



Annual Report 2003

“All human beings are born free and equal in dignity and rights.”

Universal Declaration of Human Rights (1948), Article 1

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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

The military incursions into Palestinian Authority territory in 2002, which led to an unprecedented loss of life and property, were replaced in 2003 by chronic ongoing abuse of the civilian population. The most basic human rights – to life, physical integrity, family life, freedom of movement, education, work, health and elementary living conditions – were all denied.

The Separation Wall has created a new reality in the West Bank: tens of thousands of people were closed off in enclaves

between the wall and the Green Line and cut off from the trade, education and medical facilities and jobs in the cities of West Bank. They now must carry special permits even to live in their own homes. Thousands of farmers have been alienated from their land, on which they make their living.

The Law of Nationality and Entry into Israel (Temporary Order) was passed in 2003, making it impossible for mixed Israeli and Palestinian couples and their children to exercise their right to family life.

New Cases

While In 2002, HaMoked handled 8,751 new cases, a higher figure than ever before, the 2003 number increased even further - to 9,034.

New cases handled by HaMoked in 2003

Subject	Detainee Rights	Violence and Property Damage	Freedom of Movement	Residency	House Demolitions	Respect for the Dead	Other	Total
2003	5,278	1,314	2,179	210	24	21	8	9,034
Change compared to 2002	-27%	+86%	+289%	+136%	-67%	-32%	-86%	+3%

The different breakdown is due to the change in the focus of military operations and to HaMoked's proactive measures. The roadblocks, closure and sieges became even more oppressive due to the nature of the military presence in the OT and the ongoing construction of the Separation Wall. This, coupled with HaMoked's positive steps, led to a jump of 289% in the number of new cases concerning freedom of movement.

The extended violence and the activity undertaken by HaMoked in response to the amendment to the Torts Law (State Liability) led to an increase of 86% in complaints about violence (see the chapter about violence by the security forces).

The number of new requests to trace detainees has fallen (from 7,078 in 2002 to 5,077 in 2003), in part due to fewer arrests made by the military.



Legal Action

In 2003, HaMoked petitioned the High Court of Justice and the administrative courts 139 times on behalf of around 290 residents of the occupied Territories. HaMoked also filed 12 tort claims. Here too the general trend applied, with an increase in petitions and claims relating to freedom of movement and violence, and a decrease in the number of habeas corpus petitions seeking to trace detainees, from 33 in 2002 to 10 in 2003.

Draconian as it may be, the Law of Nationality and Entry into Israel left a narrow opening for persons who had applied for family unification before May 2002, when the Israeli cabinet discontinued the processing of such applications. Because of this opening, the number of petitions handled by HaMoked in this matter increased.

Legal action taken by HaMoked in 2002 and 2003

	Detainee Rights	Violence and Property Damage	Freedom of Movement	Jerusalem Residency	West Bank Residency	Deportation	House Demolitions	Respect for the Dead	Total
2003	40	12	45	22	4	1	24	3	151
2002	63	8	5	9	--	13	37	--	135

Three of the petitions filed by HaMoked in 2003 are particularly noteworthy:

In October 2003 HaMoked filed a petition regarding secret detention facility 1391, which is inside Israel. HaMoked demanded that the facility be shut down immediately, arguing that the existence of a secret detention facility violates both domestic and international law (see the chapter about detainee rights).

In November 2003 HaMoked filed a petition demanding to stop the construction of those parts of the Separation Wall that invade the West Bank and end the consequent violation of the rights of the civilian population along this route (see the chapter about freedom of movement).

In December 2003 HaMoked filed a petition demanding that the Law of

Nationality and Entry into Israel be repealed as far as children are concerned. In its petition, HaMoked argued against the all-embracing interpretation of the concept of family unification adopted by the Ministry of the Interior. Under their interpretation, children born in the Territories to residents can only be entered in the Israeli population registry through the frozen process of family unification (see the chapter about Jerusalem residency).

Toward the end of 2003, HaMoked started preparing for tort claims in close to 200 cases of violence, after the amendment to the Torts Law, passed in August 2002, significantly limited the statute of limitations during which residents of the Territories can submit damage claims – from seven to two years (see the chapter about violence by the security forces).

The Website: www.hamoked.org

In 2003, HaMoked created a legal library with items from Israeli, international and foreign law, covering more than 50 different subjects and placed it on the web. The website contains primary sources that in most cases are not available elsewhere on the Internet, so that attorneys, researchers and human rights activists in the Occupied Territories, Israel and abroad can make use of the knowledge and experience accumulated by HaMoked in the context of human rights violations in the Territories and the efforts to protect these rights. The site also contains many links to information that can be found on the websites of other human rights organizations and Israeli,

Palestinian and international institutions.

More than 1,000 items have been uploaded to the site so far, including court rulings, civilian and military legislation, petitions and the State's responses, tort claims, affidavits, opinion statements, cabinet resolutions, principle correspondence, international conventions, resolutions of international organizations, reports and maps. Around 200 documents have been translated into English so that Hebrew language documents can also be accessible to relevant audiences in the Territories and around the world.

While the website is continually updated, many visit daily to make use of the already abundant material available.



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

The closure and siege policy and the roadblocks, ditches and obstacles built by Israel, continue to take their toll on Palestinians in the Territories. According to B'Tselem, in November 2003, 56 staffed roadblocks were operated throughout the West Bank in order to apprehend Palestinians and monitor their moves. Dozens of makeshift roadblocks are deployed across the West Bank daily in order to stop and search passersby. In addition, the military has built 457 mounds and 95 permanent concrete roadblocks and excavated 56 ditches in order to stop the movement of vehicles, close the entrance to and exit from towns and villages and make it hard to travel. Soldiers stationed across the OT make it extremely difficult for tens of thousands of people to get to their

schools and universities, access medical and administrative services, visit their relatives or go to work. Any attempt to go from one place to another inevitably entails an encounter with soldiers, delays and humiliation. At least 38 people died because they were delayed at roadblocks when on their way to receive medical care, including at least 7 babies who died at birth, when the soldiers would not let the mothers through to the hospital.

Restrictions on movement have also been detrimental to the Palestinian economy: 60% of the population lives in poverty (with income less than two dollars per day), the level of unemployment has reached 50%. The price of water delivered by water tankers – designated for villages that are not connected to the water system or

whose water lines had been destroyed – has risen by 80% over this period, due to the increased cost of transportation.¹

Over the last few years, the military's policy has created isolated, besieged areas whose residents are blocked in with practically no one coming or going. The Gaza Strip is a sealed area, with hardly any entry or exit permitted. The construction of the Separation Wall has compounded the difficulties in those West Bank areas that are now locked in behind high prison walls and barbed wire. The gates are controlled by the army, which has failed to comply with its commitment to maintain regular opening and closing hours.

The right of Palestinians to leave the Territories is limited as well. Without permits, which are given sparingly, Palestinians are not allowed into Israel. At the same time, the policy concerning passage to Jordan has changed several times in 2003, preventing the

departure of many Palestinians. Until recently, Palestinians were not required to carry any special permit in order to go through roadblocks in the Territories, which were only intended for general supervision and for enforcing the siege. Recently, the military started demanding special permits in order to let people through roadblocks within the West Bank and through the gates of the Separation Wall. This demand intensifies army control over the lives of Palestinian residents and makes the difficulty of daily life under the occupation even greater. Now the Palestinians need permits from the District Coordination Office (DCO) to return to their homes, which makes the very existence of a personal life contingent on special permits. The roadblocks, permit system and gates have splintered the land into isolated areas, systematically tearing apart the social structure and the fabric of the Palestinian community in the Territories.

The Separation Wall and the Seam Zone

The wall that is now being built and the set of barriers on either side do not overlap with the Green Line. In order to create a de facto annexation of Jewish settlements, the alignment of the wall veers eastward from the Green Line to include the settlement blocs; however, it also disconnects hundreds of thousands of Palestinians from areas where they live and from the land on which they make their living. The winding path of the wall and the confiscations of land for its construction are changing the lives of hundreds of thousands of Palestinians. Those living east of the wall are unable

to access their fields and water wells to its west; those living between the Green Line and the wall are in effect caged in on their land and can go to other cities in the West Bank, see doctors, go to school, go to the market or visit relatives only if they pass through the gates in the wall, using special permits. The complexity of life by the wall, the constant monitoring by the authorities and the enclaving of villages are liable to cause the Palestinian population to abandon its land, leading to a de facto annexation of the territory between the wall and the Green Line to Israel.

The wall changes the reality in the occupied territory. In order to build the wall, the IDF confiscated 28,000 dunam (around 6,900 acres) of Palestinian land, and enclaved 845,000 dunam (around 210,000 acres), or 15.1% of the West Bank, between the wall and the Green Line. The number of residents living along the wall whose lives will be adversely affected by it is estimated at 875,600, or 38% of the Palestinian population of the West Bank.² But the wall does more than separate a multitude of Palestinians from their land, lock them behind fences and walls and deprive them of their source of income; it also creates a discriminatory regime that confers rights upon Jews and Israeli citizens and denies these rights from Palestinian residents.

In the beginning of October 2003, the Military Commander of the West Bank declared the area between the wall and the Green Line, also referred to as the seam zone area, to be a closed military area, indefinitely off limits. This status has different implications for different individuals. The Palestinian residents of the seam line area, who were born and raised in this place, and who wish to work there or visit their relatives – need a special permit to pass through the gates. Israelis – Israeli citizens and anyone entitled to such citizenship under Israel's Law of Return, do not need any such permits and are free to come and go as they please. This means that it is a closed military zone only for Palestinians, who need permits to live in their homes and farm their land. The orders defining the rights in the seam line area also make provisions for special cases. The distinction between Israelis and Palestinians is not the only one: tourists, Palestinians who work in Jewish settlements and Palestinians who

hold permits to enter Israel are also entitled to come and go as they please.



A petition filed by HaMoked with the High Court of Justice against the route of the wall and against the permit regime that goes hand-in-hand with it held:

“Thus, Palestinians who have been living for generations on their land, which has become the “seam zone”, who till the soil by the sweat of their brow, who had children and raised them there – have to go to the offices of the Civil Administration and fill out a form and ask for a permit to stay on their land and in their homes, and there is the fear that if one of them is found to have a security history, he will be denied the possibility of continuing to live on his land, and here we have the beginning of a process of a crawling transfer with security pretexts. Tourists, on the other hand, arriving from around the world, possibly setting foot on Middle Eastern soil for the first time, get an automatic permit, are not required to stand in line during the opening hours of the Civil Administration, their right to stay on the inhabitants' land is clear to the Fifth Respondent. And finally there are the hewers of wood and the drawers of water of the settlers, those Palestinians who are exploited by the robbers of their land for a pittance, who, according to the best tradition of racially segregating regimes which enable the servants to reach their masters, are also not barred from entering, lest the settlers be left without anyone to clean their toilets.”³

The petition, filed on November 6, 2003, does not challenge the construction of the wall. The Israeli government has the

¹ B'Tselem: www.btselem.org.

² According to B'Tselem: www.btselem.org.

³ High Court Petition 9961/03, **HaMoked – Center for the Defence of the Individual v. the Government of Israel et al.**, paragraph 85.

full right to take measures defending its borders. However, the construction of a wall inside the West Bank, east of the Green Line, conflicts with both domestic and international law and is detrimental to the lives of hundreds of thousands of people. The construction of the wall is causing a major alteration in the Occupied Territory. Israel is building inside the occupied territory a concrete wall that in some places is eight meters (26 feet) high. It is using farmland as its construction site, blocking access to fields and water wells and partitioning villages. These changes violate international law, which provides that the occupying power may not implement any substantive changes in the occupied territory. In order to build the wall and enforce its desired regime, the military administration created a series of discriminatory and humiliating regulations, as described above. These regulations violate the basic values of the State of Israel and the Basic Law: Human Dignity and Liberty. But the wall is not only illegal – it is also immoral, since it has dire consequences for the civilian Palestinian population whose daily routine is now at the mercy of the military commander, who can stop people from returning to their homes and farming their land.

In the meantime, the debate about the legality of the wall has transcended the borders of Israel and will also be addressed by an international forum. On December 8, 2003, the U.N. Secretary-General asked the International Court of Justice in The Hague for an advisory opinion on the legal consequences arising from the construction of the wall. The main arguments made at the U.N. Assembly meeting are, in essence, similar to those submitted to the HCJ. These arguments address the material changes

that the wall creates in the occupied territory and the humanitarian implications that it will have for the population living in the area.

In the course of February 2004, sessions were held about the wall both in the HCJ and at the ICJ. As of the time this report was compiled, neither had published its conclusions.

Palestinians are stranded every day by the wall, at the gates on their way to their farmland, water wells and urban centers in the West Bank. In December 2003, the Association for Civil Rights in Israel (ACRI) filed a petition asking the Court to instruct the IDF to keep the wall gates open around the clock.⁴ These passageways had been built in the wall in order to enable eligible Palestinians to pass through, but in reality the passage permits are used to pressure applicants and as another mechanism with which to monitor and humiliate the population. Soldiers are supposed to open the gates as ordered, but in reality the gates are opened at irregular hours and for very short intervals. Even Palestinians who have the necessary permits might be detained by the gates for many hours, subjected to the soldiers' arbitrary decisions, delayed and humiliated.

The village of Jayyus near Qalqiliya has a population of 3,100, 90% of which makes its living by farming. The construction of the wall left the entire village, except for one family of eight, on the east side of the wall, cut off from more than 80% of its farmland and from its water sources. In order to get to the village farmland, which comprises 7,000 dunams (around 1,730 acres) of olives, cereal, citrus fruit and vegetables and six water wells, residents

must obtain special permits and use the one of the Jayyus gates. Between August and December 2003, HaMoked's hotline dealt with 122 cases in which people were stranded on the wrong side of these gates.

An example is the sequence of events in just four days in December:

On December 7th, at 1:10 PM, a man called HaMoked's hotline asking to have the Jayyus gate opened for people who were waiting on either side for the military patrol, which was to arrive at 12:30 PM and open it. A few phone calls later, HaMoked found out that because of alerts, the gate would not be opened. Nevertheless, at 1:25 PM a military force came to the gate and let through those who were still waiting. At 5 PM that day a man called and informed HaMoked that the gate had not been opened at 4:30 PM

as it was supposed to, and that some 50 people are therefore unable to go home. The following day, one of the farmers got stuck on the east side of the wall, because he was a couple of minutes late. The gate was still open when he got there but the soldiers would not let him through. On December 9th, the gate was not opened at midday, and farmers waited there for more than three hours in hope that soldiers passing by would open it for them. At 4 PM the last of the farmers left the gate and returned to their homes, without farming their land. The next day, around 40 farmers were stuck on the west side of the wall on their way back to Jayyus. Only an hour and a half after the time when the gate was scheduled to be opened, did the military patrol arrive and let them pass. **(Cases E3382, E3388, E3390, E3396, E3408)**

Roadblocks

The large numbers of roadblocks, the endless friction between civilians and soldiers and the practically limitless power in the soldiers' hands, have turned abuse, beatings and humiliation to a routine. In many cases, intervention at the roadblocks is urgent – which is why HaMoked's Emergency Human Rights Hotline was created. In 2003, HaMoked's hotline handled around 2,000 calls from roadsides and roadblocks, and tried to resolve the various problems as fast as possible, by contacting the relevant people at the Civil Administration and the local military headquarters. While in most cases HaMoked's communications with

the Civil Administrations and the District Coordination Offices (DCOs) yielded results, the process generally took too long. HaMoked also followed up on cases at the callers' requests, even after the complainants were allowed through and saw that it was investigated and that those responsible were tried. HaMoked also followed up on cases where authorities failed to assist altogether.

⁴ HCJ Petition 11344/03, *Salim et al. v. IDF Commander in the West Bank*.

On the evening of October 26, 2003, A.A.'s contractions started. At 7:40 PM A.A. and her husband got in their car and drove toward the entrance to their village, in the Nablus area, to meet the ambulance that they called and which was to drive her the rest of the way from the roadblock at the entrance to the village to the hospital. However, soldiers who were standing at the village entrance stopped the car. When the ambulance got to the other side of the roadblock, the soldiers started fire and drove it away. A.A.'s husband called HaMoked, which immediately contacted the Civil Administration demanding that the ambulance be allowed in. Half an hour and many phone calls later, the Civil Administration informed HaMoked that the ambulance could approach the roadblock and pick up A.A. HaMoked was on line with both the ambulance and A.A.'s husband, who had driven away earlier because of the soldiers' shooting. At 8:35 PM, 55 minutes after they left the house, A.A. and her husband started crossing by foot the mound separating between them and the ambulance. The soldiers were gone and A.A. made it safely to the ambulance. She reached the hospital – which is a 15-minute drive from her home – at 8:50 PM. **(Case E3037)**

On February 2, 2003, at noon, soldiers stopped the traffic at a roadblock near Jerusalem and took the IDs and car keys of everyone there. A soldier told the passengers in one of the cars to step out, turned on the radio and demanded that they dance with him. A few minutes later one of the passengers called HaMoked, which contacted the DCO in Ramallah.

At 12:40 PM, around 40 minutes after the incident started, a military jeep arrived on site. The IDs and car keys were returned and the car was allowed to drive on. **(Case E972)**

On the morning of May 3, 2003, A.D. (38) reached the Hawara roadblock near Nablus. The soldier at the roadblock threw A.D.'s papers on the ground and instructed him to crawl and bray like a donkey, or else he would not get his papers back. When A.D. refused, the soldier confiscated the ID and told him that he was detained until further notice. HaMoked's hotline contacted the Civil Administration and asked that A.D. be released and that his papers be returned. Six hours later, an officer from the DCO arrived on site, gave A.D. his papers and allowed him to carry on. **(Case EI508)**

On May 31 at midday, Z.A. crossed the Qalandiya roadblock with his taxicab. At the roadblock he was stopped by a border policeman, who opened the door and without saying a word bashed Z.A.'s face with the butt of his rifle. Z.A. fell from the car and passed out on the road. The soldiers would not allow passersby to go near the wounded man and help him. One of the witnesses called HaMoked, which contacted the DCO and demanded that an ambulance be allowed across the roadblock to evacuate Z.A. Within 30 minutes a Red Crescent ambulance arrived on site and took Z.A. to the hospital, where he spent two days because of an eye injury. The case is being followed up by HaMoked vis-à-vis the internal affairs unit of the Israel Police. **(Case EI778).**

Entry to the Gaza Strip

As all other aspects of life, the movement of Palestinians to and from the Gaza Strip leaves much room for abuse and heavy-handed decisions. As stated in the previous annual report, passage between the West Bank and the Gaza Strip, which in the Oslo Accords are recognized as a single political and territorial unit, has become all but impossible.⁵ Since the interim agreement between Israel and the PLO was signed, the military has prohibited Israelis from entering the territories of the Palestinian Authority in the Gaza Strip. Although exceptions were made, the authorities recognized fewer of these as time went by, and since the current Intifada started practically no exceptions have been permitted. The only arrangement still in force – although not consistently – is that of divided families in which one of the partners is Israeli and the other Palestinian. According to the State, the prohibition to enter the Gaza Strip is driven by security, as explained in a HCJ hearing of the petition filed by several Knesset members who wished to go there.⁶ In this hearing, the State argued that it is unable to protect Israelis inside Palestinian territory, and that it must therefore restrict them from going there. Even if this argument holds in the case of Knesset members, it hardly makes sense in the case of a Palestinian who wishes to go to Gaza to care for his or her bedridden mother, attend a wedding or console bereaved relatives. The prohibition on Palestinians who live in Israel or East Jerusalem to enter Gaza gives rise to suspicion that the State in fact has other motivations – to break up the Palestinian society into small, isolated and besieged groups. This concern intensifies when

considering the different policies practiced toward Jews and Palestinians: Jews entering the Strip (the settlements) are under a permanent threat to their lives, but they are nevertheless allowed in; Palestinians, even those who were born and raised in the Strip, are banned.



G.A., 41, who was born in Gaza, is married with four children, lives in Jerusalem and works for the municipality. In July 2002 he contacted HaMoked after his repeated applications to receive a permit to enter Gaza to visit his sick mother; had been refused. His 72-year-old mother is a widow who suffers from depression and serious chronic diseases and cannot care for herself. After repeated applications by HaMoked, G.A. indeed received a permit and spent two days with his mother in October 2002 and three in May 2003. In September 2003 HaMoked attempted to obtain another permit for G.A., but was flatly turned down. G.A. did not comply with the criteria, the authorities said. HaMoked then contacted the military Legal Advisor for the Gaza Strip to change this decision, which on the face of it seemed unreasonable. After several telephone conversations with the legal advisor's office, HaMoked realized that the office did not consider itself in a position to challenge the decisions of the authorities and that all they could do, at best, was to

⁵ HaMoked: Center for the Defence of the Individual, **Annual Report 2002**, p. 58 ff.

⁶ High Court Petition 9293/01, **Baraka et al. v. Defense Minister et al.**

serve as a go between. HaMoked tried to talk with the legal advisor in person, but was not able to reach him. After a letter sent by HaMoked was not answered either, HaMoked petitioned the HCJ, asking the IDF Commander in the Gaza Strip to allow G.A. in and explain why he has adopted a sweeping policy rather than deciding on a case-to-case basis. G.A. was then permitted into Gaza; the State thought it could avoid the hearing, but HaMoked demanded a hearing and an explanation as to the more general question: Why are Palestinian citizens or residents who live or reside in Israel or East Jerusalem not allowed into the Gaza Strip? As of the time that this report was compiled, no response has been received. The case will probably be heard by the court in September 2004. **(Case 17936)**

HaMoked hopes that once the HCJ discusses the principles that should govern military policy, the troubles of many other Palestinians prohibited from entering the Gaza Strip will also be over.

A.K. was born in Gaza and was awarded the status of a permanent resident of Israel due to her marriage to a domiciliary of Jerusalem. In 1985, A.K. and her husband divorced. She returned to Gaza and married a local, who passed away in 1996. The couple had a child. Since she was an Israeli resident, A.K. lived in

Gaza with her husband and their son, who was born in Gaza, under temporary permits. Because of the current Intifada, A.K. kept away from the Erez crossing, and she stayed in Gaza without a permit with her son. When she tried to have the permit renewed in September 2002, her application was denied. It is military policy that divided family procedures are only applicable when both spouses are alive; the unification between a mother and her son is not sufficient grounds for a permit to stay in Gaza. A.K. was forced to return to Jerusalem, leaving her son with relatives in Gaza. In October 2002 the son was seriously injured in a car accident and hospitalized in Gaza. A.K. then received a special two-day permit to visit him there. Due to her son's condition, A.K. was permitted to visit Gaza on several other occasions, for limited periods. A letter sent by the office of the military legal advisor for the Gaza Strip stated that under Islamic law and tradition, the orphan belongs to the father's family, and therefore, by law, A.K. does not have to be with her son. Although the law does not require her to do so, A.K. has taken advantage of the entry permit to Gaza and stayed with her son ever since. At the time this report was compiled, she was still there with him, ostensibly unlawfully and without being able to go to Jerusalem for fear that she would not be allowed back. **(Case 22979)**

Leaving the Territories

Since the start of the occupation, the departure of Palestinians from the West

Bank and Gaza Strip to Jordan or Egypt has always been controlled by the military.

Whenever it wishes to pressure the population, it also makes it more difficult for Palestinians to cross the border, and people wishing to go abroad for school, medical treatment or family visits are forced to go back. Palestinians whose exit is prohibited can only reapply after six months. Thus, a visit planned for a certain date can be postponed by years and sometimes forever. In certain cases, the authorities make the permission to leave contingent on a voluntary exile of sorts. The person leaving the Territories must pledge not to return for a given, arbitrary number of years, in most cases two or three, as required by the military. Ostensibly, this requirement rules out the threat in allowing the person to leave, since he cannot serve as a courier for dangerous organizations, and the military is then able to permit his exit. However, it seems that this requirement is just another part of the undeclared population transfer policy practiced by Israel, which is meant to encourage anyone who leaves the Territories to prepare for an extended stay in hope that they would choose not to come back.

In 2003, HaMoked handled nearly 200 complaints from Palestinians whose applications for permits to leave the country had been turned down. In more than half these cases, HaMoked's intervention caused the authorities to change their decision and allow the applicant to leave, either through appeals to military panels or petitions to the HCJ. This ratio reflects the arbitrariness behind the refusal to grant exit permits and proves that turning down these applications – as is the case with all other applications – is just another way to make the life of Palestinians in the Territories unbearable.



In March 2001 A.Z. went to Allenby Bridge on his way to Jordan, en route to Syria, to visit his son, daughter in law and grandchildren, as he had done many times since Israel had deported his son to Lebanon in 1992. At the Bridge he was told he would not be allowed to leave the West Bank, because of security reasons. A.Z., who was then 77 years old, asked HaMoked to try to reverse the decision and help him get together with his family. In July 2001, after extensive correspondence, HaMoked was answered that the IDF Commander in the West Bank had reviewed the request but decided to reject it due to security reasons. Six months later, HaMoked asked the authorities to review their decision. After five months, the military's answer was received – the application was turned down again, for security reasons. In March 2003, HaMoked submitted another application to the military. It took six more reminders to get an answer, finally received in November, stating that the application was denied, as before, for security reasons. In December 2003 HaMoked petitioned the HCJ asking that A.Z. be permitted to exit the country and that an explanation be provided, at least to the Court, as to the evidence supporting the military commander's decision that the exit of a 79-year-old man from the West Bank indeed represented a threat to the security and stability of the region. On December 30, HaMoked withdrew its petition after the military reversed its decision and decided to allow A.Z. to leave the West Bank and visit his relatives in Syria. **(Case 11933)**

In the last year, the authorities have

intermittently implemented a sweeping, strict policy, prohibiting all persons aged 16-35 to leave the country.



A.N., a 19-year-old student from Qalqiliya, studies communication in Egypt, returned to the West Bank in January 2002 to visit his family during the semester break. On his way back to school, at Allenby Bridge, he found out that Israel would not allow him to leave and that he might miss an entire semester. A.N. had left for Egypt many times before and no problem ever came up. It therefore seems that his exit was disallowed as part of a sweeping prohibition on all persons aged 16-35. HaMoked made an urgent application to the military to permit A.N. to leave for school before he missed the registration period and consequently the entire semester. After three more

applications, the military answered that A.N. would not be allowed to leave due to security reasons. HaMoked again challenged the decision, but to no avail. A.N. missed the semester. In August 2003, before the next school year began, HaMoked reapplied to permit A.N.'s exit. In September 2003 HaMoked petitioned the HCJ to force the State to respond. In answer to the petition, the State said that A.N.'s exit would be permitted, on condition that he stay out of the West Bank until he completes his studies, in about two years. A.N. accepted this condition, signed a document undertaking that he would not return to his home during the next two years, except under exigent humanitarian circumstances, and left for his final two years of school in Egypt. **(Case 25162)**



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 2003, access to the Interior Ministry's East Jerusalem bureau became even more difficult than before, increasing the uncertainty with which Palestinian residents of East Jerusalem had to cope. Several reasons combined to create this situation. In August 2003, the “Law of Nationality and Entry into Israel (Temporary Order) 2003” was passed. This law, reflecting a cabinet resolution from May 2002, suspended all processes of family unification between Israeli residents and citizens and their Palestinian spouses from the Territories, with no exceptions.

This law further undermines the rights of the Palestinian residents of East Jerusalem. Because in 2003 the Ministry's bureau in East Jerusalem was closed due to strikes, work sanctions and holiday periods for

about six months, residents could not inquire as to the practical consequences of this law for outstanding family unification applications. Naturally, the extended strike took a toll on the entire population, which even before the strike had to wait for hours in line outside the bureau in order to get service. Applications to renew laissez-passer papers, replace ID cards, register a new address or enter children in the population registry – trivial, everyday procedures in any other country – are extremely arduous for residents of East Jerusalem. These people are required to get service only at the bureau in East Jerusalem, which deliberately makes the process as difficult and time-consuming as possible.

At the same time, Palestinian residents need the services of the Interior Ministry much

more than Israeli residents and citizens, since unlike Israelis, they are often required to show their papers to police patrols and soldiers at roadblocks that are deployed throughout East Jerusalem. Without papers, they can be humiliated and delayed for hours. Their only other choice is to stay in voluntary house arrest.

The construction of the Separation Wall is

yet another threat to the lives of Palestinian residents of Jerusalem whose applications to the Ministry regarding their legal status are still pending. In addition, once the Separation Wall is completed, this will be yet another hurdle separating between residents and their spouses on the one side of the wall and the services provided in Jerusalem on the other.

The Law of Nationality and Entry into Israel (Temporary Order) 2003

In August 2003, the Law of Nationality and Entry into Israel (Temporary Order) 2003 came into effect, terminating – without any exception or room for discretion – all family unification processes between Palestinians and their spouses from the Territories. Before the law, Israeli residents and citizens could ask the State to grant members of their immediate family legal status in Israel. Ever since the cabinet resolution of May 2002, Palestinian residents of East Jerusalem can no longer apply for such legal status for spouses from the Territories. Moreover, the Interior Ministry has implemented an exceptionally broad interpretation of the term “family unification” and now holds that even the registration of children who were born in the Territories to Palestinian residents is prohibited. The law of 2003 affirmed this interpretation, with a single exception: children under the age of 12 who were born in the OT can be entered into the Israeli population registry as part of the family unification process. Children who are even a few days older cannot gain legal status in Israel or domicile in it, are

not entitled to public education or medical services in Israel and are liable to be deported to the Territories, far from their families in Israel.



M.A. is a native of Jerusalem and an Israeli resident who in 1988 married a resident of Ramallah. Until 1997 the couple alternated between the husband's parents' home in Qalandiya and M.A.'s parents' home in Abu Tur (Surri) in Jerusalem. In 1997 they moved to M.A.'s parents' house and in 2000 they rented an apartment in the Jerusalem neighborhood of Kafr'Aqab and based their lives there. In the course of the years, M.A. and her husband had seven children: the four elders, age seven to 14, were born in Al Bireh, and the three young ones, age six months to three years, were born in Jerusalem. In order that her entire family can live in Israel lawfully, M.A. applied in 2000 to have the children entered in the population registry and for family unification with her husband. In February 2001 M.A.'s

application for family unification was denied and in May the same year the Ministry of the Interior rejected the appeal too, claiming that Jerusalem was not the couple's center of life. In August 2001 the Ministry of the Interior also turned down the application to register the children arguing that "it has not been established that the couple's center of life" was in Jerusalem. In July 2002 HaMoked made another application to have M.A.'s children registered, attaching numerous documents proving that the family does indeed live in Jerusalem. In September, the Population Registry's response was received: the two younger girls can be registered, "but registration of the four children who were born in Al Bireh and are registered in the Territories can only be accomplished through an application for family unification; however, at this time, following the cabinet resolution dated May 12, 2002, no applications of this kind are being processed."

Despite repeated requests, HaMoked never received a copy of the new procedure according to which the registration of minors can only be accomplished through family unification. In December 2002 HaMoked petitioned the administrative court to enter M.A.'s children in the Population Registry and void the interpretation of the cabinet resolution which provides that registration of children can only be carried out as part of the family unification process and that all such registration procedures must therefore be halted. HaMoked also demanded that regulations or laws be passed, clarifying the status of children born to Israeli residents abroad and in the Territories.

The administrative court indeed issued an interim injunction barring the deportation of the children until a final decision, but despite HaMoked's protest also ruled that the final decision would only be handed down after the High Court of Justice decides the petitions challenging the cabinet resolution.

In September 2003 the court decided to shelve the petition, without any explanation. HaMoked withdrew its petition and filed a new, updated petition, which also addressed the implications of the new law regarding the status of children. At first, the HCJ consolidated HaMoked's petition with those filed by human rights organizations Adalah and the Association for Civil Rights in Israel (ACRI), which called for the new law to be abrogated. Later on, HaMoked's petition was separated from the two others and a hearing was set for July 2004.

As of the time that this report was compiled, M.A.'s three older children (age 12, 13 and 14) were in virtual detention, unable to leave their neighborhood because soldiers at the roadblock do not allow children who are not registered in their parents' IDs to pass. **(Case 16670)**

The Interior Ministry also implemented the law retroactively. Before the law was passed, the cabinet resolution completely halted family unification processes and discontinued the progress up the hierarchy of residency status. The resolution also applied retroactively to all outstanding applications, in complete disregard of the deliberate foot-dragging practiced by the Ministry's East Jerusalem bureau, due to which applications take years to process. On average, the processing until approval

of applications for family unification took five years. Thus, many applications that were made years prior to the cabinet resolution were also shelved. The law slightly improved the situation, since it provided that applications submitted prior to the cabinet resolution would be nevertheless processed. However, the Interior Ministry does not resume the processing of these applications of its own volition; it only does so if the applicant has made a new request since August 2003. The Ministry did not release any new instructions regarding the new condition for resuming the processing of applications, so that applicants are not even aware of this situation. Many are therefore barred from living lawfully in Israel with their spouses simply because they are uninformed. It was HaMoked that published notices in the Palestinian press about the implications of the law and the new policy. While the law does not apply retroactively to applications made before the cabinet resolution, it does apply retroactively to the residency status procedure. This hierarchical procedure was implemented in the end of 1996, when a decision was made that a graduated process of five years and three months would take place between the approval of an application and the granting of full residency status. In the course of this interval, the spouse from the Territories may stay in Jerusalem thanks to temporary permits, which are reexamined by the Interior Ministry every year. In the first 27 months (two years and three months) of the graduated process, the spouse is to receive the permits from the District Coordination Office in the Territories (DCO permits); in the last three years, the Interior Ministry is to grant the spouse the status of temporary residency (A/5), which must be renewed

annually. Applications to extend permits to stay in Israel or to upgrade the spouse's status must be submitted on set dates. Decisions about such applications are to be delivered by the Ministry within three months of application. Applicants must accordingly file their applications at the bureau three months before their current permits expire, in order not to be stuck without legal permits – even though the family unification has been approved and the graduated process has begun. In reality, though, in most cases it takes more than a year for an upgrading application to be approved. When the cabinet decided to freeze family unification processes, it also decided to halt upgrading procedures – as reflected in the new law. Consequently, some Palestinians have no choice but to stay in Israel for extended periods with only temporary permits, no welfare and social security rights and no foreseeable prospect of gaining such security, which Israel is committed to grant under international conventions that it has signed.



I.D. is an Israeli resident who was born and raised in Jerusalem. In 1998 she married A.D., a resident of Hebron. The couple moved to Shu'fat, within the city limits of Jerusalem. Immediately after their marriage, I.D. applied to the Interior Ministry for family unification with her husband, so that he could get legal status and live with his family in Israel. Two years later, in December 1999, the Ministry approved the application and implemented the graduated residency procedure on the husband. In January 2000, A.D. was referred to the DCO in Hebron, where he received a permit to stay in

Israel. A year later, in compliance with the graduated procedure, A.D. sent the Ministry additional documents confirming that Jerusalem was the couple's principal place of abode. Five months later the application was approved, and another month after that A.D. was referred again to the DCO to get another permit to stay in Israel. In December 2001 A.D. applied to the Ministry to upgrade his status to temporary residency (A/5), as provided by the graduated procedure. In February 2002 the couple reported to the Ministry's bureau in East Jerusalem with documents certifying that Jerusalem was their principal place of abode and that they had paid all the relevant application fees. However, in March the Ministry went on strike and in May the cabinet adopted the resolution freezing the processing of all family unification applications, including all applications for status upgrades.

HaMoked contacted the Ministry's Bureau in August, September and December 2002, asking for a response to A.D.'s upgrade application. After no response was provided, in February 2003 HaMoked petitioned the administrative court. The Ministry then explained that A.D.'s status could not be upgraded due to the cabinet resolution, and that A.D. would

therefore continue to receive referrals to the DCO, where he can renew his permit to stay in Israel. HaMoked rejected this offer, claiming that the Ministry's implementation of the cabinet resolution was retroactive and therefore unlawful. In its petition, HaMoked argued that the Ministry cannot reject applications that were made in time only because Ministry staff took too long to review them and in the meantime procedures had been changed.

The court denied HaMoked's petition and made the petitioners pay NIS 7,500 in court costs. The decision was based on the Law of Nationality and Entry into Israel (Temporary Order), which became effective in August 2003 – six months after the petition was filed – and provides that the legal status of persons in the graduated procedure cannot be upgraded as part of the family unification process. In other words, the court interpreted the law as having retroactive effect. HaMoked appealed the decision, arguing that neither the Ministry nor the court is entitled to give the law retroactive force and that the decision of the administrative court was therefore misguided. The appeal is yet to be heard by the Supreme Court. **(Case 13559)**


The Interior Ministry's Bureau in East Jerusalem

Some 240,000 Palestinians, who became Israeli residents after the annexation of East Jerusalem to Israel, live in the city and require the services of the Interior Ministry's Population Registry bureau in East Jerusalem. Because of the special status

of these residents, they need these services quite frequently. While other Israelis can get services – such as ID renewal, registration of children in the population registry, changing a registered address or getting travel documents – at any bureau, regardless of

their registered address, East Jerusalem residents can only get them at the local East Jerusalem office.

The service standard and physical conditions at the East Jerusalem bureau are deplorable. Although procedures and office hours change frequently, the bureau systematically refrains from publicizing any such information. There is no notice board at the bureau and no active information desk. Lines outside the bureau are excruciatingly long, and people must wait for months to get an appointment. This has made bribery and trade in appointments a de facto norm. In August 2003, the supervisor of the bureau's security unit was arrested under suspicion that he had received sexual favors from women for expediting the process.⁷

Clients are supposed to fill out various forms at the bureau – but often there are no blank forms available there. Six months after the State pledged to do so, following  HaMoked's petition to the High Court from 2001,⁸ application forms for an exemption from fees could still not be found at the bureau. It took another petition to make these forms available at the bureau – but even then, only in Hebrew.

The Ministry is so slow in processing applications, that sometimes the applications are no longer relevant. Applicants cannot just walk in and be served; they must schedule appointments three or four months in advance. Following a petition about the impossible physical conditions at the bureau, the HCJ instructed that staff be increased to 42, office hours extended and that the office be physically relocated within 19 months.⁹

Applicants are required to submit numerous documents. Naturally, the information provided in these documents

must be up to date. However, due to the drawn-out processing of applications, which takes months and even years, applicants are required to resend the documents time and time again. Bureau clerks also require “additional documents” as they see fit. For example, they refused to register a woman's children in her ID if she did not produce an old divorce certificate – from the same husband she had since remarried, although certified copies of this certificate had been submitted on several occasions. Applicants are instructed to have all mail-delivered documents certified by an Arabic-speaking attorney and attach an affidavit signed by a lawyer, confirming all the details for which no documentation is provided. These requirements make the service – which is supposed to be free of charge – an expensive luxury.

Although the Ministry's decision-making process pertains to basic human rights and is carried out by a public body, this process is not transparent and decisions are not always explained. In some cases the bureau does not even bother to respond to applications at all, and in others it makes do with laconic answers such as “center of life has not been established” or “the authenticity of the marriage has not been established.” Evidently, the secrecy shrouding these decisions gives clerks the power to wield arbitrary authority in making fateful decisions.

Since the beginning of 2003, HaMoked was pursuing different avenues in order to combat the standard of service and physical conditions at the bureau. HaMoked's representatives participated in discussions that the Knesset's Interior and Environment Committee dedicated to this subject. Following these meetings, and at the

request of the Committee Chair, HaMoked and ACRI prepared a detailed report about the prevailing conditions, including recommended action items. The report was submitted to the Committee and presented to the Minister of Interior. Human rights organizations and private lawyers who deal with the issue of residency status meet several times a year to get updates about the situation at the bureau, consult and decide on modes of operation.

The issues uncovered at the bureau do not seem to be the result of coincidence or oversight. Rather, they reflect a pattern in the way that the authorities treat Palestinian

residents. The Interior Ministry systematically violates the rights of Palestinian residents of East Jerusalem when it delays them in long lines, draws out the processing of applications, mistreats clients at the office and gives unsupervised power to office clerks. Abuse of this kind is a daily routine at one of the most important arms of the Executive.

⁷ **Haaretz**, December 14, 2003, item by Jonathan Lis.

⁸ High Court Petition 6029/01, **Abu Sharf v. Population Registry Director**.

⁹ High Court Petition 2783/03, **Rufa Rafoul Jabra v. Minister of the Interior et al. (Takdin Elyion 2003 (4), 385)**.



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

Civil status is a basic and essential condition for reasonable living conditions. In many respects, a person who is not listed in the population registry does not exist. In the West Bank, persons without legal status can at any moment be caught at roadblocks, in unannounced military searches and by military patrols and be arrested and deported. The population registry in the West Bank is based on the census that the Israeli military conducted after occupying the Territories in 1967. Every person aged 16 and above who resided in the Territories at the time and was present during the census, received the status of permanent resident of the Territories and was given an identity card. Children under 16 were registered in their parents' IDs. In this process, the military denied the right of some 300,000 Palestinians, many of whom were deported or had left the Territories at the time, to live

in the West Bank, and thus turned them into refugees. But even persons who were recognized as residents of the West Bank were liable to lose this status. Since 1967 Israel has revoked the residence of some 100,000 Palestinians who failed to register in time or spent a long time (more than six years) abroad.¹⁰

One of the matters handled by the Civil Administration was various requests and applications from de facto residents regarding their residence status. In 1995, with the implementation of the interim agreements, Israel handed over to the Palestinians some of the authority pertaining to the management of the population registry and to issuance of identity cards. For example, registration of children born to residents of the Territories now became the exclusive responsibility of the Palestinian Authority. However, in most

matters of residence – entry permits to the Territories for spouses of residents, family unification and the return to the West Bank and Gaza of persons whose residence had been revoked – the Palestinian Authority has been no more than a conduit to pass on the applications to Israel, which in fact has the final say in the matter. When the

current Intifada broke out and the Civil Administration froze the processing of all residence issues, many Palestinians found themselves with no answer to bureaucratic problems. Some Palestinians were even forced to stay in other countries, often without any legal status - residents who can not reside.

Families Torn Apart

The cessation in handling Palestinian applications for permits to visit the West Bank – which HaMoked considers a form of collective punishment – has torn families apart, as one of the parents, and in some cases a few of the children, were cut off from the rest of the family on the other side of the border. Persons who are not registered in the Palestinian population registry need visitation permits in order to enter and stay in the Territories. This permit, which depends on Israeli approval, has an expiration date and as a rule it is only renewed if the person leaves the Territories. Thus some Palestinians who were abroad at the onset of the current Intifada discovered they could no longer receive visitation permits to return.


One of the exceptions to this rule, accomplished after a series of petitions to the High Court of Justice in the early 1990s, pertains to spouses of residents who stayed in the Territories as visitors or received visitation permits between 1989 and August 1993: the State has promised the Court that such spouses would be lawfully entitled to stay in the area while their applications for family unification were being processed,

their visitation permits would be extended for consecutive six-month periods and they would be permitted to enter and leave the Territories without restriction. Applications of such spouses for family unification (namely, for the status of residency and a Palestinian ID) were to receive preferential treatment. However, since September 2000 Israel has suspended the handling of visitation permits and family unification applications. Consequently, many people have been unable to return to their homes and are stranded outside of the Occupied Territories. People who were living in the West Bank under the arrangement approved by the HCJ and whose visitation permit was to be continually renewed, left the country only to discover that their permits would not be renewed. Families that were living in the West Bank under this arrangement were abruptly torn apart.

HaMoked's appeal to the authorities to

¹⁰ See Families Torn Apart: Separation of Palestinian Families in the Occupied Territories. HaMoked: Center for the Defence of the Individual and B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories. Jerusalem, 1999. page 17.

recognize these cases as humanitarian ones was unrequited. The legal arguments regarding the right of these couples to family life and the right that their children have to grow in a protected family unit in their own home were not heeded. Neither was the argument that in declining such applications for visitation permits the State was violating the commitment it had made to the HCJ. In 2002 HaMoked petitioned the HCJ in the matter of a family, challenging the way that the authorities had been treating the serious problem created by the halt in processing the issue of residency in the West Bank. Shortly before the hearing the authorities announced that “ex gratia and in light of the specific circumstances of the case,” the visitation permit would be approved and G.A. would be able to reunite with her family in the West Bank.

In 2003 HaMoked petitioned the HCJ in the  matter of three other families after all the attempts to solve their problem with the authorities directly, without resorting to the Court, had failed. In these cases too the military changed its position before the hearing and approved the visitation permits – “ex gratia and in light of the specific humanitarian circumstances of these cases.”

N.D. from Hebron and A.H., who carries a Jordanian passport, married in

January 1993. In June 1993 A.H. visited the West Bank and therefore belonged to the population to which the HCJ arrangement applied: she could stay in the West Bank and her visitation permit would be renewed every six months. In August 2000, A.H. traveled to Jordan to see her family, and on her return discovered that Israel had suspended the issuance of all visitation permits and that she could therefore not be able to cross the border. A.H., who was pregnant at the time after years of fertility treatments, was forced to have her first son in Jordan, far away from her husband. The husband visited his wife in Jordan, but most of the time the family was kept apart. In July 2003 N.D. contacted HaMoked, which filed an urgent application with the military to renew the visitation permit and enable the family to reunite. After this request was ignored, in November 2003 HaMoked petitioned the HCJ. In December the State submitted its response: “Because of exceptional humanitarian circumstances and ex gratia,” the application of A.H. for a visitation permit to the West Bank would be processed. Agreeing with the State, HaMoked withdrew its petition, but A.H. has not yet received the permit and is still in Jordan. **(Case 27778)**

Registration of Residents

Although Israel handed over to the Palestinian Authority some of the authority pertaining to the population registry, Israel's approval is still required for every single

registration. Since the start of this Intifada, Israel has completely halted the processing of applications for residency status. In December 2002 Israel went even further,

when it also froze the registration of children aged 6 to 15 who were born outside of the Territories, although according to the Oslo Accords, this registration is within the exclusive jurisdiction of the Palestinian Authority.

N.M., a Palestinian who carries a Jordanian passport, married a resident of the West Bank and in 1984 moved to the area of Nablus. The couple had five children: two were born in the West Bank and were therefore entered in the Palestinian population registry and in their father's ID. Three were born in Jordan and were registered in N.M.'s passport. N.M. recently sent her passport to be extended in Jordan, but since the girls' father is a resident of the West Bank and since the Palestinian Authority is authorized to register all persons under 16 in the population registry, the Jordanians deleted the children from their mother's passport. In February 2003 N.M. applied to the Palestinian Ministry of Interior to have the children registered, but to no avail – Israel had also frozen the registration of children born outside the Territories. HaMoked contacted the relevant military officials asking that the children be registered, since failure to do so constitute a clear-cut violation of the Oslo Accords, and demanding that the Palestinian Ministry of Interior be allowed to register N.M.'s children without delay. After numerous communications with the IDF and Palestinian Ministry of Interior, the military notified HaMoked that there is no reason barring the registration of the girls. Nearly a year after applying for registration in the Palestinian population

registry, N.M.'s children were finally registered. **(Case 29007)**

In August 1969 soldiers came to the home of G.D. near Ramallah in order to arrest him and when finding that he wasn't home, they arrested G.D.'s father and brother. When he found out, G.D. went to the Civil Administration to turn himself in and have his relatives released. G.D. was interrogated under suspicion that he was a member of the Fatah, and was held in administrative detention for 13 months. A month and a half after his arrest, G.D. and other detainees were taken to the Jordanian border. Next to the border they were taken off the vehicle. The soldiers gave each detainee a water canteen, a pack of biscuits and one dinar, and told them to start walking. The group marched toward the border until they were picked up by Jordanian soldiers. G.D. settled in Jordan, where he made his living by farming and commerce, married and started a family. In April 1997 he contacted HaMoked to have the deportation revoked and renew his residency in the West Bank. HaMoked conducted an extensive correspondence with the military, demanding to see a deportation order and other details that led to G.D.'s deportation to Jordan, but to no avail. In August 1997 HaMoked was informed that "the commander of the IDF forces in the West Bank has rejected G.D.'s application to return to the Area." One year later, HaMoked contacted the military commander and demanded that the advisory committee, which is supposed to review every deportation order, be convened in order to reconsider the validity of the order pertaining to G.D.

In 2000, three years after the application was denied and after more than 30 years in which G.D. had been living in Jordan, the advisory committee convened in order to see whether G.D. was still a threat to security and whether his deportation, commenced in 1969, was still justifiable. In February 2002 the military commander

revoked the deportation order and permitted G.D. to return to the West Bank. Although the order was signed by the IDF Commander in the West Bank and delivered to HaMoked, Israel has not yet enabled the Palestinian Authority to issue an ID for G.D. **(Case 11159)**



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

The mass arrests and new reality created by the current Intifada have significantly influenced the conditions of detainees held by the military and Prison Service. Statements collected by HaMoked describe the congestion and even hunger at the detention facilities and the conduct of the jailors, who abused and hit the inmates. Two petitions HaMoked filed with the High Court of Justice about the conditions at West Bank detention facilities somewhat improved the situation.

Detainees' rights to communicate with the outside world were also blatantly disregarded. Between May 2001 and March 2003, the authorities disallowed family visits, cutting off thousands of detainees from their loved ones. This policy was also challenged in a petition,

and visits were finally renewed, albeit to a limited degree.

The secret detention facility in which people were incarcerated in unthinkable conditions without any outside supervision, was also discussed by the HCJ this year, but the petition has not yet been decided.

In 2003, the military pursued its lax arrest policy and military commanders issued thousands of administrative arrest warrants. Within only a few months the number of administrative detainees exceeded 1,000. For example, in April 2003, the military was holding 1,119 administrative detainees.¹¹ As known, a signed order that is based on confidential information, is enough to administratively incarcerate individuals in

¹¹ According to BTselem, www.btselem.org

absolute disregard of their basic rights – without a trial, an indictment or a defined penalty.

HaMoked filed numerous petitions addressing the rights of Palestinian detainees. In 2003, HaMoked presented six principle petitions to the HCJ on behalf of detainees who were incarcerated in deplorable conditions and in violation of the law, and on behalf of families whose requests to see their loved ones had been denied. In addition, HaMoked filed

10 habeas corpus petitions, 15 petitions seeking to allow detainees to meet with legal counsel, and eight petitions asking for the release of administrative detainees.

Due to the dozens of daily arrests, HaMoked improved coordination with the military in an effort to trace detainees. In 2003, HaMoked received applications to trace 5,077 detainees. In most cases, HaMoked successfully traced the detainee and informed the family of his whereabouts within 24 hours.

The Secret Detention Facility

The existence of a secret detention facility in Israel was exposed in two habeas corpus petitions submitted to the HCJ in 2002. These petitions asked to reveal the whereabouts of two detainees whose names could not be found on the lists of the Prison Service, the police or the military. HaMoked, which petitioned on behalf of the families in these cases, was told in response that details about these inmates could be received from a certain policeman at the Kishon detention facility. A conversation with this policeman yielded that the men were being held at an interrogation facility and that the location of this facility, the functions it serves and the authority to operate it were all state secrets. It further transpired that the names of the detainees who were held there did not appear in any official record.¹²



On October 30, 2003, HaMoked petitioned the HCJ demanding to shut down the secret facility without delay. HaMoked argued that the existence

of a secret facility and detainee list was in violation of domestic and international law and the essence of democracy. HaMoked further held that since the commanders, guards and interrogators were not supervised in any way, they could do whatever they pleased. Indeed, statements collected by HaMoked from Palestinians who were held there indicated that conditions at the secret facility were inhumane and the interrogation methods illegal.

On January 21, 2003, I was apprehended and taken from my home to the Huwwara facility, and from there to Salem to have the arrest extended. That day, two policemen came and covered my eyes with a piece of black cloth and sunglasses and put a paper bag over my head. I asked the policeman who cuffed me where we were going, but he said he did not know... We arrived at this place; they put me in a room and uncovered my eyes. They told me to strip and searched

me. There were 10 soldiers standing around me with clubs in their hands... They gave me a blue shirt and pants, but neither was my size and I was very cold because they did not let me keep my underwear... They took me to a cell with a bag over my head. The cell door was 30-40 centimeters wide with a small slot. The walls were rough and painted black. The light was very dim, and the cell was barely the size of the mattress. For a toilet I had a large plastic bin. I had terrible stomach aches and the smell was intolerable. After 15 days I said I would not talk to the interrogator unless they let me use a regular toilet. That was the first time I entered a bathroom in two weeks. The smell from the bin was insufferable. There were no windows in my cell and the odor just lingered... In my communications with the interrogator I learned that my cell was nicknamed "the tomb"... There was no running water in the cell, so three times a day the guards brought in a small water pitcher with the meals, but the water was not clean. The meals were meager: three slices of bread, a quarter of a tomato, half a cucumber and an egg for breakfast. For lunch they would throw in a little white rice too. Before they would give me my food, the soldier would bang the door with his club, making a terrible noise. Only then would he declare that my food has arrived, and ask me to face the wall and cover my head with the bag. At night they used to wake me up by banging on the iron door. I was cold all the time, both in the cell and when they took me for questioning. The two blankets they gave me were just not enough... I asked the interrogator where I was and he told me it was a

secret facility for special cases and that no one knew where I was. In the first three days of questioning they did not let me sleep, tied me to the chair in the shabah position and asked me questions. Then they sat me on a bench in the corner so that I could not lean back. They hit me throughout the interrogation. Whenever I gave them a wrong answer, they would hit me... I spent nearly 30 days at the interrogation facility, all of them in "the tomb". Throughout my detention I was isolated from the world; I saw no other detainees nor any other human being apart from the jailers. The interrogator reiterated how no one knew where I was and how the interrogators could keep me there for as long as they like... This really got to me. There were many moments when I feared for my life, not knowing whether I would ever leave that place or whether I would be crippled. I was very scared. **(Excerpt from the affidavit of S.M., submitted in HCJ Petition 9733/03, HaMoked: Center for the Defence of the Individual v. State of Israel)**

In the first hearing, in November 2003, the Court held that the petition divides into two separate parts. For specific complaints about torture and inhuman conditions at the secret facility, the Court referred HaMoked to the Office of the Military Advocate General and the department that monitors GSS operations. Regarding the legal issue of the very existence of such a facility, the Court demanded that the State explain why one is needed. The hearing is scheduled for August 2004.

¹² HaMoked: Center for the Defence of the Individual, 2002 Annual Report, p. 68.

Illegal Combatants



Fauzi Ayoub was released from prison on January 29, 2004 as part of a prisoner exchange agreement between Hezbollah and the Israeli government. Ayoub and others who were released in this deal were flown to Germany and from there to Lebanon. Until his release, Israel held Ayoub under the Imprisonment of Illegal Combatants Act of 2002.¹³ According to press publications, Ayoub entered Israel in October 2000 with a false American passport and was apprehended by the Palestinian police in Hebron. In June 2002 the Israeli military raided the detention facility in Hebron and took off everyone there. According to these sources, Ayoub – a Canadian citizen of Lebanese descent – was an active member of Hezbollah who entered the Territories through Israel in order to train Hamas activists in the use of explosives. Since November 2002, about one month after the Chief of Staff issued the order to apprehend Ayoub as an illegal combatant, HaMoked has represented Ayoub in various legal proceedings:

HaMoked filed a “prisoner petition” to the administrative court on Ayoub’s behalf, seeking to improve his conditions of detention. The Court instructed the Prison Service to provide the detainee with an orthopedic back belt and an orthopedic sock, and to give him the books and magazines sent by the Canadian Embassy. The Court also ordered that Ayoub be allowed to maintain records pertaining to his case and to present them to his attorney, but denied the inmate’s request for a radio, which he wanted in order to listen to Lebanese stations.

HaMoked represented Ayoub in the judicial

review conducted by the District Court regarding his continued incarceration under the Imprisonment of Illegal Combatants Act. Since his arrest, HaMoked represented Ayoub in the two judicial reviews held in his case. In the last one the judge wrote that based on the confidential material he reviewed, “the Respondent (Ayoub) is still dangerous” and permitted his continued detention.

HaMoked thereupon appealed this decision to the Supreme Court, asking that the Court examine the legality of the Imprisonment of the act under which Ayoub is being held. This Act was passed in order to provide a legal solution for the detention of persons who might serve as bargaining chips in future negotiations for the return of Israelis held by the enemy, including corpses. This need arose after the April 2000 HCJ ruling which held that persons who are not threats to the State of Israel and who are detained only as potential bargaining chips for such exchanges must not be held in administrative detention. The HCJ further held that “two wrongs don’t make a right”; Israel cannot hold hostages who do not represent a threat only because they might be useful in future negotiations. Following this ruling, Israel released 13 Lebanese citizens who were held in administrative detention; however, Israel refused to release another two detainees, Sheikh Abdel-Karim Obeid and Mustafa Dirani. In order to enable their continued detention as bargaining chips despite the HCJ ruling, the cabinet drafted this bill.

This Act, passed in 2002, circumvents the Court ruling and upholds some of the limitations imposed on administrative

detention. This statute blends the authority given by law to the military for handling civilians and combatants. International law in general and the Geneva Convention in particular, draw a clear distinction between combatants and civilians, leaving no room for any third category.¹⁴ Under the Geneva Convention, combatants can kill and use arms, and it is permitted to kill them as well. When combatants are captured by an enemy army, their situation is reversed: as a rule they are protected against legal proceedings, but they can be detained under the conditions stipulated in the Geneva Convention, until the acts of hostility subside.¹⁵ At the same time, international law provides absolute protection to civilians. However, if civilians operate against an occupying army, the army may start criminal proceedings against them, adjudicate their case in military court and keep them in prison until they have served their sentence.¹⁶ Under certain circumstances and conditions, international law allows the military commander to restrict the movement of a civilian in an occupied area and put him under administrative detention.¹⁷ The penal and incarceration system used by the Israeli military in the Territories is therefore founded on the legal status of civilians who operate against the military in occupied areas, and owes its existence to international law.

In order to hold people in Israel as bargaining chips, Israeli law now created the category of "illegal combatants", which refers to persons who took part in acts of hostility against Israel but are not entitled to the status of prisoners of war. On the one hand, Israel continues to indict such people for using weapons or for membership in "terror organizations" – under international

law, a permissible process in the case of civilians who have taken part in acts of hostility. On the other hand, the law now allows the Chief of Staff to arrest these people until the end of hostilities, as though they were captive soldiers.

In Ayoub's first judicial review, HaMoked argued that the Imprisonment of Illegal Combatants Act was unlawful and that it violates Israel's Basic Law: Human Dignity and Liberty, international law and the Geneva Conventions, and the spirit of the law and values practiced in the State of Israel, as expressed in the rulings of the HCJ. In its petition HaMoked referred to various articles challenging the legality of this Act, composed by celebrated jurists from Israel and abroad, and to the opinions that the legal advisors of the Knesset, the Ministry of Foreign Affairs and the Constitution, Law and Justice Committee of the Knesset had drafted when working on the bill. All these articles and opinions support HaMoked's arguments against the Act, and yet the District Court held that the law was not illegal and that Ayoub's detention was lawful. Since Ayoub and other detainees that were

¹³ **The Imprisonment of Illegal Combatants Act, 2002.** Published in official Gazette [*sefer ha-hukim*] 1834 (March 14, 2002), p. 192.

¹⁴ Even the Knesset's legal advisor stated in the opinion he submitted to the Chairman of the Foreign Affairs and Defense Committee on September 5, 2000: "The protection and categorization provided by the Third and Fourth Geneva Conventions contain no loopholes. A person is either a combatant or a civilian; there is no third option." (Paragraph 16.1.1).

¹⁵ **Geneva Convention Relative to the Treatment of Prisoners of War** dated August 12, 1949.

¹⁶ **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** dated August 12, 1949, Article 68.

¹⁷ *Ibid*, Article 78.

held in Israel as “illegal combatants” were released, the fate of this petition, as that

of others on this matter, is now unclear. (Case 23854)

Family Visitation

Until October 2000, relatives from the Territories were allowed to visit detainees regularly. After clearing the visit with the Israeli authorities, which issued permits for each relative according to clearly-defined criteria, the families were bused in by the ICRC. However, shortly after the onset of the current Intifada, the military halted all permits and in effect discontinued visitation.



Demanding that prisons and detention facilities be reopened for visitation HaMoked petitioned the High Court of Justice in December 2002 on behalf of three detainees at Ofer Camp as well as the mother of one, who had not seen their loved ones in a very long time.¹⁸ In its response, the State said that it had no objection in principle to visitation: the authorities are doing their best to make visits possible, but due to various problems, mostly because of the security situation, visitations have not yet been resumed. The State further noted that “family visits will commence in February.” The representative of the State later said that all the arrangements for the first round of visitors at Ofer had already been completed and that on March 9 the families of detainees from Qalqiliya, Jericho and Ramallah would be able to come by shuttle and visit their relatives. The HCJ therefore adjourned in order to check three months later whether visitation had in indeed been made possible.

The detainees at Ofer Camp discontinued the first visit of their families shortly after it began, in protest of the degrading conditions under which the visit was taking place. Statements collected by HaMoked reveal that visitors were separated from detainees by two partitions, 1.5 meters apart, so that around 20 detainees were standing on one side of the first partition and the families were on the other side of the other partition. There were no other partitions, and people had to shout in order to overcome the distance and the voices of other visitors. The visitation facility was designed in a way that detainees and visitors were unable to see each other: the bottom part of the partitions, up to 1.6 meters was opaque, so that people had to remain standing and anyone shorter than that could not see or be seen. Obviously, detainees and their children were unable to see each other this way. The time allotted by the prison authorities for the meeting between people some of whom had not seen each other for a year or more, was only half an hour once a month. The prison authorities did not prepare a suitable waiting area for families waiting their turn into the facility, and the many visitors, including children and elderly people, had to wait for hours on the buses without any bathrooms, drinking water or any room to walk around. The detainees were also protesting the criteria for visit permits: the

authorities had only committed to permit visitation by parents, spouses and children up to the age of 13. In other words, visits by brothers and sisters, friends and children over the age of 13 were ruled out. **(Case 23959)**

The negotiations between the detainees and authorities of the military prison, and the communications that ensued between HaMoked and the State Attorney's Office after the detainees refused to go through with the visits, yielded several understandings. The prison authorities agreed to place the partitions only 30 centimeters instead of 1.5 meters apart, lower the visual block, place benches in shading areas outside and double the duration of each visit. The authorities agreed to reconsider permit criteria and promised individual consideration and prompt responses in special cases. The authorities further agreed to allow relatives from Tulkarm, Bethlehem and Salfit visit the Ofer Camp and said they would gradually expand visitation rights to other areas as well.

In July 2003, family visits to Ofer Camp were resumed, and in August visitors from the three additional districts were also allowed to come. Families from six districts in the West Bank were then able to regularly visit their detained relatives.

In the detention facilities inside Israel, visitation was renewed earlier, in March 2003, but the issue of visits by relatives from the Hebron, Jenin and Nablus districts has not been resolved; according to the military, this problem could not be overcome due to the security situation and military operations in these areas. Consequently, more than half the population of the West Bank and many detainees have been denied

the right to meet with their loved ones. Nevertheless, many families were able to visit. According to data compiled by the State Attorney's Office, between March and October 2003, more than 14,000 people visited prisons in the Territories and in Israel.¹⁹ Only in 2004 were visitation rights extended to Jenin and Hebron. As of June 2004, people from the Nablus district could still not visit.



In December 2003, HaMoked petitioned the HCJ again on the subject of prison visits. HaMoked's request this time emanated directly from the previous petition, in which the authorities had set criteria for permits. Under the new criteria, only grandparents, parents, spouses and children under 16 were allowed to visit, provided that they had been screened and approved by the security authorities. In this petition, HaMoked represented 21 men and women whose applications to visit their detained relatives had been denied, although under any reasonable standard, including the defined criteria, they should have been approved.

H.N.'s husband was arrested in June 2002 and sentenced to 22 months in prison. At first he was held at Ofer and later on at Ket'ziot Prison in the Negev. Since his arrest, his family only saw him twice, during the trial, and was not allowed to communicate with him. Although H.N. was never arrested or interrogated by the security forces, her request to visit her

¹⁸ HCJ petition 11198/02, **Diria et al. v. Commander of Ofer military detention facility et al.**

¹⁹ Statement of the State Attorney's Office, paragraph 15, HCJ Petition 11198/02, **Diria et al. v. Commander of Ofer military detention facility et al.**

husband in prison was denied because of security reasons. Despite the State's assurances, none of the applications made in H.N.'s case and in the case of 126 other relatives were answered. HaMoked therefore petitioned the HCJ on behalf of 21 applicants, in order to force the State to explain why they had been turned down. Three days before the hearing, the State's representative announced that H.N. and 19 other petitioners would be allowed to visit, and that other special cases would be reviewed as soon as possible. However, the military took very long to decide on the technicalities of how the approved visits would take place. H.N. waited in vain for the promised

permit; but she was among the fortunate ones and her husband was released as part of a prisoner exchange in January 2004. **(Case 26008)**

The State also argued that the fact that these petitioners would receive permits was not because they received special treatment but because the military has changed its policy. The following day, HaMoked received answers to 58 other applications – around half the applications HaMoked had made by then. Most of the applications (54 out of 58) were approved – indicating the arbitrariness of the repeated refusals that forced applicants turn to HaMoked in the first place.

Conditions of Detention

In 2003, the military incarcerated thousands of Palestinians. In some periods, the figure exceeded 3,000. Many of these detainees were held in various facilities throughout the West Bank, such as Ofer Camp and temporary facilities at the military headquarters in the region. But the Ofer facility, built in March 2002, and the facilities and prisons inside Israel were not designed to contain so many detainees, and detention conditions had become inhuman. The sharp jump in the number of detainees affected mainly those who were arrested in the West Bank and held at the Ofer facility, which was set up almost overnight, and at temporary facilities where detainees were not meant to spend more than a few days. These facilities did not have enough food, blankets or mattresses for all the detainees.

The military did not provide clothes for changing or mend the broken tents, whose tenants were exposed to the rain and cold. The washing facilities were insufficient and in some cases, overflowing toilets created a serious sanitary hazard. The facilities were insufferably crowded. Detainees, who were held there for weeks and even months, did not have enough room to lie down nor enough food to eat. Medical care was scarce, and even those detainees whom the physician in charge said should not be kept there because of their health, were not released or transferred. Statements from detention facilities throughout the West Bank exposed humiliation by the soldiers, beatings, medical neglect and abuse.



In May 2003, HaMoked filed a petition concerning the detention conditions

at the temporary detention facilities at the military camps of the brigades of Etsion, Shomron, Efrain, Binyamin and Menashe. Statements made by detainees who were held there indicated that conditions in these facilities did not even meet the minimum standard for human survival: congestion was unbearable and detainees did not even have enough room to lie down; food was scarce and of low quality; detainees only had access to toilets twice or three times a day, at the jailors' discretion; the tents were broken and detainees exposed to the weather; detainees were not given extra sets of clothes and were wearing the same dirty, smelly clothes they had worn on their arrest; detainees were permitted very little time in the yard. Although these were meant to be transit facilities, in reality people were being held there for weeks and even months. Detainees did not get any newspapers or visits and the staff abused, humiliated and beat them. Obviously, the commanders of these facilities were in violation of Israeli and international law, but despite repeated appeals that HaMoked made to them, nothing was done. In May 2003, HaMoked petitioned the HCJ.

"I was detained on January 23, 2003. The only time I was questioned was on February 3, 2003, between 9 AM and 10 PM. I was taken twice to the military court at Salem for the extension of my arrest... which was extended until the end of my trial. The hearing was set for June 3, 2003. I have a congenital heart defect. Because it is so crowded... I cannot sleep, I feel I am suffocating and I have chest pains. The commanders of the facility are aware of my condition; they know I need special medication that they cannot provide.

They promised they would contact my family and get me my medication, but nothing has been done...".

"I hereby state that I was arrested on January 31, 2003 and interrogated for six days thereafter, 9 hours every day. I was taken to court once, but had no counsel. I do not know when the next hearing will take place. Around three weeks ago, a man with a leg wound caused by hollow-point ammunition was held here, and because he received no medical treatment, the wound got infected and gangrene set in. In protest, all detainees, under my lead, went on a hunger strike. In retribution, the soldiers took me out of the room and beat me up all over... Whatever little bread detainees get is moldy... Until a month ago, they used to let us go outside for one hour a day, but now they only give us 35 minutes. In this time, all 18 prisoners have to do their laundry, shower, stretch their legs and breathe some fresh air, brush their teeth, go the toilet and shave...".

"I am 16. I am anemic and have low blood pressure, and need large quantities of food. Because of the food shortage and poor quality of food at the facility, I am constantly dizzy. I hardly get half a tomato a day, no fruit, not enough meat. I once saw one of the soldiers taking some of the bread that was meant for us and throwing it away...".

(Excerpts from affidavits submitted in HCJ Petition 3985/03, Badawi et al. v. IDF Commander in the West Bank et al.)

In June 2003, around one month after the petition was filed, an advisory committee to the Chief of Staff, chaired by the president of the Central Command's soldiers'

military court, was appointed to check the conditions at the temporary detention facilities. As of 2004, it appeared that thanks to the committee's appointment, conditions have somewhat improved: one of the facilities was closed for renovations and congestion standards were defined. But, concurrently, the number of detainees at the facilities grew (on October 23, 2003, the figure was 333) and congestion was worse than ever before. In addition, the main problems remained unchanged: poor sanitary conditions, a shortage in bunks and mattresses, insufficient medical care and meager food. As of June 2004, the committee has not yet completed its work. HaMoked has recently received reports, which have not been corroborated yet, that conditions have deteriorated even more. HaMoked will look into the matter and decide on further action.

As stated in the previous report, in December 2002 the High Court rejected the petition to improve detention conditions at Ofer Camp. This petition was meant to improve the conditions at the camp and guarantee detainees' most basic rights. While the Court rejected the petition, the outcome was not altogether disappointing,

as the very filing of the petition led to an improvement of detention conditions. In this decision, the Chief Justice expressed his dissatisfaction at the prevailing conditions and stated that from the very start of the mass-arrests, conditions did not meet the required minimum standard and that "this deviation cannot be justified." The Court further held that the State must provide detainees with newspapers, books and games and consider the construction of a decent mess hall where detainees can eat at tables and not on the floor "like animals".²⁰ Indeed, in the eight months after the petition was filed and until the Court made its decision, conditions at Ofer did improve. However, three months after the decision, HaMoked was forced to file an application with the Court under the Contempt of Court Order. The Court was asked to penalize the State for failing to provide detainees with books, newspapers and games as instructed by the Court. HaMoked found out that the books, newspapers and games collected for Ofer Camp by the ICRC and private individuals, had been destroyed. In visits to the facility, newspapers intended for the inmates were found outside in the mud. The petition is still pending.

Administrative Detention

The authority to issue administrative detention orders is in the hands of military commanders in the Territories, giving them almost unlimited power to apprehend and hold individuals as administrative detainees. The order authorizes the commander signing the arrest warrant to digress from

standard criminal procedure and not reveal the suspicions or the evidence on which it is based. This is how in 2003 hundreds and at times even more than 1,000 people were incarcerated based on the inexplicit grounds that they "pose a threat to the security of the region". Military detention

orders are effective for up to six months and are subject to judicial review. Within eight days after the military commander signs the order, the detainee must be brought before a military judge who is to consider the lawfulness of the order, based on investigation material submitted to him.²¹ The military commander may extend the detention for another term, subject to judicial review. Administrative detention violates two of the detainees' most basic rights: the right to defend themselves against the accusations, which is denied since they have no access to the evidence against them; and the right to know of their period of detention which is denied because there is no trial and their detention can be extended indefinitely.



In June 2002, R.G.'s mother asked HaMoked to trace her son, who had been arrested by the military 10 days earlier and whose whereabouts were unknown. The next day, HaMoked traced R.G., who was being held in administrative detention at Ofer Camp. The arrest warrant, signed by the IDF Commander in the West Bank, stated that R.G. was affiliated with one of the organizations active in the West Bank and ordered that he be held in administrative detention for four months, until October 2002. Around 10 days after the arrest, in the first judicial review, the judge sustained the arrest warrant and, having reviewed the confidential evidence, asserted that administrative detention was in order. Four months later, on the day that R.G. was set to be released, a new arrest warrant was issued and his detention was extended by six months. In the judicial review held a few days later, the military

prosecutor stated that he had no new intelligence on R.G. Tamar Pelleg-Sryck, HaMoked's attorney said that an existing order could not be extended without any new evidence, based solely on intelligence predating R.G.'s arrest. R.G.'s travels throughout the West Bank, as an employee of UNRWA, could not serve as indication of his affiliation with any organization, she further argued. The judge stated he had noted the arguments of the defense, but upheld the administrative order nonetheless. Pelleg-Sryck appealed the decision with the Military Court of Appeals. The Court held that the actions attributed by the confidential material to R.G. are serious enough to justify his continued detention. At 6 PM on March 26, a few hours before his expected release, another administrative order was issued, extending R.G.'s detention by a further six months. In the judicial review, Pelleg-Sryck repeated the same arguments: the intelligence collected against R.G. before his first arrest in June 2002 could not reasonably be enough to keep him in prison for a year and a half; without new evidence, the continuation of his administrative detention would be unlawful. Both this judge and the judge who heard the appeal that followed, rejected these arguments and upheld the

²⁰ High Court Petition 3278/02, **HaMoked: Center for the Defence of the Individual v. IDF Commander in the West Bank**.

²¹ From the start of the events in April 2002 and until October 2003, Order 1500 furnished far-reaching authority to carry out administrative detentions. For example, the Order enabled any officer from the rank of Major to sign military detention orders and for a while extended the period for judicial review to 18 days.

arrest warrant. In September 2003, before R.G. was to be freed, another warrant was issued – this time only for three months. In the judicial review session for R.G.'s fourth arrest, the defense attorney asked the court to carefully examine the so-called new intelligence. This evidence is not new at all, she said, and was only submitted for appearances' sake. This time, the court sided with the defense. The judge held that the risk in revealing the evidence against R.G. was not specific and that because of the long time that has passed since his arrest, the court must give special emphasis to R.G.'s rights. "Therefore," the judge held, "I believe the right thing to do would be to question the detainee and significantly shorten his current detention so that it

concludes on October 30, 2003." The prosecution got one month to question R.G. and start criminal proceedings against him – which would force them to reveal the evidence and serve an indictment, or find some meaningful new evidence to justify his continued administrative detention. Without new evidence, the judge stated, R.G. could no longer be held in administrative detention. The prosecution appealed, but since it had no new intelligence and since an indictment was not served, the Military Court of Appeals denied the appeal. R.G. was released on October 30, 2003, after 17 months of incarceration, not knowing what he was accused of or ever seeing the evidence against him. **(Case 20633)**

Tracing of Detainees

In 2003, the Israeli authorities arrested many thousands of Palestinians, and HaMoked received thousands of applications to trace detainees. While in 2002 HaMoked had to file 33 habeas corpus petitions in order to compel the State to reveal the whereabouts of detainees, only 10 petitions of this kind had to be filed in 2003.

As stated in the 2002 report, HaMoked went to the courts in all cases where the military did not provide information as to where a person was being held. In many of these cases, the military only divulged the information once a petition was filed. In these cases, HaMoked withdrew its petitions. In order to force the military to comply with HaMoked's requests and provide reliable information within a reasonable timetable, HaMoked asked

the Court to make the State cover trial costs. The Court complied, and within a short time the authorities streamlined their operations. However, there are still cases in which the answers provided by the military control center are inadequate; in these cases, HaMoked talks directly with the detention facilities and contacts on the ground.

On December 17, 2003, 15-year-old H.M. was arrested by the military. HaMoked immediately contacted the military control center, asking that H.M. be traced. Concurrently, HaMoked also contacted other military units with an inquiry about H.M. whereabouts. However, the authorities said they had no information about him. After further communications,

the military confirmed H.M.'s arrest and said that until the early afternoon, he was held at the transit facility at Etsion and that he was then transferred to the facility at Binyamin. A telephone inquiry with Binyamin Brigade confirmed that H.M. was indeed being held there. In other words, HaMoked traced the whereabouts of H.M. on the day of his arrest; military control center; on the other hand, only traced him and notified HaMoked five days later, on December 22. **(Tracing 30129)**

In 2003, HaMoked received 5,077 requests to trace detainees, including 90 applications to trace women and 335 to trace minors. The law specifies the conditions under which women and minors may be held. One of these conditions is that men and women and minors and adults must not be held together in the same cell. HaMoked prioritizes applications to trace arrested minors and women and handles these cases with urgency. HaMoked traces

these women and minors, and makes sure that the conditions of their arrest are in compliance with the law.

At 3:23 PM on December 4, the parents of P.H., a Nablus resident, called HaMoked, asking to trace their daughter. At 4:14 PM, after telephone communications with the Civil Administration, the Prison Service, military control center and others, HaMoked confirmed that P.H. was indeed held by the military, but still did not know her exact location. At 4:30 the Civil Administration told HaMoked that P.H. was being held at the Shomron Brigade headquarters in special conditions, and was being guarded by female soldiers. HaMoked called the Brigade, which confirmed this information. At 5:00 PM HaMoked called P.H.'s parents and gave them the details. HaMoked followed up on the case and three days later found out that P.H. had been transferred to a women's detention facility inside Israel. **(Tracing 29928)**



Violence Committed by the Security Forces

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

Universal Declaration of Human Rights, Article 3

In 2003, 579 Palestinians were killed by the gunfire of Israeli soldiers, policemen and civilians. 1,010 Palestinians were wounded by gunfire and many others were injured when hit by rubber-coated bullets, plastic bullets, tear gas and shrapnel.²² The daily violence to which civilian Palestinian population in the Territories is exposed at the hands of the Israeli security forces and settlers has impacted HaMoked's operations. In 2003, HaMoked handled 1,314 new cases pertaining to personal injuries and violence to property caused by the security forces or by settlers.

In cases of this kind, HaMoked seeks to bring the perpetrators to justice, secure compensation for the victims and impart reasonable behavioral norms to the security forces and settlers.

The formal bodies empowered to uphold the laws have neglected their duties. Until

December 2003, during more than three years of confrontation in which 2,289 Palestinians were killed and 6,274 injured by gunfire, the military police only started 72 investigations into serious injuries or deaths of civilians, and only 13 of these probes led to indictments. In other words, only a negligible part of the cases of death and injury are investigated by military police and less than 20% of these ever reach the court. The authorities' reluctance to scrutinize their own actions is now at the focus of a petition filed by B'Tselem and the Association for Civil Rights in Israel (ACRI), in which the High Court of Justice is asked to compel the military to launch an investigation whenever a civilian is killed.²³ HaMoked confronts these problems on a day to day basis. In 2003, HaMoked has managed to get the military police and the internal affairs division of the Israel Police to

start 51 investigations. Investigation files and data collected by the military prosecution reveal not only the negligence of the authorities in handling violence but also the value system driving the investigation: most investigations launched pertained to property damage, such as looting, vandalism and theft.²⁴ This also holds true for most of the indictments that were served.

In addition to the negligence of the investigating authorities, the amendment to the Torts Law, endorsed in the middle of 2002, has now made it even more difficult for victims to get the compensation they deserve. The amendment stipulates almost impossible timetables for submission and processing of complaints and grants the security forces extensive legal protection against damage claims.

One night in July 2003, soldiers surrounded the home of M.A., went up on the roof and arrested his son who was sleeping there. They later woke up all the other tenants and ordered them to leave the house. The soldiers cuffed everyone and blindfolded all the adults. The family sat for around two hours in the street this way, tied up and blindfolded, while the soldiers searched the premises. When they completed the search, at around 4 AM, the soldiers left the house, firing in the air. The gunfire seriously injured the neighbors, H.S. and her husband A.S. An ambulance that was called to the scene was delayed at the roadblocks but managed to get the couple to the hospital, where A.S. was

pronounced dead. In addition to the death of A.S., the serious injury of his wife and the devastation caused to the home of M.A., NIS 40,000 – the payroll for M.A.'s employees – had disappeared from the premises. **(Case 29268)**

HaMoked's emergency hotline, established in March 2002, handles many violence cases. The hotline is in ongoing contact with the military and other authorities, to which complaints are referred in real time.

In June 2003, a resident of Huwwara, near Nablus, called HaMoked complaining about settlers who were passing through the village, shooting at the houses and throwing shock grenades. The hotline immediately contacted the Civil Administration, which notified the police about the riot. The police was also asked to take action, and was given the name and contact information of the complainant for a deposition. Half an hour later, a military jeep arrived at the village and the soldiers ordered the settlers to leave. The incident concluded without any physical injuries and with only minor damage to property. **(Case E2014)**

²² Data about casualties is from B'Tselem: www.btselem.org; data about injuries is from the Red Crescent: www.palestinercs.org

²³ High Court Petition 9594/03, **B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories et al. v. Military Advocate General.**

²⁴ *Ibid.*, paragraph 13.

New Investigations

As noted, HaMoked collects as many details as possible about the incident and refers the complaint to the relevant authority, demanding an investigation. Each of the agencies operating in the Territories has its own investigations arm. Military operations are investigated by military police, which only start investigations at the order of the military advocate; police and border police operations are investigated by the Justice Ministry's internal affairs department; incidents in which settlers are involved are investigated by the police. HaMoked has pushed to expedite the launching and completion of investigations on all fronts, since as time goes by it is harder to collect evidence and witnesses' recollection of the events is not as clear – making it harder to get to the truth.

Despite the deaths, injuries and property damage caused by Israeli forces and settlers in the Territories, the authorities are reluctant to start investigations. The policy of the Military Advocate General is that the military police must only start an investigation if the operational debriefing, conducted by the commanders of the relevant military unit, leads to suspicion of criminal behavior. The petition submitted by B'Tselem and ACRI, asking that the Military Advocate General start an investigation whenever civilians are killed, states that “as long as the decision to launch a military police probe is based primarily on the military debriefing, there is no wonder that the number of investigations actually conducted is marginal compared to the number of deaths of Palestinian civilians.”²⁵

In October 2001, 14-year-old R.A. and his friends were playing at the boys' elementary school at Al Fawwar Camp, outside Hebron. The school is only a few hundred meters away from the main road, which is for Jews only. The area was peaceful. A single gunshot, fired without a warning by the soldiers guarding the road, hit R.A. in his chest. The boy was rushed to the hospital, where he was operated and saved – but his left arm remained paralyzed. In December 2001, HaMoked contacted the Advocate of the Central Command demanding that military police start an investigation of the incident. HaMoked offered any assistance that may advance the inquiry, including communication with the complainant and other witnesses. Apart from a confirmation that the Advocate received the application at the end of December 2001, HaMoked heard no more news about the matter. No investigation had been launched. HaMoked made repeated appeals to the Office of the Advocate of the Central Command, but to no avail. In April 2003, HaMoked received a letter from the deputy of the Advocate, stating that military police had been instructed to start investigating the allegations. Despite this instruction, no investigation took place. After many more telephone conversations with the military police in Beer Sheva, they finally found the file and started handling the case. In September 2003 R.A. was finally summoned to testify. **(Case 16754)**

Investigation priorities reveal the norms and ethical standards of the military.

On the morning of April 2, 2002, as the military invaded Bethlehem, an armored personnel carrier stopped outside S.A.'s home. The soldiers opened fire and stormed the house. S.A.'s mother shouted to them that there were children in the house and that they should cease firing. When she came to the door to open it for the soldiers, she was killed by explosives that were meant to pull the door out of place. The fire and explosion also killed S.A.'s brother. The other family members hid in the bathroom, and the soldiers, who did not notice them, left the site. Because of the curfew, an ambulance only managed to make its way through the next day and evacuate the bodies. The family fled the house, and S.A. was able to return only a month later. He found total devastation: furniture was destroyed, walls were pocked with bullet holes, personal belongings were used by soldiers, all the food had been eaten, and a video camera had disappeared. Following S.A.'s request, in June that year HaMoked contacted the Office of the Advocate of the Central Command, demanding that an investigation

be launched and the perpetrators tried.

In December 2002, during the night, soldiers came to S.A.'s house with a masked man and another man whom the soldiers called "Captain Job". The soldiers forced the family out on the street and searched the house. In the process, they destroyed furniture, ripped clothes, confiscated two mobile telephones and stole NIS 500 and three rings.

In January 2003, HaMoked again contacted the authorities asking for an investigation into this second incident at the family's home.

In June 2003, military police deposed S.A. An inquiry conducted by HaMoked indicated that the military police focused exclusively on the second incident, in which property had been vandalized and stolen, but completely ignored the first, in which two people had been killed. Only after another exchange, more than a year after the first incident, did the Advocate General's Office instruct that the files be located and an investigation launched about the death of S.A.'s mother and brother. **(Case 17822)**

Investigation Procedures

In 2003, HaMoked's intervention led to 63 investigations. It is generally true that Palestinian grievances are processed very slowly and inefficiently, but police treatment of crimes attributed to settlers is particularly negligent.

In February 2003, HaMoked started handling an assault and theft case that

happened in the Nablus area more than a year earlier. Fourteen-year-old N.S. and his friend were taking the family's sheep out to pasture when they noticed five settlers and two armed men in uniform running toward them. The children got scared and fled; the settlers chased after

²⁵ Ibid, paragraph 19.

them but were unable to catch up, and made do with stealing the sheep. **(Case 25510)**

In May 2002, four settlers attacked T.S. not far from his village in the Nablus area, beat him, broke his arm and chased him away. The settlers took the flock of sheep he was shepherding. **(Case 25782)**

In July 2003, A.A. who had been seriously injured when driving his car between Qalqiliya and Nablus two years previous turned to HaMoked. He was injured in his eye by a stone thrown by children from the nearby settlement of Karnei Shomron. **(Case 27677)**

Although in all these cases the victims complained at the District Coordination Office (DCO) immediately after the incident, nothing was done. HaMoked managed to find papers proving that complaints had indeed been filed, but repeated requests to get information about the progress of investigation were of no use. In September 2003 HaMoked was informed that "according to the police computer records ... no criminal cases matching the descriptions you have provided could be found."

The police is not the only agency that is negligent in its treatment of complaints about exceptionally serious incidents. The heightened military presence, the roadblocks and the bureaucracies of the Civil Administration and the military, coupled with the language barrier between investigators and witnesses turn those investigations that do eventually start, into a slow, arduous and ineffective procedure.

In February 2003 HaMoked received an inquiry about the death of T.H., who

had been killed by soldiers in Jenin several months earlier. According to eye witnesses, T.H. was driving his taxi in Jenin's industrial area when he noticed a tank and an armored personnel carrier blocking the road. T.H. pulled over and turned on his hazard lights, as customary. Without any warning, the tank's submachine gun started to fire. T.H. sustained a fatal head injury. The tank advanced toward the car and stopped nearby, but the soldiers did not descend or lend any help to the bleeding man. Moreover, pointing their weapons, they did not allow passersby to help him either. The soldiers also prevented an ambulance staff which arrived shortly after the incident from caring for T. H. One of the people on site managed to convince the soldiers to let him take T.H. to the hospital in Jenin in his own car. Because of his serious condition, T.H. was transferred from Jenin to Haemek Hospital in Afula. Although the arrival of an ambulance to the Jenin hospital was cleared with the Civil Administration, the ambulance was detained at the roadblock for an hour and a half. Upon arrival at Haemek Hospital, T.H. was pronounced dead.

Seven months after T.H.'s death and following HaMoked's appeal to Advocate of the Central Command, the military police notified HaMoked that an investigation had been initiated "into the death of the civilian T.H." and that witnesses are to report to the DCO in Jenin for depositions. The investigator set a date for the meeting and specifically requested that the witnesses be there on time. On the scheduled date, the situation in Jenin was tense and many armed units were patrolling the area. On their way to

the meeting, the witnesses came across a roadblock that was not there before, and fearing arrest or injury, they went back to their homes. Only thanks to back-and-forth phone calls between HaMoked and the military authorities could T.H.'s son make it to the DCO and give a statement. To collect the additional testimonies, the investigator gave his main questions to HaMoked, which had them translated and sent to an attorney in Jenin. The attorney deposed the witnesses accordingly and submitted the depositions to HaMoked, which had them translated into Hebrew and transferred to the investigator. Ten

months after the incident, the investigator asked HaMoked to help find the ambulance team that carried T.H. from the hospital in Jenin and the registration papers of the taxi that T.H. was driving when he was shot. HaMoked collected all the required information, deposed the witnesses and transferred their statements to the military police. However it turned out that the investigator in charge had left and someone else has taken his place. HaMoked contacted the new investigator, who said he could not find the relevant documents and asked HaMoked to resend them. **(Case 25065)**

The Amended Torts Law

The recent legislation concerning compensation in the Territories,²⁶ effective since August 2002, has narrowed the access that Palestinians have to the justice system. The new law has changed the administrative procedures and shortened the timetable in which victims can file suit. Furthermore, the new law has redefined the operations of the security forces in the Territories from “policing” to “wartime action”, making the security forces completely immune from tort claims.

The new law, dubbed by the media “the Intifada law”, requires victims and their attorneys to report the incident to the Defense Ministry within 60 days, using a special form. Ostensibly, once notice is given, the Ministry is to start an immediate investigation – but this is not the case. The new law also reduced the

statute of limitations for claims against the security forces regarding incidents in the occupied territories from seven to two years. This change has retroactive force, so that in incidents predating the amendment, the term is up either seven years after the incident or two years after the implementation of the new law (i.e. July 2004), whichever comes first. This compounds victims' distress, since without incentive, the investigating authorities have no reason to hurry. Complainants are entirely dependant on the authorities to investigate, since they themselves cannot collect any information about the unit and soldiers involved in the injury. While the

²⁶ Torts Law (State Liability) (Amendment – claims arising from activity of security forces in Judea, Samaria and the Gaza Strip), 2001.

authorities drag their feet, the statute of limitations kicks in and within two years the case will become moot.

HaMoked has prepared to deal with these changes. First, HaMoked tried to thwart the regulations governing the notice that complainants must send the Defense Ministry within 60 days of the incident. HaMoked and ACRI sent a letter to the chairman of the Knesset's Constitution, Law and Justice Committee, stating that the new legislation "is unparalleled in Israeli law" and that "in no other case is a plaintiff required to give prior notice in order to be allowed to sue his tortfeasor." One of the things that the chairman was asked to do is incorporate a provision in the regulations, providing that the notice form be translated to Arabic and distributed to all police stations, DCOs, city halls and other accessible facilities.

Second, HaMoked notified all the Palestinians whose rights would be curtailed by the amendment and all the agencies involved in their defense. At a meeting organized by HaMoked in Ramallah in April 2003, with the Palestinian organizations of Al Haq, A-Damir, DCI/Palestine and the Palestinian Human Rights Center, HaMoked explained all the aspects of the amended law. HaMoked also publicized all the details of the amendment in ads in Palestinian press.

Concurrently, HaMoked prepared for changes in its working methods. Now, whenever a new case is opened, notice is delivered to the Defense Ministry about the extent of the damage involved. HaMoked has also consulted with tort lawyers in order to expedite the filing of 162 violence claims whose limitations period expires at the end of July 2004.

The implications of the law are still not clear and the Defense Ministry has not yet rejected any claim based on the new procedures. The changed legal status of Israel's operations in the Territories – from "policing" to "wartime action", which grants the State immunity against tort claims, has not yet been challenged in court either.

The new reparations legislation has changed the norms and ethical system: the legal legitimacy given to the operations of the security forces, by the changed legal status of these operations, has pulled the rug from under the concept of accountability as practiced so far by the defense establishment. Although the security forces are still accountable under criminal law, they are now immune from civil proceedings. The amended law sets a twisted norm according to which the State can operate with impunity, and by extension so can its soldiers, in all actions against Palestinians in the Territories.

Closing Cases

HaMoked works with applicants' hand-in-hand from the moment contact is made. HaMoked handles the case vis-à-vis the authorities, monitors the investigation

and pushes to have recommendations submitted and indictments served. In some cases, after the official investigation is completed and recommendations are

revealed, HaMoked also files civil suits. In 2003 HaMoked handled 42 tort cases.



In April 1999, three 16-year-olds were transferred to the detention facility at the Etsion brigade. The detainees were taken by truck with three border policemen. *Haaretz* described the developments on the truck as follows: "During the ride, Eran Nakash, one of the guards, punched, slapped and kicked the three detainees, whose hands were tied behind their backs. He also instructed some of them to give him oral sex and hit them when they refused. He forced them to sing a song in Arabic demeaning Mohammad."²⁷ The Justice Ministry's internal affairs unit conducted a swift and effective investigation in this case; the criminals were traced and indicted by the State Attorney's Office. The District Court heard the case in October 1999 and in January 2000 the defendants were found guilty. In March 2003, after tracing the plaintiffs and photocopying the investigation files and court minutes, HaMoked filed a civil suit against the border policemen. **(Case 13852)**

In some cases, HaMoked manages to secure compensation for victims even without the intervention of the court. This is generally possible in damages caused while or due to the confiscation of property.

In January 2002, P.R. and M.R., two fishermen from Gaza, were tried for crossing territorial waters. They were apprehended by an Israeli Navy patrol boat, which towed their fishing boat to shore. The military judge decided that because of their clean record and since

they were not aware that the maritime border had been moved (from six to three kilometers from shore), they need not be held any longer, and let them go. The judge further decided that the confiscated fishing boat should be returned to its owners. Six months had gone by but the boat was not returned. The fishermen then contacted HaMoked for help. HaMoked filed a complaint with the Defense Ministry's ombudsman. The military replied: "Our inquiry with the Navy has yielded that your client's boat sank at the time of the arrest." Between November 2002 and July 2003, extensive correspondence and communications took place between the Defense Ministry's ombudsman, HaMoked and the fishermen. In September 2003, the Defense Ministry, through HaMoked, paid the fishermen NIS 45,000 in compensation for the boat, the equipment that was on it and the days of work lost. **(Case 17940)**

The courts decided two tort cases in 2003.



In August 1995, soldiers came to the home of Z.Z. in the middle of the night, ordered everyone out and started a search, leaving the house in chaos, breaking furniture and tearing up clothes and mattresses. The soldiers left four hours later, taking Z.Z.'s son into detention. Z.Z. then found out that in addition to the devastation they had left behind, the soldiers had also

²⁷ Moshe Reinfeld, *The Supreme Court metes out heavy sentence for border policeman who abused Palestinians*, *Haaretz*, July 4, 2002.

taken \$3,000 she had hidden there. The next day, she filed a complaint with the police, but after getting no response, she contacted HaMoked. One year and many inquiries later, HaMoked received a response from the office of the Military Advocate General: The evidence was insufficient and the case was closed. The Military Advocate added that a polygraph test conducted by the military police confirmed the testimony of one of the soldiers who said he saw a veil with money and documents but did not take it, and that there was no other evidence in the case. HaMoked asked for the investigation files, but did not receive them. In November 1997, HaMoked petitioned the High Court of Justice to compel the Military Advocate General to explain why he had ignored the request to reveal the investigation material. Finally, the Advocate's office allowed HaMoked to photocopy the files. In June 2002 HaMoked filed for compensation with the Magistrate's Court in Jerusalem on the grounds of theft and vandalism. In the decision, handed down in March 2003, the judge stated that the testimony of the soldier who had seen the money establishes that "he did not even take the minimum steps to safeguard the money he had found," which made him responsible toward Z.Z. for the lost cash. The judge further held that the State cannot relieve itself from its vicarious liability for the soldier's actions, and must therefore compensate for the missing money. As for the vandalism, the judge established that since Z.Z. had failed to provide any evidence as to the damage,

the court could not order damages to be paid. **(Case 8976.1)**

Ten cases were closed in 2003 after the complainants had withdrawn their claims. Withdrawals are prompted by various motivations: distrust of the Israeli legal system, fear of retribution or the victim's feeling that his personal hardship is just part of a shared destiny.

In May 2002, Border Police came to G.G.'s home. As they entered the house, one of the policemen shoved G.G. and he fell to the ground. The policemen ordered everyone out on the street, where G.G. was questioned. Apparently, the policemen were not satisfied by G.G.'s answers and the investigator hit him forcefully and ordered his arrest. Two other policemen cuffed him and hit him in his face and body. The policemen then cuffed G.G.'s nephew, punched and kicked him and hit him with the butts of their rifles. All the while, another policeman held the other family members at gunpoint, stopping them from intervening. Ten minutes later G.G. was released and his papers were given back to him.

G.G. contacted HaMoked, which applied to the Justice Ministry's internal affairs unit. Five months later, the internal affairs unit asked G.G. and his nephew to come in and make statements. G.G. agreed at first, but then changed his mind. He explained that he did not believe the investigation would yield any results and that he would rather forget the entire affair. Despite HaMoked's pleadings, G.G. did not change his mind.

(Case 17798)



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

Since the onset of the current Intifada, the High Court of Justice has in effect given the military a free hand to demolish houses without any warning and without a court hearing. The army has exercised this freedom and demolished houses without the restraints that are normally practiced by the Israeli authorities and which are required by law. Houses were demolished without warrants, without granting residents the right to be heard, without any court hearing and at times in the dead of night and without letting residents remove their property. Family albums, documents, books, money, clothes and furniture were all buried under the rubble. According to B'Tselem, in 2003 the 231 houses were demolished as a penal measure against the families of palestinians suspected to have carried

out attacks and as a deterrent to others. Rulings handed down during the year by the HCJ somewhat constrain the military as they reinforce the administrative and legal barriers regulating the use of this measure. In 2003, the military managed to operate without any supervision in this regard. The military did not issue demolition warrants as required, did not give residents prior notice and did not enable them to challenge the decision and state their claims. HaMoked therefore petitioned the HCJ whenever concerns arose that the military might demolish a house. Whenever a family inferred from the military activity or from statements made by soldiers that its house was to be demolished, it petitioned the High Court, through HaMoked. In most of these petitions, the State argued that the Court

has no need to discuss the specific matter since the military had not yet decided to demolish the house and the petition is thus a theoretical exercise without any basis in fact. In all cases, the State reserved the right to act without giving the family members prior notice or allowing them to petition.



On the night between July 18 and 19, 2002, the security forces apprehended several members of four families of the area of Kafr Tel. Apparently the arrests were made because each of these families had relatives who were wanted by Israel. The houses of two of these families were demolished with explosives that same night, without any prior notice. Three days later HaMoked petitioned the HCJ on behalf of the other two families, in order to prevent their houses from being demolished as well. HaMoked demanded that the houses not be demolished or at least that prior to demolition the families would be given the warrant ordering the demolition and permitted to state their claims before the military commander and then, if he does not rescind the warrant, before the HCJ. The Court issued an interim injunction instructing that the houses were not to be destroyed pending a final decision and that the State Attorney's Office was to submit a statement within three days. In its response, the State argued that "no decision had been made to demolish the petitioners' homes. This is therefore a premature petition which as such, must be denied." The State further argued that it "cannot be made to subject itself to various restrictions that will apply if in the future it is decided to demolish these houses." For this reason too, the State

held, the Court must reject the petition *in limine*.

HaMoked replied that the families' right to be heard is a longstanding basic right and that the State must enable those injured by its actions to challenge its decisions before the relevant authorities and the High Court.

The Court decided to appoint a special panel to discuss the matter and left the interim injunction intact, pending the final decision. However, after a month had gone by and no date was set for the hearing, the State asked the Court to schedule an urgent hearing and speed up the legal proceeding.

In the first hearing, on August 28, 2002, the State agreed, at the advice of the Court, to let the family members state their claims before the military commander and try to convince him that in this case it would not be appropriate to demolish the house. The reservations were submitted but the military did not announce its decision. Throughout this time, they never adopted any formal decision to demolish the house, but continued to operate in the Court in order to revoke the interim injunction prohibiting this move. Referring to the minority opinion of Justice Dornier, that "the demolition of a house is not a penal measure in the full sense of this term but rather a deterrent measure, which should not be implemented except as a direct response to a terror attack perpetrated by a terrorist living in the house,"²⁸ HaMoked argued that a house cannot be demolished two years after the acts attributed to one of the tenants, and that after such a long time has gone by, the State has forfeited its right to retaliate.

In its final decision handed down in February 2004, the Court rejected HaMoked's petition and revoked the interim injunction, but stressed that the military should do its best not to destroy any family property except for the house itself.²⁹ The Court did not address the argument that the time gone by revokes the authority to demolish. As of the time that this report was compiled, the house was not destroyed. **(Case 17908)**

In HCJ, the State maintains that due to military reasons, the tenants cannot be heard before the demolition. In other words, the military does not give prior notice, issue a warrant or allow the tenants to be heard, due to concerns that if the plan to demolish the house is revealed, an ambush or booby traps would be set up and the house would become a death trap for the soldiers. However, this argument is invalid, both in terms of the military's operational reality and in terms of legal principle.

In most cases, the tenants know of the military's aim to demolish their house: the soldiers come to the house, search it and take photographs and measurements. Those who so desire can prepare for the military operation with or without a court hearing and attack the soldiers when as the mission is carried out. Under these circumstances, the issue of the official warrant and the holding of a hearing have no added value as intelligence and do not in and of themselves expose the military's intentions.

The argument that the risk to the life of soldiers is enough to override the need for a hearing and the right to appeal is invalid in the legal sense too. The HCJ has only permitted the military to demolish houses without first hearing the residents,

only when the operational needs and the definitions of the specific mission so require, at the discretion of the military commander in the field. In short, in the course of action, the military is allowed to demolish a house that is in its way or that represents a threat to the soldiers, without pausing for administrative procedures that would slow down the operation. When the army demolishes the family homes of palestinians suspected to have carried out attacks, it turns the legal argument up side down, converting the means into the goal. Penal demolition is not, however, an operational activity; it is an administrative act. The argument that a penal act such as the demolition of a house is operational and requires the confidentiality and operational preparations in which the Court must not intervene, confuses between the military's civil duties, as the agency in charge of all matters in the occupied territories and the one authorized to perform penal actions, and its military duties as a combative organization.



The rulings handed down by the High Court in 2003 may have not prevented the demolition of houses, but they nevertheless served to curb the military in its policy of demolishing houses without due process. The rulings handed down in petitions filed with the HCJ against house demolition underscored the duties and restrictions imposed on the military, which go hand-in-hand with its powers. In a ruling from September 2003, the HCJ stressed that only in special cases can

²⁸ HCJ 1730/96, **Adel Salem Abdelrabbo Sabih v. Maj. Gen. Ilan Biran**, P.D. [Court Rulings] 50(1), 353.

²⁹ High Court Petition 6309/02, **Jabry et al. v. IDF Commander in the West Bank**.

houses be demolished without a warrant.³⁰ In another ruling, from October, the Court reminded the military commander that he has the duty of issuing a written warrant stating the authority to demolish the house, the reason for the warrant, the exact building for which the warrant is issued and where and to what extent the authority will be used (in other words – how much of the house will be sealed or demolished).³¹ The Court further emphasized that the army

must, to the extent possible, allow the tenants to state their case and challenge the decision before the HCJ. These duties are also mentioned in a ruling from May 2003, which held that where a warrant is not feasible, the military Legal Advisor for the West Bank must explain in writing, ahead of time, why the tenants could not be allowed to exercise their right to be heard and why a warrant could not be issued.³²



Respect for the Dead



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



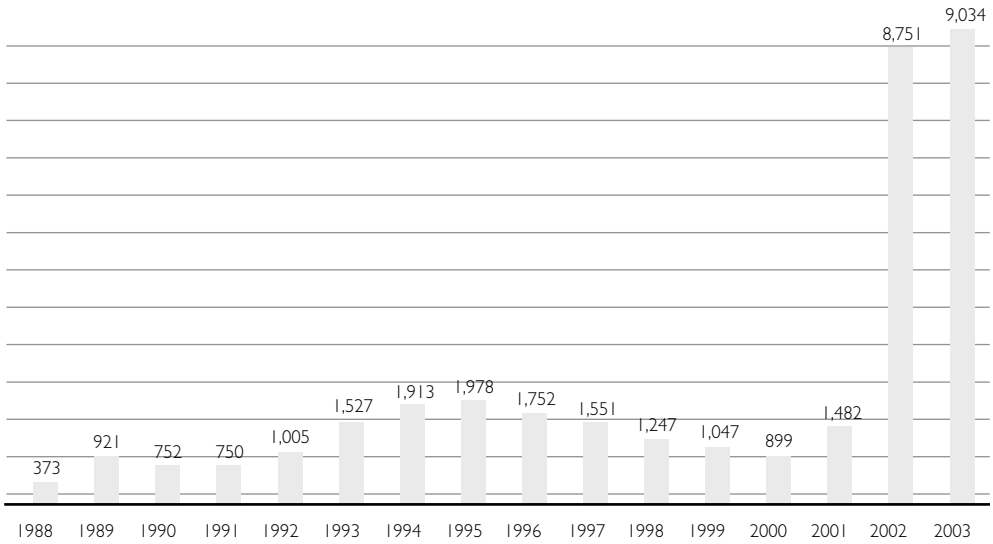
Appendices

Statistics

New cases in 2003 compared to 2002

		2003		2002		% Change
		Number of cases	% of cases	Number of cases	% of cases	
Detainee Rights	Tracing	5,077	56.2	7,078	80.9	-28.3
	Administrative Detention	106	1.2	124	1.4	-14.5
	Conditions of Detention	11	0.1	34	0.4	-67.6
	Family Visitation	84	0.9	--	--	+
Freedom of Movement	To and from Territories	238	2.6	132	1.5	+80.3
	Within the Territories	1,941	21.5	428	4.9	+353.5
Residency	Jerusalem	206	2.3	89	1.0	+131.5
	West Bank	4	--	--	--	+
Violence to Body and/or Property		1,314	14.5	705	8.1	+86.4
House Demolitions		24	0.3	72	0.8	-66.7
Respect for the Dead		21	0.2	33	0.4	-36.4
Other		8	0.1	56	0.6	-85.7
Total³⁴		9,034	100.0	8,751	100.0	+3.2

New Cases: July 1988 - December 2003



³⁴ During 2003, HaMoked cared for 1,176 complaints received before 1.1.2003. 351 cases were closed during the year.

Excluding requests for tracings, HaMoked received 3,957 new complaints, a growth of 136% over the previous year:

Donors

HaMoked: Center for the Defence of the Individual, should like to acknowledge the support of the following organizations:

Association pour L'Union les Peuples Juif et Palestinien, Switzerland

British Embassy, Tel Aviv

Canadian Embassy, Tel Aviv

CCFD (French Catholic Committee against Hunger and for Development), France

The European Commission

Embassy of Finland, Tel Aviv

The Ford Foundation, USA

Global Ministries, Netherlands

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Minister for Development Cooperation, Ministry of Foreign Affairs, Netherlands

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New Israel Fund

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International Commission of Jurists, Sweden

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