Annual Report 2004

"All human beings are born free and equal in dignity and rights."
Universal Declaration of Human Rights (1948), Article 1

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Table of Contents

Preamble

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind... national or social origin... no distinction shall be made on the basis of the... status of the country or territory to which a person belongs, whether it be independent... or under any other limitation of sovereignty."

Universal Declaration of Human Rights, Article 2

Little has changed in 2004. Residents of the Occupied Territories still had to cross checkpoints and roadblocks to get from one place to another. They still lived in the shadow of the wall which was built around their villages, and endured military incursions into their towns and refugee camps; and they still had to face Israel's complicated and gruelling bureaucracy. Many who wished to go abroad during the year were forbidden to do so by Israel. Residents of Gaza who wanted to go abroad often found the border crossing sealed.

HaMoked's legal battles yielded three promises in 2004: allowing Israeli residents to visit relatives in the Gaza Strip on Muslim and Christian holidays; setting up an arrangement which would allow those barred from entering Israel to visit their relatives who are incarcerated inside its territory; and returning bodies of deceased Palestinians to their families. In November, two days before Id Al Fitr, the chairman of the Palestinian Authority, Yasser Arafat, died. Israel closed off the Occupied Territories and cancelled holiday visits in the Gaza Strip. Those barred from entering Israel had to wait until May 2005 in order to receive permits to visit their loved ones in jail and the Israeli military has yet to find an arrangement that would allow returning bodies to their families.

In 2004, the Israeli government extended the Citizenship Law. By the end of the

year, Israeli residents who are married to residents of the West Bank had been unable to live with their spouses or children over 12 years old for two and a half years. The freeze on family unification for residents of the Occupied Territories married to foreigners went into its fifth year.

In the Israeli and international legal arenas, 2004 yielded two important rulings concerning the separation wall. In June 2004, the High Court of Justice ordered the State to change a part of the wall's planned route in the area north east of Jerusalem. The court ruled the original route excessively harmed residents of the area. The following month, the International Court of Justice (ICJ) published its advisory opinion regarding the wall. The ICJ ruled that building the wall inside Palestinian territory, and the human rights violations it causes, violate international law and that Israel must dismantle the wall and pay damages to Palestinians who have been harmed by it.

In 2004, the Israeli government approved the plan to disengage from the Gaza Strip. The government claims that following implementation of the plan, Israel would cease to be responsible for the Palestinians in the Gaza Strip. HaMoked, along with B'Tselem, prepared a report which illustrates that Israel will maintain its control over the Gaza Strip even after disengagement and that the occupation is not at its end. "One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan" was published in March 2005.

2004 marked the tenth anniversary of HaMoked's founder, Dr. Lotte Salzberger's death. In honour of her memory, HaMoked held an evening entitled "Current Tools for Advancing Human Rights – Human Rights in the Age of Terrorism." The evening was attended by senior legal scholars and members of Knesset who discussed various ways of handling contemporary issues related to defending human rights.

Legal Action

In 2004, HaMoked filed 253 petitions the High Court of Justice (HCJ) and to the administrative courts on behalf of 394 residents of the Occupied Territories, an 80% rise compared to the number of petitions filed in 2003. Additionally, HaMoked filed 92 tort claims in cases of violence and damage to property and two concerning detainee rights.

Legal action taken by HaMoked in 2003 and 2004

	Detainee Rights	Violence and Property Damage	Freedom of Movement	Jerusalem Residency	West Bank Residency	Deportation	House Demolitions	Respect for the Dead	Total
2004	25	93*	192	16	1	4	12	4	**347**
2003	40	12	45	22	4	1	24	3	**151**

* Of the 93, 92 are tort claims and one is a HCJ petition.

The most significant increase in legal action occurred in the field of violence. This is due to a shift of focus in this particular field to legal work; a shift brought on by the reduction of the statute of limitations (from seven years to two) and its retroactive application. Throughout 2004, HaMoked filed 92 tort claims in cases of violence, almost eight times more than the number of claims filed in the previous year. Some of the claims filed during 2004 concerned cases which happened during the military invasion into West Bank cities in the spring of 2002, "Operation Defensive Shield", including a petition regarding the appalling holding conditions in the Ofer Prison in the early days of the operation.

Another significant increase occurred in the number of petitions regarding freedom of movement, more than four times the number of petitions filed during the previous year. The majority of the petitions in this field concerned Palestinians whom the military forbade to go abroad. The major increase in petitions in this area reflects the authorities' dysfunction – most of the petitions were filed after the military had not replied to HaMoked's requests. Not only did the petitions force the army to provide an answer, but they also revealed that in some half of the cases, the prohibition was unnecessary as the petitioners were allowed to go abroad. These numbers indicate that the military often forbids people to go abroad without conducting individual examinations as required, and that such examinations are carried out only after legal action is taken.

Amongst the petitions and claims filed by HaMoked during 2004, two are especially noteworthy:

In December 2004, HaMoked filed the first of two petitions regarding the military and the General Security Service's refusal to investigate alleged inhumane holding condition and illegal investigation

techniques, including torture, in facility 1391, Israel's secret jail. The petition was filed after the HCJ refused to deliberate on these issues in the framework of a petition filed by HaMoked against the secret jail itself. The HCJ suggested HaMoked first exhaust all remedies with the proper authorities on the issues of holding conditions and investigation techniques.

In February 2004, HaMoked appealed the administrative court's ruling upholding a decision made by the Interior Affairs Minister. The Minister had decided not to award residency to S.Z. S.Z. is a young man who has no legal status anywhere in the world, despite the fact that he has lived his entire life in Israel and his immediate family are residents of East Jerusalem. Following HaMoked's appeal, the HCJ took a rare decision to force the State to grant S.Z. temporary status which would allow him to live and work in Israel for a year. The court also ordered the State to assist in his rehabilitation during that year.

New Cases

New cases handled by HaMoked in 2004

	Detainee Rights	Violence and Property Damage	Freedom of Movement	Residency	House Demolitions	Respect for the Dead	Other	Total
2004	5,613	287	2,548	112	23	11	7	**8,601**
2003	5,278	1,314	2,179	210	24	21	8	**9,034**

In most fields, the number of new cases handled by HaMoked during 2004 has not significantly changed, as compared to 2003. The gap in other fields stems directly from Israel's policies.

The most significant change occurred in cases involving violence. The drop in the number of new cases in this field does not reflect an improvement in the situation on the ground, but rather deterioration in the legal arena due to the fourth amendment to the Tort Law. The amendment included the reduction of the statute of limitations on cases of violence and property damage that occurred in the Occupied Territories from seven years to two. The reduction was applied retroactively so that all cases of violence that occurred between July 1997 and the end of 2002 reached their limitation sometime in 2004. During this year, most of HaMoked's work in the field of violence was dedicated to preparing dozens of tort claims in cases which were to reach their limitation in 2004. The heavy workload created by the fourth amendment forced HaMoked to limit the number of new cases taken on in this field in order to properly handle those previously accepted.

As this report is being written, June 2005, the Knesset's Constitution, Law and Justice Committee is discussing another proposed amendment to the Tort Law. This new amendment is intended to completely block compensation claims by Palestinians who were harmed by Israeli Security Forces. HaMoked is working to prevent the passage of this further amendment and plans, whether it is passed or not, to continue handling cases of Palestinians who have been harmed by Israeli Security Forces.

The Law of Nationality and Entry into Israel which was passed by the Knesset in 2003 and renewed in 2004 has halted family unification in Jerusalem. Family unification in the West Bank has been at a standstill since the outbreak of the current intifada. In these two fields, HaMoked continues working on prior cases in an attempt to use whatever means left open to it to provide assistance.

Freedom of Movement

"Everyone has the right to freedom of movement and residence within the borders of each State.
Everyone has the right to leave any country, including his own, and to return to his country."

Universal Declaration of Human Rights, Article 13

Leaving the Territories

Throughout the occupation, Israel has made the departure of residents of the Territories abroad contingent upon the approval of the military commanders in the Gaza Strip and the West Bank. Over the years, Israel has manipulated this control as a form of penalty or as leverage to pressure persons seeking a permit to leave the country, to collaborate. In some cases, the military makes the departure of residents contingent on a pledge that they would not harm Israel's security during their stay overseas or that they would not return for an extended period of time. Sometimes both conditions are stipulated.

Many Palestinians realize only when they get to passport control that they are not allowed to leave the area. In many cases, these are people seeking to leave the country under urgent circumstances, such as medical treatment, studies abroad, the hajj or since they have obtained entry and work visas for other countries, valid only for limited periods of time.

In 2004, HaMoked handled 369 new cases of residents of the Territories whom the military did not allow to leave the country. In 84% of the cases that were closed by the year's end, the authorities lifted the prohibition and allowed the applicant to leave. In 42% of these cases, the High Court of Justice (HCJ) had to be petitioned to

help this happen. In most of the cases in which petitions were filed, the military withdrew the ban even before a hearing was held. These statistics clearly show that the military's policy on exit permits is arbitrary and that it does not conduct any case-to-case examination although it is obligated to do so.

Another problem that HaMoked encountered in this context was the military's response time. In 1993, following a HCJ petition HaMoked had filed, the military undertook to respond to applications for exit permits within two months, and even sooner in urgent cases.[1] An examination held by HaMoked analyzed at the end of 2003, revealed that the military had failed to comply with this undertaking in about half of the cases. To compel the military to make good on its word, HaMoked decided to petition the HCJ whenever the military took longer than the promised two months. In 2004, HaMoked filed 110 petitions on behalf of applicants who did not receive a response within the required timeframe, or who needed to leave the country urgently.[2] HaMoked continues to monitor the military's response time to make sure that the situation improves.

To leave the Gaza Strip and go abroad, residents must go through Rafah crossing. This involves numerous hurdles. Applicants are forced to wait in line hours and sometimes even days and weeks, until they receive a permit to pass from the Palestinian side to the Israeli side and from there to Egypt.

In October 2004, HaMoked started receiving dozens of applications from residents whose exit was restricted by the military. Many were aged 16 to 35, and some told HaMoked they had never tried to leave before, knowing that the military did not allow people of this age range to exit. The military announced the age based restriction was abolished back in August 2004. However, Palestinian officials in charge of exiting the Gaza Strip said that in reality Israel continued to restrict the exit of men aged 16 to 35. People of this age group underwent extensive questioning at the border crossing. This delayed the entire line and sometimes even thwarted the exit of others who were waiting behind.[3]

Officials in the Palestinian Authority (PA) told HaMoked that in October Israel introduced a new "coordination" procedure, ostensibly designed to bring order to the border crossing. Notwithstanding its denials of any age restriction, Israel announced that residents of the Gaza Strip aged 16 to 35 who wish to go abroad must apply to the Palestinian Civil Committee. The Committee transferred the names to the Israeli District Coordination Office (DCO) at Erez Crossing. The Israeli DCO indicated on the list who would be allowed to leave and who would not and returned the marked list to the Palestinian side. A copy of the list was sent to the authorities at Rafah. The Committee announced the names of those who were allowed to leave on the

1 HCJ Petition 3927/93, **Turki Salah v. IDF Commander in the West Bank**.

2 In addition to these petitions, 37 others were filed in connection with the military's refusal to grant permits to leave the country.

3 Amira Hass, "Palestinians Stop Men Aged 16 to 35 from Going to Rafah Terminal because of 'Shin Bet Harassments'", **Haaretz**, October 4, 2004.

radio, and they could then go on to the crossing station.

On the face of it, this procedure was designed to notify applicants ahead of time, sparing them futile trips to Rafah. The reality was quite different. When they arrived at the crossing, they had to submit their names again at the Palestinian side. The lists were again transferred to the Israeli side of Erez Crossing, and returned marked. Some of those who had earlier been approved by the DCO at Erez, now found themselves on the blacklist. Obviously, then, the procedure did not provide any certainty, nor did it guarantee that people were thoroughly checked before being turned down. In many of these cases, HaMoked's petitions to the HCJ got the military to retract.

However, as of mid-December 2004, even permits granted after HCJ petitions were of no use. On December 12, Palestinians blew up a military post at Rafah. Israel closed the crossing and offered an alternative solution only for residents wishing to go on the hajj or requiring urgent medical care. Thousands of students, people whose permanent residence was abroad, people who had work visas in other countries and the general population of the Gaza Strip were all locked in.

Around the time of the explosion at the Rafah crossing, HaMoked filed several petitions on behalf of Palestinians whose applications had been denied. In these petitions, HaMoked added a demand that the military generate a viable solution for residents to depart to Egypt in the interim period while the crossing station was being rebuilt.[4]

In its response, the State argued that it had offered to let Palestinians leave via the Nitzana Terminal in the Negev, but was turned down by the PA.[5] According to various reports, the PA rejected this proposal because only very few people would be able to go through Nitzana, and because should this alternative be implemented, crossing via Rafah would never be permitted again.[6]

The Court held that the State had a duty to exercise all the means at its disposal to resolve the problem, and gave the State one week to submit a response.[7] At the end of the week, the State asked for a two-week extension. Faced with the urgency of finding a solution, HaMoked's representative asked to hold a hearing without delay, but the Court denied this request. After two more weeks, and more than a month after Rafah had been closed, the State announced that a solution had been found for patients in need of urgent medical care that cannot be obtained in the Gaza Strip.[8]

At the end of January 2005, Israel reopened the crossing at Rafah to Palestinians seeking to return from Egypt to the Gaza Strip, and later on also permitted the departure of residents in need of medical care and others whose case was addressed by the HCJ. Later on, it officially relaxed the criteria for leaving via Rafah, but in effect continued to ban the exit of residents aged 16 to 35. The PA, which refused to resume the list mechanism which was in place before the bombing, forwarded lists of applicants from this age group only in urgent cases. Israel, for its part, only handled applications of sick people in need of urgent treatment, foreign residents and students.

The crossing became fully operable

again only in mid-February 2005, around two months after it had been closed down. Currently, residents of the Gaza Strip aged 16 to 35 no longer need to coordinate their passage ahead of time, and military sources have confirmed that the sweeping prohibition on this age range has been lifted.

Entry to the Gaza Strip

Since the implementation of the Oslo Accords in 1994, Israel has prohibited Israeli citizens and residents to enter those parts of the Territories that had been handed over to the Palestinian Authority (PA), except subject to individual permits. This severed families and destroyed social and economic relationships that had formed between Israelis and the inhabitants of the Gaza Strip during the occupation.

During the intifada, Israel intensified the divide between Israelis and the residents of the Gaza Strip by imposing increasing restrictions on entry to this region. The practice of allowing entry to the Gaza Strip during the Muslim holidays of Id al Adha and Id al Fitr was discontinued almost completely. Israel also stopped implementing the "divided families" procedure, by which Israeli residents who are married to residents of the Gaza Strip were given long-term permits to stay in the Gaza Strip, and significantly narrowed the criteria for visits of other kinds.

According to HaMoked's experience, entry permits are now given only to persons seeking to enter the Gaza Strip to visit their immediate relatives, and only for the purpose of attending weddings or funerals or visiting relatives on their deathbed. Applicants are required to provide various documents establishing the reason for their visit. Obtaining these documents sometimes involves much effort and cost, and the permits received are valid for a very limited time, usually only a few days.

Divided Families[9]

The "divided families" procedure, which was established in 1995 thanks to HaMoked, enables women who are citizens or residents of Israel and are married to residents of the Gaza Strip to stay there under permits that must be renewed at regular intervals.[10] Women who are in Israel

4 HCJ Petition 11714/04, **Abu Yusuf v. IDF Commander in the Gaza Strip**; HCJ Petition 11751/04, **Bashiti v. IDF Commander in the Gaza Strip**; HCJ Petition 11762/04, **Abu Aisha v. IDF Commander in the Gaza Strip**.

5 State's response in HCJ Petition 11714/04, **Abu Yusuf v. IDF Commander in the Gaza Strip**, December 29, 2004.

6 For example: OCHA, **Situation Report Rafah Terminal**, January 19, 2005.

7 Decision in HCJ Petition 11714/04, **Abu Yusuf v. IDF Commander in the Gaza Strip**. December 30, 2004.

8 State's response in HCJ Petition 416/05, **Physicians for Human Rights et al. v. IDF Commander in the Gaza Strip et al**. January 16, 2005 (the hearing of this petition was consolidated with HaMoked's petitions).

9 For further details about divided families see: HaMoked and B'Tselem, **One Big Prison**, 2005, pp. 37-53.

10 The procedure also applies to men who are citizens or residents of Israel and are married to women in the Gaza Strip, but this is a minority of the cases.

must apply to the "Office for Israelis" at the District Coordination Office (DCO) at Erez Crossing, attaching various documents that prove they are married to a resident of the Gaza Strip. If the military approves their request, they must go to Erez Crossing to get the permit and enter the Gaza Strip. The procedure also allows women who stay in the Gaza Strip to extend their permits without leaving the Strip. They are to go to Erez Crossing and deliver their permit to representatives on the Palestinian side, who hand them over to the Israelis, who extend the permit and return it to the Palestinian DCO, which returns it to the applicant. This procedure can take several hours, and the women have to wait at the crossing throughout it. Except in special cases, the military does not enable permits to be extended by mail or fax.

Children of a divided family who are registered in their mother's identity card – that is, Israeli residents or citizens – may join their mother on her visits to the Gaza Strip until they turn 18. If the children are registered as residents of the Gaza Strip, namely, in their father's ID, the military allows the mother to take them outside the Gaza Strip only until they turn five. Women who have children older than five must leave them behind when visiting Israel.

Since the current intifada began, the procedure has not been properly implemented. Sometimes, the military revises the procedure for receiving and extending the permits without publicizing the new requirements. As of 2001, permits expire after one month instead of three. Also, the military often freezes or cancels the procedure, in most cases as part of a general tightening of the closure imposed on the Gaza Strip. This happens in various circumstances, such as when the military imposes collective punishment after Palestinian attacks on Israeli civilians or soldiers, after executions without trial by the Israeli forces, during military operations in the Gaza Strip and on Jewish holidays. When the military freezes the procedure, for whatever reason, women and children who had left the Gaza Strip earlier are unable to return. In some cases, the permits of women who are in the Gaza Strip are not renewed either. The choice they have then is to leave the Gaza Strip, risking being unable to return until the military relaxes the closure, or stay with their families and risk being penalized by the military, which considers them to be outlaws who have violated a military order.

Applications HaMoked has received indicate that in 2004 the military froze the procedure at least six times for varying durations.[11] In May 2004, one of the times when the military resumed the procedure, it started demanding that applicants seeking to enter the Gaza Strip or extend their permits sign a form pledging they would not enter Israel for three months. The military did not publicize this new requirement, and HaMoked only learned about it in a telephone conversation with the "Office for Israelis." Military sources told the media that the procedure was designed to reduce the traffic at Erez Crossing and limit the number of security checks that have to take place there, because of security alerts.[12] HaMoked contacted the State Attorney's Office and the Military Legal Advisor for the Gaza Strip, alerting them that this demand is unlawful because it effectively deprives Israeli residents and citizens of their right to enter their own country, a right protected both by Israeli and international law.[13]

After these appeals received no response, HaMoked and Adalah filed a joint petition with the High Court of Justice (HCJ) on behalf of four families injured by the new procedure, demanding its cancellation.[14] In this petition, HaMoked and Adalah argued that the procedure forced Israeli citizens and residents who were married to residents of the Gaza Strip to make the brutal choice between their family and country. It was further argued that this procedure was arbitrary and discriminatory and seriously violated the rights to family life, dignity and equality, as well as the right of citizens and residents to enter their country.

In its response, the military repeated the argument that frequent traveling between the PA and Israel was a security threat and added that terror organizations have tried to use "persons who were permitted to move between the Gaza Strip and Israel" in order to carry out terror attacks. However, the military added that from that time on, applications to enter the Gaza Strip under the "divided families" procedure would be examined individually, and that the procedure itself would be revisited.[15] Applications HaMoked received later indicated that the military had in effect abrogated the procedure altogether. Women seeking to enter the Gaza Strip or stay there were not asked to pledge they would not leave for three months and women who had signed this pledge before the petition, were allowed back into Israel before the three months had passed.

While the petition was being heard, HaMoked learned that women who arrived at Erez Crossing after failing to renew their permits for a while, were questioned by the police under suspicion of violating the military order prohibiting Israelis to enter the Gaza Strip. In an inquiry with the DCO at Erez Crossing, HaMoked was told by the DCO that this was merely a formality and that the women had no reason to be concerned. A short while later, HaMoked received several applications from women whose requests for entry permits had been denied. It turned out that as opposed to the information provided by the DCO, the military refused to approve the applications because these women had failed to renew their permits in time and stayed in the Gaza Strip without a valid permit, in violation of the order. HaMoked filed petitions with the HCJ on behalf of three such women who, because of the military's refusal to grant them a permit, had been separated from their families for a long time.[16]

In these petitions, HaMoked explained the arduous process of renewing the permits, which was the reason why the women could not avoid violating the

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11 A freeze is inferred when applications show that in reality, divided families' applications are not being handled by the DCO at Erez. Sometimes the military officially confirms that the procedure has been halted and sometimes it denies that applications are being ignored because of an official policy.

12 Amira Hass, "The Condition for Visiting Relatives in the Gaza Strip: Stay there at least 3 Months," **Haaretz**, May 5, 2004.

13 **International Covenant on Civil and Political Rights (1966)**, Article 12(4); Basic Law: Human Dignity and Liberty, Article 6(b); Law of Entry into Israel, 1952.

14 HCJ Petition 5076/04, **Husseini v. GOC Southern Command**.

15 The response of the State in HCJ Petition 5076/04, **Husseini v. GOC Southern Command**.

16 HCJ Petition 8947/04, **Sharab v. Military Commander in the Gaza Strip**; HCJ Petition 9107/04, **Abreika v. Military Commander in the Gaza Strip**; HCJ Petition 9204/04, **Ashur v. IDF Commander in the Gaza Strip**.

order. HaMoked argued that by refusing to grant them permits, the military was ignoring these difficulties, which by and large emanated from the military's own actions and policies, for example, making the extension contingent on physical presence at Erez Crossing. Arriving at the Erez Crossing cannot be taken for granted. Due to the volatile security situation in the Gaza Strip and the frequency of military operations, just leaving the house can sometimes be dangerous. Roads are often blocked and the military splits the Gaza Strip into two or three parts, barring any passage between Erez Crossing, which is in the northern part, and the southern areas. Under these circumstances, many women often simply cannot get to the Crossing to renew their permits.

But even making it safely to Erez Crossing is no guarantee that the permit will be extended. If the procedure is revised and the women have not fulfilled the new demands, their permits are not renewed. Obviously, this is also the case if they get to the Crossing only to find that the procedure has been frozen.

Under military regulations, anyone who does not have a valid permit must leave the Gaza Strip. Women who leave when the procedure is frozen might find themselves in the same position as women who left beforehand and are unable to return because of the freeze. Since the military does not bother to announce the freezes or procedural revisions, women have no way of telling whether their permits would actually be renewed once they get to the Crossing. The dangers involved in getting there and the concern that if they are unable to renew the permit they will be forced to separate from their families for a very long time deter many women from even trying to renew their permits.

M.A., a resident of Jerusalem, is married to a resident of the Gaza Strip and lives with him and their four children in Rafah. In order to get to Erez Crossing, she has to go through three roadblocks. Since the intifada began, M.A. has been unable to renew her permits regularly. She made it through to Erez a few times, but it took her very long to get back home. On several of these occasions she had to spend the night with acquaintances, on others in hotels. Once, the Crossing was closed when she got there, and she had to spend the night in a taxi, so as not to miss the opportunity to extend the permit if the roadblock opened the next day. On other instances, she was unable to make it to Erez because of medical reasons, and since the military does not extend permits by mail or fax, her permit was not renewed.

When her permit expired in March 2004, M.A. left her home in Rafah to go to Erez Crossing and have it renewed. She was delayed at the Kfar Darom roadblock for several hours. When the soldiers finally let her through, she made it to Netzarim, where the soldiers refused to let her cross. The next morning she set off again. This time, she made it through both roadblocks, but when she finally reached Erez Crossing, she was told that because of the closure, permits were not being renewed. M.A. was instructed to return 15 days later. When she did, she discovered the procedure had been changed and that she had to first apply to the PA. The "Office for Israelis" at the DCO refused to accept her application.

Although M.A. had renewed her permits whenever she could, when she tried to renew her permit again after a visit in Jerusalem in August 2004, the military turned her down claiming that she had violated the military order prohibiting Israelis from entering the Strip. M.A. and her four children, who were with her, had been separated from their father and husband for three months. They were reunited only after HaMoked petitioned the HCJ on her behalf. **(Case 15617)**

In its petitions, HaMoked further argued that the military's refusal to grant these women entry permits to the Gaza Strip seriously violates their right and that of their husbands and children to family life. This right is protected by both Israeli and international law.[17] The refusal cruelly separates family members from one another, disrupts their lives and threatens the very existence of the family unit.

Another petition was filed on behalf of A.S., also a resident of Jerusalem, who is married to a resident of the Gaza Strip. A.S. lives with her husband and their four children in Gaza City. Since the beginning of the intifada, A.S. did not visit Israel because of the difficulties in reaching Erez Crossing and the fear that she might be forced to leave the Gaza Strip, leaving her children behind for an unknown period of time. Only in June, when she heard that another woman with similar circumstances had managed to leave and return, did she decide to go to Jerusalem to visit her mother whom she had not seen in four years.

After two weeks in Jerusalem she applied to the DCO for an entry permit to the Gaza Strip. Having received no response, she contacted HaMoked. The "Israelis Office" told HaMoked on the telephone that her application was denied because she had violated the military order forbidding Israelis to enter Gaza. Additional applications by HaMoked to allow A.S. to return to her family received no response either.

A.S. had planned to return to the Gaza Strip during the summer, but under the circumstances, her school-age children had to start the school year without their mother at home. Her daughter, a seventh grader, had no choice but to run the household in her stead. A.S.'s 12-year-old son has epilepsy and does not go to school. He has daily seizures and requires medication and permanent supervision because he is liable to harm himself or his younger brothers. Each of the daily telephone conversations she had with her children, ended in tears.

In the affidavit she submitted to the Court, A.S. said: "This terrible separation was one of the reasons I was so afraid to go to Erez Crossing to renew my permit... It pains me that there are people who think I cannot return to Gaza because I am not trying hard enough, and that I am neglecting my duties as a mother… I don't understand

17 **Universal Declaration of Human Rights (1948)**, Articles 12 and 16(3); **International Covenant on Civil and Political Rights (1966)**, Article 17 and 23(1); **International Covenant on Economic, Social and Cultural Rights (1966)**, Article 10(1); **Hague Convention (IV) Respecting the Laws and Customs of War on Land** and its annex: **Regulations concerning the Laws and Customs of War on Land (1907)**, Article 46; **Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)**, Article 27.

how anyone can prevent a mother from caring for her children."
Only in October, following HaMoked's petition and after nearly four months of separation from her family, did the military allow A.S. to return to her home in Gaza. **(Case 33961)**

Following Hamoked's petitions to the HCJ, the military allowed these three women to go back to the Gaza Strip. However the general problem still remained without any solution.
In conversations with HaMoked staff and in a letter sent to HaMoked shortly after announcing that it was permitting the three women to go back in, the military stated that it intended to continue to employ "administrative measures" against women who fail to renew their permits.
As HaMoked stated in the petitions, the military is not authorized to implement such measures. The military may only exercise administrative measures in order to uphold security interests under very specific circumstances and only for the purpose of preventing a future threat. But the military never alleged that the women's entry to the Gaza Strip posed any threat. In fact, it stressed that the only reason it would not renew the permits was that the women had – in the past – violated a military order. Thus the military uses administrative measure as an instrument of punishment without trial. This is a particularly cruel penal measure, because it separates families with children for long periods of time.
HaMoked agreed to withdraw its petitions because the individual cases had been resolved, but notified the HCJ it would petition again if the military continued penalizing women for failing to renew their permits.

Holiday Visits

Since 1994, when Israel first prohibited its citizens to enter the Gaza Strip, and until the end of 2000, when the current intifada began, Israel allowed its Palestinian citizens and residents to enter the Strip during the Islamic holidays of Id al Fitr and Id al Adha to visit their relatives.[18] The holidays were a rare opportunity for families to meet, since Israel's policy made it impossible for them to see each other during the rest of the year.
During the intifada, the military discontinued holiday visits almost altogether. From the onset of the intifada and until the end of 2003, there were only two occasions when the military permitted family visits during the holidays: a small number of visitors were allowed into the Gaza Strip in Id al Fitr in 2000; a larger number was allowed in Id al Fitr of 2003. In both cases, the permits were granted following HaMoked's intervention.
Toward Id al Adha in February 2004, HaMoked contacted the military – as it has done ahead of all Islamic holidays since the start of the intifada – asking to allow holiday visits. HaMoked demanded that the military publicize the criteria and procedures for entering the Gaza Strip ahead of time. The soldiers of the DCO told HaMoked that this time visits would be allowed, and that the Defense Minister himself had approved them. This was the first time in this intifada that the military was to approve visits in Gaza during Id al Adha. The DCO soldiers also told HaMoked that entry would apparently be limited to the immediate relatives of Gaza residents and to their children up to the age of 16. HaMoked turned to the Military Legal Advisor for the Gaza Strip on behalf of a group of people

who did not meet these narrow criteria and could therefore not join their families on their visit to Gaza.

On January 29, 2004, two days before the holiday, as HaMoked was waiting for a response, there was a suicide bombing in Jerusalem. On the first day of the holiday, hundreds of people were standing at Erez Crossing, hoping to enter the Gaza Strip and spend the holiday with their relatives. But the DCO said that the military had prohibited all visits. According to the media, the suicide bomber was a Palestinian from the region of Bethlehem. The defense establishment never said he had any link with the Gaza Strip or the Israelis seeking to enter it for the holiday. Even if such a link existed, collective punishment of an entire public whose only crime was wanting to spend the holiday among family, could not be justified. As HaMoked said in its letter to the State Attorney, this case went even further than collective punishment, because the prohibition seemed to be driven by pure vindictiveness. All of HaMoked's attempts to lift the prohibition failed, and on the second day of the holiday, HaMoked filed a petition with the HCJ, asking to allow Israelis to visit with their relatives in the Gaza Strip all year round, or at least during the holidays.[19]

On the third day of the holiday, the State Attorney's Office notified HaMoked that entry would be permitted during the holiday. The notice, which was delivered to the HCJ, stated that visitation had been banned because of concerns that the "security situation might escalate and deteriorate" after the suicide bombing,[20] but did not explain how the holiday visits were connected to such possible escalation. The military indeed announced that the prohibition had been lifted, but in reality visitors were still not allowed across Erez and into the Gaza Strip. After countless phone calls by HaMoked, a small number of visitors were finally allowed into the Gaza Strip in the few hours remaining until the Crossing closed down for the day. After many efforts, on the fourth day of the holiday HaMoked finally managed to see to it that people were allowed into the Gaza Strip, even though it was already the last day of the fest. In addition to the fact that the military only let people into the Strip for a limited number of hours, it also failed to comply with its promise to give three-day permits, and many applicants only received one-day permits, spending most of that one day waiting at Erez Crossing. The military did not allow visitors to bring in their spouses or children over 16. On top of all this, conditions at the Crossing were intolerable.

An excerpt from the affidavit of Z.D., a resident of Jerusalem, who came to the Crossing with his family, on Wednesday, February 4, 2004, at around 7 AM:

"My sister and I only managed to enter Gaza at around 1:30 PM. My four other brothers made it to our sister's home in Gaza only after midnight, having been delayed at the Crossing for hours on end. We did most of the waiting at a place with no running water or toilets. People had to relieve themselves outdoors. The

18 HaMoked has no information whether a similar practice existed for Christian holidays as well.

19 HCJ Petition 1034/04, **Kutina v. IDF Commander in the Gaza Strip**.

20 Preliminary response of the State Attorney's Office to the petition for an interim injunction, HCJ Petition 1034/04, **Kutina v. IDF Commander in the Gaza Strip**, 3 February, 2004

snacks we brought with us ran out very fast. We were hungry. It was terribly cold. I asked a soldier to get me some water for the children but he said he had none. There were no benches to sit on either. There were many people there. But what do the soldiers at the Crossing care? I didn't feel anything was being done to make the entry process go faster or more humanely…" **(An affidavit filed as part of HCJ Petition 1034/04, Kutina v. IDF Commander in the Gaza Strip)**.

An excerpt from the affidavit of N.A., a resident of Jerusalem, who came to the Crossing to visit her parents, brothers and sisters in the Gaza Strip:

On Wednesday, my husband drove us to Erez Crossing (but was not allowed to enter with us). We arrived at the Crossing at around 8 AM, but I only got to Gaza at around 1:30 PM. Conditions at the Crossing were appalling. People were crowding at the gates. They would open the gates and let in a small group, and then close them again for several hours. Whenever the gates opened, everyone pushed to get in. It was so crowded, I fell and got trampled over. The fall caused me serious back pain, and in Gaza (later on), a doctor examined me and told me to stay in bed for two days.

But meanwhile, I kept on trying to enter Gaza. I had to make it to the window, to give them my papers. There was nothing there to help keep an organized line. People pushed and were being pushed. I was alone with my three children (two, eight and nine years old). I was doing my best to hold onto them so they wouldn't get lost in the crowd.

My daughter had to go to the toilet, but the toilet (which is outside the compound) was filthy, and quite honestly just not fit for use. Also, going to the toilet meant leaving the compound and losing your place in the line. There was nowhere to sit (except on the ground) and we had to spend the entire time standing: me with my baby girl in my arms, carrying our bags and trying to hold onto the older children to make sure they didn't disappear…" **(An affidavit filed as part of HCJ Petition 1034/04, Kutina v. IDF Commander in the Gaza Strip)**.

All in all, on the last two days of Id al Adha, around 2,500 visitors made it into the Gaza Strip - around half the number that entered in the previous festival of Id al Fitr.

Later on in 2004, in response to two petitions by HaMoked concerning entry permits to Gaza, the military repeated its usual stance that Israelis were prohibited from entering the Strip because of security reasons, namely, concerns that they might be hurt or that would be terrorists would take advantage of their visits. The military nevertheless stated that it allowed Israeli citizens to visit their immediate relatives in the Gaza Strip under humanitarian circumstances (funerals, weddings, serious illness, etc.) "even during the armed conflict." The military also proclaimed it allowed Israelis to visit their immediate relatives as part of the divided families procedure and during the holidays – except if there were circumstances barring a specific individual because of security reasons. Visitors could take their children under 18 with them, the military said. Israeli citizens and residents may visit their immediate relatives on one holiday every year (Muslims can choose between Id al Adha and Id al Fitr and

Christians only have Christmas), provided they did not visit the Gaza Strip on another occasion during that same year.[21] Under this mechanism, anyone who visited the Gaza Strip under humanitarian circumstances could not enter again on the holidays in the same year.

HaMoked did not make do with these restrictive criteria, and in August 2004 demanded the State Attorney's Office provide some clarifications and expand the criteria. Among other things, HaMoked demanded that holiday visits and humanitarian visits not be mutually exclusive; that absence from the Gaza Strip for an entire year not be a condition for holiday visits; that visits be allowed on other holidays, such as Easter or the New Year, and on other occasions such as the summer holiday; that more distant relatives be allowed into Gaza along with their spouses; and, finally, that the Israeli authorities make adequate preparations and publicize the criteria and procedures for going through Erez Crossing ahead of time, to prevent the scenes at the Crossing in Id al Adha 2004 from recurring.

Even before HaMoked received any response, it became clear that the military's statements about allowing holiday visits were merely hollow words, as, the Gaza Strip remained sealed during Id al Fitr of November 2004, again, under the pretence of security. This time, it was the death of the Chairman of the PA, Yasser Arafat, that threatened the security of the region.

HaMoked applied to the HCJ to instruct the military to keep its promise to allow holiday visits, but to no avail. In its response to this application, the military explained that even when it stated that it would allow holiday visits, the permit was contingent on the security-related orders, which are revised from time to time.[22] This explanation renders meaningless the military's statement that while visits were prohibited throughout the year, they would be allowed on the holidays. Considering the military's condition that only one holiday visit would be allowed every year, provided that no other visits to Gaza took place in the 12 months before, the cancellation of the Id al Fitr visit meant that relatives of Gaza residents who did not visit there on another holiday that year, or whose family did not have any occasion that met the army's standards for "humanitarian visits", would not see their relatives, including parents, brothers and sisters, even once in 2004.

The military's response to HaMoked's request for explanations and revisions to the criteria arrived a few days after the holiday: Easter was added for Christian visitors; visits would be allowed on two holidays rather than one; the condition of no other visits during the year was abrogated; and spouses would also be allowed in. In light of this announcement, and although the rest of HaMoked's requirements were not granted, HaMoked agreed to withdraw its petitions on this subject put the new procedure to the test.

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21 Second additional response of the State Attorney's Office in HCJ Petition 10043/03, **Abaijan v. IDF Commander in the Gaza Strip**, 26 August 2004.

22 The response of the State Attorney's Office to the Petitioners' application for urgent remedies, HCJ Petition 10043/03, **Abaijan v. IDF Commander in the Gaza Strip**, 15 November 2004.

Movement between the West Bank and the Gaza Strip[23]

Under the Oslo Accords, the Gaza Strip and the West Bank constitute an integral territorial unit. Israel has never retracted its recognition of these two areas as a single territorial unit, and later on even officially bolstered it: In 2002, the State forcibly relocated Kifah Ajouri and his sister Intisar from their home in the West Bank to the Gaza Strip and prohibited them from leaving the Strip for two years (see below). When required to defend this decision, the State cited the Oslo Accords to establish that this was not a deportation but an "assigned residence" within the territory of a single political entity. This argument received the juridical stamp of approval when endorsed by the High Court of Justice (HCJ).

The status of the Gaza Strip and the West Bank as a single territorial unit grants residents the right to free movement between the two areas, including the right to choose where to live in either region.[24]

Nonetheless, a geographical obstacle stands in the way of exercising these rights. Residents of the Territories who wish to travel between the two regions have two options. They can leave Israel through the Allenby Bridge in the West Bank or Rafah Crossing in the Gaza Strip and travel to their destination via Jordan and Egypt. This option is expensive, takes a long time and is subject to the various restrictions that Israel imposes on leaving the Territories.[25] The other option is to pass through Israeli territory, but for the last 14 years, Israel has forbidden Palestinians from entering its territory except by special permit.

In 1995, Israel and the Palestinian Authority (PA) devised a solution for the divide between the West Bank and the Gaza Strip. The "Safe Passage" was to enable free movement across Israel between these two territories, without requiring an entry permit into Israel. But the passage only opened in 1999 and offered a limited solution that did not relieve Palestinians of the need to receive permits from Israel. A year later, when the current intifada began, Israel closed it down altogether.

Since then, residents of the Territories are once again completely dependant on Israeli permits to travel between the West Bank and the Gaza Strip. As a rule, the military does not allow a person registered as a resident of one area to travel to the other. The military's answers to applications of this sort indicate that, for all intents and purposes, it considers them to be applications to enter Israel. Therefore, if the army finds applicants ineligible to enter Israel for security reasons, or their reasons for moving between the areas insufficient grounds for allowing entry into Israel, the applications are denied. The military never specified what constitutes sufficient grounds. Sometimes, when HaMoked's application to allow passage between the Gaza Strip and the West Bank is granted, the permit that is given is in fact a permit to stay, for a limited period of time, in the area that the applicant seeks to enter. These two practices conflict with the rights that arise from the status of the West Bank and the Gaza Strip as a single territorial unit. Residents need not have a

reason for moving between them nor be forced to obtain a permit to stay in either.

In 2004, HaMoked handled several applications from residents of the Gaza Strip who were engaged to residents of the West Bank and wanted to move there to hold their wedding ceremonies and build their homes.

One of these was M.A., who in the summer of 2003 signed a marriage contract with a resident of the West Bank. After signing the contract, she applied to the nearest DCO for a passage permit to the West Bank. The military refused, stating that she was barred from entering Israel because of security reasons. After HaMoked petitioned the HCJ in June 2004, the military withdrew its objection and allowed M.A. and her mother to go to the West Bank for the wedding. The bride and her mother were given a permit to stay in the West Bank for 14 days. The mother returned after the wedding. M.A. stayed in the West Bank with her husband.

In January 2005, M.A.'s father died and she asked HaMoked to help her travel to the Gaza Strip and spend the days of mourning with her family.

In response to HaMoked's request, the military said that M.A.'s stay in the West Bank was "unlawful" because her registered address was in the Gaza Strip and her permit to stay in the West Bank had expired. The military demanded she return to the Gaza Strip and noted that upon returning, she would not be allowed to return to the West Bank. **(Case 29870)**

In addition to the restrictions imposed on passage between the two areas and on staying in them, the military does not allow Palestinians to change their place of residence from one region to the other in contravention of international law, Israeli law and the Oslo Accords.

Under the Israeli military law in force in the Territories, residents do not need the authorities to approve a change of address in the Population Registry. The law provides that after relocating, a person must notify the authorities of his new address which must update the Population Registry accordingly.[26] But residents of the Territories cannot follow this procedure as far as moving from the West Bank to the Gaza Strip or the opposite is concerned, because from the outset Israel does not allow them to travel between the two areas, except with special permits. Israel has in fact rendered its own laws moot by making a change of residence contingent upon special permits. This policy, which is unreasonable in and of itself, creates a catch 22 situation for residents of the Territories; HaMoked's experience has shown that the military does not consider the intention to relocate as sufficient grounds to permit passage between the West Bank and the Gaza Strip.

Furthermore, even residents who manage to move from one area to the other are

23 For further information regarding movement between the Gaza Strip and the West Bank see: HaMoked and B'Tselem, **One Big Prison**, 2005, pp. 8-24.

24 **International Covenant on Civil and Political Rights (1966)**, Article 12. For the applicability of this Covenant in the Occupied Territories see: ICJ Advisory Opinion in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, pp. 40-43, paragraphs 102-111.

25 See Chapter on Leaving the Territories, p. 12.

26 Order regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297) (1969), Article 13.

unable to update their registered address. After the PA was created in 1994, Israel handed over various responsibilities relating to the Population Registry. The PA is now responsible for updating the registry, and informs Israel of all updates. Address changes, as opposed to registration of residency, do not require Israel's prior approval. The military, however, refuses to recognize address changes between the West Bank and the Gaza Strip made by the PA, and maintains that any such change requires its prior approval. When the current intifada began, the military stopped approving such address changes.[27] The PA has therefore stopped updating address changes as well.

Israel considers anyone staying in the West Bank or the Gaza Strip without a permit and who appears in its records as a resident of the other region, to be staying there illegally. Applications handled by HaMoked indicate this has far-reaching implications for these individuals: the military administration in their region flatly refuses to handle their various applications because they are registered as residents of the other region. In 2004, HaMoked petitioned the HCJ on behalf of three women whose applications were ignored by the military because of this reason. Two of them were applying for permits to visit their sons, who were imprisoned in Israel, and one was applying for a permit to travel abroad.[28] Other applications indicated that when the military encounters individuals who live in the West Bank but are still registered as residents of Gaza, they are arrested and released in the Gaza Strip, away from their jobs and families. The military then refuses to let them return. In addition, when Palestinians registered in the Gaza Strip but living in the West Bank go to the Gaza Strip on their own volition, the military does not let them return to the West Bank.

When this report was compiled, HaMoked was still waiting for the State's response in a petition regarding the S. family. Z.S. has been "stuck" in Gaza for the last four years and her husband, A.S., for the last two. A.S. and Z.S. were born, raised and married in Gaza. In the late 1990s, A.S. found a job in the Ramallah region and the couple moved to that area. They notified the PA of their address change, and the information in their IDs was updated accordingly.

In 2000, Z.S., who was pregnant with their fourth child, traveled with the couple's three older children to have the baby close to her family in the Gaza Strip.

Unfortunately for Z.S., her daughter was born just as the second intifada began. The military closed the Safe Passage, and when she wanted to go back to her husband and home in the West Bank, she had to apply to the DCO, but the military did not give her any response.

After two years during which she was unable to return to the West Bank, Z.S. contacted HaMoked. Over the telephone, the soldiers at Erez DCO said that in the Population Registry, Z.S. was entered as a resident of the Gaza Strip. Although HaMoked sent numerous letters, this was the only response it ever received.

In the beginning of 2003, after a two-year separation from his wife and children and after he had never seen his youngest daughter, A.S. joined his family in the Gaza Strip. Since then the military has not allowed him to return either.

HaMoked has repeatedly applied to the

military to allow the family to go back to the West Bank. In December 2004, after more than two years of silence, HaMoked petitioned the HCJ. **(Case 22834)**

In 2004, HaMoked managed to arrange for K.H. to return to the West Bank after two years in which he was stranded in the Gaza Strip. K.H. was born in the Gaza Strip. In 1991, he moved to Ramallah to study in university, and after graduating, he made his home there. He married a resident of the city, found a job as a computer engineer and rented an apartment. In 1998, he notified the PA of his address change, and his new address in Ramallah was entered in his ID.

In March 2003, K.H. went to cross Allenby Bridge en route to Amman on business. The Israelis arrested him at the Bridge and took him to Ashkelon Prison. After one day of questioning, in which he was asked about his affairs in the West Bank, his captors banished him to the Gaza Strip. At the Prison he was told that according to the Population Registry that Israel had, he was registered as a resident of the Gaza Strip.

After trying in vain to fix the records through the Palestinian Ministry of Interior in Ramallah and Gaza, K.H. contacted HaMoked. A military representative told HaMoked orally that unless K.H. was registered as a resident of the West Bank, there were no grounds justifying his entry into Israel. This was the only response HaMoked ever received on the matter. After six months passed, HaMoked petitioned the HCJ on his behalf. By then, K.H. had been stuck in the Gaza Strip for over a year.

Following the petition, the military announced it would let K.H. travel to and stay in the West Bank, but stressed that this permit was ex gratia and that it would not allow K.H. to officially change his address to the West Bank.

Without an address change, K.H. still faces the danger of banishment to Gaza and the military might refuse to handle his applications or enable him to leave the country via Allenby Bridge. HaMoked demanded that the military find a solution for his predicament. An arrangement was reached in negotiations with the State Attorney's Office, according to which K.H. would be allowed to file his applications with his regional DCO in the West Bank and go abroad via Allenby Bridge.

Shortly after K.H. returned to the West Bank, HaMoked received applications from A.S. and S.Z.. Like K.H., they too live in the West Bank but are registered as residents of the Gaza Strip, and like K.H., they too had been arrested and banished to the Gaza Strip. In this case, HaMoked was able to arrange for their return to the West Bank without petitioning the HCJ. As this report was being compiled, HaMoked was making efforts to obtain the same arrangement for them as that which had been secured for K.H.

(Cases 23309, 32182, 34115)

While in some cases HaMoked's intercession solves individual problems of passage between the West Bank and the Gaza Strip, Israel's general policy has remained unchanged. The State continues

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27 Preliminary response of the Respondents in HCJ Petition 5504/03 **Kahlut v. IDF Commander in the West Bank**, February 25, 2004.

28 See chapter on Family Visitation p. 34; HCJ Petition 11355/04, **Haja v. Military Commander in the Gaza Strip**.

to ignore the rights of residents of the Territories and prohibits their passage between the two regions, whether for temporary visits or relocation. This sweeping policy has created an almost absolute divide between the populations of the two regions, and in effect submits all of them to "assigned residence."

Roadblocks

The year 2004 has not seen any significant change in the freedom of movement of Palestinian residents of the Occupied Territories. As in the previous three years, hundreds of roadblocks were still deployed throughout the West Bank, and villages in this territory were still encircled by dirt mounds. The soldiers manning these roadblocks have almost unlimited power, and the ongoing friction with civilians has created a reality in which continued delays, insensitivity toward the sick, penalties, property seizures, humiliation and abuse are the residents' daily bread.

In 2004, HaMoked handled 1,687 real-time complaints about incidents at roadblocks. In most cases, HaMoked's intercession helped, but only after long hours. In some cases, HaMoked followed up on the case after the incident was over, in order to make sure it would be investigated and the wrongdoers be brought to justice.

On February 17, 2004, at around 3 PM, W.S. arrived at Huwwara Roadblock en route to Nablus. He noticed that the soldiers there only allowed people through if they signed a blank piece of paper. The soldiers demanded W.S. sign too, and when he refused, they refused to let him cross. After about four hours of delay, W.S. contacted HaMoked's hotline. A little later, an officer arrived, apparently from the Civil Administration, but instead of letting him through, he tried to convince him to sign the blank paper. W.S. was adamant in his refusal, although the officer threatened that if he did not sign, the soldiers would beat him up.

After holding W.S at the checkpoint for around six hours, the soldiers let him pass without signing the blank paper. When HaMoked demanded an investigation of this practice, an officer at the Civil Administration said that it had been discontinued and that the signed papers had been destroyed. The officer said that the demand to sign a blank piece of paper was initiated by a company commander posted in the region who decided to use "psychological warfare" against the Palestinians, "so they think they are being monitored." **(Case E3910)**

On the morning of February 17, 2004, HaMoked's hotline received a complaint that soldiers as Salem Roadblock were instructing women to remove their jalabiya, women's religious attire. The hotline contacted the Civil Administration's "humanitarian desk" demanding to put a stop to this practice, which violated the religious belief and privacy of the women. The soldiers at the desk said these

were routine security checks and the instructions to remove the jalabiya were reasonable. HaMoked explained that if the checkup was really indispensable, it should be performed by female soldiers and at a distance from all the other people at the roadblock. The Civil Administration insisted that the requirement was reasonable, but within less than an hour the soldiers started letting women through without asking them to remove their jalabiya.
(Case E3903)

On the afternoon of December 24, 2004, HaMoked's hotline received a complaint that four Palestinian men were being detained at Sanur Roadblock. About an hour after HaMoked started processing the complaint, the military reported that the men had been released. HaMoked's representative called one of the men, S., who confirmed their release. A few minutes later, eyewitnesses called the hotline and reported that the four men were still being detained. When HaMoked's representative managed to reach S. again, he told her that in their previous conversation, a soldier was pointing his gun at him, threatening him not to say he was still being detained. HaMoked sent a letter to the Military Legal Advisor for the West Bank, demanding that this case be investigated and that an effort be made to ensure it did not recur. No response was received by the time this report was compiled.
(Case E5978)

On the afternoon of August 7, 2004, several people called HaMoked's hotline and reported that some 25 men and boys were being held at Huwwara Roadblock for several hours. One of the boys was S.K., who was returning with his mother from Ramallah, where he had received medical treatment. When the soldiers instructed S.K. to join the group of detainees, his mother asked to stay with him. The soldiers' reaction was to hit her. When her son tried to protect her, the soldiers beat him up too. They forced S.K's mother to move on and leave him behind. Only after more than two hours of relentless efforts by HaMoked did the soldiers let the detained group cross.
(Case E5243)

On July 25, 2004, at 3:40 PM, HaMoked's hotline received a call reporting that a young Palestinian man had been shot at Beit Iba Roadblock. Eyewitnesses told HaMoked that when the Palestinian, M.K., arrived at the roadblock, a dispute developed between him and one of the soldiers, in which M.K. called the soldier a liar. The soldier then grabbed M.K. by the head, bashed it into the concrete blocks and beat him up. When M.K. tried to run, the soldier shot him in the arm. The Civil Administration's humanitarian desk told HaMoked that M.K. was shot because he had tried to break through the roadblock and escape the soldiers. The incident received extensive media coverage, and a military police inquest was announced.[29]
(Case E5169)

[29] Amos Harel, "Soldier Shoots Palestinian Student who Argues with him at a Roadblock in the West Bank; Military Police to Launch an Investigation," **Haaretz**, July 26, 2004.

As noted, HaMoked does not always close the case once the incident is over. This year, one of the complaints HaMoked received about military brutality and confiscation of IDs at Qalandiya Roadblock led to a civil action.

On July 23, 2002, at around 2 PM, M.H. arrived at Qalandiya Roadblock after having an operation on his left arm. M.H., who was feeling poorly, cut in line, and a soldier instructed him to go back. M.H. handed his medical documents to the soldier, but the latter assaulted him, beat him up all over and threatened to break his other arm. When the roadblock commander came to see what was going on, the soldier said M.H. had attacked him. M.H. showed the commander his medical documents, explaining that because of his condition he was unable to stand in the sun. The commander said that the hospital's discharge letter did not state he was not allowed to stand in the sun. He took M.H.'s ID and threatened to keep him at the roadblock until 7 PM. M.H. asked for his ID back, but the commander refused to give it to him. M.H. therefore decided to cross the roadblock without his ID. Shortly after, he returned with his father, who asked a soldier at the roadblock to return his son's ID, but the soldier refused and pushed him. When M.H. protested, the soldier hit him in the chest with the butt of his gun. M.H. and his father left the roadblock and went to the hospital to get medical care.

A week later, HaMoked managed to get M.H.'s ID back. Following HaMoked's inquiry, military police launched an investigation, but they closed the case six months later. The military has been unable to corroborate M.H.'s allegation about the soldiers' brutality, they said. On November 22, 2004, HaMoked filed a civil suit on the matter.

(Case 17939, Civil Action 13054/04)

The restrictions imposed on movement of Palestinian residents of the Territories have significantly increased during the second intifada, but closure, curfew and roadblocks had been routine from much earlier on. This year, a civil action pertaining to an incident that occurred in 1998 was finally concluded. In that incident, soldiers at a roadblock near Hebron prevented a woman in labor from reaching the hospital.

On the evening of August 25, 1998, P.A., who was then nine months pregnant, felt she was going into labor. Together with her husband, mother-in-law and brother-in-law, she left her home in Beit Ula to go to the hospital in Hebron.

At the Beit Kahil roadblock, three soldiers stepped up to their car and informed them they could not continue because the city was under closure. The family explained that this was an emergency because P.A. was in labor. The soldiers pointed their flashlight at her, claimed that she was not really in labor, and prohibited them from crossing. The family therefore had to take a different, much longer route.

P.A. gave birth in the car, on the way to the hospital. Her mother-in-law had to tear off pieces of her and P.A.'s clothes and use them to stop the bleeding. The condition of the baby girl, who was born with several birth defects, deteriorated. The family made it to the hospital, but the baby died shortly after.

The family filed a complaint with the police. The military police investigation that ensued was closed since: "The soldiers exercised discretion and their decision was within their purview... since it was their impression that the complainants' claims were not genuine."[30]

At the end of 2003, HaMoked filed a civil action on P.A.'s behalf, arguing that the soldiers had violated the right of P.A. and her baby girl to receive medical treatment. In 2004, the State paid P.A. NIS 40,000 in compensation.
(Case 13201, Civil Action 12262/03)

The Separation Wall

The construction of the separation wall continues and with it the serious violation of the basic rights of Palestinians who have involuntarily found themselves affected by it. The wall violates basic rights such as the right to property, freedom of movement, work, education and health. Although Israel has declared that the wall is designed to prevent the entry of attackers from the Territories,[31] the wall does not follow the Green Line: most of it is in the West Bank. For its construction, Israel has confiscated thousands of acres of Palestinian land. The route, which extends deep into the Territories, results in de facto annexation of many settlements, along with Palestinian land and villages. The wall separates farmers from their land and villages from the cities that provide them with vital services, and in some cases even between residents of the same village.

Israel has declared the territory between the wall and the Green Line, dubbed "the seam zone", to be a closed military zone, off limits to Palestinians, except through special permits. In this reality, Palestinians who live east of the wall but work in villages in the "seam zone" or have farmland there, need permits to get to work. Those whose homes are west of the wall cannot go on living there without permits from the military. Palestinians on both sides of the wall have to wait at the gates until Israeli soldiers arrive and let them through to schools, universities, hospitals, markets, work places, friends and relatives on the other side. Many of the gates open only twice or three times a day, and even then for a very short time. Sometimes, the military does not open the gates at all.

The regime Israel practices in the seam zone is, for all intents and purposes, apartheid, discriminating between individuals based on their ethnic affiliation. While the entrance of Palestinians to the "seam zone" is prohibited and subject to the restrictive permits-and-gates policy, Israelis in the same area continue to enjoy full freedom of movement. Under the orders regulating the area, they do not require any permit in order to stay there. The orders define Israelis living in the "seam zone" as Israeli residents and citizens, who

30 Letter to HaMoked from Lt. Col. Moshe Yinon, Central Command Advocate, February 8, 1999.

31 "Seam Zone" website, Israel's Ministry of Defense: http://www.securityfence.mod.gov.il/Pages/ENG/default.htm, last accessed February 1, 2005.

are entitled to immigrate to Israel under the Law of Return. In other words, Jews as such are allowed to stay and travel around the "seam zone" without any restriction, while the native residents who have been living and working there for years, need special permits.

The route of the wall and the regime associated with it indicate that security is not the only factor in its construction. Rather, the wall is designed to create a new political reality, effectively erasing the Green Line and establishing a new border. The wall's permit regime has already made it impossible for Palestinian residents to maintain normal daily life, and is liable to cause them to relocate. In order to live freely (to the extent this is possible under occupation), they will have to leave the area, paving the way for annexation.

While Israel insists that this route is the only viable solution for the protection of Israeli citizens, a High Court of Justice (HCJ) decision from June 2004 casts doubts on this argument. Following a petition filed by Palestinian villagers from northeast of Jerusalem, the HCJ held that a 30-kilometer leg of the route planned for that area was unlawful. The planned route would have subjected these villagers to the difficulties experienced by Palestinians in other areas where the wall is already in place. The HCJ held that such serious violation of the rights of Palestinian inhabitants cannot be justified, since there was another available route which would cause less harm.[32] The HCJ thus rejected the State's argument that the original route, deep inside the Territories, is the only solution for Israel's security needs. After this decision, Israel indeed reconsidered the route and in some places pushed it closer to the Green Line. But in most areas the wall still extends into occupied territory, in some areas very deeply.

The question of the legality of constructing a wall inside the Territories is still pending before the HCJ in a petition filed by HaMoked in 2003.[33] The International Court of Justice (ICJ), however, has already spoken on this matter. In July 2004, the ICJ rendered an Advisory Opinion establishing that construction of the wall in the Occupied Territories constitutes a violation of international law. The ICJ held that Israel must dismantle the parts of the wall already built as well as compensate all Palestinians harmed by it.[34] The Opinion reinforces many of the arguments that HaMoked raised in its petition.

In its responses to several petitions challenging the separation wall, the State reiterated that it was doing its utmost to minimize the injury to Palestinian residents. The State repeatedly asserts it is doing its best not to build the wall on farmland or separate between farmers and their land. According to the State, where this is inevitable it installs gates to allow farmers across.[35]

These efforts evidently overlooked the villages of 'Azzun and An Nabi Elyas, in the Qalqiliya region. Israel built the settlement of Zufin just north of these two villages. The wall in the area envelopes Zufin, creating an enclave that also includes 300 acres of farmland belonging to residents of 'Azzun and An Nabi Elyas and blocking their access to it. The farmland is used mainly for growing olive trees. The wall around the enclave has two gates, one west of the villages, near the Qalqiliya District Coordination

Office, and the other north of them, next to the village of Jayyus. Both gates are too far from 'Azzun and An Nabi Elyas and access from them to the farmland is impractical. The way from the gates to the farmland goes through hilly terrain. Cars cannot go through, and walking is difficult, especially when the farmers have to carry their produce back with them.

Ahead of the olive-picking season in 2004, HaMoked contacted the Prime Minister, the Attorney General and the Civil Administration, demanding an immediate solution for these villagers. In order to prevent the loss of the olive crop, HaMoked demanded a gate be installed in the wall near the villages, where they used to access their land before the wall was built. In this area, there is a dirt road on which cars can drive.

Two months went by, the picking season was over, but no response arrived. Once the year's produce was lost, HaMoked contacted the same authorities again, this time demanding a permanent solution – dismantling the wall and compensating the villagers for their damages.

The Zufin enclave clearly shows that extraneous considerations guided the State in choosing where to build the wall. The fact that the wall is topographically illogical and that its route almost fully corresponds to the municipal area of Zufin, clearly indicates that the route was planned with annexation rather than security in mind. Indeed, in December 2004, the newspapers reported plans to build new neighborhoods in Zufin, in the same enclave that had been annexed to Israel de facto and which contains the farmlands of 'Azzun, An Nabi Elyas and other Palestinian villages.[36]

Around one month after HaMoked's letter demanding that the wall near 'Azzun and An Nabi Elyas be dismantled, the State agreed to discuss an agricultural gate for the villagers. No gate has been built.

(Case 34920)

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32 HCJ Petition 2645/04, **Beit Sourik Village Council et al. v. Government of Israel et al**.

33 HCJ Petition 9961/03, **HaMoked v. Government of Israel et al.** See also: HaMoked, **Annual Report 2003**, p. 13.

34 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, International Court of Justice.

35 See, for example, the State's response in HCJ Petition 9961/03, **HaMoked v. Government of Israel et al**, and the decision in HCJ Petition 2645/04, **Beit Sourik Village Council et al. v. Government of Israel et al**.

36 Niv Hakhlili, "Between Two Settlements", **Kol Ha-Ir**, December 24, 2004.

Detainee Rights

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

No one shall be subjected to arbitrary arrest, detention or exile."

Universal Declaration of Human Rights, Articles 5 and 9

Family Visitation

"The right to hold family visits at detention facilities is a basic right, both of the detainees and of their families. This basic right arises from the understanding of man as a social being who lives within the family and the community. It also arises from the concept that the detention or arrest in and of themselves should not deny the detainee of his or her basic rights: prison walls limit his freedom of movement, but must not deprive him of his other basic rights…".[37]

Prohibition of Entry into Israel

The Israeli authorities do not allow residents of the Territories to enter Israel independently to visit relatives who are imprisoned there. All family visits take place through the auspices of the International Committee of the Red Cross (ICRC), subject to the approval of the military and coordination with it, the Prison Service and the police. In order to visit their imprisoned relatives, Palestinian residents of the Territories must apply to the military for a permit.[38] Applications are filed with the ICRC, which transfers them to the military. The Red Cross informs the families whether the applications are granted or denied, and implements the visits. The ICRC organizes shuttles which take families from city centers in the West Bank and the Gaza Strip to the various prisons where Palestinians are held. In violation of international law, most of these facilities are inside Israel.[39] In Israel, the ICRC shuttles are always accompanied by police cars.

Not all relatives are allowed to visit. The criteria for such visits have changed over the years. To date, the military allows parents, grandparents and spouses to visit. Children and siblings may visit except for those between 16 and 46 years of age. Relatives who meet these criteria and whom the military has not found to be a security threat, receive three-month visitation permits. During this period, they may visit their imprisoned relatives whenever the ICRC organizes a visitation from their area. After the three months, they must apply for a new permit. From time to time, when the military tightens the closure imposed on the Territories, no family visits are allowed at all.

In October 2000, the military stopped issuing visitation permits. Following HaMoked's intervention, visitation was gradually resumed as of March 2003.[40] After the renewal of family visits HaMoked received dozens of calls from relatives who had been turned down. In December 2003, following a petition that HaMoked filed on behalf of 21 refused relatives, the military stated it would relax its policy.[41] In reality, however, no real change could be seen. The petitioners, except one, received permits, but others, who under the relaxed policy were told that in principle they would be allowed to visit, did not receive the permits. Dozens of new requests that HaMoked forwarded to the military Legal Advisor for the West Bank, did not even receive a response.

In answer to HaMoked's inquiries, the military said that permits and responses were delayed because an arrangement had not yet been found for those who in the past were barred from visiting. The military was working on such an arrangement, they said. In August 2004, after no progress was made for more than eight months, HaMoked filed 11 petitions on behalf of applicants who had not received any response. In September, the State Attorney's Office announced that temporary arrangements have finally been made. All persons who challenged refusals predating the December 2003 announcement, and in whose case a specific examination yielded that visits could be allowed, were to receive 21-day permits. In this 21-day period, only one visit would be allowed. Although the State Attorney's Office said that the arrangement would apply to all Palestinians who had applied before September 2004, in effect no one who applied after June 2004 received a permit, except one woman. Only some of the dozens of applications forwarded to the military prior to June 2004 were granted and most of these were for persons who were mentioned in pre-petitions or petitions before the High Court of Justice (HCJ). The vast majority of all other applications received no response at all.

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37 From HaMoked's petition: HCJ Petition 7512/04, **Dar Ziada v. Military Commander in the West Bank**.

38 Residents of East Jerusalem do not need a permit.

39 Article 49 of the **Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949)** provides: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." All the detention facilities where Palestinian detainees and prisoners are allowed to receive visitors are in Israeli territory, except for the Ofer facility in the West Bank. The temporary detention facilities are in the West Bank too, but no family visits are allowed there at all.

40 HCJ Petition 11198/02, **Diria et al. V. Commander of Ofer Military Detention Facility et al**.

41 HCJ Petition 8851/03, **Nahleh et al. v. IDF Commander in the West Bank**.

At the end of October, the State notified HaMoked that a permanent arrangement had been reached. From now on, anyone whom the military turns down because his entrance to Israel would, according to the military, be a security threat, can reapply; the application will be examined individually, and if it is found that the applicant can be allowed into Israel with the ICRC shuttles for the purpose of visiting an imprisoned relative, the applicant will receive a 45-day permit for a single visit. Once the permit holder visits the relative, the permit expires. Applicants will then have to reapply according to the same procedure. The military announced that the new procedure would go into effect at the end of November 2004.

There were several problems in the proposed arrangement. Because so many entities were involved in each application, the process would be cumbersome and long and, inevitably, enable very infrequent visits. Also, the procedure offered no solution for Palestinians wishing to visit several relatives.

HaMoked nevertheless decided to wait and put the new arrangement to the test. However, very few people received permits after the effective date in November 2004 and these too, only after intervention by HaMoked on a case-to-case basis. The military only started implementing the procedure in April 2005. HaMoked will continue to monitor implementation.

L.N. has been unable to visit her sons, who were imprisoned in Israel, for nearly two years. This, despite the fact that she applied for a permit immediately when visitation was resumed in March 2003 and even though the military never claimed she could not enter Israel because she was a security threat. The only reason for the military's refusal to let L.N. visit her sons was that she did not live where the records said she did.

In 1967, immediately after the Israeli occupation, L.N. and her husband moved from the Gaza Strip to the West Bank. Although they notified the authorities of their change of address several times, the records were never updated. When L.N. applied for a permit to visit her sons, in March 2003, the ICRC told her that her application had been denied because her registered address was in the Gaza Strip.

L.N. contacted HaMoked for help. Three months after HaMoked applied to the State Attorney in Charge of the West Bank, the following response was received: "We are unable to process L.N.'s application because she is a resident of Deir al Balah."[42] HaMoked sent a sharp response, explaining that clerical errors cannot relieve the military of its duty to let L.N. exercise her right to visit her imprisoned sons, and demanding a response. A year went by, and despite several reminders from HaMoked, no answer was received.

In July 2004, HaMoked petitioned the HCJ jointly on behalf of L.N. and M.G., another woman who lives in the West Bank but is registered in the Gaza Strip, demanding that they be allowed to visit their sons. The petition read: "The respondent only invokes this argument when the petitioners' basic rights are at stake. For the purpose of arresting and trying their sons and demolishing the petitioners' homes, it did not matter that they were registered as residents of the Gaza Strip.

But where the exercise of constitutional basic rights is concerned, suddenly the issue of old records becomes a wall separating between the respondent and the petitioners."[43]

In September 2004, the State Attorney's Office announced it would expand the new visitation arrangement to apply to residents of the West Bank who are registered in the Gaza Strip. In January 2005, nearly two years after first applying to the ICRC, L.N. finally received a 45-day permit. **(Case 25758)**

Prevention of Family Visits by Prison Authorities

The Prison Service Regulations stipulate that no visits are allowed from convicted former prisoners, except subject to approval by the Commissioner.[44] This regulation is all-embracing and applies to all former inmates, regardless of the crime for which they were incarcerated, the duration of their prison sentence or the time that has passed since their release.

Although the authority to lift the prohibition is expressly granted to the Commissioner, the Prison Service orders provide that this power is vested in the Section Chief and enumerate the criteria to be weighed.[45]

HaMoked handles many cases of former convicts whose applications to visit their imprisoned relatives are denied. These efforts are often successful, but the process is long and the procedures that the Prison Service employs in these cases are not transparent.

HaMoked addresses the applications to the Prison Service Commissioner. In accordance with the Prison Service orders but in violation of the Prison Service Regulations, answers are provided by the Section Commanders. If the Section Commander denies visitation, there is no appeal. Most of HaMoked's applications to the legal advisor of the Prison Service to reconsider rejections received no response at all. In some cases, where no response was received for a very long time, only a petition to the HCJ got the State Attorney's Office to intervene, and visitation was finally permitted.

But even when visitation is permitted, the situation is unclear. In most cases, the permit only states that the person "is not barred" or that he has received "permission" to visit. It frequently happens that a former convict who has received a permit and visited with his relative for months, arrives at the prison gate and is suddenly told he is barred from visiting or that his permit is "old" and must be renewed. Only rarely do the permits state an expiration date. Most permits do not stipulate any such date, and bearers have no way of telling whether or when they expire.

Furthermore, since permits are issued by Section Chiefs, they are only valid for that specific section. If a detainee is transferred to a facility in another section, the permit no longer holds. Permits do not state that they are section-specific. The existence of this limitation was inferred after visitors had been told that their permits did not apply at the new prison to which their relatives had been transferred.

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42 Letter to HaMoked from Captain Tsurit Fahima, Head of Legal Section, on behalf of the Military Legal Advisor for the West Bank, July 13, 2003.

43 HCJ Petition 6855/04, **Naji v. Military Commander in the West Bank**.

44 Prison Service Regulations, 1978, Article 30.

45 Commission Order 04.42.00 – "Visitation", Article 15.

Whether the permit is invalid because it has allegedly expired or because the detainee has been transferred, the visitor has no choice but to reapply. Regardless of the reason why the permit is no longer valid, it generally takes very long – three to five months – to get a response, whether positive or negative. All these delays are in violation of the Prison Service orders regarding security prisoners, which provide that responses must be given within two weeks.[46]

Although there are explicit criteria that section commanders must follow when considering former prisoners' visitation applications, rejections are never explained. Under the Prison Service orders, the relevant elements are whether the applicant is a relative and how closely related he is to the detainee; whether the detainee receives any family visits; whether the applicant is still involved in any criminal activity; and when he was last released from prison. The orders expressly state that a former convict should be allowed to visit, unless there is intelligence that he has criminal ties with the detainee and there are concerns that the meeting would be abused or would pose a threat to State security.[47] The fact that responses are not explained gives rise to concern that denial is arbitrary and that the mandatory criteria are not even weighed.

R.A. was arrested in August 2000. Two months later he was sentenced to life plus five years. In the first two months after his arrest, his father, Z.A., visited him three times. When Z.A. arrived at the gates of Shata Prison for a fourth visit, he was not allowed in.

Nearly 20 years earlier, Z.A. served four months in prison for polygamy. The Prison Service speedily granted HaMoked's application to lift the bar against Z.A., and for a year and a half the visits went smoothly.

When Z.A. tried to see his son in June 2004, the Prison authorities refused to let him in, arguing that he was a former convict. HaMoked once again contacted the Prison Service Commissioner's office on his behalf. At first, the office said the prohibition would not be lifted because of security reasons.[48] HaMoked applied again, demanding a detailed explanation, based on the fact that a previous rejection had already been withdrawn. The Prison Service then approved visitation, and Z.A. could once again see his son.

Toward the end of 2004, Z.A.'s son was transferred from Nafha Prison, which is in the northern section, to Ramla Prison, in the central section. When Z.A. first wanted to visit him there, he was refused again. For the third time, HaMoked applied to the Prison Service to lift the prohibition. Only three months later was Z.A. allowed to visit his son.

(Case 15326)

J.M. was born in 1986. He was three months old when his father was sentenced to life. At the age of 14, J.M. himself was arrested under suspicion of throwing stones at soldiers. He was sentenced to four months in prison. Until his arrest and for some time after his release, J.M. visited his father regularly. When he turned 16, he received an ID card, as required by law. From that age on, the Prison Service would not permit him to visit his father.

In December 2002, HaMoked applied to the Prison Service on behalf of J.M.,

seeking to lift the prohibition on his visits as a former convict. Within a month, the Prisoner Liaison Officer for the southern section said he could not visit his father "because of security/intelligence reasons."[49] HaMoked appealed the decision to the legal advisor of the Prison Service, but despite repeated reminders, received no response.

After more than a year and a half of silence, in October 2004 HaMoked turned to the State Attorney's office demanding its intervention. One month later, the Prisoner Liaison Officer for the southern section notified that J.M. would be allowed to visit his father.

The first time he tried to exercise his permit, the authorities at the Eshel Prison, to which J.M.'s father had been transferred, refused to let him in, because of his record as a former convict. J.M. insisted and told them that the previous prohibition in his case had been lifted. Indeed, another computer search immediately revealed that he should be allowed to visit.

J.M.'s permit did not specify any specific expiration date. As of January 2005, J.M. has already managed to visit his father around three times – after more than two years in which they had not seen each other.

(Case 24340)

Administrative Detention

Administrative detention is detention without a charge sheet or a trial. Security legislation in the Occupied Territories authorizes the military commander to issue administrative detention orders effective for six months, and extend them indefinitely.[50] A military commander issues administrative detention orders based on a summary of confidential intelligence from the General Security Services (GSS). This information is supposed to be compelling evidence of the threat represented by the individual, to the extent that his administrative detention is required. The information is not revealed to the detainee or the attorney representing him or her in the judicial review performed by a military judge. In these circumstances, not only must the detainee's counsel grope in the dark, but also the judge's ability to uncover the truth is very limited. The detainee may appeal the decision of the lower court to a military court of appeals,[51] but in the vast majority of the cases, the order is sustained. The detainee can still petition the High Court of Justice (HCJ), but thousands of cases already addressed by the HCJ indicate that there is little hope for their release.

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46 Commission Order 03.02.00 – "Rules Relating to Security Prisoners", article 9.

47 Commission Order 04.42.00 – "Visitation", article 15.

48 Letter to HaMoked from Major Leah Sosel, Information Control Documentation Officer, September 6, 2004.

49 Letter to HaMoked from Lt. Col. Geula Eliezer, Prisoner Liaison for the southern section, January 30, 2003.

50 In the West Bank: Order Regarding Administrative Detention (Interim Order), Order No. 1226, 1998; In the Gaza Strip: Order Regarding Administrative Detention (Interim Order), Order No. 941, 1998. The orders are almost identical.

51 Ibid.

The mechanism of administrative detention exists inside Israel as well, by force of a law passed by the Knesset. In Israel, the authority to issue an administrative detention order is vested in the Minister of Defense. The judicial review is performed by the president of the District Court, whose decision can be appealed to the Supreme Court. The appeal is presided over by a single judge, in a procedure similar to that of military court.

In 2004, HaMoked's attorney who represents administrative detainees appeared in 142 military court hearings. In most of the cases, the judges sustained the detention orders. Even when they held that the orders could not be extended any further, the military commander issued an extension order, claiming that new information has come to light. There were only 11 cases in which detainees were released following a judge's decision.

In the beginning of 2005, R.Q. had been held longer than any other administrative detainee in custody at the time. R.Q has been in administrative detention for nearly four years, since July 2001. Over the years, military judges instructed to end his detention three different times. But on each, the detention was extended under the pretext of "new intelligence."

In 2003, an appellate judge sustained the fifth administrative detention order against R.Q., which was to expire at the end of October 2003, but stated that his detention must not be extended beyond that date.[52] But when R.Q. was to be released at the end of this term, more than two years after his arrest, the military issued a new, sixth, order, extending his detention by another four months. The appellate judge cut the term by two months and held that only new and significant information would justify another extension.[53]

When the detention was to end under a judge's decision, the military issued an order assigning R.Q.'s residence to the Gaza Strip. The order was never carried out, because the military issued a seventh administrative detention order instead. Later on, the military admitted it had started the process for R.Q.'s forced relocation to Gaza because of the judge's instruction that new intelligence would be required to extend the order, and that when such intelligence was compiled, an administrative detention order was issued instead.[54]

On July 3, 2004, the eighth administrative detention order against R.Q. was issued. The judge shortened this order by two months as well,[55] but it was followed by another order, number nine.

In December 2004, one month after the ninth order was issued, R.Q. petitioned the HCJ through HaMoked, demanding that the military revoke the order against him or launch a systematic, vigorous investigation of the suspicions that led to his administrative detention, and put him to trial – or release him.

In his petition, R.Q. described what he was going through:

"I repeatedly asked my judges to order an investigation of the suspicions underlying my arrest. I want to stand trial, because in a fair criminal proceeding I will be able to defend myself, while in the administrative detention proceeding I feel helpless against the evidence, which is all confidential.

"Of all my judges, there was one who dared to question the confidential material, and on two separate occasions ordered my release. But the prosecution later argued that there was 'new intelligence' which was so incriminating that the commander could extend my detention despite these decisions … Sometimes I see in my judges' eyes or hear in their words or between the lines, a hint of hesitation, an inclination to end my detention. But they decide differently. It seems only natural to me that it would be difficult for a judge who only gets evidence from one side while I cannot respond, to make an independent, objective decision …".

Having reviewed the confidential material, the HCJ sided with the State, sustaining the administrative detention order against R.Q.[56] That order expired on March 1, 2005. R.Q.'s detention was then extended by another three months. **(Case 36309)**

M.N. was arrested in November 2002, at the age of 15. Five days later, a six-month administrative detention order was issued against him. At first, he was held in the Etzion temporary detention facility. He was denied many of the rights granted to detainees under military law: he did not receive adequate medical treatment; he was not allowed a daily walk in an open courtyard; and he was not allowed any family visits. However, the authorities strictly upheld the provision that minors must be held separately from adults. In order to adhere to this requirement, they kept M.N. in absolute isolation for 45 days. His isolation ended on his sixteenth birthday, when, under military law, which applies in the Territories, he became an adult. M.N. was then transferred from the Etzion facility to Ofer Prison and from there to Ketziot Prison. The appeal HaMoked's counsel filed on his behalf was denied.

In January 2003, M.N. was transferred to Ofer for questioning. He denied the suspicions against him and the investigation file was closed shortly after, because the evidence was insufficient. Toward the end of his detention, he was taken to Ofer for questioning once again. When the interrogator realized that the material in front of him was the same material about which M.N. had been questioned back in January 2003, he decided not to question him again. M.N. was returned to Ketziot, and a second six-month administrative detention order was issued.

In the judicial review, HaMoked's counsel argued that the intelligence on which the order was based was outdated and that this was the same material that led to M.N.'s arrest in November 2002. Although the military prosecutor did not deny this, the military judge nevertheless sustained the order. The appeal was also denied.

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52 Administrative Detention Appeal, 1111/03, **Qadri v. Military Prosecutor**.

53 Administrative Detention Appeal 1777/03, **Qadri v. Military Prosecutor**.

54 Response of Respondent No. 1, HCJ Petition 11006/04, **Qadri v. IDF Commander in the West Bank et al**, December 9, 2004.

55 Administrative Detention, 1750/04, Judicial Review, July 12, 2004.

56 HCJ Petition 11006/04, **Qadri v. IDF Commander in the West Bank et al**.

A year later, the military commander issued another order extending M.N.'s arrest by another six months. HaMoked's counsel argued, among other things, that the court should consider his young age and the fact that a long time had passed since his arrest and should therefore order his release. Disregarding these arguments and despite the fact that the order again relied on the same old intelligence that led to M.N.'s arrest a year earlier, the military judge approved the extension order, but shortened it by three months. The judge stressed that he was cutting the order shorter only so that the detention can be reconsidered at an earlier time, but added that "unless substantial new intelligence is compiled and should the relative calm on the ground continue… it will be hard to justify detaining M.N. any longer."[57]

When these three months ended, the military sought to extend M.N.'s detention by another three months. The military prosecutor admitted that no new material had been compiled, and based its entire argument on the fact that in M.N.'s area of residence, the situation had not calmed down. The military judges who adjudicated the extension, both in the judicial review stage and in the appeal, accepted the prosecutor's position and upheld the order.[58]

For a year and a half the military judges ignored M.N.'s young age, the fact he had not been given the opportunity to graduate high school, that the investigation file had been closed because of insufficient evidence, that his father was willing to vouch for his not engaging in any activity and that M.N. repeatedly stated that he had no intention of harming Israelis and that all he wanted was to go back to school and to his mother.

A year and a half after his arrest, the military commander sought to extend M.N.'s detention for the fourth time, by another three months. Responding to a question from HaMoked's attorney, the military prosecutor said there was no new evidence this time either and that M.N. was not suspected of belonging to any organization. All the prosecution had to say in open court was that if M.N. were released, he would "fall like a ripe fruit" into the hands of organizations wishing to harm Israel.[59]

Although all the extension orders against M.N. were based on the same intelligence that led to his arrest in November 2002 and no new information was ever presented, the judge who presided over this judicial review explained that "since there is no current information" the order should be cut shorter by one month. The judge stipulated that without new material, M.N.'s detention must not be extended again and the military would have to release him once this order expired, in July 2004.[60]

When the fifth detention order expired, the military did not seek an extension. M.N. was released, finished high school and started studying psychology at the university.

Under the Fourth Geneva Convention, the occupying power may use internment, but only when necessary for imperative reasons of security. In any case, the internee must be allowed to appeal his arrest.[61] Israeli law recognizes that administrative detention is a radical measure and because of its serious infringement on the detainee's rights, stipulates that it must only be used under special or unusual circumstances.[62]

Israel ignores these principles and uses administrative detention extensively. In 2004, at any given moment, 657 to 863 administrative detainees were held in military facilities and by the Prison Service.[63] Also, in 2004 the military issued administrative detention orders against at least three people who engaged in non-violent political activity. These three detainees are from the village of Budrus and are key activists in the the Popular Committee against the Apartheid Wall. HaMoked's attorney took part in representing two of them.

In January 2004, administrative detention orders were issued against A.M. and N.M., two brothers from the village of Budrus, who are active against the separation wall. They were brought before the same military judge. A.M. was released since the judge was convinced his detention was motivated entirely by his activity against the wall. In his decision, the judge wrote that "the military commander may not use his power to order a man's administrative detention only because he was involved in activity of this kind." Despite the similar circumstances, the judge decided to sustain N.M.'s detention. Explaining his decision, he said that the intelligence pertaining to N.M. indicated "activities supporting terrorism" in association with the Tanzim.[64]

HaMoked's counsel, who represented N.M. in his appeal, argued that N.M. was arrested only because of his activities against the wall and that, as held in his brother's case, this was not sufficient grounds for administrative detention.

The prosecutor argued that N.M. was not being detained because of his activities against the fence but because of his ties with Tanzim.

The appellate judge, like his colleague before him, also reviewed the intelligence. In his decision, he commented on the confidential material and the conduct of the military prosecution and the GSS: "The material indicates that there is indeed information linking the appellant with Tanzim. However, this evidence spans several years … The recent evidence, however, pertains specifically to his protest activity against the fence. I therefore asked the prosecution why the appellant was arrested only now, although his connection with Tanzim has been known for years...".

The judge's question was forwarded to the GSS, and then – as the judge put it – "the truth came to light and I was told

57 Decision, Administrative Detention Appeal 2313/03, **Commander of IDF Forces in the West Bank v. Alnajar**, December 2, 2003.

58 Administrative Detention 275/04, **Commander of IDF Forces in the West Bank v. Alnajar**, Administrative Detention Appeal 349/04, **Alnajar v. Commander of IDF Forces in the West Bank**.

59 Hearing of Administrative Detention 1424/04, **Commander of IDF Forces in the West Bank v. Alnajar**, May 24, 2004.

60 Ibid, decision.

61 **Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)**, Article 78.

62 For example, Administrative Detention Appeal 4/94, **Ben Horin v. State of Israel**, Court Decisions [PD] 38(5) 329, 334; Criminal Rehearing 7048/97, **Doe I et al v. Minister of Defense**, Court Decisions [PD] 44(1) 721, 740-741; Administrative Detention Appeal 8607/04, **Fahima v. State of Israel** (not published), paragraph 8; Administrative Detention Appeal 2/86 **Doe v. Minister of Defense**, Court Decisions [PD] 31(2) 508, 513.

63 According to B'Tselem: http://www.btselem.org/English/Administrative_Detention/Statistics.asp, last visited July 21, 2005.

64 Decision, Administrative Detention Appeal 188/04, **Morar v. Military Prosecutor**, February 2, 2004.

that the timing of the arrest was indeed related to disturbances associated with the construction of the fence…" The judge further noted that the military prosecution misled the lower court into believing there were other reasons for the arrest. The judge held that the reason for N.M.'s arrest was indeed his activity against the wall, and therefore ordered his immediate release.[65]

A.A., also a resident of Budrus and a key activist against the wall, was arrested eight months after N.M.'s release. The judicial review in his case was held by the same judge who sustained the order against N.M. but released his brother. In answer to questions presented by HaMoked's counsel, the military prosecutor confirmed that no violent activity was attributed to A.A. and that some of the evidence related to his activity against the wall.

A.A. did not deny his activities against the wall, and explained to the court that he believed in a non-violent struggle. His statement was supported by an affidavit from A.M., who stated that among the Budrus members of the Popular Committee against the Apartheid Wall, it was A.A. who always advocated restraint during demonstrations and urged others not to use force.[66]

Having reviewed the confidential material, the judge held that the main cause for the administrative detention order against A.A. was his activity against the wall and therefore ordered his immediate release.[67] The military prosecution appealed the decision. As in the case of N.M., the prosecution argued that A.A. was arrested because of other activities. At the hearings, A.A. reiterated that his was a non-violent campaign. The appellate military judge held that the evidence did include some information that was not related to A.A.'s activities against the wall, and that this evidence indicated a future threat, which was the cause for the detention. The judge did not disclose any of this evidence, but held that it did not justify four months of detention, and cut the term by half.[68]

The Secret Detention Facility

Israel maintains a secret detention and interrogation facility whose location has never been disclosed officially. Its existence was exposed in habeas corpus petitions HaMoked filed with the High Court of Justice (HCJ) in 2002, seeking to reveal the whereabouts of three Palestinians who had disappeared and all attempts to trace them through the regular channels failed.[69]

Detainees are held at the secret facility in harsh physical conditions. They are not told where they are being held and no one else is informed of their whereabouts. At first the State tried to continue hiding the existence of this facility, but eventually it admitted its existence and provided a few details about it, including that it is in a secret military base under the code name "Facility 1391".

In December 2003, HaMoked petitioned the HCJ against the existence of this secret detention facility. HaMoked argued that concealing the location of a detention facility is in violation of Israeli law, including military law, and of international law, all of which require that the authorities to give notice as to "the arrest and place of detention."[70]

HaMoked's petition included affidavits by detainees who had been held in the secret facility, which generated a bleak picture of the physical conditions and interrogation methods practiced there. Individuals were held in atrocious conditions of sensory deprivation, including frequent and long periods of isolation. They were denied basic sanitary conditions and subjected to torture, including abuse and sexual humiliation. When they asked where they were, their jailers said they were on the moon, in a different country, or other such answers. HaMoked's petition also included a psychiatric evaluation asserting that the secrecy shrouding the facility's location was part of a method designed to induce disorientation among the detainees as the first step toward breaking their spirit.

In the first hearing in November 2003, the HCJ announced it would only address the lawfulness of the existence of a secret facility. As for the physical conditions and methods of interrogation, HaMoked was instructed to first exhaust all remedies vis-à-vis the relevant authorities.[71]

The State submitted its statement of defense in May 2004, in which it repeated facts and arguments it had previously raised. The State claimed the location of "Facility 1391" was classified not for the purpose of violating detainees' rights but for security reasons. The State, however, refused to publicly enumerate these "security reasons." The State also claimed Facility 1391 is not a detention facility but an interrogation facility. It is designed for "special cases", mainly foreigners; most internees are not kept there for long periods of time and are transferred once their questioning is completed; Palestinians from the Territories were held there because during the military invasion of the West Bank in the spring of 2002, "Operation Defensive Shield," all the other facilities were in full occupancy; Palestinian internees were detained there until the spring of 2003.[72]

The State argued that the legal duty to give notice as to the arrest and whereabouts of a detainee does not necessarily mean that a specific geographical location must be divulged and that providing the name of the place is sufficient. The State accordingly argued it was fulfilling its legal obligation by informing the families that their relatives were being held at Facility 1391 and providing them with a contact

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65 Ibid.

66 Court transcript, Administrative Detention West Bank 2628/04, **IDF Commander in the West Bank v. Awad**, November 1, 2004.

67 Decision, Administrative Detention West Bank 2628/04, **IDF Commander in the West Bank v. Awad**, November 1, 2004.

68 Decision, Administrative Detention Appeal 2431/04, **Military Prosecutor v. Awad**, November 4, 2004.

69 See: HaMoked, **Annual Report 2002**, pp. 73-75; **Annual Report 2003**, pp. 34-35.

70 In Israeli law: Criminal Procedure Act (Enforcement Authorities – Arrests) 1966, Article 33(a); in military law: Order regarding Security Instructions (Amendment No. 53)(Judea and Samaria)(No. 12220) 1988, Article 3(a).

71 Decision, HCJ Petition 9733/03, **HaMoked v. State of Israel et al.**, December 1, 2003.

72 The State Attorney's response, HCJ Petition 9733/03, **HaMoked v. State of Israel et al.**, May 19, 2004.

address. In this context, it should be noted that the State started notifying families that their relatives were being held at Facility 1391 only after its existence had been exposed. The State further argued that the conditions inside the facility complied with the standards stipulated by law and that its secrecy did not detract from the detainees' rights.[73]

Shortly before a hearing was to be held, HaMoked filed a brief before the HCJ, presenting its main arguments. In the brief, HaMoked emphasized the fact that the secretive nature of the facility and the lack of substantial outside supervision (even the International Committee of the Red Cross is not allowed in) subject internees to potential torture. HaMoked cited the fact that under international law, merely holding a person in a secret location, is considered cruel and inhuman treatment, precisely because of the danger of torture. Where the secret facility in Israel is concerned, the danger is even greater, because of the profile of most of the detainees: foreign residents who are suspected of subversive activity. These detainees are particularly vulnerable to harm in that the soldiers perceive them as "the other" and as "the enemy," and they are cut off from their homeland.[74]

HaMoked explained that the interpretation the State has offered for the duty to reveal the place of detention was illogical. The conclusion this interpretation led to was that, in fact, any person could be detained at a secret facility without anyone knowing where he or she was. The power to hide the location of a person's place of detention is undemocratic. It is a significant step down the slippery slope to totalitarianism.[75]

A hearing in the petition was held in December 2004. The Justices voiced their concern over the fact that Israel has a secret detention facility. The President of the Supreme Court, Justice Aharon Barak, said it seemed there were prisons "somewhere out there" about which no one knew anything, and that this gave rise to an uneasy feeling that there were people who simply vanished. Justice Tirkel criticized the State's interpretation of the law and stated that this reading rendered the legal requirement of publicizing a person's "place of detention" meaningless. President Barak concurred and added that a person has the right to know where he is being held, and that in this respect, the number 1391 is absolutely meaningless.[76]

At the request of the State, the second part of the hearing was held ex parte. The Court offered the State several possible solutions to which it was to relate in its response. In the interim period, the State was to notify the Court (ex parte) of any new detainee being held in the facility, and the Court would react on a case-to-case basis. As at June 2005, around six months after the hearing, the State has not yet filed its response with the HCJ.

Lack of Investigation

In its response to HaMoked's petition regarding the existence of Facility 1391, the State argued that the secrecy of this facility did not undermine detainees' rights: the physical conditions are appropriate, the methods of questioning lawful, the conduct of the staff is impeccable and all the rights to which internees are entitled are upheld.

These arguments are dubious, considering the numerous affidavits collected by HaMoked's attorneys from former detainees These affidavits depict a harsh reality of inadequate physical conditions, humiliating

and inhuman methods of interrogation and even torture.

As noted, the HCJ refused to address the physical conditions and methods of interrogation directing HaMoked to first exhaust all remedies vis-à-vis the relevant authorities. In December 2003, HaMoked contacted the Military Advocate General and the GSS Ombudsman in charge of Detainees' Complaints (via the State Attorney's Office), seeking an investigation of the complaints emerging from the affidavits of 10 persons who had been held at Facility 1391 at different times, and which were attached to the petition.

One of the complaints forwarded to the GSS and the military was that of S.A., who had been held at the secret facility for about a month. In his affidavit, which was attached to HaMoked's petition, S.A. described the conditions in which he was held and the methods of interrogation to which he was subjected. His testimony is consistent with others about this facility:

"… They blindfolded me with black cloth and dark sunglasses on top, and put a canvas bag over my head … I asked the policeman who cuffed me where they were taking me, and he said he was not authorized to say and that he did not even know. They made me lie down on the floor of the jeep and covered me with a blanket … We stopped somewhere; they put me in a room and took the blindfold off. It was an empty room. Ten soldiers in regular military uniform came in. They completely stripped and searched me … the soldiers all had clubs … They took me, with my eyes shut, to the cell … the walls were rough, completely black; the door was black too. There was a very dim light, but the kind that got in your eyes whether you were lying down or sitting up, in a way that made it difficult to see … There was a big plastic bin in the cell which was supposed to be used as a toilet. That was terrible for me … the smell whenever I removed the lid was intolerable and it lingered in the room … which had no windows or openings for fresh air … There was no water in the cell. They would give me a bowl/container of water three times a day with my meals, but the water wasn't clean …".

Comments made by S.A.'s interrogators indicated that the physical conditions were part of a system designed to break the detainees' spirit: "From my conversation with the interrogator I understood that this cell was known as 'the tomb' and that if I cooperated with him, they would transfer me to a more comfortable cell."

S.A.'s interrogators used physical violence against him and even methods of torture that the HCJ had prohibited: "In the first three days, the interrogation took place in the same room; they didn't let me sleep; I was tied to the chair in the 'shabah' position [the prisoner's hands and legs are shackled to a small, slanted chair that forces him forward in a painful position]. They sat me on a bench one-meter long, in the corner of the room, so I couldn't lean back. During the questioning, they hit

73 Ibid.

74 Brief, The Petitioner's main arguments, HCJ Petition 9733/03, **HaMoked v. State of Israel et al.**, December 12, 2004.

75 Ibid.

76 The Justices' comments were documented by HaMoked's attorney who was present in the courthouse.

me … The interrogators would put their feet on my private parts … my hands were tied … whenever I gave a 'wrong' answer, they hit me. I often fell off the chair. The beatings were humiliating."

S.A.'s interrogators used the physical conditions and secrecy of the facility to terrorize him: "Throughout my detention there, I was isolated from the world. I saw no other detainees; the only people I saw were my interrogators. The interrogator kept saying that no one knew where I was and that they were free to keep me there as long as they liked … This was very powerful … there were many moments when I feared for my life; I was afraid they would cripple or maim me; I wasn't sure I would get out of there alive." **(Case 36315)**

The authorities' reaction reflects their dismissive attitude toward the serious allegations emerging from these statements.

The GSS ombudsman's response revealed that only two of the ten complaints had been looked into. Probes into the other eight commenced only after HaMoked's request in December 2003. Shortly thereafter, the ombudsman announced that three of the complainants were never interrogated by the GSS, and that inquests into the other five complaints have begun.[77] In April 2004, the Deputy Attorney General said that the investigation by the GSS' ombudsman of four complaints is still underway and that HaMoked would be advised of the results.[78] One of these four complaints was S.A.'s. Despite this reassurance and despite HaMoked's repeated reminders, the update never arrived.

The military did not respond to HaMoked's communications on this subject for about one year. When the response of the Chief Military Prosecutor came in, it turned out that the military has not investigated the complaints and had no intention of doing so. In her letter, the Military Prosecutor raised various arguments in answer to all the complaints, without addressing any of them individually. One of her arguments was that the complaints could not be examined because they stretched over more than 10 years and related to dozens of soldiers who could no longer be identified.[79]

In December 2004, given the authorities' continued reluctance to investigate the complaints, HaMoked petitioned the HCJ to instruct them to do so and, if the findings so justified, prosecute the persons responsible for S.A.'s incarceration and interrogation.[80]

In this petition, HaMoked pointed out that one of the arguments the State had used to justify keeping the existence and location of Facility 1391 secret was that this did not jeopardize the wellbeing of detainees. But when the State's position is challenged by the serious allegations made by S.A. and others, the State refuses to conduct a thorough investigation and expects the public and the Court to accept its position without providing any proof.

In its petition, HaMoked listed a number of decisions made by international tribunals stipulating that where torture is suspected, the State is under a special duty to investigate. Under circumstances of this kind, the State is to launch an independent inquest, whether the victims complained or not and investigate the case thoroughly and effectively. In S.A.'s case, the State completely shunted responsibility for looking into the alleged torture, making do with a cursory check.

In its response to the petition, the State Attorney's Office reiterated their claim that no need was established which would justify launching an investigation.[81] At the same time, the State did not bother refuting some of S.A.'s arguments and ignored the fact that his accusations were corroborated by many other affidavits, which, combined, indicated a longstanding tradition of misconduct.

In June 2005, the HCJ rejected the petition filed on S.A.'s behalf and another petition HaMoked had filed, demanding to investigate the allegations of another former internee at the secret facility.[82] The Court laconically stated that the investigation carried out by the authorities was reasonable. The Court thus helped whitewash misconduct in a secret facility whose very existence it had denounced in another hearing only six months before.

Conditions of Detention

Military Temporary Detention Facilities in the West Bank

In May 2003, HaMoked petitioned the High Court of Justice (HCJ) to instruct the military to improve holding conditions in its five temporary detention facilities in the West Bank. These facilities are designed for detainees in transit before they are sent to their permanent detention facilities or released. The petition detailed the harsh physical conditions in these facilities: congestion, no access to medical services, long detention despite the designation of these facilities as temporary, unspeakable sanitary conditions, poor quality of food, violence by the soldiers, and so on.[83]

Shortly after the petition was filed and following a recommendation made by the HCJ in another one of HaMoked's petitions,[84] the Chief of Staff appointed an Advisory Committee that was to examine the physical conditions at the temporary detention facilities and submit recommendations. The Court announced it would monitor the Committee's work and the implementation of its recommendations.

HaMoked continued monitoring the conditions at the temporary facilities and filing affidavits and grievances with both the Court and the Advisory Committee. HaMoked's findings were that any changes that may have occurred thanks to the Committee's work were minor and insufficient and that during 2004, detention conditions at the temporary facilities remained unacceptable:

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77 Letter to HaMoked from Talia Sasson, head of the State Attorney's Special Operations Unit, January 29, 2004.

78 Letter to HaMoked from Malchiel Blas, Deputy Attorney General (Consultant), April 13, 2004.

79 Letter to HaMoked from Col. Einat Ron, Chief Military Prosecutor, December 18, 2004.

80 HCJ Petition 11447/04, **HaMoked v. the Attorney General**.

81 Respondents' response in HCJ Petition 11447/04, **HaMoked v. the Attorney General**, March 31, 2005.

82 Decision, HCJ Petition 11447/04, **HaMoked v. the Attorney General**.

83 HCJ Petition 3985/03, **Badawi et al. v. IDF Commander in the West Bank et al**.

84 HCJ Petition 3278/02, **HaMoked et al. v. IDF Commander in the West Bank**.

- Food was scarce and of low quality. In January 2004, there was not enough bread in four of the five facilities.

- In wintertime, detainees are exposed to the cold. Some of the structures leak and mattresses and blankets get soaked. New detainees often do not get enough blankets and veterans have to share theirs with them. Many detainees are arrested at home, wearing thin clothes that do not protect them against the cold. Supply of clothing at the detention facilities is insufficient.

- Sanitary conditions also leave much to be desired. Detainees do not get enough detergent for the floor and laundry or enough soap. In some facilities, there is no free access to toilets so detainees are forced to use containers, which stay in the crowded cells.

- Although in its petition HaMoked had warned that the medical services at the detention facilities were inadequate, the situation has not changed. Detainees still complain that even in medical emergencies it is very hard to see a doctor.

- Detainees are completely cut off from the outside. Their watches are taken upon their arrest. They have no newspapers, TV or radio sets. The military does not allow family visits or incoming or outgoing letters.

- Toward November 2004, increasingly more complaints came in that detainees were being held for extended periods of time at facilities that were designated as transit facilities. Complaints of congestion amounted as well, despite the. Committee's recommendations for improvements in these two areas.

Even though the Court limited itself to monitoring the Committee's work and the implementation of its recommendations, HaMoked was not allowed to review the Committee's findings and check that they coincide with the picture emerging from statements of detainees or whether its recommendations were indeed being carried out. Despite repeated requests, the State Attorney's Office refused to forward the Committee's reports to HaMoked. Certain details from the Committee's first two reports, submitted in July 2003 and January 2004, could be inferred from the references that the State Attorney's Office made to these reports in its response to the petition. Apparently, many of the Committee's findings confirm the complaints that detainees have lodged with HaMoked, but little has been done to fix the situation.

In February 2004, the State Attorney's Office promised to forward the Committee's third report to HaMoked. It was further agreed that if the need for additional improvements emerges from the report, according to HaMoked's understanding, another Court hearing would be scheduled. As of April 2005, the Committee has not yet submitted the third report.

In November 2004, HaMoked's attorney contacted the Chief of Staff's Advisory Committee directly, regarding the temporary detention facilities. In her letter, she specified details she had learnt from the statement of A.A., an

administrative detainee who had been kept at the Binyamin transit facility for about a month:

When A.A. entered the facility in the end of October 2004, he received only one blanket. It was very cold in the tents, and the veterans shared their blankets with him. When he was picked up, A.A. was wearing only a shirt and a thin sweater. He asked for warmer clothes to protect him against the biting cold, but did not receive any.

A.A. was locked up with 24 other detainees in a tent with only 20 mattresses. The inmates also had to share their eating utensils and food: they only received three food trays for every five people.

The structure which housed the inmates' toilets had no door, only a blanket. A door was installed the day before the Red Cross inspection, a door was finally installed. The toilet seats inside were uncovered, set very close to one another and separated only by half-height thin. There was no separation between the toilet seats and the showers, which only rarely had hot water.

Because of the fierce cold, A.A. suffered protracted pain in his leg, which had been injured in a car accident. The physician who saw him talked to him, but did not examine his leg or give him any treatment.

A.A. went on a hunger strike because of the rough conditions, and because he knew that as an administrative detainee he was entitled to better ones. When the detainee representative informed the sergeant in charge that A.A. had stopped eating, the sergeant said: "I couldn't care less." Two days later, A.A. was transferred to Ketziot military detention facility.

Excerpt from the statement of H.G., who was held at the Salem facility from 5 July, 2004, until 11 August, 2004:

"The conditions in this prison … are disastrous. Inmates are treated like animals: the officer addresses us by shouting, and there were even incidents when inmates were slapped across the face... The detainees suspect that we do not get all the food that is meant for us; cheese, for example. It is the same with the towels and underwear that the [Red] Cross gets us. In my own eyes I saw soldiers opening Red Cross packages, taking out towels, taking them to the shower and returning with them to their rooms.

"In the morning, we get one hour for the toilet, shower, laundry, dishwashing etc., for all 50 of us. There are two toilet stalls and two showers. Only three inmates are allowed to leave the cell at the same time...

"There is a real food shortage – we are hungry all the time. The food we get in the morning includes only soft cheese for seven people and some bread. They give us bread every other day, five or six loaves. In other words, one loaf for seven people... Never during my detention was I as hungry as I was at Salem. I think I must have lost 10 kilograms... Ketziot and Ofer are rough. I was at Ofer for a while and transferred to Ketziot three days ago. But these facilities are nowhere near as bad as Salem, where the conditions are completely inhuman."

(Affidavit made for HCJ Petition 3985/03, **Badawi et al. v. IDF Commander in the West Bank et al**.)

Conditions at the Ofer Detention Facility

In March 2003, HaMoked filed a motion under the Contempt of Court Ordinance, after the military had failed to comply with the instructions it was given by the HCJ in HaMoked's petition concerning the conditions at Ofer Military Prison. The HCJ had instructed the military to provide the inmates with books, games and newspapers, regardless of outside contributions.[85]

In its responses to the March motion and subsequent motions by HaMoked, the military announced that as of April 2003, it would provide inmates with newspapers – one copy for every 20 prisoners, this on top of newspapers supplied by outside contributors. The military named eight Arabic, Hebrew and English language newspapers and magazines that would be allowed. Additionally, the military said it would allow books, except books about chemistry and physics, and that games were already being provided.

During 2004, HaMoked monitored the military's compliance with HCJ's and with its own promises. While the supply of newspapers has improved, the military has not complied with its own commitment and only provides one copy for every 30 inmates, rather than for every 20. It also provides only two of the eight publications it had named, and only in Hebrew. Detainees do receive other newspapers, including one in Arabic, but only via donations. As noted, under the Court's instructions and the military's own promises, the military is to supply the required amount of newspapers without relying on outside help.

While detainees have indeed received games, as the army maintains, these were supplied by the Red Cross exclusively, not by the prison authorities. Also, the military does not replace these games once they wear out, nor does it provide conditions that would enable inmates to maintain them longer.

Although the military acknowledges its duty to supply inmates with books, it has refrained from doing so. All the books at Ofer Prison were brought in by families and donors such as the city of Al Bireh and the Red Cross. The military has not even complied with its own obligation to let in books (other than those on chemistry and physics) from outside donors. In July 2004, 250 of the 500 books and magazines HaMoked sent to the prisoners at Ofer were returned; none of these was about chemistry or physics. The returned publications were said to be "inflammatory". These were books about Israeli politics and social affairs, as well as all of B'Tselem's reports and joint reports published by HaMoked and B'Tselem, dealing with violation of human rights of Palestinians in the Territories. Only in March 2005, after direct communications with a new Prison Commander, did HaMoked manage to get the rejected reports and books in.

In addition to this monitoring effort, HaMoked also cautioned the military about the poor sanitary conditions at Ofer Prison and about the fact that at least in the last seven months of 2004, occupancy exceeded capacity by far.

HaMoked's arguments concerning the supply of books, newspapers, games, sanitary conditions and overcrowding, were confirmed, in part, by the Chief of Staff's Advisory Committee for the Ofer Facility. This Committee was set up following the HCJ's recommendation in the same petition in which it enumerated

the duties of the military toward detainees at Ofer Prison.[86] In addition to the findings mentioned above, the Committee criticized the serious restrictions that the General Security Service imposed on family visits at Ofer Prison and the fact that the prison authorities do not allow any physical contact between inmates and their visiting relatives, including young children. The Committee also recommended extensive improvements in sanitary and medical services.[87] In a meeting between the Prison Commander and an attorney for HaMoked, the Commander promised to improve these services. HaMoked is monitoring implementation.

Detainee Tracing

Under International Law detainees and prisoners are entitled to rights, such as adequate prison conditions, legal representation and fair trial. Obviously, detainees' rights can be upheld only if their arrest and place of detention are known. This way, relatives, attorneys, or human rights organizations can lend the help necessary. Military legislation also provides that the army must deliver notice regarding a person's arrest and whereabouts "without delay".[88] In reality, however, the military gives the families of Palestinian detainees no notice at all.

Given this, and in the absence of any official agency to which the relatives of detainees can turn, one of the most important services HaMoked provides is tracing detainees.

In 2004, HaMoked received 5,484 new requests to trace detainees. Compared to previous years, there has been considerable improvement in the military's documentation and follow-up of the whereabouts of detainees and prisoners. While in the previous two years HaMoked filed 43 habeas corpus petitions (33 in 2003 and 10 in 2002),[89] in 2004 there was no need for court intervention in tracing detainees.

According to military procedures, information about the whereabouts of detainees and prisoners is to be provided to HaMoked by a control center which operates out of the Military Police headquarters. The control center collects information about the location of detainees from all the agencies involved: the military, the Prison Service and the police.

Although by and large, the information provided by the control center is reliable, sometimes it is unable to trace a person. In these instances, the families do not know where their loved ones are being held for many days, and cannot lend them any assistance. When

85 HCJ Petition 3278/02, **HaMoked et al. v. IDF Commander in the West Bank**.

86 Ibid.

87 The Chief of Staff's Advisory Committee for the Ofer Facility, **Periodic Report**, July 29, 2004.

88 Order Regarding Security Procedures (Judea and Samarea) (No. 378), 1970, Article 78b, Amendment 53.

89 HaMoked, **Annual Report 2003**, pp. 44-45, **Annual Report 2002**, pp. 69-75, **Semi-Annual Report January – June 2002**, pp. 9-10.

this happens, HaMoked sometimes contacts the forces on the ground directly.

On June 20, 2004, M.B. asked HaMoked to retrace his son. The son, A.B., was arrested two months earlier, and HaMoked's inquiries yielded that he was being held at the police station at the Russian Compound in Jerusalem. Following the father's request and HaMoked's subsequent probe, the control center reported that A.B. was released on May 17 from Ohalei Kedar Prison. HaMoked forwarded this information to A.B.'s parents, who said that their son had not been released and to the best of their knowledge had been kept all this time at the Russian Compound. HaMoked contacted the police station directly, and found out that A.B. had been transferred to Ohalei Kedar Prison on June 20. HaMoked confirmed this with the Prison, and relayed the information to the family. **(Tracing 32209)**

S.A. was arrested on March 4, 2004. Three days later, his family asked HaMoked to trace him. HaMoked found out that S.A. was being held at the Binyamin temporary holding facility. A month later HaMoked discovered that S.A. was no longer there, and asked the control center to retrace him. The control center said that S.A. was released on April 2, 2004. However, the family said that he never came home, and that they had been told he was incarcerated somewhere in the Negev, but had not been given any specific details. HaMoked contacted the control center again, which this time replied that S.A. had been transferred to Ket'ziot Prison. **(Tracing 31309)**

Violence Committed by Security Forces and Settlers

"Everyone has the right to life, liberty and security of person."

Universal Declaration of Human Rights, Article 3

The Law Denying Palestinians Compensation

In 2004, HaMoked focused its activity regarding violence on the new reality created by the fourth amendment to the Law of Civil Wrongs (Liability of the State) 1952 (hereinafter referred to as the Civil Wrongs Law). This amendment significantly curtailed the ability of Palestinians who suffered damages at the hands of Israel's security forces to claim compensation. The amendment became effective in July 2002, but, as explained below, its implications were first felt in 2004.

The idea of denying Palestinians the right to claim damages for injuries inflicted by Israel was not born in this intifada. The concept has been mulled over by Israeli governments since the mid-1990's. The bill designed to deny Palestinians compensation for damages caused by the security forces in the Occupied Territories (referring here to the West Bank and Gaza Strip) passed the first reading at the Knesset (the first of three before a bill passes into law) in 1997. This bill was put on hold for a few years, until in 2001 the cabinet resumed the legislative process. This time, the process was followed through, and the fourth amendment to the Civil Wrongs Law became effective on August 1, 2002. The campaign led by human rights organizations, including HaMoked, apparently led to some minor revisions in the final language, but failed in completely

preventing this violation of Palestinian rights.

The amendment, which relates exclusively to acts carried out in the West Bank and Gaza Strip restricts the right to compensation in two main ways: First, it expands the immunity granted to the State against payment of compensation for damages caused by "wartime action." Second, it lays down numerous requirements, restrictions and changes. These reduce the accessibility to the judicial system of Palestinians injured at the hands of security forces and limits the ability to manage their claims. For example, claims can only be filed subject to prior notice given to the Ministry of Defense; the burden of evidence is shifted from the State to the plaintiffs even in cases where otherwise the burden would lie with the State; and the statute of limitations is not the standard seven years but only two. These provisions do not exist in relation to acts performed on Israeli territory.

Wartime Action

The original language of the Civil Wrongs Law exempted Israel from paying compensation for damages caused by the State in the course of "wartime action." The Court generally gave this phrase a narrow interpretation, limiting it to unquestionable cases of wartime action, such as "deployment of forces in advance of battle, attacks in combat, exchange of fire."[90] A short time before the amendment was passed, the Supreme Court repeated this consistent reading, under which the basic question was the nature of the action rather than whether it was performed in the course of or for the purposes of the war. Each action must be examined individually, weighing "all the circumstances, the object of the action, the location, the duration of the activity, the identity of the operating force … the threat that preceded the action and the damage that it was likely to create ... the force and size of the unit … and the duration of the incident."[91] Under this interpretation many military acts in the Territories constitute law enforcement rather than wartime actions. Although this decision attempts to demarcate the boundaries of State immunity according to a judicial policy that would adequately reflect the principles underlying the law of torts, the cabinet and the Knesset decided to pass into law an even broader definition of the term "wartime action", to include "…any action of combating terror, hostile actions or insurrection, and also an action as stated that is intended to prevent terror, hostile acts and insurrection committed in circumstances of danger to life or limb."[92]

The new definition classifies policing actions that have nothing to do with combat, such as suppressing demonstrations against the Israeli occupation, as wartime action. Furthermore, the law's previous language was sufficient to relieve the State from compensating for damages caused by soldiers and policemen who acted in compliance with the law and without negligence. The amended law, on the other hand, exempts the State from compensation even when its representatives operated in violation of the law, negligently or with malice – as long as their acts fall under the definition of wartime action. Israel treats almost all of its activity in the Occupied Territories and much of its activity vis-à-vis Palestinians inside Israel as "acts of combating terror."

Duty of Prior Notice

The amended Civil Wrongs Law requires victims to submit written notice to the Ministry of Defense within 60 days of the incident that caused the alleged damage. Without such notice, the victim cannot sue for damages.[93] Therefore, even if the authorities conducted their own investigation and even if the wrongdoers are convicted under criminal law, if the victim did not file notice within two months of the injury, he is barred from suing for compensation. The regulations laying down the notice procedure stipulate that if any detail is omitted from the form, the notice could be disqualified.[94] Any other method of reporting (such as by filing a complaint with the police) does not constitute notice for the purposes of this law.

Period of Limitations

One of the main changes in the amendment was that it shortened the statute of limitations as compared to regular tort claims. Normally, victims can sue for damages within seven years from the incident in which the alleged damage was caused. The amendment reduces this timeframe to only two years if the wrongdoer is the security forces and the incident takes place in the occupied territories.[95]

This period of limitations is unreasonable on several grounds. First, in many cases, the extent of the damage cannot be evaluated or proven within two years. The amendment forces many victims to sue for amounts that do not necessarily reflect their full actual damage. Second, where the damage is caused by security forces, most of the information required for preparing a tort claim is in the hands of the State. The victim has no way of knowing the identity of the soldiers or policemen who inflicted the damage, whether they were negligent or if they had violated their orders. To prove these facts, the victim needs the material from the investigation carried out by the authorities. HaMoked's experience shows that even when such investigations are conducted, they take a very long time. It takes even longer for the authorities to hand over the investigation material, if this is done at all. In most cases, the entire process takes more than two years. With the shortened period of limitations, victims cannot wait for the outcome of such investigations, and have to file their claims without this material – reducing their chances of winning.

Burden of Proof

The general rule in tort claims is that the plaintiff must prove his damages. But where the injury is the result of something that was in the absolute control of the wrongdoer, the circumstances point to negligence on the wrongdoer's part and the victim has no way of telling what exactly caused the damage, the burden of proof is shifted to the wrongdoer. However, the amendment provides that this rule does not apply to the actions of the security forces

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90 Civil Appeal 623/83 **Levy v. State of Israel**, Court Decisions [PD] 30(1), 477, 479.

91 Civil Appeal 5964/92 **Bani Uda et al. v. State of Israel**, Court Decisions [PD] 46(4) 1.

92 Law of Civil Wrongs (Liability of the State) 1952, Article 1.

93 Ibid, Article 5A(2). The Court may extend this timeframe under certain circumstances and accept notices submitted after the deadline, if there are circumstances justifying the delay.

94 Civil Wrongs Regulations (Liability of the State) (Written Notice of Damages) 2003, Articles 2-4.

95 Law of Civil Wrongs (Liability of the State) 1952, Article 5A(4).

in the Territories, except in special cases and at the discretion of the Court. This means that Palestinians who are injured by the security forces are required to present evidence they have no way of obtaining, since, as noted, the information relating to the operations of the security forces is in the hands of the State, and plaintiffs have no access to it. The only way potential claimants can obtain this information is if the authorities conduct their own inquests and forward the findings.

Shifting the burden of proof creates an absurd situation. Victims are completely dependant the State's investigation of its own wrongdoing in order to get compensation from none other than the State itself. As noted, the authorities, and the military in particular, tend not to investigate injuries to Palestinian property or person, and even when they do, these investigations take very long. The amendment encourages this behavior, because it not only helps grant soldiers and policemen who violate the law immunity against criminal penalties, but also assists them and the agencies that sent them to evade compensating for the damages they have caused.

Tackling Reduced Limitations

The Knesset has stipulated that the reduction of the statute of limitations would apply retroactively. This means that limitations run out either seven years after the incident or two years after the amendment was passed, namely, in July 2004 – whichever comes first.

Therefore, in July 2004 limitations were about to run out for more than 100 cases dealing with violence and damage to body and/or property handled by HaMoked. Many of these incidents occurred before the amendment and some took place shortly after it was passed, but the period of limitations was already running out. In many cases, the period ran out as HaMoked was waiting for a response from the authorities concerning their investigations.

Despite the enormous hurdles that the amendment imposed for damage claims, HaMoked had prepared in order to be able to file suit in these cases before the statue of limitations ran out. In 2004, HaMoked's attorneys, as well as outside counsel that were retained for this purpose, filed 94 tort claims. To compare, the number in previous years ranged between 6 and 35. HaMoked's claims dealt with assault, beatings, degrading treatment, shootings, pillage, vandalism, false imprisonment and more. They provide an overview of the diverse ways in which Israeli security forces harm Palestinians.

On February 25, 2002, at around 1 AM, M.H., who was then in her ninth month, felt fierce contractions. M.H., her husband and her father-in-law drove from their home in the village of Zeita Jamma'in toward the Rafidya Hospital in Nablus. Huwwara checkpoint separates the village from Nablus. Around three meters from the checkpoint, M.H.'s husband stopped the car for a security check. The three soldiers manning

the checkpoint searched the car and its passengers, instructing M.H. to lift her upper garment to prove she was really pregnant.

After a long delay, the soldiers allowed the family to carry on. M.H.'s husband continued driving slowly toward a ditch in the main road, around 300 meters after the checkpoint. After crossing the ditch, the passengers heard a few gun shots, followed by intense fire coming from further up the road. M.H. was hit. Her husband took a bullet to the neck. His father was also injured.

When the shooting stopped, M.H. saw soldiers surrounding the car, aiming their guns at her. They told her there were firearms in the car and ordered her to get out and take her clothes off. M.H. removed her upper garment, remaining in a shirt and pants. The soldiers ordered her to remove these as well, all the while aiming their guns at her and firing in her vicinity. M.H. remained in her undergarments. She asked the soldiers to cover her several times, but they did not. Only at around 4 AM did a Palestinian ambulance arrive and take M.H., her husband and her father-in-law to the hospital. M.H. did not make it to the delivery room and gave birth to a healthy baby girl in the hospital elevator. Her father-in-law was seriously injured. Her husband was killed.

The military ignored demands to investigate this incident for a year and a half. Only in August 2003 did the Chief Military Prosecutor notify B'Tselem that a decision has been made not to start an inquiry, as the soldiers acted appropriately and complied with the rules of engagement.

In November 2003, M.H. approached HaMoked for help. The military repeated its notice that there were no grounds for the military police to launch an investigation, even though it admitted that the soldiers had killed a man and injured two others. In a letter to HaMoked, the military said that the family was shot after crossing an army blockade and failing to respond to the soldiers' instructions to stop. The military further alleged that the passengers were evacuated after receiving treatment on site, and after the soldiers had made sure that this was not a car bomb.[96] In its letter, the military made no mention of the fact that only minutes before the shooting the family crossed a checkpoint where it was inspected by soldiers, nor of the fact that two hours had passed before they were evacuated after the shooting. No explanation for the soldiers' mistreatment of M.H. was offered either.

In May 2004, HaMoked filed for damages on M.H.'s behalf. In the statement of defense that was filed around six months later, the State repeated the army's version, adding that there was a car-bomb alert at around the same time when the victims' car passed the checkpoint. The State excused the soldiers' mistreatment of M.H. and the fact that they had left her undressed for around two hours, by saying that "all their actions were designed to make sure that the passengers were not suicide bombers or terrorists…" Now the State is arguing that this was a wartime action and that the claim should therefore be rejected.

The case is being adjudicated by the Magistrate's Court in Nazareth. **(Case 27856, Civil Case (Nazareth) 4090/04)**

[96] Letter to HaMoked from Lt. Col. Liron Lieberman, Central Command Advocate, December 30, 2003.

The military incursion into Palestinian cities in the spring of 2002 ("Operation Defensive Shield") set new records of brutality. Since the incursion predated the amendment by several months only, the period of limitations on all the cases of violence during the invasion ran out in July 2004. Some of the claims HaMoked filed when preparing for this date related to incidents that took place in "Operation Defensive Shield", including damage caused by soldiers to Palestinian-owned businesses.

H.Z. was the owner of El Karameh, a company that provided computer services and operated an internet café. Its offices were on the sixth floor of an office building in central Ramallah. On March 29, 2002, the IDF invaded the city as part of "Operation Defensive Shield." The military seized the building, surrounded it with barbed wire and prevented access to it for 23 days.

When H.Z. entered what used to be his internet cafe, he discovered that the soldiers had put a hole in one of the walls in the part of the building where his computer company used to be, and vandalized everything in the place: computers, computer accessories, office furniture and supplies, cafeteria equipment and supplies, and the TV corner were all damaged beyond use. The soldiers also erased the memory in the computer system. The business that H.Z. had established and on which he had made his living, was in total ruin.

On October 29, 2002, HaMoked applied to the Military Advocate for the Central Command, demanding an investigation. More than a year and a half later, the Advocate answered that no investigation would be launched, because "in the course of Operation Defensive Shield, IDF soldiers searched for arms. These searches sometimes caused damage to property, wherever the soldiers had to break down doors or open walls behind which arms and documents were concealed. Since the damage caused to some of the property is the outcome of the combat activity that was underway in the city at the time and since hundreds of soldiers were in the area, there is no way of tracing the soldiers who were allegedly involved in this specific incident."[97] In July 2004, HaMoked filed a claim for the damage caused to H.Z.'s property, estimated in hundreds of thousands of shekels. The State has not yet submitted its defense. **(Case 23021, Civil Case (Nazareth) 5470/04)**

HaMoked also files action where the physical or financial damage is not that great. These cases best reflect the authorities' disregard for Palestinians. In claims of this kind, HaMoked advocates that human dignity in and of itself is a basic right whose violation entitles the victim to compensation just as much as any injury to person or property.

On the night of August 7, 2001, G.M. and her husband, who are residents of the Old City of Jerusalem, were abused, threatened, beaten and humiliated by a Border Police Officer. The incident began when G.M. came across a flying checkpoint posted by the Border Police near the Mar Elias Monastery in Jerusalem. G.M. stopped her car, as instructed, and presented her ID. When she did not play along with one of the policemen who attempted to start

a conversation with her about her car, he became abusive and ordered her to wait on the roadside. G.M. asked why she was being delayed, and asked the officers to give her their names. The officer who had ordered her to wait refused at first, and when he finally gave her a name, G.M. suspected this was not his true name and asked him to show his ID. The officer then started cursing her. Waiving his fist, he yelled that had she not been a woman he would beat her. Screaming and cursing, the officer gave G.M. her ID back and ordered her to leave.

G.M. and her husband went to two police stations in Jerusalem in order to file a complaint, but were turned down in both. A short while after arriving at the first police station, the same officer who had threatened G.M. at the checkpoint also showed up and now threatened her husband as well. He also turned up at the second police station where they tried to lodge a complaint. The couple therefore asked for a police escort on their way home, but the officers at the station refused.

The next day, the couple filed a complaint with the Internal Affairs Department of the Police (IA). Three weeks later, the IA commander notified HaMoked that he had decided, "because of issues of public interest, not to pursue the investigation, as the matter is not suitable for criminal indictment."[98] The complaint was forwarded to the Ombudsman of the Israeli Police. HaMoked's appeal on the decision of the IA commander to close the case was denied, and the Ombudsman closed the file after most of the policemen who were questioned, said they could not recall the incident.

In February 2004, HaMoked filed for damages against the officer and against the State, due to its liability for his actions and due to the fact that it neglected to investigate.

In its statement of defense, the State denied G.M.'s allegations and held that she. had provoked the officers. Only thanks to the legal proceeding did the plaintiff and HaMoked find out that the officer had been reprimanded in a police disciplinary action. But the documents that were disclosed indicated that the disciplinary proceeding was inadequately managed.

Negotiations were held and a settlement reached, under which the State paid G.M. NIS 10,000 in compensation. **(Case 16222, Civil Case (Jerusalem) 3652/04)**

As this report was being compiled, the Knesset's Constitution, Law and Justice Committee was deliberating another revision to the Civil Wrongs Law. The proposed amendment would completely deny Palestinians any ability to claim damages that Israel causes in its actions in the Territories (namely, the West Bank and Gaza Strip), even if these are not wartime actions. If the amendment is passed, Palestinians would not be allowed to file claim for certain incidents occurring inside Israel either. The amended law would also apply to claims that have already been filed but in which the evidence stage has not yet begun. Claims that stood some chance of success despite the serious

97 Letter to HaMoked from Lt. Col. Liron Lieberman, Central Command Advocate, May 13, 2004.

98 Letter to HaMoked from Eran Shendar, Head of the Internal Affairs Department, August 26, 2001.

restrictions of the fourth amendment of the Civil Wrongs Law, are likely to fail if the new amendment is passed. HaMoked and other human rights organizations are campaigning to prevent this from happening.

Obstacles to Palestinian Claims

As this report is being written, the fifth amendment to the Civil Wrongs Law has yet to be approved, and the implications of the fourth on Palestinian claims have yet to be fully unraveled. Except for two cases that ended in settlement, in most of the cases HaMoked filed in preparation for the expiration of the statute of limitations, the courts have not started hearing evidence yet. It is therefore hard to tell how the courts will interpret the fourth amendment's instruction regarding the burden of proof. Additionally, the courts have yet to decide whether actions challenged by HaMoked's claims meet the its expanded definition of wartime actions.

However, the State's conduct in response to the numerous claims filed by HaMoked in 2004, indicates that it is not waiting to see the effects of the fourth amendment nor for the fifth to be passed . It is taking other steps to thwart Palestinian lawsuits.

The State Attorney's Office has increased the amount of cash collateral that plaintiffs must submit in case their claims are denied and they are ordered to cover the trial costs. Plaintiffs who cannot afford such collateral, give up before they even start.

The State delays the beginning of the legal proceeding with repeated motions to postpone the deadline for submitting a statement of defense. In many cases, the State only filed a statement of defense six months or more after the timeframe stipulated by law, which is 30 days from submission of the statement of claim. The State's most frequent excuse is the excessive case load due to the "flood" of tort claims by Palestinians. The State completely ignores the fact that it caused this flood by applying the reduced statute of limitations retroactively. The State should have foreseen that many claimants would file suit in or around July 2004, before their period of limitations runs out, and should have prepared accordingly.

In some of the claims HaMoked has filed, the State filed third party action[99] against Palestinians who are suspected of dispatching others to attack Israelis. These attacks are the purported reason for the military action in which the damage occurred. In some cases, the State Attorney's Office tried to file third party action against the plaintiffs themselves, arguing that they were responsible for the damage they had suffered. The State used this tactic, for example, in the case of a woman whose home was destroyed by the military[100] and in a case in which a woman and her children were beaten by Border Police Officers.

These actions not only stretch out the proceedings, but also obfuscate reality. When the State files third party action against a plaintiff it is turning victim into offender. By naming those suspected of involvement in

attacks on Israelis as defendants, the State is trying to hold Palestinians who have injured Israelis liable not only for their own actions but also for damage inflicted upon other Palestinians by its own soldiers and police officers. The claim that a specific terror attack led to a specific military operation does not indicate any causal relationship between this attack and actions performed by soldiers during the military operation. In most of these cases, the Court has yet to decide whether to accept the third party action.

Another obstacle Israel puts in the way of Palestinian plaintiffs is barring some of them from entering Israel for the purpose of managing their claims, under the pretext of security related issues. Claimants need to enter Israel for various purposes. For example, those suing for personal damages have to submit a medical opinion from an Israeli expert and for this purpose must enter Israel to be examined. Also, they must enter Israel to testify in court. The State has defined a new procedure, under which a Palestinian claimant who is barred from entering on security-related grounds, will be allowed into the country for matters relating to his or her claim only if escorted by a private security company. The procedure requires two armed guards to collect the claimant at the nearest District Coordination Office (DCO) in the company's vehicle, stay attached throughout the day and then return the claimant to the DCO.[101]

HaMoked's inquiry has shown that every such day would cost around NIS 1,600. Most residents of the Territories would find it almost impossible to raise such an amount for even one day, let alone several days, as is often necessary when managing a claim. Many victims are deterred from filing claims to begin with, because of the high costs involved, such as the collateral and court fees. The requirement to pay a security company is another attempt to deter Palestinians from suing the State.

The State's use of measures that would deter or prevent Palestinians, because of economic constraints, from suing it for damages, constitutes a serious violation of the right to accessibility to the legal system. On top of this injury to the basic rights of Palestinians, the State's move is unscrupulous as Israel does not allow Palestinians to sue it in Palestinian courts. Israel creates a situation where it injures Palestinians, forces them to sue for their damages in Israeli courts, and uses its power to stop them from entering Israel to proceed with these claims.

The new procedure came to light in the course of one of the tort claims HaMoked filed in preparation for the expiration of limitations.

In April 2004, R.A. sued the State of Israel, claiming damages for an injury by Israeli gunfire. Three years earlier, when he was 14, R.A. was injured by soldiers' gunfire when playing soccer in school, at the Al Fawwar Refugee Camp. The statement of claim listed the injuries he sustained: "Serious injury to the chest and left lung and complete paralysis of his left arm and hand ... [R.A.] is permanently disabled because of his chest and

99 Whether by filing third party action or by adding defendants.

100 See chapter on House Demolitions, p. 96.

101 Additional response for the respondent, HCJ Petition 11858/04, **Alkhatib v. Military Commander in the West Bank**, April 1, 2005.

lung injury and the paralysis of his left arm and hand. [R.A.] suffers and will always suffer serious pain and requires medical, pharmaceutical and psychological treatment for the rest of his life."[102]

The Court instructed R.A. to file a medical opinion. He scheduled an appointment to see an expert physician in Jerusalem on November 21, 2004. On November 8, HaMoked approached the Legal Advisor for the West Bank, asking to allow R.A. and his mother into the city on that date. The Legal Advisor approved the mother's entry, but said R.A. could not enter Jerusalem because of security reasons. No further explanation was provided. Unable to enter Israel, R.A. would not be able to provide a medical opinion, which would place the entire claim in jeopardy.

In December 2004, HaMoked petitioned the High Court of Justice on R.A.'s behalf,[103] arguing that the prohibition on R.A.'s entry into Israel to get a medical opinion seriously violated his right to relief for his injury and to access to the courts. HaMoked explained the ongoing injustice in R.A.'s treatment: "Not only was he seriously injured, an injury that still causes him great suffering; not only was there no speedy investigation but one that took three years to conclude; not only were the offenders not brought to justice; not only was he made to file his claim in haste, because of the changed period of limitations – now the same agencies that are allegedly responsible for his serious injury are trying to prevent him from following the only legal avenue he still has – managing his claim."[104]

In response, the State said it would let R.A. into Israel for his medical examination only if he was escorted by private security guards. HaMoked later found out that this was not a one-time requirement and that any Palestinian litigant whom the General Security Service proclaims is barred from entering Israel, would have to pay for his security guards whenever he wishes to enter Israel for the purposes of his claim.[105]

HaMoked adamantly objected to this requirement. The first hearing in this petition was held in April 2005. The State offered, ex gratia, to cover half the cost of R.A.'s security for his medical appointment. In its offer, the State completely ignored the issues of principle in the procedure it defined.[106] But the offer did not even solve R.A.'s specific problem. The State's offer was for the one day of his medical appointment, while R.A. is likely to have to enter Israel again – and would have to cover the entire cost of security on his own.

The Court instructed the State to submit a response relating to the legal arguments against the procedure, and set another hearing for October 2005. Meanwhile, R.A.'s claim is "stuck" as he is still unable to enter Israel in order to obtain a medical opinion. **(Case 16754, Civil Case (Jerusalem) 5418/04)**

Violence Committed by Settlers

Violence at the hand of Israel's security forces is not the only threat with which Palestinians from the Territories are faced. Settler violence is commonplace and attacks on Palestinians have often led to serious property damages, physical injury, and even death.[107] These attacks can often be predicted. Many of them occur during the olive harvest, next to certain settlements and after Palestinian attacks on settlers.[108]

As the occupying force, Israel is responsible for the safety and security of the Palestinian population in the Territories, and has the duty of protecting it against threats and violence. Yet, while Israel does not hesitate to take action against Palestinians, it seems paralyzed when required to protect them from rampant settlers. Despite the extent of this phenomenon and the fact that it is well known, the authorities do all but nothing to prevent it. Security forces do not make any preparations to thwart settler attacks in sensitive times and areas. Furthermore, even once attacks are underway and the security forces are called in, they are in no hurry to lend a hand to the attacked Palestinians. In many cases, security forces show up a long time after they are called, and after most of the damage has already been done. Sometimes, members of the security forces are even present during settler attacks and do nothing to exercise their duty to protect the victims.

The agencies charged with enforcing the law do not comply with their duty to bring the offenders to justice. HaMoked's experience has shown that the police fail to perform adequately when dealing with Palestinian complaints of settler attacks. Investigation files disappear, investigations are slow and unprofessional, the police do not make any effort to collect evidence and the investigation often ends without any suspects or, even if there are suspects, without any steps being taken against them. Even attackers who are tried often get away with light sentences.

This method of operation has greatly contributed to the culture of lawlessness that has set root in the Territories in the years of occupation and settlement activity. The impotence of the security forces sends settlers the message that they may go on abusing Palestinians. The settlers know they can steal, hit, throw stones even shoot at Palestinians and go unscathed.

HaMoked works with victims of settler attacks, starting with the police investigation and the steps taken against the offenders, and through to tort claims against them and the authorities in case the latter were negligent in preventing or investigating the incident. Such tort claims are among the only ways by which the attackers and the

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102 Civil Case (Jerusalem) 5418/04, **Alkhatib v. the State of Israel**.

103 HCJ Petition 11858/04, **Alkhatib v. Military Commander in the West Bank**.

104 Ibid.

105 Ibid, Respondent's preliminary response, January 20, 2005.

106 Ibid, Respondent's response, May 3, 2005.

107 According to B'Tselem, during the second intifada, Israeli civilians killed 35 Palestinian civilians in the Territories. www.btselem.org. Last checked on June 20, 2005.

108 For example: B'Tselem, **Foreseen but not Prevented: The Performance of Law Enforcement Authorities in Responding to Settler Attacks on Olive Harvesters,** November 2002; **Free Rein - Vigilante Settlers and Israel's Non-Enforcement of the Law**, October 2001.

State can be forced to account for their actions.

In the afternoon of May 11, 2002, B.S., his wife A.S. and his sister-in-law K.S. were farming the family land near their village of Immatin. Suddenly, three settlers appeared, one of them carrying a gun. They came from the direction of the nearby settlement of Havat Gilad Zer and threw stones at the family. When the three farmers ran for their lives, the settlers chased them. The armed settler pointed his gun at the family and fired several shots. A.S. was injured in her arm. Stones hit her in the back and head. Her husband and sister, who had been injured in her leg, carried A.S., running, to the family car that was parked nearby. At the hospital, A.S. was found to suffer from trauma to her head and back, and an injury to her left arm. Later on, an expert said the arm injury has caused her permanent disability.

A military and police force that was called to the site, took B.S. to Havat Gilad Zer to search for the attackers. At the settlement, B.S. identified the shooter and pointed him out. The settler, A.C., refused to let the officers into his trailer to search it. The duty officer instructed the police officer that was with them not to exercise his authority to enter the trailer and search it, and to make do with the details the settler agreed to provide.

In the two days after the incident, the police collected testimonies from the family. Despite their testimonies and the certain identification, the shooter was only arrested three weeks after the incident. The judge released him on bail. The police never notified the victims that the case had been closed. Only in December 2003, nearly a year and half after the attack and only after HaMoked's intervention, did the police let the family know that the case had been closed due to insufficient evidence.

In July 2004, HaMoked filed suit against A.C., the shooter, and against the police for its sloppy investigation. The case is still pending in the Magistrate's Court in Jerusalem. **(Case 30044, Civil Case (Jerusalem) 9179/04)**

The most sensitive time, which always requires special preparedness by security forces, is the olive harvest. Every year, settlers attack Palestinians on dozens of separate occasions, especially in the olive groves nearer to settlements. Even though the authorities know when the harvest season is and where the attacks usually take place, they make no preparation, leaving the road open for settlers to injure Palestinian farmers and vandalize their property.

On October 21, 2002, settlers attacked olive harvesters from the village of Turmus'ayya. The assault took place in the morning, when several farmers from the village were harvesting olives at Al Daharat, near the settlement of Shvut Rachel.

Because of the numerous settler attacks on Palestinians in this area, especially during the harvest, and because three days earlier settlers had already attacked harvesters in the vicinity, the villagers spoke with the military ahead of time, to make sure that the army would provide some protection. But the army did not show up. When the farmers reached the olive grove, they noticed suspicious

settler movement. They called the army and the police two more times, but no one came.

Later, a group of armed settlers came to the olive grove. The settlers broke up and started walking among the harvesters. The farmers again called the police, which this time simply slammed the phone. The settlers launched at the harvesters, setting fire to seven cars parked nearby that belonged to them. Other settlers stopped the owners of these cars from approaching and salvaging their property.

Finally, a police and army force arrived. The soldiers deployed next to Shvut Rachel and instructed the Palestinian harvesters to leave within five minutes. The owners of the torched cars went with the police officers to the station, to lodge complaints. On their way, when passing by Shvut Rachel, they recognized a few of their attackers. They tried telling this to the officer who was with them, but he silenced them.

A.K.'s car was one of those that were torched. He filed a complaint, together with his friends, on the day of the attack. Having received no word on the investigation for five months, he turned to HaMoked for help. HaMoked contacted the Binyamin Police Station asking for an update on the investigation. It took the police around six months to trace the file, sending HaMoked back and forth between Binyamin, the Jerusalem District Claims Unit and the State Attorney's Office for the Jerusalem District, which all gave conflicting information as to the whereabouts and status of the case.

Around three months after HaMoked's first inquiry, the police announced that the case against all suspects had been closed because of insufficient evidence. A month later, HaMoked was informed that the case was returned to the State Attorney's Office, with a single suspect. Only in September 2003 was HaMoked given the name of the attorney handling the case for the State Attorney's Office. HaMoked contacted her several times in the subsequent year, and was repeatedly told that the case was still being processed. The last of these responses was on October 12, 2004, almost two years after the incident and eight days before the period of limitations on the actions of the police and military ran out. A.K. and his brother, who owned the car, had no choice but to file the suit without the investigation material. HaMoked filed the action on their behalf on October 20, 2004.

In its statement of defense, the State maintains its actions were reasonable and denies any liability in this incident. Instead, the State assigns the responsibility to three settlers against whom it has filed third party action. More than two years after the incident, the State Attorney's Office has not yet decided whether to indict these three settlers. **(Case 25615, Civil Case (Jerusalem) 11714/04)**

Jerusalem Residency

"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."

Universal Declaration of Human Rights, Article 16 (1)

In 1967, Israel annexed East Jerusalem , in violation of international law. Those who were living there during the census that was carried out immediately after annexation were granted the status of permanent residents. Permanent residents may live and work in Israel, enjoy freedom of movement inside its territory and receive all social benefits to which citizens are entitled, but their status is different from that of citizens. The status of permanent residency can be revoked by the Minister of the Interior. Permanent residents are barred from voting or being elected for the Knesset (but may vote in municipal elections); they may not hold any positions in the administration; if they leave the country, they might not be allowed back in, and if they stay away for more than seven years or become residents or citizens of another state, their status as permanent residents may be revoked.

Ever since the illegal annexation of East Jerusalem, Israel has continually worked to entrench its hold on the city by creating a clear Jewish majority. The inferior legal status of the residents of East Jerusalem is one of the tools for doing so. The Interior Ministry frequently exercises its authority to revoke the residency of persons who spend a long time outside of Israel. These persons are then stripped of the rights that the residency status awarded them. Yet, even residents of Jerusalem who have not lost their status cannot take these rights for granted. In order to exercise them, they have to jump through endless bureaucratic hoops.[109]

In addition to harming those who are

already residents, Israel goes to great lengths to minimize the number of Palestinians who become residents of Jerusalem. One of the methods employed for doing so is foot-dragging by the Interior Ministry branch in East Jerusalem. Another is the obfuscation, by the same bureau, of the procedures for registering children of residents and granting legal status to adults.

The effort to maintain a Jewish majority in the city reached new heights with the Law of Nationality and Entry into Israel, which stopped the unification of residents with their spouses from the West Bank and Gaza Strip. This law also injures Israeli citizens who marry residents of the Territories, but because of their fragile status, residents, and especially their children, are hit harder.

The Law of Nationality and Entry into Israel[110]

At the end of July 2004, the Knesset extended the 2003 Law of Nationality and Entry into Israel (Temporary Order) by another six months. The Law, which became effective in August 2003, revoked the family unification procedure between Israelis and their Palestinian spouses. The procedure, which allows foreign nationals who are married to Israelis to live in the country is still in effect for non-Palestinians. The law was challenged by numerous petitioners, including HaMoked, but the High Court of Justice (HCJ) has not yet handed down a decision on this matter.

The Law in effect fixed a practice that started in May 2002, when the Israeli government decided to freeze the processing of applications for family unification. Since then, no new applications can be filed. Also, persons whose applications were approved prior to the freeze, cannot go on climbing the status ladder as part of the "graduated procedure" that leads to residency in Israel. They are now living in Israel under temporary permits or holding temporary status that they are required to constantly renew. As long as the Law is effective, they will not get permanent status and many will not receive any social benefits, primarily health insurance. HaMoked's routine work includes assistance to hundreds of families from East Jerusalem that are in the various stages of family unification.[111]

The Interior Ministry Branch in East Jerusalem

The family unification procedure and whatever remains of it after the Law, involves countless visits to the Interior Ministry branch in East Jerusalem. Residents of East Jerusalem and their spouses are

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[109] See: HaMoked and B'Tselem, **The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians**, April 1997; **The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of Residents of East Jerusalem**, September 1998.

[110] See: HaMoked and B'Tselem, **Forbidden Families: Family Unification and Child Registration in East Jerusalem**, January 2004.

[111] While this chapter focuses on HaMoked's activity relative to Jerusalem residents who are married to residents of the Territories. HaMoked also helps residents who are married to foreign nationals.

allowed access only to the East Jerusalem branch of the Interior Ministry. Israeli citizens, on the other hand, are entitled to receive service at any branch in Israel. Despite slight improvements in 2004, the performance of the East Jerusalem branch remains unacceptable.

In the past, the branch was infamous for its endless waiting lines. Residents of East Jerusalem had to wait for hours and even days, literally outside the building to meet with officials and file applications. In this respect, the service has somewhat improved. While appointments can now be scheduled over the phone, HaMoked's experience is that sometimes it takes hours or even days for the staff to pick up the phone and make such appointments. Even then, the appointments are scheduled for months ahead.

In addition to the above, the branch continues to mistreat and disrespect the residents of East Jerusalem in all other aspects as well. Its working procedures are frequently changed but these changes are never publicized. Residents have no way of telling in advance which documents they might be required to produce and they are often sent back and forth by the ministry staff in order to bring more and more documents.Each statement a resident makes must be certified by an attorney, which adds to the costs.The forms are not available in Arabic. HaMoked's experience shows that the criteria are not uniform: different officials ask for different documents for the same type of application. Often, conflicting information is provided to different applicants. At times it seems the branch has no defined procedures and the fate of East Jerusalem's residents is entirely in the hands of the bureau's clerks.

Family Unification: the Graduated Procedure

Under the graduated procedure,[112] once the application for family unification is approved, the spouse from the Territories is granted permission to stay and work in Israel for a period of 27-month (the District Coordination Office (DCO) -permit stage). This status does not award holders any social benefits. After this period, the spouse from the Territories is entitled to temporary residency (A/5). Temporary residents are entitled to the same social benefits as permanent residents, but must renew their status annually. After three years of temporary residency, they become permanent residents.

In actuality, even when the Ministry still processed new applications and moved those in the process up the ladder as described, the procedure took much longer than defined and the Ministry imposed endless hurdles at each stage.

The Application Stage

In the past, when applying for family unification, a couple was required to prove that their center of life was in Jerusalem for at least two years prior to the application. "Center of Life" means not only is their residence within the municipal boundaries but also their place of work and/or study is within Jerusalem. To do so, they had to present numerous documents and affidavits, subject to the bureau's demands and conduct, as described above.The Palestinian spouse was thoroughly screened by the Interior Ministry and other government agencies. If the agencies decreed there were criminal or state security issues which barred the applicant from entering Israel, the application was denied. The process

generally took around five years, and only then, if the application was approved, did the Palestinian partner enter the graduated procedure.

New applications for family unification can no longer be filed, but in May 2003 the Interior Ministry announced it would resume the processing of applications that were filed before the May 2002 freeze. This notice gained binding legal status in the 2003 Nationality Law, which expressly provided that anyone whose application had been approved, could move on to the DCO-permit stage – but no further. The Ministry has never publicized the fact that the freeze on approved applications had been lifted and resumes processing applications only upon request by the couple. In 2004, three applications of HaMoked clients were revived and approved.

In January 2002, B.Z., a resident of Jerusalem, filed a family unification application for his wife, M.Z. Three months later, the government halted the family unification procedure and the Interior Ministry notified the couple that their application had been denied.

In June 2003, after the Ministry announced it would resume treatment of applications filed before the freeze, HaMoked contacted the Ministry, asking to address the case of B.Z. and M.Z.

Only in November 2004, nearly a year and a half after this request, did the Ministry summon the couple for a hearing. Around three weeks after the hearing, the Ministry approved their application. M.Z. was referred to the DCO, where she received her first permit to stay in Israel after around four years in which Israel's policy left her no choice but to be an illegal alien in her own home. **(Case 26666)**

The Permit to Stay Stage

After the application for family unification is approved, the Interior Ministry issues a one-year certificate stating the approval of the request. This document allows the Palestinian spouse to receive a permit to stay in Israel from the DCO in his or her area of residence. A DCO permit is valid for three to six months. Renewal of such permits requires reporting to the DCO in person.

Applications to renew the Ministry's certificate may only be filed three months or less before it expires. New certificates are issued only after security clearance and after it is reestablished that the couple's center of life is in Jerusalem. The couple is again required to submit documents and affidavits, and is again screened for security-related and criminal affiliations. This process can sometimes take more than a year, creating long gaps between Ministry certificates. During these gaps, the Palestinian spouse cannot get a permit to stay in Israel.

Under such circumstances, he or she has two options: staying in Jerusalem illegally, exposed to the danger of detention, arrest or deportation back to the Territories, or returning to the Territories and thus risking rejection of the application on the grounds that the applicant's center of life is not in Jerusalem. As noted, throughout this waiting

[112] The graduated procedure described in this chapter only relates to family unification applications filed by Israeli residents for their spouses. A similar procedure also exists for citizens. For a description of this procedure, see: The Association for Civil Rights in Israel, **The Ministry,** 2004, pp. 31-32 [Hebrew].

period, the Palestinian spouse is not entitled to social benefits. Nowadays, many applicants are forced to report to the DCO every three months, obtain a renewed Ministry certificate every year and spend unlimited lengths of time as aliens in their own homes, without any foreseeable solution.

R.A., a resident of the Gaza Strip, married Z.A., a resident of Jerusalem, in the summer of 1999. Their application for family unification was approved in October 2000, and since then R.A. has stayed in Israel legally with Interior Ministry certificates and DCO permits. The second certificate she received from the Ministry was valid through November 17, 2003.

Around two months before the expiration date, HaMoked applied to the Ministry for a new certificate. An appointment at the Ministry was scheduled for R.A. and her husband on November 30, 2003, but when the time came, the Ministry was on strike. When the strike ended, in January 2004, the Ministry rescheduled the appointment for March. It was not until August that year, five months after the appointment, that the Ministry approved the application and referred R.A. to the DCO to obtain a permit to stay in Israel In early September 2004, R.A. went to the "Office for Israelis" at Erez Crossing with the Ministry's certificate, in order to get a new three-month permit from the DCO. The attending soldier refused to issue a permit and ordered her to enter the Gaza Strip. HaMoked contacted the commander of the "Office for Israelis" directly, to receive an explanation for the refusal. The commander said that because of the time lag between the Ministry's certificates, R.A. had been staying in Israel unlawfully and a permit could therefore not be issued. The commander said that her request would be forwarded for processing, and that she had to wait at the DCO. R.A. waited there until at the end of the day, the soldier returned her papers and sent her back to Jerusalem without any further explanation and without a permit.

HaMoked therefore asked the State Attorney's Office to intervene. Despite repeated reminders, this yielded no results. At the time this report was compiled, nine months after the Ministry renewed the certificate authorizing R.A.'s stay in Israel, she still does not have a DCO permit. The Erez DCO is the only DCO that refuses to grant permits because of the long time lags between Ministry certificates. **(Case 14587)**

Temporary Residency

Those who made it through to the second stage of the graduated procedure before the freeze on family unification, received the status of temporary residency (A/5 visa). Temporary residents are entitled to social benefits such as health insurance and national insurance allowances. They are required to renew their status every year. Every year, they have to prove to the Ministry, once more that their center of life is in Jerusalem, and once more they are screened for criminal and security-related affiliations. Here too there are long time lags between the expiration of one A/5 visa and the next, leaving the Palestinian spouse without any legal status in Israel and without any social benefits. As of now, temporary residency cannot be upgraded to

permanent residency. The Interior Ministry refuses to make any exception or exercise discretion even in special circumstances.

H.G. was born in 1922. In 1974 he married W.J., a resident of Jerusalem, and moved there. The couple applied for family unification 20 years later, because until then Israel did not allow women to make such applications for their husbands. The application was approved only in 1997, after HaMoked petitioned the HCJ on their behalf.[113] Following the petition, the Ministry agreed to grant H.J. temporary residency for five years and three months. During this period, he would be required to renew his status annually. After that, and subject to the usual screening, he would receive the status of permanent residency. According to this timeline, H.J. was to become a permanent resident in February 2002.

If the Ministry had lived up to the arrangement, H.J. would have been able to become a permanent resident back in February 2002, before the freeze on family unification. Yet, each time H.J. applied to renew his temporary resident's visa, the Ministry dallied with the response for anywhere between seven and nine months. In addition to these delays, there were times when H.J was unable to submit a request for renewal of his temporary status on time due to the Ministry's ever changing policies on scheduling appointments and its inaccessibility. H.J. was supposed to renew his temporary status for the last time in February 2001, but because of these delays, this last renewal occurred only in October of that year. At the appointment he finally managed to schedule in October, he asked to upgrade his status to permanent residency. The clerk explained it was not possible because not enough time had passed and that he would be able to do so at his next appointment, namely, in September 2002. Four months before that date, Israel halted the family unification process.

In September 2002, HaMoked contacted the Ministry of the Interior, demanding that H.J. be granted permanent residency, as promised. The Ministry's response arrived eight months later, in May 2003. H.J. received another one-year temporary resident visa.

In May 2004, HaMoked filed another application for permanent residency on H.J.'s behalf. After four months of silence, HaMoked petitioned the Administrative Court. In November 2004, around two months after the application was filed, the Ministry renewed his temporary residency once again, completely ignoring the application for permanent residency.

In November 2004, when H.J was again granted temporary residency he had already been living in Jerusalem for 30 years. Of the seven years since his original application for family unification was approved, H.J. spent a total of more than two and a half years as an illegal alien, devoid of any legal status, strictly because of the Ministry's procrastinations.

Since he has no legal status, 82-year-old H.J. is not eligible for national health insurance or an old-age allowance.

The State holds it stopped family unification because of security needs. In its petition, HaMoked argued that it is hard to

[113] HCJ Petition 7464/96 **Jabbarin v. Interior Ministry**.

see what kind of threat an elderly man like H.J. can represent if granted permanent residency. The Ministry still refused to grant H.J. permanent residency, but following the petition agreed to approve two years of temporary residency in his case instead of just one. **(Case 7272)**

In May 2005, an amended bill was put before the Knesset. The press said these amendments relaxed the government's policy, but in fact they were little more than symbolic gestures. One of the amendments provided that a resident or citizen whose husband or wife from the Territories were over 35 or 25, respectively, could apply for family unification. If the application is approved, at the end of the five-year process, the spouse would be eligible for a permit to stay in Israel. But the Knesset rejected even this gesture. The bill was returned to the Knesset's Internal Affairs and Environment Committee for further discussion, and the 2003 Law of Nationality and Entry into Israel was extended by another three months. At the time this report was written the law was in effect through to the end of August 2005.

Registration of Children

Under Israeli law, a child born in Israel to parents who are permanent residents, is entitled to the same legal status. If only one parent is a resident and the other has no legal status in Israel, the child is still entitled to residency. In the past, the child was entitled to residency only if the father was the resident. Israeli law is silent as to the status of children born to Israeli residents outside of Israel, which is often the case with residents of East Jerusalem.

Over the years, the Interior Ministry kept changing its policies on registering children of East Jerusalem residents. It manipulated every possible loophole to avoid registering them in the Israeli Population Registry and constantly revised its procedures without prior notice or publication after the fact. HaMoked could only infer these policy changes from the responses the Ministry gave in cases it was handling.

At present, the Ministry is directing its policy against children of East Jerusalem residents who were born outside of Israel, although it is hardly eager to register children who are born inside Israel either.

In order to register a child, an Israeli resident must go to the Interior Ministry and have the child entered in the Population Registry. In the case of residents of East Jerusalem, the process is likely to be long and arduous. If the parents register their child before he or she is one year old, registration usually goes through swiftly and the parents are not required to present proof that their center of life is in Jerusalem. But if for any reason they have not registered the child before his or her first birthday, they are required to submit numerous documents and affidavits certified by an attorney, proving that their center of life is in Jerusalem. The Ministry takes months and sometimes even more

than a year to process these applications. During this interval, the children have no legal status. If at the end of the process the Ministry is not convinced that the family's center of life is in Jerusalem, it refuses to enter the child in Israel's Population Registry.

Registration is almost impossible if the child was born outside of Israel. As noted, Israeli law is silent on this subject, and registration in such cases depends on the Ministry's procedures, which change frequently. In 2001, HaMoked noticed that the Ministry had started to distinguish between children born inside and outside Israel (similar attempts had been made before but abandoned after being challenged in court). At first, the Ministry charged a fee for registering children born abroad to residents of East Jerusalem. Next, it announced that instead of receiving permanent residency, these children would get two years of temporary residency. In May 2002, before the outcome of this new policy could be fully assessed, the cabinet halted family unification and the Ministry gave child registration a new and outrageous interpretation.

Registration of Children after the Freeze on Family Unification

After the cabinet resolution freezing family unification, the Interior Ministry started turning down HaMoked's applications to register children who were born in the Territories and only one of their parents was a resident of Jerusalem. The Ministry claimed these applications were effectively family unification requests, and because of the cabinet resolution, applications of this nature could not be processed. The Ministry also applied this policy to children who were born inside Israel but were registered in the Territories.

The August 2003 Nationality law which entrenched the freeze on family unification included a qualification under which children under 12 may receive a permit to stay or reside in Israel in order not to separate between them and their parents, if the latter are staying in Israel legally. This qualification left many unanswered questions: Would these children be given residency or temporary permits? Would they be forced to separate from their parents and leave their homes once they turned 12? Would they enter the graduated procedure?

HaMoked did not wait for these questions to be answered and immediately petitioned the High Court of Justice against applying the Law in the case of children.[114] The Court consolidated this action with others that were filed against the Law, and has yet to hand down a decision. In the meantime, to stop children from being severed from their families, and despite the objection to applying the Law in the case of children and classifying their registration as family unification, HaMoked has advised its clients to file family unification applications for their children.

The answers to the questions regarding children's status started coming in mid 2004. In June that year, as part of an administrative petition HaMoked had filed in the case of a child whose father is a resident of Jerusalem and mother is a Jordanian citizen, the Interior Ministry announced that children born abroad to parents who are residents

[114] HCJ Petition 10650/03, **Abu Gweila v. Minister of the Interior**.

of Israel would be registered under a graduated family unification procedure. This procedure would be different from the one for spouses; children would be granted temporary residency upon approval of the application. This status will be valid for two years, after which, subject to the center-of-life test and security clearance, the children would be recognized as permanent residents.[115] This announcement was validated as a Court judgment in October 2004.[116]

In the time between the Ministry's announcement and it being sustained as a Court decision, it became clear that the Ministry had no intention of implementing this policy in the case of children who were born or registered in the West Bank and Gaza Strip. In September 2004, HaMoked received the Ministry's first response to a "family unification" application made for children. The Ministry stated the application had been approved and the children would be allowed to stay in Israel for a year by force of District Coordination Office (DCO) permits. HaMoked's client was informed that as long as the Nationality Law was in force, her children would not be registered in Israel or receive legal status in it.

HaMoked asked the director of the Population Registry Bureau for explanations. The director said a procedure on the subject existed, and promised to publish it soon. While the procedure was never published, in November 2004 HaMoked petitioned the Administrative Court to cancel it. In the least, HaMoked asked to apply the policy for children born in foreign countries to children born in the Occupied Territories and grant them temporary residency for two years. Since then, HaMoked has filed six more petitions in cases where parents were instructed to obtain DCO permits for their children.

In March 2005, following these petitions, the Ministry of the Interior announced that its procedures had been changed. Children of mixed couples (a resident of East Jerusalem married to a resident of the Territories) who are less than 12 years old and appear in the Palestinian Population Registry, would receive temporary residency for two years, and would subsequently be entitled to permanent residency, subject to the center-of-life test and security clearance. The Ministry even gave HaMoked a document describing the new procedure. However, it steadfastly objected to granting any status or permits to children over 12, even if all their siblings have received such status or if other humanitarian reasons justify doing so.

In 1988, H.G., a resident of Jerusalem, married T.G., a resident of Beit Sahur in the Bethlehem region. By the year 2002, the couple had seven children and moved between the home of T.G.'s parents, where they lived, and Jerusalem, where T.G. worked. Their eldest daughter was born in Jerusalem, and the couple spent long periods of time at the home of H.G.'s parents in the city. All seven children were entered in the Population Registry in the West Bank.

In 2002, the family permanently moved to Jerusalem and a year later asked HaMoked to help them enter their children in Israel's Population Registry. In December 2003, HaMoked applied to the Interior Ministry to register the children according to the Ministry's new procedure, although at the time, the procedure was yet unknown. HaMoked

asked that the two elder daughters be granted legal status, even though they were over 12, so they would have the same status as their siblings.

Before an answer was received, the couple had another baby girl. Since she was born in Jerusalem, she was entered in the Population Registry and received permanent residency. In September 2004, H.G. was referred by the Interior Ministry to obtain DCO permits for five of her children, two of whom are as young as four and five. When she asked about her two older daughters, the clerk at the Ministry told her to take their case to court, which H.G. then did, through HaMoked.

Following her petition, the Ministry said it would grant five of the younger children temporary residency, but adamantly refused to grant any status to the older girls, because they were over 12. HaMoked again explained that by law, the Ministry had to register the eldest and grant her permanent residency because she was born in Jerusalem, and that the younger girl should be registered because of humanitarian reasons, since all her family was living in Jerusalem and all her siblings were residents or eligible to become ones. As at May 2005, the two eldest daughters still do not have any legal status in Israel. **(Case 27781)**

In 1984, A.M., a resident of Jerusalem, married a resident of Hebron and moved there to live with him. Their eldest daughter was born in Jerusalem and their four other children in Hebron. All five children were entered in the Population Registry of the West Bank.

In 1997, A.M.'s husband died and two years later the widow returned to Jerusalem with her children. In October 2004 she applied, through HaMoked, to have her five children entered in Israel's Population Registry. At the time, her children were 7, 11, 13, 16 and 17 years of age.

In the application, HaMoked stressed that by law, the eldest daughter had to be registered, since she was born in Jerusalem. HaMoked emphasized that the children who were born and registered in the Territories and were over 12 should also be registered, because their father had died. If the Ministry refused to register them, they would be torn away from the only parent they still had.

In February 2005, the Ministry replied that the only application that would be considered was for the two youngest children who were not yet 12. HaMoked reapplied, underscoring that the other children, who were past the age limit, should also be registered, because of humanitarian reasons, and that the eldest was entitled to permanent residency in any case, because she was born in Jerusalem.

A.M.'s application for her two youngest children is being processed. HaMoked's applications to grant legal status to her other children have not yet been answered. **(Case 25704)**

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115 Motion for Agreed Judgment, Administrative Petition 402/03, **Juda v. Minister of the Interior**, June 6, 2004.

116 Decision, Administrative Petition 402/03, **Juda v. Minister of the Interior**, delivered on October 24, 2004.

West Bank Residency

"Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nationality…"

Universal Declaration of Human Rights, Article 15

People with no legal status generally try to avoid encounters with the law as such encounters might lead to their deportation. This is all the more so in the Occupied Territories in general and in the West Bank in particular, where encounters with security forces are all but inevitable, given the permanent checkpoints, flying checkpoints, village searches, etc. On all these occasions, Palestinians are required to present proof that they are residents of the West Bank or that they have some other legal permit to stay there. Those who do not have such legal status[117] might be arrested and deported, even if the West Bank has always been their only home.

Israel's policy regarding residency in the Occupied Territories has always been stringent. In the past, residency was only granted to persons who were polled in the census that the military held after the occupation of the West Bank and Gaza Strip in 1967. Israel revoked the residency of those who left the area during the 1967 war, and deported many others. Between 1967 until the handing over of limited responsibilities regarding the Population Registry to the Palestinian Authority (PA) as part of the Oslo Accords, Israel would revoke the residency of any resident of the Territories who spent a long time abroad. Israel hardly ever enabled aliens to become residents, and only rarely reinstated a person's residency if taken away. Relatives and spouses of residents could, under very specific circumstances, become residents through a family unification procedure.[118]

The Oslo Accords left most of the final authority regarding residency in Israel's hands. The PA was authorized to independently register children under 16 in the Population Registry. All other

actions associated with residency, such as repatriating deportees and other residents whose residency has been revoked, issuing visas and handling the family unification procedure, were subject to prior approval by Israel. When the current intifada began, Israel froze the processing of all residency-related issues, leaving many people with unresolved problems and sometimes without any legal status, exposed to the dangers associated with this situation.

A.T. was born in Colombia in 1982, to Palestinian parents. His father died a few months later, and his mother decided to take him and his older sister back to the village near Ramallah where she was born. When they returned, A.T. was eight months old.

Under Israel's policy at the time, because of A.T.'s mother's long stay abroad, she lost her residency. She therefore returned to the West Bank under a visitor's permit obtained for her by a relative. In 1994, A.T.'s mother applied for a Palestinian ID card. By 1999, when her application was approved, A.T. was already 17. Since Israel does not allow children over 16 to be registered, A.T. did not receive an ID card.

After graduating high school, A.T. started studying at Al Quds University in Abu Dis. In March 2004, on his way to university, he was stopped by soldiers on the road from Ramallah to Abu Dis. Since he had no ID card, they arrested him. A.T. was imprisoned and an order for his deportation was issued. The Interior Ministry wanted to send him back to Colombia, where he was born. A.T. moved to the West Bank when he was less than one year old; this was the only home he ever had, and he did not speak any Spanish at all.

HaMoked's attorney petitioned the District Court in Tel Aviv on A.T.'s behalf, demanding that the deportation order be rescinded. In September, the Court granted HaMoked's request. A.T. was released and allowed to return to his home in the West Bank. However, since he has not been entered in the Population Registry, he still faces the danger of arrest and deportation. **(Case 31808)**

Family Unification

In the past, the family unification procedure allowed some foreign nationals who married residents of the West Bank and Gaza Strip to become residents and live there legally with their spouses. Israel imposed strict limitations on the procedure and only a small number of applicants were approved and granted status. Now, with the freeze on family unification, even this narrow opening has been completely closed.

[117] In most cases these are people who have legal status in some other state. HaMoked's clients also include persons who do not have legal status anywhere in the world.

[118] For further details regarding residency in the Territories see: HaMoked and B'Tselem, **Families Torn Apart: Separation of Palestinian Families in the Occupied Territories**, 1999.

Foreign nationals are not only barred from becoming residents, they cannot even visit the Territories, since Israel has also halted the processing of visitors' permits.[119]

Despite the absolute freeze on visitors' permits and family unification, Israel has announced it would continue to determine whether foreign nationals who have married residents of the Territories belong to a group dubbed the "High Court of Justice (HCJ) population". Being acknowledged as belonging to the "HCJ population" is of great significance, as this group enjoys a special status which allows its members, even today, to legally reside in the Territories. The "HCJ population" includes foreign nationals who married residents of the West Bank and Gaza Strip and entered these territories between the beginning of 1990 and August 31, 1993. Following HCJ petitions filed in the early 1990's, the State announced an arrangement whereby those who fall under the criteria detailed above would be entitled to enter the Territories and remain there with visitors' permits that are renewed every six months, provided they pass security clearance.[120]

But the special status of the "HCJ population" does not protect it against the freeze. Israel has refused to continue processing family unification applications by members of this population which were not decided before the freeze. Furthermore, as long as members of the HCJ population live in the Territories by force of temporary visitors' permits rather than permanent status, their continued stay there is not guaranteed. This is so, even if they have been living in the territories for many years and have built their homes and families there.

Israel renews visitors' permits for members of the "HCJ population" as long as they remain in the Occupied Territories. However, once they leave it treats them as it would any other foreigner and does not issue new permits. Despite the freeze, HaMoked has taken steps to enable members of the "HCJ population" to return to the Territories. In 2004, HaMoked's efforts have made it possible for three women who were stuck in Jordan because of this policy for two to four-and-a-half years to return. The military announced it would allow them to return only after HaMoked had petitioned the HCJ on their behalf.[121] In all these cases, the military stressed that the visitors' permits were granted *ex gratia*.

Even when the intervention of the HCJ was not required in order to get the military to process the applications of members of the "HCJ population" to return to the West Bank, the military imposed hurdles on their return.

B.H., a Jordanian national, married a resident of Nablus in 1993 and moved to the West Bank to live with him there and was recognized by Israel as belonging to the HCJ population. Since her move to the West Bank in 1993, she has been living there lawfully, with her visitors' permit renewed every six months.

In June 2004, despite concerns that she might not be permitted to return, B.H. went to Jordan to nurse her ailing mother. Her three daughters went with her. When they wanted to return in August 2004, B.H. turned to HaMoked for assistance.

HaMoked approached the Legal Advisor for the West Bank, demanding that B.H. be issued a new visitor's permit. Five months later, the military responded: issuance of visitors' permits to the "HCJ population" is contingent upon security clearance, and

B.H.'s husband must therefore report to the military and undergo a security check.[122]

The petitioner and HaMoked refused to submit to this demand. "In the exceptional case that security reasons might justify barring the entry of a woman who has been living in the area for 11 years and who has her home and family there, these reasons must pertain to **the danger represented by the woman's entry**, and have nothing to do with the husband," HaMoked affirmed in a letter to the military.[123]

In April 2005, after B.H. and her daughters had been separated from their husband and father for nearly a year, the military announced it would allow B.H. to enter the Territories, directing her husband to apply for a visitor's permit for her. The military did not repeat its demand for a security screening. **(Case 34100)**

A large portion of HaMoked's activity on the matter of residency is dedicated to establishing that applicants belong to the "HCJ population." The military is normally slow to respond to HaMoked's applications relating to residency. It is even slower to respond to applications to recognize affiliation with the "HCJ population," with some responses taking as long as two years. In 2004, HaMoked continued to make efforts to get the military to resume treatment of these applications. The few responses HaMoked received, their substance and the military's foot-dragging in answering all other applications, raises concern that the State is attempting to reduce the scope of the HCJ arrangement.

In 2004 and the beginning of 2005, the military responded to six applications demanding confirmation, that the applicant belonged to the "HCJ population", as the first step toward further treatment. In four of these cases, the military refused to confirm such association, arguing that in the period relevant to the HCJ arrangement, the applicants did not actually live in the Territories.

A requirement of this kind was not stipulated in the HCJ arrangement. In fact, it is diametrically opposed to the substance of this arrangement. Belonging to the "HCJ population" was a prerequisite for legally staying in the Territories and setting root there. Persons who were not associated with this population could not live in the Territories to begin with. Now the military is turning things around, and claiming, paradoxically that living in the Territories is

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[119] Visitors' permits are the equivalent of a tourist visa for the Territories. Generally, anyone who has a visa to enter Israel, can also enter the Occupied Territories, but in most cases foreign nationals who have relatives in the Territories do not get such visas.

[120] HCJ Petition 4494/91, **Abu Sarhan et al. v. IDF Commander in Judea and Samaria**; HCJ Petition 4495/92, **Hadra et al. v. IDF Commander in Judea and Samaria**. The renewal of visitors' permits is just one of the provisions of the arrangement defined by the HCJ. For further details see: HaMoked and B'Tselem, **Families Torn Apart: Separation of Palestinian Families in the Territories**, 1999.

[121] HCJ Petition 9736/03, **Masimi v. IDF Commander in the West Bank**; HCJ Petition 10004/03, **Darwish v. IDF Commander in the West Bank**; HCJ Petition 11191/03, **Mafarga v. IDF Commander in the West Bank**.

[122] Letter to HaMoked from Captain Amit Zuchman, Advisory Officer for the Internal Department, on behalf of the Military Legal Advisor for the West Bank, February 17, 2005.

[123] Letter from HaMoked to Academic Officer Opinkaro, Office of the Military Legal Advisor for the West Bank, March 29, 2005.

the prerequisite for belonging to the "HCJ population."

In 1982, R.A. left the village in the West Bank where he was born and traveled to Saudi Arabia for work. A year later he married H.A., a resident of Kuwait. In 1994, the couple moved to the West Bank. Two years earlier, in 1992, H.A. visited the West Bank under a visitor's permit obtained for her by a relative. This was sufficient to make her part of the "HCJ population." Indeed, when, upon their return to the West Bank, R.A. applied for family unification with his wife, the Palestinian Authority informed him that his wife belonged to the "HCJ population" and was therefore entitled to renew her visitor's permit every six months. This arrangement worked until 1999. But that year, when the couple applied for a new permit, they were told that her name was not listed in the computer files.

In 2004, a physician treating H.A., who suffers from chronic diseases, recommended that she go abroad for surgery. The couple was concerned that if she left the West Bank, she would not be allowed to return. They therefore contacted HaMoked.

HaMoked approached the Legal Advisor for the West Bank, demanding that he confirm that H.A. belonged to the "HCJ population" and guarantee that if she leaves, she would be allowed to return. HaMoked attached various documents establishing that H.A. belonged to the "HCJ population", but the military refused. "There is no indication that [H.A.] entered the area in 1992," the response said.[124]

The military did, however, find records showing that H.A.'s husband entered the West Bank and stayed there for a month and a half in 1992. In its letter, HaMoked explained that on that visit, R.A. entered the West Bank with her husband, but the military only used this record as further "proof" supporting its refusal to recognize H.A. as belonging to the HCJ population. The fact that the husband visited the Territories, the military argued, proved that the couple did not reside in the West Bank "during the relevant period of time." [125]

In the case of H.A. and her husband, this argument is particularly infuriating, because at the time of that visit, the HCJ arrangement was not yet in force and Israel did not allow couples where one of the spouses was an alien to live together in the West Bank.

Furthermore, the military held that H.A. never belonged to the HCJ population. It offered no explanation as to why she was given biannual visitor's permits for five years.[126]

HaMoked rejected the military's arguments and demanded that it reconsider, process the family unification application and grant H.A. visitor's permits as before. The military has not yet responded. **(Case 30754)**

Registration of Children

HaMoked helps Palestinians entitled to residency in the Occupied Territories but not listed in the Palestinian Population Registry get registered. This group includes deportees,[127] people who lost their residency (in most cases, after long periods abroad), residents who for various reasons were deleted from the Population Registry and others who were never in it. The most notable group belonging to this last category is that of children who were born abroad to Palestinian parents.

The Oslo Accords authorized the Palestinian Authority (PA) to register children under the age of 16 who have one Palestinian parent, without prior approval by Israel. This authority applies also to such children who were born abroad. Israel makes the registration of children born abroad contingent on their physical presence in the Occupied Territories. Although officially Israel continues to recognize the PA's authority to register children, in reality it does not enable registration of Palestinian children who were born abroad and are older than five.

Children under five may accompany their parents when they enter the Territories. Children over five must have permits of their own. As stated, since the beginning of the second intifada, Israel no longer issues visitors' permits. This puts these children in a bind. On the one hand, Israel does not permit their registration unless they are physically in the Territories, while on the other it does not let them in.

A.R. and I.R., both residents of Beit Jala, married in 1985 and moved to Saudi Arabia, where A.R. found work. Their seven children were born there. Over the years, the family visited the West Bank several times, and on these visits, the parents registered their children in the Palestinian Population Registry. After the birth of their sixth daughter R.R. in 1995, the family was unable to visit the West Bank because of financial problems. In 2000, the couple had its seventh child, and three years later the family left Saudi Arabia to visit the West Bank.

When the parents and their seven children arrived at the Allenby Bridge, they were told that R.R., who was eight by then, could not enter with them. Her younger brother, who was around three years old, was allowed to accompany his parents.

The family returned to Amman and tried to get a visa for R.R., who has a Jordanian passport, but was turned down. Having no choice but to leave R.R. behind, they entered the West Bank, registered the youngest boy and returned to Saudi Arabia.

In 2004, the family decided to move back to the West Bank, but could not do so as long as R.R. was not registered. The parents turned to HaMoked for help.

In November 2004, in response to HaMoked's query, the representative of the Legal Advisor for the West Bank

[124] Letter to HaMoked from Captain Amit Zuchman, Assistant Legal Advisor, on behalf of the Legal Advisor for the West Bank, March 25, 2004.

[125] Ibid.

[126] Ibid.

[127] For further details, see chapter on Repatriation of Deportees, p. 89.

stated that work was underway to find a comprehensive solution for all children in R.R.'s position. Until such time, the military declared it would resolve the cases of R.R. and six other children represented by HaMoked on an individual basis. However, the representative cautioned that the processing of their applications might take quite a long time.

In February 2005, HaMoked was told in an oral communication that a permit for R.R. had been approved. Despite oral and written reminders, the permit arrived only in April 2005, when the military issued an official document confirming that R.R. would receive a visitor's permit. **(Case 35371)**

T.S. and A.S. managed to register their children in time. But in their case this led to the brutal separation of two babies from their mother.

In June 2004, T.S. and A.S. and their two children, two and a half and one year old, visited their family in Halhul in the West Bank. The family resides in Germany and all have German passports. T.S., who is not a resident of the West Bank, entered the area as a tourist on her German passport.

A.S. never lost his residency, and during the family visit to Halhul, he registered the couple's children in the Palestinian Population Registry. He returned to Germany, where he works in August. His wife and the two children continued their vacation in the West Bank.

On September 3 the mother and children started their journey back to Germany. They went to the tourist section at the Allenby Bridge, where the mother had first entered. Her passport was checked and stamped, but when the German passports of the two children were checked and it was discovered that they were registered in the West Bank, she was not allowed to take them with her.

The mother begged to let her return to the West Bank with her babies, but to no avail. The officials at the border explained that since her passport had already been stamped, she could not return to the West Bank.

Having no other choice, T.S. called the children's grandfather in Halhul from the border crossing. She handed the children over to him and entered Jordan on her own. Two days later the family called HaMoked.

The authorities first demanded that Palestinian passports be issued for the children. Their grandfather applied, but it turned out that this would take at least two weeks. On September 6, after further inquiries, the military agreed to let the children out with special exit permits, accompanied by their uncle. This required the permission of father, who was in Germany. The next morning, A.S. faxed a letter giving his brother power of attorney. A.S.' father and brother went to Hebron to file the documents with the representatives of the Palestinian DCO, but the military had blocked the road between Halhul and the city. They had to take a detour, and by the time they arrived they were told that the application could only be transferred to the Israeli DCO the following day. On September 8 the documents were forwarded to the Israeli side, and permits were issued that evening.

On September 9, six days after being

separated from their mother, the toddlers were taken by their uncle to Allenby Bridge. The three crossed the bridge in the late afternoon, and the children were at last reunited with their mother. **(Case 34492)**

Deportation

"...deportations of protected persons from occupied territory... to that of any other country, occupied or not, are prohibited, regardless of their motive."

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), Article 49

Deportation to Gaza – the End?

In 2002, Israel adopted a policy of deporting the families of individuals suspected of involvement in activity against Israel from the West Bank to the Gaza Strip declaring this an act of deterrence. HaMoked represented the first three casualties of this policy, Abdel Nasser Assida, Intisar Ajouri and her brother Kifah. Basing its decision on the assertion that the West Bank and the Gaza Strip should be considered a single unit of occupied territory, the High Court of Justice (HCJ) held that their transfer to Gaza was not deportation but "assignment of residence," a security measure that the military may implement under Article 78 of the Fourth Geneva Convention. However, the HCJ also imposed serious restrictions on the use of this measure. Deterrence may not, under any circumstances, serve as the only grounds for assigned residence. The only reason to assign a person's residence is to prevent a danger that this person poses, and use of this measure must be discontinued once the danger has passed. The Court allowed for deterrence to come into play, but only as a secondary factor. For example, it may be weighed when choosing between measures against persons who have been established to pose a threat.[128] Based on these guidelines, the HCJ canceled the deportation order against Abdel Nasser Assida, but upheld those against Intisar and Kifah Ajouri. The two orders were effective for two years. During this term, the military's

Board of Appeals convened every six months to see whether there were still valid reasons to uphold the deportation orders. In effect, the Board was to check whether the siblings still posed a threat - the only grounds that could justify their continued assigned residence.

In its first session after the first six months, the Board of Appeals found that the siblings should remain in the Gaza Strip. The Board convened for the second time in August 2003, and submitted its recommendations a month later. In its analysis, the Board addressed the security situation that prevailed when it convened in early August. Members stated that it was a calm period - prisoners were being released, five "assigned residence" orders were canceled and one was shortened. The Board found that "the improved security situation reduces the need for the assigned residence order as a deterrent." Under the circumstances, the Board's recommendation was to push up the expiration of the orders to October 31, 2003.[129]

By the time this decision was compiled and signed, the security situation deteriorated again and the Board decided to qualify its previous recommendation. Under the circumstances of an escalating security situation, they wrote, "the relative weight of the deterrence factor should be increased in order to try and quell the motivation of the population to carry out terror attacks."[130] The Board therefore recommended that the Commander reconsider the Ajouri case in mid October and that if the security situation at the time called for an increased emphasis on deterrence, the military may keep them in the Gaza Strip. The Board nevertheless noted that the reconsideration should be done "with a view to releasing them on October 31, 2003."[131] Apparently, then, the question whether the Ajouris would be allowed to return to their homes was decided purely on the issue of deterrence, in violation of the HCJ's instructions.

Although the Board's recommendation leaned toward lifting the assigned residence orders, and although there was no further escalation in the security situation, the Ajouris were kept in exile in Gaza. The military completely ignored the Board's recommendations. The Commander of the West Bank announced his decision only in early December, about a month after the Board's recommended time for reconsideration. Contrary to the Board's recommendations, the assigned residence orders were to remain in force. A letter the Military sent to HaMoked, to inform it of the Commander's decision, never mentioned that the Board had recommended to favorably weigh their release in October. The Board's recommendations themselves were only passed on to HaMoked at the end of December, less than two months before the third session of the Board of Appeals, in February 2004. Under these circumstances, HaMoked decided not to petition the HCJ regarding the Board's recommendations and the Commander's decision, but to argue the case before the next panel of the Board.

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128 HCJ Petition 7015/02, **Ajouri et al. v. IDF Commander in the West Bank et al.**; HCJ Petition 7019/02, **Ajouri et al. v. IDF Commander in Judea and Samaria et al.**, Court Decisions [PD] 74(6) 352. For further details see also: HaMoked, **Annual Report 2002**, pp. 15-20.

129 Recommendations of the Board of Appeals, Military Court of Appeals for the West Bank and Gaza Strip, September 1, 2003, paragraph 29.

130 Ibid, ibid.

131 Ibid, paragraphs 22, 32.

By the time the Board convened for the third time in February 2004, its authority was expanded and its recommendations became binding. The Board handed down its decision in March 2004. Intisar Ajouri was allowed back into the West Bank, effective immediately. However, based on new information that the Board had been given and which ostensibly tied Kifah Ajouri with organizations that engage in operations against Israel, the Board decided to keep him in the Gaza Strip. He was allowed to return to the West Bank only when the order's full term expired, two years after his deportation to Gaza.[132]

When the Board announced that Intisar Ajouri could return to the West Bank, her sister and her two children, their father and another brother were all in the Gaza Strip with her. Ajouri requested to return to the West Bank with them. HaMoked passed on her request to the Military Legal Advisor for the West Bank, who replied that the family could return to the West Bank together on March 14, 2004. In compliance with the instructions of the military, the family reported to the roadblock at 11:30 AM, but the soldiers would not let them through for nearly eight hours, sending them back and forth inside the compound, prohibiting them from talking on the telephone and keeping them for many hours in the area between the Israeli and Palestinian side of the roadblock, where there is only one bench and no toilet.

When the family finally crossed the roadblock at around 7 PM, they were told Intisar would not be crossing with them. The military told HaMoked that Intisar Ajouri would have to be escorted by security forces back into the West Bank, a demand it had not mentioned before. She was instructed to return the next day.

Ajouri reported to the roadblock the next day, as instructed. Although the Board of Appeals had asserted she no longer represented any threat and although she was not under any form of arrest, the soldiers assigned to take her back cuffed her by the wrists and ankles and put her in a vehicle used for transferring detainees, where she sat in a small cabin with just a small window for air. During the long drive, the soldiers made a 30-minute stop, and there was another two-hour delay at Huwwara Roadblock. The small window in her cabin remained closed most of this time.

Despite HaMoked's demand that the military find a way to transfer persons whose residence had been assigned back to their homes without treating them as dangerous prisoners, Kifah Ajouri was treated the same way when he was returned to the West Bank on August 26, 2004, around one month after the order against him had expired.

(Case 17942)

The decision to deport the families of persons suspected of involvement in actions against Israel was adopted as part of a line of resolutions designed to hurt these families. These measures included house demolitions[133] and refusal to return bodies (this decision only came to light in 2004 as part of HaMoked's petitions on the subject).[134] One can only assume that Israel intended to use deportation to Gaza as extensively as it used house demolitions. However, in this case, HaMoked's legal

battle against the measure was successful, and the restrictions the HCJ imposed on the State stopped it from using deportation extensively. Apart from Intisar and Kifah Ajouri, another 17 residents of the West Bank were deported to the Gaza Strip.[135] In February 2005, the press reported that 16 had been allowed to return to the West Bank as part of what Israel referred to as "concessions to the Palestinians".[136]

Repatriation of Deportees

In 2004, HaMoked continued handling repatriation requests from deported residents of the Territories. Most applications are from Palestinians who were deported in the early 1970s without being given a deportation order or the possibility of appeal. In some of these cases, no deportation order was issued and in others the military issued orders but never bothered to present them to the deportees. HaMoked has previously been able to revoke several orders of this kind and repatriate the deportees with the families they have built during their forced exile. Several restrictions were imposed: the deportees were allowed to return with their wives, unmarried daughters of any age and unmarried sons of 22 or less.

Deportation orders do not revoke the deportees' status as residents of the Territories. Therefore, once these orders are canceled, the deportees are entitled to all the rights reserved for residents, including entering the Territories and receiving ID cards. But in fact, as several cases have shown, deportees are not always allowed to resume their lives in the Territories, even if the orders against them are lifted. In 2004, HaMoked filed two petitions to the High Court of Justice (HCJ) on behalf of two deportees. The military had canceled the deportation orders against them, but has not allowed them to return to the West Bank or lead normal lives there.

N.H. was arrested in 1970 at the age of 21. After one year of imprisonment without trial, he was driven, together with 14 other Palestinians, to the Jordanian border. The soldiers gave each man a piece of bread, a tomato, an egg, some water and one Jordanian dinar, and instructed them to walk into Jordan. N.H. never received a deportation order, nor was he informed he was about to be deported.

He remained in Jordan, studied education, married and built a family. In 2000, almost 30 years after his deportation, he decided to return to his village, Idna, near Hebron. HaMoked contacted the army that same year, demanding that the deportation order against N.H., if ever one existed,

[132] Recommendations of the Board of Appeals, Military Court of Appeals for the West Bank and the Gaza Strip, March 2, 2004, paragraphs 19-25.

[133] See chapter on House Demolitions, p. 96.

[134] See chapter on Respect for the Dead, p. 92.

[135] B'Tselem, www.btselem.org , last visited June 5, 2005.

[136] Amos Harel and Arnon Regular, "Concessions to the Palestinians: 16 Deportees to Gaza to Return to their Homes in the West Bank," **Haaretz**, February 18, 2005.

be revoked. In March 2001, the military notified HaMoked that N.H. would be allowed back into the West Bank.

Since he did not have Palestinian travel documents, the only way he could enter was on a visitors' permit issued upon an invitation by his family. In October 2001, the military Legal Advisor for the West Bank informed HaMoked that he had instructed the District Coordination Office (DCO) in Hebron to approve N.H's family's application for a visitors' permit. Five months later, the Palestinian DCO informed N.H.'s brother that the Israelis had turned down his request. The rejection was received orally and without any explanation. HaMoked again contacted the military Legal Advisor for the West Bank, demanding N.H. be allowed to return to his home. When no response was received, HaMoked filed a petition to the HCJ.[137]

The army's foot dragging had potentially devastating effects for N.H.'s family. Two of his sons, who were less than 22 years old when the deportation order was revoked, were by now too old to join their father. Furthermore, in case of children who were born abroad, registration through the Palestinian Authority (PA) is only possible for those aged 16 or less and who are physically in the Territories. Two of N.H.'s children who at the time the order was lifted were less than 16, were now too old. In the petition, HaMoked demanded that in addition to allowing N.H. to enter the Territories without delay, the State consider the children's age at the time the order was revoked, and allow them and N.H.'s wife to return with him.

The State Attorney's Office agreed to arrange for N.H.'s return and enable his wife and children, based on their age upon revocation, to return with him. According to the proposed arrangement, the wife and children over 16 would receive visitors' permits for six months at a time. HaMoked's demand that they be granted residency was turned down. **(Case 15177)**

As stated in HaMoked's report for January-June 2002, HaMoked managed to have the deportation order against A.D., a resident of the village of Kafr 'Ein, who had been deported to Jordan in 1970, revoked.[138] While the order was revoked in February 2002, A.D. has not yet been able to resume a normal life in the West Bank.

When the order was revoked, A.D. was in the West Bank, on a visitation permit. Four of his seven children were also with him. Around three months later, A.D. applied to the Palestinian Authority for an ID. Under the Oslo Accords, the PA has been charged with issuing IDs, but since the Israeli army only recognizes its own records, there is no point in issuing such IDs without prior approval from the Israeli authorities.

The PA therefore forwarded the request to the Israeli DCO, but received no answer. After a year of silence, HaMoked contacted the military Legal Advisor for the West Bank, demanding that A.D. be given an ID card and that his wife and the three children who remained in Jordan receive visitors' permits and residency. After another year of no response, HaMoked petitioned the HCJ.[139]

The State Attorney's Office responded that A.D. had already been entered in the Population Registry and that there

was no reason to refuse an ID. The State said it had no objection to letting his wife and children join him, subject to standard conditions. It is not yet clear if they will be granted residency. **(Case 11159)**

[137] HCJ Petition 10894/04, **Halawi v. Military Commander in the West Bank**.

[138] HaMoked, **Semi-Annual Report, January–June 2002**, p. 38.

[139] HCJ Petition 10151/04, **Dajara v. Military Commander in the West Bank**.

Respect for the Dead

In 1992, Aharon Barak, who was later to become the President of Israel's Supreme Court, declared that "human dignity… means, in fact, respect for the dead … It is natural for people to want to be buried properly ... [Respect for the dead] is also respect for the family of the deceased… the family has the right to honor the memory of their loved one and express their feelings toward him in a way that seems appropriate to them."[140]

Palestinian families whose relatives were killed in operations against Israelis, in armed clashes with the military or in assassinations, cannot take this right for granted. For years Israel has refused to return the bodies of Palestinians to their families and treated their burial with insensitivity and disrespect. Whatever the deceased had done, upon their death they are no longer a threat. Disrespect for the dead and refusal to return the bodies, constitute, in the least, collective punishment of their families and possibly outright vindictiveness.

As noted, except for a few isolated cases, Israel has refused to return the bodies of Palestinians to their families. Even when it agreed to return the bodies, the serious irregularities in the burial procedures and incomplete documentation have, in some cases, made this impossible. In the past, bodies were buried in two enemy casualty cemeteries (today other cemeteries in Israel are used as well.) The State did not accurately record the location of the burial sites, and in some cases has been unable to trace graves. Even when it managed to trace a person's grave, it was impossible to assert whether the body was indeed his, since the measures used to mark the bodies and graves were inadequate.[141] HaMoked's activities have led to some improvement in the State's burial procedures, but its refusal to return bodies is as unyielding as ever.

HaMoked has learned that, at least starting in 2002, the practice of not returning bodies became official policy, although no

announcement has been made to this effect In July 2002, the Israeli government adopted numerous penal measures against the families of Palestinians who have carried out attacks against Israelis or were suspected of involvement in doing so. The government announced two of these measures – deportation and house demolition,[142] but did not announce that bodies would not be returned. This was only revealed in 2004, in the State's response to HaMoked's petition, when, relying on said government resolution, the State Attorney's Office refused to return the bodies of three Palestinians.[143]

Arguing along the same lines as it did on the house demolition policy, the State held that by not returning the bodies of those who had attacked Israel or were suspected of involvement in doing so, it deters others from doing the same in the future. The State also maintained that this was a preventive measure, since the funerals of Palestinian activists often evolve into riots and serve as venues for recruiting more activists and promulgating violence against Israel. Additionally, the State said it was holding onto the bodies as bargaining chips for prisoner exchange negotiations.

In its response in one of the petitions, HaMoked asserted that the State was trading in corpses, and that the operations that the deceased had allegedly performed cannot possibly justify the violation of the families' rights and the disrespectful treatment of the dead. The High Court of Justice (HCJ) also expressed dissatisfaction with the State's position, and instructed the State to reconsider. Indeed, change was not long in coming. In December, the State Attorney's Office notified HaMoked that the State had reviewed the policy and decided to abandon it. From now on, the State said, bodies would be returned to the families, except in exceptional cases.[144] The State did not specify what these exceptional cases were, but agreed to return all three bodies it had refused to return in the first six months of the year.

The military has two standard conditions for the return of bodies: one is that public order be maintained throughout the return and burial proceedings, and the other is that forensic tests take place to ascertain that the right body is being returned. When the body cannot be scientifically identified using existing data such as x-rays, dental records and fingerprints or through comparison of the person's unique morphology, DNA testing is required of two parents or, in their absence, of two siblings. The State demands that the relatives cover this cost, which is around NIS 3,000.

At first glance, the State's demand to ascertain that the right body is being returned seems appropriate. This is an international standard, and, clearly, identification of this kind minimizes the chance of mistake that would later cause

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[140] HCJ Petition 5688/92, **S. Vikselbaum et al. v. Minister of Defense et al.**, Court Decisions [PD] 47(2), p. 828, In Hebrew, translated by HaMoked.

[141] See HaMoked – Center for the Defence of the Individual and B'Tselem, **Captive Corpses**, 1999, pp. 18-22.

[142] HaMoked – Center for the Defence of the Individual, **Annual Report 2002**, pp. 15-20, 23-28.

[143] HCJ Petition 3417/03, **Alan v. IDF Commander in the West Bank**; HCJ Petition 1900/04, **Mugrabi et al. v. National Institute of Forensic Medicine and IDF Commander in the West Bank**; HCJ Petition 9893/03, **Ganem v. IDF Commander in the West Bank**.

[144] As relayed orally to HaMoked's attorney. The State Attorney's Office turned down his requests to receive this undertaking in writing.

the families great distress. But the issue of identification is complex, and the bigger picture reveals a double standard.

The military, which is charged with handling bodies after burial, has adamantly refused to return bodies based on identification by administrative evidence such as documents found on the body or announcements issued by Palestinian organizations assuming responsibility for attacks and naming the operatives. At the same time, when demolishing a house, the soldiers do not ask the tenants for blood samples to make sure that the person because of whom the house is to be torn down is indeed their first of kin. In this case, the army makes do with administrative evidence.

Israel's policy regarding payment for the identification of bodies is also inconsistent. In the beginning of November 2004, HaMoked found out that the State intended to return the bodies of several Palestinians from the Gaza Strip. Fifteen bodies were returned in February 2005, apparently as part of what Israel refers to as "gestures" toward the Palestinian population.[145] Israel covered the cost of the tests performed on the bodies before their transfer to the Palestinian Authority in the Gaza Strip.[146] For many Palestinian families, the cost of DNA testing is an insurmountable hurdle.

In 2004, a nine-year battle for the return of R.J.'s body to his family in East Jerusalem came to a dead end. R.J. was killed in 1968 at the age of 13, when attempting to place a bomb at the Ambassador Hotel in Jerusalem - then the residence of the military governor. Nobody knew what became of his body.

In 1995, R.J.'s mother asked HaMoked to help trace her son's body and bury it. For around six years, the authorities shunted responsibility from one to the other. The Ministry of Defense said that the only documentation it could find was of the autopsy that had been performed at the National Center for Forensic Medicine at Abu Kabir. The military held that at the time, the police was responsible for burial of enemy casualties. The police, however, was unable to find any documentation. In 2001, HaMoked petitioned the HCJ, demanding that the State trace the body and return it to the family.[147]

The police then appointed an officer to investigate the whereabouts of R.J.'s body, but the report he handed in leaves much room for doubt. The investigating officer said that the Center for Forensic Medicine had apparently destroyed all of its records from 1968, and that there is no mention of R.J. in the Institute's computerized archives. The officer tried to track the investigation file that the police had on R.J.'s brother, who was suspected of dispatching R.J., but could only find an empty binder. The documents that had been inside, the police said, were handed over to the military. The investigating officer therefore turned to the army, which said that an inquest indicated that no documents relating to R.J. existed. Precisely what kind of inquest this was remains a mystery. The officer did not bother to note whether the military archives had been checked.

He also contacted the Jerusalem police, which investigated the incident at the time. Retired officers he interviewed said that to the best of their recollection, the bodies of Palestinians that they had handled were passed on to the families once identified at the Center for Forensic Medicine. The

investigating officer asked the Jerusalem police "to use their intelligence operatives to reveal information that would help trace the body."[148] The officer appointed as intelligence coordinator, said that R.J.'s body had been transferred to his family and buried in the Muslim cemetery in the Old City. The funeral was attended by R.J.'s mother and brother, and at least two other people whom the intelligence coordinator could name. The intelligence officer further said that R.J. was buried in a mass grave, without any means of identification. According to the report, these details were provided by a single source, which was not named.

The investigating officer further reported that he had interviewed the two people who had ostensibly attended the funeral. However, the name of one of his interviewees was not the same as either of the names provided by the intelligence source. The investigating officer reported that in the interviews, the two men said they remembered R.J.'s death, but had no recollection of his burial. HaMoked traced these two men. One confirmed he remembered R.J.'s death, but recalled nothing of his burial. The other said he wasn't even in the region in those years: between 1964 and 1971 he was living in Kuwait.

The investigating officer's conclusions were based primarily on the information provided by the mysterious intelligence source. R.J., the officer asserted, was buried in a mass grave. To check whether he was indeed buried there, all bodies in that grave would have to be analyzed, which was not a viable option.

HaMoked's attempts to compel the State to explain the enigmas raised by the report have yielded no results. In February 2004 there was no longer any choice but to shelve the petition.

(Case 7213)

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145 Aluf Benn, Gideon Alon, Yuval Azoulay, Amos Harel, "Fifteen Terrorist Bodies Move from Israel to the Palestinian Authority," **Haaretz**, February 14, 2005.

146 As relayed orally to HaMoked by the Palestinian Authority's Ministry of Health.

147 HCJ Petition 4047/01, **Jabber v. State of Israel**.

148 HCJ Petition 4047/01, **Jabber v. State of Israel**; Investigating Officer's Report, Appendix to the Notice Added by the State Attorney's Office, November 20, 2002.

House Demolitions

"Any destruction by the Occupying Power of real or personal property belonging… to private persons… is prohibited, except where such destruction is rendered absolutely necessary by military operations."

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), Article 53

In June 2002, the security cabinet decided on various penal measures against the families of Palestinians who carried out or planned attacks against Israelis or are suspected of doing so. The proclaimed purpose of these measures was deterring Palestinians from partaking in such activities. One of the measures was demolishing the family home.

Punitive house demolitions are not a new measure. Israel used this method until 1997 and resumed demolishing houses back in October 2001, but the cabinet resolution gave the military a green light to expand its use of this measure. The number of houses that the military demolished went up nearly sixfold, from 22 in the six months preceding the resolution to an average of 126 for every six months since then and until the end of 2004.[149]

Upon this resolution, HaMoked set out to fight house demolitions in the courts. The High Court of Justice (HCJ), which had formerly laid down rules that somewhat restricted the ability of the State to exercise this measure, this time gave the State carte blanche to use it as it saw fit. The HCJ overturned its own rule by which the State was to give the family prior notice and enable it to state its claim. Now the Court left it to the army to decide who would be allowed to contest an impending demolition. In most of the few cases that reached the HCJ, the demolition was approved.

The military made extensive use of the leeway the HCJ had given it. Most houses were demolished in the dead of night, without any prior warning, official order or time for the family to remove its belongings.

Despite the green light from the HCJ, HaMoked continued filing appeals with the military commander in charge and petitioned the HCJ whenever there was real concern that a specific house has been earmarked for demolition. In 2004, a new dimension was added to this legal struggle when HaMoked filed its first claim for damages arising from the demolition of a house.

On August 4, 2002, soldiers arrived at a residential compound in Silat al Harithiya where there are five houses that belonged to the T. family and one other that belonged to S.Z., who is not a member of the same family. The soldiers ordered all members of the T. family who lived in the compound to get out, informed them that one of the houses was about to be blown up and moved them away. They did not allow anyone to remove any belongings from the houses. After the tenants were at a safe distance, the soldiers detonated a building that had three apartments. M.T., a widow, lived in one of them with three of her sons. Two other sons lived in the two other apartments. In March, another one of M.T.'s sons had carried out a suicide attack in Afulah.

The house where M.T. lived was completely destroyed, but the explosion also caused serious damage to the other houses in the compound. The home of M.T.'s sister-in-law, which was right next to the demolished building, was damaged so heavily that it was dangerous to enter and there was no choice but to tear it down. Parts of S.Z.'s home also became unfit for living.

In addition to the damage to the buildings, the explosion caused extensive damage to the property inside the houses. Everything in the three apartments belonging to M.T. and her sons was buried under the rubble: appliances, beds, cupboards and all their contents, two kitchens and all the kitchenware, two washing machines, etc. Much of the property in the houses that remained standing was also damaged. A car that belonged to one of M.T.'s relatives was completely destroyed. In the neighbor's garden, fruit trees and a shed were destroyed. The explosion did not spare animals either: pet birds that were in one of the demolished houses were killed, as were rabbits and pigeons that lived in the neighbor's shed.

In response to HaMoked's inquiry, the military said that "the building was demolished by an officer from the Corps of Engineers, who took special care not to damage adjacent buildings. Before the building was demolished, members of the [T.] family were given time to remove their belongings … If there are allegations concerning damage caused to adjacent buildings, the complainants can sue for damages ...".[150]

In August 2004, HaMoked filed for damages both for the damage to adjacent buildings and for the loss of property in all the houses. In the statement of claim, HaMoked explained the special value of personal belongings: "The value of the destroyed property ... goes beyond the monetary market price.

[149] According to B'Tselem: www.btwelem.org, last checked on June 2, 2005.

[150] Letter to HaMoked from Captain Paso, Assistant to the Military Legal Advisor, on behalf of the Military Legal Advisor, March 1, 2004.

These are all the objects, big and small, that surround people and give them a sense of belonging and security, objects that are intertwined with a person's life memories, days gone by and people who are no longer alive. The sentimental value of such objects is priceless. The injury that deprives a person not only of his dwelling but also of his home and all the objects that constituted an intimate part of his existence, is immeasurable."

In the statement of defense filed in March 2005, the State argued that the demolition of M.T.'s house constituted a wartime action. The State also sought to serve M.T. with a third party action, claiming she knew of her son's intention to carry out the attack but did not stop him or notify the security forces. The house was demolished as a result of that attack, and so M.T. bears some of the responsibility for the demolition of her own home.

The case is still pending in the Magistrate's Court in Jerusalem. **(Case 33764, Civil Case (Jerusalem) 9326/04)**

As stated, although the HCJ has changed its policy, HaMoked still pursues this avenue and in 2004 filed 12 petitions challenging the demolition of houses. Only two petitions were actually heard. In one, the Court authorized the demolition but in the other, in an exceptional decision, the Court instructed the State to make do with sealing the room of the person because of whom the demolition had been ordered. In another case, the military demolished the house after the petition was filed.

On October 21, at 2 AM, HaMoked received an urgent call from M.D., a resident of Qalqiliya. Soldiers came to his house and announced they were going to shortly demolish it. They did not present any demolition order and only gave the family 15 minutes to collect their belongings and leave.

An attorney for HaMoked immediately contacted the Office of the Military Legal Advisor for the West Bank, and once she confirmed that the army indeed intended to demolish the house, she petitioned the HCJ by fax.

At 2:45 AM HaMoked called M.D. to inform him that a petition had been filed. The house had already been demolished, M.D. said. **(Case 35693)**

It later transpired that while the soldiers were demolishing M.D.'s house, the military was reconsidering this policy in its entirety. In mid February 2005, the military officially announced that around four months earlier the Chief of Staff had appointed a committee to look into the house demolition policy. Following the recommendations of this committee, the military decided it would no longer demolish the homes of Palestinians who are suspected of involvement in attacks against Israelis.[151] The official statement on the IDF website did not specify the reasons underlying this recommendation, but the media reported that the committee had concluded that the damage this policy causes outweighs its benefits. Instead of deterring, demolitions only inflame hatred and hostility.[152] When this statement was released, eight petitions against demolitions that HaMoked had filed in 2004 were still pending in the HCJ. In all eight, the State announced that given the change in policy, it no longer intended to demolish the houses.

The efficacy of the demolition policy is

irrelevant to the question of its legality. Demolition of houses is unlawful, among other reasons, because it constitutes collective punishment, which is prohibited by international law[153] and violates the principle of individual responsibility.[154]

The military, on the other hand, maintains that house demolitions are required for deterrence and that deterrence is a military necessity. One of the primary arguments the army invoked for justifying the policy was its efficacy. Whenever it was required to defend a decision to demolish a house, the military repeated that there was indication that house demolitions indeed deterred Palestinians from planning and carrying out attacks against Israelis, and led others to turn in relatives who engaged in such activity. The army's statement of February 2005 shows that this argument, on which the entire policy was built, was never adequately examined. Once it was, the military discovered that its assessments were incorrect and abandoned the policy. By the time the military realized its mistake, 666 houses had been demolished.[155]

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151 Defense Minister and Chief of Staff Resolution to Change the Policy of Demolishing Terrorists' Homes [Hebrew], IDF website, www.idf.il, February 17, 2005, last checked on June 1, 2005.

152 Amos Harel, "Committee Appointed by the Chief of Staff: Stop Demolishing Terrorists' Homes – the Damages outweigh the Benefits," **Haaretz**, February 17, 2005.

153 **Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949)**, Article 33; **The Hague Convention Respecting the Laws and Customs of War on Land (1907)**, Article 50.

154 See the dissenting opinion of Justice Mishael Cheshin in HCJ Petition 2006/97, **Janimat v. GOC Central Command – Uzi Dayan**.

155 Since Israel again started demolishing houses in the current intifada and until publication of the statement. According to B'Tselem, www.btselem.org, last checked on June 2, 2005.

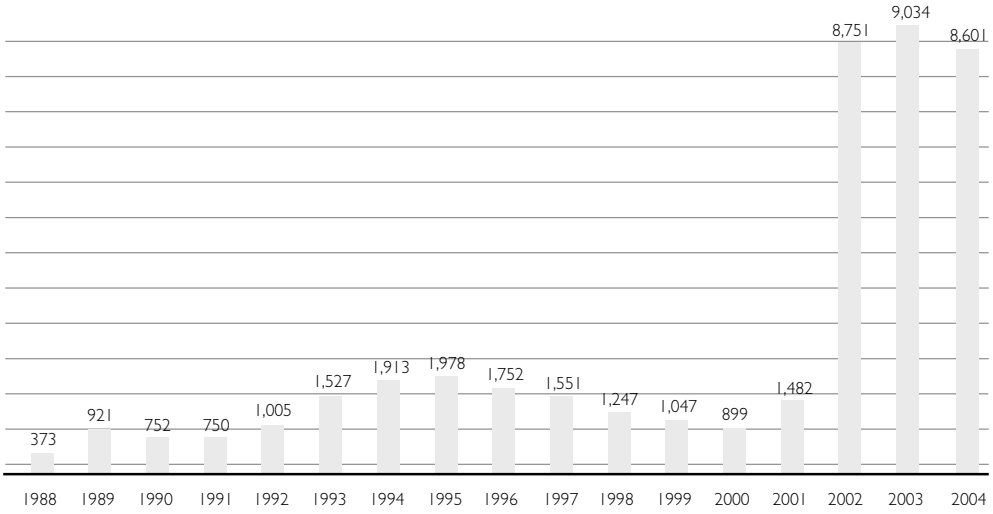
Appendices

Statistics

New cases in 2004 compared to 2003

		2004		2003	
		Number of cases	% of cases	Number of cases	% of cases
Detainee Rights	Tracing	5,484	63.8	5,077	56.2
	Administrative Detention	78	0.9	106	1.2
	Conditions of Detention	16	0.2	11	0.1
	Family Visitation	35	0.4	84	0.9
Freedom of Movement	To and from Territories	363	4.2	238	2.6
	Within the Territories	2,185	25.4	1,941	21.5
Residency	Jerusalem	87	1.0	206	2.3
	West Bank	25	0.3	4	0.0
Violence to Body and/or Property		287	3.3	1,314	14.5
House Demolitions		23	0.3	24	0.3
Respect for the Dead		11	0.1	21	0.2
Other		7	0.1	8	0.1
Total		**8,601**	**100**	**9,034**	**100**

New Cases: July1988 - December 2004



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