



Activity Report 2008-2010

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

Universal Declaration of Human Rights (1948), Article 1

Activity Report 2008-2010

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ISSN 1565-4451

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شارع أبو عبيدة ٤، القدس ٩٧٢٠٠ | هاتف: ٠٩٧٢-٢-٦٢٧١٦٩٨ | فاكس: ٠٩٧٢-٢-٦٢٧٦٣١٧

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Preamble

This report summarizes three years of activity by HaMoked: Center for the Defence of the Individual, from January 2008 to December 2010. These years were characterized by an increasing separation between the two parts of the Occupied Palestinian Territories (OPT). Israel maintains a strict policy of separation between the Gaza Strip and the West Bank (including East Jerusalem), and the restriction on movement between them is almost absolute. Palestinian residents whose address is registered in the Gaza Strip are defined by Israel as “illegal aliens” in the West Bank, and therefore, they are arrested and deported from their homes. During the period covered by this report, Israel honed the legal tools serving the separation policy; among other things, the military issued an order that practically enables Israel to define every Palestinian living in the West Bank as an “infiltrator” who is legally subject to deportation. The policy of separation, in its various manifestations, was one of the central issues HaMoked addressed during these years.

In the West Bank, there has been relative calm in the security situation and the security collaboration between Israel and the Palestinian Authority (PA) has grown stronger. Today, the PA interrogates and detains individuals who, in the past, would have been detained by Israel. The relative calm and the Israeli-Palestinian security collaboration are reflected in the decline in the number of requests received by HaMoked during this period to trace detainees, as well as the decrease in the number of administrative detainees. At the same time, Israel continues to hold thousands of Palestinians in prisons within its borders. HaMoked is working to protect these prisoners and their families, beginning with tracking down prisoners’ place of imprisonment, continuing with the struggle against torture, humiliating and inhuman treatment, cruel holding conditions and detention without trial, and, finally, managing the ongoing and Sisyphean work on family prison visits.

The separation wall continued to be built deep inside the West Bank between 2008 and 2010. During these years, the full extent of the damage caused by the permit regime effective in the West Bank areas located between the separation wall and the Green Line (the “seam zone”) became apparent. The number of human rights abuses processed by HaMoked pertaining to the separation wall and its attendant permit regime continues to grow.

In the Gaza Strip, these years were characterized by the siege imposed by Israel, and by its military attacks, which peaked in the winter of 2008-2009 with “Operation Cast Lead.” HaMoked joined hands with other human rights organizations in an effort to reduce the harm to civilians, prevent war crimes, and investigate the acts of the military in the Gaza Strip.

In East Jerusalem, the Ministry of Interior escalated its efforts to deny the rights of residents who had obtained legal status in a foreign country. At the same time, the Ministry of Interior has also been waging a rearguard battle against every man, woman and child wishing to reside with their family in East Jerusalem. This battle is waged using the Temporary Order that enables Israel to reject applications made by city residents for family unification with residents of parts of the OPT that were not annexed by Israel. Alongside the effort to find ways to help families on an individual basis, during this period HaMoked has waged a legal battle against the rules that allow revoking the residency status of East Jerusalemites with the aim of having them cancelled. HaMoked has also continued its efforts to have the “Temporary Order” preventing family unification repealed.

During the period covered by the report, HaMoked intensified its work on violations of the social and economic rights of East-Jerusalem residents, a mostly poor and disadvantaged population. Although in the framework of the “unified Jerusalem,” residents of the city are eligible for social security rights identical to those of Israeli residents, their rights are methodically and arbitrarily abused.

HaMoked has also continued with its work on civil claims filed by residents of the OPT for abuses of their rights, particularly for acts of violence by security forces, which have left their victims injured, disabled or bereaved. Generally speaking, these civil claims have been met with increasing hostility, both by the State Attorney’s Office, and by the courts.

HaMoked's intensive activity in recent years has led to a series of achievements. Tens of thousands of people who lived in the OPT were able to obtain legal status following many years during which Israel had frozen the registration processes. The number of those prevented from travel abroad was significantly reduced and a new procedure was instituted, enabling residents to find out whether or not they were prohibited from traveling before they reach the border crossings. And yet, the procedure also serves as a bureaucratic tool for the military to limit the involvement of human rights organizations and to circumscribe judicial oversight in cases where an individual has been prohibited from exiting the OPT. On the matter of requests to visit Israeli prisons, response time was reduced to a certain extent and the restrictions on visits by former prisoners were relaxed.

In addition to the achievements, which span a broad range, the main thrust of HaMoked's work has continued to focus, as its name suggests, on protecting human rights on an individual basis. HaMoked can take credit for tens of thousands of cases that were resolved. Every such case is a world unto itself: a man who was released from arbitrary detention, a woman who received a permit that extricated her from the four walls of her home, a young man who was able to continue his studies, a boy able to see his parents, or a farmer who is now able to cultivate his lands after years of having no access to them.

New Cases, 2008-2010

Topic	Year		
	2008	2009	2010
Detainee Tracing	4525	3876	3199
Detainee Rights	334	297	255
Freedom of Movement	137	173	225
Internal Freedom of Movement	0	6	54
Jerusalem Residency	64	28	21
Residency in the OPT	30	63	93
Social Rights in Jerusalem	2	145	142
Violence and Property Damage	2	2	1
Punitive House Demolitions	2	0	0
Other	0	1	0
Total	5096	4591	3990

Legal Action, 2008-2010

Topic	Year		
	2008	2009	2010
Detainee Rights	39	54	66
Freedom of Movement	119	118	106
Freedom of Movement in the OPT	0	0	11
Jerusalem Residency	46	11	21
Residency in the OPT	2	0	1
Social Rights in Jerusalem	0	30	70
Violence and Property Damage	11	4	10
Punitive House Demolitions	2	1	0
Other	1	2	0
Total	220	220	285

Petitions to the HCJ, 2008-2010

Petitions to the High Court of Justice (HCJ) submitted by HaMoked and the percentage they constitute of all HCJ petitions during the period of the report.

Year	Total petitions submitted to the HCJ ¹	HaMoked petitions	Percentage of HaMoked petitions from total submitted to the HCJ
2008	2,149	159	7.4%
2009	1,603	136	8.5%
2010	1,591	111	7%
Total	5,343	406	7.6%

¹ According to the Israeli Judicial System's reports under the Freedom of Information Act.



Jerusalem Residency

East Jerusalem and its neighborhoods, as well as the suburbs and the villages surrounding it, are an inseparable part of the Occupied Palestinian Territories (OPT). Despite this, in 1967, Israel applied Israeli law, jurisdiction and administration to this part of the West Bank. As a result of this move, the residents of East Jerusalem suffer from unique problems with respect to their status in their own city. In terms of Israeli law, there are rules that are unique to them, both as compared to those that apply to Israeli citizens and to those that apply to all other residents of the OPT.

At the beginning of 2008, HaMoked had 184 cases regarding various issues pertaining to East Jerusalem residents, their status, and the status of their relatives in the city. In 2008, 53 cases in this category were opened in HaMoked, 28 in 2009, and 21 in 2010. Processing of these cases is characteristically protracted, sometimes spanning many years. Out of 133 cases in this category processed by HaMoked in 2010, 21 were opened in the 1990s, and 40 between 2000 and 2005. It is rare for a case of this type to be concluded with the complete success of all family members gaining permanent status in Israel.

Between 2008 and 2010, HaMoked, in the context of these cases, conducted no fewer than 125 different legal proceedings. Forty-seven of them were carried over from previous years and were still pending at the beginning of 2008. Seventy-eight were launched in 2008-2010. Most of these proceedings were administrative petitions in the District Court and appeals of rulings by this Court submitted to the Israeli Supreme Court, as well as petitions to the High Court of Justice (HCJ), applications to the Family Court and proceedings for disclosure of classified evidence. Not only is the processing of these cases extremely long, but most of them require HaMoked to bring multiple legal

actions. Of all the cases handled by HaMoked at the end of 2010, 39 involved two legal actions over the years, while ten required more than two. In one case, no less than four administrative petitions were submitted to the District Court and one petition to the HCJ since 1999.

Revocation of Status

In 1967, following the occupation of the West Bank and the application of Israeli law to the Old City of Jerusalem and its vicinity, residents of the annexed area received Israeli identity cards, but to this day, most do not have Israeli citizenship, and under international law, Israel may not force citizenship on these individuals. Israel has a dual approach towards residents of East Jerusalem: on the one hand, it has declared Jerusalem a “united” city and its residents, “Israelis”; on the other, it effectively views residents of East Jerusalem as part of the population of the OPT. Thus, for example, even prior to signing the Israeli-Jordanian Peace Accords, Israel allowed East-Jerusalem residents to exit to Jordan using arrangements similar to those applying to residents of the other parts of the West Bank in the framework of the “open-bridge policy.” In the Oslo Accords, Israel agreed to the participation of East-Jerusalem residents in elections to the Palestinian Authority.

For many years, East Jerusalem was the most important urban, financial, social, cultural and political center for residents of the West Bank, while its relationship to the areas of the State of Israel was of secondary importance. Residents of East Jerusalem were Israel’s “step children,” and this took expression, inter alia, in the neglect of their needs in all that pertained to infrastructure, educational systems, health, welfare, and the like. In 1988, in the Mubarak 'Awad judgment,² the Israeli Supreme Court, in interpreting the legal significance underlying the distribution of Israeli identity cards to East Jerusalem residents, determined that these residents have the status of “permanent resident” in Israel, according to the Entry into Israel Law, and that this status could “expire” were a resident to settle in another country or, to use the Ministry of Interior’s parlance, transfer his “center-of-life” to another country. This ruling, which has remained in effect for 22 years with almost no alterations, serves the Ministry of Interior as a key tool for denying

2 HCJ 282/88 **'Awad v. Prime Minister** (1988). This and additional documents cited in this report are available at HaMoked's website.

rights from city residents and advancing a demographic policy that views the presence of Jerusalem's Palestinian residents as a threatening and undesirable phenomenon.

This policy is manifested in the "quiet deportation" that Israel began carrying out parallel to the implementation of the Oslo Accords: the sweeping revocation of residency status from East-Jerusalem residents who moved the center of their lives to other parts of the OPT or abroad, even if they made sure they maintained valid documents in keeping with pre-existing guidelines. This trend was stymied in 2000 following the concerted efforts of human rights organizations, led by HaMoked, which included a petition to the HCJ. In an affidavit submitted to the HCJ in 2000, Natan Sharansky, then Minister of Interior, announced that the Ministry of Interior would not revoke status based on a prolonged stay abroad, if the resident maintained a connection to Israel. Additionally, an arrangement was stipulated that enabled Palestinians whose residency had been revoked to have it reinstated based on a two-year stay in Israel, including East Jerusalem.

However, the cessation of the "quiet deportation" in 2000 did not put an end to the policy of residency revocation. For a number of years, there was a certain decline in the number of East-Jerusalem residents whose status was revoked by the Ministry of Interior, but beginning in 2006, the number of revocations returned to and even exceeded that of the second half of the 1990s. In its response to HaMoked's request for figures on the extent of revocations in 2008, the Ministry of Interior stated that during that year, it had initiated a survey for the purpose of revoking residency from individuals whose "center-of-life" was not in Israel.³ The numbers speak for themselves:

Year	No. of East-Jerusalem residents whose residency was revoked
1967	105
1968	395
1969	178

³ See response of the Ministry of Interior to HaMoked's request under the Freedom of Information Act, November 5, 2009: http://www.hamoked.org.il/items/110587_eng.pdf.

Year	No. of East-Jerusalem residents whose residency was revoked
1970	327
1971	126
1972	93
1973	77
1974	45
1975	54
1976	42
1977	35
1978	36
1979	91
1980	158
1981	51
1982	74
1983	616
1984	161
1985	99
1986	84
1987	23
1988	2
1989	32
1990	36
1991	20

Year	No. of East-Jerusalem residents whose residency was revoked
1992	41
1993	32
1994	45
1995	91
1996	739
1997	1,067
1998	788
1999	411
2000	207
2001	15
2002	No data available
2003	272
2004	16
2005	222
2006	1,363
2007	229
2008	4,577
2009	721
2010	191

In addition to handling individual cases regarding revocation of status, in 2008 HaMoked launched a legal effort to spur a “development” of the case law made twenty years earlier in the Mubarak 'Awad case.⁴ In a series of legal

4 *Supra*, note 2.

proceedings, HaMoked claimed that it should be held that the permanent-residency status of East-Jerusalem residents cannot "expire" due to a change of one's "center-of-life", and that these residents' right to return to their homeland will be preserved indefinitely, and that this right should be read into their permanent residency visa. HaMoked claims that this is imperative for two reasons. The first is legal: from a legal standpoint, such a built-in condition is necessary for upholding Israel's obligations under international law. According to the Fourth Geneva Convention, which addresses the possibility of an occupying power annexing occupied territories and claiming sovereignty over them, such annexation does not detract from the rights of the residents of this area, who remain protected by the Convention. This is a pragmatic provision: the Convention does not require a decision as to whether the annexation is legal or not, since it is reasonable to assume that the annexing State will claim that it acted legally. The Convention applies to residents of the territory either way. Similarly, there is no contradiction if the Israeli courts, which recognized the application of Israeli law to East Jerusalem, apply the law of the occupation to the area, in addition to Israeli law. For our matter, one of the protections the Convention affords to residents of an occupied area is the prohibition against their deportation. Eroding the status of East Jerusalem residents so that it becomes fragile and can be revoked, ultimately ending in deportation, is in contravention of this provision. Moreover, revocation of the status of East Jerusalem residents is in contravention of international human rights law. The International Covenant on Civil and Political Rights, which Israel ratified three years after the Mubarak 'Awad ruling, prohibits arbitrary revocation of a person's right to enter his own country. A person's right to return to his country applies not only to citizens of that country, but also to permanent residents and to others who, in light of their relationship to the place, should not be viewed as foreign nationals.

The second reason pertains to the harsh outcomes of the Mubarak 'Awad ruling , as revealed after over twenty years during which it has been in effect. The ruling assumes that a person who goes abroad and maintains a "center-of-life" there for many years thereby cuts off his connection to his country of origin. However, the reality of life, particularly in our day and age, is different. Numerous individuals stay abroad for many years for studies or for work, and return to their countries when economic circumstances and life events enable or require it, such as when their children reach school

age, or when they themselves reach retirement age. Others, who go abroad due to a committed relationship with a foreign citizen, may seek to return many years later because the relationship ended. This is not the case when it comes to East Jerusalem. The Palestinian residents of East Jerusalem are stuck between a rock and a hard place. According to this judgment, their right to leave their homes for a limited time period in order to make a living, fulfill themselves, pursue an education, or participate in modern society is pitted against their right to a home and a homeland. They are trapped in a legal cage of sorts that denies them the freedom of movement to which all human beings are entitled, and restricts them to the narrow space in which they were born. The sanction imposed upon them for leaving the city for a circumscribed period and acquiring status elsewhere means the loss of their home and the possibility of returning to their homeland.

The 1988 ruling was a harsh blow to the city's population, particularly the women. According to the policy practiced by the Ministry of Interior until 1994, female residents of East Jerusalem did not receive approval for family unification with spouses who did not have an Israeli identity card, unlike men, who were permitted to request status for their non-resident wives. Since marriage between Palestinian residents of East Jerusalem and Palestinian residents of the OPT and the Palestinian Diaspora is quite widespread, due to the deep connections between the populations, women who married non-residents of East Jerusalem were forced to raise their families in the OPT or abroad. Many of these women have no social-support network in case of divorce, widowhood or marriage to a violent husband other than their families in Jerusalem. Life in traditional society (and it can be generally said that East Jerusalem residents live in a society with traditional characteristics) is very difficult for women who seek to lead an independent life, and when a woman lacks the anchor of returning to her family and her birthplace to seek shelter and protection, she finds herself in a position that is weak to the point of helplessness.

The cases in the context of which HaMoked sought to have the law re-examined exemplify how rigid the legal precedent is and how its indiscriminate application to the lives of human beings leads to severe abuse of fundamental rights and to inconceivable results.



H.S., an East Jerusalem resident, went to the United States at age 20, in 1984, to study chemical engineering. After concluding his studies, he returned to Israel, and since he was unable to find work in this field, he returned to the United States where he studied medicine. In 2005, upon concluding his studies, he returned again to Israel for internships at Al-Muqassed and Shaare Zedek hospitals in Jerusalem. In 2007, he began working as a doctor at Hadassah Hospital. During his stay in the United States, H.S. acquired American citizenship so that his stay in the country would be legal. His wife, a Jerusalem resident, received a green card, and two of the couple's children were born in the United States.

In 2006, the Ministry of Interior revoked H.S.'s status as a Jerusalem resident. H.S. appealed this decision in the Jerusalem District Court, claiming, inter alia, that the implication of the decision was that Jerusalem residents were prevented from pursuing an education if it required a protracted stay abroad. The Court, led by Judge Jonathan Adiel, rejected the petition through formal application of the existing law: H.S. had American citizenship, and he resided abroad for a long period with his wife and children. "After the petitioner settled in the United States, he changed his mind, and now requests to transfer the center of his life to Israel. This does not suffice to adversely affect the expiration of his Israeli residency, which occurred following his settling in the United States."⁵ H.S. appealed this ruling in the Israeli Supreme Court;⁶ HaMoked and the Association for Civil Rights in Israel submitted an amicus curiae brief. In their request, the organizations raised the argument regarding the need to update the case law on the topic. Ultimately, the principle underlying the issue was not ruled on in the framework of the case, and H.S. was referred to family unification proceedings with his wife, a Jerusalem resident. **(Case 58487)**



'A.'A. was born in East Jerusalem in 1960. From a young age, he has suffered from a debilitating mental illness. In the early 1990s, he entered a relationship with a British citizen living in Israel on a tourist visa. When she informed 'A.'A. that she was pregnant, he joined her in Britain. The two planned to establish their home in Jerusalem, but the baby was born with severe cerebral palsy. Since the child was eligible for a high level

5 AP 384/07 **Syaj v. Minister of Interior** (2008).

6 AAA 2392/08 **Syaj v. Minister of Interior** (2010).

of medical care in Britain, while in Israel arranging for medical insurance involved bureaucratic entanglements, 'A.'A. decided to stay in Britain. His wife supported him financially, and enabled his ongoing medical care and provision of necessary medications. The British Home Office granted 'A.'A. a visa based on humanitarian considerations, followed by British citizenship. This fact was conveyed to the Israeli Ministry of Interior, which reviewed the topic with the British authorities, and decided to make no changes to 'A.'A.'s residency status.

In 2007, the couple separated. 'A.'A. found himself, for the first time in his life, without any social or financial support. His mental health declined, and he returned to his family in Jerusalem. In September 2008, he went for a brief visit to Britain to see his daughter, but upon his return, he was informed at Israel's international airport that he was not an Israeli resident and that his presence there was illegal. 'A.'A. was sent back to Britain, after being told that he could not enter Israel for ten years.

HaMoked petitioned against this decision. During the hearings in the petition, the Ministry of Interior presented contradictory claims regarding the date on which decisions on the expiration of 'A.'A.'s residency had been rendered. It turned out that the ministry's policy is to intentionally refrain from informing individuals of such decisions while they are in Israel, so as to prevent them from avoiding leaving the country. In other words, the Ministry of Interior waited until 'A.'A. traveled abroad, and only then implemented the decision to revoke his residency status and prevent his re-entry into Israel. The District Court determined that 'A.'A. had not been given an opportunity to challenge the expiration of his residency, and ordered that he be allowed to enter Israel.⁷

After 'A.'A. returned to Israel, HaMoked submitted an application on his behalf to have his status as a permanent resident of Israel reinstated. The Ministry of Interior demanded a professional psychiatric opinion, which HaMoked delivered, but this did not satisfy the Ministry of Interior, and it demanded a governmental psychiatric opinion. This, too, was submitted. The request was handled by the Interministerial Committee on Humanitarian Affairs, granting status for humanitarian reasons, and over a year after the request was submitted, the committee decided to refuse it, claiming that "The committee found no humanitarian basis for his request,

7 AAA 1063/09 _____ v. Minister of Interior (2009)

and he can receive medical care in his country of origin." What is 'A.'A's country of origin? In the committee's view, 'A.'A., a man who was born in Jerusalem in 1960, seven years before the city was occupied by Israel, lived there without interruption until 1993, and returned in 2007 under such difficult personal circumstances, comes from Britain. HaMoked appealed this decision.⁸The petition is still pending. (Case 59480)



N.S. was born in Jerusalem in 1953. In 1978 she married a Jordanian subject and shortly afterwards, moved to Jordan to live with him. Due to conflicts between the two, N.S. decided to separate from him in 1994, and return to Jerusalem. She returned to the city with her children, and enrolled them in schools in the city. In the summer of that year, before the school year began, she gave in to her husband's pleas and set out with her children for a brief visit in Jordan, so that they could see their father. From that time and for three years hence, N.S. and her children were prisoners in the father's home, first in Jordan, and afterwards in Lebanon. Only in 1997 did N.S. succeed in breaking free from his yoke and returning with her children to Jerusalem. In Jerusalem, she began working as a pre-school assistant and studying for certification as a pre-school teacher. In 2000, her divorce from her husband was finalized.

In 1999, when she went to the Ministry of Interior to replace her worn-out identity card, N.S. learned that her residency had been revoked. She submitted successive requests to the Ministry of Interior to have the bitter sentence reversed – sometimes herself and sometimes via private attorneys – but her requests went unanswered. When one of her children left the country, Israel prohibited his return, on the grounds that his residency had also expired. N.S.' petitions to the Court to allow her son to return home were rejected.

In 2006, N.S. turned to HaMoked for help. HaMoked contacted the Ministry of Interior charging that, in N.S.'s case, it should apply the policy according to which a person whose status in Israel was revoked due to "lack of center-of-life" can have it restored after two years of living in Israel, and that the special humanitarian circumstances of the case should also be taken into account. The Ministry of Interior was not impressed by the humanitarian circumstances, and announced that the policy of reinstating status applied

8 AP 60780-10-10 _____ v. Minister of Interior.

only to those whose status was revoked on or after January 1, 1995, while N.S.' residency status was revoked at the end of December 1994. HaMoked petitioned the Court, where an agreement was reached to bring N.S.' matter before the Interministerial Committee on Humanitarian Affairs. The committee rejected the request on the grounds that the decision to revoke her residency was legal and that no "compelling proof" was brought for the claims that N.S.' former husband prevented her from returning to Jerusalem between 1994 and 1997.

Without an identity card, N.S. encountered increasing difficulties passing through the Qalandiya Checkpoint, separating her place of residence in Kafr 'Aqab from her place of employment, and she was forced to resign her position. Her children, who were also unable to lead a normal life in the city without identity cards, moved to Jordan one after the other. Ten years after successfully building a new and independent life for herself in Jerusalem, N.S. returned to Jordan and to her ex-husband. A new crisis, however, quickly ensued between the two, and N.S. decided to try again to renew her life in Jerusalem. In July 2008, HaMoked submitted a second petition, attacking the decision of the Interministerial Committee and raising a plethora of claims regarding the need to update the case law on the status of East Jerusalem residents.⁹ The Ministry of Interior preferred to avoid a judicial decision on this issue: In March 2009, N.S. and one of her children returned to Jerusalem, with interior-ministry approval, and today, they are undergoing a graduated procedure to have their status in Israel restored. (Case 41949)

9 AP (J-m) 8612/08 **Abu Haykal v. Minister of Interior**.

Family Unification and Child Registration

The Ministry of Interior views itself as Israel's "gatekeeper." An examination of its policy and of the conduct of its officials shows that they see denying status to relatives of East-Jerusalem residents as a patriotic mission. Legally speaking, since the mid-1990s, Israel has enabled family unification proceedings intended to grant status to spouses of East Jerusalem residents. In the case of children who have only one parent who is an East Jerusalem resident, "child registration" procedures were put in place for children born in Israel, and "family unification" procedures for children not born in Israel. However, the Ministry of Interior follows these procedures as if it were acting under duress, and makes every effort to make them difficult to navigate, protracted, complicated and expensive; to this end, it uses various pretexts to refuse applications as much as possible.

Passing through all of the obstacles that the Ministry of Interior places in the way of these applicants is no small feat. Receiving permanent residency status for a spouse often involves a long battle over the course of a decade or more.



S'A., a resident of the village of al-'Isawiya in Jerusalem, married H'A. in 1996. He was born in the same village, but was a Jordanian subject. After getting married, S'A. submitted an application for family unification with her spouse, but it was rejected in 1997. The grounds for the rejection were "lack of center-of-life" in Jerusalem, but it was not clear why, since both spouses lived in al-'Isawiya, which is included in the territories annexed to Jerusalem after 1967. S'A. appealed the refusal. No response was received until 2000, at which time the Ministry of Interior requested new documents regarding "center-of-life". All of the documents were sent, but although repeated reminders were sent to the ministry, no response was offered. In 2003, HaMoked petitioned the Court,¹⁰ at which point it learned that the case had been neglected due to a "human error," which was not rectified despite the many reminders. Seven years after S'A.'s application for family unification with her husband was submitted, it was approved. Now the couple could embark on the arduous journey of the

¹⁰ AP 879/03 'Awadallah v. Director of the Population Administration East Jerusalem Bureau.

“graduated procedure.” According to this procedure, for five years and three months, the couple would need to submit annual proof that the center of their lives was in Israel, and their case would also be evaluated in terms of security and criminal criteria. If they passed the test, the “sponsored” spouse (the one who was not an Israeli resident) would have his status extended for an additional year. For the first 27 months, the “sponsored” spouse receives a B/1 visitor visa, enabling him to work in Israel as well, and for the following three years, he receives an A/5 temporary residency visa, which also renders him eligible for social benefits.

And yet, despite his eligibility, H.A. did not receive the temporary residency visa because his birth certificate was missing. H.A. was born at home, with the assistance of a midwife, in 1941, and his precise date of birth is unknown. The Jordanian Ministry of Interior issued a birth certificate for him based on a ruling that estimated his age, but the Israeli Ministry of Interior was not satisfied with this: it demanded a birth certificate from the place of birth, i.e. a birth certificate issued by the Israeli interior ministry itself. However, the ministry did not issue a certificate since it did not succeed in locating the petitioner’s birth registration in the birth register kept by the British Mandate. Given the absence of the birth certificate, the interior ministry, making a “legal exception,” granted H.A. additional visitor visas, rather than a temporary residency visa. After all hope was lost, HaMoked submitted an objection against the decision not to give H.A. the visa.

Objection proceedings are held before the Appellate Committee for Foreigners that acts as a quasi-judicial instance. Despite its name, the committee is, in actuality, a single person, who is an official in the Ministry of Interior. According to protocol, the Ministry of Interior must provide its answer to an objection within 30 days; such, however, was not the case with H.A. The ministry requested extension after extension, and the committee granted these. Ultimately, in June 2010, HaMoked submitted a court petition.¹¹ At the same time, the five years and three months set for the “graduated procedure” came to an end. Following submission of the petition, a response was given to the objection according to which the Ministry of Interior agreed to give H.A. a temporary residency visa, and no more. This was exactly what was requested when the objection was

11 AP 1566-06-10 **Awadallah v. Minister of Interior.**

submitted a year earlier. An additional effort was necessary to satisfy the ministry and have it agree to a permanent residency visa.

In August 2010, 14 years after submitting the family unification application, H!A. received a permanent identity card. (Case 15064)

“Center-of-life”

One of the principle conditions for approval of a family unification application is that the “center-of-life” of the sponsoring applicant (the parent or spouse who already has status in Israel) must be in Jerusalem. “Center-of-life” is the term the Ministry of Interior uses for indicating that a person lives his daily life in the city of Jerusalem. It is proven using a considerable collection of documents: a rental agreement or proof of ownership of a residence, house bills such as water, telephone, electricity and property taxes, report cards for children in Jerusalem schools, vaccination records, pay stubs of both spouses, and print-outs testifying to the receipt of national-insurance pensions as well as membership in health funds. In addition, certified and notarized affidavits are required. The Ministry of Interior sometimes goes as far as checking water or electricity usage. It may also hold “hearings” before interior-ministry officials. These hearings are conducted as cross-examinations of the applicants in an attempt to have them confess that they did not actually live in Jerusalem during one period or another, while cross-referencing their statements against those of others, recorded in telephone conversations or in National Insurance Institute investigations. The smallest doubt regarding “center-of-life” identified by the official could lead to a rejection of the application.



In 2008, the Ministry of Interior rejected two applications submitted by R.R., a resident of East Jerusalem; one was for family unification with her spouse, a resident of Nablus, and the other to have her baby daughter registered in the population registry. The applications were rejected despite the fact that the National Insurance Institute had recognized R.R. (after investigations and examinations) as a resident of Israel and even though the couple’s other children, registered as permanent Jerusalem residents, were vaccinated in Jerusalem, go to school there, and receive their medical care in the city. According to the interior ministry, the applications were rejected since there were no bills in R.R.’s name, and since

her oldest son lived for a year with his father in Nablus, where he began his studies before transferring to a school in Jerusalem. R.R. explained that the bills were not registered in her name since she lived in her parents' home, and that her husband was living in Nablus because he did not have a permit to enter Jerusalem and because his workplace is in Ramallah, necessitating that he live separately from his wife until he receives the necessary permits. This was also the reason that her oldest son began his studies there. In the hearing held for R.R., the interior-ministry official accused her of living, in his opinion, in Nablus, and asked her repeatedly about her place of residence and how long she had lived in Nablus. Her responses and explanations were of no avail: the application was denied. Only following a petition submitted by HaMoked, did the Ministry of Interior agree to register R.R.'s daughter in the population registry and to approve her application for family unification with her husband, so that he would be able to receive a military permit to enter Israel.¹² (Case 54907)

Proving one's "center-of-life" has a unique meaning for residents of Wadi Hummus, one of the neighborhoods of the village of Sur Bahir. Most of the village was annexed to Israel in 1967, but the Wadi Hummus neighborhood, established in the southeastern part of the village, is located outside of the annexed area. This fact had no practical implications for many years. The arbitrary border of the annexation existed on maps only. On the ground, it was not visible: the Wadi Hummus neighborhood was part of Sur Bahir and the city of Jerusalem, and its residents held Israeli identity cards. When Israel began to erect the separation wall, the wall's route was planned such that it would run between Wadi Hummus and the rest of the village. Following a petition to the HCJ, the route was altered: the State agreed that it was a single organic community, and rerouted the wall so that it would go around the neighborhood from the east. While in the past, the neighborhood was included in the OPT outside of Jerusalem but did not actually belong to them, it was now separated from them by an impervious wall.

In 2004, the National Insurance Institute began sending residents of the Wadi Hummus neighborhood notices of cancellation of their eligibility as residents of Israel, since they lived outside of the area annexed to the State. The residents turned to the Labor Court, and under the instructions from

¹² AP 8560/08 **Raba' v. Ministry of Interior** (2009).

the Attorney General, the National Insurance Institute announced that it was retracting its decision. As long as the separation wall stood, the permanent residents of Jerusalem would be recognized as residents of Israel for purposes of eligibility for social benefits.

Until this point, the State had recognized that even though the residents of Wadi Hummus lived outside the formal borders of Israel, every aspect of their “center-of-life” was in Israel, and they lacked even physical access to the other areas of the OPT. However, when the village residents tried actualizing their right to family life with female spouses who were non-residents and with their joint children, the requests were refused. HaMoked is currently processing three requests in this category: one by a resident of Wadi Hummus who submitted a family unification application for his wife, a Jordanian subject (the H. family); the second by a resident of Wadi Hummus who seeks to register two children born to him and his wife, who was born in the OPT (the 'A. family); the third is of a resident of Wadi Hummus who submitted a family unification application for his wife, who is registered in the OPT (the 'A. family).

The first two cases were brought before two different judges in the Jerusalem District Court; the third case is pending in the Ministry of Interior awaiting the Courts' decisions. Regarding the H. family, Judge Yehudit Tsur ruled that the logic that led the Attorney General to determine that the residents of Wadi Hummus should be recognized as Israeli residents for purposes of social security rights, was also suitable for the present case: “Indeed, the petitioners’ place of residence is formally located outside the area of the State of Israel, but in the unique reality that has been created, there is room to determine that the center of their lives is located within Israeli territory. In this context, it should be stated that the petitioner works in Jerusalem and the petitioners’ children go to school and receive their medical care in the city. In addition, all of the services and infrastructure of which the petitioners avail themselves are Israeli and Israel is also the center of their social and family life. This reality is the outcome of a situation created by the separation wall.”¹³ Unlike her, Judge Noam Solberg accepted the position of the Ministry of Interior: “This is the nature of boundaries and border lines, which distinguish, sometimes arbitrarily, between those positioned on either side of them. But the Court

13 AP (J-m) 8568/08 **Hamadah v. Ministry of Interior** (2009).

cannot help [...] Given that they live and sleep regularly in homes that are outside of Israel, the petitioners do not fulfill the requirement of 'center-of-life' in Israel."¹⁴

Both judgments were appealed to the Supreme Court. In an interim decision, the Supreme Court justices expressed their opinion that the ruling of Justice Tsur "cannot be upheld," but requested a practical solution be devised for the woman and the children.¹⁵ Such a solution has yet to be found. One of the families understood that insisting on its rights would get it nowhere and found its own practical solution, leaving its home and moving to the part of the village located in the area annexed by Israel. The Ministry of Interior continued making matters difficult for the family – among other things, it asked for a comparison of the electricity usage prior to and following the move – and summoned the family to a protracted hearing in which the spouses were cross-examined separately. The application was ultimately approved (Cases 53836, 61842, 53806).

Registration of Children Ex Gratia



J.D.'s father is a resident of Jerusalem. He is a drug addict, and has spent many years in jail. J.D.'s mother, a resident of Hebron, divorced the father when J.D. was a year old, and since then, J.D. has grown up in her grandparents' home in Jerusalem. In 2000, when J.D. was eight years old, her grandmother became her legal guardian – first her temporary guardian, and later, her permanent guardian – in keeping with the report and recommendation of the Ministry of Welfare. In 2004, the grandmother contacted the Ministry of Interior, requesting that J.D. be registered in the population registry. The request was not answered, nor were HaMoked's letters to the Ministry of Interior. Even after a petition was submitted to the Court on July 16, 2006, the State delayed processing the request. Ultimately, the case was brought before the Interministerial Committee on Humanitarian Affairs, which decided to make a legal exception and grant J.D. temporary status in Israel. Jerusalem District Court Judge Yehudit Tsur did not agree with the committee, and determined that J.D. should receive permanent residency in Israel – not as an act of compassion, but

14 AP 8350/08 **'Attoun v. Minister of Interior** (2009).

15 AAA 1966/09 **'Attoun v. Minister of Interior**; AAA 1895/09 **Ministry of Interior v. Hamadah**, ruling of June 29, 2009.

according to law. In addition, the judge's ruling sharply criticized the Ministry of Interior's conduct in handling the affair.¹⁶ (Case 38451)

Refusal of Family Unification Applications on Security-Related or Criminal Grounds

One of the tools used by the Ministry of Interior in its attempts to reject requests is reliance on security and criminal considerations, i.e. crime prevention. In most cases, the reasons for such refusals are not disclosed. Given the lack of basic details regarding the claims underlying the refusal, countering it is like climbing a smooth wall. Often, once the security reasons are revealed, even partially, it turns out that there was no justification for concealing them, and that even from a "security" perspective, they were insufficient justification for refusing the request.



N.S. and S.S. were married in 1987. S.S. carries an Israeli identity card, and N.S., a West-Bank identity card. In 1995, the couple submitted a family unification application. The request was approved in 1999 and the couple embarked on the graduated procedure, at the end of which N.S. was to receive a permanent Israeli identity card. N.S. began receiving permits to remain in Jerusalem. In 2006, the Ministry of Interior notified the couple that the request had been refused, on the claim that "the 'sponsored' man has connections with a terrorist organization." HaMoked's requests to the Ministry of Interior to retract its decision, or at least, to provide a more detailed substantiation, were denied. The Ministry of Interior's response to the request for more information regarding the reasons for refusal was "we cannot specify anything beyond what we have written in our reply." HaMoked petitioned the Court for Administrative Affairs,¹⁷ and only then did the State agree to expose a small excerpt from the reasons for refusal: N.S. had worked in two institutions, "Aqra'a" and "Wifadah," known – the State claimed – as institutions that worked on behalf of Hamas, had been declared illegal organizations according to the Defense (Emergency) Regulations, and were closed by the police. Following a request for additional details submitted to the Court, the State agreed to expose a

16 AP (J-m) 700/06 **D'ana v. Director of the Population Administration East Jerusalem Bureau** (2008).

17 AP 300/07 **Salhab v. Ministry of Interior**.

small amount of additional information, but insisted on its refusal to explain the suspicions that lay behind the decision to close down the organizations as well as the nature of N.S.'s alleged position.

However, the information provided was enough for HaMoked to undertake its own investigation. HaMoked learned that "Aqra'a" operated in East Jerusalem for many years. It was located on Ibn Batuta Street, a main street located near the District Court, the offices of the National Insurance Institute, and the Ministry of Justice. The office held enrichment classes for children and adults, and its activity was entirely public. The organization had an Israeli bank account, and managed its financial matters through an Israeli accountant. Even after it was closed, it remained registered with the Israeli Registrar of Companies. The second institution, "Wifadah," operated over a shorter period, but conducted itself similarly. It further became clear that the ostensibly classified suspicions against the institutions were mentioned in the newspapers after they were closed, including a press release issued by the Israel Police. Among the claims against the institutions were that they were serving as a cover for transfer of funds to Hamas and its election campaign. A closure order was issued for "Aqra'a" as the Palestinian Authority (PA) elections approached, but it was executed only approximately two months later. The directors of the institution were arrested for brief questioning and released without charges; the office equipment was also returned. Until the closing of the institution, no one thought its activity was illegal. As for N.S., it transpired that he had worked at these institutions as a custodian – he cleaned, ran errands, arranged rooms before and after lessons, and the like.

HaMoked returned to the Court with this information, and even submitted an expert opinion by Dr. Hillel Cohen, who classified the institutions as belonging to the Islamic stream, but stated that their activity was not necessarily identified with a particular political orientation, and that the institutions had taken upon themselves to act within the confines of Israeli law. After hearing the parties and examining the classified material, Judge Yehudit Tsur suggested that the Israel Security Agency (ISA, formerly known as the "General Security Service," GSS) interrogate N.S., and, following this, a new decision would be made. The interrogation took place, and the decision was to continue to refuse the request.

HaMoked again submitted a petition to the Court, and again information

trickled in very slowly from the State.¹⁸ This time, it was also claimed that “there is negative security material against the brother of the petitioner” and that according to the interrogation of another man, N.S. had also worked in the offices of the Hamas slate for the PA elections. In order to learn the details of the suspicions, more requests for additional details were necessary – and the mountain turned out to be a molehill. The State disclosed the name of the brother regarding whom there was negative security material, and it turned out that he was suspected of being connected with the Palestinian security apparatus: the brother worked in a factory whose owner is affiliated with Fatah. As for the interrogated man who had mentioned N.S.’s name, it turned out that his claim was that N.S. (or another man with the same name) had worked as a messenger, an unlikely claim considering N.S. had difficulty getting around the city without a permit. In the discussion that took place in June 2008, the State accepted the Court’s suggestion that in one year’s time, the couple could request a resumption of the processing of their already submitted family-unification application.

In June 2009, the couple submitted a request to renew the family unification process, and it was approved in January 2010. On February 14, 2010, after three and a half years of legal struggles and two Court petitions, N.S. once again began receiving military permits legalizing his presence in Jerusalem. **(Case 44444)**

As can be seen from the case of the S. family, the Ministry of Interior uses laconic and unsubstantiated security refusals as a method for rejecting family unification applications. Applicants are given the option of challenging the request, but only retroactively. Sometimes, during the legal proceedings, the State reveals a number of details, usually sparse in themselves, which shed light on the reasons for the refusal. The result is not only that refusals are challenged retroactively, but also, that it is only during the hearing of the petition that was submitted (if one was submitted at all), that the applicants have the tools for grappling with the reasons for the refusal, and not always even then.

In late 2007 and early 2008, a series of rulings were issued by the Jerusalem District Court sitting as the Court for Administrative Affairs, that overturned

18 AP 1112/07 **Salhab v. Ministry of Interior.**

the Ministry of Interior's security-based refusals of East Jerusalem residents' family-unification applications, since the applicants had not been given an opportunity to make their claims before the decision was made. The judges ordered the Ministry of Interior to hold a hearing on the applicants' matter before making a new decision. When the first ruling of the series was issued, the State chose not to appeal it, but at the same time, it ignored the rule it stipulated, according to which a hearing must be conducted; rather, it proceeded as it had in the past. When the Jerusalem District Court judges continued issuing rulings in this vein, the State appealed them in the Supreme Court. HaMoked and the Association for Civil Rights in Israel filed a motion to join the appeal discussions as *amicus curiae*. At the end of the process, the Court accepted the position of the organizations in principle and determined that a family unification application could not be refused before the applicants were given the opportunity of a preliminary hearing: the applicants must be informed in advance that the authorities are considering rejecting their application and given the opportunity to raise their claims against the rejection before a final decision is made. In an ordinary situation, this occurs when one of the spouses is living in Israel without a permit. In a few exceptional cases, in which the State can plea true urgency, an application may be refused, the illegally-present spouse may be deported prior to the hearing, and the hearing may be held retroactively. The Court also ruled that the authorities' announcement that they were considering rejecting the application should be as detailed as possible. Even when the refusal is based on classified intelligence information, maximum effort should be made to summarize the classified material in open paraphrases that are more detailed than they had been up to that time. The Court did not make unequivocal pronouncements regarding the character of the hearing, but stated that common sense favors that the proceeding should be based on claims set forth in writing followed by an oral hearing.¹⁹ After the ruling was handed down, HaMoked resumed processing cases that had been refused, prior to the ruling, on security grounds and without a preliminary hearing.

The implications of the ruling reached beyond family unification applications by East Jerusalem residents. For example, in the matter of a foreign resident employed by UNRWA who was denied an entry visa into Israel, necessary for her to be able to continue working in the OPT, the Jerusalem District Court

19 AAA 1038/08 **State of Israel v. Ghabis** (2009) (Case 59359).

ruled that following the petition she submitted (not through HaMoked), the Ministry of Interior was required to give her an oral hearing.²⁰

In any event, following the Supreme Court's ruling, the Ministry of Interior changed the refusal process. Presently, applicants are given the opportunity to submit claims in writing before the final decision is made, but the amended procedure is also deficient: it does not mention an oral hearing, there are no directives to ensure that the cause provided for the refusal will be broader than what is accepted today. There is also no mention of the obligation to enable applicants to review the material against them (in the case of non-classified material). In addition, the procedure has no directives that would ensure that interior-ministry officials use independent discretion and balance out the relevant interests in keeping with the tests determined in the ruling and based on all of the relevant information, rather than serving as rubber stamps for the position of the security authorities.

As terrible as the Ministry of Interior's procedures are, there has been more than one occasion on which the ministry has acted against its own procedures. In these cases, violation of the procedures serves as one of the claims for overturning decisions.

Y.'A. and K.'A. have been married since 1991. Y.'A. has a Jerusalem identity card, while K.'A. has a West-Bank identity card. In 2007, the Ministry of Interior sent Y.'A. a notice that, based on the position of the police, the couple's family unification application was being rejected until the conclusion of proceedings, and that "for purposes of continued processing of the request, you must close the pending files against you." According to the guidelines of the Ministry of Interior, a family unification application can be refused for criminal behavior on the part of the "sponsored" spouse (in this case the wife, K.'A.), but it cannot be refused for criminal reasons relating to the sponsoring spouse, since he will continue to be a permanent resident of Israel regardless of whether or not he is a criminal, and regardless of whether the request is granted or denied, unless he is serving a protracted prison sentence or the subject of proceedings which are liable to end with a protracted prison sentence. In such a case, the application may be refused, since the couple would not be able to live

²⁰ AP 1954/09 **Hilal v. Ministry of Interior** (2010).

together. In the case of the 'A family, no open criminal cases were pending against the woman being “sponsored” and the case against Y'A. was not in any way expected to end in imprisonment; Y'A. was not even detained for interrogation. Given these circumstances, HaMoked appealed the decision. When the appeal went unanswered, HaMoked contacted the Ministry of Interior's Appellate Committee, and approximately nine months later, the ministry's position was received: the woman was to receive permits for one year, not as part of the graduated procedure, and during this time, the couple's level of involvement in criminal activity would be examined. The Ministry of Interior claimed that since the objection related to the lack of response to an appeal, and the response now provided an answer, the objection should thus be deleted. HaMoked opposed deletion and requested that the Appellate Committee discuss the merits of the case. The Appellate Committee accepted HaMoked's position that the refusal did not meet the criteria, and that processing of the application must be renewed. (Case 34031)

Deportation

Living in Jerusalem without legal status is extremely difficult. There is a high presence of security forces in the city, and some Jerusalem neighborhoods are separated from one another by the separation wall. Every movement inside Jerusalem, not to mention trips to its suburbs or to the neighborhoods that are cut off from it by the wall, entails the risk of running into a military or police checkpoint. While the State is usually complacent to wait for those without status to be caught in a routine inspection, and does not actively seek them out, in the autumn of 2008, the Ministry of Interior began methodically deporting women whose applications for family unification had been rejected. The women were summoned via telephone to report to the police station, checkpoint, or the Ministry of Interior. When they arrived at the appointed place, they were told that the reason for the summons was the “hearing” required for processing their request. From there, the women were taken for a brief interrogation at the Immigration Administration and told to leave the city. In one case, a woman was put into a police car and taken to the other side of the separation wall, even though an objection against the refusal of the family unification application on her behalf was

being processed by the Ministry of Interior at the time. HaMoked's demand to halt the deportations, which were carried out in contravention of the explicit ruling of the HCJ, went unanswered. That stated, for a long period, until 2011, HaMoked received no additional reports of such cases.

Bureaucratic Failures

Even when the Ministry of Interior does not refuse an application, the families undergoing family-unification procedures repeatedly run up against bureaucratic failures. As stated, after the application is approved, the family enters the graduated procedure, which requires it to submit a yearly request to extend the status of the "sponsored" spouse. Even when the request is submitted on time, a timely response is not guaranteed. In a ruling delivered in 2004, a procedure was devised with the intention of preventing a situation where the spouse remains without any status due to the lack of response.²¹ According to this procedure, the spouse caught in this situation is to receive a visa that bridges the gap until a decision is received. And yet, despite repeated requests by HaMoked, this procedure is not implemented except in cases where lawyers on behalf of HaMoked are present at the time family members are summoned to the office and insist that it be carried out.

Often, when the spouse is originally a resident of the OPT, his presence in Israel is formalized through visas issued by the military's District Coordination Offices in the OPT (henceforth: DCOs). The Ministry of Interior refers the family to the DCO and is meant to apprise the office of the referral, but in practice, much time elapses until the permit is issued. For a long time, HaMoked encountered difficulties in its attempts to find out what happened to the permits the DCO was supposed to have issued. In 2009, the problem was for the most part solved through a procedure, according to which, at the time the permit was issued, a text message was sent to the mobile phone number the applicant had provided to the Ministry of Interior.

These examples are just the tip of the iceberg when it comes to the bureaucratic problems characterizing the authorities' handling of family unification applications submitted by East Jerusalem residents for their spouses.

21 AP 612/04 **Dahud v. Minister of Interior** (2004).

Queues

The official letterhead of the Ministry of Interior sports the slogan, "Ministry of Interior – Our Service is Never Inferior – Here for You Now and Always." The sense that visitors to the interior ministry in East Jerusalem get is different. The office resides in a building that also houses the Israeli Employment Bureau, and therefore, the entrance to the building is particularly crowded. The applicant seeking the services of the interior ministry is forced to stand in five different queues – no less and sometimes more – one after the other. The first queue winds outside of the building, and often reaches beyond the awning installed to protect those waiting from the sun and rain. When the applicant reaches the front of the line, he must pass through an electric turnstile operated by remote control – this is a hazard for those passing through. After passing through the turnstile, he waits in line again – sometimes for over an hour – for the security inspection. The security guards treat the visitors uncivilly and condescendingly. For example, they require them to wait in two straight lines; those who step out of the line are sometimes punished by the security guards who refuse to admit them into the office. The special needs of people with disabilities are not accommodated. Ultimately, every person receives an extremely thorough security inspection, of the type carried out in international airports. After going through the security screening, the applicant must stand in three additional lines: at the entrance to the office itself, while waiting to receive a number at the information desk, and while waiting to be received by an official.

HaMoked contacted the Ministry of Interior regarding this matter in 2007 and again in 2009. The Ministry of Interior attributes a substantial portion of the problems to the fact that the equipment for registering the presence of unemployment-benefit recipients is located in the same building, and therefore, many of those waiting in line are not there for Ministry of Interior services. Despite repeated promises, to this day the equipment has not been removed from the building.

The Citizenship and Entry into Israel Law

The Citizenship and Entry into Israel Law: Petitions on Issues of Principle

Between 2008 and 2010, HaMoked's handling of issues concerning residency in East Jerusalem took place under the shadow of the Citizenship and Entry into Israel Law (Temporary Order) (henceforth: Temporary Order), whose main purpose is to prevent residents of the OPT from receiving status in Israel through family unification with Israeli citizens and residents, including residents of East Jerusalem. The Law was initially enacted as a "Temporary Order" in 2003. It has since been amended twice and extended several times and it is still in effect. Petitions submitted with the goal of having the Law repealed were rejected in 2006, but at the same time, most of the justices accepted the position that the Law impinges on the constitutional rights to equality and family life. Some justices believed that although the Law should be softened, the impingement was proportional, inter alia, in light of the Law's temporary nature. In 2007, after the State extended the Law's validity, additional petitions were submitted to the HCJ.

HaMoked's petition on the matter focused on the harm inflicted by the Law on children of East-Jerusalem residents.²² In contrast to the children of Israeli citizens, who, as a rule, are Israeli citizens from birth, the children of East Jerusalem residents do not automatically receive status in Israel. The Temporary Order prevents granting Israeli status to children defined as "residents of the Area" who are over 14 years of age. These children are able to receive entry permits to Israel from the military, but they cannot receive an Israeli identity card or permanent status. They are therefore denied medical services, social benefits, and a sense of security regarding their continued life in their city. The order that enables the granting of permits but prevents the granting of status cannot be rationalized using security claims, which the State uses to obscure the real reasons and motives behind the Law. After all, these ostensibly dangerous children receive permits that enable them freedom of movement in Israel; what is denied them is proper registration and social security rights. The orders regarding children can therefore only be

22 HCJ 5030/07 **HaMoked: Center for the Defence of the Individual v. Minister of Interior.**

seen as an attempt to save State money and serve demographic objectives. The State continues to claim that the goal of the orders is security-based, but fails to provide clear data regarding the number of children of East-Jerusalem residents who have been defined as “residents of the Area” and who were involved in violent activities against Israel.

Since the submission of the petitions in 2007, a number of court hearings have been held, during which an order nisi was issued, the panel of justices was expanded, and the State was instructed to explain its position and present data to justify it. Several organizations, including “Shurat HaDin: Israel Law Center,” “Im Tirtzu” and “Fence for Life, Public Movement for the Security Fence,” submitted an amicus brief and raised the demographic claim that the Law is necessary in order to prevent “Israel from being run over with hundreds of thousands and perhaps even millions of Palestinians,” as worded in the motion submitted by “Im-Tirtzu.” These organizations’ motions relied, inter alia, on a table prepared by Professor Arnon Sofer that includes numeric forecasts regarding the “demographic balance” between Arabs and non-Arabs in Israel that would result if the petitions were accepted. The petitions are now awaiting a decision (Case 50717).

Citizenship and Entry into Israel Law: Ways Out

The difficult ramifications of the Temporary Order led the attorneys representing East Jerusalem residents and the judges of the Jerusalem District Court to invent “ways around” the outcomes of the law. The State, for its part, makes every effort to expand the application of the Temporary Order even beyond what its wording necessitates, and wages a fierce battle in each and every case.

One loophole can be found in the definition “resident of the Area,” which appears in the Temporary Order. From 2003-2005, the Jerusalem District Court handed down a series of judgments determining that the Temporary Order did not apply to a person whose “center-of-life” was in Jerusalem, even if he was registered in the population registry of the West Bank. According to the Court, when there is no real connection to the OPT, the security objective of the Temporary Order cannot justify denying status. The rulings were issued in the context of requests to register children. At first, the State chose to ignore the Court’s rulings and to continue as it willed, but in 2005,

it began to appeal the rulings in the Supreme Court. One of the appeals was submitted in a case in which HaMoked represented the family; in the ruling, the Supreme Court accepted the interpretation of the District Court judges.²³

In addition to appealing the decisions of the District Court, the State amended the Temporary Order so that the definition “resident of the Area” would explicitly include everyone registered in the Palestinian population registry. HaMoked claimed that even after the amendment, the Temporary Order must not be applied to a person whose registration in the Palestinian population registry was formal only and did not reflect his actual living situation. The District Court rejected the claim,²⁴ and the ruling was appealed in the Supreme Court.²⁵ The appeal was heard in 2009 (after the Court had issued its interpretation of the term “resident of the Area” prior to the amendment), but no decision was rendered. Instead, it was agreed that the issue be transferred to the humanitarian committee established under the Temporary Order (Case 35341).

The State devised two additional channels for reducing, as much as possible, the number of children who are still eligible for status in Jerusalem despite the Temporary Order. The State interprets the Supreme Court’s ruling on the meaning of the term “resident of the Area” prior to the amendment as narrowly as it can. In the State’s view, it is sufficient that registration in the OPT be accompanied by a single connection to them, any connection, for the child to be considered a “resident of the Area” even when there is no dispute regarding the fact that the “center-of-life” was in Jerusalem for many years. The State continues to maintain this approach even after the series of Jerusalem District Court’s rulings that favored a more liberal approach. While the State does not appeal these rulings, it refrains from implementing them.²⁶

An additional channel is granting status to children through a graduated procedure: first, temporary residency for two years and only then permanent status. If, at the end of two years, the child is older than 14, the State makes the claim that it is unable to grant permanent status, and instead, extends his temporary status, which is subject to periodic inspections. This policy is

23 AAA 5569/05 **Ministry of Interior v. ‘Aweisat** (2008).

24 AP 600/06 **Abu Ramuz v. Minister of Interior** (2007).

25 AAA 10346/07 **Abu Ramuz v. State of Israel** (2010).

26 See, e.g., AP 311/06 **Murar v. Minister of Interior**; AP 8295/08 **Mashahara v. Minister of Interior**.

particularly unreasonable: when the Temporary Order was amended in 2005, the Knesset decided, in contrast to the government's suggestion, to raise the cut-off age for receiving status in Israel from 12 to 14. However, immediately after the decision was issued, a procedure preventing the granting of permanent status to children over the age of 12 was written. The Jerusalem District Court struck down the procedure and held that it undermined the objective of the statute,²⁷ but the State, as it is wont, did not appeal the rulings and yet continued to follow the procedure as if these rulings had never been issued.



H.S. holds an Israeli identity card. J.S., her husband, has a Palestinian identity card. The couple first lived in the village of Ni'lin and in Jordan, but since 2001, they have lived in the area that was annexed to Israel in 1967. After they proved their "center-of-life" in Jerusalem, and after being recognized as residents of the city by the National Insurance Institute, the couple began the exhausting process of arranging status for the family. At the time of writing, June 2011, four of the couple's children are registered as permanent residents of Israel, and one girl is registered with a temporary status, while the father and the eldest daughter receive permits from the military that allow them to be present in Jerusalem. HaMoked conducted three legal actions for the S. family. One of them addressed the question of the status of B., one of the couple's children. B. was born in 1991. When the application to have him registered was submitted, he was already older than 12, but not yet 14. The Ministry of Interior approved his registration as a temporary resident for two years. At the end of the two years, HaMoked requested that B. receive permanent status. The Ministry of Interior refused, claiming that B. was a "resident of the Area" over the age of 14, and therefore, it was possible only to extend his previous status. The position of the Ministry of Interior was overturned in the ruling of Judge Yehudit Tsur from the Jerusalem Court for Administrative Affairs.²⁸ Firstly, Judge Tsur determined, B. is not a "resident of the Area." His "center-of-life" is in Jerusalem. His registration in the OPT and residency there for five years of his childhood are insufficient to consider him a resident of the OPT. Secondly, even if the Temporary Order applied

27 AP 8295/08 **Mashhra v. Minister of Interior** (2008), and additional rulings.

28 AP 8890/08 **Srur v. Minister of Interior** (2009).

in B's case, the protocol which results in not granting permanent status to children who were 12 years old when their application was submitted was invalid. These two findings are consistent with earlier rulings of the Jerusalem District Court that were not appealed in the Supreme Court by the Ministry of Interior. Following the ruling, the Ministry of Interior granted B. permanent status in Israel, but this time, filed an appeal to the Supreme Court.²⁹

The case of one of B's sisters, who has only temporary status, is still awaiting decision in the Supreme Court. **(Case 38247)**

An additional way around the Temporary Order is continued processing of family-unification applications that had gone into the "graduated procedure" before the Temporary Order went into effect. These are applications which were approved, but the "sponsored" spouse from the OPT had not yet received permanent status in Israel, since receiving the status requires a protracted probationary period. It should be recalled that during the probationary period, the "sponsored" individual first receives military-issued entry permits into Israel; after 27 months, his status is upgraded to a temporary residency visa, and at the conclusion of three additional years, it is upgraded to permanent status. According to the Temporary Order, anyone who has already entered the graduated procedure may remain in Israel (subject to a yearly individual examination), but will retain his previous status without upgrades. Following a petition submitted by HaMoked, which eventually ended in an appeal to the Supreme Court, and due to pressure from the justices, the State agreed to forgo this rule when the procedures become protracted due to a Ministry of Interior error or red tape. In such cases the spouse's status could be upgraded despite the Temporary Order.³⁰ The arrangement was stipulated in the summer of 2008, following which many cases were reopened in an effort to obtain temporary residency status for spouses of East Jerusalem residents, which would grant them social security rights and health care.



HaMoked has been working on the case of the R. family since 1993. T.R. has a Jerusalem identity card. M.R., her husband, has an identity card from the OPT. The couple was married in 1990 and made

29 AAA 5718/09 **Minister of Interior v. Srur** (2011).

30 AAA 8849/03 **Dufish v. Minister of Interior** (2008).

their home in Shu'fat Refugee Camp in Jerusalem. According to the Ministry of Interior's policy until 1994, male residents of East Jerusalem could submit family unification applications for their wives who had no status in Israel, but women could not submit such applications for their non-resident husbands. Women, this policy implies, are supposed to follow their husbands. The policy was changed in 1994, and in 1995, the couple submitted a family unification application. In 1997, the Ministry of Interior approved the registration of the couple's children after it was proven that the family's "center-of-life" was in Jerusalem, yet, in November of the same year, refused the family unification application, claiming "lack of center-of-life" in Jerusalem. The family appealed the decision and pointed to the extensive evidence of their "center-of-life" in Jerusalem, the same evidence on which the original approval of their children's registration had been based. Rather than approving the application, the Ministry of Interior decided to defer the case for processing, and continue investigating the matter of "center-of-life." It then further delayed the application while awaiting the opinion of other parties. In 1999, the application was approved, but the red tape continued. M.R.'s first permit, which was to regularize his presence in Israel for the first year, was never granted, and the application for the second year met with no response even one year after it was submitted. The file, said one of the interior-ministry clerks in a telephone conversation, had gotten "buried" in the office. Meanwhile, the government passed a resolution to freeze family unification procedures with spouses who are residents of the OPT, and later, this decision was enshrined in law in the form of the Temporary Order. Finally, in the summer of 2002, all of the authorities approved the couple's continued eligibility for family unification, but all that M.R. received was a military permit allowing his presence in Israel. HaMoked filed a petition on the family's behalf to the District Court, claiming, inter alia, that had it not been for the authorities' foot-dragging, the husband would have had temporary residency before the government resolution to freeze family unification processes was passed; the family should not bear the consequences of the authorities' negligence.³¹ The Court rejected the petition and HaMoked appealed to the Supreme Court.³² Following the arrangement set into place in the summer

31 AP (J-m) 723/03 **Rajub v. Minister of Interior** (2007).

32 AAA 5534/07 **Rajub v. Minister of Interior** (2008).

of 2008, the case was returned to the District Court, where the State agreed to apply the arrangement to the R. family as well. The two were summoned to the offices of the Ministry of Interior, where they received permission for an additional military permit. In the summer of 2009, after yet more correspondence, and some 14 years after the family unification application was first submitted, M.R. received temporary residency status in Israel and an identity card. HaMoked is still working on the case, since the temporary status must be renewed annually. **(Case 5075)**

Despite the agreements that have been reached, the Ministry of Interior is in no rush to upgrade an applicant's status. In the case of the A. family, for example, the ministry dragged its feet for four years (1995-1999) in approving their family-unification application, and continued to delay processing thereafter. At the time, F.A. was supposed to receive temporary status in Israel, there was still no decision on the second military permit to which she was entitled in the framework of the graduated procedure. After the HCJ ruled that in such cases the family is eligible for a status upgrade, HaMoked contacted the Ministry of Interior, but the request was rejected. HaMoked took the matter to the Appellate Committee, and the Ministry of Interior stood its ground. The Committee rejected the position of the ministry and ruled that the delay in approving the couple's requests in the framework of the graduated procedure was unjustified, even without taking into account the delays of the original approval of the application. In keeping with the order of the Committee, in September 2009, F.A. was granted temporary residency in Israel and the appropriate identity card. **(Case 25471)**

H.R., from the village of 'Ubeidiya, has an OPT identity card. In 1995, she married a resident of Shu'fat Refugee Camp in Jerusalem, and has since lived with him. Her husband is addicted to drugs, and has been arrested on occasion for minor property crimes and drug violations. The couple first lived in the home of the husband's parents, but left, among other reasons, due to violence on the part of the mother-in-law. Welfare authorities removed the children from the home to a boarding school for a certain period of time. H.R. is 33 years old and suffers from diabetes and thyroid

problems, but she is a devoted care-giver and supports the family, albeit on a meager budget, by working as a pre-school teacher and assistant for the elderly in the refugee camp. The family lives in extremely difficult conditions and is supported by the Ministry of Welfare.

In 1995, the couple submitted a family unification application, which was approved by the Ministry of Interior only in 1999. In September 2001, H.R. was supposed to receive a temporary identity card as part of the graduated procedure, which would have given her health insurance and social benefits, but instead, the ministry extended the approval for her to receive military permits – and even these were not provided consecutively, and she remained without any permit for protracted periods. For example, from July 2008 through December 2009, she did not receive a permit and she was for all practical purposes imprisoned within Shu'fat Refugee Camp, unable even to receive medical treatments not provided in the camp. The children, together with their mother, were also imprisoned in the camp. Her husband was at this time in prison. In December 2009, employees of HaMoked accompanied H.R. to a hearing at the Ministry of Interior, and immediately at the end of the hearing, she received a referral to receive military permits allowing her presence in Israel.

HaMoked is now overseeing the upgrading of H.R.'s status to temporary residency in Israel, the status to which she was entitled before the Citizenship and Entry into Israel Law was passed. It emerged that she was denied status due to police opposition, in light of her husband's criminal activity, even though, according to the guidelines of the Ministry of Interior itself, the criminal examination is meant to apply only to the "sponsored" partner and not to the "sponsoring" partner, who in any case is a resident of Israel. As stated, a criminal check on the "sponsoring" resident is relevant only if the punishment for the crimes he committed involves prolonged incarceration of the kind that would prevent the couple from leading a shared life, but the charges against H.R.'s husband were not expected to lead to extended imprisonment, nor did they.

The Ministry of Interior rejected HaMoked's request to upgrade H.R.'s status, and HaMoked submitted an objection to the decision. **(Case 29164)**

Since the annexation of East Jerusalem, families in which one spouse has an Israeli identity card while the other has an identity card from the OPT

have been forced to deal with nearly insurmountable bureaucratic obstacles when attempting to formalize their status through the Ministry of Interior. The Temporary Order has made things even more complicated. The efforts to find loopholes in the Temporary Order, on the one hand, and the State's efforts to expand it on the other, have created a patchwork of legal rules and exceptions that can be navigated only by experts. The case of every man, woman and child follows a path forged through a dense thicket of articles and sub-articles, procedures and laws, combinations between dates of submission for each applications, dates of entry into effect of directives, the age of family members on those dates, and so on, ad infinitum. Within this dense forest of legal intricacies, the natural right of a person to live as part of a family, without discrimination on the basis of religion, race or nationality, is often forgotten.

Individuals without Status

Many Palestinians live in Jerusalem but have no legal status anywhere in the world. There are many underlying reasons for the lack of status, but they are always related to interior-ministry procedures and the fact that the ministry is inaccessible to the public, as well as to the rigidity of the clerks and their tendency to avoid actually grappling with irregular circumstances such as lack of birth certificates, single mothers, families where children are being raised by family members other than the parents, and the like.



H!A. was born in 1981 to a father who has an Israeli identity card, and a mother who is registered in the West Bank. A short time after she was born, H!A.'s parents were divorced, and H!A. remained in her father's custody. The father remarried, and H!A. grew up with her siblings from the second marriage, and was raised by her stepmother, who, like the father, has an Israeli identity card. The father originally lived in the Jewish Quarter of Jerusalem, but was forced out of his home after the 1967 War, when Israel expelled all Muslims living in the neighborhood and rebuilt it for Jews only. For many years, the family lived in Dahiyat al-Bareed located in north Jerusalem, bordering the area annexed by Israel but outside of it. At the end of the 1990s, the family moved to a home within the annexed area. In 2002, H!A. married a resident of East Jerusalem, and today she lives with him and their children in the city.

Her father's attempts to register her in the population registry met with repeated failure. The Ministry of Interior agreed to register the children he had with his new wife, but in all that pertained to H!A. , the couple was rejected repeatedly. The family kept copies of the requests they submitted to the Ministry of Interior over the years – some through lawyers, some typed informally by typists. The Ministry of Interior ignored the requests, and the application to register H!A. went unanswered for an entire decade. H!A. graduated high school, embarked on her higher education, got married and had children – all without residency status.

In 2003, the family turned to HaMoked for help. Following HaMoked's intervention, the case was brought before various committees and officials of varying ranks in the Ministry of Interior. Every now and then, decisions were made, but they were overturned by the ministry before the family

was even informed that they had been rendered. The application remained undecided. In 2006, HaMoked submitted a petition to the Court,³³ and in 2007, just before the hearing of the petition, the State announced that it would agree to grant H.A. a visitor visa of the type given to tourists, but one that also makes it possible to work in Israel. From the State's perspective, H.A. is a "resident of the Area" since she was born to a mother who is a resident of the OPT, and since the family lived for many years in Dahiyat al-Bareed, located in a part of the West Bank not annexed by Israel. The Citizenship and Entry into Israel Law, as it was amended in 2005, allows Israeli residents to submit family unification applications for their female OPT spouses who are over the age of 25, although the most that wives can receive upon approval of the application is a military permit allowing for their presence in Israel. This permit is akin to a tourist visa and does not confer the right to work or any social security rights. While the Court was hearing the case, the Law was again amended. The amendment mandated the establishment of a committee for humanitarian matters. The Court decided to refer H.A., who was now more than 25 years old, to this committee, but HaMoked appealed the decision to the Supreme Court: the committee had not yet been established, its powers were limited, and the chances that it would change the decision that had already been made in H.A.'s case were slim. In a hearing held in the Supreme Court in 2009, it was agreed, in any case, to attempt taking the path of the committee.³⁴ A request was thus submitted to the committee, but no response was received. HaMoked was forced to petition the Court again.³⁵ In September 2010, following the petition, HaMoked received a letter indicating refusal of the application. Despite the refusal, a month later, the State announced that it agreed to grant H.A. a temporary identity card for two years, after which she would receive permanent status in Israel. On October 21, 2010, H.A., now 29 years old, received an identity card for the first time in her life. (Case 28522)



H.B. was born in Al-Muqassed Hospital in Jerusalem in 1985 to parents who were residents of the city. The family lived in abject poverty and the father was a drug addict. After H.B. was born, her parents

33 AP 1146/06 '**Asileh v. Minister of Interior.**

34 AAA 4682/07 '**Asileh v. Minister of Interior.**

35 HCJ 3276/10 '**Asileh v. Minister of Interior.**

took her from the hospital without any formal procedure and without receiving a “notice of live birth,” since they had no way of paying for the hospitalization. Only in 2002 did the family obtain a “notice of live birth” for H.B. When H.B. contacted HaMoked, she was already 23 years old, married, and a mother of three. HaMoked contacted the Ministry of Interior requesting that H.B. be registered in the population registry, but the Ministry of Interior required a declarative judgment from the Family Court indicating that H.B. was indeed her parents’ daughter. The State’s representatives in the Court demanded a DNA test, which costs thousands of ILS. The test was performed and proved that H.B. was related to her parents. The State therefore agreed that the requisite declarative judgment be issued. However, at the end of all of these proceedings, the request to register H.B. in the population registry was refused, on the claim that she was already an adult – a fact that was known to the Ministry of Interior at the time it required her to obtain the declarative judgment. HaMoked appealed the decision, the appeal was rejected, and in February 2011, it submitted an objection on her behalf to the Appellate Committee for Foreigners. In response, the Ministry of Interior agreed to grant H.B. permanent status. (Case 49887)

Palestinians Living in Jerusalem but Registered in the West Bank

East Jerusalem is home to a large population of Palestinians who are registered in the Palestinian population registry and do not have Israeli identity cards. While they and their families have lived in the city for decades, they (or their parents) were registered in the West Bank during the census taken in 1967. Until the beginning of the 1990s, when the closure was imposed, registration in the West Bank involved no particular problems, since people were able to move freely between the parts of the West Bank that had been annexed to Israel and those parts that had been placed under military administration. After the closure was imposed, difficulties traveling from one area to another began, and became worse after the erection of the separation wall in East Jerusalem.

In October 2007, the government passed Resolution 2492, stipulating that residents in this predicament could contact the Ministry of Interior until April 2008. If they succeeded in proving a consecutive “center-of-life” in Jerusalem

from 1987, and if no security or criminal impediment were present, they could receive temporary permits allowing them to remain in the city. Following this decision, the Ministry of Interior compiled a list of necessary documents for proving “center-of-life,” but this list is very long and includes some items that are difficult and costly to obtain.

HaMoked suspected from the outset that the goal of the decision was not to ease the plight of this population, which has faced severe impositions on its freedom of movement since the separation wall was erected, but to draw it to the Ministry of Interior so that the State could collect data about it in preparation for possibly removing individuals from their homes. This fear increased in light of the manner in which the government resolution was implemented, as gleaned from reports from the field, and as became apparent from information received from the Ministry of Interior following a petition submitted by HaMoked under the Freedom of Information Act. The petition was filed after a request made under the Act met with no response.³⁶ From the information ultimately received, it became known that following the government resolution, 841 permit requests were submitted. Twenty-four were rejected out-of-hand since they were submitted after April 2008. Of the remaining requests, 364 were rejected for various reasons: 344 for failure to prove “center-of-life” since 1987; 14 due to security reasons; and 6 due to criminal records. As of January 2011, 446 requests were still being processed two-and-a-half years after they were submitted. Only 31 requests (3.6%) were approved. Moreover, it became clear that in the rare cases in which the request was approved, the permit granted was not a regular permit allowing one’s presence in Israel, but rather one limited to the person’s area of residence. So, for example, in one of the cases brought to HaMoked’s attention, the permit that was granted limited the recipient’s presence only to the area confined within “Qalandiya Crossing to the north, Route No. 1 (French Hill junction) to the south, and Maj.-Gen. Uzi Narkis Road to the east. The permit includes the neighborhoods of Beit Hanina and Shu’fat only.” The permits do not include the right to work in Jerusalem, afford no social security rights, and must be renewed every two years.

³⁶ AP 4834-09-10 **HaMoked: Center for the Defence of the Individual v. Minister of Interior** (Case 66677).

Committees... Committees... Committees: Finding Your Way Around

The Appellate Committee for Foreigners: as stated, this is, in fact, a one-man committee staffed by an official from the Ministry of Interior, whose job is to render a quasi-judicial review over decisions made by other departments of the ministry. The proceedings of the Appellate Committee take place via written submissions by the resident (or his counsel), and by the Ministry of Interior (through counsel appointed for this purpose). The Committee's decision is binding upon the Ministry of Interior.

The Appellate committee was established with the objective of lightening the excessive load of petitions submitted to the Court for Administrative Affairs, but soon, it, too, became backlogged with hundreds of objections. The Ministry of Interior is required to submit its response to the Committee within 30 days, but it consistently fails to meet the schedule set in the working protocol, and the Committee grants it one extension after another. In many cases, the Committee accepts the position of the ministry, and sometimes, it adopts an even harsher position on issues of principle. That stated, it does often accept the position of the objectors. In any case, its decisions are detailed and include supporting arguments.

The Interministerial Committee on Humanitarian Affairs: an advisory committee to the Minister of Interior, which deals with applications for status in Israel that do not conform to the regular criteria of the ministry, but involve humanitarian issues. The committee's approach is strict, and its laconic decisions tend to ignore the applicants' claims. The modus operandi of the committee has been harshly criticized, including in court rulings.

The Humanitarian Committee under the Citizenship and Entry into Israel Law: an advisory committee to the Minister of Interior that focuses on requests relating to residents of the OPT and citizens of countries cited in the Law as those whose citizens are ineligible for an entry visa into Israel. The Law stipulates narrow criteria regarding the type of applications that can be brought before the committee, and the type of visas it can recommend (for example, it is impossible to obtain permanent residency status through this channel). The provision under which the committee was established was inserted into the Citizenship and Entry into Israel Law following an HCJ ruling regarding the Law: even the justices who believed that the Law was constitutional held that a mechanism must be established for processing exceptional cases.

In practice, the committee was not established until nine months after the Law was amended, and it does not function according to the guidelines and timelines stipulated. Applications are not processed in a timely fashion, and in order to accelerate its work, HCJ petitions regarding the committee's lack of response are necessary. In a session of the Knesset's Internal Affairs and Environment Committee held at the end of October 2010, it emerged that of 770 applications submitted to the committee to that date, only 290 had been processed, and only 45 of them approved. In response to an inquiry by HaMoked, a representative of the Ministry of Interior responded that only in four cases (0.5% of the requests) was temporary residency granted.



One of the cases in which the committee approved the granting of military permits only is the case of R.H., a 58-year-old widow whose husband was a Jerusalem resident and whose children are registered as residents of the city. In an HCJ petition in which the Ministry of Interior was asked to grant R.H. status in Israel, HaMoked obtained the protocol of the committee's session. The protocol reflects no discussion and presents no positions of committee members. In addition, it emerged that the data in the possession of the committee were incorrect, in particular, the ages of the children. The committee decided to approve permits for the widow allowing for her presence in Israel until her children were no longer minors, based on the information that one of the girls was 12, even though R.H.'s youngest child was almost 18 years old. The HCJ ordered that the case be returned to the committee for further review.³⁷ (Case 45576)

Social Rights

In 2008-2010, HaMoked decided to expand its work on cases relating to East-Jerusalem residents' social security rights and to allocate a team for this purpose. At the beginning of 2008, HaMoked had two cases involving East Jerusalemites' social rights in processing. That same year, 13 new cases in this category were opened. In 2009 an additional 145 cases were opened, and in 2010, yet another 142. At the beginning of 2008, HaMoked was processing two legal actions in this category. Thirty more actions were initiated in 2009, and 70 more in 2010.

³⁷ HCJ 10041/08 **Hijaz v. Minister of Interior.**

National Insurance Institute Withdrawal of Residency Recognition³⁸

Most of the social security rights in Israel are given only to residents of the State, those whose “center-of-life” is within the Green Line or in the territories annexed to Israel (East Jerusalem and the Golan Heights), as long as their presence in Israel is legal, and they have permanent, or at least temporary status. Through special legislation, these rights are also granted to settlers: that is, Israeli citizens – Jews only; living in the West Bank in areas not under PA control. Israeli citizens whose “center-of-life” is in OPT areas controlled by the PA are excluded from this special legislation, as are non-Jewish Israeli residents lacking citizenship who live in the OPT. These groups are not eligible for health insurance or for most social benefits.

HaMoked processed many requests of residents whose eligibility for health-insurance benefits was terminated by the National Insurance Institute (NII) based on thin information according to which they were living outside of the territory annexed to Jerusalem. The NII is required to inform residents of its intention to revoke recognition of their status as residents eligible for social benefits and to enable them to present their claims on the matter. However, in many cases, whether or not the NII notifies them of its intentions in writing, the residents have no knowledge whatsoever of the processes taking place in their matters. This is exacerbated by the lack of order in street-name and house-number signs, the degraded postal services, and the fact that the letters are written in Hebrew and in an administrative jargon that is often difficult for even a native speaker to understand. In any case, most people who apply to HaMoked regarding this issue discovered that their NII status had been revoked only when their benefits stopped appearing in their bank accounts, or when they required medical treatment. In many cases, submitting a claim to the Labor Court induces the NII to retract its decision prior to conclusion of the proceedings. This reinforces the assumption that the revocation of eligibility for benefits and medical insurance, the ramifications of which can be most severe for the resident and his family, is carried out quite casually.

38 Residency according to the National Insurance Institute (NII) is not identical to residency according to the Ministry of Interior. The NII decides on residency questions based on a person’s permanent place of residence, solely for purposes of social benefits and health insurance. A person can be registered as a resident in the interior ministry’s population registry, and at the same time, lose his resident status for purposes of national insurance.



The P's, both Jerusalem residents, were married in 2006, and after celebrating their wedding, set out for a honeymoon in Eilat. Upon their return, they lived for two weeks in an empty apartment belonging to the husband's family and located in al-'Eizariya, outside of the area annexed to Israel. Afterwards, they moved to the husband's parents' home in Beit Hanina in Jerusalem, and, a year and a half later, to a house they received from the wife's father in al-'Isawiya, also in Jerusalem. During the brief period during which the couple was living in al-'Eizariya, the NII carried out an investigation regarding the place of residence of the husband's sister, in the context of which the investigation agency reported the couple's temporary presence in al-'Eizariya (the investigators even set up an observation point there and reported that "the fourth floor was lit [...] movement was discerned on the fourth floor and noises were heard in the apartment."

In 2009, the couple contacted the NII in order to arrange benefit payments for their children. An investigation was conducted, and the husband was accused of submitting false information when he claimed continuous residency in Jerusalem. The couple's explanations during the investigation were for naught: the NII determined that the couple had ceased being residents of Israel from the day they signed their marriage agreement – a year and a half prior to their wedding! – until they moved to their permanent home in al-'Isawiya.

HaMoked submitted a claim on behalf of the couple,³⁹ but before the evidentiary hearing, the NII retracted its prior decision and recognized the couple as Jerusalem residents who had lived in the city continually throughout the years. **(Case 61291)**



The S. family, whose members are Jerusalem residents, has been receiving benefits for its children since it was proven in an NII investigation that they live in the city. One day, the couple was informed that their child benefits had not been deposited in their account. HaMoked contacted the NII in order to clarify why their payments had been halted, and since the request went unanswered, the organization submitted a claim to the Labor Court.⁴⁰ At this point, it emerged that the benefits had

39 NII 11750/09 **Far'un v. National Insurance Institute.**

40 NII 10961/09 **Salaimah v. National Insurance Institute.**

been terminated because the couple had not filled out a “multi-year report.” The report was submitted, and the NII renewed the benefits, including those that had not been paid on time. (Case 59376)



M.F., a resident of Jerusalem, was married to a Jerusalem resident and separated from her. For some time he lived at his mother’s home in Abu Tor, and later he moved to the Ramlah/Lod area. At the end of 2009, M.F. was admitted to Asaf HaRofo Hospital following dramatic weight loss and incessant abdominal pain. The medical test results dictated an urgent biopsy, but at the time he was hospitalized, he learned that his medical insurance had been terminated without his having been informed of the matter. After he was released from Asaf HaRofo, M.F. was hospitalized at Hadassah Mt. Scopus, but he was forced to leave because he could not afford the hospitalization expenses. The Hadassah Ein Karem Hospital in Jerusalem also demanded he pay a sum he could not afford, and he was removed from the premises by security guards. HaMoked submitted a claim to the Labor Court to have his medical insurance renewed with a motion for an urgent order for renewal.⁴¹ Within two days, the NII agreed to renew his medical insurance from the day on which it was cancelled. This stated, no explanation was given as to why the insurance had been cancelled in the first place. (Case 63801)

Health Insurance for Children

Registering the children of East Jerusalem residents with the Ministry of Interior is a slow and complicated process, during which they effectively remain without medical insurance, as, according to the NII, children whose residency has not been resolved are not eligible for national health insurance. Given this, and following the petition of HaMoked, Physicians for Human Rights–Israel and the Association for Civil Rights in Israel, an expedited procedure was instated in 2001 for ensuring health insurance for these children. The procedure applies to children who have one parent who is an East Jerusalem resident and who is recognized by the NII as eligible for health insurance. These children are registered with the NII under a temporary number, until they receive an identity number from the Ministry of Interior.

41 NII 10077/10 **Fatlah v. National Insurance Institute.**

Over the years, the NII has gradually eaten away at the provisions of the procedure and limited it to children under the age of one year. If the child is over one year of age, the NII requires confirmation from the Ministry of Interior that a child registration application is in process as a condition for the child's eligibility for health insurance. The NII has recently gone so far as to refuse to issue a temporary number even when the confirmation is presented. Moreover, the temporary number expires when the child reaches 18 months (or six months after the number was issued in the case of a child who was already over a year old). This period can be extended if the Ministry of Interior confirms it is still processing the application. At the same time, the Ministry of Interior has made its own procedures stricter. Today, the ministry is not prepared to process applications for child registration without proof of "center-of-life" in Jerusalem for the two years prior to submission of the application. One of the ramifications of this practice is that a person can submit an application to have his child registered only two years after he is recognized as a resident by the NII, as such recognition serves as proof of "center-of-life". The child is automatically eligible for health insurance only after he gets registered.



The Q. family resides in East Jerusalem. The NII recognizes both spouses as residents and they are insured under the National Health Insurance Law. The couple went to study in the United States, remaining there slightly longer than a year, during which time their son, S., was born. This temporary stay abroad does not interfere with their eligibility for social security rights, but the Ministry of Interior refuses to admit their application to register their son as a resident until two years have passed from the day of their return. When the couple arrived at the NII, S. was already over a year old. The NII refused to register him with a temporary number until it received confirmation that the Ministry of Interior was processing an application in his matter. However, as stated, the Ministry of Interior had not allowed them to submit their application for registration. HaMoked submitted a claim to the Labor Court. The Court's decision of March 8, 2010, states that "the Court recommends that the defendant [the NII] grant the child a temporary number in light of the fact that both parents are indisputably residents: they were residents before leaving for the United States, and they were residents upon their return, as they remained abroad for a year and a half or less, such that residency is not

revoked based on the guidelines of the NII [...].⁴² The NII did not accept the recommendations of the Court. The case is currently in summations. (Case 59484)



F.F. is a resident of Jerusalem whose husband has an OPT identity card. The couple's children were registered with the NII under a temporary number for the sake of receiving national health insurance, while their application for status in the Ministry of Interior was pending: they were first told to wait two years in order to qualify for a "center-of-life" in Jerusalem, and now that the application has been submitted, the response is slow in coming.

One of the couple's children suffers from a congenital heart defect. In November of 2010, the child's primary care physician determined that catheterization was necessary, but when the mother arrived at the health fund, she learned that her child's registration with the NII had been cancelled, apparently as part of the procedure under which the temporary number expires automatically rather than remaining valid until an identity number is received from the interior ministry. Following a claim submitted by HaMoked to the Labor Court and a motion for a temporary order to renew the insurance, the NII decided to renew the child's medical insurance for the time being through a temporary number. The sick child underwent the surgery he needed.⁴³ The question of the other children's insurance is pending, as is the question of the sick child's continued coverage. (Case 67335)

Medical Treatments

Eligibility for medical insurance under the National Health Insurance Law does not guarantee that East Jerusalem residents will get appropriate medical care, as has become apparent from one of HaMoked's cases.



'A.D. is a homeless man addicted to drugs, who lives alternately in shelters and on the street. In 2005, the NII retroactively revoked its recognition of his status as a resident eligible for benefits and health insurance, claiming that he lived with his wife in Beit Jala even though

42 NII 11556/09 **Qutub v. National Insurance Institute.**

43 NII 1573-12-10 **Fruh v. National Insurance Institute.**

the two were separated, and even though 'A.D., in his current state, was unwelcome in his wife's home. During the investigation they conducted in Jerusalem, the NII investigators could not find 'A.D. in the shelter where he sometimes resided, nor could they find anyone who knew him by his full name in the bakeries where he sometimes worked, since he was known only by his nickname. In light of this, the NII decided to revoke 'A.D.'s eligibility for health insurance. 'A.D. received no notification of this. HaMoked submitted a claim on behalf of 'A.D. to the Labor Court,⁴⁴ and to date, following the claim, 'A.D.'s health insurance has been renewed until the hearing of his case is completed. In light of this, 'A.D.'s health fund referred him to surgery, long overdue, at Hadassah Ein Karem Hospital, but the hospital refused to honor the referral since 'A.D. had not yet paid a prior debt to the hospital, one that was not covered since the NII had revoked 'A.D.'s eligibility for health insurance. In response to HaMoked's inquiry, the hospital claimed that according to the National Health Insurance Law, the health fund was responsible for providing medical care – not the hospital; the hospital is only a service provider, and it has the right to deny care to a person who has not paid his debt to the hospital. Hadassah Ein Karem Hospital described its approach as "business common sense." The legal office of the Ministry of Health notified the hospital that its refusal to accept the referral from the health fund based on the patient's debt (irrespective of the relationship between the hospital and the health fund) undermined the essence of national health insurance, particularly in light of Hadassah Hospital's status as the largest hospital in Jerusalem and a central institution for the treatment of health fund members. Following this intervention, the hospital admitted 'A.D. for treatment, contingent on his pledge to continue pursuing his claim for retroactive recognition of health insurance eligibility. (Case 64405)

Income Support for the Children of Prisoners

Until April 2010, an Israeli resident child whose resident parent was ineligible for an NII pension because he was in prison and whose other parent was ineligible because she was not a resident, could not submit a request for an income support pension.

44 NII 10437/10 **Darwish v. National Insurance Institute.**



N.J. is a resident of the West Bank, while her husband and their five children are permanent Israeli residents. The father was imprisoned in June 2009, but until that time he had been eligible for an income support pension for himself and for his children. When he was imprisoned, his eligibility was terminated, as the law stipulates. N.J. therefore submitted a claim for income support for her five children, who remained without any source of income. HaMoked contacted the NII office in East Jerusalem on her behalf, but the request was rejected on the claim that N.J. was not eligible to submit such a request, since she was not a resident of Israel. In December 2009, HaMoked filed a claim against the NII on this matter, arguing that the children, Israeli residents, were caught between a rock and a hard place: on the one hand, their imprisoned father was unable to support them, and on the other, their mother had no permission to be in Israel, let alone work there. HaMoked further charged that the children should be considered abandoned children, as they were legally defined at the time. While their mother did live with them, she was unable to uphold her obligations to them. Therefore, they should be viewed as abandoned.⁴⁵ The Court accepted the claim that the children were in a problematic predicament that required a legal solution, but dismissed the claim that the children were abandoned. **(Case 61938)**

In an appeal in a similar case, heard before the National Labor Court, the Court ruled that the situation of such children did come under the legal definition of an “abandoned child,” and therefore, they were not eligible for a pension.⁴⁶ However, on April 1, 2010, Amendment 35 to the Income Support Law (2010) was passed. Under the amendment the children of incarcerated Israeli residents whose other parent is not a resident are eligible of an income support pension. In light of this, HaMoked submitted a new application for income support pensions in cases of this type that it had taken on. Yet this did not put an end to these families’ suffering. In one case, the application was returned since “it is impossible to enter a claim for income support under the name of the wife who is a resident of the OPT.” The application was then not processed as it is not yet possible to make a decision until the changes required by the legal update are integrated into the income support system.” In another case, the NII demanded a long series of documents –

45 NII 11503/09 **Jaber v. National Insurance Institute** (2010).

46 LabA 614/05 '**Abl v. National Insurance Institute** (2010).

including an irrelevant document (the protocol of a court hearing regarding the incarcerated father), and a non-existent document (a report from the welfare authorities confirming that they were not providing support for the family). The NII then rejected the claim, citing “lack of cooperation.” In both cases, legal actions had to be brought so that the children could receive the pensions for which they were eligible.⁴⁷

Accessibility of the Welfare System

The efficacy of the welfare system depends to a large extent on its accessibility to those who need it. Disempowered populations are particularly hurt by inaccessibility. The East Jerusalem offices of the NII are characterized by particularly poor accessibility, made worse by language difficulties, poverty, and social neglect.

HaMoked succeeded in removing two of the obstacles placed in the path of city residents seeking to fulfill their social security rights. Until 2010, the NII employed a policy according to which Palestinians holding OPT identity cards were denied entry to the NII offices in East Jerusalem, even if they had a permit allowing their presence in Israel. This guideline effectively denied the rights of a large number of residents, for example, children who have an Israeli identity card but whose resident parent had passed away or was imprisoned. In these cases, realization of eligibility depended on a request filed by the parent who had an OPT identity card – but this parent, as stated, was not permitted to enter the NII offices. In 2010, this policy was amended (Case 59759).

Following additional requests by HaMoked, the NII instructed its employees on the obligation to provide every applicant with material relevant to his case upon request (such as material from an investigation conducted into his matter). This, after many applicants were told that they had to submit their requests in writing, through an attorney. It was further determined that no fee could be collected for providing individuals or their counsel with pertinent material, but that for repeat requests a fee of ILS 25 would be collected (Case 66030).

47 NII 32850-08-10 **Berber v. National Insurance Institute** (Case 64423); NII 54601-11-10 **Qanibi v. National Insurance Institute** (case 66031).

National Insurance Institute Investigations

As stated, East Jerusalem residents whose "center-of-life" is outside the territories annexed to Israel are not eligible for national health insurance or for most social benefits. In order to evaluate residents' eligibility, the NII hires private investigators. The files of the private investigations that make their way into the hands of HaMoked clearly reveal that these investigators do not view it as their role to uncover the truth, but rather, to find evidence that the person being investigated does not live in the annexed area. They operate on the assumption that those demanding benefits are always lying, and even advise the NII on how to conduct itself with a view to denying pension eligibility to as many East Jerusalem residents as possible.

W.Q., born in 1952, lived for most of his life in Jerusalem. He lived with his wife in Beit Jala for some time, but after they separated, he returned to Jerusalem where he lived with his sister. W.Q. suffered from a heart condition, and his sister was also homebound due to health problems. After W.Q.'s residency was revoked, HaMoked was successful in restoring his status with the Ministry of Interior, and afterwards, submitted a claim to have his eligibility for national-insurance payments restored. The NII, through the "Moran Investigations" company, devoted astounding efforts to prove that W.Q. was still living in Beit Jala. Employees of "Moran Investigations" questioned neighbors who lived near the house where W.Q. had lived in the past with his wife, and even conducted "multiple visits," during which they staked out the house during the evening and night hours when, according to information they received orally from a young man residing in the neighborhood, W.Q. was supposed to be home, even though neighbors residing near the house claimed otherwise. The house was dark and empty during all of the stake outs. The investigators knocked on the door at 6 a.m., but no one responded, of course, since the house was empty. They opened the water bill which was lying by the door, without permission, and found that for many months there was almost no water usage in the home; they photographed the interior of the house through the window, intruding on privacy without permission. The investigators also went to W.Q.'s sister's house in the Old City of Jerusalem at 8.30 a.m., found W.Q. and questioned him. Among other things, they confronted him with the claim that according to their records, he lived in

Beit Jala. Despite this, W.Q. "held fast to his lies," as they called them. They also questioned his neighbors in the Old City, but after they confirmed that he lived there, dismissed their claims by stating that they had "realized we were NII investigators." When W.Q.'s sister insisted that her brother lived with her, the investigators wrote in the report: "the woman with whom we conversed refused to admit that the claimant lived in Beit Jala." Approximately two months later, the investigators returned and staked out the house in Beit Jala during the evening and night hours, as well as in the very early morning. The house was still closed and abandoned. Their conclusions were that "the claimant is well briefed and it seems that he is taking care to remain within the borders of Jerusalem until his claim is decided. We propose freezing processing of the file for a longer period, so that the claimant's suspicions abate and we will be able to catch him at his home, outside the area." In 2010, W.Q. died, and the claim became obsolete. **(Case 63701)**



Residency in the Occupied Palestinian Territories⁴⁸

In 2008, HaMoked achieved a breakthrough in the realm of West Bank residency, which solved the residency issues of many of those who applied to the organization for assistance. This could be seen in the number of applications to HaMoked from 2008-2010: at the beginning of 2008, 155 cases dealing with West Bank or Gaza Strip residency were in processing. From 2008-2010, only four additional cases were opened. Alongside processing of the new cases, intensive work continued on existing cases, including at the theoretical legal level (“petitions on issues of principle”). At the end of 2010, six cases were still being processed by HaMoked. This stated, the solutions reached during this period are temporary and partial; the human rights abuses in this realm are still severe and require additional interventions on the part of HaMoked.

Family Unification

In today's world, normal social life cannot be maintained for long without arrivals of visitors from abroad and the possibility of immigration to the country. This applies particularly (though not exclusively) to immigration that results from kinship. The right to family life is one of the basic human rights, and the Israeli Court has recognized that this right includes a person's right to establish a family in his country with his foreign spouse and with their shared children, as well as the right of his family to have legal status in Israel.

In the context of the Israeli-Palestinian conflict, the general right to family unification has special aspects. The majority of the Palestinian people – more than half – are in the diaspora. The ongoing social relationships – sometimes

⁴⁸ Referring to all of the Occupied Palestinian Territories, with the exception of East Jerusalem.

between members of the same family or the same village – give rise to new marital relationships. This is compounded by Israeli policy, which, for many years, suppressed the development of the Palestinian economy and society, and encouraged residents of the Occupied Palestinian Territories (OPT) to travel abroad to study and make a living. Naturally, many of those who travelled abroad married residents of the countries where they studied or worked. Israel's conduct indicates that it considers these ties desirable as long as they encourage emigration of Palestinians from the OPT, but the immigration of the spouse into the OPT is viewed as a "demographic threat" and an actualization of the right of return, through the back door.

Over the years, Israel allowed non-OPT residents to enter the OPT as visitors via visitor permits, mostly during the summer months. During 1999 and 2000, the number of visitor permits issued reached over 60,000 per annum. The policy regarding permanent immigration to the OPT was stricter, but despite this, during the first half of the 1990s, following a long series of petitions submitted to the High Court of Justice (HCJ) by HaMoked, a policy that recognizes the right of OPT residents to family unification with their spouses was put in place, albeit within limited annual quotas. And yet, since October 2000, Israel has blocked both the possibility of entering the OPT with visitor permits and the possibility of settling in them legally and receiving residency status. Applications that were pending at the time were frozen, and applications that were approved could not be actualized. A person caught in the OPT without legal status that is recognized by the military administration (status that, as mentioned, cannot be obtained) – is deported. A person's best chance of entering the OPT is through a visa to enter Israel, which also grants the holder the privilege of entering the OPT. Otherwise, entry to the OPT is all but impossible. Israel has tried many times to block or limit this avenue as well, but these attempts have thus far been curtailed through the combined efforts of citizens from Western countries living in the OPT by virtue of Israeli visas, who recruited the support of their home countries to help in the matter.

Since 2000, HaMoked has been trying to chip away at the freeze that has been put on processing family unification applications, and in some individual cases, it has even succeeded in bringing about exceptions in the issuance of visitor permits. A legal victory was achieved in 2005, when Israel agreed, following petitions submitted by HaMoked, to approve requests for

entry into the OPT submitted on behalf of children (up to age 16) of OPT residents, so that they could enter and realize their right to be registered as residents.

In 2006, HaMoked began a wide-reaching attempt to breach the frozen wall. In July of that year, HaMoked, together with B'Tselem, published a comprehensive report on the Israeli freeze policy.⁴⁹ At the same time, HaMoked collected information on families that were negatively affected by this policy. All of the cases involved residents of the OPT married to foreign nationals who had been living in the OPT for many years; in all of the cases, due to the freeze policy, these families lived under siege, since the foreign spouse was living in the OPT under the constant threat of deportation. The foreign spouse was unable to visit his or her country of origin, even in cases of family emergency, since anyone who leaves is unable to return. In all of these cases, the family had not even one proper channel through which it was possible to formalize the status of the foreign spouse.

In April 2007, HaMoked began submitting HCJ petitions regarding these families. By September of that year, 47 petitions had been submitted, and in each, HaMoked asked for a solution for the individual problem, as well as a general remedy whereby an official channel would be established, enabling foreign spouses of OPT residents to enter the OPT and settle there. In these petitions, HaMoked relied on the HCJ ruling on the Citizenship and Entry into Israel Law (Temporary Order) which prevents family unification in Israel between residents of Israel and residents of the OPT. The HCJ refused to repeal the Law, but it did stipulate that the right to family life is part of the constitutional right to dignity and that this right also includes the right to establish a family in one's country of nationality with a foreign spouse.⁵⁰ In the case of the Citizenship and Entry into Israel Law (Temporary Order), the HCJ determined that a statute passed by the Knesset and security reasons trump this right. HaMoked claimed that the freeze policy in the OPT was not enshrined in statute and could not be justified on security grounds, since those being denied status in the OPT as a result of the policy could have received status in Israel, in principle, had they been married to Israeli citizens. HaMoked claimed that the freeze policy stemmed from political

49 HaMoked and B'Tselem, **Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories** (July 2006).

50 HCJ 7052/03 **Adalah v. Minister of Interior** (2007).

considerations that had no place in administrative decisions that relate to human rights, particularly in the OPT, since according to the court ruling, such considerations are invalid and extraneous. According to international law, the military government in an occupied territory must ensure that the life of the population proceeds as it should, meaning, among other things, respect for the right to family life and the provision of a proper channel for processing applications to enter and take up residence in the area. Evading this obligation due to the political considerations of the Israeli government is unacceptable.

Four of the petitions were scheduled for a hearing; the petitioners in these cases were joined by eight human rights organizations in addition to HaMoked. In the first hearing, held in September 2007, the justices sided with the petitioners' arguments regarding the need to resume processing family unification applications. At the end of January 2008, the State notified the Court of its decision to approve 12,000 family unification applications as a political gesture to the Abu Mazen government as part of the political negotiations. In October 2008, just before the hearings of the petitions, the State announced that it was increasing the quota to 50,000. The applications of all the families on whose behalf HaMoked had petitioned the HCJ were approved as part of quota. Although, in the hearing, HaMoked's lawyers insisted that the petitions raised a theoretical question and touched on general remedies, and that the "gesture" actually provided proof that the entire policy was motivated by invalid political considerations, the justices preferred to avoid the need to rule on the matter, and ordered the petitions be struck, as they had become moot once the matter of the petitioners themselves was resolved.

According to HaMoked's data, approximately 35,000 people in the OPT actually received status as part of the "gestures" extended to Abu Mazen; approximately 23,000 in the West Bank and some 12,000 in the Gaza Strip. Most of the individuals who received status were spouses of OPT residents who had been illegally present in the OPT. Apparently, no more than 1,000 spouses were permitted to enter the OPT from abroad when the quota was implemented. At a certain stage, Israel explicitly announced that the "gesture" was intended solely for those already present in the OPT. In addition to spouses of residents of the OPT, a few thousand other statusless individuals

also received status in the framework of the quota, most of whom were born in the OPT or entered them as children but were never entered into the population registry.



The M. couple met in Russia in the 1990s. R.M., a Palestinian from the city of 'Anabta, studied architecture there. A.M., a Russian citizen, studied dentistry. In 1994, they were married in Russia, and had their first son in the country. In 1998, upon completing their studies, the couple – now an architect and a dentist – moved to the OPT. R.M. found work with a construction company in Nablus, and Dr. A.M., in a dental clinic in the city. The couple has three children, who are receiving their schooling in Nablus. For several years, Dr. A.M. lived illegally in the OPT, and was under threat of arrest and deportation. A visit to her widowed father in Russia was out of the question: in light of Israel's freeze policy, were A.M. to exit the OPT, she would not have been able to re-enter and would have had to separate from her spouse and children. The family's petition was the last in the series of petitions submitted by HaMoked in 2007 against Israel's freeze policy.⁵¹ In April 2008, in the framework of Israel's quota allocation, A.M. received an OPT identity card. **(Case 51185)**



M.S., from the city of Zarqa in Jordan, married a resident of Yatta, a village in the West Bank, in 1989. She entered the OPT that same year, and has been living there ever since. According to the arrangement obtained during the first half of the 1990s following petitions HaMoked submitted to the HCJ, M.S. was eligible for permanent status in the OPT, but an error in the border-control system, which made it appear that she had left the OPT in 1991, stood in her way. While it did not impinge on her eligibility for status, it created bureaucratic difficulty. HaMoked began processing M.S.' case in 1999. Following HaMoked's request, the military government recognized her eligibility for status in the OPT, and in May 2000, the family-unification application that her spouse submitted for her was approved. At the same time, due to the same error in the border registration system, Israel prevented the Palestinian Authority (PA) from issuing an identity card for M.S. HaMoked's many requests to the military authorities and the State Attorney's Office did not help: the policy

51 HCJ 7663/07 **Mezid v. State of Israel**.

was implemented through “non-processing” and “non-response.” In January 2005, HaMoked was forced to submit a petition to the HCJ,⁵² but the petition, too, failed to bring about a solution to the problem. At that point, the State was retracting its granting of status for M.S., and abdicating its responsibility for the fact that no identity card had been issued. According to the State’s claim, it was the PA’s responsibility. And yet, did this mean that the PA was free to issue an identity card for M.S.? No! According to the State’s approach, approval of the family unification application is valid for a year from the date of receipt. Since M.S. did not obtain an identity card within a year of receiving the approval, it had expired and a new application had to be submitted – an application that would not be discussed due to Israel’s freeze policy. Later, the State indicated it would be willing to approve a new family unification application for M.S., on “humanitarian grounds,” should it receive one through the PA. The PA therefore sent the application, but Israel refused to admit it for processing, initially denying that it had been sent. The PA again sent the application, but it was again sent back, on the grounds that it had not been passed through the correct channel. In March 2007, when it finally became clear that the State would do everything in its power to deny M.S. permanent residency in the OPT, HaMoked requested that the petition be scheduled for a hearing. The hearing was scheduled for November 2008, but meanwhile, the family unification approval quotas were announced, and in March 2009, after almost 20 years in the OPT, M.S. received an identity card. The petition, now superfluous, was struck. **(Case 13906)**

Although the approval quota solved residency issues for many individuals, the principle underlying the problem has remained: the OPT are still a closed area, off-limits to foreigners. The approvals for family unification were given almost exclusively in cases in which the foreign spouse was already present – illegally – in the OPT. While the approvals solved the residency issues of thousands of families, they also allowed the government to handle a large population of residents not registered in the government databases and whose deportation from the OPT was likely to arouse significant international difficulties. OPT residents whose spouses are abroad have remained without a solution, and their right to live as a family in their country is still denied.

52 HCJ 177/05 **Shreith v. Commander of the Military Forces in the West Bank** (2009).

Moreover, ad-hoc political gestures are not a substitute for a proper mechanism for processing applications for visiting and settling in the OPT. Such a mechanism should operate according to law and according to the principal of respect for human rights, rather than be based on the vagaries of transient policies. The family life of OPT residents continues to serve as a political bargaining chip.

Status Revocation and Deportation

Although the Oslo Accords transferred the realm of immigration to the OPT to the hands of the Palestinian Authority (though most of its decisions are still subject to Israeli approval), Israel continues to view these issues as falling within its exclusive jurisdiction. For example, in 2008, Israel unilaterally revoked the residency of individuals who had received it through the “gestures” to Abu Mazen. When these individuals petitioned the HCJ, the State told the Court that the residency had been given “erroneously” and “as a result of malfunctions.” According to accepted legal norms, an “error” on the part of an authority does not, in itself, justify overturning the decision. Yet, even if it decided to overturn the decision, this must be done in the same manner in which the decision was made in the first place. In other words, in the present case, just as residency is given by the Palestinian Authority with Israel’s approval, it must also be revoked by the Palestinian Authority at Israel’s request. When it comes to approving residency applications, Israel hides behind the PA: on the one hand, it claims that it is unable to approve the applications as long as it has not received them. On the other hand, it claims that it is unable to accept applications directly from residents because this would be an abrogation of the agreements with the PA, and at the same time, it refuses to accept applications from the PA. In contrast, when it comes to revoking status, the obligation towards the PA is forgotten and Israel acts unilaterally. In all of the petitions submitted to the HCJ on this issue, the Court accepted the position of the State.⁵³

Israel continues to retain the powers officially transferred to the Palestinian Authority in seeking to deport Palestinians residing in the OPT without legal status. Although this is clearly a civilian power, explicitly transferred to the PA under the Oslo Accords, the HCJ ruled in 2005 that Israel retains possession of

53 See, e.g., HCJ 7959/08 **Nasser v. Civil Administration of Judea and Samaria** (2008).

it.⁵⁴ Since, for some ten years, visitors have not been able to enter the OPT, the victims of deportation are all individuals who have lived there for a protracted period; most of them were born in the OPT, or entered them as children, but their status in the OPT was never formalized. Two of the reasons for this are the strict policy on family unification and military legislation, which until 1996 greatly limited the possibility of registering the children of residents.

Until 2009, Israel had no legal basis for deporting individuals who had been born and lived in the OPT for their entire lives, even if their status was never formalized. Deportation powers were vested by the Order regarding Prevention of Infiltration (1969),⁵⁵ which applied only to individuals who had entered the OPT illegally from Jordan, Syria, Egypt or Lebanon, as well as those who entered the OPT with visitor permits and did not leave after the permit expired. In 2009, Israel expanded the definition of “a person who has entered the Area illegally [...] or a person who is present in the Area and has no legal permit.”⁵⁶ The order now goes beyond this broad definition, and specifies that a person who does not have a certificate or permit issued by the military administration in the OPT or the authorities of the State of Israel that allow said person’s presence in the OPT, is presumed to be an infiltrator.⁵⁷

This broad definition could cast its net over every single person in the OPT. Ostensibly, it is intended to “rectify” the situation that existed earlier, which did not allow Israel to deport people who were born in the OPT but never obtained legal status there, or forcibly transfer to the Gaza Strip residents who live in the West Bank but are registered in Gaza in the population registry. There are tens of thousands of people whom Israel views as “illegally present” in the West Bank.⁵⁸ But, as per the new definition, there is another group of “infiltrators.” It includes all residents of Israel present in the OPT. The presence of Israelis in the OPT was made possible by a collective permit issued in 1970, but according to the conditions of the permit, settling in the OPT requires an individual permit from the military administration. In addition

54 HCJ 7607/05 **Abdallah (Hussein) v. Commander of IDF Forces in the West Bank** (2005).

55 Order regarding Prevention of Infiltration (Judea and Samaria) (No. 329) 5729-1969.

56 Order regarding Prevention of Infiltration (Amendment no. 2) (Judea and Samaria) (No. 1650), 5769-2009, Sect. 1b. Now: Sect. 299 of the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009.

57 Now, the provision is consolidated in Sect. 304 of the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria), (No. 1651), 5770-2009.

58 For additional details, see *infra*, pp. 90-100.

to the settlers who live in the OPT in contravention of the conditions of this permit (though it is difficult to imagine steps being taken against them under the order), the OPT is also home to Palestinian citizens of Israel and Palestinian residents of East Jerusalem. In practice, the definition can also extend to OPT residents who hold OPT identity cards: these identity cards do not explicitly state that they permit the holder's presence in the OPT, and in any case, today they are issued by the Palestinian Authority, and not by the Israeli military administration.

Settlers without Permits

Israel maintains that the West Bank is a closed military area and one's presence therein requires a permit from the military administration. This claim serves as the basis for forcibly removing Palestinians considered to be "lacking status" from the West Bank and even Palestinian residents of the OPT whose registered address is in the Gaza Strip.

What about Israelis? According to the law, Israelis (as well as foreign residents legally residing in Israel) are not permitted to enter the OPT. The exception to this prohibition is contained in the general permit issued by the military administration in 1970.⁵⁹ This permit allows Israelis to enter the OPT, but includes a series of important reservations; among other things, that an Israeli may not move his place of residence – permanent or temporary – to the OPT without an individual permit. Any stay exceeding 48 hours requires a special individual permit, entering and exiting the OPT during the evening and night require an individual permit, so does the erection of structures for purposes of staying in the OPT.

In July 2010, HaMoked requested information on this issue under the Freedom of Information Act. HaMoked requested figures on the number of individual permits given in keeping with these provisions, the number of applications for permits submitted, and the number of Israelis against whom removal or criminal proceedings were instigated due to presence in the OPT in contravention of the conditions of the general permit. After a series of attempts to ignore the request, the IDF Spokesperson sent a response: not a single individual permit was given. In other words, according to military law, all of the settlers in the OPT are illegal aliens. Needless to say, to the best of HaMoked's knowledge, to date, no steps have been taken against a single settler in response to the violation of the order's provision. **(Case 66029)**

59 General Entry Permit (No. 5) (Israeli and Foreign Residents) (Judea and Samaria), 5730-1970.

Alongside the significant expansion of the definition of “infiltrator,” in 2009 Israel stipulated a series of procedural provisions regarding the execution of the deportation orders. These directives were issued following repeated comments made by the Supreme Court that the State must establish a procedure for periodic judicial oversight of “custody,” i.e. individuals who are detained by virtue of deportation orders that have not yet been executed. Once a deportation order is issued it serves as a legal basis for placing the individual in question in detention with no time limit or judicial review.⁶⁰ The new directives make it possible to release a prisoner on bail and order the establishment of a committee of military judges to provide judicial review of detentions by virtue of deportation orders. However, a detailed examination of the directives indicates that this is a problematic arrangement in that on one hand, it enables expedited deportation without judicial review and on the other, protracted detention while offering no opportunity to use the duration of the detention as an argument for release.

In March 2010, HaMoked contacted the Military Commander of the OPT, and subsequently the Minister of Defense, requesting to delay the effective date of the new directives until they were reevaluated. The military rejected the requests, but appended to its response an interpretation of the new directives, which slightly mitigates their severity. For example, the military stated that the term “infiltrator” did not apply to individuals who were born in the OPT. At the same time, the military refused to amend the language of the Order itself so that it conforms to this interpretation. The sweeping definition of “infiltrator” is not pure chance. Even if Israel does not take advantage of this language in order to carry out mass deportations of residents of the OPT in the foreseeable future, the Order is highly problematic primarily because it enables such activities, now or in the future.

The change in the military legislation pertaining to the removal of “infiltrators” was made behind closed doors: legislation in the OPT is enacted by military officers. There are no public discussions or hearings, no parliamentary proceedings and matters are not brought to the residents of the OPT so that a decision can be made democratically. The new legislation was published in the official newspaper of the military administration (distributed to a very small readership), and according to the military’s claim, it was also posted

60 HCJ 2737/04 **Kefarneh v. Commander of the Gaza Strip**, decision of November 24, 2004; HCJ 7607/05 **Abdallah (Hussein) v. Commander of IDF Forces in the West Bank** (2005).

on the noticeboards of the military courts. The media and the public knew nothing about the reversal in the status of OPT residents until HaMoked exposed the matter.

Following exposure of the information, the directives made waves in Israel, among the Palestinian population, and around the world. On March 13, 2010, twenty-one Israeli and Palestinian human rights organizations issued a joint announcement expressing their opposition to Israel's illegal policy of transferring Palestinians and deporting them from the West Bank, a policy that was intensifying, as indicated by the amendment to the Order regarding Infiltration. The organizations called on the international community to take immediate concrete steps to ensure that Israel refrains from taking prohibited actions, i.e. deportation and forced transfer of civilians. The topic received extensive coverage in leading media outlets in dozens of countries around the world. In Israel, it received wide coverage in *Haaretz* newspaper, which devoted a front-page story to it on April 11, 2010, and an op-ed piece the following day. The two large daily papers in Israel – *Yedioth Ahronot* and *Maariv* – ignored the issue entirely.

The new order elicited outraged responses in the international political arena. The Palestinian Authority, headed by Abu Mazen, as well as the Hamas government, condemned the directives, as did Egypt and Jordan. Jordan even summoned the Israeli Ambassador in Amman for a reprimand meeting. The Arab League issued a strongly worded announcement. The South African government expressed its concern about the Order. On April 14, 2010, the matter was raised in a UN Security Council session, and in his report to the council, the Under-Secretary-General for Political Affairs expressed his concern regarding the Order. On April 19, 2010, the Special Rapporteur on Human Rights in the OPT warned that the amended order may be in violation of the Fourth Geneva Convention and the International Covenant on Civil and Political Rights.

HaMoked represents residents who have been imprisoned by Israel for many years under deportation orders that cannot be executed. These individuals are usually people whose "center-of-life" is in the OPT, which is where they were raised and where their families live. Deporting them means taking them away from their homeland. They find themselves between the hammer and the anvil: on the one hand, due to Palestinian and Jordanian political fear

of Israeli maneuvers that would include mass deportation of Palestinian residents from the West Bank to the Gaza Strip or Jordan, execution of the deportation orders is in any case impractical. On the other hand, as long as the deportation order is not carried out, Israel continues to hold candidates for deportation in prison, sometimes without telephone contact with the outside world, family visits, or hope for release.

HaMoked petitioned the HCJ regarding eight candidates for deportation who had been held in Israeli prisons for prolonged periods. In one of the petitions, HaMoked succeeded in bringing about the release of one of them. The other petitions were rejected after the military established the Committee for Judicial Review of Deportation Orders, which is tasked with examining whether or not to continue holding deportation candidates once every 60 days. Once the committee was established, the HCJ took the position that it was necessary to wait for its decision. At the time of writing, June 2011, the committee is in operation (without representation from HaMoked), but no results have yet been achieved. Among the issues the committee is considering are also questions regarding its own powers, its status, and the directives according to which it operates.



'A.M., a resident of the village of Tammun in the Jenin District, was born in Jordan in 1988. In 1995, his family moved to the West Bank. 'A.M. entered the West Bank on his mother's visitor permit. The family remained in the OPT after the permit expired. In December 2006, when he was a high school student, 'A.M. was arrested by Israel and given a one year prison sentence in a plea bargain. When he completed his prison sentence, an order was issued for his deportation from the OPT as an "infiltrator." Rather than being released from prison, he remained there under the deportation order, with no time limitation or judicial review. Since he had no foreign passport, the deportation order could not be executed. In 2008, there seemed to be a solution to his problem: his application for status was approved in the framework of the quota that Israel presented as a "gesture" to the Abu Mazen government. Shortly thereafter, Israel unilaterally revoked 'A.M.'s status on the argument that he had received it "in error," given security information that existed against him. The HCJ approved the status revocation.

On February 16, 2010, after 'A.M. had been in detention under a deportation

order for over two years, without any judicial review of the imprisonment, HaMoked submitted a petition to the HCJ.⁶¹ Following the petition, the State agreed to release 'A.M., subject to the deposit of a guarantee and various undertakings, without giving him status in the OPT and without cancelling his deportation order. In March 2010, 'A.M. returned to his home in Tammun. (Case 63655)

Separation of the Gaza Strip from the West Bank

At the beginning of 2008, HaMoked was processing 30 cases relating to human rights violations originating in Israel's separation policy, adopted with the goal of separating the Gaza Strip from the West Bank. During 2008, 29 additional cases on this topic were opened, 62 in 2009, and 91 in 2010. During these three years, 61 petitions relating to this issue were submitted to the HCJ, and one petition, pertaining to freedom of information in this context, was submitted to the District Court. In addition, HaMoked continued its work on two petitions submitted in 2007.

The Gaza Strip, the West Bank, and the Separation Policy

The West Bank and the Gaza strip are two areas within a single integral territorial unit. Together, they make up the part of historical Palestine which is intended, in keeping with guidelines set in international decisions, to serve as a territorial basis for realizing the Palestinian people's right to self determination. Despite the lack of territorial contiguity, the West Bank and Gaza Strip comprise a single unit from the economic, social, cultural, ethnic, political, administrative, legal, historical and numerous other perspectives. Family ties, political associations, the health and education systems (and more) – all cross the boundary lines between the West Bank and Gaza Strip.

All agreements signed by Israel and the Palestinian Authority enshrine the parties' commitment to the principle of the indivisibility of the OPT, which may not be undermined. This principle provided the basis for the HCJ ruling permitting the forcible transfer of Palestinians from the West Bank to areas

61 HCJ 1268/10 **Mahmoud v. Commander of the Military Forces in the West Bank** (2010).

within the Gaza Strip, since a forcible transfer within an occupied territory is permitted under international law within narrowly defined circumstances of security threats. In contrast, deportation outside of the territory, including to other occupied territories, is prohibited.⁶²

For many years, Israel has endeavored to split East Jerusalem off from the other parts of the OPT. In more recent years, Israel has adopted an additional policy intended to separate the Gaza Strip from the West Bank. This policy is intensifying, and Palestinians' ability to move between the two parts of the OPT has been all but eliminated. Moreover, today, Israel classifies Palestinians as "West Bankers" or "Gazans" according to their address in the population registry and considers them as two separate groups. An individual defined as a Gazan is not permitted to be present in the West Bank, and the consequence of violating the prohibition is arrest and removal to the Gaza Strip. Such individuals are treated as illegal aliens. Exceedingly narrow criteria have been determined for transitioning from the category of "Gazan" to that of a "West Banker," and the procedure is very similar to one of immigration.

Israel's separation policy has had severe consequences for the human rights of Palestinians in the OPT. First of all, the right of every person to move freely in his own country and to choose his place of residence as he wishes, is injured. Due to the deep connections between the two parts of the OPT, preventing movement between them impinges on the right of many Palestinians to family life, health, education, a livelihood, freedom of occupation, personal development, and participation in the social sphere. Thousands of people who suddenly discovered they were "illegal aliens" in their own homes are threatened daily with the loss of their personal freedom and being removed from their homes. HaMoked has been working on issues relating to the actualization of Palestinian human rights stemming from the lack of territorial contiguity between the West Bank and Gaza Strip for many years. However, Israel's policy, intended to cut the two parts of the OPT off from one another, has forced HaMoked to intensify this work in the years 2008 to 2010. This activity has led to a series of individual achievements, and perhaps slowed down the implementation of some of the measures Israel had begun using. At the same time, the theoretical questions relating to the separation policy still await judicial ruling.

62 HCJ 7015/02 'Ajuri v. Commander of IDF Forces in the West Bank (2002).

Movement from the Gaza Strip to the West Bank and Vice Versa

In countries where movement from one area to another requires transit through another country, international law requires the State being traversed to reach an arrangement that enables movement of people and goods through its territory. A close example is the arrangement that existed between Jordan and Israel until 1967 regarding passage to the Mt. Scopus enclave in Jerusalem. Likewise the Interim Agreement between Israel and the PLO stipulated mechanisms whose goal was to ensure free passage between the West Bank and Gaza. The main mechanism was the “safe passage” which enabled movement between two parts of the OPT in pre-determined paths, or, in certain circumstances, in secured shuttles. The main aspects of this arrangement were implemented only partially and only for a brief period. In November 2005, after Israel evacuated the military bases and settlements in the Gaza Strip, the parties reached an additional agreement, under international sponsorship, according to which freedom of movement between the areas would be ensured by secured shuttles. This arrangement was not implemented at all. According to existing Israeli policy, passage between the two parts of the OPT is possible only in “exceptional humanitarian cases.” Israel maintains the position that first-degree family ties do not qualify as exceptional humanitarian grounds, much less a person’s desire to study at a university in Nablus, establish a business in Hebron, attend a theater group meeting in Ramallah, or meet a childhood friend in Rafah. Moreover, all cases processed by HaMoked in recent years involve extreme humanitarian need and often tragic circumstances, but even they are met with bureaucratic apathy. The State authorities, including the court system, tend to reject the requests on the claim that “they do not meet the criteria.”



T.M., born in Nablus, lives with her husband and children in the Gaza Strip. In June 2009, her brother was injured in an accident in Nablus, and hospitalized in critical condition, suffering from fractures to the skull and brain damage. After a week-and-a-half, the brother was sent home for rehabilitation, but his condition was still serious. Two requests submitted by T.M. to travel to Nablus to visit her brother received no answer from the Israeli side, even after HaMoked’s intervention. On July 15, 2009, HaMoked submitted a petition to the HCJ. In the hearing, which took place on July 30, 2009, the State claimed that the matter was not an

exceptional humanitarian case that justified a departure from the overall policy, under which Palestinians are prohibited from traveling between the West Bank and the Gaza Strip. The State claimed that since the injured brother had relatives in Nablus, T.M.'s presence was not required in order to nurse him and, therefore, this was "merely a family visit." The petition, the State argued, "did not show cause necessitating the petitioners' presence in Nablus." The HCJ accepted the State's claim, and rejected the petition.⁶³ (Case 61563)



L.R., from Tulkarm, married and established her family in the Gaza Strip. In September of 2008, her 62-year-old mother was hospitalized in Tulkarm. The mother's situation was defined as critical, and she was put on a respirator. L.R. contacted the Palestinian Civil Affairs Committee to request entry into the West Bank in order to visit her mother on her deathbed, but received no response. Approximately two weeks later, L.R.'s mother passed away, and she again contacted the committee with a new request to attend the funeral and visit the mourners' tent. This request also went unanswered. At this stage, L.R. contacted HaMoked. HaMoked submitted a request on her behalf to the military authorities, but was told that L.R. had to approach the Palestinian Civil Affairs Committee in Gaza, which the military viewed as the sole mediating agent between Palestinian civilians and the military authorities. Since two requests had already been submitted through the committee, HaMoked had no recourse but to petition the HCJ.⁶⁴ Following the petition, HaMoked learned that after L.R.'s submitted her second request, attaching her mother's death certificate, the first request was marked as irrelevant and the military stopped processing it without informing anyone of its decision. Processing of the second request continued past the date of the funeral, and therefore it, too, was stopped and the request was marked as irrelevant without any notification. However, the State indicated it was willing to accept a third request that would relate to the updated circumstances, but only if it was transferred through the Palestinian Civil Affairs Committee. The State even pledged to expedite processing. Submission of the request to the Palestinian Civil Affairs Committee was delayed for almost one month, due

63 HCJ 5829/09 **Mansour v. Military Commander of the West Bank** (2009).

64 HCJ 9258/08 **Reisha v. Military Commander of the West Bank** (2009).

to the complete refusal of the Israeli side at the time to accept requests. It took the State several more months to notify, via telephone, that the request would not be processed since L.R. was still registered in Tulkarm, and therefore she should have submitted the request in the first place through the Tulkarm DCO! To add insult to injury, HaMoked found out that just before the hearing of the petition, L.R.'s husband received a phone call from a man who presented himself as an employee of the Israeli military at Erez Crossing, ostensibly calling as part of processing of the request (which, in any case, had already been refused), and asking him questions that sounded like an attempt to induce him to collaborate with the Israeli military. In light of all this, the HCJ justices ordered HaMoked to submit an amended petition that related to all the developments that had taken place since the original petition was submitted. At the end of July 2009, following submission of the amended petition, Israel finally approved L.R.'s visit to Tulkarm. Ten months after her mother passed away, L.R. managed to meet her relatives and visit her mother's grave. **(Case 38293)**

Palestinians who have close family both in the West Bank and in the Gaza Strip are in a particularly difficult predicament. As stated, according to Israel's current policy, family ties *per se* are not sufficient cause for allowing passage between the West Bank and Gaza Strip. Those whose registered address is in the West Bank find themselves (one way or the other) cut off from their nuclear families in Gaza. When they ask to join them, they are often required to sign varying versions of guarantees or other documents by which they effectively relinquish their right to move between the two parts of the OPT.

F.A., from a Jericho family, has lived in the Gaza Strip since the 1990s, with her husband and children. In the past, the couple occasionally visited F.A.'s family in Jericho, but at present, Israel's separation policy does not allow for this. In 2005, F.A. succeeded in reaching Jericho for what was meant to be a brief visit, but it lasted for some five months due to difficulties in her obtaining a permit to return to Gaza. In the summer of 2007, when her father was hospitalized, F.A. received an additional permit that enabled her to come with her children to Jericho. Her husband remained in Gaza, and a year later, he was injured in an accident. F.A. submitted a request via HaMoked to return to Gaza, and HaMoked received a reply from the

military administration stating that the request would be approved only if F.A. reworded it as a request to settle in Gaza permanently. At the same time, the military administration, through the Palestinian DCO, sent F.A. a letter stating that her request would be approved if she pledged never again to return to the West Bank. Under duress, F.A. signed the pledge and returned with her children to Gaza. **(Case 56457)**

HaMoked has repeatedly encountered cases in which Palestinians' requests to enter the Gaza Strip are rejected only because the applicants' request or past conduct imply that they are indeed interested in settling in the Gaza Strip, but also intend to visit the West Bank occasionally, or return there some time in the future. Israel's policy is strict and unflinching: passage is not allowed unless the applicant intends to settle in Gaza fully without any intent of returning to the West Bank, either for visits or as a result of changing circumstances. Israel presents this approach as giving Palestinians free choice: move to Gaza if you prefer, or stay in the West Bank if you prefer. In practice, it is a cruel manipulation in order to force people to relocate. HaMoked tried to challenge this policy, but the Court preferred to avoid discussing it.



S.Q., a resident of Qalqiliya was married in 2002 to B.Q., who is originally from the Gaza Strip but moved with his family to Qalqiliya in the late 1990s. Two years after the wedding, the couple had a son. An additional year passed, and the family's shared life was severed: in 2005, B.Q. was caught in Israel without a permit. Since his registered address was still in Gaza, he was not released to the West Bank, but removed to the Gaza Strip. His attempts to receive a permit to return home were in vain. S.Q. succeeded in visiting him in the Gaza Strip once, but her subsequent requests were refused, one after another. The fact that B.Q. fell ill and was awaiting a kidney transplant did not change the authorities' attitude. In March 2008, S.Q. received an additional document from the Israeli authorities reiterating the refusal: a document entitled Refusal Report, decorated with two flowers and an illustration of Snoopy. The document stated that the request would not be approved, but that "a single-use one-way permit to Gaza could be approved, should she decide to remain and live with her husband in Gaza. To this end, she must change her address to Gaza and/or present a Palestinian guarantee that she wishes to return to Gaza, live there, and not return to Judea and Samaria."

HaMoked petitioned the HCJ regarding S.Q.'s matter as well as the general issue of pressuring Palestinians to relocate to Gaza, among other things by making visits to the Gaza Strip subject to a pledge not to return to the West Bank. S.Q.'s case was resolved following submission of the petition: the State decided to approve the request as an exceptional humanitarian matter based on her husband's serious medical condition, which justified, according to the State, a short-term visit without relocation. In August 2008 – and not without a series of delays – S.Q. and her four-year-old son succeeded in entering the Gaza Strip in order to visit the father and husband. The matter of principle underlying the petition remained pending⁶⁵

In July 2010, HaMoked submitted to the Court the expert opinion of Dr. Yutaka Arai, senior lecturer in international law at Kent University in England. Dr. Arai analyzed Israel's policy and pointed out that it could be reasonably claimed that the forcible transfer of a civilian within occupied territories amounted to a war crime. The International Criminal Tribunal for the Former Yugoslavia found that the prohibition on forcible transfers was not limited to transfer through direct application of physical force (such as arresting individuals and loading them onto trucks), but applied also to indirect transfer through creating circumstances that force people to abandon their homes, ostensibly by choice, but without truly exercising free will.

Since S.Q.'s case was resolved, as were the cases of other Palestinians who petitioned the Court regarding this matter, the HCJ opted not to grapple with the heart of the matter, and rejected the petition on the grounds that it was theoretical. **(Case 55519)**

The opening of Rafah Crossing following the Gaza flotilla affair has eased the problem of passage between the West Bank and the Gaza Strip, and vice versa: Palestinians registered in the West Bank are able to use Allenby Bridge Border Crossing; They can leave the West Bank through this crossing; travel through Jordan and Egypt and enter the Gaza Strip through Rafah crossing, and return to the West Bank the same way. However, not only is it a long, complicated and costly journey, but Israel places limitations on this option as well. Palestinians registered in the Gaza Strip cannot enter the West Bank

65 HCJ 6579/08 **Qablan v. Commander of the Military Forces in the OPT** (2010).

in this manner. Israel will prevent their entry through Allenby Bridge Border Crossing. Palestinians registered in the West Bank who reach the Gaza Strip via this route cannot return through Erez Crossing and Israel, and must return through the same circuitous path by which they came to Gaza. Lastly, during most of the period covered by this report, 2008-2010, Rafah Crossing was not open.



M.A., a resident of Jericho, wanted to get engaged to his cousin who lived in the Gaza Strip. In the summer of 2008, M.A. set out for the Gaza Strip through Jordan, Egypt, and Rafah Crossing. The engagement plan did not materialize, and at the end of the visit, M.A. asked to return to Jericho, but Rafah Crossing was closed. He submitted a request to return to Jericho through Erez Crossing, but received no response. The repeated requests submitted by M.A. and HaMoked also went unanswered. After nine months without an answer, HaMoked petitioned the HCJ. In the response, submitted one year after the initial request was made, the State said that M.A. must leave the Gaza Strip the same way he entered it: through Rafah Crossing (which was still closed). The HCJ dismissed the petition without prejudice, reserving M.A.'s right to seek remedy from the Court should travel through Rafah Crossing remain impossible for a prolonged period of time. The Court also imposed legal costs on the State, since it failed to respond to the requests within a reasonable time, and did so only following submission of the petition.⁶⁶ M.A. continued with his attempts to obtain approval to travel through Erez Crossing but was refused time and again. Palestinian Authority officials told him that the Israelis were refusing his requests as a sanction for having turned to the Court. In light of this, M.A. asked HaMoked to stop working on his case. (Case 59506)

Palestinians Removed to Gaza following the Church of the Nativity Events

In 2002, the siege on the Palestinians who barricaded themselves in the Church of the Nativity in Bethlehem ended with international mediation and guarantees, the full details of which were never publicized. As part of this arrangement, some of the individuals who had barricaded themselves were removed to destinations abroad, and some to the Gaza Strip. No time limit

66 HCJ 5768/09 **Al-Daks v. Military Commander of the West Bank** (2009).

was set for the removal of these individuals to the Gaza Strip, and in fact, the legal basis for preventing them from returning home is unclear. Their homes and families are in the West Bank, while they are ostensibly in temporary exile in the Gaza Strip, even though there is no projected date for their return home. In 2004, in the context of these special circumstances, HaMoked succeeded in bringing about an arrangement that would enable first-degree relatives from the West Bank to visit those removed to Gaza. The arrangement was endorsed in an Israeli Supreme Court judgment of that year⁶⁷ but in 2008, the State retracted its commitment to the arrangement, and the Court refused to intervene. According to the Court, the State's obligation remains in place theoretically, but it depends on the circumstances. Under the existing circumstances (which are ongoing), the State may prevent a woman and her children from visiting the spouse and father who was forcibly removed to Gaza – based on a general policy, and without a concrete security objection.⁶⁸ Therefore, these narrow rules applying to the entire population with respect to entry into the Gaza Strip apply also to those removed from the Church of the Nativity, and their relatives are not permitted to visit them. At the same time, while officially, the presence of the Church-of-the-Nativity deportees in Gaza Strip is temporary, their wives are permitted to join them if they declare they intend to settle there permanently and are aware that they will not be able to return to the West Bank except for visits, and these, too, only in the most exceptional of humanitarian cases.



The A.H.'s are residents of 'Ayda Refugee Camp near Bethlehem; they were married in 1999. In 2002, as part of the arrangement that brought an end to the siege on the Church of the Nativity, the father was removed to Gaza. Since then, the wife and the three children have split their time between the family home in the West Bank, and the father's home in the Gaza Strip. Sometimes, the mother and children reached Gaza through Jordan, Egypt, and Rafah Crossing; at other times, through Israel. On more than one occasion, HaMoked's assistance was necessary for arranging their passage to or from the Gaza Strip. For example, in 2009, an HCJ petition was necessary in order for the wife and children to travel from the Gaza Strip to the West Bank.⁶⁹ After several months in the West

67 HCJ 10677/04 **Al-'Abaiyat v. Commander of IDF Forces in the West Bank** (2004).

68 HCJ 5263/08 **Al-Harimi et al. v. Commander of the Military Forces in the Occupied Territories** (2009).

69 HCJ 3454/09 **Abu Hamidah v. Military Commander of the West Bank**.

Bank, the wife and children wished to return to the father in Gaza. In the response, they were informed that if the wife intended to settle in the Gaza Strip she would receive a permit, but if she was interested only in a temporary visit, the request would be denied. As a condition for receiving the permit, the wife was required to sign a declaration stating that she knew that according to the present policy, she would only be able to return to the West Bank in circumstances of an exceptional humanitarian nature. HaMoked petitioned the HCJ against this decision: while the woman was interested in entering the Gaza Strip for a prolonged period, there was a considerable difference between this and settling there and relinquishing her right to return to the West Bank, especially given that the husband was in Gaza temporarily and against his will. At the HCJ hearing, the State insisted on the clear distinction between a visit (even if it was for a period of years) that would not be allowed, and complete and permanent settlement in the Gaza Strip which would be allowed. HaMoked, for its part, argued that the family should not be required to choose between “all or nothing,” and that their request should be considered as presented: a request for long-term presence in the Gaza Strip, but without settling permanently. The Court adopted the State’s distinction, categorized the request as a visitation request, and rejected the petition.⁷⁰ Some three months after the ruling was handed down, the wife entered the Gaza Strip with her children through Rafah Crossing. (Case 34536)

“Without the HCJ and Without B’Tselem”

On September 13, 2009, the head of the Gaza District Coordination Office (DCO) announced that the administration would no longer accept requests from human rights organizations regarding entry of Palestinians from the Gaza Strip into Israel, including entry for the purpose of crossing through Israel to enter the West Bank. The head of the DCO announced that from now on, all requests had to be submitted only to the Palestinian Civil Affairs Committee, which is the liaison office in the Gaza Strip. The same was true for clarifications regarding requests that had already been submitted to the Palestinian Civil Affairs Committee, or appeals of requests that had been submitted to the committee and refused.

70 HCJ 1583/10 **Abu Hamidah v. Military Commander of the West Bank** (2010).

The Gaza DCO claimed that the submission of requests through the Palestinian Authority was mandated by the Oslo Accords, and according to procedures determined jointly by Israel and the Palestinian Authority. This claim is odd, since no such directive exists in the Accords. Moreover, under the directives regarding entry into Israel from foreign countries, in no case is an individual seeking to enter Israel required to contact the Israeli authorities through the authorities of his own country. In fact, as early as in September 2008, HaMoked applied to the Coordinator of Government Activities in the Territories (COGAT), under the Freedom of Information Act, requesting the operational protocols agreed upon on this matter between Israel and the PA. When the request was not answered, HaMoked petitioned the Court.⁷¹ As a result of the petition, it was relayed that the demand was indeed not anchored in the Accords or in any written procedures and rather, it was only a “practice regarding cooperation between one authority and another, which had been adopted by the parties ‘in the spirit of the Accords.’”

The ban the Gaza DCO had imposed on human rights organizations did not stem from its desire to preserve the honor of the Palestinian side. Working vis-à-vis the Palestinian Civil Affairs Committee is convenient for the military, since the committee operates according to Israel’s dictates. Thus, for example, instead of the Israeli DCO reviewing the applications and substantiating refusals, it declines to accept ones that do not meet a particularly narrow set of criteria from the Palestinian side in the first place, thus forcing the Palestinian side to screen the applications and refrain from transferring any of this sort. In addition, the applications transmitted by the Palestinian committee are less detailed than those submitted by human rights organizations, and are not followed through with legal action. Following a joint request submitted by human rights organizations to the State Attorney’s Office regarding the Gaza DCO ban, the State largely retracted its position and the Gaza DCO was required to provide the organizations with responses to applications that arrived via the Palestinian side, and in certain cases, review applications that were not transferred through this channel.

71 AP (T.A.) 2367/09 **HaMoked: Center for the Defence of the Individual v. Coordinator of Government Activities in the Territories** (Case 62356).

"The Settlement Procedure"

Israel's attitude toward individuals wishing to move from the West Bank to the Gaza Strip is the mirror image of its attitude toward Palestinians who wish to move from the Gaza Strip to the West Bank. While the condition for moving to the Gaza Strip is a pledge to settle permanently, Israel does everything in its power to prevent Palestinians living in the Gaza Strip from moving to the West Bank and settling there. Over the years, HaMoked has processed a number of requests by women residing in the Gaza Strip who sought to move to the West Bank in order to marry or join their spouses already living there. In two cases, following a petition to the HCJ, the State agreed to permit travel only for purposes of the wedding celebration, and subject to the deposit of a large monetary guarantee ensuring that immediately upon conclusion of the marriage ceremony, the women would leave their new husbands and return to the Gaza Strip.

In other cases, the requests were refused on the grounds that they did not meet the criteria stipulated by the State.



H.H., a young woman from Gaza, met N.A., a resident of the town of Surif in the West Bank, through friends. After a long-distance relationship conducted over the telephone and the Internet, they decided to get married. They signed a marriage contract (a representative signed the contract on N.A.'s behalf via power of attorney) and wanted to hold the wedding ceremony in Surif and make their home there. In December 2007, H.H. submitted a request, through the Palestinian Civil Affairs Committee, for a permit allowing her to travel to the West Bank. In light of Israel's refusal to accept such requests for processing, the committee did not relay the request to the Israeli side. The only requests admitted and processed at the time were ones regarding essential medical treatment or the death of a family member. In April 2008, HaMoked petitioned the HCJ on behalf of the couple.⁷² In response to the petition, the State notified it would agree to the petitioner's traveling to the West Bank, accompanied by both her parents only, and on condition that immediately after the wedding ceremony, the bride would separate from her new husband and return to the Gaza Strip. In order to ensure this, the State asked that a guarantee of ILS 20,000 be

72 HCJ 3592/08 **Hamidat v. Commander of the Military Forces in the West Bank.**

deposited, a sum that for most residents of the OPT lies in the realm of fantasy. This request, of course, is entirely unreasonable from a practical, humanistic, and theoretical standpoint. Israel may limit the movement of Palestinians through Israel, but it may not prevent Palestinians from living anywhere they wish inside the OPT.

In August 2008, while the petition was proceeding slowly, H.H. received an entry permit into Israel, since she required medical treatment at Al-Muqassed Hospital in Jerusalem. When the treatment was over, she went to Surif, where she met her fiancée for the first time, married him, and moved in with him. The petition was erased, but not before the State announced that in its view, H.H.'s presence in the West Bank was illegal and "in these circumstances, the respondents wish to make quite clear that it is their intention to take action toward removing the petitioner from Judea and Samaria." (Case 55223)

In 2008, as part of the hearing on H.H.'s matter, the HCJ ordered the State to provide it with a proper procedure regarding the criteria and modus operandi for processing the requests of Palestinian residents of the Gaza Strip seeking to move to the West Bank in order to reside with their spouses. In 2009, Israel issued a procedure stipulating that such requests would never meet the criteria for approving requests. The procedure stipulates three categories for approving requests by Gaza Strip residents to relocate to the West Bank: chronically-ill individuals whose situation requires nursing by a relative; orphans under the age of 16; and elderly persons over age 65 requiring nursing care. Even these individuals would not be eligible for moving if there was a relative of any degree in the Gaza Strip who could care for them. So, for example, a three-year-old child who lost a parent is not eligible to move in order to be cared for by the other parent who lives in the West Bank if there is a possibility that a distant relative in the Gaza Strip could care for him. To add insult to injury, the procedure stipulates a series of additional obstacles: the request will be refused in the case of a security prohibition, even if the information does not pertain to the person seeking to move, but to the resident who is already present in the West Bank; requests may be submitted only through the Executive Director of the Civil Affairs Ministry in the Palestinian Authority, who is also the Secretary General of the Fatah movement in the West Bank. If and when the request is approved, the applicant will only receive a temporary permit that needs to be renewed

regularly; the applicant's eligibility is reexamined every six months to a year. Only after seven years in this status, and if the applicant still meets all the criteria, can he submit a request to settle in the West Bank and change his registered address in the population registry. Ever since the procedure was issued, requests by Gaza Strip residents to join their spouses in the West Bank have been systematically refused. The refusals have related not only to requests to pass through Israeli territory – even those who succeeded in leaving Gaza through Rafah Crossing were not permitted to enter the West Bank from Jordan.



In March 2010, HaMoked, together with twelve other human rights organizations, submitted a petition which sought the revocation of the procedure stipulating “criteria” for the passage of residents from the Gaza Strip to the West Bank. The petition includes a review of the various legal arrangements that have been in place over the years of occupation with respect to passage between the West Bank and the Gaza Strip. The review demonstrates that although the arrangements for movement between the areas changed from time to time, Palestinians from Gaza were never forbidden from settling in the West Bank, and vice versa, and no special permit was ever required to this end. The procedure infringes on a series of recognized basic rights: the right to freedom of movement in one's own country; the right to family life, which the HCJ ruled includes the right to a family life in the country of residence, even if this means immigration of the foreign spouse to that place (and all the more so with respect to relocation by a resident of the same territory); and the right of helpless individuals to have their best interest considered by the authorities. In terms of the law of occupation, this protocol is a grave breach of the fabric of life of residents of the OPT, a violation that cannot be explained by security considerations, but only by a demographically motivated policy of splitting portions of the population off from one another and preventing the growth of the population in the West Bank. At the time of writing, the petition is still pending.⁷³ (Case 64709)

73 HCJ 2088/10 **HaMoked: Center for the Defence of the Individual v. Commander of the West Bank.**

Forcible Transfer

One of the cornerstones of the separation policy is the artificial division of the Palestinian population into “residents of the Gaza Strip” and “residents of the West Bank.” The military is attempting to turn these categories, which were previously purely geographic and administrative, into categories of personal status. In the past, being registered with a Gaza-Strip address was not significantly different from being registered in the Hebron or Nablus districts. The legal and administrative affairs of residents of each area were processed in different departments, but these were parallel and, for all practical purposes, almost identical. Residents could choose to live in any part of the OPT, subject to the limitations imposed on passage through Israel. Just as a person registered in Nablus did not require a permit in order to live in Jenin, so, too, a person registered in Rafah did not require a permit to live in Jenin. During the early years of the occupation, the Gaza Strip and the West Bank were declared closed military zones, but Palestinians were given a general permit to move between them. This permit did not include a prohibition on taking up residence, and as such, it was different from permits that enabled the entry of Palestinians into Israel, and the entry of Israelis into the OPT. Military legislation required residents who had changed their place of residence to retroactively notify the authorities of this, but there was no need for advance approval.

After the Oslo Accords, a new arrangement of the same spirit entered into effect. This arrangement stipulated various possibilities for movement between the two parts of the OPT, whether through individual permits for entry into Israel, or through a “safe-passage card,” which enabled movement within Israel along designated routes and during specified hours or via secured shuttles. This arrangement addressed only the manner in which travel between the two parts of the OPT was to take place and included no limitation on the duration of stay at the destination. Moreover, the Oslo Accords related to all residents of the OPT as a single population registered in a single population registry. The arrangement requiring the updating of addresses also remained in effect, with one difference: residents were now required to notify the Palestinian Authority, which was to update its population registry and notify Israel of the change.

According to Israel’s present policy, registration in the West Bank or the Gaza Strip is a type of citizenship. This means that movement between the two

parts of the OPT is perceived in terms of an immigration policy. Palestinians whose registered address is in Gaza but are residing in the West Bank are treated as if they were foreigners who are illegally present in the West Bank, unless they are in possession of a special visa. A person whose presence is defined as illegal can be arrested and deported as an infiltrator. This policy has been implemented gradually, through trial-and-error, with the associated legal justifications and legislative tools being introduced only after steps have been taken on the ground. The process has not yet been completed, and is likely to have fateful outcomes, both for the lives of hundreds of thousands of Palestinians, as well as for the future of the Palestinian people as a nation.

HaMoked has come across cases in the past in which Israel arrested Palestinians present in the West Bank and forcibly transferred them to the Gaza Strip because their registered address was in Gaza. Processing of these cases revealed how many “holes” there were in the State’s position. For example, despite the State’s claim that the presence of “Gaza residents” in the West Bank necessitated a permit from the beginning of the occupation until September 2007, no permit entitled “permit for a resident of Gaza allowing for one’s presence in the West Bank” was issued. With respect to the State’s reliance on the order defining the West Bank as a “closed military area,” in most cases, entry into the West Bank was carried out legally (for example, through the “safe passage”), and no specific order prohibited residents from the Gaza Strip from settling in the West Bank after arriving there.

On December 25, 2007, the military government, for the first time in over 40 years of existence, issued a new type of permit, entitled “Permit Allowing Presence in Judea and Samaria.” According to a letter from the spokesperson for the Coordinator of Government Activities in the Territories (COGAT), sent in response to a request submitted by HaMoked under the Freedom of Information Act, until May 2008, 68 permits of this type were issued for Palestinian residents whose registered address was in the Gaza Strip.⁷⁴ This same letter itemized the criteria for granting such a permit to a Palestinian who is registered in Gaza but residing in the West Bank. To obtain the permit, the following conditions had to be met: the applicant must have entered the West Bank prior to September 2000, and have stayed there consecutively since that time; he must be married to a resident registered in the West Bank,

74 Letter from Maj. Peter Lerner, Spokesman for the COGAT, to HaMoked, May 18, 2008.

with whom he has children, or, the spouse registered in the West Bank must have children who live with him; there must be no security or police objection. Even when all the conditions are met, the authorities reserve the right to exercise discretion, inter alia, based on “general security considerations,” i.e., considerations that do not pertain to the applicant himself. In addition, the granting of permits in exceptional humanitarian cases is possible, but family ties in and of themselves, as the letter emphasizes, do not qualify. According to the State’s estimations, the number of Palestinians living in the West Bank with registered addresses in the Gaza Strip is in the tens of thousands, and some 2,500 Palestinians who are registered as residents of the Gaza Strip were born in the West Bank.⁷⁵ It can be stated with near certainty that not many of them fall under the narrow criteria that make one eligible for a permit.

On October 13, 2009, the Order regarding Prevention of Infiltration (1969) was amended. Until that point, the order applied only to people who entered the OPT illegally from abroad or entered legally and remained after their visa expired. Under the amendment, a person “who is present in the Area and who has no legal permit” is also considered an “infiltrator.” The amendment also added a provision according to which a person is considered an infiltrator if he has no document or permit issued by the military government or by the State of Israel allowing his presence in the West Bank.⁷⁶ These provisions turn almost all residents of the OPT into alleged infiltrators with the threat of deportation hanging over their heads. At the same time, it seems that the catalyst for the amendment was the need for a legal infrastructure for handling residents who live in the West Bank but are registered in the Gaza Strip. These residents do not have special permits allowing their presence in their homes, for the simple reason that such permits did not exist until 2007. In correspondence between HaMoked and the military, the military stated its intention to apply the provisions of the order to this population.

According to official figures, Israel forcibly transferred 400 Palestinians to the Gaza Strip in 2004, and six in 2007; no data were provided for 2005 and 2006, but in 2008 and 2009, the number jumped to 48 and 32 respectively, and by

75 Letter from Col. Uri Mendes, Commander of the COGAT’s Coordination and Operations Directorate, to HaMoked, June 2, 2010.

76 See original Order *supra*, note 55; Amended Order, note 56. For additional information and HaMoked’s work to have the Order repealed, see: <http://hamoked.org/Document.aspx?dID=Updates1013>.

May 2010, five more were forcibly transferred.⁷⁷ To the best of HaMoked's understanding, these figures do not include Palestinians transferred to Gaza after serving a prison sentence or after being caught without a permit in Israel, as well as Palestinians who travelled to Gaza with a permit, based on the stipulated "criteria," but Israel refused their return to the West Bank.



A.S. was born in the Gaza Strip in 1975. After the Oslo Accords were signed and the Palestinian Authority was established, A.S. was drafted into the Palestinian Police, and in 1995, he was stationed in the West Bank. He arrived there by police shuttle traveling in full coordination with Israel. For 14 years, A.S. served as an officer with the Palestinian Police in Bethlehem. He married in 2002 and had three children. On Thursday, March 26, 2000 at 9:00 p.m., Israeli soldiers knocked on the door of his home in Beit Sahur and arrested him. A representative of the West Bank Military Legal Advisor's Office approved his forcible transfer to the Gaza Strip in the middle of the night. On Sunday, March 29, 2009, A.S.'s wife contacted HaMoked, asking for assistance in locating where he was being held. HaMoked found out that the military was planning to transfer him to Gaza, and immediately submitted an urgent petition to the HCJ requesting that the forcible transfer be prevented.⁷⁸ The Court issued an interim order preventing the "deportation," as the order explicitly stated. At the same time, the military issued a deportation order against A.S.: while A.S. was arrested on the claim that he had been illegally present in a closed military area (meaning the entire West Bank), in the order he was described as an "infiltrator." A.S. remained in detention by force of this order.

HaMoked claimed that a person cannot be removed from his home of 14 years merely on the basis of his registered address, and that there was no legislation prohibiting a Palestinian from the Gaza Strip from living in the West Bank. A.S. moved to the West Bank in full coordination with Israel, and the requirement that he possess a permit of the type Israel only began issuing twelve years after he had moved to the West Bank, was unlawful. HaMoked supported its position with the affidavit of the military officer who was involved in the deployment of the Palestinian Police in the West Bank in the 1990s, and even pointed out that in 2002, A.S. was arrested by Israel together with other Palestinian police officers, and released in the

⁷⁷ *Supra*, note 75.

⁷⁸ HCJ 2786/09 **Salem v. Military Commander of the West Bank**.

West Bank. As for defining A.S. as an “infiltrator,” HaMoked claimed that this contradicted the language of the Order regarding Infiltration, which applied only to people who entered the Area from the Arab countries listed therein. The deportation order was therefore illegal and A.S. should be released from detention. And yet, just a few months later, the military expanded the Order regarding Infiltration, such that it applied to any person present in the West Bank without a permit issued by Israel. This amendment makes any person in the West Bank a potential candidate for deportation. Alongside the legal claims regarding the overall need for a permit and regarding the application of the Order regarding Infiltration, the State’s response emphasized claims regarding security information against A.S. HaMoked responded that a distinction must be made between proceedings based on security grounds (such as criminal proceedings, or ones seeking assigned residence) and proceedings based on alleged illegal presence in the West Bank. In proceedings of the latter nature, the question is whether or not the presence is legal, and the security material is irrelevant.

The first hearing of the petition was scheduled for June 24, 2009. On the eve of the hearing, the State announced that at this stage it was retracting its intention to transfer A.S. to the Gaza Strip, and instead, it would charge him for the suspected security activity and would seek to hold him in custody until the end of the proceedings. The hearing was postponed, the deportation order was revoked, and criminal proceedings were initiated against A.S. The State pledged that the deportation issue would be only be raised towards the end of the criminal proceedings.

A.S. was accused of membership and activity in an unauthorized association, based on testimony regarding his alleged involvement in attempts to establish a “cell” in 2004-2005. The indictment did not clarify with which organization the cell was affiliated and did not attribute any activity to it. A.S. was also charged with illegal presence in the West Bank. On September 2, 2009, the Military Appeals Court decided that the charge of membership in a “cell” from 2004-2005, given that no activity was attributed to it, did not justify detention until the end of proceedings, and ordered that A.S. be released on parole under a bail of ILS 30,000. The State did not accept the ruling and attempted to overturn it by filing a series of motions. Among other things, it added gun possession to the indictment,

but the Court determined that the gun was not in working order and of a model that had been discontinued some 60 years earlier, and that this had no bearing on the extent of danger A.S. potentially posed or on his release on bail.

A.S.'s family struggled to raise the substantial amount of bail money. Only more than two months later, on November 15, 2009, after HaMoked assisted the family in raising money, was the sum collected and deposited with the military authorities. On the same day, and prior to his actual release, the military issued a new deportation order against A.S. On December 15, 2009, after the petition was heard, the Court issued an order nisi. One month later, rather than responding to this order, the State issued a cancellation of the deportation order. On January 20, 2010, A.S. was released to his home in Beit Sahur.

The Palestinian Authority updated A.S.'s address in the population registry, and at present, he is registered as a resident of Beit Sahur. In June 2010, HaMoked submitted a petition to the HCJ in which Israel was requested to update its copy of the registry in keeping with the change on the Palestinian side.⁷⁹ At the time of writing, June 2011, the petition is still pending. The first petition to prevent A.S.' forcible transfer to the Gaza Strip was erased. The criminal proceedings against A.S., which seem to be intended solely for the purpose of keeping him in custody while avoiding judicial review of his intended forcible transfer to Gaza, continue to proceed at a snail's pace. **(Case 60480)**

And yet, preventing deportation does not always require a petition to the HCJ.

S.H. lived in the past with his family and children in Beit Lahiya in the Gaza Strip. In 1997, S.H. moved to Tulkarm and began working in construction. Approximately one year later, his wife and children joined him. In 2006, S.H. was caught in Israel without a permit (not for the first time). After serving his prison sentence he was released, by court order to Tulkarm. In 2008 he was again arrested in Israel during an attempted break-in. When he was apprehended, he was beaten and one of his ribs was broken. While serving his prison term, S.H. and his family contacted HaMoked, and after HaMoked submitted a written request, the authorities allowed S.H. to be released to

⁷⁹ HCJ 4510/10 **Salem v. Military Commander of the West Bank.**

the West Bank subject to an undertaking not to enter Israel, get involved in terrorism, or have contacts with terrorist elements. He was also ordered to post a ILS 4,000 guarantee, to be returned after one year as long as he adhered to this undertaking. **(Case 66763)**

On many occasions, HaMoked's intervention was required after a resident had been physically removed to the Gaza Strip. In a number of cases, HaMoked succeeded in returning the resident to his home, but in others, it failed.



D.A. was born in Khan Yunis in 1991. When he was six years old, he moved with his parents and four siblings to the West Bank, first to towns in the South Hebron Mountain region, and then Hebron. After fourth grade, D.A. dropped out of school and began taking odd jobs around Hebron. In early 2009, he went to Rahat inside Israel, and began working there. Approximately two weeks later, he was arrested by the police and removed to the Gaza Strip. He found shelter at the home of his 70-year-old grandmother and began his attempts to return to his family in Hebron. Hamas members in the Gaza Strip harbored suspicions against him, and he was kidnapped, beaten and forced to hide out in various places, including demolished houses on the outskirts of Rafah. HaMoked petitioned the HCJ to have the State allow him to return home, but the State remained steadfast in its refusal.⁸⁰ In a hearing that took place in January 2010, the justices harshly criticized the deportation of a 17-year-old boy, on his own, to the Gaza Strip. Succumbing to the pressure of the justices, the State withdrew its opposition, emphasizing that the turnabout in its position was a result of the special circumstances of the case and the fact that D.A. was a minor at the time of his removal to Gaza. On January 10, 2010, D.A. returned to his home in Hebron. **(Case 61243)**



'A.F. was born in 1957 in Balata Refugee Camp near Nablus, to a family of Palestinian refugees from Jaffa. In 1967, the family became refugees for the second time, now on the east bank of the Jordan River. 'A.F. joined the PLO, and in 1996 he returned to the OPT as part of the Palestinian Authority. He initially went to the Gaza Strip, where he received

⁸⁰ HCJ 10520/09 **Abu 'Abed v. State of Israel.**

an identity card with a Gaza address, and three months later, he was stationed in the West Bank. In 1997, he married a resident of Nur Shams Refugee Camp near Tulkarm.

At the end of 2001, Israeli soldiers came to 'A.F.'s house and arrested him. Five days later, he was transferred to the Gaza Strip. In 2005, he managed to receive a permit that allowed him to return to his home in the West Bank. In March 2008, he retired from his job with the Palestinian security forces and in November, he moved with his family to a small house he had built on a plot of land given to them by his wife's family in Nur Shams Refugee Camp. Not more than a few weeks passed before 'A.F.' was arrested at a roadblock and again transferred to the Gaza Strip. HaMoked's requests to enable his return home went unanswered, and in January 2010, a petition was submitted to the HCJ.⁸¹ Following the petition, the State conceded that had 'A.F.' been arrested in the West Bank today, he would not have been removed to the Gaza Strip, since, according to present policy, Palestinians who have been present in the West Bank since before 2000 and against whom there is no security objection, are not removed to Gaza, even if they are registered as living in the Gaza Strip. At the same time, the State refused to enable 'A.F.'s return to his home and family. In a hearing held in June 2010, the HCJ refused to intervene at this stage, and determined that the hearing would continue after the ruling on the outstanding petitions of principle on this matter. (Case 58652)

In November 2009, in the framework of one of the petitions submitted by HaMoked against the removal of a Palestinian resident from the West Bank to the Gaza Strip solely because his registered address was in the Gaza Strip,⁸² the State announced it was easing the enforcement policy on the matter, such that anyone who entered the West Bank prior to 2000 and against whom no security objection existed, would not be removed to the Gaza Strip. A person who had been removed or was forced to remain in the Gaza Strip but who fulfilled these criteria would be permitted to return to the West Bank.

It turned out, however, that declarations are one thing, and reality, another. The military procedure regarding removal to the Gaza Strip, which HaMoked received following its request under the Freedom of Information Act, did not

81 HCJ 774/10 **Fahoum v. Military Commander of the West Bank**.

82 HCJ 6685/09 **Kahouji v. Military Commander of the West Bank** (Case 62296).

mention this policy. In one case, the State refused the request of a Palestinian to return to his home in the West Bank, even though he had moved there in 1996 and there was no security objection against him. The State maintained that while he would not have been removed today, at the time he was removed, there were other policies in place, and therefore, he would not benefit from the change in policy.⁸³ In another case, a person was removed to the Gaza Strip on the grounds that “the above named entered Judea and Samaria in 2000. According to the relevant guideline, Gaza residents who entered Judea and Samaria in the framework of the safe passage cannot be removed. And yet, the above named is a bachelor and has no family connections in Judea and Samaria.”⁸⁴ In another case, HaMoked received the decisions of officials in the Gaza DCO regarding the return of a Palestinian who had lived in the West Bank since 1999, but was forced to remain in the Gaza Strip after having entered by permit with his family in 2004, following the death of his father. HaMoked sought to have the family return to the West Bank based on the policy declared before the HCJ. The DCO permit center recommended that the request be approved “if the [statement regarding the] HCJ was true,” but the Legal Advisor of the DCO decided otherwise: “It is not clear why the request should be approved on an exceptional basis, since no special circumstances were presented. [I] recommend acting in keeping with the policy, while ensuring consistency and attention to the fact that approval of the request might constitute a precedent for the approval of other requests of families that are half Gazan and half West Bankers.”⁸⁵

On July 9, 2010, HaMoked contacted the director of the HCJ petitions department in the State Attorney’s Office to complain about the gap between the State’s declarations before the HCJ and their implementation in the field. At the time of writing, June 2011, no response has yet been received.

Forcible Transfer and the Office of the Legal Advisor for the West Bank

According to military procedure, the forcible transfer of a Palestinian resident from the West Bank to the Gaza Strip based on his address as it

83 See case description above, note 81 (Case 58652).

84 A petition on this matter is still pending because the State continues to oppose the petitioner’s return to the West Bank. See HCJ 391/10 **Abu Jazer v. Military Commander of the West Bank** (Case 62247).

85 Internal communications of the Gaza DCO Permit Center (Case 65163).

appears in the population registry requires a preliminary consultation with the Office of the Military Legal Advisor for the West Bank. This office is also HaMoked's first contact for inquiries in cases where there is concern that a person living in the West Bank is in the process of being forcibly transferred to the Gaza Strip.

The involvement of the West Bank Legal Advisor's Office in forcible transfers to Gaza has reached the point where the office is so committed to the task that it is willing to compromise its responsibility for maintaining the rule of law. For a certain period of time, whenever HaMoked made an inquiry regarding a candidate for forcible transfer, the transfer was delayed, whether to make time to examine the request, or to enable HaMoked to petition the HCJ. This practice was not exceptional: this was the case with respect to forcible transfers for security reasons, and, over the years, also with respect to deportations abroad, house demolitions, and other administrative sanctions. In 2009, the West Bank Legal Advisor's Office changed "the rules of the game": the military began making every effort to expedite the removals so that they are carried out before any court order stopping them is issued. So, for example, on October 22, 2009, the West Bank Legal Advisor's Office did not delay a forcible transfer from the West Bank to the Gaza Strip, even though HaMoked contacted the office well in advance. On October 28, 2009, the West Bank Legal Advisor's Office refused to delay an additional forcible transfer to the Gaza Strip, though a petition had been submitted to the HCJ, and the motion for an interim order to delay the transfer was already on the duty justice's desk. In this case, the attempt to preempt the court order did not succeed, and the order preventing the transfer was issued before the military had a chance to force the petitioner through Erez Crossing.⁸⁶ On December 21, 2009, the Deputy West Bank Legal Advisor officially announced that the West Bank Legal Advisor's Office would not delay forcible transfers to the Gaza Strip under any circumstances, unless a binding court order has been issued. The amendments entered into the military legislation in the OPT in all that pertains to the deportation of "infiltrators" enable summary deportations in many cases,⁸⁷ and in others, they enable deportation 72 hours after a deportation order is issued, with no judicial review: the military is

86 HCJ 8729/09 **Sawali v. West Bank Military Commander** (2010) (Case 63074).

87 The relevant provisions are now in Sects. 301 and 307 of the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009.

required to bring the deportation order for review by a judicial committee within eight days, but the deportation candidate's right to appeal to the committee earlier than that is not enshrined in the order.

Address Change from the Gaza Strip to the West Bank

As stated, according to Israel's position, a Palestinian who lives in the West Bank but whose registered address is in the Gaza Strip does so without a permit and must therefore be considered an "infiltrator" who is to be deported. The only way to formalize such an individual's status is through special permits allowing for presence in the West Bank, but the criteria for granting such permits, as we have seen, are very narrow.

From a legal standpoint, the State's position regarding this matter is unsound. The categories "resident of the Gaza Strip" and "resident of the West Bank" were never defined, and the way that Israel classifies Palestinians in the OPT as "West Bankers" and "Gazans" is based entirely on the address that appears on their identity card. The weakness of the State's position is twofold: First, there is no statutory provision that forbids a person from living at an address other than that appearing in the population registry. While the West Bank was declared a closed military area, so was each major city in the West Bank. If the significance of closing the West Bank is that a person whose address is in "Gaza" is an illegal alien in the West Bank even if he entered legally, what is the law regarding a resident of Hebron whose registered, out-of-date address, is in Bethlehem? The State determined that in this matter, every person in the OPT is considered by law to be an infiltrator if he does not have an Israeli issued-written permit authorizing his presence therein. Second, if the address listed in the identity card is the distinguishing criterion, the transition from one category to another must be in keeping with the laws that apply to changes of registered address, and these laws are those of the population registry. The registry does not establish rights, but rather, is intended to reflect reality. The Israeli Supreme Court has accordingly ruled over the years that population-registry officials may not consider the information provided to them for registration, unless it is visibly incorrect. In keeping with the aforesaid, and throughout the years of the occupation, changes of address in the population registry have taken place based on a notice submitted to the authorities by the resident. The resident is required to send the notice within 30 days after the actual change of address, and the authorities have

no discretion allowing them to deny the change of address, their task is simply to update the addresses in their records. After the address has been registered and appears in the population registry, it still does not determine the resident's status; it is only "prima facie evidence" regarding the actual place of residence, and can be contradicted.

In the Oslo Accords, administration of the OPT population registry was transferred to the Palestinian Authority. Israel continues to hold a copy of the registry, but the binding registry is the Palestinian version. In order to ensure that the Israeli registry remains updated, it was determined that the Palestinian Authority would inform Israel of every change, "including, inter alia, any change in the place of residence of any resident."⁸⁸ There is one single, joint registry for the West Bank and the Gaza Strip, and the term "resident" applies to all residents of the territory, without distinction. The Accords emphasize that the parties are committed to the integral character of the entire area, but since October 2000, Israel has been methodically breaching the provisions of both military law and the Oslo Accords on this matter. In the context of these breaches, Israel refuses to accept notices from the Palestinian Authority regarding address updates from the Gaza Strip to the West Bank made in the Palestinian registry and does not update its copy of the registry. Moreover, Israel has even registered children born in the West Bank with Gaza addresses, and not in the addresses listed in the notices of birth given by the Palestinian Authority. Finally, although the official registry is the Palestinian version, Israel recognizes only the registry entries in its own copy, and, therefore arrests people who, according to its registry copy, have a Gaza address, and forcibly transfers them to Gaza.

In 2010, HaMoked submitted ten petitions on behalf of Palestinians whose addresses were updated in the Palestinian population registry after they relocated from Gaza to the West Bank, in keeping with their actual place of residence. The petitions demand that the military authorities update their copy of the registry. The demand was made despite the fact that Israel's copy of the registry is not a binding database which is managed pursuant to the law, since in practice, the (intentional) errors in the copy of the registry are severely detrimental to the daily lives of OPT residents, to the point where they become prisoners in their own homes and candidates for deportation.

88 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995), Annex III, Art. 28.

Some of the petitions involved Palestinians who had been forcibly removed to the Gaza Strip, but were able to return to the West Bank thanks to previous petitions filed by HaMoked. Although Israel has agreed to let them return to the West Bank, and sometimes even pledged to allow their continued presence there, it refuses to update their registered addresses.

According to the Palestinian population registry, the Q. family is registered as living in the Gaza Strip. In 1999, the father of the household moved to the Jenin area, and later that year, his wife and five children joined him. The father found work, first in agriculture and later as a school guard, and the children, the youngest of whom was a year old when the family moved to Jenin, were enrolled in the local education system. In July 2005, the wife, together with the youngest son, set out to visit relatives in the Gaza Strip. For purposes of the visit, the wife and the son received a permit allowing their passage through Israel, but when she tried to return to her home and her other children, she encountered an impenetrable wall. HaMoked submitted a petition requesting that she be allowed to return, but the State opposed it, based on the claim that her presence in the West Bank was illegal, that she must not be allowed to return there, and that her husband and remaining children should leave their home and join her in the Gaza Strip. The petition was scheduled for a hearing, and following pressure on the part of the justices, the State changed its position. It was agreed that the wife would return to Jenin and the family would contact the Palestinian Authority in order to change their registered address. The ruling on questions of principle pertaining to the legality of the family's presence in the West Bank was deferred, by consent, to other cases.⁸⁹

In keeping with these agreements, the family contacted the Palestinian Authority, which updated the family's registered address to its actual address, and notified the Israeli side of the change, but the latter ignored the notice. Between 2006 and 2010, the Palestinian Authority sent no fewer than four updating notices regarding the family to the Israeli side, but to no avail. The last response from the State was that the procedure for notification of address changes was not relevant in cases of changes of address from the Gaza Strip to the West Bank, and that the correct procedure was an application under the "settlement procedure," which had not been submitted. This response completely contradicts the agreements

89 HCJ 396/06 **Qa'is v. Commander of the Military Forces in the West Bank.**

following which the first petition was erased and in the framework of which the family was asked to change its registered address. Moreover, the “settlement procedure” applies to people who have not yet moved from the Gaza Strip to the West Bank, and not to those who have already moved and have actually changed their address. In light of this response, HaMoked again petitioned the HCJ in the matter of the family.⁹⁰ At the time of writing, June 2011, the petition is still pending. However, with the State’s consent and in the framework of the petition, an interim order was issued, forbidding the deportation of the family to the Gaza Strip. **(Case 41267)**

In May 2010, HaMoked, together with 15 other Israeli and Palestinian human rights organizations, submitted a petition addressing the issues of principle relating to this matter.⁹¹ In the petition, the organizations attack the Israeli policy that prevents the updating of registered addresses of OPT residents who have moved from the Gaza Strip to the West Bank, and the policy whereby they are removed to the Gaza Strip based on their registered address. At the time of writing, the petition is still pending.

90 HCJ 5014/10 **Qa’is v. Military Commander of the West Bank.**

91 HCJ 4019/10 **HaMoked: Center for the Defence of the Individual v. Military Commander of the West Bank** (Case 65425).



Freedom of Movement

Internal Freedom of Movement

Until 2009, requests regarding freedom of movement within the West Bank were handled by HaMoked's emergency hotline. In 2009, after thorough preparation and as part of its ongoing work, HaMoked increased its efforts on this issue. In 2009, nine cases were opened in this category, all relating to restrictions on movement that result from the separation wall. In 2010, 52 cases were opened in this category, 44 related to the separation wall, and the others regarding movement restrictions elsewhere in the West Bank. During these years, HaMoked filed ten new petitions to the High Court of Justice (HCJ) concerning freedom of movement within the West Bank. Concomitant with processing individual requests, HaMoked continued with a case attacking the separation wall from a theoretical legal standpoint,⁹² and with an additional petition regarding the route of the wall in the area of 'Azzun.⁹³

The Separation Wall

The separation wall erected by Israel passes mainly through the Occupied Palestinian Territories (OPT). An expansive area, some 120,000 dunums (approx. 30,000 acres), according to the State's figures, is trapped between the Wall and the Green Line. The State calls this area "the seam zone," but it is an inseparable part of the West Bank, and has no more connection to Israel than any other part of the West Bank. In this area of the West Bank, Israel imposed a permit regime that HaMoked, in its petitions on the matter,

92 HCJ 9961/03 **HaMoked: Center for the Defence of the Individual v. Government of Israel et al.** (2011).

93 HCJ 2732/05 **Head of 'Azzun Municipal Council et al. v. State of Israel et al.** (2006).

compares to the system of pass laws that was a central part of the apartheid regime in South Africa. As part of the permit regime, Palestinian residents of the OPT are prevented from entering this closed area unless they possess special permits given (when they are given) only to those who can prove to the military authorities that they have a special need to enter it. In contrast, Israelis and tourists visiting Israel can leave Israel and enter this strip of the West Bank without limitation and without being required to show any connection or need to enter it.

The Separation Wall: the HCJ Petition

HaMoked's petition against the permit regime that is in effect in the area imprisoned between the separation wall and the Green Line has been pending since 2003.⁹⁴ The petition was initially directed against the erection of the wall itself, but after the HCJ gave the wall its stamp of approval in other cases, only the question of the regime in this area of the West Bank remained open.

In February 2007, the Court held a hearing on HaMoked's petition and on a similar petition submitted by the Association for Civil Rights in Israel (ACRI). The case was referred for ruling, but the ruling never came. In 2009, the Court requested an update from the parties regarding the implementation of the permit regime. Figures submitted by the State indicated that while the area in which the permit regime applies had grown, the number of permits to enter the area for agriculture needs had declined significantly. The number of permanent permits decreased over the years by 83%, and the overall number of permits for agricultural needs had declined by 59%. This latter figure relates to all permits for agricultural needs, including permits granted only for brief periods, particularly during the olive harvest.

These figures provide only a partial picture. In order to receive the complete picture, one must add the time it takes to get a permit, during which farmers who live in the area have no access to their lands. To this one must also add the narrow criteria and the complex bureaucracy involved in receiving permits; the limited hours during which the agricultural gates are open, the denial of passage by agricultural vehicles and trucks necessary for loading produce, the prevention of access to grazing grounds (since the shepherds do not have ownership over the land) – these are but some of the difficulties

⁹⁴ *Supra*, note 92.

that residents of this area encounter due to the restrictions imposed on movement into and out of the closed area.

The result of this permit regime is the destruction of agriculture in West Bank areas trapped beyond the wall. Some examples are presented in the notice submitted by ACRI to the HCJ, which relied, among other things, on UN figures. For example, out of dozens of agricultural structures and hothouses in the Falameya, Jayyus and Qalqiliya areas, only a few remain. In al-Jarushiya (Tulkarm District), 70% of the almond trees have withered because they were not tended, and in Far'un, citrus and guava trees spanning hundreds of dunums have died. In the enclave that annexes the settlement of Salit to Israel, 500 dunums (approx. 125 acres) of olive trees belonging to Palestinians went up in flame since firefighters were not permitted to cross the separation wall in order to extinguish the fire.

In October 2009, HaMoked filed a notice, in which it supported the arguments made by ACRI and emphasized that the harmful consequences of the permits regime are inherent in the method: it is impossible to hold hundreds of thousands of people under a bureaucratic and discriminatory permit regime, and at the same time, preserve their fabric of life. In addition, HaMoked emphasized the improper principle underlying the permit regime. The guiding principle of this regime is that approximately 2.3 million Palestinians living in the West Bank are not permitted to enter the section of the West Bank that has been trapped between the wall and the Green Line, with the exception of the few who prove a special need to military authorities, and who manage to get through the stringent bureaucratic procedures. In contrast, over seven million Israelis citizens as well as the three million tourists who visit Israel every year are permitted to enter this area, outside of Israel's borders, without limitation.

In April 2011, the Court rejected the petition (Case 28482).

The separation wall: Individual Interventions

In addition to the general petition, between 2008 and 2010, HaMoked processed individual cases of Palestinians requesting stay permits allowing their presence in the areas of the West Bank which have been cut off by the Wall. HaMoked's experience in this realm reveals how arbitrarily the State manages movement in these areas. Stay permits are to be granted

based on a document entitled “Standing Orders for the Seam Zone”⁹⁵ which contains 73 pages of rules, forms, tables and flow charts. The standing orders define no less than nine types of permits, and specify a separate procedure for receiving each one. For example, the document stipulates that prior to granting a permanent residency permit in the “seam zone,” military officials must “go into the field” to visit the resident’s house to look at tax payment receipts, children’s school report cards and “DCO maps.” The procedure specifies additional rules regarding how the request must be submitted and processed, the documents that must be attached, and the composition of the committee that is to discuss it; and since the permit is given for two years only, it also specifies the manner in which it can be extended. Rules, procedures and complex flow charts were also determined for permits for new residents in the “seam zone,” permits for business owners and traders, visit permits (for humanitarian purposes, such as a funeral or wedding), permits for students, permits for employees of international organizations and the Palestinian Authority, permits for medical staff, and so forth.

Permits for Agricultural Needs

One of the permits granted as part of the procedure contained in the standing orders is an “agricultural permit.” This permit is not granted to people who farm agricultural lands in the area cut-off by the Wall, but rather, to the individuals who own, lease or rent the lands. The permits are given based on Land Registry records, ownership papers, inheritance papers, rental agreements etc., which the military fastidiously examines. No permits are given for plots of half a dunum or less (which is often the case, at least in the formal registration, when the land is divided among many heirs).

An “agricultural permit” given to a single person defined as the owner of the land does not suit agricultural practices in most West Bank regions, where the land is farmed by family members working together. The registered owner is not necessarily the person best suited to do the actual agricultural work. According to the standing orders, family members who wish to farm their land are “employees in the seam zone” and a farmer may receive permits for them, based on a table that determines the number of workdays necessary in each agricultural branch. The military, which formulated the table, decided that in the case of deciduous trees, for example, 20 workdays

95 See “Standing Orders for the Seam Zone” of 2010 (in Hebrew), at: <http://www.hamoked.org.il/Document.aspx?dID=Documents1464>.

are necessary per year per dunum (quarter acre), all between the months of December and August. According to the military, from September to November, the farmer has no need to access the plot. Vineyards are allotted 17 days per year per dunum, between April and September. An additional month, February, is allowed for pruning. During the other months, the farmers have no access to their plots. This same method is used for determining the agricultural seasons and the number of workdays required for olive orchards, citrus groves, field crops and vegetables growing in open areas, and hothouse tomatoes and cucumbers.



Since 2002, the family of M.K., a resident of the village of Tura al-Gharbiya in the Jenin District, has leased two plots: a two-dunum olive grove and a five-dunum plot used for various crops. The separation wall erected on the northern border of the village closes off extensive areas of the West Bank, and effectively annexes to Israel the area where the settlements of Reihan, Shaqed, Hinnanit, and Tal Menashe were built. The family's plots remained north of the wall. Until 2009, M.K. and his parents received permits to cultivate their land regularly, but at the end of 2009, the military refused to renew the permits on the claim that the lands leased by the family were south of the wall. For nearly three months, the family remained without permits. Then, permits were granted only to M.K.'s father and mother. In response to HaMoked's query, an official from the District Coordination Office (DCO) explained that it was not the olive harvest season, and that M.K. would be given a permit for the olive harvest. However, M.K.'s labor was needed on the second plot leased by the family: as spring approached, the family wished to prepare the land for planting sesame, tobacco and tomatoes, and since this is hard physical labor, M.K.'s participation, together with his parents, was particularly essential. The attempts to change the position of the military establishment fell on deaf ears, and HaMoked petitioned the HCJ.⁹⁶

The Court joined proceedings in this petition with six additional petitions regarding denial of entry permits for agricultural needs in the areas split off by the Wall. The State's response to the petitions contained internal contradictions and absurd statements. For example, in one case, the State explained that the petitioner's permit had been confiscated but

96 HCJ 2574/10 **Kabha v. Military Commander of the West Bank.**

not invalidated, yet failed to explain what the petitioner was to do with a permit he did not possess. In another matter, the State claimed that the petitioner had been summoned to a hearing but did not appear, but this contradicted information provided by the State itself in the petition of principle regarding the permit regime, according to which, during that same year – 2008 – a total of eleven residents were summoned to a hearing in the same district, all of whom appeared. In M.K.'s case, the State claimed that he had not submitted an application for a permit, even though M.K. was in possession of the refusal form. Regarding the response given to HaMoked by telephone, the State claimed that it related to "a general status clarification, and not a concrete request."

When the petition was heard in April 2010, the Court refused to instruct the State to process M.K.'s case based on the existing material, and ordered him to submit a new request. "We are working on the assumption that [...] a response will be provided promptly." After a series of deferral letters, M.K. received a three-month permit in mid-May 2010. The permit expired in August and was not renewed. In an additional hearing on the petition, which took place on November 4, 2010, the State Attorney's Office pledged that a permit would be given within a week, but the State did not uphold this obligation "due to various technical difficulties," and a week later, on November 11, 2010, the State Attorney's Office told the Court that a permit would be issued "at the beginning of next week." Yet, the permit was only issued a month later, on December 12, 2010, after many telephone calls and after M.K. arrived repeatedly at the DCO in vain. The permit was valid until March 2011. (Case 64623)

Other petitioners were less fortunate.



The lands of the family of M.H., from the village of Jayyus were caught on the other side of the Wall. The family grows guavas, clementines, olives and almonds, as well as hothouse cucumbers and tomatoes. M.H. initially received entry permits to the farmland on a regular basis, but on January 14, 2010, his application was refused based on an Israeli Security Agency order. In April 2010, following a petition submitted by HaMoked,⁹⁷ the State announced that it was prepared to reconsider the matter favorably. M.H. was sent to submit a new application, but not

97 HCJ 2195/10 **Khaled v. Military Commander of the West Bank.**

only was the request refused – M.H. received no notification of the refusal. The State claimed that a hearing was scheduled for M.H after the refusal was issued. The procedure, however, requires the hearing be held before a refusal is issued and, in any case, M.H. himself was not summoned to the hearing. A new hearing was scheduled for August. This time, M.H. was summoned and the decision reached at the end of the hearing was to grant him a permit. However, instead of being given the permit, M.H. was instructed to submit a new application. On September 7, 2010, some 11 months after submission of the first application, the permit was issued. (Case 64168)

Residency Permits



When the separation wall was built, the village of Tura al-Gharbiya was also cut off from Khirbet ar R'adiya, a small rural community in the Jenin District that until then had been part of the same local authority. In 2009, R.Q., a resident of Tura al-Gharbiya, married a resident of Khirbet ar R'adiya. The couple wished to live in the wife's house in Khirbet ar R'adiya, among other reasons because her mother was sick and needed her daughter's help. The couple twice requested a permit for R.Q. so that he could live with his wife, and twice the applications were rejected on the grounds that R.Q. was not a permanent resident of the "seam zone." The military officer who rejected the applications later explained that they had been submitted as applications for a permit for a "permanent resident of the seam zone," rather than for a "new resident of the seam zone," which is why they were rejected. Meanwhile, R.Q. submitted a new application prepared by HaMoked, and this time, it was explicitly a "new resident" application. This application received no reply, and the same military officer made it clear that "It is not urgent. He isn't living on the street." HaMoked submitted a petition to the HCJ,⁹⁸ following which the State announced that R.Q. would be issued a permit for "personal needs," valid for a few months. While the military was in no hurry to carry out the State's commitment, after a few more meaningless back-and-forth requirements and rejections, R.Q. received the promised permit. This permit is only the first stage in the tortuous and protracted process necessary for receiving a permit for a "new resident of the seam zone." (Case 65164)

98 HCJ 6158/10 **Kabha v. Military Commander of the West Bank.**

This bureaucratic saga might explain the fact that, according to State statistics provided in the general petition, during the years 2007, 2008 and 2009, not a single permit was given to a new resident asking to live in the area of the West Bank beyond the separation wall.

The path to receiving a permit, which enables a person to move to the other side of the Wall, is almost entirely blocked. The path to losing a permit, on the other hand, is always open.

S.W., a 42-year-old Palestinian woman, married and the mother of five children, lives with her family in Khirbet Um a-Rihan. The village is located in the West Bank near the Green Line, in the Wadi Ara area. S.W. was recognized as a “permanent resident in the seam zone,” but this recognition entitled her only to permits which are valid for two years at a time. At the end of 2010, the military decided not to extend her permit. The military officer responsible for the matter accused her of not living in her house in Khirbet Um a-Rihan. S.W. affirmed that for a certain period she did not live at home for personal reasons that she preferred not to specify. The officer insisted and S.W. told him that she had quarreled with her husband. The officer, who apparently knew of the incident, asked: “What was it? He wanted to marry another woman?” S.W. affirmed that her husband’s intention to marry another woman was the reason for the quarrel. The conflict between S.W. and her husband had been resolved, but such was not the case for S.W.’s application for a permit to reside in her own home. At first, she was given short-term permits valid for the daytime hours only. After HaMoked’s intervention, she was given a permit for all hours, but it was valid for six months only. HaMoked demands that the regular permit be renewed, though it, too, is valid only for two years. **(Case 67480)**

Delays and Humiliation at the Separation-Wall Crossings

The existence of the permit in and of itself does not guarantee the holder delay-free passage at the permanent crossings through the separation wall.



R.Q., a resident of Barta'ash Sharqiya, considerably reduced travel outside his village of residence because of an experience he had at the Reihan Roadblock. Beginning in May 2010, R.Q. was detained at the roadblock for a period of 30 minutes to three hours each time he wanted

to pass through, whether in the morning on his way to work, or in the evening on his way home. In addition, R.Q. was required to strip down to his underwear, and when he was almost fully naked, he was forced to undergo a manual search. Following a petition submitted by HaMoked, the State explained that due to intelligence material pertaining to R.Q., each time he passed through the roadblock, personnel contacted security officials by phone to ask if a thorough search was necessary, and until the response was received, R.Q. had to be detained at the roadblock, and sometimes even subjected to an “individual search,” as the State called it. In a further notice, the State asserted that no exceptional search procedures would be applied and that he would be given a routine check, as is the practice for all those passing through the roadblock. And, indeed, the delays and the humiliating searches were discontinued.⁹⁹ (Case 65780)

Daily Tribulations Relating to the separation wall

Over the years that have gone by since Israel began building the separation wall, complaints relating to it have become the lion’s share of the complaints received by HaMoked’s emergency hotline. Among other things, the complaints involve delayed processing of permit applications, late opening of gates intended for passage of farmers, delays at roadblocks and crossings through the separation wall, and the refusal to let livestock, equipment and merchandise pass through.

In the northwest, the separation wall cuts into a wide swath of the West Bank, with the goal of effectively annexing the settlements of Hinnanit, Shaqed, Tal-Menashe and Reihan to Israeli territory. In the area between the northern side of the Wall and the Green Line there are agricultural lands, as well as a number of Palestinian communities, including Khirbet Umm ar Rihan, Dhaher al-Malih and Khirbet ar R’adiya. Passage through the separation wall to and from these communities takes place at Shaqed Gate (Gate 300). The gate is open from 7:00 a.m. to 10:00 a.m. and from 12:00 p.m. to 7:30 p.m. The incidents described below all occurred at this gate, and were all resolved through HaMoked’s emergency hotline.

On July 16, 2008, a Palestinian resident of Khirbet Umm ar Rihan arrived at the Shaqed Gate with 15 sheep that he wished to bring into the village.

99 HCJ 6156/10 **Kabha v. Military Commander of the West Bank.**

The soldiers refused to allow him to pass with the sheep on the claim that this should have been arranged in advance. HaMoked intervened through military officials, and just a few moments before the gate's closing, the military allowed the resident to pass through the gate with the sheep. **(E. 7653)**

On August 31, 2008, soldiers refused to allow a Palestinian to cross the roadblock at the Shaqed Gate on his way to Khirbet ar R'adiya with his donkey, which was carrying eight sacks of flour, on the claim that this constituted a commercial quantity that had to be pre-arranged, and that no more than two sacks could be brought in. Following HaMoked's intervention, passage was allowed for the donkey and all of the flour sacks. **(E. 7712)**

On November 27, 2008, the military detained 75 children, 6th-10th graders from Khirbet Umm ar Rihan at Shaqed Gate. The students were on their way to a book fair in Jenin. All the children who were detained are residents of the village and are permitted to pass through the roadblock. Following HaMoked's intervention, the students were allowed to continue on their way, but the military made clear that group crossings required advance coordination. **(E. 7772)**

On April 23, 2009, the funeral of a four-year-old child was held in Dhaher al-Malih. The Palestinians arranged in advance for the gate to be open during the funeral, but the mourners who arrived there found the gate closed. Following HaMoked's intervention, soldiers arrived and opened the gate. **(E. 7876)**

In June 2009, the emergency hotline received a complaint regarding the behavior of soldiers at the Shaqed Gate; among other things, the soldiers warned residents not to contact human rights organizations. HaMoked sent the complaint to military officials and organized a meeting between the head of the local council and the head of the DCO. Ultimately, the soldiers resumed routine conduct. **(E. 7911)**

On November 12, 2009, a resident of Khirbet Umm ar Rihan needed to bring a bulldozer through the Shaqed Gate for mechanical servicing in Jenin. He tried coordinating this with the DCO, but received no response. HaMoked contacted the military in an attempt to find out why no answer had been given. At first, military officials claimed that he would be required to submit a proper, written application, but ultimately, they made do with arranging the matter by telephone. After the arrangement was made, the resident arrived at the Shaqed Gate with the bulldozer, but the soldiers refused to let him through. Ultimately, the bulldozer went through, and two days later, after an additional arrangement was made, it returned to the village. (E. 7976)

On November 15, 2009, a funeral was held in Khirbet Umm ar Rihan, and HaMoked was asked to help in obtaining permits for people wanting to come to the village to attend it. After intervention by the emergency hotline, the requested permits were received, including permits for three people whose entry, the military originally claimed, was precluded by the Israel Security Agency. (E.7977)

On January 4, 2010, a Palestinian who passed through the Shaqed Gate complained that during the search of his car, soldiers dismantled mechanical components and failed to return them properly. He himself did not know how to reassemble them. Only an hour later, following HaMoked's intervention, did the soldiers reassemble the components they had dismantled. (E. 8045)

On June 20, 2010, soldiers prevented a physician from passing through Shaqed Gate to Khirbet Umm ar Rihan, although she had a medical-staff permit. HaMoked's inquiry revealed that the prohibition against her had a special name in military jargon: "unclosed circle," i.e., there was a record of her entry through the gate into the closed area, but no record of her exit. In the military's view, the immediate conclusion in such a case is that the person entered Israel without a permit. In practice, the "unclosed circle" ban is often imposed because of oversights in registration by soldiers at the

gate. Following HaMoked's intervention, the physician was called to the gate and allowed to pass through. The prohibition in the military databases was removed. (E.8248)

In many cases, requests to receive entry permits into the territories on the other side of the separation wall, particularly for agricultural purposes, "disappear," and the Israeli DCO claims it never received them in the first place. In other cases, it turns out that there is a security prohibition. According to the Standing Orders, in such a situation, the request must not be refused and the applicant must be summoned to a hearing committee. Indeed, on several occasions, with HaMoked's intervention, the resident was summoned to the committee and received a permit. Sometimes, the applicant is refused since he was caught in the past in Israel without a permit, and sometimes the request is delayed when it reaches the ISA examination stage. Sometimes the request is refused because it does not meet the criteria determined in the Standing Orders, for instance, when military calculations show that the applicant is a person whose share in the plot is less than half a dunum. Often, the role of the emergency hotline is to resolve problems arising from the system's inaccessibility or from the way it operates, such as when requests are lost, processed slowly, or are not given properly substantiated responses.

Roadblocks

Palestinians' ability to move around the West Bank is restricted, among other things, by countless checkpoints and roadblocks. According to B'Tselem's figures, in October 2010, there were 99 permanent roadblocks in the West Bank. According to figures collected by the UN Office for the Coordination of Humanitarian Affairs (OCHA), during each month between April 2009 and March 2010, there was an average of 310 flying checkpoints in the West Bank, while, as of May 2010, the number of physical barriers in the West Bank was 420. Moreover, according to B'Tselem's data, as of October 2010, 232 kilometers of roadway in the West Bank were allocated for exclusive or near-exclusive use by Israelis.

Between 2008 and 2010, HaMoked processed eight requests regarding removal of travel restrictions of this type, each disrupting the routine lives of many residents. As of the end of 2010, most of the cases were still pending. In one case, HaMoked's intervention brought about the removal of the obstruction.



For many years, the road leading from Kharbatha Bani Harith to the “Postal Junction” was blocked. The military placed concrete blocks there as well as a locked metal gate. The barrier stood in the way of residents of Kharbatha, Deir Qaddis and Ni’lin to Ramallah, the main city in the district. There were, of course, makeshift solutions: some travelled in taxis to the roadblock, crossed it on foot, and continued via taxis on the other side. Some travelled on makeshift and dangerous roads. Public buses and many private vehicles preferred traveling via a roundabout route that passed close to the Nili and Naaleh settlements, making the trip six times longer. The disruption to the daily life of the residents was extreme: the villages depend on the public institutions in Ramallah: government offices, health services, stores, and other service providers in the city. The city is also the source for provisions for the villages, and many of the residents work or study there. In addition, the roadblock greatly interfered with the ability of residents of the village of Ras Karkar, also in this area, to reach their lands east of it, and negatively impacted the social and family ties of residents of all the villages on both its sides.

Over the years, the issue of this roadblock often came up in discussions between Israeli and Palestinian authorities, but without result. HaMoked’s request of July 2010 also received no attention. In mid-October 2010, HaMoked submitted a petition to the HCJ.¹⁰⁰ One month later, Palestinian residents partially removed the roadblock, and the military chose not to replace it. On November 23, 2010, the military removed the metal gate that had been at the site, and moved the concrete blocks to the side of the road. The State notified HaMoked that it had no intention of putting a new roadblock at the site at that time, and claimed that the recommendation to remove it was issued in September 2010 after HaMoked’s request, but before the petition was submitted. (Case 64325)

Travel Abroad

The struggle over the attempts of the authorities to limit Palestinian travel abroad has been integral to HaMoked’s work since its inception. Cases on this issue sometimes remain in processing for many years, for example, when a person’s request to travel abroad is refused repeatedly, or when a person’s

¹⁰⁰ HCJ 7505/10 **Head of Kharbatha Bani Harith Council v. Military Commander of the West Bank.**

travel abroad is prohibited even though it has been permitted in the past. At the beginning of 2008, HaMoked was processing 247 cases regarding travel abroad: 202 cases of residents living in the West Bank, and 45 cases of residents living in the Gaza Strip. In 2008, 106 cases in this category were recorded (seven of them pertaining to Palestinians living in the Gaza Strip); in 2009, 121 cases (again, seven of them pertaining to Palestinians living in the Gaza Strip); and in 2010, 162 cases (21 relating to Gaza Strip residents).

HaMoked's work in this realm between 2008 and 2010, as in past years, yielded high success rates: 58%, 69% and 53% of the cases completed in 2008, 2009 and 2010 respectively. However, these success rates reflect a dire reality in which the authorities impose indiscriminate and arbitrary travel prohibitions. Many of these prohibitions are removed the moment the prohibited individuals find an organization or lawyer to represent them, or when the authorities fear that their decision could not stand up to legal scrutiny.

Success rates for these cases are high both at the stage of the administrative processing vis-à-vis the military authorities, and at the legal stage, after the HCJ petition. An HCJ petition is likely to lead to a change in the State's position even before the hearing is held, and in very rare cases, the prohibition is removed following pressure from the justices during the hearing itself.

In 2008, 18% of the letters sent by HaMoked to military authorities led to the receipt of exit permits; in 2009, 45% of the letters succeeded, and in 2010, 38%. The variation between the years was affected, inter alia, by the number of cases in which HaMoked was forced to petition the HCJ due to a lack of response on the part of the authorities. In the framework of petitions submitted by HaMoked in 2008, 60% of petitioners received permits, 55% in 2009, and 31% in 2010. These figures also include petitions submitted after a prolonged lack of response on the part of the military administrative authorities. The success rates in HCJ petitions in cases in which the military refused to approve travel abroad are 36%, 57% and 25%, in 2008, 2009 and 2010, respectively.

New Procedure for Examining Prohibitions on Travel Abroad

Between 2008 and 2010, the military administration changed its procedures with respect to prohibitions on travel abroad. The roots of the change are in the petition submitted in 2006 by ACRI, HaMoked and PHR-Israel.¹⁰¹ The petition was originally aimed against the practice by which ISA personnel would enter “prohibitions” regarding civilians into the computer system. These “prohibitions” would “lie in wait”, suddenly appearing when a person arrived at the border crossing, or requested permits to enter Israel or the area fenced in between the separation wall and the Green Line, etc. In the petition, the organizations requested that the matter of prohibitions on freedom of movement be anchored in a proper procedure, one that requires, for example, notifying the individual in advance of the intention to restrict his freedom of movement and allows for a hearing before a decision is rendered. The petitioning organizations also claimed that the decision could not be made in secret by an anonymous ISA official, but rather by a competent authority and by substantiated and time-limited written orders delivered to the applicants in a timely fashion.

Over the course of the hearings in the petition, its subject matter was confined to the question of the procedure for leaving the OPT for destinations abroad. In January 2008, the State presented a new procedure, but rather than correcting the severe flaws that the organizations had pointed out, it turned out that the military government had seized the opportunity to push human rights organizations and attorneys representing applicants out of the picture, and to instate a long series of procedures that must be exhausted before an applicant could take legal action. The procedure blocked the previously existing channel for challenging travel prohibitions: contacting the West Bank Legal Advisor in writing via mail or fax, usually through an attorney or a human rights organization. Under the procedure, the individuals themselves were required to report to the Israeli DCO, to submit a substantiated application in writing, and on this occasion also to submit biometric data. Six weeks later, the applicant would again be required to report to the DCO in order to receive his answer. On receiving a negative answer, he may submit an appeal, but the processing of appeals would take

¹⁰¹ HCJ 8155/06 **The Association for Civil Rights in Israel et al. v. Commander of IDF Forces in Judea and Samaria** (2010).

six weeks. Only after receiving a response to an appeal could the resident be considered as having exhausted the remedies and able to petition the HCJ.

Following a legal struggle, the procedure was gradually amended. The updated procedure, sent to HaMoked in June 2010,¹⁰² corrects a number of flaws that existed in the original procedure. For example, a resident can now receive information regarding travel prohibitions entered against him in the computer system on-site. This arrangement, which existed in the 1990s, enables residents to find out whether they are prohibited from going abroad prior to reaching the border crossings. Additional changes in the procedure include cancellation of the directive whereby requests are automatically rejected if submitted less than seven weeks prior to the date of travel, if required documents are not attached, or if the applicant refuses to submit biometric information. Applicants may now also submit requests through the Palestinian DCO, rather than solely through the Israeli DCO. The dual process of request and appeal was replaced with a single process of submitting an objection, although in contrast to the original procedure, which determined that six weeks at most were enough for the authorities to reconsider the decision to prohibit travel, the authorities now allotted themselves eight weeks to process objections. Another change is that the response must be transmitted to the resident as soon as the decision is made, even if this occurs before the eight-week deadline. The responses are given in writing, and the form contains a box for citing the cause for the refusal. However, the revised procedure still contains protracted response times, offers no expedited procedure for urgent cases, and does not enable residents to submit requests through organizations or lawyers. Moreover, under the procedure, an objection can be filed no earlier than nine months from the date of submission of a prior objection. The only exception to this is “special humanitarian cases” – an expression that the military always interprets very narrowly. Needless to say, the procedure does not alter the prior situation, in which a travel ban is initially entered into the system with no order, substantiation or hearing, does not require informing the resident, has no time limitation, and is not reviewed periodically by the authorities at their own initiative.

If the written procedure requires real improvements, the reality test is a complete failure. Soldiers at the DCOs are not aware of its existence, as is the

102 See procedure (in Hebrew) at:
<http://hamoked.org.il/Document.aspx?dID=Documents1324>.

population it is meant to serve. On many occasions, the forms for prior inquiry and submission of objections are not available; often, on-site answers to prior inquiries cannot be obtained (“the officer is not here”); responses are given orally, not clearly, or on makeshift documents; objections are not answered on time; the response is not transmitted until the applicants themselves physically arrive at the DCO in order to inquire about the objection they had submitted; and even though the forms contain a box for listing cause, the reason for rejecting the request is almost never provided.

One of the most serious issues relating to the implementation of the procedure is providing erroneous responses at the DCOs. For example, many applicants have been told that they were not prohibited from traveling abroad, even though, in fact, they were, and when they reached the border crossing, they had to retrace their steps. These are recurring phenomena; sometimes this is blamed on an “error,” and sometimes the military claims that the prohibition originated in a recent decision made after the resident received the response from the DCO.

In at least one case, HaMoked has learned that the claim, made upon reexamination, of a “current security prohibition,” was incorrect and was used to cover up an oversight of the authorities.

‘A.J., a resident of a village in the Bethlehem area, contacted the Bethlehem DCO on March 8, 2010, in order to find out whether he was prohibited from traveling abroad. ‘A.J. wanted to make the pilgrimage to Mecca in July, and he therefore contacted the DCO well in advance, according to timetables stipulated in the procedure. At the DCO, he was told that he was indeed prohibited from traveling, and he therefore submitted an objection to the prohibition on the designated form. On March 31, 2010, ‘A.J. contacted the DCO to inquire about his objection. He received approval on the designated form, stating that his objection had been accepted and there was no prohibition against his traveling abroad. The office of the Head of the Civil Administration informed HaMoked that the position of the security officials, according to which there was no security prohibition on ‘A.J.’s matter, had already been made on March 9, 2010. As usual, the notice was not transmitted in a timely fashion.

On July 25, 2010, 'A.J. arrived at Allenby-bridge Border Crossing, where he was told that he was prohibited from exiting to Jordan. HaMoked contacted the authorities to find out why, and according to the response received from the office of the West Bank Legal Advisor, 'A.J. had indeed not been prohibited from leaving during the month of March, but over time, the circumstances had changed and it was decided to prohibit him from traveling. HaMoked petitioned the HCJ demanding that 'A.J. be allowed to travel abroad.¹⁰³ The State Attorney's Office, in response, replied that the prohibition against 'A.J. was entered into the computers of the Civil Administration on the day he arrived at the border crossing. However, in a hearing that took place in camera, it became clear to the HCJ justices that this was not the case at all. The prohibition regarding 'A.J. existed already in March, and his return from the border crossing did not arise from a change in circumstances or a new decision, but rather from an error in entering the prohibition into the computers of the Civil Administration. The statement of the West Bank Legal Advisor was untrue, and what was written in the State Attorney's notice was inaccurate and misleading. (Case 64535)

After correspondence and meetings regarding prohibitions on travel abroad yielded nothing, HaMoked decided to tackle the issue through civil claims.

M.Q. works as a tour guide for pilgrims to Mecca. On July 8, 2009, he set out for Jordan, and after he was prohibited from exiting, he tried to have the prohibition removed, in keeping with the procedure. At first, he contacted the Palestinian DCO, but was told that the Israelis did not accept requests of this kind from them (in contravention of the written procedure!). In light of this, he made direct contact with the Israeli DCO, where he was told that there was no prohibition against him. However, he received the written confirmation which is required under the procedure only after HaMoked intervened. The day after he received the confirmation and the day after that, M.Q. tried going to Jordan, but both times he was turned back. HaMoked contacted the military administration and was told that there was no prohibition against M.Q.'s travel abroad, and that his being turned back at the border was the result of an error. In July 2010, HaMoked submitted a civil claim regarding M.Q. The claim is pending.¹⁰⁴ (Case 47432)

103 HCJ 7498/10 **Jawarish v. Military Commander of the West Bank** (2010).

104 CC 46106-07-10 **Qaysi v. State of Israel**.

How Many OPT Residents are Banned from Travel Abroad?

The scope and manner in which travel bans are used as a tool in Israel's hands have changed over the years. Until the 1990s, for example, all people within entire age ranges were prevented from traveling abroad except if exiting for prolonged periods of nine months or more. The number of individuals prohibited from travel demonstrates how freely the authorities issue travel bans. In May 2009, HaMoked applied under the Freedom of Information Act to receive figures on the number of West Bank residents defined as prohibited from traveling abroad from 2005 to 2008. HaMoked asked to know how many travel bans had been issued during those years, how many were lifted, etc. The application went unanswered, and in February 2010, HaMoked submitted a petition under the Act to the District Court.¹⁰⁵ The State failed to provide the requested figures even after the petition was submitted. In a hearing that took place on June 20, 2010, Judge Dr. Michal Agmon-Gonen rebuked the State on its conduct in this case and ordered it to pay expenses of ILS 35,000.

At the time of writing, June 2011, the State still refuses to provide the exact number of prohibitions on travel abroad, claiming exposing this information is a security risk. At the same time, it has released partial figures: the number of residents whose exit through Allenby Bridge Border Crossing was refused in 2007, 2008 and 2009 was several thousand each year: 5,757, 9,826 and 5,450 respectively. This number includes applicants refused for reasons other than security. It does not include individuals whose computer files show a travel ban but who did not attempt to travel abroad.

The number of prohibited residents declined between 2008 and 2010. In 2010, less than 1% of West Bank residents were prohibited from travel (a large number in any case: 1% of the overall population of the West Bank equals one fifth of all adult residents). The information regarding a reduction in travel prohibitions is supported by an additional statistic, according to which in 2008 alone, 55,745 prohibitions were removed, and in 2009 – 13,744. However, no information was provided regarding the number of prohibitions added during the period in which the latter

¹⁰⁵ AP 16439-02-10 **HaMoked: Center for the Defence of the Individual v. Coordinator of Government Activities in the Territories.**

were removed. The State noted that the figures included cases in which a number of prohibitions were removed for a single individual.

In a meeting with the head of the Civil Administration, HaMoked was informed that one of the catalysts for re-evaluating and reducing travel prohibitions was the general petition submitted on this issue.¹⁰⁶

Removal of Travel Prohibitions

HaMoked's main activity in the area of the freedom to travel abroad involves processing individual cases of Palestinians who were prevented from traveling outside the OPT. As demonstrated above, between 2008 and 2010, as in previous years, HaMoked's success rate in these cases was very high: in many cases, travel was allowed following correspondence with the authorities; in other cases, the State withdrew a prohibition following a petition to the HCJ, even before the hearing. As stated, the high success rate demonstrates that the use of travel bans has been and remains largely arbitrary, and that the authorities themselves do not stand by a large proportion of their own prohibition decisions.



H.H., age 64, lives in Beituniya. Her 86-year-old mother lives in Jordan. On November 29, 2009, H.H. asked to travel to Jordan to visit her elderly mother after her health deteriorated, but at Allenby-Bridge Border Crossing she was told to turn back home, with no cause given. Her attempts to clarify the reason why she had not been permitted to travel to Jordan at the DCO were met with the response that she was not prohibited from traveling; and yet, when she tried crossing the border a second time, she was again turned back. Following a request submitted by HaMoked, the office of the West-Bank Military Legal Advisor relayed that H.H. was prohibited from traveling abroad "in light of her ties with Hamas," and that the responses she received at the DCO arose from a malfunction in feeding the prohibition into the computer. HaMoked petitioned the HCJ regarding H.H.,¹⁰⁷ and following an ex-parte hearing, in which the justices reviewed classified information, the State agreed to an arrangement according to which H.H. would visit her mother in Jordan for 24 hours only. H.H. was permitted to bring with her only a handbag, and was forbidden to re-enter

106 HCJ 8155/06 **The Association for Civil Rights in Israel v. IDF Commander in Judea and Samaria** (2010).

107 HCJ 2678/10 **Hamdan v. Military Commander of the West Bank** (2010).

the OPT with any item that was not with her when she exited. To ensure her compliance with these conditions, the petitioner was required to deposit a ILS 5,000 guarantee. **(Case 63665)**

One of the main difficulties involved in protecting the rights of Palestinians to travel abroad lies in the fact that the prohibitions are almost never substantiated, and are based on classified information. Only during the processing of the case – sometimes only after submission of a petition to the HCJ – does the State provide its reasons for the refusal, and even this, in most cases, is through a laconic, abbreviated version of the full reasons that conceals more than it reveals. In the few cases in which slightly more detailed information about the reasons for refusal and the evidence on which it was based was provided, HaMoked succeeded in challenging the basis for the refusal and bringing about the removal of the prohibition.



Dr. I.A., a resident of Surif, is a specialist in internal medicine and heart disease, and the ICU head at the government hospital in Hebron. On February 26, 2009, the military prevented him from traveling abroad to a medical conference, without providing any cause. I.A. contacted the DCO, in keeping with the procedure, and submitted an objection to the prohibition, but received no response. Following HaMoked's request, it emerged that the security authorities had given a negative answer in his case, but he himself knew nothing of it. The position of the security authorities was not substantiated.

HaMoked petitioned the HCJ on I.A.'s behalf,¹⁰⁸ and following the petition, it was first divulged that the grounds for the refusal were that I.A. was a " Hamas activist, one of the directors of the Orphans Care Society in Surif." However, when HaMoked looked into the matter, it turned out that Israel had never declared the orphans association in Surif an illegal association, and in any case, I.A. had stopped working for it a year earlier. If all this were not enough, I.A. is actually a member of Fatah. Without entering into the question as to whether the State's claim was sufficient for justifying the prohibition, even if the facts were correct, it is clear that the arguments themselves were inaccurate. Following HaMoked's petition and receipt of the information, I.A. was permitted to travel abroad. **(Case 61131)**

108 HCJ 4819/09 **Al-Hur v. Commander of the Military Forces in the West Bank** (2009).



In the case of A.G., whose travel abroad for medical treatment was refused without any substantiation, the State also claimed in its response to the HCJ petition submitted by HaMoked that the reason for the prohibition lay in his membership in a charitable association. A.G. was indeed a member of a charitable association, but it had never been declared an illegal organization. In this case as well, the State retreated from its position and permitted the applicant's travel abroad.¹⁰⁹ (Case 58142)

In one case, the State, uncharacteristically, provided not just a laconic, abbreviated version of the reasons for the prohibition, but also included actual evidence and, moreover, based its position this time solely on non-classified material, rather than classified evidence presented to the justices only. This case is also exceptional because it is one of the rare instances in which a prohibition on travel abroad was removed as part of the court hearing and due to pressure from the justices, who in most cases support the State's position.



J.A., a resident of Jenin, studied medicine in Yemen. During the 2009 summer vacation, just before his last year of study, J.A. visited the OPT, as he did every year, but at Allenby Bridge Border Crossing, he was arrested and taken into interrogation by the Israel Security Agency. J.A. was interrogated for 40 days, and ultimately released unconditionally without charges, but in October, when he wished to return to his studies in Yemen, he found out he was prohibited from traveling for security reasons. J.A. tried to submit an objection to the DCO, but the soldiers refused to process his request. His attorney contacted the West-Bank Military Legal Advisor, but the latter responded that he was to be contacted only through the DCO, according to the procedure. J.A. therefore contacted the Palestinian DCO, which inquired into the matter by telephoning the Israeli side, and told J.A. that the prohibition had been lifted. J.A. reached the bridge – and was turned back. He again contacted the DCO, and this time, he succeeded in submitting his request. HaMoked contacted the West Bank Legal Advisor, requesting to expedite processing of the request so that J.A. would not miss his year of study, but the legal advisor refused to become involved on the claim that it was not a humanitarian issue.

109 HCJ 25/09 **Ghanem v. Commander of the Military Forces in the West Bank.**

When the response was slow in coming, HaMoked petitioned the HCJ.¹¹⁰ In response to the petition, the State announced that it opposed J.A.'s travel abroad on the claim that "during his stay abroad, he agreed to participate in military training by Hamas as well as Fatah," and that "he met with Hamas activists, including Khaled Mash'al's bodyguard." The State also claimed that its decision was based on J.A.'s confessions under interrogation, though a review of his confessions showed that this was not quite the case. The "agreement" to participate in military training was no more than general and hypothetical interest in gaining shooting experience, and this interest was never acted upon nor was it related in any way to activity against Israel. The meetings with Hamas members during his studies were not related to their membership in the organization.

After HaMoked pointed out the weaknesses of the claims against J.A., the HCJ justices pressured the State to let J.A. travel abroad, due to the lack of proportionality between the risk he posed and the grave damage he would sustain if he did not complete his medical degree after five years of study. As a result of this pressure, the State agreed to allow J.A. to travel abroad in order to complete his studies. (Case 63217)

Classified Material

Disclosure of the grounds for a prohibition and the evidentiary material on which it is based is essential for protecting human rights. This is not merely a question of due process or a show of justice; exposing the information is likely to lead to the correction of invalid decisions and bring an end to severe human rights abuses. In order to achieve this, however, it is necessary to deal with the following practice, which has become routine in the Israeli Supreme Court: the State provides a laconic "abbreviated version" of its reasons and presents classified material for viewing by the justices only and in the presence of one party. Opposing counsel is unable to review the material and point out its weaknesses. This process, which is in flagrant violation of the accepted rules of legal proceedings, has become a norm that is barely given any thought and is routinely practiced in security cases.

Over the years, this practice has "slipped down a slippery slope." Under the law, evidence may be considered classified for security reasons only when a confidentiality certificate signed by the Minister of Defense is issued.

¹¹⁰ HCJ 10104/09 **Abu Salameh v. Military Commander of the West Bank.**

Ostensibly, such a certificate should prevent even the justices from viewing the classified material, but the Court does have authority to review the material in order to evaluate the justification for issuing the certificate. The solution in these situations is that when the State issues a confidentiality certificate, the opposing party is given a choice: if it agrees to an ex-parte review, the justices review the material in the presence of one party, and examine both the certificate's validity (i.e. whether the file contains other material that should be transmitted to the opposing party), and the evidentiary basis for confidentiality; if the opposing party does not agree, the Court relies on the presumption of good governance, and assumes that the classified material (which the Court does not see at all) sufficiently substantiates the State's claims.

There is usually no dispute as to the classified nature of the material, and the parties "cut corners": the State does not issue a confidentiality certificate in the first place and the opposing party agrees to relate to the material as if a certificate had been issued, and as such, the material is effectively "classified." Hearings held behind closed doors and in the presence of one party have become, over time, an inseparable part of petitions in which the State claims security reasons and classified material, without confidentiality certificates being issued. This has reached the point where it seems that there is no real oversight on the extent to which information is defined as classified. The exceptional proceeding, requiring a hearing in the presence of one party only, has become the norm.

In 2009, HaMoked began working on changing this dangerous routine. In some cases, HaMoked refused to automatically accept the definition of material as classified, and requested that the State present a confidentiality certificate before deciding on how to proceed – whether to contest the certificate or agree to have the justices review the material ex parte. In one of the cases, a merchant's request to travel abroad for business purposes was rejected on the banal argument that "there is classified evidence which gives rise to concern that his travel abroad would threaten the security of the Area."¹¹¹ In another case, the petitioner wished to travel abroad for business meetings and to see his family, but the State claimed that it possessed classified information, according to which he was a senior activist in the

111 HCJ 747/09 **As'ud v. Military Commander of the West Bank** (Case 58195).

Palestinian Islamist Jihad organization.¹¹² The State contends that it can claim information is classified even without a confidentiality certificate. The issue is still pending.

Lack of Substantiation

Sometimes, the State offers no substantiation for refusing the request of an OPT resident to travel abroad, while on other occasions, it hides behind non-specified and classified “security reasons.”



Dr. G.M., head of the Electrical Engineering Department at Palestine Polytechnic University in Hebron, was asked to participate and lecture in a conference on information technology and networks, which took place in January 2010 in Alexandria, Egypt. After he learned that he was prohibited from traveling abroad, G.M. submitted an objection to his prohibition at the DCO. The objection was rejected, and, as usual, he was not informed of this until he himself arrived at the DCO in order to inquire after it. The objection had been rejected, he was told, due to “security reasons.” The words “refused by the Israel Security Agency” were handwritten on the form. HaMoked petitioned the HCJ regarding G.M.’s matter, but the State continued in its opposition and expanded its arguments: it now notified that there was classified material against the petitioner. After HaMoked demanded more details, the State’s legal counsel looked into the matter, and notified that according to the respondent, the petitioner was a Hamas activist. G.M. and HaMoked had the option of having the justices examine the classified material in the presence of one party, or to withdraw the petition (as stated, refusal to have the justices examine classified material leads to rejection of the petition based on the assumption that the State, as a rule, proceeds according to proper procedure, and the causes it provides are soundly anchored in the evidence). In this case, HaMoked and G.M. chose to withdraw the petition, given the difficulties in conducting a hearing to which they were not party.

In an unusual move, Adv. Gilad Shirman, counsel for the State in the hearing, asked that the petitioners cover trial costs. The practical implications were clear: the fear of being charged for trial costs would deter future petitioners from seeking recourse with the Court. Additionally, since in many cases

112 HCJ 1000/10 **Al-Atrash v. Military Commander of the West Bank** (Case 50667).

travel bans are removed following submission of a petition, even before the hearing, this chilling effect would allow the ISA to prevent many people from traveling abroad, even based on material on which it could not rely in court.

From a legal standpoint, the issue of trial costs hinged on whether submission of the petition was justified from the outset, in light of the fact that the petitioners withdrew the petition prior to the hearing, but after receiving the State's response. HaMoked explained that it had no choice but to submit the petition "in the dark," without knowing the facts, since no reasons for the refusal had been provided. Reasons (albeit far-fetched) were provided only after the petition was filed and only then were the petitioners able to evaluate how to proceed. Adv. Shirman claimed that providing the substantiation changed nothing, since G.M. "knows full well why his travel abroad was prohibited, and what the nature of his ties to Hamas are," and since HaMoked knows that such refusals are based on classified material. The Court accepted HaMoked's position and rejected the motion: when the State does not provide a full explanation for its reasons for refusing a person's request, this person cannot be condemned for petitioning the HCJ, even if he withdraws the petition before it is brought for a hearing and after the State has expanded its explanation for its position.¹¹³ (Case 63146)

Closure of Rafah Crossing

From June 2007 through June 2010, Rafah Crossing was closed to regular traffic. It was opened only occasionally for brief periods of time, or in special cases. At other times, it was breached by Palestinians. Adding to this the maritime and air blockade of the Gaza Strip and the closure of the land-border crossings with Israel, the picture that emerges is of a population under siege with no possibility of leaving its country. The return of those who had already gone abroad, or who succeeded in finding a way out during the siege, was not guaranteed. During the three years that Rafah Crossing was closed, HaMoked processed requests of residents who were trapped on one side of the crossing, most of them wishing to exit the Gaza Strip through Israel. In June 2010, following the Gaza Freedom flotilla, the crossing was opened for the movement of people seeking to leave or enter the Gaza Strip.

113 HCJ 10329/09 **Manasra v. Military Commander of the West Bank** (2010).



'A.A., an employee of the International Committee of the Red Cross and a Gaza resident, received a full scholarship from the Japanese government to pursue a master's degree in artificial intelligence. He was due to begin studies at a preparatory program in Tokyo in April 2008. Since he had no way of leaving the Gaza Strip, HaMoked petitioned the HCJ.¹¹⁴ The State opposed, and in response to the petition, the State Attorney's Office claimed that Israel had no obligation to allow students from Gaza to travel through its territory in order to reach their places of study. The decision to prevent passage through Israel, it maintained, is a political decision, and the Court should not intervene. In the hearing that took place on April 28, 2008, HaMoked's lawyers were forced to erase the petition, given the comments made by the justices who leaned toward accepting the State's position. In May 2008, Rafah Crossing was opened partially and briefly. 'A.A. waited at the crossing for three days, but only people with a severe medical condition or with Egyptian citizenship were permitted to cross. In July 2008, the Japanese Embassy in Israel obtained the State's agreement to allow 'A.A. to travel through Erez Crossing to Allenby Bridge Border Crossing in a consular vehicle. (Case 55233)

Entrance of Israelis into the Gaza Strip

Between 2008 and 2010, as in previous years, HaMoked helped arrange for the entry of Israelis into the Gaza Strip (both Israeli citizens and East-Jerusalem residents). At the beginning of 2008, HaMoked was processing 95 cases regarding entry into the Gaza Strip from Israel, and during the course of the year, 30 new cases were opened in this category. In 2009, 52 cases were opened, and in 2010 – 65. From 2008 to 2010, HaMoked submitted 58 petitions to the HCJ relating to the entry of Israelis into the Gaza Strip, and four administrative petitions to the District Court relating to the granting of permits to four women – all holding Israeli identity cards and living in the Gaza Strip – who sought to enter Israel with their children who were not registered in the Israeli population registry.

114 HCJ 3594/09 **'Abassi v. GOC Southern Command.**

Cutting the Gaza Strip Off from East Jerusalem and Israel

The overall trend to bring about the disintegration of Palestinian society, and in particular to isolate the Gaza Strip, is expressed also in the policy regarding the entry of Israelis into the Gaza Strip, whether residents of East Jerusalem or citizens of the State of Israel within the 1967 borders. Until the removal of military bases and settlements from the Gaza Strip in 2005, Israel regulated the entry of Israelis into the Gaza Strip via an order issued by the Military Commander of the Gaza Strip. However, beginning in September 2005, Israeli military law was abolished in the Gaza Strip. Israel continues to prevent the entry of Israelis into the Gaza Strip, now under the Disengagement Plan Implementation Law. One section of the Law prohibits Israelis from entering the evacuated area without a permit; the entire Gaza Strip has been defined as such an area. Ostensibly, this order was intended to prevent the infiltration of settlers to the settlements that were evacuated, but, in effect, it is implemented against Palestinians who have family in the Gaza Strip and against human-rights activists, peace activists, and diplomats who seek to enter the Gaza Strip.

Just prior to the removal of the military bases and settlements from the Gaza Strip, HaMoked achieved a number of gains regarding the criteria for entry of Israelis into the Gaza Strip. These gains included directives regarding family visits during holidays and in humanitarian cases, and the pledge to continue the “divided families procedure,” which applies to Israelis married to residents of the Gaza Strip and present in Gaza. These gains were preserved even after the Hamas takeover of the Gaza Strip, but, with time, they are being eroded.

Family Visits on Holidays

The main way Gaza residents maintain ties with family members who live outside the Gaza Strip is family visits during holidays. This channel is grounded in the State’s obligation to allow Israeli residents who have first-degree relatives in the Gaza Strip to visit together with their spouses and minor children, during the main Muslim or Christian holidays (‘Eid al-Fitr, ‘Eid al-Adha, Christmas and Easter). This channel once enabled family members to meet one another only infrequently, but at least independent of crises such as death or severe illness, or the rare occasion of a wedding. This arrangement lasted – not without interference and not without a need to take legal action – until Easter in the spring of 2007.



In September 2009, HaMoked petitioned the HCJ, demanding that family visits to the Gaza Strip be allowed, after two years during which the arrangement had been on hold. The State opposed the visits, but announced that its policy would be revisited in future. In response to the petition, the State claimed, inter alia, that every opening of Erez Crossing posed a severe risk to the safety of soldiers and civilians at the crossing. This claim resurfaces every few years, even though the crossing is always open and operational. In this context, the State repeatedly quotes a ruling in which a petition to enter the Gaza Strip was rejected due to the ostensible danger at the crossing, even though the State knows that two days after the judgment was issued, the request was approved.¹¹⁵ In addition, the State claimed that the crossing should not be opened due to concerns that Israelis would be kidnapped or recruited by terror organizations. The Court rejected HaMoked's petition "considering the real dangers inherent in allowing the visits, as well as in light of the fact the respondents review their policy periodically."¹¹⁶ (Case 40552)

Family Visits under Humanitarian Circumstances

At the beginning of 2009, after the Israeli attack on the Gaza Strip (known as "Operation Cast Lead"), the State tried to relieve itself from responsibility for other aspects of the arrangement.



Dr. 'A.A. is a surgeon at August Victoria Hospital in East Jerusalem. His elderly father, also a physician, once directed the department of surgery at Al-Muqassed Hospital in East Jerusalem, and is now living the Gaza Strip. In February 2009, HaMoked contacted the military authorities in order to have them allow Dr. 'A.A. to enter the Gaza Strip to visit his father, then 88 years old, who suffered from a number of illnesses, and had been recently admitted to hospital. Since the request received no answer, HaMoked petitioned the HCJ.¹¹⁷ The response of the State Attorney's Office, signed by Adv. Leora Weiss-Benski, relayed that the State opposed 'A.A.'s entry into the Gaza Strip and that it did not view itself obligated to the policy that it had declared in 2004 and again in 2008. The petition was

115 HCJ 6475/07 **Abu Laban v. GOC Southern Command** (2007).

116 HCJ 7235/09 **HaMoked: Center for the Defence of the Individual v. GOC Southern Command** (2009).

117 HCJ 2520/09 **'Abd a-Shafi v. GOC Southern Command** (2009).

heard by the Court and the justices harshly critiqued the State's position. Following this, the visit was approved and the State was ordered to pay trial costs. (Case 48524)

After this affair, the Israeli authorities once again began allowing Israelis to enter the Gaza Strip to visit first-degree relatives in exceptional humanitarian cases (weddings, engagements, severe illness, funeral, and the like), as they were obligated to do in keeping with their prior commitments. Requests that were refused after the Israeli attack on the Gaza Strip at the beginning of 2009 were also approved. And yet, "the humanitarian criteria" is presently interpreted even more narrowly than before, and in many cases, individuals who received permits in the past are now refused, despite the fact that the circumstances are identical.



H.D., a 63-year-old Israeli citizen, lives in Jaffa. Her 65-year-old sister lives alone in the Gaza Strip, and suffers from severe diabetes, high blood pressure, and damage to the eye, kidneys, and joints. In 2008, HaMoked contacted the authorities with a request to allow H.D. to enter the Gaza Strip with her blind daughter in order to visit her sister. After the request received no response, HaMoked petitioned the HCJ. Following the petition, H.D. and her daughter were permitted to enter the Gaza Strip, and in March 2009, they entered and visited the ailing sister. In November of 2009, HaMoked contacted the authorities requesting permission for another visit to the sister, whose chronic situation was deteriorating. This time, the request was refused since "it is not a severe medical case that does not [*sic.*] meet the criteria." HaMoked again petitioned the HCJ, but this time, the State opposed granting the permit. Following the comments made by the justices at the hearing, HaMoked was forced to erase the petition.¹¹⁸ (Case 57015)

Israelis seeking to enter the Gaza Strip constantly face new and unpredictable obstacles. For example, in September 2010, the Gaza DCO refused to approve the entry of an East Jerusalem resident into the Gaza Strip for purposes of visiting his sick mother, charging that he had to wait until three months had

118 HCJ 8859/08 **Dasuqi v. GOC Southern Command**; HCJ 10106/09 **Dasuqi v. GOC Southern Command** (2010).

passed since his previous visit. After an additional intervention by HaMoked, the visit was approved (Case 7580).

In this realm, as in others, much time is required in order to receive a response for requests submitted to the State authorities. The protracted response time is unjustified, particularly in the case of people who are well known to the system from previous requests.



J.A.'s mother, born in 1931, lives alone in the Gaza Strip, and is usually bedridden due to her medical state. The case is well known to the authorities: the criteria for the entry of Israelis into the Gaza Strip were formulated in 2004 as part of J.A.'s petition to the HCJ,¹¹⁹ and since then, he has visited her often, sometimes alone and sometimes accompanied by his wife and their children. On February 19, 2009, HaMoked contacted the Gaza DCO requesting J.A. and his family be permitted to visit his elderly mother, but no answer was forthcoming. A reminder letter and telephone calls were of no avail. On May 4, 2009, HaMoked submitted a petition to the HCJ.¹²⁰ Within two days of submission of the petition, A.J. was permitted to enter the Gaza Strip, and two weeks later, his wife and children were also permitted to enter. This time, HaMoked decided not to stop at approval of the individual requests, and demanded that the overall problem of the time required for processing of a request be addressed. Following this, the State Attorney's office announced a series of steps taken with the goal of expediting the processing of requests for entering the Gaza Strip. Response times have decreased since then. **(Case 17936)**

Sometimes, the State refuses to approve entry into the Gaza Strip for alleged security reasons, and is often unwilling to share the information in its possession.



H.N. lives in Jerusalem; her mother, a Jerusalem resident, married a resident of the Gaza Strip in 1980. The family lived in Saudi Arabia for many years and then the parents moved to the Gaza Strip. H.N., who was an adult, moved to Jerusalem where she continued her studies and was subsequently married. In the summer of 2009, H.N. was invited to the weddings of two of her sisters, who live in the Gaza Strip. H.N. and

119 HCJ 10043/03 **Abajiyon v. Commander of IDF Forces in the Gaza Strip** (2004).

120 HCJ 3657/09 **Abajiyon v. GOC Southern Command**.

her husband wanted to attend the weddings with their toddler-aged children. Such a request falls within the “humanitarian criteria” for visits to the Gaza Strip, but the family’s request received no response for one and a half months. Since the date of the weddings was drawing near, HaMoked petitioned the HCJ. Following the hearing, the State announced its opposition to the visit on the grounds that “the petitioner’s second-degree relatives are deeply involved in hostile terrorist activity.” At the hearing, HaMoked’s lawyers argued against the prohibition which originated from information relating to a second-degree relative, but agreed that the State reveal the classified material to the justices only. As they exited the closed hearing, the justices said that the substantiation given in the State’s response did not properly reflect the matter, and in any case, some of the classified information could be exposed. It turned out that the reason for the prohibition related to one of H.N.’s father’s eleven brothers, whom she did not even know since she had grown up in Saudi Arabia and afterwards lived in Jerusalem. It was further revealed that the claim that the information and evidence were confidential was baseless: information regarding the uncle had been publicized in the media with the approval of the security services, and information about him was the basis for criminal charges the evidence for which was public. Concealing the information resulted in a second hearing, after the non-classified information was disclosed to the petitioners and they were given a chance to respond. In this hearing, however, after reviewing both the non-classified information and information that remained classified, the justices rejected the petition.¹²¹ H.N. did not attend her sisters’ weddings. (Case 14985)

Divided-Families Procedure

The State of Israel has committed to a procedure that allows for the presence of women from “divided families” in the Gaza Strip. These women are Israeli citizens or East Jerusalem residents married to residents of the Gaza Strip, who wish to live there with their husbands and shared children (the procedure also applies to men who have an Israeli identity card and are married to women who are residents of the Gaza Strip, but most of the cases are of the former type). As it did with respect to other arrangements, Israel attempted to erode these obligations following the attack on the Gaza Strip at the beginning of 2009. Once again, the attempt was nipped in the bud.

121 HCJ 5034/09 **Nababteh v. GOC Southern Command** (2009).



'A.B., a resident of East Jerusalem, was married in 1983 to a resident of the Gaza Strip, and together they established their family in the Gaza Strip. The requests to receive permits to remain in the Gaza Strip as part of the "divided-families procedure" have been managed by HaMoked since 2003. In October 2008, 'A.B. entered Israel in order to visit her family in Jerusalem, and at the beginning of November, through HaMoked, she requested a new permit to enable her return to Gaza. The answer to her request was delayed, and on December 18, 2008, HaMoked petitioned the HCJ.¹²² On January 1, 2009, a few days after the beginning of the attack on the Gaza Strip, HaMoked received a letter from the State Attorney's Office conditioning 'A.B.'s entry into the Gaza Strip on signing a pledge not to return to Israel for at least three months. HaMoked opposed this requirement and it was removed. On January 26, 2009, 'A.B. entered the Gaza Strip. The requirement to take a pledge not to return to Israel for some time, for now, is no longer on the agenda. (Case 29339)

In the course of processing 'A.B.'s case, it became clear that this was a new policy the State intended to introduce. However, this is not the first time the State has placed women living in Gaza under the "divided families procedure" in a position where they have choose between their right to live in their country and their right to live with their families. In 2004, the State withdrew from its previous attempt to implement this policy following a petition submitted by HaMoked and Adalah to the HCJ.¹²³ However, HaMoked's interventions do not always end in success.



N'A., an Israeli citizen living in the village of Qalansawa inside Israel, married 'A.Q., a resident of the Gaza Strip, in 1999. Until 2004, the couple lived in Qalansawa, but during that year, the Ministry of Interior rejected their application for family unification in Israel. 'A.Q. returned to the Gaza Strip, and N'A. periodically visited him there. In 2008, N'A.'s request to enter the Gaza Strip was refused for security reasons. HaMoked petitioned the HCJ on her behalf,¹²⁴ and the State argued that the denial of N'A.'s request was based on information that was not related to the couple, but rather, to 'A.Q.'s relatives. Justice Edmond Levy suggested that N'A.,

122 HCJ 10744/08 **Bana v. GOC Southern Command.**

123 HCJ 5076/04 **Husseini v. GOC Southern Command.**

124 HCJ 6409/08 **'Izbeh v. GOC Southern Command** (2008).

an Israeli citizen, leave the State of Israel for the Gaza Strip, from where she could submit requests for entry into Israel – even though she was an Israeli citizen. This suggestion, beyond being unacceptable on principle, was not tenable for N'A. The husband and wife, who were unable to see one another, decided on a divorce. **(Case 54197)**

Families who are divided between the Gaza Strip and East Jerusalem (i.e. families in which the woman is not an Israeli citizen) suffer from a double difficulty: the women, who are Jerusalem residents, face difficulties not only entering the Gaza Strip, but also returning to Jerusalem. In theory, since they possess an Israeli identity card, they are permitted to enter Israel at any time, and according to current commitments made by the Ministry of Interior, the ministry may not revoke their status. However, there have already been cases in which the Ministry of Interior revoked the status of women who transferred the center of their lives to the Gaza Strip, or refused to issue them identity cards, claiming that such cards were only given to individuals who actually live in Israel. Today, the main threat to these women relates to the status of their children. The children of a woman who is an Israeli citizen are Israeli citizens from birth; however, the children of a resident receive status in Israel only if the center of the mother's life is in the country. Therefore, most children of divided families have no status in Israel, and as residents of the OPT, their entry into Israel requires a special permit.

For many years, Israel allowed Israeli women from divided families to enter Israel with their minor children (up to age 16), who were considered dependents. In 2008, Israel began requiring that the children also obtain permits. The change was described as a measure intended to increase efficiency and facilitate processes, since, in many cases, when proper permits were lacking, difficulties and delays arose when the children returned to the Gaza Strip. Indeed, for a certain period, Israel continued issuing permits for the children of divided families entering Israel with their mothers.

In 2009, the policy was changed, and Israel began applying the rule regarding the entry of Palestinians into Israel to the children of Israeli residents living in the Gaza Strip, i.e. the rule according to which no person can enter or exit the Gaza Strip. The only exception to this policy pertains to situations in which a child cannot be left in the Gaza Strip, such as the case of an infant

who is still nursing. In such cases, the infant is granted an exceptional permit. In practice, permits are given to children until the age of six. Having to leave children behind inhibits women from realizing their right to enter Israel, particularly considering that they know that if they enter Israel, they often remain there beyond the planned time, against their will, extending their separation from their children who remain behind in the Gaza Strip.



'A.A., a resident of East Jerusalem, and her husband from Rafah, formed a family in 1990, during a period when movement between East Jerusalem and the Gaza Strip was entirely free in both directions. After movement between the two parts of the OPT was restricted, 'A.A.'s presence in the Gaza Strip was formalized through permits received according to the "divided-families procedure," albeit not without difficulties. In 2004, for example, the authorities prevented 'A.A.'s return to the Gaza Strip as a "sanction" for not having extended her permits on time. Her entry was permitted only after HaMoked submitted a petition to the HCJ.¹²⁵ In the summer of 2010, 'A.A. wished to visit Israel and stay with her family in Jerusalem, as she had done in the past. The summer, during which her children are on school vacation, is the only time 'A.A. can leave home and stay with her family in Jerusalem, though only if she is permitted to take the children with her. This is also her only opportunity to see her relatives, since they are not eligible for permits to visit her in the Gaza Strip. When they requested such permits, they were turned down on the grounds that 'A.A. could come to them in Jerusalem.

The request to receive permits for the children went unanswered, and on the family's behalf, HaMoked petitioned the Administrative Court in Beersheba, which has jurisdiction over the decisions of the Gaza DCO regarding entry into Israel. The State's response indicated that the children (ages 3 to 14) of 'A.A., a resident of Israel, had no right to enter the country. In Israel's view, not only were they aliens, but they were aliens from a hostile area that was in the throes of an armed conflict with Israel, and their entry into Israel might generate a security threat. In its response, the State devoted a long exposition to the difficult security situation, the terror threats, and Hamas' control of the Gaza Strip. Judge Joseph Elon rejected the petition, together with two similar petitions, on the claim that "going

125 HCJ 9107/04 **Abreika v. Commander of the Military Forces in the Gaza Strip** (2005).

from the Gaza Strip to Israel for a summer vacation is not a humanitarian need.”¹²⁶

And yet, at the hearing on the petition and in light of the Court’s comment that there was, indeed, a measure of callousness in the decision to leave an infant without its mother, the State deigned to reconsider, subject to submission of a new application, exceptional circumstances pertaining to children, such as infancy. Ultimately, ‘A.A. was permitted to bring her two youngest children with her into Israel. By the time the permits were arranged, the summer vacation was already over, but ‘A.A., who had not seen her family in Jerusalem for two years, decided to proceed with the visit. The day after her arrival in Jerusalem, ‘A.A. submitted her application for an entry permit into Gaza, but despite repeated reminders from HaMoked, no response was provided. ‘A.A. remained in Jerusalem against her will, with her two small children, whose permits had meanwhile expired, while the rest of her children were in Rafah. Only in the month of November did ‘A.A. receive a permit to enter the Gaza Strip, at which time she returned home. (Case 34275)

Erez Crossing

Erez Crossing falls under the jurisdiction of the Land-Crossings Administration in the Ministry of Defense. The crossing is staffed by soldiers, military police, police, border police, and security-company personnel. Passage through it can take many hours, and it often involves hostile treatment, rigidity and humiliation. HaMoked has often complained about the treatment of those passing through the checkpoint. In February and March of 2008, HaMoked complained that women and girls were being required to undress in a room where security personnel observed them through a window, without being assured that the observers were all women. In October 2009, HaMoked complained of the humiliation of a woman who wished to cross the checkpoint, apparently because she was wearing strict religious dress, or, as she was told by the person responsible for inspection, “you look like Hamas.” Among other things, the woman was detained for twenty minutes in a room where she was ordered, through an intercom speaker, to stand with her hands up. The woman, who was fasting because it was the month of Ramadan, felt dizzy and was about to

126 AP 50482-07-10 **Abreika v. Minister of Interior** (2010).

faint, but her calling out and knocking on the window of the room were to no avail. Afterwards, she was transferred to another closed room where she was ordered, again through an intercom speaker, to sit on a chair, at which time the room was scanned with rays of light, which she described as laser beams. She was left locked in this room, crying bitterly, for about fifteen minutes.



The Emergency Hotline

Between 2008 and 2010, HaMoked, continued to operate its emergency hotline, which provides immediate assistance in incidents that can be resolved by contacting the military authorities. In 2008, HaMoked processed 338 requests, in 2009, 237, and in 2010, 443 requests. A comprehensive review of the emergency-hotline figures reveals that the number of requests relating to the separation wall is increasing. The following table itemizes the categories of the various complaints. Note, a single complaint may appear in several categories. For example, a complaint by a person who was detained and beaten at a gate in the separation wall and whose identity card was confiscated will appear in each of the columns.

Year	Internal Freedom of Movement	Violence	Confiscation of Property	Separation-Wall Issues
2008	268	28	128	32
2009	215	11	59	116
2010	428	0	19	389

Examples of complaints handled by the emergency hotline are discussed above, in the chapter on internal freedom of movement in the West Bank. In this chapter, we offer examples of other complaints processed by the emergency hotline.

On January 29, 2008, at 2:00 p.m., a Palestinian man contacted the emergency hotline and related that one of his acquaintances had been detained an hour earlier by soldiers in a military jeep, half a kilometer from the 'Anab Checkpoint, on the charge that he had passed the military jeep in his car. The soldiers handcuffed him and left him exposed to the cold and rain. HaMoked contacted the military's Humanitarian Affairs Coordination Center (the humanitarian hotline). The man was released at 2:35 p.m. **(E. 7473)**

On February 6, 2008, the emergency hotline received a request regarding a mobile checkpoint set up at the 'Aja Junction in the Jenin District. The slow inspections at the checkpoint caused delays for all those passing through the junction. In addition, the soldiers did not allow young people between the ages of 15 and 30 to pass through, even those on the way to their homes in the village of Silat adh Dhahr. Following HaMoked's intervention, all residents of Silat adh Dhahr, of every age, were permitted to pass through the checkpoint without delay. **(E. 7480)**

On October 6, 2008, at 8:15 a.m. the emergency hotline received a request from a Palestinian who had been on his way to receive medical treatment at Hadassah Ein Karem Hospital in Jerusalem, together with his son. Although both father and son had permits to enter Israel, soldiers detained them at the Tunnels Checkpoint and did not let them continue on their way to the hospital. HaMoked contacted the military's humanitarian hotline and the Bethlehem DCO. At approximately 9:15 a.m., the soldiers allowed the father and his son to pass through the checkpoint. **(E. 7725)**

On November 3, 2008, a Palestinian from Kafr Qaddum in the Qalqiliya District, contacted the hotline and complained that soldiers were preventing residents from reaching their olive-groves, located near the settlement of Kedumim, for harvesting. After a long series of telephone calls to various military officials, a harvest date was scheduled, and on November 10, 2008, the Palestinians from Kafr Qaddum arrived at the olive-grove and picked the olives. **(E. 7747)**

On November 25, 2008, the emergency hotline received a complaint about the confiscation of possessions and documents during a search of residential apartments in Qalandiya Refugee Camp. The soldiers confiscated cell phones, birth certificates, passports, wedding agreements, cards for crossing the Jordan bridges, health-fund cards, identity cards, and photo albums. As is the practice in searches that take place in the OPT, the families were not given a record of objects and documents confiscated. Following intervention by HaMoked, the documents were transferred to a military base in Tel Aviv, but it was agreed in principle that they would be returned. In practice, return of the documents was delayed. On January 21, 2009, the documents were returned through the Palestinian DCO, with the exception of three Jordanian passports, which the military claimed were not in its possession. **(E. 7775)**

On January 8, 2009, a Palestinian resident of the South-Hebron-Hills region contacted the emergency hotline. The man reported that the military had confiscated his car over a week earlier on the claim that he had entered a firing zone, even though it was the area where he and his family resided. HaMoked contacted the military's humanitarian hotline and on the same day, the car was returned to its owner. **(E. 7796)**

On January 29, 2009, a resident of Jerusalem contacted the emergency hotline because for two days, the military had not let him return from his studies in Abu Dis to his home in the city. The man is registered in the OPT and lives in Jerusalem by virtue of a stay permit, which the military has renewed consecutively for five years. While processing the complaint, HaMoked found out that after the last permit was issued, an Israel Security Agency prohibition was entered into his computer file. Despite this, following HaMoked's intervention, the permit was returned, and the man was able to return home. **(E. 7819)**



Violence by Security Forces and Settlers

At the beginning of 2008, HaMoked was processing 160 cases relating to violent incidents, including 91 pending civil claims. At the end of 2010, HaMoked was processing 77 cases involving violence, including 67 pending civil claims. During these years, only a few new cases were opened regarding violence against Palestinians, most in the framework of other issues HaMoked handles. In addition to the civil claims regarding violence processed during these years, HaMoked processed nine additional cases in which civil claims were filed with respect to other human rights violations.

Proposed Amendment to the Civil Wrongs Law

Between 2008 and 2010, legal proceedings in compensation claims filed by Palestinians took place under the shadow of the “Civil Wrongs Bill (Liability of State) (Amendment No. 8) 5768-2008,” put forward by the government. The proposed amendment aims to provide the State with complete immunity from compensating Palestinians for damage inflicted by the State and its agents. The bill was submitted by the government in 2008, and passed first reading. In 2009 and 2010, the Knesset Constitution, Law and Justice Committee convened three times to prepare the bill for second and third reading.

The law seeks to further expand the definition of “wartime action,” beyond its expansion from 2002. Any act defined as a “wartime action” is an act for which the State is not required to compensate the victims, even if it was perpetrated in clear violation of the law. The bill removes the condition

contained in the existing law, whereby only an act perpetrated under circumstances of danger to life or limb may be considered a wartime action. The bill also distinguishes between acts carried out inside Israel and ones carried out outside the country. Inside Israel, any act of “combating terror, hostile actions or insurrection” will be considered a wartime action. In the Occupied Palestinian Territories (OPT) (and outside of Israel overall), even actions intended to *prevent* terror, hostile actions or insurrection will be considered wartime actions. This definition may cover arrests, the erection of checkpoints and in effect, any military activity.

The bill does not stop at this, but expands the exemption from compensation to include the identity of the victim. According to the wording of the existing law, the State is exempt from compensating a victim if he is a subject of an enemy country, if he is a member of or activist in a “terrorist organization,” or was injured when acting on behalf of any of these. This holds even if the State harmed him illegally and even if there is no connection between the injury and security activity of any kind. The bill seeks to expand the exemption even further, and apply it to any violation against a person who is a resident of an area declared by the government to be “enemy territory.”

In addition to these provisions, the proposed law also includes procedural provisions whose goal is to limit Palestinians’ ability to submit and pursue a claim. Most outrageous among them is the provision that claims filed by residents of the OPT, residents of “enemy states,” and “members of or activists in a terrorist organization” and the like, will all be tried only in Jerusalem courts. This provision is apparently intended to prevent judges in other districts, whose rulings do not please the State, from presiding over such cases, and to make it difficult for lawyers who are Palestinian citizens of Israel, many of whom are from the country’s north, from representing plaintiffs in such cases. All of these suggested amendments go far beyond the arrangement that was invalidated by nine Supreme Court justices in 2006, following a petition submitted by HaMoked, Adalah, the Association for Civil Rights in Israel, and other human rights organizations.¹²⁷

127 HCJ 8276/05 **Adalah et al. v. Minister of Defense et al.** (2006). See: http://hamoked.org/Document.aspx?dID=293_update.

Court Rulings

The State's attempt to expand the blanket immunity it grants itself in compensation claims filed by Palestinians is unnecessary: it already usually gets what it wants in court. The overall sense is that the civil courts have become less tolerant and less open to Palestinian civil claims involving military activity in the OPT. The lion's share of the cases submitted through HaMoked during these years, in which judgments have been rendered, were rejected, and this is after HaMoked itself used strict internal criteria for selecting which claims to submit, after the Court imposed costly and deterring expenses on plaintiffs whose claims were rejected. The obstacles in the way of efficiently conducting court cases have also intensified. Examples include requiring plaintiffs to deposit guarantees for covering the State's costs, and the difficulties in having claimants and witnesses enter Israel for consultation, examination of materials and testimony.



In 2001, when T.M. was 12 years old, she sustained a head injury from shots fired by the Israeli military into the girls' elementary school in Jenin. Other students and a teacher were also wounded in the incident and one student was killed. In 2004, T.M. submitted a civil claim against the State to the Jerusalem Magistrates Court, through HaMoked. In the trial, two soldiers testified on the State's behalf, claiming that they were in Jenin that morning. The soldiers described an incident that, according to the State, was the one in which the students were injured. The versions the soldiers gave in court were significantly different from one another; and also from previous versions they themselves had given, as well as from other military documents relating to the shooting incident. Moreover, the location of the incident, according to their testimony, did not correspond with the location of the school. If this were not enough, their version was not supported by documentation in the operations log of the force at the time the incident took place. All the operations log contained was a Palestinian report on the shooting at the school which was received later, and the subsequent response of unidentified soldiers who stated that they had responded to shots fired from within the building. It further emerged that the commander of the force had been court-martialed, jailed and removed from a command post following the incident, although, according to the Military Advocate General, not due to the shooting itself.

Despite all this, Judge Arnon Darel ruled, in keeping with the State's version, that on the day of the incident, shots were fired at the soldiers from the school, the soldiers returned fire to the source of the shooting, the soldiers fired lawfully, and the students were injured from the soldiers' fire against the sources of the shooting. The Court did not explain why it preferred this version over the consistent testimonies of the plaintiff herself, the school principal, and a custodian who worked at the school and was present at the time of the incident. In support of the State's version, the Court invoked the fact that immediately after the shooting, there were young men in the school who helped evacuate the injured students, even though all the Palestinian witnesses claimed that these men arrived at the scene after the shooting in order to assist with the evacuation. It should be recalled that the school is located within the city. The Court's assumption that the presence of Palestinian young men was consistent with their involvement in shooting at Israeli soldiers rather than rallying to evacuate wounded girls, can be read between the lines of the ruling.

HaMoked appealed the decision to the District Court, but the appeal was rejected on the grounds that the Court does not interfere in fact-based decisions of the Magistrates Court. The motion for leave to appeal to the Supreme Court was rejected using a similar argument.¹²⁸ (Case 26267)



The 'A's are a couple from Beit Sahur. The husband was born in 1941, and the wife, in 1956. They were among civilians injured on November 9, 2000, when the Israeli military assassinated Hussein 'Abaiyat in the middle of a main thoroughfare in the town, via missile fired from a helicopter. Both were seriously injured and remained permanently handicapped. HaMoked submitted a civil claim on their behalf, but the Court determined that 'Abaiyat's assassination was a lawful wartime action and stated "we did not find that the use of force was disproportionate."¹²⁹ An appeal against the ruling is pending. (Case 23450)



The "preemptive shooting" that caused the death of 15-year-old R.H. in al-Fawwar Refugee Camp, was recognized by the Court as a

128 CC (J-m) 9188/04 **Manasra v. State of Israel** (2009); CA (J-m) 3497/09 **Manasra v. State of Israel** (2010); LCA 5130/10 **Manasra v. State of Israel** (2010).

129 CC (T.A.) 49597/04 **'Ali v. State of Israel** (2010); CA 27762-04-10 **'Ali v. State of Israel**.

wartime action for which the State has immunity from compensation. The Court was persuaded, among other things, by the testimony of an military officer, according to which, the term “preemptive shooting” essentially refers to firing in response to an attack against the force; according to this same officer, such shooting is called “preemptive” since it is intended to prevent an additional attack.¹³⁰ (Case 18003)

The Court often accepts the State’s claim of immunity due to “wartime action.” It appears that the interpretation of this concept is constantly expanding.



K’A., age 51, a resident of Askar Refugee Camp near Nablus, climbed to the roof of his house on April 16, 2002 in order to check the water tanks due to a drop in the water pressure in his home. While on his roof, he was shot from a helicopter and killed. The shooting continued when his sons ascended to the roof to evacuate him, and they were injured by shrapnel. The civil claim submitted by the family through HaMoked was rejected on the argument that it was a “wartime action.” The Court based its conclusion on the fact that the incident took place during “Operation Defensive Shield,” and on the fact that K.A. was killed by helicopter fire.¹³¹ (Case 26826)



On April 7, 2002, in the morning hours, just a few days after the invasion of Nablus during “Operation Defensive Shield,” Israeli soldiers ordered the families living in a five-story building in the city to evacuate. There were two commercially-zoned floors in the building, and three residential floors serving many residents. The building was located at the entrance to the city, at a militarily strategic point. After the evacuation, soldiers entered the building, placed explosives there, and in the afternoon, blew up the entire building, with all of its contents. The evidence raises questions regarding the reason for the explosion. The State claimed it had received information that the building had been booby-trapped against soldiers who might capture it due to its strategic location. The evidence presented on this matter suffers from what might

130 CC (J-m) 9181/04 **Khadur v. State of Israel** (2010).

131 CC (J-m) 7798/04 **Odeh v. State of Israel** (2009).

be described, at the very least, as holes. Furthermore, there is evidence that the military intended to blow up the building in any event, so that it would not serve as a shooting position for the Palestinians. The Court ruled that the demolition was based on reliable information, according to which the building was booby-trapped, and since the explosion was imperative given this information, the military acted in a reasonable and proportionate manner. The Court also held that since the explosion of the building was carried out as “part of the battle to eradicate the terror infrastructure in Nablus,” it was a wartime action. In the appeal submitted by HaMoked, it was claimed, inter alia, that the wartime action immunity should not be applied to an act that takes place during calm in military activity rather than as part of a confrontation that endangers the soldiers. An additional claim relates to the State’s obligation to compensate those who suffer from its actions, even when the actions are lawful and reasonable, when innocent people are arbitrarily and inequitably forced to pay the price of losing their property for the public need (or the military need, in this case).¹³² (Case 17849)

The approach of the Courts is also reflected in their treatment of the laws of evidence.



On December 30, 2002, A.A. was injured by heavy fire from soldiers in Nablus. Following the incident, A.A. became a quadriplegic and suffered other injuries. On March 14, 2005, he died of his wounds. The Court admitted hearsay evidence of hearsay evidence. The evidence in question was a recording submitted by a private investigator, in which a man, ostensibly a resident of Nablus, is heard saying that the deceased was killed holding a Molotov cocktail. This same individual explicitly says in the recording that he himself was not there at the time and it is not clear what the source of his information is. The Court accepted the recording as evidence without having the man recorded by the investigator testify and undergo cross examination in court, and without the person who gave him the information if, indeed, such a person existed, doing the same.¹³³ (Case 31138)

132 CC (J-m) 631/04 **Hindeyah v. State of Israel** (2010); CA 7624/10 **Hindeyah v. State of Israel**.
133 CC (J-m) 7129/05 **Abu Sh’alan v. State of Israel** (2010).

In the past, the courts tended not to rule costs against plaintiffs who sued for compensation for injuries that caused disability, the death of a loved one or damage, even if these individuals had not succeeded in meeting the burden of proof required to obtain compensation from the State. Many of the judges still adhere to this policy, but in recent years, the Court has often imposed heavy costs on Palestinian plaintiffs, sums that the average Palestinian family will never be able to pay, with the goal of dissuading victims from submitting claims.



S.S., a 14-year-old boy from al-Khadr, was killed by live fire. On July 26, 2004, his family submitted a civil claim through HaMoked. The Court determined that at the time the boy was killed, there was a gun battle between Fatah and Israeli soldiers in the vicinity. This finding contradicts what was claimed in writing, according to which there was no gun battle in the area. The Court found that the boy might have been struck by fire from Israeli soldiers, but that it was also possible that he was struck by Palestinian fire, and that in any case, it was a wartime action. Even though the family had suffered a loss, and even though it was clear that S.S. was an innocent victim in the conflict and that there was at least a high probability that he was killed by Israeli fire, Judge Ram Winograd ordered the family to pay ILS 45,000 in trial costs and legal fees. Following an appeal, the sum was lowered to ILS 30,000.¹³⁴ (Case 25047)



On September 30, 2000, one of the first days of the second intifada, M.A. was shot near Jalama Roadblock. The bullet entered his cheek and exited through his neck. He was taken to the hospital in critical condition, his life was saved, but he was left a quadriplegic. The Tel Aviv District Court, headed by Judge Dalia Ganot, rejected M.A.'s civil claim based on the belated testimony of a military officer, despite the clear gaps between it and what was written in other military documents. The officer's version does not explain how M.A. was wounded in the head, and to explain this, the judge conjectured that M.A. was struck by Palestinian fire, even though the officer himself, whose version she fully and unequivocally accepted, commented that he had no recollection of

134 CC (J-m) 8984/04 **Sbih v. State of Israel** (2009); CA (J-m) 3548/09 **Sbih v. State of Israel** (2010).

such shooting. Moreover, the operations log from the time the incident took place disappeared without explanation. The judge found that the circumstances of M'A's injury remained a mystery, rejected the claim and ruled that the disabled plaintiff must pay the State ILS 50,000 in legal fees. An appeal against the ruling is pending.¹³⁵ (**Case 24979**)

Alongside the claims that were rejected, from 2008 to 2010, HaMoked achieved rulings in favor of the Palestinian plaintiffs in five cases.



On April 11, 2002, during a break in a curfew imposed at the time of "Operation Defensive Shield," F.Z., age 14, was injured in the chest from gunfire by an Israeli soldier and died in the hospital. The family submitted a civil case via HaMoked, and the Court accepted the accounts given by the Palestinian witnesses, which were consistent with the accounts collected by a private investigator working for the State and supported by medical documents. The State, on its part, provided no account of the incident, but rather claimed that it was not reasonable to believe that the incident occurred at all, since it was not documented in the operations log, and, as a military officer who testified in court attested, "it did not make sense" that the incident was not reported. Based on the private investigation carried out on behalf of the State, the Court ruled stone-throwing had indeed taken place at the site to some extent, but that this was not sufficient for holding that the shooting was justified. The Court, with Judge Moshe Bar-Am presiding, vehemently rejected the approach that any military action carried out during "Operation Defensive Shield" automatically receives immunity as a wartime action, and awarded the family compensation totaling ILS 721,500, with the addition of trial costs and legal fees.¹³⁶

The State appealed the ruling, and the appeal is still pending.¹³⁷ The notice of appeal began as follows: "At the peak of the uncompromising war against the murderous terror running rampant in our country, on the eve of Passover 2002, after approximately one and a half years when the pages of the newspapers were filled with descriptions, almost routine, almost repetitive, of yet another attack and another murder; after months

135 CC (T.A.) 1982/04 **Atar v. State of Israel** (2010); CA 6404/10 **Atar v. State of Israel**.

136 CC (J-m) 9191/04 **Ziben v. State of Israel** (2010).

137 CA 6275-05-10 **State of Israel v. Ziben**.

during which waves of suicide bombers washed through the country and bus travel resembled Russian roulette; after killing campaigns by terrorists in rural communities and cities, the murder of children in their beds, women and the elderly in the streets – matters had gone too far.” The appeal continues with a description of “Operation Defensive Shield” (“a war for all intents and purposes [...] a blood-soaked war”) and even recalls the movie *Jenin Jenin* (“in addition to the battle on the ground, carried out with fire and brimstone, the enemy conducted an additional campaign for public perception – the other side attempted to present our fighters as bloodthirsty men of war and used even worse expressions. The war for public perception cannot be better summarized than by the affair of the [...] movie *Jenin Jenin*”). This rhetoric aptly reflects the atmosphere HaMoked’s lawyers face when working on these cases. **(Case 28260)**

This same incendiary language appears in the appeal submitted by the State regarding an incident that took place over two months prior to “Operation Defensive Shield” and involved no use of firearms.¹³⁸



On January 21, a military force entered the house of S.A. in Tulkarm as part of a search for a wanted person, and ordered the residents to exit the building. The force waited in the house until the first light of morning, and then left. S.A. returned home immediately after the force left, and noticed that large sums of cash that had been there had disappeared. Witnesses on behalf of the State testified that there had, indeed, been much money at the site, but they claimed to have safeguarded it. One of the officers testified that the force that carried out the mission comprised the best fighters, and that he had no doubt that none of them had stolen anything. After an analysis of the evidence, including contradictions in the soldiers’ testimonies, the Court decided to favor the plaintiff’s account, and ruled that the disappearance of the money at a time when the house was under the soldiers’ command and when the residents were removed from it, indicated that military had not employed reasonable precautionary measures to guard it, and that the State must compensate the plaintiff for his damage.¹³⁹ As stated, the State appealed the ruling. **(Case 25924)**

138 CA 4256-10-10 **State of Israel v. Abu Baker**.

139 CC (J-m) 7672/04 **Abu Baker v. State of Israel** (2010).



M.H., an 11-year-old boy, was wounded in his leg in 1999 from Israeli fire in Hebron. HaMoked complained about the incident that same year, and the Military Advocate General announced that it would launch an “inquiry” into the matter. In 2002, after repeated requests, the Military Advocate General announced that “no information regarding the aforesaid incident was found.” After the civil case was submitted, the State called a military officer as a witness, who claimed that it was he who had carried out the shooting, and that he remembered the incident well. The State even presented an operations log, which included reports from two different times: one regarding stone and Molotov cocktail throwing, with no injuries and no damage, and the other, later, regarding the wounding of a Palestinian child. However, the relevant operations logs of the company and the battalion were not presented, and during the officer’s questioning, a doubt arose as to whether the incident that he recalled ten years later was indeed the incident reported in the operations log. The Court, headed by Judge Arnon Darel, evaluated the evidence, including the missing evidence, and the doubts that arose as to the witness’s memory, accepted the plaintiff’s version and ordered the State to pay him ILS 63,000 compensation as well as trial costs and legal fees.¹⁴⁰ (Case 14447)



On March 9, 2006, two 11-year-old boys were caught by soldiers after they threw stones near Qalandiya Airport. The boys were detained by the military for over 24 hours without being taken to a legal detention facility and without any message being sent to their families. HaMoked filed a civil claim on the children’s behalf. At the hearing, the fact that children of this age could not be arrested was not disputed, nor was the fact that there was no legal authorization for the arrest. The Court found that it had not been proven that the soldiers made any effort to find out the age of the children, even though they appeared to be young and claimed that they were less than 12 years old. However, the Court rejected the claims of violence used against them and claims regarding improper conditions of imprisonment. The Court also did not find any factor aggravating the false arrest. Moreover, the Court considered the gravity of the children’s actions (stone-throwing, an act that was not harmful to the

140 CC 9185/04 **Khashim v. State of Israel** (2010).

soldiers). Ultimately, each child was awarded the sum of ILS 8,000 in compensation, in addition to ILS 2,000 to the parents of each of the children.¹⁴¹ (Case 43140)



In December 2002, three border-police officers detained two Palestinian brothers near the Armon-HaNatziv Promenade in Jerusalem and ordered them to come along with them to the wooded area near the promenade, where they beat them severely. One of the Palestinians also had a ILS 200 bill taken from him. A few days later, the two submitted a complaint to the Police Internal Investigations Department, and when they were informed a year and a half later that the file was closed due to “lack of evidence,” HaMoked submitted a civil claim on their behalf for the damage incurred in the attack. After hearing the evidence, the Court found the Palestinian witnesses to be more credible than the police officers who failed to report the incident in real time despite the fact that one of the brothers had asked them about the missing money immediately after the incident. And yet, the Court ordered a lower compensation than what is usually awarded in similar cases, commenting “lest the outcome of the claim deter the defendants and their peers from fulfilling their security roles properly.” HaMoked appealed the sum awarded for compensation, and the District Court ruled that since the claim was found justified, the consideration of deterring law enforcers had no place. The Court ordered the State to pay ILS 40,000 to each of the plaintiffs, as well as ILS 15,000 in legal fees and trial costs.¹⁴² (Case 24455)

Settlement Agreements

Alongside the civil cases that ended in rulings, HaMoked conducted many cases that were resolved through settlement agreements.



In 2001, when he was 11 years old, M.Q. was injured in his ankle from shots fired by an Israeli military force in Hebron. The injuries did heal but M.Q. continued to suffer from pain and impaired mobility. At the hearing of the civil claim filed by M.Q. through HaMoked, the State claimed in its defense that M.Q.’s injury – to the leg, as stated – was the

141 CC (J-m) 11330/08 **Matir v. State of Israel** (2010).

142 CC (J-m) 7050/06 **Shaqir v. Kraus** (2009); CA (J-m) 3128/09 **Shaqir v. Kraus** (2009).

result of shots fired in the air, since the operations log for that day contained an entry describing one bullet shot in the air against youths who were making and throwing Molotov cocktails. According to this same operations log, Palestinian sources had reported that two Palestinian children had been injured in the incident – during which, the military claimed, only shot had been fired. Alternately, the State claimed that in all likelihood, M.Q. was injured by Palestinian fire. In 2009, the State agreed to a settlement, in the framework of which M.Q. received ILS 65,000 in compensation.¹⁴³ (Case 16342)



H.D. was shot in the back by soldiers in 2001, after he crossed the 'Ein 'Arik roadblock on foot on his way from Ramallah to his home in a nearby village at the end of a workday. He arrived at the hospital unconscious, underwent surgery and subsequent hospitalization, and to this day, he suffers from an injury that prevents him from returning to work as a construction laborer. According to the soldiers' account, the shooting took place after a soldier in the observation post at the roadblock called out that H.D. had crossed the roadblock without being inspected. However, when the testimonies were heard, there were contradictions in the soldiers' accounts, and the soldier at the observation post was unable to recall how H.D. had escaped inspection. The judge told counsel for both parties that he tended to believe the plaintiff, who had claimed that he presented his identity card and did not circumvent the roadblock, and that indeed, it was likely that the soldier in the observation post had made an error of judgment. However, shortly before this, the Supreme Court delivered a ruling in which it found that soldiers who had shot an Israeli civilian suffering from schizophrenia as he approached a military outpost were not negligent. Justice Edmond Levy stated there that only in cases in which "judgment was extremely wrong" would the State be required to compensate for damage.¹⁴⁴ Under these circumstances, the Court suggested that the parties reach a settlement, and in November 2009, the parties reached a settlement whereby H.D. would receive ILS 120,000 in compensation from the State.¹⁴⁵ (Case 16836)

143 CC (J-m) 8983/04 **Qafishah v. State of Israel** (2009).

144 LCA 5203/08 **State of Israel v. Agbariya** (2009).

145 CC (J-m) 8982/04 **Daraj v. State of Israel**.



In February 2002, in the middle of the night, M.H., in the ninth month of her pregnancy, went into labor with painful contractions. Her husband and father-in-law drove her from their house in the village of Zeita Jam'in to the hospital in Nablus. The three were detained at Huwwara Checkpoint. Soldiers searched the car and the bodies of the travelers, and ordered M.H. to expose her abdomen so that they could see with their own eyes that she was, indeed, pregnant and needed to reach the hospital. Ultimately, the soldiers let the car drive on, but when it was only a few hundred meters away from the checkpoint, the car came under heavy gunfire. M.H.'s husband was killed in the shooting and her father-in-law was critically wounded; M.H. received shrapnel wounds. After the shooting stopped, soldiers arrived at the car and ordered M.H. to undress. For approximately two hours, M.H. was detained at Huwwara Checkpoint, lying naked on a stretcher in the cold winter night, and all of her requests to be covered went unanswered. She was finally evacuated to Rafidia Hospital in Nablus, where she gave birth to a baby girl. She was later told that her husband had died. Her husband's family held her responsible for her husband's death and for his father's injury: if she had given birth in the village and not asked to be taken to a hospital, the incident would have been prevented. M.H. developed symptoms of post-traumatic stress disorder that interfered with her social, familial and maternal functioning. The Military Advocate General decided not to launch a military police investigation into the incident, claiming that an internal inquiry indicated the soldiers had acted as necessary and in keeping with open-fire regulations. HaMoked therefore submitted a civil claim on behalf of M.H. and her daughter. In the statement of defense, the State claimed that the soldiers who shot at the car believed it contained explosives. However, as the evidence in the case was presented, the parties reached a settlement, according to which the State would compensate M.H. and her daughter with a total sum of ILS 600,000.¹⁴⁶ (Case 27856)

Settler Violence

Alongside the civil claims resulting from the actions of Israeli soldiers, HaMoked also handles civil cases involving violence committed by settlers against Palestinians.

146 CC (Nazareth) 4090/04 **Haik v. State of Israel**.



On April 30, 2003, Adir Shlomo, who works as a guard in the fields of the Patzael moshav community, shot and killed R.D., a Palestinian laborer who had entered the agricultural area in order to relieve himself when the bus on which he was traveling at the end of his workday was waiting to pass through a military roadblock. The State closed the inquest file against Shlomo due to “lack of evidence.” When HaMoked received the investigation material it emerged that Shlomo had confessed to having shot the deceased, but claimed that he did so after a chase: he alleged that he first fired at the deceased’s lower limbs, and after the latter stumbled into the bushes, he fired two additional bullets. Shlomo claimed that at first he believed the man was a thief, but during the chase, he began to suspect he was in fact a terrorist. Both claims are not credible given the circumstances, and Shlomo’s own description. Moreover, even if he suspected the deceased was a terrorist, his statements indicate that his actions did not meet the conditions stipulated in law for an act of self-defense. The letter HaMoked sent appealing the closing of the file stated that in this case, a conviction for at least manslaughter was more than “reasonably likely.”

Following the appeal, Shlomo was indicted for negligent homicide. In March 2008, he was convicted of this crime, but received only a six-month suspended prison sentence, public service, and an order to compensate the family of the deceased for ILS 25,000. In his ruling, Judge Haim Li-Ran wrote that the considerable number of shooting incidents indicated that sometimes the finger was too light on the trigger, and that “this is apparently the result of behavioral patterns and thinking acquired over many years of pursuing enemy elements within the civilian population, and that these have crossed boundaries and trickled slowly into the way contact is made with the civilian population. These patterns must be changed by emphasizing the absolute supremacy of the value of the sanctity of life and placing it at the top of the scale of values that society has an interest in protecting.” And yet, “in the reality of our lives, punishment itself will not steer this gigantic ship away from its – to my mind – dangerous course, and it will not deter potential defendants such as this defendant.” Shlomo’s appeal to the District Court, and his motion for leave to appeal to the Supreme Court, were both rejected.¹⁴⁷

147 CrimC 5229/06 **State of Israel v. Adir** (2008); LCrimA 116/09 **Adir v. State of Israel**.

In parallel to the criminal proceedings, HaMoked submitted a civil claim naming Shlomo, the community of Patzael that employed him and the State as defendants. In November 2010, the case ended with a settlement, according to which R.D.'s family would receive compensation of ILS 763,670. The community and the shooter himself were ordered to pay the major part of the amount, but since they were insured, the money was not paid out-of-pocket.¹⁴⁸ (Case 27534)

Obstruction of Claims

Prevention of Entry into Israel

One of the difficulties involved in civil claims filed by Palestinians in Israeli courts lies in the State's attempts to prevent the plaintiffs and their witnesses from entering Israel in order to conduct consultations, sign affidavits, undergo medical examinations, give testimony in court, etc. Arranging for the entry of a Palestinian plaintiff or witness can take up entire workdays of the plaintiffs and witnesses, as well as of HaMoked employees handling the matter. In order to prevent this, and when possible, relevant meetings are held in the OPT, a solution that in itself makes management of the case unwieldy and wastes work hours. In the case of a medical examination by a medical specialist or court testimony, there is usually no alternative to their entering the country.

As part of tightening the siege on the Gaza Strip, Israel decided not to allow plaintiffs and witnesses to leave the Gaza Strip for participation in legal proceedings taking place in Israel. This sweeping political decision led to the obstruction of many civil cases submitted against the State of Israel by Gaza residents. The State, in its capacity as an administrative authority, obstructs the processing of the cases, and then, as the litigant, benefits from the fact that proceedings fail to progress and requests that the claims be erased. The Courts have indeed erased no small number of such cases, sometimes following the State's undertaking not to invoke a statute of limitations if the lawsuits are resubmitted within a year of their erasure, as the Statute of Limitations Law permits. In practice, in many cases, when the lawsuits are resubmitted, the State claims limitations.

148 CC (J-m) 1660/07 **Daraghmev v. Adir Shlomo**.



M.H., an engineer with the UN Relief and Works Agency (UNWRA) in Gaza, set out on his morning commute on December 14, 2000, in a service taxi full of passengers. Near Kfar Darom (a Jewish settlement removed in 2005), soldiers stopped the taxi, ordered the driver to get out, and shortly afterwards, opened fire at him and the passengers. According to the State, the taxi driver was wanted by the military and it was he who first fired at the soldiers who had detained the taxi. M.H. tried to protect his face from the shots being fired at him, and was injured in both hands and in his face. Even after a series of complex surgeries in Israel and abroad, he continues to suffer from severe disabilities. Among other things, he is unable to hold things in his hands, write, or chew on the left side of his mouth.

M.H. submitted a civil claim through HaMoked. As part of the claim, he received an entry permit into Israel to be examined by an orthopedist, who assigned him 47% disability due to the injuries to his hands. To complete the case, an additional medical opinion was required pertaining to the damage to his jaw, but meanwhile, Israel had adopted a sweeping policy of denying residents of Gaza entry permits into Israel if the requests were made as part of a lawsuit. All attempts to arrange for M.H.'s entry into Israel failed, and since the lawsuit did not proceed, the Court erased it in May 2009. In May 2010, when the suit was resubmitted to avoid the statute of limitations, the State asked that the new lawsuit, as well, be erased under the statute of limitations.¹⁴⁹ (Case 30084)

Attempts to Transfer Cases to Beersheba

A person who sues the State, for any reason, has the right to submit his claim in any court in Israel. In special cases, the President of the Supreme Court can order a case be transferred from one court to another, for the convenience of the parties. However, the State, in its attempt to prevent Palestinians from submitting civil claims pertaining to military activities in the Gaza Strip, often asks to transfer these cases to courts in the southern district.



In 2008, the State asked to transfer to Beersheba a case involving a Gaza resident that had been submitted by a Palestinian attorney from Haifa in the Nazareth Magistrates Court. Supreme Court President

149 CC (J-m) 7665/04 **Khatib v. State of Israel**; CC 37083-05-10 **Khatib v. State of Israel**.

Beinisch asked the parties to address the “general question involving the overall need to concentrate all civil cases of this type in the south.” HaMoked submitted an amicus curiae motion, in which it emphasized that reasons of convenience generated no preference for courts in the south: while the plaintiffs were residents of the Gaza Strip, it was they who chose to file their claims in the north, and in any case, the obstacle they had to overcome on their way to court was entry into Israel, not the duration of travel within the country. As for the State, all civil cases against the military are handled in Tel Aviv. The State witnesses – most of them serving or reserve soldiers – live all over Israel and they are transported from place to place, even while they are serving in the military.

HaMoked stated in its request that the goal (and in any case, the result) of transferring all cases to the southern district would be to burden the lawyers specializing in the topic, most of them Palestinian citizens of Israel from Jerusalem and the north, or transfer cases to legal offices that did not specialize in the topic. “We also will not conceal our concern,” wrote HaMoked, “that the request also has a hidden racist aspect. Not only are lawyers from the Arab population concentrated precisely in the north of the country. Judges from the Arab population are also concentrated there. These judges hear the testimonies both in Arabic and in Hebrew without an interpreter. They can sense the witnesses – both those on behalf of the State and those for the plaintiffs – in an unmediated manner, and are able to understand the subtleties of their testimonies. This gives these judges an objective advantage in terms of presiding over cases of this type. However, the concern that arises is that their national identity (and perhaps also the fact that they did not serve in the security forces) is also a basis for the State’s desire to transfer the cases to other courts.” In January 2009, the President of the Supreme Court rejected the State’s request.¹⁵⁰ (Case 59373)

Non-Disclosure of MPIU Investigation Materials

The investigations of the Military Police Investigations Unit (MPIU) are intended to examine soldiers’ criminal liability for breaches of the law. Material from MPIU investigations is held by the State, as a public authority, and the public – particularly the complainants and crime victims – have the right to

150 CApp 4096/08 **State of Israel v. Abu Mustafa** (2009).

review them. In recent years, there have been increasing signs that the military establishment sees things differently. As early as during the first intifada, MPIU investigations were markedly superficial and even evinced cover-ups of criminality in the military. Today, the timing for launching MPIU investigations and the questions presented to the complainants indicate collusion between the MPIU and the Ministry of Defense department that handles civil claims. In effect, the MPIU sometimes acts more like a private investigator for the State, serving its interests of protecting itself from civil claims, rather than as an entity whose purpose is to investigate crimes and identify criminals. This is evidenced, inter alia, by the attempt to delay the release of investigative material for years on end, and the refusal to transfer investigative material in cases where a civil claim against the State is pending, or when the complainant does not declare that he has no intention of pursuing such a case. The MPIU's position is that in such cases, the complainant must make the necessary motions to obtain the materials as part of the civil case. The result is that the complainant is unable to consider the evidentiary material collected by the MPIU during the process of deciding whether or not to take his case to court and he is left with two options: the first is to keep the option of filing a civil claim open and receiving the investigative material only after the civil action is filed. The other possibility is to relinquish any possibility of suing for damages in future in the hopes of receiving the investigative material and appealing a decision to close the case without indictments, if such a decision is ultimately made. One way or the other, the State has a procedural advantage, since at the initial stage of handling the file, it possesses all of the materials, including the plaintiff's account, while the complainant is left groping in the dark.



In 2008, HaMoked petitioned the HCJ both against the delayed transfer of investigative materials and against the refusal to transfer these materials when the complainant was conducting a civil case against the State or considering doing so. Following the petition, investigative materials withheld for years by the military police were released. In addition, the State recognized the right of the complainants to receive the investigative material independent of the existence of a civil case, as long as the Court hearing the civil case had not issued a different decision whereby disclosure was to be carried out gradually – first by the plaintiffs, and then by the defendants.

The State even undertook to anchor these matters in a proper procedure that would also include schedules for transferring the material.¹⁵¹ In May 2009, the State supplied HaMoked with the procedure, but unlike the position it presented to the Court, the procedure stipulated that the material would not be transferred if the victim had filed a civil suit or if he had sent the Ministry of Defense a notice of damage. In this context, it must be stated that a victim from the OPT is required to submit a notice of damage within two months from the incident, as a condition for filing a civil suit in the future. The schedules determined for the procedure are also very flexible. HaMoked maintains communications with the authorities regarding this procedure. **(Case 55753)**

151 HCJ 4194/08 **Al-Wardian v. Commander of the Military Police Investigation Unit** (2009).



Detainee Rights

Detainee Tracing

Since its establishment, HaMoked has been helping residents of the Occupied Palestinian Territories (OPT) trace the whereabouts of Palestinian being held by Israel. HaMoked must provide this service as the Israeli authorities do not fulfill their legal obligation to inform families of their loved-ones' place of incarceration. From 2008-2010, the number of requests received by HaMoked to trace detainees decreased. In 2008, HaMoked processed 10,752 tracing requests, including 4,525 relating to new detainees, and the remainder, prisoners regarding whom a request had already been made. In 2009, HaMoked processed 6,605 requests, 3,876 of which pertained to new detainees, and in 2010, HaMoked handled 4,655 requests, 3,199 of which involved new detainees. This decrease seems to be the result of the relative calm in the security situation, which led to a reduction in the number of detentions as well as the close collaboration, sponsored by western nations, between Israeli security services and Palestinian Authority (PA) security services which are located in Ramallah. This has led to many arrests being carried out by the PA security services rather than by Israel.

In the earlier period covered by the report, there were still severe problems that originated in the transfer of police-detention centers and a number of military-detention facilities to the Israel Prison Service (IPS). Systemic problems in registering prisoners in the IPS led to severe disturbances in the transfer of information, which in turn brought about the intervention of HCJ justices following habeas corpus petitions submitted by HaMoked.¹⁵² During

152 HCJ 8696/07 **Mishi v. Commander of the Military Forces in the West Bank.**

the first half of 2008, the IPS amended the Commission Ordinance pertaining to holding detainees, and today, it includes provisions that require immediate updating of the computerized system the moment a person is taken into a detention facility, as well as upon every transfer from one facility to another.

Even after the IPS Commission Ordinance was amended, there were reported cases in which incorrect information regarding prisoners' place of detention was provided. In many cases, a person was reported to be in a certain prison facility, while he was actually in another. In others, a person was not located or reported as having been released, while in fact he was being held in an Israeli prison facility. Any erroneous information of this type injures the prisoner's family, which suffers from uncertainty as to his fate, or arrives to visit him at the wrong facility. It can also have a detrimental effect on the detainee's legal defense. When HaMoked contacted the Military Prison Control Center about these errors, the center attributed the mistake to incorrect information it had received from the IPS, but it appears that the complaints had the desired effect. Over time, the number of cases in which erroneous information was relayed declined. In addition, direct work procedures between HaMoked and the IPS Control Center were arranged, without the mediation of the Military Prison Control Center, and these also contributed to an improvement in the procedures involving the detainee tracing.

This improvement notwithstanding, certain problems have still not been resolved. For example, prisoners transferred from regular prisons to interrogation facilities run by the Israel Security Agency (ISA, formerly GSS) often remain registered at the prisons they have left. HaMoked has also encountered difficulties in locating prisoners who do not have an OPT identity number. Delays in registration are also not a thing of the past. A glimpse at some of the thousands of tracing cases at HaMoked reveals both the problems in the actual tracing process, as well as the reality of life in the OPT.

On April 22, 2008, HaMoked contacted the Military Prison Control Center with a request to trace the whereabouts of three prisoners. The control center replied that two of them were being held in Megiddo Prison, and the third in Hadarim Prison. It later emerged that one of the prisoners was being held in the temporary prison facility in Huwwara (Samaria), the second at Salem Prison, and the third had been transferred to Petah-Tikvah

Detention Facility, which also houses an ISA interrogation facility. The Military Prison Control Center attributed the error to incorrect information received from the IPS. **(Tracing cases 55582, 55580, 55588)**

On February 15, 2009, HaMoked contacted the Military Prison Control Center requesting to trace the whereabouts of a detainee, according to her family's request. In response, it was informed that the detainee was being held in Petah-Tikvah Detention Facility. Since this is a facility where ISA interrogations are conducted, a lawyer working on HaMoked's behalf attempted to schedule a visit with the detainee; but she then learned that the detainee was no longer there and had been transferred to Sharon Prison. According to the IPS, the soldier who conveyed the response to HaMoked had erred in copying the information the IPS had given to the military. **(Tracing case 59730)**

On April 27, 2009, the Military Prison Control Center informed HaMoked that two detainees, regarding whom HaMoked had contacted the control center, had not been located. It later emerged that one of them was being held in Ofer Prison and the other, in Jalameh (Kishon) Detention Center. Following HaMoked's complaint, the Military Prison Control Center accused the IPS of relaying erroneous information indicating that the two prisoners had been released. **(Tracing cases 60906, 60916)**

On July 9, 2010, soldiers arrested a 12-year-old boy in the village of Beit 'Ur at Tahta. The child's leg was in a cast. The family received no notification and found out about the arrest from other children in the village. The next day, when the family asked the soldiers at the outpost next to the village, they said the child had been taken to Ofer Prison. This information was verified on July 11, 2010, upon HaMoked's inquiry to the Military Prison Control Center. Two days later, the child was still imprisoned at Ofer Prison. The date of his release does not appear in HaMoked's files. **(Tracing case 65999)**

On September 16, 2010, a family from 'Azzun whose 15-year-old son had been arrested at night by the Israeli military while he was at home,

contacted HaMoked. Requests to the authorities to trace the youth yielded nothing. It later emerged that the Israeli soldiers had transferred him, after questioning, to the Palestinian Authority. The latter released him two days later. (Tracing case 66603)

On Thursday, November 4, 2010, the father of a sentenced prisoner contacted HaMoked with a request to trace his son's place of incarceration. On Sunday, November 7, 2010, a response was received from the Military Prison Control Center, according to which the son was being held at Gilboa Prison. The father was surprised to hear this, since that same day the military had come to his home to conduct a search, and he was told that his son was under interrogation at Jalameh (Kishon). A repeat clarification revealed that the prisoner had indeed been transferred to interrogation at Jalameh, but was still registered at Gilboa Prison. He was interrogated at Jalameh for two weeks, while still registered at Gilboa Prison. (Tracing case 61235)

On November 14, 2010, the family of a man who had been detained three days earlier at a military checkpoint contacted HaMoked. The man in question was 31 years old. He entered the West Bank when he was 11 and had not managed to get registered in the population registry of the OPT. Both the Military Prison Control Center and the IPS Control Center failed to trace the detainee, as did other officials. Ultimately he was located in Ashkelon Prison, thanks to the vigilance of a warden from the registration unit at Ofer Prison. The detainee was released to his home in February 2011. (Tracing case 67215)

Prisoners Held within Israel

In 2009, HaMoked, together with Yesh Din – Volunteers for Human Rights and the Association for Civil Rights in Israel, submitted a general petition related to detainee rights. The petition was directed against the practice of holding Palestinian prisoners inside Israel and conducting their detention hearings inside the country as well. These hearings are held by military courts which were established according to the military law in the OPT. Both practices contravene explicit provisions in the Fourth Geneva Convention. Given the

closure imposed on the OPT, holding detainees in Israel and conducting hearings in their matters in its territory are an abuse of the detainees' rights to communicate with their families and proper representation by attorneys from the OPT. The petitioners argued that both the change in the status of the Geneva Convention, the provisions of which have been recognized as customary international law, as well as changes in circumstances, which intensified the harm done to the prisoners, necessitated changing the old case law that upheld these practices. In 2010, the HCJ rejected the petition, ruling that holding prisoners inside Israel and holding military court sessions within its borders are enshrined in Israeli legislation, which trumps international law. In the Court's view, the essential rights of the prisoners, including the right to family visits and legal assistance, are not denied due to their being held in Israel or due to the fact that their detention is extended therein¹⁵³ (Case 60612).

Prison Visits

At the beginning of 2008, HaMoked was processing 285 cases regarding prison visits. In 2008, 270 additional cases in this category were opened, in 2009, 208 were opened, and in 2010, 220. At the beginning of 2008, HaMoked was processing 17 pending legal actions related to this issue. In 2008, 31 new petitions were submitted, in 2009, 44 more petitions were submitted, and in 2010, 52 new petitions.

Non-Response to Prison-Visit Requests

One of the difficult problems HaMoked has had to face repeatedly is the disruptions in replies to requests for prison-visit permits and the extremely slow response time, particularly in cases of applicants who are listed on the military's computer database as barred from entering Israel. In 2004, HaMoked brought about an arrangement to enable such individuals to visit their loved ones imprisoned in Israel. According to the arrangement, the requests would be examined individually, and if approved, the visitor would receive a new type of permit, enabling a single visit to prison, as part of the shuttles provided by the International Committee of the Red Cross (ICRC), within 45 days from the date of issue. Immediately after the visit takes place, or at the end of the 45-day period, the visitor would be able to submit a

153 HCJ 2690/09 **Yesh Din v. Commander of IDF Forces in the West Bank** (2010).

new request for a single-use permit.¹⁵⁴ By contrast, an ordinary prison visit permit is valid for one year and for an unlimited number of visits (the number of actual visits depends on IPS procedures as well as the frequency of ICRC shuttles to the various prison facilities).

The commitment to implement the arrangement was made in 2003, but the details, as stated, were determined only in 2004, and its practical implementation began only in April 2005. Shortly after the arrangement was implemented, it became clear that its main deficiency was the time it took to process the requests. Indeed, in 2005 and 2006, HaMoked was forced to submit four series of petitions regarding non-response to permit requests made in the framework of the arrangement. In early 2006, in one of the petitions, the State announced that request-processing times would be approximately two to two-and-a-half months.¹⁵⁵ This meant that even when the arrangement was working properly, in the best-case scenario, a visitor could see a prisoner some three to five times per year. In practice, this scenario is very far from the reality.

In 2007, HaMoked submitted a fifth series of non-response petitions. One of the petitions in this series served as an arena for deliberation on the general issue of the time necessary for responding to requests for prison-visit permits. The submissions filed by the State in this petition revealed that the military had carried out an operation to process thousands of requests that had accumulated up to January 2008, and had devoted personnel to this end. Notification was received regarding improvements in work procedures, with the goal of streamlining the processing of requests and decreasing processing times. According to the State, these improvements would enable it to keep to the timetables it had set for itself earlier, i.e. two to two-and-a-half months per request. In May 2009, the Court rejected the petition and determined that the time that the State had set for itself was reasonable, and that now “it remains [...] to periodically examine the manner in which the new procedure for processing requests is implemented [...] in the hope that this will minimize errors and contribute to the provision of better and more efficient service to the population of applicants in such an important

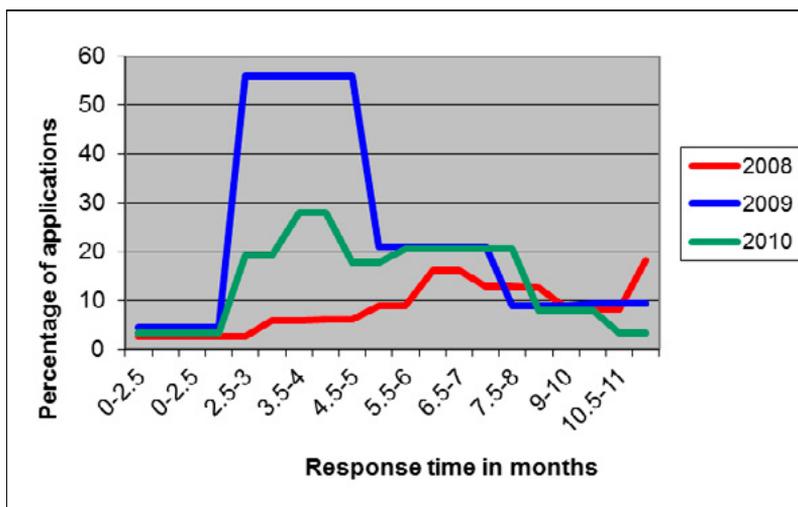
154 For additional details regarding the arrangement, see HaMoked's 2007 Annual Report, p. 56, http://www.hamoked.org/items/13200_eng.pdf.

155 HCJ 10898/05 **Fatafteh v. Commander of the Military Forces in the West Bank**.

and significant matter in their lives, which also has a dimension of human rights protection.”¹⁵⁶

However, even after the State announced the improvement of the procedures, and even after the HCJ ruling, the problem of the time necessary for processing requests continued to occupy HaMoked. The table below illustrates that from year to year, the percentage of requests answered within shorter time periods has increased, while those answered within particularly long periods decreased. The percentage of requests answered within two-and-a-half months from the time of submission to the ICRC remains very low (less than 5%), and most of the requests are approved only after six months or more. Thus, for example, of all of the requests submitted to the ICRC during 2010 whose applicants contacted HaMoked, close to one third were answered only five-and-a-half months or more from the date of submission. This statistic does not include requests that had not been answered by February 2010.

Response Time for Prison-Visit Requests



The table presents the percentage of requests for single use permits for applicants appearing in the system as prohibited by the ISA from entering Israel. The breakdown was made based only on requests that were approved, and does not include requests that were refused or that have not yet been answered. Response time is measured from submission of the requests to

¹⁵⁶ HCJ 7615/07 **Barghouti v. Commander of Military Forces in the West Bank** (2009) (Case 49212).

the ICRC until receipt of the permit. The figures relate only to applicants who turned to HaMoked for help. Response times were divided differently each year. So, for example, in 2009, 56% of the requests were answered within 2.5-5 months, but we have no breakdown of how many of them were answered within three or four months.

In addition to the delay in responding, HaMoked encountered a series of unsatisfactory answers regarding failure to process requests. For example, regarding a request submitted to the ICRC immediately after the single visit allowed by the permit was used up, the military responded that the request would not be processed because it was submitted before the prior permit had expired – this, despite the fact that the procedure explicitly stipulates that a new request may be submitted the moment the previous permit is used, i.e. before the 45-day validity period. Following HaMoked's intervention, this type of case did not recur. In another case, the military demanded, as a condition for processing, that HaMoked's requests indicate the date on which the request was submitted to the ICRC. Since this piece of information should be accessible to the military, the demand seemed like an attempt to evade processing. The military knows that applicants do not receive confirmation of submission from the ICRC and hoped they would get the date wrong. Ultimately, it was agreed that HaMoked would supply an estimate regarding the date of submission, and an error in the date would not serve as cause for not processing. In many cases, the military claimed that it had never received a request submitted to the ICRC, indicating disorder in the processing of requests.



F.M., the mother of a prisoner sentenced to six-and-a-half years' imprisonment and held at Nafha Prison, last visited her son in December 2008. Her requests for additional visits received no response. HaMoked's query to the military yielded a response that the request was being processed. W.M. and N.M., the prisoner's father and sister had last seen him in July 2008. Since that time, repeated requests had been made for a visit, but they, too, received no answer. In October 2009, HaMoked contacted the military, and in January 2010, a response was received, according to which the requests of the father and sister had been refused, with no reasons given. In February 2010, HaMoked submitted two administrative petitions to the District Court in Jerusalem, one on behalf

of the mother for failure to respond to the request, and the second on behalf of the father and sister, for the refusal. After the petition was submitted, the mother received a permit. As for the father and sister, it emerged that the refusal pertained to the 2008 request, and not to the later requests. The military claimed that these requests did not exist at all. In the ruling, Judge Nava Ben-Or criticized the conduct of the military, which had not stated in its answer to what request it was referring, and recommended that the ICRC provide all applicants with confirmations of requests submitted.¹⁵⁷ Unfortunately, this recommendation was not implemented. The father and sister submitted new requests through the ICRC, and in July 2010, received permits to visit the prisoner. **(Case 63019)**



The son of the B's, from Jericho, was imprisoned by the Israeli military in 2007, and they have not succeed in visiting him ever since. The son does not have an OPT identity number. In 2008, as part of the "gesture" to the Abu Mazen government, tens of thousands of Palestinians in the son's situation were granted status. He, too, received an identification number; however, shortly afterwards, Israel unilaterally revoked it. When HaMoked contacted the military to find out why the couple's requests to visit their son had not been answered, the military replied that the requests had not been submitted according to the "special cases" procedure, as is the practice in cases where the prisoner has no OPT identity number. Although the requests had been submitted according to this procedure, HaMoked instructed the couple to submit new requests, again according to the procedure, but the new requests received no response as well. HaMoked contacted the military in writing in order to clarify the reason this time, but the letter also went unanswered. Later, the State claimed that the reason for non-response was, apparently, "a secretarial error." In August 2009, HaMoked petitioned the Court for Administrative Affairs. The State asked that the petition be erased because the petitioners had not exhausted all other remedies before turning to the Court, and claimed again that no request had been received under the "special cases" procedure. The Court ruled that whatever the source of the error, "there is no reason or practical justification for again rejecting the petitioners using preliminary arguments, and it is appropriate – at least for

¹⁵⁷ AP (J-m) 303/10 **Malayshah v. Commander of the Military Forces in the West Bank** (2010).

the time being – for the respondent to process their request.” The Court ordered the military to make a decision regarding the petitioners’ request.¹⁵⁸ In December 2009, the couple received a permit to visit their son. (Case 58275)



Two members of the A.Z. family are being held in an Israeli prison, one since 2003, and the other since 2006. At the time of detention, the two had not been registered in the Palestinian population registry. One of them has since received an identity number, but it was unilaterally cancelled by Israel. Over the years, all of the family’s requests to visit their loved ones in prison received no response. Following HaMoked’s intervention and the submission of an administrative petition, the military replied that the permits had not been given since the prisoners had no active identity numbers.¹⁵⁹ Within four months of HaMoked’s involvement, the family received prison-visit permits. (Case 63586)

Prohibition of Visits

Prohibition of Visits of Former Prisoners

The Prison Regulations stipulate that a person who was imprisoned in the past in an IPS prison may not visit prisoners except with a special permit. This sweeping directive also applies to people who were imprisoned in the distant past, people who were held in custody but ultimately released without charges, and people who served a prison sentence for a civil offense. In 2006, HaMoked and the Association for Civil Rights in Israel submitted a petition arguing that this was a sweeping directive and that automatically classifying anyone who has been in prison in the past as dangerous was arbitrary. Even when a visit permit is ultimately granted, in effect, the right to visit is violated. The petition was rejected in 2009, but not before the State made a number of changes in the Regulations and the implementation directives. Among other things, imprisonment for civil offenses no longer precludes prison visits, and detainees released without charges are eligible for a permit six months from the date of their release. In addition, the State set criteria for processing requests by other former prisoners¹⁶⁰ (Case 41144).

¹⁵⁸ AP 1644/09 **Borgul v. Commander of the Military Forces in the West Bank** (2009).

¹⁵⁹ AP (J-m) 388/10 **Abu Zweid v. Commander of the Military Forces in the West Bank**.

¹⁶⁰ HCJ 5154/06 **HaMoked: Center for the Defence of the Individual v. Minister of Public Security** (2009).

And yet, implementation of the new procedures met with difficulties. For example, the conduct of the Commander of Rimon Prison forced HaMoked to complain about him to the Commander of the IPS Southern Region: the commander at Rimon initially refused to respond to HaMoked's requests, and then tended to deny requests in a sweeping manner and without substantiation. In addition, regional prisoner liaison officers, who according to the procedure are tasked with processing appeals against the decisions of prison commanders, refrain from carrying out this task. Furthermore, the time that elapsed until requests received a response did not decrease. Over the course of 2009, HaMoked submitted a series of petitions to the HCJ regarding failure to comply with timetables set for processing requests for visit permits by former prisoners – 14 days at most. Following the petitions, and as a result of HaMoked's relentless efforts on this matter, the situation improved.



The father of N.D., an East Jerusalem resident, is serving a life sentence. N.D. himself was arrested a number of times: in 1989 he was sentenced to a six-month prison term, but on all other occasions, he was released without charges. His last arrest was in 1994. Until 2008, N.D. was allowed to visit his father without difficulty, but after his father was transferred to Gilboa Prison, the wardens prevented the son from entering on the grounds that he was a former prisoner. In December 2008, HaMoked contacted prison authorities regarding N.D. According to the procedures, the request should be answered within 14 days. Since the request was not answered until April 2009, HaMoked petitioned the HCJ. The visit was permitted that day, and the Court issued a costs order instructing the State to pay for the expenses HaMoked incurred in filing the petition.¹⁶¹ (Case 14469)

In December 2009, the Supreme Court blocked the option that had existed for former prisoners to petition the Court against the violation of their right to make prison visits. The decision was handed down in the context of two petitions submitted by HaMoked on behalf of two residents of East Jerusalem whom the IPS had prohibited from visiting their imprisoned brothers. The Court ruled that the right to visit is first and foremost the

161 HCJ 3279/09 **D'aghneh v. IPS Commissioner** (2009).

right of the prisoners, and not of the visitors, and that visitation prohibitions were to be tackled through a “prisoner’s petition.” However, visitors cannot submit prisoner’s petitions, and since the option of recourse through the HCJ has been blocked, there is no longer an effective channel for judicial oversight on decisions on their matter. Moreover, since the facts on which the prohibition is based pertain to the visitor, and not to the prisoner, and since the prisoner and the visitor have no way of communicating with one another, in the most practical sense, the channel of a prisoner’s petition is not effective. In addition to this ruling on legal principle, the HCJ examined the classified material regarding the petitioners in both of these petitions, and rejected them on their merits as well.¹⁶² Approximately one year after the ruling, following HaMoked’s repeated requests to the prison authorities, both applicants were approved for visitation.

Prevention of Visits by the Israel Prison Service

In addition to the prevention of visits by former prisoners, the IPS also imposes individual prohibitions – sometimes on the visitor and sometimes on the prisoner.



The son of H.H., a resident of Nablus, is imprisoned at Ketziot Prison. H.H. possessed military permits to visit her son through the ICRC shuttles, but when she reached the prison gates after an exhausting trip from Nablus to Ketziot, the wardens prevented her from entering. In October 2008, after she had not succeeded in seeing her son for a year, H.H. contacted HaMoked. HaMoked’s first request to the prison authorities was met with an unsubstantiated response, according to which “the request is not approved, the prohibition remains in place. A new application can be submitted in approximately six months.” Following HaMoked’s demand for substantiation, it was relayed that the reason for the prohibition was what the IPS described as an attempt to smuggle a cellular phone into the prison. In July 2009, following additional requests by HaMoked, H.H.’s visit to her son was approved. (Case 57884)



The wife and children of S.D., a prisoner serving a life sentence at Rimon Prison, were not permitted to visit him due to a visitation

¹⁶² HCJ 4127/09 **Zaghal v. Israel Prison Service Commissioner** (2009) (Case 11628).

prohibition the IPS imposed on them in January 2006 and renewed from time to time. In 2009, the family contacted HaMoked, which submitted a prisoner's petition on S.D.'s behalf against the prohibition.¹⁶³ In July 2009, following the petition, the IPS removed the prohibition against the prisoner, but the military was in no hurry to issue a permit for S.D.'s wife. Only in January 2010, after repeated rejections and an additional intervention by HaMoked, did the wife receive a single-use permit, with which she visited her husband in February 2010. Her request for an additional permit was approved only in June 2010, but at that time, the IPS renewed the prior visitation prohibition. HaMoked submitted an additional petition against the prohibition on the prisoner's behalf. The Court rejected the petition pertaining to the prisoner's wife, but determined that his young children, then ages 8 and 11, should be able to visit him.¹⁶⁴ **(Case 59979)**

D.A., a resident of East Jerusalem, is married to a resident of the West Bank. D.A.'s husband was imprisoned for six years; at the time of his arrest, D.A. was pregnant. After their daughter was born, D.A. requested to visit her husband with the baby, but the wardens prevented her from bringing the baby in on the grounds that she had no identification number and was not registered on her parents' identity cards. Following HaMoked's request, the baby's entrance was approved based on the "notice of birth," but four months later, when D.A. went to the prison, the wardens were unwilling to honor the permit, claiming it had become obsolete. HaMoked's explanations, that the process of registering children in East Jerusalem can take a long time, helped extend the authorization, but only for brief periods. Only when HaMoked threatened to petition the Court was D.A. given a permanent permit to take her daughter with her to visit her husband, the child's father, based only on the "notice of birth." **(Case 60675)**

Prohibition of Visits due to Intervention by the Ministry of Interior and the Ministry of Foreign Affairs

'A.M. was born in 1936 in the village of Beita in the Nablus District, and since 1967, has lived as a refugee in Jordan. His son, M., was born in Jordan. In 1998, the son entered the West Bank with a visitor permit, and remained

163 PPA 5663/09 **Dar Musa v. Israel Prison Service.**

164 PP 49936-08-10 **Dar Musa v. Israel Prison Service** (2011).

there. In 2003, he was imprisoned by Israel and given five life sentences. His elderly father succeeded in visiting him once in prison, in 2006, as part of a coordinated organized visit for families of Jordanian subjects whose relatives were imprisoned in Israel. In 2009, after he was diagnosed with terminal cancer, 'A.M. asked to enter Israel to visit his son for one last time. In processing the request of the dying father to see his son, HaMoked encountered an exhausting saga of stalling, delays and harassment. The authorities passed the request from office to office, and the father had to submit repeated requests to the Israeli Embassy in Amman, and was even summoned there for interviews, despite his serious medical condition. Ultimately, in July 2010, the Ministry of Interior relayed that the request had been approved and the father was referred to the Israeli Embassy in Jordan in order to receive his visa. The embassy in Amman, was apparently unhappy with the decision made in Jerusalem, and rather than issuing the father a visa, he was asked to submit a new request. After the request was submitted, the consular department at the embassy conducted a "telephone inquiry with the Ministry of Interior," in the words of Adv. Hoiman from the Israel Ministry of Foreign Affairs, and following this telephone conversation, the request was put on hold. In August, the Ministry of Interior cancelled the approval for the father's visit. In response to the demand of HaMoked, which insisted on the father's right to be informed of the reasons for the cancellation, it was relayed that the reason was "the circumstances of imprisonment of the aforesaid's son." It appears that some official in one Israeli government authority or another believed that the life sentences given to the son were not enough, and that he and his father also had to be punished by not being allowed to see one another, even when the father was at death's door. Meanwhile, the father's condition continued to deteriorate, and he would have been unable to travel to Israel in any case. Given these circumstances, no petition was submitted to the Court. (Case 64383)

The Visit

During prison visits, a thick partition separates the prisoners from the visitors. As a rule, small children, up to the age of 8, are allowed to come into physical contact with their fathers once every two months, at the end of the visit. A visit in which physical contact is allowed is termed an "open visit." In one of the prisons, this right was taken away from an entire wing as collective

punishment for smuggling forbidden objects. HaMoked began working on restoring the open visits, but processing was never completed since all prisoners in this wing were transferred to another prison (Case 64901). In exceptional cases “open visits” are approved for visitors who are not children.

In December 2010, the IPS approved a one-time “open visit” for S.Z., a 70-year-old resident of Bethlehem who is confined to a wheelchair and suffers from serious health problems. Under the conditions in which the visits regularly take place, her medical situation prevents her from communicating with the prisoner during the visit, and therefore, she had not seen her imprisoned son – despite the permits she received – for two years. (Case 66852)

Visits from the Gaza Strip

There are 900 prisoners in Israeli prisons whose relatives live in the Gaza Strip. These prisoners are held in Israel in contravention of international law, which requires that they be held in the occupied area and transferred to the authority of the liberated area when the occupation ends. Until the summer of 2007, relatives from the Gaza Strip were able to visit their loved ones who are incarcerated in Israeli prisons through the ICRC shuttles and in keeping with the narrow criteria of degree of kinship and the absence of a security prohibition, similar to those that apply to visits from the West Bank. This arrangement continued after the redeployment of the Israeli military in the Gaza Strip in 2005, and even after the establishment of the Hamas government in 2006. However, since the summer of 2007, as part of the siege imposed on the Gaza Strip, Israel has prevented Gaza residents from visiting their relatives imprisoned in Israel.

In June 2008, HaMoked petitioned the HCJ requesting that the prison visit arrangement be renewed, as the ongoing suspension of the visits infringed on the basic rights of the prisoners and their families and amounted to prohibited collective punishment. Moreover, the visits had not been suspended due to security concerns but rather as a way of using prisoners and their families as bargaining chips between Israel and Hamas. In its response, the State claimed that even if the prisoners had a right to family visits, the State was under no obligation to allow residents of the Gaza Strip to enter Israel: entry into Israeli territory is governed by the principle of the “State’s

sovereignty and independence to choose who passes through its gates,” particularly in the case of “residents of a hostile entity.” The prohibition against the visits was described by the State as one “of the combative measures that is not ‘purely military’ that the State has adopted in the framework of the difficult and protracted armed conflict being waged against the Hamas regime in the Gaza Strip.”

In December 2009, the HCJ rejected the petition, as well as a similar one submitted by Adalah. The HCJ reviewed the petition from the perspective of a Gaza resident’s right to enter Israel for a given need, and ruled that prison visits are not included in the “basic humanitarian needs of residents of the Gaza Strip,” and that their cessation was based on “clear political and security grounds.” As for the violation against prisoners, the Court ruled that it was an “indirect violation,” since, in principle (and theory), the prisoners continue to have the right to receive visits, for example, if they have a relative who does not live in the Gaza Strip who fulfills the narrow criteria for visits. The “indirect” nature of this violation did not, in the Court’s view, justify its intervention¹⁶⁵ (Case 55992).

On the very day that it rejected the petition relating to visitors from the Gaza Strip on the claim that the main thrust of the violation was on the visitors and not the prisoners, the same Court ruled that when a former prisoner is prohibited from visiting a relative in prison on security grounds, the essence of the violation is against the prisoner, and not the visitor.¹⁶⁶ Likewise, as demonstrated above, the Court ruled that a visitor has no legal standing to petition the Court against a prohibition to visit. Justice Esther Hayut signed two conflicting judgments on the very same day; both violate the rights of prisoners and visitors alike.

Conditions of Imprisonment

Conditions in Temporary Detention Facilities

Many of the Palestinian detainees are held during the preliminary period of their detention in military detention facilities in the OPT. Such a facility is known by the military as a “temporary layover facility,” and in Arabic, as a

¹⁶⁵ HCJ 5268/08 **‘Anbar v. GOC Southern Command** (2009).

¹⁶⁶ *Supra*, note 162.

“khashabiyya.” Today, there are two such facilities – one in Huwwara (Samaria Facility), and the other in Etzion. Holding conditions in these facilities are particularly degrading, and many detainees are held in them for a month and a half or more before they are transferred to an IPS facility. In 2007, HaMoked petitioned the HCJ regarding the detention in “khashabiyya” facilities. This petition focused only on the length of time that the detainees are kept in these degrading conditions, and demanded that it be shortened.

During proceedings in the petition, HaMoked updated the Court a number of times regarding holding conditions at the “khashabiyya” facilities: cells without toilets (while the petition was in process, only urinals were installed at Huwwara “khashabiyya”); cold; overcrowding; no change of clothes; lack of hot water; insufficient medical care; meager food rations (with almost no vegetables and fruit); boredom (detainees receive no newspapers, books, writing materials, games, etc.), a “courtyard” for exercise hardly worthy of the name; and no family visits. The State did not deny the core of the claims regarding the conditions of imprisonment, though it did claim that it had instituted corrections and improvements.

In November 2007, the State announced that it intended to transfer detainees to IPS facilities within eight days from the day of their arrival in a temporary layover facility. Later, the State retracted this statement and presented a procedure, according to which the maximum layover time in a “khashabiyya” would be 21 days. In April 2008, it became clear that the State was not adhering to this procedure either. The Court issued an order nisi against the State, and in a hearing held in December 2008, the State proudly announced that it was now able to adhere to the procedure. HaMoked’s lawyers argued that the claim that a detainee could be held in such disgraceful conditions for three weeks was unacceptable. The Court rejected the petition, but recommended that the State continue to reduce the days spent in these facilities.¹⁶⁷ (Case 52738)

Canteen

The living conditions of the prisoners in IPS prisons depend to a great extent on their ability to purchase basic products at the canteen. The supplies in question are not luxury items, but basic necessities such as soap, shampoo, toothpaste, cigarettes and lighters, tea, coffee, sugar, hummus, tehina and

¹⁶⁷ HCJ 9169/07 **Taqatqa et al. v. Commander of the Military Forces in the West Bank** (2008).

olive oil. According to the IPS Commission Ordinance, every prisoner is allowed to purchase products at the canteen up to a sum of ILS 1,500,¹⁶⁸ using a special Postal Bank account opened for him by the IPS upon admission into prison. Immediate family members and more distant relatives can deposit money into the account.

The Israeli postal bank has no branches in the OPT (with the exception of East Jerusalem and the settlements, to which Palestinians usually have no access whatsoever). In order to deposit the money, families of Palestinian prisoners who are residents of the OPT are forced to send it for deposit in the Postal Bank through lawyers and acquaintances who have Israeli identity cards, or obtain entry permits into Israel in order to deposit it themselves. In addition, the branches of the Postal Bank often make it difficult for those wishing to deposit money to do so, using a variety of measures in an unpredictable manner. The branches sometimes limit the sum a single person may deposit (even if this person is simultaneously depositing money into several accounts); sometimes, they allow only a nominal sum to be deposited into a prisoner's account; sometimes they refuse to receive a deposit from a person holding an OPT identity card; and sometimes, they simply claim that "the account is closed." It seems that at least some of these restrictions are based on local initiatives by various levels of the institution's hierarchy to harm Palestinian prisoners under the guise of the struggle against terror financing.

HaMoked has tried to obtain the procedures pertaining to the maintenance of prisoner accounts in order to protect the rights of the prisoners and those who make deposits on their behalf, but these attempts have come up against an impenetrable wall. The Postal Company claimed that management of the accounts takes place in accordance with IPS procedures, but did not specify them; and the IPS, on its part, did not bother to respond to HaMoked's inquiries. In December 2010 HaMoked submitted a petition under the Freedom of Information Act in order to receive proper answers from the authorities on this matter¹⁶⁹ (Case 67371).

In the context of supplying basic necessities to the prisoners, it should be noted that family visits to prison are an opportunity to bring supplies to

¹⁶⁸ As far as HaMoked is aware, this is a monthly allowance. However, the IPS Commission Ordinances make no explicit reference to this.

¹⁶⁹ AP 3243-12-10 **HaMoked: Center for the Defence of the Individual v. Israel Prison Service.**

imprisoned loved ones. The types of permitted objects are very limited, and here, too, outside intervention is often necessary. In the fall of 2009, the families were informed that they would be able to bring winter clothes to the prisoners only during the month of November. Following HaMoked's intervention, the families were allowed to bring winter clothing from early October through the end of March (Case 35695).

Isolation

In 2008, HaMoked submitted a civil claim on behalf of two Palestinians who had been held in an Israeli prison in isolation from the other prisoners, one for five years and seven months, and the other for a year and ten months.¹⁷⁰ The two prisoners were held in isolation cells, with only one or two other prisoners in the cell. Even when going out for a walk in the courtyard, they were not allowed contact with other prisoners. Social isolation of this kind causes great distress and can even lead to psychological damage. In light of this, the Prison Ordinance contains specific provisions regarding the circumstances under which a prisoner may be put in isolation, and regarding who is authorized to order isolation. According to these provisions, isolation for over a year requires periodic court approval. In the case of the two detainees, the necessary procedures were not observed, and the isolation was enforced without the requisite orders from the competent officials. The isolation ended in 2007, following prisoners' petitions submitted by HaMoked on behalf of the two prisoners.¹⁷¹

In its response to the petitions, the State began its summations with aggressive rhetoric about the danger posed by the two prisoners and Gilad Shalit's holding conditions. On the merits, the State claimed in its defense that the prisoners were not being held in isolation at all, that they were administrative detainees (or, in the State's language: "detained under the Illegal Combatants Law") and that, since according to Law, prisoners of different types must be held separately from one another, and in the prison where the two detainees were being held there were no additional prisoners of the same category, the two were put in separate cells. HaMoked charged that this claim made it possible to bypass the provisions regarding isolation

170 CC (T-A) 13456/08 **'Ayyad v. State of Israel**; CC (T-A) 13473/08 **'Ayyad v. State of Israel**. For more on this case, see HaMoked's annual reports for 2005 and 2007, as well as: <http://www.hamoked.org/Case.aspx?cID=Cases46>.

171 PPA 2496/07 **'Ayyad v. State of Israel**; PPA 2497/07 **'Ayyad v. State of Israel**.

by transferring prisoners to prisons intended for other types of prisoners (such as detaining minors in a prison intended for adults).

In 2009, while the civil cases were underway, the two detainees were released from prison (Cases 52896, 52897).

Initiatives to Violate Basic Rights of Palestinian Prisoners

In the years 2008 to 2010, demands to violate the rights of Palestinian prisoners as a means of punishment or as pressure for the release of Gilad Shalit were raised repeatedly in the Israeli political arena. The Knesset discussed private member's bills seeking to deny family visits to prisoners classified as "security prisoners" who were members of an organization holding an Israeli civilian or combatant. In March 2009, the government passed a resolution, according to which Palestinian prisoners would not be granted any "privilege" that was not mandated by statute, common law or international convention to which Israel was a party. To this end, the government appointed a team of professionals to examine the reduction of "privileges" given to prisoners belonging to Hamas and Islamic Jihad. HaMoked sent a professional opinion regarding the invalid nature of these bills to the Knesset Foreign Affairs and Defense Committee (which discussed the private member's bills) and the Attorney General, pointing out that they sought to violate the prisoners' basic rights, subject them to collective punishment, and use their basic living conditions as bargaining chips in negotiations. A representative of HaMoked appeared in the discussion on the topic, which took place in the Knesset Foreign Affairs and Defense Committee in April 2008.

Torture and Ill-treatment in Detention and Interrogation

In 2009, HaMoked, together with B'Tselem, undertook an extensive project against the torture and ill-treatment of Palestinian detainees from the OPT during detention and interrogation. As part of the project, HaMoked and B'Tselem collected detailed testimonies from 121 Palestinians who had been held in the ISA interrogation facility in Petah Tikvah during the first and last three months of 2009. The ISA also operates interrogation facilities in Jalameh (Kishon) Detention Center, the Russian-Compound Detention

Center in Jerusalem, and Ashkelon Prison. The choice to focus on only one facility and during two separate periods was made in order to receive as reliable a sample as possible of the routine operation of the facility, without the effects of any exceptional incidents which might change this routine for some time, and due to human resources limitations that did not allow for comprehensive collection of testimonies from detainees in all of the facilities.

The detainees included in the project were traced according to requests received by HaMoked from relatives seeking information on their loved ones' place of incarceration. HaMoked sent lawyers to interview the detainees traced to Petah-Tikvah Facility during the relevant periods. The interviews were all conducted after the detainees had been transferred to other detention facilities. Detainees who had been released were interviewed in their homes by B'Tselem field researchers. After the elimination of individuals who preferred not to testify and ones who were not at Petah-Tikvah Facility during the relevant periods, 121 witnesses remained in the project, as stated.

Based on these testimonies, and with the assistance of additional materials, HaMoked and B'Tselem published a comprehensive report in October 2010, entitled: **Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikvah Interrogation Facility of the Israel Security Agency**. The report exposes systematic violence at the stage of detention, cruel holding conditions in closed detention cells, sometimes in isolation, horrific hygienic conditions, protracted restraining in the interrogation room preventing any bodily movement, sleep deprivation and additional assaults on the body and psyche of the prisoner. Nine percent of the witnesses reported physical violence in the interrogation room. The report asserts that use of each of these measures separately, and surely their combined use, amounts to cruel, inhuman and degrading treatment, which in some cases reaches the point of torture. All of these are absolutely prohibited without exception, under both Israeli and international law.

Alongside the legal chapter, the report seeks to elucidate the reasons for the cruel treatment of prisoners. The State of Israel pins this conduct on the efforts to foil serious terrorist attacks, but this argument cannot serve as a justification for the acts described in the report. The prohibition against cruel, inhuman and degrading treatment and against torture is absolute and allows for no exceptions. Moreover, the data presented in the report

indicate that the claim is inconsistent with the facts, to put it mildly. Most of the detainees who testified for the report were suspected of crimes that were not among the most severe, and many of them were accused of activity of an essentially political or religious nature. Police investigations of dangerous criminals have been carried out without employing measures of this type. The fact that the ill treatment of prisoners continued for a long time after the interrogations ended also refutes the claim that their entire purpose was to foil terrorist attacks. In the report, HaMoked and B'Tselem propose to look at the authorities' treatment of Palestinian prisoners in the context of their national identity and their activity against the ongoing occupation, rather than just in the context of the potential risk they may pose to human life.

After reviewing the complaints collected, HaMoked submitted complaints to the authorities in 19 cases selected as a representative sample.

Complaints of soldiers' treatment of detainees are handled by the Military Police Investigation Unit. Of nine complaints received by the MPIU regarding soldiers' conduct at the stage of arrest or detention at military layover and detention facilities ("khashabiyya" facilities, three cases were closed and the others are still in process. The closed files give the impression that the goal of the investigation was not to bring criminal soldiers to justice. For example, one of the cases was closed on the grounds that the complainant told the military police investigator he had not been beaten. However, the military police investigation file indicated that the witness had complained of beating on the night of the arrest when he was taken to Huwwara Detention Facility, but this complaint was not sent to the Military Police Investigation Unit; the investigation was launched only following HaMoked's complaint. It also emerged that while in the testimony recorded by the military police investigator, the witness played down the physical violence used against him, he did state that soldiers had pushed him "when I walked slowly", "when I squirmed slightly in the vehicle" and also mentioned that "the soldiers moved me with their legs" (Case 61369).

Complaints regarding ISA interrogators are processed by the Inspector of Complaints by ISA Interrogees (hereinafter: the Complaints Inspector) – an ISA employee who sends the results of his inquiries to the State Attorney's Office. Of 18 complaints submitted against ISA interrogators, one has yet to receive a response. All the others were shelved on the grounds that no

supporting evidence was found. HaMoked received the information on the decisions made regarding these complaints only after it was forced to submit a petition to the HCJ on non-response to its requests¹⁷² (Case 65978).

Since the State refused to provide HaMoked with the Complaints Inspector's investigative material, the quality of the investigation based on which the complaints were shelved could not be ascertained. It is not clear, for example, what evidence was collected, what the factual findings were, and what methods of investigation that are considered lawful by the State Attorney's Office were documented. The State's responses to the complaints make it quite evident that in the eyes of the State Attorney's Office, testimony from the interrogees themselves does not provide cause for launching a criminal investigation when "there is no supporting indication" from the interrogators or in the written documentation in the Complaint Inspector's files. Moreover, the responses also give rise to concern that the State Attorney's Office relies on documents that fail to reflect reality. For example, in one of the cases, the witness was arrested for illegal presence in Israel and was transferred for ISA interrogation only at a later stage. The witness complained of severe violence against him during detention, and his testimony to this effect already appears in his first police interrogation, even before he was transferred to the ISA facility in Petah Tikvah. In the letter announcing the decision to shelve the complaint against the ISA interrogators, the Complaints Inspector's supervisor in the State Attorney's Office claimed that the reliability of the witness was doubtful. In this conclusion, she relied, among other things, on the notes of an ISA interrogator, according to which the witness related at the beginning of his ISA interrogation that he "was feeling well." Since the complaint about the beating (which appeared in an earlier document) did not appear in these notes, the lawyer concluded that the complainant was not reliable. The conclusion that the ISA interrogator's notes were unreliable is equally plausible (Case 61348).

Regarding holding conditions at Petah-Tikvah Facility, HaMoked's request on this matter was transferred from one authority to another, until it finally reached the desk of the Prisoner Complaints Officer in the Ministry of Public Security. No response has yet been received.

¹⁷² HCJ 6138/10 **HaMoked: Center for the Defence of the Individual v. Attorney General** (2011).

Concomitant with filing the complaints, HaMoked asked, on behalf of the complainants, for their medical files from the period of detention. After some resistance, the medical records were supplied, but it quickly became clear that they contained only partial information, often missing the initial examinations performed on the detainee upon arrest. The medical information from the period in Petah-Tikvah Facility was often not transferred, or transferred only in part. In June 2010, HaMoked petitioned the HCJ, demanding to receive complete medical information. HaMoked also asked that in the future, the authorities act in keeping with the principle according to which every prisoner and former prisoner is entitled to receive their complete medical records. At the time of writing, HaMoked is still waiting for the missing medical information¹⁷³ (Case 65760).

In four cases, HaMoked submitted civil claims on behalf of complainants. Two additional claims were submitted at the beginning of 2011.

Additional Proceedings

In addition to this project, HaMoked is a partner in two additional proceedings relating to the ISA's interrogation methods. In April 2008, five human rights organizations, including HaMoked, petitioned the HCJ against the practices of putting pressure on prisoners through their relatives. The petition focused on a case in which the father and wife of an interrogee were brought to the detention facility. The father was put in a prisoner's uniform. The interrogators showed the prisoner his father and wife in this state, through a window. The interrogee remained convinced that his father and wife were in detention later in his interrogation, drawing him into a serious emotional crisis, which included a suicide attempt. In the petition, the organizations presented a series of additional cases in which the authorities brought interrogees' family members to interrogation facilities so that the interrogees would be able to see them (sometimes through a crack in the door). In other cases, family members were brought to a facility on some pretext or other, and their presence was misrepresented such that the interrogee came to believe that his relative had been arrested on his account. Sometimes, family members were indeed arrested, but it appears that the purpose of the arrest was only to pressure the interrogee.

173 HCJ 4677/10 **HaMoked: Center for the Defence of the Individual v. Israel Prison Service.**

Threats to harm relatives and attempts to induce interrogees to cooperate with the interrogators based on a promise that this would allow them contact with their relatives are recurring methods in ISA interrogations. In its response to the petition, the State claimed that “as a rule, in a situation in which a detainee’s relative is not in detention, and there is no legal cause to arrest him, there is no place to misrepresent the situation to the interrogee as if his relative is in detention,” and that “the interrogators have been apprised of the explicit prohibition on the use of threats against family members as a means of intimidation and pressure in an investigative ruse, even when the relative has not actually been arrested.” Based on these declarations, the Court rejected the petition.¹⁷⁴ From testimonies received by HaMoked and B’Tselem, the pressure on interrogees through their families continued after the ruling.¹⁷⁵

In November 2008, HaMoked participated in an application made to the Supreme Court under the Contempt of Court Ordinance. The application was submitted by the Public Committee against Torture in Israel, the Association for Civil Rights in Israel and HaMoked, on the claim that the State was violating the HCJ’s 1999 ruling on the ISA’s interrogation methods. In that ruling, the HCJ rejected, among other things, the State’s claim that the necessity defense allowed it to establish permits for the use of violence against interrogees in circumstances defined in advance and with the advance approval of specific individuals in the hierarchy of the security establishment. The Court ruled that the necessity defense is a criminal defense which can prevent bringing a person to trial, but cannot grant a public authority powers that it was not granted explicitly. Moreover, the necessity clause “deals with cases involving individuals reacting to a given set of facts. It is an improvised reaction to an unpredictable event.” It does not provide a legal basis for exercising administrative powers based on general parameters anticipating the future.

In their application, the organizations demonstrated that in practice, the ISA had instituted a new procedure, sometimes known as “the necessity interrogation procedure.” This procedure includes violent and cruel interrogation methods specified to the minutest technical detail, and

174 HCJ 3533/08 **Sweiti v. Israel Security Agency** (2009).

175 See HaMoked and B’Tselem, **Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikvah Interrogation Facility of the Israel Security Agency**, 2010, pp. 25-26.

activated in the framework of a predetermined bureaucratic and hierarchical system of approvals. The organizations supported their claims with various documents: ISA memos obtained by defense lawyers; transcripts of military court hearings in which ISA interrogators and others testified regarding interrogation methods and approval arrangements; rulings issued by these courts; letters from State officials; State responses to the press; and of course, testimonies of interrogees.

In July 2009, the Supreme Court rejected the application in a brief decision determining that the topic was not suitable for clarification in the framework of an application under the Contempt of Court Ordinance.¹⁷⁶

The Secret Facility

In 2002, HaMoked discovered the existence of a secret detention and interrogation facility known as “Facility 1391.” From information that has been published about the facility – some officially and some unofficially – it emerges that the facility is located at a fortress from the British Mandate period, near Hadera and belongs to military intelligence. Over the years, the facility has mainly served for imprisoning foreign nationals; among others, kidnapped Lebanese prisoners, including Sheikh ‘Abd al-Karim ‘Ubeid and Mustafa Dirani. In 2002 and 2003, Palestinian prisoners from the OPT were held in the facility. In 2006, during the Second Lebanon War, individuals who had been captured in Lebanon were held there. The facility’s veil of secrecy conceals inhuman holding conditions and severe acts of ill-treatment.

On May 14, 2009, the UN Committee against Torture published its concluding observations regarding a report submitted to it by the State of Israel. The report, among other things, included comments on “Facility 1391”:

Notwithstanding the information from the State party that ISA secret detention and interrogation facility known as “Facility 1391” has not been used since 2006 to detain or interrogate security suspects, the Committee notes with concern that several petitions filed to the Supreme Court to examine the facility were rejected and that the Supreme Court has found that Israeli authorities acted reasonably in not conducting

176 HCJ 5100/94 **Public Committee against Torture in Israel v. Government of Israel** (2009).

investigations on allegations on torture and ill-treatment and poor detention conditions in the facility.

The State party should ensure that no one is detained in any secret detention facility under its control in the future, **as a secret detention center is *per se* a breach of the Convention.** The State party should investigate and disclose the existence of any other such facility and the authority under which it has been established. It should ensure that all allegations of torture and ill-treatment by detainees in Facility 1391 be impartially investigated, the results made public, and any perpetrators responsible for breaches of the Convention be held accountable.¹⁷⁷

At the beginning of 2011, the HCJ rejected HaMoked's petition demanding the closure of Facility 1391. The ruling does not mention the findings of the UN Committee against Torture.

Administrative Detention

Between 2008 and 2010, the number administrative detainees from the OPT held by Israel gradually declined. This decline can be attributed to the attenuation of military activity against Israel in the West Bank, and the strengthening of collaboration between Israel and the Palestinian Authority government in the West Bank, with international backing. It appears that in many cases, instead of being detained by Israel, activists of the Palestinian opposition organizations are held in PA prisons.

Israel holds Palestinians and foreign nationals in administrative detention under three statutes: the Military Order regarding Administrative Detention, which is part of the military law of the West Bank; the Israeli Administrative Detention Law; and the Internment of Unlawful Combatants Law, which serves Israel for detaining Lebanese citizens and Palestinians residing in the Gaza Strip. In all these cases, administrative detention is based on a claim regarding future danger posed by the prisoner, and on information that

177 UN Committee Against Torture (CAT), Concluding observations of the Committee against Torture; Israel, 23 June 2009, CAT/C/ISR/CO/4 (emphasis added). Available at: <http://www.refworld.org/docid/4a85632b0.html>.

would not have met – in the State’s estimation – evidentiary standards of a criminal proceeding.

Detention orders issued under military legislation and under the Israeli Administrative Detentions Law are for specific durations, but can be extended repeatedly with no limitation. Detention orders issued under the Internment of Unlawful Combatants Law are brought up for periodic review, but they are issued for an unspecified duration. In practice, this means that administrative detainees never know when they will be released, and some remain in administrative detention for years on end. According to IPS data, as of September 2009, 8% of administrative detainees had been in prison for periods of two to five years.

Administrative-detention orders are usually based on considerations, information and evidence that the authorities define as “classified.” A prisoner and his legal counsel have no possibility of reviewing the material, and in any case, they have no way of challenging it. The security authorities present the material – and usually only its main points – to the Court *ex parte*, and without the presence of the prisoner or his counsel. Until 2002, the ISA sent representatives to the Court, who were well versed in the material and capable of answering the Court’s questions in a session behind closed doors. This practice largely stopped in 2002, and the Court therefore now relies only on the material presented to it and the military prosecutors whose expertise in the material is secondary and partial.

In October 2009, HaMoked and B’Tselem published a joint report on the topic of administrative detention, which presents comprehensive data on the use Israel makes of administrative detention against residents of the OPT. The report, entitled: **Without Trial: Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law**, illustrates that although the various administrative-detention orders are subject to judicial review, there is a large gap between reality and the provisions of international law and the jurisprudence of the Israeli Supreme Court on the topic. The existence of judicial review is an attempt to create a semblance of a fair system, but in practice, detainees have no real opportunity to defend themselves against the allegations made against them. This is illustrated in the report through a detailed description of the processing of a succession of administrative detention cases.

Administrative-detention laws make it possible to imprison a person based on estimations of the future danger he poses, through a procedure devoid of transparency and on the basis of secret material and “evidence” that are unacceptable in an ordinary legal case. This combination creates a broad avenue for exploiting the procedure for purposes other than its stated goals, such as utilizing it as a powerful tool for blackmailing, neutralizing and oppressing people and political movements.

The administrative detainees whose cases are processed by HaMoked are represented by Adv. Tamar Peleg-Sryck. In 2008, HaMoked represented 60 administrative detainees in judicial reviews, and, in addition, submitted 79 appeals to the Military Appeals Court and two petitions to the HCJ. Twenty-six of the detainees represented by HaMoked were released during the year. HaMoked also represented three detainees who were held under the Interment of Unlawful Combatants Law. In 2009, HaMoked represented 40 administrative detainees in judicial reviews, submitted 77 appeals to the Military Appeals Court and one petition to the HCJ. Sixteen of the detainees were released during the year. HaMoked also represented ten detainees held under the Interment of Unlawful Combatants Law. The increase in the number of detainees imprisoned under this law arises in part from the arrests carried out during the attack on Gaza at the beginning of 2009. Other detainees are Palestinians from the Gaza Strip who served a sentence in an Israeli prison and were to be released that year. Rather than release them, Israel issued detention orders against them under the Interment of Unlawful Combatants Law. In 2010, HaMoked represented 19 administrative detainees in judicial review proceedings, and submitted 19 appeals to the Military Appeals Court. Eleven of the detainees were released during the year, but three were re-arrested, one approximately two weeks later, and the second, two months later. The third was arrested by the Palestinian Authority on his way home from the Israeli prison. In addition, that year, HaMoked represented five detainees who had been arrested under the Interment of Unlawful Combatants Law.



H.J., age 48, a resident of Silat al-Harithiya and a teacher in the village school, had been imprisoned in the past due to his membership in the Palestinian Islamic Jihad organization. In March 2008,

he was again arrested, and a six-month administrative detention order was issued against him on the grounds that he was active in Islamic Jihad. In the many hearings that took place regarding the order and its extension, the prosecution buttressed itself behind “classified information” that could not be disclosed. Yet, from cross-examinations, it emerged that what was being attributed to H.J. was civic-organizational involvement in the Islamic Jihad, and not any kind of military activity. In fact, it was not clear whether any concrete activity was being attributed to him beyond “organizational affiliation,” “connections” and “status.” H.J. himself claimed that while he had social connections with people from the organization, he was not active in it. The order was extended twice, each time for six months. In the judicial review of the second extension, the military judge ordered a non-substantive reduction of the order to three months. A non-substantive reduction does not necessarily mean that the detainee will be released at the end of the term, but that he will undergo judicial review earlier. After this decision, the military extended H.J.’s detention five more times, each time for three months. The last order was issued on August 15, 2010, but was shortened in the judicial review from three to two months – again by a non-substantive reduction. This time, the military commander chose not to extend the order. Two years and four months after his arrest, H.J. was released to his home. (Case 4812)



A.A. was arrested in February 2007, and sentenced for activity in Hamas. As part of a plea bargain, he was sentenced to a two-year prison term and a fine of ILS 8,000 or eight additional months of prison time in lieu. A.A.’s wife sold her jewelry in order to pay the fine and advance her husband’s release. After the fine was paid and the date of A.A.’s release neared, the military issued an administrative-detention order against him for a period of six months. A.A. remained in prison, this time as an administrative detainee. In the judicial review, the order was non-substantively shortened. The prosecution appealed, and the original duration was restored. The HCJ petition against the detention was rejected,¹⁷⁸ and thereafter, the military extended the detention order for six additional months. At this stage, the case reached HaMoked. In the judicial review of this order, A.A. was represented by Adv. Tamar Peleg-Sryck of HaMoked.

178 HCJ 2562/09 **Amir v. Legally-Trained Military Judge Colonel Tirosh Moshe et al.** (2009).

Following the arguments presented by HaMoked, the military judge found that while the intelligence material on which the order was based was from recent years, the information related to a period prior to 2007. In light of this, the judge ordered a non-substantive reduction of the order. Both HaMoked and the prosecution appealed to the Military Appeals Court, but both appeals were rejected. A.A.'s administrative detention continued to be extended from time to time, until, ultimately, agreement was reached whereby the order would not be extended beyond May 20, 2010. The agreement was based, among other things, on the medical condition of A.A., who suffers from a slipped disc. In its decision, accepted following the agreement of the parties, the Court determined that should A.A. require surgery, it would serve as cause for re-examining the decision. Since A.A. indeed needed surgery, the Court ordered his release to house arrest on April 22, 2010. The State was not prepared to accept A.A.'s release one month ahead of time, and submitted a motion to delay it to the Military Appeals Court. The motion was denied.

This did not, however, mark the end of A.A.'s ordeal: on his way home, he was arrested by the Palestinian Authority in a manner that arouses the suspicion that the arrest was a result of security collaboration with Israel. A.A. was ultimately also released from detention by the PA. **(Case 69958)**



The Military Attack on the Gaza Strip

In the years covered by this report, 2008 to 2010, the Gaza Strip remained under siege and suffered military attacks by Israel. HaMoked's activity in this realm focused mainly on the struggle against Israel's separation policy, which aimed at separating the Gaza Strip from the rest of the Occupied Palestinian Territories, and on efforts to protect whatever little was left of freedom of movement to and from the Gaza Strip. These efforts are addressed elsewhere in this report. In September 2010, HaMoked relayed information on these issues to the "Public Commission to Examine the Maritime Incident of May 31, 2010" (the Turkel Commission). In addition to its concentrated efforts with respect to freedom of movement to and from the Gaza Strip, HaMoked participated, among other things, in a petition filed by human rights organizations regarding the supply of fuel and electricity to the Gaza Strip.¹⁷⁹

The most serious of Israel's attacks on the Gaza Strip was the assault Israel calls "Operation Cast Lead." The attack began on December 27, 2008, and ended on January 18, 2009. According to figures published by B'Tselem, 1,390 Palestinians were killed in this attack. Of those killed, 759 were civilians who did not participate in the fighting, including 318 minors under the age of 18. The number of wounded Palestinians reached more than 5,300, including more than 350 who suffered serious injuries. In addition, tremendous damage was inflicted on residential homes, industrial buildings, agriculture, as well as all infrastructure installations including electricity, sanitation, water and health, which had been on the brink of collapse even before the operation. According to UN figures, Israel destroyed more than 3,500 residential homes, and some 20,000 people remained without shelter. The attack on

179 HCJ 9132/07 **Al-Basyouni v. Prime Minister** (2008); HCJ 4258/08 **Gisha – Legal Center for Freedom of Movement v. Minister of Defense** (2008).

Gaza was characterized by grave breaches of the laws of armed conflict, disproportionate use of force, use of prohibited weapons, and attacks on civilians and civilian targets. As in previous cases, for example, during the invasion of West Bank cities in 2002 (known as “Operation Defensive Shield”), human rights organizations responded to the emergency situation through joint, coordinated work – with the press, the public and the courts. Among other things, the organizations launched a joint blog dedicated to providing updates on the current situation and on the organizations’ activities.¹⁸⁰ Even as the attack was taking place, the organizations alerted the government and the public, in a series of letters and press releases, about what appeared to be violations of the laws of armed conflict, damage to civilians and civilian targets, the collapse of the health system, the obstruction of evacuation and medical team access, use of phosphorous bombs and suspected use of cluster bombs, and on the holding conditions of detainees captured by the military during the operation. In the petition, which was submitted to the HCJ on January 7, 2009, nine human rights organizations, including HaMoked, demanded that the attacks on medical teams and ambulances be halted, and that no delay or prevention be permitted during the evacuation of the wounded for medical treatment.

In a second petition, submitted that same day, the organizations requested the supply of electricity to the population in the Gaza Strip be fully restored. The petitioners pointed out that cutting off the supply of diesel fuel to the Gaza Strip brought electricity production in Gaza’s power station to a complete halt, and at the same time, due to the military’s shelling, most of the high voltage lines that supply electricity to the Gaza Strip from Israel and Egypt were also put out of service. Without electricity to pump the underground water sources, water supply was cut off for 800,000 Gaza-Strip residents, and the fact that sewage pumps had stopped working caused sewage floods in populated areas and agricultural lands. In addition, there was grave concern that the generators supplying electricity to the hospitals, which were working around the clock given the serious disruptions in electricity supply, would collapse. Lack of electricity supply to bakeries also led to a bread shortage.

The two petitions were heard by the HCJ together. It rejected both after receiving updates from the military regarding preparations for a solution to

¹⁸⁰ See blog at <http://gazaeng.blogspot.co.il> (last accessed June 2011).

the humanitarian needs of the residents of the Gaza Strip, without ruling on the factual issues presented in the petition. The Court expressed its regret regarding the harm caused to the civilian population of the Gaza Strip, but claimed that “the ruthless terrorist organization ruling the Gaza Strip” was to blame and expressed hope that the State would do as much as it could to alleviate the suffering of the civilian population¹⁸¹ (Cases 55905, 58940).

On January 8, 2009, HaMoked submitted a habeas corpus petition regarding Palestinian residents of the Gaza Strip who had been arrested by Israeli military forces during the invasion of the Gaza Strip. The families of the detainees contacted HaMoked asking to find out where their loved ones were being held. In the circumstances of the attack on the Gaza Strip, this information was of particularly great importance, since a person who was not in detention could be “missing” and might be in need of evacuation due to injury or because he had been buried under rubble. The Military Prison Control Center, which provides information of this sort, refused to respond to HaMoked’s queries regarding prisoners from the Gaza Strip. Following the petition, the State provided the information regarding the detainees named in it; it turned out that only a few of them were registered as having been arrested by the military, and most had meanwhile been released. In addition, the Military Prison Control Center began providing answers to queries. In the petition, HaMoked had also demanded access to Sde-Teiman military base, which served for the layover of detainees brought into Israel, but before this demand was heard, the operation ended and all of the detainees were released to the Gaza Strip or transferred to regular prison facilities in Israel¹⁸² (Case 58892).

In addition, HaMoked took legal action to remove an attorney-client-meeting ban imposed on two prisoners from the Gaza Strip who had been transferred to Israeli prisons for interrogation. After the prohibition was removed, a lawyer working on behalf of HaMoked met with the prisoners at Ashkelon Prison. Both, it was learned, had been deprived of sleep during the interrogation. One reported spitting and cursing by the interrogators, and the other testified that someone told him two of his children had been killed in the attack. It was later discovered that this person was an informant, planted by the authorities for the purpose of soliciting information from prisoners, and that the information he provided was false (Cases 59062, 59059).

181 HCJ 201/09 **Physicians for Human Rights v. Prime Minister** (2009).

182 HCJ 289/09 **Attar v. Israel Defense Forces** (2009).

HaMoked also helped transfer supplies to a family of 120 individuals living in the Siafa enclave in the northwestern Gaza Strip. The family's medicine and food supply ran out, and since the fighting had begun, they had received no assistance except for 120 sandwiches and six bottles of water provided by the military. The military notified HaMoked that in so doing, its responsibility had been fulfilled, and that it had no intention of providing additional food or medicine to the family. On January 11, 2009, HaMoked sent five tons of food and medicine to the Zikim Roadblock, obtained with the help of donors from Israel and abroad, and the assistance of Physicians for Human Rights - Israel, which had collected the entire supply of medicines needed by the family. After intensive coordination efforts and contradictory information provided by the military, the supplies reached the military outpost located approximately half a kilometer from the family's homes. The family was told to arrive and take the supplies from there. The military allowed the family to use only two donkey-driven carts. The family coordinated arrival of an additional horse-and-wagon, but soldiers shot and killed the horse. In a statement issued regarding the case, HaMoked emphasized that Israel bore the responsibility for supplying food, medicine and humanitarian aid to residents of the Gaza Strip.

Immediately after the attack on the Gaza Strip ended, human rights organizations, including HaMoked, demanded that the crossings into the Gaza Strip be opened and that the apparent grave breaches of the law of armed conflict be investigated. Israel did not establish an independent body to investigate these suspicions, and the issue was instead investigated by the fact-finding mission headed by Judge Richard Goldstone, working on behalf of the UN Human Rights Council. Human rights organizations, including HaMoked, supplied the delegation with a document on the issue, and gave it access to material they had collected while processing cases of human rights and international law violations during the fighting in Gaza.

At the beginning of 2009, shortly after the end of the Israeli attack on the Gaza Strip, Israeli human rights organizations asked to send representatives to Gaza in order to apprise themselves of the situation there. Requests were sent to then Minister Yitzhak Herzog, who was appointed government coordinator of humanitarian aid to the Gaza Strip at the time, as well as to the GOC Southern Command. Minister Herzog notified the organizations

that the matter was not under his jurisdiction, and an answer from the military was slow to come. On February 27, 2009, HaMoked and B'Tselem petitioned the HCJ, asking for entry permits to the Gaza Strip for B'Tselem field researchers.¹⁸³ Despite the urgency, the petition was scheduled for a hearing only in the month of July. The State's response to the petition was in large part a repeat of its usual response to petitions regarding entry into the Gaza Strip by Israelis: Israelis have no right to enter the Gaza Strip; Israel's policy is to allow entry in rare cases only, since there is concern that Israelis might be attacked or recruited by terrorist organizations; and any opening of Erez Crossing endangered the soldiers and civilians there. The State usually quotes, inter alia, a 2007 judgment in which the Court rejected a petition to enter the Gaza Strip for this very reason, but it does not bother to add that two days after the judgment was handed down, the military allowed the same petitioner to enter the Gaza Strip.¹⁸⁴ In the hearing, HaMoked's lawyers pointed out that Erez Crossing operated daily, and that many Israelis entered the Gaza Strip and remained there, including for humanitarian purposes such as visitation of the sick and participation in weddings. If one of B'Tselem's field researchers had a relative in the Gaza Strip who was getting married, the State would have allowed him to visit the Gaza Strip, but when it comes to protecting human rights and upholding the public's right to know, the crossing is locked. These arguments were of no use, and at the Court's recommendation, the petition was erased. (Case 59491)

183 HCJ 1838/09 **Abu Rokaya v. GOC Southern Command**.

184 HCJ 6475/07 **Abu a-Laban v. GOC Southern Command et al.** (2007). See http://hamoked.org/Document.aspx?dID=460_update.



Attacks on Human Rights Organizations

The years 2008-2010 were characterized by increasing attacks on human rights organizations in Israel and attempts to delegitimize their activity and restrict their freedom. These attacks feed off the publications of organizations such as NGO Monitor and "Im Tirtzu," but go beyond the activities of these conservative right-wing organizations, penetrating the political and public discourse, where they manifest themselves in legislation and in the actions of the public authorities.

In February 2010, a number of members of Knesset, headed by MK Zeev Elkin, tabled a bill known as the "Law for Mandatory Disclosure of Support by a Foreign Political Entity." It was passed in a milder version in 2011. The law adds new provisions to already existing ones regarding the obligation to report donations received by non-profit organizations directly or indirectly from foreign countries. It does not stipulate similar mandatory reporting for donations received from owners of private capital, although most private donors have a strong interest to affect Israeli politics, and they are involved in financing right-wing and conservative organizations in the country.



In November 2008, HaMoked received a donation from a government foundation in Spain. The money was transferred to HaMoked's bank account by electronic transfer. The transfer documents include the complete and precise details of the organization's bank account. In the box reserved for the name of the country where the target bank is located, the entry appears as "The Occupied Palestinian Territories." From the point-of-view of international law and consensus, this is an accurate description, since the branch is in East Jerusalem, which

was occupied by Israel in 1967. One way or another, although there was no doubt regarding the identity of the account, someone in the bank's central offices in Tel Aviv decided to demonstrate his or her misplaced patriotism, and did not transfer the funds, on the excuse that the description "The Occupied Palestinian Territories" resulted in a "lack of correlation" between the details in the transfer documents and the account details. The bank was on the brink of returning the funds to Spain, but after HaMoked turned to the courts, the bank withdrew its intention and transferred the funds to HaMoked's account, after a one-month delay. This political initiative by a bank official, which could have obstructed an essential project involving defense of the social rights of East Jerusalem residents, is an additional example of the public sentiment of nationalist rallying and harassment of human rights organizations. (Case 11432)

On April 26, 2009, for the first time since its founding in 1988, police outfitted with a search warrant arrived at HaMoked. The order allowed them to conduct a search of the offices and to seize "any document or object, including computer and media containing computer records [...], including prolonged access [to the computer system] for the purpose of inspection or producing outputs related to the investigation" – meaning computer printouts – without witnesses. The search warrant was presented as part of a criminal investigation conducted at the time against New Profile movement on suspicion of incitement to evade military service. Apparently, the cause for the order was a suspicion that one of HaMoked's computers was used to upload an article suspected of including prohibited incitement to an internet site. Although the investigation against New Profile ultimately ended with the closure of the criminal files, the incident reflects the assault on freedom of expression and on civil society, and casts a menacing shadow over freedom of expression and freedom of association in the State of Israel.

The order allowing a comprehensive search of HaMoked's offices is an additional and independent manifestation of the attack on civil society organizations. It is difficult to imagine that the police, who conducted the investigation, were unaware of the main thrust of HaMoked's activity. Moreover, the investigation took place under directives from the State Attorney's Office and the Deputy State Attorney, who was personally involved in cases in which HaMoked was the adversary. HaMoked contacted the Tel-

Aviv-Jaffa Magistrates Court, which issued the search warrant, and asked that it be reviewed. HaMoked made clear that its files and computers were a repository of thousands of documents protected by attorney-client privilege and that most of them related to procedures between the individual and the State. In the framework of the review, the parties reached an agreement regarding limited scanning of the documents which would not expose their content to police investigators. Ultimately, this procedure, as well, was not carried out.

In recent years, the justice system has come under an organized attack, at least some of whose instigators have sought to weaken the principle of the Rule of Law and the protection of human rights. However, the Courts themselves are not immune to the wave of undemocratic sentiment that is washing over Israeli society, and its decisions do not give proper weight to the importance of the work performed by human rights organizations.

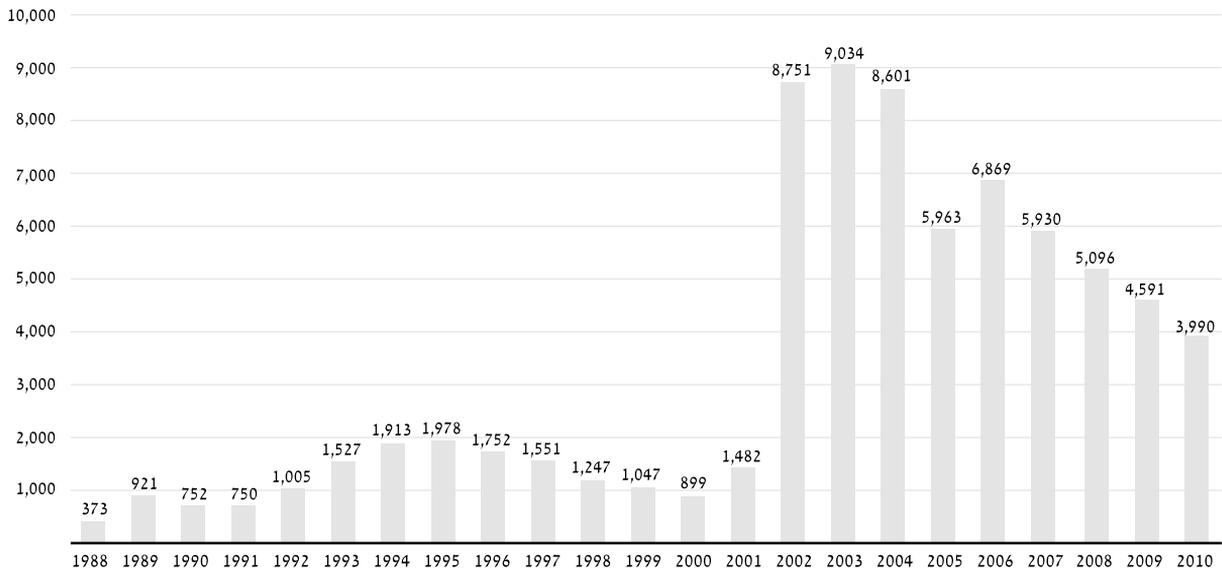
Appendices

Statistics

New cases received by HaMoked in 2008-2010, by topic

		2008		2009		2010	
		Number of cases	% of cases	Number of cases	% of cases	Number of cases	% of cases
Detainee rights	Tracing	4,525	88.8%	3,876	84.4%	3,199	80.2%
	Administrative Detention	60	1.2%	48	1.0%	20	0.5%
	Conditions of Detention	5	0.1%	18	0.4%	12	0.3%
	Family Visitation	269	5.3%	208	4.5%	219	5.5%
	Torture			23	0.5%	4	0.1%
Freedom of movement	To and From the OPT	137	2.7%	173	3.8%	225	5.6%
	Within the OPT			6	0.1%	54	1.4%
Residency	Jerusalem	64	1.3%	28	0.6%	21	0.5%
	the OPT	30	0.6%	63	1.4%	93	2.3%
Social Rights in Jerusalem		2	0.0%	145	3.2%	142	3.6%
Violence to Body and/or Property		2	0.0%	2	0.0%	1	0.0%
Punitve House Demolitions		2	0.0%				
Other				1	0.0%		
Total		5,096	100.0%	4,591	100.0%	3,990	100.0%

New cases received by HaMoked from July 1, 1988 to 31 December, 2010



Donors

HaMoked would like to acknowledge the support of the following donors

2008

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

Commission of the European Communities, Belgium

Diakonia, Sweden

EED (Evangelischer Entwicklungsdienst), Germany

Embassy of Finland, Tel Aviv

The Ford Israel Fund, USA

Misereor, Germany

Naomi and Nehemia Cohen Foundation, USA

NGO Development Center (NDC), Ramallah

New Israel Fund

Oxfam Novib, Netherlands

Representative Office of the Netherlands, Ramallah

Royal Norwegian Embassy, Tel Aviv

Swiss Development Cooperation (SDC), Switzerland

Trocaire, Ireland

2009

Broederlijk Delen, Belgium
CanFund Initiative, Canadian International Development Association
CCFD (Catholic Committee against Hunger and for Development), France
Cinemitic, London
Commission of the European Communities, Belgium
Diakonia, Sweden
EED (Evangelischer Entwicklungsdienst), Germany
Embassy of Finland, Tel Aviv
The Ford Israel Fund, USA
Misereor, Germany
Naomi and Nehemia Cohen Foundation, USA
New Israel Fund
NGO Development Center (NDC), Ramallah
Norwegian Refugee Council, Jerusalem
Open Society Institute (OSI)
Oxfam Novib, Netherlands
Royal Norwegian Embassy, Tel Aviv
Sigrid Rausing Trust, London
Spanish International Development Cooperation (AECID)
Trocaire, Ireland

2010

Broederlijk Delen, Belgium
CanFund Initiative, Canadian International Development Association
CCFD (Catholic Committee against Hunger and for Development), France
Commission of the European Communities, Belgium
EED (Evangelischer Entwicklungsdienst), Germany
The Ford Israel Fund, USA
The French Consulate, Jerusalem
Misereor, Germany
Naomi and Nehemia Cohen Foundation, USA
New Israel Fund
NGO Development Center (NDC), Ramallah
Norwegian Refugee Council, Jerusalem
Oxfam Novib, Netherlands
Royal Norwegian Embassy, Tel Aviv
Sigrid Rausing Trust, London
SIVMO, Netherlands
Spanish International Development Cooperation (AECID)
Trocaire, Ireland

HaMoked also wishes to thank the many people who have shown their support by volunteering and giving donations.

HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger, is a human rights organization established to assist Palestinians living under the Israeli occupation which causes sustained and severe violation of their rights. HaMoked acts to promote the enforcement of the standards and values of international humanitarian and human rights law.

HaMoked was established in 1988 against the backdrop of the first intifada. In the beginning, the organization, then called "the Hotline for Victims of Violence," handled applications of Palestinians who were injured by the "broken bones" policy of the Israeli Military. Over the years, HaMoked expanded its activities and now addresses human rights violations in additional areas: detainee rights (tracing detainees held incommunicado, torture, administrative detention, and prison conditions); administrative complaints – residency in Jerusalem (the Quiet Deportation) and in the Occupied Palestinian Territories (including visit permits, return of deportees, child registration in the population register; and family unification); restrictions on freedom of movement; violence against Palestinians by security forces and settlers; punitive house demolition and more.

In the process of handling complaints, HaMoked contacts the relevant Israeli authorities, files claims to the courts and petitions to the High Court of Justice. At the same time, HaMoked strives to bring about changes of policy and legislation to improve the human rights situation in the Occupied Palestinian Territories.

HaMoked's team consists of about 40 Jewish and Palestinian workers. Since its inception, HaMoked has handled over 65,000 complaints in various areas.



המוקד להגנת הפרט

HAMOKED

Center for the Defence of the Individual

هموكيد - مركز الدفاع عن الفرد