Annual Report 2002

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

Research and composition: Mr. Eitan Buchvall

Editing: Ms. Dalia Kerstein

Translation: Ms. Sharon Ramon

Graphic Design: Studio David Harel

ISSN 1565-4451

המוקד להגנת הפרט מיסודה של ד"ר לוטה זלצברגר - ע"ר
רחוב אבו עוביידה 4 ירושלים 97200 | טל. 02-6271698 | פקס. 02-6276317

Hamoked Center for the Defence of the Individual - Founded by Dr Lotte Salzberger - RA
4 Abu Obeida St. Jerusalem 97200 | Tel. +972-2-6271698 | Fax. +972-2-6276317

هموكيد - مركز الدفاع عن الفرد أسسته د. لوطة زلتسبرغر – مكتب الشكاوي – ج. م.
شارع ابو عبيدة ٤, القدس ٩٧٢٠٠ | هاتف: ٩٧٢-٢-٦٢٧١٦٩٨+ | فاكس: ٩٧٢-٢-٦٢٧٦٣١٧+

www.hamoked.org.il | mail@hamoked.org.il

Table of Contents

Preamble

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

Universal Declaration of Human Rights, Article 2

The Israel Defense Force (IDF) invasions into the territory of the Palestinian Authority (PA) in February and April, and its stay there since June, have led to unprecedented infringements of the rights of Palestinian residents. The scope of violations of Humanitarian Law was such that was never seen before: the right to life was denied of hundreds of civilians killed due to excessive and indiscriminant use of force; the right to freedom was denied to thousands who were apprehended in arbitrary arrests and held in sub-human conditions; the right to personal safety was denied to tens of thousands who were exposed to violence and looting by soldiers and settlers, on whom the Israeli authorities did not enforce the law, and of hundreds of families whose homes were destroyed; freedom of movement, education and livelihood, and the right to health and basic living conditions were denied to the hundreds of thousands who were kept under curfew, siege and closure, held at roadblocks and forbidden to leave the Territories; and the right to family life was denied to those families in which one of the partners is not officially a resident, and of the two siblings of a suspected terrorist – who was himself assassinated – who were deported to Gaza.

The activities of HaMoked: Center for the Defence of the Individual, were greatly

influenced by this state of affairs: the number of requests received for help was multiplied by almost six; the number of cases we took to court grew sevenfold compared to 2001; the cooperation between HaMoked and other human rights organizations, Palestinian, Israeli and international, was intensified; and the issues addressed by HaMoked reflected the range of human rights violations perpetrated by the Israeli authorities.

New Cases

In 2002 HaMoked received 8,751 new cases.[1] This figure exceeds the total number of new cases handled over the past six years combined (1996-2001). While an increase in the number of cases was seen even as the current Intifada began (see new cases illustration, Appendix), such a sharp jump in such a short time, spanning all of HaMoked's fields of activity, has never occurred in 14 previous years of operation.

Number of new cases handled by HaMoked in January-December 2002, by subject[2]

Subject	Detainee Rights	Violence and Property Damage	Freedom of movement	Jerusalem Residency	Deportation and House Demolition	Return of Corpses, Other	Total
2002	7,236	705	560	89	103	58	**8,751**
Change compared to 2001	+470%	+1,280%	+420%	+160%	+3,300%	+56%	**+490%**

In addition, HaMoked continued the processing of about 800 cases it has started to handle prior to year 2002.

The main reasons for this jump are the rapid deterioration of the situation in the Territories, combined with an increasing awareness of the existence and unique activity of HaMoked and its new Emergency Hotline. The policy of deportation and demolition of houses, which – according to the government – is directed toward relatives of suicide bombers, has led to appeals from their families to HaMoked, after the latter handled the return of their corpses. Appeals to trace more than 7,000 detainees were received in the wake of the mass arrests, which also led to the representation of dozens of detainees against whom administrative detention orders had

1 In many instances several appeals for help were received pertaining to a single individual or event. Such appeals were consolidated and a single file opened, so that the number of appeals for help HaMoked has handled was, in fact, in excess of 15,000.

2 For a detailed table see the Appendix 1 attached herewith.

been issued. IDF presence in Palestinian towns and villages, which aggravated the friction between IDF forces and civilian population; acts of violence, the many cases of devastation and looting by soldiers and settlers, who flaunted the law with impunity, have led to the large rise in the number of complaints regarding violence and property damage. The strict and extended restrictions on movement have influenced the number of cases in this sphere; and the difficulties imposed by the Israeli authorities on families from Jerusalem in which one of the partners is not a resident, have led to a growing number of complaints in this direction.

HaMoked's handling of thousands of tracing requests and dozens of urgent appeals for medical evacuation and humanitarian aid during IDF invasions, got HaMoked's telephone numbers disseminated throughout the West Bank. Reports of HaMoked's operations in Palestinian and Israeli press alike, especially in connection with deportation to Gaza and demolition of houses, have also prompted many new appeals. The emergency hotline, which was established this year in an attempt to offer an immediate solution for problems pertaining to freedom of movement within the Territories – passage of pregnant women who have to get to hospital, cases of violence, damage to vehicles, confiscation of ID cards and unjustified delays at roadblocks; evacuation of injured and sick people and pregnant women from their homes to the hospital, regulating the passage of water tankers and arranging passage of humanitarian aid through to the Territories during curfews and sieges; and other problems that call for immediate care vis-à-vis forces on the ground - has also led to an ever-increasing number of calls, especially in the context of freedom of movement.

Legal Action

In 2002 HaMoked filed 126 petitions to the High Court of Justice (HCJ) and administrative courts[3] on behalf of about 280 residents of the Territories, a number equivalent to the number of petitions filed over the previous four and half years. In addition, HaMoked filed 9 damage suits, including 7 concerning violence and 2 as part of the detainee-rights project. During the year, 12 court cases that were started in previous years were completed.

Number of petitions by HaMoked by subject, January-December 2002

Detainee Rights	Violence and Property Damage	Freedom of Movement	Jerusalem Residency	Deportation	House Demolition	**Total**
63	8	5	9	13	37	**135**

In its petitions, HaMoked works on three primary levels: the individual level – securing remedies for petitioners; the collective level – preventing further infringements of human rights of residents of the Territories through policy changes and by court decisions that force the Israeli authorities to be accountable for their actions or omissions; the declarative level – informing the courts of the scope of human rights violations and documenting the opposition to these violations and the reasons for it. More than 80 of HaMoked's petitions concluded this year were fully or partially successful. In many cases an agreement was reached with the State prior to a court ruling. In those cases that ended with a ruling by the HCJ, both the power and the weakness of the Court were revealed: on the one hand, the Court's rulings had the power to prevent widespread violation of human rights, as they compelled the authorities to adhere to Court-set standards, but on the other the Court refrained in many cases from second-guessing the State, which led to continued and even increased infringement of human rights.[14]

HaMoked's petitions to the HCJ regarding detainee rights yielded positive results on all three levels: **habeas corpus** petitions filed by HaMoked on behalf of 96 missing persons led to the tracing of 70 of them (of whom 12 were released due to the petition). Once HaMoked demonstrated the extent of the failures by the Israeli authorities to comply with the law, the HCJ started making the State pay trial costs, which in turn led the authorities to improve their conduct. Petitions about the harsh conditions in which detainees were being held in facilities in Israel and in Ofer Camp have led to an improvement, albeit insufficient, in these conditions. The ruling of the HCJ concerning Ofer Camp, which was based on testimonies provided by HaMoked, concluded that the IDF must observe the international rules set for detention conditions. This ruling further found that the detention of these men until the petition was filed had violated basic legal rules, which could serve as cause for questioning and prosecution of those in charge. A petition to the HCJ concerning families' visits to their detained relatives has led so far only to partial regulation of the subject, and the Court insisted that the authorities are to fully regulate the matter.

As far as deportation to Gaza is concerned, HaMoked's petitions generated mixed results on the different levels. The HCJ approved the deportation of two of the three individuals whose deportation had been ordered, but obligated the authorities to hear all parties involved in open hearings before the orders were implemented. The clear conditions the Court had set for future deportations have made it difficult for the authorities to pursue this policy. Indeed, no other family members were deported to Gaza since, and HaMoked can only hope that this measure will not be used again. In other petitions, two Palestinians who live in the Territories but are not residents and against whom deportation orders had been issued were released by the IDF and allowed to return to their homes. However, HaMoked's petitions to the HCJ on behalf of families whose homes were to be demolished have exposed the resoluteness of the HCJ not to interfere with IDF operations. The HCJ has rejected each and every one of the petitions submitted this year on this subject. Still on occasions when

homes were demolished, interim injunctions issued in some of these cases prohibiting demolition until the Court heard the case, gave the families the precious time they needed to remove their possessions – a "privilege" that hundreds of other families did not enjoy. A petition to evacuate persons trapped under the rubble of the refugee camp in Jenin resulted in a ruling obligating the IDF to assign its search and rescue forces to this mission.

Petitions to the administrative court regarding Jerusalem residency yielded positive results on the individual level: in all petitions that HaMoked filed to the administrative court in 2002, except one that is still pending, the State granted the families' request and authorized family unification or registration of children as residents. However, the policy of the Ministry of the Interior remains unchanged. On the collective level, a petition filed by HaMoked and concluded this year, has led the State to undertake to establish and publicize – for the first time – the conditions for exemption from the payment of the charge for registration in the Population Registry. HaMoked's petitions to the HCJ concerning freedom of movement have so far also generated success on the individual level: the State has agreed to allow one of the petitioners to leave the Territories to get medical treatment and permitted another to enter the Territories to return to her husband and children. However, the policy prohibiting entry into the Territories and imposing hurdles on exit from the Territories has not been changed. HaMoked's petitions concerning violence and property damages saw justice served this year: in 11 of 12 damage claims submitted by HaMoked and concluded this year, the plaintiffs were compensated, four of them by force of court decisions. Two of the rulings also had a positive impact on the collective level, as the court limited the broad interpretation that the State had been trying to give to the term "act of war", which grants it immunity against legal action.

While the need to refer to the courts in order to curb violation of Palestinian human rights in the Territories by the Israeli authorities continued to grow, access that Palestinians have to the legal system was seriously restricted: an amendment approved this year mounted almost insurmountable hurdles on the path of Palestinians seeking to prove the validity of their grievances, and compelled the courts to grant the State extensive immunity.[5] A 320% hike in the charge to be paid when submitting any petition to the HCJ or administrative courts - the first since the inception of the State[6] in real terms –has made it impossible for residents of the Territories to file such claims on their own and imposes a heavy burden on non-profit organizations that may serve as their advocate.

---

3 After a reorganization of the court system, petitions on administrative cases such as tenders, building plans, municipal taxes and the like are now referred to the district courts. When hearing an administrative case, the district court sits as an administrative court. In the last year district courts were also assigned to address petitions regarding the law of entry to Israel, which encompasses the matter of Jerusalem Residency – a matter that HaMoked handles.

4 See the sections below about deportation and house demolition.

5 HaMoked: Center for the Defence of the Individual, **Semi-Annual Report: January-June 2002**, pp. 20-22.

6 NIS 1,625 compared to NIS 386 before – **Haaretz**, July 29, 2002, p. B1.

Organizational Structure

The increase in the number of new cases handled by HaMoked provides only a partial picture of the effort required in the face of the new situation created by IDF invasions. On the one hand, the number of calls received at HaMoked was at least double the number of files that were eventually opened, especially in connection with requests to trace detainees. Concerned for the lives of their loved ones, several different family members would contact HaMoked and other organizations, which in turn also called HaMoked with requests to help trace the missing person. On the other hand, many of the cases required efforts that were never needed before, as the functioning level of Israel authorities dropped, and as large amounts of information had to be collected from complainants and verified before petitions could be filed – which was hard to do because the telephone infrastructure in some of the regions had collapsed and because of the serious limitations that were imposed on movement.

In March, before Operation Defensive Shield, HaMoked opened the Emergency Hotline, designed to provide increasingly-needed real-time solutions at IDF roadblocks. In retrospect, the additional staff and extended hours of activity helped HaMoked handle the influence of the IDF invasions and enabled it to go on assisting callers. During the invasions, HaMoked was operative from 7 AM to 4 AM; hotline staff, along with Arabic-speaking volunteers, also helped receive claimants at the office. Telephone lines were added so that more calls could be processed simultaneously; and a special team was put together, reinforced by volunteers and temporary workers, to handle requests to trace detainees.

As the situation continued and an increasing number of requests were received pertaining to all fields of activity, new staff was added and the offices were expanded which also improved the conditions in which clients were received. HaMoked began an administrative restructuring. Coordinators were appointed to supervise the various departments and oversee their operations. When the policy of deportations and demolition of houses began to be implemented, cellular phones were purchased so that callers could communicate with HaMoked staff around the clock. To meet the workload and enable all petitions to be filed, HaMoked hired the services of external consulting attorneys to handle 60 of its petitions.

Before the IDF invasions, HaMoked's Board of Directors held a strategic discussion to examine HaMoked's operations and align its direction for the future. In this meeting, HaMoked's 14 years of activity were reviewed, its current fields of operation were examined and consultation was held with representatives of other Israeli and Palestinian human rights organizations who were invited to join the discussion. Another meeting was scheduled for two months later, but because of the developments, the plan was postponed for the time being. HaMoked's website, which will include legal material pertaining to HaMoked's fields of activity, is also in the pipeline, and will go online in mid-2003.

Cooperation with Other Organizations

In the face of deteriorating human rights conditions in the Territories, cooperation between HaMoked and other human rights organizations tightened even further. During the IDF invasion of Ramallah in April, HaMoked made its facilities available to the workers of Al-Haq and Addameer, and at present HaMoked's office houses an attorney from Kav La'Oved. Ten petitions to the HCJ were prepared and filed together with the Association for Civil Rights in Israel (ACRI), B'Tselem, The Public Committee Against Torture in Israel (PCATI), A'dalah, Addameer and Al-Haq. HaMoked's close cooperation with these organizations and others was also evident in routine activity: HaMoked operated on behalf of Al-Haq vis-à-vis the IDF, after soldiers had broken into its offices in Ramallah and apprehended one of its workers. In April, B'Tselem, Al-Haq and HaMoked collected money and food for a truckload of provisions to Ramallah. HaMoked filed, on behalf of B'Tselem, a petition to the HCJ demanding to allow the entry of one of B'Tselem's employees into Israel. HaMoked receives reports of delays and violence at roadblocks from MachsomWatch and from volunteers of the International Solidarity Movement, who also contact HaMoked in connection with curfew and siege issues. Requests to trace detainees are received from many organizations, including the Palestinian Prisoners' Club, B'Tselem, PCATI, Law and Amnesty International, and administrative detainees are represented in cooperation with attorneys from Addameer and A'dalah. During Operation Defensive Shield, a daily update of human rights violations was issued together with B'Tselem, Physicians for Human Rights - Israel and ACRI. HaMoked representatives attended a seminar held by the Red Cross and a workshop on humanitarian law organized by B'Tselem.

HaMoked's cooperation with international organizations also intensified this year: HaMoked provided information to researchers from Human Rights Watch, Amnesty International and FidH; HaMoked attorneys met with UNRWA workers to collect updated information about the situation in Gaza before an interim hearing in the case of the three potential deportees. HaMoked representatives regularly attend meetings with the WHO. This was the fourth consecutive year that HaMoked was invited to testify before the UN Special Committee to Investigate Israeli Practices Affecting the Human Rights of Palestinian People and Other Arabs of the Occupied Territories. In addition to cooperation during the state of emergency, HaMoked organized meetings with representatives of the ACRI and PHR-Israel and with private attorneys to discuss the various problems faced by residents of East Jerusalem, and attended a meeting with representatives of the State Attorney's Office and the Ministry of the Interior on this matter. HaMoked also started working together with the School of Social Work at the Hebrew University and two of their students are interning at HaMoked. This year, the coalition of human rights organizations continued to fight against the amendment to the Torts Law, which regulates the State's immunity against claims resulting from acts of war. Representatives of this coalition appeared

before the Knesset's Constitution, Law and Justice Committee and argued against the amendment, but to no avail. HaMoked also participates in forums of human rights movements and social movements on behalf of Shatil.

Deportation

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

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

The Deportation to Gaza

In the last week of June, as the IDF's third invasion of the territory of the PA was underway, Israel's Security Cabinet decided to prepare for the deportation of relatives of those individuals who were suspected of being involved in terrorist activity against Israel and relatives of suicide bombers. The official motivation for this policy was deterrence.[7] A think tank discussed the ways to implement this decision, and the Attorney General's Office prepared the legal arguments to justify it. Against this backdrop, HaMoked contacted the military legal advisor in charge of the West Bank and demanded that before any such move was implemented, individuals earmarked for deportation should first be given the right to be heard and allowed time to take their case to the HCJ.

During the night between July 18 and July 19, Israeli forces entered the homes of six families in the Nablus area and detained 21 members of these families, including teenagers and the elderly. The homes of two of these families were demolished that same night. The press reported the intention to deport the detained family members to the Gaza Strip. Within hours HaMoked dispatched urgent letters to the various Israeli authorities, demanding that if deportation

7 **Haaretz**, August 13, 2002, p. A1.

be approved, then, as the families' proxy, HaMoked should be given prior notice so that steps could be taken to prevent the deportation. The State's response indicated that it did not feel bound to inform HaMoked ahead of time, and in the afternoon the media reported that the Attorney General had agreed to deport family members to the Gaza Strip under certain conditions. HaMoked therefore immediately filed two petitions to the HCJ against the deportation of the family members.

HCJ

M.S., 62, married and the father of nine, was apprehended with four of his sons at 11 PM, July 18. IDF soldiers entered his home, pushing a local resident in front of them as a "human shield", instructed the inhabitants to leave the house and blew it up, without giving the family time to take their belongings. One of the sons who was not detained that night, was suspected of being involved in shooting attacks. M.A., a 60-year-old retired school principal and the father of 11 children, was arrested with five of his sons at midnight at their house in the village of Tell. His health is poor and he was never arrested before. One of his sons, who was not detained that night, was suspected of being involved in a terror attack. S.G., a director in the Palestinian Ministry of Education and also a resident of Tell, was detained along with one of his sons. Another one of his sons is suspected of being involved in a terror attack. M.B., whose son was suspected of taking part in a terror attack in Tel Aviv that week, was apprehended with two of his other sons. He is 72 and has a herniated disc, high blood pressure and heart problems. That very same night the IDF blew up the three-story house in which M.B. and his 25 family members reside. On July 19, HaMoked petitioned the HCJ on behalf of these four men and their 12 sons who had been arrested.

Nablus resident A.H. was apprehended on July 18 by IDF soldiers who entered his house using a neighbor as a "human shield". A.H. is a retired 62-year-old veterinarian, who has diabetes and chairs the charity committee in his city. His son is wanted by the IDF. Four brothers from another family, S., were also detained that night. The soldiers who apprehended them pushed a neighbor in front as a "human shield", ordered the inhabitants of the house to leave, separated the men from the women and babies, and searched the house, turning it upside down. On Sunday, July 21, HaMoked petitioned the HCJ against the expected deportation of A.H. and the four brothers. **(Cases 17914 through 17933)**

The petitions forced the State to undertake that it would not deport the detainees to the Gaza Strip without giving them an interval of at least 12 hours to take legal steps to stop the deportation. In view of this undertaking, HaMoked withdrew the HCJ petitions and continued to represent the potential deportees in the military courts. On July 26, HaMoked filed five petitions to the HCJ demanding that it enable the detainees to meet with their counsels. In three of the petitions, injunctions prohibiting such meetings were lifted one day before the hearing, but in the case of two of the families the court allowed the injunctions to stand. Three

members of these families, siblings of wanted individuals, faced deportation a week later.

On July 31 the Security Cabinet decided to implement its previous decision on the matter. On August 1 the IDF Commander in the West Bank amended the "Order regarding Security Instructions" so as to allow the deportation of West Bank residents to the Gaza Strip, and signed deportation orders against two of the detained family members immediately thereafter. The official name of these orders, "Orders Assigning Residence," was given in order to circumvent the strict prohibition in the Geneva Convention of forcible transfers and deportation from occupied territories.[8]

Shortly after that, it was decided to deport another family member, this time a woman. HaMoked represented all three before the advisory committee of the IDF Commander in the West Bank – which recommended that the deportation orders be upheld - and before the HCJ, which addressed the petitions on this matter.

At 11 PM, August 1, HaMoked received the deportation orders issued against Kifah Ajouri, a 28-year-old resident of the Askar Camp outside Nablus, married and the father of three boys, one of whom was born when he was already held in detention, and against Abed Alnasser Asida, resident of Tell, father of four daughters and a baby boy who was born a few months earlier. Both were detained on the night between July 18 and 19 along with their fathers and brothers, and their homes were demolished. Each has a brother suspected of being involved in terror attacks, and each has "confessed" in his questioning to "assisting" his brother. It is based on this "assistance" that the deportation orders were issued. When the deportation orders came in, HaMoked was also informed that an advisory committee would be convening at 11 AM the following morning in order to hear the arguments of the potential deportees. HaMoked's attorneys demanded copies of the investigation material and insisted that the hearings of the committee should be open to the public, so that, among other things, their families could attend. The request to make the hearing public was denied. HaMoked petitioned the HCJ against this decision; the Court ordered that all committee hearings, except those in which confidential material is being discussed, should be open to the public. The fact that the hearings were opened to the public, combined with HaMoked's efforts to secure permits that would allow family members to travel within the Territories to attend these hearings, enabled the Ajouri and Asida families to be at the hearings on August 8 and meet with their relatives, for the first time since the detention.

A third deportation order was issued on August 4, against Intissar Ajouri, Kifah Ajouri's sister, 34 and a pharmacist

8 While the prohibition in Article 49 of the **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (1949) is sweeping, and any violation of this article constitutes a grave breach of the Convention, Article 78 of the Convention stipulates that: "If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment."

by training. Ms. Ajouri was held in administrative detention since the beginning of June, when HaMoked traced her through a habeas corpus petition to the HCJ. The deportation order was based on suspicion that at the request of her brother, who was wanted by the IDF, she had sewn a belt that was later used to carry explosives for a suicide bombing. On the night between August 5 and 6, Intissar and Kifah Ajouri's brother was assassinated. Word of his assassination was brought to HaMoked's attorneys and from them to the brother and sister only a few minutes before the August 6th committee meeting was set to begin. Despite objections by the IDF prosecutor, the committee conceded HaMoked's request to postpone the hearings by two days in order to allow the brother and sister time to mourn and to give the attorneys an interval in which to appeal to the authorities to revoke their deportation orders in view of the changed circumstances. But that same afternoon the IDF Legal Advisor in charge of West Bank met with the committee members, in the absence of the attorneys representing the potential deportees, explained the position of the government and military commander, and insisted that the proceedings must be continued without delay. The decision that was reached only that morning was revoked, and another meeting of the committee was scheduled for the very next morning. To protest this flawed procedure, the attorneys representing the potential deportees absented themselves from the meeting, and the committee decided to reconvene on August 8, as scheduled originally.

Concurrently, HaMoked endeavored to improve the detention conditions of the two male potential deportees. Since their detention, the two were being held in solitary confinement at the General Security Services (GSS) interrogation facility at the Russian Compound in Jerusalem, and were not even given fresh clothes. HaMoked's efforts were successful, and the two were relocated to Ofer Camp, where their conditions were the same as those of administrative detainees.

In the committee's last meeting, on August 8, testimonies were heard from the three potential deportees, their families and an employee of a humanitarian organization in the Gaza Strip, who described the living conditions that the three would encounter in this region, which are even harsher than in the West Bank. On August 12, a few hours after the written summations were submitted, the committee recommended that the deportation orders be upheld, but also recommended a reexamination of the term of Asida's deportation, since the allegations against him were not so severe. The IDF Commander of the West Bank disregarded this last recommendation, and ordered the deportation of the three individuals at 2 PM the next day. The following morning two petitions against the deportation were filed with the HCJ. One was submitted by HaMoked, on behalf of Kifah Ajouri and Abed Alnasser Asida, and the other by HaMoked and ACRI on behalf of Intissar Ajouri.

Despite the pressure applied by the defense establishment and the government through the Attorney General's Office to lift the injunction

prohibiting deportation until after the hearing and to expedite the hearing and push up the ruling, the Court decided to assign a special panel of nine Justices to hear the case on August 26. Opinions of two experts in international law that HaMoked and ACRI attached to their petitions, explained that deportation of family members constitutes a serious violation of the Fourth Geneva Convention, a crime of war and even a crime against humanity, which imposes individual liability on the perpetrators. **(Case 17942)**

At the hearing it was argued on behalf of the three potential deportees that they should not be forcibly deported to Gaza because of their brothers' actions for the sole purpose of deterrence, while the State supported the "assignment" of their residence as part of an "infrastructure of deterrence" against terror, and maintained that the three individuals "present a danger" to the security of the region. On September 3 the HCJ found that the deportation to Gaza indeed constituted "assignment of residence", but said that deterrence alone was not a sufficient cause to implement this measure, especially when it meant that individuals would be penalized for deeds performed by others. The Court said that a person's residence can only be "assigned" if that person presents a substantial danger himself. The nature of this danger was not specified. The Court approved the deportation of the siblings Kifah and Intissar Ajouri, and forbade that of Asida. In interviews after the ruling was handed down, sources in the defense establishment were quoted as saying that "the entire process went amiss and was diverted from its main objective … [which was] to create deterrence."[9] Although there was talk of more possible deportations, as of the time that this report was compiled, no other deportation orders have been issued. HaMoked has addressed the military legal advisor in charge of the West Bank with a demand that in case such orders are issued, time should be given to the potential deportees to argue against them.

Intissar and Kifah Ajouri were moved to the IDF base at Beit El, where they were held until their deportation on September 4. HaMoked endeavored to enable their families to see them before they were deported to Gaza, and a meeting was indeed arranged for the morning of the deportation. In a diversion operation that the IDF held for some obscure reason, the brother and sister were taken by an armored vehicle to a vineyard in one of the most dangerous areas in the outskirts of the city of Gaza. The owners of the vineyard, who accidentally bumped into them, took them in, and after they contacted HaMoked by phone, transportation to Gaza was arranged by employees of the Palestinian Human Rights Center - Gaza. In Gaza, the brother and sister decided to stay at the compound of the International Committee of the Red Cross (ICRC), which they believed to be responsible for their well being as victims of war crimes under the Fourth Geneva Convention.

HaMoked maintains contact with the deportees and their families and continues to represent them vis-à-vis the authorities

9 **Haaretz**, September 4, 2002, p. A3.

in connection with the rights to which they are entitled as persons whose place of residence has been "assigned". Since the end of December, HaMoked has been trying to get the authorities to allow the families from the West Bank to visit their deported relatives in Gaza. Only two and half months after the deportation did the IDF allow the visit to go through. Countless coordination efforts by HaMoked during the week preceding the visit, between the IDF, the family and taxi drivers, helped the visit take place on December 16. On December 18 HaMoked registered a demand with the military legal advisor in charge of the West Bank to authorize and enable longer and more frequent visits in the immediate future.

Concurrently, HaMoked has been pushing to obligate the IDF to ensure the support of the deportees and their dependent family members.[10] The dire economic situation in Gaza makes it impossible for the deportees to find jobs and support themselves. Until his arrest, Kifah Ajouri supported his wife, children and parents, who are now without any source of income. Ms. Ajouri was tending to her infirm parents. All of the family's property was destroyed when their home was demolished by the IDF, and the family was forced to rent an apartment. Since October, HaMoked has been trying to get the Israeli authorities to pay around NIS 5,000 a month to the deported brother and sister in Gaza and about NIS 8,800 to their families in the Askar Camp. To date, the authorities have not even responded to the demand. **(Case 17942)**

Immediately after the HCJ prohibited his deportation, the IDF prosecutor filed an indictment against Abed Alnasser Asida for the "assistance" he had lent to his brother. Before the HCJ ruling, there was no need even to present such an indictment. HaMoked has provided an attorney to represent Asida in his military trial. Despite the prosecution's demand to hold Asida in custody until the trial is over and although this demand was received by the lower court, HaMoked's appeal was granted and Asida was released on bail until a verdict is handed down. On October 8 he was reunited with his wife and children. **(Case 17920)**

Repatriation of Deportees

HaMoked has continued to handle applications of residents of the Territories who were deported in the past and now seek to be reunited with their families in the Territories. The matter of Palestinians who were deported in the first decade of occupation without any deportation order and without being allowed to contest their deportation was covered in the previous activity report.[11]

HCJ

T.T., who was born and raised in Hebron, took part in the terror attack at Beit Hadassa in Hebron in 1980, and was sentenced by the military court to life imprisonment. In 1983 he was deported to Algeria in compliance with an agreement between Israel and the PLO, without T.T. consenting to this deportation. T.T. moved to Jordan, where he was joined by his wife and daughter, who are also residents of the Territories. His parents and six brothers stayed in Hebron. In the summer of 1997, when T.T. already had seven children, HaMoked asked the IDF commander in the West Bank to allow T.T. to return to his hometown. This request was denied without any explanation in February 1998. Following HaMoked's advice, T.T.'s wife submitted a request to the PA to be allowed to unite the family. In December that year T.T. was allowed back into the West Bank for three days, in order to enable him, as a member of the Palestinian National Council, to attend the Council meeting in which the deletion of those articles in the Palestinian Charter that call for the destruction of Israel was to be discussed. T.T.'s wife and children came along. T.T. and his family stayed in Hebron, and HaMoked once again turned to the authorities with a request to reconsider his repatriation. About 10 months later, a response was given, instructing T.T. to leave the West Bank and resubmit his request.

On July 11, 2002, after Hebron was occupied by the IDF, T.T. was apprehended and an order for his deportation was issued. HaMoked appealed to the authorities to revoke the order. T.T. was held at Ofer Camp for three months before a reply was provided: the request to revoke the order, as well as that to allow the families to unite in Hebron, were denied, although this rejection contradicted the announcement that the IDF had previously made, according to which all requests to unite families were being put on hold. In the end of October HaMoked petitioned the HCJ to revoke the deportation order and approve the request to unite the family. The petition was denied, but T.T.'s deportation is being delayed, since Jordan has not yet agreed to let him in. **(Case 11404)**

Deportation of "Illegal Aliens"

HaMoked has also handled appeals for help by Palestinians who have no legal status in the Territories, and who were apprehended at random in the massive IDF arrests and against whom deportation orders have been issued. In some cases, their illegal stay was the result of Israel's

10 This obligation emerges from articles 39 and 78 of The **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (1949), under which the brothers were deported.

11 HaMoked, **Semi-Annual Report: January-June 2002**, p. 38.

policy that has led freezing all matters of family unification (see HaMoked's previous Activity Report,[12] and the Visit Permits section herewith.)

A.A. was born in Algeria in 1979, and at the request of his father's family in the Gaza Strip, moved there with his parents and brothers when he was 15. The family has since struck roots in the Gaza Strip: the father is employed as a clerk at the PA, his sister has married a Gaza Strip resident, another sister studies at the university in Gaza and A.A. himself is engaged to marry a resident of Khan Yunis. A.A. has nevertheless become a stateless person: his permanent residency in Algeria expired, and due to the delays in regulating the issue of residency in the Territories, his status in Gaza was never fixed. In 2001 A.A. was apprehended in Israel without any permit, and sentenced to six months in prison. An order for his deportation was issued in February 2002. The authorities started processing his deportation – not to Gaza, where his family lives and where he had been living for the past eight years, but to Algeria, where he was born. A.A. petitioned the HCJ to allow him to return to Gaza. The Court asked the Public Defender's Office to represent A.A., and the Public Defender's Office asked HaMoked to do this instead. The special court supervising the custodianship of illegal aliens gave the State 45 days to arrange for A.A.'s transfer to Algeria; only if this option falls through, the court said, would the State have to reconsider transferring him to Gaza. Six months later, the pressure applied by the HCJ and HaMoked finally bore fruit and at the end of October A.A. returned to his family in Gaza. **(Case 17833)**

House Demolition

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

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

Since the start of the current intifada, the IDF has demolished hundreds of houses in the Territories, in which thousands of civilians used to live.[13] Along with the decision to deport relatives of suspected terrorists, the Security Cabinet adopted a policy of demolishing the homes of these families as the main tool in the fight against suicide bombers. During the six months between July and December 2002, more than 100 houses were demolished, compared to 14 that were demolished as a penalty for actions of family members from the onset of the intifada until June 2002. Concurrently, the security forces pursued the policy of "clearing", namely, demolishing houses, uprooting orchards and leveling fields wherever a terror attack takes place, ostensibly in order to destroy any shelter behind which terrorists may hide and shoot at IDF forces in the future. This policy came to a climax in April, when houses in the refugee camp in Jenin were demolished with their residents still inside.[14] HaMoked's

12 **Ibid**, p. 11.

13 According to B'Tselem, since October 2000 some 800 houses, in which more than 6,000 people lived, were destroyed in the West Bank and the Gaza Strip in "clearing" operations or as penalties and administrative IDF operations. www.btselem.org

14 A reserved admission may be seen in the response of the State to the petition that was submitted to the HCJ in this regard: "… There were houses that people only left after the bulldozer had hit one of the walls …" Statement of the State Attorney's Office,

activity in this context was covered in the previous activity report.[15]

Despite the lack of a duly issued order, many houses were demolished without allowing the family to argue against the demolition and without giving the people time to remove any of their belongings from the house. Therefore, all appeals received by HaMoked in this context were handled with urgency, even in those cases when it was not certain that a demolition was indeed to take place. Since the beginning of the year, HaMoked has filed 37 petitions with the HCJ on this matter, on behalf of more than 50 families. The legal arguments underlying these petitions pertain to the duty of the IDF commander to observe due process and exercise reasonable discretion. The IDF commander must therefore issue demolition orders only when he has well-founded evidence, and in any case must enable the family to be heard and to appeal the order in a court of law. The IDF commander is also obligated to observe the principle of proportionality so as to minimize injury of innocent parties.

HCJ

On the night between July 18 and 19, a number of family members of individuals wanted by Israel were apprehended. Two homes of these families were demolished that same night. As mentioned above, deportation orders were later issued against three of the individuals arrested that night. HaMoked petitioned the HCJ to stop the demolition of the homes of the other four families; to date, these houses are still intact. During the first four days of August, nine houses of families of suspected terrorists were demolished in the West Bank. On August 2, as the media started to report this operation of destruction, HaMoked contacted the Chief of the IDF Central Command and asked him to give the families a 48 hour extension to exercise their right to argue against the demolition of their homes. In addition, HaMoked dedicated a special 24-hour phone line exclusively for this subject. On August 4, HaMoked filed two petitions with the HCJ on behalf of 35 families with members who are suspected terrorists. As HaMoked was drafting the first petition, in the middle of the night an urgent call came in from a family that had been ordered to leave their home by soldiers who were preparing to demolish the house. Although HaMoked tried to file a petition against this operation immediately, the court's chief secretary did not enable a hearing to take place during the night. By the time the petition was filed at 8:30 AM, three of the houses had already been razed.

HCJ

N.A., whose son's body was returned with HaMoked's help, as described in the previous activity report,[16] lost her husband shortly after she buried her son. She now lives in Qalqiliya with her nine children on the third floor of a house in which another 10 of her relatives reside. On August 2, shortly before 3 AM, soldiers arrived at the house and ordered all members of the family to leave it immediately with nothing but the clothes they were wearing, as they were about to demolish the house. Terrified, N.A. called HaMoked, which contacted the IDF Legal Advisor for the West Bank, who replied shortly after that he had no knowledge of any intention to demolish the house. The soldiers

then allowed N.A., her children and her relatives to return to their home. On the morning of August 4, HaMoked petitioned the HCJ on behalf of N.A. and 18 other heads of families. That same evening, another petition was filed on behalf of 16 other families as well. **(Case 17963)**

The object of these petitions was to compel the IDF to follow the rulings that the HCJ had handed down during the previous intifada. Under these rulings, the IDF was to provide prior notice of any planned demolition so as to allow the families living in the houses earmarked for demolition to argue their case and get the demolition order revoked, or give them time to salvage their belongings. The HCJ issued an interim order under which the demolition of the homes of the families on behalf of which the petitions had been filed, was prohibited at least until after the hearing. The next day, another six families appealed to HaMoked, which turned to the authorities asking not to demolish their houses until the HCJ handed down its decision. On August 6, the HCJ rejected the petitions, leaving it to the military commander to decide which of the families was entitled to prior notice. The HCJ thus turned the exception into the rule: until now, the rule was that everyone had the right to be heard, except under inevitable, urgent military circumstances that emerge in the course of a military operation; from now on – according to the ruling of the HCJ – penal demolition of a family home can be considered a military operation in and of itself, so that any risk to the operation or to the soldiers carrying it out, overrides the family's right to be heard. The military has been treating this ruling as a carte blanche; since, according to the military, if prior notice of demolition is given, the IDF force might be ambushed or the house might be booby trapped. Therefore, the army sees no reason to change the way it has been operating and to start issuing demolition orders or allowing inhabitants to argue their case.

HaMoked's request for another hearing by a special panel of the HCJ was also denied. On August 7, after both collective petitions described above were rejected, HaMoked filed nine individual petitions. The circumstances of the families involved were such that it was reasonable to assume that the HCJ would instruct the State to allow these families to argue their case before their houses are demolished.

HCJ

R.A. lives in a rented apartment on the third floor of a six-story building, together with his mother, sister, brother, sister-in-law and nephew. The family has been living in this rented apartment for 20 years. Another one of R.A.'s brothers detonated himself in a suicide bombing in Netanya, and his body was returned to the family with HaMoked's help. L.N., a 50-year-old widow, has been living in a rented apartment in Nablus since 1967; she still lives there now, together with her son, daughter-in-law and two granddaughters. Her other son apparently detonated

HCJ Petition 2977/02, **Adalah and LAW v. The Commander of the IDF Forces in the West Bank**, Court Rulings [P.D.] 56(3), 6.

15 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 39-40.

16 **Ibid**, p. 36.

himself in a suicide bombing in the West Bank settlement of Shave Shomron. Petitions to the HCJ were filed on behalf of R.A., L.N. and seven other families, challenging the intention to demolish their homes. **(Cases 17986, 17991)**

These petitions were rejected as well. The panel declared that the HCJ was not the appropriate forum in which to exercise the right to be heard in this case, and that each of the families could appeal in writing to the IDF commander in the region, specifying its own special circumstances. Thus, when the IDF commander is about to issue an order to demolish a specific home, he can check the letter he had received from the family, and decide whether to demolish the house or not. This decision of the HCJ has practically blocked any possibility of petitioning the Court, unless there are circumstances in which it can be concluded ahead of time that the IDF intends to demolish a particular house – for example, if soldiers are taking photos or measuring the house or if they notify the family.

H.T. lives in her home at Balata Camp outside Nablus, with her seven children and 21 grandchildren. Her son apparently detonated himself in a suicide bombing in Petah Tikva in May. H.T. was one of the petitioners in the collective petition filed on August 4. At 2 AM on the night of August 13, IDF soldiers arrived at the house, ordered everyone out and said they were going to demolish it within the next few minutes. Eventually, the soldiers made do with a search, but before leaving they told H.T. that "God willing," the IDF would destroy the house within 24 hours. H.T. only managed to contact HaMoked the next morning. HaMoked urgently contacted the IDF Commander in the West Bank and asked him to revoke the decision to destroy the house or at least allow the family to take their case to the HCJ before the decision was implemented. The West Bank legal advisor responded that no decision had yet been made, and that – in line with the ruling of the HCJ – if such a decision were adopted, the specifics of H.T.'s case would be examined and considered. In view of the discrepancy between the statements made by the forces on the ground on the one hand and the response provided by the Legal Advisor on the other, on August 14 HaMoked filed a petition with the HCJ on this matter. In its response, the State undertook to allow H.T. to argue her case ahead of time, "unless this cannot be done, in line with the criteria stipulated by the HCJ." At 3 AM on August 21, soldiers showed up at H.T.'s house once again. Using a neighbor as a "human shield", they entered the house, instructed everyone to get out, searched, and before leaving, told inhabitants to remove all their belongings by morning, as the house would then be demolished. Urgent inquires made by HaMoked as the soldiers were still searching the premises, indicated that there was no intention to demolish the house and that the undertaking given to the HCJ still stood. **(Case 17998)**

With no other option, the families had to make do with the State's response, namely that no decision to demolish their home had yet been adopted, and that if such a decision

were made, it would comply with the procedures set out in the collective petitions from early August. But in the end of October this response was found to be worthless. Two of the houses whose owners received a similar response from the West Bank legal advisor were demolished shortly after the response had been given.

Jenin residents M.H. and A.A. detonated themselves in a suicide bombing at Karkur Intersection on October 21. On October 23, their families appealed to HaMoked to save their homes from demolition. That same day HaMoked contacted the West Bank legal advisor, who replied the next day that "… no decision has been made to demolish these houses … should such a decision be adopted in the future, the authorities will follow the criteria set forth by the HCJ…" On October 28, in the dead of night, IDF soldiers arrived at the houses of these families, blew up the home of the A. family, causing serious damage to three neighboring houses, and bulldozed the house of the H. family to the ground. **(Cases 23144, 23145)**

After this happened, HaMoked no longer made do with the army's replies, and again petitioned the HCJ whenever there was any suspicion that the IDF was planning to demolish a house.

HCJ On September 9, the N. family of Hebron contacted HaMoked, requesting help in returning the body of one of the men in the family who was allegedly involved in a shooting attack in March. On October 21, soldiers came and took pictures of the family home. HaMoked sent an urgent fax to the office of the West Bank legal advisor, arguing against the demolition of the house and demanding prior notice if any such plan is in the making. The response provided by the authorities on October 29 was the same as the replies that were given in connection with the two houses demolished the day before. Therefore, on October 30 HaMoked petitioned the HCJ, demanding that the house not be demolished or at least that the authorities undertake to issue an order that the family could contest. The HCJ issued an interim injunction that same day, prohibiting the demolition of the house until the petition is heard. **(Case 23152)**

HaMoked no longer accepts the answers that the State gives the HCJ, which are the same answers that the IDF provides before the petitions. HaMoked continues to insist on the right to be heard, and therefore keeps petitioning the HCJ whenever there is a danger that a house might be demolished.

However, even in the isolated cases when demolition orders were issued and the families were given the opportunity to appeal these decisions to the military officer in charge and petition the HCJ, the Court refused to prevent the demolition.

HCJ M.B. owns a two-story house in Abu Dis, where he and his seven children live. The store on the ground floor is the family's source of income. P.H. and her five children also live in a house in Abu Dis. Two members of these families detonated themselves

in a suicide bombing in Jerusalem in December 2001. Both families were questioned by the security forces and none of them was found to have any connection with the suicide bombing. In a petition the families filed in 2001, the State undertook to give them at least 48 hours' notice if their houses were to be demolished. On August 24, 2002, shortly after midnight, orders for the confiscation and demolition of the houses were handed to the families. HaMoked appealed against these orders to the IDF Commander in the West Bank. On August 25, after no response was received, HaMoked petitioned the HCJ on behalf of the two families. On September 17, the HCJ rejected the petition and approved the demolition of the houses, even though it had stated that no proof had been provided to indicate that the families had anything to do with the terror attack. The Court held that there was a "presumption of knowledge", according to which the families must have known of the actions and thoughts of their relatives, who turned out to be suicide bombers. Two days later, the IDF blew up the home of P.H. and bulldozed that of M.B. **(Cases 17980, 22812)**

The authorities are taking advantage of the leeway that the HCJ has allowed them, and demolition of Palestinian houses is becoming increasingly more prevalent. In November, 34 houses were demolished as a penalty for actions by relatives – the highest number in more than a decade;[17] even the homes of Palestinians who are suspected of being only low-ranking activists in terrorist organizations are demolished;[18] IDF soldiers threaten families that their homes will be blown up if they do not turn in their relatives;[19] orders to seal and demolish houses in East Jerusalem have been issued against Israeli residents whose family members were suspected of being part of a cell that had carried out terror attacks (known as the Silwan Cell). HaMoked petitioned the HCJ against these orders on September 23. The HCJ endorsed the explanation provided by the State, that in view of the increasing involvement of Israeli residents in terrorist activity, demolition of houses inside Israel is justified, and on January 5, 2003, the Court rejected the petitions. A forthcoming report to be issued by HaMoked about penal demolition of houses in the West Bank, will also include a comprehensive analysis of the rulings handed down by the HCJ in this context.

Jerusalem Residency

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

Universal Declaration of Human Rights, Article 16 (1)

In the last year, the Ministry of Interior has started enforcing a vigorous security policy regarding Palestinians who are Israeli residents and citizens. The commitment to all Israeli residents was replaced by "a clear government agenda … of fighting terrorism and those that incite it," which the Minister of Interior has pledged to pursue, and the civil democracy was replaced by "a democracy on the defensive".[20] Discussions that started in February 2002 about revoking the citizenship and residency of persons suspected of aiding terror attacks, materialized in July when the Minister of Interior informed two citizens and one resident of his intention to do so.[21] The government also prohibited suspects from leaving the country and shut down several charity organizations and one newspaper. These measures got backing by the government and the legal system. As part of this policy, the Minister of Interior made it even harder for Palestinians who are legal residents of the State of Israel and whose spouses come from the other side of the Green Line, to conduct normal family lives: the government has adopted a resolution according to which no new requests for family unification with foreigners of Palestinian descent would be entertained, and residency of individuals

17 According to B'Tselem, www.btselem.org

18 **Haaretz**, November 24, 2002, p. A3.

19 **Haaretz**, August 23, 2002, p. A2.

20 Excerpts from the response of the spokesperson of the Ministry of Interior. **Haaretz**, January 2, 2003, p. B3.

21 **Haaretz**, September 10, 2002, p. A3. On the subject of revoking residency, see also: HaMoked, **Semi-Annual Report: January-June 2002**, p.29.

whose cases are already in the pipeline would not be approved. The bureaucracy that Israeli residents and their Palestinian partners have to deal with became even more convoluted, and new obstacles were set up in the path of parents who want to register children who have only one parent who is a resident.

These measures hit the residents of East Jerusalem hardest. The lives of Palestinians who live in the city are intertwined with the West Bank and Jordan; about half of the requests for family unification that were approved over the past eight years were submitted by East Jerusalem residents.[22] The strikes at the East Jerusalem office of the Ministry of Interior in March, October and November have made things even more difficult for the 250,000 residents who use the services of this office.[23] During the past year, HaMoked handled requests for unification, registration of children and the entitlement of children to health insurance and other allowances from the National Insurance Institute for more than 300 families. The condition of these families has deteriorated because of the policy of the Ministry of Interior, as did that of dozens of others that came to HaMoked asking to clarify the hazy situation. In 2002, HaMoked filed nine petitions with the administrative court concerning Jerusalem residency. In seven of these cases the State agreed to grant the petitioners' requests, and two are yet to be decided by the court. HaMoked continued cooperating with other human rights organizations in an effort to define new ways of operation to suit the changed reality. Several meetings took place at HaMoked offices between representatives of the different organizations. Two meetings were held between representatives of the various organizations and representatives various governmental bodies.

Family Unification

Since 1997 and until April 2002 the family life of many Palestinians was dependent solely on what was called the "graduated procedure". Non-resident spouses of Palestinians who are Israeli residents became residents themselves through this graduated procedure that was completed within an average of 10 years from the day that an application for family unification first was submitted to the Ministry of Interior. In this process, the spouses had to undergo annual security and criminal checkups and provide hundreds of documents to ascertain that the couple and their children all live in Jerusalem. In 2001, the Ministry of Interior started changing its policy in order to prevent Palestinians from immigrating to Israel. On May 12, 2002 the government decided to temporarily freeze the processing of all requests pertaining to family unification of non-resident Palestinians. This official change in policy followed an effective halt by the Minister of Interior of the handling of all applications for family

unification and for registration of children of Palestinians who are either Israeli residents or citizens.

One of the reasons underlying this government resolution was "… the implications of processes in which foreigners **of Palestinian descent** [my emphasis, E.B.] immigrate and strike root, including through family unification …"[24] Talks with officials in the Ministry of Interior and documents that HaMoked has obtained, indicate that because there are not enough employees to conduct a thorough investigation, the Ministry checks a person's descent based on the PA population registry: if his or her name is listed, that person will be considered to be of Palestinian descent; if not, the Ministry of Interior reserves the right to pronounce him or her to be of such descent if in the checks during the years until residency is approved, it is established that the person has Palestinian roots.

An analysis of this decision and of its far-reaching implications for the residents of East Jerusalem, their families and their children, was provided in the previous activity report.[25] Generally, this resolution leads to the rejection of new requests for family unification and of old requests that have not yet been decided. The spouses, some with children, get a standard letter stating that in compliance with the government resolution, their request has not been approved, and the foreign partner must therefore "leave the country without delay." Should the Palestinian husband or wife decide to stay in Israel with their spouse and children, they would be risking deportation if caught, in which case they also lose the right to apply for family unification in the future. The government resolution also freezes those requests that have already been approved and are going through the graduated process. In these cases, the permit to stay that the Palestinian spouse received is extended, but not upgraded. The upgrade, allocated only after at least six years have passed since the first application, allows the spouse to work and get health insurance and allowances from the National Insurance Institute.

The previous activity report mentioned HaMoked's decision to wait for a ruling in the petitions that ACRI and Adalah had filed regarding applications submitted by Palestinians who are Israeli citizens. However, the ruling was postponed, at the request of the State, until May 2003 at the earliest. HaMoked therefore decided to petition the administrative court in individual cases, in order to offer relief to these families from the fear of deportation that the temporary policy instilled. By the end of December, HaMoked filed six petitions on behalf of 23 family members whose requests for family unification had been submitted a long time ago, but were not approved or processed because of the government resolution. In all of these cases, interim injunctions have been issued, prohibiting the deportation of the non-resident Palestinian spouse. In all of these, the State agreed to approve the

---

22 According to data compiled by the Ministry of Interior. **Haaretz**, February 6, 2002, p. A1.

23 For more details about the impact of these strikes see: HaMoked, **Semi-Annual Report: January-June 2002**, p. 35.

24 **Government resolution no. 1813 dated May 12, 2002**, clause b.

25 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 30-33.

requests for family unification, despite the declared policy.

G.T., a resident of Jerusalem, married A.T. in 1995 and immediately applied for family unification. G.T. and A.T. live in Jerusalem and have three children who are listed in the Israeli Population Registry. The eldest, 4 and a half years old, goes to kindergarten in Jerusalem. In 1999, more than four years after she applied, G.T. was informed that her request was being suspended until a pending criminal charge against her husband is processed. In investigations vis-à-vis the State Attorney's Office and the police, HaMoked has learned that the file has been closed. HaMoked therefore sent a letter to the Population Registration Office in February 2000, asking to resume the handling of G.T.'s request for family unification. In the years since, the couple was asked repeatedly to send documents proving that their center of life was in Jerusalem, and HaMoked has repeatedly addressed the Registration Office, asking it to process and approve the couple's application.

On November 18, seven years after Mr. and Mrs. T. had applied for family unification, HaMoked received a letter from the Population Registration Office stating that in compliance with the government resolution, the request is denied, and the foreign spouse must leave Israel without delay or he will be deported. A.T. then needed to hide at home. On December 15, HaMoked petitioned the administrative court, requesting an interim injunction that would stop A.T.'s deportation and demanded a decision on the matter of family unification in this case. The court issued an interim injunction, and at the beginning of February 2003, the State announced that that it approves the unification. **(Case 14393)**

In another case, HaMoked petitioned the court on behalf of a Palestinian spouse whose permit upgrade, to which he was entitled even before the government freeze, did not go through because the Ministry of Interior took unreasonably long to handle it.

S.A. and A.A., married in 1988, have six children and have been living in East Jerusalem since. In 1994, when the Ministry of Interior changed its previous policy of denying unification requests submitted by resident women who had married non-residents, S.A. applied for family unification. At the end of 1995 her application was rejected without any explanation. At the beginning of 1997, HaMoked petitioned the HCJ, asking for explanations and for the registration of S.A. and A.A.'s children. A few days before the scheduled hearing, in March 1998, the Ministry of Interior decided to approve the request for family unification and register the children in the Population Registry. A.A. got a one-year permit to stay in Israel, which in 1999 was extended by another year.

In 2000, HaMoked applied for an extension and upgrade of A.A.'s permit to a temporary residence permit, in line with the graduated procedure. No answer was received over the next nine months. Even after the government resolution in May 2002, according to which the processing

of applications that have already been approved was to be resumed, the Population Registration Office provided no response. In October 2002, HaMoked petitioned the administrative court with a request to issue an interim injunction barring the deportation of A.A., who in effect has been an illegal alien during the two years since his last application was filed, and with a demand to approve his status as a temporary resident. The Court issued an interim injunction as requested, and on October 15 the State agreed to upgrade A.A.'s visa, despite the provisional policy endorsed by the government. The court further ordered the State to cover HaMoked's costs. **(Case 7614)**

Delays in permit approvals

The rights of families whose applications for family unification were already in one of the stages of the graduated procedure were compromised not only by the resolution adopted by the government in May, but also by the red tape in the Ministry of Interior. Until this year, the average was eight months from the application for an extension and until such extension was approved. As of the end of 2002, the interval – for a 12-month visa – grew to 14 months. The impact of this bureaucratic hurdle on family life is very serious. Families are not allowed to apply more than two months before the current visa expires; after these two months pass and the visa is not extended, the spouse becomes an illegal alien. If caught by one of the hundreds of security personnel deployed in Jerusalem, the partner might be deported. Furthermore, he or she may not be allowed to apply for a visa by virtue of family unification, since a criminal record is opened for every illegal alien caught.

A.A. married an East Jerusalem resident in 1987. In 1994, when female residents of East Jerusalem were allowed to apply for family unification, A.A's wife submitted such an application to unite with her husband. At the end of 1998 the application was denied. At the end of 1999, the Ministry of Interior conceded HaMoked's appeal, approved the application and even gave A.A. a one-year permit. In December 2001 A.A. applied for an upgraded, temporary residence permit, in line with the graduated procedure. His application was only approved in August 2002, but because of the government resolution, his status was never actually upgraded. Two days before his application was approved, A.A. was apprehended on his way to work, and since he did not have a valid permit, a criminal file was opened against him for being an illegal alien. Because of A.A.'s police record, which was the result of the delay caused by the Ministry of Interior, the Civil Administration was unwilling to give him an entry permit – which is a prerequisite for any legal stay in Israel.[26] HaMoked is now working vis-à-vis the police to have the case closed, and with the Civil Administration, to get A.A. an entry permit. **(Case 13728)**

If the spouse follows the law and moves to the Territories until his or her application is approved, the Ministry of Interior may deny

26 See section about entry from abroad, below.

the request, arguing that the center of life is no longer in Jerusalem. The spouse thus has no choice but to stay secluded at home, unable to work and support the family, even though the economic condition of Palestinian residents of East Jerusalem has deteriorated significantly since the outbreak of the intifada.[27]

In 1995, immediately after their marriage, R.G. and M.G. applied to the Population Registration Office in East Jerusalem for family unification. R.G. contacted HaMoked in 1999, asking to get medical coverage in connection with the birth of her child, and to register three of her children in the Population Registry. In July 2000, the couple's application for family unification was approved, and they started the graduated procedure. M.G. got a one-year permit. About two months before the permit expired, the couple applied for a one-year extension. The Population Registration Office presented several more questions, which were answered by mail as required. Despite repeated reminders that were sent to the Population Registration Office over the next six months, no response was received. In August 2002, an employee at the Population Registration Office called and informed the family that updated documentation substantiating their center of life must be submitted, since one year having passed after delivery, the documents that the Registration Office received were no longer relevant. HaMoked dispatched the required documents in September, but over the following three months no response was received. In December, HaMoked petitioned the administrative court, asking to extend M.G.'s permit. The State agreed. **(Case 13839)**

The IDF places further obstacles before Palestinians from the Territories who wish to live with their spouses and children in Jerusalem and whose applications for family unification are already being processed by the Ministry of Interior as part of the graduated procedure. In the first two years of the graduated procedure, Palestinians from the Territories must get entry permits from the Civil Administration. Until the end of February, approval by the Ministry of Interior, and, of course, a security check, were enough in order to get such permits. After the IDF's first invasion of the PA's territory, no entry permits to Israel were issued at all, except in humanitarian cases. Since the Civil Administration did not perceive the right to family life as a humanitarian right, entry permits were not issued even if approval by the Ministry of Interior was presented. The families were in an unbearable bind – the policy change cast a shadow over their life together, and the Civil Administration quashed the hope that they still had to spend another year together. Because of the government resolution, more people suffered from this policy, since it blocked any possibility of upgrading the status of the Palestinian spouse – an upgrade that would have made an entry permit unnecessary. At the end of July, HaMoked contacted the Coordinator of Government Operations in the Territories with a request to speedily find a solution for this problem. In mid-August an answer came declaring that entry permits had been

approved for residents of the Territories who were in the graduated procedure. Inquiries revealed that under the new procedure, the approvals of the Ministry of Interior, which are valid for one year, are sent to the Civil Administration, which conducts security, criminal and administrative checks that are quite similar to those that the Ministry of Interior had already performed. If the Palestinian spouse passes all these checks, the Ministry's approval is sent to the District Coordination Office (DCO) at his place of residence, and the applicant is given a three-month entry permit. The Palestinian spouse must report to the DCO and submit an application to extend the permit one month before the current permit expires.

The new procedure causes the Palestinian spouse unreasonable inconvenience: not only does he or she have to report to the DCO four times a year, but since the spouse does not know when the Civil Administration's checks will be concluded, he or she must also go there several times, until the permit is approved. HaMoked has tried to spare the Palestinian spouses this unnecessary hassle with phone inquiries to the DCO – at first the arrangement was reasonable, and several spouses even received their entry permits this way. However, as time went by, soldiers at the DCO refused to give HaMoked any information. Currently, inquiries have to be done vis-à-vis the Civil Administration, which means it takes longer to get an answer. Moreover, this procedure leads to unreasonable delays under various pretexts, sometimes even more than 10 months, in the issuance of entry permits by the DCO: the approval of the Ministry of Interior never reached the Civil Administration; the dispatch of permits from the Civil Administration to the DCO was delayed; the Civil Administration has uncovered new security-related reasons barring a permit from being issued, that were not revealed by the checkups conducted by the Ministry of Interior before the application for family unification was approved among other delaying tactics.

In August 2001, Mr. and Mrs. K. turned to HaMoked for help after the Ministry of Interior had refused to register their children and approve their application for family unification. HaMoked challenged these decisions. In January 2002, the children's registration was authorized, and on February 12 the application for family unification was approved. Until August the same year, the Civil Administration did not issue any new entry permits to Israel. Once the Administration started issuing permits again, HaMoked inquired whether an entry permit for the husband had been approved. In September, HaMoked was informed that no application that had been forwarded on his behalf from the Ministry of Interior had been found. Repeated applications to the Ministry of Interior were only answered in December: the Ministry's approval was sent again to the Civil Administration, and within two weeks the approval would be waiting at the DCO. A few days earlier, HaMoked forwarded to the Ministry of Interior the husband's application for an extended permit, in line with the

27 See **Haaretz**, December 30, 2002, p. B3; **Haaretz,** January 1, 2003, p. B4.

graduated procedure, even though he still did not get his previous permit. Despite the Ministry's promise and despite repeated queries to the Civil Administration, he did not receive an entry permit to Israel – because of an excessive workload at the DCO, delays in mail delivery and other such reasons, the entry permit was issued only shortly before – if not in fact after – the Ministry's approval had already expired. **(Case 16167)**

These delays render the approval of the Ministry of Interior, for which applicants wait many months, entirely useless. As with the delays in approvals by the Ministry of Interior, here too husbands and fathers who follow the law become illegal aliens – if caught, their applications for family unification will be rejected. In December, HaMoked asked the State Attorney's Office to arrange a meeting between HaMoked, the State Attorney's Office and the Ministry of Interior, in order to discuss these difficulties in addition to other issues pertaining to the family unification procedure. This has not yet taken place

Registration of Children

The discriminatory policy implemented in the past year in connection with unification of Israeli-Palestinian families, has also violated the right of children born into these families to be brought up in a stable family unit, and the right of their Israeli parent to raise them according to place of residence. In the last six months of 2002, the violations described in the semiannual activity report[28] became even more pronounced: as of June, the registration of children who were born abroad to one Israeli and one Palestinian non-resident parent has been effectively suspended. Starting December, this suspension was applied also to children born in Israel or East Jerusalem to one Israeli and one Palestinian non-resident parent, but who are registered in the Palestinian Population Registry. Children who are not registered in the Israeli Population Registry, are denied any status in Israel. Their rights to a protected family unit, their best interests and their rights to ongoing contact with their parents are infringed. It is harder to uphold these children's rights to education and health. They become aliens liable to deportation from the native land of their father or mother. While the government resolution from May froze applications for family unification, it made no mention of the registration of children.

The policy of the Ministry of Interior concerning registration of children who have one non-Israeli parent was never anchored in any laws, regulations or publicized procedures. This policy has undergone many changes throughout the years – changes that could only be identified in retrospect, after complaints from residents whose rights had

been compromised were received. Since 1996, thanks to the efforts of HaMoked and other human rights organizations, any child born to an Israeli resident is registered in the Israeli Population Registry in a separate procedure that is shorter than that of family unification. Registration takes place after a one-time center-of-life proof by the parents, and after a special form for babies and young children less than one year of age is filled out. No security checks are required and no criminal records have to be looked up.

As of the end of 2002, separate applications for family unification must be submitted for children who are registered in the Palestinian Population Registry. These applications are never approved, as the government has disallowed any new Palestinian applications for family unification to be processed. As for children who were born outside of the Territories, HaMoked has received conflicting responses from the Ministry of Interior: one was that the family must submit a separate application for family unification, while another was that the application to register the child depends on the application for family unification that has been or is about to be applied by the non-resident parent. The latter option is in violation of a decision that the HCJ had handed down on the matter.[29] Moreover, in many families some of their children have been recognized as Israeli residents, while other in the family were barred from receiving such recognition. Those children born outside of Israel or whose names appear in the Palestinian Population Registry have no legal status in the country where their parents and siblings live. After HaMoked received no answers to its appeals to the Ministry of Interior to revoke this policy, or, alternatively, explain the legal basis for it, HaMoked petitioned the HCJ.

CAA

M.A., who was born in Jerusalem and is an Israeli resident, married a resident of Ramallah in 1988. Until 1997, M.A. and her husband moved back and forth between the husband's home in Qalandiya and M.A.'s parents' house in the neighborhood of Abu Tor in Jerusalem. In 1997 M.A. and her husband moved to Silwan together with her parents, and in 2000 they rented an apartment in Kafr 'Aqab, which is under the jurisdiction of Jerusalem; they have been living there ever since. Since their marriage, the couple had seven children: the first four, aged 13 to 7, were born in Al Bireh, and the three little ones, aged 3 years to six months, were born in Jerusalem. In 2000, M.A. applied to the Population Registration Office to have her children registered in Israel. In August 2001, a negative answer was provided, explaining that the couple did not prove that their center of life was indeed in Jerusalem. HaMoked applied again on their behalf in July 2002. In September the Population Registration Office responded that the registration of the youngest daughters was approved, but "…as for the four children who were born in Al Bireh and are registered there, in order for them to be registered,

28 HaMoked, **Semi-Annual Report: January-June 2002**, p. 34.

29 HCJ Petition 48/89, **Issa v. Regional Population Registration Office and Others**, Court Rulings [P.D.] 33(4), 573.

a family unification procedure has to be started. Their registration will be addressed through a family unification application; however, at this point, and in view of the government resolution dated May 12, 2002, applications of this kind cannot be submitted." As in other instances, HaMoked never received an answer to the applications it has made to the Population Registration Office concerning M.A.'s children asking for an explanation of the legal basis for this policy change, and information as to where the new procedure had been published. In December, HaMoked petitioned the administrative court demanding to authorize the registration of M.A.'s children, or, alternatively, to publicize the new registration policy as required in any enlightened governance. **(Case 16670)**

The Ministry of Interior is taking advantage of the vagueness surrounding registration procedures and is making things increasingly more difficult for parents seeking to register even children who were born in Israel and who are not registered in the Palestinian Population Registry. The latest demand made by Ministry clerks in December is to get the original ID card of the parent who is not an Israeli resident. Not only does this requirement, which has not been made public, endanger the non-resident partner, who is left without an ID and is thus exposed to detention and deportation, but in some cases it is even impossible to comply with, since by law the non-resident partner is supposed to stay out of Israel as long as he or she do not have a permit, and the Israeli parent is denied access to most towns in the Territories.

Violence Committed by the Security Forces

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

Universal Declaration of Human Rights, Article 3

During the past year, the lives of Palestinians – women and men, children and the elderly – has become cheaper than ever. Their property has become free game. IDF soldiers, border police and settlers have shot, hit, threatened, looted and confiscated in unprecedented numbers. Although they are accountable for their actions, the security forces were hardly required to explain and pay for their disregard for human life and private property. In addition, investigations of such incidents by the authorities in charge are few and far between. The most poignant case is that of the IDF, which, after invading and controlling the Territories, is – by any standard – responsible for maintaining the peace and security in these areas. The many hundreds of deaths and thousands of injuries and cases of pillage in which IDF soldiers were involved since the start of the current intifada have only led to 281 Military Police investigations, 37 indictments and slightly more than 10 convictions of soldiers.[30] Investigation plays a pivotal role not only in penalizing transgressors but also, and maybe more importantly, in deterring others from doing the same.

During the year, HaMoked has taken up with the authorities the cases of hundreds of Palestinians who appealed to the organization to help stop the violence, start and complete investigations and bring criminals to justice. HaMoked continued to petition the courts in order to see justice served in the name of the victims, force the State to be accountable for the acts of its agents, whether violent or failure to

30 **Haaretz**, December 17, 2002, p. B3; **ibid**, January 2, 2003, p. A1.

investigate, and to deter the security forces from exercising violence against civilian population. In 2002, HaMoked filed for personal and property damages in seven different cases. Ten of the claims HaMoked filed in the past were concluded this year, five by ruling and five by settlement. The access of Palestinian residents of the Territories to the Israeli court system was restricted even further this year: the situation on the ground made it difficult to file and conduct lawsuits and petitions, and the amendment to the Torts Law endorsed by the Knesset ("The Law against Damages") has blocked their access to the courts almost completely.

Physical Injuries

Between the start of the current intifada and up to the end of December 2002, more than 1,700 Palestinian civilians were killed in the Territories by Israelis, and more than 20,000 were injured.[31] Nine hundred and eighty of the deaths and about 4,550 of the injuries were caused in 2002. On the rare occasions that the IDF was required to explain the extensive suffering caused to civilian population, it responded by "toughening" the rules of engagement or appointing an investigative committee to give a stamp of approval for the "unfortunate mishaps", as the official spokespersons said.[32] The ever-increasing use of the Air Force, either as part of the policy of "extra-judical killings" (euphemistically known in Hebrew as "targeted eliminations") or as part of the backup provided for forces penetrating deep into residential areas, has led to many civilian injuries, despite the adjectives attributed to these operations: "targeted", "surgical" and "sterile". In four of these operations involving fighter jets and helicopters, 50 Palestinian civilians were killed, including women, elderly persons and children, and dozens were injured.[33]

G.A. and her husband, residents of Beit Sahour, suffered serious injuries all over their bodies on November 9, 2000, when an IDF helicopter fired a missile at the car of H'sein Abayat in Bethlehem. The IDF made an official statement assuming responsibility for the assassination. Mr. and Mrs. A. were returning from a family visit, and it was just their bad fortune to be passing by the car when it was hit. They were hospitalized for a very long time and are still receiving medical treatments connected with these injuries. In November 2002, G.A. appealed to HaMoked, which immediately submitted a demand to the IDF to compensate the couple for the damages they sustained and the suffering that was inflicted upon them. As of the date of this report, no response has been received. **(Case 23450)**

Despite the thousands of civilian injuries and deaths, the army pursued its (non) investigation policy. This policy was described in detail in the previous activity report.[34] Since the start of the current intifada and until the end of 2002, Military Police

launched 30 investigations pertaining to the killing of Palestinians and to shooting incidents. Fifteen indictments were filed in this context, only two pertaining to the killing of Palestinians. Only in very few cases were soldiers convicted.[35] This reality stems from a policy implemented in the current intifada, and which was proclaimed by the Military Attorney General, who said: "when an army is at war … the policy of starting criminal investigations must, by definition, change as well. When there are thousands of cases of fire exchange and use of force, it is impossible and illogical to start an investigation for each and every one."[36]

As a result of this policy, in most of the deaths or injuries in which soldiers are involved, the IDF does not start an investigation despite HaMoked's demands.

On March 16, M.D., a resident of the old city of Hebron, was driving his younger brother to school. Three soldiers shot at their car as it was crossing an intersection. M.D. was injured by one of the bullets and taken to the nearest hospital, were he was pronounced dead. The area was quiet before the incident, and witnesses said that the passengers were not warned before they were directly shot at. M.D. had a wife and two children. M.D.'s father contacted HaMoked on May 16, and HaMoked immediately sent a letter to the IDF's Central Command advocate demanding an investigation. As of the date of this report, no response has been received. **(Case 17820)**

When there is a response, it is usually that the matter has been referred to some other authority which hasn't yet responded.

R.H., a 15-year-old boy from the Al Fawwar Refugee Camp, was on his way home on April 6 when he bumped into an IDF force, which included a bulldozer and an armored vehicle. One of the soldiers fired at him without any warning. R.H. died on the spot. On August 14 his family contacted HaMoked, asking to find out the circumstances of R.H.'s death. On August 15, HaMoked contacted the West Bank legal advisor and the IDF Central Command advocate with a request to investigate the incident. About a week later, the legal advisor responded that this incident was under the jurisdiction of the Central Command's advocate and that the matter had been forwarded to the latter. No further response has been received at the time this report was compiled. **(Case 18003)**

Whenever the IDF decides to look into a

31 Death statistics from B'Tselem, www.btselem.org; injury statistics from the Red Crescent, www.palestinercs.org

32 On September 1, 2002, an investigative committee chaired by a major general was appointed to look into a sequence of IDF operations in which 15 civilians had been killed. The committee found no flaw in these operations. In early December, after 20 Palestinians were killed in nine days and Israel itself said that 11 of them were civilians, the IDF declared it was changing its rules of engagement to make them more stringent. Only a few days after these strict rules of engagement were introduced, a 95-year-old Palestinian woman was shot dead. **Haaretz**, September 13, 2002, p. B5; **ibid**, December 10, 2002, p. A7; **ibid**, December 26, 2002, p. A10

33 **Haaretz**, December 8, 2002, p. A8

34 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 14-16.

35 **Haaretz**, January 2, 2003, p. A1.

36 **Haaretz**, October 15, 2002, p. B3.

death or injury, a debriefing takes place, not an investigation. In debriefings, the commanders on the ground probe lower officers, soldiers and friends. In three of the files opened this year by HaMoked, it was this kind of an inquiry that was started. Although sometimes debriefings are the precursor of a fully-fledged investigation, the unreasonable length of this stage rules out any chance of a successful investigation later on.

At around 8:30 AM on October 31, 2001, A.G. along with his youngest son, his sister and her husband and their children, was driving from his sister's home to his house in Tulkarm. A tank that was normally located on the roadside, was blocking their way. The family returned to the sister's house. The tank then approached the house as well. Afraid that the tank might damage the parked car, A.G. exited the house to move it. The soldiers in the tank opened fire at A.G.'s car, and he was hit. The tank blocked the road and did not let the Red Crescent ambulance in. Only after repeated entreaties, the soldiers allowed one of the medics to go to the injured man. The medic and A.G.'s brother-in-law tried to move A.G., who was bleeding heavily, to the ambulance. The soldiers stopped them at gunpoint, searched the injured man, confiscated his wallet and only then allowed them to carry A.G. to the ambulance. A.G. was rushed to the hospital, but died in surgery.

A.G.'s brother appealed to HaMoked on March 7, 2002. HaMoked turned to the IDF, demanding an investigation. At the end of April the IDF's Central Command advocate provided the following response: "we have contacted the relevant entities in the army in order to look into the complaint." As of the end of December, HaMoked has received none of the findings of this inquiry. **(Case 17263)**

As it is, the commanders have the power to decide whether to subject their subordinates to a Military Police investigation. Under these circumstances it is not surprising that most debriefings are mishandled and end without any outcome.

S.G., an 11-year-old girl, was standing on her rooftop in the neighborhood of Abu Sneina in Hebron, when, at around 6 PM on August 12, 2001, the IDF started shooting at the house. Before she had a chance to go downstairs, she was hit in the head by a bullet. S.G. was rushed to hospital, where she was pronounced dead. In November 2001 the family contacted HaMoked, which demanded that the IDF investigate the circumstances surrounding the child's death. On January 30, 2002, the authorities responded that the complaint had been passed on for inquiry. On September 24 the Central Command advocate informed HaMoked: "the inquiry indicates that … there is no information pertaining to the circumstances of the child's alleged death. Moreover, even if the child was indeed killed as described, fire exchanges were occurring at that time and place. We therefore find no reason to pursue an investigation in this complaint." HaMoked has asked the advocate for the investigation material, in order to consider what steps to take next. **(Case 16593)**

In addition to the suffering inflicted on Palestinian residents of the Territories by the actions of IDF soldiers or by their inaction when they fail to investigate incidents, the IDF has also failed to comply with its basic obligation to uphold order and security and protect the lives of Palestinians against brutality by Israeli settlers. On October 16, a Palestinian from the Nablus area was killed and three others were injured when settlers shot at them. It was the olive-picking season, and in view of the dire economic condition in the Territories, this year's good crop was extremely important. However, settlers in various regions coveted the fruit grown by Palestinian farmers. After the Palestinian olive pickers were chased away with threats, beatings and shooting, settlers came in and picked the olives for themselves. Only after the media covered the story and international pressure was applied on the Israeli government did the Chief of Staff instruct the IDF to take action against this practice.[37]

On October 5, G.G., a resident of Aqraba, and four other Palestinians went to pick olives in Wadi Yanun. About 20 settlers came and surrounded the plot where they were working. One of the settlers ordered the five Palestinians to turn around, and then asked whether to shoot them or beat them up. The answer was, loosely translated, "beat the shit out of them." The settlers attacked the pickers and beat them for a long time. The five Palestinians managed to escape and made it to the nearest clinic, where G.G. was diagnosed with two fractures in his left leg, a serious injury to his right eye and a cut just above the right eye. G.G. is still going in and out of hospitals. On December 10, G.G. contacted HaMoked, which instructed him to quickly file a complaint with the police at the nearest DCO, and send HaMoked a copy of the filed complaint, so that HaMoked could follow up on the investigation. G.G. followed these instructions, and on December 19 HaMoked contacted the DCO in Grizim, where the complaint had been filed, asking for an update on the investigation. **(Case 24096)**

Palestinian residents of East Jerusalem have also had to deal with violence, in this case by the police – mostly the border police.

In the early hours of the morning of October 7, W. H., his wife and their daughter, who live in Jerusalem neighborhood of Tsur Baher, were on their way to the clinic, where the girl was to receive medical care. Four border policemen stopped them at a makeshift roadblock, one of many that are deployed throughout the city. The policemen asked them to show their IDs. One of the policemen asked why the girl did not have an ID. The father said she could not get one because she was not yet 16, and that her details were included in his ID as required. Another one of the policemen ordered the father to get out of his truck. When W.H. did not comply immediately, the policeman opened the truck door, pulled W.H. out by his shirt, and when W.H. fell, the policeman started beating

37 **Haaretz**, October 17, 2002, p. A1; **ibid**, November 12, 2002, p. A6; **7 Days supplement, Yedioth Aharonoth**, November 22, 2002, p. 24.

him up. The mother and daughter in the truck started screaming at the policeman to stop, and in response another policeman closed the windows of the truck to shut them up.
The woman called HaMoked, asking for something to be done to stop the policemen from brutalizing her husband. HaMoked contacted the headquarters of the border police, and demanded them to instruct the policemen to stop, and to send a police car from the nearest police station to see what was going on. A few minutes later the woman called again, saying that her husband had been cuffed, put on a jeep and taken away. HaMoked discovered and informed his wife that W.H. had been taken to the police station at Armon Hanatsiv. W.H. was detained at the station for about three hours, verbally abused by another border policeman, questioned under suspicion of hitting a policeman, and only then discharged. At HaMoked's advice, W.H. filed a complaint with the police Internal Affairs Department that same day. On October 10, HaMoked contacted Internal Affairs, on behalf of W.H., to inquire about the investigation. **(Case E414-22931)**

Pillage and Vandalism

During the first two IDF invasions into towns and villages in the West Bank, HaMoked received reports of many cases in which IDF soldiers pillaged and vandalized homes and offices. IDF forces vandalized private property and destroyed municipal infrastructure. HaMoked's efforts in this context were described in the previous activity report.[38] Individual requests for help started coming in later, and in every such case HaMoked turned to the authorities with a demand to start an investigation and press charges against the transgressing soldiers. While the authorities almost completely ignored complaints pertaining to deaths or injuries, property damages did receive treatment, albeit negligent in most cases. Military Police started 93 investigations of pillage and theft, and indictments were served in 15 of these investigations.[39]

In most files that HaMoked opened in this context this year, investigations were commenced. Most of these investigations ended with rather meaningless outcomes: the stolen item was returned to the DCO, there is no record of the incident, and so on. Although investigations are started, they are ineffective. In most cases, they are run by reserve soldiers, who by and large do not speak Arabic and do not stay long enough on the job. Thus, each case changes hands at least once, which makes it hard to process to the investigation material and protracts the probe, since every new investigator needs time to study the material collected by his predecessors. Another factor that stretches the inquiry is that the investigators do not have enough translators at their service, thus material is constantly backlogged as new cases pile up.

The H. couple are both physicians. They run a clinic in Bethlehem and live in Beit Jala with their four children. In March, their daughter was injured by IDF fire and their house was searched. In the search, damage was caused to their property and valuables were stolen. On April 10 the family contacted HaMoked, which demanded that the Office of the IDF Attorney General investigate the shooting and the conduct of the soldiers during the search, and see to it that the stolen items are returned. No response was provided. During the first break in the curfew that was imposed in Operation Defensive Shield on April 16, H.H. went to her clinic and discovered the extensive damage inflicted there: the door was broken in, chairs in the waiting room were broken, pictures on the wall were vandalized, the ultrasound and sterilization machines were destroyed, the chandelier was shattered, the medical books were torn, shooting marks were evident and human excrement was left by the soldiers. Extensive damage was caused to the other offices and clinics in the building as well. On April 24, HaMoked demanded an investigation of the devastation at the clinic. In July, a reserve soldier working as a Military Police investigator called HaMoked and asked for the letters pertaining to the damage caused to the clinic specifically. Later on, the investigator sent a request to interview witnesses at the DCO in Etzion: "10 AM to 5:30 PM, Sunday through Thursday, by appointment, and depending on curfew hours." On July 22 H.H. made it to the DCO and gave a statement. As of the date of this report HaMoked has received no answer to the requests for updates on the probe. **(Case 17766)**

In September, the IDF informed HaMoked that letters of proxy and detailed affidavits by complainants must be attached to all requests to launch investigations. The IDF further demanded a statement from complainants that they would be willing to cooperate with the investigating authorities. Obviously, HaMoked cannot provide affidavits (although it can provide testimonies), since in order to sign an affidavit the complainant has to physically come to HaMoked's offices – which cannot be accomplished because residents of the Occupied Territories are not allowed into East Jerusalem.

Extensive damage has been caused to houses adjacent to those demolished by the IDF as part of the policy of penalizing the families of suspected terrorists.[40] Since increasingly more houses are deliberately demolished as part of this policy, and since explosives or bulldozers are the tool of choice in these demolitions, the prevalence of arbitrary destruction of property inevitably increases, even though this violates International Law, Israeli Law and the rulings of the HCJ. As of the date of this report, there has been no response to HaMoked's demands to compensate homeowners.

On August 4, in the village of Silat al Harithiya, an IDF force demolished

38 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 16-17.

39 **Haaretz**, January 2, 2003, p. A1.

40 See the section about house demolition, above.

the house of the family of A.T., who had allegedly detonated himself in a suicide bombing. The soldiers came to the house in the dead of night, ordered the inhabitants of this house and the ones adjacent to it to get out, not allowing them to take any of their belongings, and blew up the house of A.T.'s family. The explosion completely destroyed another house, and serious damage was caused to four others nearby: walls were broken and cracked in a way that made it dangerous to live in the rooms, etc. Animals in the sheds outside were also injured. Two of the house owners contacted HaMoked, which, on their behalf, demanded that the IDF investigate the incident, pay compensation and make sure that such communal punishment does not recur. As of the end of December 2002, HaMoked has received no response.
(Cases 18002, 22599)

Confiscation of ID Cards

Under the military law that is in force in the Territories, there are three reasons for which soldiers may confiscate IDs: to force the ID holder to remove obstacles from the road, to force the holder to remove a symbol or to make sure that the holder shows up at a certain place and time as demanded. The soldiers must return the ID once the obstacle or symbol are removed or provide some identifying certification until the person reports as required.[41] During the summer, dozens of residents of the Territories contacted HaMoked, complaining that IDF soldiers had taken their IDs, did not return them and did not furnish them with any alternative documentation. In some instances, confiscation was a means to get residents to come to the nearest DCO Office and meet with a GSS investigator or with an IDF officer. IDs were confiscated as a penalty for cutting queues at roadblocks, "insulting" soldiers, taking detours around roadblocks, breaking curfew, or for no reason at all. IDs were taken at roadblocks, during house searches or after being delayed by IDF patrols.
In some cases, residents are instructed to go to some roadblock at a later time, ostensibly in order to get back the confiscated ID, but the ID is not returned. In most cases, the confiscation is arbitrary, and the holder has no way of reclaiming his or her ID. Since the law requires residents to carry IDs at all times, without this residents are at risk of being arrested whenever they leave their house. In several cases, HaMoked's intervention got the authorities to return the taken IDs.

On December 2, four cars with about 20 men, women and children were driving from Jericho back to their homes in the northern part of the West Bank. After they were not allowed through a roadblock, they tried a dirt road, but were stopped by an IDF patrol. The soldiers confiscated the keys of all four cars and the IDs and passports of the

passengers. Later they returned the keys, and instructed the group to go back to Jericho. The group went to the DCO in Jericho, where they were told that their IDs would not be returned before nighttime. One of the women contacted HaMoked, and about two hours later, after HaMoked intervened, the IDs were returned and permits were secured to allow the group to pass through the roadblocks on their way home. **(Case E607)**

Chances of recovering the ID diminish with every day that goes by. In cases when the ID is not returned, HaMoked demands an investigation and insists that the soldiers who had confiscated the ID illegally should be put to trial.

On July 18, Nablus residents A.A. and A.K. were apprehended for two hours by IDF soldiers who were staying at a house that was occupied by the army not far from where the two live. Their IDs were confiscated. Around a week later, A.A. and A.K. contacted HaMoked, which raised the case with the Civil Administration, but the IDs could not be traced. HaMoked then approached the West Bank legal advisor the Central Command advocate, demanding to investigate the confiscation and return the IDs. As of the date of this report, no response has been received.
(Cases E192, 17945/6)

In the numerous cases when IDs are not returned to their owners, the latter have no choice but to seek new IDs from the PA, in a long, tedious, and expensive process. Residents applying for a new ID must first inform the police, publish an notice in the press, make a sworn statement in court, submit an application to the Palestinian Ministry of Interior, undergo security checks and get Israel's approval. The procedure takes more than a month and costs about the current equivalent of 20 days of subsistence in the Territories. In addition to individual assistance, HaMoked has contacted the Military Attorney General with a demand to clearly instruct soldiers on the ground about the circumstances in which they are authorized to confiscate IDs, and to make sure that these instructions are enforced. As of the date of this report, no substantive response was received.

Legal Action

The policy of the authorities in charge of enforcing the law, which in the case of personal injuries fluctuates between negligent investigation and none at all, rules out any genuine inquiry into the death and injury of thousands of residents. Israeli courts are thus the only option left for Palestinian residents of the Territories to uncover the truth. The failure of the

41 **Ordinance concerning Security Provisions (Judea and Samaria) (No. 378),** 1970, Article 91c.

authorities thus goes beyond keeping the residents of the Territories out of harm's way; the authorities also fail in their duty as mandated by the Basic Law: Human Dignity and Liberty, namely protecting the dignity and physical integrity of all people. In addition, the longer an investigation is delayed, the less evidence can be collected; thus, the policy of not investigating, denies victims the option of seeking compensation from their wrongdoers for the injustice they have suffered. When it represents victims in court, HaMoked tries to get the State to acknowledge its responsibility for the actions – and inactions – of its agents, including the failure to investigate cases of violence against Palestinians.

On the afternoon of October 29, 1993, Mr. and Mrs. A., their two daughters – aged two and three, and their two-months-old baby boy, were driving from their home to Nablus. One of the intersections on the way was blocked by Israeli vehicles. People who stepped out of these cars started shooting in the air and throwing stones at the family's car and at other Palestinian vehicles. The assailants smashed the windows and lights of the car, destroyed the engine and let the air out of the tires. One of the stones hit Mr. A. in the arm. The family managed to get out of the car and escape, and saw the assailants leaving for the nearby settlement of Yizhar. They reported the incident at the police station in Nablus, and at the request of the Civil Administration, Mr. A. returned to the intersection and gave his testimony to the officer in charge and the damaged car was photographed. He then went to the nearby hospital, where he was diagnosed with a fracture in his arm.

After many months went by and they received no update concerning the investigation, Mr. and Mrs. A. contacted HaMoked. HaMoked was told that the investigation had been closed two months after the incident, as no suspects could be identified. After getting a copy of the investigation material, HaMoked realized that except for collecting the testimonies of the victims and documenting the damage done to the car, the police had done nothing. This despite that the victims testified shortly after the incident about the direction in which the assailants had escaped, and a car that fit the details provided by the witnesses was identified by an IDF officer not far from the site, its engine still warm. In 1999 HaMoked filed suit against the Israel Police, claiming damages for the incompetent investigation. On December 9, 2002, the court ordered the government to pay the family NIS 30,000 in compensation, and endorsed most of HaMoked's arguments regarding the duty to investigate, not only as derived from the sovereign's duty to enforce the law, but also as derived from the sovereign's duty to uphold the rights of complainants. **(Case 7137)**.

At 5:50 PM on October 5, 1996, immediately after curfew was lifted from Al 'Arrub Refugee Camp, R.R., a resident of the camp, went out to the street. He was stopped by soldiers, who tied his hands behind his back with cable ties, led him to a military post at the entrance to the camp, and ordered him to sit on the

roadside. About two hours later, during which R.R. implored the soldiers to ease the pain caused by the cable ties and to let him relieve himself, a soldier came by and slapped him across the face. The force of the blow knocked R.R. over and he collapsed on the ground. When R.R. protested, the soldier kicked him all over his body. A while later, the commander instructed the soldier to release R.R.'s hands. The soldier cut the cable ties with a knife, and in the process injured R.R. in the lower back. His requests to get medical treatment were this time answered with blows with the butt of a rifle. Only around seven hours after his detention, an officer showed up and ordered R.R.'s release, without any medical treatment. At the hospital, the cut in R.R.'s back was sutured, and beating and injury marks were diagnosed. R.R. filed a complaint with the police in Hebron, and contacted HaMoked. About six months later, the IDF closed the investigation file, without taking any measures against any of the soldiers involved. In July 2002, HaMoked filed a damage suit against the abusive soldier and against the Ministry of Defense. **(Case 10580)**

A.S., who in 1993 was 15, was shot in the leg by one of the bodyguards of Rabbi Levinger next to Hashoter Square in Hebron. Passersby took him to the hospital. When no response was received six months after the complaint had been filed with the police, the boy's family appealed to HaMoked. HaMoked's inquiry revealed that although the police and other security agencies were aware of the incident in which A.S. was injured, witnesses were not questioned and the circumstances were not investigated. The negligent investigation did not find anyone guilty of the shooting, and, since there was no evidence, the Jerusalem District of the State Attorney's Office closed the file. On May 29, 2002 HaMoked filed a claim for damages against the Defense Ministry, which was responsible for the shooter at the time, and against the Israel Police, for its failure to investigate the incident. **(Case 6678)**

In the isolated cases in which the investigation conducted by the authorities does not lead to a dead end and a few indictments are even served, the penalties imposed are usually ridiculous. Here, too, legal action after conviction and sentencing force the State and those acting on its behalf to assume responsibility for their actions.

H.S. and the M.N. brothers, Yatta residents, were working in Moshav Azariya in Israel in 1994. A border policeman, whose jurisdiction did not include the Moshav area, came with two of his subordinates and a friend to chase the three Palestinians out of the Moshav. The policeman woke the workers from their sleep with shoves and kicks, chased them out of the room where they were sleeping, beat them up while searching their persons, and kept on hitting them after he got them in his car. At the border police post to which they were taken, abuse continued: the policeman beat them up with a club and pricked two of them with a syringe. About an hour later, the three were driven to the nearest roadblock and

ordered to go back to their village. Internal Affairs recommended serving a criminal indictment against the border policeman, one of his two subordinates and his friend. HaMoked coordinated the arrival of the three victims and their witnesses to the court hearings. At the end of 1999, the court found only the border policeman guilty, and sentenced him to a 10- months suspended sentence, a NIS 5,000 fine and 300 hours of community service. In 2001 HaMoked filed a damage claim against the border policeman. The court ordered NIS 12,000 to be paid to each of the victims. **(Case 10637)**

On May 9, 1996, G.Z., a resident of the Old City of Jerusalem, was walking toward Damascus Gate. After passing by three border policemen, he heard a shot, felt intense pain in his forehead, and started bleeding. The attempts of one of the policemen to stop the bleeding failed, and G.Z. was evacuated to Hadassah Hospital, where a bullet fragment was removed from his forehead. After he was discharged from the hospital and testified before Internal Affairs, G.Z. contacted HaMoked, which followed up on the investigation. The policeman who fired the shot was brought up for disciplinary action, convicted and sentenced to a NIS 150 fine, and a serious reprimand was entered in his file. In September 1998, HaMoked filed for damages, on behalf of G.Z., against the officer and the Israel Police. On September 29, 2002, the court ordered NIS 10,265 to be paid to the victim. **(Case 9887)**

Access to Justice

In the past year, the only avenue that Palestinians from the Territories still had of securing justice – compensation in Israeli courts – has been blocked almost completely. The impact that the sweeping prohibition on entry of Palestinians to Israel has had on the preparation and conducting of such claims, as well as the influence that July's amendment to the Torts Law regarding State liability has had on the chances of such claims being heard by the courts, was discussed at length in the previous activity report.[42] This amendment has already influenced HaMoked attempts to turn to the courts. The State has been trying to apply the expanded definition of acts of war, as defined in the amendment, retroactively, in order to hold itself harmless against suits connected with violations that took place before the amendment was passed and which are the subject of pending court cases. These attempts are in violation of Israeli law and case law, and unacceptable in any legal system in general. The court has not yet ruled on the matter, but a decision handed down in one of the cases presented by HaMoked, indicates that the law cannot be applied retroactively. However, indirect implications of the amendment are evident in that same decision: while the court did

not refer to the sweeping definition of acts of war provided in the amendment, it broadened the one provided earlier by the Supreme Court.[43]

On September 4, 1990, in his village of Ya'bad, K.A. noticed a military jeep with six soldiers approaching him from behind. He was shot in the head with a rubber-coated bullet and lost consciousness. When he came to, he was in the facility of the Civil Administration in Ya'bad, where he was being treated by a military personnel. Since it appeared his skull might have been fractured, K.A. was transferred to Hadassah Ein Karem Hospital in Jerusalem. Although the IDF was aware of the incident, no inquiry ever took place. In June 1997 HaMoked filed for damages against the State of Israel on K.A.'s behalf. In its summation, the State argued that the broad definition of 'acts of war' provided in the amendment to the Torts Law, applies to this incident too, even though it had occurred 12 years before. HaMoked applied for and received permission from the court to respond to this argument, and laid down the legal arguments against it. The fact that in his ruling the judge did not address the argument put forth by the State implies that the new definition cannot be applied retroactively. However, the claim was denied. One of the rationales behind the denial was a definition of 'acts of war' that stretched beyond the one the courts have endorsed until then. Under the expanded definition, the fact that stones were being thrown in the area of the incident prior to the shooting, made the encounter between the soldiers and K.A. an act of war. **(Case no. 9630)**

The amendment imposes a long list of demands with which Palestinians must comply when filing suit in Israel. One of the requirements is that the victim or a family member fill out and send a special form within 60 days of the injury. The proposed form – which is in the Hebrew language – requires complainants to provide the minutest details, including witnesses' names and ID numbers. Failure to provide any of the required information, including details unknown to the claimants, could cause the entire form to be rejected. Another requirement is that the form must be delivered by registered mail to the Defense Ministry's Claims and Insurance Department in Tel Aviv. Apart from the fact that to date registered mail services are not available in any Palestinian town, to HaMoked's knowledge, the authority to which the form is addressed has so far consistently declined compensation to Palestinians in connection with the current intifada. ACRI and HaMoked are currently compiling a position paper on the subject.
Even in cases in which the amended Torts Law has no impact on the hearing, the State tries to make it difficult for victims to substantiate their arguments.

In 1996, when M.S. was 16 months old, he was diagnosed with leukemia. He was treated successfully at Hadassah Hospital. When he was

42 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 19-22.

43 **Ibid**, p. 21.

discharged, his parents, who are residents of Beit Ula, were instructed to rush him to the hospital if he ever develops a fever, since the treatment he had received weakened him and any infection was likely to kill him. On September 28 that same year, the baby's temperature went up, and his parents tried to get him to the hospital. Despite their entreaties and the medical documentation they showed the soldiers, they were detained for a long time at the roadblock in Beit Jubrin. Finally, the mother and baby were allowed through, but about 15 minutes before they reached the hospital, the baby stopped breathing, and all the attempts to resuscitate him failed. The IDF closed the investigation about a year later, without taking any legal action against any of soldiers at the roadblock. In August 1999, HaMoked sued the State of Israel for damages in connection with the roadblock detention and M.S.'s death. As part of the proceedings, HaMoked submitted an opinion by a pediatric hematologist and oncological expert from Yale, who wrote that according to all the medical records available, had the child been brought to the hospital without delay, his life likely might have been saved. Under Israeli law, opinions presented by foreign experts must first be confirmed by a representative of the Israeli consulate before they can be admitted as evidence. The confirmation attests to the authenticity of the signature and to the criminal liability of the expert in his country of origin, in case his or her opinion is fallacious. The Israeli consulate in New York does not have a standing procedure by which to provide such confirmations, and the Consul refused to handle HaMoked's request to approve the opinion. In Israel, a government committee denied HaMoked's request to submit the opinion without such confirmation. In order to find a way out of this dead end, in which one authority was unwilling to follow the law, while another refused to make concessions, on October 30, 2002, HaMoked petitioned the HCJ. **(Case 10638)**

Freedom of Movement

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

Universal Declaration of Human Rights, Article 13

By the end of 2002, the term "Freedom of Movement" has become meaningless wherever movement of Palestinian residents of the Territories is concerned. They cannot leave their homes because of recurrent curfews; they cannot leave their towns and villages because of ditches and mounds surrounding them as part of the siege. They cannot reach other towns and villages because of roadblocks; they cannot enter Israel because of closure, which prohibits them from crossing the Green Line. Residents of the West Bank are unable to reach the Gaza Strip and vice versa, because the "safe passage" has been terminated; and most of them cannot go abroad because of the draconian conditions for exit permits to Jordan. In addition, foreign relatives of residents of the Territories cannot visit them, because Israel refuses to approve permits to visit the Territories.

Consequently, children are unable to attend school regularly, adults are unable to work and provide for their families, the sick and wounded are unable to get medical care and the faithful are unable to practice their religion. Inquiries received this past year by HaMoked covered the array of difficulties caused by denying the Freedom of Movement: delays in the evacuation of injured persons, irregular water supply, roadblock violence, separation between parents and children, engagements that cannot turn into marriage, scholarships that cannot be utilized, and vocational training courses that cannot be reached, are just some of the examples.

Entry from Abroad

According to the IDF, the West Bank and the Gaza Strip have been and still are a closed military zone; all entries and exits are subject to approval by the regional commander. Any person who is not registered in the Palestinian Population Registry needs a permit to enter and stay in the Territories. The permit, which depends on Israel's approval, is given for a limited period of time and, as a rule, can only be renewed after the person exits the Territories. One of the exceptions to this rule was defined in petitions that HaMoked filed with the HCJ in the early 1990s. The exception concerns residents' spouses who have stayed in the Territories as visitors or received visit permits between 1989 and August 1993: the State has undertaken to the Court that as long as their applications for family unification are still pending, these spouses would be legally allowed to stay in the area, their permits would be extended for six months at a time, and they would be permitted to travel in and out of the Territories with no restriction. In addition, applications of these spouses for family unification (namely, to be recognized as a resident and get a Palestinian ID) enjoy a special status compared to other applications for family unification.

Since September 2000, Israel has frozen the processing of these visit permits. Currently, visit permits are only seldom approved, in humanitarian situations whose definition no one knows. As applications for family unification have also been frozen, non-resident spouses of residents of the Territories now have no legal status in their own home – their visit permits have expired, and their applications for Palestinian IDs are not being processed. If caught by IDF soldiers, they will be deported (see section about deportation of " illegal aliens", above). If they leave the Territories, their situation will only be worse – like that of spouses who left in the first months of the intifada and have been unable to return ever since: they relied on the fact that their special arrangement had not been canceled in the past either, and that nothing has been published to indicate such pending cancellation. Husbands, wives, fathers and mothers found themselves far away from home, unable to return to their spouses and children, and children lost their father or mother in one fell swoop. The difficulty obtaining exit permits only made things worse, as members of the same family are now kept apart for months and even years. The following is an excerpt from the statement of a mother who has been staying in Jordan with her little boy for about two years now, unable to unite with her husband and her other two children in the West Bank. This excerpt is from HaMoked's HCJ petition on this case (to be discussed below):

> "I … want to live with my husband in a house of our own – and the house already exists … and I have already lived there and built a family. Now I am being kept away, like an exile.
>
> "My children are … just five and seven years of age. Do I need to explain how a mother feels when she cannot see her children? Cannot hug or kiss them? Cannot make sure that they eat

properly, or that they get to eat what they like? Or that they study well, or even that they are clean? I do not think it necessary to explain how children need their mother, and how a mother's love is irreplaceable …. The only contact we can have is by phone. I talk with them on the phone and we all cry.

"… My little boy … refuses to accept the fact that he is not with his father. He is so jealous of his cousins, that he has taken his uncle's name instead of that of his father. At night, he asks me to let him sleep by his uncle, whom he believes is his father and whom he calls 'baba' – just like his young cousin, who indeed sleeps by his father. When I refuse, he cries with anger, because he does not understand why he is being denied this treat while his cousin is not. After all, he wants a father too – a father he cannot even remember because of the prolonged separation, which forces me to show him his father's picture every day, to ingrain it in his memory as much as possible."

HaMoked has not succeeded in the last two years in convincing the authorities that such cases of families that are torn apart, constitute humanitarian circumstances in which visit permits should be approved.[44] Legal arguments concerning the right of the spouses to family life and the right of their children to be raised in a protected family unit in their own home, were to no avail. It was also of no use to explain that when the State refuses to issue visit permits in these cases it violates an committment it had first made to the HCJ in 1991 and which was reconfirmed in later cases.

HCJ

G.A., a Jordanian citizen, and H.A., a resident of Beit Ula, married in 1990 and settled in the husband's village in the Territories. The couple has three children – the eldest is now seven, and the youngest is four years old. Mr. and Mrs. A. belong to the population to which the first HCJ ruling applies - G.A. was given a visit permit, which was renewed every six months, and her permanent residency did not depend on the quota established in negotiations between Israel and the PA. Over the years, G.A. left several times to visit her parents and brothers in Jordan, and returned to her home in the West Bank. In January 2001, holding a valid visit permit, G.A. went to Jordan with her youngest, and has been unable to return ever since. In August, H.A. tried to go to Jordan with their oldest son, to visit his wife and little boy, but Israel did not let him through.

On his behalf, HaMoked contacted the West Bank legal advisor with an urgent request to approve H.A.'s exit to Jordan. The answer was received two months later: denied because of "security reasons". HaMoked appealed to the authorities again, asking to issue a visit permit for the wife, or, alternatively, to allow the husband to go to Jordan. After a great deal of red tape, both options were rejected. In November, HaMoked petitioned the HCJ to allow the wife and son into the West Bank or, alternatively, to authorize frequent exists of the husband to Jordan. In January 2003, the State announced

44 HaMoked, **Semi-Annual Report: January-June 2001**, pp. 12-14.

that "**ex gratia**, in view of the specific, exceptional humanitarian circumstances of this case," G.A. and her son would be allowed back into the West Bank. **(Case 16159)**

Following this petition, the authorities held a discussion in which they addressed the general question of visit permits. HaMoked forwarded the State Attorney's Office a document detailing its position on renewing visit permits and handling applications for family unification, and explained the legal arguments that support this stance. The authorities have still not made a decision in principle on this matter.

Leaving the Territories

Since the start of the occupation, Palestinian residents of the Territories can only leave if they get the approval of the IDF commanders in the West Bank or the Gaza Strip, as relevant. Israel has often abused this power as a penal measure or as a tool to extort collaboration. Many residents who tried to exit through the border passages at the Allenby Bridge or at Rafah, were sent back, because their applications for exit permits had been denied. They had no choice but to wait another six months, the period defined by the military, before they were allowed to reapply, and then wait another few months for the answer, and hope that this time it is positive and is not made contingent on a meeting with a GSS interrogator.

In the first half of 2002, against the backdrop of the IDF invasions into the territories of the PA, there has been a change both in the number of inquiries HaMoked has received regarding exit permits and in the circumstances surrounding these inquiries. The number of applications for exit permits has dropped, since people do not tend to part with their families in times of war; the few who did ask for help getting exit permits, did so under urgent circumstances, such as medical treatment or the hajj. For further details about HaMoked's processing of these inquiries, see the previous activity report.[45] As the IDF's presence in the territories of the PA extended throughout the year, the number of inquiries on this subject increased and the circumstances changed as well – family visits, higher education and other such reasons were cited in addition to medical emergencies. The IDF also resumed its old habits: it again started taking a year to provide answers, despite a pledge it has made in a petition that HaMoked had filed in 1992, to process ordinary applications within about two months;[46] it made the permit contingent upon a meeting with an IDF interrogator, as a means to secure collaboration; and made the permit contingent upon a commitment to stay away for a long time, a form of "voluntary exile".

S.D. and his brother have not seen each other in 18 years. Since 1997, all of S.D.'s attempts to travel to Jordan have been

rejected because of "security reasons" – apparently related to S.D.'s seven-month detention in 1995. In January 2002, HaMoked demanded that the authorities reconsider the application in view of contemporary information rather than based on events of the past. Eight months later, in August, the authorities replied that in order to process the request, S.D. must report to the DCO in Kedumim… "for a meeting with Captain S.".[47] If he does not, the processing of his application will be delayed. This demand posted by the authorities was made even though HaMoked had clarified that it would not coordinate any such meetings and that the answer provided by the authorities should not be contingent upon any conditions. S.D. told HaMoked that in his attempts to secure an exit permit, he had met with GSS interrogators in the past; they demanded collaboration, and when he refused, they threatened that he would not get an exit permit. HaMoked contacted the West Bank legal advisor, protested the fact that the answer was made contingent on a meeting that was designed exclusively to pressure S.D. to collaborate, and demanded an authorized, detailed response on the merits of the case. In December, another demand to meet "Captain S." came in. This time, S.D. decided to go to the meeting, hoping that maybe his very willingness to meet would get him the permit and enable him to see his brother. As of the date of this report, more than a year after the application was made, the authorities have not yet provided any response. **(Case 15472)**

A.P, a 29-year-old resident of Yamun, was engaged to marry L.A., a resident of Jordan. To finalize the marriage, A.P. had to go to Jordan, or, alternatively, his fiancée had to come to the Territories. In August 2001 A.P. tried to go to Jordan, but his application was denied because of "security reasons" – which did not exist previously, as A.P. had already visited Jordan several times in the past. In August 2002, HaMoked contacted the IDF on his behalf. The response was received in November: A.P. must undertake in writing that he would not return to the area including to his home for a period of at least two years and that during his stay outside of the area he would not be involved in any anti-Israeli activity. Only after A.P. signs this undertaking will the authorities process his request. Should he sign the undertaking, A.P. would not be allowed into the Territories even if one of his parents falls ill or dies. Having considered the matter, A.P. decided not to sign this undertaking yet. **(Case 17955)**

A.G. won a scholarship for graduate studies at the Institute of Agronomy in Crete, which is part of a regional project that is run in cooperation with the European Union and financed by the Greek government. Since residents of the Territories have for a long time been

45 HaMoked, **Semi-Annual Report: January-June 2002,** pp. 25-26.

46 HCJ Petition 3927/93, **Turki Salah v. IDF Commander in the West Bank**, not published

47 "Captain" is the nickname that residents of the Territories use when referring to GSS personnel.

prohibited to go abroad through Ben Gurion Airport, on October 6 HaMoked submitted an urgent application to the West Bank legal advisor, asking him to consider allowing A.G. to leave for Greece through Jordan. On October 22, the IDF replied that A.G.'s application to leave the area was rejected because of "security reasons" – without any further detail. HaMoked, on A.G.'s behalf, has urged the State Attorney's Office to reconsider. As of the date of this report, no response has been received. **(Case 16465)**

In some cases in which exit is denied, HaMoked's intervention leads to positive results – whether after appeals to the IDF or to the State Attorney's Office. In these cases, the applicant is finally allowed to leave the Territories.

In 1999 A.K., an assistant school principal from Tulkarm, was sent back from Allenby Bridge, which he wanted to cross on his pilgrimage to Mecca. Since then, HaMoked has contacted the IDF three times in an attempt to get permission for A.K. to leave. The first time, the application was denied because A.K. "is a Hamas activist". The second time, the authorities took nine months to respond that A.K. was not allowed to leave because of "security reasons." And the third time, his exit was again denied because "he is an Hamas activist." In August 2002, HaMoked once again contacted the West Bank legal advisor, and in September, less than a week after the application was made and after more than three years in which A.K. was not allowed out of the West Bank, HaMoked was notified that he was free to leave. **(Case 14135)**

G.A. was accepted to the Ph.D. program at the Faculty of Islamic Studies at the Jordan University in Amman. He signed up for the first semester starting October 15, but when he tried to cross Allenby Bridge, he was sent back and had to postpone his studies until December. In November, HaMoked submitted an urgent request to the IDF to allow G.A. to leave. The response was received on December 1: G.A. was not allowed to exit the Territories because of "security reasons". After G.A. managed to postpone the beginning of his studies by about a month, HaMoked appealed to the State Attorney's Office. At first, the West Bank legal advisor replied that G.A's application was rejected once again, but the State Attorney's Office provided an update: the security agencies have withdrawn their objection, and G.A. will be able to start his Ph.D. program in Jordan. **(Case 23312)**

Passage between the West Bank and the Gaza Strip

Under the Oslo Accords, the West Bank and the Gaza Strip constitute a single territorial unit. But even when the "safe passage" that connected the West Bank

to the Gaza Strip was operative, before the onset of the intifada, many residents of these two areas were not allowed to use it – a special magnetic card was required, which was given only if there was no security-related reason to prohibit an individual from commuting. Since the current intifada began, Israel has altogether halted passage of residents between the West Bank and the Gaza Strip. Nowadays, getting a permit to pass between two strips of land that are only a few kilometers apart takes many months, despite the HCJ ruling in HaMoked's petition against the deportation of three West Bank residents to Gaza, which endorsed the State's position that the West Bank and the Gaza Strip are a single territorial unit (see the section about deportation).

The marriage contract between West Bank resident, L.H., and Gaza Strip resident, H.K., was signed in November 2001. The marriage ceremony was to take place at the groom's home, where the bride and her mother were to go for this purpose. The two women applied four times to the DCO, asking it to arrange a permit that would allow them out of the West Bank and into the Gaza Strip, and were rejected time after time. A date for the ceremony could therefore not be set. In December 2001, HaMoked contacted the IDF on their behalf. In February 2002, the authorities said they would only let the women through if the mother signs a written undertaking to leave – and return to – the West Bank together with her daughter; obviously, this way L.A. and H.K. would not be able to conduct a married life, which was the reason for which the permits were sought in the first place. Despite this condition, the mother and daughter decided to take the pledge so that the ceremony could be held as soon as possible. HaMoked forwarded their consent to the IDF, but the processing of the application was delayed, and in March the IDF invaded the PA and the application was not handled at all. In July HaMoked contacted the State Attorney's Office asking it to allow the passage of the two women, which had already been approved five months before. No answer was received over the next three months. Meanwhile, L.A. was summoned to the DCO for questioning by the GSS, after which she was told repeatedly to come there to get her permit – only to go back empty handed every time. In November 2002 an answer was received: HaMoked was instructed to contact a specific officer at the DCO in Hebron to coordinate the precise time for the mother and daughter's journey. However, attempts by HaMoked, the daughter and even IDF officers to coordinate such a date with the DCO were to no avail. In December, L.A.'s father passed away, so her mother could not accompany her. HaMoked appealed to the authorities to allow a brother to go with L.A. instead. The IDF finally permitted L.A. to leave for Gaza on January 19, 2003, more than one year after the first application, but prohibited the brother from leaving. In her despair, L.A. decided to go to Gaza on her own. Another one of her brothers, who is in Jordan, is to come to the Gaza Strip through Egypt, so that one of her own relatives can be with her at her wedding ceremony as is customary. **(Case 16755)**

Even when the reason for the need to go from the West Bank to the Gaza Strip or vice versa stems from an error of the Israeli authorities themselves, the latter are in no rush to rectify their mistake. HaMoked has received several applications from detainees who are residents of the West Bank but were sent to the Gaza Strip after their discharge, in violation of an undertaking that the State has made in a petition that HaMoked had filed concerning detention conditions at Ofer Camp (see section about detainee rights: detention conditions). HaMoked's attempts to enable them to go back to their homes in the West Bank have not been successful so far.

H.K., a resident of Ramallah who is married to another resident of the city, was detained on March 3 at the Allenby Bridge, where he wanted to enter Jordan. He was held in Ashkelon Prison for one day, and from there he was taken to the Gaza Strip – because in Israel's records he is registered as a resident of Gaza, although he had already changed the address in his ID in 1998. For six months H.K. was trying to get back to his wife in Ramallah. After his inquiry was received, HaMoked asked the West Bank legal advisor to intervene. As of the time that this report was compiled, no response has been received. **(Case 23309)**

Closure

Since the previous Gulf War in 1991, residents of the Territories have not been allowed into Israel and East Jerusalem except with a special entry permit. Until 1993 Israel issued many permits that were valid for relatively long periods, but after a terror attack in March 1993, it imposed a general closure on the Territories that is still effective today. Roadblocks have been posted along the Green Line to prevent Palestinians who do not have permits from entering Israel; criteria for permits have not been publicized and permits were rarely given. Since October 2000, permits have been granted only in very special cases or when "concessions" are made that allow a few thousand workers to enter Israel – according to the needs of the Israeli economy – which are usually withdrawn shortly after. Anyone apprehended in Israel without an entry permit, risks imprisonment and criminal conviction, and in the future may well be denied an entry permit or any other kind of movement permit because of this criminal record. Most applicants who contact HaMoked asking for permits to enter Israel, do so when no solution to their specific problem is available within the Territories and they must seek an alternative.

N.T., a six-year-old girl form Kafr Jammal, was injured in the eye in an accident at home. That same day she was taken by ambulance to St. George Hospital in Jerusalem, where she was operated. For the treatment to succeed, N.T. had to return to the hospital for periodic checkups. N.T. did not make it to the first

checkup in May, since the soldiers at the roadblock outside her village did not let the ambulance through. The checkup was rescheduled for June, but the ambulance was again not allowed to pass. A new date was set for August, three months after the original appointment. N.T.'s parents contacted HaMoked, asking to make sure that their daughter would be allowed out of the village, through the West Bank and into Jerusalem. HaMoked spoke with the Civil Administration, which authorized N.T. and her father access to the hospital. In September, as the next scheduled appointment approached, the father once again contacted HaMoked, which again was able to secure the necessary permits. However, because of the curfew imposed on Kafr Jammal, the father was unable to go to the DCO to collect the papers. **(Case 18011)**

Israel prides itself on the full freedom it allows human rights organizations working within its borders.[48] HaMoked has made appeals on behalf of employees of human rights organizations. These have been rejected, despite the fact that when they are not allowed into the country, this compromises the operations of their organizations.

A.D., a journalist who is a resident of Tubas, has been working as a field researcher for B'Tselem since February 2002. The field workers of this organization document human rights violations in the Territories, and their training is fundamental to the operations of B'Tselem. The importance of these activists has increased even further since civilian Israelis have been prohibited from entering the territory of the PA. Since the intifada began, field researchers have no longer been able to reach the offices in Jerusalem on a regular basis, and B'Tselem therefore decided to hold concentrated seminars for its workers. The first seminar took place in October 2001. Field researchers from the Territories received entry permits to Israel. Toward the second seminar in October 2002, B'Tselem once again contacted the authorities, asking for permits for its staff, but A.D.'s entry was denied. The only explanation provided was that the GSS did not allow it. B'Tselem contacted HaMoked, which appealed to the State Attorney's Office to enable A.D. to attend the seminar. The State Attorney's Office handed the matter over to the IDF, which responded that confidential intelligence indicates that A.D. is active in the Popular Front for the Liberation of Palestine. A.D. flatly denies this: except for being briefly detained about 10 years ago for staying in Israel without a permit, and except for an incident when his camera was confiscated when he was talking with reporters about how his nephew had been killed on August 14 while being forced by the IDF to serve as a "human shield", A.D. was never arrested or questioned by the authorities. The second seminar took place as scheduled, without A.D. Before the third seminar, in December, the military disallowed the entry of A.D. and two other field researchers. HaMoked petitioned the HCJ on behalf of A.D. and B'Tselem, and concurrently endeavored to

48 See article 588 of the report Israel has submitted to the UN Commission on Human Rights.

secure entry permits for the other two staff members. The Court rejected the petition, and the two other researchers were not allowed into Israel. **(Case 23038)**

Roadblocks

There are more than 300 roadblocks in the West Bank.[49] Some, particularly those at the entrance to Israel and to settlement blocs, are permanent, while others are unannounced and posted in various locations for different lengths of time.

Roadblocks have created a new meaning for the term "distance" – the main component in the definition is no longer the number of kilometers between point A and point B, but rather the number of roadblocks along the route. Every roadblock delays traffic by many hours, during which Palestinians are exposed to humiliation and abuse by soldiers. In the absence of clear instructions, the decision as to who will pass and who will not is up to the individual soldiers at the roadblock, and is mostly arbitrary.

Since March, HaMoked has handled more than 500 appeals from residents of the Territories and representatives of various organizations, asking to allow the passage of persons who had been detained for many hours, and to restrain the soldiers. HaMoked's communications with the Civil Administration, the different DCO's and the soldiers on the ground, yielded results in most cases, but only after many hours. When clients requested, HaMoked pursued an investigation into the incident and if necessary sought indictments.

N.G., a disabled person who is a resident of Jerusalem, his wife and their eight children were trying to pass through the roadblock at Qalandiya. One of the soldiers opened their car door, took N.G.'s crutches and started playing with them. N.G.'s entreaties to give them back were to no avail, and the soldier kept them for about an hour. Only after HaMoked intervened were the crutches returned, and N.G. was allowed through the roadblock. **(Case E656)**

On October 3, an ambulance carrying a pregnant woman on her way to have a Cesarean section was detained at the Huwwara roadblock. The ambulance reached the roadblock at 10:20 AM, but by 10:50 AM was still not allowed through. The ambulance driver contacted HaMoked. After HaMoked called the Civil Administration, the ambulance was finally allowed to pass, at 11:10 AM. **(Case E403)**

On the afternoon of October 22, HaMoked received calls from Jerusalem residents who were being held at the Qalandiya roadblock on their way home. The roadblock was opened and closed intermittently, and people and cars went only allowed through very slowly, which created long queues. Since the roadblock

was set to close at 7 PM, people waiting in line started to become tense. As the first call came in at 5:10 PM, HaMoked contacted the Civil Administration, which promised that the soldiers at the roadblock had been instructed to let all Jerusalem residents through before the roadblock closes for the day. However, at 7 PM there were still 15 cars of Jerusalem residents, including sick people and children, outside the roadblock. Only at 9:25 PM did the soldiers decide to allow the cars through, after some had been waiting for more than five hours. The cars went through very slowly – the soldiers would not let any car through until the driver gave them a box of cigarettes and a lighter. Drivers who would not comply were not allowed to pass and were told they would be forced to wait until the roadblock reopens in the morning. One of HaMoked's clients refused to pay up, and despite HaMoked's efforts, which went on until midnight, he was not allowed through. HaMoked's inquiries revealed that extortion cases at the roadblock are commonplace: the day before, soldiers demanded NIS 50 from each driver, and in other cases they demanded food and beverages. HaMoked was unable to convince clients to file complaints, as all were afraid of the soldiers' revenge if they discover the identity of the complainant. **(Case E464)**

At around 3:30 PM on August 21, Mr. and Mrs. A. and their nine-month-old baby reached the Qalandiya roadblock on their way back home to Kafr Aqab. It was a hot day, and the father, H.A., asked the people in line before him to let them through. People agreed. One of the soldiers came up to H.A. and asked why he was cutting the queue, took the ID cards of the husband and wife (Kafr Aqab is part of the jurisdiction of Jerusalem and inhabitants are Israeli residents) and informed them that they would not be allowed through the roadblock and that they would not be getting their IDs back. H.A. said they would move back to the end of the line, and asked to get his ID back. The soldier then called his friends, grabbed H.A. by the neck and pulled him away. His wife asked the soldiers why and where her husband was being taken, but one of them shoved her and she fell to the ground with her baby. When she got up, assisted by people around, the soldier who had grabbed her husband by the neck, said that her husband would not be released until she left the roadblock. But even after Mrs. A. left, the soldiers did not let Mr. A. go: they sat him down next to them in the sun, ignoring his entreaties to let him move to the shade, and during the four hours he was sitting there, they punched and humiliated him. Requests to the police and DCO at Beit El to stop the abuse were to no avail, since incidents of this kind are not within the purview of these bodies. H.A.'s wife came to HaMoked's offices, and a complaint was lodged with the IDF, demanding that the incident be investigated and that abuse of this kind should not recur. As of the date of this report, no response has been received. **(Case 22489)**

49 **Haaretz**, November 3, p. B4.

Siege

The siege that the IDF has been imposing on many of the Palestinian towns and villages in the Territories since year 2000, is accomplished through physical barriers that are built around these towns and villages, such as trenches, concrete blocks, mounds and fences, and manned barriers, comprising tanks and armored vehicles. Despite a previous undertaking to the HCJ,[50] sometimes the IDF does not leave a single road open to the besieged town. Cars are unable to cross the physical barriers, and are detained at the manned barriers, which sometimes block entry and exit for days on end. While some of the physical barriers can be crossed by foot, this is not only an exhausting physical effort but could also turn into a life-threatening exercise, should any military patrol happen to pass by. In the past year the situation has only got worse: siege has been imposed on more towns and was tightened in those where it had already been imposed before. The impact of siege is more detrimental in small villages, which depend on other towns from which they get vital supplies and services. With no doctor, school, places of employment or food warehouses – the siege completely disrupts normal everyday life, including all economic functioning.

The Mawasi area, in which around 8,500 Palestinians live, is a Palestinian enclave in the south part of the Gaza Strip, encircled by the Jewish settlements of Gush Katif. The residents of the Mawasi depend on the urban centers in the Gaza Strip for medical and financial services, for schools and for social and cultural needs. Their access to and from the region was regulated in the 1994 Agreement Concerning the Gaza Strip and the Jericho Area. On May 12, 2002, the IDF imposed a siege on the Mawasi. HaMoked's processing of this inquiry in May and June was described in the previous activity report.[51] In July it appeared that the concessions HaMoked had obtained for passage to and from the area were being ignored, and that the situation was getting worse: ambulances were being detained for hours, farmers were barred from watering their fields, water wells could not be repaired, food supplies were dwindling, and entry and exit applications submitted to the DCO were not being handled at all. HaMoked contacted the IDF once again, demanding that it define passage criteria that would enable normal living conditions. Concurrently, HaMoked tried to secure exit and entry permits for individuals:

S.S. was admitted to the European Hospital in Khan Yunis with severe ;weakness on October 13. His condition deteriorated and by the end of the month it was clear he was dying. His mother and brother, who are residents of the Mawasi, wanted to be with him in his last hours. On October 27, HaMoked contacted the office of the Gaza Strip legal advisor. They were allowed to leave the Mawasi area that very same day.

One day in October, five high school students, aged 16-17, who live in the Mawasi, left for school in Khan Yunis. The IDF prohibited them from going back home. The boys have been trying to get

back home ever since. Some are staying with relatives, and some sleep in deserted houses. In November and December HaMoked made several appeals on their behalf to the IDF, but with no success. At the beginning of January 2003, HaMoked contacted the State Attorney's Office, asking that this wrong be righted as soon as possible. On January 17, about four months after they had last seen their parents, brothers and sisters, the five students were permitted back into the Mawasi, but their access back to school has not been guaranteed yet. HaMoked has asked the State Attorney's Office to arrange for that as well. **(Case 17845)**

K.P. left the Mawasi to attend her brother's wedding in Khan Yunis in the beginning of October. When she tried to go back home, she discovered that the roadblock was closed and that there was no way for her to return. On October 19, after she had tried to cross the roadblock three times, her husband contacted HaMoked. Later that day it transpired that there was a large group of women and children who for two weeks had been trying to return to their homes. HaMoked was working vis-à-vis the IDF that entire day, and in the afternoon it was informed that the roadblock would only be opened the next day. No explanation was provided as to why it could not be opened immediately. The following day the roadblock was opened and K.P. returned to her home. **(Case E454)**

One of the most difficult outcomes of the siege imposed on the towns of the West Bank is a serious shortage in water in the 281 Palestinian villages that are not connected to the water system and depend on water tankers from nearby towns. Since the siege was imposed, the 200,000 residents of these villages have been suffering a serious water shortage, especially in summertime, when most wells dry up. The physical barriers prevent tankers from passing through and force them to take long detours, and the manned barriers cause long delays – if any vehicles are allowed through at all.[52] The amount of water available in these villages is dropping and the price of water is climbing, although many of the residents are below the poverty line. Because of the extended siege, residents in these villages live on an amount of water that falls below the required minimum (50 liters per capita per day), and when the tankers do not arrive, they use low-grade water that endangers their health.[53] During the summer, HaMoked received dozens of calls from villagers and tanker drivers, asking to help the tankers get through the roadblocks. HaMoked handled every such call individually, and also contacted the authorities, demanding a general solution for the water shortage in the village at hand.

In Beit Furik, southeast of Nablus, there are 8,000 residents and about 15,000 head of sheep and cattle. In July and August, HaMoked handled several inquiries about delays in the water supply that were

50 HCJ Petition 3637/01, **Shakarna and others v. IDF Commander in the West Bank**, Takdin Elion 2002(1), 249.

51 HaMoked, **Semi-Annual Report: January-June 2002**, p. 24.

52 B'Tselem, **Not Even A Drop: Water Crisis in Palestinian Villages**, information sheet, July 2001.

53 **Haaretz**, October 16, 2002, p. B1.

caused by the manned barriers and by physical barriers on the access roads. In some cases, the tankers made it to the village after hours or days of delay. In others, they did not make it at all. Before the siege, tankers from Nablus used to come to the village five times a day. On days in the summer of 2002 when there were no special delays, only two tankers made to the village every day. Villagers were thus forced to walk many kilometers by foot to find old wells where some stale water was still left. On September 4, HaMoked contacted the West Bank legal advisor, asking him to regulate the movement of water tankers to Beit Furik and other villages in the area without delay. Five days later the answer came in: "except for a few sporadic incidents," water tankers are allowed through on a daily basis, and HaMoked's grievance is therefore unfounded. But the situation actually got worse: the number of calls HaMoked was receiving increased, and new grievances were added: truck drivers' keys and IDs were being confiscated. HaMoked contacted the authorities once again, asking to reconsider the matter. The answer provided this time was that after reinvestigating the issue, and following a thorough discussion, it had been decided to remove one of the physical barriers on one of the roads to the village and instead install a gate that would be operated by soldiers. This would allow the tankers to take a shorter route from Nablus. It was further decided to enable the residents themselves, subject to IDF approval, to remove another barrier on the same road, so as to enable tankers to reach other villages in the region as well. HaMoked checked with the head of the village, and found that the changes were indeed implemented, and that since then there have been no problems with the water supply. **(Cases 22417, E164 and others)**

Curfew

During the IDF invasions of the territories of the PA in February, March and April, curfew was imposed on the villages and towns entered by IDF forces. Since these towns in the West Bank were invaded in the end of June and until the end of September, most of them were under curfew for more than 70% of the time. Nablus was hit hardest, as the curfew there was only lifted for a total of 75 hours over a period of 80 days.[54] In most villages and towns, the curfew was lifted for a few hours a day, at different hours every time. But even then it was not safe to leave the house, since curfew was sometimes reimposed sooner than expected, and residents who were at the time outside of their homes were liable to be shot by soldiers. Curfew disrupts life wherever it is imposed: going to work, school or the grocery store becomes impossible, and evacuation of pregnant women and sick and injured persons turns into a complex, risky operation. In most cases, curfew is imposed without any

warning and residents have no time to prepare. The impact of curfew on the lives of residents, and the way that HaMoked has dealt with the matter were covered in the previous activity report.[55]

At around 4 PM on December 8, the IDF imposed curfew on three villages near Jericho. The reason provided by the IDF was stone throwing. The villagers, who were in the fields at the time, were beaten up and forced into their homes, and shepherds were not allowed to put their sheep back in the sheds. HaMoked contacted the Coordination Officer in charge, demanding his intervention. The farmers were finally allowed to collect their crops and shepherds to gather their herds. **(Case E630)**

Inability to perform the most basic daily activities under such long periods of curfew has caused residents to violate the curfew and leave their homes to get food, water and medications. Individual curfew violations became massive in the last week of September, when, during the IDF siege on the Muqata (the PA President's headquarters) in Ramallah, people went out on the street in droves to express their protest, in violation of the comprehensive curfew imposed because of the Jewish High Holidays.[56] Since then, residents of West Bank cities have started violating the curfew so as to allow schools, local government institutions, bakeries and even commerce to operate, albeit irregularly. However, the curfew remains a painful problem: it is imposed as a form of collective punishment after terror attacks and stone throwing, or as a collective preventive measure, when the IDF claims it has information about planned terror attacks or during Jewish holidays. As of the date of this report, towns and villages in the West Bank continue to suffer long curfews.[57]

There are cases in which the population is not even informed when the curfew is to be imposed and when it is lifted. Anyone leaving home during curfew is risking their life, since soldiers sometimes use live ammunition or tear gas. The penalty for being caught outside during curfew is confiscation of IDs and car keys, which in most cases are not returned. Without an ID, people cannot leave their house even after the curfew is lifted, as anyone caught without an ID is arrested.

On October 12 the area of Alfahas – between Kiryat Arba and Hebron – was under curfew. In the morning, around 15 taxi drivers from Hebron were apprehended by soldiers, who took away their IDs and car keys, and left. HaMoked contacted both the Civil Administration and the DCO in Hebron, but both refused to intervene in a case that involved curfew violation. Two days later, the car owners towed their cars away. Although HaMoked gave the IDF the registration numbers of the jeeps that the soldiers who had taken the keys and IDs were driving, the authorities never recovered these items. **(Case E434)**

54 **Haaretz**, September 9, 2002, p. A6.

55 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 23-24.

56 **Haaretz**, September 23, 2002, p. B4.

57 Updated statistics of curfew hours can be found on the website of the Red Crescent, www.palestinercs.org

Detainee Rights

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."; "No one shall be subjected to arbitrary arrest, detention or exile."

Universal Declaration of Human Rights, Articles 5 and 9

The IDF has detained thousands of Palestinians over the last year. As of the end of December, around 4,500 residents of the Territories were being held in Israeli hands, one thousand of them in administrative detention and others without any legal arrest warrant. This despite that now the authorities have 12 days from the arrest to decide what is to be done with every detainee before he or she is brought before a judge – administrative detention, investigative detention, detention until indictment or detention until the end of legal proceedings. Thousands of others were detained arbitrarily and held for days and even weeks before they were released. Since the massive arrests during the IDF invasions of the PA in March and April, the number of arrests has somewhat fallen: instead of dozens of arrests every day, there are now dozens every week.[58] The IDF's mechanism for tracing detainees collapsed. Conditions at Ofer Camp and Ket'ziot Prison, which were opened to contain the thousands of detainees that the existing facilities were unable to house, were inhuman and humiliating. Until now detainees have not been allowed to meet their families there. Makeshift detention facilities have been built, in violation of the law governing the Territories, and there is information that the GSS is operating a interrogation facility in a secret location inside Israel.

HaMoked's efforts vis-à-vis the authorities have in most cases led to no improvement, and the only thing that has compelled them to take action was petitions to the HCJ.

Having been forced by the HCJ to pay court expenses, the State has improved its tracing mechanism. The HCJ ruling concerning detention conditions at Ofer Camp has obligated the State to uphold criteria set by International Law; and individual petitions regarding detention conditions have led to an improvement in the conditions of those detainees on whose behalf the petitions were filed. HaMoked's petitions concerning family visits at Ket'ziot Prison have led to partial resumption of such visits.

Detainee Tracing

Notice of a person's arrest and place of detention are a basic right of both the detainee and his or her family. Detainees' rights to legal representation and adequate detention conditions depend on such notice. Detainees' families are entitled to know what has become of their loved ones and need to know these details so that they can lend them the assistance they need to protect their freedom. Under the law that prevails in the Territories, the authorities are obligated to notify a family of the arrest of a relative and of the place of detention "without delay". The IDF has never met this obligation, nor has it complied with the commitment it made to the HCJ in petitions that were filed by HaMoked and the ACRI in 1995.[59] In this petition, an arrangement was set up by which on the one hand the authorities were bound to inform the families of detainees and their attorneys of the arrest and place of detention, and on the other to forward this information to public organizations and lawyers, through the "control center" at Military Police Headquarters, which is supposed to receive updates from the IDF, the police, the Prison Service and the GSS. Throughout the years, only the latter part of this arrangement has been observed, but even this compliance collapsed in March, with the first wave of massive arrests. This collapse and the efforts made by HaMoked to rectify it were detailed in the semiannual activity report.[60] While HaMoked's operations in the first six months of the year have led to some improvement in the performance of the authorities, they were still far from satisfying the minimal requirement of accurate answers in reasonable time. HaMoked's general and individual appeals to the control center revealed problems in the work methods of the military system, which were the cause of many days of delay in providing answers – which are supposed to be given within 24 hours, and of errors in the information provided about detainees' place of detention. These delays heightened the families' uncertainty regarding the fate that has befallen their loved ones. Furthermore,

58 Around 1,800 Palestinians were arrested between September and December. **Haaretz**, December 26, 2002, p. A10.

59 HCJ 6757/95, **Hirbawi and others v. IDF Commander in Judea and Samaria**, not published.

60 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 9-11.

combined with the erroneous information that was eventually provided, these delays have violated the right of these detainees to adequate legal representation and have made it impossible to protect their rights as detainees. Because of these systemic failures, in many cases HaMoked decided to inquire directly to the detention facilities.

A.S., a 17-year-old resident of Tubas, was arrested with his two brothers at 3 AM on November 19. HaMoked contacted the control center that same day in order to trace his place of detention, but the answer – that A.S. has not been traced – was only received on November 27. HaMoked finally traced A.S. at a GSS interrogation facility. **(Tracing 23577)**

N.H. was picked up at his home in Nablus at 3 AM on November 3. His family contacted HaMoked that same day, and on November 6 the control center informed HaMoked that N.H. had not been traced. HaMoked managed to trace him at a GSS interrogation facility. Another tracing request was placed with the control center on November 17. Three days later, the control center replied that N.H. was not in any facility of the military, the Prison Service or the GSS. Once again, HaMoked checked directly with the interrogation facility, and found that N.H. was still there. **(Tracing 23245)**

But neither HaMoked's communications with the control center and the Attorney General's Office, nor its petitions to the HCJ, yielded the desired change. By July, HaMoked had filed 14 petitions with the HCJ to trace the whereabouts of 54 detainees. Thanks to these petitions, most of the 54 detainees were indeed located, and the petitions were withdrawn. But while April's petitions led to an improvement in the performance of the authorities, after May they fell back to their old habits, even though the petitions specifically noted that the failures addressed in them were just the tip of the iceberg. Consequently, in July HaMoked asked the HCJ to make the State pay all trial costs, even if the detainee is traced after the petition is filed. The objective was to convey a message to the authorities from the HCJ that they must improve their tracing mechanism.

At first, the State objected to paying these costs, arguing that the tracing errors were in good faith, and were the outcome of the workload with which they were faced. The authorities explained that since thousands were being detained, the control center had to deal with 140 requests daily, and that the main concern of the forces on the ground, which were charged with forwarding information about detainees to the control center, was to fight and curb terror attacks. The HCJ rejected these explanations, held they do not justify erroneous answers, and ordered the State to cover trial costs.[61]

HCJ

L.B., a 26-year-old resident of Nablus, was staying at her sister's place on July 1. In the early hours of the morning, IDF soldiers and GSS personnel came to the house, ordered everyone out and arrested L.B. That same day HaMoked contacted the control center, and was told that there was no record of L.B. being held anywhere. HaMoked's inquiries with the police and

the Prison Service, and another call to the control center, yielded no results. On July 4, HaMoked petitioned the HCJ, demanding to trace L.B.'s whereabouts. The State responded that L.B. was being held at the Neve Tirtza Prison. On July 17, HaMoked asked to withdraw the petition, as it had practiced so far, but to compel the State to pay the trial costs. Despite objections by the State, the HCJ ordered the State to pay NIS 5,000 in costs. **(Case 17880)**

In other petitions in which HaMoked tried to force the State to cover expenses that resulted from the State's own flawed performance, which has led to infringement of the rights of detainees and their families, the State argued that despite the enormous workload, the mechanism has improved and is functioning well, and "in the overwhelming majority of cases, applicants are provided with accurate, satisfactory responses within 24 hours."[62] HaMoked then monitored the tracing requests it submitted to the control center during the first half of November, and presented the data to the HCJ: of around 200 queries, more than one third were not answered within 24 hours, and in at least 12% of the cases, the answer provided by the control center was incorrect. HaMoked argued that because of the serious implications, mistakes in the tracing of detainees must be limited to rare, inevitable circumstances. Even in such isolated cases, HaMoked maintained, thorough investigations must be held so that such mishaps do not recur. HaMoked's data showed an entirely different picture. The HCJ endorsed HaMoked's arguments, compelled the State to cover trial costs, and said:

> "Providing information about the arrest and the whereabouts of the detainee is a cornerstone of the right to due process … Provision of information is a means of control and supervision, but also has significance, in human terms, for the detainee, who at once loses control over his or her life … To the family, whose relative disappears 'with no explanation' … the power of the State, no matter how honest its intentions, is enormous. Without such reports, this power might spin out of control … The authority is therefore required to be particularly meticulous whenever it exercises its power to detain, and must provide immediate reports of the arrest itself.
>
> "The difficulties faced by the control center are understandable. It is also understandable that with such an enormous number of detainees, the work of the control center is very hard. However, each detainee is an individual human being. Infringement of the rights of one detainee is not mitigated by violation of the rights of others. Moreover, the large number of detainees is not new, and the authorities charged with providing information must prepare ahead of time to be able to comply with their obligation to provide such data … It is inconceivable that bureaucracy should hinder provision of information about persons detained by

61 HCJ 5829a/02, **Albukahri and others v. IDF Commander in the West Bank**, not published.

62 Response of the State Attorney's Office to the petitioner's request for trial costs, paragraph 7, HCJ Petition 7368/02, **Khaled and others v. IDF Commander in the West Bank**, not published

the security forces. If the large number of arrests requires more preparations that would involve additional costs for the system – so be it."[63]

These rulings of the HCJ started to sink in, and as of the time that this report was compiled, the authorities' tracing mechanism has, generally, improved, and individual problems are investigated and rectified. In petitions filed toward the end of the year, the State Attorney's Office often provided information about the place of detention on the very day that the petitions were filed, and promised that steps had been taken within the military to discover the source of the mishaps and prevent their recurrence.

As mentioned, the purpose of seeking trial costs was to force the authorities to acknowledge their duties and make them accountable when they fail to comply with these duties. Therefore, in view of the intervention of the State Attorney's Office in the performance of the tracing mechanism, HaMoked has decided to demand costs in petitions on this matter only as a last resort. In the special cases in which HaMoked did file for costs, the State no longer objected, and left the matter to the discretion of the HCJ, which often authorized payment.

The implications of the failure of the authorities to meet their obligation to provide quick and accurate information about arrests and about the place where detainees were being held, were made evident when it transpired that detainees were being kept in illegal detention facilities. In September and October the control center started answering increasingly often that the persons on whose behalf HaMoked had inquired could not be found, even though these individuals were seen being picked up by IDF soldiers. Concurrently, HaMoked received information from freed detainees indicating that they had been held in the Shomron and Salem detention facilities in the northern West Bank. Until then, there was no knowledge that detainees were being held there: Shomron was in use until it was closed for renovations in the beginning of the summer, and according to the IDF spokesman it was still closed and no detainees were being held there in October either; Salem was never pronounced to be a detention facility as required by law.

A.A., a 17-year-old from Jenin, was arrested at his home in the early hours of October 3. His family contacted HaMoked on October 5. For four days, HaMoked was unable to trace him, despite communications with the control center, the detention facilities in the Territories and the GSS's interrogation facilities. On October 9, HaMoked contacted the military court in Salem, which referred HaMoked to the operations room of the Border Police at the nearby roadblock. The operations room referred it to the Border Police battalion in charge of detainees, which confirmed that A.A. was indeed being held at Salem. The next day, A.A. was transferred to a recognized detention facility. **(Tracing 22889)**

Since the control center did not even know about these facilities, naturally there was no possibility of tracing detainees that were being kept there. On October 13 HaMoked provided the Military Attorney General,

examples of names of detainees who were held in these facilities, specified the rights that had been violated and explained the illegality in holding them there. The Military Attorney General did not respond. Even when, in answer to a petition that HaMoked had filed with the HCJ in an attempt to trace a certain detainee, the State Attorney's Office named one of these unrecognized facilities as the place where he was being held, HaMoked's demands for explanations were still ignored.

Detention in illegal facilities has violated the right of detainees and their families to be informed of the arrest and of the place of detention, and led to concomitant infringement of other basic rights. When a person's arrest and place of detention are not reported, that person disappears and his captors are not obligated to comply with the law. Testimonies provided by detainees released from these facilities portrayed harsh detention conditions (see the section about detention conditions, below); some of the detainees were being held there without any arrest warrant and without being brought before a judge, as required by law.

B.M. was with his mother in an olive grove when soldiers picked him up on November 12. The next day, his family called HaMoked, which contacted the control center. The latter only provided an answer on November 17: B.M. has not been traced. Concurrently, his family got word that he was being held at the Salem facility. On November 18, HaMoked petitioned the HCJ, pointing to the fact that holding detainees at the Salem facility was against the law. The answer that the State submitted on November 20, traced B.M. to another IDF facility, although inquiries made directly with this facility before the petition was filed, indicated that B.M. was not being held there. Moreover, the arrest warrant issued against B.M. and submitted to the Court, at HaMoked's insistence, indicated that B.M.'s detention began on November 12, when he was picked up by the soldiers. However, it also indicated that the warrant was only issued on the day that the petition was filed – six days after his detention actually began. By the time that the warrant was issued, the four days that the authorities are allowed, under the Detention Ordinance, before bringing a detainee before a judge, had elapsed. HaMoked drew the attention of the HCJ and the State Attorney's Office to this fact, and B.M. was released the very same day. **(Case 23605)**

On December 2, the Military Attorney General responded to HaMoked's query of October 13, saying that in both sites the renovation and construction of permanent facilities, which provide adequate conditions, has been completed, and that routine transfer of lists of detainees held in these facilities to the control center had been arranged. Indeed, many of the detainees who could previously not be traced, were now found to be in these facilities, and the number of cases in which the control center said it could not trace detainees has dropped.

Alongside the discovery of unknown and unreported detention facilities in the

63 HCJ Petition 9332/02, **Gerarr and HaMoked: Center for the Defence of the Individual v. IDF Commander in the West Bank**, not published.

Territories, in October HaMoked revealed the existence of a secret GSS interrogation facility inside Israel. No information as to the location of this facility, the conditions in it and the activities that take place there could be obtained. This revelation was made through a petition that HaMoked filed with the HCJ on behalf of a missing resident of the Territories whom the authorities were unable to trace.

HCJ

M.S. was picked up at his home at 2 AM on October 5. HaMoked contacted the control center the next morning. On October 10, the control center responded that M.S. could not be traced. The same day, HaMoked filed a petition with the HCJ, demanding that his whereabouts be traced. The response provided by the State did not specify where he was being held; it only stated that he was being interrogated by the GSS, and that questions pertaining to this detainee should be directed to a specific officer at the Kishon detention facility. After several unsuccessful attempts to contact this officer, HaMoked finally managed to reach him on October 14. The officer said that M.S. was being held at a secret facility. Again, HaMoked petitioned the HCJ, asking to compel the State to explain to the HCJ which facility this was and what the legal basis was for holding detainees in it. A hearing was scheduled for October 20. Four days before the set date, the State Attorney's Office announced that M.S. had been handed over to the Rosh Pina police, and asked to strike the petition. HaMoked confirmed with the Rosh Pina police that M.S. was there, and refused to strike the petition, demanding a discussion of the very existence of a secret facility. A hearing has been set for April 2003. **(Case 22988)**

Information about the detainees that were being held in this secret facility could only be obtained from the officer whose name had been given to HaMoked. In talks with this officer, it turned out that administratively, the facility was part of Kishon detention facility, that the GSS was in charge, and that detainees held there were not allowed to see their lawyers. It further transpired that **the names of detainees held in this facility appeared in no official record that was accessible to the State authorities charged with tracing detainees**. Apart from the fact that under the law, the name of any facility in which detainees are held must be announced by the Minister of Internal Security and published in Reshumot, the official State gazette, without information about the location of the detention facility, neither the State authorities in charge, nor any outside organization, can monitor the detention conditions and the legality of what goes on inside.

While HaMoked's petitions concerning the tracing mechanism and the unrecognized facilities in the Territories yielded positive results, HaMoked's petitions in this case have yet to remove the veil of secrecy from the GSS facility. Information about the location of this facility, the number of detainees held there, detention conditions and official acknowledgement of this facility as one that is used for interrogation or detention, have so far not been provided.

HCJ

B.G. and M.G. are cousins. Both are merchants who live in Nablus. On November 22 they were

returning from Jordan via the Allenby Bridge. Before crossing, they called their families and informed them they would be coming home shortly, but were never seen again. The next day, the family contacted HaMoked. On November 25, the authorities answered that both were being held at a GSS interrogation facility in Petah Tikva, but inquiries by HaMoked revealed that they were not there and that they were not listed in any official record. In view of what had happened with M.S. (see above), HaMoked contacted the officer in charge of the secret facility, who on December 4 confirmed that the two were being held there. The officer said that their detention had been extended, as was the ban on a meeting with a lawyer. On December 5, HaMoked petitioned the HCJ, asking to instruct the authorities to reveal where the brothers were being held. The HCJ ordered the State to comply, but the answer provided no detail as to the location of the facility, except that administratively it belongs to Kishon detention facility. HaMoked was not satisfied by this answer, and asked the HCJ to hold a discussion about the principle underlying the existence of a secret facility where detainees were being held. As of the end of December, the whereabouts of B.G. and M.G. were still not known. **(Case 24034)**

Administrative Detention

At the end of 2001, the total number of administrative detainees was 36. In 2002, and particularly after March, hundreds of administrative detention orders were issued, and by the beginning of 2003 there were 1,007 Palestinian administrative detainees.[64] Developments over the first six months of 2002 were described in HaMoked's previous activity report.[65] Administrative detention denies a person his or her freedom, and seriously violates their basic right to due process. Administrative detention violates this right by its very definition, since it is not ordered by judges but by military commanders, without an indictment or a trial, and is based on confidential material to which the detainee has no access. Not only does the detainee have no knowledge of the allegations against him and can therefore not defend himself, he also does not know when he will be released, since in most cases, when the original administrative detention order expires, the military commander issues a new one extending it by another six months.

International Law and Israeli law both require some sort of review, judicial or administrative, of the administrative detention order, as soon as possible after such an order is issued.[66]

64 Based on data that the IDF gave Hamoked on January 14, 2003.

65 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 11-13.

66 **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (1949), Articles 43 and 78; **Basic Law: Human Dignity and Liberty**, and numerous decisions handed down by the HCJ.

The ordinance governing administrative detentions in the Territories was amended several times this year. As of the date of this report, judicial review, conducted by a military judge, must take place within 12 days of the administrative detention order (on top of the 12 days that the authorities are allowed until they issue an order after the arrest), and within 18 days of any extension. This judicial decision can be appealed before the military court of appeals. HaMoked advocate Tamar Pelleg-Sryck represented administrative detainees in more than 150 hearings in 2002 before the military court – both in judicial review hearings and in appeals challenging the decisions made there, and in many hearings which the detainees' lawyers were unable to attend because of the situation in the Territories. Generally, military judges uphold the warrants, and appeals challenging these decisions are denied. There are nevertheless cases in which appeals are granted and the detainee is released.

A.G. was arrested on August 21 and was held for questioning until September 24, when a six-month administrative detention order was issued against him since he was "a threat to the security of the region." On October 23, a military judge upheld the warrant, after he was convinced, based on the confidential material presented by the GSS, that A.G. was "involved in current military operations against the security of the region and the public, and that his release would endanger the security of the area,"[67] but deducted the days of interrogation from the total term of administrative detention. The judge emphasized that the term was shortened based on technical rather than substantive reasons, and left it to the military commander to decide whether to extend the order when it expires on February 11. HaMoked challenged this decision, arguing, inter alia, that A.G. had a clean record and that the investigative material submitted to his attorney, at her request and as instructed by the court, gave rise to concerns that he was only arrested because of his brother-in-law, who was suspected of being a member of a terror organization. The decision handed down by the military court of appeals on December 18 held: "… it is hard to point to any substantial and likely danger that his release might cause to security in the area." The court ordered A.G. to be released the following day, and established that in this case, the term of the order was shortened based on substantive reasons, and that without any new information or circumstances, the order could not be extended. A.G. was released on December 19.

There are some cases in which even a decision by the military court to release a detainee is not enough. The ease with which a person can be apprehended through an administrative detention order sometimes seems to tempts the military to go on ordering a person's arrest despite explicit court orders.

An administrative detention order was issued against A.S. on January 2. On June 20, a military commander in the West Bank issued an administrative detention

order extending his detention by another six months, until December 25. In the judicial review hearing, the military judge decided to cut the extension by two months, so that A.S. would be released on October 25. The military prosecution appealed this decision, but on October 21 the military court of appeals rejected the appeal and affirmed the term set by the lower court. Four days later, on the date set for A.S.'s release, a new six-month administrative detention order was issued against A.S., in complete violation of a ruling handed down by the HCJ on the matter, which stipulated that only if new information or circumstances emerge, may a military commander extend a detention term that has been shortened by a judge.[68] The military judge who was to approve the new administrative detention order, sided with A.S.'s counsel, established that the military commander cannot override the decisions of the court of appeals and ordered the immediate release of A.S.

The IDF had obviously not prepared for the workload created by hundreds of administrative detention orders, and did not amend the numerous flaws that were revealed in the detention process itself, in the issue of administrative detention orders, in their extension and in the judicial review thereof. Because of this chaos, a person may be unlawfully held even more than once during their detention, without any judicial review and without a valid detention order. In the appeals submitted by HaMoked in such cases, the military court of appeals has determined that detention without a legally-issued order cannot, in and of itself, serve as grounds for releasing the detainee, but will nevertheless play a significant role in the deliberations of the court. The heavy workload has also made judicial review ever more crucial – the larger the load, the greater the probability of mistakes that only proper judicial review can rule out. In reality, however, judicial review did not provide the protection that it should have.

HCJ

W.M., a reporter who lives in Ramallah, was apprehended on April 4. For 23 days he was not brought before a judge and was not allowed to meet his lawyer. At the time, the maximum legal length of detention without judicial review, during which detainees were also denied the right to legal counsel, was 18 days. On April 26, a three-month detention order was issued against W.M., and was later upheld in the judicial review process. W.M.'s appeal, contesting the administrative detention order, was rejected, even though he had been held unlawfully for several days; however, his detention term was shortened, and he was scheduled for release on July 2. On June 27, his administrative detention order was extended by another six months, until January 1, 2003. The judicial review session for this extension was set for July 15, but no notice was given to W.M.'s lawyer, and when he did not show up, the hearing was rescheduled for three days later. This hearing did not take place. W.M. was not brought before a judge until September 30 – roughly

67 ADA1960/02, dated December 18, 2002.

68 HCJ Petition 2320/98, **Al Amaleh v. IDF Commander, Court Rulings** [PADI] 45(3) 675.

three months after the extension. At this hearing W.M.'s appeal was addressed, but the judge and W.M., now represented by a new attorney on behalf of HaMoked, also discovered that no judicial review had taken place in connection with the extension of the order. The appellate judge ordered a judicial review to take place the next day, and instructed that the long time that W.M. had to wait for his case to be heard by a judge during his three months in administrative detention should to be taken into account. In the judicial review on October 1, the judge decided to release W.M., but – in violation of the law – delayed his release by three days, to enable the military prosecution to appeal this decision. On October 3, the prosecution submitted its appeal, and W.M.'s detention was extended until October 9. But justice was delayed ever further: the appeal was not heard on October 9, and W.M. was detained without any legal order until the next day, when the appellate judge sided with the prosecution and upheld the administrative detention order until January 1. On October 23, HaMoked petitioned the HCJ, demanding to end W.M.'s administrative detention, which had become unlawful several months before, after reasonable time had passed since his administrative detention order was extended. In view of the serious defects in W.M.'s detention process, as explained in the petition, the State agreed to shorten his detention and release him on December 15, before the case was addressed by the HCJ. **(Case 21220.2)**

As the number of administrative detention orders grew, the process of issuance and extension of orders by the military became increasingly more mechanical, and efforts were made to streamline and shorten the time needed to process each order. Military prosecution offered some administrative detainees, including a few who were not represented by counsel, "bargains" of shorter administrative detention. However, these shortened terms, which were endorsed by the court, were just technical, so that military commanders were still able to extend detention in these cases without any new evidence or change in circumstance. The IDF took advantage of this and extended shortened detention orders before they expired, in violation of a ruling handed down by the HCJ (see the case of A.S. above). Consent of the detainees in these cases spared the prosecutor the processes of a hearing and an appeal, and improved the authorities' statistics, which now indicated many shortened detentions. In July, HaMoked contacted the Military Attorney General and pointed out the illegality of such "bargains". Information obtained by HaMoked indicates that "bargains" of this kind have been disallowed.

The quicker processing of administrative detention orders also has an effect on the discretion that the military commander who signs them must exercise. In one of the appeals submitted by HaMoked, the military prosecutor admitted that: "military commanders sign administrative [detention] orders in the field, not in the office, under immense pressure that has to do with the very nature of their operations." Namely, the fate of hundreds of human beings who are already being held in detention without due process, is determined in passing, because

of the pressure under which commanders are operating. The limited commitment of the authorities to upholding the rights of individuals who are about to be detained for a period that is in fact unlimited, has shrunk even further. This also has bearing on the way that administrative detention orders are being signed. Until the summer, the name, rank and position of the commander signing an administrative detention order were specified alongside his signature. Since then, orders have contained nothing but a signature – in which no first or family name are decipherable and which the military court of appeals has referred to as "scribbles'. The only identifying piece of information in detention orders nowadays is: "military commander in charge of Judea and Samaria." This way, not only military commanders, as required by law, but also any common soldier can sign an order that denies a person his freedom for another six months. When the military court of appeals kept rejecting appeals on these matters, HaMoked petitioned the HCJ.

N.N., a 37-year-old resident of Qalqiliya, was apprehended on October 17, 2001, for interrogation. On December 5, 2001, an administrative detention order was issued against him. This order was extended three times, and as of the date of this report, was still valid until February 20, 2003. In the third and last extension order so far, issued on August 14, the cause of detention was changed to a more serious one: until then, it was that N.N. was "affiliated with military Hamas activists," but the third detention order states that "he is a Hamas activist," even though the order was based on the same privileged information as the first and second orders. The third extension order also contained another change: apart from the signature, in which no first or family name could be discerned, there was no other identifying detail except "military commander in charge of Judea and Samaria." In the judicial review hearing in which the third extension order was approved, N.N. was not represented by an attorney. N.N., through HaMoked, appealed the approval of this order, but the appeal was denied. On October 16 HaMoked petitioned the HCJ, demanding to release N.N. and another administrative detainee whose arrest order bore no detail of the person who had signed it; both orders were unlawful, HaMoked maintained. **(Case 23062)**

In its reply, the State undertook that as of now all those authorized to sign administrative detention orders would be instructed to add their name and details next to their signature. The HCJ accepted this undertaking, and although it rejected HaMoked's argument that the way and circumstances in which orders were being signed, as they appeared from the statements of the military prosecutor, indicated that the military commanders had failed to exercise due discretion, the HCJ nevertheless held that it would be appropriate to define procedures by which information should be brought before the military commander when he is to decide whether to sign administrative detention orders.[69] Since

69 HCJ Petition 8834/02, **Nadal and others v. IDF Commander in Judea and Military Judge Col. Moshe Tirosh**, not published.

then, administrative detention orders have also been stamped with the seal containing the details of the military commander who signs them.

In another appeal HaMoked had filed regarding the approval of an administrative detention order, the military court of appeals has held that in compliance with the law and with HCJ rulings on the matter, the place of detention must be noted on the detention order, and that detainees must not be held anywhere but in the place stipulated in the order. The judge ordered his instruction to be disseminated to the relevant entities, after various cases in which administrative detainees were being held in detention facilities other than those specified in their detention orders. In response, and after the vice president of the military court of appeals had stipulated that this condition was not substantive, the IDF Commander in the West Bank amended the ordinance governing administrative detentions, so that the place of detention no longer has to be specified in the administrative detention order.

Conditions of Detention

HCJ

Many Palestinians who were arrested in the West Bank since the first IDF invasion of the PA in March have been transferred to Ofer Camp, west of Ramallah.[70] Some have been kept there and some were relocated to GSS interrogation facilities, Ket'ziot and other detention facilities in Israel. Once information about the harsh detention conditions at Ofer Camp started to come in, HaMoked, together with other human rights organizations, took measures to improve the situation. First of all, HaMoked endeavored to enable attorneys and representatives of human rights organizations to visit the camp; next, HaMoked collected testimonies from released detainees, and based on these testimonies, petitioned the HCJ on April 18, on behalf of HaMoked and six other Israeli and Palestinian organizations, demanding that humane, dignified and suitable detention conditions be maintained at Ofer Camp and at the facilities in which detainees are gathered before being transferred there. In addition, HaMoked has filed individual petitions pertaining to the detention conditions at Ofer Camp and to meetings with attorneys. These activities were detailed in the previous activity report.[71]

Hearings on the general petition continued, but at around the same time that the individual petitions were filed and before the HCJ handed down a decision on the general petition, detention conditions at Ofer Camp gradually started to improve. With the general petition underway, HaMoked continued to monitor these conditions: HaMoked's lawyers visited the site, and attorneys representing detainees provided additional information. Testimonies of detainees indicated that the improvement was marginal, and in some aspects things had even gotten worse: overcrowding in some of the tents had grown; the sleeping

bunks remained too narrow, too short, and rough. With no tables, detainees still had to eat on the floor; a serious shortage of staples, utensils, clothes, towels and soap persisted. In some of the chain-linked enclosures in which detainees were being held, sewage from the toilets was drained through the showers; in others, shower water flowed into the tents, and in some of the toilets there was no running water. Tents and toilets were infested with rodents, snakes and scorpions. In addition, detainees started to worry about the coming winter and the cold and rain that would seep into the shabby tents and flood the floor and bunks.

On 18 December, the HCJ handed down its decision on the general petition. It was held that:

> "Even those suspected of carrying out the most atrocious terror attacks are entitled to detention conditions that meet minimal humane standards and guarantee basic human needs. It would be inhumane of us not to guarantee such conditions for detainees in our custody … It is the duty of any Israeli government, which derives from the humane nature of this government …"[72]

In its decision, the HCJ endorsed HaMoked's arguments and established that the conditions in which Palestinians were being detained during Operation Defensive Shield were in blatant violation of legal rules:

> "Even in circumstances such as these, everything must be done to provide at least a minimal standard of detention conditions. This was not done in the temporary detention facilities; detention orders, International Law – which prevails in the area – and the basic principles of Israel's administrative law have all been violated. Suffice it to mention a few flagrant violations: numerous detainees were too tightly cuffed, which caused their hands to go blue and led to excruciating pain; some detainees were detained for many hours, sometimes even 48 hours, outside, with no protection against the elements and with insufficient access to toilets; detainees' belongings were taken away without any record of the items taken. Such detention conditions, as well as other violations of minimal standards, cannot be justified by the need to prepare for handling a large number of inmates in such a short time. It was known ahead of time that this need would arise. It was expected. Operation Defensive Shield was planned ahead. One of its objectives was to detain as many suspected terrorists as possible. The need to maintain minimal detention conditions was thus a natural outcome of the objectives defined for the operation. There was no surprise here. Adequate detention facilities could have been prepared in advance. The steps that were taken a few days after the operation began should have been taken a few days before it started. Indeed, security

70 At the end of December, around 700 detainees were being held at Ofer Camp. Based on data provided to HaMoked by the IDF on December 30, 2002.

71 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 5-8.

72 HCJ Petition 3278/02, **HaMoked: Center for the Defence of the Individual and others v. IDF Commander in the West Bank**, not published, paragraph 24.

needs – which must always be taken into account – did not justify the unacceptable conditions of detention and interrogation at the temporary facilities."[73]

Concerning conditions at Ofer Camp since it was opened and until HaMoked's petition to the HCJ, the court held:

"Congestion was intolerable. Many detainees had no shelter and were exposed to the elements. Some detainees did not get enough blankets. In all of these respects, detention fell short of minimal detention standards. There was no security-related argument to justify this."[74]

In addition, the HCJ reviewed the rules of International Law with which the IDF must comply in the Territories, starting with the humanitarian provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, through to the International Covenant on Civil and Political Rights and the Standard Minimum Rules for the Treatment of Prisoners. The HCJ even made some operative suggestions: to make tables available at the camp so that detainees no longer have to eat on the floor, and to make sure that they have books, newspapers and games. The HCJ proposed the establishment of an advisory committee that would work with the prison warden, and would comprise jurists and experts from the field. The HCJ also recommended enabling Palestinian detainees in the Territories, just like those in Israel, to file petitions concerning their detention conditions.

On December 25, HaMoked contacted the IDF to check whether it had implemented the recommendations made by the HCJ concerning Ofer Camp and Ket'ziot, regarding which a similar ruling was handed down in a petition initiated by Adalah and assisted by HaMoked. As of the date of this report, no response has been received from the IDF to this query. HaMoked has also demanded that the State Attorney General and Military Attorney General investigate what the HCJ has dubbed "blatant violations" of International Law. In the context of inhumane treatment of detainees, these violations constitute grave breaches of the Geneva Conventions and under the Statute of the International Criminal Court are considered war crimes, and Israel is therefore obligated to find and indict the perpetrators and those who handed down the orders. The State Attorney General is currently considering this demand.

On January 2, 2003, the media reported "riots" at Ofer Camp, in which 30 detainees and one soldier were wounded. HaMoked's attorneys demanded permission to visit the camp the next day, and petitioned the HCJ when this demand was refused. Thanks to the petition, HaMoked staff were permitted to visit the camp on January 5. Testimonies collected by HaMoked indicated that the immediate cause that started the "riots" was humiliation of the younger detainees by the guards, but that increasing congestion and the harsh conditions in which detainees continued to be held, despite the ruling of the HCJ, had actually prepared the ground for what had happened. HaMoked contacted the State Attorney's Office with a demand that it uphold the general principle defined by the HJC and implement the court's specific recommendations.

In line with the ruling of the HCJ, HaMoked endeavored to have severe conditions in other detention facilities in the West Bank improved. Testimonies collected in November and December generated a grim picture of overcrowding, shortage of food and beds, and humiliation and violence toward detainees. With every testimony that was obtained, HaMoked contacted the IDF's judicial authorities, demanding an investigation and an improvement in detention conditions.

M.H. was apprehended in his home at 2 AM on December 24, and taken to the Salem facility, where he was kept for five days. He was held in a small, stifling room with five other inmates and no mattresses. Every detainee was given one blanket. Mattresses and additional blankets were only provided after two days. One day, no food was served at all, and on the other days quantities were extremely limited: two yogurts and a single loaf of bread for breakfast for the six detainees in M.H.'s room, and salami and bread for lunch and dinner. On the weekends, when no officers were around, M.H. and his friends were humiliated and beaten by the soldiers. M.H. was released on the night of December 28. HaMoked collected his testimony and contacted the West Bank legal advisor, demanding an investigation and an immediate improvement of the conditions at Salem. As of the date of this report, no response has been received. **(Tracing 24392)**

Many Palestinian detainees are being held in Israel under Israeli emergency legislation and in violation of International Law.[75] Most suspects are interrogated by the GSS in detention facilities and prisons inside Israel. Most administrative detainees are held at the facility in Ket'ziot, in the Negev area, while most inmates sentenced to long prison terms serve their sentences in prisons inside Israel.[76] According to a ruling handed down by the HCJ in a petition that HaMoked filed in 1996, detention conditions must comply with Israeli law;[77] however, the authorities do not comply with this ruling and continually infringe the basic rights of detainees. In those cases of which HaMoked is informed, it petitions the administrative courts on behalf of the detainees, not only in order to get the detention conditions of these specific detainees improved, but also to force the authorities to meet their court ordered obligations.

M.S., a 24-year-old resident of Hebron, married and the father of one child, was detained on

73 **Ibid**, paragraph 26.

74 **Ibid**.

75 **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (1949), Article 76.

76 According to data provided to HaMoked by the IDF on December 30, 2002, 893 of the 979 administrative detainees in custody at the time were being held in Ket'ziot. Data HaMoked received on December 4, 2002, indicated that 608 of the 670 residents of the Territories who were serving sentences in military facilities were being held at Megido Prison and in Ket'ziot. At the beginning of October, facilities of the Israeli Prison Service, inside Israel, contained some 1,800 residents of the Territories (**Haaretz**, October 7, 2002, p. A1).

77 HCJ Petition 1622/96, **Al Ahmar and Hamoked: Center for the Defence of the Individual v. GSS**, not published.

November 4. N.A., married and the father of one child, was detained on November 10. Both were held after their arrest at the GSS interrogation facility in Shikma Prison in Ashkelon. They shared a single mattress on the floor, although under Israeli law each inmate must be given his own bed and mattress. N.A. was held in a cell with eight other detainees; they had three mattresses between them. On November 26, HaMoked petitioned the administrative court in Be'er Sheva on behalf of M.S. and N.A., demanding that it order the GSS and the warden of Shikma Prison to give them beds, and prohibit the prison authorities from letting any inmate sleep without a bed, even in the GSS interrogation facility. The State replied that M.S. and N.A. were sleeping on two mattresses on the floor, in compliance with a regulation issued by the Minister of Internal Security in 1997 concerning detention conditions of security detainees, which relieved the authorities from the obligation of providing beds for such detainees. The State therefore demanded that the petition be denied. HaMoked insisted that this regulation was unlawful. The court has yet to hand down a decision on this matter.
(Cases 23855, 23856)

In some cases, petitions get the situation rectified and lead to an improvement in detention conditions, in compliance with the law.

M.M. was arrested in 2001. He was indicted in the District Court in Jerusalem, and was being held in detention until the end of legal proceedings. When his attorney visited him, he found that M.M.'s cell was infested with rats and cockroaches, and that M.M. had not been allowed to take his personal belongings, to which he is entitled by law, from the facility in which he was held before. Furthermore, M.M. was not given any basic hygiene products such as soap. M.M.'s appeals to the entities in charge of the prison were ignored. On April 29, HaMoked petitioned the administrative court in Be'er Sheva on his behalf. On June 10, three days before the scheduled hearing, the State informed the court that following the petition, M.M.'s cell had been treated against pests, that he was given back his personal belongings and that hygiene products had been provided. **(Case 17834)**

Another violation of the rights of detainees who are being held in GSS interrogation facilities in Israel stems from the fact that they are detained for weeks in substandard conditions even after their interrogation is completed. After appeals to the authorities yielded no results, HaMoked started petitioning the courts on behalf of individual inmates, to force the authorities to transfer them from the interrogation wards to detention facilities.

A.B. was arrested on June 11, and held at the interrogation ward in the detention facility in Jerusalem. On July 22 his detention was extended, in order to enable his interrogation file to be transferred to the military prosecution; this indicated that his interrogation had been completed. A.B. was nevertheless still detained at the interrogation ward, without a daily walk and without any

family visits, in a windowless cell and with no partition between the toilet and the beds – in violation of his rights as a detainee. HaMoked demanded that he be transferred to a facility where he would be held under conditions appropriate to his status as a prisoner after an indictment has been served. This was ignored. The request to transfer him to a prison where his rights would be upheld was ignored, even after an indictment had been served. On August 9, HaMoked filed a petition on behalf of A.B. Two days later, after two months in the interrogation ward, A.B. was transferred to Nitsan Prison. **(Case 22485)**

Prison Visitation

Until the second intifada, families of Palestinian prisoners who were being held in prisons inside Israel could only visit them with special transportation organized by the ICRC and subject to special entry permits issued by the IDF. In October 2000 Israel discontinued family visits, and all the attempts of the ICRC to resume this practice on a regular basis in 2001 failed because of the serious restrictions imposed on the freedom of movement, particularly in the West Bank. Many of the detainees who were apprehended in the large arrests in 2002 have been locked up for months in detention facilities without being allowed any visitors except their attorneys – provided that there is no order barring these meetings as well.

A sweeping IDF prohibition against family visits is harmful to detainees by keeping them apart from direct contact with their families for very long periods. In an affidavit signed in December and submitted to the HCJ, an administrative detainee who was arrested in March and was being held at Ofer Camp, said:

> "I am 23. I am married. I have a daughter. She is now three months old. She was born when I was in detention. I have never seen her. I had no way of communicating with my wife around the time of delivery. I only heard that the child was born from my lawyer, in court. I am a new father – but I have never actually experienced fatherhood … I am a resident of Beituniya. From the camp, I can see my home in the distance. When I see my home, and know that my wife and daughter are there and that I cannot see them, tears well up in my eyes. I would have preferred not to be able to see my home at all."

And another administrative detainee stated in his affidavit:

> "I feel it is nothing short of a crime to keep a man 10 minutes away from his family but not let him have any contact with them for so many months: I don't know what's going on with them, whether anyone has been hurt or injured, how they are feeling … I left my son when he was nine months old. I want to see him, hear him say his first

words, see him grow … These feelings cannot be put into words. But these are fatherly emotions that one must understand."

The long separation also takes a toll on the families. The father of a detainee who was being held in Ket'ziot Prison, and who has not seen his son since his arrest, four months before, said:

"We all miss P. very much – we miss him and we would very much like to visit him in prison. His little girls miss him the most … the girls ask frequently about their father and ask to see him and hug him. To the best of my understanding, the complete separation from their father, without even brief meetings that are normally allowed in prison, might have dire consequences for the girls and might seriously impair their proper development."

And a mother who has not seen her son since his arrest in May, said in her affidavit:

"I want to visit my son in prison. Is it necessary to explain why a mother wants to see her son, be near him, hear his voice?"

The physical separation from the family is compounded by the harsh conditions in which most detainees are being kept, and the inability of most of them to hold any communications of any form with their relatives. Moreover, prevention of family visits is in violation of both International Law and the regulations that prevail in the Territories and in Israel.[78] The most evident infringement is that of the right to family life, to which detainees are also entitled.[79] HaMoked appealed to the authorities and then was required to petition the courts to make sure that the rights of detainees in Ket'ziot Prison and Ofer Camp to receive family visits are upheld.

Most detainees in Ket'ziot Prison, which is inside Israel, are in administrative detention. Under Israeli law, which governs detention conditions at this facility, administrative detainees should be allowed to receive visits from their immediate family for at least half an hour every two weeks, and should be permitted to see more distant relatives and visitors subject to special permission by the prison warden. However, since Ket'ziot is inside Israel, which residents of the Territories are strictly prohibited from entering, there is no possibility for families to visit their relatives there. HaMoked has therefore taken action to enable visits of more distant Israeli relatives. At first, the authorities did not permit such visits, ostensibly because the necessary preparations had not been completed. After a reasonable period of time went by and no progress had been made, HaMoked petitioned the HCJ.

HCJ

S.A., a 22-year-old who lives in Tulkarm, was taken from his home by soldiers on April 8 and held in Megido Prison until May 1, when a three-month administrative detention order was issued against him. He was transferred to Ket'ziot Prison, and has since had no communication with his family. S.A.'s parents contacted his uncle, N.H., an Israeli citizen who lives in Tira, and asked him to visit their son. Through HaMoked, N.H. made contact with the commander of Ket'ziot, and asked him when he could visit his relative, but the

commander said that this was not an option. The commander explained to HaMoked's attorney that the facilities necessary to enable such visits are not available at the camp. In a letter dated May 12, HaMoked asked the commander of Ket'ziot Prison to state when and how N.H. would be able to visit his relative. The response stated that work was underway to set up the prison for such visits, and that the prison commander should be contacted again on May 21 to receive information about the days and hours when visits would be allowed. On May 21 HaMoked was unable to get hold of the prison commander, so another letter was delivered on May 23, stating that if an answer is not received within three days, HaMoked would have no choice but to take the case to court. On May 26 the Gaza Strip legal advisor's office called HaMoked and said that a facility designated for family visits was being built at Ket'ziot Prison, and that once construction is completed, that very same week, visits could commence. On June 20, after three weeks with no family visits, HaMoked petitioned the HCJ demanding that N.H. be allowed to visit S.A. **(Case 17806)**

The answer provided by the State on July 11 to HaMoked's petition was that in principle family visits could be held. However, in practice, two facilities were required for this purpose: one in which visitors would be frisked, and another in which the meetings would take place. Since at the time of the response, three months after Ket'ziot Prison had been reopened, only one facility had been completed, it was impossible to hold visits. The State undertook that upon completion of the other facility, then under construction, visits would be allowed. But in a response provided in September to another petition that HaMoked had filed, it became evident that there was no budget to make the second facility serviceable; this was also the reason why no mention was made in this response of any process that was underway. This petition was filed on behalf of a Jerusalem resident who was being held in Ket'ziot as an administrative detainee. HaMoked demanded that he be allowed visits by relatives who are residents of Israel and are therefore unaffected by the closure imposed on the Territories.

In answer to HaMoked's petitions, the State further replied that even if the second facility is made serviceable, there are no guarantees that residents of the PA would be able to visit Ket'ziot, because of the "almost total" closure imposed on the Territories. HaMoked filed a petition on behalf of these families as well.

W.A., a resident of Salfit, was arrested on July 30, 2001, and since April 12, 2002 has been detained

78 International Law: **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (1949), Articles 116: "Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible;" **Standard Minimum Rules for the Treatment of Prisoners** (1955), Article 37. In Israel: **Emergency Authorities (Arrests) (Administrative Detention Conditions)**, 1981, Regulation 11. In the Territories: **Administrative Detention Regulations (Administrative Detention Conditions)**, Article 11.

79 See for example: CPA 4/82, **State of Israel v. Tamir**, PADI 37(3), 201; HCJ Petition 114/86, **Will v. State of Israel**, Court Rulings [P.D.] 41(3), 477.

in Ket'ziot Prison. His daughter was born while he was incarcerated, and he has never seen her. An appeal in his case to the prison warden on June 3 was ignored, and on July 1 HaMoked petitioned the HCJ to enable W.A. to meet his wife and daughter who live in Salfit. **(Case 17895)**

By September 10, the date on which the HCJ was set to hear the five petitions HaMoked had filed concerning family visits, the second facility at Ket'ziot was still not serviceable. Five months after it was opened, detainees were being held there without seeing their families from the day of their arrest. In between, in the month of August, families from the Gaza Strip were allowed to visit their relatives in some Israeli prisons, but not Ket'ziot. In a HCJ hearing, the State undertook to complete construction work and technical and administrative preparations necessary to enable such visits by October 20. The HCJ endorsed this undertaking in its ruling. In the end of October, Israeli relatives were allowed to visit their detained relatives at Ket'ziot, and the meeting between S.A. and his relative N.H. finally took place on November 5. But as of the end of December, relatives from the Territories were still not allowed to visit; most detainees in Ket'ziot were thus unable to see their families. HaMoked is therefore working to enable visits by families from the Territories and to get Jerusalem residents who are held in Ofer Camp transferred to Ket'ziot, where their families will be allowed to visit them.

In Ofer Camp, west of Ramallah, in the Territories, family visits were subject to the restrictions imposed on freedom of movement in the Territories, namely, curfew, siege and roadblocks, but not to closure. In May, HaMoked contacted the IDF, demanding that it permit family visits. HaMoked notified the commander of the camp of the ongoing violations of rights in the facility of which he is in charge, and demanded that he make arrangements for family visits without delay. When no answer was received, HaMoked contacted theWest Bank legal advisor – who also provided no response. In September, following the HCJ ruling on HaMoked's petitions on the matter of family visits in Ket'ziot Prison, HaMoked once again made appeals concerning visits in Ofer Camp. The IDF replied that construction work and technical arrangements necessary for family visits at Ofer Camp would be completed by the end of October. The authorities ignored HaMoked's demand that they should specify a date when visits would commence. Concurrently, detainees at Ofer Camp appealed directly to the camp's management to enable family visits, but to no avail. As of the end of December, nine months after Ofer Camp had been opened and the first detainees were incarcerated there, no family visits have been held. HaMoked has petitioned the HCJ on this matter as well.

HCJ

M.A. was injured in the course of his arrest on March 6, had several operations and in October was transferred to Ofer Camp. His administrative detention order was extended until March 4, 2003. He is married and the father of a daughter who was born during his detention. Z.H. was taken into administrative detention at the beginning of June. His detention has been extended until June 19, 2003. He

is married and has three children. S.D., 27, from Beit Fajjar, was detained on May 20. Previous incarceration has caused him mental problems ever since, for which he has received treatment at the hospital in Bethlehem. On December 30, HaMoked petitioned the HCJ on behalf of these three detainees and on behalf of S.D.'s mother, demanding that they be allowed regular family visits at Ofer Camp, and that the mother be allowed to visit her son. **(Case 23959)**

The State's response is due in 2003.

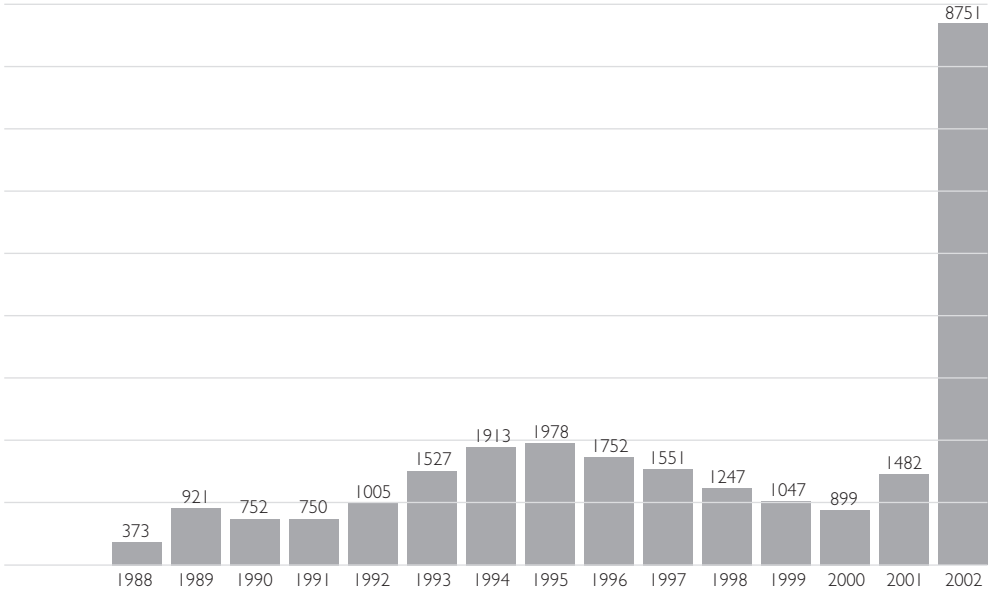
Appendices

Appendix 1 - Statistics

Table of new files opened by HaMoked during the period January 1 – December 31, 2002

		2002		2001	
		Number of complaints	% of complaints	Number of complaints	% of complaints
Detainee Rights	Tracing	7,078	80.9%	1,207	81.4%
	Administrative detention	124	1.4%	38	2.6%
	Conditions of detention	34	0.4%	6	0.4%
Violence by the Security Forces	Violence	212	2.4%	51	3.4%
	Damage to property	264	3.0%		
	Confiscation of ID cards	229	2.6%		
Freedom of Movement	To and from Occupied Territories	132	1.5%	107	7.2%
	Within the Occupied Territories [80]	428	4.9%		
Residency	Jerusalem	89	1.0%	34	2.3%
Return of corpses		33	0.4%	14	1.0%
House demolitions		72	0.8%	25	1.7%
Deportation		31	0.4%		
Other		25	0.3%		
Total		**8,751**	**100.0%**	**1,482**	**100.0%**

Complaints Received by Hamoked 1.7.1988 – 31.12.2002



80 This includes complaints received regarding curfew, siege and roadblocks

Appendix II - Donors

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

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

British Embassy, Tel Aviv

Canadian Representative Office, Ramallah

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

Royal Danish Representative Office, Ramallah

The European Commission

Embassy of Finland, Tel Aviv

The Ford Foundation, USA

Haella Stichting, Netherlands

Global Ministries, Netherlands

Jusaca Charitable Trust, England

The John Merck Fund, USA

Minister for Development Cooperation, Ministry of Foreign Affairs, Netherlands

New Israel Fund

Royal Norwegian Embassy, Tel Aviv

NOVIB (Netherlands Organization for International Development Cooperation), Netherlands

SAS Charitable Trust, England

SIVMO, Netherlands

Stichting Solidariteits, Netherlands

International Commission of Jurists, Sweden

Federal Department of Foreign Affairs, Switzerland.