

## D. Brutality and Abuse

### The Investigating Officer Found Contradictions Not in the Testimonies The Beating of Amal Al-Hamidi

#### **Summary**

On December 15, 1988 at noon, soldiers burst into the home of the Al-Hamidi family in the village of Al-Azariyah. This was apparently part of a search for barricade builders and stone-throwers. The father of the family was not at home at the time; there was only the mother, the daughter Amal (age 14), and other small children. The soldiers ran amok in the home, destroyed furniture and broke things, and beat Amal up in an attempt to force her to give up the names of the stone throwers and barricade builders. They hit her in various parts of her body, kicked her and stepped on her feet. Afterwards the soldiers dragged her by her head and hair to the coffee shop on the other side of the street. She was kept by the well, and the soldiers threatened that she would be thrown into the well if she did not hand over any names.

#### **The testimonies**

A HaMoked volunteer who visited Amal Al-Hamidi a month later could still see bruises on her feet. One of the toes was swollen and injured, and signs of violence were also visible on her elbow and legs.

Amal testified that three soldiers wearing black berets burst into her room and beat her with a baton on her limbs, and stepped on her. While on the coffee shop porch, they continued to beat her up and then placed her on the edge of the well, and threatened to throw her inside if she wouldn't give the names of the stone-throwers.

Ya'akub Mohammed Mustapha Al-Khatib, the coffee shop proprietor in Al-Azariyah, testified that he saw a soldier dragging Amal by the hair to the well next to his shop, and heard him threaten her that if she did not say who threw the stones, he would throw her into the well. While this was going on he beat her with a stick. One of the people nearby tried to protect her, but the soldiers threatened him with a weapon. Al-Khatib said that the soldiers wore red berets.

Another of Amal's neighbors, Taher Mohammed Totah, saw the soldiers beat her in the porch of the coffee shop.

#### **How long does it take to forward the investigation results?**

- HaMoked first applied to the IDF Spokesperson on January 26, 1989.

- On May 11, 1989 a complaint was filed with the CCAG and the MAG.
- On May 27, 1989, CCAG Lt. Colonel Dolev directed HaMoked to submit the complaint to the Israeli Police.
- On July 2, 1989, after a phone conversation with HaMoked attorney, Lt. Colonel Dolev promised to reconsider her decision on accepting the complaint.
- On August 18, 1989, HaMoked attorney forwarded additional information to Lt. Colonel Dolev related to the complaint, and informed her that Amal's family and neighbors were willing to testify in the matter. Lt. Colonel did not reply.
- On February 28, 1990, HaMoked attorney sent Lt. Colonel Dolev a reminder. She did not reply.
- On December 24, 1990, a meeting with Lt. Colonel Dolev's replacement, Lt. Colonel Shlomo Politis took place, in which the event was discussed.
- On January 31, 1991, HaMoked sent Lt. Colonel Politis a reminder. No response was received.
- On March 25, 1991, HaMoked sent Lt. Colonel Politis a reminder again. No response was received.
- On May 5, 1991, HaMoked sent Lt. Colonel Politis a reminder again. No response was received.
- On August 28, 1991, HaMoked sent Lt. Colonel Politis a reminder again. No response was received.
- On September 3, 1991, Lt. Colonel Politis wrote to HaMoked that an investigation had taken place in the past, and that the former CCAG Lt. Colonel Dolev decided to close the case because the investigation did not succeed in identifying the unit in IDF records that was operating at the time and place of the event. It is therefore impossible to arrive at any conclusions about the event or those responsible for it.
- On October 2, 1991, HaMoked attorney asked to receive the contents of the investigation file. Lt. Colonel Politis did not respond.
- On November 22, 1991, Lt. Politis was again asked for the file.
- On March 8, 1992, Lt. Politis was again asked for the file.
- On March 22, 1992, HaMoked attorney was told that the material was available to be viewed.

### **What did the censored contents of the investigation file reveal?**

HaMoked only received two documents: the report of the investigating officer, and one testimony which was used as the basis for his conclusion.

The testimony was heavily censored, and includes many deleted gaps, and therefore little of what was said is visible. From the parts that are not deleted beyond understanding, we learn the following: "Until then (July 1989) the place had a control center that at certain times was under the command of the Judea Region, and at other times operated independently underneath the Judea and Samaria Regional Command." In another section: "According to the operations diary of that period, it turns out that in the place an independent company

operated, but there is no detail of which company. Likewise, the event under discussion is not mentioned in the operations diary on the above mentioned date or any following date. It does mention that on (erased date) an initiated activity was planned for the company in the Al-Azariyah area.” Also: “....all of the official reports are listed as having arrived from the Abu Dis company.”

### **Was it really impossible to locate the company?**

The investigating officer – whose name was censored from the materials that reached HaMoked – was appointed only on January 21, 1990, more than 18 months after the event at Al-Azariyah.

The investigating officer clung to the contradictions in the eye witness testimonies regarding the color of the soldiers’ berets. His conclusion was that it is impossible to determine which unit was present at the time. But in the following sentence he writes: “The company present in the region was called the Abu Dis company.” This information is from the same testimony, so that the investigating officer most certainly could have located the unit in question, and perhaps even the soldiers involved. He chose however, not to investigate.

In addition, part of his final conclusion was explained in that “...there is no possibility to determine with certainty that there was abuse committed by soldiers as stated in the complaint because of the conflicting testimony.” But there are no conflicting testimonies. All of the eye-witnesses testified that Amal was beaten on the porch of the coffee shop, and some of them saw how soldiers held her on the edge of the well and threatened to throw her inside if she wouldn’t reveal who threw stones. Any contradiction may have arisen from the testimonies of the soldiers, but in the only testimony that was collected there is no mention of the incident itself.

## The State Admits that MPI Never Carried Out an Investigation

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### The Beating and Harassment of the Ma'ali family

#### Summary

On December 9 1989, two soldiers entered the Ma'ali family home in the village of Salfit, near Tulkarem. One of them was tall, blond, and carried a weapon, while the other had a field radio on his back. They asked the father, Abd Al-Hadi Ma'ali, if he had any sons. After he told them that he did, and that his son was in his room, the soldiers went there, grabbed the hands of Ossama Ma'ali, age 13, and checked his hands to see if he had been throwing stones. When the boy's father tried to intervene, the blond soldier cursed him and hit him twice, and then aimed his rifle at him and threatened to shoot. He also cursed the mother. When she asked him to stop, he hit her twice in the chest with his hand.

#### The IDF: no answer

- On January 4, 1990, HaMoked attorney wrote to the CCAG (Lt. Col. Dolev), and complained about the treatment of the Ma'ali family described above.
- On February 19, 1990, HaMoked sent a reminder to the CCAG about the complaint.
- On April 29, 1990, the MPI questioned the father. The interview was arranged with HaMoked's assistance.
- On September 26, 1990, HaMoked sent a reminder to the new CCAG, Lt. Col. Shlomo Politis.
- On November 11, 1990, HaMoked sent a reminder to the MPI offices in Jerusalem, where the Ma'ali complaint was being processed at the time.
- On December 26, 1990, HaMoked sent a reminder to the CCAG.
- On March 24, 1991, HaMoked sent a reminder to the CCAG.
- On April 19, 1991, HaMoked sent a reminder to the CCAG.

#### An answer was received

Only after the High Court intervened on May 22, 1991, after more than 16 months without a response or a suitable explanation, HaMoked attorney Rosenthal petitioned the High Court of Justice to order CCAG Lt. Col. Politis to transfer the investigation material collected by the MPI on the Ma'ali family complaint.

On July 14, 1991, the day before the High Court was due to rule on the case, both sides informed the court that there was no point in continuing with the proceedings. The CCAG's representative told HaMoked that except for collecting Ma'ali's testimony, nothing had been done to investigate the case, and therefore that was nothing to hand over. The State paid HaMoked's court costs.

### **Other possibilities for investigating the incident**

When HaMoked filed its complaint to the CCAG, it was still relatively easy to locate the soldier that hurt the Ma'ali family. Less than a month had passed from the date of the incident, and the records kept by the units active in the Salfit area would have clearly stated which soldiers were on patrol in the village on December 9, 1989. If the blond soldier had been identified, he could have been questioned on the charges of assault, threats, and illegal use of a weapon.

# Harassment for “Military Purposes”

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## The Case of Afaf Jaradat

### Summary

Afaf Jaradat is a resident of Kafr Akab, a village on the outskirts of Jerusalem. During January, February, and March of 1990, she was the victim of repeated harassment by soldiers stationed near the village. The incidents of harassment took place five times. Afaf’s husband, Karam, worked at night in Jerusalem; it is possible that the soldiers were aware of his absence and took advantage of it to harass his wife.

### The investigation begins

- On March 27, 1990, a few days after the fourth time that soldiers harassed Jaradat and threatened her, HaMoked attorney sent an urgent letter to the Legal Advisor of the Judea and Samaria Region, Ahaz Ben-Ari. In the letter, HaMoked described the harassment suffered by Jaradat, and demanded Ben-Ari’s immediate action on the matter.
- On April 20 1990, Col. Ben-Ari informed HaMoked that the matter had been transferred to the authority of the CCAG.
- On May 20 1990, HaMoked wrote to the CCAG Lt. Col. Dolev, requesting to be kept informed on any developments related to the case.
- On June 26 1990, CCAG Lt. Col. Dolev informed HaMoked that an investigating officer had been appointed, and the investigation was under his care.
- The investigation began only four months after the initial complaint was made:
  - On July 22 1990, the investigating officer Cap. Major Gabi took a statement from Jaradat.
  - On July 23 1990, Cap. Major Gabi took testimony from a soldier named Hadar.
  - On July 25 1990, Cap. Major Gabi took testimony from a soldier named Sagi.

### The testimonies

The central testimony in this case was that of Afaf Jaradat herself. In addition to the affidavit she made at HaMoked, she was also questioned by Cap. Major Gabi, the investigating officer. She testified about four incidents in which soldiers entered her home:

1. On a date she did not remember, apparently in early January, on a Saturday, soldiers arrived at her home after 18:00. Her husband was not at home, and she was with her children. The soldiers rang the doorbell a number of times and told her to open the door. She refused and said that she cannot open the door when her husband is absent. One of the soldiers told her that if she wouldn’t open the door, he would shoot her. The soldiers continued beating on the door, and Jaradat finally opened it. She saw three soldiers. Two of them were short and dark-skinned. The third was tall and blond. It was the blond one who threatened her with his rifle. They had khaki colored berets on their shoulders. When she asked why they wanted to

search her home they did not answer, but started to tease her. This lasted for an hour, during which the soldiers were in her house. They did not conduct a search, but continued to humiliate Jaradat. After an hour they left.

2. The second time was 7-10 days after the first incident. The soldiers arrived at Jaradat's house around noon time. When she opened the door, the soldiers entered. She recognized the tall blond soldier who had been there previously. This time the soldiers were busy inside the house for about ten minutes while Jaradat and her children waited outside. The soldiers also had khaki berets. When they finished, they left without speaking to Jaradat.

3. The third incident was two or three days after the second. The soldiers arrived at around 6:00 in the morning, and knocked on the door so hard it almost broke. Afaf Jaradat and her husband were not at home, and they heard about the soldiers' visit from neighbors.

4. The fourth visit was about a week after the third. This time four soldiers arrived at around 20:30. They rang the doorbell, but because Jaradat had turned off all the lights, they thought that no one was home and left.

5. The fifth visit was on March 22 or 23, 1990 at around 20:00 or 20:30. The soldiers came again, this time four of them, and rang the doorbell. Jaradat shut off all of the lights. The soldiers broke the glass on the porch door. Jaradat's neighbors yelled at the soldiers, and they yelled back. Jaradat's neighbors called her relatives. One of them was her brother in law, and he opened the door for the soldiers, after the lock was severely damaged. Jaradat recognized one of the soldiers as one of the short dark ones from the first visit. During the shouting about opening the door, the soldier she recognized threatened her, saying that if she did not open the door, he would throw a smoke bomb into the house. She described the other soldiers: one of them was named Yossi, and he was short with brown hair; another one wore glasses; another one was tall, stocky, fair, and wore a beard. When Jaradat asked, Yossi identified himself as the commander of the group. The soldiers walked around the house while humiliating the occupants, among them neighbors and relatives. At one point, all of them except Jaradat were ordered to leave the house. When she was alone with the soldiers, the dark one told her that "I will drive you crazy, coming every day until you go mad." He refused to identify himself. During this time the other soldiers wandered around the house, without conducting a search. They left after an hour.

On March 30, 1990, a few days after Jaradat's complaint was filed by HaMoked, the Jerusalem weekly Kol Ha'ir ran a story under the headline "Moving on to Sexual Harassment," with details of the harassment she suffered from. When Cap. Major Gabi questioned the two soldiers, he directed their attention to the article, and focused his investigation on the last incident.

The soldier Hadar, a sergeant, testified that he was in Jaradat's house one time. He said that the reason for entering it was that "we saw a suspicious figure disappear in the direction of the house... we suspected that the man who disappeared was hiding in the house." Which soldiers were with him when he entered the house? "I remember Yossi [deleted] and Sagi [deleted]. We were four or five." Regarding their actions in the house, he testified that "we entered the house and checked if the suspect was hiding there." About the damage that was

caused: “while knocking on the door with our feet, we broke the lock... Yossi tried to climb on the porch but couldn’t enter from there. Maybe he tried to open some window.”

Sagi, one of the soldiers from Sergeant Hadar’s testimony, was also a sergeant. He confirmed that he was present that day. He claimed that it was his first time at the house. Why did they enter the house? “It was in the evening, between 20:00 and 21:00, and in the dark I saw a figure running. We chased after it, and the guys saw it enter the home of the complainant. We wanted to check who it was.” When they entered the house, “I stood in the hallway, the others searched the house.” How was the damage caused? “We kicked the door to try and open it, the door was stuck and there was a problem with the key or the lock. Maybe a window was broken in the side porch.”

### **The CCAG closes the case**

Based on the three testimonies, the CCAG Lt. Col. Politis reached the conclusion that “the entry into the house was for operational needs and not for harassment, although it is possible that unnecessary damage was caused to the lock and a window pane on the porch. I have therefore ordered the case closed and recommended that Mrs. Afaf Jaradat be reimbursed for the damage caused to her house when the soldiers entered.”

The CCAG did not mention the fact that the central figures in the case were never investigated. In any event, the time that passed from the last incident and the questioning of the two soldiers was four months – long enough for the two to coordinate their versions so as to give a reasonable explanation for entering the house. This alone should have aroused the CCAG’s suspicion.

### **Other possibilities for investigating the case**

There are certain obvious omissions in the investigation of Jaradat’s complaint:

1. Although Jaradat’s original complaint mentioned four separate incidents of harassment, as did her testimony to the investigating officer, only two soldiers were questioned regarding the last incident, which was on March 22 or 23, 1990. In his question she never mentioned the other incidents, and accepted their answers that this was the first time they had been there.
2. Even though Yossi’s name was mentioned in two of the testimonies, Jaradat’s and Sergeant Hadar’s, the investigating officer never bothered to find him and question him on his part in the incidents, at least the last one. This despite Sergeant Hadar’s testimony implicating him as the one who probably broke the window pane in the porch. Given that Sergeant Hadar and Sergeant Sagi were questioned, it is clear that the investigating officer knew which unit was operating at the time in Akab village. He could easily have questioned Yossi as well.
3. No attempt was made to find the other soldiers from the previous incidents, who were not present in the last one.
4. Jaradat’s brother in law and neighbors were never questioned, despite having witnessed some of the incidents.

If an attempt had been made to locate the other soldiers involved, particularly the one named Yossi, a more complete evaluation of Jaradat's complaint could have been made. A fuller picture would have included testimonies from Jaradat's neighbors and relatives. The investigation was basically a cover-up, and it ensured that a complete investigation of the harassment, threats, trespassing, illegal use of weapons, and vandalism faced by Jaradat would never be carried out.

### **The compensation lawsuit**

On February 2, 1997, HaMoked filed a lawsuit for the Jaradat family based on the behavior of the soldiers in the incidents described above, and on an incident that involved soldiers and the husband, Karam Jaradat. The charge sheet mentions the soldiers' negligent behavior, harassment, trespassing, violation of privacy, assault, and vandalism. The damages incurred by the family include not only the affront to the parents' dignity, privacy, and property, but also the anxiety and mental anguish caused to their two small children who witnessed the soldiers' rampages.

The Jaradat family is demanding compensation of NIS 70,500 from the State of Israel. The lawsuit is pending.

# A Story of Forgetfulness

## The Abuse of Ra'fat Omar Rian

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### Summary

Ra'fat Omar Rian is a resident of Beit Diko village in the Ramallah district. On June 15, 1991, around 15:00, two soldiers arrived at his home and demanded that he and his brother present their ID cards for inspection. Then they told them to step out into the street. One of the soldiers locked the rest of the family in the house. As soon as Ra'fat and his brother left the house, a soldier kicked him in the back. Another soldier called him over, demanded to see his ID again, and then hit him with his right elbow. He also ordered him to come to the village center, where he gave the ID card to three soldiers there and told them that Ra'fat tried to steal his rifle. The three soldiers started to shout at Ra'fat, beat him with their fists and slapped his face. They returned his ID card and told him to erase graffiti from nearby walls, including some that had no graffiti. Another soldier came over and asked Ra'fat, what he was doing, took his ID card, and started to beat him using his hands, feet, and weapon. When Ra'fat couldn't reach slogans written high up on the wall, the soldiers started to beat him. During this progressively more severe abuse, which included more beatings and presentation of his ID card, the soldier who claimed that Ra'fat tried to steal his rifle came back and ordered him to spit on a photograph of Yasser Arafat. All during this time, while the beatings, curses, and humiliating remarks continued, Ra'fat was forced to erase graffiti from the walls. This continued for over 90 minutes. Along with Ra'fat, nine others in the village were beaten. That night, the village Mukhtar complained about the abuse at the Civil Administration at A-Ram. An officer named Amir told the Mukhtar that there was nothing he could do about it.

### The testimonies

#### The soldiers were from Golani Brigade

Ra'fat Rian's testimony was given to HaMoked three days after the incident, on June 18, 1991. He reported that the soldiers who entered the village were from Golani. He knew that from the color of their berets and from the soldiers themselves.

This testimony is supported by that of Captain (reserve) Dani Tsidon, who was the operations officer in a reserve battalion of the armored corps, within the regional Binyamin Brigade. He said that the incident in Beit Diko village took place when his battalion received command of a Golani company. The company commander was Lt. Avi Atias. This company was meant for special operations of the brigade. "As part of the weekly assignment of operations for the Golani company, there was a plan to enter Beit Diko. The entry was carried out on June 15, 1991 along two walking routes, with an officer in charge of each route. One of the forces was under 2nd Lt. Bar Sheshet from Golani, and the other force entered the village from the only road entering the village. The tasks within the village were to show presence and carry out

the erasing of graffiti, lowering of flags, etc.” (testimony of Cap. Tsidon on September 2, 1991, two and a half months after the incident.)

### **There was no attempt to steal the Golani soldier’s rifle**

As for the claim that Ra’fat tried to take the weapon of one of the soldiers, he told the MPI investigator that one of the two soldiers who entered his house “held my arm tightly, threw me at the gate and kicked my back. From his kick I was thrown a few steps forward and accidentally my elbow hit a third soldier who was outside, on his arm. The soldier got angry at me, grabbed me and hit me in the face with his elbow.”

Cap. Tsidon, who was a witness to some of the stages in Ra’fat’s beating, gives some credence to this version: “At one point in the activity I saw soldiers taking two people out of a house who were around twenty years old. At the exit from the yard to a clearing before the house one of the youths grabbed the weapon of a Golani soldier standing near the gate. He did it on person, and not in the process of tripping or being pushed, although it can be said with certainty that it was not for the purpose of taking the weapon, but a kind of grandstanding, or making an impression with the surrounding audience. The soldier and another soldier who stood next to him got very angry and gave the man two or three kicks. The man didn’t fall, and he wasn’t really hurt at that point. Then I told the Golani soldiers in the area to calm down, and they stopped and took the man to erase graffiti, lower flags and posters, etc.”

Even if one accepts Cap. Tsidon’s version of events regarding Ra’fat’s grabbing the soldier’s rifle, it is clear that there was no attempt to take away his weapon. Cap. Tsidon’s testimony that he ordered the Golani soldiers to “calm down” clearly reveals that he was witness to the use of unnecessary force.

### **Collective amnesia**

As opposed to the testimony of Cap. Tsidon, who can hardly be suspected of favoring the residents of Beit Diko, none of the Golani soldiers remembered anything at all: not the name of the village (except for one officer), and none of the events that took place. All of them were questioned during the latter part of October 1991 (the 21st and 23rd) – more than four months after the event. Within this time frame, one can reasonably expect someone to remember what happened, especially an unusual event like what happened at Beit Diko. The MPI investigators did not try to change the soldiers’ “amnesia” by confronting them with Cap. Tsidon’s testimony, which was collected six weeks beforehand. The near uniform phrasing of the Golani soldiers’ testimonies reveals that they were being asked leading questions, to which they could reply in shorthand: I don’t remember the village, I don’t remember an event, I don’t remember an attempt to take a weapon.

Cap. Tsidon told the MPI investigators that he couldn’t remember any of the Golani soldiers’ names, not even the soldier whose weapon was grabbed. It turned out however, that this was no barrier to the MPI investigators locating a number of the suspects and questioning them.

But they never tried to check with Cap. Tsidon, if the suspects that were located were those that he saw in the village.

On October 25, 1991, two days after the questioning of the last Golani soldier, MPI concluded its investigation: “in our investigation we did not locate the violent soldiers and no evidence was found for the complaints of the local resident regarding his beating and humiliation.”

### **Other possibilities for investigation**

The MPI investigators had plenty of information on the actions of the Golani soldiers in Beit Diko on June 15, 1991. Cap. Tsidon gave neutral testimony from which it appears there was a prevailing atmosphere of rampaging, and that Ra’fat Rian did nothing to provoke his beating or humiliation. The MPI investigators should have noted that Cap. Tsidon had no objective reason to sway his testimony in favor of Ra’fat, as they collected near identical testimonies from the Golani soldiers. The similarity in the answers arouses two suspicions: firstly, that the soldiers, who had the time and the opportunity to coordinate their testimonies, invented their amnesia; or secondly, that the questions of the MPI investigators were designed to produce those answers. A third possibility is that both suspicions are correct.

### **The prosecution did not try**

The Northern Command Attorney General Lt. Col. Ze’ev Lisson adopted the weak MPI investigation results without question. He did not demand that the MPI investigate the serious incident properly, and accepted the concluding remarks of the report: “the attempts of the investigators to locate those who committed the actions alleged by the complainant (Ra’fat Rian) were not successful, and I have therefore ordered the case to be closed without taking any legal measures whatsoever.”

The NCAG failed here on two counts: not only was it wrong to accept such an incomplete and sloppy investigation, the suspicion that the true perpetrators coordinated false testimony – with or without the assistance of the investigators – should have forced him to investigate the additional crime of interfering with legal proceedings.

# The CCAG Hampered the Investigation

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## The Beating of Mohammed Najib

### Summary

On April 21, 1990, at 16:00 in the afternoon, Mohammed Najib was returning home to the village of Hizma on the outskirts of Jerusalem from his work at the Notre Dame Center in Jerusalem. During the day a curfew had been imposed on the village. Najib was unaware of the curfew. In the village center, not far from his house, a military vehicle with three soldiers stopped Najib. One of the soldiers asked him what he was doing outside during the curfew. Najib replied that he was returning from work, and showed his employee ID from the Notre Dame Center, which was written in English and Hebrew. The soldier ripped up the paper, and then pointed at a slogan painted on a nearby wall, and asked Najib who wrote it. Najib said he did not know. Then the soldier grabbed him by the throat and slapped his face, while asking rhetorical and demeaning questions. Finally the soldier kicked him, and sent him on his way with another curse. Najib's wife and children were witnesses to the entire incident.

### The testimonies

Najib complained to HaMoked the next day, April 22, 1990. The same day, HaMoked sent a letter to the CCAG Lt. Col. Dolev, described the incident, included a photo of the torn document, and emphasized that the complaint was being made only a very short time after the incident – a fact that should make the identification of the unit in Hizma and the soldiers involved in beating Najib very easy.

### No one investigates

- On April 22, 1990, one day after the incident, the CCAG Lt. Col. Dolev received HaMoked's complaint and description of the incident.
- On June 17, 1990, HaMoked sent a reminder to the CCAG.
- On August 28, 1990, HaMoked sent a reminder to the CCAG.
- On November 21, 1990 HaMoked sent a reminder to the new CCAG, Lt. Col. Politis.
- On December 24, 1990 HaMoked met with the CCAG.
- On December 31, 1990, HaMoked sent a reminder to the CCAG.
- On March 12, 1991, HaMoked sent a reminder to the CCAG.
- On April 19, 1991, HaMoked sent a reminder to the CCAG.
- On June 2, 1991, HaMoked sent a reminder to the CCAG.
- On August 20, 1991, HaMoked sent a reminder to CCAG.
- On September 3, 1991, CCAG Lt. Col. Politis informed HaMoked that he checked the matter with the investigating authorities who would likely be in charge of the investigation,

and that it seemed to him that no investigation had been opened. In conclusion he wrote, “after examining the complaint and the chances of an investigation, I have decided that there is no point ordering the opening of one now.”

- On April 30, 1993, HaMoked attorney wrote to the CCAG, with an affidavit from the victim attached, and demanded that an investigation be conducted.
- On June 20, 1993 HaMoked sent a reminder to the CCAG.
- On July 27, 1993, the CCAG replied to HaMoked that her letter and the attached affidavit were insufficient to change his decision.

### **Additional legal possibilities**

If the CCAG had acted appropriately, she would have ordered the MPI to conduct an investigation quickly. As mentioned above, the information was in her hands only one day after the incident, when it was still easy to identify the unit that was in Hizma village during the curfew, and there was a good chance of identifying the violent soldier and his two colleagues. The prosecution never bothered to order the MPI to collect testimonies from the victim’s family, although they were witnesses to the abuse. In behaving as it did, the CCAG’s office foiled whatever possibility there was of investigating the incident and bringing the soldier to justice.

## The CCAG Adopts the Inadequate Investigation and Declares: No Suspects The Beating of Samer Duzdar

### **Summary**

On April 21, 1992, around 17:00, Samer Duzdar was driving in his car in the town of Al-Bireh. Two soldiers passed the area in a jeep and told him to slow down. He continued driving toward Ramallah, from where he was planning to enter Jerusalem. At a junction on the way to Jerusalem he dropped off a friend who was with him, and then the two soldiers came up to him, and demanded his ID card and told him to get into the jeep, while shoving him. The soldiers drove to a military camp, apparently Alon camp, where Duzdar was taken out of the jeep and told to sit on the ground. After ten minutes the soldiers returned and shouted at him to get into another jeep. His face was covered with a rag. They began driving, and a soldier who introduced himself as “Captain Yussuf” began to beat him with his fists. The soldiers drove the jeep to a place that Duzdar recognized only later. It was a cave near Kafr Akab. He was placed in the cave where the two soldiers beat him while insulting him. They threatened to shoot him, and finally left the cave. While Duzdar was still inside they threw a concussion grenade inside. As a result, Duzdar was injured in his face. After the explosion “Captain Yussuf” went back into the cave, gave Duzdar back his ID card, and told him to come the next morning to the offices of the Civil Administration in A-Ram. After the incident, Duzdar was treated at the hospital in Ramallah, where his face was bandaged. He was also checked at Al-Mukkassad Hospital in Jerusalem.

After being treated, Duzdar tried to file a complaint with the police. As a resident of Jerusalem he went to the Russian Compound police station. He was sent there from room to room, without taking his complaint, and finally he was told to go to the police station in Neve Ya’akov. The police at Neve Ya’akov also refused to take his complaint, with the excuse that they do not accept complaints related to the army, and told him to go to the MPI in Me’ah She’arim.

### **Who can accept complaints?**

After presenting Duzdar’s complaint, HaMoked attorney wrote to the CCAG Lt. Col. Politis and asked that an investigation be held. On May 19, 1992, the CCAG wrote back that he had turned the material over for an investigation, and forwarded HaMoked’s letter to the Police, to determine why the original complaint was not accepted.

On June 24, 1992 the Police wrote to HaMoked that Duzdar could file a complaint at the station in Neve Ya’akov.

### **MPI investigates**

The MPI responded to the complaint faster than the police. On May 24, 1992, five days after

the CCAG's letter to HaMoked, Samer Duzdar was questioned about his version of the incident. Two days later, on May 26, 1992, one of the soldiers suspected of involvement in the case was also questioned. The next day, May 27, 1992, four more soldiers were questioned. Four days later an officer was questioned, and the next day a physician was questioned who explained what was written on the medical report that Duzdar obtained from Al-Mukkassad Hospital.

Duzdar told the investigators that he would be able to recognize the soldiers who beat him. Nonetheless, MPI never held an identity parade. Instead, the investigators accepted the answers of the soldiers and the officer who were questioned, who said that as far as they were concerned the entire incident never happened. Moreover, the suspects' answers to the MPI investigators, that they never heard about the incident until questioned about it, shows that the investigators were using a leading question on each of the suspects, who were all questioned on the same day (May 27, 1992) within a short period of time.

Two of the soldiers who were questioned were presented with the work records of two jeeps, showing that they had been driving the day of the incident, April 21, 1992. They both admitted driving the jeeps on that day, but denied any connection to the incident. The MPI investigator did not pursue his line of questioning. In the testimony of the officer, Lt. Ran, he said that "the company has jeeps." He was not asked how many jeeps, and therefore the investigation does not make it clear how many jeeps are used by the company, and if additional jeep work records for the day of the incident should be investigated, to see if there are additional drivers who could be questioned.

The investigator, 1st Sergeant Ya'akov Raviv, also visited the Alon Reconnaissance Base where he questioned the soldiers. "On May 27, 1992 I went to the Alon Recon. Base and checked with 2nd Lt. Yohai [deleted] in the operations diary of the company, to look for any unusual events connected to the wounding of Samer Duzdar on April 21, 1992. During the investigation no entry was found regarding the arrest and beating of Samer Duzdar on April 21, 1992."

### **Other possibilities for investigation**

1. The MPI investigator only chose to question soldiers in the Alon Base, presumably because it happens to be the closest base to where Duzdar was arrested, as well as the place where he was – apparently – taken to during his abuse. Even if one accepts at face value the denials of the soldiers he questioned, he should then have looked elsewhere for additional suspects. This was not done.

2. Supposing that the soldiers who abused Duzdar were from Alon Recon. Base, the soldiers' testimonies were not sufficient to clear them. The investigator should have returned to cross examine them, to see if any contradictions come up. The important question – which was not checked at all – is how many jeeps are stationed at the base, and who was driving which jeep on the day of the incident. Showing two work records to two soldiers is not sufficient to determine the whereabouts of each soldier who used a jeep from the base on the day that Duzdar was abused.

3. A real investigation would have required that on the day after Duzdar's complaint, all of the drivers on the base would participate in a line-up, since Duzdar said that he could identify which soldiers abused him.

4. Duzdar told the MPI that he was taken off a jeep in Alon Recon. Base for ten minutes, and then put on another one. There may have been eyewitnesses who noticed these actions, and the soldiers who beat him. MPI did not try to locate any witnesses.

5. The investigator's conclusion, that the operations diary of the company did not include an entry for Duzdar's arrest and beating, might well raise an eyebrow. Sadists are not, in general, prone to leave a record of their criminal actions in the operations diary. It is clear from Duzdar's complaint that the soldiers were doing their best to remain anonymous; the fact is they took him to an isolated cave to abuse him.

### **The prosecution did not make a sincere effort**

On July 7, 1992 the CCAG's office wrote to HaMoked: "...We have received the investigation file, and an attorney's opinion has been given. The CCAG has decided to close the case since no suspects have been located for the incident described by Mr. Duzdar." In other words, despite all the problems presented by the investigation itself, the CCAG saw no reason to return the investigation file to the MPI to order them to complete their investigation – properly. He instead accepted the unfounded results, and based his conclusion that "there are no suspects" on their report.

After receiving the investigation file, HaMoked attorney wrote to the CCAG and pointed out that the investigation was not carried out properly or completely: "The grave incident of serious bodily harm caused to my client was not investigated, and the perpetrators have not been identified. In my opinion, this is the case only because the investigating officer did not do his job properly." She demanded that a line-up be conducted. She reminded the CCAG, that even though a lot of time has passed, Duzdar is still able to recognize the abusers.

The CCAG rejected her request, on two grounds. Firstly, there were no suspects with which to carry out a line-up, as they had never been identified. Secondly, a line-up at that stage would be "unproductive."

### **How long does it take to receive the investigation file?**

- On June 1, 1992 the last testimony was collected for the investigation.
- On July 24, 1992 HaMoked asked the CCAG to forward the contents of the investigation file.
- On November 27, 1992 HaMoked sent a reminder to the CCAG.
- On December 29, 1992 the CCAG informed HaMoked that he had requested the file, and as soon as it was censored he would inform HaMoked.
- On March 2, 1993 HaMoked requested the contents of the investigation file again.

- On March 22, 1993 the CCAG wrote to HaMoked that the file had still not been made available.
- On July 4, 1993 HaMoked asked if the material had returned from the censor yet.
- On August 8, 1993 the CCAG announced that the material was now available.

The investigation file was with the CCAG for over a year before being handed over to HaMoked, so that a legal opinion could be written. The CCAG took an unreasonably long time to censor the material and make it available to HaMoked, without any adequate explanation for the delay.

### **Demand for compensation**

On September 13, 1996, HaMoked attorney wrote to the Ministry of Defense demanding that Duzdar be compensated for his injury with NIS 7,000.

The State of Israel and Duzdar agreed on NIS 3,250 in compensation on May 8, 1997.

## The Soldier Said So, and That's What Counts

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### The Beating of Nidal and Iyad Diab

#### **Summary**

On April 3, 1994, at 21:30, Ya'akub Suleiman Diab and members of his family were driving back from Kalandia Refugee Camp to their home in Shuafat (in Jerusalem), after visiting relatives. They were in two cars, and were on their way out of the camp via the Ramallah-Jerusalem road. Some soldiers on the side of the road shouted at them to stop. Then the cars stopped, soldiers opened the doors and pulled Diab's two sons, Nidal and Iyad, out of their seats. After taking them out, they started beating them up with their fists and rifle butts. Some of the women in the cars came out and tried to pull them away from the soldiers, but they were beaten as well. Fifteen minutes later, the two brothers were handcuffed and sitting in the back of a jeep, being driven away.

The day afterwards, Diab went to the Civil Administration in Ramallah, and discovered that his sons were being held there.

On April 5, 1994, he went to the police station in Neve Ya'akov to complain. On April 6, 1994, he approached HaMoked. After difficulties in getting a proper reply, it turned out in early July 1994 that the police had transferred the complaint to the MPI, since the suspects in this case were soldiers.

#### **How long does it take to get the investigation material?**

- On July 18, 1994, after it was determined that the investigation had been turned over to MPI, HaMoked wrote the CCAG Lt. Col. Politis asking to be updated on any developments in the case.
- On August 14, 1994, the military prosecutor Cap. Udi Ben Eliezer informed HaMoked on behalf of the CCAG that the case was being closed.
- On August 24, 1994, HaMoked requested the contents of the investigation file.
- On September 25, 1994, Ben-Eliezer wrote to HaMoked that he would inform them when the material arrives.
- On February 5, 1995, HaMoked sent a reminder to the CCAG asking to view the investigation file.
- On August 17, 1995, HaMoked filed a complaint with attorney Nili Arad, the Director of the Appeals Department with the State's Attorney General's office, regarding the unnecessary delay in receiving the investigation file from the CCAG.
- On August 22, 1995, Arad forwarded HaMoked's complaint to the CCAG, and asked him to respond to it directly to HaMoked, with a copy sent to her.
- On August 23, 1995, Cap. Ben-Eliezer replied that unfortunately, despite the long delay, the CCAG did not yet have the material.

- On September 28, 1995, HaMoked again wrote to the CCAG, stating in her letter that an entire year had passed since the material was first promised.
- On November 5, 1995, Ben-Eliezer announced that because of a mishap the material had been delayed.
- On March 31, 1996, HaMoked reminded the CCAG that five months had passed since the mishap was reported.
- On June 9, 1996, HaMoked was informed via a phone call, that the CCAG was still searching for the file.
- On June 10, 1996 HaMoked informed the CCAG that no more reminders would be sent asking for the files.
- On June 17, 1996 Ben-Eliezer called HaMoked to say that the material would arrive in the next few days.
- On July 3, 1996, Ben-Eliezer called HaMoked to say that the material had not arrived yet.
- On July 8, 1996, Ben-Eliezer called HaMoked to announce that the material had arrived.

From HaMoked attorney Badra Khouri's first request to receive the material from the investigation file, and until the announcement that the material was available, nearly two years passed.

### **The testimonies**

From the investigation material, it is apparent that MPI only questioned two soldiers, and their testimonies were used as grounds from the CCAG's decision to order the case closed. Cpl. Asi Bracha told the MPI investigators on April 16, 1994, two weeks after the event in Kalandia, that the camp had been under curfew at the time. An hour after the curfew was announced, the two cars of the Diab family arrived. In reply to the soldiers' questioning, Ya'akub Diab, the father, told the soldiers that he did not know about the curfew. The father at first refused to get out of his car, but finally came out. His sons also refused to leave the car, but after "shouts and arguments" they got out. Bracha testified that the two brothers were asked to approach a nearby wall to be physically searched, but they refused. The father asked the soldiers to leave his sons alone. Then, according to the testimony, "we were forced to exercise reasonable force to bring them to the wall. At that point it was only me and another soldier whose name I can't remember... The reasonable force we used on the two brothers was just pushing toward the wall. I pushed the younger brother and the other soldier pushed the older brother." The soldier does not explain why "six more soldiers came to help us, and helped us with reasonable pushing to bring the brothers to the wall. At this point the younger brother started to curse and push and therefore [beat] me with his two fists to my stomach, but I was not harmed." After that the brothers were arrested.

Bracha also testified that an officer from the Civil Administration in Ramallah and another soldier from his unit were witnesses.

The second witness was the Civil Administration officer mentioned by Bracha in his testimony, named Oren Shaked. Shaked testified that he was the one who ordered the curfew

in Kalandia that night. He came upon the incident while patrolling the camp after the imposition of the curfew, and – as contrasted by Bracha’s testimony – was not a witness to the scuffle between the soldiers and the brothers. “Near the main entrance to the refugee camp... I saw a gathering of soldiers and four local residents. I stopped to see if there were any problems. When I got out of my vehicle, it was explained to me that two local youths in their twenties attacked soldiers from the patrol, got violent with them and cursed them, after the cars they were traveling in were stopped. The cars were stopped because they were trying to leave Kalandia refugee camp an hour after the curfew was imposed.” Shaked testified that after his arrival, the two brothers were already standing facing the wall, and none of the soldiers were beating them. After consulting with him it was decided to arrest the brothers. In his testimony, Shaked claimed that the father told him, that he was sorry and that it would never happen again. He said that the father did not complain about soldiers beating his sons. The two brothers did not complain either while being taken to detention.

### **The CCAG ruled that the soldiers acted properly**

Both of the testimonies were cited by the CCAG in his decision to close the investigation. The only eyewitness was also one of the potential suspects. For that reason it is clear that his testimony cannot be seen as trustworthy. The two weeks that passed from the date of the incident until he was questioned was long enough for him to come up with a version that would clear him of any wrongdoing. The repetition of the phrase “reasonable force,” along with the original “reasonable pushing” is suspect. These terms are not commonly used in unrehearsed speech, and seem to have been the result of coaching, since according to the letter of the law the use of reasonable force is permitted if a suspect resists interrogation, search, or arrest.

MPI should have tried to locate additional witnesses, and many were available. In addition to the two brothers, there were five members of the Diab family, and the other soldiers who participated in the pushing, according to Bracha’s testimony.

Despite the incomplete investigation, the CCAG reached the conclusion that “the soldiers in question acted properly.” His decision not to take any measures against the soldiers was based, *inter alia*, on the comments of the officer Oren Shaked, who said that the father came to him, apologized for the incident, and did not complain about his sons being beaten. That does not prove what the CCAG wishes to prove. If anything, it shows that the father wanted to finish the incident quickly and avoid the arrest of his sons, so that the whole family could return home together. To complain at that point would have created an additional reason to delay the release of his sons, who were not yet under arrest.

### **Additional possibilities for investigating the incident**

As stated above, MPI did not question most of the witnesses to the incident. It is probable that if the Diab family, including the two brothers, and the other soldiers involved had been questioned, the resulting picture would have been much more complex. It is also quite

possible that more suspects from among the soldiers who used force would have been identified.

### **MAG stands behind the CCAG's conclusions**

After HaMoked received the investigation material, HaMoked attorney wrote to the MAG and questioned (or appealed) the CCAG's conclusions. He protested the conduct of the investigation, and demanded that it be completed or repeated.

The acting MAG, Col. Yossef Telraz, rejected HaMoked's demands. His reasons rested entirely on the decision reached by the CCAG. He did not respond to HaMoked's claim that MPI only collected testimony from two people, and that the testimonies themselves are troubling. Instead he mentions Cpl. Bracha's testimony, as if it were the most believable source of evidence in this case: "A study of the investigation material reveals that the soldier involved gave a complete statement, in which he described the course of events that led to the arrest of your client's sons. According to the testimony of the soldier, all that was used was reasonable force to stand them next to the wall."

Telraz also told HaMoked that: "the identity of the other soldiers involved in the incident, is unknown." This is a strange claim. If Cpl. Bracha was identified, then the other soldiers could have been identified as well. All that was necessary was to ask him who was with him on that night in Kalandia. After all, he gave MPI the identity of the Civil Administration officer who was present that night, enabling them to question him. The records kept by the soldiers' unit would have indicated who was engaged in which activity and when.