

The border police officers did not shoot Alsharif, but he heard them concocting a story to explain the situation. Afterwards he lost consciousness and woke up in the hospital, where he learned that the officers attempted to prevent his transfer to the hospital.

Ten days after the event Alsharif noted:

"As a result of the blows and kicks which I endured, my entire body swelled up and is covered with bruises. To date I suffer from severe headaches, and frequently vomited in the first days following the event. In addition, I suffer from severe pain in my back and hips and my left hand swelled such that I am unable to lift anything with it."

The testimony of Alsharif, in addition to that of others, was passed to B'Tselem which published a report "For the Sake of Brutality: Continuing to Beat." A complaint was submitted to the Division of Investigations of Police Officers which, at the time of the report (nine months after the incident), had yet to be completely investigated.

B. The Law to Deny Compensation to Palestinian Victims of Israeli Security Force Violence

In 1997 Israel increased its activities to advance proposed legislation, the goal of which is to deny the right of Palestinians injured (or who will be injured) by security forces in the territories, to monetary compensation from the State. The meaning of this law, should it be passed, is that thousands of disabled and injured Palestinians will remain without the financial means necessary for critical medical treatment and rehabilitation. Moreover, the proposal essentially removes the duty of caution from the IDF soldiers. Soldiers will be able to damage, injure and kill and neither they nor the State will be held accountable.

Even today the situation of Palestinians suing for compensation from the State is not easy. They must go to Israeli courts and prove both their damages and the responsibility of the IDF soldiers for these damages. They shoulder a heavy burden of proof. The chances of a Palestinian involved in a violent event during the Intifada to receive compensation are extremely limited. The goal of this law is to block the path of even those who did not confront the soldiers, yet were injured due to negligent actions of IDF.

The memo concerning this proposed legislation was circulated by the Ministry of Justice in March 1997. The principles of the proposal were to release the State and IDF soldiers from tort responsibility for physical damages caused to residents of the territories from the beginning of the Intifada until the signing of the Gaza-Jericho agreement in Washington. In order to award this proposal a less severe front, an alternative arrangement of "compensation for humanitarian reasons" was also suggested. This arrangement both turned compensation from a right to charity and included such limiting criteria that only a select few would receive some form of payment - and all of this at a regulated and low amount. In relation to the period following the signing of the agreement, the proposal expanded the meaning of the term "combatant activity" of tort law, such that it would cover almost all activities of IDF soldiers in the territories. The military and State are not responsible for damages caused in the framework of "combatative activities," but this term was always interpreted as relating to the special circumstances of war and battle conditions. When fire is exchanged between organized military forces, no regular duty of caution

exists. Now the State wishes to implement this exemption also for IDF soldiers enforcing public order in the territories. Attempts by the State to expand this exemption through the courts were overruled: Again and again it was determined that police actions of IDF soldiers are not "combatative activities."

In the wake of the distribution of this memo, a coalition of human rights groups organised to act against this law. The Legal Department of HaMoked composed a detailed response to this memo, which was sent to the Ministry of Justice. In addition, lobbying activities and a public campaign were begun. Prominent attorneys in Israel and a number of international organisations, to whom HaMoked turned, also joined the efforts to oppose this proposed law.

On 23 July 1997, the government submitted the Law Concerning Handling of Suits Arising from Security Force Activities in Judea, Samaria and the Gaza Strip before the Knesset. The wording of the law was altered drastically from that of the original version, but its meaning remains the same. The direct wording of a special State exemption for activities in the territories, from the outbreak of the Intifada to the Gaza-Jericho agreement, is now gone, as is the facade of humanitarian payments provided by an administrative board. An interesting difference is that while the latest proposal continues to apply in a territorial manner on all actions, past or future, in the West Bank and Gaza Strip, it cancels its personal application: It now applies to all those injured and not just to Palestinians. However, it is reasonable to assume that a suitable solution will be found for Israelis injured in the area. The primary arrangement in the proposal is the expansion of the term "combatative activity," and the accompanying exemption from liability, to include almost all past and future actions of the security forces in the territories.

As if this is not enough, a list of additional directives is determined, which will prevent the possibility of suing even in the case that a crack is found in the exemption due to "combatative activity." The proposal negates compensation from every person who was convicted of a terrorist act, no matter if it is related to the event for which he is requesting compensation or not. This directive, a double punishment for the same act, is in violation of the basic principles of law. The proposals determine a statute of limitations of one year from the date of the event, after which it is not possible to submit a suit, as opposed to the existing seven years in general law. In reference to suits filed due to security force actions in the territories, the proposal negates an established rule in tort law according to which when the matter "speaks for itself," the burden of proof falls on the defendant. The meaning of this is that the injured party must prove not only that he was injured from IDF soldier fire (for example), but also what the directives received by the soldier were, what training was received by the soldier and other facts which will exactly detail the negligent actions which resulted in the fire. These facts are in the sole possession of the State, which even today does not document and investigate them. The proposal provides the State with an additional incentive to not document and investigate as in their absence, the injured party will never be able to bear the burden of proof which the proposal places on him.

Even if a plaintiff somehow manages to overcome these obstacles, the proposal negates compensation from the majority of those injured and rations, according to limited equations, the compensation to others. As with the original proposal, this version retroactively affects past actions and suits being heard in court, as long as a judgement has not been reached.

In November 1997, HaMoked published the report "Escaping Responsibility: The Response of the Israeli Military Justice System to Complaints against Soldiers by Palestinians." The report analyses the treatment of the military of 441 complaints against soldiers, which were received by HaMoked in 1988-1997. The report highlights serious incidents brought to the attention of the authorities yet not investigated; the faulty and incompetent manner in which the military police did investigate cases; the failure to question Palestinian witnesses; the tendency to always accept the versions of the soldiers involved in the incidents (if the soldiers were indeed located). The report notes the gentle treatment of the military prosecution and courts of the few soldiers (only in 7 of the 441 cases were soldiers tried before a military court) who were accused of violent acts.

The military's amateur and forgiving handling of security force violence toward Palestinians stands in contrast to the more efficient treatment of cases involving theft from Palestinians, cases seen as staining the military integrity. This gives a green light to violent behavior by soldiers toward Palestinians. The lack of effectiveness of the criminal system concerning military violence will now be completed by this law, which negates the soldiers' duty of caution and neutralises deterrence on the civilian level.

The findings of HaMoked concerning the manner in which Palestinian complaints are investigated also sheds light on one of the State's justifications for the law to deny compensation. The State contends that it is difficult for it to deal with these suits due to the hardship in reconstructing past events and locating the soldiers involved. This hardship results solely from the past and present abstention of the State from documenting its soldiers' activities and covering up for them during investigations of complaints. If this makes it difficult for the State to defend itself in court, it can blame only itself.

The law to deny compensation is currently before the Constitution and Law Committee of the Knesset. HaMoked continues its intensive lobbying activities to prevent the passage of this law. In addition, HaMoked has already begun examining the possibilities of attacking this law should it be passed, including through the submission of petitions abroad. However, the effects of this proposal are already felt on the ground and this plays into the hands of the State. Numerous attorneys are willing to settle for greatly reduced compensation sums in order to finish cases which the law would impact. In addition, the State Attorney often delays hearings so cases will not be completed prior to the passage of the law.

C. Compensation Suits

During 1997 HaMoked submitted 41 compensation suits, of them 35 to the legal system and 6 to administrative boards. Below are representative examples of the suits filed by HaMoked in 1997:

Violence and Destruction in the Home of Ahmed Sarnadah in Jerusalem

This complaint was received by HaMoked in 1990. One night, at approximately 1:00 a.m., Ahmed Sarnadah awoke to the sound of loud knocking on his front door. Before he was able to open it, soldiers broke in. The soldiers pushed the plaintiff into a bedroom and locked his wife and eight year old son in the bathroom. One of the soldiers kicked the plaintiff in the stomach and beat him on all parts of his body. The soldiers commenced a violent search as they broke furniture