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In the Supreme Court  
sitting as the High Court of Justice

HCJ 11198/02

Scheduled for May 19, 2003

The Petitioners:

1. \_\_\_ Diriya, ID No. \_\_\_\_\_,
2. \_\_\_ Gheith, ID No. \_\_\_\_\_,
3. Hamed, ID No. \_\_\_\_\_,
4. \_\_\_ Diriya, ID No. \_\_\_\_\_,
5. HaMoked: Center for the Defence of the Individual

**all represented by Counsel Adv. Tamar Peleg-Sryck and/or Adv. Yossi Wolfson  
of HaMoked: Center for the Defence of the Individual, 12 HaTanaim Street, Tel Aviv 69209  
Tel. 03-6421859 Fax: 03-7440621**

- v e r s u s -

The Respondents:

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

**by the State Attorney's Office**

## **Application to Attach Documents**

The Honorable Court is requested to receive the documents attached hereto and marked P/9, P/10, P/11, and P/12.

**The grounds for the application are as follows:**

1. The petition concerns the right of prisoners in the Ofer detention facility to receive family visits. The parties do not dispute this right.
2. As stated in the decision of the Honorable Court dated 16 February 2003, “The oral supplementary response given by Respondents’ counsel indicates that appropriate arrangements have already been made to shuttle relatives from Jericho, Qalqiliya, and Ramallah to visit the prisoners, beginning on 9 March 2003, and the state intends to expand the shuttles to include other locations as well, depending on the situation on the ground”. In light thereof, the Honorable Court decided to leave the petition pending in order to “check in three months whether the shuttle arrangements have been expanded to other communities in the Area”.
3. Since the decision was given, the Petitioners have learned that the Respondent has not fulfilled his commitment. Visits are not being held – now due to problems relating to the manner in which the visits are held and to the criteria that the Respondent has established regarding eligibility to participate in the visits.
4. The documents that the Petitioners seek to submit display these problems.

**P/9** is the affidavit of Petitioner 3, who represents the detainees in dealings with the prison administration.

**P/10** is a letter from the International Law Division of the Military Advocate General’s Office delineating the visiting procedures.

**P/11** is a letter dated 3 March 2003, from Petitioners’ counsel, drafted in reply to P/10.

**P/12** is a letter of Petitioners’ counsel regarding a prisoner’s family that is unable to visit because of the criteria established by the Respondent and his refusal to allow the prisoner’s wife to visit.

5. The primary problems described in the documents are these:
  - a. Not all relatives wanting to visit are able to do so.

The Respondents established extremely narrow criteria for determining what relatives are entitled to visit, i.e., only the spouse, father, mother, and small children. According to P/10, grandparents may visit and children may visit up to the age of 13. These criteria are narrower than the rights set forth in the Administrative Detention Regulations. See the reference made to this issue in P/11. The criteria, and even more so these narrow criteria, are not so much as alluded to in the Respondent’s responses to the Court.

Furthermore, the Respondents prevent visits by some of the relatives who come within the narrow criteria. Petitioner 3 states in his affidavit that he knows of some 20 prisoners (only from those districts in which visits have already been approved) who have nobody who is able to visit them. When adult relatives are not allowed to visit, permission is not given for the children to be brought to visit their fathers by another family from the same city who is visiting a person being held in the prison.

P/12 is a letter of Petitioners' counsel to Respondent 2's deputy legal advisor that illustrates the problem. In this case, the prisoner was arrested in October and has been tried and sentenced. He has a wife and four small children, between the ages of two and ten. The Respondents have not allowed the wife to visit her imprisoned husband, the refusal, apparently claiming security reasons. The prisoner's mother is deceased. His father is blind and unable to visit, certainly not in the conditions that are described below, and is clearly unable to take the prisoner's small children with him. As a consequence, there is nobody to visit the prisoner, and the children have no way to see their father.

As stated, this is a representative case, and is not unique.

- b. The visits are conducted in a long covered structure. Two parallel partitions separate the detainees from their families. The bottom part of the partitions is solid and opaque and the top is a mesh screen. The distance between the partitions is about 1.5 meters, and soldiers move about between them. There is room for about 20 detainees to stand on one side of the partition, and the relatives stand on the other side of the second partition. There is no separation allowing families to speak and have a modicum of privacy with the inmate it is visiting. The result is a swell of shouts and cries that make it impossible to carry on a conversation.

Inquiries made by Petitioners' counsel reveal that in other detention facilities that have a double mesh partition, the distance between the two partitions is much shorter, about 30 to 50 centimeters. Such a double partition enables the detainees and their families to hear each other without having to shout, albeit without privacy.

- c. The partitions between the detainees and their families are solid and opaque to a height of 1.60 meters. The mesh screen above that height is extremely dense. As a result:
  1. The detainees cannot see their children (and vice versa), because most of the children are shorter than 1.60 meters.
  2. Some of the adults also cannot see or be seen from the other side of the partition. This mostly occurs with women, many of whom are short. One of the detainees was shorter than the height of the solid part of the partition, and his wife was unable to locate him among the detainees who were allowed visitors.
  3. It is not possible to hold the visit sitting on benches or chairs, and the visitors and the detainees have to stand throughout the visit.

4. Even when it is possible to see the person on the other side, they are not clearly visible because of the double netting and the dense mesh.

The inquiries made by Petitioners' counsel indicate that the solid section of the partition at the Ketziot detention facility is much lower, while at Megiddo, the visits are conducted sitting on benches.

- d. The Respondents limit the visits to 30 minutes. In some cases, the detainees and their families have not seen each other for more than a year! In this matter, too, the accepted practice in other facilities is to allow much longer visits (three times longer in Meggido, for example). The time allocated for visits is also mentioned in P/10.
  - e. The detainees have been told that they can receive visitors once a month. This is less frequent than the requirement set forth in the Administrative Detention Regulations (the Regulations were attached to the petition as Appendix P/6), which indicate that visits are to be allowed once every two weeks. The frequency of visits is also mentioned in P/10.
  - f. The Respondents do not allow the detainees physical contact with their small children, not even with infants. Ordinarily, small children are allowed to enter the inmates' area at some point during the visit, to enable barrier free physical contact. According to Petitioners' counsel's inquiries, this is the practice in Megiddo.
  - g. No facility has been prepared for families who are waiting to begin the visit, not even a most basic one. Such a facility may include a covered structure with benches, a water fountain, bathroom, play area for small children). The families are required to wait for many hours inside buses.
  - h. Although there is a list of items that the relatives are allowed to bring for the detainees (various kinds of clothing, personal items, and food), in practice, the authorities refuse to deliver the items, except for one item of clothing per detainee.
6. Visits cannot be held in such a manner. As Petitioner 3 describes in his affidavit (P/9):

Shortly after the visit began, we realized that the conditions necessary for it were non-existent. As I said, the shouting by the families and the detainees created a chaos of noise, making it impossible to understand a word. People were not able to see each other for the whole time. It was impossible to continue the visit in this way, and we had to stop it.

7. The Respondents made a commitment to the Court to arrange family visits in the Ofer detention facility, not a sad and degrading caricature of visits.

At the last hearing, there was a sense of optimism and it seemed that the Respondents were beginning, slowly and gradually, to meet their obligations, and that it was only necessary to follow-up on the progress. Now we see that, in the meantime, we have taken several steps backwards.

8. Counsel for Respondents, Adv. Shai Nitzan, does not oppose submission of the documents, subject, of course, to his right to respond to the allegations made in the application.

Therefore, the Honorable Court is requested to accept the additional documents, which present the current factual situation, and which will form the basis for the hearing on the petition.

15 April 2003

*[signed]*  
Yossi Wolfson, Advocate  
Counsel for Petitioners

## A F F I D A V I T

I the undersigned, Hamer [*sic*], ID No. , after being warned that I must tell the truth and that I am subject to the penalties set forth in law if I fail to do so, hereby declare in writing as follows:

1. I am the prisoners' representative in the Ofer detention facility.
2. The first family visits with prisoners in the Ofer detention facility was due to take place two weeks ago. This followed almost one year in which there were no visits. The visits were to be made by families from the Ramallah area, who were to be transported to the prison in ICRC shuttles.
3. We soon realized that the facilities and arrangements for the visit made it is impossible to have visits in a reasonable, or even the most minimal way.
4. First, there was no waiting area for the families. They arrived on buses around at 7:00 A.M. and waited until the afternoon to visit. They had to wait inside the buses. There was no place for them to sit where they would be protected from the weather and the like. In a proper situation, a waiting area also has to include a play area for children – but that is not what I am talking about. I am talking about the bear basics – a proper place for the elderly, women and children to wait.
5. Second, the facility used for the visits is not appropriate. There are two partitions, with a distance of about 1.5 meters between them. On one side of the first partition stand 20 detainees. On the other side of the second partition there are dozens of relatives. Soldiers move about between the partitions. There is no partition separating the families, so the space is filled with shouts and cries that the detainees and their relatives try to exchange, all intermingled, making a conversation impossible.
6. The partitions between the prisoners and their families are solid and opaque up to a height of about a 1.60 meters, which makes it impossible for the detainees to see their children. Some of the women are too short to be seen, and we have one prisoner who is short and his wife was unable to find him on the other side of the mesh screen. Obviously, the solid part of the partition makes it impossible to sit during the visit, which makes it especially hard for the elderly and the ill.
7. The mesh screening is so dense that the people on the other side are completely blurred.
8. Third, the time allowed for the visit is extremely short. The authorities agreed to allow every detainee a visit once a month for half an hour. We (at least the administrative detainees) are entitled by law to visits once every two weeks. The time has to be longer to be meaningful. In other places, such as Megiddo, visits are usually one and a half hours to two hours long.
9. Fourth, the authorities don't let us have physical contact with the children. Usually, at the end of a visit, barrier free physical contact with small children (up to 10 or 13) is allowed. They do not let us do this.
10. Fifth, the criteria for allowing visits are problematic. The authorities only allow the spouse, mother, father, and small children to visit. Some detainees do not have first-degree relatives of this kind who are able to visit – for example, where the parents are deceased, or in the case of a bachelor, or when relatives who meet the criteria are

prohibited for security reasons. In the Ramallah, Jericho, and Tulkarm areas alone, there are about 20 detainees in these situations.

11. Also, the ICRC gave the families a list of about 25 items that they are allowed to give to the detainees during the visit. These items include, for example, clothes, shoes, sponges, pens, writing pads, cigarettes, zatar, coffee, oil, sage leaves, grape leaves, lemons, okra, mulukhiyah. They were not allowed to hand over these items, except for one item of clothing, an outer garment or a piece of underwear.
12. I would like to add that the covered structure in which the visits are held is open and susceptible to wind.
13. Finally, we do not think it right that the authorities treat a visit to the Ofer detention facility, which is located inside the West Bank, like a visit to a prison inside Israel. When it comes to visits inside Israel, clearly a permit to enter Israel is required. But why is a permit necessary to reach a prison that is located inside the West Bank?
14. As stated, the first visit was supposed to take place about two weeks ago. Shortly after the visit began, we realized that the conditions necessary for it were non-existent. As I said, the shouting by the families and the detainees created a chaos of noise, making it impossible to understand a word. People were not able to see each other for the whole time. It was impossible to continue the visit in this way, and we had to stop it.
15. Since then, we have been unwilling to receive family visits until reasonable arrangements are made. We are negotiating this matter with the prison authorities.
16. This is my name, this is my signature, and the content of this affidavit, which was translated into Arabic for me by Attorney Leena Abu-Mukh Zuabi, is the truth.

*[signed]*  
The Declarant

I the undersigned, hereby confirm that on 26 March 2003, Mr. Hamed, with whom I am personally acquainted, appeared before me, Adv. Leena Abu-Mukh Zuabi, in the Ofer detention facility, and after I warned him that he must tell the truth and that he is subject to penalties set in law if he does not do so, confirmed the accuracy of the above statements and signed it.

*[signed]*  
Leena Abu-Mukh Zuabi,  
Adv.



Official Mail  
By Fax

Military Advocate General's Office  
International Law Division  
Tel: 03-5693184  
General Staff: 0302-4184  
Fax: 03-5693320  
File 33 (18) Family Visits  
25 February 2003

Attorney Tareq Ibrahim  
HaMoked: Center for the Defence of the Individual  
4 Obeida Street  
Jerusalem 97200

Via Fax: 02-6276317

Dear Sir:

Re: **Family visits with Palestinian detainees held by Israel**  
Your letter 31708, of 4 November 2002

1. In response to your above-referenced letter, we wish to present our position on said matter. Inquiries we have made with the relevant officials regarding the questions raised in your letter, have indicated the following:
  - a. On 9 March 2003, family visits to detention facilities and prisons in Israel, as well as to the Ofer facility in the Judea and Samaria Area, are scheduled to begin for families from Ramallah, Qalqiliya, and Jericho in the Judea and Samaria Area. The visits will take place with the assistance of the International Committee of the Red Cross

(ICRC). Visits by families from the Gaza Strip have been taking place regularly for some time.

- b. According to the criteria set by defense officials, the relatives who are allowed to visit a detainee are the following: a spouse, father or mother, grandfather or grandmother, and children under age 13 (children – no restriction on the number of children). Currently, siblings are not permitted to visit. Also, relatives with security restrictions require approval by the Israel Security Agency. It should be emphasized that these criteria apply equally to relatives from Judea and Samaria and from the Gaza Strip.
  - c. The planned frequency of the visits is once every two weeks or month, for 30 minutes to an hour (depending on the facility and the area in which it is located).
  - d. Requests regarding family visits to persons held in Israel (both routine and exceptional requests) are transferred from the ICRC to the Coordination and Liaison Offices in the Judea and Samaria Area and the Gaza Strip, and undergo appropriate review. Requests that do not meet the criteria are examined as an exceptional request on an individual basis.
2. Other questions on this issue may be addressed directly with the commanders of the detention facilities and, if necessary, to the legal advisors in the Judea and Samaria Area and in the Gaza Strip.
  3. We apologize for the delay in responding. The delay resulted from our desire to completely and thoroughly clarify with the relevant officials the matters that were raised in your letter.

Sincerely,

*[signed]*

Lt. Gal Asahel  
Deputy Advisor, Security Section  
on behalf of  
Head of the International Law Division

CC:

Legal Advisor – Judea and Samaria Area

Coordination of Government Activities in the Territories – Head of Information and Coordination Division

Legal Advisor – Gaza Strip

Chief Military Police Officer – Head of Incarceration

HaMoked: Center for the Defence of the Individual  
Founded by Dr. Lotte Salzberger – Registered Association

3 March 2003

Lt. Gal Asael  
Deputy Advisor, Security Section  
International Law Division  
Military Advocate General's Office

Dear Sir:

Re: **Family visits in the Ofer military detention facility**  
Your letter of 25 February 2003

- a. I hereby thank you for your above-referenced letter and offer corrections for certain mistakes contained therein, some of lesser and some of greater significance.
- b. Adv. Tareq Ibrahim, who ceased working for HaMoked: Center for the Defence of the Individual some three months ago, did not continue to handle the matter.
- c. On the other hand, on 30 December 2002, Adv. Yossi Wolfson and the undersigned filed a petition in the High Court of Justice (HCJ 11198/02).
- d. The petition seeks to ensure that the Respondents – the commander of IDF forces in the Area and the commander of the Ofer military detention facility, fulfill their obligation to allow regular family visits, each of the respondents according to his function and authority and pursuant to security legislation (Section 12A of the Order Regarding Detention Facilities (West Bank Area) (No. 29), 5727 – 1967, Section 11(a) of the Administrative Detention Regulations, and international law norms, including the provisions of the Fourth Geneva Convention and of the Standard Minimum Rules for the Treatment of Prisoners, 1955.
- e. In the responses submitted in writing by the State Attorney's Office prior to the hearing and orally before the Court, no mention was made regarding denying the right to visit to a certain type of relatives, only individual reasons.
- f. I think that the stringent, not to say draconian, criteria (all of a detainee's children over 13 years of age, all brothers and sisters are precluded from visiting!) for determining eligibility for prison visits as set forth in your letter would greatly surprise the Court if it were to be informed thereof.

- g. Reliance on the agreement with the ICRC has no impact on this issue. I refer you to the decision of the High Court of Justice, which I attach hereto for your convenience.
- h. Therefore, I prefer, from all aspects of the matter, to view your letter as an outdated reply, and consequently no longer relevant.
- i. I hope that the instructions according to which the ICRC records the requests for visits at detention facilities meet the expectations that were set following the hearing before the High Court of Justice and its decision, and that we shall not be compelled to take action to rectify the mistakes that have been made.

Sincerely,

*[signed]*  
Tamar Peleg-Sryck, Attorney

30 March 2003

In response please cite: 26008

Lt. Col. Yair Lotstein  
Deputy Legal Advisor  
Office of the Legal Advisor  
PO Box 10482  
Beit El 90300

Via Fax

Dear Sir:

**Re: Family visits in the Ofer military detention facility  
Nahaleh (I.D.) and her four children  
of Al Jalazun Refugee Camp, Ramallah District**

1. This letter follows the hearing on HCJ 11198/02 and the Court's interim decision, of 16 February 2003, regarding the arrangement of visits at the Ofer detention facility.
2. I wish to point out that my client has been refused permission to visit her imprisoned husband. Ms. Nahaleh submitted a request to the International Committee of the Red Cross (ICRC) to arrange a visit, together with her four children, at the Ofer facility. She is the wife of \_\_\_ **Nahaleh**, ID No. \_\_\_, who was arrested on 6 October 2002 and sentenced to a term of 22 months' imprisonment.

On 7 March 2003, she was advised by ICRC officials that her request to visit her husband at Ofer had been denied for security reasons. Ms. Nahleh has never been arrested or questioned. Furthermore, when her husband served an earlier prison sentence, in 1994, she was given periodic visiting permits, and it should be mentioned that at that time, her husband was imprisoned inside Israel.

3. Mr. Nahleh, who is being held in the Ofer detention facility, has a heart condition. He underwent a catheterization and takes medication on a regular basis. During his present incarceration, he has been hospitalized twice at hospitals in Israel. Most recently, about three weeks ago, he was hospitalized at Hadassah Hospital, Jerusalem.

Attached hereto are medical documents, marked A and B.

4. The couple have four minor children, who have been given permission to visit their father, but are unable to exercise this right without their mother's accompaniment. The

prisoner's father is blind, and his mother has been deceased for some time. As mentioned, in the present circumstances, no one is available to accompany the children other than their mother, who has been denied permission. The children's particulars are as follows:

- \_\_\_\_\_, ten years old
  - \_\_\_\_\_, eight years old
  - \_\_\_\_\_, six years old
  - \_\_\_\_\_, two years old
5. I request your assistance in arranging the visit of our client and her children to the Ofer detention facility. I also request that you check if there were cases similar to that of our client, and that you take the measures necessary to ensure that such cases do not recur.
6. If the visit is not allowed or is restricted, please set forth the reasons.

Sincerely,

*[signed]*  
Yossi Wolfson, Adv.

Enclosures:  
Medical documents, marked A, B  
Photocopy of ID card, marked C