
Violence Committed by the Security Forces

“Everyone has the right to life, liberty and security of person.” (Article 3)

With the IDF invasion of the PA territories, there was a significant increase in the number and severity of phenomena of violent behavior of security force personal vis-à-vis Palestinians and their possessions. Shooting “according to the procedures” that resulted in the death and injury of the innocent, destruction and ruin in homes and offices, and theft of money and jewelry, were the lot of many residents. In addition, IDF soldiers took control of many houses, offering no compensation to their owners. Much personal and public property was confiscated. The Palestinian residents of Jerusalem also suffered from the escalating violence from the Israel police and Border Guard forces stationed throughout the city. This heightened tension did not just result in an increase in violence but also in the deeds, or more accurately the lack of deeds, the inaction, of the authorities responsible for investigating these cases. Their silence when faced with many testimonies, demonstrates the lack of willingness to root out or even restrain the violent behavior of the security forces. Of the small number of investigations initiated, most related to looting, and but a few concluded in placing soldiers on trial. Most of the cases of death and injury were transferred for clarification by the units in the field, and were concluded with no results.

HaMoked, continued acting vis-à-vis the authorities on behalf of those who requested help in opening an investigation, carrying it to the end, and bringing the suspects to trial. In addition, HaMoked continued working through the courts with the goal of bringing justice to the victims, requiring State accountability for the deeds of its emissaries, whether for a violent act or for not carrying out an investigation, in order to try to deter security force personnel from exercising violence against the civilian population. During the second half of this year, five civil suits were filed in the courts for bodily and property damage and four ended in compromise. The situation in the field added problems to the filing and conducting of these suits, since Palestinians could not meet with their lawyers or enter Israel in order to testify before the court. The passing of a proposed amendment to the Torts Law dealt an additional blow to the struggle for meting out justice for the victims of violence in the Occupied Territories, by blocking their way to seeking justice in the Israeli courts.

Violence aimed at the Body

“Protected persons are entitled, in all circumstances, to respect for their persons their honour... They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof...” (Article 27, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949))

From the beginning of the present Intifada through the end of June 2002, over 1,100 Palestinians in the occupied territories were killed by Israelis. 9,900 were wounded in shooting incidents. Of this number, over 500 were killed in the last four months of this period, alongside the incursion of Israeli forces into the Palestinian Authority. During that same time, over 700 individuals were injured. Despite the thousands of injured and killed among the civilian population, the army was satisfied with opening only a few dozen cases, only a small number of which resulted in bringing the soldiers to trial. This reality was the direct result of a policy followed even before the present Intifada, and regarding which the Chief Military Prosecutor declared the following: “the policy stipulated... was, as a rule, not to open military police investigations regarding the cases of use of weapons... this policy was completely different from the policies followed during the Intifada in the years ‘87-’94, a period when the main tool for clarifying facts was military police investigations.”¹²

A clarification, or a debriefing, a process in which examinations are performed by the army units themselves rather than by a special investigator replaced the investigation. But the army did not initiate even these clarifications. In requests for assistance handled by HaMoked, the internal clarification was initiated only after HaMoked approached the authorities, even regarding serious cases.

During the evening hours of 10 April, shots were heard near the village of A’rabeh in the Jenin district. At that time, M.H. and his wives, A.H. and J.H. were on their way home from the family farm to their home in the village. An ambulance squad from the Red Crescent arrived to the area from where the shots were heard, and found their bodies, riddled with bullets. An examination revealed that they had been shot from close range in their heads and bodies with M16 and high velocity ‘dumdum’ bullets. Later that night, a bomb was thrown from a helicopter at the H. family’s farm. The 67 year old father of the family was

¹² Quote from the letter of the Chief Military Prosecutor as it appeared in Kol Ha’Ir, 1.3.02, p. 25.

seriously injured from the explosion. Only after HaMoked's intervention was a clarification launched regarding the events of that night; it has not yet been completed. **(File 17816)**.

The clarification was meant to be a preliminary step to investigation. In effect, clarifications drag on unreasonably, are conducted unsuccessfully, and conclude with no results. As the Chief Military Prosecutor himself testifies, "...in many cases... debriefings transferred to us were, by way of understatement, unsatisfactory and unprofessional."¹² The time that passed and the negligent collection of evidence contribute to a whitewashing of the facts, and make difficult any future investigation.

On 15 May 2000, S.H., age 15, was shot in the head and killed during confrontations between the IDF and Palestinians in Ramallah. On that same day, in the same area, a second young man, F.S., was injured and lost his left eye. HaMoked's repeated requests to the IDF that an investigation on the matter be launched were not answered, and only the threat to take the matter to court pressured the army into opening an investigation. HaMoked's demand to be notified of the results of this clarification came to naught. Only in June of this year, more than two years since the killing of S.H. and wounding of F.S., was the response of the Central Command's attorney received, that "no information was found regarding the incidents." HaMoked is now considering taking the matter to court. **(Files 14965, 14966)**

Despite the pathetic nature of the clarifications, the Office of the Chief Military Prosecutor relies on their conclusions almost entirely. "...Only in exceptional cases is the matter transferred for my [Chief Military Prosecutor] consideration to decide whether to order an investigation by the military police."¹² But even on the few occasions when investigations are launched, they drag on interminably and are conducted, in most cases, with no particular effort on the part of the investigators to discover the truth.

A.M., age 21 from Jerusalem, works as an assistant to a delivery truck driver. On February 2001, soldiers at the Halamish roadblock (Wadi al-Harmiyyeh) apprehended the delivery truck he was on. The soldiers ordered A.M. to get out of the truck, and when he descended, one of them began pushing him. When A.M. asked why he was being pushed, the same soldier, along with another soldier, began beating him, using the butts of their weapons. A.M. was beaten all over his body, and only when a police patrol car passed by did the soldiers stop. The truck driver who worked with A.M. called an ambulance that took him to the Hadassah Mt. Scopus hospital. HaMoked contacted the Chief Military Prosecutor's office demanding that they investigate the circumstances of the event and bring the soldiers to trial. The response of the Chief Military Prosecutor from April 2001 was that a clarification on the matter had been initiated. In August 2001, the Central Command Attorney announced that an investigation had been launched. To this day, approximately a year and a half from the day of the event, and some ten months from the day the investigation began, no response to HaMoked's inquiries regarding the results has been received. **(File 15541)**

This policy of the Chief Military Prosecutor's Office in effect prevents investigation of the truth in all that relates to the death and injury of thousands of residents, and leaves the courts in Israel as the only open venue for residents of the Territories for discovering the truth. Even during the first Intifada, the authorities were not overjoyed to investigate cases in which Palestinians were injured or killed as a result of the actions of IDF soldiers. HaMoked, in representing injured persons in the courts, acts with the goal of bringing the State to acknowledge its responsibility, not only for violent acts committed by its emissaries, but also to gauge their actions in all that relates to the investigation.



Civil

In March 1989, H.A. was shot in the back by IDF soldiers in a confrontation with a group of young people near his home in the A'skar refugee camp near Nablus. H.A. lost consciousness and was transported to the nearby hospital, where he was hospitalized for 34 days and underwent surgery for removing his left kidney. Although the event and the injury were known to the IDF, no investigation was undertaken. HaMoked filed suit for compensation on behalf of H.A. in 1996. In the compromise agreement reached this year, H.A. was awarded NIS 57,000. H.'A. agreed to the compromise, among other reasons because his witnesses were unable to reach Israel to appear in court. **(File 6695)**

HaMoked also represents those request help in cases that do not involve intended abuse or particularly grave results. It is expressly in the seemingly mild cases that the authorities' contempt for Palestinians takes expression most strongly, both in the deed itself and in its investigation. It is doubtful that this contempt would be evidenced if the person wronged were not Palestinian.



Civil

Late into the night of 10 March 1999, B.T. was arrested at his home in Beit Fajar due to a suspicion that he was in possession of a stolen vehicle, a suspicion that later was proved to be baseless. He was taken to the police station with his hands bound in plastic handcuffs. When they reached the station, one of the

policemen took off his handcuffs using a sharp blade, and injured B.T., cutting him deeply in his left palm. B.T. was taken to the military infirmary where the doctor referred him to the hospital, but only two hours later, during which B.T. was held at the police station, was he released and he went independently to the hospital in Beit Jala. B.T. contacted the Palestinian District Coordinating Office and submitted a complaint regarding the event, and HaMoked followed the investigation. In October 1999, the Police Investigation Department (PID) decided to close the file due to insufficient evidence. In June 2000, HaMoked sued for compensation on B.T.'s behalf against the policeman who wounded him and against the Israel Police. The parties, under the court's encouragement, reached a compromise agreement, in the framework of which B.T. was compensated with NIS 12,000. (**Filed 13729**)

In those few cases when the authorities' investigations did yield results, and some of those involved were even stood trial, the punishments imposed were, in most cases, ridiculous. Here as well, working through the court system obligates the State and those who acted in its name to take responsibility for their acts and to do justice to those wronged.



Civil

H.W. made his living at a watermelon stand at the entrance to the A'skar refugee camp outside of Nablus. On 18 July 1992, Border Policemen arrived at the stand and demanded that he present his identity card. One of the policemen conducted a body search on H.W. and removed the documents in his wallet. When H.W. asked the policeman not to tear his referral form for surgery, the latter began beating him. He overwhelmed H.W. with punches and kicks, from the force of which H.W. fell to the ground; the kicks were followed-up with blows from the butt of policeman's rifle. All the while, the commander of the squad watched and did not raise a finger to stop the violence. H.W. was detained for a month, during which he suffered an attack that caused him to lose consciousness. Even after his release, he continued suffering from such attacks, and received medication. Following the investigation of the PID, the policeman who had beaten H.W. was taken for a disciplinary hearing, where he was found guilty of illegal use of force, and sentenced to the punishment of a harsh scolding.

HaMoked represented H.W. in a civil suit submitted in February 1997 against the policeman, his commander, and the State of Israel. The court recommended that the parties reach a compromise of NIS 60,000, but before HaMoked was able to clarify H.W.'s preference, Operation Defensive Shield began and a request was received to locate him. He was located in the Ofer Camp, and when it was learned that an administrative detention order had been issued against him, HaMoked contacted the camp authorities in order to enable his attorney to visit him. When the visit was approved, the compromise suggestion was presented to H.W. and he agreed to it. (**File 9812**)

Pillage and Destruction

"Pillage is prohibited. Reprisals against protected persons and their property are prohibited." (Article 33, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949))

During the first two IDF invasion of West Bank cities and towns, reports reached HaMoked regarding looting and vandalism carried out by IDF soldiers in homes and private offices. When the reports came in, HaMoked contacted the Chief Military Prosecutor's office demanding that steps be taken to prevent the looting, to locate the looters, to punish them, and to return stolen property to its owners. Individual requests for help were received later, and for each, HaMoked contact the authorities demanding that an investigation be opened and that suspected soldiers be stood trial. This topic drew attention in the Israeli media more than injury to life and limb and despite the repeated declarations of the IDF that these cases would be dealt with severely and promptly and reports that soldiers who had committed these crimes were placed on trial, most cases of looting and destruction by IDF soldiers were not investigated.¹³

On Shabbat, 30 March, an IDF force arrived at the home of F.M., an approximately 50-year-old widow who lives in Ramallah, and makes her living as a seamstress. One of the soldiers asked F.M. whether there was anyone besides her in the house, and she replied that her husband had died and she had no children. The soldiers left and returned a few minutes later. This time, they took F.M. out of her house, sat her at the entrance, entered the house, and began destroying her property. The contents of the kitchen and bedroom closets were thrown to the floor, the bed and arms chairs were broken, three sewing machines, a calculator, a washing machine and a tape recorder were smashed, food that had been in the kitchen was spoiled, a large Koran that had been in one of the closets was torn, and F.M.'s automobile was destroyed. When the IDF forces withdrew, F.M. contacted HaMoked, which contacted the Chief Military Prosecutor's Office,

¹³ By the end of August, 2002, 35 investigations of cases of looting during the three IDF invasions had been opened. HaAretz, 26.8.02, p. 5a.

enclosing pictures of the destruction from the house and demanded an investigation of the incident and compensation of F.M. for the damages. To date no response has been received, some two months since the request, and despite repeated memorandums that were sent. **(File 17790)**

In nine of the forty requests on the topic received over the past six months, HaMoked's intervention led to an investigation by the military police. In these cases, HaMoked assists in coordinating testimonies and in conveying documents to the investigators, in order to bring about a discovery of the truth and to compensate those wronged within a reasonable time period.

The H. couple, physicians who run a clinic in Bethlehem, live with their four children in Beit Jala. After the first IDF invasion, during which their daughter was injured by IDF gunfire searches were carried out in their house during which damages were incurred and valuable items were stolen. The couple requested assistance from HaMoked. HaMoked demanded that the Chief Military Prosecutor investigate the shooting and the behavior of the soldiers during the searches as well as return the couple's stolen property. This demand has not been accommodated to this day. With the first lifting of the curfew during Operation Defensive Shield, H.H. arrived at her clinic and discovered that it had been severely damaged. The door of the clinic had been broken in, the waiting room chairs broken, the pictures on the walls vandalized, the ultrasound and sterilization equipment destroyed, the chandelier smashed, and medical books defaced. There were signs of shooting. Remains left by soldiers who had used the space as toilets were evident. The other offices and clinics in the same building were greatly destroyed as well. Some two months after HaMoked sent its demand for an investigation regarding destruction of the clinic, an investigation was opened. HaMoked is following developments. **(File 17766)**

Looting and destruction also occurred in Jerusalem, but the PID, charged with investigating Border Police activity, did not investigate the complaints, mostly due to a lack of public interest, or the great difficulty in locating suspects, due to the great number of police who had been in the field. A situation was thus created in which property damage caused by Border Policemen was not investigated, and damage caused by IDF soldiers was more likely to be subject to investigation.

In the afternoon hours before the start of Israel's Independence Day, security forces entered Isawiyya in Jerusalem, imposed a curfew and took over a number of houses. Family members who lived in those houses were removed from them, in some of the cases through use of violence, were concentrated in the elementary school courtyard, and were detained there until the early hours of the following morning. Men over 35 were taken to the edge of the village, were interrogated by GSS interrogators, and ordered to accompany the security forces on their house searches. When they returned home, the families discovered that great damages had been caused: smashed windows, broken furniture, the content of closets thrown on the floor, the odor of urine and feces, and in some cases, even money that had disappeared.

In the house where Y.S. lived with his ten children, Border Police took over. Y.S. arrived at the offices of HaMoked and was referred to submit a complaint to the PID. HaMoked followed-up the complaint, which concluded less than a month after it was submitted, on the pretense that "there is no public interest in the investigation" and that there was no "specific suspect, and it is highly doubtful that a specific finding could be reached as a result of the investigation." The security forces took over A.S.'s house. HaMoked contacted the West Bank legal advisor, leading two months later to the launching of an investigation that is taking place at the present. **(File 17773, 17778)**.

In addition to the acts of destruction to private property, extensive destruction of infrastructure was wrought in communities where IDF forces entered. Tanks, armored personnel carriers and tractors damaged electric cables, water and sewage pipes, roads and sidewalks, and led to entire neighborhoods being cut off from basic services, at the same time that the IDF imposed total curfew on those areas. The handling of ten requests for help received by HaMoked included coordinating between army forces and employees of the local authorities, in order to enable the latter to enter the field and repair the damage.

Residents of Tel Street in Nablus contacted HaMoked on 27 June, after an IDF tank had damaged water lines three days earlier, causing a cessation in the water supply to all the houses on the street. HaMoked maintained contact with the Civil Administration until the pipes were repaired that day. At the beginning of July, tanks again broke the water lines, and again the flow of water in the faucets stopped, leading residents of the street to again contact HaMoked. This time, HaMoked was also in touch with the Nablus municipal water department, which claimed that workers had tried to reach the site a number of times in order to renew the water supply, but IDF soldiers prevented them from carrying out the necessary repair and even shot at them. Two days later, during which HaMoked worked to assure that IDF forces would not prevent the repair of the pipes, the taps of residents of Tel Street again flowed with water. **(File e145, e168)**

Requisition of Property and Seizure of Homes

“Requisitions in kind... shall not be demanded... except for the needs of the army of occupation... Such requisitions shall only be demanded on the authority of the commander in the locality occupied... Contributions in kind shall... be paid for...” (Article 52, Regulations Respecting the Laws and Customs of War on Land (1907))

During the three invasions of the PA territories, the IDF confiscated much equipment and a large number of documents that are not necessarily related to a military or intelligence need. The property was confiscated from private offices and homes and sometimes accompanied by destruction and theft. As a rule, HaMoked received no response regarding the military investigations on the matter. The solution to the problem is ostensibly simple – no in-depth investigation is required, such as a charge sheet or compensation; but only the return of the confiscated property to its owners. Since the quantities are large and no one knows how they were handled, it is likely that a large part of the property is lost and will not be returned again.

R.A. is an attorney in Qalqilya who deals with civil issues. During the first invasion of Qalqilya IDF soldiers entered his office and took with them all the office equipment including two computers, a fax machine, a typewriter, a telephone, professional books, and cash. Even graver, IDF soldiers also took all the files that were in the office relating to the private matters of hundreds of people represented by R.A. HaMoked contacted the West Bank legal advisor demanding that the files and confiscated equipment be returned. This request has not been answered for over three months. At present, HaMoked is considering taking legal action in the courts. **(File 17621)**

Confiscations were not limited to the invasions. One of the widespread phenomena at IDF roadblocks in the occupied territories is confiscation of identity cards and car keys by soldiers, which turns the residents into roadblock captives, with no possibility of returning or passing through until the soldiers decide to return the confiscated documents and keys, if at all. Many times, shows of violence accompany the confiscation.

On 30 May, A.A'. and A.A. set out in their truck from Dahariyya to the al-A'rub refugee camp. At the entrance to the camp was an IDF roadblock. The roadblock soldiers stopped the truck while shooting in the air, and confiscated the identity cards and licenses of A.A'. and A.A., as well as the keys of the truck. All of their requests to have their documents returned, or, alternately, to enable them to park the truck at the side of the road, were denied. They passed the night in al-A'rub and after the soldiers at the roadblock again refused to return what they had confiscated, A.A'. and A.A. turned to HaMoked for help. During the course of the day, HaMoked was in touch with the District Coordinating Office (DCO) in Hebron until, in the afternoon, the documents and keys were returned. **(File e107)**

Since the beginning of the occupation, the IDF has taken over roofs, houses and plots of land to use as outlooks, shooting positions and soldiers' residences. Until the present Intifada, in most cases when soldiers took over houses and land areas, this was done by power of an order, which could be appealed, where the property owners were referred to the Civil Administration in order to receive a usage fee for the period that the property was in the possession of the military. Since September 2000, and, and especially during the IDF invasions into the PA territories, the extent of captured private property grew significantly. The IDF took control of private houses and apartments from which families were thrown out, of public buildings and offices where all activity was suspended, and of vineyards and agricultural fields whose crops were ruined. As a result, hundreds of Palestinians found themselves without a roof over their heads and with no livelihood. Sometimes, these takeovers involved damages to property and violence. In some of the cases, no orders were presented, and it was not even possible to demand a usage fee. In the situation created, it is not known when the IDF will decide to take control of a house or a field, there is no ability to appeal such a takeover, and there is no compensation for the IDF's use of property or of the damage it causes.

HaMoked handled requests for help in this field both on the principle and the individual levels. HaMoked demanded that the Office of the Chief Military Prosecutor set straight the manner in correlation to the basic rights of the residents according to international law and existing legislation in the Occupied Territories. The response of the Chief Military Prosecutor's office was that provisions had been formulated arranging the matter of taking over buildings and damage to private property, but HaMoked's requests to receive a copy of the provisions or an enumeration of the procedures relating to the requirement to issue a seizure order, granting of compensation, and investigation of IDF soldiers' behavior, were not answered.

HaMoked's action regarding individual claims in this subject began with a demand that the army evacuate the property and provide compensation. After no response was received, HaMoked submitted a request to the State Attorney's Office. In some of the cases, the IDF evacuated the house after HaMoked's request to the State Attorney's Office, posing the question of the essence of military need regarding the takeover of those houses and additional houses across the territories.

IDF soldiers took over the apartment building owned by the A. family, inhabited by six families, on the evening of 20 October. The soldiers remained in the building for a month without presenting any order. Upon their return, the family members discovered that the building and its contents had been damaged greatly. Broken furniture, broken electrical appliances, shattered glass and perforated solar water heaters. On 2 December, three weeks after they first left, IDF soldiers returned and again took over the apartment building. Five minutes were given to 28 people who were sleeping at the time in the house, to evacuate, leaving them to the mercies of others for shelter, clothing and food, in the middle of winter. Only four days later, following requests by HaMoked, were the residents permitted to return to the apartments for a short time in order to stock up on clothing and food. HaMoked turned to the State Attorney's Office, and some three weeks later, the soldiers left the building and the families were permitted to return to their previously damaged apartments, which had again been severely damaged. HaMoked has demanded an inquiry. (**File 16709**)

HaMoked's demands for paying a usage fee to the owners of homes taken over by the IDF were not answered, not even on one occasion. HaMoked's request to open an investigation regarding those cases in which soldiers caused damage to houses and their content also received no response. This situation, in which the authorities behave with entire disregard for the law, led HaMoked to litigate.



Civil

On 14 December 2000, an IDF force took over a plot of land and building owned by A.M., without presenting an order. At the time of the takeover, the IDF evacuated three families who were renting apartments in the building. The IDF did not evacuate the site for a year and a half. During this time, the rainwater reservoir was polluted, furniture, construction tools and agricultural implements disappeared from the building storage shed, electrical appliances were vandalized, and the grapevines planted on the plot of land were not cared for. In addition, A.M. was required to pay the bills for electricity and water used by the soldiers. HaMoked's request to the IDF demanding evacuation of the building and the land, and payment of the bills, usage fees and compensation for the damages incurred by A.M., were not answered satisfactorily. Only after HaMoked's request were takeover orders for the land and the building presented, but these were valid for three months only. The IDF acknowledged its obligation to pay the water and electric bills, but this obligation was not fulfilled. The authorities claimed that an investigation regarding suspicions of theft and damages had been opened, but to this day, the investigation has not taken place. In light of this, HaMoked, in A.M.'s name, filed suit for loss of rental fees and property damage. (**File 16032**)

Access to Justice

"Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms... are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity" (Article 2 (3), International Covenant on Civil and Political Rights (1966))

During the past six months, Palestinian residents of the Occupied Territories who wish to sue the State of Israel and IDF soldiers for bodily and property damages suffered two large blows. The first is practical, with the sweeping prohibition against the entrance of Palestinians into Israel, and the second in law, with the passage of a government proposal to amend the Civil Torts Law regarding State responsibility. Both have rendered almost impossible the very preparation and submissions of suits in Israeli courts by residents of the Occupied Territories, and have minimized chances that these suits would be heard out to the end. So has the only remaining way for residents of the territories to seek justice for suffering at the hands of IDF soldiers been almost completely blocked.

Prohibition on Entry of Palestinians into Israel

Following the overall closure imposed on the West Bank and Gaza Strip since 1991, the ability of Palestinian residents of the Occupied Territories to stay in Israel is conditional upon a permit issued by the Civil Administration. With the beginning of the present Intifada, the granting of these permits has been severely curtailed. During the IDF invasion of the PA territories, the Civil Administration issued no permits, and today they are only issued for humanitarian cases, according to the army's judgment. This policy, on one hand, and the prohibition against entry of Israelis to Palestinian communities in the

Occupied Territories on the other, place countless hardships on lawsuits against the State and its emissaries for harm incurred to Palestinians. At a time when the plaintiffs are prevented from entering Israel and their attorneys are prevented from reaching them, the legal suits, their hearings in court, and their fair conclusion have become difficult to attain.

Necessary activities for filing suit such as collection of material, gathering testimony, medical examinations so that opinions can be formulated, and signing of affidavits, which until now have been carried out in face-to-face meetings, are today carried out with extreme difficulty. Destruction of infrastructure has led to a collapse of the telephone system in some areas and the use of fax machines, which are not present in every home, is conditioned upon lifting the curfew.



Civil

At the beginning of August 1995, soldiers entered the house of Z.Z., a 64-year-old resident of the village of Turmusaya. The search conducted included breaking possessions, scattering food about, and stealing 3,000 dollars that had been hidden in a cloth bag. The next day, Z.Z. submitted a complaint to the Ramallah police, which was conveyed to the military police. Only 3 months later, was the first testimony taken from one of the soldiers present at the site. The investigation revealed that the soldiers saw the money, which had been in a bundle, but it was not discovered who took it, and therefore the case was closed. The Civil Administration refused all requests by HaMoked to permit Z.Z. to enter Israel, in order to have her sign documents meant to be appended to her suit. Ultimately, a testimony was prepared over the telephone, corroborating the facts of the lawsuit, and when it was submitted in June, HaMoked asked the court to accept this affidavit in lieu of Z.Z.'s signature. The State, in its response to the petition, was not willing to accept it, and demanded that Z.Z. sign the affidavit herself. **(File 8976)**

Even in lawsuits that were already filed in court, but are still in preliminary proceedings prior to the hearing of the facts themselves, travel prohibitions prevent their progression.



Civil

HaMoked submitted a lawsuit on the behalf of H.R., who was injured by border policemen in Tulkarm, to the court in 1999. A hearing in this case, scheduled for 3 September 2001, has been postponed four times since a meeting could not be held between the attorney and the plaintiff for the taking of a first witness's affidavit, which must be submitted prior to the hearing. **(File 5648)**

Even when the court itself summons Palestinian residents to give testimony, the Civil Administration ignores the summons and does not issue the required permits. An unreasonable situation is thus created, in which the Israeli army prevents the carrying out of a decision made by the Israeli judicial branch. In lone cases in which HaMoked's efforts to arrange entry permits are successful, the IDF imposes additional difficulties that cannot be bypassed. In most cases this involves the entry permit of the witness, a procedure that requires that the army or police escort him from his entry into Israel and until he leaves the country. HaMoked's efforts then focus on arranging the escort but the IDF, which imposes this condition, is not willing to carry it out and again prevents a resident of the territories from testifying in court.



Civil

HaMoked submitted the lawsuit on behalf of the members of the A. family from Hebron concerning the theft of jewelry and money during a search by IDF soldiers in their home, in 1998. The trial reached the stage of proof, and the family members were summoned by the court to testify on 10 December 2001. Despite HaMoked's efforts, entry permits to Israel were not obtained due to delays and oversights on the part of the IDF. The court postponed the meeting to 12 June this year, and the process of requesting permits was repeated. This time, the response of the Civil Administration to HaMoked's request was positive, but conditioned on security escort of the witnesses during their stay in Israel. Attempts to arrange for this escort by the army or police yielded nothing. The court was thus forced, once again, to postpone the testimonies to 11 December, a year from the original meeting day. **(File 5642)**

In addition to handling the requests themselves, HaMoked wrote to the West Bank legal advisor demanding that clear procedures and guidelines be instituted that would make easier the issuance of permits for residents of the Occupied Territories summoned to testify in Israeli courts. This request was not answered.

The Compensation Prevention Law

During June, the Knesset Law and Constitution Committee passed a proposed amendment to the Torts Law, pertaining to the State's responsibility for activities of the security forces in the West Bank and the Gaza Strip. The proposal dates back to 1997 but until recently has remained dormant, due to the activity of a coalition of human rights organizations of which HaMoked was a part. It was revived at the urging of the current Minister of Justice. Until the amendment was accepted, the State was immune to civil suits in the courts if the incident in question occurred in what was defined as a war activity. The courts first interpreted

the term narrowly, as “real war activities in the narrow and simple meaning of this term, such as: amassing forces for battle, combative attack, exchange of fire...,”¹⁴ and distinguished between it and police activity, such as dispersal of demonstrations or carrying out an arrest, in which cases the State does not enjoy immunity. The ruling given in the Supreme Court in March expanded this interpretation and stipulated that an action would be considered a war activity when “all circumstances of the event must be examined: the goal of the activity, the place of the event, the duration of the activity, the identity of the acting force, the threat that proceeded it and was anticipated from it, the power of the military force in operation and the extent and duration of the event”¹⁵ The mass arrests, carried out during the first IDF invasion into the PA territories, and Operation Defensive Shield, can be defined as war activity according to this ruling.

The broad interpretation was insufficient for the government, which propelled the amendment to the law. The amendment works in two ways to assure that Palestinian residents of the Occupied Territories affected adversely by the activities of security force personnel will not be able to sue for compensation from the State or from its soldiers in Israeli courts. On the one hand, the amendment expands the definition of a war activity in a manner that includes almost all activities of security personnel in the West Bank and Gaza Strip. On the other hand, the proposal places nearly impenetrable barriers in the way of anyone who wishes to submit a suit. The effect of this amendment on the activities of HaMoked in all that relates to lawsuits, with the goal of rendering justice for victims and requiring State accountability for the deeds of its emissaries and to deter security force personnel from harming Palestinian residents, will be far-reaching.

According to the amendment, “any activity of fighting against terror, terrorist acts, or uprising as well as the activities aimed at preventing terror and terrorist acts or uprising” will be considered war activity.¹⁶ This definition turns all shooting deaths by the IDF during demonstration dispersal, every wound inflicted during an arrest, and all destruction of property during a search, into war activities. The court will not be able to award compensation to families of the dead, to the injured, and to owners of property destroyed during such activities. The State thereby is given freedom of action in all its activities in the West Bank and the Gaza Strip, since in all of them it will have immunity. This wide definition also includes a sizable portion of the civil lawsuits submitted by HaMoked on behalf of residents of the Occupied Territories against the State and its emissaries for acts causing bodily and property damage.



Civil

H.A. took part in his cousin’s wedding in 1992. When he exited the wedding hall, a civilian vehicle pulled up and four IDF soldiers in civilian garb descended, shot him and injured him in the thigh and hand. HaMoked represented H.A. in a lawsuit against the State in the magistrate’s court. The State claimed that the incident was due to the suspicion that H.A. took part in stone-throwing ten minutes earlier, approximately one kilometer’s distance from the wedding hall near which he had been shot. However the soldier who fired the shots admitted in his testimony that he did not see H.A. throw stones and that during the time of the shooting no danger was posed to him or to the others. The magistrate’s court rejected H.A.’s suit, giving an expanded interpretation to the Open-Fire Regulations and to the term war activity. The court viewed the stone-throwing event and the shooting event, that were far in time and distance, as a single event, and all stone-throwing events that occurred in that area on previous days as part of a composite that led to the injury of H.A. The court thus rendered the shooting at H.A. justified according to the Open-Fire Regulations, which state explicitly that “fire shall not be opened unless the procedure for apprehending is carried out immediately and at the same time as the stone-throwing,”¹⁷ and classifying it as part of a war activity which grants immunity to the State from litigation regarding this shooting.

H.A. was not willing to accept this ruling. HaMoked respected and supported his decision and continued representing him in an appeal to the District Court. At the beginning of July, the District Court accepted the petition, and overturned the ruling of the magistrate’s court. In its ruling, the District Court ruled that the broad interpretation given by the magistrate’s court in defining war activity and to the Open-Fire Regulations was faulty: “The soldier who shot... was not in a position of real life danger that would place the activity in the classification of war activity... in light of the aforesaid, the State in the case before us has no defense in the claim that the shooting was a ‘war activity.’”¹⁸ This, as stated, was before the amendment to the Torts Law had been passed. H.A. received NIS 9,000 in compensation. **(File 3504)**

In order to not rely too much on the courts’ judgment in ruling on whether each activity falls within the new definition of war activity, the amendment provides a number of requirements regarding which the

¹⁴ Civil Appeal 623/83, Levi v. State of Israel, PD M(1), 477, 479.

¹⁵ Civil Appeal 5964/92 Bani ‘Odeh et al v. State of Israel, unpublished.

¹⁶ Civil Torts Law (State Responsibility), Amendment – Litigation for Activities of the Security Forces in Judea and Samaria and the Gaza Strip (2001-5761), par. 2.

¹⁷ From the Instruction Sheet for Soldiers, Instructions on Behavior in the Territories, Part B., Art. 5(c).

¹⁸ Civil Appeal 2163/01, unpublished.

ability of residents of the Occupied Territories to meet them is doubtful. First, the person wronged must announce in writing his intention to sue the State within 60 days after the event occurred. In order to meet this condition, those wronged, who are mourning their dead, nursing their wounded, or repairing their property, must postpone these minor tasks, decide whether they would like to file suit against the State of Israel in the future, fill out a special form enumerating all the particulars of the event, send it and keep track of its arrival, activities which should be performed with legal guidance. This requirement is rationalized by the State's difficulty in locating the soldiers involved and interpreting their impressions regarding events that occurred long ago. The residents of the Occupied Territories will thus pay the price for the failures of the State and its emissaries. A substantial portion of those who request help from HaMoked regarding violent events and property damage do so more than two months past the event, whether for the circumstances stated or due to a lack of awareness regarding their right to compensation.

Second, the amendment shortens the period defined before which such suits become obsolete; from seven years to two, and in special cases, to three. This reduction is particularly deleterious to Palestinians who were severely injured, since in these cases the first years are devoted to their care, and the damage for which a suit could be filed and compensation demanded can still not be assessed. For this reason, a significant portion of suits regarding bodily damage, submitted by HaMoked until now, was for events that occurred, four, five and even six years from the day of the event. The third requirement does not pertain at all to those injured themselves, but to the Palestinian Authority. According to this requirement, the PA must cooperate with Israel in all that pertains to the trial, and if it does not, the court can reject the suit. Should documents not be sent in a timely fashion, witnesses not located quickly, partial data only provided, the State is granted the authority to demand that the court rejects the suit. From a number of cases being handled by HaMoked, it emerges that the State is already summoning many witnesses from among residents of the Territories who are not related to the essence of the suit, with the knowledge that most of them will not risk their lives at roadblocks and will not waste entire days in order to appear in court. Their failure to arrive already now provides sufficient reason to fulfill the requirements for rejecting the suit.

In addition to all this, the amendment to the law transfers the burden of proof from the State to the plaintiff, in cases that until now, the burden was on the State to prove that it had not been negligent. Now, even if the plaintiff proves injury in an action by IDF soldiers, he will be required to find those soldiers, who injured him, investigate them and prove that their action is actionable. Thus the plaintiff not only bears a burden that he cannot carry, since he has no access to military documents or to the soldiers themselves, but also the last existing incentive for the State to carry out investigations of events that ended in death, injury or property damage has disappeared. Today as well, there are nearly no investigations. This is at a time when the State is required to prove that the behavior of its soldiers was not negligent and requires an investigation which, if carried out in a negligent manner, can be grounds for compensation, as determined in a precedent ruling issued in 1998 in a lawsuit submitted by HaMoked.

Despite the difficult results for the values of equality and justice, on 24 July the Knesset approved the amendment in a second and third reading, and in the coming days it will take effect. An additional governmental law is already pending, granting sweeping immunity to all activities of security force personnel in the Occupied Territories beginning 29 September 2000. If passed, even those injured by the security forces in an action that does not involve preventing terror, a terrorist act or uprising, and who succeed in jumping through the hoops and conducting a lawsuit in an Israel court, will not be able to sue for justice. HaMoked is continuing its work with the coalition of organizations in order to prevent passage of this law, and also continues to file lawsuits in Israeli courts and minimize, to the extent possible, the damage that this amendment causes to residents of the Occupied Territories.