



# Violence Committed by the Security Forces

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

Universal Declaration of Human Rights, Article 3

In 2003, 579 Palestinians were killed by the gunfire of Israeli soldiers, policemen and civilians. 1,010 Palestinians were wounded by gunfire and many others were injured when hit by rubber-coated bullets, plastic bullets, tear gas and shrapnel.<sup>22</sup> The daily violence to which civilian Palestinian population in the Territories is exposed at the hands of the Israeli security forces and settlers has impacted HaMoked's operations. In 2003, HaMoked handled 1,314 new cases pertaining to personal injuries and violence to property caused by the security forces or by settlers.

In cases of this kind, HaMoked seeks to bring the perpetrators to justice, secure compensation for the victims and impart reasonable behavioral norms to the security forces and settlers.

The formal bodies empowered to uphold the laws have neglected their duties. Until

December 2003, during more than three years of confrontation in which 2,289 Palestinians were killed and 6,274 injured by gunfire, the military police only started 72 investigations into serious injuries or deaths of civilians, and only 13 of these probes led to indictments. In other words, only a negligible part of the cases of death and injury are investigated by military police and less than 20% of these ever reach the court. The authorities' reluctance to scrutinize their own actions is now at the focus of a petition filed by B'Tselem and the Association for Civil Rights in Israel (ACRI), in which the High Court of Justice is asked to compel the military to launch an investigation whenever a civilian is killed.<sup>23</sup> HaMoked confronts these problems on a day to day basis. In 2003, HaMoked has managed to get the military police and the internal affairs division of the Israel Police to

start 51 investigations. Investigation files and data collected by the military prosecution reveal not only the negligence of the authorities in handling violence but also the value system driving the investigation: most investigations launched pertained to property damage, such as looting, vandalism and theft.<sup>24</sup> This also holds true for most of the indictments that were served.

In addition to the negligence of the investigating authorities, the amendment to the Torts Law, endorsed in the middle of 2002, has now made it even more difficult for victims to get the compensation they deserve. The amendment stipulates almost impossible timetables for submission and processing of complaints and grants the security forces extensive legal protection against damage claims.

One night in July 2003, soldiers surrounded the home of M.A., went up on the roof and arrested his son who was sleeping there. They later woke up all the other tenants and ordered them to leave the house. The soldiers cuffed everyone and blindfolded all the adults. The family sat for around two hours in the street this way, tied up and blindfolded, while the soldiers searched the premises. When they completed the search, at around 4 AM, the soldiers left the house, firing in the air. The gunfire seriously injured the neighbors, H.S. and her husband A.S. An ambulance that was called to the scene was delayed at the roadblocks but managed to get the couple to the hospital, where A.S. was

pronounced dead. In addition to the death of A.S., the serious injury of his wife and the devastation caused to the home of M.A., NIS 40,000 – the payroll for M.A.'s employees – had disappeared from the premises. **(Case 29268)**

HaMoked's emergency hotline, established in March 2002, handles many violence cases. The hotline is in ongoing contact with the military and other authorities, to which complaints are referred in real time.

In June 2003, a resident of Huwwara, near Nablus, called HaMoked complaining about settlers who were passing through the village, shooting at the houses and throwing shock grenades. The hotline immediately contacted the Civil Administration, which notified the police about the riot. The police was also asked to take action, and was given the name and contact information of the complainant for a deposition. Half an hour later, a military jeep arrived at the village and the soldiers ordered the settlers to leave. The incident concluded without any physical injuries and with only minor damage to property. **(Case E2014)**

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<sup>22</sup> Data about casualties is from B'Tselem: [www.btselem.org](http://www.btselem.org); data about injuries is from the Red Crescent: [www.palestinercs.org](http://www.palestinercs.org)

<sup>23</sup> High Court Petition 9594/03, **B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories et al. v. Military Advocate General.**

<sup>24</sup> *Ibid.*, paragraph 13.

## New Investigations

As noted, HaMoked collects as many details as possible about the incident and refers the complaint to the relevant authority, demanding an investigation. Each of the agencies operating in the Territories has its own investigations arm. Military operations are investigated by military police, which only start investigations at the order of the military advocate; police and border police operations are investigated by the Justice Ministry's internal affairs department; incidents in which settlers are involved are investigated by the police. HaMoked has pushed to expedite the launching and completion of investigations on all fronts, since as time goes by it is harder to collect evidence and witnesses' recollection of the events is not as clear – making it harder to get to the truth.

Despite the deaths, injuries and property damage caused by Israeli forces and settlers in the Territories, the authorities are reluctant to start investigations. The policy of the Military Advocate General is that the military police must only start an investigation if the operational debriefing, conducted by the commanders of the relevant military unit, leads to suspicion of criminal behavior. The petition submitted by B'Tselem and ACRI, asking that the Military Advocate General start an investigation whenever civilians are killed, states that “as long as the decision to launch a military police probe is based primarily on the military debriefing, there is no wonder that the number of investigations actually conducted is marginal compared to the number of deaths of Palestinian civilians.”<sup>25</sup>

In October 2001, 14-year-old R.A. and his friends were playing at the boys' elementary school at Al Fawwar Camp, outside Hebron. The school is only a few hundred meters away from the main road, which is for Jews only. The area was peaceful. A single gunshot, fired without a warning by the soldiers guarding the road, hit R.A. in his chest. The boy was rushed to the hospital, where he was operated and saved – but his left arm remained paralyzed. In December 2001, HaMoked contacted the Advocate of the Central Command demanding that military police start an investigation of the incident. HaMoked offered any assistance that may advance the inquiry, including communication with the complainant and other witnesses. Apart from a confirmation that the Advocate received the application at the end of December 2001, HaMoked heard no more news about the matter. No investigation had been launched. HaMoked made repeated appeals to the Office of the Advocate of the Central Command, but to no avail. In April 2003, HaMoked received a letter from the deputy of the Advocate, stating that military police had been instructed to start investigating the allegations. Despite this instruction, no investigation took place. After many more telephone conversations with the military police in Beer Sheva, they finally found the file and started handling the case. In September 2003 R.A. was finally summoned to testify. **(Case 16754)**

Investigation priorities reveal the norms and ethical standards of the military.

On the morning of April 2, 2002, as the military invaded Bethlehem, an armored personnel carrier stopped outside S.A.'s home. The soldiers opened fire and stormed the house. S.A.'s mother shouted to them that there were children in the house and that they should cease firing. When she came to the door to open it for the soldiers, she was killed by explosives that were meant to pull the door out of place. The fire and explosion also killed S.A.'s brother. The other family members hid in the bathroom, and the soldiers, who did not notice them, left the site. Because of the curfew, an ambulance only managed to make its way through the next day and evacuate the bodies. The family fled the house, and S.A. was able to return only a month later. He found total devastation: furniture was destroyed, walls were pocked with bullet holes, personal belongings were used by soldiers, all the food had been eaten, and a video camera had disappeared. Following S.A.'s request, in June that year HaMoked contacted the Office of the Advocate of the Central Command, demanding that an investigation

be launched and the perpetrators tried.

In December 2002, during the night, soldiers came to S.A.'s house with a masked man and another man whom the soldiers called "Captain Job". The soldiers forced the family out on the street and searched the house. In the process, they destroyed furniture, ripped clothes, confiscated two mobile telephones and stole NIS 500 and three rings.

In January 2003, HaMoked again contacted the authorities asking for an investigation into this second incident at the family's home.

In June 2003, military police deposed S.A. An inquiry conducted by HaMoked indicated that the military police focused exclusively on the second incident, in which property had been vandalized and stolen, but completely ignored the first, in which two people had been killed. Only after another exchange, more than a year after the first incident, did the Advocate General's Office instruct that the files be located and an investigation launched about the death of S.A.'s mother and brother. **(Case 17822)**

## Investigation Procedures

In 2003, HaMoked's intervention led to 63 investigations. It is generally true that Palestinian grievances are processed very slowly and inefficiently, but police treatment of crimes attributed to settlers is particularly negligent.

In February 2003, HaMoked started handling an assault and theft case that

happened in the Nablus area more than a year earlier. Fourteen-year-old N.S. and his friend were taking the family's sheep out to pasture when they noticed five settlers and two armed men in uniform running toward them. The children got scared and fled; the settlers chased after

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<sup>25</sup> Ibid, paragraph 19.

them but were unable to catch up, and made do with stealing the sheep. **(Case 25510)**

In May 2002, four settlers attacked T.S. not far from his village in the Nablus area, beat him, broke his arm and chased him away. The settlers took the flock of sheep he was shepherding. **(Case 25782)**

In July 2003, A.A. who had been seriously injured when driving his car between Qalqiliya and Nablus two years previous turned to HaMoked. He was injured in his eye by a stone thrown by children from the nearby settlement of Karnei Shomron. **(Case 27677)**

Although in all these cases the victims complained at the District Coordination Office (DCO) immediately after the incident, nothing was done. HaMoked managed to find papers proving that complaints had indeed been filed, but repeated requests to get information about the progress of investigation were of no use. In September 2003 HaMoked was informed that "according to the police computer records ... no criminal cases matching the descriptions you have provided could be found."

The police is not the only agency that is negligent in its treatment of complaints about exceptionally serious incidents. The heightened military presence, the roadblocks and the bureaucracies of the Civil Administration and the military, coupled with the language barrier between investigators and witnesses turn those investigations that do eventually start, into a slow, arduous and ineffective procedure.

In February 2003 HaMoked received an inquiry about the death of T.H., who

had been killed by soldiers in Jenin several months earlier. According to eye witnesses, T.H. was driving his taxi in Jenin's industrial area when he noticed a tank and an armored personnel carrier blocking the road. T.H. pulled over and turned on his hazard lights, as customary. Without any warning, the tank's submachine gun started to fire. T.H. sustained a fatal head injury. The tank advanced toward the car and stopped nearby, but the soldiers did not descend or lend any help to the bleeding man. Moreover, pointing their weapons, they did not allow passersby to help him either. The soldiers also prevented an ambulance staff which arrived shortly after the incident from caring for T. H. One of the people on site managed to convince the soldiers to let him take T.H. to the hospital in Jenin in his own car. Because of his serious condition, T.H. was transferred from Jenin to Haemek Hospital in Afula. Although the arrival of an ambulance to the Jenin hospital was cleared with the Civil Administration, the ambulance was detained at the roadblock for an hour and a half. Upon arrival at Haemek Hospital, T.H. was pronounced dead.

Seven months after T.H.'s death and following HaMoked's appeal to Advocate of the Central Command, the military police notified HaMoked that an investigation had been initiated "into the death of the civilian T.H." and that witnesses are to report to the DCO in Jenin for depositions. The investigator set a date for the meeting and specifically requested that the witnesses be there on time. On the scheduled date, the situation in Jenin was tense and many armed units were patrolling the area. On their way to

the meeting, the witnesses came across a roadblock that was not there before, and fearing arrest or injury, they went back to their homes. Only thanks to back-and-forth phone calls between HaMoked and the military authorities could T.H.'s son make it to the DCO and give a statement. To collect the additional testimonies, the investigator gave his main questions to HaMoked, which had them translated and sent to an attorney in Jenin. The attorney deposed the witnesses accordingly and submitted the depositions to HaMoked, which had them translated into Hebrew and transferred to the investigator. Ten

months after the incident, the investigator asked HaMoked to help find the ambulance team that carried T.H. from the hospital in Jenin and the registration papers of the taxi that T.H. was driving when he was shot. HaMoked collected all the required information, deposed the witnesses and transferred their statements to the military police. However it turned out that the investigator in charge had left and someone else has taken his place. HaMoked contacted the new investigator, who said he could not find the relevant documents and asked HaMoked to resend them. **(Case 25065)**

## The Amended Torts Law

The recent legislation concerning compensation in the Territories,<sup>26</sup> effective since August 2002, has narrowed the access that Palestinians have to the justice system. The new law has changed the administrative procedures and shortened the timetable in which victims can file suit. Furthermore, the new law has redefined the operations of the security forces in the Territories from “policing” to “wartime action”, making the security forces completely immune from tort claims.

The new law, dubbed by the media “the Intifada law”, requires victims and their attorneys to report the incident to the Defense Ministry within 60 days, using a special form. Ostensibly, once notice is given, the Ministry is to start an immediate investigation – but this is not the case. The new law also reduced the

statute of limitations for claims against the security forces regarding incidents in the occupied territories from seven to two years. This change has retroactive force, so that in incidents predating the amendment, the term is up either seven years after the incident or two years after the implementation of the new law (i.e. July 2004), whichever comes first. This compounds victims' distress, since without incentive, the investigating authorities have no reason to hurry. Complainants are entirely dependant on the authorities to investigate, since they themselves cannot collect any information about the unit and soldiers involved in the injury. While the

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<sup>26</sup> Torts Law (State Liability) (Amendment – claims arising from activity of security forces in Judea, Samaria and the Gaza Strip), 2001.

authorities drag their feet, the statute of limitations kicks in and within two years the case will become moot.

HaMoked has prepared to deal with these changes. First, HaMoked tried to thwart the regulations governing the notice that complainants must send the Defense Ministry within 60 days of the incident. HaMoked and ACRI sent a letter to the chairman of the Knesset's Constitution, Law and Justice Committee, stating that the new legislation "is unparalleled in Israeli law" and that "in no other case is a plaintiff required to give prior notice in order to be allowed to sue his tortfeasor." One of the things that the chairman was asked to do is incorporate a provision in the regulations, providing that the notice form be translated to Arabic and distributed to all police stations, DCOs, city halls and other accessible facilities.

Second, HaMoked notified all the Palestinians whose rights would be curtailed by the amendment and all the agencies involved in their defense. At a meeting organized by HaMoked in Ramallah in April 2003, with the Palestinian organizations of Al Haq, A-Damir, DCI/Palestine and the Palestinian Human Rights Center, HaMoked explained all the aspects of the amended law. HaMoked also publicized all the details of the amendment in ads in Palestinian press.

Concurrently, HaMoked prepared for changes in its working methods. Now, whenever a new case is opened, notice is delivered to the Defense Ministry about the extent of the damage involved. HaMoked has also consulted with tort lawyers in order to expedite the filing of 162 violence claims whose limitations period expires at the end of July 2004.

The implications of the law are still not clear and the Defense Ministry has not yet rejected any claim based on the new procedures. The changed legal status of Israel's operations in the Territories – from "policing" to "wartime action", which grants the State immunity against tort claims, has not yet been challenged in court either.

The new reparations legislation has changed the norms and ethical system: the legal legitimacy given to the operations of the security forces, by the changed legal status of these operations, has pulled the rug from under the concept of accountability as practiced so far by the defense establishment. Although the security forces are still accountable under criminal law, they are now immune from civil proceedings. The amended law sets a twisted norm according to which the State can operate with impunity, and by extension so can its soldiers, in all actions against Palestinians in the Territories.

## Closing Cases

HaMoked works with applicants' hand-in-hand from the moment contact is made. HaMoked handles the case vis-à-vis the authorities, monitors the investigation

and pushes to have recommendations submitted and indictments served. In some cases, after the official investigation is completed and recommendations are

revealed, HaMoked also files civil suits. In 2003 HaMoked handled 42 tort cases.



In April 1999, three 16-year-olds were transferred to the detention facility at the Etsion brigade. The detainees were taken by truck with three border policemen. *Haaretz* described the developments on the truck as follows: "During the ride, Eran Nakash, one of the guards, punched, slapped and kicked the three detainees, whose hands were tied behind their backs. He also instructed some of them to give him oral sex and hit them when they refused. He forced them to sing a song in Arabic demeaning Mohammad."<sup>27</sup> The Justice Ministry's internal affairs unit conducted a swift and effective investigation in this case; the criminals were traced and indicted by the State Attorney's Office. The District Court heard the case in October 1999 and in January 2000 the defendants were found guilty. In March 2003, after tracing the plaintiffs and photocopying the investigation files and court minutes, HaMoked filed a civil suit against the border policemen. **(Case 13852)**

In some cases, HaMoked manages to secure compensation for victims even without the intervention of the court. This is generally possible in damages caused while or due to the confiscation of property.

In January 2002, P.R. and M.R., two fishermen from Gaza, were tried for crossing territorial waters. They were apprehended by an Israeli Navy patrol boat, which towed their fishing boat to shore. The military judge decided that because of their clean record and since

they were not aware that the maritime border had been moved (from six to three kilometers from shore), they need not be held any longer, and let them go. The judge further decided that the confiscated fishing boat should be returned to its owners. Six months had gone by but the boat was not returned. The fishermen then contacted HaMoked for help. HaMoked filed a complaint with the Defense Ministry's ombudsman. The military replied: "Our inquiry with the Navy has yielded that your client's boat sank at the time of the arrest." Between November 2002 and July 2003, extensive correspondence and communications took place between the Defense Ministry's ombudsman, HaMoked and the fishermen. In September 2003, the Defense Ministry, through HaMoked, paid the fishermen NIS 45,000 in compensation for the boat, the equipment that was on it and the days of work lost. **(Case 17940)**

The courts decided two tort cases in 2003.



In August 1995, soldiers came to the home of Z.Z. in the middle of the night, ordered everyone out and started a search, leaving the house in chaos, breaking furniture and tearing up clothes and mattresses. The soldiers left four hours later, taking Z.Z.'s son into detention. Z.Z. then found out that in addition to the devastation they had left behind, the soldiers had also

<sup>27</sup> Moshe Reinfeld, *The Supreme Court metes out heavy sentence for border policeman who abused Palestinians*, *Haaretz*, July 4, 2002.



taken \$3,000 she had hidden there. The next day, she filed a complaint with the police, but after getting no response, she contacted HaMoked. One year and many inquiries later, HaMoked received a response from the office of the Military Advocate General: The evidence was insufficient and the case was closed. The Military Advocate added that a polygraph test conducted by the military police confirmed the testimony of one of the soldiers who said he saw a veil with money and documents but did not take it, and that there was no other evidence in the case. HaMoked asked for the investigation files, but did not receive them. In November 1997, HaMoked petitioned the High Court of Justice to compel the Military Advocate General to explain why he had ignored the request to reveal the investigation material. Finally, the Advocate's office allowed HaMoked to photocopy the files. In June 2002 HaMoked filed for compensation with the Magistrate's Court in Jerusalem on the grounds of theft and vandalism. In the decision, handed down in March 2003, the judge stated that the testimony of the soldier who had seen the money establishes that "he did not even take the minimum steps to safeguard the money he had found," which made him responsible toward Z.Z. for the lost cash. The judge further held that the State cannot relieve itself from its vicarious liability for the soldier's actions, and must therefore compensate for the missing money. As for the vandalism, the judge established that since Z.Z. had failed to provide any evidence as to the damage,

the court could not order damages to be paid. **(Case 8976.1)**

Ten cases were closed in 2003 after the complainants had withdrawn their claims. Withdrawals are prompted by various motivations: distrust of the Israeli legal system, fear of retribution or the victim's feeling that his personal hardship is just part of a shared destiny.

In May 2002, Border Police came to G.G.'s home. As they entered the house, one of the policemen shoved G.G. and he fell to the ground. The policemen ordered everyone out on the street, where G.G. was questioned. Apparently, the policemen were not satisfied by G.G.'s answers and the investigator hit him forcefully and ordered his arrest. Two other policemen cuffed him and hit him in his face and body. The policemen then cuffed G.G.'s nephew, punched and kicked him and hit him with the butts of their rifles. All the while, another policeman held the other family members at gunpoint, stopping them from intervening. Ten minutes later G.G. was released and his papers were given back to him.

G.G. contacted HaMoked, which applied to the Justice Ministry's internal affairs unit. Five months later, the internal affairs unit asked G.G. and his nephew to come in and make statements. G.G. agreed at first, but then changed his mind. He explained that he did not believe the investigation would yield any results and that he would rather forget the entire affair. Despite HaMoked's pleadings, G.G. did not change his mind.

**(Case 17798)**