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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

Second 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 the Judea and Samaria Area.
2. On 29 January 2003, we filed our first response to the petition, in which we explained that the Respondents have no opposition in principle to the visits and continuously act 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 Judea and Samaria to detention facilities and prisons in Israel, in which detainees and prisoners from Judea and Samaria were being held, ceased.

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

3. In our response, we also stated that, for many years, family visits of residents of the territories were made, with the assistance of the International Committee of the Red Cross (ICRC), with detainees in the detention facilities. Through cooperation with 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 were recently in constant contact with the ICRC, and had attempted to renew the visits, which 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 obtaining individual permits).

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 on the ground so permitted.

6. **Given these statements, at the conclusion of the hearing of the petition on 16 February 2003, 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.**
7. On 17 July 2003, a second hearing was held on the petition. In anticipation of the hearing, the state submitted a supplementary response, in which it described the developments in the matter up to that time. So as not to repeat the response, we refer to it in its entirety. In brief, we should mention that the response stated that, on 9 March 2003, following extensive effort, family visits were indeed held by families from Judea and Samaria with detainees and prisoners in detention facilities and prisons in Israel. In the first stage, family visits were allowed by relatives from the Jericho, Ramallah, and Qalqiliya districts.

The response mentioned that the operation is very large, in that each visit entails organization, buses, crossing many checkpoints, prior coordination, and the like.

To clarify the scope of the visits, we wish to point out that, to date (i.e., a period of four months), some 130 visits have been held (the term "visit" refers to a visit of a group of families from one of the aforesaid districts at a detention facility or prison). The visitors were brought in hundreds of buses, and thousands of relatives took part. The visits were made to detainees and prisoners at the military detention facilities in Ketziot and Megiddo and at facilities run by the Israel Prisons Service - Nafha, Shata, Ashkelon, Nitzan, and elsewhere.

8. The supplementary response further stated that, while these visits were being held, plans were being made to enable visits with detainees in the Ofer detention facility, beginning on 10 March 2003. The first family visit at Ofer indeed took place on 10 March 2003. However, a few minutes into the visit, the detainees asked to halt it, and requested to leave the facility in which the visit was held. They contended that the conditions there 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.

On this point, it was mentioned that the ICRC, which organized the visit, did not think that the visit could not be held.

9. In any event, following this incident, the detainees' demands were examined. The recommendations made by the ICRC regarding improvement in the conditions were considered and implemented.

10. Following these developments, the ICRC sent a letter to the military authorities, describing the chronology of the events detailed above, and pointed out that, **although all the renovations recommended by ICRC were 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 the family visits to all detention facilities in Israel would continue.

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

The negotiations were fruitful, and decision was reached to institute additional changes, both in the physical conditions in the facility in which the visits are held, and the conditions in which they are held. Following the Respondents' consent to make the changes, the detainees indicated that they agreed to renew the visits, with the negotiations continuing simultaneously.

12. Following the understanding reached by the parties, the physical changes in the facility were made.

Following the changes, coordination was made with the ICRC to have the visits to Ofer begin on 23 July 2003, i.e., one week following the first hearing on the petition, and we so notified the Court in our previous response.

The previous response also stated that 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 starting in March of this year.

It was also mentioned that, towards the middle of August, after the plan for visits from these six districts had been implemented, the practical implementation of the expansion of the family visit plan to the three additional districts was reviewed, the state would 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 would to be examined.

13. On 17 July 2003, the second hearing on the petition was held (before Honorable Justices Mazza, Naor, and Hayut). At the beginning of the hearing, the Court pointed out to the Petitioners that their refusal to enable the visits in the Ofer detention facility, even though the ICRC found that nothing prevented them, indicated that the Petitioners had not appeared before the Court in good faith.

Nevertheless, the Court decided to hear the substantive matters, after which it held that it had been convinced that, taking into account the security and logistical constraints facing the Respondents, they were taking reasonable action to enable family visits to detainees at the Ofer detention facility.

Thus, the Court held that, under the circumstances, the issues raised in the petition had been resolved, and that the petition should be dismissed.

Despite this, the Court decided, in its words, “beyond the requirement of the law,” to grant Petitioners’ counsel’s request and direct that the petition be scheduled for further hearing “to further monitor the developments.”

14. **Therefore, we shall now update the Court on the developments that have taken place since the hearing.**

As stated above, at the time of the previous hearing, visits had not yet been held at Ofer. The intention was to begin visits there on 23 July 2003, and we so informed the Court in our previous response.

15. Indeed, following the hearing, our stated intention became reality, and *from 23 July 2003 to the present, many visits have been held at the Ofer detention facility.* In these visits, residents from six districts in the West Bank took part, as planned: Tulkarm, Salfit, Bethlehem, Jericho, Ramallah, and Qalqiliya.

Visits by residents from these districts were also held not just in Ofer, but also in the rest of the detention facilities, located inside Israel.

To illustrate the scope of the visits, we should mention that between July and September, more than 9,000 visitors visited incarcerated relatives. Furthermore, the number of visitors during these months rose appreciably in comparison with the number of visitors who visited inmates in the preceding four months. In total, from March to the present, more than 14,000 individuals have visited their incarcerated relatives.

16. Regarding visits by relatives from the Hebron, Nablus, and Jenin districts, the only districts from which visits have yet to be arranged, as mentioned in our previous response, towards the middle of August, the state will favorably consider expanding the plan to these districts as well. In the first stage, the possibility of conducting visits of relatives from Hebron district will be examined.

Indeed, as mid-August approached, OC Central Command decided, in principle, to expand the family visits to include Hebron, and implementation was to begin in September. However, following the deterioration in the security situation and the

severe terrorist attacks that originated in the Hebron area, most significantly the bombing of the bus on the No. 2 line in Jerusalem, on 19 August 2003, severe security constraints resulted in the freezing of the plan.

In any event and despite the situation, in recent days, the OC has decided to expand the family visit plan to cover the Hebron area, and it will begin soon, unless a new preclusion for such arises.

As for Nablus and Jenin, these two areas are the focus of substantial and extensive terrorist activity.

As a result, defense officials are compelled to take firm action in fighting terrorism. In this framework, the army imposes complete closures on the cities an intermittent curfew; substantial numbers of troops enter the cities from time to time, and other actions.

In these circumstances and because of the security constraints that create security and logistical problems that prevent the arrangement of the visits, it has not yet been possible to expand the family visits' plan to these districts.

However, as soon as security permits, visits from these districts will be considered.

17. We should add that, despite the aforesaid, it is possible to submit individual requests to the authorities based on special humanitarian grounds, which will receive special handling, and if justification is found to grant the requests, individual visits with detainees by particular individuals will be allowed. Such visits have indeed been held in the past.
18. We also wish to give an update regarding a specific problem that was raised in the petition: the refusal, for security reasons, to allow Petitioner 4 to visit Petitioner 1. Our examination of the matter has indicated that there are now no security grounds for preventing the visit of this petitioner at the Ofer facility.

In this regard, we should mention that this petition was filed by three petitioners who were imprisoned in the Ofer facility at the time of filing (and by the mother of Petitioner 1 and a public petitioner), who contended they were being prevented from visiting relatives. In the meantime, Petitioner 2 has been transferred to the Ketziot facility, while Petitioner 3 has been released. As for Petitioner 1, as stated, his mother can visit him, as can other relatives who meet the criteria (if such relatives exist). Thus, Petitioners' specific problem has been resolved.

Conclusion

19. **We see from the above that family visits from those parts of Judea and Samaria from which visits have been held (Jericho, Ramallah, and Qalqiliya districts in the first stage, and Tulkarm, Salfit, and Bethlehem in the second stage), in which relatives have visited detainees at the Ofer facility, have been taking place for more than two months, and that many visitors have been**

visiting regularly at the other detention facilities, which are in Israel, for more than seven months. Detainees and prisoners have received thousands of visitors.

Regarding visits from other districts, the grave security situation has made it impossible to arrange visits from those areas. In any event, it has been decided, as stated, to expand the plan to the Hebron district, and to the two remaining districts, and as soon as feasible, consideration will be given to including them in the family visit plan.

We also mention that visits at the Ofer facility were planned to begin in March, at the time of the visits to the other detention facilities, but due to various demands raised by the prisoners at Ofer, the visits were not held. It should be noted that the ICRC was of the opinion that the conditions in the facility enabled the visits to take place in a completely reasonable manner, and that the ICRC had set forth this position in its letter of 26 March 2003, following the granting of some of the prisoners' requests. Nevertheless, the prisoners refused to allow the visits to take place, and therefore they are entirely to blame for the fact that the visits did not begin until July.

20. In any event, as stated, the visits have finally also begun at the Ofer facility, with the prisoners' consent, and they are taking place in an orderly fashion.

All of the above indicates that the specific plans as to which the Court was informed during the previous hearing have been essentially implemented, and the visits at Ofer have been taking place satisfactorily.

Also, the specific problem of the Petitioners herein has been resolved.

For these reasons, and as the Honorable Court stated in its previous decision, the petition has been fully resolved and must therefore be dismissed.

Today, 4 Tishrey 5763, 30 September 2003

[signed]

Shai Nitzan

(Acting) Head, Special Functions
Division