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**In the Supreme Court  
sitting as the High Court of Justice**

**HCJ 11198/02**

\_\_\_\_\_ **Diriya et al.**

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**The Petitioners**

- v e r s u s -

- 1. Commander of the Ofer Military Detention Facility**
- 2. Commander of IDF Forces in Judea and Samaria**

both by the State Attorney's Office  
Ministry of Justice, Jerusalem

**The Respondents**

**Supplementary Response on behalf of the State Attorney's Office**

1. In this petition, the Petitioners request that the Court direct the Respondents to show cause why they do not allow Petitioners 1-3 to make regular family visits at the Ofer military detention facility, which is located in Judea and Samaria.
2. On 29 January 2003, we filed our response to the petition. We explained that the Respondents do not oppose family visits in principle, and are continuously doing what they can to enable such visits. However, for objective reasons, most of which are a result of the grave security situation in the Territories, family visits had not begun at that time in the Ofer detention facility. It should be mentioned that, for the same reasons, there was a prolonged period of time in which visits by families from the Judea and Samaria Area to detention facilities and prisons in Israel, in which detainees and prisoners from the Area were being held, did not take place.

We further stated in our response that the Respondents are attempting to overcome said problems in various ways, and renew the visits. We also stated that, as early as February 2003, family visits would begin to Ofer by residents of some cities in the Judea and Samaria Area whose relatives are being held in the facility.

3. In our response, we also stated that, for many years, family visits by residents of the Territories with relatives held in detention facilities were held, with the assistance of the International Committee of the Red Cross (ICRC). With the cooperation of the ICRC – which was in contact with the Palestinian families, compiled a list of visitors, handled the arrangements for obtaining the permits, and arranged the transportation – it was easier to arrange the family visits. However, since October 2000, with the deterioration in the security situation, and especially since Operation Defensive Shield, it has been harder for the ICRC to assist in arranging the visits. For this reason, visits became disrupted, and were ultimately stopped altogether.
4. Our response also indicated that the military authorities have recently maintained ongoing contact with the ICRC, and have attempted to renew the visits that are arranged with its assistance. These contacts led, in the summer of 2002, to an understanding between the State of Israel and the ICRC, whereby visits of residents from the Gaza Strip to their relatives imprisoned in all detention facilities inside Israel would be renewed. Indeed, since the beginning of August 2002, residents of the Gaza Strip have been able to visit their relatives who are detained in such facilities (subject to individual exceptions).

Subsequently, it was stated that in the fall of 2002, the State of Israel and the ICRC reached another understanding, whereby the ICRC would aid in organizing family visits at Ofer, and at other detention facilities. The first stage would involve visits by families living in certain districts in the Judea and Samaria Area. As stated, the previous response indicated that, according to the plan, the visits were apparently to begin some time in February 2003.

5. The hearing on the petition was held on 16 February 2003. At the hearing, Respondents' counsel stated that the visits were to begin on 9 March 2003, with visits being made, in the first stage, by residents of Jericho, Qalqiliya, and Ramallah. Respondents' counsel further indicated that the Respondents intended to expand the visits to include families from other locations, where the situation in the field so permitted.

6. **Given these statements the Honorable Court held that there was no basis for issuing an Order Nisi. However, it was decided to leave the petition pending, and to check in three months whether the transportation arrangements had been expanded to other communities in the Area. In accordance with the Court's decision, we shall describe below the relevant developments that have taken place since the first hearing.**

7. On 9 March 2003, following extensive efforts, visits by relatives from the Judea and Samaria Area with detainees in prisoners held in detention facilities and prisons in Israel began. Relatives from the Jericho, Ramallah, and Qalqiliya districts were able to take part in the visits in the preliminary stage.

It should be mentioned that this is a very large operation, in that each visit requires organization: security detail for the buses, crossing many checkpoints, prior coordination, and the like.

To explain the scope of the visits, we wish to point out that, to date (i.e., a period of four months), some 130 different visits have been held (the term "visit" refers to a visit of a group of families from one of the said districts at a specific detention facility or prison). The visitors were transported in hundreds of buses, and more than 6,000 relatives took part. The visits were made to detainees and prisoners at the military detention facilities in Ketziot and Megiddo and at the Nafha, Shata, Ashkelon, Nitzan, and other prisons operated by the Israel Prison Service.

To illustrate the issue, attached is a list delineating the visits that have been held, marked Appendix R/1.

8. As these visits were held, plans were underway for enabling visits with detainees in the Ofer detention facility, beginning on 10 March 2003. The first visit at Ofer indeed took place on 10 March 2003. However, a few minutes after the visit began, the detainees asked to halt it, and requested to leave the facility in which the visits were held. They said the conditions in the facility prevented them from holding a "proper" visit. Thus, they announced that the visits would not be renewed until their demands to improve the physical conditions in the facility and the terms of the visit were met.

**It should be mentioned that the ICRC, which organized the visit, did not think that the visit could not be held.**

9. Following this incident, the detainees' demands were examined, and consideration was given to meeting same.

On 16 March 2003, as a result of the incident, ICRC officials arrived at the detention facility and recommended that some of the detainees' demands be met. For example, the detainees' main demand was that the distance between the prisoners and the visitors during the visit, which was about 90 centimeters, be reduced substantially. The ICRC officials suggested that the request be granted.

The authorities considered the matter and decided to grant the request. As a result, within a few days, the distance was reduced to 15 centimeters. It was also decided to meet requests regarding other matters.

10. Following implementation of these changes, another visiting date was set, in coordination with the ICRC, for 23 March 2003. However, the detainees told their families not to come, because as of that time, not all of their demands had been met. As a result, the visit was cancelled.
11. Following these developments, the ICRC sent a letter to the military authorities, describing the chronology of the events detailed above, and pointing out that, **although all the renovations recommended by the ICRC had been implemented, the detainees' representatives refused to receive family visits.**

**The ICRC noted that it was ready to renew the family visits at Ofer under the current conditions and circumstances, in cooperation with all the relevant Israeli authorities, but that the detainees' representatives refused to receive family visits. Therefore, the ICRC announced that it had decided to cancel, for the present, the buses that had been ordered to transport the families to Ofer, until further notice, and expressed its disappointment about the situation that had been created. The ICRC emphasized that it would be willing to renew the family visits to Ofer if the detainees altered their decision. They added that family visits at all detention facilities in Israel would continue.**

12. Notwithstanding the ICRC's position, security officials continued negotiations with the detainees to see if it was possible to meet more of their demands, so that the visits could finally take place at Ofer.

**The negotiations were fruitful, and lead to a decision to implement additional changes, both in the physical conditions in the facility used for the visits, and in the conditions in which the visit is held. Following the Respondents' consent to make the changes, the detainees indicated that they agreed to renew the visits, with the negotiations continuing simultaneously.**

13. The Honorable Court was informed of this agreement in the joint motion to postpone the hearing on the petition, which had meanwhile been scheduled for 19 May 2003. The motion was filed on 18 May 2003. It stated that the construction work agreed upon by the parties was scheduled to be completed within a month, and that the parties agreed that the visits would begin immediately thereafter, subject to coordination with the ICRC (see Section 4 of the motion). The motion also mentioned other developments that had taken place in the matter, primarily

regarding the Respondents' announcement that it would consider a few more of the demands the Petitioners had made (Section 5 of the motion).

The parties' request was granted, and the hearing was adjourned, first to 7 July 2003 and then to 17 July 2003.

14. In accordance with the understandings between the parties, the physical changes were made in the facility and completed within thirty days. The ICRC was so notified, and it was also informed that it could begin the visits immediately. At the request of the ICRC, the visits at Ofer were scheduled to begin on 23 July 2003, as it needed a few weeks to organize the visits.

It should be mentioned that an understanding was reached with the ICRC in early July that, commencing on 21 July 2003, prisoners in Ofer and in detention facilities and prisons in Israel would be allowed to receive family visits by relatives living in three additional districts – Tulkarm, Salfit, and Bethlehem – while at the same time receiving family visits from relatives living in the Jericho, Ramallah, and Qalqiliya districts, from which visitors had come over the past four months.

15. **According to the plan prepared by the ICRC for visitors to the Ofer detention facility, the first visit from the Ramallah district was scheduled for 23 July, the first visit from the Bethlehem district on 30 July, and the first visit from the Jericho, Qalqiliya, Tulkarm, and Salfit districts on 6 August. Of course, further visits from these districts were also planned.**
16. **In addition, towards the middle of August, after the plan for visits from these six districts is implemented, and the practical implementation of the expansion of the family visits plan to the three additional districts is reviewed, the state will favorably consider the possibility of expanding the plan to districts from which visits had not been held because of the severe security conditions (Nablus, Jenin, and Hebron districts). In the first stage, the possibility of conducting visits of relatives from the Hebron district will be examined.**
17. The precise dates of the planned visits, and the plans for the future, were provided to Petitioners' counsel, and counsel was also informed that changes had been made in the criteria established by the Respondent regarding the relatives who were allowed to visit detainees in the Ofer detention facility. Regarding the criteria, Petitioners' counsel was informed about two months ago that the security establishment had decided to re-examine the subject. Yesterday, Petitioners' counsel was informed that the examination had not yet been completed, but that it had been decided to establish more flexible criteria, whereby detainees' children under age 16 would be allowed to visit (rather than under age 13), and that siblings up to age 16 would be allowed to visit, provided that the number of visitors at each visit – for each detainee – did not exceed three, which was the customary practice.

**Although all this information was provided to Petitioners' counsel, and even though the information obviates the need for a hearing on this petition, Petitioners' counsel indicated that they insist that the hearing on the petition be held.**

18. To complete the picture, we shall add that an advisory committee to the Chief of Staff has recently been appointed and tasked with examining prison conditions in the Ofer detention facility. This committee was appointed following the recommendations the Honorable Court made some months ago in its judgment in HCJ 3278/02, **HaMoked: Center for the Defense of the Individual v. Commander of IDF Forces in the Judea and Samaria Area** (not yet published).

The Court explained that, indeed, the High Court of Justice has always held comprehensive judicial review of detention conditions, but, naturally, such review cannot be a substitute for ongoing monitoring by the relevant military officials. Therefore, the Court believed that such an advisory committee should be appointed to advise the Respondent regarding the detention conditions in the facilities.

The amended Letter of Appointment of the committee empowered to examine the detention conditions in the Ofer detention facility is attached hereto, marked Appendix R/2.

19. As appears from the Letter of Appointment, the head of the committee is a military judge from the Military Court Division, holding the rank of colonel, and the other committee members are a lieutenant colonel from the Medical Corps and a lieutenant colonel who serves as commander of the Command Military Police.

The Letter of Appointment states that the committee shall serve as a permanent advisory committee charged with monitoring and supervising the detention conditions in the Ofer facility.

The Letter of Appointment further states:

The committee shall conduct an ongoing examination of the detention conditions in the facilities, both regarding the general conditions and the specific problems and complaints.

The Letter of Appointment also directs that the committee file periodic reports of its findings, and recommendations, which shall be provided to the Chief of Staff, and to the OC Central Command, the head of the Personnel Branch, the deputy head of the Personnel Branch, and the chief officer of the Military Police.

**In these circumstances, if the Petitioners have complaints regarding the conditions in the visitors' facility, and are dissatisfied with the handling of their requests by the relevant army officials, the Petitioners may submit their complaints to the aforementioned committee, and do not have to turn directly to the High Court of Justice.**

20. We further note, to complete the picture, that this petition was filed by three petitioners who were imprisoned in Ofer when the petition was filed (and by the mother of one of them and a public petitioner). In the meantime, Petitioner 2 has been moved to the Ketziot facility and Petitioner 3 has been released.

### **Conclusion**

21. **As indicated by the aforesaid, family visits from the parts of Judea and Samaria from which visits have been held (the Jericho, Ramallah, and Qalqiliya districts) at detention facilities and prisons in Israel over a period of four months have already resulted in thousands of visitors meeting with prisoners in Israel. In the coming days, the visits will be expanded to include three more districts (Bethlehem, Salfit, and Tulkarm), and we hope that within a short time, family visits will be even further expanded.**

**Family visits were also planned to begin in March at the Ofer facility. However, because of demands raised by prisoners at Ofer, the visits did not take place. It should be noted that the ICRC believed that the conditions in the facility enabled the visits to be held in a completely reasonable fashion, as the ICRC clearly indicated in its letter of 26 March 2003, after some of the prisoners' requests had been met. Nevertheless, the prisoners refused to enable the visits to be held, and so are solely at fault for the fact that the visits did not begin.**

22. **In any event, as stated, in the meantime, the main disputes have been resolved, and on 23 July 2003, the visits are finally to begin, with the consent of the prisoners.**

**In these circumstances, the petition has been fully resolved and should be dismissed.**

Today, 15 Tammuz 5763, 16 July 2003

*[signed]*

Shai Nitzan

(Acting) Head, Special Functions  
Division