



Respect for the Dead



On February 4, 1971, R.A.'s father was killed in an encounter with the military in the Hebron hills area. After the Oslo Accords were signed, many applications were made for the return of Palestinian bodies. Twenty three years after his father's death, R.A. contacted an attorney to arrange for his father's body to be returned for burial. In November 1995 the military Legal advisor in the West Bank granted the request: "I was asked to inform you that the IDF Commander of the West Bank has approved the return of the body to the family. The body will be returned in the near future in coordination with the Civil Administration, in compliance with the procedures." But the body was never returned.

Four years later, R.A. appealed to HaMoked for help. During 1999 and 2000, HaMoked contacted various entities in an attempt to find out what happened

with the promise made to the family and where the body of S.A. could be found. In its applications, HaMoked attached all the material it had – affidavits of witnesses to the encounter and newspaper clippings about it. But these applications were to no avail. In February 2001 the military told HaMoked that "the IDF has no knowledge of this [body], and has therefore been unable to trace it." But the IDF's notice left an opening, because, as stated in the notice, "at the time, the IDF was not in charge of handling the bodies; apparently, this was the responsibility of the Special Assignments Bureau of the Israel Police." HaMoked then asked the police to look

³⁰ High Court Petition 4241/03, **Sualma et al. v. IDF Commander in the West Bank**,

³¹ High Court Petition 8262/03, **Abu Salim et al. v. IDF Commander in the West Bank**.

³² High Court Petition 2301/03, **Jaber et al. v. IDF Commander in the West Bank**.

into the matter, but in a letter sent in August 2001, the police too stated that "an inquiry with the relevant authorities yielded no results." The National Forensic Institute also reported that S.A.'s details do not appear anywhere in its records.

In October 2001 HaMoked petitioned the High Court of Justice to trace the body and uphold the promise that was made to the family. The State replied that tracing bodies is a complicated task and that 30 years after the fact, no one knows where this body is anymore. The State further maintained that the promise that was made to the family was only a statement of intent, and that in order to trace the body the State should be given more time to look into the specifics of the case. In the State's second statement, three months later, it maintained that bodies were indeed the responsibility of the police and that "the matter was handled by a unit that no longer exists" and whose documents had been destroyed. The police checked the possibility that the body was buried in a special cemetery near Safed, but an inquiry revealed that only people who were killed in the north of the country were buried there. The police then appointed an officer to search for the body, and the Court was asked to extend the timetable for the hearing by another three months. Although the Court gave the State just one month, until August 2002, the final and conclusive response of the State was only received in October. The officer appointed by the police said that the military had transferred the body to the Jordan Valley.

Following these findings and at the request of the military Legal Advisor

in the West Bank, the head of the IDF Central Command appointed a committee of inquiry – but it too was unable to trace the body. The committee found that the body had apparently been transferred to the enemy casualties cemetery near Adam Bridge in the Jordan Valley, but also stated that "the body can no longer be traced since systematic records about the burial of terrorists at the site in the relevant period (February 1971) are no longer available." According to the committee, the military, which now controls the site, only has documentation dating back to May 1972. Although dozens of bodies were buried there since the establishment of the cemetery in 1968 until May 1972, there are now no records that can help identify the bodies or trace the exact location of the graves of those who were apparently buried there.

In response, HaMoked asked the State for a copy of the committee's report and demanded that the State establish the number of bodies buried at the enemy casualties cemetery for whom documentation is not available. HaMoked further asked that the State check why and on what basis the promise was made to R.A. back in 1994 that his father's body would be returned. HaMoked inquired whether the State would be prepared to cover the cost of DNA testing for unidentified bodies in order to identify that of S.A.

The State replied that without records there is no way of telling how many bodies were buried at the site and that it could only estimate that the number is in the dozens. It explained that the promise was a general one that only attested to the State's good will, and that this promise

did not take into account the technical difficulties that might arise. Without any clues as to the whereabouts of the body, genetic tests could not be performed, the State said.

The committee findings forwarded to HaMoked did not reveal any new details. In Court, HaMoked reiterated the demand to perform DNA tests on all the unidentified bodies in the cemetery, in

order to identify S.A.'s body and create organized records of the other bodies on site. In December 2003 the Court turned down this request and held that "as regrettable as this may be, under the current circumstances, the body of the petitioner's father cannot be traced."³³

³³ HCJ Petition 8359/01, **Abu Maiser v. State of Israel**.