

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

and personal items and hit the plaintiff in his face. At the conclusion of the search, the soldiers dragged the plaintiff outside and a man in civilian clothes checked his identity card. The man then freed him and apologised, saying they mistakenly thought he was wanted by the Israelis.

Two days following the incident, Mr. Sarnadah filed a complaint through HaMoked to the Public Complaints Officer of the Border Police; at this point he assumed the soldiers who broke into his home were Border Police officers. After several days the officer announced that the complaint was transferred to the Military Police as it appeared soldiers were involved. In retrospect it became known that the Military Police did not investigate the event, and no material concerning this incident was located by them. Due to this typical negligence of the investigating authorities, the soldiers were not held accountable.

HaMoked's demand of the Claims' Officer to compensate Mr. Sarnadah was refused on the grounds that no report was found on the incident. The State, which failed to investigate, was now using this as an excuse not to pay compensation. On 3 March 1997 HaMoked submitted a suit on behalf of Mr. Sarnadah to the Magistrates Court in Jerusalem. NIS 30,000 was demanded from the State. In September the State submitted a general defence, noting among other things that the State has yet to locate the relevant documentation. The suit is currently pending.

Abuse of Children and Revenge in the Kusaba Family Home

In the winter of 1990 an observation point was erected on the roof of the Kusaba family home in the Kalandia refugee camp. One day a confrontation developed between the soldiers and the family members concerning damages caused to the building by the soldiers. Six soldiers spoke among themselves and arrived at the home one late afternoon, seeking revenge. At this time, three additional soldiers were on the roof of the home. The soldiers entered the house, shattered personal items and furniture, ripped up family photographs, personal documents and destroyed food. The soldiers then took two of the family children, aged 11 and 15, up to the roof where they beat and kicked them, finally ordering them to lay on their backs in a puddle of water. As they lay on the roof, the soldiers placed tiles on their stomachs and the children were forced to remain like this for several hours. This occurred on a rainy winter day.

Due to this event, and in the wake of a complaint submitted by HaMoked, the soldier David Shemesh was convicted in a military court of assault and improper behavior. He was sentenced to one month in prison, three on parole and demoted to the rank of private.

On 4 February 1997 HaMoked submitted a petition against nine of the soldiers involved in the incident. As it was clear this was revenge planned by the soldiers themselves and as one of the soldiers was charged, HaMoked decided not to petition against the State. HaMoked's assumption was that the State could successfully argue it is not responsible for the soldiers' conduct in this instance. However, three weeks after the filing of the petition, the State Attorney contacted HaMoked and announced that the State would represent the soldiers in court. The State Attorney's office also requested to close this file quickly, without submitting a respondent's brief and without evidence. Within a few weeks a compromise was reached, which received the status of a court judgement, and the plaintiffs were awarded NIS 32,000.

Beatings by Border Police Officers

In February 1994 four border police officers detained Mamun and Ramah Rumah, brothers driving to their home in Jericho. The officers placed the brothers in a border police jeep and drove them to a remote area, where they took them out and began beating them. One of the brothers, who attempted to escape, was pushed and fell down a slope. In the end the officers left the brothers, who were beaten and laying on the ground, in the area. Four of the officers were convicted in the Magistrates Court of improper use of power; they were acquitted due to reasonable doubt from the charges of assault. Two of them, who appealed, were later cleared of all charges by the District Court.

On 29 June 1997 HaMoked submitted a compensation suit against the Border Police officers and the State. In this case the State also volunteered to take full responsibility upon itself, and compensated the brothers with NIS 17,500.

Illegal Seizure of a Roof

The Abdallah home is situated on the Dir Balut intersection in the Tulkarem district. In 1990 the home was confiscated and sealed off by the IDF. In addition, the IDF used the house as a permanent base and observation point. Toward the end of 1994 the Minister of Defence permitted the opening of the home and in early 1995, as became known later, signed an order to return the home to the family. However, by 29 February 1995 the soldiers had yet to leave the house and during 1995 caused further damage to the house, built on its roof and uprooted olive trees in the yard. Among other things the soldiers destroyed tiling, damaged the roof and electrical system, tore down walls and shattered doors and windows. During all these years the family was prevented from picking their olives and thirty olive trees, most of them at least fifty years old, were uprooted. In addition, the water well of the family was contaminated. Only in the wake of numerous complaints by HaMoked did the Legal Advisor of the West Bank send the order returning the home to the family to HaMoked. This was in February 1996, more than one year after the order was issued. Another two weeks and a threat of a High Court petition were required before the soldiers evacuated the house.

On 2 June 1997 HaMoked submitted a compensation suit against the State. The State was charged to compensate the family for the damages to the house and olive orchard, in addition to the illegal seizure of the home. NIS 152,195 have been demanded.

In the respondent's brief the State argued that the implementation of the order returning the family home was delayed due to threats of Jewish settlers to take over the house, the need for IDF reevaluation and the location of an alternative base.

Death of Talal Abu Aisa

Talal Abu Aisa was shot to death in Nablus on 8 December 1995. An IDF officer, Captain Micha Levi, fired the fatal shot from the jeep in which he sat, and continued firing even after he got out of the jeep. He fired without using the gun sight, into an alley in which Talal and his friends were walking. According to the IDF, earlier that same day and in another place, rocks and bottles were thrown at the jeep. However, there was no attack on the jeep at the place of the shooting and the soldiers were in no danger. Notwithstanding, the Military Attorney did not recommend charging the officer for the shooting and killing, but only for not providing medical assistance after Abu Aisa was hurt.

On 3 December 1997, HaMoked submitted a compensation suit against the State and Captain Levi. The amount of compensation requested is NIS 255,000. The State took upon itself, as usual, the representation of Levi. The respondent's brief submitted by the State is in essence a general denial of the charges.

It appears that often the sole way to enforce the right of the residents of the territories to security of person is through compensation suits due to violations of this right. The enforcement authorities are lenient with the soldiers and police through negligent investigations, reluctance to charge and insignificant punishments for those convicted. On the declarative level the State disavows itself from "soldiers gone bad," but when these soldiers are sued for compensation by their victims, the State represents them and compensates the victims.

4. Freedom of Movement

Entry to the Gaza Strip

The "safe passage" arrangements determined in the Oslo Accords between the West Bank and Gaza Strip were not implemented in 1997. The closure of the Gaza Strip includes a ban on entrance into Gaza; this ban also applies to residents of East Jerusalem, wishing to enter Gaza to be with their family members. In March 1996, during the first part of the current closure, it was not at all possible to enter the Gaza Strip.

The division between the West Bank and Gaza Strip is strict and makes meetings between family members most difficult. In June 1997, for example, HaMoked began dealing with the case of Hanan Sheikh Ahmed, a resident of Kalandia who was separated from her husband and 1.5 year old baby living in Gaza. Almost two months were needed to arrange her entrance into the area. Mrs. Sheikh Ahmed first entered Gaza in 1994 and there she married. In May 1996 Israel permitted residents of the West Bank, who were illegally located in Gaza, to return to the West Bank in a secured convoy of buses. Mrs. Sheikh Ahmed took advantage of this opportunity to visit her parents, especially important in light of the deteriorating health of her father. When she attempted to return to Gaza, she was not permitted.

HaMoked's initial correspondence with the Israeli authorities in this matter resulted in the general response that "the aforementioned is forbidden from entering Israel for security reasons." It took further correspondence and numerous telephone calls before a family meeting was permitted in Gaza at the end of July 1997.

HaMoked also treated the case of Said Al Hajagara, a 72 year old resident of the West Bank who was prevented by the Israeli authorities from entering the Gaza Strip to visit his five adult daughters, all married and living in the Jabalia camp with their families. More than two months were required to arrange a permit for Mr. Hajagara to see his daughters, but the story did not end here. When he requested to leave the Gaza Strip for the West Bank, at the end of his permit, he was told by the soldier at the Erez checkpoint to return and die in Gaza. It took an additional three days of intensive contacts to facilitate Mr. Hajagara's return home.

Exit for Abroad

The Oslo Accords did not alter the status of the West Bank and Gaza Strip as closed military zones, from which entry and exit is dependent on the area military commander.