המוקד להגנת הפרט
HAMOKED
هموكيد ـ مركز الدفاع عن الفرد

اسسته د. لوطة زلتسبرغر ـ مكتب الشكاوي ـ جمعية مسجلة

1997 ANNUAL REPORT OF ACTIVITIES

HAMOKED: CENTER FOR THE DEFENCE OF THE INDIVIDUAL

FOUNDED BY DR. LOTTE SALZBERGER

شارع ابو عبيدة ٤، القدس ٩٧٢٠٠ هاتف: ٠٢.٦٢٨٣٥٥٥ / ٠٢.٦٢٦٤٤٣٨ فاكس: ٠٢.٦٢٧٦٣١٧

TABLE OF CONTENTS

General Information on Activities p. 1

1. Residency p. 3
   The Quiet Deportation
   Residency in the Territories

2. Detainee Rights p. 12
   Torture
   Administrative Detention
   Location of Detainees
   GSS Law

3. Security Force Violence p. 19
   The Law to Deny Compensation
   Compensation Suits

4. Freedom of Movement p. 25

Organizational Report p. 28

General Statistics on 1997 Activities

During the period 1 January 1997 - 31 December 1997, HaMoked received 1,551 new requests for assistance. During the first half of 1997, 645 complaints were received and during the entire year of 1996, 1752 complaints were accepted.

Table of Complaints Received by HaMoked During 1997

Subject	Number of Cases	% of Total Cases
Location of Detainees*	1161	74.7
Residency	46	3.0
Administrative Detentions	29	2.0
Exit Permits	116	7.5
Entrance from Jordan to West Bank	5	0.3
Entrance from Israel to Gaza	14	0.9
Entrance from Territories to Israel	4	0.2
Violence, Property Damage	37	2.4
Missing Persons	1	0.1
Detention Conditions, Torture **	52	3.4
Family Visits in Prison	67	4.4
ID Card Confiscations	5	0.3
Guarantees	4	0.2
Other	10	0.6
Total	**1551**	100%

*Location of Detainees - HaMoked received 1,525 requests to locate detained persons - of them, 1,161 persons whose personal data was not located in HaMoked's database, and another 364 persons whose data was already listed and HaMoked was requested to locate them an additional time, due to a further detention.

Table of Requests According to Region During 1997

Region	Number of Requests	% of Total
Nablus	132	8.5
Tulkarem	158	10.2
Ramallah	175	11.3
Jerusalem	103	6.6
Bethlehem	391	25.3
Hebron	468	30.2
Jenin	35	2.2
Jericho	8	0.5
Other	14	0.9
Gaza Strip*	67	4.3
Total	**1551**	**100%**

* The complaints from the Gaza Strip break down as follows:

Family reunification	1
Entry from Gaza to Israel	4
Exit permit abroad	1
Prison visit	1
Death	1
Tracing	49
Torture	10

Table of Requests According to Month and Subject in 1996

Month	Property	Violence	Adm.	Location of Detainees	Other	Total
1/97	1	1	18	56	6	82
2/97	1	2	24	49	2	78
3/97	--	1	32	99	11	143
4/97	1	--	16	105	5	127
5/97	1	1	21	69	17	109
6/97	--	--	18	76	11	105
7/97	--	6	17	70	15	108
8/97	1	5	10	139	13	168
9/97	6	6	22	227	7	268
10/97	--	--	19	94	6	119
11/97	3	3	22	69	13	110
12/97	--	2	14	108	10	134
Total:	**14**	**27**	**233**	**1161**	**118**	**1551**

1997 Administrative Complaints by Month/Subject

Month	ID Confis.	Exit Permit	Entry to West Bank	Residency	Entry to Israel	Other	Total
1/97	---	10	---	4	4	---	18
2/97	1	13	1	6	3	---	24
3/97	1	15	---	7	6	3	32
4/97	2	8	1	4	---	1	16
5/97	1	9	---	1	7	3	21
6/97	---	11	---	1	5	1	18
7/98	---	9	---	4	4	---	17
8/98	---	5	---	3	2	---	10
9/98	---	4	4	7	6	2	22
10/98	---	14	---	3	2	---	19
11/98	---	12	---	3	7	---	22
12/98	---	6	---	3	5	---	14
Total:	**5**	**116**	**5**	**46**	**5**	**10**	**233**

1. Residency

a. The Quiet Deportation

The issue of residency in East Jerusalem is differentiated from that in the West Bank and Gaza Strip. In Jerusalem the issue is controlled by the Israeli Ministry of Interior and the tendency of the ministry, particularly evident in the past two years, is to cause a reduction in the number of Palestinians holding Israeli identity cards in the city. Without utilising physical violence, without loading people onto jeeps or trucks, the Ministry of Interior is conducting a policy of quietly deporting Palestinian residents of Jerusalem outside of their city. This policy of quiet deportation results in the violation of the rights of many: The right to a normal family life, the right to social security and the most fundamental right to live in your home and not be deported from it. One who attempts to defend his rights finds himself up against an uncaring and harsh administrative system.

During 1997, HaMoked continued to treat a variety of difficulties connected to this policy. In part this was done on the individual level and in part on the principled level. Legal activities were combined with an extensive public campaign.

The Background to the Quiet Deportation

In 1967, immediately following the Israeli occupation of the city, Israeli law was implemented over extended areas of the Jerusalem metropolitan which had previously been under Jordanian rule. One who was present during the census conducted at the time received an Israeli identity card and status of permanent resident (but not citizen) in Israel. Residents of Jerusalem enjoy a number of advantages not held by the other residents of the territories: They are eligible to work and live in the city (and in all of Israel), while the closure prevents this from the residents of the West Bank and Gaza Strip. They are also eligible for national security and health insurance.

Throughout the years, the Israeli authorities have conducted policies intended to regulate the "demographic balance" in Jerusalem by decreasing the number of Palestinian residents of the city. Among other things, this included the prevention of new building in East Jerusalem, a lack of sufficient classrooms and the refusal to grant family reunification requests from East Jerusalem women who requested Israeli identity cards for their husbands from the West Bank, Gaza Strip, Jordan or other countries. In addition, one who went abroad and did not renew his travel card on time lost his right to return to the city. The present tool to decrease the number of Palestinian residents in East Jerusalem is the criterion of "center of life."

In 1994, the East Jerusalem branch of the Israeli Ministry of Interior began to revoke the identity cards of Jerusalem residents. Entire families received notices (occasionally in the mail) that they were no longer residents. The announcement was accompanied by a demand to leave Jerusalem within fifteen days. The legal background to the negation of residency is the interpretation of the Ministry of Interior (which received the backing of the legal system) according to which when one moves his center of life from Jerusalem, his permit for permanent residency (physically demonstrated by an identity card) expires. Here are persons who, according to the Ministry of Interior, moved to the West Bank (including the suburbs of Jerusalem over which Israeli law was not extended), Jordan or other countries. Even if these persons returned to reside in Jerusalem for a number of years, they received deportation notices. Over the years these people continued to receive full services from the Ministry of Interior (including entry and exit documents from Israel as residents), without being warned in any way that they are liable to lose their residency. Some of the victims of this policy are Jerusalemite women, married to residents of the West Bank or Jordan, and who until 1994 were not permitted by the Ministry of Interior to receive family reunification with their spouses in Jerusalem. They were thus forced to live outside the city.

The Public Campaign

In the spring of 1997 HaMoked, in conjunction with the organisation B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories, commenced a wide public campaign to halt the quiet deportation. In the framework of this campaign a joint report was issued and explanatory information widely distributed, including in local Israeli newspapers. The campaign garnered wide international interest, and the stories of families who lost their residency were published in the media throughout the world. In this campaign HaMoked remained in close contact with a number of Palestinian and Israeli human rights organisations, attorneys and members of Knesset.

Treatment of Individual Cases

Family Reunification - Requests for Permanent Residency for Husbands of Israeli Residents

During 1997, the state of family reunification requests of East Jerusalem women requesting to receive permits for their non-resident spouses to legally reside in the city remained frozen. Requests such as this were almost never granted.

During this year the Ministry of Interior announced that those who submitted a request for family reunification which is still pending will be entered into a gradual process continuing for five years, at the end of which they are to receive a permit for permanent residency. The process is supposed to be implemented in the following manner:

Those requesting will be awarded a B1 visitors' permit that will allow them to reside and work in Israel. This permit will first be awarded for six months or one year, and will be extended for a period of 27 months. During this time, periodic examinations of the family's center of life and the security profile of the non-resident spouse will be conducted. Following the 27 months and yet another examination, the non-resident spouse will receive an A5 temporary resident permit for a period of two years. At the end of this time and more examinations, the spouse will receive a permit to reside permanently in Israel.

The Ministry of Interior claimed this arrangement is relevant only for Jordanians whose wives are requesting family reunification and that for residents of the West Bank and Gaza Strip, a policy has yet to be determined.

In the experience of HaMoked, it appears that neither Jordanians nor residents of the West Bank and Gaza Strip benefit from this arrangement of the Ministry of Interior. The meaning of this is that family members are forced to live apart, leave the city or (as in most cases) live together in the city in constant fear. However, petitions to the High Court submitted by HaMoked and other attorneys yielded results. The arrangement, which was not implemented in an overall manner, will be implemented for those who petitioned the High Court and who proved their center of family life is Jerusalem and their security background is "clean."

In June 1997, HaMoked submitted a High Court petition on behalf of seven families in which Jerusalemite women requested to be reunited in the city with their husbands from the West Bank and Gaza Strip. The petition requests that the Minister of Interior respond as to why he does not issue temporary residency permits to the non-resident spouses until decisions have been taken in their family reunification requests. The Israeli Defence Forces (IDF) was requested to respond why it does not grant the petitioners periodical permits to enter Israel in order to live with their families. The court issued an order forbidding the deportation of the petitioners from the city until the hearing and a decision in this matter. The petition is currently pending and the temporary arrangement - in the form of an order forbidding the deportation of the petitioners - is relevant only to the petitioners and not to others in a similar situation.

<u>Family Reunification - Requests for Permanent Residency for the Wives of Jerusalem Residents</u>

In these cases HaMoked learned that the past practice concerning women, whose resident husbands were involved or suspected of being involved in security violations or whom refused to collaborate with the security authorities, continues.

The principle of this practice is delays of years in the handling of requests for family reunification. Also in these cases, only a petition to the legal system facilitates a solution.

<u>Refusal of Requests for Family Reunification</u>

Last year the Ministry of Interior exhibited a tendency to "get rid of" requests for family reunification in which documents proving center of life had yet to be submitted or when clerks of the ministry did not even request documents from the family.
In these cases the family receives a form letter noting that the request has been denied on the basis of not proving center of life, but a subsequent demand is no longer made to return the ID card. A letter of appeal in these cases usually returns the file to the Ministry of Interior.

In general, there is a decline in the demand to return ID cards when a family reunification request is denied on the basis of not proving center of life in Jerusalem.

Requests to Register Children of Residents in the Israeli Population Registry

In 1997 there was an improvement in the treatment of requests to register children when documents proving center of life in Jerusalem were submitted. During the past year, HaMoked had several successes in the area of registration of children. With this, in the past only Jerusalemite women whose husbands were not from the city were required to present proof of center of life in order to register children in the Israeli population registry. Today, however, Jerusalemite men married to non-resident women are also required to prove center of life in order to register children.

General Trends - Ministry of Interior

In 1997 there was a strengthening of the trend in the Ministry of Interior to demand proof of center of life in order to receive all services, whether family reunification or the registration of children as noted, or for insignificant actions such as a change of personal status or address within the city.

An additional important trend is the tightening of the informational connection between the Ministry of the Interior and the Institute for National Security (INS). The INS greatly extended the number of examinations of residency that it conducts for those requesting its services, examinations which involve a number of home visits by an investigator and the questioning of neighbors and acquaintances. These investigations are lengthy and result in serious delays in the provision of services, delays which will be outlined below.

It is evident that the Ministry of Interior receives a full report, and even the written investigations, from the INS. Occasionally, the Ministry of Interior specifically questions whether a request has been made to the INS and what were the results. Sometimes there is such proximity between the approval of residency by the INS and, for example, approval for registration of children by the Ministry of Interior that there is no escape from the conclusion that the reliance of the ministry on INS investigations is complete.

Institute for National Security

Due to the increasing reliance on its investigations, the INS has increased the number of residency investigations of residents of East Jerusalem, without allocating the necessary manpower for this. These investigations extend, according to the Institute, between six months and one year although in some cases known to HaMoked, the investigations lasted for more than two years. In the opinion of HaMoked, these investigations are tendentious and conducted by signing people on vague statements in Hebrew; the majority of the signators do not understand the content of the statements which they sign. In numerous cases the people are not aware of the importance of these investigations in determining residency in the city, and they thus cause a worsening of their situation or that of their family and acquaintances with the Israeli authorities.

The lengthy delay in implementing these investigations also delays the provision of necessary services to residents of the city - various allowances, health insurance and stipends, such as that for birth expenses. HaMoked treated cases of children of residents whose registration had not yet been completed by the Ministry of Interior and who required urgent medical treatment. These children were entitled to medical insurance under the Law for National Medical Insurance, but did not receive it due to the incompletion of the investigation of their parents' center of life.

Additional urgent cases treated by HaMoked were of Jerusalemite women about to give birth and who met with refusal of the hospitals in the city to register and accept them for delivery, unless they themselves paid the necessary fees or signed the INS on a form obligating it to pay all expenses of the delivery. In numerous cases the INS commenced an investigation of the residency of the woman and her family, but the investigation was often concluded well after the birth. The fact that the INS did not provide coverage for the birth caused the hospitals to take sanctions against the Palestinian women, and even threaten that they would not release the newborns from the hospital.

In the matter of Palestinian women about to give birth, HaMoked together with the Israeli Association for Civil Rights in Israel and Physicians for Human Rights, presented a petition to the High Court. In the wake of this petition, the INS agreed that hospitals would immediately register a Jerusalemite woman whose husband is also a resident of Israel; the organisations received an oral agreement that the INS would pay for the birth of a woman whose residency examination has yet to be completed by the birth. If the INS later determines the woman is not a resident of Israel according to its own criteria, it will extract from her the amount paid for the birth.
The matter of the general procedure concerning investigations of pregnant women and their right to INS birth stipends has yet to be decided upon.

*****

HaMoked is treating tens of complaints of East Jerusalem residents in the matters of family reunification, registration of children, negation of residency, refusal to provide medical services and others. In all of these matters, HaMoked acts in cooperation with additional organisations and private attorneys specializing in these fields. Treatment of these complaints is done through correspondence with the relevant authorities and individual and principled petitions to the courts, especially the High Court.

During 1997 HaMoked assisted 121 families from whom the Ministry of Interior threatened to revoke residency, in addition to the registration of children in the Population Registry, health problems and INS. To date, 16 High Court petitions have been submitted in these areas and five have been successful. The remaining petitions are still pending.

B. Residency in the Territories

The issue of family reunification of Palestinian families in the West Bank with their non-resident family members has been dealt with by HaMoked for several years. This is a painful problem for the population of the Occupied Territories, and numerous families find themselves divided in their legal status. Causes of this include wars and the resulting

refugees, emigration for economic reasons (principally to the Gulf States), military law, which makes it difficult to receive residency and easy to lose it and traditional marriage patterns, which encourage marriage within the extended family even when the family members live in different countries. For the couple and their children, the meaning of having different statuses is a life without stability and assurance, which includes extended periods of separation and travelling or illegal residence in the territories under the constant threat of deportation.

In the framework of HaMoked's efforts in this subject, and in the wake of tens of petitions submitted between 1991-1993 to the High Court, several narrow achievements intended to solve the problems of these families were set with the IDF. These included the possibility to permit the non-resident spouse and minor children to remain in the territories with no threat of deportation, and during this time obtain the status of permanent residents. Even following the achievement of these general arrangements, HaMoked treated numerous cases in which the arrangements were violated or families fell outside of the narrowly determined criteria.

The Oslo Accords transferred the authorities concerning residency in the territories and visitation arrangements from the Israelis to the Palestinians (Interim Agreement from 28 September 1995, attachment 1, article 28). Even according to this agreement the transfer is not complete, and numerous actions of the Palestinian Authority (PA) are dependent on one type or another of Israeli agreement. In practice, Israel did not fulfill this agreement in its entirety and although authorities were formally transferred to the PA in November 1995, to date Israel has not transferred the complete data base and technical means which were also to be transferred. In numerous areas, there is no agreement between the Israelis and Palestinians concerning the manner in which the authorities will be implemented; the differences of opinion concern both matters of substance (for example, the annual quota for family reunification) and matters of procedure (for example, the manner in which requests for a visitor's permit will receive Israeli "clearance"). The negotiations on these matters were frozen by the Israelis for a lengthy period, and only toward the end of 1997 were there signs of some movements in the discussions. Due to the dependence on agreements yet to be reached during the negotiations, the treatment of these various issues has been frozen for over two years.

The transferral of authorities also resulted in a burdensome and complex bureaucracy. The Palestinian resident no longer comes in direct contact with the Israeli authorities but requires the services of the Palestinian authorities, which occasionally hold authority but generally act only as middlemen between the resident and the Israelis. Adding to the confusion, the procedures (if they exist at all) vary from place to place in the territories and between areas A, B and C, and differing fees are required both by the Palestinian and Israeli sides. This bureaucratic duplicity makes it difficult to follow through on requests and to receive reliable information on their status. For example, occasionally the Palestinians will not transfer certain types of requests to the Israelis, knowing they will be rejected, while the Israeli side is not willing to deal with the queries of HaMoked concerning these requests with the argument that they were never submitted. Other requests are passed back and forth between the Israeli and Palestinian sides due to misunderstandings and division of responsibilities.

Family Reunification and Visitors' Permits in the Territories

In 1993 the State announced to the High Court, in response to pending petitions, the majority submitted by HaMoked, that Israel would implement a new policy concerning family reunification in the territories. The new policy permitted family reunification for a group of families - spouses and their minor children - dubbed "High Court population I." These are families in which one of the spouses is a resident of the territories while the other is not, and whose date of marriage preceeds 31 August 1992. In addition, the non-resident spouse must have been in the territories for a period between 1989 - 31 August 1992. Concerning the second group, dubbed "High Court population II," the State recognized the right of the families to live together in the territories through long-term visitors' permits, extended every six months. This group includes couples whose date of marriage and date of visitation in the territories by the non-resident fell between 1 September 1992 - 31 August 1993. Members of High Court population II, and those who do not fall within one of these defined groups, are eligible to submit requests for family reunification. However, unlike members of High Court population I, these requests must be approved within the framework of the yearly quota, which stands at 2,000 for the West Bank and Gaza Strip together.

Even when the State announced this new policy, human rights organisations argued that the annual quota of 2,000 would not meet the urgent needs of the population. This evaluation was proven true, as thousands of requests are denied annually when the quota is filled.

With the transferral of authorities to the PA, an almost complete freezing occurred in the matter of family reunification. Differences of opinion over the quota resulted in a halting of treatment of requests for an extended period of time. The exception to this is requests submitted by those belonging to High Court population I, requests which are approved outside of the quota. HaMoked continues to deal with requests such as this which have yet to be answered because of bureaucratic delays or other factors. Toward the end of 1997, an understanding was reached in the framework of the negotiations on this subject between Israel and the PA, such that the treatment of family reunification requests would be dealt with within the existing quotas, without the PA giving up its demand to extend them.

The insufficient quotas and the stalement in handling requests for family reunification, along with the limited criteria that permit the High Court populations to live together in the territories with long-term visitors' permits, created a situation in which numerous families cannot legally live together. In many instances the families prefer to keep the family together, at the cost of the non-resident spouse remaining illegally in the territories. These families live under constant threat. While because of the military redeployment there are no Israeli soldiers patrolling the streets of Palestinian cities, these people still may be arrested at checkpoints and deported from the territories. If the non-resident spouse is not in the territories, the chances of visiting his family decreased this year. In the summer of 1997 Israel greatly restricted the number of summer visits permitted to the territories. These limitations are sanctions against the PA which is not, according to Israel, acting to remove the approximately 30,000 visitors who did not leave the territories when their visitor permits expired. The PA claims, following an examination of the issue, the Israeli figures are exaggerated and include people who left the territories or received permanent residency status. In the meantime, numerous families suffer from separation and uncertainty concerning their future.

Registration of Children

Until 1995, residents of the territories could register their children in the population registry and in their identity cards only until the children reached the age of 16. In certain instances (when the child was born abroad or when only the mother was a resident), the age was limited to five. A child born to a resident father and a non-resident mother could not be registered at all. The meaning of not being registered was that the child had no legal status in the territories, he was not eligible to live there with his resident parent(s) and would have no future in the territories when he grew up. This situation was corrected in the beginning of 1995 due to pressure of human rights organisations. From then on every child until the age of 18 was eligible to register in the population registry if both his parents are residents or (if only one parent is a resident) his permanent place of residency is the territories. However, this arrangement was never implemented. Even those who arrived at the offices of the Israeli Civil Administration with a copy of this arrangement were met with a complete refusal of the clerks to register the child.

The interim agreement between Israel and the PA introduced a new factor. From now on the eligibility for registration was dependent only on one of the parents being a resident of the territories. However, the age was once again changed, and one over the age of 16 was once again not considered a child eligible to be registered and live with his parents. The interim agreement awards the sole authority to register children to the PA, but this arrangement was never implemented in practice. As the computerized population registry remains in the hands of Israel, an Israeli permit for each addition to the registry is required and Israel continues to enforce its interpretation of the eligibility for registration.

Among other things, Israel insists that a child whose age is over 16 and who can apparently be registered according to the order from 1995 is not eligible. It should be noted that the security orders and regulations in the territories will continue to be in force until they are specifically cancelled.

In April 1997 HaMoked submitted a High Court petition on behalf of five families for whom Israel refused to register their children as they were over the age of 16. These are 17 year olds, who reside with their family members in the territories, study or work there, but are prevented from holding identity cards. The younger siblings of these teenagers are residents of the territories, as is at least one of their parents. In all of these cases, previous attempts to register the children failed, either because the child was over the age of five at the time, the flat refusal of Israel to approve family reunification requests or the refusal of the Civil Administration to implement the arrangement from 1995. HaMoked argued that both materially and principally, the children are eligible for registration in accordance with the order of 1995 which has yet to be abolished. In the wake of this petition, the State expressed willingness to arrange the residency of the petitioners and others in their situation, without admitting their right to be registered according to the order.

Refund of Fees Collected Illegally

The painful problem of separated families in the Occupied Territories was an unfailing source of income for the Civil Administration. High fees were paid for family reunification requests (which were, in general, denied or left without response) and visitors' permits and their extensions. When the right of some families to live in the Occupied Territories with long-term visitors' permits was recognised, the Military Government demanded that these families pay the fees retroactively, for the periods during which one of the family members was in the area illegally. Occasionally, these amounts came to thousands of shekels. In the economic reality of the territories, this policy caused an unbearable burden on the families with already low incomes. This situation caused HaMoked to demand in later arrangements (from the beginning of 1994) limitations on the amount of fees to be collected from the residents. Among other things, it was agreed that fees would no longer be collected retroactively.

In many cases the Civil Administration violated its obligations concerning these fees. Fees were collected retroactively and permits were extended for only one month, while the fees paid were for six month extensions. Correspondence to return these monies did not achieve results, and in November 1995 HaMoked turned to the legal system on behalf of nine families and demanded that the State refund the fees illegally collected. The State admitted that in the majority of cases the fees were not in accordance with the regulations, but refused to refund the money. According to the State, when the authorities in the matter of population registry and visitors' permits were transferred to the Palestinians, the obligations connected to them were also transferred. Accordingly, the complaints of the residents concerning the Israeli government must today be directed toward the PA. The State relied on the law of the implementation of the interim agreement, which determines that Israeli courts will not hear claims against the State (apart from those of Israelis or tourists in Israel) which are based on areas of responsibility transferred to the PA. The hearing of the suit thus focused on the legality of this directive of the interim agreement and its validity concerning the matters of the plaintiffs. In May 1997 the Magistrates Court ruled in favor of the State and HaMoked appealed to the District Court. Under pressure from the judges of the District Court, the State agreed to return the money it admitted had been illegally collected. Concerning the remainder of the suit, the hearing was returned to the Magistrates Court and the State agreed to refund the remaining money.

During 1997 HaMoked treated 129 different cases in the category of residency in the Occupied Territories, of them 25 requests received in the first half of 1997.

During the year, HaMoked successfully solved the problems of 63 of these families. In seven of the cases, Israel refused to permit the requests for family reunification or the return of deportees.

Detainee Rights Project

For years HaMoked has advocated on behalf of the human rights of Palestinian detainees and prisoners held by Israel. This advocacy has included the areas of meeting with legal counsel, torture during interrogation, inhumane detention conditions, solitary confinement and the prevention of family visits.

In 1996, HaMoked commenced an intensive project to protect the rights of Palestinian detainees during the period of their detention and interrogation by the General Security Service (GSS). The project was renewed in early 1997, after HaMoked drew operative conclusions from the activities of the previous year. In the framework of this project, the detainees are accompanied from the initial request for assistance by their families until their transfer out of the GSS interrogation wings. These intensive activities include a vigorous legal battle for the right of each detainee to receive legal counsel and not be subject to torture. HaMoked also represents the prisoner in court sessions to lengthen his imprisonment and during appeals against extended detentions, with the goal of increasing the legal scrutiny of the interrogations and decreasing the trend of extended detentions for no valid reason. Whenever possible, HaMoked advocates for the presence of the families during court sessions. HaMoked also deals with the inhumane detention conditions to which the detainees are subject in the interrogation wings. In total, HaMoked assisted 55 detainees in 1997, but the achievements of the project do not end with the defence of these specific persons. In several areas the project resulted in positive alterations in detainee rights on a larger scale. In addition, the project resulted in a continuous awareness of the subject of torture by the Israeli High Court and both the Israeli and international publics. The legal aspects of torture have yet to be decided upon in Israel, but the State is more and more required to be accountable for its actions.

Prevention of Meeting with Legal Counsel

The security legislation applicable to the Occupied Territories permits the GSS interrogators, with no legal procedure, to issue an order preventing a meeting between a detainee and his attorney for a cumulative period of up to 30 days (it is possible to extend this period with legal proceedings). A prevention of legal counsel represents a most serious violation of the rights of the detainee: All contact with a person not connected to his interrogation team is prevented and his right to legal counsel is denied, as is outside scrutiny of his detention conditions and the methods of interrogation used against him. The attorney is prevented from representing his or her client in a proper manner. The GSS makes use of the tool of preventing legal counsel as a standard procedure, and often as a way to prevent intervention in its interrogation methods. In a number of cases, an order preventing legal counsel was issued while the detainee was transferred to a cell with collaborators for an "interrogation" conducted by them. The prevention of legal counsel, therefore, makes the isolation of the detainee absolute, combines with other methods of torture and harms the right of legal scrutiny.

The battle against the prevention of legal counsel is conducted through urgent appeals to the Israeli State Attorney's Office and petitions to the High Court. In total, HaMoked submitted 20 petitions in this matter in 1997. In the majority of cases, a meeting with legal counsel was permitted by the State Attorney just prior to the hearing in court on this matter, such that no hearing was required. In the cases in which the appeals were heard in court, the judges consistently refused to shorten the order preventing legal counsel.

Torture

The detainees held in interrogation wings in Israel undergo torture. During long periods of time they are prevented from sleeping and are chained in handcuffs in painful positions as they are seated on a low stool in which the front legs have been sawed so that the stool leans forward and the backrest cuts into the back of the detainee. The detainees' hands are stretched and cuffed through the backrest of the stool in a painful manner which prevents all movement. The handcuffs themselves are tightened, causing pain, wounds and swelling of the hands. In addition, the head of the detainee is covered by a sack of thick cloth which barely permits breathing and loud music is played continuously which dulls the senses. Occasionally, there is also exposure to cold or heat. During the interrogation itself the interrogators utilize "shaking," a form of torture which causes brain damage and the risk of death (as occurred in the case of "Abd al-Samad Harizat), and the "gambaz". In "gambaz" the detainee is forced to kneel in the frog position for extended periods of time, his legs forced together and hands cuffed behind his back, until he can no longer hold out and falls over. In addition, HaMoked has come across cases in which the detainees were hung by their hands from a hook on the wall such that their feet barely touched the floor; of cases in which the detainee was seated with his back against a table, and the interrogator placed the hands of the detainee on the table and pressed downwards on his shoulders; of cases in which detainees were forced to perform various exercises; of beatings, humiliations and threats. The attorneys of HaMoked have often found the detainees broken, both physically and mentally. In one instance, the detainee was unable to stop sobbing during the entire visit of the attorney.

Israel attempts to justify its use of systematic torture with the argument of a "ticking bomb," but as of today has not pointed to one case in which the facts fit this theory. Many of the torture victims assisted by HaMoked were released or put in administrative detention following the conclusion of their interrogations, and no charges were filed against them. Almost always there was a letup in the torture on weekends and holidays, when the interrogators went on holiday. In addition, both from a legal and moral perspective, the argument of a "ticking bomb" lacks all basis. No goal justifies all means, especially not the use of physical and mental torture. Israeli law specifically forbids the use of force during interrogation. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) explicitly forbids the use of torture under all conditions with no exceptions for emergency situations.

In 1997 HaMoked submitted 27 High Court petitions to halt the torture of Palestinian detainees. In the majority of cases the State announced, in the wake of the petitions, that it would discontinue the use of "physical force" against the petitioner. While the State had its own narrow interpretation of what constitutes physical force, the most severe forms of torture were halted. However, the case of Aiman Kapisha is different.

In the matter of Aiman Kapisha, the GSS used its full authority to prevent a meeting between him and his attorney. This prevention continued for thirty full days, and HaMoked submitted a petition against his torture already during this period. The court refused to issue an interim injunction to halt the torture. When Kapisha's attorney was permitted to visit him on 5 April 1997, the torture to which he was subjected was exposed: Tying in painful positions, overtightening of handcuffs, a sack covering his head, loud music being played continuously, prevention of sleep, exposure to cold, "gambaz,"

shaking, beatings and physical exercises. He was further threatened that his family members would be arrested so that he could hear them scream during their interrogations. The GSS continued to use various combinations of these methods until the end of May.

The matter of Kapisha was presented before the UN Committee against Torture, which convened on 7 May 1997 in Geneva to discuss the matter of Israel. His affidavit, presented before the committee in real time, played a crucial role in determining the conclusions to which the committee came. The committee unequivocally concluded that the GSS interrogation methods constitute torture as defined by the UN convention. The committee further determined that Israel is prevented from raising arguments of State security to justify its use of torture.

In addition, Amnesty International issued an urgent action appeal in the matter of Kapisha. As a result, the Israeli authorities were bombarded with tens of letters from around the world demanding that Israel stop torturing Kapisha. The case also received extensive news coverage, particularly outside of Israel, and once again brought to the forefront the issue of GSS torture.

It should be noted that the UN committee's condemnation of Israel's use of torture was barely mentioned in the Israeli media.

Further progress relates to the justification that the State must provide to the courts concerning the GSS interrogation methods. In the past, in response to court petitions submitted by HaMoked, the State ignored the arguments against the tying in painful positions and made due with the statement that the tying (in addition to the sack and music) is not an interrogation method but intended to protect the security of the interrogation facility and prevent communication among the detainees. Presently, however, the State admits that the tying of detainees in "incomfortable positions" is an interrogation method, and justifies it with the "necessity of defence." It is possible that this is an initial step toward the uncovering of the GSS lies and a certain limiting of the methods of torture.

Pending before the High Court is a long list of petitions submitted by HaMoked on behalf of detainees tortured by the GSS, and whose interrogations have ended since the submission of their petitions. Some of these detainees were released, others placed in administrative detention while against some charges were pressed. In addition, there are also petitions submitted by attorneys and other human rights organisations which are still pending. The tendency of the court has been to avoid making a principled ruling in the subject of torture. Decisions concerning interim injunctions were almost always worded, even when they had a clear influence on the immediate situation of the specific interrogee, in an unclear manner. Numerous petitions were deemed "irrelevant" after the interrogation of the petitioner was concluded. In other petitions, no date for a hearing was ever set. In the beginning of 1998 a change in this trend became evident. Two petitions of the Israeli Public Committee against Torture were set for a hearing with nine judges, with a stated goal of reaching a principled judgement. To the discussion of these petitions were added other pending petitions, including one of a detainee (who has since been released) and HaMoked. A date for this hearing has yet to be set.

In addition to the submission of High Court petitions to halt the torture of individual detainees, HaMoked petitioned for the full exposure of the torture undergone by the detainees; this was done in the framework of criminal proceedings which were initiated by the State against these detainees. HaMoked also initiates the examination of released detainees, in order to examine the long term impact of torture. The petition of HaMoked to try the GSS interrogators responsible for the death of Harizat is also still pending.

Detention Conditions

While the periods of detention of Palestinians held by Israel are determined by military legislation in the Occupied Territories (apart from those detainees who are residents of East Jerusalem), their detention conditions are determined by Israeli law. In May 1997, the Criminal Law Procedure (Detention and Enforcement Authorities) 1996, went into effect. This law determines, among other things, minumum conditions for detainees which ensure their dignity and health.

Without a doubt, the conditions of the detainees, as described to attorneys of HaMoked, do not meet the requirements of this law. In November 1997, one of the detainees described the conditions in which he was held in the Ashkelon prison. There were six detainees held in a cell sized 2.5x3.5 m. The detainees were not given beds but old mattresses, which were ripped and flea-infested. The blankets were also ripped, old, moldy and wet. The toilet was separated from the rest of the cell by a low partition, such that the detainees had no privacy. The trash bin, emptied once a day, had no lid, and its odor combined with the heavy odors eminating from the toilet. Small bugs and cockroaches freely roamed the cell. In addition, the detainees, who ate in the cell, did not receive flatwear and were forced to eat with their hands. No daily exercise period was permitted.

HaMoked was able to improve the aforementioned conditions, and one example of this is the provision of a daily shower. The new detention laws determine an uncontested right to a daily shower. In the wake of petitions submitted by HaMoked to district courts in Jerusalem and Beer Sheva, the State and prison services recognized the obligation to permit a daily shower for Palestinian detainees. The court in Beer Sheva also ruled that the partition separating the toilet from the rest of the cell must be raised, but this decision was overturned by an appeal of the State to the High Court.

Due to a petition submitted by HaMoked to the High Court, the State announced that it would transfer the detainees from the interrogation wings to other wings, in which the conditions are not as dire, as soon as possible upon the conclusion of their interrogations.

Following vigorous correspondence with the prison in Ashkelon, the commander of the prison announced in the beginning of 1998 that each detainee is eligible for a daily shower, a change of clothes, underwear and towel, bath items and receipt of various personal belongings from his family. In addition, due to the complaint of one of the detainees assisted by HaMoked, the detainees were provided with Korans.

This is obviously not enough to overcome the difficult and humiliating conditions under which the detainees must live, but it is possible to point to a certain improvement which the project brought to their lives. HaMoked does not make due with the principled guarantees given, but ensures that they are enforced in specific cases. In 1997, HaMoked submitted 20 petitions on behalf of detainees to regional courts concerning their detention conditions.

HaMoked continues its Detainee Rights Project in 1998.

*****

During the year, HaMoked's attorneys made 123 visits to 52 detainees, among them 4 administrative detainees who had been sent to interrogations. These visits were conducted in the three prisons in which the GSS holds interrogation wings: The Kishon prison in Haifa, the Shikma prison in Ashkelon and the police station of the Russian Compound in Jerusalem. 21 times the attorneys of HaMoked submitted urgent appeals to the State Attorney's Office to remove orders preventing meeting with legal counsel; these appeals concerned 45 individual detainees. Twenty petitions, encompassing 38 detainees, were submitted to the High Court to remove orders preventing legal counsel. In one instance HaMoked's attorney appealled an order preventing legal counsel which was issued by the regional court in Jerusalem against two detainees, residents of the city.

Administrative Detainees

The Administrative Detainees Project of HaMoked commenced in the beginning of June 1997. From May 1988 to April 1995, these activities were conducted in the framework of the Association for Civil Rights in Israel. Afterwards, for two years the project was conducted primarily on a volunteer basis. The implementation of this project by HaMoked permitted expansion beyond its original borders.

Rights and Conditions

The implementation of this project by HaMoked at the present time permitted the meeting of the special needs of the administrative detainees, needs which arose as a result of the transfer of 140 (of approximately 300) of them in the beginning of June 1997 from the IDF detention center Megido to the Prison Services. In Megido the detainees had, over the years, arrived at arrangements with the administration of the center concerning special rights and demands. Thus, a tolerable modus vivendi was arrived at. The transfer of 140 administrative detainees to the Prison Services was accompanied by both a significant loss of these rights and violations of rights guaranteed by law.

From June to November 1997, HaMoked's activities centered on the rights of these detainees and their detention conditions in the prison conditions.

HaMoked accompanied the struggle of these detainees. We instructed them concerning their rights guaranteed by law, and corresponded vigorously with the relevant authorities concerning specific problems. HaMoked began treatment of this issue with the realisation of rights guaranteed in law, those dealing with detainees in general and administrative detainees in particular. HaMoked advocated for the right to a canteen, a walk and physical exercise in the yard and food such as that of the jailors.
In addition, HaMoked acted to obtain permits for family visits when these were denied and to find solutions for the health problems of many. We reacted against illegal punishments, accompanied the detainees in their hunger strike and demanded the right for Israeli friends to visit. These activities required numerous visits, at least once a week, in both the relevant prisons of the Prison Services. Visits were also conducted to the Megido military prison. In many of the instances the work of HaMoked was successful.

Appeals of Administrative Detention

In November 1997, the administrative detainees decided to once again appeal their detentions following a period of 16 months in which they refused to do so. This refusal was their means of protesting the rejection of the majority of appeals and the extension of numerous detention orders after they had been shortened by a judge. As a result of this change, the activities of HaMoked since November 1997 have centered on the representation of detainees in their appeals and accompanying actions.

From 18 November 1997 to March 1998, HaMoked represented 68 detainees in appeals against their detentions. Of the 68 appeals, 35 of them were shortened by periods of a few days to four months. It is important to note that in contrast to the period prior to the shortening of the detentions, all the detainees (even those represented by other attorneys) were released on the date determined by the judge. The percentage of successful appeals - 50% - is higher than in the past.
It should also be noted that this percentage is an average of the decisions taken by many judges, and in the recent period by the five judges responsible for appeals in the Damun and Megido prisons. The difference among these judges are significant, so much so that the percentage of current shortened detentions of one judge is 0%.

Cooperation with Activists and Organisations

The activities of HaMoked in the area of administrative detentions are conducted with the increasing cooperation of activists and organisations advocating for human rights in the territories.
Close cooperation and mutual assistance exist between HaMoked and Physicians for Human Rights, with each organisation providing its own specialised expertise. HaMoked's connections with the Palestinian organisation "A Damir" are similarly characterised, as are those with the Association for Civil Rights in Israel (ACRI). Information is frequently and freely exchanged with B'Tselem. HaMoked was assisted by the Palestinian Center for Human Rights in the Gaza Strip, in the matter of the sole Palestinian administratively detained from the Gaza Strip during this time.

Among the joint activities with B'Tselem and ACRI are the petitions against administrative detentions, including one of leading legal figures from the academic community, which were published in the Israeli press.

HaMoked has close connections with "Open Doors," a volunteer group acting to release administrative detainees and unparalleled in both its character and achievements. Open Doors assisted HaMoked, together with B'Tselem and ACRI, in organising a protest exhibition against administrative detentions which was held in December 1997 in an art gallery in Tel Aviv.

HaMoked exchanges information with Amnesty International and several local branches of the organisation have "adopted" specific administrative detainees.

Attorney Yakov Anoch, up until two years ago a military prosecutor in the territories, has recently begun assisting HaMoked in representing administrative detainees. This "crossing the lines" is another expression of the welcome change in Israeli public opinion, a change which has influenced Israeli policy concerning administrative detention. The results on the ground: The release of many detainees, including some held for extended periods. The number of administrative detainees held in the three prisons dropped in the second half of 1997 from 500 to approximately 250. With this, it must be remembered that during this time new administrative detention orders were also issued.

Table of Requests for Location of Detentions According to Regions and Years (to 31 December 1996)

	1989	1990	1991	1992	1993	1994	1995	1996	1997	**Total**
Nablus	10	5	6	5	32	45	107	76	78	**288**
Tulkarem	4	9	4	1	21	42	88	87	107	**256**
Ramallah	132	101	54	36	76	102	109	130	145	**772**
Jerusalem	61	37	37	36	56	98	67	55	31	**471**
Bethlehem	110	56	29	25	59	218	396	158	350	**1083**
Hebron	34	7	8	1	63	295	556	698	367	**1672**
Jenin	4	2	5	1	9	9	18	44	22	**92**
Jericho	5	3	1			1	4	6	5	**23**
Other	6	2	2	1	1	1	6	14	7	**33**
Gaza	1	2	4	3	123	181	25	64	49	**403**
Total	**367**	**224**	**150**	**109**	**440**	**992**	**1376**	**1332**	**1161**	5093

* This number is not absolute as a detainee who was located in the past and for whom there was a new tracing request, is traced as a continuation of the previous location.

General Security Service Law

To date the GSS has acted while its activities, and even its existence, are not anchored in law. For the past several years, the Ministry of Justice has been preparing draft legislation which would "legalise" the existence of the GSS and it activities. In the first drafts of the proposal, an article concerning the permits to GSS interrogators to use physical means against the interrogees was included. HaMoked, together with other human rights organisations, vigorously acted to remove this article from the proposal, which would have legalised torture.

The proposed GSS Law, placed before the Knesset on 23 February 1997, did not include an article legalising torture. Officials in the Ministry of Justice noted that the article was removed from the proposal out of fear that it would delay the law's passage, and said the directive would be placed in the Order to Prevent Torture, an amendment which has yet to be submitted to the Knesset.

The removal of this article from the proposed legislation is a major success of human rights organisations. With this, the proposal has other problematic articles. The proposal awards the GSS extensive powers and authorities, while placing strict restrictions on the availability of information concerning the GSS. Article 17 of the law provides exemption from criminal liabililty for GSS employees or those acting on their behalf, concerning actions "done in good faith and in a reasonable manner." Human rights organisations are currently examining the law and considering their reaction.

3. Security Force Violence

In 1997, HaMoked received one complaint concerning death, 10 of property damage and 26 of violence (not including torture during interrogations).

The authorities involved in the complaints of violence are as follows:

IDF	6 complaints
Border Police	13 complaints
Police	2 complaints
GSS	2 complaints
Jewish residents	5 complaints
IDF Special Forces	1 complaint

HaMoked is currently handling 258 complaints of violence, for which 59 have been submitted pending petitions for compensation.

A. The Treatment of Acts of Violence

As can be seen from the statistical data, the physical violence in the territories continues, while in the past year the phenomenon of particularly harsh violence by the border police has been evident. In fifty percent of the complaints of violence the perpetuators were border police officers, and these complaints included the most disturbing descriptions of violence HaMoked has encountered. The initial treatment focuses on the attempt to initiate an investigation of the event, locate the perpetuators and charge them. HaMoked submits complaints to the relevant investigative authority (the Central Command for soldiers, and Divison for the Investigation of Police of the Ministry of Justice for police officers, GSS officials and Jewish settlers). HaMoked assists in bringing the witnesses to investigations and collecting evidence, and closely follows the results of the investigations. Unfortunately, in the majority of cases the investigation is not efficient and the sole succor for the individual is through civil suits for financial compensation from the State or the perpetuator.

One example of the difficult cases encountered by HaMoked in 1997 is the complaint of Waal Alsharif, who was detained on 14 July 1997 by border police officers at the Ras al Amud checkpoint, together with approximately 20 additional Palestinians (including a five year old child). He and the others were commanded to kneel by a wall, with their hands on the wall and heads bowed down. When they tired from this position and stood up, the officers began to beat them:

"...then two border police officers began with each person, sat him down forcibly until they reached a 16 year old, who announced that he is unable to sit like this anymore. The two of them grabbed the boy, took him to a metal structure and began to beat him. I saw them kicking him on all parts of his body and punching him in the stomach. The boy screamed and yelled from pain, and all present heard his screams..."

Alsharif protested when the officer demanded that he bow his head down lower and the officers began to beat him also. They punched him in his face and head, and hit him on all parts of his body.

"As I was standing, a fourth border patrol officer joined in and hit my head with the butt of his rifle. I then felt great weakness and a terrible weariness. They succeeded in pushing me to the ground."

"The short, dark officer kicked me several times in the head and back. As a result of the kicks I began to vomit, and the first officer with the light eyes jumped in my direction with his weapon as he told another officer 'leave me alone, I want to shoot him...'"

The border police officers did not shoot Alsharif, but he heard them concocting a story to explain the situation. Afterwards he lost consciousness and woke up in the hospital, where he learned that the officers attempted to prevent his transfer to the hospital.

Ten days after the event Alsharif noted:

"As a result of the blows and kicks which I endured, my entire body swelled up and is covered with bruises. To date I suffer from severe headaches, and frequently vomited in the first days following the event. In addition, I suffer from severe pain in my back and hips and my left hand swelled such that I am unable to lift anything with it."

The testimony of Alsharif, in addition to that of others, was passed to B'Tselem which published a report "For the Sake of Brutality: Continuing to Beat." A complaint was submitted to the Division of Investigations of Police Officers which, at the time of the report (nine months after the incident), had yet to be completely investigated.

B. The Law to Deny Compensation to Palestinian Victims of Israeli Security Force Violence

In 1997 Israel increased its activities to advance proposed legislation, the goal of which is to deny the right of Palestinians injured (or who will be injured) by security forces in the territories, to monetary compensation from the State. The meaning of this law, should it be passed, is that thousands of disabled and injured Palestinians will remain without the financial means necessary for critical medical treatment and rehabilitation. Moreover, the proposal essentially removes the duty of caution from the IDF soldiers. Soldiers will be able to damage, injure and kill and neither they nor the State will be held accountable.

Even today the situation of Palestinians suing for compensation from the State is not easy. They must go to Israeli courts and prove both their damages and the responsibility of the IDF soldiers for these damages. They shoulder a heavy burden of proof. The chances of a Palestinian involved in a violent event during the Intifada to receive compensation are extremely limited. The goal of this law is to block the path of even those who did not confront the soldiers, yet were injured due to negligent actions of IDF.

The memo concerning this proposed legislation was circulated by the Ministry of Justice in March 1997. The principles of the proposal were to release the State and IDF soldiers from tort responsibility for physical damages caused to residents of the territories from the beginning of the Intifada until the signing of the Gaza-Jericho agreement in Washington. In order to award this proposal a less severe front, an alternative arrangement of "compensation for humanitarian reasons" was also suggested. This arrangement both turned compensation from a right to charity and included such limiting criteria that only a select few would receive some form of payment - and all of this at a regulated and low amount. In relation to the period following the signing of the agreement, the proposal expanded the meaning of the term "combatant activity" of tort law, such that it would cover almost all activities of IDF soldiers in the territories. The military and State are not responsible for damages caused in the framework of "combatative activities," but this term was always interpreted as relating to the special circumstances of war and battle conditions. When fire is exchanged between organized military forces, no regular duty of caution

exists. Now the State wishes to implement this exemption also for IDF soldiers enforcing public order in the territories. Attempts by the State to expand this exemption through the courts were overruled: Again and again it was determined that police actions of IDF soldiers are not "combatative activities."

In the wake of the distribution of this memo, a coalition of human rights groups organised to act against this law. The Legal Department of HaMoked composed a detailed response to this memo, which was sent to the Ministry of Justice. In addition, lobbying activities and a public campaign were begun. Prominent attorneys in Israel and a number of international organisations, to whom HaMoked turned, also joined the efforts to oppose this proposed law.

On 23 July 1997, the government submitted the Law Concerning Handling of Suits Arising from Security Force Activities in Judea, Samaria and the Gaza Strip before the Knesset. The wording of the law was altered drastically from that of the original version, but its meaning remains the same. The direct wording of a special State exemption for activities in the territories, from the outbreak of the Intifada to the Gaza-Jericho agreement, is now gone, as is the facade of humanitarian payments provided by an administrative board. An interesting difference is that while the latest proposal continues to apply in a territorial manner on all actions, past or future, in the West Bank and Gaza Strip, it cancells its personal application: It now applies to all those injured and not just to Palestinians. However, it is reasonable to assume that a suitable solution will be found for Israelis injured in the area. The primary arrangement in the proposal is the expansion of the term "combatative activity," and the accompanying exemption from liability, to include almost all past and future actions of the security forces in the territories.

As if this is not enough, a list of additional directives is determined, which will prevent the possibility of suing even in the case that a crack is found in the exemption due to "combatative activity." The proposal negates compensation from every person who was convicted of a terrorist act, no matter if it is related to the event for which he is requesting compensation or not. This directive, a double punishment for the same act, is in violation of the basic principles of law. The proposals determine a statute of limitations of one year from the date of the event, after which it is not possible to submit a suit, as opposed to the existing seven years in general law. In reference to suits filed due to security force actions in the territories, the proposal negates an established rule in tort law according to which when the matter "speaks for itself," the burden of proof falls on the defendant. The meaning of this is that the injured party must prove not only that he was injured from IDF soldier fire (for example), but also what the directives received by the soldier were, what training was received by the soldier and other facts which will exactly detail the negligent actions which resulted in the fire. These facts are in the sole possession of the State, which even today does not document and investigate them. The proposal provides the State with an additional incentive to not document and investigate as in their absence, the injured party will never be able to bear the burden of proof which the proposal places on him.

Even if a plaintiff somehow manages to overcome these obstacles, the proposal negates compensation from the majority of those injured and rations, according to limited equations, the compensation to others. As with the original proposal, this version retroactively affects past actions and suits being heard in court, as long as a judgement has not been reached.

In November 1997, HaMoked published the report "Escaping Responsibility: The Response of the Israeli Military Justice System to Complaints against Soldiers by Palestinians." The report analyses the treatment of the military of 441 complaints against soldiers, which were received by HaMoked in 1988-1997. The report highlights serious incidents brought to the attention of the authorities yet not investigated; the faulty and incompetent manner in which the military police did investigate cases; the failure to question Palestinian witnesses; the tendency to always accept the versions of the soldiers involved in the incidents (if the soldiers were indeed located). The report notes the gentle treatment of the military prosecution and courts of the few soldiers (only in 7 of the 441 cases were soldiers tried before a military court) who were accused of violent acts.

The military's amateur and forgiving handling of security force violence toward Palestinians stands in contrast to the more efficient treatment of cases involving theft from Palestinians, cases seen as staining the military integrity. This gives a green light to violent behavior by soldiers toward Palestinians. The lack of effectiveness of the criminal system concerning military violence will now be completed by this law, which negates the soldiers' duty of caution and neutralises deterrence on the civilian level.

The findings of HaMoked concerning the manner in which Palestinian complaints are investigated also sheds light on one of the State's justifications for the law to deny compensation. The State contends that it is difficult for it to deal with these suits due to the hardship in reconstructing past events and locating the soldiers involved. This hardship results solely from the past and present abstention of the State from documenting its soldiers' activities and covering up for them during investigations of complaints. If this makes it difficult for the State to defend itself in court, it can blame only itself.

The law to deny compensation is currently before the Constitution and Law Committee of the Knesset. HaMoked continues its intensive lobbying activities to prevent the passage of this law. In addition, HaMoked has already begun examining the possibilities of attacking this law should it be passed, including through the submission of petitions abroad. However, the effects of this proposal are already felt on the ground and this plays into the hands of the State. Numerous attorneys are willing to settle for greatly reduced compensation sums in order to finish cases which the law would impact. In addition, the State Attorney often delays hearings so cases will not be completed prior to the passage of the law.

C. Compensation Suits

During 1997 HaMoked submitted 41 compensation suits, of them 35 to the legal system and 6 to administrative boards. Below are representative examples of the suits filed by HaMoked in 1997:

Violence and Destruction in the Home of Ahmed Sarnadah in Jerusalem

This complaint was received by HaMoked in 1990. One night, at approximately 1:00 a.m., Ahmed Sarnadah awoke to the sound of loud knocking on his front door. Before he was able to open it, soldiers broke in. The soldiers pushed the plaintiff into a bedroom and locked his wife and eight year old son in the bathroom. One of the soldiers kicked the plaintiff in the stomach and beat him on all parts of his body. The soldiers commenced a violent search as they broke furniture

and personal items and hit the plaintiff in his face. At the conclusion of the search, the soldiers dragged the plaintiff outside and a man in civilian clothes checked his identity card. The man then freed him and apologised, saying they mistakenly thought he was wanted by the Israelis.

Two days following the incident, Mr. Sarnadah filed a complaint through HaMoked to the Public Complaints Officer of the Border Police; at this point he assumed the soldiers who broke into his home were Border Police officers. After several days the officer announced that the complaint was transferred to the Military Police as it appeared soldiers were involved. In retrospect it became known that the Military Police did not investigate the event, and no material concerning this incident was located by them. Due to this typical negligence of the investigating authorities, the soldiers were not held accountable.

HaMoked's demand of the Claims' Officer to compensate Mr. Sarnadah was refused on the grounds that no report was found on the incident. The State, which failed to investigate, was now using this as an excuse not to pay compensation. On 3 March 1997 HaMoked submitted a suit on behalf of Mr. Sarnadah to the Magistrates Court in Jerusalem. NIS 30,000 was demanded from the State. In September the State submitted a general defence, noting among other things that the State has yet to locate the relevant documentation. The suit is currently pending.

Abuse of Children and Revenge in the Kusaba Family Home

In the winter of 1990 an observation point was erected on the roof of the Kusaba family home in the Kalandia refugee camp. One day a confrontation developed between the soldiers and the family members concerning damages caused to the building by the soldiers. Six soldiers spoke among themselves and arrived at the home one late afternoon, seeking revenge. At this time, three additional soldiers were on the roof of the home. The soldiers entered the house, shattered personal items and furniture, ripped up family photographs, personal documents and destroyed food. The soldiers then took two of the family children, aged 11 and 15, up to the roof where they beat and kicked them, finally ordering them to lay on their backs in a puddle of water. As they lay on the roof, the soldiers placed tiles on their stomachs and the children were forced to remain like this for several hours. This occurred on a rainy winter day.

Due to this event, and in the wake of a complaint submitted by HaMoked, the soldier David Shemesh was convicted in a military court of assault and improper behavior. He was sentenced to one month in prison, three on parole and demoted to the rank of private.

On 4 February 1997 HaMoked submitted a petition against nine of the soldiers involved in the incident. As it was clear this was revenge planned by the soldiers themselves and as one of the soldiers was charged, HaMoked decided not to petition against the State. HaMoked's assumption was that the State could successfully argue it is not responsible for the soldiers' conduct in this instance. However, three weeks after the filing of the petition, the State Attorney contacted HaMoked and announced that the State would represent the soldiers in court. The State Attorney's office also requested to close this file quickly, without submitting a respondent's brief and without evidence. Within a few weeks a compromise was reached, which received the status of a court judgement, and the plaintiffs were awarded NIS 32,000.

Beatings by Border Police Officers

In February 1994 four border police officers detained Mamun and Ramah Rumah, brothers driving to their home in Jericho. The officers placed the brothers in a border police jeep and drove them to a remote area, where they took them out and began beating them. One of the brothers, who attempted to escape, was pushed and fell down a slope. In the end the officers left the brothers, who were beaten and laying on the ground, in the area. Four of the officers were convicted in the Magistrates Court of improper use of power; they were acquitted due to reasonable doubt from the charges of assault. Two of them, who appealed, were later cleared of all charges by the District Court.

On 29 June 1997 HaMoked submitted a compensation suit against the Border Police officers and the State. In this case the State also volunteered to take full responsibility upon itself, and compensated the brothers with NIS 17,500.

Illegal Seizure of a Roof

The Abdallah home is situated on the Dir Balut intersection in the Tulkarem district. In 1990 the home was confiscated and sealed off by the IDF. In addition, the IDF used the house as a permanent base and observation point. Toward the end of 1994 the Minister of Defence permitted the opening of the home and in early 1995, as became known later, signed an order to return the home to the family. However, by 29 February 1995 the soldiers had yet to leave the house and during 1995 caused further damage to the house, built on its roof and uprooted olive trees in the yard. Among other things the soldiers destroyed tiling, damaged the roof and electrical system, tore down walls and shattered doors and windows. During all these years the family was prevented from picking their olives and thirty olive trees, most of them at least fifty years old, were uprooted. In addition, the water well of the family was contaminated. Only in the wake of numerous complaints by HaMoked did the Legal Advisor of the West Bank send the order returning the home to the family to HaMoked. This was in February 1996, more than one year after the order was issued. Another two weeks and a threat of a High Court petition were required before the soldiers evacuated the house.

On 2 June 1997 HaMoked submitted a compensation suit against the State. The State was charged to compensate the family for the damages to the house and olive orchard, in addition to the illegal seizure of the home. NIS 152,195 have been demanded.

In the respondent's brief the State argued that the implementation of the order returning the family home was delayed due to threats of Jewish settlers to take over the house, the need for IDF reevaluation and the location of an alternative base.

Death of Talal Abu Aisa

Talal Abu Aisa was shot to death in Nablus on 8 December 1995. An IDF officer, Captain Micha Levi, fired the fatal shot from the jeep in which he sat, and continued firing even after he got out of the jeep. He fired without using the gun sight, into an alley in which Talal and his friends were walking. According to the IDF, earlier that same day and in anther place, rocks and bottles were thrown at the jeep. However, there was no attack on the jeep at the place of the shooting and the soldiers were in no danger. Nonwithstanding, the Military Attorney did not recommend charging the officer for the shooting and killing, but only for not providing medical assistance after Abu Aisa was hurt.

On 3 December 1997, HaMoked submitted a compensation suit against the State and Captain Levi. The amount of compensation requested is NIS 255,000. The State took upon itself, as usual, the representation of Levi. The respondent's brief submitted by the State is in essence a general denial of the charges.

It appears that often the sole way to enforce the right of the residents of the territories to security of person is through compensation suits due to violations of this right. The enforcement authorities are lenient with the soldiers and police through negligent investigations, reluctance to charge and insignificant punishments for those convicted. On the declarative level the State disavows itself from "soldiers gone bad," but when these soldiers are sued for compensation by their victims, the State represents them and compensates the victims.

4. Freedom of Movement

Entry to the Gaza Strip

The "safe passage" arrangements determined in the Oslo Accords between the West Bank and Gaza Strip were not implemented in 1997. The closure of the Gaza Strip includes a ban on entrance into Gaza; this ban also applies to residents of East Jerusalem, wishing to enter Gaza to be with their family members. In March 1996, during the first part of the current closure, it was not at all possible to enter the Gaza Strip.

The division between the West Bank and Gaza Strip is strict and makes meetings between family members most difficult. In June 1997, for example, HaMoked began dealing with the case of Hanan Sheikh Ahmed, a resident of Kalandia who was separated from her husband and 1.5 year old baby living in Gaza. Almost two months were needed to arrange her entrance into the area. Mrs. Sheikh Ahmed first entered Gaza in 1994 and there she married. In May 1996 Israel permitted residents of the West Bank, who were illegally located in Gaza, to return to the West Bank in a secured convoy of buses. Mrs. Sheikh Ahmed took advantage of this opportunity to visit her parents, especially important in light of the deteriorating health of her father. When she attempted to return to Gaza, she was not permitted.
HaMoked's initial correspondence with the Israeli authorities in this matter resulted in the general response that "the aforementioned is forbidden from entering Israel for security reasons." It took further correspondence and numerous telephone calls before a family meeting was permitted in Gaza at the end of July 1997.

HaMoked also treated the case of Said Al Hajagara, a 72 year old resident of the West Bank who was prevented by the Israeli authorities from entering the Gaza Strip to visit his five adult daughters, all married and living in the Jabalia camp with their families. More than two months were required to arrange a permit for Mr. Hajagara to see his daughters, but the story did not end here. When he requested to leave the Gaza Strip for the West Bank, at the end of his permit, he was told by the soldier at the Erez checkpoint to return and die in Gaza. It took an additional three days of intensive contacts to facilitate Mr. Hajagara's return home.

Exit for Abroad

The Oslo Accords did not alter the status of the West Bank and Gaza Strip as closed military zones, from which entry and exit is dependent on the area military commander.

116 persons turned to HaMoked in 1997 for assistance in leaving for abroad, after their requests were refused or they were turned away at the various border crossing points.

As of the end of 1997, the position of the authorities concerning these 116 requests is as follows: 51 were refused, 9 accepted on condition that the persons obligate themselves in writing not to return to the territories for a defined period of time, 32 requests were accepted and 24 requests are still pending. In addition, the handling of 70 additional requests received by HaMoked prior to 1997 is still ongoing.

In addition, 14 persons who turned to HaMoked before 1997 received permission to leave this year; 2 who submitted requests prior to 1997 received permits to leave for limited periods and 38 requests received earlier were denied.

It should be noted that the vast majority of requests to HaMoked were to leave for Jordan. The position of the authorities concerning exit through the Israeli airport is even stricter than in the past.
In general, residents of the territories are not permitted to leave via the airport.

*****

The case of Farid Abu Dahir has been handled by HaMoked since July 1996, but all attempts to arrange his exit through correspondence with the authorities failed. On 9 July 1997 HaMoked submitted a High Court petition on his behalf.

Farid Abu Dahir completed his doctoral studies in January 1996 at Leeds University in the United Kingdom. His thesis analysed the manner in which the Intifada was covered by the daily Arabic newspapers published in the United Kingdom. Presently Dr. Abu Dahir is a lecturer in the Department of Journalism at Al-Najah University. In addition, Dr. Abu Dahir established a private firm for the collection and distribution of news items, and writes editorial articles in the Palestinian newspapers. To the petition were attached three articles he published in which he called for the advancement of democracy in Palestinian society, criticised the Israeli implementation of the Oslo Accords and analysed the escalation of violence.

Dr. Abu Dahir's desire to go abroad is closely tied to his academic work. His exit was denied in the summer of 1996, when he requested to travel to the United Kingdom for his graduation ceremony at Leeds University. Since then his exit has also been denied when he asked to attend academic conferences to which he had been invited. The justification provided for the prevention of his exit was that it would endanger the security of the region as he is "a Hamas activist." Abu Dahir denies this claim, which also does not fit the independent line exhibited in his articles.

The petition argues that the prevention of Abu Dahir's exit harms two of his legal rights: The rights to freedom of movement and freedom of occupation. These rights have received recognition and increasing protection in court rulings and fundamental laws of Israel. It was further argued that the prevention ignores the needs of the residents of the territories and encompasses a warlike attitude that has continued for more than thirty years. During this period people grew up and developed careers, such that the importance of the right to freedom has increased. The injury of Abu Dahir's right to freedom of movement was done without due process, apparently on the basis of rumours and without providing him an opportunity to appeal and confront the information against him.

In the wake of this petition, the State agreed to a one-time exit of the petitioner. It was also agreed that in the future, all of his requests to leave would be examined in their own right.

Entry Permits into Israel

51 complaints were received by HaMoked during 1997:

1 Entry for purposes of studies
47 Entry to visit family members in prison
3 Work

As of 1997 HaMoked succeeded in solving 29 of these complaints.

During the year, HaMoked also dealt with 20 complaints received prior to 1997 for the following:

10 Entry to visit family members in prison
4 Studies
5 Divided Families
1 Passage from the West Bank to the Gaza Strip in order to enter Egypt

10 of these complaints were successfully treated.

*****

An especially difficult, but not unrepresentative, case is that of Mrs. Aziza Nasser from the Ramallah district. Her husband and two sons are imprisoned in Beer Sheva and are serving long sentences. Up until the summer of 1996 she would regularly visit them, but at that time was told she was prevented from entering Israel and her requests to participate in the prison visits arranged by the Red Cross were denied. In July 1997 Mrs. Nasser turned to HaMoked and more than three months were required to receive a one-time permit to visit in prison. She was allowed one hour to see her husband and two sons, whom she hadn't seen for more than a year. Following this visit HaMoked once again turned to the authorities and requested a long-term permit for visits. After two more months of advocacy a one-time permit was once again issued. Additional efforts were required to arrange another one-time permit to visit her husband and HaMoked is currently advocating to arrange another visit with her sons.

A special problem arose in the case of Sanaa Gubran. In the wake of HaMoked's intervention she received a periodic permit for prison visits with her husband, but could not use this permit as she is a resident of the West Bank and he is a resident of Jerusalem. Separate days are alloted for visits of West Bank residents with prisoners from the West Bank and other days for residents of Jerusalem with prisoners from Jerusalem. Mrs. Gubran fell between the cracks. HaMoked intervened and successfully arranged her visits.

Organisational Report

Board of Directors

* Mr. Yossi Shwartz: Chairperson, former director of HaMoked
* Mr. Victor Lederfarb: Treasurer of HaMoked, economic advisor, MBA
* Mr. Dan Bitan: Administrative Director of the Truman Institute for Peace, Hebrew University of Jerusalem
* MK Professor Naomi Chazan: Member of Knesset
* Ms. Rachel Waglash: Nurse
* Mr. Ala Hatib: Former director of HaMoked, currently director of medical center in Tira
* Attorney Tagrid Jahashan: Former attorney at HaMoked, currently a legal advisor at the Israeli Women's Network and "Women for Political Prisoners"
* Professor Frank Stewart: Islamic studies, Hebrew University of Jerusalem
* Dr. Avner De Shalit: Political Science, Hebrew University of Jerusalem

Staff of HaMoked

Ms. Dalia Kerstein, Director
Ms. Rimonda Mansour, Administrative Assistant
Ms. Zahava Cohen, Administrative Coordinator
Ms. Maisa Hurani, Client Intake Coordinator
Ms. Maha Hatib, Client Intake Coordinator
Ms. Tali Gur, Authority Follow-up Coordinator
Ms. Moran Cohen, Assistant to Client Intake Coordinator
Ms. Neta Harel, Assistant to Client Intake Coordinator
Mr. Yossi Wolfson, Legal Assistant
Mr. Eliahu Abram, Director of Legal Department
Ms. Hala Huri, Attorney
Mr. Hisham Shabaita, Attorney
Mr. Ali Haider, Attorney
Ms. Connie Hackbarth, Communications Coordinator
Mr. Yosef Bruder, Accountant