights to dignity and bodily integrity and their unconditional right to be free of torture and ill-treatment.

On the night of February 16, 2009, soldiers arrested A.H. at his home in Nablus. En route to the detention facility, while A.H. was lying on his back on the floor of the vehicle with his hands tied behind his back, the soldiers kicked him all over his body, stepped on him and hit him on the head with the butt of a rifle. When he asked for the handcuffs to be loosened a little, one of the soldiers tightened them even more. At the detention facility, a physician who examined A.H. noticed wounds on A.H.'s swollen hands, removed the handcuffs and rebuked the soldiers. The MPIU's internal investigation following HaMoked's complaint was closed for "lack of evidence". In January 2011, HaMoked helped A.H. file a civil claim for

205 HCJ 7987/11 **HaMoked: Center for the Defence of the Individual v. Supervisor of the Inspector of Interrogate Complaints, Ministry of Justice et al.** (2012).

206 See supra note 201.

207 For more on HaMoked's work on civil actions, see infra pp. 151-159.

bodily harm caused by the military, the IPS and the ISA during his arrest, detention and interrogation.²⁰⁸ **(Case 61366)**

On January 12, 2009, in the middle of the night, F.A. was taken from his home in Nablus and led through a muddy field, barefoot and in his night clothes. The commander in charge of the arrest, most likely an ISA agent, ordered F.A. to stand in a puddle and asked him how he chose to die. For several interminable minutes, F.A. was convinced he was about to be executed. Then, the commander burst out laughing and told F.A. that he had no intention to shoot him, just to arrest him. The soldiers around him laughed as well. F.A. was then forced to lie face down on the floor of a vehicle. He was taken to the ISA interrogation facility in Petah Tikva. The ISA and MPIU internal investigation files opened following HaMoked's complaint were closed for "lack of evidence". In January 2011, HaMoked helped F.A. file a civil claim for mental and bodily harm caused by the security forces.²⁰⁹ **(Case 61368)**

In February 2011, HaMoked joined the Public Committee Against Torture in Israel and other human rights organizations in a court petition on behalf of ten Palestinians who had been interrogated by the ISA. The organizations demanded the Attorney General be instructed to launch criminal investigations into the petitioners' complaints and any other complaint about torture or ill-treatment in ISA interrogations.²¹⁰ The organizations argued that the internal complaint review process, whereby complaints undergo initial review by an ISA employee (the inspector) and his or her supervisor at the Ministry of Justice, failed to meet international and Israeli legal requirements and that none of the more than 650 complaints filed against ISA interrogators in the last decade had resulted in a criminal investigation.

In August 2012, in a partial judgment handed in the petition, the court severely criticized the operation of the internal review mechanism and held that it should be removed from the ISA and placed with the Ministry of Justice. In November 2012, the state announced that the Ministry of Justice

208 CC 33161-01-11 **Hamad v. State of Israel et al.** (2012).

209 CC 25138-01-11 **Abu Salem v. State of Israel et al.**

210 HCJ 1265/11 **Public Committee Against Torture in Israel et al. v. Attorney General** (2012).

was taking steps to take over the review mechanism.²¹¹ The state did not disclose when the transfer would take place, what protocols would govern the review process, and who would supervise it. At the time of writing, the transfer has not yet taken place. **(Case 68238)**

Despite HaMoked's petitions and state undertakings, Israeli security forces continue the cruel and abusive treatment and torture of Palestinian detainees and interrogees, all in violation of both international and Israeli law.

In the early afternoon of June 10, 2012, the military arrested 16-year-old M.A., when he was crossing a checkpoint on his way home to Nablus, back from work in the Maale Efrayim settlement. The soldiers cuffed M.A.'s hands and feet. They made him sit on a concrete bench, with no shelter from the sun, for 2.5 hours. He was then taken by soldiers from one military base to the next. The soldiers refused to remove his cuffs even during his medical examination and even after his hands started bleeding. The minor spent the night at a military base, outdoors, tied to a metal chair, wearing only an undershirt. At dawn, M.A. was taken to "sleep" on the bare, ant-infested floor of a room inside a structure on the base. During detention, M.A. was repeatedly beaten, cursed and degraded by soldiers, and all the while, no notice was given to his family.

All efforts to trace him having failed, HaMoked filed a petition for a writ of habeas corpus instructing the state to disclose the youth's whereabouts.²¹² More than 30 hours after his arrest, the minor was taken to the Petah

211 In fact, back in November 2010, the Attorney General decided that the inspector would no longer be an ISA employee but a Ministry of Justice employee instead. The Attorney General's decision and reasons were made public in February 2013, in the Second Report of the Turkel Commission, established pursuant to an Israeli government resolution dated June 14, 2010. In this matter, the commission held that "there are serious failures in the effectiveness and thoroughness and also in the promptness of the [internal ISA] investigation process", and that the failures in the review process "raise serious doubts about the ability of the [inspector] to conduct an 'effective investigation'". The commission therefore recommended the responsibility for reviewing complaints against ISA interrogators be transferred to the Department for the Investigation of Police at the Ministry of Justice. Following the testimony given by former ISA head, Yuval Diskin, the commission also recommended "full visual documentation of the interrogations". See **Turkel Commission Second Report**, pp. 416-417, available at: <http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf>. A similar position was presented in the state's response of January 9, 2011 to one of HaMoked's petitions; see supra note 201.

212 HCJ 4589/12 **al-Din et al. v. West Bank Military Commander** (2012).

Tikva detention facility, and only then did the State Attorney's Office notify HaMoked of his arrest and whereabouts. The state did not allow the minor to see a lawyer until the next day. Four days after his arrest, M.A. was released without charge. **(Case 73451)**

At 8:00 a.m. of November 20, 2012, M.A., a 16-year-old boy from the Hebron district, arrived with his father at the Ezion police station after he was summoned for interrogation. M.A.'s father had just taken him out of hospital – before the recommended date for his release – as he had been told to do by security forces; and so the son arrived at the police station with an injured leg and using crutches. No one told the father his son was about to be arrested, and after his arrest, the family was not told where he was about to be held. The father contacted HaMoked, but when asked, the military did not know where the minor was being held.

When 24 hours passed since the son had disappeared, HaMoked filed an urgent habeas corpus petition, asking the state be instructed to disclose where M.A. was being held.²¹³ The state responded that same day that the youth was being held at Ofer Prison, but the prison told HaMoked that M.A. was not registered or held there. The next day, more than 48 hours into the arrest, at the hearing of the petition, state counsel admitted they still did not know where M.A. was being held.

In the days he was held unregistered by security forces, M.A. was subjected to torture and ill-treatment. He was first interrogated by four ISA agents at the police station. The agents beat M.A., swore at him, threatened him and refused to provide medical care for his injury. Needless to say, he was also denied counsel.

At the end of the interrogation, soldiers took M.A. to a nearby military base, where he was held in a kitchen blindfolded and with his hands tied behind his back for more than 24 hours. He spent the night sleeping on the kitchen floor, still blindfolded, with no mattress or blanket. Despite his requests to eat and drink, the soldiers gave him no food, and only twice gave him water to drink, when they relented to his pleadings to go to the washroom.

On the second night, M.A.'s medical condition deteriorated, and he was taken to Haddasah Hospital. After he was treated at the hospital, the minor

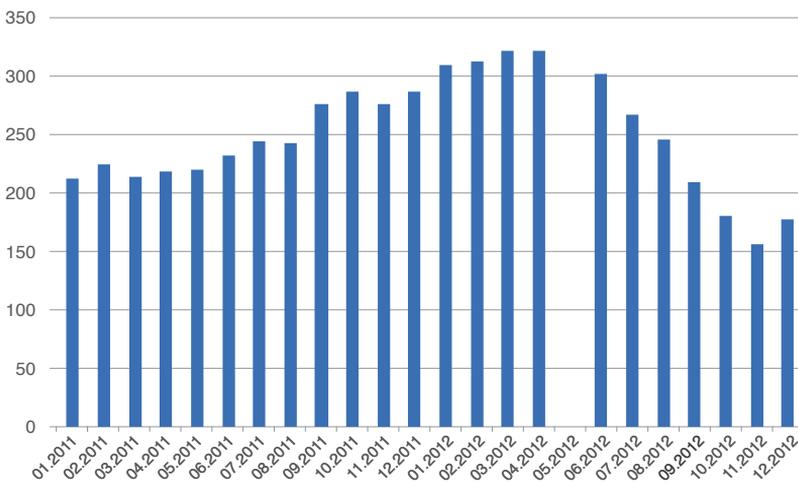
213 HCJ 8435/12 **Abu Sal et al. v. West Bank Military Commander.**

was taken back to the military base, and then transferred to another base, where he was held handcuffed on a chair outdoors. No one talked to him or explained what the military intended to do with him. The only person who gave him some sort of attention was the guard at the entrance to the base, who swore at him, pressed on his injured leg and threatened him. About 60 hours into his arrest, M.A. was brought before a military judge. Only then, for the first time since his arrest, was he given a meal, and only then was his family notified of his whereabouts. **(Case 75275)**

Administrative Detention

During 2011-2012, Israel continued to hold several hundred administrative detainees in its prisons.

Administrative Detainees Held in Israeli Prisons²¹⁴



The administrative detention of West Bank residents is conducted pursuant to military legislation in the West Bank. Israel also holds Gaza residents and

²¹⁴ Figures provided by the Israel Prison Service. Figures include a dozen or so Jewish prisoners and an almost absolute majority of Palestinian prisoners – residents of the OPT including East Jerusalem, and Israeli citizens. Figures also include prisoners held at Ofer Prison located in the West Bank. No figures were provided for May 2012.

Lebanese citizens in administrative detention pursuant to the Incarceration of Unlawful Combatants Law.²¹⁵ Administrative detention relies on special legal proceedings hinging on the detainee's future "potential threat" and on information the state estimates would be ruled inadmissible in criminal court proceedings. Under military law, an administrative detainee must be brought for judicial review before a military judge within eight days of issuance of the administrative detention order. The detainee has the right to appeal to the military appellate instance against the decision of the first instance. If the appeal is denied, the detainee may appeal to the Supreme Court. However, most administrative detention orders are based on evidence and information the authorities define as "classified". Detainees and their counsel cannot review the material, and therefore cannot contest it.

Administrative detention orders issued under military legislation are time-limited, but can be extended perpetually. Detention orders issued under the Incarceration of Unlawful Combatants Law are subject to periodic review, but have no initial time limit. And so, administrative detainees can remain in detention for many years, without being indicted, without being told what the allegations against them are and without knowing if and when they might be released; all as part of a non-transparent process and, based on classified material and "evidence" that would not be admitted in an ordinary trial.

In 2011, 885 administrative detention orders issued against Palestinians were brought before the military courts for judicial review; of them, only 21 were revoked (2.4%); about two thirds were extensions of administrative detention orders issued earlier.²¹⁶ Evidently this practice allows prolonged incarceration without conviction. In January 2013, the Supreme Court criticized the military instances reviewing extensions of administrative detention orders:

The military court also is under a "special and enhanced obligation" and it must examine the classified material carefully and meticulously, and whenever possible, it must provide counsel for the detainee with details and information from the classified material, which can be revealed without taking unnecessary risks.

215 For more on the Incarceration of Unlawful Combatants Law, see HaMoked, **Activity Report 2007**, pp. 68-75 of the online version, pp.57-62 of the printed version.

216 Published in **Haaretz** newspaper, March 4, 2013. No figures were published for 2012.

I am afraid that, as emerges from the hearing transcripts, the military court has not done so, and I am not convinced that it has served as a mouthpiece for the petitioner during the hearing.²¹⁷

Despite this criticism, the petition was dismissed by the HCJ – as were all such petitions filed in 2011-2012, and the absolute majority of those filed in previous years. Thus, the judicial review and appeal proceedings – designed to provide oversight of the perilous procedure of denying liberty without trial, a procedure that can easily be abused as a powerful tool for extortion and oppression – are rendered entirely meaningless.

In 2011, HaMoked represented 13 administrative detainees in 16 judicial reviews and 20 appeals, four of them were released during that year; HaMoked also represented two detainees held under the Incarceration of Unlawful Combatants Law. In 2012, HaMoked represented ten administrative detainees in 18 judicial reviews and 17 appeals; two of them were released. From 1995 until 2012, administrative detainees assisted by HaMoked were represented by Adv. Tamar Peleg-Sryck. Adv. Peleg-Sryck retired at the end of 2012, after more than 20 years of extensive work in the field, during which, she represented on HaMoked's behalf more than 750 administrative detainees in hundreds of judicial-review proceedings and dozens of HCJ petitions.



Detention Pursuant to Deportation Orders

In 2011, HaMoked concluded working on the cases of seven Palestinians whom Israel held in detention for many years, pursuant to an administrative decision and without judicial oversight. All seven detainees were born in Jordan and moved with their families to the West Bank at a young age. Each was arrested by Israel under different circumstances and charged with different offenses. They were all sentenced, and have since finished serving their prison terms, the last one in 2008. But Israel continued to hold them in prison, pursuant to deportation orders the military issued against them under the Order regarding the Prevention of Infiltration, on the claim that they were not OPT residents and unlawfully present in the West

217 HCJ 317/13 **'Abahreh v. Commander of the Military Forces in the Judea and Samaria Area et al.** (2013), Judgment, January 27, 2013.

Bank. In 2010, HaMoked filed seven HCJ petitions, demanding the military be instructed to release the detainees to their West Bank homes and revoke the deportation orders against them.²¹⁸ HaMoked argued that Israel was denying the detainees' right to personal liberty and due process and that denying liberty through detention was a harsh and harmful measure, all the more so in the absence of judicial oversight.

While the detainees were held in Israeli prisons, the Israeli authorities informed them that the burden of proving their status in Jordan lay with them, and that they would remain in prison until they provided the required documents. In addition, the detainees were asked if they would be "prepared" to move to the Gaza Strip; having no ties to the Gaza Strip, the seven refused the "offer" and remained in prison. In 2009, the Order regarding Security Provisions was amended,²¹⁹ and as a result, in 2010, a new judicial review instance was established – a military committee for review of deportation orders, tasked with reviewing cases such as these. As the committee presented an alternative remedy, HaMoked followed the HCJ's advice and withdrew the petitions.²²⁰

In April, May and September 2011, Israel released under restrictions six of the detainees to their West Bank homes – after three superfluous years in prison without conviction. The deportation orders were not cancelled. The seventh detainee was deported to Jordan in September 2011.

(Case 71733)

The Secret Prison

In 2002, HaMoked's habeas corpus petitions exposed the existence of a secret detention and interrogation facility inside Israel, "Facility 1391". From the little that has been published about the facility, it appears that it belongs to the military intelligence corps and operates inside a fort dating back to the British Mandate, near Hadera. The facility has mostly been used for holding foreigners, including individuals abducted from Lebanon such as Sheikh 'Abd al-Karim

218 See, e.g., HCJ 2074/10 **Hamed et al. West Bank Military Commander** (2010).

219 English translation of the Order Regarding Security Provisions (Amendment No. 112) available at: http://www.hamoked.org/files/2010/112302_eng.pdf.

220 With the exception of HCJ 1002/10 **Mahmoud et al. v. West Bank Military Commander** (2010) which was heard by the court before the establishment of the military committee for review of deportation orders. After the committee was established, the court dismissed the petition and referred the petitioners to the committee.

'Obeyd and Mustafa Dirani. Under a shroud of secrecy, inhuman holding conditions and severe acts of ill-treatment and torture are practiced there.

In 2003, HaMoked petitioned the HCJ demanding to close Facility 1391.²²¹ HaMoked argued, and continues to argue, that several express provisions in both Israeli and international law prohibit the use of a secret prison. The court dismissed HaMoked's petition and a similar petition filed by MK Zahava Gal-On in January 2011.²²² The court based its judgment on a secret "arrangement" presented by the State Attorney's Office in its response to the petitions, and avoided direct review of the secret facility's legality.

According to the secret arrangement, use of Facility 1391 for the purpose of holding detainees would be restricted. The court ruled that "the detention facility – in its current format and noting the restrictive arrangement undertaken by the state – does not contravene the provisions of Israeli and international law". However, in the following paragraph, the court stated: "should the state seek to hold detainees in the facility for a duration exceeding the one determined in the restrictive arrangement, it shall be obligated to relay the physical location of the detention facility". This statement oddly seems to suggest that it would take a slightly longer period of detention than the one stipulated in the arrangement to make the secrecy of the prison illegal.

Be that as it may, in an exceptional move, the arrangement proposed by the state was appended as a classified annex to the judgment. Thus, the judgment is not only based on classified material, but on its own classified section. Some of the arrangement's details disclosed by the court were that residents of Israel or the OPT would not be held in the facility; that detainees would be held there for "extremely short" durations; and that detention there requires approval by "high ranking officials" and notification to the Attorney General. In addition, in an *ex parte* hearing, the state presented the court with procedures guaranteeing, so it claimed, the detainees' rights: that the facility would undergo periodic inspections and could be visited by members of the Secret Service Subcommittee of the Knesset Foreign Affairs and Defense Committee.

221 HCJ 9733/03 **HaMoked: Center for the Defence of the Individual v. State of Israel et al.** (2011).

222 HCJ 8102/03, 9733/03 **MK Zahava Gal-On, HaMoked: Center for the Defence of the Individual et al. v. Minister of Defense, State of Israel et al.** (2011), Judgment, January 20, 2011.

The judgment raises more perplexities: first, the fact that then Supreme Court President Dorit Beinisch and Justices Miriam Naor and Esther Hayut expanded on the developments in the operation of the secret facility after the petition was filed, but completely ignored the state of affairs that preceded it; the justices also avoided addressing the treatment of detainees in the facility and were silent on such issues as who had knowledge of the facility's existence and of the detainees held there – this when the petition had been filed due to the military's evasions in divulging detainees' whereabouts, and the provision of false answers to HaMoked's tracing requests. Second, the state's announcement that detainees held in the secret facility would be allowed to meet with their counsel outside the facility raises even more questions: If there is no "security impediment" to taking the detainees out of the facility, why are they being held there at all? Why are they not interrogated in an official, supervised facility? Lastly, why did the judgment completely ignore the determination of the UN Committee against Torture that Facility 1391, and any other secret facility, must be closed immediately?²²³

The court held that the scope of review in HaMoked's petition had been reduced, leaving only the secrecy of the detention facility open for deliberation. This clearly highlights just how careful the court was to address only the petition's peripheral issues rather than its core, substantive issues, given that a simple search in popular websites quickly reveals the exact location of the facility, with photos and satellite images. The judgment, with its classified annex, does bring Facility 1391 into the sphere of legal protections, but it leaves everything that goes on there a mystery, since monitoring the unknown is impossible.

Following the judgment, HaMoked has continued to monitor the operation of the secret facility, using the few available tools for public scrutiny left by court. In 2011-2012, HaMoked contacted the State Attorney's Office several times regarding foreign nationals feared to be held in Facility 1391. In addition, HaMoked submitted a freedom-of-information application about detentions in the secret prison. According to the state's responses, the latest from June 2012, no detainees have been held in Facility 1391 since the judgment was given. **(Case 28500)**

223 On May 14, 2009, the UN Committee against Torture published its concluding observations on the report submitted to it by Israel. The concluding observations included remarks about Facility 1391. For more details, see HaMoked, **Activity Report 2008-2010**, pp. 188-189.



Violence by Security Forces and Settlers

[L]iability in torts protects several rights of the injured party, such as the rights to life, liberty, dignity and privacy. The law of torts is one of the main tools whereby the legal system protects these rights; it reflects the balance that the law strikes between private rights interest, and between the right of the individual and the public interest. Denying or restricting liability in torts undermines the protection of these rights. Thereby these constitutional rights are violated.

Aharon Barak, Supreme Court President²²⁴

As Supreme Court President (Emer.) Barak stated in the above quote, tort law is one of the main legal tools for protecting the basic rights of injured persons. Damages are primarily designed to provide victims with the funds that would enable them to return as much as possible to the position they would have been in had their rights not been violated. In addition, ordering injuring parties to pay damages expresses the preeminent legal, societal and moral principle of accountability. Therefore, paying damages evinces recognition of both the harm done to the victims and the importance of the human rights that were violated.²²⁵

In 2011-2012, HaMoked continued handling civil claims filed by residents of the Occupied Palestinian Territories (OPT) with respect to bodily harm

224 HCJ 8276/05 **Adalah et al. v. Minister of Defense et al.** (2006), Judgment, December 12, 2006, §25 of the opinion of Supreme Court President (Emeritus) Aharon Barak.

225 Note the difference between prosecuting members of security forces for wrongdoing in criminal proceedings, where the state is the prosecutor, and compensation claims, conducted separately in civil courts, where the state may be the defendant.

and property damage caused by Israeli security forces and settlers. In this period, HaMoked processed 98 such cases, including six new ones; nine lawyers worked for HaMoked on 95 civil claims and appeals, including eight filed in the period. The claims address a wide range of offenses and acts of violence perpetrated against Palestinians, including bodily harm, property damage, house seizures, theft and more. In 2011-2012, 34 of the claims were concluded, of them, four were accepted, 16 dismissed, ten settled and four withdrawn; of the six appeals concluded in the period, one was accepted, four rejected and one withdrawn.

In addition to its work on the civil claims, HaMoked closely followed the legislative process leading up to Amendment No. 8 of the Civil Wrongs (Liability of the State) Law, and the struggle to allow Palestinian witnesses from the Gaza Strip and the West Bank to enter Israel to participate in court sessions. HaMoked also continued monitoring the criminal investigations conducted by the Military Police Investigation Unit (MPIU), the Department for the Investigation of Police (DIP) and the interrogatee-complaints inspector investigating complaints against agents of the Israel Security Agency (ISA, formerly known as the General Security Service, GSS, or Shin Beit).²²⁶

Civil Wrongs (Liability of the State) Law, Amendment No. 8

The state's liability in torts and the payment of compensation for damage caused by security forces and other state agents are regulated by the Civil Wrongs (Liability of the State) Law 5712-1952. The Law defines the limits of state liability, stipulating, inter alia, that it cannot be held liable for damage caused as part of a "wartime action". Since the mid 1990s, Israeli politicians have been promoting legislative changes relating to civil claims against Israel filed by OPT residents.

In 2002 and 2005, the Israeli parliament, the Knesset, passed Amendments Nos. 4 and 7 (respectively) to the Civil Wrongs (Liability of the State) Law.²²⁷ In July 2012, the Knesset also passed Amendment No. 8. All three amendments

226 For more about the inspector and HaMoked's work on complaints against security agencies, see *supra* pp. 132-138.

227 Amendments Nos. 5 and 6 to the Law address other issues.

are primarily designed to facilitate Israel's efforts to exempt itself from liability for damage caused by its security forces in the OPT, and to hinder Palestinians from filing claims for damage they incur. The very existence of special legislation relating exclusively to claims made by OPT residents raises doubts as to the Israeli justice system's ability to avoid distinguishing between plaintiffs and handle OPT residents' claims against Israel fairly.

Amendments Nos. 4 and No. 7 were designed to have most pending claims dismissed out of hand and to prevent nearly all future compensation claims. Among other things, Amendment No. 4 introduced a very broad definition of the term "wartime action", and shortened the limitations period from seven years to only two for Palestinians' claims against the state. Amendment No. 7 established general criteria for denying the right to compensation based on the victim's identity and the time and place in which the damage was caused.²²⁸

In September 2005, nine human rights organizations, including HaMoked, filed a petition to the High Court of Justice (HCJ), demanding it repeal Amendment No. 7 for breaching Basic Law: Human Dignity and Liberty.²²⁹ In December 2006, the HCJ accepted the petition in part, striking down the section that gave the state immunity from liability for actions carried out by security forces by declaring extensive areas inside the OPT as "conflict zones". The court held that this section was in breach of Basic Law: Human Dignity and Liberty, since it violated the rights to life, dignity, property and liberty. However, the court opted not to rule on the legality of the section exempting the state from damages based on the victim's identity.²³⁰ **(Case 39082)**

Less than a year after the HCJ's judgment, the Ministry of Justice again circulated a bill memorandum, entitled "Amendment No. 8", with the same objective: providing the state with near blanket immunity for military actions on a geographic basis, and denying any remedy to Palestinians, even those harmed by non-combat activity. The fact that a similar section in Amendment No. 7 had been unanimously struck down by nine Supreme Court justices did not deter the Ministry of Justice from proposing this new amendment –

228 For more on Amendments Nos. 4 and 7, see HaMoked, **Activity Report January-June 2002**, pp. 14-22; HaMoked, **Activity Report 2003**, pp. 49-51; HaMoked, **Activity Report 2005**, pp. 108-116 (in Hebrew).

229 See *supra* note 224.

230 For more details, see HaMoked, **Activity Report 2006**, pp. 85-91 (in Hebrew).

a law circumventing the HCJ, which can be viewed as another attempt to put the executive branch and the security forces above the law and absolve them from accountability for their actions and from judicial oversight on human rights violations. Ultimately, through lobbying work at the Knesset committees, HaMoked and other human rights organizations succeeded to curb the legislator's attempt to circumvent the HCJ judgment in this section. Still, the sections that were enacted as part of Amendment No. 8 have far-reaching consequences for the issue of state liability and the ability of OPT residents to exercise their right to claim compensation under Israeli civil law.

“Wartime Action”

The Civil Wrongs (Liability of the State) Law stipulates that the state is not civilly liable for any action defined as a wartime action, even if it is carried out in blatant breach of the law. The term has always appeared in the Civil Wrongs Law, but until 2002, its meaning was determined through the interpretation of the courts. Amendment No. 4, passed in 2002, provided that the term applied to “any action of combating terror, hostile actions, or insurrection, and also an action for preventing terror, hostile actions, or insurrection performed in circumstances of danger to life or limb”; thus, regardless of whether those injured by the action are innocent or not.

Amendment No. 8 expands the definition further. Under the new definition, danger to life and limb to security forces is no longer a necessary condition for an action to fall under the definition of wartime action. Any action which is “of combative nature, given its overall circumstances, including the purpose of the action, its geographic location, or the threat posed to the force performing it” is now considered a wartime action. This means that almost any action the security forces perform in the OPT (and even inside Israel) – from arresting suspects to security screening at checkpoints – comes under blanket immunity.

On April 11, 2002, during Operation Defensive Shield, the military lifted the curfew from the city of Jenin for a short time to allow residents to leave their homes and get basic supplies. F.Z., a 14-year-old boy, went with his younger brother to a grocery store near their home. The brothers were at the store entrance, when a shot was fired in their direction from an Israeli tank stationed nearby. F.Z. was injured and died shortly after in the hospital.

F.Z.'s family filed a civil claim through HaMoked for its loss.²³¹ One of the torts attributed to the army was negligence resulting in death, expressed in unjustified shooting in a residential area at an individual who was not involved in violence or unlawful assembly.

In its statement of defense and appended affidavit, the state claimed that the incident "never took place" and that in any event, the action was a wartime action and therefore the state must be exempt from liability. In February 2006, following Amendment No. 7, the state sought to have the claim dismissed out of hand as the Minister of Defense had declared the area a "combat zone", where the state is not liable for damage caused by the actions of its security forces.

In December 2006, the HCJ struck down this section in the Law, and in 2010, the Jerusalem Magistrates Court accepted the claim and ruled that F.Z. was killed from shots fired by soldiers and that the state was responsible and must compensate his family. In rejecting the state's claim that immunity from liability applied because the action constituted a wartime action, the judge determined that Amendment 4 did not affect the decision "both because the Amendment does not formally apply in this case given its date of enactment [...] and because it cannot, substantively, affect the matter at hand considering the nature of the shooting incident and the circumstances in which it took place". The court ordered the state to pay ILS 721,500 in damages to F.Z.'s family.

The state appealed the judgment to the District Court. It continued to deny the incident ever took place and argued that even if it had, it constituted a wartime action, like all military actions in Jenin during Operation Defensive Shield.²³² In its response to the appeal, HaMoked argued that it had been established that the boy was innocent of any crime when he was killed by a bullet fired by a soldier who was in no real danger. HaMoked also said that the wartime-action defense must not be applied to Operation Defensive Shield in its entirety and every incident must be examined separately.

On August 7, 2011, the Jerusalem District Court rejected the state's appeal, holding that the Magistrates Court had not erred in its findings regarding the circumstances of F.Z.'s death and that the incident did not come under the definition of wartime action and did not exempt the state from civil liability. **(Case 28260)**

231 CC 9191/04 **Zaban et al. v. State of Israel – Ministry of Defense et al.** (2010)

232 CA 6275-05-10 **State of Israel – Ministry of Defense v. Zaban et al.** (2011)

Immunity Based on the Victim's Identity

The state gave itself another broad exemption from civil liability based on the victim's identity, defined initially in Amendment No. 7 as applying to subjects of enemy states or members of terrorist organizations, and expanded in Amendment No. 8 to include "any person who is not a citizen of Israel, who is a resident of a territory outside Israel which the government has declared, by order, an enemy territory". This new definition applies retroactively from September 2005, when the disengagement from Gaza was completed. Thus, – in direct contrast to the court's determination in the judgment on Amendment No. 7, that "Even if Israel's belligerent occupation there [the Gaza Strip] has ended, as the state claims, there is no justification for a sweeping exemption from liability in torts"²³³ – the state has provided itself with the option of declaring the entire Gaza Strip as enemy territory, and to thereby exempt itself – retroactively and completely – from civil liability for damage it caused – directly or vicariously – to Gaza residents. Such immunity would apply whether the victim was injured in Gaza or in Israel, even if the state's injurious action was unlawful and even if the harm was entirely unrelated to security activity.

Procedural Changes

Amendment No. 8 includes two provisions relating to the manner of filing claims and their hearing by Israeli courts. According to the first provision, once the state argues wartime action, the court must first consider this defense and if it finds that the action does constitute a wartime action, it must dismiss the claim immediately. This provision contradicts common practice in other civil claims, where the court has discretion whether to consider an argument early on or at the end of the proceedings, after it has heard all the evidence relating to the injurious incident (including testimonies by implicated soldiers), and after it has made full factual findings on the circumstances of the case.

The second provision stipulates that claims by Palestinians from the West Bank are to be heard only by courts in the Jerusalem district, and claims by Palestinians from the Gaza Strip only by courts in the Beer Sheva district. This contravenes the right of any plaintiff to choose in which court to file

233 See supra note 224, §36 of the opinion of Supreme Court President (Emeritus) Aharon Barak.

a civil claim. This provision applies retroactively to all claims in which the hearing of evidence has not yet commenced. In the explanatory notes for the bill, the state asserted that consolidating the districts where claims are heard would promote professionalization and “case law uniformity”, and that the court's proximity to the area where the damage occurred would make it easier for the parties to attend court sessions. These explanations seem entirely baseless: courts all over the country are experienced and adept at hearing claims by OPT residents, having done so for more than 25 years. As for convenience, the main difficulty facing litigants from the OPT is entering Israel, not arriving at any specific court, while members of the security forces arrive at courts from all over the country irrespective of where they served at the time of the incident. Most importantly, such arguments could equally apply to any civil claim in other areas of torts, yet the state does not seek to limit any other claims to courts in certain districts. Limiting court jurisdiction only in claims filed by OPT residents, raises concerns that this provision is motivated by extraneous considerations, such as improper interference in the composition and discretion of the court, in order to influence trial outcomes.

Amendment No. 8 is yet another step in Israel's efforts to entirely block compensation claims by Palestinian residents of the OPT for wrongs committed by security forces. The HCJ ruling that OPT residents have a right to file for compensation when their human rights are violated has only slightly dented these efforts. Denying compensation based on the time and place of the incident and on the identity of the victim, rather than on a thorough examination of the injurious action, violates the right to compensation for wrongs committed by the state – a right which stands by itself and also serves to protect other human rights, whose violation is the cause of action.

Civil Claims

Since its inception, HaMoked has been assisting Palestinians harmed by acts of violence committed by soldiers, police officers, border police officers and ISA agents through all stages of the process, beginning with filing the complaint and demanding an investigation, followed by monitoring the investigation and its progress to ensure it is exhaustive and that those responsible are brought to justice, and ending with filing and handling civil claims if warranted by the legal circumstances. HaMoked's experience over the years shows that when the victims of violence are Palestinians, sometimes investigations are not opened; those that are, are often superficial, non-exhaustive and severely protracted; and even when investigations are efficient, they are often closed without a recommendation to indict the implicated members of the security forces. The fact that negligent investigations are conducted routinely – by the ISA interrogatee-complaints inspector, the MPIU, and the DIP alike – reveals a state of affairs where there is no oversight of security forces and no real intent to bring perpetrators of egregious acts to justice. It would seem that in the eyes of the Israeli authorities, the person, dignity, home and property of Palestinians deserve no protection, and the harm they incur by others does not warrant a real investigation seeking to make the perpetrators accountable.

At midday, April 15, 2002, H.H., a resident of the Qalandiya refugee camp, left the mosque after prayer. While walking along the street, he was hit by a single shot fired by an Israeli soldier. The bullet entered H.H.'s back and exited through his chest. The soldier got into a military vehicle and left the area. H.H. was rushed to a Ramallah hospital, where he was pronounced dead. H.H. left behind four young children, a wife and parents. He was the sole provider for the family.

HaMoked contacted the Military Advocate General (MAG) demanding the incident be investigated and the soldiers involved brought to justice. It took the MAG about 18 months to decide that the incident did not warrant an investigation as “even assuming that the deceased expired in the manner described by the two eyewitnesses – it is impossible to determine who the soldier that fired the shot was or what unit he belonged to”. Moreover, given the discrepancies between the eyewitnesses' accounts and the

statements of soldiers who were in the Qalandiya area on that day, the MAG decided on that there was no need to establish the reliability of the eyewitness testimonies and ordered the investigation closed without further action.

While still waiting for the MAG's response to their request to receive the MPIU investigation files, H.H.'s family, through HaMoked, filed a civil claim against the State of Israel and the military for vicarious responsibility for the actions of the soldier, arguing that his identity was immaterial.²³⁴ The soldier fired a shot in a residential area, at a person who was not involved in violent activity, without any cause and in unjustified circumstances. In its statement of defense, the state disclaimed responsibility for the death, denied the circumstances presented in the statement of claim and added that even if the military had killed H.H., it was done as part of a wartime action and therefore the state was exempt from paying damages.

In January 2012, almost a decade after H.H. was killed, the court endorsed the parties' settlement, whereby the state would pay H.H.'s family ILS 400,000 in damages. As stated, none of the soldiers involved in the incident resulting in H.H.'s death were tried for their actions. **(Case 27735)**

Alongside claims over acts of violence by security forces, HaMoked also files claims over acts of violence perpetrated by Israeli settlers against Palestinians. Under international law, as the occupying power, Israel must protect residents of the OPT from attacks and harassment by settlers, inter alia, by investigating such acts and indicting perpetrators. In most cases, however, the police and the military offer no assistance – during or after the event – to Palestinians who fall victim to settler violence. Investigations are often perfunctory, and at times, the investigation and also the trial are truly farcical.

In June 2002, three armed settlers arrived at a grazing area of the village of Rabud, near Hebron. The settlers seized a horse that belonged to I.Q., a farmer from the village. When I.Q. approached them and asked they return the horse, the settlers pushed him and threatened him with their weapons. The police was notified, but rather than investigate and arrest the settlers, a criminal investigation file for horse theft(!) was opened against I.Q. Moreover, one of the police investigators even offered I.Q. to return his

234 CC 6304/04 **Estate of Hamed et al. v. State of Israel et al.** (2012)

horse if he agreed to serve as a collaborator. After more than three years of negligent inquiry, the police finally closed the criminal case against I.Q. but took no action against the settlers.

In October 2008, I.Q., through HaMoked, filed a civil claim against the three settlers for assault, robbery, and loss of income, and also against the state for negligence and deliberate omission to conduct adequate investigation.²³⁵

In May 2011, after lengthy deliberations, the Jerusalem Magistrates Court dismissed the claim, ordering the plaintiff to pay trial costs; Judge Reuven Shamia fully accepted the version of the defendant settlers that the horse belonged to them, based, inter alia, on the police "investigation". The judge's portrayal of the events gives a clear indication of the nature of both the investigation and the ruling in this case: "Defendant No. 1 claimed that the horse was named 'Tractor' because of his uncommon size. The police officer who was at the scene checked this fact and reported that the horse whinnied when it was called 'Tractor' and therefore the officers decided to leave it with Defendant No. 1." **(Case 22431)**

Even when a civil claim is granted, executing the judgment often proves difficult.

On October 19, 1994, after a bus was attacked on Dizengoff Street in Tel Aviv, the West Bank was put under closure. Roni Borgana, who was a border police career officer, then serving as the security officer of Beit Hashmonay, a moshav community inside Israel, took it upon himself to expel three Palestinian laborers who worked in the nearby moshav community of Azaria, outside his jurisdiction – despite the fact that the laborers had permits for work and overnight stay in Israel and had been permitted to remain in Azaria by the police officer in charge of security there.

Borgana arrived with two subordinates at the laborers' sleeping-quarters, woke them up by beating and kicking them, and subjected them to a long ordeal of abuse with extreme physical violence that caused them various bodily injuries. Among other things, Borgana beat them with a club and other blunt instruments, injected them with a sedative using a syringe, and forced them to sing chants praising the border police. At the end of the ordeal, the laborers were taken in the patrol car, dropped off near the Green Line, and ordered to get back to their village in the West Bank.

235 CC 19339-08 **Qotina v. Mark et al.** (2011).

In December 1999, the Jerusalem Magistrates Court convicted Borgana of assault causing bodily harm and soliciting perjury during investigation, as he had urged his accomplices to give a false account of where they had detained the complainants.²³⁶ In January 2001, Borgana was given a ten months' suspended sentence, 300 hours of community service and a fine of ILS 5,000.

HaMoked represented the three victims in a civil claim, filed in March 2001 following the criminal conviction, for the mental and physical injury Borgana had caused them.²³⁷ In the verdict, issued in October 2002, Borgana was ordered to pay each plaintiff ILS 12,000 in damages, and ILS 3,000 in trial costs and legal fees.

Borgana evaded payment for years; HaMoked therefore sought a writ of execution. The execution office, inter alia, issued against Borgana an arrest warrant, a stay of exit order (barring him from leaving the country), and an order restricting passport renewal. Ultimately, efforts yielded results, and on January 9, 2011, – 16 years after the three were attacked – Borgana's family liquidated his debt and paid the plaintiffs about ILS 40,000 in total.

(Case 10637)

Court Rulings

The Israeli courts seem to take their cue from the state's efforts to attain blanket immunity in compensation claims by Palestinians: of HaMoked's claims concluded in 2011-2012, twenty ended with in court verdicts, sixteen of them dismissals; and note that HaMoked employs strict criteria in selecting which cases to take to court. In addition, the obstacles hindering effective litigation have intensified. For instance, the sums plaintiffs are required to deposit as assurances for covering the state's costs have increased dramatically over the years. Moreover, in the past, courts tended not to impose costs on plaintiffs who suffered bereavement or lasting disability, when finding they failed to meet the burden of proof that would warrant compensation from the state. Many judges still adhere to this practice, but in recent years, courts have often ordered heavy costs, sometimes tens of thousands of Israeli shekels, against Palestinian plaintiffs irrespective of the injuries they suffered, including severe disabilities and death. Given that the

236 CrimC 243/96 **State of Israel v. Borgana** (1999).

237 CC 5693/02 **Mahmoud et al. v. Borgana** (2002).

average family in the OPT cannot afford to pay such sums, the inevitable conclusion seems to be that these costs orders are meant to deter victims from filing claims.

On the morning of April 7, 2002, during Operation Defensive Shield, military forces arrived at “the Commissioner” building in Nablus and instructed the occupants to vacate the premises. The building had two commercial floors and three residential ones, containing 15 apartments. M.H., the owner of the building, lived with his family in one of the apartments. Immediately after the evacuation calls, artillery shells were fired at the building, causing a fire and forcing the occupants to flee. A military force then entered the building and planted explosives. In the early afternoon, the building was detonated, and destroyed with all its contents. The military gave the owner no opportunity to contest the demolition, nor did it allow the occupants to remove their belongings before the demolition.

In June 2002, HaMoked contacted the military’s West Bank legal advisor, to inquire about the circumstances surrounding the demolition. HaMoked argued that there had been no cause to destroy the building, and noted that at the time no shooting was directed at the military from inside or around the building, and no gunmen or wanted persons were present inside it. After more than a year, the legal advisor’s reply arrived, stating the building was exploded because it had been booby trapped to injure soldiers.

In June 2004, M.H. filed a civil suit through HaMoked for the damage incurred as a result of the destruction of the building.²³⁸ The plaintiffs argued, inter alia, that even if it was necessary to blow up the building for operational reasons, the military must compensate the owners for the damage. In the statement of defense, the state claimed the demolition had been carried out based on credible information which had reached the soldiers that the building had been booby trapped; furthermore, this was a wartime action which exempts the state from civil liability and damages. Absurdly, the state also argued that the booby traps had damaged the building and that if the military had not diffused them, the personal and property damage would have been greater.

To assess the reliability of the intelligence information, the plaintiffs filed a motion for disclosure of evidence. In one of the hearings held in the

238 CC 6310/04 **Handiyah et al. v. State of Israel et al.** (2010).

motion, the State Attorney's Office admitted that it had no indications as to the source of the information that the building had been booby trapped.²³⁹ In August 2010, the Jerusalem District Court ruled that the demolition was a wartime action that was reasonable, proportionate, and necessary; that it required no objection hearing, and that the plaintiffs were not entitled to compensation. Regarding the credibility of the intelligence information, the court held that "during war, there is no time to examine the reliability and source of information and it is also impractical to do so". In light of this, the court ordered the plaintiffs to pay the state's trial costs and legal fees to the sum of ILS 25,000, plus VAT.

In January 2011, M.H., through HaMoked, appealed to the Supreme Court,²⁴⁰ arguing, inter alia, that the lower court had erred in finding this constituted a wartime action, since it had not been proven that the military force had faced imminent mortal danger under the circumstances; and further, that the military's conduct inside the building following capture, ruled out the possibility that the building had indeed been booby trapped, and also proved that the forces present there did not give credence to the information allegedly received. The plaintiffs also argued that the forces on the ground had alternative courses of action, such as seizing the building. All these factors made it clear that the demolition was disproportionate. At the advice of the Supreme Court, M.H. withdrew the appeal. The court granted his motion to overturn the District Court's costs order. In the judgement, the court advised M.H. to seek compensation from the committee for exceptional cases, adding a recommendation to the committee to "consider the application with an open heart and a willing spirit". **(Case 17849)**

In 2011-2012, the courts ruled in favor of Palestinian plaintiffs in a small number of cases; in a few others, the parties reached a settlement in which the state agreed to pay damages without admitting any wrongdoing.

In December 2001, soldiers took over the home of S.Y. in the village of Shufa, near Tulkarm. A few days later, the soldiers presented a warrant for seizure for military purposes. The warrant was valid for six weeks and referred only to the roof of the building. Once the military took over

239 CApp 248/10 **A. v. State of Israel et al.** (2010).

240 CA 7624/10 **Handiyah et al. v. State of Israel** (2012).

the building, S.Y., his wife and their two children were prohibited from coming within a certain distance of their home, and were forced to rent an apartment in Tulkarm. HaMoked's attempts to have the military vacate the home immediately and compensate the owner failed.

The soldiers remained in the house for three years and seven months – with a warrant valid for only six weeks. When they finally vacated it, they left behind extensive damage to the building itself, its contents and the lot on which it is built.

In April 2007, S.Y., through HaMoked, filed a compensation claim against the Ministry of Defense for extensive property damage, mental anguish, and house usage fees.²⁴¹ The state argued that the claim must be rejected because the seizure came under the definition of wartime action. After lengthy negotiations, the parties reached a settlement whereby Israel would pay S.Y. ILS 411,000 in compensation. In November 2011, the settlement was endorsed as a judgment. **(Case 17827)**

Denying Entry into Israel

The right of OPT residents to file for damages in the State of Israel has been recognized as a constitutional right that the state must allow them to exercise.²⁴² Despite this, state authorities try to prevent Palestinians from the West Bank and the Gaza Strip from entering Israel for matters required as part of legal proceedings, such as giving testimony in court, undergoing medical exams, holding consultations, signing affidavits and the like. Moreover, in recent years, as part of the tightening of the siege on Gaza, Israel prevents the entry of Palestinians from Gaza for litigation. This policy has foiled many civil claims Gaza residents had filed against Israel, after the military persistently denied the plaintiffs' entry to the country. Thus, in its capacity as the administrative branch, the state blocks the progression of court cases, and then, as the defendant, it exploits the delay to seek dismissals. The courts do dismiss many of these claims, sometimes on condition that if the claims are re-filed within a year from dismissal, as the statute of limitations permits, the state would not claim limitations. In practice, when the action is re-filed, the state does often claim limitations.

241 CC 6785/07 **Ya'acoub et al. v. State of Israel – Ministry of Defense** (2011).

242 On the state's duty to allow access to justice, see, e.g., HCJ 1358/91 **Arashid et al. v. Minister of Police et al.** (1991).

In April 2013, a new protocol entitled “Protocol for Reviewing Applications by Palestinian Residents of Gaza for Entry for the Purpose of Conducting Legal Proceedings in Israel” was posted on the website of the Coordinator of Government Activities in the Territories. The protocol appeared unexpectedly, without prior notice, background explanations or an indication of when it went into effect. It establishes a cumbersome, arbitrary and biased procedure for reviewing such applications. HaMoked continues its battle to help Gaza residents exercise their fundamental rights in this regard, including the right to remedy, the right to access justice, the right to property and the right to dignity.

On October 2, 2003, M.B., a 17-month-old toddler, climbed to the roof of his home in the Gaza Strip. Shortly after, he was hit by a bullet fired by an Israeli soldier in a nearby post. The toddler was rushed to hospital, where he was pronounced dead.

HaMoked contacted the MAG on behalf of the family, demanding an investigation. The MAG obliged only after HaMoked petitioned the HCJ.²⁴³ In November 2007, about 2.5 years after the investigation was opened and some four years after M.B. was killed, the Southern Command Prosecution notified HaMoked that the investigation had been closed for “lack of evidence”. An appeal filed by HaMoked in 2008 was rejected by the MAG. In July 2005, while the criminal investigation was still underway, M.B.'s parents, through HaMoked, filed a civil claim against the state.²⁴⁴ In December 2009, the parties agreed to stay the proceedings for six months, because the military was restricting the plaintiffs' entry into Israel. When the civil claim resumed, the court subpoenaed M.B.'s parents and the director of surgery at the hospital where M.B. was pronounced dead, who lived close to the B. family and witnessed the fatal shooting. The three applied to the military to allow their entry, but the military refused. In June 2011, HaMoked filed an administrative petition demanding the court instruct the military to allow the witnesses to enter Israel.²⁴⁵ A few months later, the state announced it had decided to allow M.B.'s father to enter Israel to testify, but not the mother or the physician.

In August 2012, the District Court dismissed the petition. The judge

243 HCJ 1970/05 **Badrasawi et al. v. Military Advocate General** (2005).

244 CC 7646/05 **Badrasawi et al. v. State of Israel**.

245 AP 11636-06-11 **Badrasawi et al. v. State of Israel – Ministry of Defense** (2012).

accepted that position of the state – the defendant in the civil claim – that it had struck the correct balance between the need to hear the testimony and considerations of the policy to ban entry from Gaza to Israel. The judgment legitimized the absurdity that allows a defendant in a civil claim to select which of the plaintiff's witnesses will testify against it. This decision violates M.B.'s family's right to due process and curtails its ability to receive compensation for the loss it incurred at the hands of the state. In October 2012, HaMoked appealed the District Court's decision to the Supreme Court. The appeal is pending.²⁴⁶ **(Case 68744)**

Military Police Investigation Unit Files

The Military Police Investigation Unit (MPIU) is the military unit in charge of investigating suspicious incidents in which soldiers are implicated. MPIU investigations should ascertain the criminal culpability of the soldiers involved. At the end of the investigation, the file is transferred to the MAG, which is tasked with reviewing the investigation and is authorized to decide whether to take criminal or disciplinary action against the suspects. However, as stated, HaMoked's experience shows that in cases involving Palestinian victims, the conduct of both the MPIU and the MAG is negligent and dismissive; effective and exhaustive investigations are rare.

Moreover, the timing of opening MPIU investigations and the questions posed to the complainants suggest inadequate conduct on the part of the investigative authorities and point to a firm connection between the MPIU and the Ministry of Defense department handling civil claims. In fact, the MPIU often functions as a provider of services to the state, promoting its interests as a defendant in civil claims, rather than as an impartial agency tasked with conducting criminal investigations and tracking offenders. One of the practices pointing to this is the MPIU's years-long lack of response to requests for provision or disclosure of investigative materials in cases in which civil claims were filed against the state. Reviewing the MPIU investigation file allows victims to learn what was done with their complaints, gather

246 AAA 7499/12 **Badrasawi et al. v. Coordinator of Government Activities in the Territories et al.**

information about the violation of their rights, and pursue their right to remedy. However, occasionally, when the material finally arrives – which could take months and years – it turns out that the MAG had closed the file without performing even rudimentary investigative measures.

In 2008, HaMoked filed a petition to the HCJ on behalf of Palestinians whose applications to review the materials collected in investigations into offenses soldiers committed against them had been denied or left unanswered for protracted periods.²⁴⁷ In the proceedings, the HCJ instructed the military to formulate a clear procedure for furnishing complainants with investigative materials. In May 2010, the military published a procedure detailing various arrangements for accepting or denying requests to review investigation files. HaMoked responded with a detailed criticism of the procedure, listing its flaws, and asserting its provisions were unreasonable. However, extensive correspondence on this issue led to no result.

Therefore, in September 2011, HaMoked and Yesh Din - Volunteers for Human Rights petitioned the HCJ to instruct the military to amend the procedure entitled "Processing External Requests to Access Investigative Materials Collected by the MPIU".²⁴⁸ In the petition, the organizations argued that the arrangements included in the procedure contradicted the state's position presented during the previous petition and must be invalidated as extremely unreasonable, motivated by extraneous considerations and injurious to fundamental rights. The organizations demanded the procedure be revised such that a civil claim against the state – potential or pending – would not preclude disclosure of MPIU investigation materials shortly after an investigation is closed; that the schedules set in the procedure would allow offence victims to exercise their rights effectively; and that the MAG would be the deciding authority on appeals against MPIU disclosure decisions, rather than officials inside the military prosecution. In the pleadings, the organizations stressed the vital role of the victim's right to disclosure, which is integral to the rights to due process and access to justice. The organizations argued that through a seemingly innocuous procedure, the military violates fundamental and protected rights, denies offence victims the ability to exercise their rights fully, and prevents the necessary supervision

247 HCJ 4194/08 **al-Waridan et al. v. MPIU Commander et al.** (2009).

248 HCJ 6477/11 **HaMoked: Center for the Defence of the Individual et al. v. MPIU Commander et al.**

of investigations – all this, when the creators of the procedure and those who caused the harm are one and the same. The petition is pending (**Case 55753**)

By affecting delays in investigations and holding off decisions in investigations and on victims' requests to receive investigation files, the military attempts to diffuse complaints over criminal acts perpetrated by soldiers in the OPT and signals to the security forces that they are immune from prosecution.

On October 31, 2001, soldiers shot and killed A.J., a resident of Tulkarm, while he was parking his car in his sister's yard. The MPIU began investigating the incident about a year and a half later. Another 18 months went by before it collected the testimonies of the soldiers and commanders involved in the incident. The investigative materials indicate that the soldiers had received "approval to kill" [*sic*] based on the suspicion that A.J. had acted as a lookout, directing gunfire toward army positions using his cell phone. Based on this suspicion, which was not verified either prior or subsequent to the incident, the soldiers shot A.J. using a weapon described by one of them as "a weapon that can only kill".

Seven years after the incident, and only after HaMoked petitioned the HCJ to instruct the MAG to make a decision on the prosecution of the soldiers responsible for A.J.'s killing,²⁴⁹ the MAG announced the investigation was closed. HaMoked appealed against this decision, arguing that the shooting was approved and executed arbitrarily – in breach of the open fire regulations and without any real evidence of A.J.'s involvement in hostilities – solely because he was talking on his cell phone. HaMoked added that it must be found that the soldiers had deliberately killed a protected person and as such, committed a serious crime and grossly violated international humanitarian law.

In January 2011, the chief military prosecutor rejected the appeal, arguing that the soldiers came under the "necessity defense". This statement was made despite the fact that the man was unarmed and the soldiers, even according to the army, were not in imminent danger. The military prosecutor added that alternatively, the soldiers came under the "error of fact" defense, as "An analysis of the forces' actions indicates that they came to an understanding that the individual at whom the gunfire was aimed

249 HCJ 5314/08 **Jarusha v. Military Advocate General et al.** (2008).

had removed himself from the circle of protected persons”, because, to their understanding, he took part in hostilities. A person who extricates himself from the circle of protected persons, added the prosecutor, “becomes **a legitimate target for attack**” (emphasis in original). The chief military prosecutor’s statements give soldiers license to kill based on their “understanding”, even when the victims are not putting anyone’s life at risk. On July 26, 2012, HaMoked petitioned the HCJ to instruct the military to prosecute the soldiers for their part in A.J.’s killing, as it was a “targeted killing”.²⁵⁰ HaMoked noted that under international law, individuals are considered protected persons so long as they do not take a direct part in hostilities. Since at the time the soldiers shot A.J., he posed no risk to anyone, and since the decision to kill him was made in advance and was to be executed when the opportunity presented itself, the “necessity defense” did not apply. HaMoked also argued that according to international law and the principle of proportionality, even if individuals remove themselves from the “circle of protected persons”, they may not be killed if a less injurious measure is available. Yet the soldiers shot A.J. without making any attempt to apprehend him, using weapons that “can only kill”. This indicated that they acted in breach of the open-fire regulations and in an unreasonable and disproportionate manner. Therefore, HaMoked added, the attack on A.J. did not constitute a legitimate life-saving measure, but rather a premeditated killing.

The military prosecutor’s determination that the soldiers come under specific legal defenses is a dangerous step that has broad moral implications for the use of force against civilians. Making such determinations sends armed soldiers the message that they will enjoy impunity even when criminal acts they commit result in the death of innocent civilians. The petition is pending. **(Case 17263)**

250 HCJ 5772/12 **Jarusha et al. v. Military Advocate General et al.**



Respect for the Dead

The value of respect for the dead is part of the concept of human dignity, which enjoys constitutional protection in our legal system. It fuses with the value of human dignity during life and forms an integral part thereof. It is a concept that encompasses not only the dignity of the deceased themselves, but also projects onto the dignity of their loved ones and families. It touches the entire public whose obligation to protect this value characterizes the moral and principled belief that makes it unique.

Ayala Procaccia, Supreme Court Justice.²⁵¹

Israel attaches great importance to the dignity of the dead and the feelings of their families, at least when it comes to its own soldiers who were killed in the line of duty. When it does not have the bodies of its soldiers, Israel spares no effort to retrieve them and bring them to proper dignified burial. However, Israel's treatment of the remains of enemy fallen and of their families is callous and disrespectful: beginning with the burial of bodies without documentation or proper means of identification to allow locating them in future and ending with the blanket refusal to return bodies to their families so that they may bring them to proper ceremonial burial. Israel's policy constitutes a serious violation of the dignity of both the deceased and their families. It is also a blatant breach of the provisions of international law on the duty to uphold the dignity of protected persons, a duty that has been recognized by the High Court of Justice (HCJ), which ruled that respect for the dead forms part of the constitutional right to human dignity.²⁵²

251 HCJ 52/06 **al-Aqsa et al. v. Simon Wiesenthal Center** (2008), Judgment, October 29, 2008, §156 of the opinion of Justice Procaccia.

252 For more details, see joint report by HaMoked and B'Tselem, **Captive Corpses**, 1999.

HaMoked has spent many years in assisting Palestinian families recover the bodies of relatives and bring them to proper burial according to religion and custom.²⁵³ Almost a decade ago, the military stated that it had no principled objection to returning bodies to the families. However, in the summer of 2006, following the capture of three Israeli soldiers, in the Gaza Strip and on the Israel-Lebanon border, Israel changed its policy and suspended action on the return of bodies.

D.D. disappeared in October 2002. His family asked HaMoked to trace him. After a few failed attempts to locate D.D., HaMoked petitioned the HCJ for a writ of habeas corpus.²⁵⁴ Following the petition, the state announced that D.D.'s body had probably reached the Institute of Forensic Medicine on October 13, 2002, after he was killed in an altercation with the police. In March 2005, HaMoked sent the military a request on behalf of D.D.'s parents to receive their son's body. In its response, the military agreed to return the body subject to forensic identification. However, the body was not returned; then, as stated, in the summer of 2006, Israel froze all processing of requests to retrieve the bodies of Palestinians. In February 2013, HaMoked filed a petition to the HCJ, demanding D.D.'s family finally be allowed to bring him to burial according to their faith and religion, 11 years after his death. At the time of writing, the petition is still pending.²⁵⁵ **(Case 23524)**

In January 2007, in one of HaMoked's petitions that was filed back in 2001, the state announced that "given the likelihood that the bodies of terrorists would be used in negotiations [...] it has been decided for the time being to delay the transfer of terrorists' bodies to their families pending resolution of the issue of the captives."²⁵⁶ The state raised this claim repeatedly over the years, but in July 2011, Israel and the Palestinian Authority reached an agreement whereby Israel would return 84 of the bodies. Ultimately, following heavy public pressure in Israel, the agreement was cancelled and the Ministry of Defense retracted its position, stating "it would not be right to transfer [the

253 For more details, see HaMoked, **Activity Report 2005**, pp. 129-133 (in Hebrew).

254 HCJ 8648/02 **Damiati et al. v. West Bank Military Commander** (2002).

255 HCJ 1173/13 **Damiati et al. v. West Bank Military Commander et al.**

256 HCJ 9025/01 **'Awadallah et al. v. West Bank Military Commander et al.**, Updating Notice on behalf of the Respondent, January 11, 2007.

bodies] because of considerations related to negotiations for the release of [captive soldier] Gilad Shalit or other considerations.”²⁵⁷ In October 2011, after Gilad Shalit was released, HaMoked contacted the military’s West Bank legal advisor on behalf of 35 families, requesting immediate action for the return of the remains of their loved ones. **(Case 31750)**

In May 2012, Israel returned 91 bodies to the Palestinian Authority as a “gesture of goodwill”. HaMoked represented the families of nine of the deceased, one of whom was named in HaMoked’s petition from 2005.²⁵⁸ In July 2012, in two other similar petitions by HaMoked, which are still pending, the state announced that “There are talks with the Palestinian Authority in order to examine the possibility of transferring additional bodies.”²⁵⁹ In February 2013, still without any pertinent response from the military about its two pending petitions or its applications on behalf of 73 additional families, HaMoked began filing a new series of ten petitions to the HCJ, demanding Israel return to the families the remains withheld for many years.²⁶⁰

257 Channel 2 News (Israel), July 5, 2011.

258 HCJ 8027/05 **Abu Salim et al. v. West Bank Military Commander** (2012).

259 See supra note 256, Further Updating Notice on behalf of the State, July 2, 2012.

260 See, e.g., supra note 255.



Appendices

Statistics

Donors

Statistics

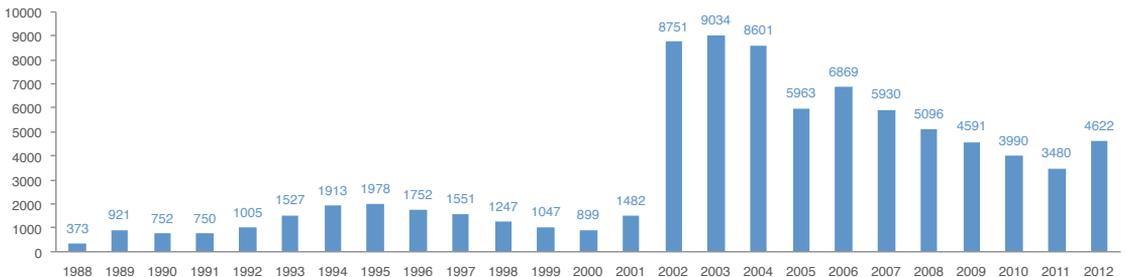
Cases Processed by HaMoked in 2011-2012²⁶¹

		2011		2012	
		New Cases	Active Cases ²⁶²	New Cases	Active Cases
Freedom of movement	Between the Gaza Strip and the West Bank	44	110	47	120
	From the OPT abroad	144	267	118	459
	Entry to the Gaza Strip by Israelis	60	158	227	420
	Seam Zone", roadblocks and checkpoints	138	165	297	423
Residency	In East Jerusalem	74	291	50	319
	In the OPT	18	86	13	85
Social security rights in East Jerusalem		42	154	23	105
Detainee rights	Detainee tracing	2,775	3,712	3,630	5,488
	Family visits in prisons	174	539	202	630
	Holding conditions	4	28	7	24
	Torture and ill-treatment during detention and interrogation	2	23	0	12
	Administrative detention	2	11	0	10
Violence by security forces and settlers		2	89	4	67
Respect for the dead		-	38	-	42
Other		1	8	4	10
Total		3,480	5,679	4,622	8,214

261 A single case may relate to several individuals, such as several members of the same family.

262 Total number of cases, new and preexisting, processed that year.

New Cases Opened by HaMoked from July 1988 to December 2012



Legal Action by HaMoked in 2011-2012

Topic		Year	2011	2012	Total
Freedom of movement	Between the Gaza Strip and the West Bank		22	35	57
	From the OPT abroad		117	119	236
	Entry to the Gaza Strip by Israelis		16	19	35
	"Seam Zone", roadblocks and checkpoints		36	44	80
Residency	In East Jerusalem		27	26	53
	In the OPT		9	-	9
Social security rights in East Jerusalem			40	31	71
Detainee rights	Detainee tracing		-	5	5
	Family visits in prisons		71	120	191
	Holding conditions		5	1	6
	Torture and ill-treatment during detention and interrogation		5	-	5
	Administrative detention		36	35	71
Violence by security forces and settlers			5	3	8
Other			-	1	1
Total			389	439	828

**HaMoked's Petitions to the HCJ and their Percentage of all
HCJ Petitions Filed in 2011-2012**

	Total no. of petitions filed to the HCJ	HaMoked's petitions to the HCJ	% of total
2011	1,685	206	12.2%
2012	1,647	217	13.1%
Total	3,332	423	12.6%

Donors

HaMoked gratefully acknowledges the support of the following donors:

2011

Broederlijk Delen, Belgium
The Belgian Consulate, Jerusalem
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Embassy of Finland, Tel Aviv
Embassy of the Kingdom of the Netherlands, Tel Aviv
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The Ford Israel Fund
The French Consulate, Jerusalem
Misereor, Germany
NGO Development Center (NDC), Ramallah, Representing Sweden, Denmark,
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Norwegian Refugee Council (NRC)
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Sigrid Rausing Trust, UK
Spanish International Development Cooperation (AECID), Jerusalem
Swiss Development Cooperation, Jerusalem
Taiwan Foundation for Democracy, Taipei
Trocaire, Ireland
United Nations Development Programme (UNDP), Jerusalem

2012

Broederlijk Delen, Belgium
CCFD (French Catholic Committee against Hunger and for Development),
France
Embassy of the Kingdom of the Netherlands, Tel Aviv
Firedoll Foundation, USA
Ford Israel Fund, USA
The French Consulate, Jerusalem
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Misereor, Germany
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NGO Development Center (NDC), Ramallah, Representing Sweden, Denmark,
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HaMoked wishes to thank the many people who have shown their support by volunteering and giving donations.