

# **Escaping Responsibility**

The Response of the Israeli Military Justice System  
to Complaints against Soldiers by Palestinians



Jerusalem, December 1997



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# List of Abbreviations and IDF Officers

## Abbreviations

AG: Attorney General of the State of Israel

CCAG: Central Command Advocate General/ Central Command Advocate General's Office

HCI: High Court of Justice

IDF: Israel Defense Forces

MAG: Military Advocate General/ Military Advocate General's Office

MK: Member of Knesset

MPI: Military Police: Investigations

NCAG: Northern Command Advocate General/Northern Command Advocate General's Office

RCC: Regional Command Center

SOC: Staff Officer for Compensation (within the Ministry of Defense)

## IDF Officers Mentioned in the Report:

Brigadier Amnon Strashnov – Military Advocate General

Brigadier Ilan Shiff – Military Advocate General

Colonel David Yahav – Deputy Military Advocate General

Major Anat Ron – Acting Military Advocate General, and

Major Anat Ron – Deputy Chief Military Prosecutor

Lieutenant/Captain Yuval Horn – Assistant to the Chief Military Prosecutor

Lt. Col. Rachel Dolev – CCAG

Lt. Col. Shlomo Politis – CCAG

Lt. Col. Aviram Nir – CCAG

Major Baruch Menny – Deputy CCAG

Lt. Col. Ze'ev Lisson – NCAG

Captain Tehila Vinograd – Civil Administration (Beit El) Legal Advisor

Advocate Lauren Itzkovitch – Attorney with the SOC's office

Advocate Adrian Agasi – Staff Officer for Compensation

Captain Udi Ben-Eliezer – Military Prosecutor with the CCAG

Lt. Col. Dani Be'eri – Chief Military Prosecutor

Nili Arad – Director of the High Court Petitions Department in the Attorney General's Office

# Introduction

After the outbreak of the Intifada in December 1987, the Israeli political leadership ordered the security services, particularly the IDF,<sup>1</sup> to suppress the popular uprising of Palestinians in the Occupied Territories (including East Jerusalem.) The uprising was aimed at ending Israeli military occupation, and as the dimensions of the uprising became clear thousands of conscripts and reserve soldiers were sent to the territories. The result was violent clashes between the soldiers and Palestinian civilians – men, women, and children. The efforts to suppress the Intifada included, among other means, significant violations of the human rights of Palestinians in the Occupied Territories.

The Military Advocate General's (MAG) office was the main institution responsible for dealing with the legal questions arising from the Intifada. The military judicial system was called on to "find solutions within the framework of the law" for most of the drastic measures taken against the population. These measures included deportation, house demolition and sealing, administrative arrest, various "guidelines for opening fire," collective punishment, and policies for the use of force against unarmed civilians. The MAG's office was also responsible for developing a policy for dealing with soldiers, who in the course of operating against Palestinians, were suspected of violating the law.

The cases in this report cover various kinds of injury committed by soldiers against Palestinians in the Occupied Territories, including property damage, harassment, beating, gunfire injuries, and death. An analysis of the treatment of complaints submitted to the authorities in response to these violent actions reveals a consistent pattern of partial and biased judicial procedures. The situation can be summed up as "no investigation – no results." Even when a complaint results in the identification of the soldiers involved in violent action, their interrogation is likely to be negligent and incomplete. The Investigating Military Police or the appointed investigating officer generally failed to respond to contradictions or to follow up on leads provided by the testimonies, that should have resulted in additional questioning or new testimonies. In some cases, MPI accepted testimonies as truthful that had obviously been coordinated in advance by the soldiers involved. Even more troubling are cases when the MPI investigators have used leading questions to draw out the kind of answers that will help remove suspicion from the soldiers. Palestinian plaintiffs or witnesses were rarely questioned by the MPI investigators, despite repeated offers by HaMoked to assist in arranging interviews.

<sup>1</sup> The abbreviations that appear in this report are explained on page 5.

The treatment of complaints by the military judicial system is typified by bureaucratic delays that prevented proper investigations and the identification of the soldiers described in the complaint. This includes unjustified delays in submitting the conclusions of the military prosecution and in giving HaMoked staff access to the investigation files. In some of the cases under discussion, the military prosecution applies questionable considerations that seem to be in conflict with their supposed commitment to uncover all the facts and to pursue suspects to the full extent of the law.

As will become clear after reading this report, what has been seen is not a series of errors, but rather a policy fully backed by the MAG. HaMoked's report is based on files that include the testimonies of Palestinian plaintiffs, family members and other witnesses; lengthy correspondence with the military prosecution (especially the Central Command Attorney General's office) and other official bodies; and the MPI investigation files made available to HaMoked, including soldiers' testimonies and other material.

## The Policy of the Military Attorney General: The “Intifada Factor”

During the Intifada, the MAG sought to create the impression that it operated according to two basic principles, as described by the Military Advocate General during 1986-1991, Brigadier Amnon Strashnov, in his book *Justice Under Fire*.<sup>1</sup> The first was “to provide the IDF and the security forces the widest range and quality of legal tools in order to allow them to fulfill their difficult task of suppressing the uprising.”<sup>2</sup> The second was “to protect the rights of the region’s population. This principle was expressed, among other ways, in the consistent and vigorous struggle of the MAG’s office and the entire judicial system to combat exceptional incidents that occurred in the conduct of soldiers, and in the protection of the rights of the individual through the strict prohibition of violating these rights unless this was according to the law...”<sup>3</sup>

When examining offenses by soldiers, Strashnov claimed that the judicial system applied a concept that was defined as the “Intifada Factor.” Due to the difficulties faced by the troops during that period, Strashnov writes, “we established lenient standards relative to previous periods. This frequently expressed itself in the charges we used against the soldiers, the severity of the punishment the military prosecutors demanded, and especially in the considerations that guided us when deciding between placing a soldier on military trial, or opting for a disciplinary court or administrative measures.”<sup>4</sup> Strashnov continues: “We were quite often satisfied with a less serious charge, even if the evidence would have allowed us to bring a more severe one. Even after the charge-sheets were submitted, our position was to accept a guilty plea on a lesser charge, if the defendant was willing, so as to avoid pursuing the matter to the fullest extent of the law, both in terms of the charges and the punishment.”<sup>5</sup> In other words, the law enforcement policy vis-à-vis the soldiers was supposed to take into account “the soldiers’ difficult position, given the provocations and the difficult tasks they were assigned, to which they were untrained and unfamiliar.”<sup>6</sup>

The leniency in considering who should be brought to trial was not the only aspect of the “Intifada Factor” policy. An analysis of the cases in this report (and others), shows that the

<sup>1</sup> Strashnov, Amnon, *Justice Under Fire – The Judicial System During the Intifada*, Yediot Aharonot Publishers, 1994, Tel Aviv.

<sup>2</sup> *Ibid.*, p. 11.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, p. 158.

<sup>5</sup> *Ibid.*, p. 161.

<sup>6</sup> *Ibid.*, p. 158.



principles behind the policy permeated down from the MAG himself to the military prosecutors of each regional command, from there to the MPI investigators, and then on to every last soldier, passing through each of the chains of command.

The MPI investigators could not have continued to conduct improper investigations unless they had received de facto authorization from the MAG's office. Only in rare occasions did the military prosecution send incomplete investigations back for completion; in most cases the prosecution accepted the MPI investigation results as final, and in the absence of suitable evidence closed the case without taking action.

The widespread implementation of the "Intifada Factor" illustrates a simple fact. The cases covered in this report are from the years 1988-1994. Despite substantial changes in the Intifada and in the political developments in relations between Israel and the Palestinians, there has been no visible change in the policy. The same patterns in the investigations and decisions to not prosecute are apparent throughout the period under discussion, and remain so even today.

In September 1997, HaMoked filed a High Court of Justice (HCJ) petition on behalf of five Palestinians, in which the Central Command Attorney General is asked to allow HaMoked to view the contents of certain investigation files already complete. The investigations were undertaken in response to complaints made by the Palestinians. In its petition, HaMoked argued that the delay in handing over the files is in violation of the law, which demands that the CCAG operate within a reasonable time frame. HaMoked further argued that the investigation material is necessary to determine if lawsuits should be filed against the State and the soldiers involved, and therefore if the material is not forwarded, the plaintiffs cannot receive any compensation for their damages. The case is pending.

# The Law for Denying Compensation to Palestinian Victims of the Security Forces

The long-standing “Intifada Factor” policy has not been confined to ensuring that soldiers do not stand trial for crimes committed against Palestinians. It also hampers or prevents the Palestinian victims from suing for compensation for destruction of property or physical and mental harm. The compensation lawsuits require the plaintiff to establish the responsibility of the State for the damage that was caused. Since in many cases there are no army records regarding the incident or the units involved, while in other cases the investigation was sloppy and incomplete, or the files were lost, the injured party was denied the ability to demand compensation.

In some of the cases, plaintiffs chose to pursue their claims through HaMoked. Some chose to submit their claim to the Staff Officer for Claims in the Ministry of Defense, while others preferred to file a lawsuit in Israeli courts. The defendants were the State of Israel and the IDF, and occasionally individual soldiers actually involved in the incident. In other cases the plaintiffs chose to use private attorneys, or not to sue for damages at all.

Surprisingly, the State of Israel has tended to agree to compromise agreements with the plaintiffs, even in cases where HaMoked did not have conclusive proof regarding the identity of those responsible for causing the damage. The amounts that the State agreed to pay in these settlements were not high, however, and on occasions ludicrously small given the kind of injustice for which they were meant to compensate; but the willingness to pay some amount shows that the State of Israel is well aware of its responsibility. The policy of reaching compromises also shows that the State prefers to reach settlements quietly rather than have cases resolved in open court, with the public and media interest this arouses.

## **Adding insult to injury**

The present government intends to prevent the possibility of Palestinians receiving compensation by means of a law entitled “The Law for Processing Lawsuits Against the Security Forces Operations in Judea, Samaria, and Gaza Strip, 1997” (see Appendix B). The proposed law is a serious perversion of justice, contradicts tort law in Israel and the civilized world, and is completely inconsistent with the standards of international law.

The main justification that the State offers for seeking to pass the law is that the Palestinian claims against the State constitute a considerable financial burden. The State notes that as of April 1997, over 4,000 lawsuits have been filed (700 of which are still being processed by the courts. In the past year alone, 600 lawsuits were filed. If one takes into account the

number of dead and wounded during the Intifada (approximately 1,000 Palestinians killed and 18,000 injured – then the State will indeed be obliged to pay a considerable amount of money.

Secondly, it is argued in the explanatory comments in the law that “in some cases, the State has no way of examining the claims regarding the involvement of the security forces in specific instances, either in terms of responsibility for the incident or in terms of the extent of the damages. During the Intifada the State had difficulty in reaching the claimants’ residence in the territories, to determine the circumstances of the injury being claimed and the extent of the damages. The process of investigating the claim was in itself life-threatening, and was frequently avoided for that reason.” In addition, “difficulties are also encountered in locating witnesses for the State from among the security forces and bringing them to court. Part of the difficulty in locating them stems from the rapid turnover of personnel in the field. It is also very difficult to retroactively locate soldiers involved in some local field activity, sometimes years after the event occurred.” This report shows how Israel’s “Intifada Factor” policy is now going under the name of “difficulties” that are being used to justify the State’s attempt to evade its responsibility to pay compensation.

Lastly, the State is trying to use an argument relating to its administrative authority. “Another difficulty in the same context,” claims the proposed law’s preface, “is that the medical care given to the injured was carried out in medical facilities that are not in Israel, and to which there is no access today for the State. This fact creates difficulties in verifying the accuracy of the medical reports.” This is not true, however: the hospitals in the territories, private as well as government, were subject to the Civil Administration’s supervision. Therefore, in the framework of investigating an injury or death, there was no difficulty in locating the hospital, the responsible physicians and nurses, and the medical documentation (which met the standards of the Civil Administration).

The following are the main points of the proposed law:

- The High Court has defined “warlike activities” (for which the State is exempt from liability to pay compensation) as actual acts of war, such as “gathering the battle forces, military offensives, exchanges of fire, explosions, etc.”<sup>1</sup> The proposed law attempts to expand this definition so that the exemption from compensation will cover “any operational activity of the Israel Defense Forces whose purpose is to combat or prevent terror, and any other action to maintain the peace and preventing hostile actions and revolt in circumstances of danger to life or limb of the Israel Defense Forces.” In other words, almost any action carried out by IDF troops during or after the Intifada will be covered under the new definition, excluding the possibility that the State will have to compensate for damages caused by its security services (even if the victim is innocent of any hostile activity, and even if the damage was a result of IDF negligence or misbehavior). Whether the law’s sponsors intended it or not, this blanket exemption will also cover instances of Israelis

<sup>1</sup> Chief Justice Meir Shamgar, in CA 623/83, *Levy vs. The State of Israel*, Piskei Din 40(1) 477, 479

harmful as a result of IDF activity in the territories. These include public bus drivers, phone and electric company technicians, journalists, lawyers, and of course all those Israelis who reside permanently in the territories. None of these people will be able to sue the State for damages.

The only exception is when an IDF soldier has been convicted of causing damage maliciously. However, in most cases, as seen clearly in this report, not only are soldiers not convicted, they are rarely even brought to trial.

- Anyone who in the past was convicted of terrorist activities against the IDF or civilian population will not be eligible to claim compensation – even if the incident which led to the demand for compensation is completely unconnected to the claimant’s previous conviction. This constitutes double and retroactive punishment.
- The statutory time limit in which claims can be filed has been shortened from seven years – the normal period for tort claims – to only one year. If the State is unable to receive information from the Palestinian Authority that will help its case vis-à-vis the plaintiff, the victim will pay the price: the State will then be permitted to reject the claim.
- The amount of monetary compensation victims will be eligible for is to be limited, in contrast to the legal principle that compensation is determined by the actual damage. In addition, if the victim was crippled, he/she will receive a one time lump sum based on payment until the age of 65, rather than the usual method of providing a monthly stipend based on the severity of the handicap. Anyone whose injury resulted in a handicap of less than 10% will not be compensated at all.
- The law will not only affect claims based on injuries after the law’s passage, but also on claims filed in the future for injuries that have already taken place.

If passed, the law will turn standard judicial procedure, morality, and civilized standards upside down. If until today there was still some measure of compensation for Palestinian victims, the moment the bill becomes law – if not before – they will be left without any right to sue for damages. Even without the passage of the law, Palestinians were deprived of many rights, and their lives, property, and well being were often violated. This situation is now in the process of being legalized, sanctifying arbitrary rule in the guise of a legal and democratic process.

### **What about human dignity and liberty?**

Four months before the bill passed its first reading in the Knesset (March 20, 1997), its initial draft was sent to various interested parties, such as human rights organizations – HaMoked among them. In a statement issued on April 10, 1997, the human rights community vigorously opposed the content and ethos of the law, and the changes it would bring were it to be passed.

The human rights community’s statement noted that “the proposed law retroactively impairs many basic human rights, and removes necessary checks on the security forces. These checks are in place to protect respect for life and personal safety. The law completely fails to meet

the standards set by Basic Law: Human Dignity and Liberty.<sup>2</sup> It contradicts basic principles of the legal system in Israel in general, and the principles of tort law in particular. It is contrary to the rule of law.” (See Appendix C).

Following the harsh criticism from Israeli and international human rights organizations and jurists, the bill was revised. Its guiding principle however, the granting of immunity to the State in cases where it is being sued for damages by Palestinian victims, remains. The bill passed its first reading in the Knesset and will be brought for the second and third readings in the current Knesset session, which began on November 2, 1997.

HaMoked demands that the proposed law be withdrawn and discarded, to prevent the irreparable damage to Israeli legal system. Human dignity, the sanctity of life, and the right to personal safety are among the underlying values of the State of Israel. The role of the law is to defend those values. If the law denies compensation to a child crippled by IDF soldiers who acted negligently; if the law determines that IDF troops do not have to be careful to avoid harming that child; if the law does not grant that child the means of recovery and rehabilitation; then the words of the Basic Law regarding the “universal and Jewish values of the sanctity of life and human dignity” become meaningless.

<sup>2</sup> While Israel has no written constitution, the Knesset has passed a series of “Basic Laws” that enjoy quasi-constitutional status.

# Representative Cases

## A. Unjustified Shooting

### The Evidence Shows that the Suspect was Lying, but MPI Determined that the Shooting was According to the Rules

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The killing of Issa Taha Al-Manasra

#### Summary

Issa Taha Al-Manasra, a 17-year old resident of Bani Naim village in the Hebron district, was wounded by a rubber bullet on January 7, 1989. Ten days later he died at Al-Mukkassad Hospital in Jerusalem.

On January 7, 1989, in the afternoon, Al-Manasra left his house for work accompanied by his sister Kubar. After walking a short distance, they went in different directions. At this time young people from the village were throwing stones at Israeli troops from one of the alleys. A jeep with Israeli soldiers inside stood near Al-Manasra's house. He continued walking toward the jeep while looking for a taxi to take him to work. A few minutes later, he was shot by one of the soldiers in the jeep. Eyewitnesses recounted that Al-Manasra was hit in his torso, near the stomach. Injured and bleeding heavily, he was evacuated to Alia Hospital in Hebron. There, the surgeon on duty diagnosed a tear in the heart as a result of the rubber bullet. The surgeon was able to repair the tear, and the heart began working again. However, Al-Manasra suffered from brain damage as a result of the injury. He was transferred the same day to Al-Mukkassad Hospital in Jerusalem for treatment in the intensive care ward, where he underwent artificial respiration. Despite the physicians' efforts to save his life, Al-Manasra died on January 17, ten days after being shot.

#### MPI delays investigation

The MPI investigation began only after Al-Manasra's death, and not on the day he was injured, despite the severity of his wounds. In the preliminary report prepared by MPI on January 17, 1989, the day that Al-Manasra died, it was already determined that the suspect in the shooting was Lt. Colonel Yair Landau, and that he was suspected of violating Section 85 of the Military Code of Conduct (improper use of a weapon). Nonetheless, Lt. Col. Landau was only interrogated two weeks later, on January 31, 1989. The radio operator who was with Lt. Col. Landau in Bani Naim was only interrogated on February 12, 1989, over a month after the shooting. The driver, who was also present, was only interrogated on April 28, three months after the shooting.

## **The testimonies**

Three questions emerge on examining the testimonies collected from Lt. Colonel Landau, the radio operator Theodore, and the driver Yehoshua. The MPI investigators should have tried to answer these questions before submitting their conclusions at the end of investigation. However, they chose to ignore the contradictions inherent in the testimonies – contradictions that suggest that the shooting at Bani Naim was in clear violation of the regulations for opening fire, and that Lt. Colonel Landau was lying to the MPI investigators.

### **1. How far away were the stone-throwers from Lt. Colonel Landau?**

Lt. Colonel Landau presented the MPI investigators with a version of events that conforms to the regulations for opening fire with rubber bullets: First he shot live rounds into the air as a warning, then he shouted to them in Arabic to stop, and then he aimed at the protesters' legs while standing, without breathing heavily. The rubber bullet was fired at the legs of the protesters, below the knee, after aiming was done through the gun sights of the rifle. One rubber bullet was fired, followed by seven more bullets all fired in a similar manner and from the same position.

Lt. Colonel Landau's testimony contains factual contradictions, indicating that the firing was actually carried out in violation of the existing regulations for the use of rubber bullets.

At the beginning of his testimony, Lt. Colonel Landau said that the stone-throwing protesters were 70 meters ahead of him. This group "moved along the street toward my position in front of the jeep. (At this point a live bullet was fired as a warning, and Lt. Colonel Landau shouted at them to stop.) ...but they continued getting closer." Lt. Colonel Landau remained standing on the right side of the alley. It is obvious that the distance between Landau and the protesters decreased, and was already less than 70 meters. This contradiction is explained by Lt. Colonel Landau's desire to give a version of events that conforms to the regulations for opening fire that were in force at the time – regulations that forbid shooting rubber bullets from a distance of less than 70 meters, because of the danger that anyone shot at close range would be killed.

Reinforcing the conclusion that the distance was less than what Lt. Colonel said it was the testimony of the driver Yehoshua. According to the driver, the distance between Lt. Colonel Landau and the protesters when the shooting occurred was around 50-70 meters.

### **2. Was the shot fired from a standing or kneeling position?**

What was being targeted? Two questions of critical importance to the investigation are: was Lt. Colonel Landau firing from a standing or kneeling position? Where was he aiming his fire – to the legs, below the knee, or toward the torso? He testified that he was firing from an upright position, and that he aimed for the legs (below the knee). The radio operator Theodore's testimony corroborates Lt. Colonel Landau's version.

Interrogated nearly two weeks after his officer, he said that the shooting was done from an

upright position. The jeep driver Yehoshua told investigators that when the stone throwing intensified, Lt. Colonel Landau hid behind a wall, kneeled, lowered the barrel of his rifle (which was pointed at the sky during the firing of the warning shot), and shot one plastic bullet at the people in the alley.

In addition, the autopsy report written by the operating surgeon from Alia Hospital in Hebron stated that the bullet penetrated the body in the lower chest. A diagram included in the report shows the entry wound on the left side of the body, near the stomach (upper abdominal region). The autopsy revealed that damage occurred within the chest cavity, and that the bullet hit the front right side of the heart. The path of the bullet, in an upward direction, strengthens the supposition that the shooting was done from a kneeling position with the barrel of the rifle raised higher than the stock, and not from a standing position, and it weakens the claim that the firing was done toward the legs below the knee. If we take into account the testimony of the shooter that the street was level, and that the firing was done through the sights on the barrel of the rifle, then the claim that the fire was aimed at the feet is obviously false. If the shooting was done from a standing position with the barrel pointed at someone's legs on a level street, then the path of the bullet should have been downwards, and not upwards, as the surgeon from Alia Hospital stated.

This contradiction is quite clear, and should have led the MPI investigators to interrogate Lt. Colonel Landau a second time and confront him with this discrepancy. They did not do so.

### **3. When did Lt. Colonel Landau discover that someone was injured from his shooting?**

In his testimony, Lt. Colonel Landau said that only after the eighth rubber bullet was fired did he hear women shouting that someone had died. The women, according to his testimony, passed by him "running toward the bend in the alley where the rioters were." Despite this, he did not attempt to investigate, and after the second IDF force in the village met up with him, they left the village via the north-west exit. He said that only half an hour later he learned that a wounded person had been brought to the hospital in Hebron.

The driver Yehoshua gives a contradictory version of events: He states that after the shooting Lt. Colonel Landau returned to his jeep where he and the radio operator Theodore were standing, and "told me that he thought he killed someone."

It seems that here too Lt. Colonel Landau was perjuring himself, so that it would conform to the regulations for opening fire, which state that if anyone is injured from gunfire, he/she must receive medical treatment. The severity of his misconduct is further compounded by his own testimony that after the shouts that someone had died, "the rioters disappeared and the stone-throwing stopped completely." In other words, even if his claim that during the stone-throwing his life was in danger was accurate, this danger had passed after it was known that someone was injured. At that moment it was possible, indeed mandatory, to approach the place in the alley that the woman had run to, to see what had happened and offer medical treatment to the injured person.



### **The Military Advocate General's office announces that the shooting fell within the guidelines**

On July 18, 1990, more than 18 months after the incident, HaMoked received word of the investigation. According to Major Einat Ron, then the acting Chief Military Prosecutor, the results of the investigation had been transferred to the Central Command Military Advocate General's office, and after being looked at it was returned for completion. Only on March 8, 1991, after the repeated prompting of HaMoked and more than two years after the incident occurred, did the Military AG express his opinion that "the shooting which resulted in the death of Issa Al-Manasra was carried out according to the regulations, while the force that the shooter was commanding encountered a life-threatening situation."

### **Additional legal possibilities for responding to the violations**

Were the contradictions in the testimonies seriously investigated, enough evidence might have been assembled to charge Lt. Colonel Landau with unlawful use of a weapon. In addition, he could have been charged with violating Section 304 of the criminal code: causing death by negligence. The maximum sentence for that crime is three years imprisonment.

### **How long does it take to receive the investigation material?**

After the results of the investigation became known to HaMoked, the possibility of filing a civil suit was considered by the Al-Manasra family, for the killing of Issa. On May 12, 1991, HaMoked attorney Andre Rosenthal asked Lt. Yuval Horn, assistant to the Chief Military Prosecutor, for permission to see the investigation file.

- In mid-June 1991 HaMoked attorney was told by Major Einat Ron, that a discussion had been held on his request to receive the investigation file.
- On June 17, 1991 HaMoked attorney asked Lt. Yuval Horn to inform him of the Military Advocate General's response to his request.
- On June 19, 1991 Lt. Horn announced that the file had been ordered from MPI, and that after passing censorship they would arrange a time for the file to be examined.
- On September 3, 1991 HaMoked attorney sent a letter to Lt. Horn and repeated his request to view the file.
- On September 15, 1991, four months after the first request to receive the investigation file, HaMoked was given permission to view it.

### **Legal claim for damages**

On January 17, 1996, HaMoked filed a legal claim for damages in the name of Issa Al-Manasra's estate and his parents. The claim was made at the Jerusalem Magistrate Court for NIS 112,000. This amount included compensation for the shortening of the deceased's life; for the pain and suffering that occurred before his death; for funeral expenses; and for

the pain and suffering of his parents. The defendants named in the claim were Lt. Colonel Yair Landau, the State of Israel, the Minister of Defense, and the IDF.

After filing the claim it was made clear to HaMoked that the Attorney General's Office (Tel Aviv District) was not planning to forward a copy of the claim to Lt. Colonel Landau. HaMoked Attorney Badra Khouri then asked the State's attorney responsible for the case to forward Lt. Colonel Landau's particulars so that HaMoked could file the claim. The attorney refused to do so.

On May 8, 1997 the Magistrate Court was presented with an agreement reached between the State of Israel and Issa Al-Manasra's parents, providing compensation of NIS 7,500.

## Witnesses Saw the Killing, But the Shooter Was Not Prosecuted

The killing of Rufeida Abu Laban

### **Summary**

Rufeida Abu Laban, age 13, was shot and killed on April 17, 1989 in the Deheisheh Refugee Camp near Bethlehem.

On the morning that she died, an IDF foot patrol under the command of Sergeant Dror Yitzhari moved across the camp “to demonstrate our presence, maintain order, and enforce the curfew,” in the words of the concluding MPI investigation (July 19, 1989). When the foot patrol reached the southern part of Deheisheh, they were attacked by stone-throwers from all directions. During the attempt to disperse the stone-throwers, the soldiers fired rubber bullets, and Sergeant Yitzhari fired at least two rubber bullets at the protesters. The soldiers followed up immediately with the pursuit after the protesters who ran away in the direction of Artes Mountain. Sergeant Dror Yitzhari fired an additional rubber bullet that hit and killed Rufeida Abu Laban. She was in the street after being told by her father to find her younger brother. Rufeida Abu Laban’s body was taken to the home of a camp resident, and then transferred to Mount of David Hospital in Bethlehem. Dr. Sami As’ad examined her and established her death. In a report written nine days later, on April 26, 1989, Dr. As’ad wrote that the body was brought to the hospital at 10:45 a.m. on April 17, 1989. In the rear of her head an entry wound was visible. The bullet exited the front of her skull, leaving a hole 6 cm wide, causing her death. Testimonies were collected from Sergeant Yitzhari and other soldiers under his command on the afternoon of the shooting. Apart from a conversation between the father of the girl and the military governor of Bethlehem, no attempt was made to locate and interview eyewitnesses to the shooting from the camp residents. The girl’s father was not a witness, and he refused to allow his daughter’s body to be exhumed for the investigation.

HaMoked received reports of the shooting the same day it occurred. HaMoked field researchers located two witnesses to the shooting: the physician who examined the girl’s body, and the resident of the house that the body was brought to before being transferred to the hospital.

A letter was sent the same day to the Military Advocate General, Brigadier Amnon Strashnov: “The events as described by the residents of Deheisheh Refugee Camp indicate that the guidelines for opening fire were violated, and in our estimation an immediate investigation is called for. We will be glad to assist in locating eyewitnesses and bringing them for interrogation as necessary.”

### **The testimonies**

An examination and comparison of the testimonies collected from all sides reveal four salient points:

a. Rufeida Abu Laban did not participate in stone-throwing, and was an innocent bystander.

- b. Rufeida Abu Laban was shot from behind, proving conclusively that she could not have posed a danger to anyone.
- c. The testimonies of the soldiers, including Sergeant Yitzhari, show that the shooting of rubber bullets was in violation of existing regulations for opening fire.
- d. The soldiers lied when they said that they did not know anyone had been killed as a result of the shooting.

### **Rufeida was an innocent bystander shot from behind**

Let us begin with the testimonies of Palestinian eyewitnesses to the shooting and killing of Rufeida Abu Laban:

Raida MD, 15 years old at the time of the incident, a resident of Deheisha Refugee Camp: “Rufeida arrived at my house and told me that she wanted to go and look for her little brother Adham. I went out with Rufeida toward the mountain... We noticed that the army was there and I saw young men running to the camp. I could tell that there was a problem. Rufeida and I wanted to go back home. The soldiers who were about 30 meters away started to shoot. I ran and the shooting was behind me. Rufeida was in front of me. Suddenly I saw her fall. I kept on running. I did not realize that she was hit by the shooting. I was also hit from a shot that grazed my left hip. I kept on running and I never saw Rufeida again...”.

Raida’s testimony is consistent with the findings of Dr. As’ad, who wrote that the shot which killed Rufeida was fired from behind. Further strengthening this conclusion is footage shot by the Canadian Broadcasting Corporation, filmed immediately after Rufeida’s death. In the film, Rufeida’s face is visible. The bones of her nose and eye sockets (the location of the exit wound) are smashed into a pulp by the bullet.

Approximately a week after the incident, Raida was stopped by “Captain Kamal” from the Civil Administration, and questioned about the stone-throwing that preceded Rufeida’s death. However, as she told HaMoked, “during the interrogation I was never asked about Rufeida or about the incident in which she was shot.”

The circumstances of the shooting are apparent from the testimony of Mohammed AI, a Deheisha resident who was in the areas known as Mount Al-Ahras that morning: “...I saw one of the soldiers point his weapon like a sniper, through the gun sights, and fire a number of shots. The shooter aimed his rifle toward Mount Al-Ahras when he was firing. After half an hour I heard from various people that the girl Rufeida Abu Laban was killed by soldiers at Mount Al-Ahras and that she died on the spot.”

### **Shots were fired in violation of standing orders**

Sergeant Yitzhari violated the regulations for opening fire with rubber bullets in three respects:

- a. The regulations specify that before rubber bullets are fired, the shooter must fire a live round into the air as a warning. Sergeant Yitzhari did not fire into the air before using the

rubber bullets. First Sergeant Dror, who was with the unit, also testified that no warning shot was fired.

b. The regulations specify that rubber bullets should be fired only at the leg, below the knee. The evidence strongly suggests that the shooting was aimed not at the legs but at the torso.

c. The regulations also state that if it is impossible to aim below the knee (because of topography, obstructions, or any other reason), the use of rubber bullets is forbidden. The distance and the difference in elevation between the soldiers and the fleeing girls did not allow Sergeant Dror Yitzhari to aim his rifle properly. Nonetheless, he fired.

In addition to all of the arguments above, the wound in Rufeida's head clearly shows that she was shot from behind, and therefore could have posed no threat whatsoever to the soldiers.

### **The soldiers lied in their testimonies**

Soldiers from Sergeant Yitzhari's unit lied to MPI investigators when they testified that they did not see anyone injured as a result of their gunfire. The shooter himself stated that "I didn't see anyone get hurt, it was far away." But Mahmoud IA, the owner of the house that Rufeida was brought to immediately after being shot, testified that "...after the young people left my house (taking Rufeida with them to the hospital) a group of soldiers arrived. Three of them entered my yard. One of the soldiers asked me about all the blood in the Mount area... they were following the blood and left the area." The visit at Mahmoud IA's house and the tracking of the blood trail were not coincidental; the soldiers had reason to believe that someone had been wounded, and they were trying to verify it. Nonetheless, during interrogation they denied thinking that anyone was injured.

### **The results of the MPI investigation**

As noted above, MPI did not make any attempt to locate witnesses from the refugee camp. Although HaMoked offered to assist in locating and bringing witnesses for the investigation, MPI never followed up on the offer. Even without the testimonies of witnesses from the camp, however, MPI had more than enough material to reach the conclusion that Sergeant Yitzhari fired contrary to regulations, and that it was the rubber bullet he fired which killed Rufeida Abu Laban.

The investigators satisfied themselves with the soldiers' testimony, including that of the shooter Sergeant Yitzhari, and refrained from asking questions stemming from the testimonies themselves. One such unasked question is: was anyone injured as a result of firing rubber bullets, and if so, who might that be? The investigators recorded the soldiers' words, in which they claim to have never seen girls or young women, and made no attempt to draw a connection between the soldier's gunfire and the death of the girl. This is despite the fact that the death of the girl (at the same time and in the same place as the shooting by IDF soldiers) was well known to MPI at the time. This conclusion is apparent in the testimony of the Bethlehem Military Governor. The investigation report summary, written on July 19, 1989 and titled "non-obeyance of compulsory military regulations," states that "no

connection was found between the death of a local resident... and IDF activity in the area.”<sup>1</sup> The search for information at local hospitals was incomplete. Nine days after the shooting, Dr. As’ad from Jabal Daoud Hospital in Bethlehem prepared an autopsy report. The MPI investigators never reached the hospital, did not speak to Dr. As’ad, and satisfied themselves with the comment of Lt. Colonel [---], the chief of Regional Command Center (hereafter RCC) in Bethlehem, that “in the search for information from hospitals there was no report of a female body or head injury.”

MPI also accepted the soldiers’ version of what happened to the body, without any effort to verify the facts. Lt. Colonel [---], the governor of Bethlehem, testified that he met the girl’s father. “According to my understanding from the father, his daughter never reached the hospital, was never examined by a physician, and a physician never determined her death.” The father denied those words. Actually, even according to the governor’s version, the father was not an eyewitness, neither to the injury nor to what happened afterwards. He told investigators that “in the incident where it is claimed a girl was killed in Deheisha refugee camp on April 17, 1989, a request was received from the head of the Civil Administration to visit the family and try to learn the circumstances in which the death occurred... We met the girl’s father, Khalil Abu Laban... He claims that he never saw her, not when she was injured, not after she was injured, and not during burial. The father had only heard rumors of what happened that were passing around.”

The MPI investigators knew that they were getting only hearsay evidence from the Bethlehem governor. He was supposedly repeating the comments of the father, who stated that these comments were no more than rumors. They did not try to question the father, but wrote in their report that: “Our investigation revealed that the local resident who was killed was buried on the way to the hospital, by the youths that evacuated her, without having been examined by a physician or having her death determined by a medical professional.”

In the preliminary MPI report on the incident, 2nd Lt. Yossi and Major David stated that Sergeant Dror Yitzhari “fired two rubber bullets toward rioters during a disturbance without firing a warning shot into the air beforehand, and without aiming at the legs, as called for by regulations.” They conclude that Sergeant Yitzhari apparently violated Section 133 of the Military Legal Code (1955), which deals with “non-obeyance of regulations in force.”

In the final report it is also stated that Sergeant Yitzhari “fired two rubber bullets toward the rioters without noticing if anyone was hit. The soldier did not fire a warning shot into the air before firing the rubber bullets, and did not aim at the legs, and in so doing violated the regulations for opening fire with rubber bullets.”

### **The Central District Attorney General’s opinion**

The MPI file on this case was sent to the Military Advocate General Central Command, and on September 11, 1989, Central Command Military Prosecutor Lt. Colonel Rachel Dolev wrote an opinion on it. Before the opinion had been written, B’Tselem (The Israeli

<sup>1</sup> Cap. Ilan and 2nd Lt. Yossi were the authors of the report.

Information Center for Human Rights in the Occupied Territories) and HaMoked both wrote to Lt. Colonel Dolev informing her that the family of Rufeida Abu Laban had not been questioned at all. Regardless, the file was not returned to MPI for completion of the investigation, and Lt. Colonel Dolev has admitted that she accepted the testimony of the Bethlehem Governor regarding his conversation with the girl's father as enough. The opinion she wrote was therefore based on the incomplete and misleading information present in the investigation file.

Lt. Colonel Dolev reached the conclusion that based on the testimonies, Sergeant Yitzhari was guilty of "a violation of using a weapon illegally... Since the regulations for using rubber bullets... demand a live round warning shot in the air to warn the rioters before rubber bullets are used, and firing a rubber bullet is not a substitute for this warning shot." Moreover, "if it is impossible, because of the lay of the land or any other reason, to aim fire below the knee, then it is forbidden to fire." (Emphasis in the original – HaMoked).

Despite her assessment, Lt. Colonel Dolev decided not to put Sergeant Yitzhari on trial, neither before a court nor before an officer-judge. The decision not to put him on trial before a court was justified on the grounds that "apparently no-one was injured as a result of the gunfire." The decision not to put him on trial before an officer-judge was justified on the grounds that more than three months passed since Sergeant Yitzhari was released from reserve duty, and after such a long period of time it was no longer possible to put him on trial. It seems that Lt. Colonel Dolev did not feel entirely comfortable with her own decision. She ordered the file closed only "after great hesitation," and even recommended that the commander of Sergeant Yitzhari's unit reprimand him for his mistake, "and explain to him my reasons (reached with a heavy heart) for not putting him on trial contained in this opinion."

### **Other legal possibilities**

Given the evidence before her, and taking into account the defects in the investigation file, Lt. Colonel Dolev could still have placed Sergeant Yitzhari on trial on two counts: "non-obeyance of military regulations" according to Section 133 of the Military Legal Code, a violation that carries with it a maximum punishment of one year imprisonment; and violating Section 85 of the Code, which deals with "illegal use of a weapon," and punishable by up to three years imprisonment.

In addition, the decision to avoid placing Sergeant Yitzhari on trial because of the time that passed since his release from reserve duty has no basis in fact. Had he been tried before a military court, this could have taken place up to six months from the date of the offense on the first charge, and up to twelve months for the second offense relating to the illegal use of a weapon. Given that her opinion was written on September 11, 1989, it is clear that at least one month remained for the first offense, and seven for the second.

### **The response of the Minister of Defense**

On May 29, 1989, MK Yair Tzaban wrote to then Minister of Defense Yitzhak Rabin

asking to learn what happened to the investigation into the death of Rufeida Abu Laban. Among other things MK Tzaban tried to learn if testimonies were collected from the girl's family members and other Palestinian eye-witnesses, and if charges were filed against anyone.

The Minister of Defense's response, which rested on the reply given by the Chief Military Prosecutor, arrived on March 15, 1990. It said that "one of the commanders fired two plastic bullets, but diverged from relevant operational orders. It seems that one of the bullets hit the deceased and caused her death." The letter also explains the motives of Lt. Colonel Dolev in choosing not to try Sergeant Yitzhari. The Minister of Defense added that "it should be emphasized that the attorney (Dolev) ordered a reprimand despite the life-threatening danger that the force was facing."

### **A new version of the findings**

A few days later, on March 27, 1990, HaMoked asked the Chief Military Prosecutor for the investigation findings regarding the death of Rufeida Abu Laban.

On April 18, 1990, Cap. Major Einat Ron, then the assistant chief military prosecutor, answered HaMoked's request: "No support was found during the investigation for the claim that the girl was killed as a result of a plastic bullet injury to the head."

HaMoked replied to Captain Ron on July 29, 1990. Using the Minister of Defense's response, HaMoked suggested that the principal in the case diverged from the regulations for opening fire with plastic bullets, one of which apparently caused Rufeida's death. Cap. Major Ron was asked to explain the contradiction between her version of events, in which the child was not killed as a result of a plastic bullet, and the Minister of Defense's comments. The minister was basing his answer on the reply of the Chief Military Prosecutor, Cap. Ron's commanding officer. Attached to the letter was Dr. As'ad's autopsy report.

Cap. Major Ron replied on August 26, 1990 that "unfortunately there was an error in the wording of the reply (from the minister to MK Tzaban) from which it could be understood that there was a connection between the shooting of the soldier mentioned in the letter and the death incident." In her letter, Cap. Major Ron completely ignored the autopsy report from Mount David Hospital.

HaMoked responded on September 12, 1990 stating that the revised "wording" sent to the Ministry of Defense actually constituted a new version of the events relating to this incident. At this point HaMoked asked to view the contents of the investigation file, because the family of the deceased was considering further legal actions related to Rufeida's death.

### **How long does it take to get a file?**

It took more than a year for HaMoked to receive the investigation file:

- On October 9, 1990 Cap. Major Ron asked HaMoked to forward a power of attorney authorization signed by the family.
- On November 14, 1990 a power of attorney authorization was sent, and HaMoked again



requested to view the contents of the investigation file. No reply was forthcoming from Cap. Major Ron, despite numerous written reminders and telephone calls.

- On February 24, 1991, HaMoked again requested the contents of the investigation file in writing. Cap. Major Ron did not reply.
- On March 22, 1991, HaMoked again requested the contents of the investigation file in writing. Cap. Major Ron did not reply.
- On April 26, 1991 (more than five months after the power of attorney authorization was sent to Cap. Major Ron) HaMoked wrote to Brigadier Ilan Schiff, then Military Advocate General, for help in getting access to the investigation file. Brigadier Schiff did not reply.
- On May 5, 1991 HaMoked wrote to Cap. Major Ron again. She did not reply.
- On May 23, 1991 HaMoked wrote to Cap. Major Ron again. She did not reply.
- On July 4, 1991, more than seven months after the power of attorney authorization was sent to Cap. Major Ron, HaMoked wrote to attorney Nili Arad, then director of the High Court of Justice Petitions Department of the State's Attorney General's Office, asking for assistance in receiving the investigation file.
- On July 30, 1991 Cap. Major Ron replied, informing HaMoked that a date would be arranged for viewing the file after it passed censorship.
- On September 11, 1991 HaMoked was informed by Cap. Yuval Horn, assistant Chief Military Prosecutor, that the files would be available for inspection beginning on October 6, 1991.

## **Compensation**

On January 19, 1994 HaMoked wrote to the legal advisor for Judea and Samaria District of the Civil Administration and demanded compensation for the death of the girl. The letter was on behalf of the parents. After further exchanges of letters and discussions, the staff officer for compensation claims at the Ministry of Defense wrote on January 2, 1995 that the claim for compensation was rejected.

## **Compensation claim in court**

On 22 February, 1996 HaMoked filed a claim for compensation on behalf of Rufeida Abu Laban's estate and her parents to the Jerusalem District Court for NIS 106,500. This sum included compensation for shortening Rufeida's life, pain and suffering incurred before her death, burial and funeral expenses, and the pain and suffering of the parents.

The defendants were Dror Yitzhari, the IDF, and the Ministry of Defense.

The claim rested on the testimonies of Palestinian eyewitnesses to the shooting incident from Deheisha refugee camp, and an affidavit from Dr. Sami As'ad, who examined the girl's body and determined her death.

On March 11, 1997 the court approved a compromise agreement between the girl's family and the defendants, which granted the plaintiffs NIS 40,000.

## No Investigation – No Proof

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### The Wounding of Rouhi Rashid Abdallah

#### **Summary**

On the evening of March 3, 1989, Rouhi Rashid Abdallah, a resident of Tubas (a village near Nablus) was traveling in a car near Mechura Junction. Nine or ten soldiers, including one female soldier, were standing at the intersection while waiting for a lift. As the vehicle approached the intersection, one of the soldiers raised his rifle and shot at the car. Abdallah was injured by the gunfire. The driver continued driving until reaching an adjacent military base, where soldiers gave Abdallah first aid for his wounds.

Shortly afterwards he was rushed in a military ambulance to the Civil Administration in Nablus. From there he was evacuated by the Red Cross to Al-Itihad Hospital, also in Nablus. Abdallah was hospitalized for 90 days and was operated on three times. His physicians instructed him to rest at home in bed for six months. The medical report, written by an orthopedics specialist, stated that Abdallah's left thigh bone was shattered, and would never completely heal. He was assessed as suffering from fifteen percent permanent disability.

#### **The testimonies**

The details of the incident were given by the victim and two others in the car when it was fired upon. All three witnesses described the place and time of the shooting, the number of soldiers at the hitchhiking point, and the approximate age (20) of the soldier who fired his rifle.

While waiting in the Civil Administration in Nablus, testimonies were collected from the driver of the car and Abdallah. They also said that soldiers photographed their car.

#### **No-one investigates**

- A month after the incident, on April 6, 1989, HaMoked attorney wrote to the MAG, listing the details of the case, and noting that the Civil Administration in Nablus collected testimonies from the passengers of the car that was shot at. HaMoked Attorney asked if there had been an investigation, and if so what the conclusions were.
- Four months later, on August 2, 1989, CCAG Dolev replied that “Unfortunately, because of the time that passed from the date of the incident and the opening of an investigation, and because the shooting was anonymous and at a lift station, it was impossible to conduct a serious investigation and clarify the details, or identify the anonymous shooter.”

#### **The opportunity for a thorough investigation was missed**

As stated above, Abdallah was taken to a military base immediately after the shooting, and

from there to the Civil Administration. The military authorities knew then, that a shooting incident took place only a short time before. Even so, nothing was done to locate the shooter. At that time he may still have been standing at the Mechura junction lift station, waiting to be given a lift.

The information collected by Civil Administration personnel from the car passengers was never used either. If indeed the car was photographed, they could have helped pinpoint the angle of the gunfire and the distance between the vehicle and the weapon when the shots were fired, helping to authenticate or disprove the complaint. A ballistics test would further assist in identifying the weapon used – assuming of course that efforts were made to locate the shooter, who was after all surrounded by eight or nine witnesses.

### **The Ministry of Defense denies compensation on the grounds of “lack of proof”**

- In her letter dated August 2, 1989 the CCAG stated that it was impossible to validate the facts of the incident. She did however suggest that the injured party turn to the Staff Officer for Claims in Judea and Samaria, and promised that when the CCAG office was consulted, she would recommend compensation.
- On November 16, 1990, HaMoked attorney filed a compensation claim on behalf of Abdallah. The claim was submitted to the staff officer for claims in Judea and Samaria.
- When HaMoked attorney asked about the claims status, he learned that the staff officer for claims was trying to get information from the Military Police. After two months of delays, the claim was rejected on July 25, 1991.
- On August 8, 1991, HaMoked attorney met with the deputy MAG, Colonel David Yahav.
- On August 14, 1991, the relevant material for the case was sent to Colonel Yahav. There was no reply.
- On November 4, 1991, HaMoked attorney sent Colonel Yahav another letter, asking for a reply to the previous one.
- An answer was finally received on December 11, 1991 from Ahaz Ben-Ari, then Head of the International Law Branch of the MAG. In his letter, Ben-Ari stated that the Ministry of Defense decided against compensating Abdallah. “This is a case in which there is no proof or documentation. The plaintiff himself never reported the incident.”

The only truth in this assertion is that there is no proof, and this is hardly surprising since no one bothered to investigate the incident. As for documentation, this was collected by the Civil Administration in Nablus where the car passengers were interrogated. As for the plaintiff not reporting his injury, this is plainly untrue: the injured man, who was brought immediately to the Civil Administration after being shot, was himself incontrovertible proof that a shooting had occurred, aside from the fact that testimonies were then collected.

### **Compensation claim in civil court**

Following the denial of Abdallah’s compensation claim by the Ministry of Defense, HaMoked filed a suit on Abdallah’s behalf with the Jerusalem Magistrate Court on February

28, 1996. The defendant is the State of Israel, which is called upon to pay NIS 532,000 for pain and suffering, past and future lost earnings, and medical expenses. The suit is still pending.

## Not Even a Thread

### The wounding of Munir Karaja

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#### Summary

Munir Karaja, a 64 year old resident of Halhoul village (near Hebron) was wounded on November 7, 1989. At 11:00 a.m., Karaja was walking on a street in Hebron on his way to the taxi stand for Halhoul, on his way home. He was carrying parcels with food in them. The street was quiet at the time, and there were no disturbances or stone-throwing incidents. Karaja was then shot with a burst of gunfire that hit his leg. He turned around and saw a soldier pointing his rifle at him. The soldier, who was threatening to shoot him again, was part of a small force of 5-6 soldiers on a foot patrol.

Karaja fell down onto a traffic island in the street. A passing car stopped and its driver helped him to enter the vehicle. The car was fired at with another burst of gunfire that hit the car. Fortunately, those shots did not hit anyone. Karaja was then evacuated to Alia Hospital in Hebron.

#### The testimonies

The description of the incident comes from the wounded man, Munir Karaja. In his testimony to HaMoked he said that the soldiers were wearing green berets. His testimony is corroborated by the driver who took him to the hospital, Rasmi Abd Al-Rahim Mesalem Jaber, a resident of Hebron. He did not see who shot Karaja, but he heard the gunfire. He did not remember how many shots were fired exactly, but he reported that there were many. He also saw Karaja fall down on the traffic island. When he came over to help Karaja into his car, another 4-5 shots were fired, hitting the car in the rear.

#### No-one investigates

- On December 7, 1989, Karaja filed a complaint with HaMoked. The same day HaMoked attorney wrote to the Central Command Attorney General Lt. Colonel Rachel Dolev and asked for the incident to be investigated.
- On December 19, 1989 Lt. Colonel asked for more details and clarifications regarding the shooting incident: "After further elaboration of the above mentioned points I will be able to consider if and how the complaint should be investigated."
- On February 23, 1990 HaMoked sent Lt. Colonel Dolev the information she requested, an affidavit signed by Karaja, a medical report on his condition, and additional documents.
- On November 21, 1990 HaMoked sent a reminder to Lt. Colonel Shlomo Politis, who succeeded Lt. Colonel Dolev as Central Command Attorney General.
- On December 24, 1990 a meeting was held between HaMoked and Lt. Colonel Politis, in which he promised that the matter would be checked.

- On January 31, 1991 HaMoked wrote a letter asking if any progress had been made with the case. No reply was received.
- On March 19, 1991 HaMoked wrote another letter to Lt. Colonel Politis, which was never answered.
- On May 9, 1991 HaMoked again reminded Lt. Colonel Politis that his predecessor Lt. Dolev had promised to consider “if and how the complaint should be investigated” after receiving the information she requested.
- In August 1991, following telephone calls from the Central Command Military Advocate General’s Office, HaMoked sent the relevant documentation again.
- On September 4, 1991, Lt. Colonel Politis decided to close the investigation of the wounding of Munir Karaja. In his decision he wrote: “...Despite all of our efforts, I have not been successful in discovering what happened to the complaint. At this stage, because of the passage of so much time since the incident, I have decided not to order an investigation since the chances of locating those involved in the incident are minuscule and an investigation would not be effective anyway.” He did however add, that “I have decided to try and see if it is possible to discover if there were any disturbances at the scene of the incident, and if it is possible to identify any forces present in the field on the day of the incident. If I am able to get details that will present me with a thread for opening an investigation, then I will reconsider my position.”
- On December 6, 1991 Lt. Politis wrote to HaMoked: “...My investigation did not result in the hoped-for thread. In your original complaint dated December 7, 1989 you mentioned soldiers with green berets. However, according to records from that period it turns out that only soldiers with black berets were present in the field. In such a situation there is no way to identify the soldiers who did what your complaint alleges. If soldiers did in fact do this thing, the possibility that the firing was done by forces not on active duty at the time cannot be discounted. For example: soldiers just passing through and so on.” For this reason, continued Lt. Politis, “I am not ordering the opening of an investigation into the complaint under discussion. As far as I am concerned, the matter is closed.”
- Attorney Andre Rosenthal from HaMoked refused to accept Lt. Politis’ decision, and in a series of letters demanded that the case be opened again for investigation. Attached to one of the letters was the testimony collected from the driver of the car.
- On May 28, 1992, Lt. Colonel Politis informed HaMoked that his decision not to investigate was unchanged.
- On August 5, 1992 attorney Badra Khouri from HaMoked demanded that the incident be investigated.
- On November 23, 1992, Lt. Colonel Politis informed HaMoked that he had not changed his position on the matter.

### **Further legal possibilities**

A cursory investigation into the facts of the incident could have revealed what happened in Hebron on November 7, 1989, and the identity of the soldier who shot Munir Karaja. Despite

this, it is evident that no one in the Central Command Attorney General's office made any attempt to investigate and learn what happened. HaMoked's complaint was passed on to the CCAG's office a month after the incident, and by the end of February 1990, three and a half months after the incident, the CCAG had all of the findings supplied by HaMoked. At that stage, because only a short time had passed, it was still possible to locate which forces were in the city that day. The facts however, speak for themselves: by November of that year, some nine months after material was forwarded to the CCAG, nothing had been checked. We see that even in August 1991, one year and nine months after the incident, the AG's office was still asking for documents from HaMoked, a step revealing that nothing had been done.

On September 4, 1991 the CCAG Lt. Politis did promise that he would find out if it was possible to identify the units operating in Hebron at the time of the incident, despite the time that had passed. The blame for the passage of time lies with the AG's office, and it cannot therefore use it as an excuse for closing the investigation.

Lt. Colonel Politis argued that while the soldiers in HaMoked's original complaint had green berets, the reports from the field indicated only units wearing black berets. Because of this discrepancy, he said, there was no chance of identifying the soldiers. This argument must be rejected. Even if we suppose that the soldiers all had black berets – and after all it is entirely possible that an injured old man might fail to distinguish, or remember the exact color – the question is, why did not the investigation try to identify which units were in Hebron that day, whatever the color of their berets. But such an investigation was never opened.

Lt. Colonel Politis writes that “the possibility that the firing was done by forces not on active duty at the time cannot be discounted. For example: soldiers just passing through and so on.” While that may be the case, no attempt was made to discover which units were in Hebron that day, and whether they were on active patrol duty.

### **Demand for compensation**

After repeated demands by HaMoked to investigate the incident and identify the shooter were rejected, HaMoked attorney wrote to the Ministry of Defense on July 8, 1993 demanding NIS 25,000 as compensation for the injuries Karaja sustained following the shooting, for pain and suffering, and for medical expenses incurred at various hospitals in the West Bank and Jordan.

The Ministry of Defense denied that its soldiers were responsible, and on August 21, 1994 attorney Lauren Itzkovitz wrote to HaMoked attorney that the medical documents presented with the claim did not show that the damage was the result of being shot. “Perhaps he was injured by a stone?” he added. Eventually an offer of NIS 2,000 was made.

After lengthy negotiations, a settlement was reached in June 1996. The Ministry of Defense paid Munir Karaja NIS 12,000.

# The Shooter Violated Orders, Injured a Woman and Was Acquitted

## The wounding of Sabah Sabatin

### **Summary**

On September 7, 1989, Sergeant David Ben-Gigi was on patrol with three other soldiers in Husan village. A stone barricade had been erected in the center of the village. The soldiers stopped passing motorists and ordered them to get out of their cars and help to clear the stones from the road. One of the cars carried the Sabatin family. The driver, Mohammed Sabatin, disobeyed Sergeant Ben-Gigi's order and instead of getting out as instructed, he put the car in reverse and began to drive away slowly. Ben-Gigi ran after the car, calling for it to stop. Then he crouched on one knee, aimed his rifle, and fired at wheels of the retreating car. The car was hit and it stopped. Inside, Sabah Sabatin, Mohammed's wife, had been hit by the gunfire. She was hit in the spine, right kidney, right lung, and intestines. She remains paralyzed from the waist down and is unable to control her bodily functions. Her medical situation is irreversible.

### **The trial**

HaMoked does not have the investigation file, however certain facts are known. The Deputy Central Command Military Advocate General told HaMoked that the investigation file reached their office on March 19, 1990. Sergeant Ben-Gigi was charged with illegal use of a weapon on May 20, 1990. He could have been charged with more severe offenses applicable under the Criminal Code, a fact conceded by the Deputy Attorney General. For example, wounding, or wounding and bodily harm in serious circumstances, a charge punishable by up to six years imprisonment. The maximum punishment for the military offense, on the other hand, is only three years.

### **The judgment**

The sentence was handed down by the Central District Military Court on September 26, 1990. During the trial, the court heard conflicting testimony from the parties: Mohammed Sabatin claimed that he drove away from the stone barricade slowly, whereas the defendant reported that Sabatin drove quickly. Sabatin's version was corroborated by the testimony of another soldier. The court then focused on another question that emerged from the results of the investigation: while the soldiers in the unit received the regulations for opening fire in writing – regulations that forbid opening fire in a situation as occurred in Husan – the soldiers also received verbal orders from their commanding officers that contradicted the written orders. Ben-Gigi and other soldiers from the unit testified that the written orders only permitted opening fire on "suspicious vehicles," i.e. when there is a reasonable suspicion that one or more occupants of the vehicle was involved in a terrorist incident or other serious



crime, or that the occupants are intending to commit such actions. But in the briefing given by the commanding officers, the soldiers were told to open fire on any vehicle that refused to stop. Ben-Gigi argued that since he was operating in compliance with the orders he was given, he was innocent.

### **The conviction**

The court did not accept the argument, and ruled that Ben-Gigi violated the regulations for opening fire that explicitly forbid opening fire on anyone who is not a “suspect” in connection with a terrorist incident or other serious crime, and who then refuses to stop and tries to escape. Regarding the verbal orders received in the field, the District Court ruled that they were “forbidden guidelines without any basis in law” and consequently rejected Ben-Gigi’s defense. That defense argued that he should not be punished because the illegal action was committed following an order received from his commanders.

Ben-Gigi was therefore convicted on two counts of illegal use of a weapon. When the court deliberated the sentence, it took into account the obfuscation regarding the regulations for opening fire, a result of his officers contradicting the written orders in their briefing. It also counted in Ben-Gigi’s favor the fact that he served as a reservist for decades. The court sentenced him to three months imprisonment, suspended. The sentence would be activated if he committed the same offense within two years.

### **Acquittal**

The prosecution and the defense appealed the verdict. The Military Appeals Court ruled for the defendant, and on March 7, 1991 acquitted Ben-Gigi. The Appeals Court’s commentary on the acquittal reflects a tendency to legitimize unacceptable norms and practices once these have become established in the field. Two lines of argument were used: First, that while the orders given in the field were probably illegal, they were not expressly illegal, and therefore Ben-Gigi had no choice but to obey. Secondly, that the commanding officers made it clear that if the soldiers did not follow their verbal instructions, disciplinary actions would be taken against them (this was repeated in numerous testimonies). The court saw this as a reason to accept Ben-Gigi’s defense.

In other words, the Military Appeals Court agreed with the Central District Military Court that Ben-Gigi was a victim of a confusing situation. However, it went further by declaring him innocent of any charge.

### **The Military Appeals Court criticizes the Military Advocate General’s Office**

In the margins of the Appeals Court’s decision the judges made two critical comments to the MAG’s office. The first was regarding the incomplete and negligent investigation that MPI carried out, and the fact that the MAG’s office did not find any reason to demand a deeper investigation. The judges comments speak for themselves:

“...Upon examining the evidence presented to the lower court... we are astonished at the negligent manner in which the investigation was conducted. No investigation was carried out at the hospital where Sabatin was treated, for the purpose of finding the bullet that hit her. This is despite the fact that the medical report explicitly states that there was an entry wound for the bullet, but no exit wound. This means that the bullet remained in her body and was, in all likelihood, removed during the operation. If the bullet had been found, it would have been possible to conduct a ballistic test and compare it to the weapon that was used. No attempt was made to examine the vehicle that was damaged, to determine the trajectories of the bullets, and from there to arrive at the necessary conclusions. There was no diagram of the scene of the incident. Such a diagram – if it had been made – would include the location of the stone-throwers and the location of the hit vehicle. Examination of the diagram may have helped in determining which of the soldiers, if any, could have hit the vehicle but not its sides. The military prosecution did not ask for the investigation to be completed in the above-mentioned areas. Lessons should be drawn from that. We direct the attention of the Head of the Military Police, the Head of the Investigating Military Police, and the Military Advocate General to these matters.”

The second criticism relates to the tendency to put all the blame on the junior echelons. The judges direct this comment at the MAG, noting that the soldier acted according to the instructions he received, and in the preliminary investigation after the incident he was even praised by his officers. For this reason, wrote the judges, the “primary responsibility” should not have fallen on him, and “the decision to demand justice only of him (Ben-Gigi) does not serve the principle of equality before the law.” In other words, the MAG is almost being told explicitly that it would have been appropriate to bring the officers to trial for giving illegal orders to their subordinates. To the best of HaMoked’s knowledge, no officer was brought to trial for issuing the illegal orders.

## No Investigation – No Evidence – No Guilt

The Wounding of Aya Abd Al-Rahman and Ilham Salameh

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### Summary

On September 8, 1993 in the afternoon, an IDF jeep with soldiers entered Bidya village in the Tulkarm district, looking for masked men reportedly painting slogans on the walls of houses. The masked men were surrounded by many little children. When the masked men saw the soldiers, they started to flee. The soldiers gave chase, and during the pursuit live bullets were fired. Two girls were injured from the gunfire, who were in their house's courtyard: Aya Abd Al-Rahman, age 5<sup>1</sup>/<sub>2</sub>, and Ilham Salameh, age 6<sup>1</sup>/<sub>2</sub>.

Aya was injured in her thighs from the bullets, and arrived at Al-Ittihad Hospital in Nablus after losing much blood. She underwent an operation to mend an arterial tear, and was subsequently hospitalized for a month. As a result of the injuries, her thighs suffered a lot of scarring. An orthopedic physician determined that the girl would suffer from a ten percent permanent disability.

Ilham was also shot in the thigh. She was treated and hospitalized for one week.

### The testimonies

The two soldiers in the jeep that entered the village were First Sergeant David, a medic, and Lt. Ro'i Gutman. Staff Sergeant David fired the shots that injured the two girls, according to his own testimony and that of Lt. Gutman. They also testified that the shots were fired while in hot pursuit of the masked men.

The shots fired by Staff Sergeant David that wounded the girls were fired into an alley, as Lt. Gutman stated: "I don't remember David doing the procedure for arresting a suspect at the intersection (where the two were standing when the shots were fired) before he fired... I don't remember exactly if I even saw the masked men that were in the alley or not. The place was a mess... I think that the girls were hit by David's shooting by mistake, when he fired into the alley. David had no intention of hitting them."

This testimony shows that Staff Sergeant David fired into the alley without first checking who was in it. Considering that at the beginning of the incident there were many children in the street (Staff Sergeant David and Lt. Gutman both testified to this), the shooter should have taken into account that aside from any masked men there may be others in the alley, including children. The shooting was therefore in violation of the regulations then in effect, according to which "it must be considered responsibly and carefully if it is appropriate to use the weapon, taking into consideration all of the circumstances of the incident... Opening fire is permissible only toward attackers or identified suspects. There is to be no indiscriminate shooting." (our emphasis – HaMoked).

Such shooting was also in violation of other orders. Here is the testimony of the brigade commander, a colonel, who investigated the events at Bidya the day of the incident: "The

soldiers' fire at the masked men, who were the reason why the soldiers were in Bidya, was quite proper, except for the problem of the wall, which the shooter did not see, and from which the bullets ricocheted and continued on to hit the girls. During shooting intended to stop masked men care must be taken that there is no possibility of bullets ricocheting. There should be no shooting when there are other objects, even if there is threat to life." This implies that the brigade commander also reached the conclusion that Staff Sergeant David did not follow the regulations for opening fire.

### **MPI is slow to investigate**

Staff Sergeant David and Lt. Gutman testified that they first heard of the girls' injuries half an hour after the shooting. The company commander, an officer with the rank of Lt. colonel, and the brigade commander, with the rank of colonel, investigated the incident. Despite being aware that the soldiers violated the guidelines, both officers determined that the two soldiers behaved without fault. That MPI was not obliged to accept this conclusion.

The MPI investigation began only after HaMoked's complaint was sent to the CCAG, Lt. Colonel Shlomo Politis on November 15, 1993. Attached to HaMoked's complaint was an affidavit signed by Ilham's father in which he testified that on the day of the incident soldiers from the Civil Administration arrived at his house and apologized for the shooting incident. Only during January, about four months after the incident, were the two soldiers involved questioned, FS David on January 6, 1994 and Lt. Ro'i Gutman on January 17. Aya's father was questioned on February 2, 1994, and Ilham's father on February 3, 1994, about five months after the incident. The company commander was questioned on March 2, 1994, and the brigade commander on March 29, 1994 – seven months after the incident. The physician who treated the girls was questioned only on March 24, 1994.

Such a long delay in the investigation actually prevented any chance at finding out the truth. As stated above, the two soldiers involved knew of the injuries within half an hour of the shooting. If a proper investigation had been carried out on the spot, it is possible that the bullets that hit the girls would have been recovered. The girls' injuries had both entry and exit wounds. A ballistics test would have helped in determining who fired the weapon.

### **CCAG decides: no-one is guilty**

On May 23, 1994 the CCAG Lt. Colonel Shlomo Politis wrote to HaMoked that "the results of the investigation found no clear causal connection between the firing actually done by the soldiers and the wounding of the girls. In any case, the soldier's firing conformed with the regulations for opening fire."

As for the lack of a causal connection between the firing and the girls' injuries, it is clear that Lt. Politis ignored the fact that the MPI investigation was incomplete, and accepted its findings without question. Even at this relatively late stage he could have demanded that MPI repeat its investigation of the participants, or locate additional witnesses from the village – but he did not.

As for the shooting in violation of the existing regulations, the testimonies of the participants

in the shooting, and their brigade commander both indicate that the soldiers did not follow the regulations for opening fire. The MPI findings on this point completely contradict Lt. Colonel Politis' conclusion, as presented to HaMoked.

When HaMoked attorney appealed the CCAG's decision, Lt. Colonel Politis rested on the claim made by the participants in the shooting that during the incident the alley was empty, and that they did not see the girls, and ignored other statements made during the investigation.

HaMoked attorney refused to accept this conclusion, and pointed out to Lt. Colonel Politis that Ilham Salameh's father affidavit mentions a visit from the Civil Administration the evening of the incident, apologizing for the shooting and its results.

The answer received from the deputy CCAG, Major Baruch Mani, speaks for cracks in Lt. Colonel Politis' version of events. "It is conceivable," he wrote to HaMoked attorney on August 1, 1994, "that the shots fired by the soldiers that were questioned is related to the injuries of the minors because of the nearness in time and place between the shooting and the wounding. However, the CCAG in his capacity as the person responsible for criminal prosecution must be convinced beyond any reasonable doubt that the specific shooting, performed by a specific soldier, brought about a specific wound. This was not possible to determine only because of the conceivable possibility I explained before... It is possible that the wounding was caused by the firing of IDF soldiers... and yet, along with that, the evidential framework has not been laid out that would justify any action by the CCAG on the criminal plane." After receiving the investigation material, HaMoked attorney asked that MPI question additional witnesses who were not questioned before the file reached Lt. Colonel Politis. Even after those witnesses were questioned, the conclusion that no one should be brought to trial for the shooting was not changed.

### **Additional legal possibilities**

As stated above, the testimonies of the shooting participants and the brigade commander show that the firing was in violation of the regulations for opening fire. Even based on such partial investigation results it was possible to bring Staff Sergeant David to trial on Section 85 of the Law of Military Statutes, illegal use of a weapon. The maximum penalty for that offense is three years imprisonment.

### **The compensation claim in court**

On July 3, 1997, HaMoked filed a compensation claim in the Jerusalem Magistrates Court on behalf of both girls. The sum of NIS 130,000 was demanded for Aya Ahmad, and NIS 40,000 for Ilham Salameh, for special damages. The claim was also for general damages. The suit is pending.

## **B. Throwing Concussion Grenades**

### CCAG Fails to Determine if the Regulations Were Legal

The Wounding and Partial Blinding of Randa Natsheh

#### **Summary**

Around noon on January 22, 1990, (male) students were throwing stones at IDF troops next to the girls school Khalil Al-Namozgiyah. Around 12:30, after the end of the school day, the girls began to exit the school and congregate where the students were throwing stones. One of the girls was Randa Natsheh, then 14 years old. As they were leaving through the school gate, a reserve officer named Aryeh Ofek threw a concussion grenade at them. Randa Natsheh felt a "burning in her eye and on her face." She lost consciousness, and was evacuated to St. John's Ophthalmic Hospital in Jerusalem, where she was hospitalized for ten days. The explosion of the concussion grenade cost her the sight in one of her eyes. The physicians managed to save the other eye, but her vision is unstable. In addition, Randa began to suffer from psychological problems related to the event and her subsequent disability.

#### **The testimonies**

The MPI investigation began on March 12, 1990, after HaMoked filed a complaint with the CCAG, Lt. Colonel Rachel Dolev. On May 14, 1990, the investigation file was completed. The report states that there are no doubts as to the facts of the case. Randa testified that the soldiers stood about 20 meters away from the school. The girls exiting the gate were not participating in the stone throwing. The soldiers failed to warn the girls before taking action against them. Nonetheless, reserve officer Aryeh Ofek threw a concussion grenade at them, also according to his own testimony. The rationale behind throwing the grenade can be found in the testimony of another officer, the company commander Yerboam Segev. In his words, as quoted in the report, "the event happened during the dispersal of the crowd that formed when the girls exited the school, as the stone throwers hid behind them." The identity of the person who threw the grenade, and his motives, were therefore known.

There is a dispute regarding the question of what hit Randa. The report is based on the estimation of company commander Segev, that the pin of the grenade is what hit her. However, the medical reports show that it is far likelier that she was hurt by the close proximity of the exploding grenade.

## **The CCAG closes the file**

On June 28, 1990, the CCAG Lt. Colonel Dolev decided to close the case without taking any legal steps against any of the soldiers involved in the incident. Her reasons were mainly based on the investigation report prepared by MPI, and on the testimony of an officer from the Judea Regional Brigade regarding the regulations pertaining to throwing concussion grenades. The officer, Dani Sasson, told the MPI investigators that "...as far as the concussion grenades are concerned, there are no restrictions on range and no need for special training to use one." Based on that Lt. Colonel Dolev determined that officer Aryeh Ofek "operated according to the instructions of the operations commander, who has it in his capacity and authority to use them." And so, she did not find any fault with his behavior and ordered the case to be closed.

## **Other legal possibilities**

### **Why were the lives of the girls placed in danger?**

The central question for this event is, why was a concussion grenade thrown into a group of school girls? As mentioned above, the girls stood between the soldiers and a group of stone-throwers. Throwing the concussion grenade was intended to scare the stone throwers and deter them from continuing. But in the circumstances – a group of school girls stood between the soldiers and the stone-throwers – it was clear that throwing the grenade would primarily endanger the girls. In spite of that, Aryeh Ofek threw the grenade. The legal question therefore, was whether Ofek was exercising bad judgment or not when he threw the grenade. But the CCAG did not address the question of endangering the lives of civilian bystanders. She accepted the soldiers explanations that they were in danger, without going any further. She never wondered why the grenade was thrown into the group of school girls, as opposed to a safe distance from them – an action which would have had a deterring effect, because of the loud noise the grenade makes as it explodes, without endangering anyone.

In this context the opinion of Dani Sasson on the regulations for using concussion grenades makes no difference. The circumstances of the event, which are undisputed, show that throwing the grenade into the group of female students was uncalled for in any event.

Such behavior constitutes a violation of standing orders and an illegal use of a weapon, since even if the soldiers were in danger, it remains forbidden to endanger non-combatants who merely happen to be in the area and are not endangering anyone else.

If Aryeh Ofek had been tried for illegal use of a weapon, not following regulations, or negligence, he would have faced prison sentences of 1-3 years.

### **What caused Randa Natsheh's injuries?**

The CCAG's conclusion that Randa Natsheh was injured from the pin of the grenade is based entirely on the opinion of Yerboam Segev. However, the nature of her injury belies that claim. The pin of a grenade is a small piece of metal capable of causing a limited amount of damage. Yet Randa suffered from burns on her face and scalp, as well as damage to her eyes.

A large part of her head was injured, consistent with the typical results of close proximity to explosions.

### **The legality of the regulations**

On the question of the legal regulations for using concussion grenades, the CCAG has turned normal procedure on its head. The lack of a minimum range and the absence of any necessary training, as expressed in the statements of Ofek's officer, cannot be the standard by which the CCAG determines legality. It is the AG's job to determine what the legal regulations are, and not that of any particular unit in the field. Dani Sasson's testimony indicates that the regulations for using a concussion grenade were issued by the Judea Regional Brigade, apparently the brigade commander.

This state of affairs demanded that the CCAG investigate if the brigade commander received permission from the MAG's office to issue those regulations. For if such an approval had not been received, then the regulations were illegal. The CCAG made use of Dani Sasson's opinion without checking to her own satisfaction whether the regulations were promulgated with the proper authority.

If she were to reach the conclusion that the instructions were issued without proper authority, she had to pursue the culpability of the Judea Regional Brigade commander's in the incident under investigation. By way of not pursuing the relevant legal questions, she excused herself from her duty to investigate any branching out of the investigation, leading perhaps to charges against additional people.



## **C. Closure**

### The Mother Was Forced to Give Birth at Home – The Baby Died of Infection The Death of the Infant Shuruk Yassin

#### **Summary**

The parents of the baby Shuruk Yassin live in the village of Bil'in near Ramallah. In January 1991, Shuruk's mother Butheyra was in her ninth month of pregnancy. She was scheduled to give birth at the Red Crescent hospital in Jerusalem, and was invited there for a check up on January 21, 1991. A few days before her scheduled appointment, the Gulf War broke out, and a curfew was imposed on the Occupied Territories. Following this development, Butheyra's husband Abd Al-Latif Ismail Yassin, violated the curfew to get a travel permit for his wife's visit to the hospital in Jerusalem – a four kilometer walk from the nearest Civil Administration offices in Khirbata village. The soldier standing guard at the gate refused to allow Yassin to enter, even after he explained the purpose of his visit. He demanded that Yassin return with the Mukhtar of Bil'in, who was staying in Ramallah at the time. Because Yassin was unable to get a travel permit to Jerusalem, his wife never made it to her pre-natal examination.

Five days later, on January 25, 1991, Butheyra's labor pains began. Her husband made desperate attempts to find a vehicle in which to transport his wife to the hospital, but to no avail. Because of the curfew, no vehicle was found. Left with no choice, he called for a midwife who diagnosed a breach birth. Despite the difficult medical situation, the mother gave birth with the midwife's assistance.

The infant was born blue, and would not stop screaming. A few days later, on January 29, 1991, she stopped eating. As soon as her parents saw that she was in distress, they tried to bring her to the hospital. For the second time Yassin tried to get his neighbors to help, but they all refused, explaining that they were afraid of what might happen to them if they violated the curfew. Finally, one of the neighbors agreed to help, and after his car was repaired the mother and her baby were driven to a hospital in Ramallah in the early hours of the morning. At the time there was no physician on duty in the hospital, only a nurse. Apparently the baby received no medical attention until the next morning. The father was not allowed to visit during the hospitalization. On February 9, 1991, Shuruk Yassin died at the age of two weeks.

#### **The testimonies**

Following the father's complaint to B'Tselem, an investigating officer, who was a medical

doctor, was appointed. One of the central findings of the testimonies she collected, was the series of arbitrary commands issued by Cap. Sami, who was then the head of the Civil Administration representative office in Khirbata. These findings did not prevent the CCAG, Lt. Colonel Politis, to determine that the guilty party in the death of Shuruk was none other than her father.

The key testimony in this version was that of the soldier who stood guard at the gate of the Civil Administration offices in Khirbata, and who refused to allow Abd Al-Latif Yassin to enter the building. The soldier (Raviv), told the investigating officer that “before the start of the Gulf War I was never briefed, either in writing or verbally, about solving medical problems of locals who come to the representative office. ...With the beginning of the war, Sami, the commander of the representative office directed his troops, including myself, to prevent locals from entering the representative office. They were to be dealt with only through their Mukhtar. The Mukhtar of Bil’in village did not live in his village from the start of the war – he lived in Ramallah.” He continued that “there were incidents where many locals would gather by the gate. Then Sami the head of the representative office told them that if they don’t disperse within five minutes, they would be arrested by the army for violating the curfew. Then the locals dispersed because they were afraid to get arrested.”

Raviv’s comments raise another point: residents of the Occupied Territories were sent back without any attention given to their requests, also when there was no officer in the representative office. Verification for that can be found in other testimonies, for example those of Cap. Sami, Lt. Doron (Sami’s deputy), and Col. S., from the Civil Administration in Ramallah.

Sami’s testimony reveals that he gave orders that endangered anyone who was outside during the curfew, even if it was his own orders that caused him to violate the curfew. “Even if that Mukhtar (from Bil’in village) wasn’t around at the time, he could have gone to any Mukhtar in a nearby village to get his help.” As if this were not enough, he added in a later interview that “a local resident who showed up at the representative office without a Mukhtar, and was sent back to the village to come with the Mukhtar or to return to the representative office when an officer is found, did not receive a permit so that he could get back without the problem of violating the curfew.”

Sami’s instructions created an impossible situation for the residents of Bil’in village. They were supposed to use the Mukhtar as an intermediary to arrange their affairs, yet the Mukhtar lived in Ramallah and was unavailable. Accordingly, they effectively had no possibility of dealing with official matters.

### **Results of the policy**

As a result of the representative office’s policy, the mother was unable to have herself examined by a physician during the critical stage right before she was to give birth. Such an examination could have revealed that the birth was to be a breach delivery, and appropriate measures could then have been taken to ensure the health and safety of mother and child.

In the end the mother was forced to give birth with the aid of a midwife at home. When the parents were finally able to reach the hospital, the baby was already suffering from an infection, as diagnosed by Dr. Abdallah Abd Al-Hamid Mustapha Muhsin. His opinion was that the infection resulted from the unsanitary conditions in which the childbirth occurred, at the Yassin home. Shuruk died a few days later, a result of the infection and hypoxia (lack of oxygen to the brain) which caused brain damage.

### **CCAG determines that no-one is guilty**

Ten months after Shuruk Yassin's death, the CCAG Lt. Politis presented his conclusions. In a letter dated December 18, 1991, he relied on the testimonies collected by the investigating doctor, yet places the guilt on the infant's father: "...It was possible to travel during the curfew if necessary, even without a special permit. The proof is that the baby's father reached the Civil Administration offices, during the curfew, before the birth." There is no mention in the letter that the father was sent back from the Civil Administration, and that as a result his wife did not receive an examination at that critical stage of her pregnancy.

Lt. Colonel Politis further adds that "the critical day for the fate of the infant is the birthday on January 25, 1991: On that day the plaintiff did not apply to the Civil Administration to ask for a travel permit to bring his wife to the hospital. He preferred to turn to the owners of vehicles in Bil'in that he knew, so that they would take his wife to hospital. Mr. Yassin was refused by two vehicle owners that he turned to, and who refused to help him because they did not have travel permits. Mr. Yassin also did not turn to the Civil Administration for permission to take the infant to the hospital on January 29, 1991 after the infant's condition worsened. But that time, as opposed to before, he found a vehicle owner to take him and his wife and the infant to Ramallah, where the infant was hospitalized for medical treatment."

His conclusion is that "in the circumstances detailed above, I have decided to order the file to be closed since the matter relates to a connection between the death of the baby and IDF authorities."

Lt. Colonel Politis ignores the reality for a Bil'in villager in those days. Without a travel permit, a person who went to the Civil Administration for assistance was in danger of being arrested for violating the curfew. When he made it to the gates of the Civil Administration he was sent back with empty hands because the Mukhtar was not with him. In any case, as already explained, the Mukhtar was not available. Thus resident is sent back home, having violated the curfew merely by being outside his house.

It is worth mentioning that on April 24, 1991, following a petition by the Israeli-Palestinian Physicians Association, the Israeli High Court ruled that the Civil Administration must issue a regulation in which there will be "a full explanation of the course of action open to a patient or member of his family, who are faced with a difficult situation in which they need medical attention during curfew (including the assistance of a physician or even transportation to the hospital)." Lt. Colonel Politis' letter was sent after that verdict, but with no reference to its contents.

### **Additional legal possibilities**

*Both from the testimony of the soldier Raviv who prevented Yassin from entering the Civil Administration in Khirbata, and from the testimony of Captain Sami, it is clear that the orders of the latter regarding the treatment accorded to local residents who needed assistance called for two preconditions: the presence of the village Mukhtar with the person needing assistance, and the presence of an officer in the Civil Administration offices. If either of these two elements was missing, the problem would not be dealt with, no matter how urgent or serious. Such an order cannot be legal. The occupation authorities are responsible for the health and welfare of the residents of the occupied territory, and this includes making sure that they are not prevented from seeking medical care. Captain Sami's orders manifestly prevented medical care, for both the mother and the infant. It was therefore possible to consider bringing him to trial for committing the violation detailed in article 304 of the Criminal Code, Negligent Manslaughter. This article covers the causing of death through a lack of caution, an unthinking or uncaring act, which falls short of criminal. The maximum punishment for this offense is three years imprisonment.*

### **How long does it take to obtain the investigation material?**

- On April 17, 1991, HaMoked attorney wrote to the MAG Brigadier Ilan Schiff, demanding the investigation material and payment of compensation for the baby's death.
- On May 10, 1991, following a verdict of the High Court related to the petition of Israeli and Palestinian Physicians Association, HaMoked attorney applied again to Brigadier Schiff requesting the investigation material.
- On May 27, 1991, Brigadier Schiff's office informed HaMoked that an investigating officer had been appointed for the case.
- On July 26, 1991, HaMoked attorney again demanded the investigation findings.
- On August 7, 1991, Lt. Colonel Politis told HaMoked attorney that he was unaware of any previous correspondence related to the matter, except the letter dated July 26, 1991, and he asked for a power of attorney authorization to be provided.
- On August 14, 1991, all of the material related to the complaint was sent to Lt. Colonel Politis. HaMoked attorney again demanded the contents of the investigation file. Lt. Colonel Politis did not reply.
- On October 13, 1991, HaMoked attorney wrote again to Lt. Colonel Politis, and reminded him that despite the passing of two months since his previous request, no answer had been received. Lt. Colonel Politis did not reply.
- On November 3, 1991, HaMoked attorney again sent a reminder to Lt. Colonel Politis.
- On November 21, 1991, Lt. Colonel Politis wrote that he had received the investigation file, and was scrutinizing it closely.
- On December 18, 1991, Lt. Colonel Politis informed HaMoked of his decision to close the case.
- On January 13, 1992, HaMoked attorney asked again for the contents of the investigation file.

- On March 30, 1992, Lt. Colonel Politis informed HaMoked that after the material was censored, it would be made available.
- On June 10, 1992, HaMoked was informed that the censored material had arrived at the office of the military prosecutor.

### **The demand for compensation**

- On January 19, 1994, HaMoked attorney sent a request for compensation to the IDF on behalf of Shuruk Yassin's parents. The letter was sent to Captain Tehila Vinograd, from the legal advisory office of the Civil Administration at Beit El.
- On March 7, 1994, HaMoked attorney sent Captain Vinograd a reminder.
- On March 20, 1994, HaMoked attorney was asked by claims officer Zion Shuker to provide a power of attorney, and original medical documents.
- On April 24, 1994, the documents were sent to officer Shuker.
- On July 25, 1994 attorney Lauren Itzkovitch announced on behalf of the claims officer, that without admitting responsibility, and for humanitarian reasons, the IDF was willing to give the parents NIS 7,000.
- At a meeting between HaMoked attorney and claims staff officer attorney Adrian Agasi on December 30, 1994, and in a letter sent to HaMoked attorney on January 2, 1995, attorney Agasi announced that he was not willing to increase the proposed amount of compensation.

### **The demand for compensation in court**

On November 23, 1995, HaMoked filed suit for damages and compensation at the Jerusalem Magistrate Court, on behalf of Shuruk Yassin's estate and her parents. The claim was for NIS 81,300, an amount that included compensation for shortening of life, pain and suffering, travel, medical and funeral expenses, the parents' pain and suffering, and the loss of future support that the deceased would have provided her parents in their old age. The defendants named in the suit were the State of Israel and the government hospital in Ramallah.

On March 9, 1997, the State of Israel and the parents reached an agreement according to which the parents received NIS 14,000.

## **D. Brutality and Abuse**

### The Investigating Officer Found Contradictions Not in the Testimonies The Beating of Amal Al-Hamidi

#### **Summary**

On December 15, 1988 at noon, soldiers burst into the home of the Al-Hamidi family in the village of Al-Azariyah. This was apparently part of a search for barricade builders and stone-throwers. The father of the family was not at home at the time; there was only the mother, the daughter Amal (age 14), and other small children. The soldiers ran amok in the home, destroyed furniture and broke things, and beat Amal up in an attempt to force her to give up the names of the stone throwers and barricade builders. They hit her in various parts of her body, kicked her and stepped on her feet. Afterwards the soldiers dragged her by her head and hair to the coffee shop on the other side of the street. She was kept by the well, and the soldiers threatened that she would be thrown into the well if she did not hand over any names.

#### **The testimonies**

A HaMoked volunteer who visited Amal Al-Hamidi a month later could still see bruises on her feet. One of the toes was swollen and injured, and signs of violence were also visible on her elbow and legs.

Amal testified that three soldiers wearing black berets burst into her room and beat her with a baton on her limbs, and stepped on her. While on the coffee shop porch, they continued to beat her up and then placed her on the edge of the well, and threatened to throw her inside if she wouldn't give the names of the stone-throwers.

Ya'akub Mohammed Mustapha Al-Khatib, the coffee shop proprietor in Al-Azariyah, testified that he saw a soldier dragging Amal by the hair to the well next to his shop, and heard him threaten her that if she did not say who threw the stones, he would throw her into the well. While this was going on he beat her with a stick. One of the people nearby tried to protect her, but the soldiers threatened him with a weapon. Al-Khatib said that the soldiers wore red berets.

Another of Amal's neighbors, Taher Mohammed Totah, saw the soldiers beat her in the porch of the coffee shop.

#### **How long does it take to forward the investigation results?**

- HaMoked first applied to the IDF Spokesperson on January 26, 1989.

- On May 11, 1989 a complaint was filed with the CCAG and the MAG.
- On May 27, 1989, CCAG Lt. Colonel Dolev directed HaMoked to submit the complaint to the Israeli Police.
- On July 2, 1989, after a phone conversation with HaMoked attorney, Lt. Colonel Dolev promised to reconsider her decision on accepting the complaint.
- On August 18, 1989, HaMoked attorney forwarded additional information to Lt. Colonel Dolev related to the complaint, and informed her that Amal's family and neighbors were willing to testify in the matter. Lt. Colonel did not reply.
- On February 28, 1990, HaMoked attorney sent Lt. Colonel Dolev a reminder. She did not reply.
- On December 24, 1990, a meeting with Lt. Colonel Dolev's replacement, Lt. Colonel Shlomo Politis took place, in which the event was discussed.
- On January 31, 1991, HaMoked sent Lt. Colonel Politis a reminder. No response was received.
- On March 25, 1991, HaMoked sent Lt. Colonel Politis a reminder again. No response was received.
- On May 5, 1991, HaMoked sent Lt. Colonel Politis a reminder again. No response was received.
- On August 28, 1991, HaMoked sent Lt. Colonel Politis a reminder again. No response was received.
- On September 3, 1991, Lt. Colonel Politis wrote to HaMoked that an investigation had taken place in the past, and that the former CCAG Lt. Colonel Dolev decided to close the case because the investigation did not succeed in identifying the unit in IDF records that was operating at the time and place of the event. It is therefore impossible to arrive at any conclusions about the event or those responsible for it.
- On October 2, 1991, HaMoked attorney asked to receive the contents of the investigation file. Lt. Colonel Politis did not respond.
- On November 22, 1991, Lt. Politis was again asked for the file.
- On March 8, 1992, Lt. Politis was again asked for the file.
- On March 22, 1992, HaMoked attorney was told that the material was available to be viewed.

### **What did the censored contents of the investigation file reveal?**

HaMoked only received two documents: the report of the investigating officer, and one testimony which was used as the basis for his conclusion.

The testimony was heavily censored, and includes many deleted gaps, and therefore little of what was said is visible. From the parts that are not deleted beyond understanding, we learn the following: "Until then (July 1989) the place had a control center that at certain times was under the command of the Judea Region, and at other times operated independently underneath the Judea and Samaria Regional Command." In another section: "According to the operations diary of that period, it turns out that in the place an independent company

operated, but there is no detail of which company. Likewise, the event under discussion is not mentioned in the operations diary on the above mentioned date or any following date. It does mention that on (erased date) an initiated activity was planned for the company in the Al-Azariyah area.” Also: “...all of the official reports are listed as having arrived from the Abu Dis company.”

### **Was it really impossible to locate the company?**

The investigating officer – whose name was censored from the materials that reached HaMoked – was appointed only on January 21, 1990, more than 18 months after the event at Al-Azariyah.

The investigating officer clung to the contradictions in the eye witness testimonies regarding the color of the soldiers’ berets. His conclusion was that it is impossible to determine which unit was present at the time. But in the following sentence he writes: “The company present in the region was called the Abu Dis company.” This information is from the same testimony, so that the investigating officer most certainly could have located the unit in question, and perhaps even the soldiers involved. He chose however, not to investigate.

In addition, part of his final conclusion was explained in that “...there is no possibility to determine with certainty that there was abuse committed by soldiers as stated in the complaint because of the conflicting testimony.” But there are no conflicting testimonies. All of the eye-witnesses testified that Amal was beaten on the porch of the coffee shop, and some of them saw how soldiers held her on the edge of the well and threatened to throw her inside if she wouldn’t reveal who threw stones. Any contradiction may have arisen from the testimonies of the soldiers, but in the only testimony that was collected there is no mention of the incident itself.



## The State Admits that MPI Never Carried Out an Investigation

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### The Beating and Harassment of the Ma'ali family

#### Summary

On December 9 1989, two soldiers entered the Ma'ali family home in the village of Salfit, near Tulkarem. One of them was tall, blond, and carried a weapon, while the other had a field radio on his back. They asked the father, Abd Al-Hadi Ma'ali, if he had any sons. After he told them that he did, and that his son was in his room, the soldiers went there, grabbed the hands of Ossama Ma'ali, age 13, and checked his hands to see if he had been throwing stones. When the boy's father tried to intervene, the blond soldier cursed him and hit him twice, and then aimed his rifle at him and threatened to shoot. He also cursed the mother. When she asked him to stop, he hit her twice in the chest with his hand.

#### The IDF: no answer

- On January 4, 1990, HaMoked attorney wrote to the CCAG (Lt. Col. Dolev), and complained about the treatment of the Ma'ali family described above.
- On February 19, 1990, HaMoked sent a reminder to the CCAG about the complaint.
- On April 29, 1990, the MPI questioned the father. The interview was arranged with HaMoked's assistance.
- On September 26, 1990, HaMoked sent a reminder to the new CCAG, Lt. Col. Shlomo Politis.
- On November 11, 1990, HaMoked sent a reminder to the MPI offices in Jerusalem, where the Ma'ali complaint was being processed at the time.
- On December 26, 1990, HaMoked sent a reminder to the CCAG.
- On March 24, 1991, HaMoked sent a reminder to the CCAG.
- On April 19, 1991, HaMoked sent a reminder to the CCAG.

#### An answer was received

Only after the High Court intervened on May 22, 1991, after more than 16 months without a response or a suitable explanation, HaMoked attorney Rosenthal petitioned the High Court of Justice to order CCAG Lt. Col. Politis to transfer the investigation material collected by the MPI on the Ma'ali family complaint.

On July 14, 1991, the day before the High Court was due to rule on the case, both sides informed the court that there was no point in continuing with the proceedings. The CCAG's representative told HaMoked that except for collecting Ma'ali's testimony, nothing had been done to investigate the case, and therefore that was nothing to hand over. The State paid HaMoked's court costs.

**Other possibilities for investigating the incident**

When HaMoked filed its complaint to the CCAG, it was still relatively easy to locate the soldier that hurt the Ma'ali family. Less than a month had passed from the date of the incident, and the records kept by the units active in the Salfit area would have clearly stated which soldiers were on patrol in the village on December 9, 1989. If the blond soldier had been identified, he could have been questioned on the charges of assault, threats, and illegal use of a weapon.

# Harassment for “Military Purposes”

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## The Case of Afaf Jaradat

### Summary

Afaf Jaradat is a resident of Kafr Akab, a village on the outskirts of Jerusalem. During January, February, and March of 1990, she was the victim of repeated harassment by soldiers stationed near the village. The incidents of harassment took place five times. Afaf’s husband, Karam, worked at night in Jerusalem; it is possible that the soldiers were aware of his absence and took advantage of it to harass his wife.

### The investigation begins

- On March 27, 1990, a few days after the fourth time that soldiers harassed Jaradat and threatened her, HaMoked attorney sent an urgent letter to the Legal Advisor of the Judea and Samaria Region, Ahaz Ben-Ari. In the letter, HaMoked described the harassment suffered by Jaradat, and demanded Ben-Ari’s immediate action on the matter.
- On April 20 1990, Col. Ben-Ari informed HaMoked that the matter had been transferred to the authority of the CCAG.
- On May 20 1990, HaMoked wrote to the CCAG Lt. Col. Dolev, requesting to be kept informed on any developments related to the case.
- On June 26 1990, CCAG Lt. Col. Dolev informed HaMoked that an investigating officer had been appointed, and the investigation was under his care.
- The investigation began only four months after the initial complaint was made:
  - On July 22 1990, the investigating officer Cap. Major Gabi took a statement from Jaradat.
  - On July 23 1990, Cap. Major Gabi took testimony from a soldier named Hadar.
  - On July 25 1990, Cap. Major Gabi took testimony from a soldier named Sagi.

### The testimonies

The central testimony in this case was that of Afaf Jaradat herself. In addition to the affidavit she made at HaMoked, she was also questioned by Cap. Major Gabi, the investigating officer. She testified about four incidents in which soldiers entered her home:

1. On a date she did not remember, apparently in early January, on a Saturday, soldiers arrived at her home after 18:00. Her husband was not at home, and she was with her children. The soldiers rang the doorbell a number of times and told her to open the door. She refused and said that she cannot open the door when her husband is absent. One of the soldiers told her that if she wouldn’t open the door, he would shoot her. The soldiers continued beating on the door, and Jaradat finally opened it. She saw three soldiers. Two of them were short and dark-skinned. The third was tall and blond. It was the blond one who threatened her with his rifle. They had khaki colored berets on their shoulders. When she asked why they wanted to

search her home they did not answer, but started to tease her. This lasted for an hour, during which the soldiers were in her house. They did not conduct a search, but continued to humiliate Jaradat. After an hour they left.

2. The second time was 7-10 days after the first incident. The soldiers arrived at Jaradat's house around noon time. When she opened the door, the soldiers entered. She recognized the tall blond soldier who had been there previously. This time the soldiers were busy inside the house for about ten minutes while Jaradat and her children waited outside. The soldiers also had khaki berets. When they finished, they left without speaking to Jaradat.

3. The third incident was two or three days after the second. The soldiers arrived at around 6:00 in the morning, and knocked on the door so hard it almost broke. Afaf Jaradat and her husband were not at home, and they heard about the soldiers' visit from neighbors.

4. The fourth visit was about a week after the third. This time four soldiers arrived at around 20:30. They rang the doorbell, but because Jaradat had turned off all the lights, they thought that no one was home and left.

5. The fifth visit was on March 22 or 23, 1990 at around 20:00 or 20:30. The soldiers came again, this time four of them, and rang the doorbell. Jaradat shut off all of the lights. The soldiers broke the glass on the porch door. Jaradat's neighbors yelled at the soldiers, and they yelled back. Jaradat's neighbors called her relatives. One of them was her brother in law, and he opened the door for the soldiers, after the lock was severely damaged. Jaradat recognized one of the soldiers as one of the short dark ones from the first visit. During the shouting about opening the door, the soldier she recognized threatened her, saying that if she did not open the door, he would throw a smoke bomb into the house. She described the other soldiers: one of them was named Yossi, and he was short with brown hair; another one wore glasses; another one was tall, stocky, fair, and wore a beard. When Jaradat asked, Yossi identified himself as the commander of the group. The soldiers walked around the house while humiliating the occupants, among them neighbors and relatives. At one point, all of them except Jaradat were ordered to leave the house. When she was alone with the soldiers, the dark one told her that "I will drive you crazy, coming every day until you go mad." He refused to identify himself. During this time the other soldiers wandered around the house, without conducting a search. They left after an hour.

On March 30, 1990, a few days after Jaradat's complaint was filed by HaMoked, the Jerusalem weekly Kol Ha'ir ran a story under the headline "Moving on to Sexual Harassment," with details of the harassment she suffered from. When Cap. Major Gabi questioned the two soldiers, he directed their attention to the article, and focused his investigation on the last incident.

The soldier Hadar, a sergeant, testified that he was in Jaradat's house one time. He said that the reason for entering it was that "we saw a suspicious figure disappear in the direction of the house... we suspected that the man who disappeared was hiding in the house." Which soldiers were with him when he entered the house? "I remember Yossi [deleted] and Sagi [deleted]. We were four or five." Regarding their actions in the house, he testified that "we entered the house and checked if the suspect was hiding there." About the damage that was

caused: “while knocking on the door with our feet, we broke the lock... Yossi tried to climb on the porch but couldn’t enter from there. Maybe he tried to open some window.”

Sagi, one of the soldiers from Sergeant Hadar’s testimony, was also a sergeant. He confirmed that he was present that day. He claimed that it was his first time at the house. Why did they enter the house? “It was in the evening, between 20:00 and 21:00, and in the dark I saw a figure running. We chased after it, and the guys saw it enter the home of the complainant. We wanted to check who it was.” When they entered the house, “I stood in the hallway, the others searched the house.” How was the damage caused? “We kicked the door to try and open it, the door was stuck and there was a problem with the key or the lock. Maybe a window was broken in the side porch.”

### **The CCAG closes the case**

Based on the three testimonies, the CCAG Lt. Col. Politis reached the conclusion that “the entry into the house was for operational needs and not for harassment, although it is possible that unnecessary damage was caused to the lock and a window pane on the porch. I have therefore ordered the case closed and recommended that Mrs. Afaf Jaradat be reimbursed for the damage caused to her house when the soldiers entered.”

The CCAG did not mention the fact that the central figures in the case were never investigated. In any event, the time that passed from the last incident and the questioning of the two soldiers was four months – long enough for the two to coordinate their versions so as to give a reasonable explanation for entering the house. This alone should have aroused the CCAG’s suspicion.

### **Other possibilities for investigating the case**

There are certain obvious omissions in the investigation of Jaradat’s complaint:

1. Although Jaradat’s original complaint mentioned four separate incidents of harassment, as did her testimony to the investigating officer, only two soldiers were questioned regarding the last incident, which was on March 22 or 23, 1990. In his question she never mentioned the other incidents, and accepted their answers that this was the first time they had been there.
2. Even though Yossi’s name was mentioned in two of the testimonies, Jaradat’s and Sergeant Hadar’s, the investigating officer never bothered to find him and question him on his part in the incidents, at least the last one. This despite Sergeant Hadar’s testimony implicating him as the one who probably broke the window pane in the porch. Given that Sergeant Hadar and Sergeant Sagi were questioned, it is clear that the investigating officer knew which unit was operating at the time in Akab village. He could easily have questioned Yossi as well.
3. No attempt was made to find the other soldiers from the previous incidents, who were not present in the last one.
4. Jaradat’s brother in law and neighbors were never questioned, despite having witnessed some of the incidents.

If an attempt had been made to locate the other soldiers involved, particularly the one named Yossi, a more complete evaluation of Jaradat's complaint could have been made. A fuller picture would have included testimonies from Jaradat's neighbors and relatives. The investigation was basically a cover-up, and it ensured that a complete investigation of the harassment, threats, trespassing, illegal use of weapons, and vandalism faced by Jaradat would never be carried out.

### **The compensation lawsuit**

On February 2, 1997, HaMoked filed a lawsuit for the Jaradat family based on the behavior of the soldiers in the incidents described above, and on an incident that involved soldiers and the husband, Karam Jaradat. The charge sheet mentions the soldiers' negligent behavior, harassment, trespassing, violation of privacy, assault, and vandalism. The damages incurred by the family include not only the affront to the parents' dignity, privacy, and property, but also the anxiety and mental anguish caused to their two small children who witnessed the soldiers' rampages.

The Jaradat family is demanding compensation of NIS 70,500 from the State of Israel. The lawsuit is pending.

# A Story of Forgetfulness

## The Abuse of Ra'fat Omar Rian

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### Summary

Ra'fat Omar Rian is a resident of Beit Diko village in the Ramallah district. On June 15, 1991, around 15:00, two soldiers arrived at his home and demanded that he and his brother present their ID cards for inspection. Then they told them to step out into the street. One of the soldiers locked the rest of the family in the house. As soon as Ra'fat and his brother left the house, a soldier kicked him in the back. Another soldier called him over, demanded to see his ID again, and then hit him with his right elbow. He also ordered him to come to the village center, where he gave the ID card to three soldiers there and told them that Ra'fat tried to steal his rifle. The three soldiers started to shout at Ra'fat, beat him with their fists and slapped his face. They returned his ID card and told him to erase graffiti from nearby walls, including some that had no graffiti. Another soldier came over and asked Ra'fat, what he was doing, took his ID card, and started to beat him using his hands, feet, and weapon. When Ra'fat couldn't reach slogans written high up on the wall, the soldiers started to beat him. During this progressively more severe abuse, which included more beatings and presentation of his ID card, the soldier who claimed that Ra'fat tried to steal his rifle came back and ordered him to spit on a photograph of Yasser Arafat. All during this time, while the beatings, curses, and humiliating remarks continued, Ra'fat was forced to erase graffiti from the walls. This continued for over 90 minutes. Along with Ra'fat, nine others in the village were beaten. That night, the village Mukhtar complained about the abuse at the Civil Administration at A-Ram. An officer named Amir told the Mukhtar that there was nothing he could do about it.

### The testimonies

#### The soldiers were from Golani Brigade

Ra'fat Rian's testimony was given to HaMoked three days after the incident, on June 18, 1991. He reported that the soldiers who entered the village were from Golani. He knew that from the color of their berets and from the soldiers themselves.

This testimony is supported by that of Captain (reserve) Dani Tsidon, who was the operations officer in a reserve battalion of the armored corps, within the regional Binyamin Brigade. He said that the incident in Beit Diko village took place when his battalion received command of a Golani company. The company commander was Lt. Avi Atias. This company was meant for special operations of the brigade. "As part of the weekly assignment of operations for the Golani company, there was a plan to enter Beit Diko. The entry was carried out on June 15, 1991 along two walking routes, with an officer in charge of each route. One of the forces was under 2nd Lt. Bar Sheshet from Golani, and the other force entered the village from the only road entering the village. The tasks within the village were to show presence and carry out

the erasing of graffiti, lowering of flags, etc.” (testimony of Cap. Tsidon on September 2, 1991, two and a half months after the incident.)

### **There was no attempt to steal the Golani soldier’s rifle**

As for the claim that Ra’fat tried to take the weapon of one of the soldiers, he told the MPI investigator that one of the two soldiers who entered his house “held my arm tightly, threw me at the gate and kicked my back. From his kick I was thrown a few steps forward and accidentally my elbow hit a third soldier who was outside, on his arm. The soldier got angry at me, grabbed me and hit me in the face with his elbow.”

Cap. Tsidon, who was a witness to some of the stages in Ra’fat’s beating, gives some credence to this version: “At one point in the activity I saw soldiers taking two people out of a house who were around twenty years old. At the exit from the yard to a clearing before the house one of the youths grabbed the weapon of a Golani soldier standing near the gate. He did it on person, and not in the process of tripping or being pushed, although it can be said with certainty that it was not for the purpose of taking the weapon, but a kind of grandstanding, or making an impression with the surrounding audience. The soldier and another soldier who stood next to him got very angry and gave the man two or three kicks. The man didn’t fall, and he wasn’t really hurt at that point. Then I told the Golani soldiers in the area to calm down, and they stopped and took the man to erase graffiti, lower flags and posters, etc.”

Even if one accepts Cap. Tsidon’s version of events regarding Ra’fat’s grabbing the soldier’s rifle, it is clear that there was no attempt to take away his weapon. Cap. Tsidon’s testimony that he ordered the Golani soldiers to “calm down” clearly reveals that he was witness to the use of unnecessary force.

### **Collective amnesia**

As opposed to the testimony of Cap. Tsidon, who can hardly be suspected of favoring the residents of Beit Diko, none of the Golani soldiers remembered anything at all: not the name of the village (except for one officer), and none of the events that took place. All of them were questioned during the latter part of October 1991 (the 21st and 23rd) – more than four months after the event. Within this time frame, one can reasonably expect someone to remember what happened, especially an unusual event like what happened at Beit Diko. The MPI investigators did not try to change the soldiers’ “amnesia” by confronting them with Cap. Tsidon’s testimony, which was collected six weeks beforehand. The near uniform phrasing of the Golani soldiers’ testimonies reveals that they were being asked leading questions, to which they could reply in shorthand: I don’t remember the village, I don’t remember an event, I don’t remember an attempt to take a weapon.

Cap. Tsidon told the MPI investigators that he couldn’t remember any of the Golani soldiers’ names, not even the soldier whose weapon was grabbed. It turned out however, that this was no barrier to the MPI investigators locating a number of the suspects and questioning them.



But they never tried to check with Cap. Tsidon, if the suspects that were located were those that he saw in the village.

On October 25, 1991, two days after the questioning of the last Golani soldier, MPI concluded its investigation: “in our investigation we did not locate the violent soldiers and no evidence was found for the complaints of the local resident regarding his beating and humiliation.”

### **Other possibilities for investigation**

The MPI investigators had plenty of information on the actions of the Golani soldiers in Beit Diko on June 15, 1991. Cap. Tsidon gave neutral testimony from which it appears there was a prevailing atmosphere of rampaging, and that Ra’fat Rian did nothing to provoke his beating or humiliation. The MPI investigators should have noted that Cap. Tsidon had no objective reason to sway his testimony in favor of Ra’fat, as they collected near identical testimonies from the Golani soldiers. The similarity in the answers arouses two suspicions: firstly, that the soldiers, who had the time and the opportunity to coordinate their testimonies, invented their amnesia; or secondly, that the questions of the MPI investigators were designed to produce those answers. A third possibility is that both suspicions are correct.

### **The prosecution did not try**

The Northern Command Attorney General Lt. Col. Ze’ev Lisson adopted the weak MPI investigation results without question. He did not demand that the MPI investigate the serious incident properly, and accepted the concluding remarks of the report: “the attempts of the investigators to locate those who committed the actions alleged by the complainant (Ra’fat Rian) were not successful, and I have therefore ordered the case to be closed without taking any legal measures whatsoever.”

The NCAG failed here on two counts: not only was it wrong to accept such an incomplete and sloppy investigation, the suspicion that the true perpetrators coordinated false testimony – with or without the assistance of the investigators – should have forced him to investigate the additional crime of interfering with legal proceedings.

# The CCAG Hampered the Investigation

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## The Beating of Mohammed Najib

### Summary

On April 21, 1990, at 16:00 in the afternoon, Mohammed Najib was returning home to the village of Hizma on the outskirts of Jerusalem from his work at the Notre Dame Center in Jerusalem. During the day a curfew had been imposed on the village. Najib was unaware of the curfew. In the village center, not far from his house, a military vehicle with three soldiers stopped Najib. One of the soldiers asked him what he was doing outside during the curfew. Najib replied that he was returning from work, and showed his employee ID from the Notre Dame Center, which was written in English and Hebrew. The soldier ripped up the paper, and then pointed at a slogan painted on a nearby wall, and asked Najib who wrote it. Najib said he did not know. Then the soldier grabbed him by the throat and slapped his face, while asking rhetorical and demeaning questions. Finally the soldier kicked him, and sent him on his way with another curse. Najib's wife and children were witnesses to the entire incident.

### The testimonies

Najib complained to HaMoked the next day, April 22, 1990. The same day, HaMoked sent a letter to the CCAG Lt. Col. Dolev, described the incident, included a photo of the torn document, and emphasized that the complaint was being made only a very short time after the incident – a fact that should make the identification of the unit in Hizma and the soldiers involved in beating Najib very easy.

### No one investigates

- On April 22, 1990, one day after the incident, the CCAG Lt. Col. Dolev received HaMoked's complaint and description of the incident.
- On June 17, 1990, HaMoked sent a reminder to the CCAG.
- On August 28, 1990, HaMoked sent a reminder to the CCAG.
- On November 21, 1990 HaMoked sent a reminder to the new CCAG, Lt. Col. Politis.
- On December 24, 1990 HaMoked met with the CCAG.
- On December 31, 1990, HaMoked sent a reminder to the CCAG.
- On March 12, 1991, HaMoked sent a reminder to the CCAG.
- On April 19, 1991, HaMoked sent a reminder to the CCAG.
- On June 2, 1991, HaMoked sent a reminder to the CCAG.
- On August 20, 1991, HaMoked sent a reminder to CCAG.
- On September 3, 1991, CCAG Lt. Col. Politis informed HaMoked that he checked the matter with the investigating authorities who would likely be in charge of the investigation,

and that it seemed to him that no investigation had been opened. In conclusion he wrote, “after examining the complaint and the chances of an investigation, I have decided that there is no point ordering the opening of one now.”

- On April 30, 1993, HaMoked attorney wrote to the CCAG, with an affidavit from the victim attached, and demanded that an investigation be conducted.
- On June 20, 1993 HaMoked sent a reminder to the CCAG.
- On July 27, 1993, the CCAG replied to HaMoked that her letter and the attached affidavit were insufficient to change his decision.

### **Additional legal possibilities**

If the CCAG had acted appropriately, she would have ordered the MPI to conduct an investigation quickly. As mentioned above, the information was in her hands only one day after the incident, when it was still easy to identify the unit that was in Hizma village during the curfew, and there was a good chance of identifying the violent soldier and his two colleagues. The prosecution never bothered to order the MPI to collect testimonies from the victim’s family, although they were witnesses to the abuse. In behaving as it did, the CCAG’s office foiled whatever possibility there was of investigating the incident and bringing the soldier to justice.

## The CCAG Adopts the Inadequate Investigation and Declares: No Suspects The Beating of Samer Duzdar

### **Summary**

On April 21, 1992, around 17:00, Samer Duzdar was driving in his car in the town of Al-Bireh. Two soldiers passed the area in a jeep and told him to slow down. He continued driving toward Ramallah, from where he was planning to enter Jerusalem. At a junction on the way to Jerusalem he dropped off a friend who was with him, and then the two soldiers came up to him, and demanded his ID card and told him to get into the jeep, while shoving him. The soldiers drove to a military camp, apparently Alon camp, where Duzdar was taken out of the jeep and told to sit on the ground. After ten minutes the soldiers returned and shouted at him to get into another jeep. His face was covered with a rag. They began driving, and a soldier who introduced himself as "Captain Yussuf" began to beat him with his fists. The soldiers drove the jeep to a place that Duzdar recognized only later. It was a cave near Kafr Akab. He was placed in the cave where the two soldiers beat him while insulting him. They threatened to shoot him, and finally left the cave. While Duzdar was still inside they threw a concussion grenade inside. As a result, Duzdar was injured in his face. After the explosion "Captain Yussuf" went back into the cave, gave Duzdar back his ID card, and told him to come the next morning to the offices of the Civil Administration in A-Ram. After the incident, Duzdar was treated at the hospital in Ramallah, where his face was bandaged. He was also checked at Al-Mukkassad Hospital in Jerusalem.

After being treated, Duzdar tried to file a complaint with the police. As a resident of Jerusalem he went to the Russian Compound police station. He was sent there from room to room, without taking his complaint, and finally he was told to go to the police station in Neve Ya'akov. The police at Neve Ya'akov also refused to take his complaint, with the excuse that they do not accept complaints related to the army, and told him to go to the MPI in Me'ah She'arim.

### **Who can accept complaints?**

After presenting Duzdar's complaint, HaMoked attorney wrote to the CCAG Lt. Col. Politis and asked that an investigation be held. On May 19, 1992, the CCAG wrote back that he had turned the material over for an investigation, and forwarded HaMoked's letter to the Police, to determine why the original complaint was not accepted.

On June 24, 1992 the Police wrote to HaMoked that Duzdar could file a complaint at the station in Neve Ya'akov.

### **MPI investigates**

The MPI responded to the complaint faster than the police. On May 24, 1992, five days after

the CCAG's letter to HaMoked, Samer Duzdar was questioned about his version of the incident. Two days later, on May 26, 1992, one of the soldiers suspected of involvement in the case was also questioned. The next day, May 27, 1992, four more soldiers were questioned. Four days later an officer was questioned, and the next day a physician was questioned who explained what was written on the medical report that Duzdar obtained from Al-Mukkassad Hospital.

Duzdar told the investigators that he would be able to recognize the soldiers who beat him. Nonetheless, MPI never held an identity parade. Instead, the investigators accepted the answers of the soldiers and the officer who were questioned, who said that as far as they were concerned the entire incident never happened. Moreover, the suspects' answers to the MPI investigators, that they never heard about the incident until questioned about it, shows that the investigators were using a leading question on each of the suspects, who were all questioned on the same day (May 27, 1992) within a short period of time.

Two of the soldiers who were questioned were presented with the work records of two jeeps, showing that they had been driving the day of the incident, April 21, 1992. They both admitted driving the jeeps on that day, but denied any connection to the incident. The MPI investigator did not pursue his line of questioning. In the testimony of the officer, Lt. Ran, he said that "the company has jeeps." He was not asked how many jeeps, and therefore the investigation does not make it clear how many jeeps are used by the company, and if additional jeep work records for the day of the incident should be investigated, to see if there are additional drivers who could be questioned.

The investigator, 1st Sergeant Ya'akov Raviv, also visited the Alon Reconnaissance Base where he questioned the soldiers. "On May 27, 1992 I went to the Alon Recon. Base and checked with 2nd Lt. Yohai [deleted] in the operations diary of the company, to look for any unusual events connected to the wounding of Samer Duzdar on April 21, 1992. During the investigation no entry was found regarding the arrest and beating of Samer Duzdar on April 21, 1992."

### **Other possibilities for investigation**

1. The MPI investigator only chose to question soldiers in the Alon Base, presumably because it happens to be the closest base to where Duzdar was arrested, as well as the place where he was – apparently – taken to during his abuse. Even if one accepts at face value the denials of the soldiers he questioned, he should then have looked elsewhere for additional suspects. This was not done.

2. Supposing that the soldiers who abused Duzdar were from Alon Recon. Base. the soldiers' testimonies were not sufficient to clear them. The investigator should have returned to cross examine them, to see if any contradictions come up. The important question – which was not checked at all – is how many jeeps are stationed at the base, and who was driving which jeep on the day of the incident. Showing two work records to two soldiers is not sufficient to determine the whereabouts of each soldier who used a jeep from the base on the day that Duzdar was abused.

3. A real investigation would have required that on the day after Duzdar's complaint, all of the drivers on the base would participate in a line-up, since Duzdar said that he could identify which soldiers abused him.

4. Duzdar told the MPI that he was taken off a jeep in Alon Recon. Base for ten minutes, and then put on another one. There may have been eyewitnesses who noticed these actions, and the soldiers who beat him. MPI did not try to locate any witnesses.

5. The investigator's conclusion, that the operations diary of the company did not include an entry for Duzdar's arrest and beating, might well raise an eyebrow. Sadists are not, in general, prone to leave a record of their criminal actions in the operations diary. It is clear from Duzdar's complaint that the soldiers were doing their best to remain anonymous; the fact is they took him to an isolated cave to abuse him.

### **The prosecution did not make a sincere effort**

On July 7, 1992 the CCAG's office wrote to HaMoked: "...We have received the investigation file, and an attorney's opinion has been given. The CCAG has decided to close the case since no suspects have been located for the incident described by Mr. Duzdar." In other words, despite all the problems presented by the investigation itself, the CCAG saw no reason to return the investigation file to the MPI to order them to complete their investigation – properly. He instead accepted the unfounded results, and based his conclusion that "there are no suspects" on their report.

After receiving the investigation file, HaMoked attorney wrote to the CCAG and pointed out that the investigation was not carried out properly or completely: "The grave incident of serious bodily harm caused to my client was not investigated, and the perpetrators have not been identified. In my opinion, this is the case only because the investigating officer did not do his job properly." She demanded that a line-up be conducted. She reminded the CCAG, that even though a lot of time has passed, Duzdar is still able to recognize the abusers.

The CCAG rejected her request, on two grounds. Firstly, there were no suspects with which to carry out a line-up, as they had never been identified. Secondly, a line-up at that stage would be "unproductive."

### **How long does it take to receive the investigation file?**

- On June 1, 1992 the last testimony was collected for the investigation.
- On July 24, 1992 HaMoked asked the CCAG to forward the contents of the investigation file.
- On November 27, 1992 HaMoked sent a reminder to the CCAG.
- On December 29, 1992 the CCAG informed HaMoked that he had requested the file, and as soon as it was censored he would inform HaMoked.
- On March 2, 1993 HaMoked requested the contents of the investigation file again.

- On March 22, 1993 the CCAG wrote to HaMoked that the file had still not been made available.
- On July 4, 1993 HaMoked asked if the material had returned from the censor yet.
- On August 8, 1993 the CCAG announced that the material was now available.

The investigation file was with the CCAG for over a year before being handed over to HaMoked, so that a legal opinion could be written. The CCAG took an unreasonably long time to censor the material and make it available to HaMoked, without any adequate explanation for the delay.

### **Demand for compensation**

On September 13, 1996, HaMoked attorney wrote to the Ministry of Defense demanding that Duzdar be compensated for his injury with NIS 7,000.

The State of Israel and Duzdar agreed on NIS 3,250 in compensation on May 8, 1997.

## The Soldier Said So, and That's What Counts

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### The Beating of Nidal and Iyad Diab

#### Summary

On April 3, 1994, at 21:30, Ya'akub Suleiman Diab and members of his family were driving back from Kalandia Refugee Camp to their home in Shuafat (in Jerusalem), after visiting relatives. They were in two cars, and were on their way out of the camp via the Ramallah-Jerusalem road. Some soldiers on the side of the road shouted at them to stop. Then the cars stopped, soldiers opened the doors and pulled Diab's two sons, Nidal and Iyad, out of their seats. After taking them out, they started beating them up with their fists and rifle butts. Some of the women in the cars came out and tried to pull them away from the soldiers, but they were beaten as well. Fifteen minutes later, the two brothers were handcuffed and sitting in the back of a jeep, being driven away.

The day afterwards, Diab went to the Civil Administration in Ramallah, and discovered that his sons were being held there.

On April 5, 1994, he went to the police station in Neve Ya'akov to complain. On April 6, 1994, he approached HaMoked. After difficulties in getting a proper reply, it turned out in early July 1994 that the police had transferred the complaint to the MPI, since the suspects in this case were soldiers.

#### How long does it take to get the investigation material?

- On July 18, 1994, after it was determined that the investigation had been turned over to MPI, HaMoked wrote the CCAG Lt. Col. Politis asking to be updated on any developments in the case.
- On August 14, 1994, the military prosecutor Cap. Udi Ben Eliezer informed HaMoked on behalf of the CCAG that the case was being closed.
- On August 24, 1994, HaMoked requested the contents of the investigation file.
- On September 25, 1994, Ben-Eliezer wrote to HaMoked that he would inform them when the material arrives.
- On February 5, 1995, HaMoked sent a reminder to the CCAG asking to view the investigation file.
- On August 17, 1995, HaMoked filed a complaint with attorney Nili Arad, the Director of the Appeals Department with the State's Attorney General's office, regarding the unnecessary delay in receiving the investigation file from the CCAG.
- On August 22, 1995, Arad forwarded HaMoked's complaint to the CCAG, and asked him to respond to it directly to HaMoked, with a copy sent to her.
- On August 23, 1995, Cap. Ben-Eliezer replied that unfortunately, despite the long delay, the CCAG did not yet have the material.



- On September 28, 1995, HaMoked again wrote to the CCAG, stating in her letter that an entire year had passed since the material was first promised.
- On November 5, 1995, Ben-Eliezer announced that because of a mishap the material had been delayed.
- On March 31, 1996, HaMoked reminded the CCAG that five months had passed since the mishap was reported.
- On June 9, 1996, HaMoked was informed via a phone call, that the CCAG was still searching for the file.
- On June 10, 1996 HaMoked informed the CCAG that no more reminders would be sent asking for the files.
- On June 17, 1996 Ben-Eliezer called HaMoked to say that the material would arrive in the next few days.
- On July 3, 1996, Ben-Eliezer called HaMoked to say that the material had not arrived yet.
- On July 8, 1996, Ben-Eliezer called HaMoked to announce that the material had arrived.

From HaMoked attorney Badra Khouri's first request to receive the material from the investigation file, and until the announcement that the material was available, nearly two years passed.

### **The testimonies**

From the investigation material, it is apparent that MPI only questioned two soldiers, and their testimonies were used as grounds from the CCAG's decision to order the case closed. Cpl. Asi Bracha told the MPI investigators on April 16, 1994, two weeks after the event in Kalandia, that the camp had been under curfew at the time. An hour after the curfew was announced, the two cars of the Diab family arrived. In reply to the soldiers' questioning, Ya'akub Diab, the father, told the soldiers that he did not know about the curfew. The father at first refused to get out of his car, but finally came out. His sons also refused to leave the car, but after "shouts and arguments" they got out. Bracha testified that the two brothers were asked to approach a nearby wall to be physically searched, but they refused. The father asked the soldiers to leave his sons alone. Then, according to the testimony, "we were forced to exercise reasonable force to bring them to the wall. At that point it was only me and another soldier whose name I can't remember... The reasonable force we used on the two brothers was just pushing toward the wall. I pushed the younger brother and the other soldier pushed the older brother." The soldier does not explain why "six more soldiers came to help us, and helped us with reasonable pushing to bring the brothers to the wall. At this point the younger brother started to curse and push and therefore [beat] me with his two fists to my stomach, but I was not harmed." After that the brothers were arrested.

Bracha also testified that an officer from the Civil Administration in Ramallah and another soldier from his unit were witnesses.

The second witness was the Civil Administration officer mentioned by Bracha in his testimony, named Oren Shaked. Shaked testified that he was the one who ordered the curfew

in Kalandia that night. He came upon the incident while patrolling the camp after the imposition of the curfew, and – as contrasted by Bracha’s testimony – was not a witness to the scuffle between the soldiers and the brothers. “Near the main entrance to the refugee camp... I saw a gathering of soldiers and four local residents. I stopped to see if there were any problems. When I got out of my vehicle, it was explained to me that two local youths in their twenties attacked soldiers from the patrol, got violent with them and cursed them, after the cars they were traveling in were stopped. The cars were stopped because they were trying to leave Kalandia refugee camp an hour after the curfew was imposed.” Shaked testified that after his arrival, the two brothers were already standing facing the wall, and none of the soldiers were beating them. After consulting with him it was decided to arrest the brothers. In his testimony, Shaked claimed that the father told him, that he was sorry and that it would never happen again. He said that the father did not complain about soldiers beating his sons. The two brothers did not complain either while being taken to detention.

### **The CCAG ruled that the soldiers acted properly**

Both of the testimonies were cited by the CCAG in his decision to close the investigation. The only eyewitness was also one of the potential suspects. For that reason it is clear that his testimony cannot be seen as trustworthy. The two weeks that passed from the date of the incident until he was questioned was long enough for him to come up with a version that would clear him of any wrongdoing. The repetition of the phrase “reasonable force,” along with the original “reasonable pushing” is suspect. These terms are not commonly used in unrehearsed speech, and seem to have been the result of coaching, since according to the letter of the law the use of reasonable force is permitted if a suspect resists interrogation, search, or arrest.

MPI should have tried to locate additional witnesses, and many were available. In addition to the two brothers, there were five members of the Diab family, and the other soldiers who participated in the pushing, according to Bracha’s testimony.

Despite the incomplete investigation, the CCAG reached the conclusion that “the soldiers in question acted properly.” His decision not to take any measures against the soldiers was based, inter alia, on the comments of the officer Oren Shaked, who said that the father came to him, apologized for the incident, and did not complain about his sons being beaten. That does not prove what the CCAG wishes to prove. If anything, it shows that the father wanted to finish the incident quickly and avoid the arrest of his sons, so that the whole family could return home together. To complain at that point would have created an additional reason to delay the release of his sons, who were not yet under arrest.

### **Additional possibilities for investigating the incident**

As stated above, MPI did not question most of the witnesses to the incident. It is probable that if the Diab family, including the two brothers, and the other soldiers involved had been questioned, the resulting picture would have been much more complex. It is also quite

possible that more suspects from among the soldiers who used force would have been identified.

### **MAG stands behind the CCAG's conclusions**

After HaMoked received the investigation material, HaMoked attorney wrote to the MAG and questioned (or appealed) the CCAG's conclusions. He protested the conduct of the investigation, and demanded that it be completed or repeated.

The acting MAG, Col. Yossef Telraz, rejected HaMoked's demands. His reasons rested entirely on the decision reached by the CCAG. He did not respond to HaMoked's claim that MPI only collected testimony from two people, and that the testimonies themselves are troubling. Instead he mentions Cpl. Bracha's testimony, as if it were the most believable source of evidence in this case: "A study of the investigation material reveals that the soldier involved gave a complete statement, in which he described the course of events that led to the arrest of your client's sons. According to the testimony of the soldier, all that was used was reasonable force to stand them next to the wall."

Telraz also told HaMoked that: "the identity of the other soldiers involved in the incident, is unknown." This is a strange claim. If Cpl. Bracha was identified, then the other soldiers could have been identified as well. All that was necessary was to ask him who was with him on that night in Kalandia. After all, he gave MPI the identity of the Civil Administration officer who was present that night, enabling them to question him. The records kept by the soldiers' unit would have indicated who was engaged in which activity and when.

## **E. Property Damage**

### **Confiscation Without Compensation**

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#### **The Damaging of Munzar Ahmad Al-Hamid Ayash's car**

##### **Summary**

On February 6, 1989, at about 9:00 a.m., Munzar Ahmad Al-Hamid Ayash was driving on the Beit Omar-Hebron road. He was stopped by soldiers near the Halhoul municipality building. The soldiers claimed that they needed to take the car to check it in the Halhoul military camp. Ayash demanded a written confiscation order, but the soldiers said that he would receive such an order only after the car was returned. They told him to come back in the afternoon to get the car back. When he returned, he saw his car parked on the side of the road. The engine hood was open, one soldier was behind the steering wheel, and two others were busy under the hood. They told him that the car was not working. They gave him a report which they said was a list of the damages to the car, to be presented to the Civil Administration in Hebron.

Ayash was forced to have his car towed to a garage in Halhoul. In the end the car was repaired in Hebron, and Ayash paid for the damages to the engine, steering wheel, clutch, brakes, shock absorbers, the cap of the coolant tank, and the fan.

##### **The testimonies**

Following the instructions of the Civil Administration in Hebron, Ayash presented a written request for compensation for the damages the soldiers caused his car. He attached receipts for NIS 740, the cost of repairing the car, that he had paid from his own pocket. At a later stage, when the demand for compensation reached the Staff Officer for Compensation, he also gave the license plate number of the jeep the soldiers were driving when his car was taken.

##### **The staff officer for compensation refuses to compensate**

- On December 20, 1989, around ten months after the claim was made, HaMoked attorney wrote to the Staff Officer for Compensation in Beit El demanding that he respond to the claim.
- On January 2, 1990, the Staff Officer informed HaMoked that without an order for confiscating the car, no compensation would be paid. HaMoked attorney explained that in this case the soldiers refused to give one. She was told that the opinion of the Civil Administration Officer in Hebron would be sought.

- On February 11, 1990 HaMoked sent a reminder to the Staff Officer, and asked if he received an answer from the Civil Administration in Hebron.
- On March 7, 1990, the staff officer wrote that the Military Governor of Hebron did not receive any claim for compensation due to the confiscation of the car. He also repeated that in the absence of a confiscation order, no compensation will be paid.
- On July 18, 1990, HaMoked sent another reminder.
- On July 29, 1990, the Staff Officer wrote that the military jeep whose number was given did not belong to the Military Police, and that he would investigate whether it belonged to the Civil Administration.
- On September 7, 1990 HaMoked sent another reminder.
- On January 2, 1991 HaMoked attorney sent another reminder to the Staff Officer.
- On February 22, 1991 HaMoked sent another reminder.
- On March 5, 1991 the Staff Officer told HaMoked that there was no decision yet.
- On May 31, 1991 HaMoked attorney demanded that the matter be resolved without any further delay.
- On June 19, 1991, the Staff Officer wrote that since there was no proof that the car was actually confiscated by soldiers, it had been decided to reject the claim.

### **The staff officer sabotaged the chances for an investigation**

The Staff Officer was in no hurry to examine the facts before him. It took him five months after receiving the jeep's license number to ascertain that it did not belong to the Military Police. His duty was then to find out who the jeep did belong to – but he failed even to check with the Civil Administration in Hebron. There is no mention in his letters of what was done to locate the jeep.

In any case, the Staff Officer had Ayash's affidavit before him – the equivalent of sworn testimony in court. He described what happened, and how the soldiers refused to give him a written confiscation order. Nonetheless, the Staff Officer repeated his original argument, that he had no proof that the car was confiscated, and without such proof, no compensation would be paid.

### **Ayash receives compensation**

On September 15, 1991, after receiving the Staff Officer's rejection, HaMoked attorney appealed the decision before a board of appeals.

On January 13, 1992, at the preliminary hearing, the Staff Officer's representative agreed to pay NIS 600 to Ayash.

## The Investigating Officer That Was Never Appointed

### Burning Books in Mahmoud Al-Azrari's House

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#### **Summary**

On October 30, 1989, around 14:00, soldiers entered Mahmoud Al-Azrari's house in Deheisheh Refugee Camp. They were looking for his son. After not finding him, they piled three textbooks they found in the center of one of the rooms and set fire to them using newspaper. Then they left.

#### **The testimonies**

The book burning occurred in the presence of Al-Azrari's wife and sister. His wife put the fire out after the soldiers left. The books did not burn completely, and their burnt remains are still with the family. In a complaint to HaMoked, Mahmoud's son A'ahed said that the soldiers wore red berets, apparently on the word of his mother who was a witness.

#### **The CCAG does nothing**

One week after the incident, on November 7, 1989, HaMoked sent the complaint to the CCAG Lt. Col. Dolev. HaMoked never received a reply to the complaint.

On September 26, 1990, HaMoked sent the new CCAG, Lt. Col. Politis, a reminder. The case was discussed in a meeting with him on December 24, 1990. Another reminder was sent on January 31, 1991, and after two and a half months, on March 12, 1991, yet another one.

On September 3, 1991 the CCAG informed HaMoked that after checking the matter, he discovered that his predecessor had asked for an investigating officer from the proper authorities, but an investigation was not opened. Nonetheless he decided not to open an investigation, since, according to him, the chances of producing any results were too slim.

#### **Other possibilities for investigating the incident**

The worst aspect of the CCAG's handling of this case, is her failure to ensure that an investigating officer was appointed. If she had, perhaps an investigation would have been opened soon after the event, when the witnesses were available and there was a chance to locate the soldiers. Since no steps were taken to ensure that an investigation was taking place, the CCAG is responsible for preventing the only chance to investigate the book burning in Al-Azrari's house.

## The Soldiers Weren't Identified, the Occupation Order Wasn't Legal, Compensation Was Paid

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Damage Caused to Abd Al-Rahim Ashatieh's House After an Observation Post was Erected on His Roof

### **Summary**

Beginning in June 1990, the IDF erected an observation post on the roof of Abd Al-Rahim Ashatieh's house in Salfit village, Tulkarm District. Sometime in October 1990, soldiers manning the observation post drove stakes into the roof to secure a tent they erected. The holes in the roof caused by the stakes led to water leaking into the house during the winter. Between June 1990 and May 1991 soldiers shattered the solar reflectors on the hot-water boiler three times. After the second time that the reflectors were broken, Ashatieh covered the glass with a wire screen – but it was broken again for the third time. In addition, the soldiers posted on the roof used a barrel for collecting water for various uses, and lit fires. Beyond the property damage, the soldiers abused members of the family: they beat Ashatieh's son, who suffers from mental retardation, and at night they made a lot of noise and bothered the residents of the house.

The property damage and harassment continued even after May 1991.

### **The observation post was illegal**

Ashatieh complained about the observation post on May 15, 1991. After receiving the complaint, HaMoked attorney asked for a copy of the occupation order allowing the observation post to be erected. After it arrived, HaMoked discovered that the order was valid only from May 23, 1991. In other words, during the entire period mentioned in the complaint, the observation post was illegal, since there was no occupation order in force.

After HaMoked pointed this out to the Judea and Samaria legal advisor, he was told that the observation post was erected only in March 1991, not in June 1990. Even if one accepts that version, it is clear that the post was illegal – at least for two and a half months.

Although the order that was issued was valid for nine months, the observation post was removed in September 1991.

### **Compensation was paid – eventually**

Along with his complaint detailing the damages to his house, Ashatieh specified what needed to be fixed or replaced: the water barrel on the roof, rendered unusable after being misused by the soldiers; repair of the solar reflectors; replacement of the window panes in the stairwell; sealing the holes in the roof caused by the tent stakes; painting the house to cover up the water damage caused by water leaking in from the roof; erecting a fence around the yard to keep the soldiers out; and fixing the door to the roof. The costs of all the repairs

reached 5,200 Jordanian Dinars, a sum that was worth more than NIS 20,000 at the time. An appraiser from the Staff Officer for Compensation estimated the damages at only NIS 5,700. After lengthy negotiations lasting many months, the SOC agreed to pay NIS 8,860, of which NIS 8,140 was for repairing the damage, and NIS 720 as “rent” for using the roof. The money was paid in February 1993, nearly two years after the complaint was filed, and three years after the damages to the roof began.

### **Eighteen months to investigate the complaint**

HaMoked was not satisfied with the payment of compensation, and demanded that an investigation be conducted so that the soldiers who caused the damages would be found and brought to trial.

- On August 27, 1991 HaMoked asked the assistant to the Judea and Samaria legal advisor, Captain Adrian Agasi, to investigate the behavior of the soldiers who used the observation post. This request was never answered.
- On December 3, 1991 HaMoked sent a reminder.
- On December 12, 1991 the CCAG, Lt. Col. Politis replied that he had not yet received the investigation findings.
- On December 17, 1991 Agasi informed HaMoked that an investigating officer had been appointed to deal with the complaint.
- On June 25, 1992 CCAG told HaMoked that the investigation was not yet complete.
- On September 10, 1992 HaMoked sent a reminder. No answer was received.
- On October 8, 1992 HaMoked sent another reminder. No answer was received.
- On November 22, 1992 HaMoked sent another reminder. No answer was received.
- On December 18, 1992 HaMoked attorney wrote to the CCAG that more than a year had passed since he told her that “he had not received the investigation findings yet.” She asked for his response without further delay.
- On December 28, 1992 HaMoked received a letter from the CCAG: “The investigation of the matter under discussion is not yet complete.”
- On March 19, 1993 HaMoked sent another reminder to the CCAG.
- On March 23, 1993 the CCAG wrote HaMoked that he decided to close the file, since it was not possible to locate the soldiers. As for the damages, he wrote, “I drew the conclusion that, based on all of the circumstances, the possibility that damages were caused as a result of stones thrown at the soldiers on the observation post cannot be excluded.”

### **The “investigation” consisted of questioning one soldier**

After four months of additional correspondence, HaMoked was finally told that the investigation file was available to be looked at and photocopied. It turns out that the investigation consisted of the testimony of an officer with the rank of captain named Mansour Muadi, who was serving as the deputy intelligence officer for the Tulkarm Civil Administration during the period under discussion. He was questioned on May 14, 1992,



eight months after HaMoked requested that the complaint be investigated. In his testimony Muadi claimed that Ashatieh only came to him once with a complaint about the soldiers' use of the water barrel on the roof. When he checked the complaint, he saw that the water was "open water," a reference to the fact that the soldiers removed the barrel's lid and the water was uncovered.

In response to a leading question asked by the investigating officer ("Were stones thrown at the house and the observation post?"), Muadi said yes, "that's probably what caused the damages."

HaMoked attorney responded to this conclusion with a letter to the CCAG on January 20, 1994. "It is clear that only one soldier was questioned," she wrote. "No other soldiers were questioned who could have been located through existing records or the Salfit Civil Administration."

On March 6, 1994, the CCAG replied that the investigating officer made efforts to locate the soldiers in the observation post, but was not successful. As a result, he ordered the investigation closed.

HaMoked insisted on understanding why the investigating officer was unable to locate the soldiers. The CCAG replied that, "the investigating officer was unable to locate the soldiers stationed on the roof. IDF troops engaged in this sort of activity are replaced often, and therefore the investigating officer was unable to locate the soldiers in question." He added that "the plaintiff did not mention specific dates in which the damage mentioned in the complaint was caused, and did not give any detail that might help in identifying them." Therefore, he concluded, "the claims made by the plaintiff against the conduct of IDF soldiers were not verified."

### **The investigation is glossed over, an agreed version of events is concocted, and the case can then be closed**

As stated above, the only soldier approached for the investigation was questioned in mid-May 1992, even though the complaint was filed by August 1991. Moreover, the investigating officer asked the soldier to offer his opinion on a possible version that no one had raised until this stage, and to suggest that the damages might have been caused by stones thrown at the soldiers on the observation post. The CCAG relied on that exchange in his answer to HaMoked. Interestingly, as he was presenting his conclusion, the SOC was paying Ashatieh compensation for the damages incurred by the soldiers. In other words, even the SOC recognized that during the presence of soldiers manning the observation post, they caused damage. If he had not accepted this fact, he would not have compensated for the damages – certainly not by 55% more than his original offer, which was based on the estimate made by a professional appraiser.

Regarding the criminal aspect of the case, it seems that no real attempt was made to locate the soldiers who caused the damages. Even if there is rapid turnover, it is known which unit was responsible for the post, and the unit's diary would allow investigators to reach the

specific soldiers on the roof at any given point. The CCAG, instead of returning the investigation to the investigation officer to complete it, preferred to raise arguments against the victim in this case.

## The House Was Damaged – The Staff Officer Offered NIS 500

### The Damaging of Hassan Awad Abu Kabita's Home

#### **Summary**

On June 3, 1991, IDF troops under the command of “Captain Fuad” destroyed the home of Nabil Diab Abu Kabita in Yatta village in the Hebron district. During and after the demolition, part of the house fell on Hassan Awad Abu Kabita's house next door, causing serious damage. An appraiser estimated the cost of repairing the damages at NIS 14,050.

#### **The staff officer plays for time**

- On August 28, 1991, the Staff Officer for Claims at the Ministry of Defense forwarded HaMoked's complaint on to the Staff Officer for Claims – Judea & Samaria District for treatment.
- On September 11, 1991, HaMoked wrote to the SOC Judea & Samaria District asking for a quick resolution to the complaint due to the urgency of repairing the house before the approaching winter.
- On November 22, 1991, HaMoked sent a reminder to the SOC.
- On February 28, 1992, HaMoked sent another reminder to the SOC.
- On March 10, 1992, the SOC wrote to HaMoked that the matter was being processed.
- On June 25, 1992, HaMoked sent another reminder to the SOC.
- On July 5, 1992, the SOC told HaMoked that he hoped to have the issue resolved within ten days.
- On July 19, 1992, the SOC wrote to HaMoked that according to an estimate that he received from an appraiser, the damages were worth only NIS 500, and that he was willing to pay that amount.
- On August 2, 1992, HaMoked attorney Badra Khouri informed the SOC that since she had an estimate for NIS 14,050, she suggested that he reconsider.
- On August 16, 1992 the SOC wrote that he was firm on his original offer of NIS 500.

From the day that the complaint was filed until the first offer of NIS 500 in compensation, 11 months had passed. This is a manifestly undue length of time for the estimation of this kind of compensation claim. Firstly, an appraisal of damages of the kind caused to Abu Kabita's house must be undertaken as close as possible to the date of the incident, since leaving the house with cracks in the walls and pillars can result in more severe damages at a later stage, as well as distorting the nature and extent of the original damage. Secondly, there is no shortage of appraisers in this field, so that the SOC could have dispatched one to the scene of the damage on the same day as HaMoked's complaint was received. Thirdly, it does not take very long for an appraiser to complete the task of estimating damages in a case like this. The appraiser whose opinion was accepted by the court in the end reported that it took him a total of 15 hours, or two days work, to study documents, travel back and forth to the

damaged house, examine the damages, and analyze the findings. There was therefore, no justified reason for the SOC to avoid presenting a qualified appraisal on his behalf in the days after receiving the original complaint.

### **The SOC appeals committee approved realistic compensation**

After the SOC offered to pay NIS 500 in compensation, HaMoked appealed before the appeals committee. With the agreement of the SOC's representative, an expert was appointed to estimate the damages. His estimate was NIS 13,700 – just NIS 350 less than the estimate prepared by the appraiser retained by Abu Kabita. This sum was approved by the appeals committee to be paid as compensation.

# What Kind of Damage is Unavoidable During a Search?

## Property Damage in Abd Al-Wahhad Abd Al-Aziz Fakiya's House

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### **First Incident**

#### **Summary**

The first incident was on January 14, 1993, around 17:00. The Fakiya family was in the yard, when four men in civilian clothes and kafiyyas<sup>1</sup> arrived. They appeared to be soldiers from an undercover unit. They entered the house, but prevented any family members from going inside with them. Shortly afterwards, 35 more soldiers in uniform arrived, surrounded the house, and broke the doors down to get inside. Fakiya offered to open the doors, but one of the soldiers punched him in the nose, breaking a tooth, and then hit him with a stick. The soldiers stayed in the house for an hour and a half. When the family members entered, they were shocked to discover the extent of the damages: three closets, a desk, a bookshelf, two radios, and two beds were all broken. One of the soldiers kicked a goat, killing it. Before leaving, the soldiers arrested Fakiya's seventeen year old son, Mahmoud. He was released two days later.

### **The testimonies**

The break-in was witnessed by Fakiya, his wife, daughters, and son who was arrested as the soldiers left. Fakiya detailed the soldiers' actions, including the beating by the soldier, property damage, and killing the goat, in an affidavit. It was sent to the CCAG Lt. Col. Politis together with the complaint submitted to HaMoked. HaMoked attorney demanded that the incident be investigated. Fakiya repeated his description when the MPI investigated him on March 10, 1993. His wife was also questioned that day, and her testimony corroborates her husband's version.

### **CCAG: "No military force was found."**

After receiving HaMoked's complaint and subsequent reminders, Lt. Col. Politis replied that "despite the MPI investigation, no military force was found to be involved in the incident claimed by your client."

### **What the CCAG and the MPI did not investigate**

As stated above, the Fakiya family testified that the people who reached the house before the soldiers in uniform wore civilian clothes and Kafiyyas. This was more than just a hint as to their identity, and the MPI should have checked if they were from an undercover unit or not.

<sup>1</sup> Traditional Arab scarves.

Also, after the incident Fakiya's son was arrested. The records of his arrest and detention could have led to the unit that searched Fakiya's house that day.

However, none of the leads were followed. The MPI only checked with certain units, and accepted that none of them had unit records showing an operation on the relevant date, January 14, 1993. The MPI investigators never bothered to check if soldiers from these units were involved, but chose not to leave written records of the operation.

## **Second Incident**

### **Summary**

The second incident occurred on July 16, 1993. Soldiers came to Fakiya's house around 8:00 in the morning. They were searching for Fakiya's son, even though he had not lived in his father's house for a long time. The soldiers entered the house, but not before detonating four concussion grenades and firing weapons inside the house. When the family was allowed to enter their house, they once again witnessed a scene of destruction: one room was severely damaged from the explosion of a concussion grenade; both refrigerators were shot by nine bullets; two closets were broken; five mattresses were cut open with knives; nine blankets were torn apart with knives; clothes pulled out of the closets were ripped; sugar, rice, and olive oil were spilled on the floor and mixed together. The damage was documented by Fakiya with a video camera.

### **The testimonies**

The family was witness to the second incident. The damage, in any case, was captured on film, which was later given to the MPI for investigation.

A number of soldiers were questioned on the incident, and their stories match those of the Fakiya family. The soldiers confirmed that they arrived at the house in civilian clothes. Then they were replaced and the house was surrounded with uniformed soldiers. After that, the undercover soldiers broke into the house to search for Fakiya's son, who was wanted, and for weapons. The detonation of the concussion grenades was justified as a precautionary measure, in case the wanted suspect was armed. The shooting within the house was explained as firing into potential hiding places. The cutting of the mattresses, blankets, and sacks of food was part of the search for weapons. The soldiers denied that any of the damage was intentional.

None of the soldiers questioned testified that weapons were found as a result of the search.

### **Eighteen month to obtain the file**

- On October 17, 1993 HaMoked attorney sent a complaint to CCAG Politis regarding the second break-in at Fakiya's home. She requested that he order an investigation.
- On November 29, 1993 Politis told HaMoked that he ordered an investigation into the break-in.

- On January 24, 1994 HaMoked sent a reminder regarding the incident.
- On March 13, 1994 Politis announced that he had received partial findings, and that he ordered the investigation to be completed.
- On June 30, 1994 HaMoked gave the video cassette shot by Fakiya to the MPI.
- On February 12, 1995 HaMoked sent a reminder to the new CCAG, Lt. Col. Aviram Nir.
- On April 2, 1995 Captain Udi Ben-Eliezer informed HaMoked on behalf of the CCAG that “the search on July 16, 1993 was carried out for the purpose of finding a dangerous fugitive. According to previous information, he was hiding in the plaintiff’s house. The search was also for locating weapons which were suspected to have been hidden in various places in the house. Within the framework of this kind of search, property damage was unavoidable. No evidence has surfaced indicating that soldiers damaged or vandalized property on purpose or needlessly.” Therefore, the CCAG ordered the case closed.

The investigation findings reached HaMoked a year and a half after the investigation, and more than seven months after the last person was questioned by the MPI.

### **Fifteen months to receive the investigation file**

- On April 16, 1995 HaMoked asked to copy the investigation file. The CCAG (Nir) did not respond.
- On July 10, 1995 HaMoked again requested to copy the file.
- On July 31, 1995 Ben-Eliezer replied on behalf of the CCAG that after the file was returned from the censor, HaMoked would be notified.
- On May 13, 1996 HaMoked complained about the CCAG’s delay in handing over the investigation file to Uzi Fogelman, Director of the High Court Petitions Department of the AG’s office.
- On June 4, 1996 Ben-Eliezer told HaMoked that the file was held up on its way to the censor for reasons that were unclear to the CCAG. A telephone call to the appropriate authority had established that the censorship would be carried out soon.
- On July 14, 1996 HaMoked copied the file. Fifteen months passed from the date of HaMoked’s original request, and until the file was actually copied.

### **Compensation**

On August 26, 1996 HaMoked attorney Hisham Shabaita demanded NIS 5,000 in compensation for the damages to the Fakiya home, from Adrian Agasi of the Unit for Insurance and Lawsuits within the Ministry of Defense. The State of Israel and the Fakiya family reached a settlement on March 2, 1997, for NIS 2,000.

## Unidentified Units Protected by Secrecy

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### Property Damage in the Homes of the Awlad Issa Family

#### **Summary**

On July 17, 1993, at 5:00 a.m. when the Awlad Issa family were asleep, their three houses were surrounded by a few dozen soldiers. The houses were in the Al-Arub refugee camp, near Hebron. Some of the soldiers wore green-yellow berets, while others wore the dark green uniforms of the border police. The soldiers used a megaphone to order the family out of the houses.

While the family was standing outside, soldiers detonated concussion grenades in Yussuf Awlad Issa's house. Afterwards the soldiers entered the house and spent about 90 minutes inside. After they left, Issa saw that they had taken some of his children's note books. He also saw an officer with a sledge hammer on the roof of his mother's house next door. The officer hammered the metal roof for about fifteen minutes.

When the family was allowed back into their houses, they saw the severely damaged contents of their homes. The inside of Issa's house was in complete chaos. All of the kitchenware was smashed, the refrigerator was broken, the washing machine was destroyed, and the closet doors in one of the rooms were damaged. In addition, the bathroom sink was broken, and living room furniture was damaged, the cushions were ripped, and armrests and handles were broken.

Later Issa found that in addition to his children's notebooks, the soldiers took video and audio cassettes, computer disks, and the building permit for his house.

In an affidavit prepared by HaMoked attorney Tigrid Jahshan on December 12, 1993, the mother testified that she suffered from IDF troops almost continuously during a four month period. Soldiers in uniform or civilian clothes arrived at her home around 25 times to conduct searches. During their visits, the soldiers physically assaulted family members, vandalized and destroyed the contents of the entire house, and damaged the house itself.

Even more severe damages were caused to Jamila Hasouna Hassan Awlad Issa's house. The hammer blows of the officer on her roof caused it to collapse, which led to the walls collapsing as well. The house's entire contents were damaged beyond repair. She also complained that despite being a religious woman, the soldiers forced her into the street wearing only her nightgown, without a head scarf. This deeply offended her.

She also mentioned that during the soldiers' visits the family was forced to spend hours outside their house, in the heat of the noon sun or in the cold night, without being able to eat or drink, with the soldiers forbidding them to receive help from their neighbors even for relieving themselves.

#### **The testimonies**

HaMoked sent the complaint to CCAG Politis on December 29, 1993. The affidavits of Issa



and his mother were attached, so that the facts of the case were known to the MPI, to which the complaint was forwarded for investigation.

From the investigation file it is clear that there was no serious effort to locate the forces involved in the operations that caused the destruction to the Issa house, even though the MPI investigators had more than enough facts to do so. The activity report of a MPI investigator of July 5, 1994 mentions the operations diary of the Hebron Brigade, but apparently nothing was done with it. In addition, the activity report for July 7, 1994 of another MPI investigator mentions three units who were present in the Al-Arubb refugee camp on the day of the incident under investigation, as part of an IDF operation. In the material given to HaMoked, the names of the units were deleted, but it is clear that the MPI investigator knew which units they were. This information was more than enough to begin the search for the soldiers. Additional information was in the testimonies of the Issa family: they mentioned that some of the soldiers had green-yellow berets. This means that they were probably from the Nahal infantry brigade. Nevertheless, the MPI investigators never tried to follow up on these leads, and instead withdrew from the case.

Additional information was not collected, because of the refusal of a GSS agent to cooperate with the MPI investigators. In an activity report from July 5, 1994, the MPI investigator wrote that he visited the GSS offices in Hebron and met with an agent who refused to identify himself. The investigator showed him an operations diary from July 17, 1993, and asked to check if there was someone named "Noam" in the unit. The investigator summarized the GSS agent's answer: "beyond verifying that there was no one named "Noam" in the unit, he refused to make any comment." The investigator accepted the refusal, and avoided further research on information that he suspected was relevant to the investigation.

During part of the investigation the Issa family was in Saudi Arabia. In early September 1994, the mother arrived at HaMoked and expressed her willingness to be questioned by the MPI. HaMoked attempted to locate the MPI file, via letters and phone calls, without success. HaMoked also tried to locate the MPI investigators to let them know that the mother was waiting to be questioned. In the end no testimony was collected from her beyond what she said in her affidavit.

### **The CCAG closes the file**

On November 20, 1994, the CCAG Aviram Nir announced that because of the time that passed since the complaint was filed, the chances of locating the unit responsible were very small. Another problem was that the plaintiffs were abroad and it was not possible to get any additional details that would assist in locating the unit. The plaintiffs were abroad during part of the investigation, but in September – two months before the CCAG's decision to close the file – they were at home, waiting to be questioned.

The CCAG addressed the fact that the searches were after a relative who belonged to Hamas. "In those circumstances," he wrote, "of searching for a dangerous fugitive, a thorough and comprehensive search is required in the wanted person's home, in an effort to locate documents, objects, or weaponry. In such a search, property damage may, unfortunately,

occur.” In his answer the CCAG ignored the surface nature of the investigation conducted by the MPI, and tried to place the responsibility for the failed investigation on the plaintiffs.

After receiving the CCAG’s decision to close the case, HaMoked attorney asked him to reconsider, emphasizing that Issa and his mother were willing to give their testimonies to the MPI investigators.

Captain Ben-Eliezer wrote back that “at this stage – given the passage of time and the inability to locate the specific unit that searched the Issa family’s residence – there is no point in opening the investigation again, in the absence of any additional detail that could assist in locating the soldiers involved.” In a previous letter he complained that the plaintiffs did not come in for questioning, so the investigators couldn’t get any more details on the unit; yet when they expressed willingness to be questioned in order to provide these missing details, Ben-Eliezer used the argument that there is no “additional detail that could assist in locating the soldiers involved” as justification for closing the case.

### **Eighteen months to obtain the investigation file**

- On January 23, 1995 HaMoked asked to copy the investigation material.
- On May 14, 1995 HaMoked sent a reminder to the CCAG. CCAG did not reply.
- On June 7, 1995 HaMoked sent a reminder to the CCAG.
- On August 1, 1995 Lt. Col. Nir replied that the forces operating in Al-Arub refugee camp that day were not located. Since the operation was legal, “we do not believe that the file you have requested will help your client’s case. If you nonetheless insist on viewing the file, please let us know.”
- On November 12, 1995 HaMoked repeated its request for the investigation file. CCAG did not reply.
- On April 3, 1996 HaMoked sent a reminder to the CCAG.
- On April 23, 1996 Captain Ben-Eliezer informed HaMoked that the material had not yet arrived yet.
- On May 13, 1996 HaMoked complained to Fogelman, Director of the High Court Petitions Department in the AG’s office, about the delay in receiving the file.
- On June 4, 1996 Ben-Eliezer told HaMoked that the file is on the way.
- On July 14, 1996 the file was copied.

From the date of the original request, and until it was made available, a year and a half passed. This delay is unreasonable. Nir’s comment regarding the inadvisability of turning the material over stands out even in the context of the foot-dragging and delays that HaMoked encountered in other cases. There had never been an attempt to get out of transferring the material on the grounds that “it wouldn’t help” the victim.

### **Other legal possibilities**

Despite the long time that passed from the filing of the complaint to the opening of an

investigation, it was still possible to use the operations diaries of the units that the MPI was able to locate. The fact is, a MPI investigator reached the GSS, whose men were apparently involved in the operation. If the investigators had reached the units, there is a good chance that some of the soldiers involved would have been located for questioning. A serious investigation would have revealed why so much damage was caused in the two houses, when the goal of the search was to find a fugitive. Perhaps the necessity of detonating concussion grenades inside the house would also have been discussed.

## *The IDF Admits that the Soldiers Were Never Questioned*

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### Property Damage in Amin Ma'ali's House

#### **Summary**

On August 20, 1993, around 12:00, six soldiers on foot patrol arrived at Ma'ali's house in Salfit village, in Tulkarm District. Ma'ali himself was at his shop, nearby. The door to the house was locked. When the soldiers arrived Ma'ali offered to open the door. One soldier, about 170 cm tall, with a dark complexion and a beard, forbade him from entering his house. Another soldier, tall and with a light complexion, kicked the door open, breaking the lock in the process. Two soldiers entered the yard and threw a concussion grenade into the yard. Then the soldiers entered the house. They were inside for about half an hour. After they left, the family saw the damage that the soldiers had caused: the doors to two closets were broken; drawers in the dining room were broken; the contents of the closets were on the floor; kitchenware was damaged, as well as the bathroom. Ma'ali's wife understood from one of the soldiers that they were looking for their son, Abd Al-Fatah, a fugitive.

In the affidavit given by Ma'ali, he stated that soldiers had been to his home numerous times in the past, but without causing damage. Soldiers also came to his home after the complaint was filed, in a late night "visit."

#### **The testimonies**

During the search, Ma'ali was in the yard with his wife, daughter, and daughter-in-law. In an affidavit given at HaMoked, he described the incident and described two of the soldiers in detail.

#### **The Minister of Defense ordered the NCAG to investigate the plaintiff**

- On September 7, 1993 HaMoked attorney Badra Khouri sent the first complaint to CCAG Politis.
- On October 12, 1993 a reminder was sent to Politis.
- On October 18, 1993, Major Rachel Toren-Cohen wrote to HaMoked that the complaint would be investigated. On that day she ordered the MPI to open an investigation.
- Between October 28-30, 1993 a MPI investigator talked to Lt. Col. Doron Maynard, commander of Battalion 71. He verified that his soldiers broke into the Ma'ali house. He also said that entering the house was based on information that the fugitive, Ma'ali's son, was violent and always armed. He was credited with a number of murders and terrorist attacks, and was planning to murder soldiers at the representative office [of the Civil Administration] and Captain Mansour in particular, and that he was seen entering his father's home on occasion. Maynard checked with the Battalion officers, and they told him that the searches at

the house were thorough, but denied breaking the lock, throwing the concussion grenade, and the other damages described in the complaint.

- On November 1, 1993 Major Yigal Shteif, commander of the MPI base for Jerusalem, Judea and Samaria, informed the CCAG that “in light of the above, every search after the fugitive was carried out without taking risks, but in the investigation with the officers of the Battalion who participated in the search, they denied breaking the lock, throwing a concussion grenade, or damaging the house in the fashion described in the complaint. I therefore recommend not opening a MPI investigation in this matter.”
- On November 18, 1993, Toren-Cohen transferred the case to the NCAG, Lt. Col. Lenny Alford, since Battalion 71 lies within her jurisdiction.
- On February 13, 1994 Captain Erez Raban, MPI commander in the Golan Heights, informed the NCAG that Maynard reported that “he does not have the possibility to identify the soldiers of the unit that participated in the search.”
- On March 23, 1994 Alford replied to Raban that she had examined the investigation file, and was of the opinion that “there is no avoiding a lengthy investigation on the matter, since it appears to be a serious complaint.” Moreover: “The Battalion commander should be asked for help in locating the company that was engaged in operations at the time, and take the soldiers’ testimonies regarding the suspicions raised in the complaint.” She added that in the letter from Shteif (MPI Commander for Jerusalem, Judea and Samaria), it was clear that the officers involved in the searches, and who denied causing the damages detailed in the complaint, had been located. She instructed him to collect testimonies from them as well.
- On June 1, 1994 Alford informed HaMoked that “the soldiers who were questioned denied causing the damages to the plaintiff or that a concussion grenade was thrown... In spite of an in-depth investigation, we did not locate any soldiers who supposedly caused the alleged damages.” She therefore ordered the investigation to be closed.
- On June 26, 1994 HaMoked sent a letter to Alford, raising the question of why Ma’ali had not been summoned for questioning; how did she reach the conclusion that the suspects had not been located, given that there was no line-up for Ma’ali and his family to try and identify the soldiers.
- On August 28, 1994 Alford answered that Ma’ali had not been questioned by the MPI because they had his affidavit. She mentioned that MPI had checked with the officers of the unit, and they denied Ma’ali’s claims, and that “the soldiers that were questioned” denied causing property damage or throwing a concussion grenade.
- On September 13, 1994 HaMoked wrote to Alford, noting that the investigation was superficial and no more than a general inquiry. HaMoked attorney asked to copy the investigation file. Alford did not reply.
- On November 2, 1994 HaMoked sent Alford a reminder. No reply was received.
- On January 8, 1995 HaMoked sent another reminder to Alford.
- On March 27, 1995 Alford replied. Her letter was a summary of her previous correspondence.
- On April 17, 1995 HaMoked attorney wrote to Alford that the investigation was

superficial. She also wrote that this would be her last letter, since the soldiers could have been found.

- On May 17, 1995 Alford replied, and in her letter there was a different version than before: “Attempts were made to identify the soldiers operating in the place, but since there was no individual records of the soldiers, there was no possibility then, and certainly not today, to identify a particular soldier...” She mentioned that it was decided not to open a MPI investigation, and therefore there is no investigation file to be handed over.
- On May 31, 1995 HaMoked wrote to then Minister of Defense Yitzhak Rabin. In the letter HaMoked recounted the details of the incident and asked that he order an investigation.
- On July 10, 1995 Lt. Col. Dani Be’eri, the Chief Military Prosecutor, informed the NCAG that after examining HaMoked’s reservations, he is of the opinion that there is room to order the MPI to collect testimonies from the Ma’ali family.

### **The NCAG accepts MPI’s failure to follow its instructions**

In the letter quoted above, Alford wrote to Raban on March 23, 1994 and instructed him to ask for the help of the Battalion Commander in locating the company that was on active duty and collect testimonies from soldiers regarding the suspicions raised in the complaint, and to take testimonies from the officers who participated in the searches and denied the damages. It was clear to her that none of the soldiers involved was questioned properly.

Nonetheless, in a letter to HaMoked dated June 1, 1994, she wrote that “...a MPI investigation has been conducted” and that “the soldiers who were questioned denied causing property damage to the plaintiff or that a concussion grenade was thrown.” However, it was the officers who denied throwing the grenade, not the soldiers. Moreover, she argued that “In spite of an in-depth investigation, we did not locate any soldiers who supposedly caused the alleged damages.”

Two issues are raised: First, Alford’s own instructions to the MPI were not obeyed – the soldiers and officers of Battalion 71 were never questioned by a MPI investigator. As she admits, the soldiers were never even located. The investigation file transferred to HaMoked does not mention any attempts to locate the soldiers. Secondly, although her precise instructions on who should be questioned were not obeyed, Alford accepted the inquiry conducted by the commander of Battalion 71 with his officers, in order to justify her decision to close the file.

It seems that at a later stage Alford recognized that her letter of June 1, 1994 to HaMoked did not rest on sufficient facts, and she therefore changed her line of argument. In her letter of May 17, 1995 she writes that: “Attempts were made to identify the soldiers operating in the place, but since there was no individual records of the soldiers, there was no possibility then, and certainly not today, to identify a particular soldier...”

That letter also claimed that she has no investigation material, since there was no MPI investigation. This is not accurate. While a formal MPI investigation may not have taken place, she did have the information collected from conversations with the Battalion commander and his officers, and a summary of the conversation he had with a MPI

investigator. She should have forwarded this material to HaMoked at an early stage, which might have facilitated investigating the incident and identifying the guilty soldiers.

### **The delays achieve their purpose**

On August 23, 1995, following the intervention of the Minister of Defense and the Chief Military Prosecutor, Ma'ali was finally questioned by the MPI. This occurred precisely two years after his house was broken into, on August 20, 1993.

During the break-in, Ma'ali was 69 years old (born in 1924). When he was questioned, he was 71 years old. It is no wonder then that given the two year waiting period and his advanced age, contradictions existed between the affidavit given immediately after the incident and the testimony collected two years later. It is also no surprise that details of the incident became mixed up with the other 'visits' conducted in his home, which HaMoked made known.

Alford based her response on the contradictions: "The plaintiff's testimony changed and was full of contradictions compared to his original version, given in the affidavit." she wrote on January 30, 1996. "There was no possibility for the plaintiff to give identifying details that would have allowed the soldiers to be located. Therefore, it was decided to end the investigation without taking any legal action."

The delays then served their purpose: two and a half years after the incident, the contradictions stymied even the possibility of demanding compensation from the SOC to at least receive money for the damages caused to the Ma'ali family house and property by the soldiers.

## F. Theft

### When the IDF Wants, the Investigation is Quick and Professional The Theft of Jewelry and Gold Coins from Suad Issa

#### **Summary**

On August 11, 1991, around 21:00, soldiers entered Suad Issa's house in Al-Khader village, in Bethlehem District. They came to arrest her son, Khaled, and conducted a thorough search of the premises. After they left, Issa discovered that the blue plastic box containing her jewelry and gold coins, normally in the verandah, was on the floor – empty. The jewelry was gone.

#### **From complaint to investigation**

- The next day, on August 12, 1991, Issa filed a complaint with the police.
- On August 14, 1991, Issa complained to HaMoked. That day HaMoked attorney Rosenthal asked CCAG Politis to investigate.
- On September 11, 1991 Politis transferred the complaint to the MPI.
- On October 7, 1991 three soldiers from the unit that conducted the search were questioned: 2nd Lt. Hannan Azoulay, Staff Sergeant Ariel Asbag and Staff Sergeant Meidad Vaknin. From their testimonies it was clear that Vaknin conducted the search in the verandah. When Vaknin was asked by the IMP investigator about a blue jewelry box, he denied seeing it during the search. At this point he was being questioned as a witness and not as a suspect.
- On October 8, 1991 a MPI investigator asked HaMoked to find out if Issa would be willing to be questioned with a polygraph. She agreed.
- On November 24, 1991 Issa arrived for a polygraph test, but since she had open heart surgery in the past, the test was canceled.
- As a result of comparing testimonies – that of Issa, who said that her jewelry box was in the verandah, and those of the soldiers that it was Vaknin who conducted the search there – the MPI investigators reached the conclusion that the main suspect in the theft was Vaknin. On December 2, 1991 Vaknin was questioned again, this time as a suspect, under warning. He again denied stealing the jewelry.
- Issa was questioned again on the same day, and she repeated her version.
- At some point (date unknown), Vaknin was questioned with a polygraph machine, and the results showed that he was lying.
- As a result he was questioned again – under warning – on December 4, 1991. This time he confessed to the theft. Afterwards the hiding place of the jewels was discovered, and the jewelry was recovered.



The investigation was successful, three and a half months after the initial complaint was filed. This is a very short time compared to other cases.

### **The charge sheet and conviction**

- On December 23, 1991 CCAG Politis informed HaMoked that he ordered the Chief Military Prosecutor to submit a charge sheet against the soldier.
- On January 22, 1992 the Central District Military Court convicted Vaknin of theft and inappropriate behavior. He was sentenced to six months in prison; two and half to be served, and the remainder suspended for two years. He was also demoted in rank from Staff Sergeant to Private.

From the end of the investigation through Vaknin's conviction, only six weeks passed – also a very short time.

### **Conclusion: The MPI knows how to investigate professionally when it wants to**

The description above of the investigation procedures, filing of charges, trial and conviction reveal a correct, rational, and goal-oriented process. In other words, the case was dealt with professionally. When an investigation is handled this way, rather than out of a desire to cover up someone's criminal acts, then the process is rapid and efficient. It only took five months from complaint to sentencing.

The conclusion is that when the MPI is motivated to investigate, it can locate the unit whose soldiers were involved in an incident that was the subject of a complaint. Afterwards, once the investigation is done properly, there is no particular difficulty locating the suspect(s).

Comparing the treatment of this case with others, some of which are mentioned in this report, is not encouraging. The contrast sheds light on the true role played by the MPI in other investigations. The treatment of this complaint of the theft of Issa's jewelry in particular, strengthens the suspicion that in the other investigations – related to killing, wounding, and abusing civilians – the role of the MPI was to prevent the truth from being revealed. The MPI in those cases delayed, and covered up, and investigators did not bother to address the conclusions or contradictions from within the testimonies of witnesses or suspects in order to reach the truth. This case proves that the MPI does not lack professionalism, but rather the motivation to carry out proper investigations.

## Conclusions

In this report HaMoked has attempted to examine the way the military system deals with complaints by Palestinian residents of the Occupied Territories against IDF soldiers. The complaints in the report are representative of those received by HaMoked regarding bodily harm and property complaints during the period 1989 – 1994.

We attempted to ascertain whether the military justice system makes every effort to reach the truth as a result of a thorough and trustworthy investigation. Did it submit charge sheets that express the crime alleged to have occurred in a meaningful and accurate way? Were the punishments in keeping with the gravity of the crime?

Our conclusions are discouraging. They point to a policy of the military system to turn a blind eye to serious crimes committed by its soldiers, and in this way allow others to commit similar crimes in the future.

Three factors make these findings particularly alarming. Firstly, most of the complaints in this report were filed during the Intifada when the level of human rights violations in the Occupied Territories was at its peak, and the system should have been sending a message of restraint in the use of force. Secondly, almost all the plaintiffs approached HaMoked regarding complaints of soldiers' behavior unconnected to their (the plaintiffs) participation in rioting or disturbances. Third, the complaints that HaMoked forwarded were in most cases based on medical and other documents related to the complaint, and backed up by affidavits from the plaintiffs.

Similar findings can be found in the 43rd report of the State Comptroller, who examined the work of the CCAG during two periods: October-December 1991, and May-September 1992.<sup>1</sup> The report is particularly critical of the investigation of complaints against soldiers by investigating officers. According to the Comptroller, "the investigating officers, who usually have no legal training or expertise in investigating, often work in a superficial manner. Only rarely is the CCAG presented with a proper investigation file. This phenomenon exists despite clear and precise regulations on the back of the form appointing investigating officers, and despite special instructions from the CCAG that few of the investigating officers bother to comply with... it is also apparent from the documentation that in many cases the investigating officer confines himself to photocopying the operations diary and placing it in the file. He does not collect testimony, not even from the plaintiffs; in many cases the summary of the investigation does not match the contents of the investigation file."<sup>2</sup>

<sup>1</sup> State Comptroller – Annual Report #43, 1993, GPO, Jerusalem.

<sup>2</sup> Ibid., p. 879.

The Comptroller also pointed out defects in the operation of the CCAG, clearly expressed in the cases included in this report and elsewhere. These defects hampered the investigations and the possibility to place someone on trial: “The investigation was not carried out soon after the incident, and the time that passed made the investigation and identification of the soldiers involved more difficult. Many investigation files prepared by investigating officers were returned by the CCAG for completion, and they were sometimes not finished for years, or never returned at all. Delays occurred in checking essential details, preventing the possibility of verifying the facts of the incident. The records kept by military units in the region do not allow for the identification of specific soldiers in many cases. In many cases there is a lack of cooperation and evasion of witnesses, including IDF soldiers.”<sup>3</sup>

The comments in the report directed at the investigating officers are also true for investigations carried out by the MPI. Despite these severe criticisms in the Comptroller’s report, the military system did nothing to try to improve the investigations of complaints filed by Palestinians against soldiers who hurt them.

In the past, even if the soldiers did not have to face the full extent of the law, at least some of the victims could receive compensation from the State for damages, pain and suffering. Today the government is trying to block that opportunity through legislation intended to deny compensation to Palestinians hurt by the security forces in the Occupied Territories. The cases in this report relate to innocent people, including minors, victimized by soldiers. According to the proposed law, they will remain without any answer to their suffering.

The proposed law represents a direct continuation of the treatment of the IDF of violations of law committed by the security forces during their activity in the territories. This report clearly shows that the military was never involved in a sincere effort to root out the lawlessness of its members when directed against Palestinian victims. Today the State is trying to give this status quo a legal cover, and to free the State of any responsibility for those violations.

<sup>3</sup> Ibid., p. 880.

## Appendix A: Statistics

### Palestinian Complaints Against IDF Soldiers Submitted to HaMoked 1988-1997

#### **Trials:**

HaMoked received 441 complaints of IDF violence against Palestinians during 1988-1997. These include:

- |  |                               |
|--|-------------------------------|
| 22 – Death                               | 102 – Destruction of property |
| 60 – Wounding                            | 54 – Confiscation of property |
| 51 – Beating without intention to arrest | 28 – Theft during searches    |
| 32 – Beating while under arrest          | 59 – Other                    |
| 33 – Threats and harassment              |                               |

Out of 441 complaints, suspects were brought to trial in only 22 incidents.

In seven cases nine soldiers were brought to trial in military court:

Offense/ # of cases	# soldiers brought to trial	Sentence
Death / 2	2	Both acquitted, one after an appeal.
Beating and abuse / 2	3	One sentenced to five months suspended; One sentenced to two months suspended; One sentenced to four months (one suspended). All three demoted.
Theft / 3	4	Two sentenced to six months (2.5 in practice), and demotion; One sentenced to five months (45 days in practice); One sentenced to five months (25 days in practice).

In sixteen cases 25 soldiers were brought to disciplinary proceedings:

Offense/ # of cases	# soldiers brought to trial	Decision
Death / 3	4	Unknown*
Beating and abuse / 11	18	Unknown*
Other / 2	3	Unknown*

\* Decisions in disciplinary proceedings are not generally made public.

(In one case, some soldiers were brought before a military court, and others were subjected to disciplinary proceedings.)

**Compensation:**

Out of 102 cases that involved the use of violence against Palestinians, HaMoked sued for compensation according to the following breakdown:

7 – Death	31 – Destruction of property
21– Wounding	9 – Confiscation of property
7 – Beating without intention to arrest	7 – Theft during searches
2 – Beating while under arrest	12 – Other
6 – Threats and harassment	

In 67 cases the plaintiffs received compensation: 11 in court, 50 from the Staff Officer for Compensation, and 6 cases from appeals committees.

The compensation in every case was the result of a compromise settlement, with the Judge-Advocate’s office or the Staff Officer for Compensation.

29 cases are pending: 23 in court and 6 with the Staff Officer for Compensation.

In 60 cases HaMoked approached the Staff Officer for Compensation. Nine of those were rejected. In six of those cases HaMoked appealed the SOC’s rejection. The appeal was accepted in each of those cases.

Three cases were dropped at the request of the plaintiff.

# Appendix B: Proposed Law for the Handling of Claims

## RESHUMOTH PROPOSED LAWS

July 1997

2645 23

### **Proposed Law for the Handling of Claims arising from Activities of Security Forces in Judea and Samaria and the Gaza Strip, 5757-1997**

A proposed law is hereby published on behalf of the Government:

#### **Introduction**

The need for the Handling of Claims arising from Activities of the Security Forces in Judea and Samaria and the Gaza Strip Law, 5757-1997, hereby proposed, results from the uniqueness of the tort claims filed against the State in recent years. These claims resulted from events that occurred during the "intifada" in Judea and Samaria and the Gaza Strip (hereafter - the areas), and contend that the Israel Defense Force and other security forces caused bodily and property damage to the claimants, residents of the areas.

Since the Six-Day War, Israel has administered the areas by means of "belligerent occupation." It established a Civil Administration, headed by a military commander, in each area. The military commander's authority derived from the rules of public international law dealing with belligerent occupation. Under international law, the military commander has the task of maintaining security and order in the area, and of protecting the well-being and security of the IDF forces and civilians there.

In December 1987, widescale riots and disturbances, which were termed "the intifada," began. They were organized in various frameworks by commands located within and outside the areas, which coordinated and directed the activities in the field. The intifada was characterized by mass demonstrations, which included burning of tires at road intersections and along thoroughfares in order to prevent access to towns and villages, strikes, throwing of stones and Molotov cocktails at IDF forces and Israeli civilians, stabbings and use of other non-firearm weapons, and use of firearms.

The intifada had a dual nature: violent attacks on Israeli civilians, soldiers, and other security

\* Translated by B'Tselem

personnel, and as propagandist activity, such as dissemination of circulars, hanging of flags, slogan-writing, and the like. The common denominator uniting the intifada's various manifestations is the denial of the legitimacy of Israel's, and its security forces', control in the areas. The intifada was, therefore, a violent expression of a collective struggle with political ends, whose purpose was to hinder Israel's control in the areas, in order to cause it to withdraw from them.

The aforementioned reality with which the security forces were confronted was complex: the activity of the residents was not paramount to an organized army, but it was organized. Sometimes the activity involved large numbers of persons, and sometimes it was conducted in small groups; sometimes it bore a demonstration-like character, and sometimes it had the character of a pinpointed, violent, and designated action, such as firing at soldiers or their vehicles, throwing Molotov cocktails where soldiers were concentrated, throwing concrete blocks from roofs in order to seriously injure particular soldiers. Sometimes, these kinds of actions were combined with one another, and were difficult to identify as an action of a certain type, some of the civilians taking part in the violent acts and some not, and there was never a guarantee that an event that began as a demonstration might not end in a violent activity. This situation created special hardships and risks for the soldiers.

Already at the beginning of the intifada, residents of the areas began to submit tort claims against the State for compensation for bodily and property damage caused by the security forces. At first, claims were submitted infrequently, and then, as the years passed, at an increasing pace. In addition to the claims filed with the courts, many compensation claims are pending before the Defense Ministry, in preparation for the filing of suit.

To date, more than 4,000 tort claims have been filed against the State, of which more than 700 are currently being heard in courts throughout the country. In the past year alone, more than 600 suits have been filed. Other claims are in the initial stage of review at the Defense Ministry, and others have been settled or a court judgment given. According to IDF records, during the intifada, some 1,000 Palestinians were killed and some 18,000 wounded.

Under section 5 of the Torts (State Liability) Law, 5712-1952, the State is exempt from liability for damages resulting from "combatant activity of the Israel Defense Forces."

The Supreme Court interprets the "combatant activity" exemption narrowly, covering only activity where war is clearly involved (see, e.g., Civ. App. 623/83 Asher Levy v. State of Israel, Piskei Din 40(1) 477).

The Supreme Court has not yet ruled on whether section 5 of the law applies to activity of security forces during the intifada. A number of appeals on this question and related matters are currently pending before the Supreme Court. The President of the Supreme Court consolidated the various cases, and ordered that the hearing take place before a nine-judge

panel. In a preliminary hearing held several months ago, the court expressed its opinion that it is preferable that the legislature resolve the question of compensation of residents of the areas for injuries caused by the security forces during the intifada.

The intifada was, as previously stated, a violent, planned, and organized struggle, at least in part, in the context of a conflict between nations. This conflict included intentional injury to soldiers and civilians. The security forces, called upon to impose order and to protect the security of the areas, operated under difficult conditions and faced actual risk of death and bodily injury to an extent justifying those activities to be included within "combatant activity."

The State is not liable for damages resulting from such activity. War is a violent struggle between nations, conducted in numerous and varied ways. War wears many faces. Sometimes it is full-blown, and sometimes it is conducted in a different manner of violent activity. The proposed law is intended to clarify and stipulate that the exemption for "combatant activity" also applies to activities of security forces in the areas, where the activities were conducted in the context of the struggle against terrorism and to prevent insurrection and hostile acts against security forces and civilians.

The claims described above create numerous procedural and evidentiary problems for the State, with which it frequently is unable to cope using existing legal tools. In some of the cases, the State lacks even the smallest lead to check the claims regarding the involvement of security forces in the relevant incident, both as regards responsibility for the event and as to the extent of the damages. During the intifada, the State had difficulty reaching the area in which the claimant, a resident of the Territories, lived, in order to investigate the circumstances in which the injury occurred and the extent of the damages. The investigation itself involved danger to life, and often could not be conducted for this reason. Upon IDF redeployment in the areas where the Palestinian Authority has established control, the State, in practice, has no access to the area where the alleged injuries occurred.

An additional difficulty in the same context is that injured parties were treated in medical facilities outside of Israel, to which the government also has no access, making it difficult to investigate the reliability of the injured party's medical reports. The body-snatching, from hospitals, of Palestinians killed precluded clarification of whether they had been injured by IDF soldiers; the soldiers were unaware of some of the injuries, and such cases were not, therefore, investigated. Local hospitals have only partial records, and even these records do not necessarily help in identifying who caused the injury. Even if the IDF possesses relevant records, in most cases the records are not sufficiently clear to conclusively describe the nature of the incident or its consequences.

There is also a difficulty in locating, and bringing to court, witnesses on behalf of the State. Locating witnesses is difficult because there was a very high turnover of forces in the field,



and it is extremely difficult to locate, sometimes many years after the event, the soldiers who participated in a specific activity. Even if the soldiers are located, when their testimony is requested, they usually are no longer soldiers, some of them are abroad, and it is difficult to bring them to court to give testimony. Even if they are located, and even if they appear to give testimony, because they participated in many similar events within a short period of time, they often are unable to remember properly a given event. Because a large segment of the suits were filed long after they occurred, the difficulty of remembering the incident is even more problematic.

Under this state of affairs, the State is unable to defend against these claims. Furthermore, the current situation encourages fictitious and fraudulent claims against which the State lacks the tools to distinguish between such claims and legitimate claims.

In addition to the aforementioned considerations, the agreements with the PLO, which provide for mutual recognition and the obligation to stop violent acts between the parties, are also relevant. In the framework of the agreements, the IDF forces withdrew from the Palestinian town and population centers, and Israel transferred to the Palestinian Authority all the powers concerning the Palestinian population.

During a period of armed struggle between nations, every side must bear its damages and care for its injured. Israelis injured during the intifada clearly have no practical possibility of claiming compensation for damages from those responsible, and the State compensates them insofar as they are victims of terrorist acts. When the agreements with the Palestinians were signed, an entirely new and different political climate was created between the State of Israel and the Palestinians in the areas, which climate also justifies turning over a new leaf in the matter under discussion.

# Justice Ministry's Statement of Background and Explanation of Proposed Law for the Handling of Claims arising from Activities of Security Forces in Judea and Samaria and the Gaza Strip, 5757-1997

## *Definitions*

1. In this law –

"region" – each of the following: Judea, Samaria, and the Gaza Strip;

"court" – a court hearing a claim pursuant to section 2;

"the Council," "the Agreement" – as defined in the Law Extending the Validity of the Emergency Regulations (Judea and Samaria and the Gaza Strip – Adjudication of Crimes and Legal Assistance), 5728-1967;

"the State" – the State of Israel, including the Israel Defense Forces;

"act" – includes omission;

"injured person" – a person who suffered damage as a result of an act committed in the region by the Israel Defense Forces;

"Israel Defense Forces" – including other security forces of the State that acted or act in the region including all those who act on their behalf;

"minor" – a person under eighteen years old.

## *Claim against the State*

2. (a) A claim for damages against the State for damages suffered as a result of an act performed in the region by the Israel Defense Forces (hereafter – "claim") will be heard in accordance with the provisions of this law.

(b) The provisions of this law shall not apply to a claim to which Chapter 4 of the Law Implementing the Agreement concerning the West Bank and Gaza Strip (Judicial Powers and other Provisions) (Legislative Amendments), 5756-1996, applies, or to a claim for a road accident within the meaning of the Compensation of Persons Injured in Road Accidents Law, 5735-1975, in which a motor vehicle of the Israel Defense Forces,

## **Explanatory Comments**

**Section 1:** The definitions section. The term "Israel Defense Forces" includes all of Israel's security forces who operated or operate in the areas, including the Israel Police Force and the General Security Service, and those who operate on their behalf, i.e., also security forces personnel, insofar as they are sued individually.

**Section 2:** The proposed law stipulates that tort claims against the State resulting from activity of security forces in Judea and Samaria and the Gaza Strip shall be heard in accordance with the special provisions of this law concerning such claims.

The law does not apply to claims to which chapter 4 of the Implementing the Agreement concerning the West Bank and Gaza Strip (Judicial Powers and other Provisions) (Legislative Amendments) Law, 5756-1996, applies, i.e., claims resulting from activity of the civil administration in the areas within the domains of responsibility transferred to the Palestinian Authority in accordance with the Interim Agreement, such as claims for medical malpractice, as regards which the aforementioned law stipulates that courts shall not hear.

whose registration number or identity of its driver at the time of the accident is known, unless the accident occurred incidental to hostile activity of the injured person against the Israel Defense Forces or civilians.

*Combatant activity*

3. As regards the applicability of section 5 of the Torts (State Liability) Law, 5712-1952, in claims under this law, any operational activity performed by the Israel Defense Forces intended to combat or prevent terrorism, and any other activity by the Israel Defense Forces to safeguard security and prevent hostile acts and insurrection, in circumstances entailing risk of death or personal injury, shall be considered "combatant activity," unless a person was convicted for malicious infliction of the injury that is the subject of the claim.

*Denial of claim* 4. The court may, for reasons it shall record, deny a claim, wholly or in part, if it is proven that –

**Explanatory Comments**

The law also does not apply to a claim resulting from a road accident in which a motor vehicle of the security forces whose registration number or identity of its driver is known, unless the accident occurred incidental to hostile activity of the injured person against the Israel Defense Forces or civilians.

**Section 3:** The Intifada was, as previously stated, a violent, planned, and organized struggle, at least in part, in the context of a conflict between nations. This conflict included intentional injury to soldiers and civilians. The security forces, called upon to impose order and to protect the security of the areas, operated under difficult conditions and faced actual risk of death and bodily injury, to an extent justifying those activities to be included within "combatant activity." The State is not liable for damages resulting from such activity. War is a violent struggle between nations, conducted in numerous and varied ways. War wears many faces. Sometimes it is full-blown, and sometimes it is conducted in a different manner of violent activity.

The proposed law is intended to clarify and stipulate that, as regards claims under this law, the exemption for "combatant activity," mentioned in section 5 of the Torts (State Liability) Law, 5712-1952, applies to activities of security forces in the areas, where the activities were conducted at the risk to life or bodily injury in the context of the struggle against terrorism and to prevent insurrection and hostile acts against security forces and civilians. This definition includes, inter alia, the activity of security forces to quell riots and disturbances and to disperse demonstrations that entailed stone-throwing, throwing of Molotov cocktails, and also occasional gunfire, where the security forces risked death or bodily injury. The defense granted by this section does not apply to a member of the security forces who has been convicted of maliciously causing the injury that is the subject of the claim.

As the Jerusalem District Court recently held in a tort action of the type being discussed, which was brought by a resident of the areas who had been injured by security forces: "One of the objectives lying at the foundation of the defense for combatant activity is to prevent restricting the discretion of the decision-maker in the field... These decisions must be made under circumstances of extreme pressure, characteristic of war. In such circumstances, the legislature prefers releasing the decision-maker from the regular rules of tort liability in order to enable attainment of the objectives of military activity." (Civ. Compl. 0209/93, Matar Mahmud Shaban v. State of Israel (judgment dated 1 July 1997, not yet published).

**Section 4:** The court may, for reasons it shall record, deny a claim, wholly or in part, if the injury

(a) The injury occurred incidental to serious hostile activity committed by the injured person against the Israel Defense Forces or civilians.

(b) The injured person was convicted of committing a serious terrorist act against the Israel Defense Forces or civilians.

*Payment for humanitarian reasons*

5. The court may, for reasons it shall record, order payment of compensation to the injured person in an amount that shall not exceed the amount set in section 10, even where the exemption under section 3 applies, if it is proven that, under the circumstances of the incident, humanitarian reasons justify such compensation.

*Requirement of notice*

6. (a) A court shall not hear a claim unless the injured person or his or her guardian or another person on his or her behalf gave written notice, in a manner that shall be set forth in regulations, of the act that is the subject of the claim.

(b) The notice shall be provided within sixty days from the date the act occurred; however, where, because of the health of the injured person or his or her guardian, or other justifiable circumstances, the injured person was unable to provide the notice within the time mentioned above, the notice shall be given within thirty days from the date in which the preventive cause was removed.

**Explanatory Comments**

occurred incidental to serious hostile activity committed by the injured person against the security forces or civilians, or if the injured person was convicted of committing a serious terrorist act against the security forces or civilians. The reason for such denial is that the State does not consider itself liable for injuries suffered by a person who perpetrated a severe hostile or terrorist act against security forces or civilians.

**Section 5:** The court is granted discretionary power to order compensation of injured persons even in cases where the "combatant activity" exemption under section 3 applies. The compensation is to be granted where the court is convinced that special humanitarian reasons justify the payment of compensation. The exemption under section 3, as a general norm, is liable to apply also in cases where the denial of compensation is found to be unjust. The purpose of granting this power to the court is to prevent injustice in those instances where the court is of the opinion, for reasons it shall record, that special humanitarian circumstances exist. The amount of compensation the court is empowered to grant may not exceed, in any case, the compensation amount mentioned in section 10.

**Section 6:** The law requires that the injured person, or a person on his or her behalf, forward written notice, in a manner and at the times mentioned in the law, concerning the act that is the subject of the claim. The purpose of this requirement is to enable the security forces to investigate, at a time close to the events, the circumstances in which the incident and the alleged injuries occurred, and to prevent allegations of injuries caused by security forces being raised long after the alleged event occurred. This provision does not apply, for obvious reasons, to a claim whose cause of action is an act that occurred prior to the date of commencement of the law, as set forth in section 12(b) of the law.

(c) Where the injured person dies and notice had not been given during the deceased's lifetime, and the time for providing the notice under sub-section (b) has not yet passed, the notice shall be provided by the deceased's dependants or his or her estate or by another on his or her behalf within sixty days of the deceased's death.

(d) Notwithstanding the provisions of this section, the court may, for special reasons that it shall state, hear a claim concerning an act notice of which was not timely provided.

*Limitation  
of actions*

7. The court shall not hear a claim filed more than a year after the date upon which the cause of action of the claim arose; however, the court may extend this period for an additional period that shall not exceed one year if it is convinced that the plaintiff did not have a reasonable opportunity to file the claim earlier.

*Lack of possibility  
to defend*

8. If it is proven to the court that the State has been denied a fair opportunity to defend the claim because the Palestinian Council does not comply with the provisions concerning legal assistance as set forth in Article IV of Annex IV of the Agreement, the court may deny the claim.

*Rules  
of evidence*

9. (a) The provisions of sections 38 and 41 of the Torts Ordinance shall not apply in the hearing of a claim under this law.

(b) In reaching a decision on a claim, the court shall consider, inter alia, the support or lack of support for the injured person's version of the

**Explanatory Comments**

**Section 7:** The proposed law stipulates a one-year statute of limitations, the court being empowered to extend this period for an additional year where it is convinced that the plaintiff did not have a reasonable opportunity to file the claim on time. The purpose of this provision is to collect and complete handling of these claims as soon as possible, and to enable the relevant State authorities to prepare for investigating the contentions set forth in the claims within the shortest possible time. The requirement of providing notice under section 6 of the law does not apply, as previously mentioned, to a claim whose cause of action is an act that occurred prior to the date of commencement of the law.

**Section 8:** In accordance with Article IV of Annex IV of the Interim Agreement, entitled "Legal Assistance in Civil Matters," the two parties to the agreement agreed to assist the other in matters related to legal assistance, such as issuing court documents, including orders to appear and give testimony. Legal assistance arrangements are often necessary to enable the State to defend claims of the kind under discussion. It is proposed, therefore, to empower the court to deny a claim where it is convinced that the State has been denied a fair opportunity to defend the claim because the Palestinian Authority does not comply with the agreement's provisions concerning legal assistance.

**Section 9:** Subsection (a) – in claims of the kind under discussion, courts often switch the burden of proof by applying section 41 of the Torts Ordinance ("res ipsa loquitur"), and at times pursuant to section 38 of the Ordinance ("dangerous implement"). Transferring the burden of proof under the aforementioned section 41 is intended to facilitate the plaintiff's proof of his or her case in circumstances where the plaintiff

circumstances of the incident by one or more of the following:

- (1) Inclusion of the injured person in the lists of injured persons prepared, at the time of the incident, by the security forces or the Civil Administration in the region;
- (2) Record of a complaint filed with the security forces or the Civil Administration;
- (3) Decision given in a judicial or disciplinary proceeding relating to the same incident;
- (4) Any testimony or other official document of the security forces.

*Compensation  
for personal  
injuries*

10. (a) Compensation for personal injuries in a claim under this law shall be awarded in a judgment ordering a one-time payment.

(b) The judgment for compensation shall be made in accordance with the degree of permanent functional disability of the injured person following the injury suffered at the rate of one percent of the average salary for each percent of the aforementioned degree of disability, multiplied by the number of months the injured person would have earned an income from the time of the incident until he or she reaches the age of sixty-five; where the injured person is a minor – from the age of eighteen until he or she reaches the age of sixty-five.

**Explanatory Comments**

does not know, and is incapable of knowing, the circumstances causing the injury. In such a case, if the burden of proof is not switched, the plaintiff is liable to be unable to provide sufficient evidence, even though the complaint may be totally justified. The situation in the cases under discussion is different. It is inappropriate to assume that the State routinely has information concerning the circumstances in which the injury occurred; the opposite is true, since the State generally has inferior evidence, and the plaintiff most often knows the circumstances of the events. Switching the burden of proof in such cases is dispositive in many instances, resulting in the State's being found liable.

Application of section 38 to claims of the kind under discussion is unjustified, since it is applicable where the "dangerous implement" (weapon) caused the injury where it was held by another or has been abandoned, and not where it was held by the person who had been given control of it (Civ. App. 751/68, Ra'ad v. State of Israel, Piskei Din 25(1) 197, 208). These are not the circumstances of the events involved in the complaints under discussion.

As regards subsection (b) – the proposed law instructs the court that, in determining the relevant facts of the case being heard, it must consider, inter alia, the support or lack of support for the injured person's version of the circumstances of the incident in the following: inclusion of the injured person in the lists of injured persons prepared, at the time of the incident, by the security forces or the civil administration in the areas; a record of a complaint was filed with the security forces or the civil administration; a decision had been given in a judicial or disciplinary proceeding relating to the incident; and any testimony or other document of the security forces or the civil administration.

**Section 10:** The proposed law stipulates that the payment to entitled injured persons or dependents is to be made by a one-time, capitalized payment in accordance with the calculation set forth in the section. The amount of compensation will mainly be determined in accordance with the regular rules of personal-injury

In this section, "the average salary" means the average salary in the area in which the injured person lived at the time of the commencement of this law, as the Finance Minister shall determine by order. The amounts in the order shall be revised on the first of January and the first of July of each year, according to the increase in the consumer price index.

(c) In addition to the compensation under sub-section (b), the court may order a one-time payment in favor of the injured person for pain and suffering and for medical and rehabilitation expenses, taking into consideration the customary medical and rehabilitation services in the region and their cost.

(d) Where the injured person died, the compensation paid to the dependants shall be calculated according to the provisions of this section, with the necessary changes.

(e) Where the injured person died and did not leave dependants, his or her estate shall be entitled to compensation in an amount that shall not exceed the amount determined by the Finance Minister and the Defense Minister, upon consultation with the Justice Minister and approval of the Constitution, Law, and Justice Committee of the Knesset.

(f) Compensation will not be ordered under this section if the degree of permanent medical disability does not exceed ten percent, unless the court finds a special reason to justify compensation.

*Preservation  
of provisions*

11. (a) The provisions of this law shall not detract from any defense or exemption relating to liability of the State or any of its agencies or any person who acted pursuant to law.

(b) The provisions of this law shall not detract from the provisions of law and defense enactments in the region concerning claims for damages suffered as a result of an act of the Israel Defense Forces in the region.

**Explanatory Comments**

tort claims, with the necessary changes resulting from the uniqueness of the kind of claims under discussion, such as the practical inability to investigate and set the actual loss of income of the specific plaintiff, and in a manner intended to establish a simpler and more efficient mechanism for awarding compensation.

The proposed law emphasizes that the compensation will be set according to the average wages in the area in which the injured person lived and in accordance with the medical and rehabilitation services in the areas, and their cost there.

**Section 11:** The proposed law does not detract from any defense or exemption relating to liability of the State pursuant to any other law, and is not intended to detract from the provisions of law and defense enactments in the areas concerning the handling of claims of the kind under discussion.

*Applicability  
and transitional  
provisions*

12. (a) This law shall also apply to claims whose cause of action is an act that occurred prior to the date of commencement of this law, whether suit was initiated prior or subsequent to its commencement, except as regards claims for which judgment was given prior to commencement of the law.

(b) The provisions of section 6 shall not apply to a claim whose cause of action is an act that occurred prior to the commencement of this law.

(c) As regards section 7, a claim whose cause of action is an act that occurred prior to the commencement of this law and the period for the filing of suit has not yet expired, the times set forth in the aforementioned section shall be counted from the date of the commencement of this law, provided that the period in which the suit must be filed would not be extended were it not for the provisions of the aforementioned section.

*Implementation  
and regulations*

13. The Defense Minister is responsible for implementation of this law, and may, upon consultation with the Justice Minister, enact regulations relating to its implementation.

**Explanatory Comments**

**Section 12:** As regards subsection (a) – Since the objective of the law is to arrange the handling of claims arising from events most of which occurred during the "intifada," the proposed law also applies to claims whose cause of action relate to incidents that occurred prior to the commencement of the law, regardless of whether a claim has been filed with the court prior to commencement of the law, except for a claim where judgment has been given prior to commencement of the law, even if the judgement is under appeal.

As regards subsection (b) – The provisions of section 6, which concern the duty to provide notice, shall not apply, for understandable reasons, to a claim whose cause of action occurred prior to the commencement of the law.

As regards subsection (c) – A claim whose cause of action is an act that occurred prior to the commencement of this law and the period for the filing of suit has not yet expired, the new statute of limitation periods of section 7 will be counted from the date of the commencement of this law. However, the law does extend the normal period within which the suit must be filed, such as where less than one year remains until the end of the period within which suit must be filed were it not for the provisions of the aforementioned section.

**Section 13:** The Defense Minister, being in charge of the security forces in the areas, is responsible for implementation of the proposed law, and may, upon consultation with the Justice Minister, enact regulations relating to its implementation.



## **Appendix C: Response of Human Rights Organizations to the Draft Law**

### **Response of Human Rights Organizations to the Draft Law Denying Residents of the Occupied Territories the Right to Claim Compensation**

On 20 July 1997, the Israeli government endorsed the draft law entitled Handling Claims arising from Activities of the Security Forces in Judea and Samaria and the Gaza Strip, 5757-1997.

We, The Association for Civil Rights in Israel, B'Tselem: the Israeli Information Center for Human Rights in the Occupied Territories, DCI – Defence for Children International, HaMoked: Center for the Defence of the Individual, Physicians for Human Rights, Rabbis for Human Rights, and the Public Committee against Torture in Israel, object to the proposed legislation because it seriously violates human rights and the basic values of the State of Israel. The draft law grants the IDF and other security forces complete exemption from liability for unlawfully caused injuries and damages.

1. The draft law artificially expands the definition of "combatant activity", and exempts the state from tort liability for the vast majority of the activities of the security forces in the Occupied Territories. This exemption contradicts prior rulings of Israeli courts.
2. The draft law's only exception to this exemption for "combatant activity" is when a member of the security forces was convicted "for malicious infliction of the injury that is the subject of the claim". The failure to indict, in the past and in the future, members of the security forces will, therefore, exempt the state from paying compensation.
3. The draft law enables the court to deny an injured party convicted in the past of "committing a serious terrorist act," the right to compensation, even if there is no connection between the conviction and the injury that is the basis of the claim. This contradicts basic principles of penal law which state that a person may not be punished more than once for the same act.
4. The draft law limits the period of time in which a suit for damages may be filed to one year, instead of the seven years under existing law. Because of the extensive duration of investigations by the investigations unit of the military police, and the delay in submitting their conclusions to the attorneys of the injured parties, this article will, in many cases, prevent the filing of claims. In addition, this article nullifies the exception to the draft law's exemption from liability, as legal proceedings against the relevant soldier are almost never concluded within a year. The result is intolerable: a long delay in the investigation or prosecution, both within the control of the state, exempts the state from liability.

5. In proposing the draft law, the government seeks to place the burden of proof always on the plaintiff, even where the facts are not at his disposal, such as the type of weapons fired, or the directives given to the soldier that fired. This article creates a negative incentive for the security forces, and will make negligent investigations expedient, for without the detailed findings of an investigation, the facts will not be available to the plaintiff.

6. The draft law stipulates that a person whose degree of permanent medical disability does not exceed ten percent is not entitled to compensation. The compensation available to a person whose degree of permanent medical disability exceeds ten percent shall be based on the average salary in the area of residence of the injured person, and thus will be significantly lower than that available today, when compensation is based on actual figures.

Granting the state a sweeping exemption, by excessively expanding the term "combatant activity," effectively nullifies the security forces' duty of caution vis-a-vis the civilian population in the Occupation Territories. The state thus seeks to relieve itself of one of the principal duties that the legislature imposed on the security forces, which was intended to protect a person's basic human rights to bodily integrity and to protection of his or her life and property.

## Appendix D: Response of the IDF Spokesperson

צבא הגנה לישראל  
יחידת דובר צה"ל  
ענף קשרי ציבור  
רח' איתמר בן אבי"י 9  
תל - אביב 64736  
ד.צ. 01000  
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דובר צה"ל  
IDF SPOKESMAN

לכבוד  
"המוקד להגנת הפרט"

### הנדון: דו"ח "בורחים מאחריות"

להלן תגובת דובר צה"ל לדו"ח "בורחים מאחריות":  
מעיון ראשוני שערכנו בדו"ח עולה כי הוא מגמתי וחד צדדי.  
הדו"ח דן במקרים מועטים יחסית לאלפי התקירות שנפתחו במהלך השנים  
1988 - 1997, בוודאי שאין ללמוד ממקרים אלו על הכלל.  
בדיקת נכונות הפרטים באשר לארועים הנזכרים בדו"ח, אשר חלקם ארעו  
בשנים 1998 - 1989, תארך זמן רב בשל היקפם ומהותם, והחומר כולו מצוי  
בארכיונים.  
לפיכך, מענה מקיף ורציני לטענות המועלות בדו"ח ינתן, אם יחפוץ הארגון,  
לאחר בדיקה מעמיקה בחומר.

November 11, 1997

The following is the response of the IDF Spokesperson to the report “Escaping Responsibility”:

A preliminary review of the report shows that it is one-sided and biased. The report covers relatively few incidents compared to the thousands of investigations opened during the period 1988–1997. It is certainly impossible to draw general conclusions from these cases.

It will take a considerable time to verify the accuracy of cases mentioned in the report [...] due to their scope and nature, and the fact that all the material is now archived.

Accordingly, a comprehensive and serious response to the claims raised in the report will be provided, if the organization so wishes, after in-depth examination of the material.