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At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 2901/02

- In the matter of:
- 1. HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (Reg. Assoc.)**
 - 2. The Association for Civil Rights in Israel**
 - 3. B'Tselem – The Information Center for Human Rights in the Occupied Territories**
 - 4. Physicians for Human Rights**

all represented by attorneys Yossi Wolfson et al. of
HaMoked: Center for the Defence of the Individual
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Tel. 02-6283555 Fax 02-6276317

The Petitioners

v.

Commander of the IDF forces in the West Bank

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

The Respondent

Statement on behalf of the Respondent

1. The petition involves the Petitioners' application requesting that the Respondent allow a meeting between attorneys and detainees whose names are on a list attached to the petition, and with other detainees in Ofer Camp, and that the sweeping order prohibiting the meeting with all the hundreds of detainees be nullified.
2. For the reasons set forth below, the Honorable Court is requested to deny the petition.

The facts

3. As is known, since the end of September 2000, numerous combat incidents have taken place in the region of Judea and Samaria, and many terrorist attacks have occurred in these areas and in Israel, which have led to hundreds of dead and wounded Israelis. Many Palestinians have also been killed or wounded.

4. The incidents increased in severity in March 2002, in which one hundred and twenty Israelis were killed, and hundreds were wounded, in terrorist attacks perpetrated by Palestinians.
5. In response to these acts of terror, the government of Israel decided, on 29 March 2002, to initiate a wide-scale IDF action to destroy all the parts and components of the Palestinian terrorist infrastructure, and, to accomplish this, engage in extensive activity until the objective is achieved.
6. As part of this activity, that began at the end of March 2002, IDF forces entered much of the territory that was under the control of the Palestinian Authority, into Palestinian cities, such as Ramallah, Qalqiliya, Tulkarm, Nablus, Jenin and Bethlehem, and also into Palestinian villages. One of the objectives of the IDF forces in entering these areas was to detain wanted persons and persons belonging to the various terrorist organizations, and to collect weapons and *matériel*.
7. In the context of the IDF's activity, battles with armed individuals and groups take place in the region, and the IDF is compelled to call up many reservists, and to employ heavy weaponry, such as tanks and armored troop vehicles, and even attack helicopters and airplanes.
8. Since the battles started at the end of March 2002, that is, a period of some twenty days, IDF forces have arrested in Judea and Samaria, at the scene of the combat, or nearby, *close to 1,600 detainees*.
9. Some of these detainees took actual part in the fighting against IDF forces or were involved in initiating and perpetrating attacks against Israeli citizens, and some surely were detained in the fighting arena but are not connected to hostile activity.
10. The security forces have the task of determining, as quickly as possible, who of the detainees endanger state security and the safety of its citizens, and who among them were detained but their continuing detention is unjustified. It should be mentioned that, among those detained were individuals who, it was found, have investigations files that remain open against them for serious criminal offenses that they committed in Israel, and later fled to the territories.
11. Because of the large number of detainees taken within a short period of time, and due to the gravity of the suspicions on which the individuals were detained, and because IDF forces are continuing to detain persons in the various areas of the fighting, a situation has been created in which the regular laws of detention are not appropriate

for coping with the need to detain such a large number of detainees, whose identity in many cases is not known.

12. A month ago, where there was a substantial increase in the number of detainees taken in the various IDF actions in the Territories, and it was necessary to take numerous actions to classify the detainees, a general order was issued regarding the prohibition on detainees from meeting with an attorney. At first, the said order was issued for five days.

R/1 A photocopy of the order of 9 March 2002 is attached hereto and marked *R/1*.

13. In the beginning of April 2002, when the number of detainees grew significantly, a second general order regarding prohibition of meeting with an attorney was issued for a period of fifteen days.

R/2 A photocopy of the second order is attached hereto and marked *R/2*.

14. The number of detainees increased greatly in the beginning of April 2002, so the Respondent decided, on 5 April 2002, to issue the Order Regarding Detention in Time of Combat (Emergency Regulation) (Judea and Samaria) (No. 1500), 5762 – 2002.

R/3 A photocopy of the order is attached hereto and marked *R/3*.

15. The Order states that a “detainee” is –

A person who is detained during the combat actions in the region, commencing on 16 Nissan 5762 (29 March 2002), and the circumstances of his detention raise the suspicion as to the detainee that he endangers or is liable to endanger the security of the region, the safety of IDF forces or public safety.

16. The Order states, in section 2(a) that an order may be given to detain for a period not to exceed eighteen days a person who is detained pursuant to the Order.

17. The Order further provides that the detainee will be given an opportunity to state his case no later than eight days from the day that he is detained. The statement of his case will be made before various officials, among them IDF officers, investigators or coordinators of the General Security Service and Police investigators, the objective being to make an initial investigation on the identity of the individual and also to hear his comments regarding his detention.

18. In accordance with the Order, an order can be given to release a detainee even prior to the end of the said eighteen-day detention period. Indeed, *since the detentions under discussion began, some 760 detainees have been released*. Thus, more than 800 detainees are currently being held in detention.
19. The Order further provides that the period of the detention will be determined in accordance with the regular provisions regarding detention for purpose of interrogation. Of course, it is also possible that detention will be extended also by means of administrative detention.
20. The Order further provides, in section 3, a general order preventing a detainee from meeting with an attorney during the period of detention.
21. It should be emphasized that the Order states that it remains in effect for two months only; that is, the order is a temporary order.
22. Furthermore, everyone whose classification procedure has ended and is not released from detention is transferred as quickly as possible for further questioning by the Police or the General Security Service, or to administrative detention, in which event the laws of regular administration apply to him, to the extent possible, also prior to the passing of the eighteen days set forth in the Order.

Position of the Respondent

23. The Respondent does not dispute the right in principle of every detainee to meet with an attorney, unless there is a lawful cause for the prohibition. As set forth above, the Respondent is of the opinion that the said Order is necessary in this time of combat in order to classify the hundreds of detainees within a few days.
24. It should be emphasized that the classification process is not simple in that individuals are detained, sometimes without identification documents, and in some instances a false identity is provided to the security authorities in an attempt to avoid detention. The classification procedure includes initial questioning, fingerprinting, and other checks, and taking into account the number of detainees, and all the other tasks faced by security officials at this time, a brief number of days is needed to complete it.
25. In this period, any meeting with an attorney is liable to frustrate the investigation and classification and the interrogation, harm the security of the region and the state, and is difficult to implement for organizational reasons.
26. Regarding the petition's contentions regarding the reasons that require, in the opinion of the Petitioners, an immediate meeting with detainees, it should be stated that, as

regards concrete contentions about the maltreatment of one detainee or another, the position of the Respondent and of the chief military prosecutor is that every complaint of this kind against IDF soldiers, in which a specific complainant sets forth details that enable investigation, will be investigated by the Military Investigation Unit in that it involves suspicion of commission of an offense, in accordance with the general policy of the IDF since the beginning of the combat. It should be noted that all the contentions set forth in the petition are general and anonymous, making it impossible to investigate them unless details on the complainants are provided and they give testimony to Military Investigations. Where concrete complaints against GSS or Police personnel are concerned, they will be investigated by the official in charge of investigating interrogees' complaints in the Ministry of Justice or the Department for the Investigation of Police, as the case may be.

27. Also, as regards the conditions in the Ofer facility, the facility is administered by the military police, the detainees in the facility receive food, a bunk for sleeping, and a number of blankets for each detainee, and the facility is administered in accordance with the orders of the chief officer military police command.
28. As regards the application for a temporary injunction, in Ofer Camp, no physical force is used against detainees in the classification process that takes place there; thus, there is no basis for this application.
29. In light of the above, the Respondent is of the opinion that the petition should be denied.

Today: 25 Nissan 5762
7 April 2002

[signed]

Malkiel Blass

Head, High Court of Justice Matters
State Attorney's Office