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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

Response on behalf of the State Attorney's Office

In this petition, the Petitioners request that the Court direct the Respondents to explain why they do not permit Petitioners 1-3 to receive regular family visits in the Ofer military detention facility, located in the Judea and Samaria Area.

At this point, we should clarify that the Respondents have no opposition in principle to the visits, and continuously act to enable such visits, as will be described below. However, for various objective reasons, most of which derive from the grave security situation in the Territories, there have not yet been family visits in the detention facility. In any event, the Respondents attempted to overcome said problems in different ways, and family visits will apparently begin as early as February, as set forth below.

Thus, the Respondents are of the opinion that the petition should be denied.

We shall present the factual background relevant to the petition, and thereafter explain why the petition should be denied.

The factual background

1. The detention facility in Ofer was established in late March 2002, at the beginning of Operation Defensive Shield. The facility is a command detention facility, intended for use in situations in which many detainees are arrested within a relatively short period of time. The facility was initially planned to be temporary. With the decision to launch Operation Defensive Shield, the authorities expected a large number of detainees within a short period of time, so the order was given to open the facility immediately.

When the facility was opened in March 2002, military authorities did not know how long the facility would serve its temporary purpose. Therefore, the authorities did not initially build the facilities necessary to enable family visits, i.e., a facility in which the visits would be held and a facility for checking the visitors.

2. As time passed, and it became clear that it was necessary to keep the facility functioning because of the extremely large number of detainees, the requisite facilities to conduct family visits were built. At the end of October 2002, construction of the two necessary facilities was completed.

Petitioners' counsel was informed of this fact shortly following the completion of construction, as appears from paragraph 1.4 of the petition.

3. Although the authorities in charge of the facility were prepared at that time to begin family visits in the detention facility, family visits in the facility have not yet taken place.

The reason for this is that the current security situation, in which the army is regularly forced to implement a policy of closures, restrictions on movement along roads, checkpoints and roadblocks, and curfew, presents numerous objective difficulties that make it hard for persons wishing to visit their relatives in Ofer to reach the facility. These difficulties also cause problems in issuing the

permits that are at times necessary for movement in the Territories, in communicating with the detainees' families, and the like.

4. For many years, family visits by residents of the Territories with relatives that are held in detention facilities have been 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 have become disrupted, and were ultimately stopped altogether.
5. Recently, the military authorities have been in ongoing communication with the ICRC, and has attempted to renew the visits that are arranged with its assistance. These communications have led 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 obtaining individual exceptions).

Subsequently, some months ago, the State of Israel and the ICRC reached another understanding whereby, beginning on 15 November 2002, the ICRC would aid in organizing family visits at Ofer, and in other detention facilities. The first stage will involve visits by families living in Hebron, Bethlehem, and Jericho.

Shortly before said date, the ICRC requested that the plan be postponed until 25 November 2002, and the date was postponed as requested.

6. However, a few days before 25 November, terrorists from Hebron and Bethlehem committed extremely grave acts of terrorism, following which the two cities were placed under curfew. The ICRC indicated that because of the deterioration in the security situation in Hebron and Bethlehem, and the difficulty in arranging the visits, there would be further delay before its assistance would begin.
7. Recently, communications with the ICRC have been renewed with the intention of arranging the arrival of visitors from certain cities in the Judea and Samaria Area to the detention facilities, with the help of the ICRC, and these communications have reached an advanced stage. However, no final understanding has yet been reached.
8. Simultaneously, and as a result of the difficulties encountered in these communications, the IDF has recently begun staff work – even before the petition was submitted - with the objective of enabling the commencement of family visits at Ofer, even without the aid of the ICRC.

However, owing to the security situation, the many sieges and restrictions on movement in the Territories, this is a complex plan whose implementation is not

simple. Despite this, the IDF is making efforts to complete the staff work that has begun on this subject as soon as possible.

9. According to the assessments of defense officials, which were recently provided to the undersigned, by the beginning of this coming February, family visits in the Ofer facility will likely begin, at least by residents of some Judea and Samaria Area cities whose relatives are detained in the facility. The visits will begin even if the communications with the ICRC do not bear fruit in this matter.
10. We see from the above, that the Respondents do not oppose family visits in principle; that the special facilities necessary for holding the family visits at Ofer have been built, and that, apparently, by next month, family visits will begin to be held in the Ofer facility, even if no understanding is reached with the ICRC.

Under these circumstances, the petition is moot, and should be denied. Therefore, it is requested that the petition be denied.

Today, 29 January 2003

[signed]

Shai Nitzan

(Acting) Head, Special Functions
Division