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)**