

3. Violence

Incompetent Investigations into Complaints of Violence and the Enforcement of Responsibility through Compensation Suits

Since its establishment HaMoked has dealt with instances of Israeli security force violence against residents of the Occupied Territories, including East Jerusalem. HaMoked assists the residents in filing complaints about violence, follows-up on the investigation of these complaints with the goal of disclosing the perpetrators and putting them on trial. For some time HaMoked has warned that the law is not enforced in regard to security forces. Instead of rooting out the phenomenon of security force violence, the system of enforcement prefers to ignore complaints, twist the facts or conduct superficial and incompetent investigations which do not produce any results. Palestinian witnesses are almost never questioned and their testimonies are given almost no weight in contrast to those of soldiers and police officers suspected of committing offences. At the end of 1997 HaMoked published a report entitled "Escaping Responsibility: The Response of the Israeli Military Justice System to Complaints against Soldiers by Palestinians." The report analyses complaints submitted until 1994 and the grim situation depicted here has not changed since.

One of the means which HaMoked utilises to hold the authorities accountable is the submission of civil compensation suits against Israel in cases of violence. The authorities whom at the relevant time refused to deal with the complaints in an appropriately serious manner must now explain in court how a person was beaten, humiliated, injured or killed. The State must often explain why a complaint was not investigated, how a complaint was lost, etc. Apart from the recognition and monetary compensation (generally very modest) gained by the victim, the civil compensation suits force the system to deal with its accountability.

In a precedent-setting judgement awarded in 1998 in a case submitted by HaMoked, it was determined that a negligent investigation of complaints may have financial implications for Israel. The case dealt with a number of thefts committed by soldiers during searches of homes in the village of Batir in May 1989. The victims of the thefts immediately complained about them to the Israeli military officials in the area and afterwards to the Israeli police. While the military police did conduct an "investigation" and the State Attorney was able to count 38 "actions of investigation," Judge Bilha Kahana wrote in her judgement that these were the equivalent of "treading water." She further noted that had a reasonable investigation been conducted, the thieves would most likely have been located. The State, which was not responsible for the thefts themselves, was forced to compensate the plaintiffs as the negligent investigation meant that the thieves could not be held responsible. The judgement thus sets an important precedent in the legal doctrine of "evidential damage," and also awards significance within the damage laws to the responsibility of the State to be accountable for the actions of its soldiers.