



# Annual Report 2007

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

Universal Declaration of Human Rights (1948), Article I

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ISSN 1565-4443

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شارع أبو عبيدة ٤، القدس ٩٧٢٠٠ | هاتف: ٩٧٢٠٠-٢-٦٢٧١٦٩٨ | فاكس: ٩٧٢-٢-٦٢٧٦٣١٧

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# Introduction

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

Universal Declaration of Human Rights (1948), Article 1

In June 2007, Hamas took control of the security apparatus in the Gaza Strip. This takeover had a far-reaching effect on the political set-up of the Occupied Territories, on the life of the Palestinian population, and as a result, on the daily work of HaMoked as well.

Israel took advantage of the political situation in the Palestinian Authority (PA) in order to shake off its responsibility for the Palestinian population in the Territories, particularly in Gaza. In September 2007, the Israeli security cabinet declared the Gaza Strip a “hostile entity,” leading to a full-blown siege on the Strip and turning it into a prison from which there was no entry and no exit. Israel reduced electricity and gasoline supply to the Strip, prevented the entry of wares, and brought exporting from the Strip to an almost complete halt. These steps gave rise to a humanitarian crisis in the Gaza Strip, including a shortage of drinking water, food, medicines, and other essential goods. HaMoked, together with Palestinian residents of the Gaza Strip and Israeli and Palestinian human rights organizations, petitioned the Israeli High Court of Justice (HCJ) against the decreased provision of electricity and

gasoline. The Court rejected the petition. In addition, as part of the collective punishment imposed on residents of the Gaza Strip, Israel cancelled family visits from the Gaza Strip to relatives detained in Israel. HaMoked submitted a petition on this matter as well.

During 2007, Israel continued advancing its plan to separate the Gaza Strip, the West Bank, and East Jerusalem from one another in order to divide the Palestinian populations into separate clusters, thereby undermining the principle of the integrality of the Occupied Territories and the right of the Palestinian people to self-determination therein. This policy took official expression at the end of 2007, when a new permit system was introduced, making it mandatory for Palestinians whose registered address was in the Gaza Strip to possess a permit in order to live in the West Bank. This policy was never officially publicized or entered into law.

The use of indirect security claims was expanded yet further in 2007 and became a matter of routine. Almost every aspect of the lives of the Palestinian residents of the Territories depends upon permits that Israel issues according to strict criteria. Each permit, however, is contingent upon the absence of a security-related prohibition. At present, the term "security-related prohibition" applies not only to the actions of the individual, but to those of his relatives, friends and acquaintances. Since Israel's use of this claim is broadly applied to all areas of life, it bears on every realm of HaMoked's administrative and legal work. Among its other activities, HaMoked took to the Court to oppose the application of security prohibitions against children in cases involving the Citizenship and Entry into Israel Law (Temporary Order).

Overall, 2007 was characterized by a trend towards increased stringency in the Israeli Supreme Court's treatment of cases brought by HaMoked and other organizations dealing in the human rights of Palestinian residents of the Territories. One of the main reasons for this was the appointment of Justice Minister Daniel Friedman in February 2007, and the open war he declared on the powers of the Supreme Court. Immediately upon taking office, Friedman initiated legal reforms whose goal was to limit the HCJ's power. In this context, he ordered the Justice Ministry to formulate a new amendment – Amendment 8 – to the Civil Wrongs (Liability of the State) Law 1952, which would institute a flat ban on compensation for Palestinians for damages inflicted by the Israeli security forces; this occurred just six months after the HCJ had struck down a similar amendment precisely on this issue, on the grounds that it violated the basic laws. The judgment was

given in a petition submitted by HaMoked together with eight other human rights organizations.

The Justice Minister went as far as declaring that he would have Amendment 8 passed and strip the HCJ of the power to annul it, even if this necessitated amending the basic laws. HaMoked issued a position paper regarding Amendment 8 and is working towards preventing its legislation.

Friedman's policy, and the waves of support for it, pushed the HCJ into a defensive position that takes expression, *inter alia*, in attempts to disassociate from the radical image attributed to the court by those who wish to limit its authority. The Court therefore chooses, more often than in past years, to side with the State's positions against those taken by organizations that defend human rights, such as HaMoked, and almost completely avoids discussing matters of principle that could influence Israel's policy in the Territories. In this stormy political and legal environment, HaMoked has been forced to increase its efforts in defending the basic human rights of the Palestinian population that it represents.

In 2007, HaMoked underwent an organizational and programmatic evaluation undertaken by a staff of experts including Dr. Fiona MacKay from the International Criminal Court in The Hague, Mark Waysman, an independent evaluation consultant, and Mouin Rabbani, a senior analyst with the International Crisis Group. The evaluation's findings were based on individual interviews with HaMoked employees, and with directors of other human rights organizations, reports and other documents, observations of HaMoked various teams, the organization's work practices, and more. In its formal, written review, the evaluation team noted that HaMoked is a central and important organization with a proven and long standing commitment to human rights and to the goals it seeks to achieve, and that the administrative and legal assistance provided by HaMoked excels both in its high quality and high level of professionalism. The staff and management of HaMoked were praised for their strong abilities and their dedication to the organization and its goals.

## New Cases

	Detainee Rights	Violence and Property Damage	Freedom of Movement	Residency	Total
2007	5367	79	368	116	5930
2006	6227	82	463	97	6869

## Legal Action

	Detainee Rights	Violence and Property Damage	Freedom of Movement	Jerusalem Residency	West Bank Residency	Deportation	Total
2007	53	8	92	29	48	0	230
2006	38	8	43	22	7	1	119



# Freedom of Movement

**“Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.”**

Universal Declaration of Human Rights (1948), Article 13

During 2007, Israel continued its policy of limiting the freedom of movement of Palestinian residents of the Occupied Territories. In the West Bank, the mobility of Palestinians is limited by checkpoints, roadblocks, and the Separation Wall, many segments of which are built deep into the Territories. In addition, the army routinely places restrictions on movement in areas of the West Bank – through siege, encircling and closure – and obstructs entry into and exit from them, sometimes completely. Palestinians' freedom of movement in the Gaza Strip has also been compromised. Despite Israel's claims that implementation of the disengagement plan put an end to Israel's control over the Strip and to its legal obligations vis-à-vis its Palestinian residents, Israel continues to exert almost complete control over a number of main aspects of Palestinian life in the Gaza Strip, through control of the border crossings, airspace, sea, and the Palestinian population registry. In June 2007, after violent incidents and clashes between Fatah and Hamas erupted in the Gaza Strip, Israel tightened its siege. On 19 September 2007, the Israeli Security Cabinet declared the Gaza Strip a "hostile entity" and announced Israel would be imposing collective punishments on the Palestinian population, including additional restrictions on freedom of movement.

Since human rights are inter-related, the violation or infringement of one has ramifications on all others. Restrictions on movement thus adversely affect: access to education, health, religion and culture, access to the workplace, trade, and the ability to maintain family and social ties. In this context, HaMoked continues to help hundreds of individuals struggling for the right to freedom of movement and the other rights contingent upon it, and particularly Palestinians prevented by Israel from traveling abroad, or traveling from the Gaza Strip to the West Bank and vice versa. HaMoked also lends assistance to Israeli citizens and residents who seek to visit their relatives in the Gaza Strip. Additional aid is provided in real time to Palestinians delayed at checkpoints and other locations in the West Bank.

## **Leaving the Territories**

Traveling abroad is a basic right in international law, and has a legal status in Israeli law as well; as such, this right also accrues to residents of the Occupied Territories. Since the occupation of the West Bank and Gaza Strip in 1967, the responsibility for the protection of this basic right has rested with Israel, which retains control of all border crossings into and out of the Territories. Despite this, Israel denies its responsibility as a sovereign in occupied territory, and works to restrict this vested right and to limit it based on "security" claims.

## **Leaving Abroad from the West Bank**

The procedures implemented by Israel do not enable people seeking to exit the West Bank to a foreign country to find out in advance whether their exit would be permitted or not. They must secure a travel document, arrive at the border crossing, and hope that their names do not appear on the list of persons considered "security risks" who are prohibited from traveling, since if it does, the authorities will deny them passage.

Persons classified as a "security risk" do not receive a proper order, explanation or information regarding the length of time for which the prohibition applies. HaMoked's experience reveals that in many cases, the army invokes the "security risk" claim arbitrarily and indiscriminately.



This practice was reviewed in a petition submitted by HaMoked in 2006 together with the Association for Civil Rights in Israel.<sup>1</sup> According to data collected in preparation for the petition, in 2004, some 180,000 Palestinian residents were prohibited from exiting the Territories due to a "security risk" or "Israel Security Agency (ISA) preclusion." For those classified as such, the right to freedom of movement is severely limited, both within the Territories themselves, and as far as entering Israel or traveling abroad are concerned, even where there is an acute medical necessity or life-danger. In such cases, permission is usually given only after legal intervention. The petition challenged the severe violations on the freedom of movement of those labeled "security risks," the sorely defective procedures and the decision-making process in all that pertains to restrictions on movement of Palestinian residents of the Territories. As stated, the army does not deem it necessary to inform a person prior to his arrival at the border that he is now prohibited from traveling, and does not issue an official order regarding the prohibition. The civilian in question has no option of presenting his claims before the relevant authorities or appealing the decision before it has a fateful effect on his life, even though it violates his basic rights. A person prohibited from travel is not entitled to a hearing, even retroactively; even were legal proceedings to take place it would be impossible to counter the military's position since its decision is not substantiated. Letters to the Military Legal Advisor for the West Bank through HaMoked or other human rights organizations do not necessarily elicit a substantiated answer either, with the army usually hiding behind the claim that the material is classified. It appears that in many cases, the decision to prohibit travel is arbitrary and not based on sufficient factual and legal claims. This conjecture is bolstered by HaMoked's high rate of success in overturning travel prohibition in individual cases and obtaining the necessary permits. Another aspect of this phenomenon to which the organizations that were parties to the 2006 petition objected was the lack of periodic re-evaluations of the decision to prohibit travel, despite the fact that such a prohibition has a long-term damning effect on its bearer. The prohibition, once implemented, remains valid indefinitely. The army does not specify a period after which it re-examines the prohibition's validity or proportionality.

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<sup>1</sup> HCJ 8155/06, *The Association for Civil Rights in Israel v. IDF Commander in Judea and Samaria, et al.*

The occupying army's responsibility to protect the human rights of the occupied territory is an undisputed fact; this obligation is anchored in international humanitarian law and in international human rights law, as well as in Israeli law.<sup>2</sup> Despite this, the Court accepted the army's claims and refused to discuss the issues of principle raised in the petition. The petition was deleted and all that remained was the Court's demand that the respondent present its guidelines pertaining to provision of information in advance regarding a security-based prohibition on traveling abroad. On 21 January 2008, the State Attorney's Office presented the new guidelines, but a close examination reveals that despite the pretense of 'reform,' the new procedure, which contradicts the basic principles of proper administration, anchors unjustified and unreasonable violations of human rights in law, and imposes even further limitations on the freedom of movement of residents of the Territories seeking to travel abroad. According to the new procedure, a Palestinian from the West Bank who wishes to inquire in advance as to whether he is prohibited from travel for security reasons, must report in person to the District Coordination Office (DCO) in his area and submit a request, backed by supporting documents. Within six weeks, he will be summoned again to the DCO, at which time he will receive a final answer. He may submit an objection, this, too, only by physically reporting to the DCO. The procedure does not allow for requests or responses by mail or phone, nor through a representative such as a private lawyer or a human rights organization.

The army began implementing the new procedure before the end of the 30 days allotted to the petitioners to submit their response to this procedure, and before the Court had discussed and ruled on the matter. The petitioners asked the Court to issue an interim order that would freeze implementation of the new procedure and leave the status quo in effect until the ruling.<sup>3</sup> (Case 41592)

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<sup>2</sup> See, for example, Hague IV Laws and Customs of War on Land (1907), including the Annex to this convention, Arts. 43, 46; Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Art. 27; the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention on the Rights of the Child (1989). Israel ratified these in 1991.

<sup>3</sup> See *supra*note 1, Response on behalf of the Petitioners to the Respondents' notices, and motion for temporary injunction and order nisi, 20 February 2008.

While addressing the issues of principle, HaMoked continues to assist individuals seeking to travel abroad from the West Bank in light of the difficulties Israel imposes upon them. HaMoked provides assistance in cases of violation of basic human rights, such as the right to education, livelihood, health and freedom of religion and worship, and when the life of a person or his family may be in jeopardy if permission for travel abroad is not obtained, as well as in cases of a clearly humanitarian nature. Although the realization of these rights depends, among other things, on freedom of movement, Israel relates to this as a "humanitarian gesture" that it "grants" out of good will, minimally, and according to strict criteria.



On 6 March 2007, H.A. and his ailing mother, Z.A., arrived at the Allenby Bridge – the only crossing through which one can travel abroad from the West Bank – destined for Jordan. Just a few years earlier, his mother had undergone a kidney transplant in Jordan, but due to complications, she now needed another urgent operation. H.A. also had a kidney transplant in Jordan, and needed periodic follow-up and treatments. The army permitted H.A.'s mother to travel, but prevented H.A. from leaving the West Bank and summoned him to a meeting with an ISA representative at the Etzion DCO. On the appointed day, H.A. reported to the DCO and waited for many hours, but the meeting did not take place and he was given another summons. H.A. reported to the DCO again and again, and each time was given a new summons. During this entire time, his mother was in a Jordanian hospital without any family member to help her during her time of illness. Approximately two days after his mother's surgery, and some two months after he was prevented from traveling, H.A. contacted HaMoked. HaMoked submitted an urgent request to the Military Legal Advisor for the West Bank, but did not receive a substantive answer,<sup>4</sup> and meanwhile, H.A. was again summoned to a meeting with the ISA, where he was again interrogated. At the end of the interrogation, he asked the ISA interrogator whether he would now be permitted to travel, but received no response. HaMoked submitted a petition to the HCJ on

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<sup>4</sup> Letter of HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank Division in the Office of the Military Legal Advisor for the West Bank (West Bank MLA), May 2, 2007.

H.A.'s behalf.<sup>5</sup> In the petition, HaMoked reiterated that a person's right to leave his country is a universal right and is recognized as such, and therefore, as long as there was no information against H.A., indicating that he posed a security threat, Israel had no legal right to delay his trip. The petition was deleted after H.A. received permission to travel, and after he signed a declaration that he would in no way act against the interest of security in the Territories or in Israel. **(Case 50122)**

The security forces are all too willing to take advantage of the vulnerable situation of ailing individuals and their families during their hour of duress in order to force them to collaborate. The army even uses the security claim to this end, as a means of exerting psychological pressure on Palestinians seeking to travel abroad. Sometimes, refusal to collaborate leads to a prohibition on travel, while willingness to act as an informant is a pretext for reinstating permission to travel.

M.M., a Palestinian from Jordan, was married in 1993 to a Palestinian from the Territories, and moved to Bethlehem to live with her. In 1998, he received approval for family unification and a Palestinian identity card. His family remained in Jordan and he visited them on occasion, until he was prohibited from traveling in October 2006 with no reason provided. In order to clarify the reason, M.M. inquired independently at the Etzion DCO. There he met an ISA officer who called himself "Captain Lawrence"; the latter made it clear to him that if he were to collaborate with the ISA, he would be approved for travel. M.M. rejected the offer. In November 2007, his 13-year-old brother was diagnosed with leukemia. In order to visit his brother and be with his family during this difficult period, M.M. arrived at the Allenby Bridge, carrying medical documents attesting to his brother's situation, but again he was returned from the bridge with no explanation. HaMoked submitted an urgent request to the Office of the Military Legal Advisor for the West Bank,<sup>6</sup> and the response stated that "[...] there is nothing preventing the above's travel to Jordan, this in

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<sup>5</sup> HCJ 4155/07, Al-Sheikh v. IDF Commander of West Bank.

<sup>6</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 29 May 2007.

accordance with the regular guidelines,"<sup>7</sup> without referring at all to the prior occasions on which he had been prevented from traveling. Equipped with a permit he received from the army, M.M. set out for the Allenby Bridge and crossed over into Jordan. **(Case 50545)**

The right to education is a basic right that empowers the individual and enables him to exercise other rights; it also enables society as a whole to develop. And yet, Israel places countless obstacles in the way of the academic institutions in the Territories, and prevents residents of the Territories from obtaining an education abroad by imposing limitations on freedom of movement. In 2007, HaMoked processed 11 requests of Palestinians from the West Bank seeking to study abroad, whose travel was prevented due to their classification as "prohibited for security reasons."



K.B. was accepted to a doctoral program in Malaysia, and was scheduled to arrive there by 5 July 2007. On 13 June 2007, he went to the Allenby Bridge to embark on his journey to Malaysia, but was told that he was "prohibited from travel." K.B. requested to meet with an ISA officer in order to have the decision changed, but his request was denied. Although K.B. was held in administrative detention during the month of October 2005, he was released one month later, and in the trial preceding his release, the military judge announced that there was no impediment to his traveling abroad to continue his studies. HaMoked's query to the Military Advisor for the West Bank was not immediately processed, in contravention to the new procedures, according to which urgent and exceptional matters must be addressed promptly.<sup>8</sup> Therefore, and due to the time-sensitive nature of the matter, HaMoked submitted a petition to the HCJ on behalf of K.B.<sup>9</sup> Among other things, HaMoked demanded in the petition that if concrete security material supporting the prohibition against KB's from traveling to his studies existed, it should be reviewed by the Court so that its validity could be assessed. Before the

<sup>7</sup> Letter from Corporal Hadar Yanoushi, NCO, Population Registry Division in the Office of the West Bank MLA, 13 June 2007.

<sup>8</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 20 June 2007.

<sup>9</sup> HCJ 5633/07, Badrasawi v. Commander of IDF Forces in the West Bank.

petition was heard, K.B. was given permission to travel, with no explanation as to why he had been turned away at the bridge.<sup>10</sup> HaMoked withdrew the petition. (Case 50887)

A.R. completed his master's degree and was accepted to a doctoral program in pharmacology in China with a full scholarship. He purchased an airline ticket from Egypt to China for 30 August 2007, three days before his studies were scheduled to begin. On 25 August 2007, he tried to reach Jordan through the Allenby Bridge, but the Israeli authorities prevented him from leaving the West Bank, and summoned him to a meeting with an ISA officer at the Hebron DCO on 30 August 2007, the day he was scheduled to fly to China. A.R. had never been arrested, and had never been prevented from traveling before. The university in China granted him permission to delay his arrival by one week only. HaMoked contacted the office of the Military Legal Advisor for the West Bank by telephone, and A.R. was requested to report to the Hebron DCO the next day, to attempt to schedule an earlier appointment with the ISA officer. An officer at the office of the Military Legal Advisor for the West Bank claimed in a telephone conversation that A.R. did not appear in the army's computer as prohibited from traveling, and that his exit was apparently prevented in order to bring him to a meeting with the ISA.<sup>11</sup> The next day, A.R. reported to the Hebron DCO, and after waiting for several hours, the soldiers instructed him to return the following day. On the following day A.R. again arrived at the Hebron DCO, and again they refused to receive him and asked him to come the following day – that is, one day prior to his flight. HaMoked again appealed to the office of the Military Legal Advisor for the West Bank and learned that A.R. would be allowed to travel on condition that he undertake not return to the West Bank for an entire year. HaMoked insisted that the written undertaking include an article stating "should a humanitarian need arise during the period of the undertaking, the Commander of the Area will consider allowing my entrance to the West Bank without this constituting

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<sup>10</sup> Letter from Corporal Ran Li-On, Legal NCO, Population Registry Division of the Office of the West Bank MLA, to HaMoked, 28 June 2007.

<sup>11</sup> Telephone conversation between an attorney from HaMoked and Academic Officer Gadi Shahak, 26 August 2007.

a violation of the undertaking."<sup>12</sup> No meeting with an ISA officer ever took place. A.R. signed the undertaking and on the morning of 30 August, set out for Jordan across the Allenby Bridge. **(Case 51866)**

The right to freedom of religion and worship, established in international law, obligates the state to enable anyone in its jurisdiction to pursue his faith and practice the precepts of his religion, including religious gatherings and pilgrimage to holy sites. Israel has issued no explicit statement prohibiting Palestinians from traveling abroad for religious purposes, but in effect, it makes it very difficult for them, invoking various claims, chief among them, of course, the "security" claim.



In June 2007, M.S.A. sought permission to travel to Jordan, and from there to Saudi Arabia, to observe the 'Omra pilgrimage, but he was detained at the Allenby Bridge on the claim that he was prohibited from travel by the ISA. In the past, M.S.A. had been arrested twice. The most recent arrest was in April 1998, when he was held in administrative detention for one month and then released. Since then, he had not been interrogated or detained. HaMoked contacted the Military Legal Advisor for the West Bank with a request to allow M.S.A. to travel to Jordan,<sup>13</sup> and almost two months later, the military sent a response rejecting his request "[...] for security reasons since said individual is a senior Hamas activist, and there is a concern that his traveling abroad will be in the service of Hamas activity."<sup>14</sup> Since M.S.A. had traveled abroad in October 2006 with no difficulty, HaMoked decided to submit a petition on his behalf demanding that the army reveal the alleged security information against him to the court, on the assumption that the Court would be able to examine the nature of the security material, its reliability and currency, and to decide whether M.S.A.'s travel posed a true risk.<sup>15</sup> Even before the petition was heard, the army reneged and allowed M.S.A. to leave for Jordan, despite the alleged intelligence material against him. **(Case 40348)**

<sup>12</sup> Letter from HaMoked to Captain Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA, 29 August 2007.

<sup>13</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 18 June 2007.

<sup>14</sup> Letter from Sergeant Hadar Yanoushi, NCO, Population Registry Division in the Office of the West Bank MLA, to HaMoked, 21 August 2007.

<sup>15</sup> HCJ 7382/07, Alja'bri v. Commander of IDF Forces in the West Bank.

## Leaving the Gaza Strip

The Rafah Crossing, the border point between the Gaza Strip and Egypt, was in the past the only direct gateway abroad from the Strip. In August 2005, with the implementation of the disengagement plan, Israel evacuated the Rafah Crossing, which until then had been under its direct control, and in November that same year, signed the internationally sponsored Agreement on Movement and Access with the Palestinian Authority (PA).<sup>16</sup> According to the agreement, the Rafah Crossing would serve travelers in possession of a Palestinian identity card, and would be run jointly by the PA and Egypt; in addition, EU observers would be stationed there, along with a camera system, through which Israel could oversee the site in real time. In effect, although Israel has no physical presence at the crossing, it has the power to prevent the European observers from reaching it, thereby bringing its operation to a halt.

Since the signing of the Agreement on Movement and Access, Israel has on many occasions halted its operation for periods of varying duration and under different pretexts. In June 2007, following Hamas' takeover of the security apparatus in the Gaza Strip, Israel shut down the crossing. Some six weeks following, HaMoked and other Israeli and Palestinian human rights organizations together called on Israel, the EU, the PA, and Egypt to immediately open the borders of the Gaza Strip for the passage of individuals in order to uphold the agreement, independent of any political agenda regarding Hamas.<sup>17</sup> According to the organizations' claim, it was unlawful to hold Palestinians living in the Strip hostage in the struggle for control over it. Closing the Rafah Crossing severely harmed hundreds of thousands of civilians who were unable to leave or return to the Strip in order to earn their living, receive medical care, or study. At the same time, the organizations demanded that Israel uphold its responsibility for the well-being of the Palestinians living in the Strip as the occupying power wielding

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<sup>16</sup> Agreed Documents on Movement and Access from and to Gaza, 15 November 2005: [http://www.mfa.gov.il/MFA/Peace+ Process/Reference+Documents/Agreed+documents+on+movement+and+access+from+and+to+Gaza+15-Nov-2005.htm](http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Agreed+documents+on+movement+and+access+from+and+to+Gaza+15-Nov-2005.htm)

<sup>17</sup> The partner organizations to this call were al-Haq, Mezan Center for Human Rights, Al-Dameer Association for Human Rights, B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, Gisha – Legal Center for Freedom of Movement, The Palestinian Centre for Human Rights, The European-Mediterranean Network for Human Rights, Yesh Din – Volunteers for Human Rights, Physicians for Human Rights - Israel, Shomrei Mishpat – Rabbis for Human Rights.

effective control over it. And yet, even after the Rafah Crossing was officially opened for passenger crossing, it in effect remained closed most of the time. From June 2007 until the Palestinians forced their way through it on 23 January 2008, the crossing was almost entirely closed down. Palestinians living in the Gaza Strip could exit only through an alternative route that required an exit permit from the Strip and travel through Israeli territory – permits which Israel scarcely provides.



'A.S., a Palestinian resident of Egypt who also holds Romanian citizenship, entered the Gaza Strip with his wife and four children through the Rafah Crossing to visit his parents and other relatives, but he was not permitted to leave the Strip since Israel had closed the crossings. On 10 July 2007, with the reopening of the Erez Crossing, through which permit and foreign passport holders are able to exit the Strip into Israel, 'A.S. arrived there with his wife and children on their way to return home to Egypt, but at the checkpoint they were told that they were prohibited from passing through. HaMoked contacted the "Humanitarian Desk" of the Gaza DCO on the family's behalf, and the Coordinator of Government Activities in the Territories, with a request to permit them to return home to Egypt.<sup>18</sup> In response, HaMoked was informed that 'A.S. was prohibited from traveling through Israel for security reasons.<sup>19</sup> Around this time, the army began allowing exit from the Gaza Strip to Egypt through the Erez Crossing and the Egyptian-Israeli Nitzana Terminal. The names of those whose requests had been approved by the Palestinian Civilian Committee were announced in the Gaza media. On 4 September 2007, the names of 'A.S. and his family appeared on the list of those permitted to leave, but when they reached the crossing, the army prevented 'A.S. from exiting, although his wife and children were given permission to cross. The family members faced a difficult dilemma: to remain trapped together in the Gaza Strip, far from home, or to separate for an unknown period of time, but at least enable the children to return home to their friends and begin the school year. The family decided on the second option. In September 2007

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<sup>18</sup> Letter from HaMoked to the "Humanitarian Desk" in the Gaza DCO, 9 August 2007; Letter from HaMoked to Maj. Gen. Yosef Mishlev, Coordination of Government Activities in the Territories (COGAT), 9 August 2007.

<sup>19</sup> Letter from the Public Complaints Office at the Gaza DCO to HaMoked, 21 August 2007.

HaMoked submitted a petition to the HCJ on behalf of 'A.S., on the claim that he clearly fulfilled the criteria stipulated by the army itself to qualify for leaving the Gaza Strip, since those with foreign or dual citizenship were able to leave Gaza even during the most turbulent times. As stated, 'A.S. is a resident of Egypt and a Romanian citizen, and the army is not permitted to take advantage of the fact of his status as a resident of the PA in order to prevent him from returning to his country and his family.<sup>20</sup> The right of a person to return to the land of his residence is recognized as a fundamental right in international conventions and declarations.<sup>21</sup> The Israeli Court also ruled that it is a natural right, whose limitation constitutes a severe violation of human rights.<sup>22</sup> As was anticipated, even before the date of the hearing on the petition, notice arrived that 'A.S. had received permission to return home to Egypt in theory.<sup>23</sup> But despite HaMoked's daily communications with the respondents' attorneys, the Romanian Embassy, and 'A.S. himself, only on 21 November 2007 did official notice arrive in writing, permitting 'A.S. to cross at the Kerem Shalom Terminal escorted by a representative from the Romanian Embassy.<sup>24</sup> In mid-December, HaMoked received a letter sent by the Legal Advisor of the Gaza DCO to the State Attorney's Office announcing that 'A. S.' departure through Kerem Shalom would not be possible, but that he could go to Jordan through the Allenby Bridge with a representative from the Romanian Embassy.<sup>25</sup> An additional period exceeding one month passed, and the army was still unable to arrange 'A.S.' departure from the Gaza Strip. On 23 January 2008, Palestinians living in the Gaza Strip broke through the Rafah Crossing. Since 'A.S. holds a valid certificate of Egyptian residency, the Egyptian authorities allowed him to cross through the barriers, and he returned home.

**(Case 39159)**

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<sup>20</sup> HCJ 7869/07, al-Sha'ar v. OC Southern Command et al.

<sup>21</sup> See for example Universal Declaration of Human Rights (1948), Art. 13; International Covenant on Civil and Political Rights (1966), Art. 12.

<sup>22</sup> See, for example, HCJ 4706/02, Salah v. Minister of Interior, *Piskei Din* 56(5) 695, 704; HCJ 448/85, Daher v. Minister of Interior, *Piskei Din* 40 (2), 701.

<sup>23</sup> Telephone conversation between an attorney from HaMoked and Atty. Itai Ravid, Assistant to the State Attorney, 11 October 2007.

<sup>24</sup> Letter from Atty. Itai Ravid, Assistant to the State Attorney, to HaMoked, 21 November 2007.

<sup>25</sup> Letter from Lieut. Haim Sharvit, Legal Advisor to the Gaza DCO, on behalf of Head of the International Law Department, to Atty. Itai Ravid, Assistant to the State Attorney, 17 December 2007.



R.A., a Palestinian woman living in the Gaza Strip, is a physician who works in the Gaza Women's Hospital. Since 2005, R.A. has been studying for a master's degree in midwifery and gynecology at Al-Shams University in Egypt. On 3 August 2007, she needed to reach Egypt to take a qualifying exam for membership in the Royal College of Obstetricians and Gynecologists, and to arrange her final year of study. Since Rafah Crossing was hermetically closed in June 2007, HaMoked requested that the army permit her to travel to Egypt across the Allenby Bridge. For over one month, no response arrived, and on 25 July 2007, HaMoked petitioned the HCJ.<sup>26</sup> In the petition, HaMoked presented an overview of the factual basis of R.A.'s predicament, and, in a broader perspective, Israel's obligation to enable her to travel according to Israeli law, international humanitarian law, and international human rights law. "If the petitioner's path abroad is blocked," stated the petition, "not only will her right to freedom of movement be violated – a fundamental right that is the basis on which a person builds his personal autonomy and navigates his way in the world – but her right to education will be violated, as will her efforts for personal and professional advancement on her own behalf and on behalf of the population that she serves in her practice of medicine." In response to the petition, received on 29 July 2007, the Assistant to the State Attorney stated, *inter alia*, that R.A.'s travel through Israel to the Allenby Bridge required that the Erez Crossing – controlled on the Palestinian side by the Hamas – be opened, and that this would endanger the lives of soldiers and civilians.<sup>27</sup> And yet, according to the army's own figures, on the day that the State submitted its response to the court, 252 people crossed Erez, 177 of them Palestinians, and a report published by the Coordinator of Government Activities in the Territories (COGAT) from that day stated the opening and closing hours of the gates at the Crossing.<sup>28</sup> In a response submitted to the court, HaMoked therefore attacked the misleading representation of the situation and the internal contradictions in the State's response to the petition.<sup>29</sup>

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<sup>26</sup> HCJ 6475/07, Abu Laban v. OC Southern Command et al.

<sup>27</sup> *Ibid.*, Response on behalf of the Respondents, 29 July 2007.

<sup>28</sup> Daily report distributed to embassies and international organizations regarding the situation in the Gaza Strip (Hebrew), 30 July 2007: <http://www.l.idf.il/MATPASH/Site/Templates/controller.asp?lang=HE&fid=47357&did=48707>

<sup>29</sup> Supranote 26, Response on behalf of the Petitioners to Response on behalf of the Respondents, 30 July 2007.

Just hours after HaMoked submitted its response to the court, Justice Uzi Fogelman issued a ruling rejecting the petition without a hearing. It could be that the ruling was written before HaMoked's response was read. It seems that the Court accepted without hesitation the State's claims regarding the situation at the Erez Crossing and the danger that opening it posed to soldiers' lives. Two days after the ruling, the DCO informed HaMoked in a telephone conversation that R.A.'s request had been approved, and that she would be permitted to travel via the Allenby Bridge on the following day. The army had examined HaMoked's request, submitted even before the petition had been filed, and had found, in complete contradiction to the claims raised before the HCJ, that R.A.'s departure via the Erez Crossing involved no endangering of human life. On 2 August 2007, R.A. left Gaza through the Erez Crossing, passed through Israel to the Allenby Bridge, and from there went to Jordan and on to Egypt. In light of the gap between the court's decision and the army's approval, HaMoked submitted a brief to the court and requested that the fact that R.A. had received an entry permit into Israel and departed via the Allenby Bridge be appended to the ruling.<sup>30</sup> The Court rejected the request.<sup>31</sup> **(Case 51308)**

The manner in which Israel approves or rejects requests for permits to leave the Gaza Strip to go abroad is arbitrary and lacks transparency. It appears that despite the State's claims that every request is examined individually, many requests are rejected based on sweeping criteria, and moreover, delays in the processing of requests and neglectful handling serve as a means for Israel to interfere with the departure of Palestinians from the Strip.

A.Z. was accepted to a master's degree program with a full scholarship at the University of Westminster in England. The university asked him to report to his studies no later than 20 September 2007, since, if not, he would lose his scholarship. He therefore purchased a plane ticket from Cairo to London departing on 11 September 2007. Approximately one month prior to his trip, A.Z. contacted the Israeli DCO in the Gaza Strip via the Palestinian Civilian Committee, asking that his trip to Egypt be arranged

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<sup>30</sup> *Ibid.*, Notice on behalf of the Petitioners and request for addendum to judgment, 6 August 2007.

<sup>31</sup> *Ibid.*, judgment, 8 August 2007.

through the Nitzana Terminal, since the Rafah Crossing was closed in June of that year. Since he did not receive an answer, he turned to HaMoked for help on 9 September 2007. An attorney for HaMoked immediately contacted the "Humanitarian Desk" of the Gaza DCO, and explained the urgency of the trip, and after a few hours and telephone calls, learned that it was necessary to contact COGAT – contrary to any known procedure in such cases – and that A.Z.'s request had not reached the Israeli side at all.<sup>32</sup> HaMoked submitted an urgent request in writing to the "Humanitarian Desk" of the Gaza DCO, demanding that they fulfill their responsibility and process the request, which without a doubt fell within their realm. The communiqué emphasized that events in Gaza, and the closing of the Rafah Crossing in particular, made it impossible for A.Z. to reach Egypt as in the past, and therefore coordination was required to arrange for his departure via Nitzana, the Allenby Bridge, or any other way.<sup>33</sup> In order to accelerate the army's response, HaMoked wrote to the Head of the Operations Branch at the Gaza DCO requesting that he interfere to arrange for A.Z.'s timely departure. Ultimately, A.Z. was not able to leave on the date of the flight, but his name was added to the list of those permitted to exit via the Nitzana Terminal on 18 September 2007.<sup>34</sup> On said day, A.Z. arrived at Erez, as necessary, and discovered that Israel had closed the crossing. A.Z. returned home and phoned the university in London, which agreed to an extension until 10 October 2007 due to the extraordinary circumstances of his departure from Gaza. At first, the army refused to allow A.Z. travel via the Allenby Bridge, and he was forced to wait for the first opportunity when the Nitzana Terminal,<sup>35</sup> which at the time was closed with no known opening date, would re-open; yet ultimately, the army relented and allowed him to proceed via the Allenby Bridge on 9 October 2007, one day before he was to begin his studies at the university.<sup>36</sup> On said day, A.Z. arrived at the Erez Crossing, as required, but after hours of waiting, was told that

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<sup>32</sup> Telephone conversations between attorney on behalf of HaMoked and the "Humanitarian Desk" of the Gaza DCO, 9 September 2007.

<sup>33</sup> Letter from HaMoked to the "Humanitarian Desk" of the Gaza DCO, 9 September 2007.

<sup>34</sup> Telephone conversation between attorney on behalf of HaMoked and Lieut. Col. Uri Zinger, Assistant to the Head of the Operations Branch at the Gaza DCO, 16 September 2007.

<sup>35</sup> Telephone conversation between attorney on behalf of HaMoked and Lieut. Col. Uri Zinger, Assistant to the Head of the Operations Branch at the Gaza DCO, 8 October 2007.

<sup>36</sup> Letter from the Public Complaints Office of the Gaza DCO to HaMoked, 8 October 2007.

he had not received authorization from the Israeli side allowing him to pass through. An attorney with HaMoked immediately contacted the Gaza DCO, and a few hours later, a high-ranking army official responded that it had been a "human error" – a clerk had mistakenly pressed the wrong key and cancelled the authorization – but assured that the new authorization would be processed that day.<sup>37</sup>

At 6:00 P.M., after a thorough ISA interrogation, in which A.Z. again explained that he had never posed a security risk and that many times he had entered Israeli territory with permission, A.Z. was returned to Gaza. At 6:05 P.M., a telephone call to HaMoked confirmed that the travel prohibition was final.<sup>38</sup> HaMoked contacted the University of Westminster on A.Z.'s behalf, in an attempt to again postpone the date of arrival. Due to the uncertainty surrounding his departure from Gaza, it was agreed that his studies would be postponed and his scholarship reserved for the following academic year.

**(Case 52086)**

The right to health, one of the most basic rights, obligates the State to ensure for its subjects, among other things, the possibility of receiving appropriate medical care. The health system in the Gaza Strip is unable and unprepared to accommodate the many sick and wounded. Israel limits the passage of medicines and equipment and in so doing adversely impacts the PA's ability to ensure suitable medical care for its residents. Given the lack of equipment, medications, and expert physicians, the only remaining option for many patients is to receive treatment in the West Bank, in Israel or abroad. And yet Israel prevents ailing individuals seeking medical care from leaving the Gaza Strip, even in cases of life danger, thus ignoring not only its legal commitments, but also its basic human obligations.



M.M., a resident of the PA and a Moroccan citizen, approximately 40 years old, entered the Gaza Strip in August 2007 to conduct business. Shortly afterwards, he learned that he had pancreatic cancer and required urgent medical care in Jordan. He therefore contacted the person

<sup>37</sup> Telephone conversation between attorney on behalf of HaMoked and Lieut. Col. Uri Zinger, Assistant to the Head of the Operations Branch at the Gaza DCO, 9 October 2007.

<sup>38</sup> Telephone conversation between attorney on behalf of HaMoked and Lieut. Col. Uri Zinger, Assistant to the Head of the Operations Branch at the Gaza DCO, 9 October 2007.

in charge of medical arrangements in the Palestinian DCO in Gaza and submitted a request for travel abroad. On 15 October 2007, he was told that the army had refused his request. On 24 October 2007, HaMoked appealed on his behalf to the "Humanitarian Desk" of the Gaza DCO and asked that his departure from Gaza through the Nitzana Terminal, Allenby Bridge or any other route, be arranged, so that he could receive urgent medical care in Jordan.<sup>39</sup> In response, the army answered that M.M.'s passage through the West Bank to reach Jordan would not be authorized for security reasons<sup>40</sup> – with no substantiation or reference to M.M.'s situation, or even any suggestion for an alternate solution. HaMoked petitioned the HCJ and requested an urgent hearing, claiming that no medical care was available in the Gaza Strip for M.M.'s illness.<sup>41</sup> Appended to the petition were documents and medical studies attesting to the importance of receiving prompt medical attention in treating pancreatic cancer; a lethal disease usually diagnosed only in its advanced stages. The earlier the detection and treatment, the better the chances for recovery, with a 20% chance for recovery if treatment is delivered in a timely fashion. Preventing M.M. from exiting Gaza, claimed HaMoked, was tantamount to a death sentence.

Israel enables individuals with foreign citizenship to leave Gaza even when the crossings are closed. COGAT's report of 5 July 2007, submitted together with the petition, details the principles of Israel's policy regarding foreign nationals in Gaza, including permission granted to the bearers of foreign citizenship and allowances in humanitarian cases, including medical cases.<sup>42</sup> In another case, Israel claimed in court that "opening the crossing [Erez Crossing] is today limited, mainly, to urgent, life-saving medical cases, to employees of international organizations [...] to a handful of merchants on whom Gaza's economy depends."<sup>43</sup>

The COGAT's report, posted daily on the internet,<sup>44</sup> states that on 28 October 2007, Erez Crossing was open from 6:30 a.m. to 6:30 p.m., and

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<sup>39</sup> Letter from HaMoked to the "Humanitarian Desk" in Gaza, 24 October 2007.

<sup>40</sup> Letter from Public Complaint's Office at the Gaza DCO to HaMoked, 29 July 2007.

<sup>41</sup> HCJ 9250/07, Maqusi v. OC Southern Command et al.

<sup>42</sup> Ibid., appendix 9/P

<sup>43</sup> Supranote 26, arts. 26-27 of Response on Behalf of the Respondents, 29 July 2007. For more on this petition, see p. 21 of this report

<sup>44</sup> See supranote 28.

during this time, entry and exit of Palestinians and foreign nationals was allowed. For example, on that day, the army allowed the passage of 153 residents who needed medical care, and entry into Israel of 23 additional Palestinians. A day before the hearing, scheduled for 7 November 2007, the army announced that "after examining the special circumstances of the petitioner, it was decided to allow his departure to enable him to receive the desired medical care. The conditions of the petitioner's departure (with attention to the negative security information existing against him), as well as the manner and date of the petitioner's travel, will be arranged promptly, and with the urgency required by the circumstances of the matter."<sup>45</sup> On 12 November 2007, a written confirmation was sent to HaMoked's offices stating that M.M.'s departure would be possible through the Kerem Shalom Terminal, and that the matter had been coordinated with army officials and with the Egyptian and Palestinian authorities.<sup>46</sup>

The Kerem Shalom Terminal is used exclusively for the transfer of wares. The only access to it for any other purpose involves a walk which takes several hours through an open space which at the time was exposed to the shooting taking place in the area. Such a journey involves great physical effort and even life danger.

This offer clearly did not suit an ailing person in M.M.'s grave condition. It also transpired that M.M.'s departure had not been arranged in any manner with the Egyptian side. After a phone conversation with HaMoked, the State Attorney's Office representative announced that M.M. would be able to depart on 19 November 2007, apparently through the Erez Crossing and Allenby Bridge.<sup>47</sup> On said day, notice was received that the army was opposed to M.M.'s traveling through Israel to the Allenby Bridge, but that he would be able to leave through Kerem Shalom as soon as it was adapted for the passage of individuals.<sup>48</sup> During this entire time, the only treatment M.M. was receiving was painkillers. In a court hearing on 29 November 2007, Israel held fast to its position that M.M.'s travel through

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<sup>45</sup> Supranote 41, Notice on behalf of the Respondents and urgent request by consent to postpone hearing scheduled for the petition, 6 November 2007.

<sup>46</sup> Letter from Atty. Itai Ravid, Assistant to the State Attorney, 12 November 2007.

<sup>47</sup> Telephone conversation between attorney on behalf of HaMoked and Atty. Itai Ravid, Assistant to the State Attorney, 18 November 2007.

<sup>48</sup> Telephone conversation between attorney on behalf of HaMoked and Atty. Itai Ravid, Assistant to the State Attorney, November 19, 2007.

Israeli territory to the Allenby Bridge, even in an armored vehicle, posed a security threat. The justices accepted HaMoked's position, according to which, due to the severity of M.M.'s situation, he was to be allowed to leave Gaza without delay, and ruled that if the army did not arrange for his exit through a route other than via Israel by 2 December 2007, an urgent follow-up hearing would be held regarding his departure from the Allenby Bridge via Israel.<sup>49</sup> On the morning of 3 December 2007, M.M. left the Gaza Strip through the Erez Crossing, passed through Israel to the Nitzana Terminal, and from there continued into Egypt. (Case 52653)

## Movement between the Gaza Strip and the West Bank

Between 1967 and 2007, despite the lack of territorial continuity, the West Bank and Gaza Strip were considered a single political entity. Over the course of the Israeli occupation, integrative processes between these two areas in all realms of life took place: family ties, education, culture and economy. In the Declaration of Principles of 1993, and later in the Interim Agreement of 1995, Israel officially recognized that the Gaza Strip and the West Bank are a single territorial unit, in which the Palestinian people's right to self-definition would be realized in future. The PA was defined as the leadership of both the Gaza Strip and the West Bank.<sup>50</sup>

Based on these principles, mechanisms designed to enable residents of the territories to travel between the two areas were stipulated. However, due to Israel's policy, the mechanism, termed "the safe passage," operated only for a brief period. The principles of territorial integrity were validated by the Israeli Supreme Court, which ruled in a petition submitted by HaMoked in the 'Ajuri case,<sup>51</sup> that a forcible transfer between the West Bank and Gaza Strip did not constitute deportation, but rather assigned residence within the same occupied area. Even after implementation of the disengagement plan, Israel

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<sup>49</sup> Supranote 41, judgment, 29 November 2007.

<sup>50</sup> Israeli Palestinian Interim Agreement on the West Bank and Gaza Strip (1995), Arts. 11, 31 (8).

<sup>51</sup> HCJ 7015/02, 'Ajuri et al. v. Army Commander in West Bank et al., judgment, 3 September 2002.

viewed these areas as a single integral unit. For example, on 16 November 2005, an internationally sponsored agreement was signed between Israel and the PA regarding access and movement. Under the agreement, freedom of movement between the two areas would be ensured by way of security-escorted bus convoys traveling between Gaza and the West Bank. Residents of the West Bank and Gaza Strip are therefore entitled to freedom of movement between these two areas and all that follows therefrom. This right, which derives from the right of a civilian to move freely within his own state, is well anchored in international humanitarian law, international human rights law, and Israeli constitutional law.<sup>52</sup> While the right to freedom of movement can be proscribed by strict criteria, the application of sweeping, disproportional and unreasonable restrictions on freedom of movement between the Gaza Strip and the West Bank – as Israel has done since the outbreak of the second intifada, and excessively since the implementation of the disengagement plan in 2005 and the declaration of Gaza as a "hostile entity" in September 2007 – constitutes a blatant violation of international and Israeli law. In general, it is possible to claim that Israel's policy aims at separating Palestinian residents of the Territories who live in the West Bank from those who live in the Gaza Strip.

### **Deportees from the Church of the Nativity**

In 2007, the army stopped allowing family visits to Palestinians whom Israel had deported from the West Bank to the Gaza Strip. During the Israeli invasion of Palestinian cities in the West Bank in the spring of 2002, during Israel's "Defensive Shield" operation, Palestinians who were 'wanted' by Israel barricaded themselves in the Church of the Nativity in Bethlehem. Army forces layed siege to the church, and, as part of a secret agreement with international sponsorship, the Palestinians turned themselves in to the authorities and were deported from the West Bank – some abroad and others to the Gaza Strip. In 2004, a judgement issued in a petition submitted by HaMoked to the HCJ regarding one of the Gaza deportees sealed the State's pledge to enable first-degree family members living in the West Bank

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<sup>52</sup> "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." International Covenant on Civil and Political Rights (1966), Article. 12(a)

to visit their relatives, subject to individual security screenings.<sup>53</sup> According to HaMoked's claim, when the State removes a person from his home and family, it has a special obligation to enable family members to visit him. And yet, although the State itself recognized its obligation to enable the visits, and although the West Bank and Gaza Strip are a single territorial unit and the army has only to evaluate whether the passage of relatives through Israel – necessary due to the lack of territorial contiguity between the two areas – involves an actual security threat, in a number of cases the army refused to let family members submit an application for a visitation permit; and in other cases, the request was refused.



Since December 2006, D.'s family had been trying to submit a request to the Etzion DCO for entry into Israel in order to reach the Gaza Strip, but the soldiers refused to receive the request. Even after HaMoked submitted a request in their name, in writing, to the office of the Military Legal Advisor for the West Bank,<sup>54</sup> it was refused for security reasons.<sup>55</sup> HaMoked petitioned the HCJ,<sup>56</sup> and the State claimed in its response that the security risk on which the army had predicated its refusal related to the activity of the deported person himself. The absurdity of the response apparently eluded the respondents. The State also claimed in its response that when a person is removed from his home for security reasons, there is, ostensibly, less of an obligation to enable family members to visit him.<sup>57</sup> In its response, HaMoked noted the State's circular reasoning. Israel removed those involved in the Church of the Nativity affair from their homes to the Gaza Strip due to the security danger they ostensibly posed, and recognized, that the distancing vested it with the increased and special obligation to enable families to visit their deported relatives in the Gaza Strip; yet now, the State was claiming that the distancing itself constituted

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<sup>53</sup> HCJ 10677/04, Al-'Abbyat v. Commander of Army Forces in West Bank, judgment, 27 December 2004.

<sup>54</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 30 August 2007.

<sup>55</sup> Letter from Sergeant Dana Hirsch, Responsible for the Population Registry Division in the Office of the West Bank MLA, 7 October 2007.

<sup>56</sup> HCJ 9283/07, D'ana v. Commander of Army Forces in the Occupied Territories.

<sup>57</sup> Ibid., Arts. 5, 9 and 11 to the Preliminary Response on behalf of the Respondent, 31 December 2007.

a security danger that justified prevention of the visits and reduced Israel's obligation to approve them.<sup>58</sup> The hearing on the petition was scheduled for July 2008. **(Case 43618)**

The army reiterated these claims in another case of a refused visitation request by relatives of one of the Palestinians who, after barricading himself in the church, was removed to the Gaza Strip, adding that today, the obligation to enable visits was no longer valid, and entry of Palestinians from the West Bank into the Gaza Strip would be approved only in exceptional humanitarian cases.<sup>59</sup> At the same time, in this case, the army insinuated that if the deported man's wife wished to leave her home in the West Bank and settle in Gaza, her request would be reviewed.<sup>60</sup> **(Case 53136)**

### **Restrictions on Freedom of Movement due to Registered Address**

In keeping with the Interim Agreement, the Palestinian side holds the authority to update registered addresses in the population registry. The PA updates the address and sends an updating notice to the Israeli side, which maintains a copy of the registry and updates it respectively.<sup>61</sup> Since 2000, Israel has ceased updating the registered address of Palestinians who moved from the Gaza Strip to the West Bank in its registry. Israel claims that the military commander has the right to retain certain authorities relating to the Palestinian population registry if he deems it necessary, but no clear guideline has been issued on the matter. Today, Israel claims that a Palestinian must live at the address where he is registered; change of residence from the Gaza Strip to the West Bank without changing the registered address – which, as stated, is not possible – is considered "illegal presence" in the West Bank. And yet, in contradiction to its conduct regarding Palestinians who lived in the Gaza Strip and moved to the West Bank, in opposite cases, in which Palestinians living in the West Bank seek to move to the Gaza Strip, Israel removes its opposition and updates their registered address. In so doing,

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<sup>58</sup> *Ibid.*, Response on behalf of the Petitioners, 13 January 2008.

<sup>59</sup> Letter from Captain Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA, to HaMoked, 22 January 2008.

<sup>60</sup> Letter from Captain Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA, to HaMoked, 23 January 2008.

<sup>61</sup> Interim Agreement, Art. 28 Appendix III.

Israel exposes the fact that it is using its *de facto* control over registration processes as a tool for political manipulation motivated by unacceptable demographic considerations.



'A.'A. a Palestinian woman who lives in the Gaza Strip, signed a marriage contract in 2006 with F.'A., who lives in the West Bank. The two wanted to hold the wedding ceremony according to Islamic tradition, since only afterwards could they live under the same roof as a couple. However, for over a year, the ceremony was postponed, each time anew, because of Israel's refusal to grant the bride and her family permission to travel to the West Bank. In March 2007, HaMoked petitioned the HCJ on behalf of the family.<sup>62</sup> In its response, the State declared that it was not opposed to allowing the bride and her family travel to the West Bank for the wedding ceremony, on condition that the bride return afterwards to the Gaza Strip.<sup>63</sup> The Court decided that the bride, her parents, and her younger brother should be allowed to attend the wedding ceremony in the West Bank; after the ceremony, the Court ruled, the bride would be allowed to remain in the West Bank for two months, during which she would apply to the PA to change her place of residence. At the end of said two-month period, an additional hearing would be held on the petition.<sup>64</sup> On 21 April, 'A.'A. informed the Palestinian Interior Ministry of her change of address, and on that day, her address was updated in the Palestinian population registry to her new address in Tulkarem, and notice to this effect was sent to the Israeli side for the purpose of updating its copy of the registry, according to the agreed-upon procedures. HaMoked informed the State's counsel in this petition that notice had been transmitted by the Palestinians to the Israeli side and inquired as to whether the new address had been updated in the copy of the population registry on the Israeli side,<sup>65</sup> but the State's response submitted to the Court indicated that Israel refused to recognize the address change and, it claimed, 'A.'A. was considered "an illegal alien" in the West Bank."<sup>66</sup> In its brief, HaMoked

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<sup>62</sup> HCJ 2680/07, 'Amer et al. v. Commander of Army Forces in the West Bank et al.

<sup>63</sup> *Ibid.*, petition hearing on 28 March 2007.

<sup>64</sup> *Ibid.*, judgment, 1 April 2007.

<sup>65</sup> Letter from HaMoked to Atty. Gilad Shirman from the State Attorney's Office, 15 May 2007.

<sup>66</sup> Supranote 62, Updating Notice on behalf of the Respondents, 31 May 2005.

claimed that the State was insisting on cutting off the family life of 'A.'A. and her spouse and was undermining the solution the Court itself had suggested, the very solution that both 'A.'A. and the PA had worked to implement. Among other things, HaMoked claimed that the term "illegal alien" applies to foreigners who have not left the area after their visas had expired; applying it to Palestinian residents in the Territories is an innovation with no legal basis.<sup>67</sup> The army, added HaMoked in its petition, makes whatever claim suits its purposes, both regarding its powers and procedures, without citing legislative grounds, without publicizing them, and without transparency. The army demands that actions be taken "according to the procedure" but has published neither the procedure nor proper orders, and as such refrains from specifying its powers. Regarding 'A.'A., since Israel occupies the Territories according to the laws of occupation, the only question that must be asked is one of a balance of interests between 'A.'A.'s right to a family life and the security considerations of the area and of Israel; and since 'A.'A.'s movement is not prevented for security reasons, and her presence in the West Bank poses no risk, there is no real cause to prevent her from living in the West Bank with her husband.

The army maintained its position and attempted to foil any solution, but since 'A.'A. had received a permit allowing her to pass through roadblocks, and since she lives with her husband in the West Bank, HaMoked decided to delete the petition, reserving the right to submit an amended petition pertaining directly to the change of address in the Israeli copy of the population registry.<sup>68</sup> (Case 48633)

## **Requirement for Duration-of-Stay Permits**

In 2007, Israel intensified its unilateral steps intended to institutionalize and perpetuate the separation between the West Bank and the Gaza Strip. In the petition submitted by HaMoked on behalf of a PA resident living in the West Bank whose registered address was Gaza, the army issued a first permit of its kind: a "duration-of-stay permit for the Judea and Samaria Area" (hereinafter: "duration-of-stay" permit). This permit is intended to limit and oversee the

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<sup>67</sup> Ibid., Additional Response on behalf of the Respondents, 5 July 2007.

<sup>68</sup> Ibid., Agreed and amended request to cancel hearing date and delete petition, 28 November 2007.

presence in the West Bank of Palestinians whose registered address is in Gaza, even if they have lived in the West Bank for years. At the same time, thousands of Israeli citizens are being given the right, in keeping with Israeli law and a ruling of the Israeli Supreme Court, to live without a permit or other restrictions in settlements established in the very heart of the West Bank. Moreover, this is not a mere bureaucratic change; the new permit, which was implemented with no legislative act or public announcement, denies Palestinians the basic right available to the residents of any political unit to move freely in its territory and gives rise to a broad violation of additional basic rights. In addition, the permit constitutes a further violation of Israel's obligation, as signatory to the Oslo Accords, to preserve the integrity of the Territories until a permanent agreement is achieved.



A.A., a Palestinian woman from the Gaza Strip, married a Palestinian man living in Jericho in 1993, and moved to live with him there. Between then and 2005, she visited her parents twice in the Strip, and each time, returned after a few days to her home in Jericho. In June 2005, she visited the Gaza Strip with her daughter, while her husband and three other children remained in Jericho. However, her attempts to obtain a one-day entry permit to enter Israel in order to return to Jericho failed, and she remained in the Gaza Strip, far from her children and her husband for over two years. During this entire period, she lived with her daughter at the home of her elderly parents, who suffer great economic duress. On occasion, she was able to speak with her children in Jericho, but over time, the talks became increasingly difficult due to the children's longing for their mother. A.A. again contacted the Palestinian DCO to obtain a permit to travel from the Strip to the West Bank via Israel. In May 2007, after receiving notice from the Palestinian DCO that her request to return home had again been refused on the Israeli side, she contacted HaMoked. HaMoked forwarded the request to the "Humanitarian Desk" of the Gaza DCO,<sup>69</sup> but again it was refused for "security reasons,"<sup>70</sup> despite the fact that the army declined to explain what the ostensible reasons were, and why they had not prevented A.A., her husband and her children from visiting her family in the Gaza Strip and returning home in the past.

<sup>69</sup> Letter from HaMoked to the "Humanitarian Desk" of the Gaza DCO, 9 July 2007.

<sup>70</sup> Letter from the Public Complaints Office of the Gaza DCO to HaMoked, 29 July 2007.

In September 2007, HaMoked petitioned the HCJ on behalf of A.A. and her children, claiming, *inter alia*, that the family's rights, including the right to dignity and family, had been blatantly violated, without the army even bothering to summon the petitioner to a hearing and without giving her the right to plead her case regarding the travel prohibition.<sup>71</sup> HaMoked further claimed that the army, as the occupying power, had no right to treat A.A. and her daughter, both Palestinian residents of the Territories, as tourists or as foreign citizens who wish to enter the territory of the West Bank. In hearings on the petition, the State demanded that A.A.'s presence in the West Bank be arranged through renewable duration-of-stay permits that limit how long she remains in the West Bank and require her to receive a permit from Israel in order to live with her family in her own home. Despite the concern that agreeing to the condition stipulated by the State would set a precedent for other cases in the future, HaMoked's first obligation is to its client, and since the petitioner agreed to the condition, the petition was deleted by consent<sup>72</sup> after the army allowed A.A. and her daughter to return home. For the purposes of the trip, they were issued one-day permits to enter Israel, and a temporary duration-of-stay permit for the West Bank. **(Case 51044)**

As stated, this was the first case HaMoked handled in which a resident of the territories was required to arrange for his presence in the West Bank through a temporary duration-of-stay permit. Since that day, duration-of-stay permits were received in four additional cases handled by HaMoked. In one of them, a permit was issued in violation of a court order:



In January 2007, M.'A. moved to live in Ramallah after being hired by the Palestinian Aviation Ministry in the West Bank. His family remained in the Gaza Strip. M.'A. is a Fatah man, and since the events of June 2007, entering the Gaza Strip involves a real danger to his life. His wife, A.'A., suffers from a rare and chronic disease, and must endure the physical difficulties and many hospitalizations and regular tests. In February 2007,

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<sup>71</sup> HCJ 7569/07, Abu Nar et al. v. Commander of Army Forces in the West Bank et al.

<sup>72</sup> *Ibid.*, decision, 7 November 2007.

M.'A.'s wife submitted two requests to the Palestinian DCO in Gaza to allow her to enter Israel in order to reach her husband together with her four children, but her request was refused by the Israeli side. In March 2007, the mother and children submitted an additional request, through HaMoked, to the "Humanitarian Desk" of the Gaza DCO,<sup>73</sup> but the request did not "fulfill the criteria."<sup>74</sup> HaMoked appealed to the Legal Advisor to the Gaza DCO, requesting that he intervene,<sup>75</sup> and when no response came through, called his office, only to learn that they could not find the request.<sup>76</sup> On that same day the request was resent,<sup>77</sup> and the following day, its receipt was confirmed.<sup>78</sup> Approximately six weeks later, since nothing further had been heard regarding the complaint, HaMoked contacted the office of the Legal Advisor to the Gaza DCO and discovered that again they were unable to locate the request or any documentation attesting to its existence.<sup>79</sup> HaMoked again sent a request, and again its receipt was confirmed by the Gaza DCO.<sup>80</sup> During this time, A.'A's illness became worse, and she was referred to Ramallah for medical care. She therefore contacted the medical coordinator in the PA and asked to arrange for her passage from the Gaza Strip to Ramallah so that she could receive treatment. Her request was approved, and on 11 September 2007, she went from the Gaza Strip to the West Bank, but was forced to leave her children alone in the Strip, with the hope that they would promptly be given a permit that would enable them to cross into the West Bank. The request to the Legal Advisor of the Gaza DCO received no response. Due to the dire state of her health, the medical treatment was protracted, and to this date, she is still in Ramallah, under close medical surveillance that prevents her from returning to the Strip. Her

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<sup>73</sup> Letter from HaMoked to the "Humanitarian Desk" of the Gaza DCO, 20 March 2007.

<sup>74</sup> Letter from the Public Complaints Office at the Gaza DCO to HaMoked, 28 March 2007.

<sup>75</sup> Letter from HaMoked to Lieut. Haim Sharvit, Legal Advisor to the Gaza DCO, 22 July 2007.

<sup>76</sup> Telephone conversation between an attorney from HaMoked and the Office of the Legal Advisor to the Gaza DCO, 26 August 2007.

<sup>77</sup> Letter from HaMoked to Lieut. Haim Sharvit, Legal Advisor to the Gaza DCO, 26 August 2007.

<sup>78</sup> Telephone conversation between an attorney on behalf of HaMoked and Lieut. Haim Sharvit, Legal Advisor to the Gaza DCO, 27 August 2007.

<sup>79</sup> Telephone conversation between an attorney on behalf of HaMoked and Corporal Yarden Zer-Avivi, Asst. to Legal Advisor to the Gaza DCO, 8 October 2007.

<sup>80</sup> Letter from HaMoked to Legal Advisor to the Gaza DCO, 8 October 2007; telephone conversation between an attorney on behalf of HaMoked and Corporal Yarden Zer-Avivi, Asst. to Legal Advisor to the Gaza DCO, 8 October 2007.

children, a 16-year-old boy and three younger girls, the youngest of whom is three years old, have stayed behind in the Strip, and are assisted only by a family friend who lives nearby. For two months, the children were forced to support themselves and attend to their needs alone, this in the already adverse living conditions of the Gaza Strip. Requests by HaMoked to the "Humanitarian Desk" of the Gaza DCO were not answered, and therefore, HaMoked petitioned the HCJ on behalf of the children.<sup>81</sup> In the ruling, the HCJ decided to let the children join their parents in the West Bank.<sup>82</sup> On 28 February 2008, the children were reunited with their parents, after over five months of separation.

During the HCJ hearing, held on 21 February 2008, the army demanded that the mother obtain a duration-of-stay permit allowing her to remain in the West Bank with her children. The Court refused this request, and decided to condition the mother's remaining in the West Bank only on her pledge that she return to the Strip with her children at the end of the necessary medical treatment, with no need for permits or time limitation. Despite this, on the day the children went from the Gaza Strip to the West Bank, the army issued them duration-of-stay permits valid for three months. Thus, the army indirectly tried to limit the mother's stay in the West Bank using her children. Later, the army went even further, stating explicitly that despite the Court decision, the mother herself would have to obtain a duration-of-stay permit. HaMoked is continuing to struggle for the cancellation of the duration-of-stay permits issued for the children, and for implementation of the ruling as required. **(Case 49421)**

Not all of the ramifications of the new permit policy are yet known, but it is clear that it constitutes a further injury to Palestinians' normal life. HaMoked sent a detailed request to the army under the Freedom of Information Act for information regarding the new permit. This will be of assistance in the continuing struggle in the court.<sup>83</sup>

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<sup>81</sup> HCJ 726/08, Al-'Adlouni v. Commander of Army Forces in the West Bank et al.

<sup>82</sup> Ibid., judgment, 21 February 2008.

<sup>83</sup> Letter from HaMoked to the IDF Spokesperson, 10 February 2008.

## Entry into the Gaza Strip from Israel

Until 1994, Israel enabled Palestinian citizens and residents of Israel to enter the Gaza Strip on an unlimited basis. Following the Oslo Accords, the Gaza Strip was fenced in and Israel adopted a policy whose goal was to minimize freedom of movement from Israel to the Strip and vice versa. This policy was intensified with the outbreak of the Second Intifada. Among other things, Israel stopped granting permits for family visits during the Muslim holidays of 'Eid al-Fitr and 'Eid al-Adha,<sup>84</sup> and impeded the "split families procedure" designed to enable Israeli women married to Palestinians from the Strip to live with their spouses and children in the Strip, and at the same time maintain ties with their families in Israel. On 12 September 2005, after the removal of the Israeli settlements in the Gaza Strip, Israel cancelled the military orders pertaining to the Strip, including the order that prevented the entrance of Israelis. However, in practice, the arrangements that had been put in place previously remained in force. Israel's working assumption was that the residents of the State and its citizens had no right to enter the Gaza Strip, and since it was a privilege, preventing it constituted no obstruction of the right to freedom of movement deriving from the Basic Law: Human Dignity and Liberty. This approach ignores the close historical connection between the territories of Israel and those of the Gaza Strip, and the human rights that arise from ethnic, cultural, social and family ties between the Palestinians living in Israel and those residing in the Gaza Strip. It appears that at the heart of the Israeli policy is the goal to weaken and cut off these ties.

### Holiday Family Visits

During the Second Intifada, following HaMoked's petitions,<sup>85</sup> the army formulated criteria for the entry of Israelis into the Gaza Strip. In the context of holiday visits, a procedure was stipulated by which during 'Eid al-Adha, 'Eid al-Fitr, Christmas and Easter, and in the absence of individual security preclusions, citizens of the State and its residents would be permitted to visit

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<sup>84</sup> HaMoked is unaware of a similar practice regarding the Christian holidays in the period up to the outbreak of the Intifada.

<sup>85</sup> HCJ 10043/03, Abaijan et al. v. Commander of the IDF Forces in the Gaza Strip; HCJ 1034/04, Qutina et al. v. Commander of the IDF Forces in the Gaza Strip; HCJ 552/05, HaMoked v. Army Commander in the Gaza Strip, HCJ 10135/05, HaMoked v. OC Southern Command; HCJ 8451/06, HaMoked v. OC Southern Command et al.; HCJ 2823/07, HaMoked v. OC Southern Command et al.

first-degree relatives living in the Gaza Strip, accompanied by their spouses and children under 18.<sup>86</sup> The visits to the Gaza Strip continued in keeping with the criteria even after the disengagement plan and the establishment of the Hamas government. However, in 2007, ahead of 'Eid al-Fitr, when HaMoked asked to receive the procedure for holiday visitation arrangements, the army informed it that a decision had not yet been made by the Defense Minister regarding the upcoming holiday. This despite the fact that only a few months earlier, during the Easter holiday, the Military Legal Advisor for Gaza had announced that holiday visits to first-degree relatives would be allowed, in keeping with the State's obligation in prior petitions. HaMoked petitioned the HCJ, claiming that the State was deviating from its previous commitments and, as such, violating the right to family life and freedom of worship of its Palestinian Moslem citizens and residents. On that same day, the Court issued a ruling requiring the State to submit its response to the petition within five days.<sup>87</sup>

On 8 October 2007, the State submitted its response, stating that holiday visits must not be allowed due to security concerns: Israelis could be kidnapped for bargaining; soldiers or citizens at the Erez Crossing could be hurt; terror organizations might try to recruit Israeli residents and citizens; and during Israeli army actions in the Gaza Strip, the visitors might be hurt.<sup>88</sup>

HaMoked responded that holiday visits had been made possible in the past despite similar claims. For example, despite the State's claim that the kidnapping of citizens and holding them hostage were likely, since the kidnapping of Israeli soldier Gilad Shalit in June 2006 and since the establishment of the Hamas-led Palestinian government, family visits had taken place undisturbed. HaMoked further claimed that the State was trying to downplay the fact that for a long time, passage to and from the Gaza Strip has been enabled on a daily basis without violence or exceptional events.<sup>89</sup>

In a hearing held on 10 October 2007, HaMoked withdrew the petition after the Court clarified that its chances were slim, since it accepted the State's claims regarding the security risks likely to arise from the entry of Israeli

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<sup>86</sup> For additional details see HaMoked, Annual Report 2004, pp. 20-23 [http://www.hamoked.org.il/items/12900\\_eng.pdf](http://www.hamoked.org.il/items/12900_eng.pdf).

<sup>87</sup> HCJ 8250/07, HaMoked v. OC Southern Command et al., decision, 3 October 2007.

<sup>88</sup> *Ibid.*, Response on Behalf of the Respondents, 8 October 2007.

<sup>89</sup> *Ibid.*, Request to submit Response on behalf of Petitioners to Response on Behalf of the Respondents, 9 October 2007.

residents and citizens into the Strip; and yet, the Court ruled that the State had to consider re-instating the visits in keeping with the security situation. Approximately one month prior to Christmas and 'Eid al-Adha, HaMoked contacted the OC Southern Command, demanding that the army fulfill its obligation to the Court and allow Israelis to enter the Gaza Strip to visit their families on the holidays, which during this period were more important than usual given the tight and ongoing closure on the Gaza Strip that prevented family members from meeting.<sup>90</sup> The army answered that this time as well, Israelis seeking to visit their families living in the Gaza Strip during the holidays would not be granted permits.<sup>91</sup>

### **"Split Family Procedure"**

With the closing of the Gaza Strip to Israeli citizens and residents, Israeli women married to residents of the Strip found themselves in an unthinkable situation in which they or their families were dependent on an army permit to remain in or visit their homes in the Strip (hereinafter: split families).<sup>92</sup> HaMoked made concerted efforts to reach an arrangement whereby women from these split families would be able to continue living a proper family life while maintaining ties with their families in Israel. According to the procedure, the women received entry permits into Gaza valid for three months that could be extended at the Gaza DCO. Until the outbreak of the Second Intifada, this procedure was in regular effect, but since then, Israel has begun imposing various restrictions on the entrance of women from split families to the Strip. The army introduced frequent changes to the procedure in an arbitrary manner and without informing the population in the Gaza Strip, usually, as collective punishment following terror attacks. The changes included, among other things, a shortening of the period for which permits were valid, requirements to sign an undertaking not to leave the Strip for specified times, and even sweeping cancellation of the procedure.

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<sup>90</sup> Letter from HaMoked to Maj. Gen. Yoav Galant, OC Southern Command, 26 November 2007.

<sup>91</sup> Letter from Major Avi Kalu, Legal Advisor to the Southern Command to HaMoked, 10 December 2007.

<sup>92</sup> There are also cases in which a man with Israeli residency or citizenship is married to a woman from the Strip, but in the overwhelming majority of cases – and in all such cases handled by HaMoked – the marriages were between an Israeli woman and a man from the Strip, hence reference is made in the feminine.

Requests from HaMoked and petitions to the HCJ led in many cases to cancellation of these changes.<sup>93</sup>

As stated, following the withdrawal from the Gaza Strip, Israel cancelled the military orders it had implemented in the Strip and changed the legal basis for the prevention of the entrance of Israelis into it. However, the arrangements for receiving temporary permits remained the same, including the narrow criteria and the tendency to withhold them. Moreover, from time to time, security forces would prevent a person's entrance into the Strip without providing satisfactory explanation, even when that person was in possession of a valid permit.



A.D., a Palestinian resident of Jerusalem, had been married since 2002 to M.D., a Palestinian man living in the Gaza Strip. Since her marriage, A.D. had entered the Gaza Strip on a number of occasions for short periods in order to visit her husband, and despite the geographic distance, the couple maintains daily contact via telephone. On 24 December 2006, M.D. submitted a request to the Gaza DCO seeking an entry permit into Gaza for his wife, and a few days later, received notice from the Israeli Desk<sup>94</sup> of the DCO that a permit had been prepared for her and that her entry had been scheduled for 1 January 2007. On said day, A.D. arrived at the Erez Crossing, but after about six hours of waiting, she was told that the ISA was preventing her entry into the Strip due to security problems relating to relatives in her husband's family. On 11 January 2007, HaMoked contacted the "Humanitarian Desk" of the Gaza DCO on her behalf, and asked to approve her request to enter Gaza, given that she had not seen her husband for approximately one year.<sup>95</sup> The request was approved,<sup>96</sup> and after coordination with the DCO, A.D. arrived at the Erez Crossing on 2 February 2007. To her surprise, however, a border police officer prevented her from entering due to a security reason pertaining

<sup>93</sup> For example: In March 2004, Israel began having Israelis entering the Strip sign a pledge that they would not return to Israel for three months. This requirement was in violation of international law (Art. 12 of the International Covenant on Civil and Political Rights (1966), and Art. 6 of Basic Law: Human Dignity and Liberty). The instruction was cancelled following a petition by HaMoked and Adalah. See HCJ 5076/04, Husseini et al. v. OC Southern Command.

<sup>94</sup> The Israeli Desk is the office in charge of handling requests by Israeli citizens and residents relating to the Gaza Strip.

<sup>95</sup> Letter from HaMoked to the "Humanitarian Desk" of the Gaza DCO, 11 January 2007.

<sup>96</sup> Letter from the Public Complaints Office at the Gaza DCO to HaMoked, 25 January 2007.

to her husband's relatives. Since it was a border police officer who this time prevented A.D.'s entry into the Strip, HaMoked contacted the Border Police in order to clarify whether an order had been issued preventing her from leaving the country. Upon receiving a negative answer, HaMoked again asked that A.D.'s entry into the Gaza Strip be arranged, and requested information regarding the security reason behind the refusal.<sup>97</sup> The army examined the request and announced that A.D. would be allowed to enter the Strip,<sup>98</sup> but this time, as well, she was informed when she reached the Erez Crossing that she did not have permission to enter the Strip and she was forced to return. HaMoked petitioned the HCJ on her behalf,<sup>99</sup> and the State responded that A.D. was prevented from entering the Gaza Strip for security reasons based on "[...] current and reliable intelligence information regarding relatives of the petitioner, including the husband she wished to visit, who were connected to terrorists."<sup>100</sup> In the hearing on 3 September 2007, an attorney for HaMoked claimed, among other things, that in light of the amendment to the Entry into Israel Law and the freezing of family unification between Israelis and residents of the Territories in Israel, the only option for the couple to fulfill their right to family life was for A.D. to visit the Strip. Preventing the visit meant an absolute violation of A.D.'s right to a family life. It was also claimed in the hearing that in keeping with the respondents' preliminary response, preventing the meeting was not based on information directly pertaining to A.D.'s husband or relatives, but rather to persons with whom the State claimed he had ties but regarding which no details were provided; the army was judging A.D. for deeds of other people that she did not know at all, in contravention of the principles of Israeli law and in violation of A.D.'s right to be judged on her own deeds, as an independent person. Moreover, in the past, the authorities had proposed to A.D.'s husband that he collaborate with the ISA and share with them things he had heard while working as a taxi driver, but he refused. The respondents' lawyer denied that the ISA had requested anything of the sort. At the end of the hearing, the Justices reviewed the classified information and recommended that HaMoked withdraw the petition. **(Case 48091)**

<sup>97</sup> Letter from HaMoked to Sergeant Major 'Amer Naser Al-Din from the Israeli Desk at the Gaza DCO, 6 March 2007. Letter from the Israeli Desk at the Gaza DCO to HaMoked, 12 March 2007.

<sup>98</sup> Letter from the Israeli Desk at the Gaza DCO to HaMoked, March 12, 2007.

<sup>99</sup> HCJ 3804/07, Daud v. OC Southern Command et al.

<sup>100</sup> *Ibid.*, Preliminary Response on Behalf of the Respondents, 30 May 2007, Art. 6.

Since the process of family unification between residents of the Territories and Israeli citizens or residents has been legally blocked by Israel, women from split families must choose between living with their families in the Strip and attempting to divide their time between the Strip and Israel.<sup>101</sup> In 2007, Israel intensified the limitations placed on Israeli women married to Palestinian men who live in the Gaza Strip. For years, the entrance of Israelis into the Strip had been conditioned on a permit from the army and presentation of an Israeli identity card at the Erez Crossing. In January 2007, HaMoked learned from the Gaza DCO that the Minister of the Interior had issued a new guideline to take effect on 1 February 2007, conditioning entry of Israelis into Gaza via the Erez Crossing on the presentation of a passport or laissez-passer. This new requirement presented difficulties for permanent residents from split families, since they were not Israeli citizens and therefore ineligible for an Israeli passport. While they could request an Israeli travel document, receiving such a document involves a long and tortuous bureaucratic process, and the Ministry of the Interior in any case tends to reject such requests submitted by women residents from split families. The Office of the Interior Ministry Spokesperson claimed that an announcement on this matter was published, but despite their efforts, HaMoked's staff was unable to track down the announcement either on the internet site of the Interior Ministry or among the announcements of the Spokesperson's Office. HaMoked therefore asked for a clarification regarding the new procedures, particularly pertaining to Jerusalem residents<sup>102</sup>, but received a response from the Interior Ministry that no change in the policy had occurred, and that the existing policy had merely been adjusted.<sup>103</sup> HaMoked learned that Israeli citizens and residents were being required not only to present a travel document at the entrance to the Strip, but also to deposit them at the crossing, and women of split families remaining in the Strip under renewable permits were required to present a passport or laissez-passer as a condition for renewal of the permit. This requirement, involving a trip to Israel and a wait for the issuance of documents, which sometimes takes over one month, has no legal basis and insidiously overlooks these women's obligations to their families, children and places of employment.

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<sup>101</sup> For a broader discussion of the family unification process see Jerusalem Residency in this report.

<sup>102</sup> Letter from HaMoked to Col. Nir Pres, Head of the Gaza DCO, 1 February 2007; Letter from HaMoked to Sabin Hadad, Interior Ministry Spokesperson, 1 February 2007.

<sup>103</sup> Letter from Sabin Hadad, Interior Ministry Spokesperson, to HaMoked, 12 February 2007.

'A. A., a Jerusalem resident, lives with her husband in Gaza. In December 2007, her most recent permit expired, but all of her efforts to renew it failed. After her written request was not answered, and despite a high-risk pregnancy that had been preceded by fertility treatments, 'A.A. went herself to the Erez Crossing where she was told that they would contact her by telephone the moment that renewal of the permit was approved. Over two months passed, and the Gaza DCO did not contact her. During this entire period, 'A.A. regularly telephoned the Palestinian side to see whether she had received a permit, and was consistently told that the Israeli side had not yet set a date for her. In one of the conversations, she was informed that Israel was conditioning renewal of the permit on presentation of a passport or laissez-passer. When 'A.A. contacted HaMoked, she was in the eighth month of her pregnancy; due to her deteriorated medical condition, a Cesarean section was planned for 19 February 2007. HaMoked wrote to the "Humanitarian Desk" of the Gaza DCO, demanding that no measures be taken against 'A.A., who was residing in Gaza without a valid permit since her physical condition made it impossible for her to travel to Israel to renew it.<sup>104</sup> When no substantive response was received to this correspondence, an attorney from HaMoked sent an additional letter demanding that 'A.A.'s permit be renewed without further delay, including a retroactive renewal, and that renewal or receipt of her permit or that of any other spouse from a split family should not be conditioned on presentation of a passport or laissez-passer.<sup>105</sup> On 20 March 2007, HaMoked received approval for renewal of 'A.A.'s permit, valid retroactively and until 19 April 2007.<sup>106</sup> (Case 16961)

Even before HaMoked received a substantive answer to the theoretical question of passports and laissez-passer documents, it learned that Interior Ministry clerks in East Jerusalem had begun to confiscate Israeli identity cards of women from split families who had come to receive a laissez-passer. The law does not permit clerks to confiscate identity cards

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<sup>104</sup> Letter from HaMoked to the "Humanitarian Desk" at the Gaza DCO, 14 February 2007.

<sup>105</sup> Letter from HaMoked to the "Humanitarian Desk" of the Gaza DCO, 19 February 2007 (copies sent to the Legal Advisor to the Gaza DCO, the Head of the Gaza DCO, OC Southern Command, COGAT, and the Military Advocate General).

<sup>106</sup> Letter from Captain Yasmin Ohana from the Military Advocate of the Southern Command to HaMoekd, 20 March 2007.

in such cases; the confiscation of the identity cards thus aroused concern that the authorities were preparing to downgrade the status of the women following their stays in Gaza; indeed, the Interior Ministry and welfare institutions condition provision of services on a consecutive two-year stay in Israel (including East Jerusalem), and the Minister of the Interior is empowered to revoke the residency of a person who does not live in Israel for a protracted period. HaMoked immediately contacted the Interior Ministry and demanded it cease from this policy and return the confiscated identity cards to their owners.<sup>107</sup>

Y.'A., a Jerusalem resident, is married to a Palestinian man who lives in Gaza. The couple has five children, who are registered in the Palestinian population registry. In early February 2007, the army informed Y.'A. that her five children had been issued permits, and that she could enter Israel with them. On 2 February 2007, Y.'A. arrived at the Erez Crossing with her children, where a clerk from the Israeli Desk informed her that she would be able to re-enter the Strip only if she produced an Israeli passport. Since she is a permanent resident and does not possess a passport, the clerk instructed her to apply for a laissez-passer at the Population Administration in East Jerusalem. On 5 February 2007, Y.'A. reported to the Population Administration in East Jerusalem, and submitted a request for a laissez-passer. She explained that she divided her time between the Gaza Strip, where her children and husband lived, and Jerusalem, where her family lived. She submitted her identity card for examination and it was returned to her together with a receipt documenting that she had submitted the request. On 11 February 2007, Y.'A. returned to the office to receive a laissez-passer. A clerk asked for her identity card, and for the proof of request. Approximately 30 minutes later, Y.'A. was told that since she was residing in the Gaza Strip, her identity card would have to be taken from her and she would be left with the laissez-passer only. In response to her question as to whether the identity card would be returned to her were she to leave Gaza and wish to re-deposit her laissez-passer, she was told that she would never receive her identity card back. Y.'A. left the Office without

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<sup>107</sup> Letter from HaMoked to Tova Amedi, Population Administration Bureau, Ministry of Interior, 19 February 2007.

her card, and contacted HaMoked. An attorney from HaMoked wrote to the Population Administration demanding that the confiscation of identity cards be halted immediately, and that the cards that had been confiscated be returned. The letter stated the conditions in the law under which a clerk was permitted to retain a person's identity card until completion of an examination, and made clear that Y.'A.'s case did not conform to these conditions. In addition, HaMoked complained that the identity card was taken from her under false pretenses, since she and others like her, were led to believe that their identity cards were being taken from them for just a few moments, for processing and issuing of a laissez-passer.<sup>108</sup> On 15 March 2007, Y.'A. received her identity card back. **(Case 10321)**

Although the Interior Ministry continually reiterated its claims that it had not stipulated new directives or procedures, the army insisted that there was an Interior Ministry directive to present a passport or laissez-passer when entering Gaza.<sup>109</sup> Following HaMoked's inquiries to various government offices, the Legal Advisor to the Gaza DCO ultimately announced that "according to the directives of the Ministry of the Interior of 1 January 2007, every Israeli resident or citizen wishing to enter the Gaza Strip was required to deposit an Israeli passport/laissez-passer. It should be noted that in accordance with the order of the Interior Ministry, this directive was cancelled on 18 February 2007."<sup>110</sup> The directive to confiscate identity cards in the Jerusalem office of the Interior Ministry was also cancelled in the same manner; yet, again, the Ministry did not trouble itself to make a public announcement regarding cancellation of the directives and the change in the requirements to present documents upon entering the Gaza Strip. This conduct caused many citizens and residents to leave their families in the Strip in order to receive a laissez-passer or Israeli passport – a process that took two weeks – required superfluous expenses, and sowed fear among the residents that they were going to lose their right of residency.

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<sup>108</sup> *Ibid.*

<sup>109</sup> Letter from Lieut. Haim Sharvit, Legal Advisor to the Gaza DCO to HaMoked, 20 February 2007.

<sup>110</sup> Letter from Lieut. Haim Sharvit, Legal Advisor to the Gaza DCO to HaMoked, 3 March 2007.

## Entry of Children from Split Families into Israel

The children of Israeli women living with their families in the Gaza Strip are registered in the Palestinian population registry. According to Israel's position, registration in this registry cancels a person's right to receive Israeli status. No publication was ever made of a procedure regarding the entry of children from split families into Israel. HaMoked's experience reveals that permission to enter depends upon the whim of the person at the DCO: sometimes children under five are permitted to accompany their mothers without obtaining their own permits; sometimes only babies are permitted to enter with the mother without a permit, and siblings must stay behind in the Strip; and sometimes, the entire family receives a permit to leave Gaza and enter Israel. Women who need to enter Israel are often forced to leave their children, or some of them, in the Gaza Strip, without knowing when they will be able to see them again.



A.D., a Jerusalem resident, was married in 1994 to M.D., a Palestinian resident of Gaza. The couple has five children, the oldest of whom is ten years old. In keeping with the "split families procedure," A.D. lives in Gaza, dependent on renewable permits and security checks. A.D. divides her life between her home in the Gaza Strip, where her husband and children live, and her home in Jerusalem, where her family lives. On 13 November 2007, A.D. arrived at the Erez Crossing with her five children, and asked, as she had in the past, to enter Israel with them in order to attend her brother's wedding in Jerusalem. The soldier at the Erez Crossing told her that she could go to Jerusalem by herself, without her children, since the children were registered in the Palestinian population registry and in order to travel to Israel, required entry permits into Israel, even though they were minors. On 15 November 2007, after HaMoked's intervention, A.D. successfully arrived in Jerusalem with two of her children – her two-month-old daughter, and her two-year-old son; her other children remained with their father in the Strip. Three days later, A.D. asked to return home to the Gaza Strip. HaMoked contacted the Gaza DCO with a request to arrange for her entrance into the Strip by 20 November 2007, emphasizing that the children who remained in the Strip ranged in age from kindergarten to elementary school, and needed their mother's care, especially since their father was at work during most of the waking hours.<sup>111</sup> A response was received that "Jerusalem" was "examining"

<sup>111</sup> Letter from HaMoked to the Israeli Desk at the Gaza DCO, November 18, 2007.

the request.<sup>112</sup> At the same time, HaMoked contacted the head of the Gaza DCO in an attempt to resolve the theoretical question of changes instituted in the procedures by the army.<sup>113</sup> In the past, the army had permitted children below age 16 to accompany their mothers into Israel without a permit, but the procedure, as stated, changed, and its details were unknown. The letter went unanswered, as did an additional letter sent by an attorney from HaMoked to the head of the Gaza DCO, complaining of the long time elapses between submission of requests and the response, particularly in the case of women known to the security authorities who frequently undergo the checks and procedures required of them.<sup>114</sup>

Over one month passed from the time that A.D. asked for her return to the Strip to be arranged, yet no response was forthcoming. HaMoked petitioned the HCJ on her behalf.<sup>115</sup>

A week after submission of the petition, and even before the hearing was held, A.D. received an entry permit and returned to her home and children in the Strip. HaMoked deleted the petition but sent a letter to the Gaza DCO asking for a meeting to clarify the procedures pertaining to issues relating to women from split families and their children.<sup>116</sup> **(Case 27846)**

## **Imposition of Punishments and Sanctions**

In coming to renew permits that expired, women from split families have encountered sanctions from the army and the police. There are many reasons why a permit expires before a replacement permit is issued: Sometimes, the time necessary for the army authorities to answer a request exceeds the period of the permit's validity; sometimes closure is imposed on the Gaza Strip, and sometimes the Gaza DCO is closed due to political events. Whatever the reason, the punitive steps, among other things, lead women who were unable to renew their permits on time – even if only a short time passed since the expiration, and even if the reasons are justified and understandable – to fear coming to get them renewed, to the point where they prefer to remain in the Strip without a valid permit.

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<sup>112</sup> Telephone conversations between HaMoked and the Gaza DCO, 26, 29 November 2007, 4 December 2007.

<sup>113</sup> Letter from HaMoked to Col. Nir Pres, Head of the Gaza DCO, 20 November 2007.

<sup>114</sup> Letter from HaMoked to Col. Nir Pres, 13 December 2007.

<sup>115</sup> HCJ 11114/07, Daya et al. v. OC Southern Command, et al.

<sup>116</sup> Letter from HaMoked to Col. Nir Pres, Head of the Gaza DCO, 6 January 2008.

S.H., a Jerusalem resident, has been married to a resident of Gaza since 1992. The couple lives in the Gaza Strip with their four children under the "split families procedure." On 16 October 2007, after advance coordination with the Israeli Desk at the Gaza DCO, S.H. arrived at the Erez Crossing in order to renew her entry permit into the Gaza Strip after it expired, first due to a protracted delay in "split family procedure" proceedings between January and April 2007, and later because she was unable to reach the Erez Crossing due to illness. Despite the advance coordination, upon arriving at the Erez Crossing, the soldiers suddenly summoned the police, and S.H. was taken for interrogation at the Sderot Police station, after a police officer had her sign a document in Hebrew without translating it for her and without explaining to her its content. The interrogation was also conducted entirely in Hebrew, even though S.H. repeatedly emphasized that she did not understand and did not speak the language. At the end of the interrogation, she had no choice but to sign the Hebrew document, and was released. S.H. naively expected that the police officer would return her to the Erez Crossing, and she waited in the hallway of the station. After no one addressed her, she approached the station desk where she was told that she would have to coordinate her entry with the Israeli Desk of the Gaza DCO, and that there was no intention of returning her to the Erez Crossing or transporting her to any other place. When she arrived at the Erez Crossing, S.H. assumed that she would return to her home and her family in Gaza that same day. She was not prepared to stay far from home, and found herself suddenly with no roof, no money and no clothes, save those she was wearing at the time. Her four children, the youngest of whom was only six years old, were left behind, fearing terribly for the fate of their mother who had suddenly "disappeared" from the house. For ten days, S.H. was forced to knock on the doors of relatives and acquaintances living in Israel in an attempt to find a place to stay until her return to the Gaza Strip and her children would be approved. HaMoked submitted a complaint regarding the severe shortcomings in the conduct of the Sderot police, and a demand to formulate a procedure in the DCO.<sup>117</sup> The police file against S.H. was deleted.<sup>118</sup> (Case 51990)

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<sup>117</sup> Letter from HaMoked to the Public Complaints Unit in the Israel Police, 25 November 2007.

<sup>118</sup> Letter from Chief Superintendent Shimon Nahmani, Commander of the Sderot Station, to HaMoked, 17 December 2007.

Processing of cases of women from split families and their families was slower than usual during 2007. The number of requests HaMoked received from women in Israel who were unable to receive a response to their requests to return to Gaza within a reasonable time period multiplied. Children who were with their mothers missed the beginning of the school year; those who stayed in the Strip were cut off from their mothers for long periods; sick relatives were left without treatment for protracted periods. The claim presented by the army in many cases, that the delays in issuing permits were due to the need for security checks, is unsatisfactory, since these are women whose situations are well known to the authorities. HaMoked continues to work to put an end to the grave violation of the rights of women from split families, and to protect the family unit and wellbeing of the children, as required by law.

### **Visits to the Gaza Strip for Humanitarian Reasons**

Since 2000, the number of permits given to Israelis seeking to enter the Gaza Strip has been reduced. The main elements of the army's policy on this matter were presented in a petition submitted by HaMoked, in which it demanded an Israeli resident be allowed to enter the Gaza Strip in order to visit his ailing mother.<sup>119</sup> In response, the State related that visits of first-degree relatives in Gaza would be made possible for humanitarian reasons (wedding, engagement, serious illness, funeral, etc.) even in times of conflict, subject to the absence of a security preclusion.<sup>120</sup> These arrangements remained in effect even after the implementation of the disengagement plan. However, in June 2007, following the violent clashes between Fatah and Hamas, the army closed the crossings into the Strip, almost completely, including the Erez Crossing, which is used by Israelis entering the Strip. As time went on, the violence subsided somewhat, and the army began gradually reopening the Erez Crossing. In keeping with the change in circumstances, HaMoked began submitting requests on behalf of Israelis who wished to enter Gaza for humanitarian reasons, because despite the army's declared position, in many cases the entrance of relatives to Gaza is still prohibited, even in clear humanitarian cases, and there is often a need for HaMoked to intervene and take legal action.

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<sup>119</sup> HCJ 10043/03, Abaijan et al. v. Commander of the IDF Forces in the Gaza Strip.

<sup>120</sup> *Ibid.*, Response on behalf of the Respondent, 27 August 2004.



On 1 July 2007, HaMoked contacted the Gaza DCO with a request to allow A.M. to enter the Gaza Strip together with his daughters in order to visit his cancer-stricken mother.<sup>121</sup> A.M. is a certified nurse, and his ailing mother needed his help and support. On 21 August 2007, after a number of memos from HaMoked, the army allowed A.M. to enter the Strip with his daughters for three days.<sup>122</sup> In October, A.M. contacted HaMoked with an additional request to arrange for him to enter the Strip in the company of his daughters, and HaMoked again contacted the army requesting that they allow the visit for humanitarian reasons,<sup>123</sup> but on 13 November 2007, the army's response arrived, stating that "his exit from Israel for a stay in the Gaza Strip **will not be permitted** for the following reasons [...] **security reservations**."<sup>124</sup> HaMoked petitioned the HCJ on behalf of A.M. and his daughters, claiming, *inter alia*, that this was a case which clearly falls in the criteria stipulated by the army for the entrance of Israelis into the Gaza Strip. The army has, in the past – including recently – permitted A.M. and other Israelis to enter the Strip in similar cases.<sup>125</sup> HaMoked emphasized that the army was violating A.M.'s right to freedom of movement and family life, and preventing him from exercising his right and obligation to nurse his mother in her time of need. Before the trial took place, the security authorities lifted the "security reservations" preventing the entry of A.M. and his daughters into Gaza.<sup>126</sup> On 4 February 2007, after coordinating with the army, A.M. and his daughters entered the Gaza Strip from Israel. (Case 7580)

## Roadblocks and Real-Time Assistance

Alongside its ongoing work, HaMoked runs an emergency hotline with the goal of providing real time assistance to Palestinians whose rights are violated by security forces and settlers. The overwhelming majority of calls to the hotline relate to incidents that occur at the roadblocks deployed throughout

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<sup>121</sup> Letter from HaMoked to the Israeli Desk of the Gaza DCO, 1 July 2007.

<sup>122</sup> Letter from the Israeli Desk of the Gaza DCO to HaMoked, 21 August 2007.

<sup>123</sup> Letter from HaMoked to the Israeli Desk of the Gaza DCO, 21 October 2007.

<sup>124</sup> Letter from the Israeli Desk of the Gaza DCO to Hamoked, 13 November 2007 (emphasis in the original).

<sup>125</sup> HCJ 1094/07, Masbah v. OC Southern Command et al.

<sup>126</sup> Letter from Ilil Amir, Chief Assistant to the State Attorney to HaMoked, 10 January 2008.

the West Bank, which are points of friction between soldiers and border police officers, and Palestinians. The very existence of the roadblocks interferes with the possibility of conducting a proper life, and if that were not enough, the disrespectful, offensive and sometimes criminal behavior of the soldiers and police officers at the roadblocks is routine.

On 22 August 2007, at 6.30 a.m., a convoy of four buses sent by the International Committee of the Red Cross (ICRC) to transport 200 family members from the West Bank to visit a prison in Israel was detained at the Tarqumiya checkpoint in Hebron. The soldiers offered no explanation for the delay, and did not search the buses or any of their passengers. During this time, other vehicles passed through the checkpoint. The drivers attempted to explain to the soldiers that they were pressed for time due to the limited visitation hours in the prisons, but in vain. At 8.30 a.m., one of the drivers contacted HaMoked. Fifteen minutes later, after HaMoked contacted the army's "Humanitarian Desk," the buses were sent on their way. **(Case 7338)**

Soldiers and police officers have no qualms about detaining children under the age of criminal responsibility at the checkpoints. They do not inform them of their rights, interrogate them without an adult present and do not inform their parents of the detention – all this, in contravention of the law. In these cases, the emergency hotline works with utmost urgency with the goal of having the children released to their homes.

On 2 August 2007, the emergency hotline received a phone call regarding a child approximately ten years of age who had been beaten by soldiers and was now being held at the Huwwara checkpoint in the Nablus district. That morning was exceptionally hot, and the child, according to the witnesses' report, had set up a drink stand at the checkpoint. The soldiers fell upon the child, beat him, and locked him in a room near the checkpoint. HaMoked urgently contacted the army demanding that the child be released immediately and that the complaint be investigated. Two hours later, and after repeated requests by HaMoked, the child was released to his home. The army informed HaMoked that the soldiers at the checkpoint denied they had acted violently towards the child during the "detention." **(Case 7322)**

On 23 August 2007, at 2.00 p.m., HaMoked received a phone call from a resident of Sebastia in the Nablus district. He reported that around 12 children aged 10-12 had been caught by soldiers near the Shavei Shomron settlement, and were being held at al-Athar Square in Sebastia. The emergency hotline began attempts to locate the children to find out the reason for their detention and to attend to the conditions under which they were being held. Over two and a half hours later, during which HaMoked conducted telephone calls with the Nablus DCO, the army's "Humanitarian Desk" and the concerned parents of the children, it was learned that the children were being "detained" since they had thrown stones at soldiers. HaMoked was further informed that one of the children was sick and needed food and shade. During this entire time, the children sat outside, in the sun, and the soldiers did not allow them to receive food – just drink. After a conversation between HaMoked and one of the soldiers, the sick child was brought into an air-conditioned office, and all of the children received food. The children were held in this manner for over six hours, during which the soldiers and officers in charge raised a variety of contradictory claims in an attempt to justify the lengthy and patently illegal detention. Not one of the children was arrested or interrogated. HaMoked was informed that at that time there was a party for the soldiers; the soldiers waited until the party ended, and only afterwards released the children. **(Case 7341)**



# Detainee Rights

**“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No one shall be subjected to arbitrary arrest, detention or exile.”**

Universal Declaration of Human Rights (1948), Articles. 5, 9

## Family Visitation

Thousands of Palestinians are imprisoned in Israel: detainees who have yet to be tried, those awaiting trial outcomes, sentenced prisoners, administrative detainees, and civilians imprisoned for an unspecified period under the Incarceration of Unlawful Combatants Law. In the overwhelming majority of cases, Palestinian prisoners are held in facilities within Israeli territory, in violation of international law, which prohibits the transfer of population from occupied territory to the territory of the occupying power, as well as the holding of detainees and sentenced prisoners outside the occupied area.<sup>127</sup> The imprisonment of Palestinians within Israeli territory obliges their relatives to request entry permits into Israel to visit them. Israel supplies these permits under rigid reservations and narrow criteria.

The right to family visits in prison facilities is a basic right, both for detainees and their relatives, arising from the view of the human being as a social creature who exists in the context of family and community. This right is entrenched in a series of Israeli and international legal sources, including the

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<sup>127</sup> Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Arts. 49, 76.

Fourth Geneva Convention, according to which "Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible."<sup>128</sup> The minimum standards for treatment of prisoners determined by the United Nations also recognize the right of the prisoner to maintain contact with his family through letters and visits,<sup>129</sup> while the view that detention and imprisonment must not limit or cancel a person's fundamental rights, including his and his family's right to live as a family to the extent possible given the existing conditions, is also rooted in Israeli case law.<sup>130</sup> And yet, Israel does not allow Palestinians who live in the West Bank and Gaza Strip to travel to the prison facilities independently, and at the same time, does not offer an alternative.<sup>131</sup> The visits are organized and funded by the International Committee of the Red Cross (ICRC), which serves as a mediator between the Israeli army and the prisoners' families. But even when the visits facilitated by the ICRC function normally, the process is complicated and lengthy. According to the procedure, prisoners' relatives submit their requests to the ICRC Offices, ICRC personnel transfer them to the army, the army examines the requests and returns the permits and rejections to the ICRC, which delivers them to the families. A visitation permit is valid for three months, during which the holder can visit his imprisoned relative once every two weeks. At the end of the three-month period, a new permit must be requested through the ICRC.

For the three years following the outbreak of the Second Intifada, Israel prohibited prison visits entirely. Beginning in March 2003, following HaMoked's legal efforts, the visits were gradually reinstated, but only for first-degree relatives of the prisoners.<sup>132</sup> Even after the resumption of visits, the army has continued to heap difficulties upon relatives wishing to visit their loved ones in prison; according to its informal position, as expressed in its actions, the right to visitation is not a vested right, but a gesture granted by Israel to the prisoner and his relatives.

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<sup>128</sup> *Ibid.*, Art. 116.

<sup>129</sup> *Standard Minimum Rules for the Treatment of Prisoners (1957)*, par. 37.

<sup>130</sup> See, for example, Prisoner. Pet. App. 4463/94, *Golan v. Israel Prison Service*, *Piskei Din* 50(4), 136, pars. 12-13; HCJ 2245/06, *MK Dobrin et al. v. Israel Prison Service et al.*, judgment, 13 June 2006, sec. 15.

<sup>131</sup> Residents of East Jerusalem who have Israeli identity cards do not require a permit from the army, but they are dependent upon the dates of the ICRC shuttles.

<sup>132</sup> This category included grandparents, parents, brothers, spouses and children. Children of the prisoner between the ages of 16-35 are allowed to visit twice a year; siblings in this age range can visit once a year. Children under the age of 16 do not require a permit.



H.A., born in 1915, is disabled and bedridden. In 2004, he suffered a stroke and was hospitalized for long stretches of time. His son was arrested in August 2002 and sentenced to 30 years' imprisonment. During the first four years of his son's prison term, H.A. did not visit him due to his advanced age and dire medical condition. At the end of 2006, H.A. asked to visit his son so that he could see him one last time. The ICRC agreed to provide H.A. with medical escort and an ambulance for transport, and due to his state, HaMoked submitted an urgent humanitarian request to make arrangements for the visit.<sup>133</sup> When no answer was received, HaMoked sent a reminder, demanding a response within a few days, re-emphasizing the father's severe situation and the clearly humanitarian nature of the request.<sup>134</sup> One week later, HaMoked petitioned the High Court of Justice (HCJ) claiming that grave humanitarian considerations were at stake, and therefore, immediate issuance of a permit would be the ethical, human and obvious step.<sup>135</sup> A day after the petition was submitted, the State's counsel notified HaMoked that the army was claiming that the permit had been issued prior to the submission of the petition, and would be sent to the ICRC for transfer to the petitioner.<sup>136</sup> **(Case 47836)**

Since 5 June 2007, following the events in Gaza, the army has cancelled all family visits from the Gaza Strip. Even after the situation stabilized, and Erez Crossing was opened for travelers, the visits were not renewed. HaMoked demanded renewal of the visits, claiming, among other things, that they were organized and carried out by the ICRC in coordination with the army and in keeping with strict security arrangements, with escort by the security forces and strict criteria for visitors subject to security approval.<sup>137</sup>

The army responded that the visits could not be renewed since there was no official Palestinian entity with which security arrangements could

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<sup>133</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 14 December 2006.

<sup>134</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 7 January 2007.

<sup>135</sup> HCJ 391/07, Alzaru v. Commander of Army Forces in West Bank.

<sup>136</sup> Letter from Atty. Itai Ravid, HCJ Division in the State Attorney's Office to HaMoked, 15 January 2007.

<sup>137</sup> Letter from HaMoked to Col. Pnina Sharvit Baruch, Head of International Law Department, 9 August 2007.

be coordinated for movement through the crossings.<sup>138</sup> Since, during July 2007 alone, over 1,500 people passed through the Erez Crossing, all in coordination between the Palestinian side and the Israeli army,<sup>139</sup> the sweeping cancellation of visits is clearly a collective punishment against the prisoners from the Gaza Strip and their families, and as such is prohibited by international law and is in violation of obligations made by Israel in the past.

### **Prevention of Visits by the Army "The Preclusion Arrangement"**

Until November 2004, Palestinian residents defined by Israel as "precluded from entering Israel" or "precluded for security reasons" were not given permits for visitation of imprisoned relatives. The number of Palestinians Israel considers "precluded" is in the many tens of thousands.<sup>140</sup> Since the reinstatement of visits in 2003, HaMoked has been acting in the legal realm to enable Palestinians defined as "precluded from entering Israel" to visit Israeli prisons via the ICRC. In November 2004, the army announced an arrangement whereby a request denied for "security reasons" could be re-evaluated (hereinafter: "preclusion arrangement"). Under the arrangement, if the Israeli Security Agency (ISA, formerly, GSS) deems it possible to qualify the prohibition so that it no longer applies to prison visits, the "precluded person" will receive a permit for a single visit, valid for 45 days.<sup>141</sup> The "preclusion arrangement" entered into effect only a year and a half later, and since then, has been characterized by foot dragging which results in visits taking place very rarely. In order to make the process more efficient, HaMoked submitted a series of petitions in cases in which the army failed to respond for a long period. At the beginning of 2006, following HaMoked's legal work, the army undertook to process requests for permits and renewals through the "preclusion arrangement" within 2 to 2.5 months.<sup>142</sup> In practice, the army

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<sup>138</sup> Letter from Lieut. Nimrod Karin, Asst. to the Head of Economic Humanitarian Division in the International Law Department, 2 September 2007.

<sup>139</sup> Data from COGAT website reports. See *supra*note 28.

<sup>140</sup> In 2004, the number of Palestinians defined by Israel as "precluded" was approximately 180,000, based on data collected for a petition submitted by HaMoked, the Association for Civil Rights in Israel and Physicians for Human Rights - Israel. See also *supra*note 1.

<sup>141</sup> For additional details see HaMoked, Annual Report 2004, pp. 34-39, Annual Report 2005.

<sup>142</sup> HCJ 10898/05, *Fatafeh v. Commander of the Army Forces in the West Bank*, Supplementary Response on behalf of Respondent, 16 February 2006.

did not uphold its promise, and HaMoked was forced in 2006 to submit two additional rounds of petitions due to failure to respond.

In 2007 as well, in most cases processed by HaMoked, the army did not live up to its undertaking. HaMoked submitted an additional round of 20 petitions to the HCJ in which it claimed that the fears that the processing of requests under the "preclusion arrangement" involved too many agencies and that this would likely render it even more unwieldy and long had all turned out to be true: the army's undertaking, following four rounds of petitions submitted by HaMoked before 2007, was not upheld, and the time needed for processing the requests was longer than 2.5 months; in many cases, no answer was received for several months, and sometimes years. In conjunction with the round of petitions submitted in 2007, HaMoked began demanding the army cover the costs of submitting the petitions. HaMoked also demanded the Court take a stricter approach regarding rulings on legal costs in cases of protracted non-response by the authorities, which constituted neglect of their role as administrative authorities and violated the basic rights of detainees' families. However, this punitive approach also failed to have an effect on the army's conduct, and by the end of February 2008, HaMoked had submitted 13 more petitions as part of a sixth round of petitions on this topic.



S.A., a home maker and mother of two, a nine-year-old boy and a five-year-old girl, had never been detained or interrogated. Her husband was arrested in June 2003 and sentenced to 24 years' imprisonment. He has no relatives who are authorized to visit him except for S.A. and their two children. The children usually visit him unaccompanied by an adult, since S.A., despite several requests, did not receive a permit to visit him for the first three years of his detention. In August 2006, HaMoked wrote on her behalf to the office of the Legal Advisor for the West Bank requesting that they arrange for her to visit her husband in prison.<sup>143</sup> In September 2006, after HaMoked's intervention, S.A. received a single visit permit valid for 45 days, and when it expired, she again asked the army to renew it. According to the arrangement, the permit was supposed to have been issued, at the latest, by the end of December 2006. In May 2007, after seven months during which she received no response, HaMoked again

<sup>143</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 21 August 2006.

contacted the office of the Legal Advisor for the West Bank demanding a reply to S.A.'s request for renewal of the permit.<sup>144</sup> Over a month later, the army answered HaMoked with a demand for additional documents: a marriage certificate and a photocopy of the prisoner's passport or his Israel Prison Service (IPS) number.<sup>145</sup> Although these documents, on which the army conditioned its processing of the permit, had already been appended to requests submitted in the past, HaMoked again sent them and demanded that the army uphold its obligations and renew the permit from the date of expiry, according to the arrangement, and without delaying the processing each time with a demand for documents that were already in its possession.<sup>146</sup> Approximately six weeks later, HaMoked petitioned the HCJ.<sup>147</sup> One week later, before the petition was heard by the Court, the army announced that S.A. had been issued a single visit permit valid for 45 days.<sup>148</sup> The petition was deleted by consent. In response to HaMoked's request for expenses, the army claimed that the request had been processed and a demand for the missing documents had even been sent, and therefore, the Court should not require payment of expenses incurred due to failure to respond.<sup>149</sup> HaMoked insists that the demand for documents already submitted in the past, and based on which the army already issued a prior visitation permit, does not constitute proof that the request was processed. **(Case 45833)**

### **Security Prohibition**

In cases where a request for a visitation permit was evaluated in the context of the "preclusion arrangement" and denied by the ISA, the army refuses to consider an alternative that would enable a meeting between a prisoner and his relative, even under strict conditions, such as the presence of a warden or

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<sup>144</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 5 May 2007.

<sup>145</sup> Letter from Corporal Tamar Lekvir, NCO, Population Registry Division in the Office of the West Bank MLA, 12 June 2007.

<sup>146</sup> Letter from HaMoked to Corporal Tamar Lekvir, NCO, Population Registry Division in the Office of the West Bank MLA, 12 June 2007.

<sup>147</sup> HCJ 6417/07, Ibrahim v. Commander of Army Forces in the West Bank.

<sup>148</sup> Letter from Corporal Tamar Lekvir, NCO, Population Registry Division in the Office of the West Bank MLA, to HaMoked, August 1, 2007.

<sup>149</sup> Supranote 147, Response on behalf of the Respondents regarding Motion for Ruling on Expenses, 9 October 2007.

with audio surveillance, claiming that the very encounter between the visitor and the prisoner poses a security danger. The applicant for a visitation permit cannot appeal the decision. The only avenue of appeal is through the HCJ. The ISA's claims regarding the character of the security danger and the proof that it exists are classified. The Court is authorized to review the classified material, but the petitioner's counsel is not. The potential visitor is thus prevented from responding to the accusations against him in an informed manner. In 2007, HaMoked submitted eight petitions to the HJC on this topic. Of these, only one was heard in court; in the others, filing in the courts was sufficient to reverse the army's decision and to have the permits granted prior to the hearing dates.



S.B. married M.B. in 2003. Three and a half months after their marriage, M.B. was arrested and sentenced to nine life sentences and 30 years' imprisonment. The couple's child was born when the father was already in prison. For three and a half years, S.B. received no response to her request for a visitation permit, even though she had never been detained or interrogated. HaMoked submitted a petition to the HCJ.<sup>150</sup> In its response, the State claimed that a visit by S.B. to her husband posed a danger to State security; the fact that for so long no answer to S.A.'s requests was forthcoming was explained by the army as a "mishap."<sup>151</sup> HaMoked agreed that the Court review the ISA's classified material and determine whether S.B.'s visit indeed posed a security risk, as the army had claimed. In the courtroom, HaMoked again emphasized that S.B. had never been detained or interrogated, and that the child's wellbeing required that a solution be found that would make it possible for the small child to know his imprisoned father. HaMoked also claimed that the prison itself implemented security measures during visits: thorough searches at the entrance; thick glass separating prisoner and visitor, thus preventing any physical contact between them; and wardens overseeing the entire visit. And if these were not enough to preempt danger, HaMoked claimed, based on an earlier ruling,<sup>152</sup> it was the State's role to create conditions that would enable the meeting, and to introduce additional means of

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<sup>150</sup> HCJ 7615/07, *Barghouti v. Commander of Army Forces in the West Bank*.

<sup>151</sup> *Ibid.*, Preliminary Response on behalf of the Respondents, 4 November 2007, section 5.

<sup>152</sup> *Supra*note 142, decision, January 2, 2006.

surveillance to the extent necessary. The Justices reviewed the classified material and determined that the case was extreme in its severity. They, therefore, recommended that HaMoked delete the petition and suggested that S.B. submit a request no sooner than three or four years hence. Upon receiving the Court's recommendations, HaMoked deleted the petition, insofar as it related to S.B.'s visit to her imprisoned husband, but left intact the general request for assistance regarding the State's failure to adhere to the deadlines for granting a response and issuing permits, as it had promised. (Case 49212)

### **"Lack of Kinship" Claim**

In 2007, HaMoked continued providing assistance in cases of the army's neglectful and dismissive handling of requests for visitation permits on the claim of "lack of kinship." These are cases of Palestinians who repeatedly applied for permits through HaMoked, and each time were required to prove anew their kinship to the prisoner whom they wished to visit. After appending documents attesting to the relationship, their requests were accepted, but each time they applied for a renewal they were again told – sometimes after waiting for several months – that they were not related to the prisoner, and so forth. In most of the cases, HaMoked managed to have a permit granted by submitting the necessary documents, but this was not sufficient. In some cases, HaMoked petitioned the HCJ and demanded, in addition, that the kinship be updated in the registry and that an overall solution be found for the problem of updating the records.



A.J. was arrested by Israel in 2001, and sentenced to 15 years' imprisonment. A.J. is a bachelor. His parents, as well as his grandparents, are no longer alive, and he has no first-degree relatives to visit him in prison, except for his brother, H.J. In 2003, with the renewal of prison visits, H.J. asked the army via the ICRC for permission to visit his incarcerated brother, but he received no answer for six months, despite the many reminders sent by HaMoked on his behalf. In August 2004, HaMoked petitioned the HCJ on his behalf,<sup>153</sup> following which H.J. was awarded a three-month visitation permit. He then received an

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<sup>153</sup> HCJ 7871/04 Jarouf v. Commander of Army Forces in the West Bank.

additional permit. In April 2005, H.J. wished to renew his permit for visiting his brother, but was refused on the claim that he was not related to the prisoner; this, it should be recalled, after the army had in the past issued him two visitation permits. Following the refusal, HaMoked petitioned the HCJ on H.J.'s behalf, including documents that testified to the blood ties between the petitioner and the prisoner.<sup>154</sup> In June 2006, H.J. was given an additional permit, but when it expired in September 2006, he was again refused for lack of kinship. HaMoked again contacted the army, and even emphasized the need to update the family relation in the database.<sup>155</sup> For about a month, no response was received from the army regarding H.J.'s matter, and HaMoked submitted another petition,<sup>156</sup> but it was deleted by consent after H.J. was presented with another permit and received written confirmation that the sibling relationship between him and his brother had been entered into the computerized system.<sup>157</sup> **(Case 27046)**



A.H. lives in the West Bank. Her husband holds a Jordanian passport and has lived in the West Bank since August 1995. The couple had three children, but two of them died of meningitis. In December 2004, the husband was arrested and sentenced to three years' imprisonment. Their young son was one year old when his father was incarcerated. With the exception of A.H. and her son, there is no one to visit the prisoner, since all of his relatives live in Jordan, and as long as A.H. is prevented from visiting her husband, his small son also cannot visit him. When her husband was arrested, A.H. contacted the ICRC a number of times asking that they help arrange her visits to the prison. Since no response was received from the army for ten months, HaMoked sent a request on her behalf,<sup>158</sup> as well as documents attesting to their marriage. Fourteen months passed from the day of A.H.'s request to when the army asked for documents verifying her name, since the surname appearing on her identity card

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<sup>154</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 22 May 2006.

<sup>155</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 18 March 2007.

<sup>156</sup> HCJ 3214/07, Jarouf v. Commander of Army Forces in the West Bank.

<sup>157</sup> Letter from Atty. Avinoam Segal-Elad, Asst. to the State Attorney, to HaMoked, 28 May 2007.

<sup>158</sup> Letter from HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 20 October 2005

was not identical to the maiden name on her marriage contract.<sup>159</sup> After HaMoked clarified this misunderstanding, A.H. received a visitation permit valid for three months. When the permit expired at the beginning of June 2006, A.H. tried to renew it through the ICRC, and after nine months had elapsed and she received no response, HaMoked petitioned the HCJ on her behalf.<sup>160</sup> Following the petition, the army issued a permit for A.H., and gave her written confirmation that the family relationship between herself and her husband had been updated.<sup>161</sup> The petition was deleted with the agreement of both sides.<sup>162</sup> **(Case 39633)**

In May 2007, after many requests to the army and an HCJ petition, in which HaMoked insisted a viable solution be found for the problem of updating the data of familial ties in the army's computerized database, HaMoked began receiving responses from the army, claiming that the PA was responsible for arranging the registration. For example: "We wish to remind you that the responsibility for the population registry lies with the PA, as stated in the Interim Agreement, including corrections in the computer [records] of family ties."<sup>163</sup> While the responsibility for the population registry had been transferred to the PA as part of the Interim Agreement, in practice, Israel still controls the registry in its requirement that changes made to it must receive prior permission from the Israeli side.<sup>164</sup> In this context, the reference to the Interim Agreement and placement of responsibility for the outdated registrations in the population registry on the Palestinians was hypocritical. In order to resolve the problem of kinship listings, representatives of HaMoked met with representatives of the Palestinian Interior Ministry in Ramallah, and a working procedure was decided upon that would help HaMoked verify whether changes in the Palestinian registry had indeed been relayed to Israel and updated in the computerized database. HaMoked is continuing to track cases in which a permit was received after details were updated in the

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<sup>159</sup> Letter from Corporal Dana Hirsch, Legal NCO, Population Registry Division in the Office of the West Bank MLA, 16 February 2006.

<sup>160</sup> HCJ 2747/07, Haja v. Commander of Army Forces in the West Bank.

<sup>161</sup> Letter from Atty. Avinoam Segal-Elad, Asst. to the State Attorney, to HaMoked, 16 May 2007.

<sup>162</sup> Supranote 160, decision, 21 May 2007.

<sup>163</sup> Letter from Corporal Tamar Lekvir, NCO, Population Registry Division in the Office of the West Bank MLA to HaMoked, 16 October 2007.

<sup>164</sup> For additional information see Chapter I of this report, "Freedom of Movement."

Palestinian registry, and checks whether the listing was indeed updated also on the Israeli side and whether the permits were issued in a timely fashion.

### **Failure to Meet Criteria**

HaMoked has had to intervene in cases where the only family members able to visit the prisoner do not meet the narrow criteria set by the army, even though in the past the army promised that exceptional cases of a humanitarian nature would be processed immediately. In fact, HaMoked's work illustrates that such requests are automatically rejected by the army, and only the intervention of an organization like HaMoked, or an HCJ petition, stands a chance of eliciting approval of a visitation permit.



In June 2005, 'A.H. contacted the ICRC with a request for a permit to visit her niece, but received no response. In March 2007, HaMoked wrote on her behalf to the Office of the Military Legal Advisor for the West Bank, making clear that this was an application on humanitarian grounds by a person who was not a first-degree relative and did not meet the criteria, to visit a prisoner, incarcerated since 2002, who had no visitors at all: her father was deceased, her mother lived in Jordan, and the only other relative authorized to visit her according to the narrow criteria set by the army was her elderly and ailing grandmother, who was not fit for the hardships of the journey.<sup>165</sup> In its response, the army claimed that there was no kinship between 'A.H. and her niece, and refused her application claiming that she did not fulfill the criteria for prison visitation.<sup>166</sup> In light of the army's answer, HaMoked submitted a written complaint to the Military Legal Advisor for the West Bank regarding the handling of exceptional applications of West Bank residents to make prison visits: applications are not read carefully, documents are requested for no reason, and applications are rejected without being examined, in contravention of the army's undertaking in the past.<sup>167</sup> In its letter, HaMoked invoked the

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<sup>165</sup> Letter of HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 9 October 2006.

<sup>166</sup> Letter from Corporal Tamar Lekvir, NCO, Population Registry Division in the Office of the West Bank MLA to HaMoked, 11 November 2006.

<sup>167</sup> Letter of HaMoked to Major Liron Aloush, Head of the Population Registry Division in the Office of the West Bank MLA, 13 November 2006.

HCJ decision, according to which "relatives who do not fulfill the regular criteria for receipt of a visitation permit have the option of contacting the legal advisor at the local command to request special allowances for special reasons to be enumerated in the request."<sup>168</sup> At the same time, HaMoked submitted an exceptional request to the IPS asking that they allow 'A.H. to visit her niece,<sup>169</sup> but even when the IPS authorized a single visit, 'A.H. was unable to exercise her right without permission from the army allowing her to enter Israel. After submitting the petition, and even before the hearing, 'A.H. was issued a single-visit permit valid for 45 days, so that she could visit her niece.<sup>170</sup> (Case 44708)

### **Prohibition of Visit due to Registered Address**

In May 2006, HaMoked submitted a petition on behalf of parents wishing to visit their children in Israeli prisons, but whose requests were not processed by the army since they live in the West Bank but their registered address is in the Gaza Strip.<sup>171</sup> The petition was submitted after Israel violated its undertaking – the result of an earlier petition – to process such requests.<sup>172</sup> In the petition, HaMoked stated that the refusal to process the requests of West Bank residents registered in the Gaza Strip constituted a grave violation of the basic rights of both visitors and prisoners, particularly since it stems from purely bureaucratic causes for which Israel was responsible since, as stated, it is Israel which foils the mechanism for address changes. In response to the petition, the army published a new procedure, according to which visitors would submit their requests to the ICRC, the latter would transfer them to the army authorities in the West Bank, the army authorities in the West Bank would send them to the Gaza DCO, and the Gaza DCO would be responsible for granting the permits.<sup>173</sup> Despite the new procedure, the five petitioners in HaMoked's petition, and the other relatives in a similar

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<sup>168</sup> HCJ 11198/02, Diriya et al. v. Commander of Ofer Military Prison Facility et al., decision, 17 July 2003.

<sup>169</sup> Letter from HaMoked to Maj. Ilana Ivgi from the IPS Prisoner Department, 2 November 2006.

<sup>170</sup> Letter from Atty. Ilil Amir, Chief Assistant to the State Attorney to HaMoked, 26 July 2007.

<sup>171</sup> HCJ 3784/06, Mughrabi et al. v. Commander of Army Forces in the West Bank.

<sup>172</sup> HCJ 6855/04, Naji et al. v. Commander of Army Forces in the West Bank.

<sup>173</sup> Processing of Requests for Visitation of Prisoners in Israel by Gaza Strip Residents Living without Address Change in Judea and Samaria – Procedure, 26 June 2006, appended to HCJ 3784/06, *supra*note 171, Response on behalf of the Respondents, 9 July 2006.

position, did not receive visitation permits. Two months later, HaMoked again sent a letter demanding that the procedure be implemented immediately,<sup>174</sup> but only in December 2006, more than six months after the procedure's release and the State's undertaking before the Court to implement it, did three of the five petitioners receive permits. Moreover, when the visit was concluded, police approached two of the petitioners who had participated in the visit and sought to have them board the buses heading for Gaza. After the women explained that they lived in the West Bank and not in the Gaza Strip, they were told that if they did not change their addresses, they would be sent to Gaza after the next visit. Clearly, the authorities involved in the family prison visits, such as police and IPS personnel, were not informed of the new procedure's specifications. In November 2007, HaMoked submitted an update notice to the Court demanding that the State explain its oversights in implementation of the procedure and the failure to issue permits due to address registration.<sup>175</sup> In response, the State conceded that the procedure had indeed not been implemented, and undertook to implement it immediately.<sup>176</sup>

## **Prevention of Visits by Prison Authorities**

### **Prevention of Visits by Former Inmates**

In June 2006, HaMoked, along with the Association for Civil Rights in Israel (ACRI), submitted a petition to the HCJ to strike down the IPS regulation according to which "a person who was a sentenced prisoner will not visit a prisoner in prison without the permission of the Commissioner."<sup>177</sup> The organizations claimed that the regulation violated both the right of prisoners to receive visitors, and of the visitors themselves.<sup>178</sup> The State claimed in its response that the regulation was crucial for surveillance of former inmates visiting prisons, yet proclaimed willingness to ease its policy on this matter. Among other things, removal of the prohibition on prison visits may become permanent, rather than time limited, as is the case today; also, the

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<sup>174</sup> Letter from HaMoked to Atty. Avinoam Segal-Elad, Asst. to the State Attorney, 28 August 2006.

<sup>175</sup> Supranote 171, Request on behalf of the Petitioners to Submit Updating Notice and Scheduling Hearing, 21 November 2007.

<sup>176</sup> *Ibid.*, 31 March 2008.

<sup>177</sup> Prison Service Regulations, 1978, Regulation 30(a).

<sup>178</sup> HCJ 5154/06, HaMoked et al. v. Minister of Public Security et al.

time that has elapsed since the prisoner was released will also be factored in.<sup>179</sup> HaMoked pointed out in its petition that the regulation applies not only to convicted prisoners, but also to any person who was ever held in an IPS facility, including detainees who were interrogated and released without charges once the interrogation was over, and those who were acquitted. Applying the regulation in this manner violates the principle of presumed innocence, deriving from the basic right to liberty, and ordinarily viewed in international law today as *jus cogens*, i.e. a principle so fundamental and basic that no state has the right to renounce, violate or reduce it. An additional claim was that since visitors from the Territories are required in any case to receive a permit from the army, and since the permit is granted after receiving ISA approval, there is no reason to require an additional permit for prison visitation, this time from the IPS. After the hearing of this petition, it was ruled that the State had 60 days to account for the gap between the definition of a "former inmate" according to the IPS and the instructions set forth in the Criminal Register Law.

HaMoked, as a human rights organization, opposes any regulation limiting the right of a former inmate to visit in prison, and this opposition is the basis of the petition submitted to the HCJ together with ACRI. However, in order to help make the system more efficient, and in light of deficiencies in the IPS' handling of requests from former inmates wishing to visit the prison, HaMoked contacted the IPS Commissioner.<sup>180</sup> In its letter, HaMoked claimed that the IPS was not upholding the rules required by the regulation. For example, the regulation stipulated a two-week time limit for a response to requests for removal of a prohibition imposed on a former prisoner, but in effect, of all of the requests submitted by HaMoked in 2007, only 26 percent received answers within two weeks, and in 21 percent of the cases, no answer was received at all. The letter further pointed out that the delay in receipt of answers and deficiencies in the issuance of permits and updates in the computerized databases often led to the cancellation of visits due to expiration of visitation permits issued by the army. HaMoked's letter received no response.

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<sup>179</sup> *Ibid.* Preliminary Response on behalf of the Respondents, 11 January 2007.

<sup>180</sup> Letter from HaMoked to Lieut. Gen. Benny Kanyak, IPS Commissioner, 14 November 2007.

## **Disqualification of Visitors by the IPS**

The IPS may legally prohibit a prison visit if it has a reasonable basis to suspect that the visit is likely to be detrimental to state security, public safety, or proper procedure and discipline within the prison.<sup>181</sup> HaMoked's work has revealed that in many cases, even when an explanation for the disqualification is offered, it is not reconsidered with the passage of time, and it thereby loses its validity and becomes a disproportional prohibition.

For six years, the IPS prevented L.Q. from visiting her brother, who had been in jail since 2001, since when she was 18 she used a birth certificate that was not her own in order to present herself as a minor, thereby avoiding – as per regulations - the long process for obtaining a visitation permit. Prison authorities discovered the deed and informed L.Q. that she would be forbidden from visiting her brother for six months. Six years later, and although the army had approved her request and issued her a visitation permit, prison authorities refused to approve her visit since she still appeared in the system as disqualified from entering the prison. Only following HaMoked's intervention – demanding its lawful right to understand the reasons for the prohibition, its duration and in whose hands the decision lay,<sup>182</sup> was the prohibition reevaluated and a decision made to lift it.<sup>183</sup> **(Case 52510)**

In the case of S.J., prison authorities claimed she had attempted to smuggle a cellular phone to her jailed son. She was interrogated by the police and released without any criminal proceedings, but was told that she would be suspended from the next two visits organized by the ICRC. And yet, a year and four months later, the prison still insisted on its refusal to allow her to visit. HaMoked submitted a request to cancel the prohibition, or, alternately, to receive information regarding its duration;<sup>184</sup> in January 2007, the Prisoner Department informed HaMoked that the prohibition had

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<sup>181</sup> Prison Service Regulations, 1978, Regulation 30(b).

<sup>182</sup> Letter from HaMoked to Maj. Ilana Ivgi, Crime Victims Officer, Prisoner Department, IPS Commissioner's Office, 28 October 2007.

<sup>183</sup> Letter from Maj. Ilana Ivgi, Crime Victims Officer, Prisoner Department, IPS Commissioner's Office to HaMoked, 27 December 2007.

<sup>184</sup> Letter from the Security and Prisoner's Administration, Prisoner Department to HaMoked, 22 November 2006.

been reviewed two months earlier, and that she could reapply in four months, i.e., six months from the date of the last review.<sup>185</sup> In December 2007, the request had still not been approved, and the prison authorities claimed that the reason for preventing the visit was a "negative intelligence brief regarding the prisoner,"<sup>186</sup> even though during that entire period, the prisoner was visited regularly by his father and his fiancé. HaMoked intervened again,<sup>187</sup> and the visit was approved.<sup>188</sup> (Case 47222)

## **Incarceration of Unlawful Combatants Law**

In 2000, the HCJ ruled that the state was no longer authorized to hold Lebanese detainees who were at the time being held in administrative detention if they posed no danger.<sup>189</sup> The detainees in question were being held as bargaining chips. In order to circumvent the HCJ ruling and continue holding the detainees, Israel passed the Incarceration of Unlawful Combatants Law in 2002. The law allows Israel to imprison any person it determines belongs to an organization which acts against it – irrespective of the person's own actions or the extent of danger he poses – until such time that Israel determines that the organization he ostensibly belongs to has ceased to constitute a threat.<sup>190</sup> The law also allows bringing a person imprisoned under its terms to trial for acts he perpetrated against the state, yet not releasing him after serving the sentence set by the Court, as long as Israel determines that he belongs to an organization that endangers its security.

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<sup>185</sup> Letter from the Security and Prisoner's Administration, Prisoner Department to HaMoked, 22 January 2007.

<sup>186</sup> Letter from HaMoked to Maj. Ilana Ivgi, Crime Victims Officer, Prisoner Department, IPS Commissioner's Office, 30 December 2007.

<sup>187</sup> Letter from HaMoked to Maj. Ilana Ivgi, Crime Victims Officer, Prisoner Department, IPS Commissioner's Office, 17 November 2006.

<sup>188</sup> Letter from Maj. Ilana Ivgi, Crime Victims Officer, Prisoner Department, IPS Commissioner's Office to HaMoked, 22 January 2008.

<sup>189</sup> Add. Crim. Hearing 7048/97, *Anonymous v. Minister of Defense* (2000), *Piskei Din* 54(1) 721.

<sup>190</sup> Incarceration of Unlawful Combatants Law, 5762-2002.



## **Incarceration of Unlawful Combatants Law and International Humanitarian Law**

The first section of the Incarceration of Unlawful Combatants Law defines the goal of the law as follows: "This Law is intended to regulate the incarceration of unlawful combatants not entitled to prisoner-of-war status, in a manner conforming with the obligations of the State of Israel under the provisions of international humanitarian law."<sup>191</sup> An "unlawful combatant" is defined by law as "a person who participated, whether directly or indirectly, in hostile acts against the State of Israel or is a member of a force perpetrating hostile acts against the State of Israel regarding whom the conditions stipulated in international humanitarian law for granting prisoner-of-war status do not apply."<sup>192</sup> HaMoked claims that the purpose of the law, and therefore also the definition of "unlawful combatant," stands in total contradiction to the rules of international humanitarian law.<sup>193</sup> Combatants, as defined in Article 4 of the Third Geneva Convention, are legitimate targets, but if they are taken prisoner, their prisoner-of-war status grants them protections and rights. According to this convention, among other things, prisoners of war must not be punished. They have immunity from criminal prosecution for their actions during war; they are entitled to visits by the ICRC, they can send and receive letters from their relatives and practice their religion, and they must be released immediately at the end of hostilities.<sup>194</sup> The Third Geneva Convention does not apply to a person who does not fall under the definition of "combatant"; rather, such a person is considered a "civilian" protected under the Fourth Geneva Convention. Civilians who participate directly in combat do not lose their legal status as civilians; the Fourth Geneva Convention continues to apply to them<sup>195</sup> and they can be imprisoned only pursuant to criminal prosecution or administrative detention.<sup>196</sup>

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<sup>191</sup> *Ibid.*, Sec. 1.

<sup>192</sup> *Ibid.*, Sec. 2.

<sup>193</sup> *Crim.App. 6659/06, 'Iyad v. State of Israel et al.*, particularly pp. 35-71 (in Hebrew).

<sup>194</sup> Third Geneva Convention relative to the Treatment of Prisoners of War (1949), Art. 118. The immunity is granted only for combat activity that took place in the context of the rules of international law. If the acts were carried out in contravention of these rules, prisoners of war may be tried.

<sup>195</sup> For further reading on this point see *supra*note 193, arguments of appellants' counsel on behalf of HaMoked, 39-43.

<sup>196</sup> Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Arts. 41, 42, 43, 68, 78.

According to the first Article of the Incarceration of Unlawful Combatants Law, the law does not apply to a person defined as a "prisoner of war." The law was intended to create an intermediate category that has no validity in international humanitarian law: a person who is protected neither by the Third Geneva Convention as a prisoner of war, nor by the Fourth Geneva Convention as a civilian. As such, Israel is violating the central principle according to which every person is protected by a status that is defined and recognized in international law.<sup>197</sup> The State of Israel is claiming that an "illegal combatant" is not eligible for the protections of a prisoner of war, since he, or the organization with which he is affiliated, does not fulfill all of the conditions enumerated in Article 4 of the Third Geneva Convention. This, however, according to Israel's claims, does not detract from the fact that he is a "combatant" and not a "civilian."<sup>198</sup> In addition, the state contradicts itself in stipulating that the law is consistent with articles 41-43 of the Fourth Geneva Convention, which discuss the detention of a "protected civilian."<sup>199</sup> The Incarceration of Unlawful Combatants Law is Israel's attempt to draw from each of the categories recognized by international humanitarian law whatever suits its needs, while granting the smallest possible measure of rights and protections to persons it has captured and detained pursuant to the law.

In 1977, the First Protocol to the Geneva Conventions was drafted.<sup>200</sup> Articles 43-44 of the protocol expanded the definition of combatants eligible for prisoner-of-war status so that it also included opposition forces and militias that do not abide by the rules of war but visibly bear arms. Israel is not a signatory to the Protocol, and refrains from granting various guerilla fighters a recognized legal status that also includes protections and rights.<sup>201</sup>

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<sup>197</sup> See, Jean S. Pictet, *Commentary: IV Geneva Convention: Relative to the Protection of Civilian Persons in Times of War*, Geneva International Committee of the Red Cross, 1958. p. 51.

<sup>198</sup> See *supra*note 193, State Summary, 15 March 2006, section 19.

<sup>199</sup> *Ibid.*, sections 55-63, 212, 245-248.

<sup>200</sup> Protocol I, Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (1977).

<sup>201</sup> For more on this topic see Hili Moodrick Even-Khen, ed. Mordechai Kremnitzer: *Unlawful Combatants or Unlawful Legislation? On the Unlawful Combatants Law 2002, Israel Democracy Institute*, December 2005; Knut Dorman, "The Legal Situation of Unlawful/Unprivileged Combatants", *International Review of the Red Cross*, vol. 85, 2003, pp. 45-73; Keneth Watkin, *Warriors Without Rights? Combatants, Unprivileged Combatants, and the Struggle over Legitimacy*, Program on Humanitarian Policy and Conflict Research, Harvard University, Occasional Paper Series, Winter 2005.

In 2002, as part of its representation of Fawzi Ayoub, one of the first individuals issued an imprisonment order under the Incarceration of Unlawful Combatants Law, HaMoked embarked on a struggle against the law due to the severe human rights violations it engendered.<sup>202</sup> The District Court rejected HaMoked's claims that the law should be struck down on grounds that it was unconstitutional and violated the rules of international law.<sup>203</sup> HaMoked appealed to the Supreme Court,<sup>204</sup> but in September 2005, the petition was rejected on the claim that since in 2004 all detainees held under the law had been released in the prisoner-exchange agreement with the Hizbollah, and since at that time no one in Israel was imprisoned under said law, a hearing on these claims would be merely theoretical.<sup>205</sup> Four days after the appeal was rejected, with the declaration of an end to the military administration in the Gaza Strip on 12 September 2005, the Chief of Staff issued imprisonment orders under the law to two residents of the Gaza Strip who had been held until then in administrative detention. Upon issue of the orders, the legal discussion regained relevance.



R.'A was held in administrative detention for three and a half years; his cousin, H.'A., was held in administrative detention for two years and seven months. When the military administration in Gaza ended, imprisonment orders were issued for both, claiming that they belonged to Hizbollah, and that therefore the Incarceration of Unlawful Combatants Law applied to them.<sup>206</sup> HaMoked, which represented both men, claimed that the law under which the imprisonment orders were issued was illegal, and that the cousins' continued detention, after Israel's declaration of the end of the occupation in the Gaza Strip, constituted a violation of the rules of international law. The District Court accepted the State's position that the law did apply to them, and rejected the principled claims against the law.<sup>207</sup> HaMoked appealed to the HCJ but they are still under review.<sup>208</sup>

<sup>202</sup> Var. Req., 92690/02, Tel Aviv-Jaffa District Court, State of Israel v. Sheikh 'Abd al-Karim 'Obeid et al.

<sup>203</sup> Ibid., judgment, 10 March 2003.

<sup>204</sup> Crim.App. 3765/03, Ayoub v. State of Israel et al.

<sup>205</sup> Crim.App. 3660/3, 'Obeid et al. v. State of Israel et al., judgment, 8 September 2005.

<sup>206</sup> For further information on the administrative detention of R.'A. and H.'A. see HaMoked, Annual Report 2006.

<sup>207</sup> Crim.App. 1221/06, 'Iyad v. State of Israel, Ruling, March 14, 2006.

<sup>208</sup> Crim.App. 6659/06, Crim.App. 1757/07, 'Iyad v. State of Israel.

At the same time, HaMoked filed a civil suit on behalf of the cousins regarding the conditions of their detention.<sup>209</sup> R.'A. was illegally kept in isolation by the IPS, for five years and seven months. On 28 August 2007, R.'A. submitted a prisoner's petition against the State of Israel, the IPS and the Chief of Staff, in order to obligate them to remove him from isolation and move him to a prison where other administrative detainees were being held.<sup>210</sup> Following the petition, R.'A. was taken out of isolation. H.'A. was kept in isolation for a year and ten months, and taken out only through a prisoner's petition submitted on his behalf by an attorney from HaMoked.<sup>211</sup> In the lawsuits, it was claimed that a prisoner's holding conditions, whether he is an administrative detainee or a detainee under the Incarceration of Unlawful Combatants Law, should conform to Israel's obligations under international humanitarian law. Detention in conditions of isolation for such a long period – without permission from the authorized officials in the IPS, and without consulting relevant government agencies, without offering the right to plead or receiving court approval, constitutes an abuse of the prisoner's rights and his dignity. **(Cases 52896, 52897)**

Article 77 of the Fourth Geneva Convention (1949), stipulates that "Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory." The principle of release of detainees and prisoners with the end of the occupation is an absolute principle to which no exceptions apply. The Article pertains to detainees held in preventive detention – that is, administrative detention – as well as persons convicted of crimes.<sup>212</sup> Israel's very attempt to keep detained Gaza Strip residents in prison even after the declaration of the end of the military administration, is therefore in contravention of the provisions and intentions of international humanitarian law. Even more grave is the passing into legislation of a law whose goal is to anchor a violation of international law, as Israel did with the Incarceration of Unlawful Combatants Law.

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<sup>209</sup> C.C. 13473/08, 'Iyad v. State of Israel; C.C. 13456/08, 'Iyad v. State of Israel.

<sup>210</sup> C.C. 2495/07, 'Iyad v. State of Israel.

<sup>211</sup> Civ.App. 2496/07, 'Iyad v. State of Israel.

<sup>212</sup> See, Jean S. Pictet, *Commentary: IV Geneva Convention: Relative to the Protection of Civilian Persons in Times of War*, Geneva International Committee of the Red Cross, 1958, p. 366

In the summer of 2006, during the Second Lebanon War, Israel held Lebanese detainees in the secret facility known as 1391, and in other facilities.<sup>213</sup> Some of them were released, after HaMoked's intervention, on the same day the petition on their behalf was submitted.<sup>214</sup> HaMoked continued acting to secure meeting permits from the army for the remaining Lebanese detainees held in the detention facilities, but was permitted to meet only with some of them.<sup>215</sup>



On 17 August 2006, HaMoked received a letter from the Legal Advisor of the Intelligence Corps, stating that H.'A., a resident of Lebanon, approximately aged 45, in detention at the Ashmoret Prison, was requesting to meet with a representative of HaMoked regarding his legal representation.<sup>216</sup> In a meeting with a lawyer working on behalf of HaMoked, H.'A. was unable to relay any information regarding his detention and interrogation.<sup>217</sup> The attorney gained the impression, as did H.'A.'s interrogators, that he suffered from a mental illness, and he himself stated this during his interrogation. His wife and four children were not at home when he was apprehended and, worried, they contacted the ICRC, through which they sent documents confirming that H.'A. had for many years been diagnosed with a mental illness, and had even been hospitalized in the past. It was also learned that H.'A.'s connection with the Hizbollah was solely through the financial assistance that he received from an aid fund of the organization to finance his medications. HaMoked's attorney presented the Court with evidence demonstrating that many Shi'ite citizens of Lebanon were forced to depend on Hizbollah funds, without which they had no access to health services, education, electricity or water, and claimed that Israel had produced no concrete evidence proving that H.'A. himself had carried out any activity for the organization or acted to

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<sup>213</sup> Letter from the State Attorney's Office to Atty. Tzemel, 8 August 2006.

<sup>214</sup> HCJ 6772/07, Nasralla et al. v. Defense Minister, et al.; for more on the detention of members of the Nasralla family, see, HaMoked, Annual Report 2006.

<sup>215</sup> Letter from Official in Charge of HCJ Petitions in the State Attorney's Office to HaMoked, 13 August 2006.

<sup>216</sup> Letter from Legal Advisor of the Intelligence Corps to HaMoked, 17 August 2006.

<sup>217</sup> So indicated in the investigation notes from H.'A.'s interrogations. See also Var. Req. 2550/06, State of Israel represented by Northern District Attorney (criminal) v. 'Aqil, Response Summary on behalf of Respondent to State Summary, 25 January 2007, 1 February 2007.

advance its goals.<sup>218</sup> In March 2007, the District Court utterly rejected HaMoked's claims, and ruled that H.'A. was mentally sound, despite his attempts "to present himself as mentally ill."<sup>219</sup>

HaMoked attacked the legality of the Incarceration of Unlawful Combatants Law, and the legality of H.'A.'s detention under it, but at the same time, worked to ensure that his conditions of detention were acceptable, particularly given his mental state. With the help of Physicians for Human Rights, H.'A.'s medical documents were examined, as was the written opinion of the IPS psychiatrist, with the goal of ensuring that H.'A. receive the medical care he required. Scheduling an evaluation by an external psychiatrist, with a translator present, was a lengthy process, and HaMoked even had to submit a prisoner's petition on H.'A.'s behalf to enable the evaluation.<sup>220</sup> An additional prisoner's petition was submitted through HaMoked when it became apparent that the drug treatment H.'A. needed due to his mental condition had been terminated.<sup>221</sup> The reason for this was, it turned out, that although the written medical opinion of the IPS physician determined that H.'A. showed no signs of an active mental illness, and although based on this opinion the Court had determined that H.'A. was masquerading as mentally ill, already in December 2006, the IPS had supplied H.'A. with anti-psychotic medications and the physicians treating him determined that he had to continue receiving the medications and remain under medical supervision. HaMoked submitted the new data to the Court, and demanded to have his mental status reevaluated, and, in light of this, also to reevaluate the Court's decision not to cancel the prison order issued against him.<sup>222</sup> On 15 October 2007, HaMoked received a phone call from journalists asking for details regarding H.'A.'s anticipated release, but the attorney representing him on behalf of HaMoked knew nothing of the matter; nor did the representative of the ICRC and H.'A.'s family. That evening, it was announced that in the framework of an exchange

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<sup>218</sup> *Ibid.*, *ibid.*

<sup>219</sup> *Ibid.*, Decision in Request for Judicial Review, 13 March 2007, p. 24.

<sup>220</sup> Civ.App., 1923/07, 'Aqil v. Prisoners' Officer – Sharon Prison et al.

<sup>221</sup> Civ.App. 2363/07, 'Aqil v. Prisoners' Officer – Sharon Prison et al.

<sup>222</sup> Crim.App. 3245/07, 'Aqil v. Prisoners' Officer – Sharon Prison et al. 'Aqil v. Prisoners' Officer – Sharon Prison et al., Agreed Request on behalf of Petitioner to Submit New Evidence, 9 September 2007.

agreement between Israel and the Hizbollah, Israel would receive the body of an Israeli who had drowned and floated to the shores of Lebanon, and in exchange, release H.'A. and return two bodies of Lebanese citizens killed in the war. On 16 October 2007, H.'A. was returned to Lebanon, after having been held in Israel for more than a year. (Case 45949)

## Conditions of Imprisonment

One of the most important rulings handed down from among the cases submitted by HaMoked in 2007 deals with criminal neglect by prison authorities and their shunning of their responsibility to protect, as obligated, detainees and prisoners in their custody.



In early 1997, 'A.S., a Palestinian approximately 21 years old, was transferred from Ketziot Prison to the Meggido Prison Facility, which was at the time under the army's jurisdiction.<sup>223</sup> Two weeks later, a physician confirmed his death. 'A.S. was tortured to death by fellow inmates in his ward who suspected him of collaborating with Israel. For several days, 'A.S. was 'interrogated' and beaten by the prisoners, but although he called for help and begged for his life, none of the prison authorities intervened or came to his aid. 'A.S., who was unable to walk or stand on his own, and whose screams echoed throughout the ward, was not even asked once by the wardens in charge as to how he was faring. On the morning of 15 February 1997, one of the prisoners in charge announced to the wardens that 'A.S. was not feeling well, but at this point, there was nothing for the physicians to do except to pronounce him dead. In the pathological report, the physician wrote that 'A.S. suffered from internal hemorrhaging in his back and limbs, as well as in additional parts of his body, from blows he received many hours prior to his death.<sup>224</sup> The criminal procedure focused on the prisoners accused of murder; but took no stance and cast no accountability on the prison authorities and persons acting on their behalf who were responsible for the wellbeing and health of the prisoners. HaMoked, on behalf of the deceased's family, filed a civil claim for compensation, in which it claimed that the murder was made possible, among other things, due

<sup>223</sup> In 2005, administration of this prison was transferred from the army to the IPS.

<sup>224</sup> Dr.Y. Hiss, Medical Opinion, 16 February 1996.

to the criminal negligence and apathy of the prison authorities and their employees, who in their actions, and mainly in their omissions, violated their obligations towards the prisoner, who was in their custody, leaving him to torture and death.<sup>225</sup> The responsibility of the state to protect its prisoners, even from the violence of other prisoners, is not a matter of controversy, and is anchored in Israeli and international law. The controversial issues discussed in the Court surrounded three main questions: Could the defendants have predicted the possibility of the deceased's murder and prevented it? Did the defendants take reasonable measures to prevent such a murder, especially given that two weeks earlier, another prisoner was murdered in the same prison, under similar circumstances? HaMoked claimed that the defendants knew that the measures taken were insufficient and were unable to prevent torture and violence within the prison walls. In this case, the prison staff could and should have taken notice of 'A.S.' situation, and stopped the abuse to save his life. On 12 August 2007, the Court ruled in the family's favor, and ordered the State to pay over NIS 1 million in damages, as well as court expenses and attorneys' fees.<sup>226</sup> (Case 9966)

## **Conditions in the Army's Temporary Holding Facilities**

At the end of March 2002, following a number of serious suicide attacks in Israel, Israel launched a massive military action in the Occupied Territories, known as "Operation Defensive Shield." In the framework of this operation, mass arrests were made; at the peak, some 6,000 Palestinians were being held in Israel. The detainees were taken to temporary detention facilities, erected specifically for this purpose, or to makeshift prison compounds that were dismantled after use.<sup>227</sup> At these locations, a "preliminary screening" would take place; most of the detainees were released and those remaining were transferred for further interrogation and detention to the central facility at the Ofer Camp.<sup>228</sup> The conditions of detention at the temporary

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<sup>225</sup> C.C. 1625/02, *Shahatit v. Commander of Meggido Prison and State of Israel – Ministry of Defense*.

<sup>226</sup> *Ibid.*, ruling, 12 August 2007.

<sup>227</sup> The army calls these facilities: "Layover and Detention Facilities" or "Sectional Prison Facilities"; Palestinian residents of the Occupied Territories call them "khashabiyye" – temporary structures.

<sup>228</sup> Today, the army has only two temporary detention facilities. The remaining sectional detention facilities have been closed.

facilities and at the Ofer Camp were the focus of the petition submitted already in 2002 by HaMoked and six other organizations;<sup>229</sup> In its decision, the HCJ ruled that the army had violated the rules of international law as well as the basic principles of Israeli administrative law and military law applying to the territories.<sup>230</sup> And despite this, in 2003 HaMoked was forced to submit an additional petition, this time on behalf of seven detainees held for months in the temporary facilities under despicable conditions. The petition focused both on the conditions of imprisonment as well as the length of time they were held in these facilities.<sup>231</sup> Approximately one month after the petition was submitted, a military advisory commission to the Chief of Staff was appointed with the goal of evaluating the conditions in the temporary detention facilities. The commission's third report, submitted to the Chief of Staff in January 2005, stated: "Deviation from conceivable standards for living conditions (clothing, food, living area, hygiene and proper sanitation) is insufferable and will not be tolerated [...] An overall view of the matter indicates that the army as an organization does not attribute great importance to proper living conditions in the facilities and does not invest suitable effort in their proper management." And later: "The commission believes that if the army wishes to continue operating the detention facilities based on a recognition of the operational need for their ongoing existence, it must consider, at a systemic level, the question of their administration and institute far-reaching changes in them."<sup>232</sup>



Despite the harsh critique by the commission, and despite the clear recommendations for change, in October 2007, HaMoked again petitioned the HCJ, this time on behalf of 16 detainees held in the temporary detention facilities for over 21 days, and reported excessive crowding in the cells, lack of food, hot water, hygiene products, changes of clothes, and minimal medical care.<sup>233</sup> The detainees were even forced to urinate into plastic bottles, since they were prevented entry into the latrines.<sup>234</sup> Even before the petition,

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<sup>229</sup> HCJ 3278/02, HaMoked et al. v. Commander of IDF Forces in the West Bank.

<sup>230</sup> Ibid., judgment, 18 February 2002.

<sup>231</sup> HCJ 3985/03, Badawi et al. v. Commander of IDF Forces in the Judea and Samaria Area et al.

<sup>232</sup> Advisory Commission to the Chief of Staff for Evaluating Sectional Detention Facilities in Judea and Samaria, Report No. 3, November 2005, pars. 13-18 (emphasis in the original).

<sup>233</sup> HCJ 9169/07, Teqatqa et al. v. Commander of Army Forces in the West Bank et al.

<sup>234</sup> According to affidavits taken by HaMoked from detainees in the temporary prison facilities and appended to the abovementioned petition.

HaMoked had contacted the army, in light of the extended stays of some of the detainees in the temporary facilities, and asked that it act immediately to transfer them to a facility administered by the IPS, where their rights would be upheld.<sup>235</sup> Following the letter, the detainees were transferred to an IPS facility, but on 15 October 2007, HaMoked was forced to contact the army regarding 18 additional detainees held at the Samaria temporary detention facility for over 21 days,<sup>236</sup> and again on 25 October 2007, regarding ten additional detainees held for over 21 days at the Etzion detention facility.<sup>237</sup> No reply was received to any of these letters. Nine days after the petition was submitted, eight of the detainee petitioners were transferred to IPS prisons, but other detainees already there for long periods were left behind in the facilities. HaMoked submitted an update to the Court, informing it, *inter alia*, that in addition to the petitioners, there were 18 more detainees who had been in the facility for over 21 days, and that this constituted a grave deviation from the standard for the maximum number of detainees allowed. HaMoked further stated in its update that on 13 November 2007, in violation of the 60-detainee standard limit, 91 detainees were being held in the Samaria Detention Facility, and in the Etzion Facility on that same day, 59 detainees were being held, even though the maximum capacity was 38 detainees. The deviation from the standard further degraded the already harsh conditions at the facilities.<sup>238</sup>

After updating the Court, and close to the time of the hearing, the army began gradually transferring increasing numbers of detainees from the temporary prison facilities to IPS prisons, so that the number of detainees in the facilities would not deviate from the permitted capacity. In the State's response to the petition, it was claimed that "the issue of the length of detainees' stay in the layover facilities was recently brought for examination to the highest echelons of the IDF and IPS."<sup>239</sup> As a rule, the army did not deny the claims raised by HaMoked in the petition, and even claimed that the goal, which the

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<sup>235</sup> Letter from HaMoked to Maj. Nisim Ben Avi from the Central Command – Military Police, 2 September 2007.

<sup>236</sup> Letter from HaMoked to Cap. Ziv Kleiman from the Central Command – Military Police, 15 October 2007.

<sup>237</sup> Letter from HaMoked to Cap. Ziv Kleiman from the Central Command – Military Police, 25 October 2007.

<sup>238</sup> Supranote 233, Request on behalf of Petitioners for Updating Notice, 13 November 2007.

<sup>239</sup> *Ibid.*, Preliminary Response on behalf of Respondents, 27 November 2007.

army and IPS were not in effect reaching, was that the detainees be held in temporary prison facilities for no more than eight days, unless permission was received from the higher echelons for a deviation from this period.<sup>240</sup> In the hearing, the Court ruled that the State had 30 days to submit an updated response after the relevant agencies, in consultation with HaMoked, took counsel regarding how to improve the situation in the temporary prison facilities.<sup>241</sup>

The State's response presented ostensible progress in addressing the issues raised in the petition in all that related to the length and conditions of imprisonment in the temporary facilities. Among other things, it was claimed that detainees were no longer held in the facilities for more than 21 days, and that meetings were being held between high-ranking officials with the goal of arranging for the transfer of the detainees from the military imprisonment facilities to IPS facilities; and the directive to not deviate from the standards in both types of facilities had been re-articulated. In addition, the Court received a report of the establishment of a new military detention facility to be opened by the end of May 2008 as a replacement for the Etzion facility.<sup>242</sup>

After HaMoked representatives visited the temporary prison facilities and documented the conditions there, HaMoked submitted an update notice to the Court, as well as affidavits of detainees held in the facilities.<sup>243</sup> In the notice, HaMoked complained to the Court that the current situation, in which detainees in the temporary facilities suffered from detention conditions inferior to those in the regular facilities where sentenced prisoners were held, was in contravention of both legislation and case law, as well as the principle of presumed innocence. HaMoked demanded that the army commit itself to transferring the detainees from the temporary holding facilities to regular facilities within a period not to exceed eight days, as stated in the IDF-IPS convention on the matter; and that as long as detainees were being held in the temporary facilities, the army give them proper conditions, as required by international and Israeli law. HaMoked also claimed that not all of the changes

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<sup>240</sup> *Ibid.*, section 11. Apparently, it is no coincidence that the IDF-IPS agreement specifies a period of eight days, since this is the period in which, according to section 78 of the Order regarding Security Directives (Judea and Samaria) (No. 378) 1970, a person can be detained prior to being brought before a judge.

<sup>241</sup> *Ibid.*, decision, 29 November 2007.

<sup>242</sup> *Ibid.*, Update Notice on behalf of the Respondents, 30 December 2007.

<sup>243</sup> *Ibid.*, Update Notice on behalf of the Petitioners, 9 March 2008.

and improvements mentioned in the State's response to the petition were reflected in the field: detainees at the Etzion facility reported that for days on end there was no warm water for bathing, the cells were freezing cold, the windows were lacking panes and the detainees were forced to keep the cold out using mattresses, the blankets were dirty and worn, there was a lack of clothes and underwear; there were no family visits, and there was no incoming or outgoing mail.<sup>244</sup> In light of HaMoked's notice, the Court scheduled an additional hearing on the matter for the end of April 2008.

## **Administrative Detention**

According to information HaMoked received from the IPS, some 800 Palestinians were detained by Israel in any given month, with no charge sheet or trial.<sup>245</sup>

The military law in effect in the West Bank and in the Gaza Strip – until implementation of the disengagement – enables the military commander to issue detention orders for periods of up to six months.<sup>246</sup>

The detention orders can be extended, each time for a period of up to six months, with no limit on the number of orders per detainee. This means that there is no limit in the military legislation on the duration of administrative detention for a person against whom no charges have been submitted, who has not been informed of the suspicions against him, and who has no way of knowing if and when he will be released. Military law stipulates that the order must be brought for judicial review by a military judge no later than eight days from the date of issue. The detainee has the right to appeal the decision of the first judge before a military appeals instance, and if the ruling is not in his favor, he can petition the Supreme Court. In the overwhelming majority of cases, the military judges approve the orders with no changes. In 2007, of 2,934 administrative orders issued by the military commander, only 168 orders, constituting 5.7 percent of the total number of orders, were cancelled by the military court; 41 were shortened, that is, the judge determined that

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<sup>244</sup> For the full notice (in Hebrew) see: <http://www.hamoked.org.il/items/9407.pdf>

<sup>245</sup> In 2006, the average was approximately 700 administrative detainees.

<sup>246</sup> In the West Bank: Order Regarding Administrative Detention (Interim Order), Order No. 1226 1998; in the Gaza Strip (until the end of the military administration in September 2005): Order Regarding Administrative Detention (Interim Order), Order No. 941, 1998. The orders are almost identical.

if no new evidence was presented, the detainee would be released after serving the detention period stipulated by the last order; and sometimes, the period of the order was even shortened. The remainder of the orders were approved with almost no changes by the military court. As in previous years, in 2007 as well, there was not a single occasion upon which the Supreme Court reversed the decision of a military judge and ruled for the release of the detainee. In petitions that were submitted by the State against a military judge's decision to release an administrative detainee, however, the HCJ exhibited no difficulty in intervening to extend the detention.

A military order is issued against a person based on intelligence material transferred from the ISA to the army, which ostensibly demonstrates that the person constitutes a danger to state security. The material is classified and its content is not revealed to the detainee or his lawyer. Even the judges are not privy to the full extent of the classified information, but rather only to an abridged version of it. All this takes place in the framework of secret proceedings in which only the judges and representatives from the military prosecution are present. The judicial review and the appeal – intended to serve as oversight mechanisms for a vulnerable procedure that can potentially rob a person of his freedom without due process – are thus rendered meaningless.



### **Administrative Detention in International Humanitarian Law and in Israeli Law**

International Humanitarian law allows for the use of administrative detention as a preventative measure in cases where a person poses an immediate danger to state security or public order,<sup>247</sup> yet it recognizes the grave violations of the detainee's right to due process inherent in it, and therefore, stipulates that it should be used sparingly, and only when absolutely necessary for security. The legal sources for the standards for limiting the use of administrative detention in international humanitarian law can be found, among other places, in Article 75 of the First Protocol of the Fourth Geneva Convention, considered as reflecting customary international law. Israeli law also formulated standards for ensuring the

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<sup>247</sup> Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Art. 78.

circumscribed and careful use of administrative detention. For example, it was determined that it should be used only as a preventive measure, and only against a person who is personally dangerous, and not as a replacement for criminal punishment. The Court particularly emphasized that administrative detention and the extension of administrative detention orders should take into account all of the circumstances, and not only be based on ISA evidence.<sup>248</sup> Despite this, Israel uses administrative detention extensively, detaining hundreds of Palestinian residents of the Territories every year. Many administrative detainees are held by Israel for long periods with no real evaluation of the reliability of the classified material against them; the military judges tend to accept the ISA claims without objection and approve the orders; and the HCJ itself rejects most of the petitions for canceling administrative detention orders.

Despite the provisions of international law, in some of the cases it processed in 2007, HaMoked discovered that the ISA used administrative detention as a punitive measure against Palestinians who refused to collaborate with Israel.



M.A., a nursing student, 20 years of age, reported to a meeting with an ISA representative, after he had been summoned, and was arrested on the spot. The first administrative detention order against him was issued on 14 December 2004. No real reason was provided for the detention, the order stating vaguely that M.A. was a Hamas activist who posed a risk to the security of the Area. During the judicial review of the orders, doubts were raised as to whether M.A. was the person to whom the classified information pertained. However, in spite of this, the judges did not require the military prosecution to resolve the issue and provide unequivocal evidence. During the hearings held in the first four orders, no new information was submitted to the Military Court. M.A. remained in detention based on the same, old, classified information, which claimed that he had expressed a willingness to carry out a forbidden

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<sup>248</sup> Among the judgments setting the standards for the use of administrative detention, see, for example, Adm. Det. App. 4/94, Ben Horin v. State of Israel, *Piskei Din* 48(5) 329, 334; Add. Crim. Hearing 7048/97, Anonymous v. Minister of Defense, *Piskei Din* 54(1), 721, 740-741; Adm. Det. App. 8607/04, Fahima v. State of Israel, par. 8., Adm. Det. App. 2/86; Anonymous v. Minister of Defense, *Piskei Din* 41(2), 508, 513.

act; the identification of M.A. as the person in question was uncertain. In December 2006, when the fifth order was issued, the army presented new information that included, among other things, an investigative report compiled by the ISA a few days after the arrest in 2004. For two years, the report was not submitted to the defense, nor, it appears, to the Military Court either; despite the fact that the information included in it turned out to be essential and decisive for M.A.'s defense. The report revealed that the ISA had proposed that M.A. collaborate, but he had refused and was punished with detention.

As will be recalled, the view that administrative detention is not to be used as punishment, but rather only as a step for preventing future danger, is anchored in Israeli caselaw.<sup>249</sup> An administrative detention order is illegal if issued for any other goal, even if that goal is security-related,<sup>250</sup> and is certainly illegal if issued as an attempt to bear upon the detainee to collaborate or as punishment for his refusal to do so. International humanitarian law is also unequivocal regarding the question of collaboration, and views any such attempt as a grave violation of the Fourth Geneva Convention.<sup>251</sup> And indeed, the decision of the judicial review of 26 December 2006, stated that "the authority does not understand the proper purpose of the administrative detention," and that the classified and unclassified information presented to the Military Court "supports the conclusion that the reason for the administrative detention in this case is punitive and the assessment of danger in the evidence submitted to the Court suggest that it would be reasonable to release the accused."<sup>252</sup> The judge emphasized the gravity of using administrative detention as a punitive tool, and even recommended that the matter be investigated by the relevant authorities. Despite this, on 31 December 2006, the Military Appeals Court accepted the army's appeal and approved an additional administrative detention order, this time for three months.

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<sup>249</sup> See, for example, Adm. Det. App. 1/82, *Qawasmeh v. Ministry of Defense*, *Piskei Din* 36(1), 666, 669; Adm. Det. App. 8607/04, *Fahima v. State of Israel*, judgment from 4 November 2004; Adm. Det. Pet. 4/97, *Ben Horin v. State of Israel*, Adm. Det. Pet. 8788/03; *Federman v. Minister of Defense*, *Piskei Din* 58(1) 176.

<sup>250</sup> See, for example, Add. Crim. Hearing 7048/97, *Anonymous v. Minister of Defense*, *Piskei Din* 54(1), 721, 742.

<sup>251</sup> Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Arts. 31, 51, 147.

<sup>252</sup> Adm. Det. Judea and Samaria, 3667/06, decision, 26 December 2006.

An attorney on behalf of HaMoked petitioned the HCJ against the acceptance of the appeal, pointing out the main faults in the authorities' conduct in regard to M.A.'s detention: the invalid considerations underlying the detention; the withholding of information from the defense and from the Military Court; the failure to evaluate the danger posed by M.A., whose release, the judge said, was "reasonable;" and relying on outdated intelligence information for the decision.<sup>253</sup> In the ruling handed down in February 2007, the HCJ refused to intervene in the military judge's decision, but offered the following guideline to the army: "The petitioner has been in administrative detention for a considerable time, and after the order expires, the proportionality between the risk posed by the petitioner and the evidence indicating a risk versus the length of the detention should be considered."<sup>254</sup> On 4 March 2007, upon completion of the period of the administrative order, an additional order was issued for a period of three months; HaMoked's appeal against the judge's decision to approve the order was rejected.<sup>255</sup> Immediately upon expiration of this order, an additional order was issued until 2 September 2007, but this time, the order was revoked by a military judge in the lowest instance. Among other things, the judge claimed that the evidence presented was insufficient for proving the identity of the detainee as the person involved in the deeds attributed to him by the ISA, and that the detainee had been detained for over two and a half years, such that the requirement for proportionality between the level of risk attributed to the detainee and the weight of the evidence against him led to the conclusion that he should be released.<sup>256</sup> **(Case 48460)**

In the following case as well, it appears that the motives leading to the administrative detention were unlawful.



Y.A., a resident of the village of Beit 'Omar, is a farmer who is married and a father of two. He was detained in August 2007, and placed in administrative detention. A military judge approved the administrative detention order. An attorney on behalf of HaMoked appealed the decision

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<sup>253</sup> HCJ 813/07, Aljudi v. Commander of IDF Forces in Judea and Samaria et al.

<sup>254</sup> Ibid., judgment, 18 February 2007.

<sup>255</sup> Adm. Det. App. 1766/07, Aljudi v. Military Prosecutor, decision, 19 March 2007.

<sup>256</sup> Adm. Det. 2279/07, Judicial Review, decision, June 18, 2007.

in the Military Appeals Court, and presented three declarations by three Israelis who know Y.A. in different circumstances and in different circles, all three of whom testified that he voiced opinions in favor of coexistence and peace, and was a supporter of non-violent legal protest.<sup>257</sup> Y.A. also testified to this effect on his own behalf. In light of these testimonies, and given that he is known as a peace and human rights activist, the ISA's claim that links him to activities that pose a risk to the security of the region is curious. The attorney voiced to the appeals court the concern that it was precisely his legal and legitimate actions for peace and coexistence that led to his illegal arrest. The judge reviewed the classified material and then heard the ISA's classified evidence separately. In his decision, the judge claimed that the detention was entirely unrelated to Y.A.'s human rights activities or to the demonstrations in which he participated, but rather to his activity in the Palestinian Islamic Jihad movement,<sup>258</sup> and yet, he did not find in the classified information sufficient evidence of danger posed by Y.A., and decided to accept the appeal and release him.<sup>259</sup> **(Admin. Det. Appeal 3666/07)**

As stated, the HCJ justices avoid intervening in military court decisions pertaining to administrative detentions, but sometimes, the very appeal to the HCJ is sufficient for bringing about the release of a detainee; apparently, in order to prevent an HCJ hearing that would lead to a precedent-setting ruling, or in order to avoid revealing insufficient evidentiary material, the army's attorneys prefer to reach a settlement before a hearing is held.



'A.B., a resident of Beit Rima, married and father of two, was put in administrative arrest on 31 August 2004, on suspicion that he was active in the Popular Front for the Liberation of Palestine (PFLP). The detention order was extended for two months, but no new security material against 'A.B. was added. In the ruling of the judicial review of 27 August 2006, the judge insinuated that the classified material testified to 'A.B.'s indirect involvement in a nationalistically motivated murder;

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<sup>257</sup> Adm. Det. App. 3666/07, Abu Maria v. Military Prosecution.

<sup>258</sup> Ibid., Hearing Protocol, 23 September 2007.

<sup>259</sup> Ibid., Hearing Protocol, 23 September 2007.

but despite this, he ordered a significant reduction of the administrative order; that is: for lack of additional security evidence against the detainee, the order would not be extended. He further determined that until the order expired, 'A.B. would be questioned regarding his involvement in the murder.<sup>260</sup>

The interrogation was meant to have led to the end of 'A.B.'s protracted administrative detention, followed either by a criminal trial for involvement in the murder, or by clearing him of suspicion and releasing him. Those guilty for the murder had already been arrested and sentenced, and one of them was extrajudicially executed by Israel, but no one was interrogated regarding 'A.B.'s involvement in the murder. On the day that 'A.B.'s "statement" was taken, in which he denied any involvement in the murder or ties to the PFLP, he was issued a new administrative order. In the judicial review, the military judge wrote in his ruling: "I have reached the conclusion that the administrative detention order issued against the detainee is not justified and must be terminated."<sup>261</sup> Four days after the military judge's decision, the military prosecution appealed it, claiming that it had new security material against 'A.B.<sup>262</sup> The Military Appeals Court accepted the prosecution's appeal.<sup>263</sup> After an additional administrative order was issued, valid until 12 March 2007, an attorney from HaMoked petitioned the HCJ on 'A.B.'s behalf.<sup>264</sup> In the petition, the attorney described the problematic chain of orders issued against 'A.B., the unlikely appearance of classified intelligence material immediately after the decision to release him, and the military judges' approval of the military orders despite the fact that 'A.B.'s involvement in the murder was still unclear, even with the addition of the "new material." The attorney re-emphasized that the most basic purpose of administrative detention is to prevent illegal activity in the future. An administrative order issued for the purpose of punishment for something that happened in the past, deviates from this purpose and is thus illegal. Moreover, a criminal proceeding is preferable to administrative detention, and therefore,

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<sup>260</sup> Adm. Det. 2698/06, Judicial Review, decision, August 27, 2006.

<sup>261</sup> Adm. Det. 3031/06, Judicial Review, decision, 5 October 2006.

<sup>262</sup> Adm. Det. App. 3524/06, Military Prosecutor v. Barghouti, 9 October 2006.

<sup>263</sup> *Ibid.*, decision, October 12, 2006.

<sup>264</sup> HCJ 1272/07, Barghouti v. Commander of IDF Forces in Judea and Samaria et al.

administrative orders must not be issued or approved if it is possible to prosecute the detainee. If there is sufficient material for submitting charges against 'A.B. then he should be transferred from administrative detention to a criminal track, but he should not be left in administrative detention solely because the evidence against him is insufficient. However, before the petition hearing, the parties reached an agreement whereby the administrative order would not be extended, and, due to the lack of new material regarding 'A.B., he would be released when the order expired.<sup>265</sup> In March 2007, some two and a half years after his detention, 'A.B. was released. **(Case 48879)**

During 2007, Atty. Tamar Peleg, on behalf of HaMoked, represented 74 administrative detainees, appeared at 212 judicial review proceedings, and submitted appeals to the military appeals courts and to the HCJ. Among the detainees represented by HaMoked, 14 were released following judicial review of the order, and 17 were released in the military appeals courts. In total, military judges released 31 of the detainees, or 42 percent of the detainees on whose behalf HaMoked intervened, as opposed to only seven percent of all administrative detainees released during 2007 following legal intervention.

## **Detainee Tracing**

The right to be informed of a person's arrest and place of detention is a basic right, both of the detainee and of his family. Registration of a detainee in the place of detention is a necessary condition for the exercising of his rights. Only in this manner can his family and attorney learn of his status, the state of his health, and the conditions of his detention, check whether and when it is possible to meet with him, and take action towards having his rights fulfilled. In addition, the detainee's right to be present at the legal proceedings conducted against him depends on his being properly registered at the site of his detention. And yet, despite the obligation of the authorities to inform the family regarding the location of detention, the army and the IPS do not fulfill this obligation. Additionally, they do not enable the families to contact them directly in order to receive information about their loved ones and prohibit

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<sup>265</sup> *Ibid.*, Agreed Request to Delete Petition, 20 February 2007.

detainees labled as "security detainees" from telephoning their families. Since its establishment, HaMoked has assisted the families of Palestinian detainees with the goal of providing them updated information regarding where their loved ones are being held as quickly as possible. HaMoked requests the information from a military prison control center, established following a petition submitted by HaMoked in 1995 in the Hirbawi affair.<sup>266</sup> The control center's role is to collate the information on detainees and their place of detention, and supply updated information as to the whereabouts of a detainee within 24 hours of the request,<sup>267</sup> as agreed in HaMoked's petition. HaMoked performs ongoing follow-up of the control center's operation and is trying to establish a procedure for exceptional and urgent cases such as minors, women, and the injured, all of whom are entitled to special conditions and protections. In 2007, HaMoked processed over 10,000 requests to trace prisoners and detainees, of whom 5,030 were newly detained. Although the prison control center has improved, it does not always relay the information within the necessary time frame.

On 29 May 2007, HaMoked began its attempts to locate M.S., who had been arrested the day before in Ramallah, at the request of his family. M.S. is paralyzed and wheelchair-bound, and he is therefore entitled to special conditions. Yet despite this, it took the military prison control center three days to locate him. At first, HaMoked contacted the military prosecution at the Ofer Camp, but the prosecution, as well as the ISA representative in charge of M.S.'s interrogation, claimed that since his arrest he was being held at the Hadarim Detention Center, due to his physical state. That same day, HaMoked contacted Hadarim to confirm the information, but was told that M.S. was not imprisoned there. An urgent letter sent by HaMoked to the prison commander on 31 May 2007 went unanswered. A week passed from the day of the arrest, and HaMoked contacted Atty. Ofra Klinger, Head of the IPS Prisoners' Service Division, asking where M.S. was being held, why the place of detention had not been updated in the IPS system, and who was responsible for this omission. In the answer received the following day, it was related that the prisoner was located at the Magen

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<sup>266</sup> HCJ 6757/95, *Hirbawi et al. v. Commander of IDF Forces in Judea and Samaria*, *Takdin Elyon* 96(1), 103, Judgment, 11 February 1996.

<sup>267</sup> With the exception of weekends, when the families wait for a response until Sunday morning.

(special needs) Prison and that he was taken in by the IPS only on 4 June 2007, explaining why, for an entire week, he was not registered in any place of detention. On 24 July 2007, an attorney from HaMoked met with M.S. at the Magen Prison. In the affidavit taken from him on that day, M.S. claimed that upon his arrest, he was taken to Ofer, and from then directly to Hadarim. At Hadarim he was interrogated and placed in an isolation cell, and at a certain point he was taken for extension of detention to the Russian Compound. He was then transferred to Magen, and the interrogation team that had interrogated him in Hadarim continued there as well. This entire series of events occurred without any documentation. The location of M.S.' detention was concealed for an entire week, during which he was interrogated and detained, in contravention of the procedures and in disregard for his physical condition. HaMoked sent a written complaint to the Attorney General of Israel, Mr. Meni Mazuz. **(Case 50564)**

In 2007, HaMoked was forced to file four petitions for writs of *habeas corpus* as opposed to just one in 2006. A *habeas corpus* petition is a demand for provision of proof of the legality of the detention and the location of the detainee. These petitions also serve to check the state's power to exploit the possibility of detention in an arbitrary and unbridled manner. They are submitted in cases where there is a high probability that a person is being detained but cannot be located in the registries, and their goal is to force the state to supply the necessary information in order to exercise the detainee's rights and provide relief for his family.



On 7 October 2007, HaMoked contacted the family of S.M., who had been arrested two days earlier while at a friend's house in the Nablus area. HaMoked's preliminary investigation revealed that after S.M.'s detention, he was brought to the Samaria temporary detention facility, and on the next day, taken to the Kishon Detention Center. HaMoked conveyed the information to the detainee's family, but about a week later, the family again contacted HaMoked with a request to locate him. That same day, HaMoked submitted a written request to the military control center, requesting help in locating him, but despite the urgency of the matter, no response was forthcoming. In a phone call with HaMoked, the Control Center claimed that they had been unable to locate S.M.'s place of detention. HaMoked also contacted the IPS control center, which related

that S.M. had been transferred already on 11 October 2007 from the Kishon Detention Center to another location, but it was not known to where. The Kishon Detention Center also informed HaMoked that S.M. had been transferred to an unknown location. In the attempt to find out where he was, HaMoked also contacted the Sharon Prison and the Russian Compound Detention Center in Jerusalem; these two detention centers have a computer terminal connected to the Israel Police. Both detention centers responded in the negative; nor did S.M. appear on the police computer. On 16 October 2007, HaMoked submitted a petition for a writ of *habeas corpus* demanding immediate receipt of information regarding S.M.'s location and his condition,<sup>268</sup> and the State's response to the petition stated that the fact that S.M. was not registered was due to an "error" and that the detainee had been at the Ohalei Kedar Detention Center since 11 October 2007.<sup>269</sup> In light of this, the respondents' attorney requested to delete the petition. HaMoked requested that the Court require the respondents to submit an updating notice enumerating the follow-up procedure on the steps to be taken in order to prevent the perpetuation of "errors" leading to failure to register prisoners, sometimes for days on end. HaMoked stated that this was not an isolated problem, but negligence on the part of the IPS, and that it seemed that the IPS did not take proper responsibility as stipulated in law to be fastidious in the registration of detainees and in overseeing the registration process. HaMoked further charged that the cases brought to its attention were almost certainly a minuscule portion of the overall number of case in which detainees were not properly registered, since HaMoked attempts to find detainees only after it is contacted by the families, and only at the time of the request.<sup>270</sup> In the Response on behalf of the Respondents, the State Attorney's Office announced that the IPS was intending to issue an order regarding the admission of detainees and their immediate registration, both in the prison log and in the computerized database. In cases of transfer from one detention facility to another, the registry would be updated in

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<sup>268</sup> HCJ 8696/07, Mishi v. Commander of Army Forces in the West Bank et al.

<sup>269</sup> *Ibid.*, Response on behalf of the Respondents, 18 October 2007.

<sup>270</sup> *Ibid.*, Agreed Request to Respond to the Response on behalf of the Respondents and Request for Ruling on Expenses, 18 October 2007.

both.<sup>271</sup> The petition was deleted, but HaMoked reserved the right to renew it should the order not be published by 1 May 2007.<sup>272</sup>  
(Tracing 52467, Case 52556)

### **Registration of Detainees in the Russian Compound Detention Facility in Jerusalem**

During 2007, the Russian Compound Detention Facility was transferred from police jurisdiction to the IPS. The transfer led to severe omissions in the registration of detainees.

A.'A. was arrested on 21 November 2007, and his family requested that HaMoked help trace him. HaMoked immediately contacted the control center; and on 25 November 2007, was told that A.'A. had not been located. Afterwards, as well, HaMoked petitioned the Supreme Court for a writ of *habeas corpus*. During the evening, the attorney representing the State Attorney's Office informed HaMoked that A.'A. was being detained at the Russian Compound, but on the next day as well, A.'A. did not appear in the facility's registry. A.'A. was held at the Russian Compound for an entire week with no registration whatsoever. (Tracing 53153)

A.H. was arrested on 25 November 2007. Two days after his arrest, his family contacted HaMoked requesting to locate him, and on that same day, HaMoked immediately contacted the control center. The next day, the control center gave notice that A.H. had not been located. That evening, A.H.'s family informed HaMoked that it had received notice from the Russian Compound Detention Center that their son was being detained there, and despite this, on 29 November 2007, A.H. had not yet been registered there as a detainee. A.H. was in detention at the Russian Compound for five days without any registration whatsoever. (Tracing 53237)

H.D. was arrested on 4 December 2007, and the next day his family contacted HaMoked with a request to trace him. That same day, HaMoked contacted the control center. On 6 December 2007, the control center stated that H.D. had not been located. Therefore, HaMoked petitioned the

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<sup>271</sup> Ibid., Supplementary Response on behalf of Respondents, 19 December 2007.

<sup>272</sup> Ibid., Judgment, 29 January 2008.

Supreme Court for a writ of *habeas corpus*. After submitting a petition on his matter, the respondents informed HaMoked that H.D. was being detained at the Russian Compound Detention Center, but even submission of the petition did not bring about his registration. On 13 December 2007, H.D. was transferred to the Shikma Prison, where he was properly registered. H.D. was held at the Russian Compound Detention Center for nine days without being registered. **(Tracing 53345)**

M.A. was arrested on 6 December 2007, and on 10 December 2007, his family contacted HaMoked with a request for help in locating him. On that same day, HaMoked contacted the control center, and the next day was told that M.A. had not been located. HaMoked immediately contacted the Russian Compound Detention Center and was informed that M.A. was not being held there. HaMoked was about to petition for a writ of *habeas corpus* when, suddenly, M.A. himself called his brother and told him that he was being detained at the Russian Compound Detention Center. On 23 December 2007, M.A. was released after having been held for 18 days without any registration whatsoever. **(Tracing 53409)**

HaMoked submitted a written complaint to the Commander of the Jerusalem Detention Center at the Russian Compound, Lieut. Col. Menashe Nahum, making the claim, among others, that the transfer of the detention center from one authority to another did not occur suddenly, but rather had been planned long in advance, and took place at the instigation of the IPS. The IPS had plenty of time to ensure proper transfer of the detention center, and in any case, transfer is not an excuse for failure to register detainees in the database.<sup>273</sup> HaMoked, in its continued monitoring of this issue, has found that following its complaints and legal action, the flaws discovered at the Russian Compound have been rectified, and the detainees are now properly registered at the time of their detention.

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<sup>273</sup> Letter from HaMoked to Lieut. Col. Menashe Nahum, Commander of Jerusalem Detention Center at the Russian Compound, 27 December 2007.



# Violence by Security Forces and Settlers

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

Universal Declaration of Human Rights (1948), Article 3

The year 2007 began on a positive note in the realm of damages suits and compensation for victims of violence in the Occupied Territories, after, in December 2006, the High Court of Justice (HCJ) struck down one of the main articles in Amendment 7 to the Civil Wrongs (Liability of the State) Law – 1952 (hereinafter: Compensation Law). The article which was struck down granted the State almost complete exemption from compensatory payments for acts carried out by security forces in the Occupied Territories, through declaring vast areas of the Territories conflict zones. Soon after the decision was issued and the amendment was struck down, the government set to the task of legislating a new amendment to the Compensation Law, Amendment 8, intended to achieve the same goal: deny as many Palestinians as possible any opportunity for receiving compensation for damages.

The results of these maneuvers on the part of the government are still unknown, yet, in the interim, the cancellation of Amendment 7 by the HCJ has led to the renewal of proceedings that had been halted pending the decision on the question of the amendment's unconstitutionality. Today, ten attorneys from HaMoked and two members of the general staff are working on complaints of violence against Palestinian residents of the Occupied Territories and East Jerusalem perpetrated both by the security forces and by settlers. During 2007, attorneys working on behalf of HaMoked were conducting some 140 damages claims, in addition to administrative assistance

in cases not involving damages claims but regarding which clarifications and investigation were required. The claims dealt with a broad variety of law violations and violent acts towards Palestinians, including bodily and property damage, seizures of homes, theft, and more.

## Denying Palestinians Compensation

### Proposed Law for Denying Compensation to Palestinians

Israel's attempts to prevent Palestinians from accessing the civil courts to present compensation claims began as early as the 1990s, and a Bill intended to deny compensation to Palestinians for damages caused by Israeli security forces in the Occupied Territories passed a first reading in the Knesset in 1997. The Law (hereinafter: Amendment 4) entered into force on 1 August 2002.<sup>274</sup> Among other things, Amendment 4 stipulated a shortened statute of limitations of two – instead of seven – years for the submission of damage suits for events that occurred in the Territories. HaMoked devoted 2004 to dealing with the new reality created by the Amendment, and managed to file suites for some 100 prior cases within the two-year period. Yet even before the statements of defense were filed in most of the cases, the Knesset passed an additional amendment to the Compensation Law (hereinafter: Amendment 7),<sup>275</sup> the goal of which was an almost total obviation of the possibility to sue for compensation in the future. Rather than statements of defense, HaMoked and the courts received requests from the State Attorney's Office to reject the claims out of hand.<sup>276</sup> HaMoked and additional human rights organizations petitioned the HCJ, charging that Amendment 7 was unconstitutional and should be cancelled. A number of the civil claims suits already filed were rejected entirely, while others were halted pending a decision by the Supreme

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<sup>274</sup> For more on Amendment 4 see HaMoked, Activity Report, January-June 2002, pp. 5-19, [http://www.hamoked.org.il/items/11200\\_eng.pdf](http://www.hamoked.org.il/items/11200_eng.pdf), Activity Report 2003, p. 51, <http://www.hamoked.org.il/items/62700.pdf>

<sup>275</sup> For more on Amendment 7 see HaMoked, Activity Report 2005; HaMoked, Activity Report 2006; Atty. Yossi Wolfson, "The Right to be Compensated for the Violation of Human Rights," 2008, [http://www.hamoked.org.il/items/110380\\_eng.pdf](http://www.hamoked.org.il/items/110380_eng.pdf).

<sup>276</sup> By the end of 2006, such requests had been received in 70 of the cases filed by HaMoked.

Court regarding the constitutionality of Amendment 7. In December 2006, the HCJ ruled in favor of the organizations and against the amendment,<sup>277</sup> and, as stated, the procedures in the pending claims were renewed.

Less than a year after the HCJ ruling, the Ministry of Justice again published a legal memorandum with an identical goal: to grant blanket immunity to the state for army activities in the Territories, including an absolute denial of relief to Palestinian residents, even those who were not injured during combat (hereinafter: Amendment 8).<sup>278</sup> The fact that Amendment 7 was unanimously cancelled by nine Justices in the Supreme Court did not deter the Justice Ministry from submitting an additional amendment, whose blatant unconstitutionality even exceeds that of its predecessor. HaMoked, together with the Association for Civil Rights in Israel and Adalah, published a position paper in which they stated that Amendment 8 was unconstitutional and in opposition to the basic principles of Israeli and international law, and therefore, must be shelved.<sup>279</sup>

Amendment 8 attempts to use slightly different legal tools to achieve the same result as its disqualified predecessor; in order to create a situation in which no one will be accountable for illegal, unacceptable, and even criminal acts, and in which the victims of the acts will remain with no relief. For example, the first article in the memorandum for the new law attempts to circumvent the HCJ decision by expanding the definition of the term "wartime action," which grants the state immunity from damages. According to Amendment 8, "wartime action" is meant to include almost all activities of the army in the Territories, even if they were not carried out in the context of danger to life or limb. The State is trying to claim immunity for every activity, as long as it is carried out by the Israeli security forces in the Territories. Expansion of this definition of "wartime action" leads to even more far-reaching results than Amendment 7. The same is true of the second article in the proposed amendment, which is an expansion of article 5c in Amendment

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<sup>277</sup> HCJ 8276/05, Adalah et al. v. Minister of Defense, et al., Judgment, 12 December 2006.

<sup>278</sup> Memorandum for Civil Wrongs (Liability of the State) Law –1952 (Amendment 8) 2007. Memoranda are published so that comments may be submitted, usually during a three-week period, after which the bill is drafted and brought to a committee headed by the Minister of Justice. After it is approved, the bill is brought before the Knesset for an initial vote (first reading).

<sup>279</sup> The position paper can be viewed at: [http://www.hamoked.org.il/items/9081\\_eng.pdf](http://www.hamoked.org.il/items/9081_eng.pdf)

7. In Amendment 7, this article enabled the Defense Minister to declare that a particular area in the Territories is a "zone of conflict"; Amendment 8 grants the Defense Minister the authority to declare that a particular act is an "act of war" even within the Green Line, and even under circumstances in which no activities occurred that endangered life or limb. As for the residents of the Gaza Strip, Amendment 8 makes their bodies and property fair game: article 3 of the amendment completely denies them the possibility of suing for compensation based on the identity and affiliation of the victim, rather than determining criteria based on the manner in which the damage came about – and this is whether the misdeed was perpetrated when the victim was in Gaza or when he was within Israel, whether the perpetrators are members of the security forces or representatives of any other part of the state. This article, which existed already in Amendment 7, where it applied only to subjects of an enemy nation, now applies to all residents of the Strip, in absolute contravention of the Court's stipulation that there is no justification for absolving the state in a sweeping manner of its responsibility for damages it caused in the past, or will cause in the future, in the Gaza Strip and to its residents.<sup>280</sup>

To add insult to injury, the State attempts, in Amendment 8, to also limit the role of the judiciary. The State 'suggests' that claims against it for activities of the security forces in the West Bank be discussed only in the Jerusalem courts, and that claims for activities in the Gaza Strip be discussed only in the Beer Sheva courts. In the explanatory notes, the State claims that restricting the venue will lead to "increased professionalism" and create "uniformity in jurisprudence" – a claim that can be applied to any type of court case. In its position paper, HaMoked claims that restricting jurisdiction only in damages claims filed by Palestinian residents of the Territories begs for interpretation, and raises the possibility that ulterior motives lurk behind the State's proposal, such as inappropriate intervention in the judges' discretion, and an attempt to influence trial outcomes.

Amendment 8 seeks to grant the executive branch and the security forces supra-statutory status, and exempt their deeds from judicial review. HaMoked, as a human rights organization, is committed to a view that attributes utmost importance to conducting judicial review over the state's

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<sup>280</sup> Supranote 277, Judgment, par. 36, 12 December 12, 2006.

actions, even if retroactively, executing extra caution in the examination of Israel's activities in the Territories and ensuring that in this framework, witnesses are heard, evidence is presented, and the Court retains its authority to determine whether the security forces acted lawfully or not.



### **The Right to Compensation in International Humanitarian Law**

The principle that an illegal act requires compensation is well ingrained in international humanitarian law. This applies to acts perpetrated during a war in violation of the rules of war; and all the more so to acts that had no connection to the fighting. This principle is rooted in the Fourth Hague Convention of 1907<sup>281</sup> and the Geneva Convention of 1949,<sup>282</sup> both of which Israel signed and ratified. In the matter at hand, Article 3 of the Fourth Hague Convention states that: "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." A comprehensive study carried out by the International Committee of the Red Cross on customary international humanitarian law determined that a state that violated international humanitarian law was required to pay full compensation for bodily and property damages. Customary law comprises basic principles that bind all the nations of the world, including those not bound by formal agreements on this matter. Customary humanitarian law reflects consistent legal policy and basic principles that developed within international treaty law and domestic law in most countries of the world, pertaining to proper and acceptable conduct during time of war.

In December 2005, the UN General Assembly adopted a declaration regarding the right to remedy and reparation for victims of gross violations of international human rights law, and serious violations of international

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<sup>281</sup> Fourth Hague Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1907).

<sup>282</sup> The First Geneva Convention deals with the injured, sick, medical staff, and military clergy; the Second Geneva Convention deals with war at sea; the Third Geneva Convention deals with prisoners of war; the Fourth Geneva Convention deals with protection of the civilian population during time of war or under occupation. The four conventions were signed on 12 August 1949, and ratified by Israel on 6 July 1951.

humanitarian law.<sup>283</sup> The decisions of the General Assembly are a formal expression of the UN's positions and intentions, a recommendation to member nations to adopt the standards articulated in the declarations and their implementation. The introduction to the declaration emphasizes that the victim's right to remedy and reparation is a recognized and well entrenched right in international humanitarian and human rights law.<sup>284</sup>

## Claims following Violence against Palestinians

### Claims regarding Soldier Violence against Palestinians

Submission of claims for damages is the last stage in the chain of steps that HaMoked takes in handling complaints of soldier violence against Palestinians. HaMoked works with the victims, beginning with submission of the complaint to the army and the demand for an investigation, through the follow-up on the investigation and its implementation by the the Military Police Investigation Unit (MIU), in an attempt to ensure an exhaustive investigation based on which those responsible are brought to justice, and finally, submission of a civil claim, if necessary. The MIU is part of the army, charged with investigating incidents in which the suspects are soldiers. The MIU's approach in cases where the victims are Palestinians is usually negligent or dismissive, and only rarely is an efficient and thorough investigation carried out. Even when the victims are civilians is not sufficient to ensure that a proper investigation will be conducted, and that the State will take responsibility for compensating the victims and their families in an acceptable manner in accordance with the law.



'A.S., a 15-year-old minor, used to sell cookies to passers-by in a square in central Hebron. On 3 December 1993, Rabbi Levinger arrived at this square in his car, escorted by bodyguards. One of the

<sup>283</sup> **General Assembly Resolution 60/147:** *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 16 December 2005.

<sup>284</sup> *Ibid.*, *ibid.*

bodyguards, a member of the security forces, shot 'A.S., without any provocation on his part, while he was busy arranging his wares. The soldiers present in the area did nothing to stop the shooting, did not arrest the shooter, and did not even call an ambulance to evacuate the wounded youth and administer medical care. A passer-by took 'A.S. to the hospital in his private car. The bullet that tore through 'A.S.' leg left him an invalid, both medically and functionally. The incident and the circumstances that led to his wounding were never actually investigated, even though the police and the army knew of the case and an investigation file was opened. Rabbi Levinger and his guards were never questioned, and the file was ultimately closed on the pretext of "lack of sufficient evidence." In 2002 HaMoked submitted a civil suit against the State for its vicarious responsibility for the actions of the bodyguard who fired the shots and the other soldiers who did not prevent the shooting, and against the police for violation of the responsibility to investigate.<sup>285</sup> In the statement of defense, the State claimed that the shots had been fired by a settler during the course of another incident, which occurred later on that same day, in which settlers shot at Palestinians who had thrown bottles and stones at them.<sup>286</sup> Such an incident indeed occurred on that day in Hebron, but it was not related to the shooting of 'A.S. and it even appeared as a separate event both in the army and police logs for that day.<sup>287</sup> In addition, HaMoked produced evidence of the fact that 'A.S. was already in the hospital when this event began. In any case, the State adhered to its claim that 'A.S. was shot by settlers and not by the bodyguard, and went so far as adding the claim that even if he had been shot by the bodyguard, the shooting was not due to negligence but rather a matter of self-defense, and that it comes under the defense that it took place during "wartime action." The State further claimed that "it can be unequivocally determined that if the plaintiff had remained at home and/or left the dangerous area, he would not have been injured. This is his contributory fault..."<sup>288</sup> The State's offer of compensation was NIS 6,000. The Court accepted the plaintiff's position and determined that the shots had been fired illegally by the bodyguard.

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<sup>285</sup> C.C 6007/02, Salhab v. State of Israel – Ministry of Defense, et al.

<sup>286</sup> *Ibid.*, Statement of Defense, par. 14, 9 December 2002.

<sup>287</sup> *Ibid.*, Police memorandum, 4 December 1993, citing both events, attached as Appendix C to the Civil Claim.

<sup>288</sup> *Ibid.* Summaries on behalf of Defendant, par. 52, 3 July 2007.

In addition, it ruled that no contributory fault should be attributed to 'A.S. and that he should be awarded NIS 81,000, as well as legal fees and part of the court expenses.<sup>289</sup> The State appealed the ruling to the District Court – regarding both the casting of responsibility, and the sum – and asked to delay payment of the stipulated sum until the appeal was decided.<sup>290</sup> Even after it was determined that a portion of the sum must be paid immediately, the State ignored the Court's decision and refused to pay. During the hearing of the appeal, the District Court harshly criticized the State for submitting a futile appeal. The judges emphasized that the behavior of the bodyguards was inappropriate, and that the State caused 'A.S. evidentiary damage by failing to investigate the circumstances of the shooting. The State followed the Court's recommendation and withdrew the appeal. **(Case 6678)**

Since the beginning of the occupation, the army has assumed the practice of taking over private land and public buildings in the Territories: roofs, homes, offices, and plots of land, for use as lookouts, shooting posts, and lodgings for soldiers. Since September 2000, when the second intifada broke out, the extent of the army's seizures of Palestinian property has grown considerably. The army procedure specifies rules for what the army terms "proper" seizure,<sup>291</sup> but in practice, these conditions are often not upheld. In the overwhelming majority of cases handled by HaMoked, property owners were not presented with seizure orders and were not informed of the intention to take over their property so that they could do all in their power to reduce in advance the damages likely to be incurred. The army was not consistent in documenting the contents of the private property at the time of entry and departure, as required, and the use made of the property deviated from "reasonable use" and included destruction and vandalism.

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<sup>289</sup> *Ibid.*, Judgment, 29 October 2007.

<sup>290</sup> *Ibid.*, Appeal, 16 December 2007; *Ibid.*, Motion to Stay Implementation of Ruling, 26 November 2007.

<sup>291</sup> General Headquarters / Operations Branch / Operations Brigade, Military Administration Department, Permanent Directives File, Directive 1/0.70, Procedure for Taking Security Measures and Infrastructure Activity During Combat, 1 February 2002 (in Hebrew), <http://www.hamoked.org.il/items/8510.pdf>

The requirement to pay a user's fee for the period of seizure or use of private property is grounded in international law,<sup>292</sup> as well as in Israeli law in a series of rulings of the Israeli Supreme Court,<sup>293</sup> as is the obligation of the military force to protect the property and its contents. In the absence of documentation, proving damages is complex; therefore, HaMoked counsels those seeking its help to document damages in writing and photographs, register the day or dates of the seizure and evacuation of the property, and contact the army while they are still in the field, in order to minimize the damage as much as possible and to support future claims. Despite this, HaMoked was forced on many occasions to agree on behalf of the owners to small compensatory sums that did not reflect the actual damage incurred.

H.'s family lives in the village of 'Arura in the Ramallah area. In May 2003, soldiers arrived at the house and ordered the family members to evacuate the property. No one in the family had received any prior notice regarding seizure of the house, and had not been afforded an opportunity to plead against it. The soldiers did not present a seizure order and prevented the family from removing their belongings from the house. One of the members of the family came to the house a number of times and saw soldiers vandalizing property there, and even spoke up, but with the exception of a small number of objects, he was not permitted to remove anything from the home. After approximately two weeks, the soldiers left the home. Upon their return, the family found damage everywhere: handprints and footprints blemished the walls, clothing and personal objects of the house's residents were scattered and strewn about on the floor; furniture was destroyed; electric appliances were no longer utilizable, cigarette burns went straight through the rugs, the car that had been parked in the courtyard was totally destroyed, the well's motor had been ruined, and a gold ring stolen. HaMoked contacted the Central Command Advocate's Office to complain about the damages caused by the soldiers during the

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<sup>292</sup> Fourth Hague Convention regarding the Laws and Customs of War on Land, including the Annex to this convention (1907), Arts. 23, 52; Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Art. 53.

<sup>293</sup> See, for example, HCJ 401/88, Abu Riyan et al. v. Commander of IDF Forces in the Judea and Samaria Area; HCJ 290/89, Juha v. Military Commander of Judea and Samaria Area; HCJ 2056/04, Beit Surik Village Council et al. v. Government of Israel et al., Judgment, par. 32, 30 June 2004.

seizure, and to demand an investigation of the incident.<sup>294</sup> Over two years after submission of the complaint, the MIU launched an investigation. The investigation material obtained by HaMoked indicates that it was negligent and carried out for the record only: no attempt was made to locate the soldiers who had been in the home, and not one of them was questioned. A number of the officers who were questioned had not even been present in the house, and knew nothing about what had happened during the seizure. At the same time, HaMoked contacted the Defense Ministry on the family's behalf, demanding that it pay user's fees for the house, as required by law, and compensation for the damages, as required by law.<sup>295</sup> The Defense Ministry confirmed the seizure of the home, but denied the damages and the family's right to receive user's fees, with the exception of payment of electric and water bills for a two-week period.<sup>296</sup> HaMoked appealed to the military appeals committee regarding the Defense Ministry's decision.<sup>297</sup> In the advanced stages of the process, the committee recommended settling. After protracted negotiations, a compromise was reached, and the family received NIS 15,000 in compensation.<sup>298</sup> **(Case 26076)**

The negligent investigation attests to the fact that the soldiers are immune from criticism and that there is no true intention of punishing them for their grave actions; in the army's eyes, the damage to family members, their possessions, their home and their dignity is a triviality that does not warrant investment of a true effort into an investigation in order to bring the perpetrators to justice.

Manned roadblocks, both those that tear apart the West Bank, and those that divide it from Israel, constitute a point of ongoing friction between soldiers and the Palestinian population.<sup>299</sup> The prevalence of the roadblocks

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<sup>294</sup> Letter from HaMoked to the Advocate of the Central Command, Lieut. Col. Roi Ganot, 3 April 2003.

<sup>295</sup> Letter from HaMoked to Atty. Sharon Zimrin, Dir. Claims Dept. of Claims and Insurance Division – Ministry of Defense, 3 March 2005.

<sup>296</sup> Letter from the Claims Dept. of Claims and Insurance Division – Ministry of Defense, 23 November 2005.

<sup>297</sup> Appeal 33/05, Claims Appeals Committee the Ofer Military Court, Khasib v. Officer of Claims Staff.

<sup>298</sup> *Ibid.*, Compromise Agreement, 11 December 2006.

<sup>299</sup> Regarding the reality created by roadblocks in the West Bank see, B'Tselem, *Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank*, 2007.

and the almost unlimited power in the hands of the soldiers, create a reality in which arbitrary use of force, including humiliation, beatings and abuse, are routine.

One of the compensation claims submitted by HaMoked in 2007 concerned an incident in which a Palestinian who wished to pass through an army roadblock on his way home was falsely imprisoned, beaten and shot.



A.H., a resident of the Qalandiya Refugee Camp, works with his brothers in construction. On 31 May 2002, on their way home from work, the brothers were detained at a roadblock by soldiers. One of the soldiers called to A.H., who began walking towards him. The soldier aimed his weapon at him and ordered him to stop. At the soldier's orders, A.H. emptied out his clothing bag onto the road and handed over his identity card. The soldier ordered him to turn around with his hands raised, searched him, confiscated his cellular phone, and placed him in a suffocating and stinking cell next to the roadblock. The soldier ordered A.H. to sit there, and when he refused, he hit him with the butt of his rifle until he sat down. After some time, A.H. exited the cell to find out when he would be released, but the soldiers ordered him to go back to the cell. After a long time had elapsed and A.H. was told nothing, he again emerged from the cell and asked for his identity card from a soldier in the lookout tower, but another soldier immediately began beating him with the weapon he was holding. The soldier who was in the lookout tower came down with another soldier, and all three began beating A.H. in the face and on the hand using their fists and the butts of their rifles. When he tried to resist the beating, a soldier, Staff Sergeant Ofer Segal, shot him. The bullet entered A.H.'s thigh and the soldiers dragged him back into the same cell, where they continued beating him and even threatened to kill him. A few moments later, a military ambulance arrived and A.H. was taken to Hadassah Hospital at Mt. Scopus for medical treatment. When he recovered from his injuries, he contacted HaMoked. In June 2002, A.H.'s complaint and a demand for an investigation of the incident were transferred to the Central Command Advocate's Office.<sup>300</sup> In August 2004, HaMoked received an

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<sup>300</sup> Letter from HaMoked to the Advocate of the Central Command, 5 June 2002.

announcement that the investigations file had been closed without any of the soldiers being brought to trial. In the letter, the Attorney from the Advocate's Office stated that it would have been desirable to bring the soldier who fired the shots for disciplinary action, but military judicial law no longer applied to him.<sup>301</sup>

The other soldiers manning the roadblock who beat and abused A.H. were not brought to trial either. Despite recurring inquiries, the content of the investigation file reached HaMoked only in 2007, two years and five months from the day of the request. The material reveals that with the exception of the soldier who fired the shots, Staff Sergeant Ofer Segal, no other soldiers who took an active part in the incident were questioned. In addition, no affidavit was taken from A.H.'s brother, who witnessed the events. In October 2007, HaMoked submitted a civil claim on behalf of A.H.<sup>302</sup> (Case 17848)

## **Claims regarding Border Police Violence against Palestinians**

Border police officers hold the same power as Israel police officers but they operate in a format similar to that of the army. Among other things, they serve as backup for army forces in the West Bank, but their presence is particularly prominent in East Jerusalem. The Palestinian residents of Jerusalem and the surrounding neighborhoods are exposed daily to unceasing harassment by border police officers, including excessive use of force, abuse of innocent people, and even murder. In cases of violence against Palestinians by border police officers, HaMoked works with the victims through the entire process, beginning with submission of a complaint to the Department of Investigation of Police (DIP), the body responsible for the investigation of border police officers, and continuing with overseeing, to the extent possible, how the investigation is conducted. HaMoked's cumulative experience points to many cases where the facts are concealed and the investigation is superficial and not exhaustive. Even when more serious investigations are conducted, the files are usually closed without a recommendation to indict any of the police officers involved. In suitable cases, HaMoked submits damage compensation suits.

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<sup>301</sup> Letter from Lieut. Col. Liron Liebman, Advocate of the Central Command, to HaMoked, 8 August 2004. Unlike a criminal trial, a soldier can only be brought to disciplinary trial during his regular army service, or until three months from the day of discharge in the case of a reserve soldier. See: Military Judgment Law, 1955, 173-176.

<sup>302</sup> C.C. 11388/07, Hamad v. Mr. Ofer Ami et al.



On 3 June 2003, in the afternoon, 'A.F., then age 31, went with his ten-year-old son to pray at the al-Aqsa mosque in Jerusalem. At the entrance to the Lion's Gate, a police officer demanded that he produce his identity card, and at the same time, made a demeaning remark. An argument erupted between the two and the police officer demanded to search 'A.F., even though there was no cause, and refused 'A.F.'s request that the search be conducted at a nearby police station, rather than in front of passers-by and particularly not in front of his son. The police officer asked 'A.F. to have his son move away, and when the latter asked why, the police officer answered: "So that he won't see what's about to be done to his father." 'A.F. refused to be separated from his son. The police officer called two border police officers who were in the vicinity, and told one of them: "Put him against the wall, and if he resists, we'll say that he attacked you."<sup>303</sup> The two pushed 'A.F.'s head until it hit the wall, and then began beating him all over his body. A police car summoned to the site took him, his son and the police officers to the nearby police station, where 'A.F. was interrogated on suspicion of attacking a police officer. When he related his version to the interrogator at the police station, the latter omitted many details from the written affidavit, and, consequently, 'A.F. refused to sign it. Before leaving the station, he was required to sign a personal guarantee so that he could be released to his home. 'A.F. asked for the details of all of the police officers involved in the incident, but the interrogator gave him the name of only one of the border police officers, Michael Ben Haroush, personal i.d. 72491848. 'A.F. returned to the scene of the incident and demanded the details of everyone involved. A border police officer, Igor Romanenki, i.d. 72599687, and police officer Roi Barzilai, i.d. 1094127, gave him their details.

In addition to his physical injuries, 'A.F. suffered from humiliation and an offense to his dignity, and particularly felt for his son, who saw what had happened. After the incident, 'A.F.'s son began suffering from anxiety attacks, sleep disturbance, and bed-wetting. HaMoked contacted the DIP demanding that the incident be investigated. An investigation was subsequently opened but was closed in May 2004 "for lack of public interest."<sup>304</sup> The only action performed in regard to the investigation file

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<sup>303</sup> From 'A.F.'s affidavit, as related to an attorney on behalf of HaMoked, 19 June 2003.

<sup>304</sup> Letter from Herzl Shbiro, Director of the DIP, to 'A.F., 1 May 2004.

was to take 'A.F.'s affidavit, even though the complainant had submitted the details of the police officers and their identity was known to the investigator. An attorney on behalf of HaMoked contacted the Attorney General, Mr. Meni Mazuz, appealing the decision,<sup>305</sup> and subsequently, the DIP reopened the file<sup>306</sup> and a recommendation was made to take disciplinary action against officer Roi Barzilai for abusing authority.<sup>307</sup> The officer was indeed tried, and apparently convicted, but despite the intensive efforts of HaMoked employees, no information regarding the sentence was retrieved from the disciplinary tribunal. In a telephone conversation, we were told a recommendation was made for Barzilai to receive a commanders' reprimand – a reprimand transmitted orally to a police officer and kept in his personal file.<sup>308</sup>

In November 2006, 'A.F. told an attorney on behalf of HaMoked that he still sees Barzilai on occasion at the Lion's Gate, and although the officer acts as though he does not remember him, for 'A.F., it arouses strong emotions. The falsified complaint submitted by the officer against 'A.F. on the day of the incident is still registered in the police database, and is a stumbling block in all of his interactions with the authorities. His son, who witnessed the incident, has not yet overcome the emotional damage he had suffered. HaMoked submitted a civil claim on 'A.F.'s behalf against the police officers who were involved in the event, and against the State of Israel as vicariously responsible for their conduct and for the failure to bring them to justice.<sup>309</sup> (Case 27324)

## **Claims regarding Settler Violence against Palestinians**

In the West Bank and East Jerusalem, there are some 150 settlements and some 100 outposts, inhabited by over 450,000 settlers. Despite the repeated promises of Israel to freeze the building of the settlements, the number of settlers is growing and building in the settlements continues. Beyond the fact

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<sup>305</sup> Letter from attorney on behalf of HaMoked to Attorney General Meni Mazuz, 6 May 2004.

<sup>306</sup> Letter from Yuri Margolis, head of Jerusalem Team of the DIP, to HaMoked, 31 May 2004.

<sup>307</sup> Telephone conversation between Hagit Bitan, Secretary of the DIP to HaMoked, 7 December 2004.

<sup>308</sup> Telephone conversation between Hamutal Segev, Prosecutor in the disciplinary court, and HaMoked, 24 July 2006.

<sup>309</sup> C.C. 6879/07, Fahouri v. Igor Romanenki et al.

that the settlements themselves are illegal and their establishment is in violation of international law, the Palestinian population often finds itself attacked and persecuted in its own territory and on its lands by settlers. According to the Geneva Convention, Israel, as the occupying power, is responsible for protecting the Palestinians from harassment by settlers, including investigating and trying the guilty parties.<sup>310</sup> In effect, the army, the Border Police and the Israel Police are not forthcoming with assistance to the Palestinian victims of settler violence, neither during their occurrence nor afterwards, and investigation of the incidents is often limited to "going through the motions." The work of HaMoked clearly shows that the Israeli authorities abandon the Palestinian population in the Territories to a fate of violence and criminal acts on the part of settlers. HaMoked provides assistance to Palestinians who have been harmed by settlers and other Israeli citizens in the Territories: working with victims, sometimes during the incident, helping them submit complaints and assisting during the police investigation, and keeping abreast of the investigation in an attempt to ensure that it proceeds efficiently. When necessary, HaMoked represents victims in a civil suit, and helps them in the process of collecting compensation from those accountable.



'A.S., a truck driver, was driving in the area of Bani Na'im on 8 June 2003, when he noticed a man who had emerged from a stationary car; the man began shooting at him. The shots hit the truck, and 'A.S. stopped and fled, in order to find shelter from the shooting. Shocked and confused, he related the details of the incident to soldiers who were passing through the area in a jeep, but when they saw that he wasn't injured, they said to him: "So fix your vehicle and go home." HaMoked inquired with the police on 'A.S.'s behalf, and after he gave an affidavit, an investigation was launched, leading to the capture of Menachem Livney, a settler from Kiryat Arba. Livney was one of the leaders of the Jewish underground in the 1980s. He was convicted and given a life sentence, but his request for clemency was approved, and he was released in 1990, after

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<sup>310</sup> Art. 27 of the Fourth Geneva Convention stipulates that: "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity."

serving seven years in jail. When he was released, the State saw fit to grant him a permit to carry a weapon. It was with this weapon that Livney shot five bullets in 'A.S.'s direction. Criminal proceedings were launched against Livney,<sup>311</sup> but these were cancelled in 2004 due to a procedural error: the case was being adjudicated by a single judge, but the charge sheet contained an article according to which the motive was racism, requiring the case to be presided by a panel of three judges. The State Attorney's Office therefore submitted an updated charge sheet,<sup>312</sup> without the article stating the racist motive, and after an appeal, the District Court sentenced Livney to four months of public service, and a four-month suspended prison sentence.<sup>313</sup>

Immediately following the incident, 'A.S.' began suffering from anxiety and depression. He felt threatened, his ability to function was affected, and he was sent for psychological tests and treatment. His relatives help support him since his ability to work and support himself were impeded by his psychological state. In October 2007, HaMoked filed a suit on his behalf against Menachem Livney and the State of Israel. The State was named in the claim, among other reasons because it had allowed a convicted murderer to legally possess a weapon; because of its responsibility for the soldiers who were negligent and treated 'A.S.' complaint with contempt and indifference, and because even when the guilty party was located, the criminal proceeding and the punishment did not reflect the severity of the incident.<sup>314</sup> The claim is still pending before Jerusalem Magistrate's Court **(Case 30042)**

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<sup>311</sup> Crim. Case 173/03, State of Israel v. Menachem Livney.

<sup>312</sup> Crim. Case 2785/04, State of Israel v. Menachem Livney.

<sup>313</sup> Crim.App. 9652/05, State of Israel v. Menachem Livney, Judgment, 4 December 2006.

<sup>314</sup> Civ. Case 11387/07, Shatat v. Menachem Livney et al.



# Jerusalem Residency

**“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”**

Universal Declaration of Human Rights (1948), Article 16 (1)

The residents of East Jerusalem received their status as Israeli subjects following the annexation of East Jerusalem by Israel in 1967. These include the original residents of the Old City, the neighborhoods surrounding it, and the villages and refugee camps annexed into greater municipal Jerusalem. After the annexation, the Palestinians who had lived in the West Bank and Gaza Strip lost their right to enter East Jerusalem, and an artificial separation was created between them and the Palestinians who lived in the annexed territory. The status of East Jerusalem residents was defined as "permanent residents." This status, unlike citizenship, expires if, among other reasons, the person holding it is absent from Israel for seven years, or if he receives permanent status in another country. Temporary residency does not entitle a person to an Israeli passport or the right to vote in Knesset elections, nor does it automatically entitle a person's children to status. In addition, according to law, the Minister of the Interior has the authority to revoke the status of a resident based on his discretion. In effect, Israel applies to the residents of East Jerusalem the same arrangements it applies to immigrants from foreign countries, even though the Palestinians are the city's original inhabitants; they did not immigrate to Jerusalem from another

place, and their status in Israel was forced upon them by the occupation and the annexation. However, the new border that was created did not cut off the reciprocal connections between the residents of East Jerusalem and the residents of the other territories occupied in 1967. For many years, Jerusalem was the most important urban center for the entire West Bank, and business, work, family relations and marriage of Jerusalemites with residents of the other Occupied Territories were, and are still, widespread.

Since the annexation, Israel has invested great effort in preserving what it calls the "demographic balance" in Jerusalem, which means reducing the number of Palestinians living in the city and maintaining a Jewish majority of some 70 percent.<sup>315</sup> Residents of East Jerusalem struggle for their right to continue living in the place where they were born and where their families have lived for generations, and despite this, many of them are forced to leave the city due to Israel's ongoing policy of discrimination that includes, among other things, revocation of status, strict limitations on building, failure to provide adequate infrastructure, and low budget allocations for education. One of the main ways in which Israel keeps the number of Palestinians living in Jerusalem to a minimum is by limiting the granting of legal status in Israel to Palestinian residents of the Territories and neighboring countries who marry residents of East Jerusalem, and the children of these unions.



### **The Status of East Jerusalem in International Law**

In June 1967, immediately after the occupation of the West Bank, the Israeli government decided to annex to Israel some 70,500 dunams of the occupied area north, east and south of Jerusalem ("East Jerusalem"), and to include the entire area within the municipal boundaries of Jerusalem. Basic Law: Jerusalem – Capital of Israel, which passed into legislation in 1980, determined that "Jerusalem, complete and united, is the capital of Israel."<sup>316</sup> According to Israel's position, since the area has been annexed, Israeli law applies to it. And yet, the area of a State's sovereignty is a question in international law, which enables acquisition of sovereignty in only one of two ways: an agreement between two bordering nations, or acquisition of sovereignty over an area that is not under the sovereignty

<sup>315</sup> For more on this issue see, B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, May 1995.

<sup>316</sup> Art. 1 to Basic law: Jerusalem Capital of Israel, 1980.

of any state; and since the drawing of borders is a matter that influences other countries, it must be carried out in keeping with the rules that apply to all nations, that is, in keeping with the rules of international law.<sup>317</sup> The unilateral application of Israeli law to occupied territory is not recognized in international law as a legitimate way of imposing sovereignty. Rather, the reverse is true. One of the basic principles of international humanitarian law states that sovereignty cannot be transferred or changed as a result of the use of force or the threat thereof. This is how international law distinguishes between actual control of an army in the field, defined as occupation and required to be temporary, and legitimate sovereignty; and indeed, the international community and international institutions do not recognize the unilateral annexation of East Jerusalem and Israel's sovereignty in the annexed territory. As early as 1967, the U.N. General Assembly called upon Israel to pull back the annexation of Jerusalem,<sup>318</sup> and afterwards, even demanded that Israel retract its declaration of Jerusalem as the capital of the nation<sup>319</sup> and apply to Jerusalem the international laws of occupation.<sup>320</sup> In an advisory opinion for the U.N. General Assembly regarding the separation wall, the International Court of Justice (ICJ) wrote in 2004 that East Jerusalem is an occupied area and that the Israeli annexation has no validity under international law:

"The territories [...] were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories [...] have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power."<sup>321</sup> This position of international law is the position of the vast majority of the nations of the world.

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<sup>317</sup> Annon Rubinstein and Barak Medina, *Constitutional Law of the State of Israel, Vol B: The Authorities and Citizenship*, Schocken, 2005, p. 924 (in Hebrew).

<sup>318</sup> Decisions of the UN General Assembly 2253 (ES-V), 2254 (ES-V), July 1967.

<sup>319</sup> See, for example, decision of the UN General Assembly 35/169 (E-A), December 1980.

<sup>320</sup> Decision of the UN General Assembly A/61/408, December 2006.

<sup>321</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, General List No. 131, 9 July, 2004, par. 78, "<http://www.icj-cij.org>" <http://www.icj-cij.org>

## Citizenship and Entry into Israel Law (Temporary Order)

As stated, since the annexation, Israel has tried to reduce the number of Palestinians in the city, among other things by limiting the granting of legal status to foreign nationals who are spouses of Jerusalem residents. In 1995, a family unification procedure, which remained in effect for several years, was instituted after protracted struggles. In this procedure, a foreign spouse would gradually receive permanent status in Israel, subject to security screenings and "center of life" examinations [center of life is a term used by Israel to denote that a person actually lives in a certain place rather than just registered as a resident thereof]. This procedure was long and complicated. The couple would be sent back and forth with demands to present different documents and was sometimes required to take legal action in order to have their application approved. Despite the difficulties, however, the procedure provided a certain solution to city residents married to foreigners. In 2002, Israel decided to freeze the processing of family unification applications for couples where the foreign spouse was a resident of the Territories. The freeze was grounded in law a year later, with the Citizenship and Entry into Israel Law (Temporary Order) 2003,<sup>322</sup> and in so doing, Israel effectively cancelled the family unification within Israel for Palestinian residents of the Territories and Israelis, including residents of East Jerusalem. HaMoked with other human rights organizations petitioned the HCJ challenging the constitutionality of the law (hereinafter: the Adalah case).<sup>323</sup> In May 2006 the HCJ rejected the petitions.<sup>324</sup> Although in the ruling, six of the eleven justices on the panel wrote that the law was unconstitutional and constituted a disproportionate violation of the constitutional rights of the Arab citizens and residents of Israel to family life, the Court allowed the Knesset the possibility of replacing it with a different arrangement within seven months, and did not abolish it.

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<sup>322</sup> For more on the Citizenship and Entry into Israel Law (Temporary Order), see HaMoked and B'Tselem, *Forbidden Families*, January 2004, [http://www.hamoked.org.il/items/12600\\_eng.pdf](http://www.hamoked.org.il/items/12600_eng.pdf), HaMoked, *Activity Report 2005*; HaMoked, *Activity Report 2006*.

<sup>323</sup> Overall, seven petitions were submitted to the HCJ, and they were heard together: HCJ 7052/03, *Adalah – Legal Center for Arab Minority Rights in Israel v. Minister of the Interior et al.* Regarding the Adalah case see, HaMoked, *Annual Report 2006*.

<sup>324</sup> *Ibid.*, Judgment, 14 May 2006.

## **Amendments to the Law and their Effect on children**

In 2007, after the ruling in the Adalah case, the Knesset amended the Citizenship and Entry into Israel Law (Temporary Order), as if implementing the Court's comments and minimizing and law's damaging effect, but in practice, not only were the justices' comments not implemented, but the amendment in effect expands, deepens and solidifies the arrangement that was disqualified on principle by a majority of the justices. After the amendment passed in the Knesset, several additional petitions were submitted against it.<sup>325</sup> HaMoked supports the claims presented in those petitions, and in addition, submitted a separate petition that focuses on a particularly problematic aspect of the law: its severe ramifications on the lives of children of permanent residents of Israel.<sup>326</sup> These children live with their parents in Israel and East Jerusalem, annexed to it, and despite this, the law leaves them with no status. Application of the law may lead to these children being cut off from their parents and from their siblings who are eligible for legal status. In the petition, HaMoked claimed that the law must be struck down, at least insofar as it applies to children, since it infringes on human rights grounded in Basic Law: Human Dignity and Liberty. This infringement is disproportionate, and committed to advance a racist and unacceptable purpose. Additionally, the legislative process was highly defective throughout. Ruling on this petition is pending.

## **Expansion of the Definition of "Resident of the Area"**

Article 1 of the law, inserted after the first amendment in 2005, expanded the definition of "resident of the Area"<sup>327</sup> so that "a person listed in the Area's population registry"<sup>328</sup> will now be considered a "resident of the Area." The way in which the Interior Ministry interprets this amendment applies the definition not only to residents of the Territories who live there, but also to every person registered in the population registry of the Territories, even if that person has never lived there. And indeed, in many cases, parents registered their children in the Palestinian population registry even though the family's center of life had always been in Jerusalem, for various reasons. One of the reasons for this is that Israel's policy regarding the registration of children was often changed over the years, and never published. Another

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<sup>325</sup> HCJ 830/07, Tabila et al. v. Minister of Interior et al.; HCJ 544/07, Association for Civil Rights in Israel v. Minister of Interior et al.; HCJ 466/07, Galon v. Minister of Interior.

<sup>326</sup> HCJ 5030/07, HaMoked v. Minister of Interior et al.

<sup>327</sup> "Area" refers to the territories of the West Bank and Gaza Strip.

<sup>328</sup> Citizenship and Entry into Israel Law (Temporary Order) (Amendment) 5765 - 2005, par. 1(2).

reason relates to severe accessibility problems at the Interior Ministry's East Jerusalem office: applicants were forced to stand outside for days at a time, or to pay for their spot in the queue, and when they did manage to get through the doors, they were asked to fill out forms in Hebrew, to write affidavits obligating them to pay for lawyers and to present documents and bills from years past. In the meantime, as the process dragged on, many registered their children in the Palestinian registry in order not to leave them with no legal status in the world, and to make it possible to register them at educational institutions or receive other essential services. Permanent residents who had lived abroad for some time for work or studies, also often entered their children in the Palestinian registry as they were not permitted to register them in Israel. This was so, since receiving status was conditioned on proof that their center of life had been in Israel for at least two years. In many cases, women returned to live with their children in East Jerusalem, with their families, due to a spouse's death or to divorce, but during the period that they lived in the Territories, their children were registered there.

Israel refuses to examine evidence attesting to the fact that children of Israeli residents of East Jerusalem who live with their parents in East Jerusalem, but are listed in the Palestinian registry, are not effectively residents of the Territories, on the 'grounds' that the written record cannot be contradicted. The way in which the Ministry of the Interior interprets the new definition of "resident of the Area," according to which a person's very appearance in the Palestinian registry constitutes conclusive evidence that he is a resident of the Territories, is a distortion of Israeli law, performed for an invalid purpose: to apply the law to the maximum possible number of Palestinian children, and as a result, to reduce the number of cases in which children of East Jerusalem residents are granted legal status in Israel.

The Jerusalem District Court, sitting as the Court for Administrative Affairs, ruled that the Ministry of the Interior interprets the definition "resident of the Area" in an erroneous fashion. The definition in article 1 of the law was intended to apply to a person registered in the Palestinian registry who is an actual resident of the Territories, based on his affiliations. This definition does not include a person merely listed in the Territories' records, but who does not actually live there.<sup>329</sup> The State appealed this ruling, and the result is still pending.<sup>330</sup>

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<sup>329</sup> Adm. Pet. 817/07, Khatib et al. v. Ministry of Interior, Judgment, 16 January 2008.

<sup>330</sup> Adm. App. 1621/08, State of Israel v. Khatib.

## Distinction between Children according to Age

The question of children was discussed in article 3a of the first amendment of 2005. This article distinguishes between children according to age, and creates two separate statuses: children below the age of 14, to whom the Interior Minister may grant status in Israel; and children over age 14, to whom the Interior Minister is not authorized to grant status in Israel: at most, he may grant them a temporary permit to enter and remain in Israel. And yet, although the law makes it possible to grant permanent status in Israel to children up to 14 years of age who are registered in the population registry of the Territories, the Ministry chose to interpret the law in a minimalist manner, stipulating an internal procedure according to which children under 14 registered in the Palestinian population registry would receive a temporary status (an A/5 visa) for a two-year period, and only afterwards would they be able to receive permanent status. In cases of children who turn 14 during these two years, the Ministry refuses to upgrade their status to permanent status.



A.J. was twelve years old when her mother, a resident of Jerusalem, applied to the Interior Ministry to arrange for her status and the status of her brother and sisters, registered in the Palestinian registry. The Ministry initially refused to grant her even temporary status; her stay in Jerusalem and in Israel was arranged through temporary permits issued by the army. HaMoked petitioned the courts on behalf of the mother and her children,<sup>331</sup> and A.J. received temporary residence status for a two-year period (an A/5 permit), after which, given that she could pass the center-of-life and security clearances, would be upgraded to permanent status.<sup>332</sup> On 21 March 2007, some two years after receiving the temporary status, a request was submitted to the Interior Ministry to upgrade her status, along with documents proving that her center of life was in Jerusalem as well as the necessary affidavits. Some six months later, A.J.'s temporary residency status was extended for one year, but it was not upgraded to permanent status. The Interior Ministry exploited the fact that A.J. had

<sup>331</sup> Adm. Pet. 1238/04, Jubran et al. v. Minister of the Interior, et al.

<sup>332</sup> Ibid., Letter from Atty. Einav Harman, Chief Asst. to Jerusalem District Attorney to HaMoked, 20 April 2005.

turned 14 during the two years in which she had the A/5 visa as a pretext for preventing the upgrading of her status as required. HaMoked contacted the Interior Ministry, demanding that A.J.'s status be upgraded, as the State had undertaken in said petition.<sup>333</sup> (Case 27781)

Israel is waging an aggressive struggle with the goal of granting status, particularly permanent status, to as few Palestinian children as possible. The Interior Ministry spares no attempt to impart the lowest status possible, according to the special circumstances of each case. Even when the child has lived in Jerusalem for most of his life, but was born in the Territories, or is registered in the Palestinian registry, the Interior Ministry insists on temporary residency, and bends the law and procedures such that at the end of the two years, the child's status is not upgraded to permanent status.



J.M.'s parents were separated before he was born. The pregnant mother returned to live with her family in the West Bank, where she gave birth to her child. The father, a Jerusalem resident, remarried and had two more children, but he maintained contact with J.M. Two years later, the mother died, and the father took his son to live with him and his family in East Jerusalem. In 2001, the father was shot in the head and since then has not regained consciousness, and the grandmother is raising J.M. In 2005, when J.M. was seven years old, HaMoked contacted the Interior Ministry requesting that his status be secured. For over two years, the request went unanswered, and only on the evening of the hearing in the petition HaMoked submitted,<sup>334</sup> was a cursory and unsubstantiated response received, according to which J.M. was to begin a graduated process without a particular course or defined conclusion.<sup>335</sup> HaMoked claimed in the petition, *inter alia*, that even if the State did not view J.M. as a Jerusalem resident but rather as a resident of the Territories since he appeared in the Palestinian population registry, according to law, since he

<sup>333</sup> Letter from HaMoked to Hagit Weiss, Head of Family Unification Branch in the East Jerusalem Population Administration Bureau, 11 December 2007.

<sup>334</sup> Adm. Pet. 957/06, Miz'aru v. State of Israel – Director of East Jerusalem Population Administration Bureau.

<sup>335</sup> *Ibid.*, Notice and Request on behalf of Respondent, 15 October 2007.

was not yet 14 years old, he was eligible for permanent status. The Interior Ministry had insisted on giving him temporary status only for a two-year period, without any guarantee that at the end of the two years J.M.'s status would be upgraded to permanent.

This time, the Ministry was choosing not to treat J.M. as a resident of the Territories, even though he appeared in the Palestinian population registry, so that it would not be obligated to grant him permanent status after two years of possessing an A/5 permit. Rather, the State claimed that since J.M. was living with his grandparents, and his father was unable to submit a family unification application due to his condition, he did not fulfill the criteria. Therefore, were his status to be approved, it would be out of humanitarian considerations and not pursuant to the law. In the hearing held in the petition in October 2007, HaMoked's attorney insisted that in light of the many changes in the policy, and in light of the State's repeated attempts to prevent Palestinians from receiving Jerusalem residency, temporary residency without guarantees was tantamount to a life without security, and presented a handicap with many far-reaching ramifications for J.M.'s possibilities for conducting a normal life.<sup>336</sup> The Court ruled that it would not intervene to change the Interior Ministry's decision.<sup>337</sup> HaMoked appealed the ruling.<sup>338</sup> **(Case 27315)**

Children over the age of 14 are given a permit by the army (hereinafter: District Coordination Office (DCO) permit), parallel to a tourist visa. The permit, in contrast to permanent residency status, or even to temporary residency, does not entitle its holder to social rights. For example, children of a resident who were found ineligible for permanent residency cannot receive child allowances or disability allowances, or even national health insurance. If they become sick and require a medical diagnosis, treatment or hospitalization, they are not eligible for support from the State of Israel, even though at least one of their parents is a resident of Israel and they live with him in Israel or in the territories that it annexed.

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<sup>336</sup> *Ibid.*, Hearing Protocol, 16 October 2007.

<sup>337</sup> *Ibid.*, Judgment, 16 October 2007.

<sup>338</sup> Admin. App. 9742/07, Miz'aru v. State of Israel – Director of East Jerusalem Population Administration Bureau.

The permits are given for periods of up to six months. That is, at least twice a year, the children are forced to leave their homes in Jerusalem and report to a DCO in the Territories. Sometimes, children come with a referral from the Interior Ministry, but when they arrive to collect the permit, it turns out that it is not ready yet. Sometimes, it transpires that the DCO is closed that day, and sometimes even longer periods pass during which the DCO does not issue permits. In these cases, the common result is that many children live without valid permits. Under the law, an absurd situation is often created whereby the children of a single family, who have lived together all of their lives in Jerusalem, qualify for three different statuses.



M.A., a Jerusalem resident, was married in 1988 to a resident of Ramallah. Since 1997, the couple has continuously lived in Jerusalem. Over the years, they had seven children. The four older children were born between 1989 and 1995 in Ramallah, while the three youngest girls were born between 1999 and 2002 in Jerusalem. M.A. attempted to arrange the status of her children back in 2000, but the Interior Ministry approved only the younger girls to register with permanent status; two additional children received temporary status, while the oldest two, although they were still minors, were told that they would receive no status, and that their legal presence would be arranged through DCO permits. Thus, in one family, there are three children with permanent status, two with temporary status that must be renewed yearly, and two children with no status at all, whose presence is arranged through DCO permits that must be renewed yearly at the Interior Ministry and at the DCO in the Territories every six months. Lacking status in Israel, and in distinction from their younger siblings, the two older children are not entitled to social services, are denied child allowances and disability, and lack health insurance. During periods of curfew, closures, security warnings, DCO renovations, or strikes – situations that arise in the West Bank with great frequency - the two cannot extend their temporary permits and are exposed to the fear of detention, deportation and separation from their family. And this is not the end of their problems. For example, A.A., the eldest daughter, is now over 17, but since she has no status in Israel, many are loathe to ask for her hand in marriage. In the reality created by Israel's policy, Jerusalem residents are not willing to commit to a relationship with a future partner who has no defined status and does not know when, if at all, she will have one.

In 2006, HaMoked submitted a petition on behalf of the family.<sup>339</sup> At the hearing, the Interior Ministry deigned to grant the eldest son temporary residency status, leaving the eldest daughter as the sole subject of the petition. The main differences between the family's and HaMoked's position, and that of the Interior Ministry, revolved around the question of whether the application, submitted already in 2002, should be interpreted under the original provisions of the Temporary Order pertaining to granting status to a child, as claimed by the Interior Ministry (in which case the application would be rejected by law since A.A. was over 12 years old at the time), or; should the provisions that apply be those of the Temporary Order after the 2005 amendment, according to which a child up to age 14 could receive permanent status in Israel, as the petitioners claimed. In the ruling, the President of the Court, Mosia Arad, ruled that the application of the 2005 amendment should be considered in an active manner; that is, as referring also to applications submitted prior to the amendment and still pending, since the purpose of the amendment was to make it more proportionate.<sup>340</sup> In so doing, the judge was siding with the position of HaMoked and the family, and ordered A.A. be granted temporary status. The State appealed the ruling<sup>341</sup> and during the hearing of the appeal, the parties reached an agreement that A.A. would receive temporary residency status and her A/5 visa would be renewed yearly, given the lack of a security or criminal preclusion, while each of the parties maintained its claims on the issues of principle.<sup>342</sup> (Case 16670)

### **Application of the "Security Preclusion" Article to Children**

Article 3(d) of the law includes two draconian provisions which are applied, among others, to children ages 14-18. The first provision, already included in the 2005 amendment, applies the "security preclusion" article to the children of residents. According to the article, no security suspicion against the child himself is necessary in order to separate him from his family. The existence of "negative security information" of any kind attributed to a relative of the child suffices for his family unification application to be refused. In addition, no

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<sup>339</sup> Adm. Pet. 771/06, Abu Gwela et al. v. Minister of Interior et al.

<sup>340</sup> *Ibid.*, Judgment, 7 August 2007.

<sup>341</sup> Admin. App. 8789/07, Minister of Interior et al. v. Abu Gwela.

<sup>342</sup> *Ibid.*, Judgment, 22 January 2008.

conviction for a security offense is necessary, and the suspect does not have to be "wanted," detained or even under interrogation. A written opinion by security officials stating that the family member might constitute a security risk is sufficient.<sup>343</sup> The second provision was added in the 2007 amendment, and instructs that the Minister of the Interior is authorized to determine that a resident of the Territories constitutes a security risk based only on a determination that in his area or country of residence there is activity that might endanger the State of Israel or its citizens.<sup>344</sup> For example, the 15-year-old son who lives with his mother, an Israeli resident, in Israel, but was registered by his father, a resident of Bethlehem, in the population registry of the Territories, is considered by law a "resident of the Area." In keeping with the provisions of the "security" article, any hostile activity that takes place in the city of Bethlehem – and sometimes, in the Bethlehem District – may interfere with his receiving even a temporary permit to reside with his mother in Israel. According to the wording of the article, even hostile activity in the area of the West Bank as a whole can lead to the separation of a minor from his parents.

## **The "Humanitarian Clause"**

The 2007 amendment to the law, introduced an article that enables the Minister of the Interior to approve temporary residency in Israel for special humanitarian reasons, based on the recommendations of a committee of professionals appointed for this purpose. This article is an apparent attempt by the legislator to wash its hands clean and repair the many deficits in the law, which the Supreme Court justices pointed out in the Adalah case. In practice, the "humanitarian clause" that was added, has been restricted from every direction, to the point that it loses any real substance. For example, the maximum status that one can receive according to the "humanitarian clause" is time limited, the clause is applicable only in cases where the applicant is legally present in Israel, and is relevant only when the person who files a family unification for him is a "relative," defined in the law only as a spouse, parent or child. In addition, the article does not address unique cases, and the Minister of the Interior is authorized to impose a quota on the number

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<sup>343</sup> Supranote 328, art. 3d.

<sup>344</sup> Citizenship and Entry into Israel Law (Temporary Order), (Amendment 2), 5767 - 2007, Art. 3(d)5.

of humanitarian exceptions. The very idea of random imposition of quotas stands in absolute contradiction to the idea of a "humanitarian exception." Moreover, until December 2007, the humanitarian committee did not even exist. In many petitions on the topic of family unification submitted during the months that passed until the law was amended, representatives of the state would appear in court and refer the petitioners to the committee, with the promise that it would be established soon, and would provide the relief they sought; however, during that entire time, the committee did not exist. On 5 December 2007, the HCJ ordered the State to give notice within ten days whether the committee had been established as stipulated by law.<sup>345</sup> Only after the Court's intervention did the committee begin operating.

## **Family Unification in the Shadow of the Citizenship and Entry into Israel Law**

### **Temporary Permits**

The full family unification process culminating in permanent residency no longer exists for spouses who are residents of the Territories or countries defined by Israel as enemy nations.<sup>346</sup> In 2005, when the temporary order was first legislated, it was determined that Palestinian men over the age of 35, and Palestinian women over age 25, who were married to residents of Israel, could request to have their stay in Israel arranged for legally only through temporary permits to enter and remain in Israel.<sup>347</sup> The spouse who is a Jerusalem resident is required to submit a family unification application for his spouse. For the application to be approved, both are required to prove that their marriage is genuine and did not take place solely for the purpose of receiving status. In addition, the resident spouse is required to produce documents attesting that he has lived in Jerusalem for at least two years and that the couple does not have an additional residence in the Territories. In addition to the "genuine marriage" and "center of life tests", as they are called by the Ministry of the Interior, the ISA and the police also screen the couple. When the couple has passed all of these "tests" – a process that usually takes months, if not years – the Ministry of the Interior issues them a document

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<sup>345</sup> HCJ 5964/07, *Physicians for Human Rights v. Minister of the Interior*, Judgment, 5 December 2007.

<sup>346</sup> The 2007 amendment specified the residents of four countries to whom the law applies: Iran, Iraq, Lebanon and Syria.

<sup>347</sup> *Supranote 328*, Art. 2.

valid for one year, with which the couple can receive a temporary permit in Israel from the DCO in their area of residence. As mentioned, DCO issued temporary permits do not grant their possessors social benefits, they are valid for only three to six months, and the applicant must physically report to the DCO to renew them. Every year, the couple must apply to the Ministry of the Interior to renew the original document. They are again required to present documents testifying that their center of life is still in Jerusalem, they again must undergo security and criminal screenings, and again the process takes a long time, during which the couple in many cases remains without a valid temporary permit. They must therefore remain in Jerusalem illegally, or move to the West Bank. Both of these possibilities jeopardize their requests for a future temporary permit: illegal presence can lead to delays, detention, deportation to the Territories, and even rejection of the application, while moving to the Territories detracts from their ability to claim a "center of life" in Jerusalem, and can also lead to a rejection of the application.

The options for rejecting applications for family unification for security reasons under the Citizenship and Entry into Israel Law (Temporary Order) were already expanded in 2005; now the law includes the option of rejecting an application even though the spouse himself does not pose a security risk if he has a relative against whom there are security related suspicions. Since the law was changed, the Ministry of the Interior has made frequent use of this article. In most of the cases, the rejection of a family unification application for security reasons is irreversible. In many cases that reach the courts, the State presents classified security information whose content is not revealed to the couple, and the lawyers cannot challenge it. Sometimes, after HaMoked submits an appeal or a petition, the Ministry ultimately grants the couple a temporary permit, but insists on stating that the "security" disqualification is still current. In so doing, the Ministry, with the support of the ISA, is attempting to prevent the couple from receiving status in the future should the family unification process be reinstated, while making arbitrary and unjustified use of the security disqualification pretext.



N.S. has lived in Jerusalem for most of his life, even though he has a West Bank ID. In 1987, he married a Jerusalem resident, and the couple had six children. During the first years of his marriage, he was unable to receive official status in Jerusalem since, according to Israel's policy at the time, only family unification applications submitted by male

residents of the city for their wives were processed. In the mid-1990s, with the change in policy, the couple applied to the Interior Ministry, and beginning in 1999, N.S. received temporary DCO permits that were meant to have been the beginning of a procedure that was to end in the receipt of permanent residency status. And yet, some five years later, the granting of permits ground to a halt, and the only reason given by the Interior Ministry was the cursory message that N.S. was "tied to a terror organization."<sup>348</sup> Only after HaMoked submitted a petition to the Court<sup>349</sup> was the State forced to slowly expose that the basis for the refusal was the fact that N.S. had worked as a custodian at two East Jerusalem educational institutions that were closed by the police even though they operated overtly, within the bounds of Israeli law, and even though they were listed as registered businesses and printed pay stubs in Hebrew.<sup>350</sup>

Since his job was menial, and since the institutions operated in a legal manner, it is clear that N.S. could not have known about illegal activities, if there were any. After HaMoked had proven to what extent the State's claims were ill-based and an additional petition was submitted,<sup>351</sup> the ISA continued to devise additional far-fetched claims for refusing the application. For example, a statement taken from a suspect which mentioned the initials N.S. as someone who was working in the offices of a political party known as "Reform and Change," that was identified with the Hamas, suddenly emerged. There was, however, a snag, namely that this office was located in the Dahiyat al-Bareed neighborhood, outside of Jerusalem, and N.S. had never been there. The ISA also held fast to classified information that it claimed as evidence of an unclear relationship between one of N.S.'s brothers and the Palestinian Authority's security mechanisms.<sup>352</sup>

From the moment it was decided to refuse N.S.'s request, nothing could change the ISA's decision. And yet, N.S.'s situation is somewhat better than that of many others since HaMoked's legal assistance led to the exposure of the main reasons behind the refusal to grant status; and when the State

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<sup>348</sup> Letter from the Ministry of the Interior to the S. family, 28 August 2006.

<sup>349</sup> Adm. Pet. 300/07, Salhab v. Ministry of the Interior.

<sup>350</sup> *Ibid.*, Response on behalf of the Respondents, 28 March 2000, sec. 26.

<sup>351</sup> Adm. Pet. 1112/07, Salhab v. Ministry of the Interior et al.

<sup>352</sup> *Ibid.*, Response on behalf of Respondent requesting to order a Response to the Request for Additional Details, 19 May 2008.

deigns to specify "security reasons," an opening (albeit narrow) is created for dealing with the "security" preclusion. Others in his situation are forced to contend, as if blindfolded, with generalized and unspecified claims backed only by classified material. (Case 44444)

### Temporary Residency

A person who received a temporary residency permit (A/5 visa) prior to the cancellation of the family unification procedure, can renew it indefinitely according to the conditions below, but cannot receive permanent status. He is eligible for social services such as national health insurance and a pension from the National Insurance Institute (NII), but this is pending the annual renewal through proving "center of life" to the Interior Ministry as well as criminal and security screenings. Processing the renewals often results in long gaps between one A/5 visa and the next. During these long breaks, the spouse has no legal status in Israel and no social rights. The fact that the status is temporary is exploited by the Ministry to revoke it even at an advanced stage of the process, often leaving a spouse with no status at all and no social rights; in some cases the spouse is even forcibly cut off from his family and home in Jerusalem.



In 1999, the State authorized J.P. to embark on a graduated process that was ultimately to grant him permanent status in Israel. His wife, F.F., is a Jerusalem resident, as are their six children. According to the procedure, J.F. was supposed to receive permanent residency status in 2004, but due to the changes in Israel's policy, he has been left since 2001 with temporary status, while his A/5 visa was renewed from time to time. In November 2006, the couple's request to renew J.F.'s permit was suddenly rejected, and his Israeli identity card was taken from him on the spot. In response to HaMoked's inquiry, the Population Administration wrote: "I hereby inform you that your application for family unification was evaluated and the following decision was rendered: refusal of application for security reasons because J.F.'s brothers are active in a terrorist organization and involved in violent activity."<sup>353</sup> With a single stroke of the pen, J.F., husband,

<sup>353</sup> Letter from Hagit Weiss, Head of Family Unification Branch in the East Jerusalem Population Administration Bureau to HaMoked, 6 November 2006.

father, and family breadwinner for eight people, became an illegal resident with no political and social rights, subject to a single fate: deportation, all for no reason or any action of his own, and with no possibility of countering the claims made against him. HaMoked, on the family's behalf, submitted an administrative petition demanding that the refusal be substantiated,<sup>354</sup> but in response, it was claimed that the evidence according to which J.F.'s request had been denied was classified. All that was stated was that one of J.F.'s brothers was in administrative detention, and another was serving a prison sentence for security offenses.<sup>355</sup> The State even presented a certificate of confidentiality signed by the Minister of Defense. HaMoked submitted a petition demanding that the State reveal the material,<sup>356</sup> but the petition was deleted after the names of J.F.'s three brothers, who, according to Israel's claim, constitute the grounds for the security prohibition, were revealed, and a modicum of information was provided regarding the offenses attributed to them. These three brothers are J.F.'s half brothers, and J.F. has testified that he has no ties with them since, following a family dispute, they cut off ties many years ago. When the weakness of the State's claim became apparent, an additional claim – not previously invoked – appeared, according to which the petitioner himself constituted a security threat. The State refused to provide information on the matter, and this claim, as well, was protected by a certificate of confidentiality. HaMoked submitted an additional petition, attacking the reasons for the rejection itself, as well as the manipulative use made by the State of the security article.<sup>357</sup> **(Case 7356)**

### **Family Unification for Palestinians who are not Residents of the Territories**

The Citizenship and Entry into Israel Law (Temporary Order) does not apply to foreign spouses who are not residents of the Territories or of one of the four nations to whom the temporary order applies. Foreign spouses married to residents of East Jerusalem are still eligible for the graduated family unification

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<sup>354</sup> Adm. Pet. 187/07, Fafus et al. v. Minister of Interior, et al.

<sup>355</sup> *Ibid.* Response on behalf of the Respondents, 20 February 2007.

<sup>356</sup> HCJ 7792/07, Fafus et al. v. Minister of Defense et al.

<sup>357</sup> HCJ 8121/08, Fafus et al. v. Minister of Interior et al.

process. First, after the couple's family unification application is approved, the foreign spouse receives temporary permits for 27 months. These permits enable him to enter and remain in Israel legally, but they afford no status or rights. Subsequently, the foreign spouse can receive temporary residency status, but this must be renewed annually. After three years, he can submit a request for permanent residency. Approval of the application depends on the Jerusalem-resident spouse proving a "center of life", the couple proving that the marriage is genuine, and undergoing security screening. The couple must undergo each of these checks annually, as a condition for renewing the temporary permit for the foreign spouse so that he may change or upgrade his status. Children born to the couple while they were outside of the State of Israel can receive temporary status for two years, followed by permanent status, if their request is submitted prior to the child reaching the age of 18. At the beginning of 2007, HaMoked received a number of cases in which the Interior Ministry refused the family unification applications of East Jerusalem residents married to foreign spouses. The foreign spouses were of Palestinian origin, but were not registered in the population registry in the Territories, and in any case, the Ministry, in violation of the law, decided to apply the temporary order to them, as if they were Palestinian residents of the Territories. As a result, the applications of those who did not fulfill the criteria, for example the age criterion stipulated in the temporary order, were not processed and their applications for family unification were rejected.



H.A., a Jerusalem resident, married a Jordanian citizen in 1975. She submitted a family unification application for him back in 1977, but due to Israel's discriminatory policy, family unification applications submitted by women for their husbands were not accepted. In 1994, with a change in the policy, H.A. submitted a second family unification application for her husband and children. The official rejection of the application was received in 1997, together with a notice that H.A.'s residency had also been revoked. Only in 2004 was H.A.'s residency restored, subject to comprehensive proofs of her family's center of life. Over the years, H.A. lived with her family in a number of locations in Jerusalem, and she even produced documents attesting to this, but this did not prevent the Ministry of the Interior from again rejecting her family unification application, this time on the claim that she had submitted false documents. After the Interior Ministry also rejected H.A.'s appeal of the decision,

HaMoked filed a petition on behalf of the family.<sup>358</sup> During the discussion of the petition, the Court cast doubt on the Interior Ministry's claim regarding the reliability of the documents. The parties reached an agreement that the request would be reviewed again, and that a ruling would be rendered within a reasonable time.

While the family was still waiting for the Interior Ministry's decision on their matter, they received a response to the family unification application of H.A.'s adult son. F.A. had arrived in Israel with his family while still a minor. In 2005 he had married a Jerusalem resident, who submitted a separate family unification application for him. In its response, the Interior Ministry viewed F.A. as a "resident of the Area," i.e. a resident of the Territories, and since the provisions of the Citizenship and Entry into Israel Law (Temporary Order) applied to him, he did not fulfill the criteria for approval for a family unification request.<sup>359</sup> In his appeal of the decision, F.A. stated that since his entry into Israel from Jordan, he had lived exclusively in Jerusalem, and had never lived in the West Bank or the Gaza Strip, as the Interior Ministry's response implied. The Interior Ministry's response to the petition revealed that the Ministry related to the family members as residents of the Territories, and not as residents of Jordan,<sup>360</sup> even though there was no evidentiary basis indicating that they had ever lived in the Territories. The claim that the applicants were "residents of the Area" contradicted information that had accumulated from the National Insurance Institute investigations of the family through hearings to which they had been summoned, from the Interior Ministry's response to the petition, and Court hearings, and completely contradicted the agreement between the parties. Either way, the Ministry of the Interior decided to relate to the family unification applications of Jordanian citizens, living legally in Jerusalem, through the same legal prism determined for residents of the Territories, and in so doing deprived the family of the possibility of fulfilling its legal rights and did not even see fit to back its claims with factual data. HaMoked filed a petition on behalf of the family,<sup>361</sup> and the Court issued an interim order prohibiting deportation of the family members until the hearing of the petition, scheduled for June 2008. **(Files 49268, 43489)**

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<sup>358</sup> Adm. Pet. 1168/06, Abu Sneina et al. v. State of Israel – Ministry of Interior et al.

<sup>359</sup> *Ibid.*, Respondents' Brief, 6 February 2007.

<sup>360</sup> Letter from Hagit Weiss, Head of Family Unification Branch in the East Jerusalem Population Administration Bureau to HaMoked, 26 June 2007.

<sup>361</sup> Adm. Pet. 950/07, Abu Sneina et al. v. Ministry of the Interior et al.

## **Ministry of the Interior and the Population Administration**

The Population Administration bureaus and the clerks who work in them are the executors of Israel's policy on topics relating to the granting of status. In effect, even before the Citizenship and Entry into Israel Law (Temporary Order), a discriminatory policy motivated by inappropriate considerations of nationality and race was reflected in the activity of the clerks and in the procedures of the bureau.<sup>362</sup> While ministers and governments that come and go have an influence to a greater or lesser extent on Israel's policy regarding its Palestinian residents and citizens and regarding foreign nationals who wish to live there, the Population Administration and its workers over the years have presented a united front, whose goal is to protect and preserve the Jewish character of the State of Israel, and in so doing, they have trampled the basic rights of those who turn to it for assistance. According to law, the powers relating to the securing of status in Israel reside with the Minister of the Interior. Over the years, many of these powers have been delegated to clerks in the Population Administration, and in effect, they make most of the decisions. Tremendous power is thus concentrated in the hands of the clerical echelon that carries out its job as a "defender of democracy," through use of an obscure, secret and exhausting bureaucratic system in order to disempower non-Jews seeking official status in Israel.

### **The Inter-Ministerial Committee**

The Inter-Ministerial Committee at the Population Administration for Determining Status in Israel (hereinafter: the Inter-Ministerial Committee) handles exceptional humanitarian cases in which applicants are not eligible for status in Israel according to the regular criteria. This should not be confused with the committee formed following the Amendment to the Citizenship and Entry into Israel Law (Temporary Order) of 2007, established to process requests of Palestinian residents of the Territories who did not fulfill the criteria for receiving status according to the Temporary Order, but

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<sup>362</sup> For more on this matter see, The Association for Civil Rights in Israel, *The Ministry – Human Rights Violations by the Population Administration, 2004* (in Hebrew), <http://www.acri.org.il/story.aspx?id=1005>

whose requests were of a humanitarian nature. For example, the request of a 23-year-old resident of the Territories married to a Jerusalem resident, who, due to her age, cannot submit a family unification request, will be processed by the latter committee established after the 2007 amendment, if it is convinced that the case involves exceptional humanitarian considerations. The Inter-Ministerial Committee, in contrast, is precluded from handling cases of people to whom the Temporary Order applies, and focuses only on requests by foreign nationals who are considered, according to the procedures: "non criteria." For example, the Inter-Ministerial Committee will deal with cases of grandparents submitting family unification requests for their grandchildren, or cases of children of a union between a Jerusalem resident and a Jordanian citizen who are over 18 and seek status in Israel. The committee's members comprise representatives from the Interior Ministry the ISA, the Israel Police, the Ministry of Health, the Ministry of Labor and Social Assistance, and the liaison bureau, and its meetings are also attended by the Legal Advisor of the Interior Ministry and a representative of the Population Administration.<sup>363</sup> The committee is supposed to convene every two months, but the dates of the meetings and their protocols are not published, and it is not possible to ask to participate in the meetings or to appear before the committee. The procedure according to which the Inter-Ministerial Committee operates, like many procedures of the Ministry of the Interior, is worded laconically, and conceals more than it reveals. Requests to the committee must be submitted at the regional Population Administration bureau, where they are screened before a decision is rendered as to whether or not they will be forwarded for discussion in the committee. Many of the requests are rejected already at this stage, with no substantiation save the addition of the words "non criteria," but the criteria according to which the committee operates are unknown, and the applicant is not allowed to know whether his request will even reach the committee and what chances it has of being approved. Requests that are not rejected immediately are apparently meant to be sent to the Inter-Ministerial Committee, but in these cases as well, the applicant

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<sup>363</sup> Ministry of the Interior, Inter-ministerial Committee at the Population Administration for Determining and Granting Status in Israel, procedure number 5.2.0022, Art. 3 (in Hebrew), [http://www.moin.gov.il/Apps/PubWebSite/publications.nsf/All/50608A6F61522C03422570AD0043F80D/\\$FILE/Publications.2.0022.pdf?OpenElement](http://www.moin.gov.il/Apps/PubWebSite/publications.nsf/All/50608A6F61522C03422570AD0043F80D/$FILE/Publications.2.0022.pdf?OpenElement).

does not know if his request was forwarded, when it was sent, when it will be reviewed (if at all), and when an answer can be expected. And since nowhere in the working protocol of the committee is there a definition or even a mention of the term "humanitarian," it is the committee itself that determines its meaning, or, more accurately, that empties it of content. In many cases, the committee refuses requests of a clearly humanitarian nature, mainly in cases where the foreign spouse is of Palestinian origin.



N.M., a Jerusalem resident, married a Jordanian citizen in 1978. Until 1995, the couple lived in Jordan and Saudi Arabia for employment purposes. In 1995, the family returned to Jerusalem and divided their time between Jerusalem and nearby Qalandiya, and since the beginning of the year 2000, the family has lived in Jerusalem. In 1996, N.M. was informed that although she had taken care to renew her travel documents, as she was directed, her residency in Israel had been revoked. N.M. insisted on her right to live legally in her homeland, and in 2003, HaMoked was able to restore her status. Following this, N.M. applied to secure the status of her children and spouse, but for three of her children, it was too late. By this time, they were already legal adults. Had Israel not revoked their mother's residency, she could have secured their status before they turned 18, but this consideration did not prevent the Ministry of the Interior from announcing that it would refuse requests to secure their status – should such requests be submitted – on the claim that "they do not meet the criteria."<sup>364</sup>

N.M. is a homemaker, and her husband does not work. Neither of them is healthy, and one of their children suffers from a serious birth defect and requires medication. In addition to the living expenses, the family must also regularly pay for expensive medications. Two of the adult children whose applications for status were refused were the main wage-earners in the family. They are not married, and both live with their parents, making a living from occasional construction jobs, all of them in Israel. HaMoked contacted the Ministry of the Interior on the family's behalf, asking that they be allowed, regardless of the criteria, to submit a request to arrange their status,

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<sup>364</sup> Letter from Miriam Asraf, Interior Ministry Employee, to HaMoked, 13 January 2005.

without it being rejected out of hand. The request emphasized the special circumstances on account of which the applications were only submitted after the applicants had exceeded the age stipulated in the law, and presented the humanitarian ramifications of denying the possibility of securing legal status in Israel. It was further noted that the effect was essentially to split the family into two, and that the applicants had no connection to any place except Israel.<sup>365</sup> Following the request, the Interior Ministry deigned to enable the three adults to submit requests for humanitarian reasons.<sup>366</sup> In December 2006, the three arrived for their appointment to the Ministry of the Interior, and submitted their requests together with documents attesting to "center of life" in Israel as well as resume questionnaires intended for the eyes of the security authorities. Submission of the requests required payment of a fee of NIS 590 for each request. Two months later, the requests were refused on the grounds that "no humanitarian reasons were found to justify the granting of status in these cases."<sup>367</sup> HaMoked appealed the decision,<sup>368</sup> and seven months later, when no substantive response had been received, HaMoked submitted a petition to the Administrative Court<sup>369</sup>. During the discussion of the petition, it transpired that in contradiction to the Interior Ministry's promise, the requests had never been forwarded to the Inter-Ministerial Committee, but had been disqualified previously by Ministry representatives. The procedure had only been a matter of show. The ruling on this petition is still pending. **(Case 25857)**

Even when a request is not rejected out of hand, and is forwarded to the Inter-Ministerial Committee, this does not ensure that the committee will discuss it and produce conclusions; and even when the Court has determined a tight time frame in which the Ministry is required to rule on the requests based on humanitarian considerations, the committee acts as it pleases.

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<sup>365</sup> Letter from HaMoked to Hagit Weiss, Head of Family Unification Branch in the East Jerusalem Population Administration Bureau, 22 October 2006.

<sup>366</sup> Telephone conversation between Miriam Asraf, Interior Ministry Employee, and an attorney on behalf of HaMoked, 13 November 2006.

<sup>367</sup> Letter from Maya Levin, Senior Coordinator, East Jerusalem Population Administration Bureau, to HaMoked, 5 March 2007.

<sup>368</sup> Letter from HaMoked to Hagit Weiss, Head of Family Unification Branch in the East Jerusalem Population Administration Bureau, 15 April 2007.

<sup>369</sup> Adm. Pet. 1028/07, Mustafa et al. v. Minister of Interior et al.



H.A. was born in Israel in February 1994, and has lived there all of her life. Her mother, a Jerusalem resident, died before her eyes when H.A. was four years old, and she has since lived in Jerusalem with her grandmother, who is her legal guardian. H.A.'s three sisters divide their time between the grandmother's house, and that of their father in Hebron, but H.A. is very close to her grandmother, and considers her as her mother. Already in 2003, the grandmother tried to secure H.A.'s status with HaMoked's assistance; after three years during which H.A. and her grandmother were required to submit repeated requests, documents that had already been submitted, and were referred to procedures that did not exist, HaMoked submitted a petition to the Administrative Court on their behalf.<sup>370</sup> Before the petition was discussed, the Interior Ministry announced that the request for securing H.A.'s status would be forwarded to the Inter-Ministerial Committee,<sup>371</sup> and the Court ruled that within 120 days, the Ministry had to render a final decision on the grandmother's request for permanent residency for her granddaughter.<sup>372</sup> Over six months from the day the ruling was issued, the Interior Ministry announced to HaMoked that the "request was forwarded for discussion and decision of the Inter-Ministerial Committee at the headquarters."<sup>373</sup> Not only had the date for the decision, set by the Court, passed, but the letter did not even state when the request had been forwarded to the committee, when the review would take place, and gave no indication of when a decision might be anticipated. HaMoked submitted an additional petition to the court, and in addition, updated the court that H.A.'s father had died suddenly from an illness in July 2007, and that her grandmother was the only adult family member remaining.<sup>374</sup> In the beginning of December 2007, a year after the ruling in the previous petition, the respondents' counsel informed the Court that the request on H.A.'s matter would be discussed in the Inter-Ministerial Committee on the 27<sup>th</sup> of that month; therefore, he asked to delete the petition.<sup>375</sup> It is known that the Inter-Ministerial Committee

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<sup>370</sup> Adm. Pet. 687/06, Hajij et al. v. State of Israel – Director of East Jerusalem Population Administration Bureau.

<sup>371</sup> Letter from Nasra Hiyat, Dept. Head in Ministry of the Interior, to HaMoked, 7 September 2006.

<sup>372</sup> Supranote 370, Judgment, 18 October 2006.

<sup>373</sup> Letter from Nasra Hiyat, Dept. Head in Ministry of the Interior, to HaMoked, 10 June 2007.

<sup>374</sup> Adm. Pet. 733/07 Hajij et al. v. State of Israel – Director of Population Administration.

<sup>375</sup> *Ibid*, Urgent Notice on behalf of Respondent, 3 December 2007.

reviewed the request, but its decisions never reached the petitioners. In the framework of the petitions, the parties reached the agreement that H.A. would receive permanent status.<sup>376</sup> (Case 27331)

## Procedures

The Population Administration of the Interior Ministry is a mechanism which is authorized to realize – or not realize – the most basic rights and freedoms of every person in Israel. Its clerks run the population registry, issue identity cards and passports, and have the authority to grant entry and visitation permits to Israel. They thus possess the power to set the conditions for the granting of status in Israel, the revocation of status or deportation. Precisely because the powers in the hands of the Interior Ministry and its clerks are so great, it is of supreme importance that the procedures and criteria that underlie their decisions be clear and known, and that maximum transparency apply to processes that are so fateful. In effect, the precise opposite is true: many procedures are never made public, and those that are, are incomplete and are not updated, and as a result, tend to be misleading. Repeated requests of HaMoked and other human rights organizations on this matter have been rejected. Moreover, the procedures are concealed not only from the public, but also from the Knesset, and often, even from the courts. This enables the Ministry of the Interior and its clerks to change the "procedures" they follow from one day to the next and even to supply applicants with inconsistent information and, in effect, to prevent them from knowing their rights and demanding their realization. The phenomenon is even worse in the case of Israeli residents of Palestinian origin; it appears that in their case, the Population Administration sets for itself the goal of foiling their requests, complicating the process and ultimately revoking residency from as many Palestinians as possible and granting status to as few as possible.

In May 2007, HaMoked, together with four other human rights organizations,<sup>377</sup> submitted a petition to the Administrative Court in order to put an end to the concealment of the procedures adhered to by the Interior Ministry in matters

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<sup>376</sup> *Ibid.*, Judgment, 22 April 2008.

<sup>377</sup> The Association for Civil Rights in Israel, IRAC – Israel Religious Action Center, The Hotline for Migrant Workers, and the Worker's Hotline

of population registration.<sup>378</sup> In the petition, the organizations demanded to be able to study the complete and updated collection of procedures, and that the administration publish them in their entirety, both in the offices of the Interior Ministry across the country and on the Ministry's website, and to update their publications in keeping with changes in the procedures. The petition was submitted as part of a years-long struggle by HaMoked and other organizations against the Ministry of the Interior, which refused on various pretexts, to expose the procedures according to which the clerks of the Population Administration operated, even though the obligation of every public authority to publish its procedures is grounded in the Freedom of Information Act.<sup>379</sup> HaMoked's work has revealed that the procedures – which, as stated, change from one day to the next – are often unknown even to the clerks of the Ministry themselves, although it is they who are responsible for implementing them. Moreover, the procedures are even concealed from individuals within the Ministry of the Interior, such as the internal comptroller of the Ministry, as well as from the Knesset Interior and Environmental Committee, the parliamentary committee whose task is to oversee the work of the Ministry.<sup>380</sup> The petition opens by describing a long series of occasions on which the petitioners' attempts to realize their legal right to view said procedures were thwarted and the recurring maneuvers designed by the Interior Ministry to evade its obligations on this matter as stipulated in law, even in cases where the courts addressed the obligation to inform the public about the existence and content of procedures of the Population Administration and to publicize them in full. In response, the Interior Ministry's counsel submitted the following laconic response to the court: "After the issue that is the subject of the petition was examined by the professional and legal echelons of the Interior Ministry, the respondent chose to reexamine the procedures of the Population Administration and to publish all of the procedures on the Internet site of the Ministry of the Interior [...] with the exception of information which is classified by law."<sup>381</sup>

In the hearing held on the petition on 14 November 2007, counsel for the Ministry of the Interior reiterated the notice she had submitted to the court, but claimed that six months were necessary to publish the procedures on

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<sup>378</sup> Adm. Pet. 530/07, Association for Civil Rights in Israel et al. v. Ministry of the Interior.

<sup>379</sup> Freedom of Information Act, 1998, Art. 6a.

<sup>380</sup> Supranote 378, pars. 28-31.

<sup>381</sup> *Ibid.*, Notice and Request on behalf of Respondent, 6 November 2007.

the Internet site, and that there were internal operational procedures of the Ministry whose publication was not mandatory under the Freedom of Information Act. The Court utterly rejected the Ministry's position stating that "general commitments of this nature, to publish the procedures 'in the near future' have been conveyed over the years. As we have witnessed, these commitments have not been upheld to this day."<sup>382</sup> The claim of the Interior Ministry that the procedures were published on the Ministry's Internet site was also baseless. In addition, the Court, siding with the position of the petitioning organizations, ruled that in keeping with the claims of the Interior Ministry regarding the existence of the procedures it followed, and through which it applied its power, there was no basis for concealing them from the public. The Court determined that the Interior Ministry must publish all of its procedures and guidelines within 30 days of the ruling, in a manner that was accessible and clear to the public.<sup>383</sup> By the end of thirty days from the day of the ruling had passed, many procedures had been posted on the Ministry of Interior's website, but many others had not. An examination of the procedures that were published reveals that many of the them had been concealed not because they necessarily included harsh or discriminatory directives, but because, in many cases, they included more lenient directives. The organizations are tracking the continued publication and updates of the procedures. (Case 50688)

## Revocation of Residency

As stated, permanent residency status is substantially different from citizenship. The central rights accruing from permanent residency are the right to live in Israel, the right to work in Israel, and the right to receive social benefits, including national health insurance. Permanent residents are not entitled to vote in Knesset elections, only in municipal elections, and they are not eligible for an Israeli passport. The Minister of the Interior may cancel residency based on his exclusive discretion, and under certain circumstances, a permanent residency permit can expire without any intervention by the Interior Ministry, such as if its possessor moves abroad.<sup>384</sup> The Interior

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<sup>382</sup> *Ibid.*, Judgment, 5 December 2007, par. 36.

<sup>383</sup> *Ibid.*, par. 38.

<sup>384</sup> Art. 11 of the Citizenship Law, 5712 - 1952; Art. 11 of the Entry into Israel Law, 5712 - 1952, Regulation 11 of the Entry into Israel Regulations, 5734 - 1974, HCJ 282/88, 'Awwad v. Prime Minister and Defense Minister, *Piskei Din* 42 (2) 424, p. 431/433.

Ministry interprets the law as relating only to emigration to a destination outside of Israel and East Jerusalem. It revokes the status of those who leave and does not recognize their return and residency as rendering them eligible for rights, with the exception of cases that fulfill the strict criteria stipulated by the Ministry of the Interior.<sup>385</sup> Intervention by HaMoked, or any other legal expert, often forces the Ministry into a corner, requiring it to reinstate the expired status.

M.H. was born in Jerusalem in 1947, and received permanent residency status after the occupation and annexation of the city. In 1972, he married a United States resident, and went to live with her in the U.S.. Four years later, he was critically injured in a car accident, and hospitalized for a long period. Injuries sustained to his head left him an invalid, mentally ill, and requiring constant care. His wife divorced him and returned him to Israel so that his siblings and family could care for him. Due to his difficult situation, M.H. needed round-the-clock care and supervision. His brother, A.H., contacted the NII to receive disability payments for him, in order to help the family care for him, but he learned that M.H.'s residency had been revoked after he had received American citizenship<sup>386</sup> and that M.H. was not eligible for any disability payments since he had been injured outside of Israel, at a time when he was already an American citizen. A.H. contacted the Interior Ministry in order to restore his brother's residency and, indeed, in 1985, M.H. was issued a new identity card and his status as a permanent resident was restored. In 2000, A.H. contacted that Ministry of Social Assistance asking for help in caring for his brother, and the Ministry arranged institutional nursing care for him. The care is funded by the NII based on M.H.'s status as a permanent resident of Israel.

In December 2006, A.H. received a letter from the NII informing him that M.H.'s residency had been revoked beginning September 2006. The Interior Ministry confirmed this to A.H., but refused to supply a formal letter as proof of the revocation, or substantiate it. In May 2007, HaMoked requested that the Interior Ministry provide an explanation regarding the revocation of residency; according to the documents received, the revocation of

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<sup>385</sup> See HCJ, 2227/98, HaMoked et al. v. Minister of Interior et al., Additional Response Affidavit, 15 March 2000 ("Sharanski Affidavit") [http://www.hamoked.org.il/items/3055\\_eng.pdf](http://www.hamoked.org.il/items/3055_eng.pdf).

<sup>386</sup> According to Art. 11 a(3) of the Entry into Israel Regulations, 5734 - 1974.

M.H.'s residency had been effective since 1982. In all likelihood, there had been a clerical error; since in 1985 M.H. received his identity card, but until rectification of the error, M.H. would lose all of his social benefits, including the health insurance that paid for his institutional nursing care. HaMoked contacted the nursing facility and even made contact between it and Physicians for Human Rights - Israel, to find a temporary solution to finance M.H.'s medical care. At the same time, the Interior Ministry began its own clarifications, and summoned A.H., who had power of attorney for M.H., to a hearing in June 2007. In addition, the Interior Ministry demanded to see many documents relating to M.H. including passports, marriage agreement, divorce agreement, medical reports from abroad, and more. Since M.H. had returned to Israel alone, in a dire medical condition, most of these documents were not in his possession, and today, more than 20 years after his return, there is no way of obtaining them. M.H.'s passport could not be located, but HaMoked reached an agreement with the Interior Ministry regarding alternative documents that could be obtained, such as a wedding photo instead of a marriage agreement. Ultimately, M.H.'s residency was restored retroactively, beginning from April 16, 1985,<sup>387</sup> and in October 2007, he was given a new identity card. **(Case 49601)**

At the end of 2007, HaMoked uncovered yet another attempt by Israel to limit the number of Palestinians living within its bounds. This time, the issue was renegeing on arrangements relating to granting of status. On 31 December 2007, the Interior Ministry published an ad in the al-Quds Arabic-language newspaper calling on residents of the West Bank who had lived in Jerusalem without a permit since the period prior to 31 December 1987 and to the day of the ad's publication continuously, to submit requests for temporary permits. The ad referred to government decision 2492, which passed in October of that year, but had not yet been released to the public.<sup>388</sup> Until this decision, the Interior Ministry had tended to grant permanent residency status even to individuals who were not registered in the 1967 Jerusalem census, but could prove that they had been permanent residents of the city prior to

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<sup>387</sup> Letter from Ministry of the Interior, East Jerusalem Population Administration Bureau, to HaMoked, 8 July 2007.

<sup>388</sup> Government Decision 2492, Temporary Permits for Judea and Samaria Residents Residing in Jerusalem for a Protracted Period without Legal Permits, 28 October 2007.

the census, and since then had lived there continuously. The government decision obviates this possibility, and grants these same people – even if they prove that they lived in Jerusalem from 1967 to this day – a temporary permit that affords no status of any kind, and also does not confer social benefits, including national health insurance. Following publication of the ad, HaMoked contacted the Interior Ministry to register its reservations against various aspects of the decision.<sup>389</sup> Among other things, HaMoked objected to the fact that implementation of the decision also applied retroactively to requests for permanent status that had already been submitted and were being processed by the Administration. HaMoked claims that the basis for the government's decision is an invalid demographic goal that aims to prevent the inclusion of non-Jews in the State of Israel's population registry.

In addition, this same government decision determined arbitrarily that the requests for permits must be submitted no later than 30 April 2008, and that they must include a long, almost impossible list of documentary evidence, including, *inter alia*, proof that the applicants have continuously lived in Jerusalem at least from 1987 to the present. HaMoked made clear in its letter that the requirement to produce documents proving that one's "center of life" is in Jerusalem is not in itself unreasonable, but at the same time, it must be proportional. Proof of residence in Jerusalem for the past 20 years is likely to be difficult and complicated in any case, and any insistence, for example, for consecutive leases over such a long period, is a demand that overburdens the applicants; the same holds true for the unreasonable, burdensome and expensive demand to append an aerial photograph of one's home, approved by the Survey of Israel. HaMoked also demanded that the government's decision be translated into Arabic and publicized among the Palestinian public. In its response, the Interior Ministry rejected HaMoked's reservations, claiming, *inter alia*, that stipulation of a final date for the submission of requests was intended to assess the "extent of the phenomenon," and that at the basis of the government's decision was the view that the possibility of receiving permanent status had long been exhausted, and that the state had no obligation to continue granting this status based on 40-year-old claims of residency.<sup>390</sup> HaMoked again wrote to the Ministry of the Interior, clarifying

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<sup>389</sup> Letter from HaMoked to Mr. Yaakov Ganot, Director, Population Administration, 1 January 2008.

<sup>390</sup> Letter from Atty. Naama Peli, Office of the Legal Advisor for Ministry of the Interior, to HaMoked, 25 August 2008.

that the use of requests by people seeking to secure their legal status in Israel in order to assess the "extent of the phenomenon" of illegal presence in Jerusalem was motivated by extraneous considerations and unfair. But even more disturbing was the implication of the Ministry's response that this "reason" was probably what underlay the government's decision. Israel, through the Ministry of the Interior, was trying to squeeze as many personal details as possible out of those present in Israel without a permit, all under the guise of a "humanitarian arrangement."<sup>391</sup> The unreasonable requirements placed in the path of permit-seekers raise the suspicion that there is no true intention of granting the applicants permits.

In the 1990s, as part of the policy termed "the quiet deportation," the Interior Ministry revoked the status of hundreds of permanent East Jerusalem residents who had moved to live outside of the Jerusalem municipal boundaries, even if their new homes were only meters away from the city limit.<sup>392</sup> HaMoked's fear that the State is planning the "next step" with the goal of "dealing" with those whom the Interior Ministry had deemed ineligible for permits, intensified when it received the Ministry's response, stating: "this is a decision based in humanitarian considerations, intended to apply on a one-time basis and for a short period, and in order to bring the matter to an end; conclusion of the processing requires providing an overall response to the topic addressing all aspects thereof, both in regard to those deemed eligible based on the decision, as well as those found to be ineligible."<sup>393</sup>

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<sup>391</sup> Letter from HaMoked to Atty. Naama Peli, Office of the Legal Advisor for Ministry of the Interior, 1 April 2008.

<sup>392</sup> For more on this issue see, HaMoked and B'Tselem, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*, 1997; HaMoked and B'Tselem, *The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of East Jerusalem Palestinians*, 1998.

<sup>393</sup> Letter from Atty. Naama Peli, Office of the Legal Advisor for Ministry of the Interior, to HaMoked, 7 April 2008.



# Residency in the Territories

**“Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality [...].”**

Universal Declaration of Human Rights (1948), Article 15

With the occupation of the Territories in 1967, Israel conducted a census in the West Bank and Gaza Strip. The census registered only the Palestinians physically present at the time in the territories, and they received permanent status therein. Anyone not present in the Territories, for any reason whatsoever, lost his residency. Since then, and until the beginning of the second intifada in September 2000, a person not registered in the population registry could obtain status in the Territories only through a family unification application, which can be submitted by a first-degree relative who is a resident of the Territories.<sup>394</sup> In addition to all this, children under the age of 16 can register in the Palestinian population registry and receive residency status in the Territories if one of their parents is a resident of thereof. The Oslo Accords formally transferred the authorities for administering the registry to the Palestinian Authority (PA), which was vested with the power to accept requests of residents, update their information, and register children under age 16 in the Palestinian population registry, without prior approval from Israel. Israel retained authority over approval of family unification applications and issuance of visitor permits for foreigners.<sup>395</sup> In such cases, the PA serves as an intermediary, receiving the applications and passing them on, after screening,

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<sup>394</sup> Today, almost all such requests involve residents of the Territories married to foreign spouses.

<sup>395</sup> A visitor permit is in effect a tourist visa issued exclusively for the Occupied Territories.

for Israel's approval. With the beginning of the second intifada, Israel stopped accepting family unification applications from the PA, and refused to issue visitor permits to the Territories, including visitor permits necessary for the registration of children. In September 2005, after HaMoked intervened and took legal action, the granting of visitor permits for purposes of registration in the Palestinian population registry was renewed for children under age 16. HaMoked's intervention in individual cases, and appeals to the courts, often leads to the approval of family unification applications and issuance of visitor permits, but each time, the State insists that its consent is exceptional and beyond what is required by law. In 2007, HaMoked invested tremendous effort in challenging Israel's policy and forcing it to uphold its obligations to the Palestinian population, including the renewal of processing requests regarding residency in the Territories.<sup>396</sup>

## Family Unification

The family unification process has undergone many changes since 1967 – changes in the criteria, procedural obstacles put forward by the army authorities, and frequent changes in the procedures – and this is in addition to the failure to respond to applications and lack of consistency in processing them. During the period immediately following the occupation of the Territories, Israel tended to approve family unification applications from residents of the Territories. This policy was based, apparently, on the instructions of Article 26 of the Fourth Geneva Convention, and in recognition of the urgent humanitarian need for family unification for many residents who were separated from their family members during the war and due to the separation of the West Bank from Jordan. However, beginning in 1973, Israel changed its policy and in practice, save some exceptional cases, ceased allowing family unification in the Territories. The approach underlying the change was that residents of the Territories do not have the right to family unification, and the approvals given in these cases were a mere gesture of good will on Israel's part. This approach characterizes Israel's policy to this day.

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<sup>396</sup> For more on this topic see HaMoked and B'Tselem, *Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories*, July 2006, [http://www.hamoked.org.il/items/13000\\_eng.pdf](http://www.hamoked.org.il/items/13000_eng.pdf)

## **Israel's Policy until the Outbreak of the Second Intifada**

With the cessation of family unification process by Israel, the only way for families in which one of the spouses was a foreign national to live together in the Territories was by receiving temporary visitor permits. In the late 1980s, during the first intifada, Israel began deporting foreign spouses and their children who were not registered in the Palestinian population registry and whose visitor permits had expired. Soldiers in military jeeps would make night rounds, remove children and women from their homes, and deport them across the border. In January 1990, this matter was reported in the *Washington Post* and the deportations were suspended. During the first half of the 1990s, HaMoked and other human rights organizations submitted petitions to the HCJ regarding family unification in the Territories, and the permit policy was reviewed and re-fashioned in response to these petitions.<sup>397</sup>

Exceptional humanitarian reasons or government interest were no longer required in order to enable shared family life in the territories; the existence of a family was enough, as long as there was no security preclusion. The change in policy reflected the recognition of marriage to a resident of the Territories as a criterion for settling therein. All of the petitions were deleted following Israel's undertaking: arrangements were made for families that were already split during the time the petitions were submitted that allowed the "foreign" spouse to remain in the Territories permanently, through long-term visitor permits that had to be renewed every six months. These spouses would be eligible for full residency in the Territories through a family unification application subject to the absence of a security preclusion. These arrangements created what became to be known as the "first HCJ population" and the "second HCJ population."<sup>398</sup>

In addition, it was decided that marriage to a resident of the Territories would itself constitute a criterion for the approval of a family unification application, subject to an annual quota of 2,000 applications. Later, the quota was increased to 4,000 per year. The recognition of marital ties as justifying

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<sup>397</sup> The policy coalesced in the framework of HCJ 4494/91, *Abu Sarhan v. Commander of IDF Forces in Judea and Samaria*, and 63 additional petitions, and in the framework of HCJ 4495/92, *Hadra v. Commander of IDF Forces in Judea and Samaria*, and 20 additional petitions. The petitions were submitted by HaMoked, the Association for Civil Rights in Israel, and the National Council for the Child.

<sup>398</sup> For more on the "HCJ populations" see HaMoked and B'Tselem, *Families Torn Apart: Separation of Palestinian Families in the Occupied Territories*, July 1999, [http://www.hamoked.org.il/items/10700\\_eng.pdf](http://www.hamoked.org.il/items/10700_eng.pdf), and *supra*note 396.

family unification was anchored in the Oslo Accords and also expanded in them to beyond the nuclear family.<sup>399</sup>

### **Israel's Policy since the Outbreak of the Second Intifada**

At the end of September 2000, Israel halted all handling of applications for family unification and visitor permits (hereinafter: the "freeze policy"). As stated, according to the arrangements in effect at the time, and in keeping with the Oslo Accords, the residents submitted applications to the PA offices, which forwarded them for examination to the Israeli authorities. However, after the outbreak of the second intifada, the military commander refused to receive requests from the PA or to open a direct channel (that bypassed the PA) for receiving applications from residents. Applications that were already in the army's possession were not reviewed or finalized, and the army prevented applications which had already been approved from being followed through. The situation further deteriorated after the PA elections. With the rise of Hamas to power, Israel announced that it was severing all contacts with the PA, including those that pertained to the population registry. In effect, for seven years, Israel has been blocking the possibility of split families – where one of the spouses is a resident of the PA and other is a foreign national – to conduct a proper family life in the Territories. Since the beginning of the "freeze policy," HaMoked has worked actively to stop it, whether through appeals in individual cases, or appeals on issues of principle, both to the authorities involved in determining Israel's policy on the topic, and to the courts. Israel's "freeze policy," HaMoked noted, leads to paralysis of life in the Territories, in contravention of Israel's obligation under customary international law, and constitutes a shirking of its powers as an administrative authority.<sup>400</sup> Although the Court determined that the right to family life is a basic right, an essential part of human dignity, and not a gesture of goodwill,<sup>401</sup> Israel's policy is that marital ties in and of themselves are not a criterion for the approval or extension of visitor permits to the Occupied Territories or for the approval of family unification applications.

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<sup>399</sup> Interim Agreement on the West Bank and the Gaza Strip, Annex III: Powers and Responsibilities for Civil Affairs, art. 28 (11) in Appendix I, Washington, 22 September 1995. [http://www.knesset.gov.il/process/docs/heskemb4\\_eng.htm](http://www.knesset.gov.il/process/docs/heskemb4_eng.htm)

<sup>400</sup> Letter from HaMoked to the HCJ Department in the State Attorney's Office, 21 February 2005.

<sup>401</sup> Supranote 323, Judgment, 14 May 2006.

### **The "Gesture" of 2007**

In October 2007, rumors began reaching HaMoked that Israel was about to approve an unknown number of family unification applications of residents of the Territories and their foreign spouses. HaMoked contacted the Palestinian Civilian Committee in Ramallah for information, and learned that Israel had decided to launch a procedure for the approval of a particular number of family unification applications submitted until the freeze in 2000. These were requests of foreign spouses of residents of the Territories who had entered the Territories on a visitor permit but were left by the freeze policy with the option of either leaving their homes in the Territories, sometimes with their families, without knowing when, if at all, they would be able to return, or cutting themselves off from their families abroad and remaining in the Territories as "illegal aliens" under the constant threat of deportation and with limitations on their movement due to fear of the roadblocks. The decision to approve family unification applications was not publicized or formally announced by the Israeli authorities, but in the framework of its responses to various HCJ petitions, the State announced that it was indeed planning to approve a limited number of family unification applications. The State's response revealed that the decision had been made at the governmental level, as part of a "gesture" to the Fatah government headed by Abu Mazen, and in the context of an attempt to strengthen ties with it. The State's legal representatives, relying on this one-time gesture, asked the Court to delete the petitions on the topic, as if this resolved the issue, and as if this proved that the matter was a "political issue" in which the Court should not intervene. HaMoked responded that not only do ad hoc gestures motivated by political reasons fail to provide a real solution to the overall issue, they, in effect, strengthen HaMoked's claim that Israel was illegally turning the family lives of the civilian population in the Territories into a bargaining chip in political negotiations. In the "freeze policy," and in ignoring agreements it had signed and its obligations as an occupier of the Palestinian population in the Territories, Israel had created the problem and was now trying to present the solution as a "gesture" of goodwill. HaMoked reiterated that Israel was obligated to institute a permanent mechanism for handling family unification applications submitted by residents of the Territories out of recognition of the right to family life. This mechanism would grant assistance both to couples who were married after the freeze – including those forced to live abroad due to Israel's policy, and those living in the Territories in constant fear of

deportation, who did not dare leave the Territories lest they be prevented from returning. By May 2008, Israel had approved 12,000 family unification applications in the framework of the political "gesture".



S.D., a resident of the Territories registered in the Palestinian population registry, and R.B., a Jordanian subject, were married in 1991. In the summer of 1992, R.B. entered the West Bank, and since then she has lived there under renewable visitor permits. The couple has four children, registered in the Palestinian population registry. Since R.B. is included in the "first HCJ population," she is eligible, based on the procedures and given the lack of a security preclusion, to receive permanent status in the Territories through family unification, and not as part of a yearly quota. S.D. submitted a first request for family unification for his wife back in 1994, but after the powers of population registration were transferred to the PA, for some reason difficulties emerged in recognizing that R.B. belonged to the first HCJ population. HaMoked clarified the matter with the army authorities, and the husband submitted a second application for family unification. The fate of this application is unknown, and as far as can be seen, was lost on the Israeli side. On 23 August 2000, the Palestinian side again transferred the application to the Israeli side, which confirmed its receipt. Many months later, during which HaMoked tried to find out what had become of the application, HaMoked received the army's response, according to which "the application indeed reached the Israeli side, but was frozen due to 'ebb and tide' events."<sup>402</sup> In March 2004, the offices of the international law department in the Military Advocate's Office held a meeting attended by a representative of the department, HaMoked staff, and a representative of the Military Legal Advisor for the West Bank. The meeting was initiated by the HCJ petitions department in the State Attorney's Office with the goal of dealing with the army's avoidance of dealing with matters of residency in the Territories for weeks and sometimes even years. Even after the meeting, most of the applications that HaMoked processed were not resolved, but in the case of the couple "D.", the following response was received:

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<sup>402</sup> Letter from Capt. Peter Lerner, Spokesperson and Dept. Head, International Organizations Wing, to HaMoked, 12 July 2001. Ebb and Tide is the code name given by the army to the second Intifada.

"In light of the political-security situation, the Israeli side is at this point not processing applications for family unification in the area at all. Therefore, we cannot respond at present to the requests on this matter."<sup>403</sup>

In September 2005, HaMoked petitioned the HCJ on behalf of the couple.<sup>404</sup> In the State's response, submitted only in December 2007, the army continued to ignore the fact around which the petition revolved and regarding which there is no debate: the family unification filed by the couple "D" had been forwarded from the Palestinian side to the Israeli side and was already in the latter's hands.<sup>405</sup> Therefore, HaMoked claimed in its response that the army's argument – lack of working ties with the Palestinian side – was not relevant,<sup>406</sup> since the request had awaited response for seven years on the Israeli side, which for all that time had refused to review it. The army's claim, that the matter was a political issue pertaining to the interim agreement, was also invalid, since the basis for the army's authority is not the interim agreement, but rather international humanitarian law, which stipulates the obligations and powers of the occupying power. Neither agreements, nor military legislation, nor decisions of political elements in Israel could detract from the rights of residents of the Territories.<sup>407</sup> HaMoked further claimed that Israel was continuing to ignore changes that had taken effect in the past 20 years in the local legal arena which promoted and based the view that the right to family life was a constitutional right deriving from Basic Law: Human Dignity and Liberty, and that in the absence of weighty security considerations – which did not exist in the case of the couple, "D," the State must not interfere with or limit actualization of the right.<sup>408</sup> In the State's response, it noted that in the framework of the exceptional and one-time gesture,

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<sup>403</sup> Letter from Capt. Amit Zuchman, Asst. West Bank MLA to HaMoked, 5 April 2004.

<sup>404</sup> HCJ 8470/05, Dweik et al. v. Commander of Army Forces in the West Bank.

<sup>405</sup> *Ibid.*, Response on behalf of Respondent, 2 December 2007.

<sup>406</sup> *Ibid.* Response on behalf of Petitioners to Response on behalf of Respondents, 13 December 2007.

<sup>407</sup> See Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Art. 47: "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention [...] by any agreement concluded between the authorities of the occupied territories and the Occupying Power."

<sup>408</sup> *Supra*note 404, Response on behalf of Petitioners to Response on behalf of Respondents, 13 December 2007.

the Israeli side was prepared to examine a quota of 5,000 family unification applications. It was suggested that the petitioners submit their application again in this framework. No explanation was provided as to why the couple were required to submit another application when their previous application was already in the possession of the army.<sup>409</sup> In the discussion on the petition, held on 19 December 2007, the ISA revealed that the said quota had long been filled. In order to try to move the petitioner's matter forward, HaMoked, in spite of everything, contacted the Palestinian Civilian Committee to look into the possibility of forwarding the application to the Israeli side again, as part of the limited "gesture." The committee responded that the quota had been filled and that the waiting list was long. HaMoked updated the Court and requested it issue an order nisi obligating the state to process the application and grant R.B. permanent status in the Territories.<sup>410</sup> An additional discussion of the petition is scheduled for June 2008. (Case 13979)

The freeze on family unification applications submitted by residents of the Territories applies, as stated, to all three stages of the processing: receiving new applications, reviewing those already submitted, and implementation of decisions in applications that have been long since decided. In 2007, HaMoked processed cases that had been frozen at each one of the stages, including a group of 47 petitions dealing with family unification applications by residents of the Territories married to foreign spouses who, following the freeze, were still in the Territories after their visitor permits had expired.<sup>411</sup> The Court ruled that the first four of the 47 petitions submitted by HaMoked would be discussed together as a question of principle. Due to the importance of these petitions, eight additional Israeli human rights organizations joined the petition as petitioner and the Association for Civil Rights in Israel joined as counsel. One of the four petitions selected for review by the HCJ was submitted on behalf of the family of H.D. and T.Y:

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<sup>409</sup> Ibid. Response on behalf of Respondents, 2 December 2007.

<sup>410</sup> Ibid, Response on behalf of Petitioners to Respondent's Notice, 13 March 2008.

<sup>411</sup> Only in one case processed by HaMoked was the woman a resident of the Territories and her husband, a foreign citizen.



H.D. was born in and is registered in the Territories; T.Y. is from the Ukraine. The two met as medical students abroad, and married there. Since 2000, they have lived in Ramallah. T.Y. works as a gynecologist in the Ramallah medical center, and H.D. received a scholarship from the Peres Center in Jerusalem to specialize as a pediatrician in Israel; today, he is learning Hebrew in a language program in Netanya. The couple has two children listed in the population registry in the Territories. The family's entire life revolves around the Territories: it is where the couple built their home, where they work in their professions as physicians and where they raise their children, who are enrolled in Palestinian schools in Ramallah. When T.Y. first entered the Territories, she received a renewable visitor permit based on her marriage to H.D. H.D. submitted a family unification application for her back in 2000, but then the "freeze policy" went into effect, and the application was not processed. On 26 November 2006, HaMoked sent a written inquiry to the Military Legal Advisor for the West Bank regarding the couple, and in response, was told that the request had been forwarded to the authorities that deal with the matter.<sup>412</sup> On 4 February 2007, the PA forwarded the couple's application to the Israeli side. The application, along with others, was given by the Palestinian clerk through a messenger to a clerk named Itzik, in Beit-El. Itzik sorted the applications on the spot, and separated those that would be processed from those that would be sent back. The couple's application was returned to the messenger since it was not "humanitarian," without being stamped or any confirmation given that it had been received, and without a rejection in writing. This is consistent with praxis on the Israeli side: they do not discuss the applications nor do they reject them – they simply refuse to admit them. In April 2007, HaMoked appealed to the HCJ on behalf of the couple.<sup>413</sup> This petition is unique, among other things, in its emphasis on the State's claims regarding lack of cooperation on the Palestinian side as contributing to the failure to process the requests, and in its refutation of these claims. In the context of the petition, HaMoked claimed that Israel's policy on principle is not to admit applications for visitor permits or family unification for processing. The PA forwards the applications in keeping

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<sup>412</sup> Letter from the Office of the West Bank MLA to HaMoked, 30 March 2007.

<sup>413</sup> HCJ 3170/07, Dr. Dweiqat et al. v. State of Israel, et al.

with criteria defined by the Israeli side, and the Israeli side screens them and decides which to process. The petition further states that because the "freeze policy" originated on the Israeli side, the key to allowing the petitioners to have a family life, as well as others in their situation, is in Israel's hands. In this vein, an affidavit from Brig. Gen. Ilan Paz, head of the Civil Administration in the West Bank from 2002-2005, was appended to the petition. In the affidavit, Paz surveys the topic, and states: "The claim sounded of late, that the root of the problem is in the disconnect with the Hamas government, is not acceptable to me, since the limitations existed (to a lesser extent) even prior to the Hamas' rise to power; and today, the complete control of the external borders rests with Israel (Ben Gurion / Allenby and to a limited extent, Rafah). This is exclusively an Israeli decision, which does not truly require cooperation with the authorities on the other side. This is a decision behind which lie political considerations of the State of Israel, which I have already mentioned."<sup>414</sup> Explaining the freeze by holding the PA responsible or by using security pretexts of one kind or another, therefore distorts the truth, and is a disavowal of Israel's responsibility vis-à-vis the residents of the Territories and their rights.

In the State's response to the petition, it claimed that the Court must reject the petition since it related to purely political matters;<sup>415</sup> since twenty years ago, the Supreme Court, in the Shahin petition on the topic of the right of residents of the Territories to family unification, maintained that a resident of the Territories did not have the right for his spouse to receive the status of resident of the Territories in the framework of family unification.<sup>416</sup> In so doing, the State ignored the right to family life, even though this was recognized in 2006 as a constitutional right in the Adalah case.<sup>417</sup> In response, HaMoked replied that the State was not claiming a security risk – not even a mild or hypothetical one – posed by the petitioners. The opposition to the petition was based entirely on diplomatic-political considerations that the army commander is entirely prohibited from taking; he is obligated to consider only the security ramifications of the petitioners' application. HaMoked further claimed that the State in its response relied

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<sup>414</sup> *Ibid.*, Affidavit of Brig. Gen. (Res.) Ilan Paz, appended to petition.

<sup>415</sup> *Ibid.*, Response on behalf of Respondents, 18 September 2007.

<sup>416</sup> See also HCJ 13/86, *Shahin v. Commander of IDF Forces in Judea and Samaria*.

<sup>417</sup> For more on the Adalah case, see HaMoked, Annual Report 2006.

on the Shahin petition, but even in Shahin, the Court ruled that it was necessary to examine every request on its merits, and currently, even this was not done.<sup>418</sup> Moreover, since the ruling in the Shahin petition, changes had occurred in Israeli and international law: the Convention on the Rights of the Child was signed, basic laws were legislated and the right to a family was recognized as a constitutional right. In effect, later rulings changed the decision in the Shahin petition – which was handed down, as noted, 20 years ago.

In the petition on the issues of principle, the State also touted the "political gesture" and offered no real solution to the problem. HaMoked insisted that the "gesture" was not a solution, but rather an attempt on the part of the State to avoid judicial review, and an invalid use of the issue of residency as a bargaining chip in political negotiations.<sup>419</sup> The hearing in the petitions of principle is scheduled for October 2008. **(Case 47215)**

## Registration of Children

As stated, in the framework of the 1995 Interim Agreement, the PA received exclusive authority for registration of children under age 16 in the Palestinian population registry, even those born abroad, on condition that one of the parents was a resident of the territories, without having to receive prior approval from Israel. However, in practice, and in blatant deviation from the Interim Agreement, Israel conditioned registration on the minor's being physically present in the Territories during registration. With the exception of children under age five, who are permitted to enter the Territories with their parents, children who are not registered in the Palestinian population registry are required to receive a visitor permit in order to enter the Territories to realize their eligibility to be entered in the registry. In this manner, Israel effectively has indirect control over the registration of children in the Palestinian registry.

In September 2000, with the outbreak of the second intifada, Israel froze the possibility of receiving visitor permits, even if the purpose of the visit

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<sup>418</sup> Supranote 413, Request on behalf of Petitioners to respond to Response on behalf of Respondents, 20 September 2007.

<sup>419</sup> Ibid. Response on behalf of Petitioners to Supplementary Response, 3 March 2008.

was to register children.<sup>420</sup> For five years, all procedures relating to residency in the territories, including the granting of visitor permits, were frozen. The ramifications of the protracted freeze were many and severe: couples were forced to live apart from one another; children were separated from their parents, and family and friends were unable to visit one another. However, it appears that the matter of registering children engendered the most difficult ramifications of all, since it could potentially lead to the actual deportation of a child and his family from the West Bank. In effect, this was a case of intentional, slow and ongoing transfer. Only in September 2005, after a five-year freeze, and after HaMoked submitted petitions to the HCJ, did the army announce a change in the policy, according to which it would be possible to submit requests for visitor permits for children under 16 at the Palestinian District Coordination Office (DCO), which would forward them to processing and approval to the Israeli side. The army claimed that it was not the pressure of the petitions that brought about the change in policy, but the renewal of ties between Israel and the PA.<sup>421</sup>

Despite the declared change in the policy, the army continued, in some cases, to cause hardship for applicants.

J.M. was born in Hebron and has lived in Jordan since 1988, where he married a local resident and had four children. Over the years, he retained his residency in the West Bank. The children were not registered before Israel froze handling of matters relating to residency in the Territories, but shortly after the freeze was lifted, J.M. contacted the DCO in Hebron requesting a visitor permit for his children in order to register them in the Palestinian population registry in the Territories. A month and a half later, the Israeli side returned the application to the Palestinian DCO and notified by phone that it had been rejected; no substantiation was provided for the arbitrary rejection.<sup>422</sup> When J.M. learned of HaMoked's activity on the registration of children in the Palestinian population registry, he sought its assistance. In a letter sent by HaMoked to the Military Legal Advisor for

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<sup>420</sup> Supranote 396.

<sup>421</sup> Letter from the Office of the West Bank MLA to HaMoked, 6 September 2005.

<sup>422</sup> Telephone conversation between J.M and HaMoked, 20 June 2006, and letter from Director of the Palestinian Interior Ministry in Hebron, 20 June 2006, confirming the date of J.M.'s request to the Palestinian DCO and the date the rejection was received from the Israelis.

the West Bank, it demanded immediate approval of the children's visitor permits.<sup>423</sup> For over a year and a half, HaMoked received no response to its request. In January 2007, an officer from the office of the Military Legal Advisor for the West Bank relayed that no application submitted on behalf of the family could be found, and that they would have to submit a new application.<sup>424</sup> HaMoked's protest that this was a reevaluation of a rejection in an application submitted over a year ago were of no avail and on 24 January, J.M. was forced to submit a new application.<sup>425</sup> This new application was processed relatively quickly and the visitor permits were issued.<sup>426</sup> The family entered the West Bank in February 2007 and all four children were registered in the Palestinian population registry. **(Case 44835)**

One of the remaining, unresolved problems is that of the registration of children over age 16 who have yet to be registered in the Palestinian population registry – whether due to the long freeze, or due to the protracted time it takes the Israeli side to approve the applications, or whether due to the many obstacles that Israel places in the path of families seeking to exercise the right of their children to be registered in the Palestinian population registry. Since the army refuses to consider the age of the child at the time of submission of the application as the decisive age for its approval, many children, who at the time when the freeze was lifted were close to the upper age limit, did not complete the process in time to be registered before they turned 16, and lost their eligibility for residency. In cases in which HaMoked intervened, permits were ultimately issued by the army to enable the registration. In some cases, HaMoked demanded that the authorities pledge to enable children who had turned 16 during the freeze period to register even after age 16. The army's policy on the matter is inconsistent: sometimes, it agrees, and other times an HCJ petition is required.<sup>427</sup> In cases in which the children did not submit a request to register before age 16,

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<sup>423</sup> Letter from HaMoked to Col. Yair Lotstein, West Bank MLA, 28 June 2006.

<sup>424</sup> Telephone conversation between Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA to HaMoked, 17 January 2007.

<sup>425</sup> Telephone conversation between J.M. and HaMoked, 25 January 2007.

<sup>426</sup> Letter from Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA to HaMoked, 5 February 2007.

<sup>427</sup> See, for example, HCJ 7479/06, Mahmoud Dababsa et al. v. Commander of Army Forces in the West Bank.

even if they reached this age during the five years of the freeze, Israel's position is that a person who did not apply in time has forfeited his right, and "has no one to blame but himself."



'A.F., was born on 10 June 1989, to a Palestinian family living in Saudi Arabia. His father is a registered resident in the Palestinian population registry, and his mother is Jordanian. The family tried in the past to live in the West Bank, but their family unification application was rejected, and they immigrated to Saudi Arabia, where the father worked as a registered nurse in a hospital. As Israel had made registration of children in the Territories difficult even before the freeze policy, the father's attempts to register his children in the Palestinian population registry failed. When 'A. F. was 11 years old, the "freeze policy" was implemented, and when it was lifted, five years later, 'A.F. had exceeded the age limit and lost, according to Israel's position, his eligibility to register in the Palestinian population registry – even though Israel's policy, prior to the freeze and certainly after it, was the cause. Shortly before 'A.F. turned 16, HaMoked wrote on his behalf and on behalf of his father and younger brother to the Military Legal Advisor for the West Bank, requesting that the boys be enabled to register.<sup>428</sup> Due to the great urgency, HaMoked acted to obtain a pledge that the petitioner would be authorized to enter the Territories and register after age 16, but although oral consent was given that the application would be processed, no official was willing to commit in writing that the petitioner would indeed be able to register after age 16, were his application approved. The obvious, logical and desirable solution, given the time pressure, would have been to enable the petitioner's entry into the Territories and registration even slightly beyond age 16, as was allowed in other cases in which the army approved late registration under the pressure of petitions submitted by HaMoked to the HCJ; however, the army chose to approve 'A.F.'s entry into the Territories only up to his birthday, and not subsequently. On 1 June 2005 a representative of the Military Legal Advisor for the West Bank informed HaMoked that the petitioner's family needed to submit an application for a visitor permit at the DCO, and that the application would be approved by 9 June 2005, a day before

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<sup>428</sup> Letter from HaMoked from Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA to HaMoked, 9 May 2005.

'A.F.'s birthday.<sup>429</sup> In other words, the family was required to submit an application to the DCO, to receive the visitor permits, to send the visitor permits to Jordan, to arrive from Saudi Arabia, to enter the Territories and to register in the Palestinian population registry – all this within eight days. The family made great efforts to uphold these conditions, but they were unable to arrange for travel documents in the time allotted to them by the army. On 7 June 2005, immediately after the father announced that he had no possibility of entering the West Bank on time, prior to his son's 16th birthday, HaMoked sent an urgent letter to the Military Legal Advisor for the West Bank, requesting to postpone the day of their entry and registration of their children by one month only.<sup>430</sup> On 9 June 2005, a representative of the Military Legal Advisor notified HaMoked that there was still no response to the request,<sup>431</sup> and ten days later, she announced that the father must submit a new application with the DCO as soon as he obtained the passports, at which point the application would be processed and they would receive a visitor permit.<sup>432</sup> A written notice to this effect was supposed to be sent as well, but was not. The father and the children traveled to Jordan where they obtained passports for their children. On 28 June 2005, the application for a visitor permit for the purpose of the registration was forwarded to the Israeli side, but was refused. The next morning, HaMoked again contacted the Military Legal Advisor for the West Bank and asked that the application be admitted, and was again promised that the matter would be taken care of. During this entire time, the petitioners continued waiting in Jordan, in an apartment they had rented expressly for this purpose. Despite its repeated promises, the army retracted its commitment and told HaMoked that it had no intention of enabling 'A.F.'s registration now that he was already 16 years old.<sup>433</sup> The family was forced to return to Saudi Arabia. HaMoked appealed

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<sup>429</sup> Letter from Sandra Opinkaro, Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA to HaMoked, 1 June 2005.

<sup>430</sup> Letter from HaMoked to Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA to HaMoked, June 7, 2005.

<sup>431</sup> Telephone conversation between Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA and HaMoked, 9 June 2005.

<sup>432</sup> Telephone conversation between Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA and HaMoked, 19 June 2005.

<sup>433</sup> Letter from Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division of the Office of the West Bank MLA to HaMoked, 26 July 2005.

the decision,<sup>434</sup> but only after many reminders was an answer received to the appeal, in which the Military Legal Advisor for the West Bank rejected the request.<sup>435</sup> The Legal Advisor cast responsibility for the failure to register 'A.F. on the parents' negligence. HaMoked submitted a petition to the HCJ, claiming, among other things, that it was difficult to understand why the military commander needed to make such an effort to find formal reasons to foil 'A.F.'s registration in the Palestinian population registry;<sup>436</sup> when the army had not objected to the essential matter, that children living abroad were eligible to register in the registry, and it had also not claimed that there was a security preclusion or that the registration was counter to the security interests of the Area or of Israel. In August 2007, even before the response to the petition was submitted, the army ordered that 'A.F. be allowed to enter the Territories for late registration in the Palestinian population registry. HaMoked agreed to delete the petition, but only after the registration was formally arranged. On 30 October 2007, 'A.F. was registered in the West Bank population registry, and received an identity card of the Occupied Territories. **(Case 37906)**

In 2006, Israel again froze the issuance of visitor permits for the registration of children, this time following the Israeli government's decision to boycott the PA due to the rise of the Hamas movement to power,<sup>437</sup> as HaMoked learned in 2006 in the context of a petition to the HCJ.<sup>438</sup> The army even refused to pledge that children who turn 16 would be able to register in the future, once the boycott ended. HaMoked turned to the courts, both with individual petitions for approval of visitor permits, and with a general demand for the State to undertake to permit late registration of children who would pass the age limit during the period of the boycott, whose end was unknown. In order to prevent the Court from having to render a decision on the matter of principle, thus creating a precedent that would be legally binding

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<sup>434</sup> Letter from HaMoked to Col. Yair Lotstein, West Bank MLA, 8 August 2005.

<sup>435</sup> Letter from Academic Officer Gadi Shahak, Consulting Officer, Population Registry Division to HaMoked, 17 May 2006.

<sup>436</sup> HCJ 7046/06, Fanashe et al. v. Commander of Army Forces in the West Bank.

<sup>437</sup> Government Decision 4780, 11 April 2006.

<sup>438</sup> HCJ 7425/05, Talal Shweiki et al. v. Commander of Army Forces in the West Bank, telephone conversation on 22 May 2006 between an attorney on behalf of HaMoked and Respondent's counsel.

on the army, the army approved late registration of many petitions submitted by HaMoked prior to the ruling. Many families that did not turn to HaMoked for legal assistance were forced to contend with the arbitrary decision, and their children lost their eligibility for residence in the Territories. In November 2006, following HaMoked's pressure, the freeze on registration of children was lifted, and a more or less proper procedure was instituted for the granting of visitor permits for the registration of children under 16 in the Palestinian population registry. In 2007, HaMoked continued processing requests for registration of minors who passed the age limit during the period when Israel was refusing to accept and approve requests for visitor permits.



M.M. is a resident of the Territories who lives with his Jordanian wife and eight children in Jordan. Two of his children turned 16 before he succeeded in registering them in the Palestinian population registry. On 4 June 2006, M.M.'s brother contacted the Palestinian Interior Ministry in Hebron to submit an application for visitor permits in order to register M.M.'s children, including his daughter, A.M., who was almost 16. The Palestinian Interior Ministry told him that the Israeli side was not accepting applications for visitor permits, due to the Israeli government's boycott of Hamas that had begun two months earlier. M.M. contacted HaMoked to arrange for his daughter's registration. On 20 June 2006, HaMoked urgently contacted the Military Legal Advisor for the West Bank with the request that they issue the petitioner a visitor permit so that she could be entered into the population registry.<sup>439</sup> The letter made clear that Israel's refusal to accept applications for visitor permits was illegal and that A.M. was going to turn 16 soon, and therefore her request was urgent. That same day the army replied, claiming, *inter alia*, that "the Israeli side is still processing applications for exceptional humanitarian visitor permits and applications for visitor permits for registration of minors under the age of 16, as long as they are forwarded for approval by a low-ranking clerk who is not identified with Hamas."<sup>440</sup> HaMoked again contacted the Military Legal Advisor for the West Bank in writing and explained that the suggestion to

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<sup>439</sup> Letter from HaMoked to Col. Yair Lotstein, MLA for the West Bank, June 20, 2006.

<sup>440</sup> Letter from Academic Officer Gadi Shahak, Consulting Officer, Population Registry Division to HaMoked, 20 June 2006.

send the application through "a low-ranking clerk who is not identified with the Hamas" was illegal and impossible, since the employees of the DCO were public servants, and not politicians. The Petitioners could not know how each clerk voted, and in any case, they did not have the power to determine which clerks would submit the requests in their name.<sup>441</sup> The letter received no response. Ultimately, M.M. and his five minor children succeeded in entering the West Bank on 21 October 2006 on visitor permits, since at this stage Israel was already issuing visitor permits for the registration of children, at least in some cases, and M.M. was able to have his five children registered. A.M., who was already 16, was not granted a visitor permit and remained in Jordan with her mother. HaMoked contacted the Military Legal Advisor for the West Bank again,<sup>442</sup> and in response, the army cast responsibility for A.M.'s situation on her parents, HaMoked and the PA, but not on the army and the "freeze policy" decreed by Israel.<sup>443</sup> On 29 October 2007, HaMoked petitioned the HCJ on behalf of the minor and her father for an order granting a visitor permit to A.M., and to approve her registration in the Palestinian population registry. The discussion of the petition is scheduled for July 2008.<sup>444</sup> **(Case 44807)**

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<sup>441</sup> Letter from HaMoked to Academic Officer Gadi Shahak, Consulting Officer, Population Registry Division, 22 June 2006.

<sup>442</sup> Letter from HaMoked to Col. Yair Lotstein, West Bank, 12 November 2006.

<sup>443</sup> Letter from Capt. Sandra Opinkaro, Consulting Officer, Population Registry Division, to HaMoked, 20 May 2007.

<sup>444</sup> HCJ 9170/07, Manasra et al. v. Commander of Army Forces in the West Bank.

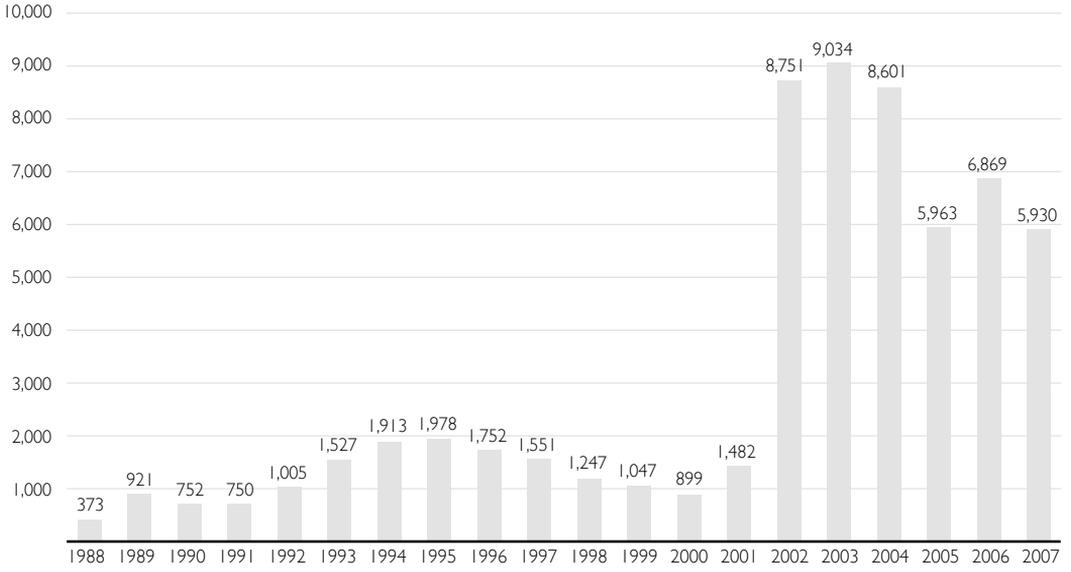
# Appendices

## Statistics

**New cases received by HaMoked in 2007 and 2006,  
by topic.**

		2007		2006	
		Number of cases	% of cases	Number of cases	% of cases
Detainee Rights	Tracing	5,030	84.8%	5,993	87.2%
	Administrative Detention	74	1.2%	49	0.7%
	Conditions of Detention	11	0.2%	18	0.3%
	Family Visitation	252	4.2%	167	2.4%
Freedom of Movement	To and from Territories	189	3.2%	182	2.6%
	Within the Territories	179	3.0%	281	4.1%
Residency	Jerusalem	64	1.1%	38	0.6%
	West Bank	52	0.9%	59	0.9%
Violence to Body and/or Property		79	1.3%	82	1.2%
<b>Total</b>		<b>5,930</b>	<b>100.0%</b>	<b>6,869</b>	<b>100.0%</b>

## New Cases by HaMoked between July 1, 1988 – December 31, 2007



## **Donors**

**HaMoked would like to acknowledge the support of the following donors in 2007:**

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Oxfam Novib, Netherlands

Representative Office of the Netherlands, Ramalla

The Royal Norwegian Embassy, Tel Aviv

SAS Charitable Trust, England

SIVMO, Netherlands

Swedish International Development Agency, Sweden

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And the many people who have shown their support by volunteering and giving donations.