



בצלם - מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)

مركز المعلومات الإسرائيلي لحقوق الإنسان في الأراضي المحتلة بتسيلم

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

Barred from Contact

Violation of the Right to Visit Palestinians Held in Israeli Prisons

September 2006

Researched and written by Anat Barsella

Edited by Yehezkel Lein

Data coordination by Najib Abu Rokaya, Sohad Sakalla, Shlomi Swisa

Fieldwork by Musa Abu Hashhash, 'Atef Abu a-Rub, Salma Deba'i, Iyad Hadad, Karim Jubran, Zaki Kuhail, 'Abd al-Karim Sa'adi, Suha Zeid

Translated by Zvi Shulman

Cover photo: Computer montage of Palestinian children on a prison visit, with Hasharon Prison in the background (Shlomi Swisa and Oren Yakobovich, B'Tselem)

ISSN 0792-8114

B'Tselem thanks the International Committee of the Red Cross and HaMoked: Center for the Defence of the Individual for their cooperation and assistance in the preparation of the report.

רחוב התעשייה 8,תל-אביב 53132, טלפון 02-6735599, פקס 02-6749111

8 Hata'asiya St. (4th Floor), P.O.Box 53132, Jerusalem 91531, Tel. (02) 6735599, Fax (02) 6749111

mail@btselem.org

<http://www.btselem.org>

Introduction

Israel holds in prison more than 9,000 Palestinians from the West Bank and Gaza Strip, some as detainees and others as convicts serving sentences.¹ All the prisons housing these Palestinians, except for one, are situated inside Israel's sovereign territory, and not in the Occupied Territories.² Holding them in Israel flagrantly breaches international humanitarian law, which prohibits the transfer of civilians, including detainees and prisoners, from the occupied territory to the territory of the occupying state.³ Israel's practice results in the severe breach of the right of residents of the Occupied Territories to visit their imprisoned relatives with any reasonable frequency and under proper conditions. In some cases, Israel has totally denied this right.

Under international law, Israel is required to ensure public order and safety in all territory under its effective control.⁴ This obligation empowers Israel to enforce the law in the Occupied Territories, including the power to imprison persons. But the obligation also requires Israel to protect the human rights of the local population. Enabling them to exercise their right to visit their imprisoned relatives is one of these rights.

Although Israel bears the responsibility to facilitate family visits with prisoners, the task has been performed, since 1969, by the International Committee of the Red Cross (hereafter: ICRC).⁵ The ICRC mediates between the Palestinian residents and the Israeli authorities in issuing permits to enter Israel, coordinating with the Prisons Service and the IDF the days on which visits will be held and the security arrangements on the day of the visit, and arranging the visitors' transportation, all without any logistic or financial assistance by Israel.

¹ According to figures of the IDF and the Prisons Service, at the end of July 2006, Israel held 9,163 Palestinian prisoners and detainees.

² Some of the Palestinians are held in temporary detention facilities in the West Bank, where family visitation is not permitted.

³ Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949, Articles 49, 76.

⁴ Regulations Attached to the Hague Convention Respecting the Laws and Customs of War on Land of 1907, Article 43.

⁵ The International Committee of the Red Cross is an international humanitarian organization that operates in areas of violent conflict and maintains direct and confidential contact with the sides to the conflict, with the objective that the sides respect international humanitarian law.

Until the outbreak of the second intifada, in September 2000, family visits to prisons took place without any particular difficulty or restriction. The difficulties began the month after the intifada started, when Israel imposed many restrictions on movement, primarily in the West Bank. By the end of October, family visits had ceased completely. Following repeated requests of the ICRC and the intervention of human rights organizations, primarily HaMoked: Center for the Defence of the Individual, which petitioned the High Court of Justice, the visits began again in March 2003. The renewed visitation took place gradually, with visits beginning from the Ramallah, Jericho, and Qalqiliya districts. More than a year and a half later, in December 2004, Israel allowed visits from other districts in the West Bank and from Gaza.

However, the restrictions entailed in the procedure for issuing permits to enter Israel make it impossible for many Palestinians to visit their relatives more than once every few months. Many others are not granted entry permits and are thus prevented from visiting their relatives at all. For those with permits, the visit takes a whole day to complete because of the prolonged checks and delays.

This report examines the ICRC's program for family visits with prisoners, and describes the many difficulties that Palestinians who take part in the program face. The report contains five chapters. Chapter One provides a brief survey of the relevant rules of law applying to Israel. Chapter Two discusses the implementation and ramifications of Israel's permit regime regarding visits. Chapter Three describes the exhausting journey, resulting from Israeli regulations, that relatives undergo traveling to and from the detention facilities. This chapter also discusses the restrictions and failures of the Prisons Service, which result, *inter alia*, in family members with permits arriving at the facility and not being allowed to see their relatives. Chapter Four discusses the physical conditions in which the visitors have to wait at the facility before meeting with their relatives, and the conditions of the meeting itself. All the chapters contain a legal analysis based on international humanitarian and human rights law and Israeli administrative law, as presented in the first chapter. Conclusions and recommendations are set forth at the end.

Chapter One

The Legal Framework

Below are some of the relevant legal rules applying to family visits in prisons. These rules are drawn from the laws applying to Israel regarding residents of the Occupied Territories, particularly to persons held in custody: the laws of occupation in international humanitarian law, international human rights law, Israeli constitutional law, and Israeli administrative law.

Prohibition on transfer of civilians to outside the occupied territory

Article 4 of the Fourth Geneva Convention grants civilians lawfully staying in the occupied territory the status of "protected person." Article 49 of the Convention prohibits the occupying state from forcibly transferring protected persons to an area outside the occupied territory. The article does not limit the prohibition to the kind of protected person, so it also applies to detainees and prisoners. The first paragraph of the article states:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

In addition, the Convention explicitly states, in Article 76, that, "Protected persons accused of offenses shall be detained in the occupied country, and if convicted they shall serve their sentences therein...." The Convention also states, in Article 77, that, at the close of occupation, the occupying state must hand the prisoners over to the authorities of the liberated territory.

The right to visit and to receive visitors

International law explicitly recognizes the right of prisoners and their families to meet with each other in the framework of visits in the detention facilities. This right stems primarily from the understanding that a person, as a social being, exists in a family and community framework.

The Fourth Geneva Convention states, in Article 116, that, "every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible." Article 37 of the UN Minimum Standards for the Treatment of Prisoners states that prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends by correspondence and visits. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states, in Article 19:

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Israel's duty to allow family visits is also derived from the right of prisoners and their families to maintain family life, which is enshrined in both international law and Israeli law.

International law goes further than prohibiting arbitrary interference in family life – it imposes a duty on the state to take action to realize this right.⁶ The great importance of the family unit to a person and to society is also recognized in Israeli constitutional law. The right to family life is considered a component of the right to dignity, which is enshrined in Israel's Basic Law: Human Dignity and Liberty.⁷

The right to family visits is also derived from Israel's obligation, under Article 43 of the Hague Regulations of 1907 to ensure proper order and safety in the territory under its effective control. Regarding this provision, Supreme Court Justice Ayala Procaccia held that the military commander in the territories is charged "not only with ensuring the safety and order of residents but also with the protection of their rights, particularly their constitutional human rights. Ensuring human rights lies at the center of the humanitarian considerations that the commander must take into account."⁸

In addition, it is an accepted principle that detention or imprisonment, which restricts the persons' freedom of movement, does not restrict their other fundamental rights, except where expressly set forth in law.⁹ Therefore, imprisonment does not justify infringing the prisoners' and their families' right to family life, as far as that is possible under existing conditions, and

⁶ Articles 12 and 16(3) of the Universal Declaration of Human Rights, of 1948; Articles 17 and 23(1) of the International Covenant on Civil and Political Rights, of 1966, ratified by Israel in 1991; Article 10(1) of the International Covenant on Economic, Social and Cultural Rights, of 1966, ratified by Israel in 1991.

⁷ In light of the extremely intimate nature of the family unit, the right to family life is considered a special component of the right to privacy, which is enshrined in Section 3 of the Basic Law. See HCJ 8099/03, *The Association for Civil Rights in Israel v. Minister of the Interior et al.*, Petition for Order Nisi and Application for Temporary Injunction and Urgent Hearing, 8 September 2003, and Judgment, 14 May 2006.

⁸ HCJ 10356/02, *Hass v. Commander of IDF Forces in the West Bank*, Judgment, Section 8.

⁹ App. Pris. Pet. 4463/94, *Avi Hananya Golan v. Prisons Service*, Piskei Din 50 (4) 136, Sections 12-13.

does not entitle the state to violate their right to visit or receive visitors. In the words of Justice Procaccia:

As an enlightened society, we must protect the prisoner's dignity, and protect the prisoner's rights so long as doing so does not contradict the actual objectives of the imprisonment, or oppose a major public interest that justifies reduction of the prisoner's rights. This obligation applies to every prisoner. It applies to a prisoner who has been given a short sentence, and it applies also to a prisoner who has been given a long sentence for serious crimes; it also applies to a prisoner serving a life sentence for murder, even murder against the backdrop of underworld gang warfare, or the murder of the prime minister. It also applies to a security prisoner. The uniform framework of principles applies to every prisoner, although the individual application in the case of one prisoner or another will likely differ in accordance with the conditions and circumstances.¹⁰

Family visits and rights of the child

Most of the prisoners have children or siblings who are children. For this reason, when Israel sets a visitation policy, it must take into account the children's rights under international law. Article 3(1) of the Convention on the Rights of the Child, ratified by Israel in 1991, states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Therefore, in every decision relating to a child, the best interest of the child takes precedence over the welfare and interests of others.

This Convention also states, in Article 9(3):

State Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

This provision results from the right of every child to receive warmth and love from his or her parents. The High Court of Justice has recognized this right as part of the constitutional right to dignity, which parents must respect and fulfill.¹¹

Proportionality

¹⁰ HCJ 2245/06, *MK Duvrin et al. v. Prisons Service et al.*, Judgment, 13 June 2006, Section 15.

¹¹ HCJ 7585/04, *Hakim K'ana'aneh et al. v. Prisons Service*, Petition for Order Nisi, August 2004, Section 84.

The right of detainees and prisoners and their families to meet in prison, like most human rights, is not absolute, and may be restricted in certain circumstances. However, for the infringement of the right to be lawful, both under international law and Israeli law, it must comply with the principle of proportionality.

In determining if the harm or injury is proportionate, three tests are applied. If the state's action does not meet one of these tests, the injury is disproportionate:¹²

- *The means must fit the objective* There must be a direct rational connection between the action (including restrictions) and the objective sought to be achieved by the action.
- *Minimal harm* The means used must injure the individual to the least extent possible among the alternative means available.
- *Proper proportion between the injury and the benefit* There must be a proper and reasonable proportion between the severity of the harm resulting from the action and the benefit anticipated from it.

Obligation to respond within a reasonable time and provide explanation

Every administrative authority has the fundamental obligation of responding to requests efficiently and within a reasonable amount of time. As a rule, in Israel, public authorities that receive a request from a citizen must reply within forty-five days from the day the request is received. When the public authority rejects the person's request, it must give reasons for the rejection so as to enable the applicant to appeal the decision and attempt to change it.¹³ Rejecting a right without explaining the decision is, by definition, arbitrary and disproportionate. The obligation to explain the decision is a fundamental rule of natural justice; for this reason, it is part of Israeli administrative law.¹⁴ In meeting its obligation, the state substantially enables the citizen whose rights have been infringed to appeal the decree and seek to revoke it.¹⁵ The obligation to give reasons also contributes to uniformity in

¹² For further details on the principle of proportionality, see HCJ 2056/04, *Beit Sourik Village Council et al. v. Government of Israel et al.*, Judgment, 30 June 2004.

¹³ The Association for Civil Rights in Israel, *The Citizen's Guide: Rights and Responsibilities of Individuals and Citizens in Israel*, 1 October 2004.

¹⁴ For further discussion on this obligation, see HCJ 11515/04, *Nada Jamal Muhammad Hassan v. Commander of Military Forces in the West Bank*, Petition for Order Nisi, 16 December 2004.

¹⁵ The Association for Civil Rights in Israel, *The Citizen's Guide*.

decision-making and renders the process less arbitrary. A public body is exempt from giving reasons only in exceptional cases.¹⁶

Prohibition on collective punishment

Collective punishment is prohibited under international humanitarian law. Article 33 of the Fourth Geneva Convention states, in part, that, "No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." This prohibition results from the principle of personal responsibility, whereby a person is punished only for the acts he or she commits.

There is a special prohibition on punishment of children for the acts of others. Article 2 of the Convention on the Rights of the Child requires parties to the Convention "to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

¹⁶ Amendment of Administrative Arrangements (Decisions and Statement of Reasons) Law, 5719 – 1959, Sections 2, 3.

Chapter Two

The Permit Regime and Infringement of the Right to Family Visits

The permit regime¹⁷

The prisons housing the Palestinian prisoners and detainees held by Israel are located inside Israel, with one exception. The main prisons are Gilboa, Shata and Megiddo in the north, Hadarim, Hasharon, and Damun in the Sharon area, Ayalon in the central area, Nafha, Eshel, Ketziot, and Shikma in the south. The one prison located in the Occupied Territories is the prison at the Ofer army camp, near Ramallah.

As a result, residents of the Occupied Territories wanting to exercise their right to visit a family member in prison must obtain a permit to enter Israel. Permits are issued by the Civil Administration in the case of West Bank residents, or by the Israeli District Coordination Office (DCO) in the case of residents of the Gaza Strip, and are forwarded to the families by the ICRC. Palestinians wanting to visit a relative in Ofer Prison also require an entry permit, apparently for the bureaucratic convenience of the Israeli authorities handling family visits, even though the visit does not entail entry into Israel.

The underlying basis of the permit regime is that family visits are a privilege that can be restricted and cancelled for various reasons. This view is reflected in the Prisons Service Regulations, which state that, after three months' imprisonment, "it is permitted to allow" the prisoner to receive visitors.¹⁸ According to the Prisons Service legal department, visitation is a "benefit" that may be denied depending on the prisoner's conduct and for other reasons; therefore, no minimum number of visits is mandated by statute.¹⁹ This position completely contradicts the view that visitation is a human right, derived directly and indirectly from international humanitarian law and international human rights law, and from Israeli constitutional law.

¹⁷ The family-visits program, the restrictions, and the limitations described in this chapter relate to families living in the West Bank and in the Gaza Strip. Palestinians who are residents of Israel and East Jerusalem do not require entry permits and do not have to rely on ICRC transportation to realize their right to visit.

¹⁸ Prisons Commissioner's Order 04.42.00, Section 5(a).

¹⁹ The comment was made on 29 March 2006 to B'Tselem by Attorney Tali Nissan, of the Prisons Service's legal department.

To obtain a permit to enter Israel for the purpose of visiting a relative in prison, the applicant must meet the family criteria set by the Israeli authorities, primarily the General Security Service (GSS), at the time. At the present time, only first-degree relatives (spouses, parents, siblings, children) and grandparents are allowed to request a permit.²⁰ This requirement is rigid, so the ICRC does not forward to the Israeli authorities requests from persons who do not meet this criterion.

In addition, the authorities impose age restrictions, which differ from time to time. Until July 2005, Israel did not permit visits by the prisoner's sons, daughters, brothers, and sisters who were between sixteen and thirty-five years of age. This sweeping restriction was removed in January 2006, and requests by these persons are now handled in the special framework relating to "persons forbidden entry on security grounds," which will be discussed below.

Minors under age sixteen who want to visit their imprisoned parents or siblings do not need an entry permit. However, the ICRC requires that they provide a letter from their parents or legal guardian confirming that the parents or guardian, and not the ICRC, will be responsible for them on visiting day. This option was proposed to the families in 2004 following a strike by security prisoners, after which the ICRC and security forces reached an understanding in the matter.

It should be mentioned that the military legislation that governs visits in the prisons does not prohibit visits by family members who are not first-degree relations. Section 12 of the Order Regarding Detention Facility (West Bank Region) (No. 29), 5727 – 1967, states that a prisoner may receive visits by a "family member," and not only by a first-degree relative. The regulations regarding the holding of administrative detainees state that a detainee will be permitted to receive one visit by "family members" every two weeks. Indeed, these regulations define "family member" as a "parent, parent of a parent, spouse, offspring, brother, or sister," but a relative of another degree, or another visitor, may also visit, upon obtaining special permission given at the discretion of the commander of the detention facility.²¹ In practice, however, such visits are not approved and do not take place.

Israel has never explained why it restricts the right to visit to first-degree relatives. By imposing this restriction, Israel denies prisoners without first-degree relatives the opportunity to receive visitors.

²⁰ To avoid unnecessary confusion, "first-degree relatives" referred to below also include grandparents.

²¹ Letter of 31 May 2005 from HaMoked to Shai Nitzan, deputy state attorney for special functions. Also, see Regulations Regarding Administrative Detention (Conditions in Administrative Detention, Judea and Samaria), 5742 – 1981.

For example, the nuclear family of R., 24, lives in Jordan. In December 2002, Israeli soldiers broke into the house of S.I., R.'s aunt, 64, who lives in a village in the Nablus area, and arrested her son N. and R. In her testimony to B'Tselem, S.I. spoke about R.'s distress.

R.'s family lives in Jordan. He came to Palestine to study, and lived in my home for six years until he was arrested. R. and N. were tried about two years later and each was sentenced to twenty years' imprisonment...

In January 2005, I was allowed to visit at the prison. Three months after that, my husband and I went to Gilboa Prison to visit them. One of the prison guards said that I couldn't visit R. because I was not his mother. I told the soldier to check the visitor's permits, and that I was his aunt, his mother's sister, that I was like his mother because he lives in my home and was arrested in my home. I said that his whole family lived in Jordan and couldn't come here. He told me, "You and your husband have no right to visit him. If you want to visit him, you have to request a permit" ... Since then, we have not succeeded in visiting R. and have not seen him at all. My husband, who is seventy years old, submitted, through the ICRC, a request to visit R. because he is his uncle, R.'s father's brother. It was rejected on the grounds that there was no family connection and that nobody was allowed to visit R. except for his father, mother, wife, or children under sixteen...

This year, R.'s mother came to visit him. She made a request to visit her son, and about twenty days later received the permit. She went to visit him in August 2005. The problem is that R.'s mother cannot come from Jordan every month to visit him. She has breast cancer and the journey is very hard on her. It also is very expensive, and she doesn't have the money... R.'s situation pains her greatly. She told me that, "R. is your son and not my son because he lived with you for a long time, and I know that he loves you just like your children do." I even feel that he is closer to me than my children, and I miss him a lot, and I love him very much. I feel sorry for him and it saddens me a lot that he is alone and has nobody in this country other than us to visit him...

What damage would they [the Israelis] suffer if we visit my nephew in jail? It bothers me and hurts me a lot that he was given a long prison sentence. Is it possible that somebody will stay in jail for twenty years without anybody visiting him? My son, N., told me that R. is in a terrible mental state because nobody visits him. He is frustrated and depressed... More than a year has passed in which we have not even been allowed to bring him clothes.²²

²² The testimony was given to Salma Deba'i on 26 December 2005.

Requests for a permit are handled in one of two ways: a special procedure, intended for persons who are classified as “forbidden entry into Israel for security reasons” and for persons in the restricted age group, and the regular procedure, for all other persons.

For West Bank residents, the permit given in the regular procedure is printed on a piece of paper and is valid for three months. The holder is allowed to visit a specific detainee or prisoner as part of the ICRC transportation program. Ostensibly, the permit is good for an unlimited number of visits during the three-month period. In practice, the maximum possible number of visits is the number permitted by the Prisons Service (once every two weeks) and depends on the transportation made available by the ICRC to the prison during the three months. When the permit expires, the family members may request that it be renewed.

The situation is different in Gaza, where the permits are given verbally and are good for one visit. About seventy-two hours before each visit, the ICRC forwards to the Israeli DCO for Gaza a list of persons wanting to take part in a particular visit. The response is generally given at the meeting point, before the buses start the journey. In many instances, visitors get to the meeting point early in the morning only to be told their request was denied. The DCO rarely gives the ICRC the responses in advance, which would enable the families to be notified in time to avoid the trip to the meeting point. A person wanting to apply for a permit to visit again must wait two weeks from the time of the prior request.

According to figures provided to B'Tselem by the Civil Administration, which is in charge of issuing permits only to West Bank residents, in 2005, it handled 29,848 requests for permits, approving 22,615 (76 percent) and rejecting 7,233 (24 percent).²³ That same year, the DCO office for the Gaza Strip handled 30,352 requests, approving 18,801 (62 percent) and rejecting 11,551 (38 percent). The reason for rejection is never given. Some family members whose requests were rejected reapplied through the special procedure.

The special procedure

A number of weeks after the family visits recommenced, in March 2003, the ICRC began to receive information that a large percentage of requests submitted by West Bank residents was being rejected on grounds that the family members were classified as “forbidden to enter Israel for security reasons,” without details or explanation. The

²³ In 2005, 33,386 requests were submitted in the framework of this procedure. The Civil Administration explained that the disparity between the number of requests made and the number of responses given resulted from duplicate requests made while the original requests were pending. The ICRC contends that the duplicate requests result from the failure of the Civil Administration to respond, which required the ICRC to send them again as a reminder.

only entity that categorizes a person as being forbidden entry on security grounds is the GSS, which does not explain its decisions. The Civil Administration does not have the power to change the decision and cannot provide an explanation to the person.

In December 2003, following repeated requests by the ICRC and HaMoked, and a petition HaMoked filed with the High Court of Justice, the IDF announced that it would “ease” the permit regime.²⁴ In practice, the policy did not change, and the status of Palestinians whose requests had been rejected on security grounds remained the same.

It was not before September 2004, following further involvement by the relevant organizations, that the State Attorney's Office announced implementation of an interim arrangement for family visits by persons in this category. According to the interim arrangement, persons whose request for an entry permit was rejected after December 2003, and who appealed the rejection through the ICRC or HaMoked and their appeal was accepted, would receive a special entry permit, valid for twenty-one days for one visit.²⁵ In practice, only relatives who petitioned the High Court were given the temporary permits.

On 26 October 2004, a year and a half after the family members' visits recommenced, and more than one year after the first petition on behalf of the persons who were rejected for security reasons, the State Attorney's Office announced the beginning of the permanent arrangement, which would include “all family members of prisoners who are forbidden for security reasons from receiving a permit to enter Israel.”²⁶ According to the arrangement, which took effect in November 2004, the ICRC submits the requests of persons forbidden to enter for security reasons to the Civil Administration separately from the other requests. The Civil Administration then forwards the requests to the GSS for its review. The GSS decides whether, despite the security reasons, the requests to visit should be permitted. If the GSS approves, the Civil Administration issues the entry permit, which is valid for forty-five days and for one visit only, and the visitor travels to and from the prison on one of the ICRC buses. The family members are allowed to make a new request only after the forty-five-days period has expired, even if they made the visit during the first week after they received the permit. If the GSS rejects the request, the applicant has to wait three months before submitting another request.

²⁴ HCJ 8851/03, *Nahleh et al. v. Commander of IDF Forces in Judea and Samaria*, Supplemental Response of the State Attorney's Office, 29 December 2003.

²⁵ Letter of 2 September 2004 to Attorney Yossi Wolfson, of HaMoked, from Attorney Shai Nitzan, of the State Attorney's Office.

²⁶ Letter of 26 October 2004 to Attorney Yossi Wolfson from Attorney Shai Nitzan.

Although the arrangement took effect in November 2004, and the initial requests were submitted in January 2005, the visits did not begin until April 2005 with the issuing of the first permits. Approximately one-third of the requests for permits received from the West Bank and submitted to the Civil Administration were handled in the special-procedure framework. According to Civil Administration figures provided to B'Tselem, of the 10,169 requests made in this framework during 2005, 7,018 (69 percent) were approved and 3,151 (31 percent) were rejected.²⁷

As noted, family members who come within a certain age group, which changes from time to time, are subject to restrictions. Beginning in January 2006, persons sixteen to thirty-five years old were allowed to submit requests for permits, which were handled according to the special procedure. If approved by the GSS, the permit holder is allowed two visits a year if the visitor is a son of the prisoner, and once a year if a brother of the prisoner. Daughters and sisters are subject to the same conditions applying in the regular procedure, i.e., the permit is valid for three months, during which an "unlimited" number of visits are allowed.

The special procedure also applies for residents of the Gaza Strip who are in the "forbidden entry into Israel for security reasons" category, with this difference: the approval or rejection is not given in writing, and the ICRC updates its records based on the permits and rejections received from the DCO. Also, Gazans who receive a permit through the regular procedure, as mentioned earlier, have to make a new request after each visit because the permit is good for one visit only. In the special procedure, after receiving a permit, Gazans have to wait forty-five days before they are allowed to apply for another permit.

The ICRC also monitors the permits given to brothers and sons from Gaza who are from sixteen to thirty-five years old to remain updated on the special restrictions applying to this age group. Sons in this category who receive a permit have to wait six months to submit a request for another visit. Brothers have to wait one year from the expiration date of the permit they previously received.

West Bank family members who receive permits in the regular procedure have a relatively easy time renewing their permits. In contrast, family members from the Gaza Strip, and

²⁷ The total number of requests made in 2005 was 15,597. In this case, too, the Civil Administration explained the disparity in the number of requests and the number of responses, whether positive or negative, on the duplicate requests that were submitted while the original request was being processed. The ICRC contends that the duplication resulted from the failure of the Civil Administration to respond to requests, which required the ICRC to send follow-up requests.

persons whose requests are handled in the special procedure, can never be sure if and when they will be allowed to see their imprisoned relative again.

This lack of certainty is exacerbated when the visits are disrupted following incidents involving state security. Recently, on 26 June 2006, following the killing of two IDF soldiers and the abduction of another soldier near the Kerem Shalom crossing into the Gaza Strip, Israel stopped all family visits. HaMoked filed a petition in the High Court of Justice opposing the decision.²⁸ A month later, the military authorities announced that they were again allowing visitors from the West Bank, except for males aged sixteen to thirty-five, who, the authorities contended, constituted a security threat. Furthermore, from the time of the incident to mid-August, no Palestinians from the Gaza Strip have been allowed to visit the prisons. The official reasons given are the hostilities taking place in the area and the danger inherent in the passage of persons through the crossing points into Israel.²⁹

The lack of certainty also disrupts the lives of the family members, causes additional tension when an incident takes place and when they submit their requests for a permit, and leads to mental anguish every time they receive a rejection. This uncertainty also affects the condition and behavior of the prisoners, who do not know the next time they will be able to see their family.

Criticism

The permit regime, described above, fails in a number of significant ways that directly affect the exercise of the right to family visits.

Arbitrary treatment

The special procedure, which has been implemented for more than one year, provides an answer for some of the residents who are classified as persons prohibited entry for security reasons. Yet, the solution is partial and raises many problems, primarily the concern that classifying a person as "forbidden entry into Israel for security reasons" is often made arbitrarily.

²⁸ HCJ 5670/06, *HaMoked: Center for the Defence of the Individual v. Prisons Service et al.*, Petition for Order Nisi, 5 July 2006.

²⁹ Ibid.

First of all, the very existence of the procedure is proof that in some cases the initial denial was unjustified. If the applicants were indeed security risks, the special procedure would be of no benefit to them.

As noted, the GSS decides who is denied entry for security reasons. The Israeli authorities notify the ICRC, which informs the applicant. No explanation for the denial is given. This process limits the ability of the applicant to appeal the decision, either to the relevant Israeli authorities or to the court. As explained in Chapter One, every administrative authority is required to give reasons for its decision, and this requirement also applies to decisions relating to residents of the West Bank and the Gaza Strip.

As appears from the figures presented above, there are more than 10,000 persons in the West Bank alone who have submitted requests to the Civil Administration for permits to visit relatives in prison and are classified as security risks. One-third of them are denied permits, also in the special procedure. The profiles of applicants who are classified as security risks and turned to B'Tselem for assistance raise the suspicion that the decision is often arbitrary. A substantial percentage of the cases involved elderly persons, or persons who had never been detained or interrogated by security forces and as to whom there is ostensibly no reason to prohibit their entry for security reasons.

Classifying thousands of persons as security risks, so as to prevent them from visiting relatives in prison even under the restricted conditions of the special procedure, is particularly puzzling given that the visits are closely supervised by organized entry into Israeli territory, to a specific site, and for a defined purpose. What makes the classification even more peculiar is that the same person may be classified sometimes as prohibited entry for security reasons and at other times not. Furthermore, there have been cases in which a person submitted two requests simultaneously to enable visits to two imprisoned relatives, and received a permit to visit one prisoner but was not allowed, because the visitor was classified "prohibited for security reasons," to visit the other prisoner.

One example is the case of W.B., 26, a resident of a village north of Jerusalem, whose husband and brother are imprisoned in Israel. In her testimony to B'Tselem, she related:

In early 2002, after the trial ended and my husband was sentenced to twelve years' imprisonment, he was taken to Megiddo Prison. I requested, through the International ICRC, a permit to visit him. I received the permit... I remember that I left the house on the day of the visit at about three in the morning. I went, with my daughters, to Ramallah, accompanied by my husband's father, who wanted to take us to the ICRC center in Ramallah. When we got there, we were notified that the visit had been cancelled because of a suicide attack that had taken place a day earlier... After that, I began to submit requests to the ICRC for a permit to visit. The

requests were denied for security reasons. Requests for permits that my husband's mother and father submitted were rejected as well.

About a year later, my husband's family and I received permits. I still remember our meeting, two years after my husband was arrested. It was very emotional. Since then, I have not been allowed to visit him for security reasons. The peculiar thing is that my brother is also a prisoner, and my mother submitted a request in my name to visit him. I managed to visit my brother twice during 2005. They did not prevent the visit on security grounds. When I wanted to visit my husband, suddenly there are security reasons.

... Previously, I had to send my children with my husband's grandmother... She was given a permit for one visit... Afterwards, she tried to submit a request for another permit, but it was rejected on the grounds that she did not have a family relationship with my husband, even though he is her grandson. Later, my husband's other grandmother, his mother's mother, who is more than seventy years old, requested a permit. She began to visit him and took my children with her, even though the visit is very tiring for her.³⁰

More than once, the classification of a person has been removed following the intervention of an attorney or human rights organization, which reinforces the suspicion that the rejection on security grounds is made arbitrarily.

The restrictions on prisoners' brothers and sons who are between sixteen and thirty-five years of age are arbitrary, if only because they are sweeping, being based on family relation and age and not on the risk posed by the particular applicant. All relatives in this age group are harmed, for years, for no reason or justification in most of the cases. The refusal to renew visits by West Bank males in this age group, which ceased following the abduction of the soldier near the Kerem Shalom crossing, is a blatant example of the arbitrary implementation of the permit regime. In making its decision, the state sets a blanket policy even though the persons prohibited entry underwent individual security checks by the GSS and received a visitor's permit based on the assumption that, as regards the visits, they do not constitute a threat. The decision to stop all visits from the Gaza Strip is also arbitrary. Even assuming that, because of the situation following the incident next to the Kerem Shalom crossing, it is necessary to impose more stringent conditions on the permit regime, there is no basis for determining that the entire population of visitors, without exception, constitutes a significant security threat, justifying a sweeping stop to visits.

Denial of the right to visit infringes not only the rights of the visitors but also those of the prisoners themselves. The High Court of Justice recognized that the state may restrict some rights of prisoners, among them the right to family life and the right to visits, whether for

³⁰ The testimony was given to Karim Jubran on 31 January 2006.

security reasons or other considerations of the prison authorities. However, as the High Court has ruled, the restriction must not be arbitrary.

It would not be superfluous to emphasize that suspending the ability of a prisoner to exercise one of his other liberties (except for the right to freedom of movement) is never absolute, but is relative. This rule applies not only regarding those liberties whose exercise by the prisoner is not necessarily dependent on freedom of movement, but also to those liberties the exercise of which depends on this freedom... The scope of the protection of the human right of a prisoner is derived from the requisite balancing between the right and other interests, of the individual or of the public, that under the relevant circumstances have to be taken into account. The point of departure is that the right deserves protection and should be respected. Denial, restriction, or violation of the right is allowed only for substantive reasons that are enshrined in law. The greater the right that is infringed the greater the reasons needed to justify the infringement.³¹

Arbitrary infringement of human rights, such as Israel's violation of the right of many Palestinians to visit prisoners, is clearly disproportionate given that it does not meet the first principle of proportionality – the need for a rational connection between the infringement (preventing the visit) and the ostensible objective (neutralizing a security threat).

Prolonged waiting and failure to respond to requests

The processing of requests for permits in the regular procedure is generally efficient and swift (the ICRC receives responses within a few days). In the special procedure for persons prohibited entry for security reasons, however, the involvement of many entities results in a lengthy process.

The first delay in the special procedure arises because permits cannot be renewed until the existing permit has expired. This is true even if the visit was made during the first week or two after the permit was received. Because of this rule, family members sometimes have to wait a whole month before they can request renewal.

Another delay results from the long time it takes to process requests. Many requests that were submitted in 2005 received no response from the Israeli authorities. As mentioned above, the first requests were submitted in early 2005, but it was not until April, about six months after the arrangement was made, that the authorities began to implement the arrangement and issue permits. The immediate result was a very low frequency of visits. In 2005, family members received no more than two permits, each good for one visit. The infrequency of visits continued in 2006: in March 2006, some 2,800 requests that were submitted in 2005 had not

³¹ Avi Hananya Golan, Sections 12-13.

been processed. While Israel does not deny the right to visit of persons forbidden to enter for security reasons, in practice, it greatly restricts them in exercising the right.

The failure to respond to requests has formed the basis of numerous petitions to the High Court of Justice: from 2003 to 2005, HaMoked filed some forty petitions on this point. One of these petitions involved eighty-five petitioners whose requests to the Civil Administration for an entry permit to enable them to visit their imprisoned relatives had not been answered.³² According to the Coordinator of Government Operations in the Territories, "the bottleneck" leading to the delay in responding "is the security check (carried out by the GSS)."³³ In response to a petition that HaMoked filed in the High Court, the IDF and the State Attorney's Office related to the question of the amount of time it takes to respond to requests made pursuant to the special procedure: "The time needed to handle the said requests, from the moment they are handed over to the army, is from about two to two and a half months," although this amount of time can change depending on the number of requests.³⁴

Even assuming that the processing ends in "the minimal amount of time needed" as the authorities contend – "about two to two and a half months" – without unexpected problems and without delay resulting from holidays or other events, family members can visit only two or three times a year, at best. This low frequency results in large part from Israel's failure to meet its obligation to provide a response within a reasonable period of time. This failure is completely unreasonable and unjustifiably infringes the families' and the prisoners' rights.

Visits with more than one prisoner

The permits given in the two types of procedures enable a visit to a specific prisoner, whose name and identity number is stated in the permit. Where a family has more than one relative in prison, the family members must make separate visit requests. This situation is particularly hard on persons prohibited entry for security reasons, especially if their relatives are imprisoned in different locations, because, as noted, they are only permitted one visit during the period for which the permit is valid. The situation is different for persons applying in the regular procedure, who are allowed to receive several separate permits to visit several different prisoners. As a result, when making their request, persons forbidden entry for security reasons have to choose which of the imprisoned relatives they want to visit.

³² Pre-HCJ 397/04, which HaMoked filed on 1 June 2004.

³³ From the protocol of a meeting held on 20 December 2005 between the Coordinator of Government Operations in the Territories and the executive director of HaMoked.

³⁴ HCJ 10898/05, *Nahil Mahmud Hemed Fatafneh v. Commander of Military Forces in the West Bank*, Supplemental Response of the Respondent, 16 February 2006.

Given that the family members who are prohibited entry for security reasons have to request separate permits, good for only one visit each, for each prisoner in succession and not simultaneously, and considering the long wait to receive an answer, in most cases they manage to see their imprisoned relative once a year, at the most. This degree of frequency is a disproportionate infringement of the right to visit family members. HaMoked wrote to the State Attorney's Office as far back as November 2004 warning about the problem and requesting that an overall solution be found for these relatives in the framework of the permit arrangement.³⁵ HaMoked never received a response.

"Lack of Conformity" of Details

One reason for the rejection of permits is the lack of conformity between the details appearing in the request and the details in the population registry administered by Israel. It should be mentioned that, even following implementation of the disengagement plan, Israel continues to administer the population registry of residents of the Gaza Strip, as well as in the West Bank.

The most common lack of conformity involves applicants who ostensibly do not meet the first-degree-relative requirement. For example, the family name of the prisoner and the applicant differs because of a change in family status (marriage), because the father's name was maintained following marriage, or as a result of an error in recording. To solve the problem in such cases, the applicant must provide documents proving the family relationship with the prisoner and update the details in the population registry. In most of these cases, the applicant requires the help of the ICRC in obtaining the requisite documents and corresponding with the Israeli authorities. Even where the requisite documents exist, corrections made by the authorities (the Civil Administration or the DCO in Gaza) are often made locally, and not in the central data bank of the population registry. In such instances, the problem of relationship arises again the next time the family member requests an entry permit, delaying receipt of the entry permit and the visit.

An illustrative case is that of H.I., 45, from Nablus, whose son is imprisoned in Israel. For eighteen months she has not been allowed to visit him because the authorities contend they are not related:

In December 2004, I filed a request through the ICRC in Nablus to visit my son. During the month, I called daily and went to the ICRC's offices to learn what was happening with the request. At the end of the month, I was informed by the ICRC that my request had been denied because there was no family relationship. I was very surprised by the reason.

³⁵ Letter of 3 November 2004 from Attorney Sigi Ben-Ari, of HaMoked, to Attorney Shai Nitzan, of the State Attorney's Office.

What is closer than the mother -son relationship? What more do they want? The clerk at the ICRC asked me to bring my son's birth certificate so we could make a new request and prove that I am his mother. I brought them the birth certificate and submitted a new request. But nothing has changed. Whenever I go to the ICRC, they tell me that I am refused a permit because there is no family relationship.³⁶

Until recently, the Civil Administration refused to process requests of Palestinians who moved from the Gaza Strip to the West Bank without obtaining Israel's approval and without a change of registration in the population registry. The Civil Administration returned the requests to the ICRC and referred the residents to the DCO in Gaza, contending that the residents were staying in the West Bank illegally and thus, in the words of the Civil Administration, "have no rights whatsoever, including the right to receive any services from the coordination and liaison authorities in Judea and Samaria." It should be pointed out that since the outbreak of the second intifada, Israel has largely refrained from approving requests to move from the Gaza Strip to the West Bank.³⁷

Given that the DCO in Gaza does not issue written permits and the relatives of prisoners have to go to the ICRC offices on the day of the visit to learn if they are allowed to make the visit, and in light of a real fear that if they go to Gaza to make the prison visit they will not be allowed to return to their homes in the West Bank, most Palestinians in this situation are in effect prevented from visiting their relatives in prison.

M.M., 47, is the daughter of a refugee family. Following the Oslo Agreements, she moved from Egypt to the Gaza Strip and received a Palestinian identity card. The address listed in her ID card is a village in the Gaza Strip. Two years after arriving, in 1998, she and her family moved to the West Bank, where she continues to live. She and her family went to the Palestinian Authority offices several times to inform them of the change in address, and were told each time that Israel refuses to confirm the change. Her three sons are imprisoned in Israel. Because her address has not been updated in the population registry, the Civil Administration refused to process her request. After HaMoked petitioned the High Court on her behalf in 2004, the Civil Administration announced that, "a review of the matter [of M.M.

³⁶ The testimony was given to Salma Deba'i on 25 December 2005.

³⁷ See B'Tselem and HaMoked: Center for the Defence of the Individual, *One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan*, March 2005; B'Tselem and HaMoked: Center for the Defence of the Individual, *Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories*, July 2006.

and another petitioner] indicated that nothing prevents, at the present time, allowing their entry into Israel to visit their sons imprisoned in Israel..."³⁸

In response to this petition, the Civil Administration announced that, "though not required to do so by law," it agreed to process the requests of Palestinians from the Gaza Strip "who are living unlawfully in Judea and Samaria." Despite this commitment, the Civil Administration continued to delay the handling of requests of Palestinians who moved from the Gaza Strip.

Only recently, in early July 2006, the Coordinator of Government Operations in the Territories formulated an arrangement for handling requests to visit prisoners that are submitted by residents of the West Bank who are listed as living in the Gaza Strip. The procedure followed another petition that HaMoked filed.³⁹ The procedure establishes the work methods and communication between the Civil Administration in the West Bank and the DCO in Gaza that will enable these residents to process their requests and receive an answer at the Civil Administration offices in the West Bank, in the way that other residents of the West Bank do. Because the procedure is new, it is not yet possible to determine how it works in practice.

Israel's policy relating to Palestinians who move from the Gaza Strip to the West Bank is itself illegal: it infringes the right, set forth in international law, of every person "to liberty of movement and freedom to choose his residence."⁴⁰ The Oslo Agreements state that the West Bank and the Gaza Strip constitute "a single territorial unit," and transfer to the Palestinian Authority the power over residents moving from one area to the other. The Civil Administration's refusal to process the requests of these residents, thereby denying their right to visit their imprisoned relatives, exacerbates the situation.

Unaccompanied minors

As a result of the permit regime, there are whole families in which the only members who are allowed to visit the imprisoned relative are the children or siblings of the prisoner. Day after day, dozens of children, ranging in age from three to sixteen, leave their homes early in the morning and travel alone, sometimes with another small brother or sister, or escorted by a neighbor, to make the visit that can take up to twenty-four hours.

³⁸ HCJ 6855/04, *Letifa Mahmud Hussein Naji v. Commander of Military Forces in the West Bank*.

³⁹ HCJ 3784/06, *Mugrabi et al. v. Commander of Military Forces in the West Bank*, Petition for Order Nisi, 7 May 2006.

⁴⁰ International Covenant on Civil and Political Rights, of 1966, Article 12(1).

As mentioned above, following the understanding reached by the ICRC and Israeli authorities in 2004, children under sixteen may visit their imprisoned relatives without having to obtain a permit. Since then, the number of children making visits unescorted by adults has gradually grown. ICRC officials try to prevent children under five from traveling without an accompanying adult, but given that there is no legal or administrative prohibition, the ICRC cannot prohibit it entirely.

Most families try to find a neighbor or acquaintance visiting the same detention facility where their relative is being held, and to have them accompany their children. But there is no formal supervision of the minors, or any official who ensures that they enter the facility for the visit. And, indeed, there have been cases in which unescorted children did not enter the facility and visit their father or brother, primarily because they did not have the documents that the Prisons Service required for entry into the facility (such as an identity card showing the first-degree relationship). As a result, they spent the whole day waiting disappointed outside the facility.

Minors who are sent to visit their imprisoned relatives without adult escort bear the burden of maintaining the connection between the family and the prisoner, as limited as it is. This situation severely affects the minors' lives. Often, the visiting day lasts almost the whole day, and the visitors return home late at night (as will be described in the next chapter). As a result, the children, who are exhausted by the long day, usually do not attend school the following day as well. Many children with relatives in Prisons Service installations visit twice a month, which means that they lose four days of school a month. The situation is especially grave for children in families having a number of relatives in jail, each in a different installation, with the burden of visits resting on them alone. This situation inevitably impairs the educational progress of these children.

The emotional burden of visiting prison without the presence and support of an adult relative is evident from the children's behavior when they return home and in their daily lives. Testimonies given to B'Tselem tell of subsequent nervousness, violence, and sometimes even depression.

Jihad, for example, a five-year old, was the only person allowed to visit his imprisoned father. His mother, D., related to B'Tselem the effects of the visits on her son's life.

In April 2003, my husband was convicted and sentenced to ten years and six months in prison. My son, Jihad, became the sole link connecting my husband and me.

... When he was three, I began to send him on visits under the care of relatives of other prisoners from our village. Despite the difficulties and obstacles with which we have had to cope, I felt that if my husband sees his child, it would make life in jail a bit easier for

him. I didn't want my son to be prevented from seeing his father. I know that they don't let a three-year-old child hug his father, that he only sees him through a glass window and bars, which hurts me a lot. When Jihad comes home from the visit, he is exhausted, despite the care he receives from the other families during the visit.

On days that my son goes to visit his father, we get up very early, because by 4:00 A.M. he has to get on the bus for Ramallah. At about 7:00-7:30, the visitors get onto a ICRC bus that takes them to the prison in Israel. They reach the prison between 10:00 and 12:00. They get back very late, sometimes at midnight or at one o'clock in the morning... When I ask my son about the visit with his father, he says, "I saw Daddy, he told me good-bye, and the army didn't let him walk with me. Daddy sends regards to you" or "Daddy wants cigarettes." I feel helpless, and it makes me sad and tense because I can't visit my husband together with my child. It really hurts when I listen to my small child, who goes through this suffering, which [even] adults can't bear. I have to send him on the visits because he is the only connection between my husband and me....

I asked the people who watched over Jihad how he was during the day, and they replied that he was a quiet and shy child, and didn't consent to accept anything from them, not even something to eat or drink. I made sure, of course, that he had enough food and drink of his own for the whole day. He sleeps Most of the time in the bus. He sometimes gets to his father sleepy and tired. Sometimes he cries when the visit ends.⁴¹

Bara', the fifteen-year-old daughter of S.I., from Nablus, travels alone to visit her three brothers imprisoned in Israel. The following is taken from S.I.'s testimony to B'Tselem.

For a year or so now, nobody in our family succeeded in visiting my three sons other than my daughter Bara', who is fifteen. She has to go visit her brothers three times a month, twice to Shata Prison, once every fifteen days, and once to Megiddo Prison. The trip is very long. When she goes to Shata Prison, she leaves at 3:30 A.M. and returns home at 10:30 at night. The same is true when she goes once a month to Megiddo Prison. In fact, it is even worse because it occurs the day after the visit to Shata Prison. Not only does she miss school on the days of the visits, but the next day, too, she doesn't go to school because she returned home late at night exhausted. So, once a month she misses three days of school one after the other. When she gets home, she doesn't eat and doesn't tell us what happened because she doesn't have the strength to talk. She returns home tense, and we see it. She is doing worse at school because she misses about one week of school a month....

I feel bad for my daughter because she has to miss school and make the very long trip and go through all the procedures set by the occupation soldiers. She has to carry lots of things for her three brothers. She has to get up in the middle of the night to get on the bus.

⁴¹ The testimony was given to Iyad Hadad on 7 December 2005.

I am in constant contact with her by phone so that she doesn't get bored and so that I can remain calm and know what is happening. I call her trip the journey of torture.⁴²

Hebba, 14, from Ramallah, related to B'Tselem how she is affected by her visits to her brother Y., whom she goes to visit in prison by herself.

... I would get home tired and exhausted. My mother and brother would wait for me so they could hear news about my brother. Even though I was so tired, I stayed up and told them everything about Y. and about what we spoke, each minute and each word. The visits affect my daily life, because I think and worry about my brother and am constantly thinking about the trip, what to take with me, from whom to get warm regards to give to my brother, and with whom to go. Even when I am in class, I daydream and can't concentrate. I have lots of questions, as I am the only one allowed to visit Y. I feel there is a heavy burden on my shoulders. I am waiting for the moment Y. gets out and is with us, enjoying his life, with no problems, and the burden is lifted from me, so I can live a normal life.⁴³

In accordance with the Convention on the Rights of the Child, Israel must consider the effects of its acts on children and give primary consideration to the best interests of the child. However, as far as B'Tselem knows, the Israeli authorities charged with setting and implementing the permit policy have failed to consider the effects of their decisions on the children in the prisoners' families. In particular, by denying permits to adult relatives, children often become the sole link between the family and the prisoner, and are left to cope with the arduous journeys without an adult relative accompanying them. As we have seen from this chapter, these journeys have a detrimental effect on their lives in many ways. By disregarding this matter, Israel breaches its obligations under the Convention.

Closure

Israel imposes a comprehensive closure on the Occupied Territories from time to time, for days and weeks at a stretch. These closures are imposed for various reasons, such as Israeli holidays, security threats, and "response" to terrorist attacks. In the period prior to February 2006, each time a comprehensive closure was imposed, Palestinian family visits to prisons, including to Ofer Prison in the West Bank, stopped automatically. There were occasions in which, when the closure was anticipated, the ICRC was informed in advance and the families were informed through the Palestinian media. When the authorities did not inform the ICRC

⁴² The testimony was given to Salma Deba'i on 13 December 2005.

⁴³ The testimony was given to Iyad Hadad on 8 December 2005.

in advance, the visitors learned about the cancellation only when they arrive at the point of departure or at the checkpoint. This continues to be the case today.

The persons particularly harmed by the closures were the family members who hold one-time entry permits good for only forty-five days that were issued to them as part of the special procedure. In many cases, these visitors waited for their permits for a long period of time (sometimes years) without seeing their imprisoned relative. When such comprehensive closures were imposed, many were unable to use the permit, for which they waited many months. In September 2005, for example, hundreds of residents received permits, which were valid from 18 September -1 November 2005. However, on 24 September, a comprehensive closure was imposed until the end of October because of the Jewish High Holy Days. As a result, only five days were left in which the families could use their one-time permit, a completely untenable situation. HaMoked: Center for the Defence of the Individual petitioned the High Court of Justice.⁴⁴ Following the filing of the petition and discussions between Israeli authorities and the ICRC, the army and the State Attorney's Office informed the High Court on January 2006 that, when a closure is imposed, the prison visits would begin again within seventy-two hours from the time the closure was imposed, unless special reasons exist to continue the cessation of visits.⁴⁵ Indeed, during the general closure imposed on the West Bank between the Purim holiday and the Israeli elections, in March 2006, family visits continued as planned.

This new arrangement provides an answer to the sweeping prohibition on visits during comprehensive closures. However, it is unclear why, where a closure is anticipated – such as on holidays – Israel has to stop visits for seventy-two hours. The reason for the prohibition on entry of Palestinians into Israel is to prevent them from moving about in the cities at times of heightened security concerns or following specific warnings of imminent attacks. However, the visitors enter Israel on buses organized by the ICRC accompanied by security forces, and not independently in a way that enables them free movement inside Israel.

⁴⁴ HCJ 9437/05, *HaMoked: Center for the Defence of the Individual v. Commander of Military Forces in the West Bank*, 3 October 2005.

⁴⁵ Ibid., Judgment, 17 January 2006.

Chapter Three

The Journey to the Prison

The families' problems do not end when they receive the permit to enter Israel. They must then cope with the many difficulties on the day of the visit itself.

Checks, waiting, and delays

The ICRC buses leave daily from the various districts in the West Bank and the Gaza Strip. In most cases, five to ten buses go to each prison. When there is no closure or special restrictions in force, the ICRC organizes dozens of visits a month in the West Bank and the Gaza Strip.

Residents with permits have to register at ICRC offices on the day before the visit, make a symbolic payment of one shekel to help cover the transportation costs, and make their way to the pre-determined meeting place, where they get on the bus. Because of the many restrictions imposed by Israel (checkpoints, physical roadblocks, and roads forbidden to Palestinians), many of the visitors have to leave their houses in the early morning hours, sometimes at 2:00 or 3:00 A.M., to reach the meeting points. Most of the buses leave between six and seven o'clock.

When the bus gets to the checkpoint leading into Israel, the passengers get onto Israeli buses rented by the ICRC. Israeli police vehicles escort the bus to the prison. The buses are not allowed to stop, and the passengers cannot get off the bus until they reach the prison.

The visitors reach the detention facility late in the morning and wait for their turn to enter the prison. It is already nighttime when they begin their journey home, following the same procedure and events in reverse: Israeli buses, with police escort, take them to Palestinian buses at the border checkpoint, which takes them to the major cities, and then the visitors make their way to their homes, which they reach about midnight or later. An average journey takes about twenty hours. The visit with the prisoner lasts no more than forty-five minutes.

At the checkpoint entering Israel, soldiers carefully inspect the passengers and their possessions. With several buses and many dozens of visitors carrying lots of items for themselves for the day and for their imprisoned relatives, the inspection can take up to two hours. The inspection at the Erez checkpoint, at the border with the Gaza Strip, takes an especially long time to complete.

The small number of police vehicles accompanying the buses results in the visitors having to wait at the checkpoint until everyone has undergone the security check, after which the buses continue the trip as a convoy. Visitors often have to wait at the checkpoint a long time after

everyone has been checked and has switched to the Israeli buses, because the police escort vehicles, whose arrival time the ICRC arranged in advance, do not arrive on time. In some of the cases reported to B'Tselem, the tardy arrival of the police escort led to delays of several hours.

R.H., a forty-four year old woman from the Hebron area whose son is imprisoned in Israel, is not permitted to enter Israel, so she sends two of her children to visit their brother. In her testimony to B'Tselem, R.H. related what her children go through during their journey.

The visit is not easy. It is real agony for my children, Sabrin, who is ten years old, and Udai, who is thirteen. The visit begins very early in the morning. They get up at 4:30 and go to Hebron, where they wait outside the ICRC offices. At 6:00, the ICRC buses leave and go to the Tarqumiya checkpoint. There are usually from six to eight buses each time. At the checkpoint, the soldiers conduct a search and use dogs to check the personal possessions. Then the passengers switch to other buses. Two police vehicles escort the buses, one in front and the other behind them. The buses are not allowed to stop along the way. It takes a long time to get to the prison.

At the prison, the visitors wait in the yard as the visits begin. The visitors are carefully checked when they enter for the visit. When the check ends, everyone waits until the last of the visitors exits, including visitors who come from other areas in the West Bank. The visitors start the trip home at six or seven at night and arrive in Hebron at ten or eleven o'clock, and from there make their way home. You can't imagine my children's condition when they arrive.⁴⁶

K.M., 45, lives in a refugee camp in Gaza. In his testimony to B'Tselem, he related his experience in visiting his son, P., in Nafha Prison.

... following three and a half years of failure [in obtaining permission to visit our son], my wife and I were allowed, in February of this year [2006], to visit him. At 6:30, my wife and I arrived at the bus parking lot in Gaza. The bus left at 8:00 and drove to the Palestinian side of the Erez checkpoint. We got there at 8:20. We walked by foot to the first place where we were checked. There is a long corridor at the end of which is a closed hall, where the checks are conducted. We were a group of 200 people going to visit their children. The procedures took four hours, and included the use of scanners, standing in front of the cameras, turning in all directions, dropping our pants and raising our shirts, all in the presence of women, while everyone is looking at me. Then we walked along a path to a computer room where our identity cards and permits were checked. We exited via the Erez gate and waited for more than two hours until everyone was checked. Then we got onto the Israeli buses, which took us to Nafha Prison.

⁴⁶ The testimony was given to Musa Abu Hashhash on 13 December 2005.

After driving for two hours, we arrived at the prison. Again we underwent complicated procedures, as if the families are the prisoners. They dropped us off at the yard in front of the prison, in the cold, where we stayed for five hours. There was no water, toilets, shelter, or places to sit. We waited inside or near the buses. The officials had us enter in groups. Each group contained eighteen families, which were allowed to visit for forty-five minutes. I met my son at 9:00 at night.

When the visits ended, we got on the bus and drove back to Erez, arriving at 1:00 in the morning. The Israelis searched us again when we entered the Gaza Strip. They completed the searches at 3:30 A.M.

We visited our son, again, in March and then in April. The procedures were even more complicated. They put us into an inspection device. It was similar to the one they had at Rafah, where the people objected to it a lot because of the fear of radiation. The procedures are handled pretty slowly. The Israelis don't take into account the time involved or the heat or the cold or the fact it is winter. We'll go and visit our son next month as well.⁴⁷

Similar conditions also apply on the way home. The visitors go in for the visit in relatively small groups, so that some finish the visit a long time before the others. But, because of the police escort, the buses cannot leave the detention facility until everyone finishes the visit and is on the buses. Thus, families that completed their visit in the afternoon or in the early evening have to wait hours before the buses start the return trip, and reach home in the early-morning hours, almost a full day after they began their journey.

P.H., from the Nablus area, related to B'Tselem how she sends her son Abd a-Nasser, who is thirteen, to visit his brother.

At 1:00 A.M., my husband and I leave the house with our son to take him to the eastern bus parking lot. The trip to and from the prison takes more than twenty-four hours, and he returns home around 2:30 in the morning. The route goes from Nablus to the Huwarra checkpoint, then to Za'atreh, and from there to the Irtah checkpoint, where the visitors get onto Israeli buses. We carry the bags that we prepared... It is hard for Abd a-Nasser to carry all these bags because he switches from one bus to another in Irtah. I feel sorry for him because he returns home exhausted and unable to speak. He goes to sleep immediately and misses two days of school because he returns home late at night exhausted from the trip. Each time, he says that he won't go the next time and that it tired him out. But when the time comes for a visit, he goes again. I tell him, "You said you wouldn't go the next time," and he replies that he goes because of his brothers, to see how they are doing and then to come back and tell me. He doesn't see his brothers for

⁴⁷ The testimony was given to Zaki Kuhail on 29 May 2006.

more than forty-five minutes, and he expends lots of time and effort during the trip back and forth.

When the buses return, one of the passengers calls me and we go to pick him up at the parking lot, which is about four kilometers from our house. We are afraid to have him walk home alone at night. There is no public transportation at that time, and soldiers wander about inside the city at night.⁴⁸

In some cases, visitors are delayed because the checkpoints they cross are not staffed around the clock, their gates are locked, and the officer holding the key is not at the checkpoint. This failure occurs even though the visiting days and the route the visitors travel are coordinated with the IDF and the Civil Administration. Testimonies given to B'Tselem indicate that these problems are especially common in the Jenin area and at the Ofer checkpoint, near Ramallah. There is no justifiable reason for delays of this kind, which add several hours to the day's trip.

Despite the stringent security checks they underwent when entering Israel, and although they have not left the bus from then until the time they arrive at the prison, and even though the buses are escorted by police, the visitors undergo another security check when they enter the prison. In some prisons, the visitors undergo five and sometimes even seven security checks, including passing through electronic gates and undergoing body searches, from the moment they enter the prison yard until they meet with their imprisoned relatives. The many security checks take much time and place a further physical and emotional burden on the visitors.

In her testimony to B'Tselem, Hebba, a fourteen-year-old girl from the Ramallah area, stated:

I get ready for the visits the day before. I prepare myself and the things people wanted to give me, and make a point of taking stunning clothes. I would get up early and take a taxi with one of the families from the neighboring villages to Ramallah. All the prisoners' families gather there, next to the ICRC buses, which are going to take us to the prison [Eshel Prison]. A ICRC representative checks the list of names, the permits, and the ID cards. We get on the bus and at eight o'clock head toward Ofer Prison. We wait about an hour until the gate next to the prison area opens at nine o'clock. Then we drive to the Beit Sira intersection [the Maccabim-Reut checkpoint], where we get off the bus, are checked, and get onto Israeli buses, which take us to the prison. We get there at noon and wait in line. The prison guards put a group of fifteen prisoners only in the visiting rooms each time. They take us via gates and points, along the prison's many corridors, at which they search us. You lose your orientation because there are so many corridors. This takes about one hour. Usually, I enter with one of the last groups. The visit lasts forty-five

⁴⁸ The testimony was given to Salma a-Deba'i on 12 December 2005.

minutes. After we are done, we go back to the buses and wait until the last group comes out, which is about nine o'clock at night.

The trip home is the exact reverse of the way to the prison, with stops and searches at the same stations. In the gate next to Ofer Prison, we have to wait a lot. We stay there about an hour, sometimes two, until the soldiers open the gate. How long we wait depends on their desire to open it.

When we get to Ramallah, my father waits for me with a taxi, which takes me back to our village.⁴⁹

As the occupying power, Israel has the general obligation to ensure the welfare of the Palestinian residents, and in particular to enable them to exercise their right to visit in prisons in a reasonable manner. The hardships that the prisoners' relatives are forced to endure to visit them are inconsistent with this obligation.

- Israel's sweeping restrictions on movement in the West Bank, which delay the arrival of relatives at the meeting points, is a disproportionate violation of a number of human rights. Furthermore, some of the restrictions result from improper and illegal considerations, among them the desire to perpetuate the settlement enterprise.⁵⁰
- The many stringent security checks of the relatives' bodies and possessions often last much longer than necessary. Even if checking the visitors is required, Israel must take steps that shorten the wait, for example, by assigning more soldiers to do the checks. Such steps are warranted, in particular, because the visits and the passage through the checkpoints are coordinated by the IDF and the ICRC, and all the passengers have a permit to enter Israel.
- The police must ensure, at a minimum, that the police vehicles accompanying the buses, without which the buses would not be allowed to enter Israel, are waiting for the visitors at the checkpoint at the prearranged time. Doing so would prevent unnecessary waiting at the checkpoint. Also, the police should allocate additional vehicles so that the buses could leave in smaller convoys, rather than wait for the last visitor to finish and leave as one large group.

Cancellation of visits by the Prisons Service

⁴⁹ The testimony was given to Iyad Hadad on 8 December 2005.

⁵⁰ For further information on restrictions on movement in the West Bank, see B'Tselem's Website, www.btselem.org, and B'Tselem, *The Forbidden Roads Regime in the West Bank*, August 2004.

Testimonies given to B'Tselem indicate that the Prisons Service prohibits some relatives from visiting, even though they received the requisite permits and arrived at the prison gate.

The Prisons Service Regulations prohibit former criminal prisoners from visiting its prisons unless the relevant Prisons Service commander approves the visit. The term "criminal prisoners" includes anyone who was ever held in a jail run by the Prisons Service on any criminal charge, including suspects who were detained for interrogation, persons who were held until the end of the criminal proceedings against them, and, of course, persons who served a prison sentence, however short. The term also includes persons who were jailed prior to the filing of an indictment, even if they are ultimately exonerated.⁵¹ As a result, there are cases in which persons who were detained for questioning or were jailed for short periods of time in the 1950s, 1960s, and 1970s are still not allowed to visit their relatives, just as security prisoners or criminal prisoners who had been released a few months ago are forbidden entry into the prison. The prohibition applies even if, in the intervening years, security forces had no contact with them at all.

A relative prohibited from visiting may request the Prisons Service to remove the restriction. The grounds for granting or denying the request are prescribed in the Prisons Commissioner's Orders and include the following: the family relationship between the applicant and the prisoner; whether the prisoner receives family visits; the date the former prisoner was released from prison; the purpose of the visit; the former prisoner's involvement in criminal activity; the existence of information on ties between the former prisoner and current prisoners. As a rule, as the order states, "The approach should be to allow the former prisoner to enter unless there is information on criminal ties with the prisoner and there is concern that the meeting would be used for an improper purpose or the meeting would endanger state security."⁵²

The purpose of the Prisons Service regulation is to maintain order and safety in the prisons. However, the regulation is applied arbitrarily and is disproportionate. Placing a sweeping restriction on a large group of people, without examining the risk and potential threat the particular individual presents, does not adapt the means to the purpose and fails to meet the minimal-harm test, as required under the principle of proportionality.

As noted, the relevant Prisons Service official is given the discretion to permit a former prisoner to visit. However, there is reason to believe that the discretion is often exercised

⁵¹ HCJ 5154/06, *HaMoked: Center for the Defence of the Individual et al. v. Minister of Internal Security et al.*, Petition for Order Nisi, 19 June 2006.

⁵² Section 30(a) of the Prisons Regulations, 5738 – 1978; Prisons Commissioner's Order 04.42.00, Section 16.

unreasonably, and that the criteria underlying the exercise of discretion are not seriously and carefully examined.

An illustrative case is that of B.S., 47, from the Tulkarm area, whose son has been imprisoned in Israel since November 2003.

[My wife and I] submitted a request to visit after the interrogation phase, and we continued to make requests weekly. The Israelis rejected each of them. Finally, in June 2005, we received a one-month permit to visit our son. When the day for the visit arrived, we went to the ICRC offices to register our names along with the names of the other parents... I remember that day. I'll never forget it. The whole family got up early... We left the house at five in the morning. We went to the ICRC office in Tulkarm, where the prisoners' parents gather...

When we arrived, we got out of the bus for the security checks and search, the checking of the ID cards, permits, and personal possessions. When my turn came, I handed over my ID card and the special permit for the visit, and then one of the prison guards told me that I was not allowed to visit. I was surprised and startled. I asked him, in Arabic, "Why am I forbidden to visit?" He said that it was because I had been arrested in the past, in 1976. I told him, "More than thirty years have passed since then. I was arrested and was released. Why am I prevented from visiting?" I was detained for a total of nineteen days in 1976. I begged him to let me visit, because it was the first time that I had come to visit my son since he was arrested, and had not seen him for a year and a half. The guard refused. I had to sit in the waiting room until the end of the visit. My wife and children were allowed to visit my son.⁵³

The supposedly uniform criteria are not applied uniformly in practice, and the procedures are applied differently from one prison to another. For example, former prisoners are allowed to visit a relative in one particular prison but not in another to which the relative was transferred. This happened to R. A., 58, from the Jerusalem area, whose two sons are imprisoned in Israel.

In 1969, I was arrested and detained in the al-Masqubiyyeh detention facility [the Russian Compound, Jerusalem] for forty-seven days. Later, I was indicted and sentenced to four years' imprisonment for resisting the occupation. I was released in 1973. In 1975, I was also detained again and interrogated for forty days. After that, I was detained for five months, and when I was released, I went back to living my life. L. [her twenty-seven-year-old son], was detained and questioned for about thirty days and was then taken to Ashkelon Prison. We went to visit him two months after he was arrested, and after that we went to visit him weekly, for two years, until he was sentenced to twenty-eight years' imprisonment.

⁵³ The testimony was given to 'Abd al-Karim a-Sa'adi on 11 December 2005.

In October 2002, my son A. was detained as well. He was questioned for thirty-eight days, and then they moved him to Tel Mond Prison. The Israelis did not let his father and me visit him because we had been detained in the past. Yet, we had been allowed to visit our other son every week. In April 2003, seven months after A. was detained and following numerous attempts and assistance from HaMoked, we were allowed to visit him. We went to see him every two weeks at Tel Mond and his brother L. every week in Ashkelon Prison.

In July 2005, I went to visit the two boys [they were now in the same prison]... When I got to the prison, the authorities said I could not visit because I had been detained in 1975. I told them that, for more than three years, I had visited my sons. But they didn't change their mind. After much begging and talk, they let my husband and me make one visit. On 25 July 2005, we went to the prison and visited the boys. I have not been allowed to visit them since.⁵⁴

The Prisons Service does not explain its reasons for granting or denying requests by former prisoners to visit. If the response is negative, no procedure for appeal is available, and when the prohibition is removed, the validity of the decision is not always clear. HaMoked and the Association for Civil Rights in Israel recently filed a petition, which is still pending, regarding the refusal to let former prisoners visit in the prisons.⁵⁵

To the best of B'Tselem's knowledge, the Prisons Service does not give prior notice to former prisoners that they will not be allowed to visit in the prison. As a result, former prisoners make all the preparations and undergo all the difficulties inherent in making the visit only to be told that they will not be allowed to enter. Given the uncertainty inherent in renewing the permits, and inasmuch as the rules regarding ex-prisoners and detainees vary from time to time and from prison to prison, many visitors make the long trip knowing that they may not be allowed to see their relative.

In these cases, the questions of the relationship between the visitor and the prisoner, of when the visitor was last detained, and whether the prisoner receives other visitors, seem irrelevant when the officials decide not to allow the visit, even though they are among the criteria set by the Prisons Service itself. Furthermore, given that all the visitors underwent a stringent security check by the GSS before obtaining the permit, the security-threat claim raised by the Prisons Service, in most instances in which ex-prisoners request to visit, is baseless. This being the case, denial of their right to visit is arbitrary and disproportionate.

⁵⁴ The testimony was given to Karim Jubran on 26 December 2005.

⁵⁵ HCJ 5154/06, *HaMoked: Center for the Defence of the Individual et al. v. Minister of Internal Security et al.*, Petition for Order Nisi, 19 June 2006.

The transfer of prisoners from one facility to another, made from time to time by the Prisons Service based on its own considerations, also causes problems for the visitors. The Prisons Service agreed in principle to inform the ICRC of every transfer within twelve days of the move. Given that security prisoners are unable to contact persons outside the prison, the ICRC informs the families of their new location.

Because of the long delay in informing the family, there are times that visitors make the exhausting trip, only to learn upon arrival that their relative had been moved to another facility. The manner of informing the families is especially problematic for persons in the special arrangement, whose visits are very limited from the start. The decision to transfer a prisoner is presumably calculated and not made on the spur of the moment, so it is unclear why the Prisons Service needs twelve days to inform the ICRC, and why the notice cannot be given the same day the prisoner is transferred.

A related problem involves visiting a prisoner whose visiting rights have been restricted as punishment. The Prisons Commissioner's Orders state that, "The prison administration shall consider informing the prisoner's family of cancellation of a visit for whatever reason."⁵⁶ An attorney in the legal department of the Prisons Service stated that giving notice to the families is the responsibility of the prisoner, and not of the Prisons Service. In the case of security prisoners, who are not in telephone contact with their families, an official of the Prisons Service informs the family, if the prisoner requests it. If no request is made, the prison authorities assume that the family has been notified by other means, such as by letter or by a third person, the ICRC or another prisoner, for example. Prison officials do not give notice on their own initiative.⁵⁷

In many cases, as testimonies and meetings with prisoners' relatives indicate, families are not informed of the cancellation of visits when the prisoner is being punished. As a result, they make the arduous trip to the prison in vain.

⁵⁶ Prisons Commissioner's Order 03.02.00, Section 14(w).

⁵⁷ This information was provided to B'Tselem on 29 March 2006 by Attorney Tali Nissan, of the Prison Service's legal department.

Chapter Four

The Visiting Conditions at the Prison

Waiting for the visit to begin

The Prisons Service limits visiting days, organized by the ICRC in each prison, to one visit every two weeks from each district. Visits to the prison at the Ofer army camp and to the Prisons Service facilities at Megiddo and Ketziot are allowed once a month from each district. To enable as many relatives as possible to make visits, the ICRC provides the number of buses necessary to carry all the visitors to the particular prison. In most cases, the buses from the various districts, with their hundreds of visitors, arrive at the prison about the same time. Most of the prisons are incapable of handling such a large number of visitors at one time, so many visitors have to wait hours in harsh conditions before getting to spend no more than forty-five minutes with their loved ones.

Until recently, the waiting conditions in Eshel Prison, in Beersheva, were particularly harsh: in violation of the Prisons Commissioner's Orders, according to which "the visitors' waiting area will be under an open-sided shelter that protects against wind and rain," the prison had only one shelter, covering an area of 120 square meters. The shelter was large enough for only about one hundred visitors and did not provide the requisite protection. Most visitors waited many hours without shelter to protect them against rain and sun. Also, there were no toilets, benches, or drinking fountains. When B'Tselem visited the area in January 2006, more than five hundred persons from Hebron and Ramallah were waiting. With no benches or chairs, all the visitors, regardless of age or physical condition, had to sit on the ground, among the piles of refuse that had accumulated. With no toilets available, to avoid having to relieve themselves, many did not drink. The lack of toilets was especially problematic for women, who had difficulty concealing their bodies when relieving themselves. The conditions in the prison yard, to which the visitors were led in small groups for security reasons, were pretty much the same, and the wait was long.

K.H., a thirty-five-year-old woman from Ramallah, takes her two children with her when she visits her husband. She related to B'Tselem her experience when they visited Eshel Prison.

There were many times we [the visitors from Ramallah] arrived and found a similar number of visitors from Hebron. They always arrived before us and went in to visit before us, and we had to wait many hours until they finished. Sometimes, it wasn't before three in the afternoon that the first group from Ramallah entered. All the time until then we spent in the open spaces of the desert. If it was hot, the heat burned us. If it rained, we got drenched, which was humiliating, and we went back into the buses. It was crowded in

the buses, and with so many hours to wait, boring. If somebody had to go to the bathroom, there was no place to do it except in the open. Sand blew into our mouths and on the food we ate when we sat outside on the ground.⁵⁸

Following requests made by various organizations, primarily Adalah, to the Prisons Service, the waiting conditions at Eshel Prison have improved of late. In a letter to Adalah, the Prisons Service noted that,

Indeed, until about two months ago, the conditions were unsuitable and improper...

Knowing about the conditions and out of concern for the welfare of the relatives, a spacious waiting hall was built. Also, a play area for children of the visitors was constructed in the adjacent yard... Additional visiting rooms – spacious, modern, and with air-conditioning – were also constructed.⁵⁹

B'Tselem welcomes the improved conditions at Eshel Prison. Yet, it remains unclear why the authorities waited so long before making the improvements, and why they needed to wait for a request from an external party before doing so. The improvements were simple to make and took only one month to complete, and there was money in the Prisons Service's budget to cover the costs.

The conditions that once prevailed at Eshel Prison are still found at Damun Prison, in the Sharon area, and in Shikma Prison, in the Negev. When B'Tselem visited Damun Prison in May 2006, it found that the waiting area had no toilets, water faucet, or trash can. The area was filthy. The area had seven tables under shelter, some 150 meters from the entrance to the prison, but they were not enough for all the visitors. Many had to seek a shady spot and sit on the ground while they waited.

The waiting areas differ from one facility to the other, but even the better-equipped facilities, such as Gilboa Prison, are not set up for the number of visitors brought by the ICRC. The problem results from the Prisons Service's decision to restrict the number of visiting days. Additional days would obviously enable the ICRC to bring fewer visitors each day, thus reducing the waiting time and the unpleasantness inherent in the long waits. The Prisons Service would have to make the requisite personnel arrangements, but such considerations cannot justify the horrible conditions imposed on the visitors.

Physical contact during the visit

⁵⁸ The testimony was given to Iyad Hadad on 30 January 2006.

⁵⁹ Letter of 26 March 2006 to Attorney Abir Bacher, of Adalah, from the Prisons Service's legal department.

In some of the prisons, visits to security prisoners are held on different days from visits to criminal prisoners. According to the Prisons Service regulations, except in unusual cases, there is no partition separating visitors (adult or child) and criminal prisoners. Visits with security prisoners, on the other hand, are held with a partition between the visitor and prisoner, making physical contact impossible.⁶⁰

A wall separates visitors and security prisoners. The bottom part of the wall is concrete and the top is reinforced glass with small holes, so that the only possible contact is with the fingertips. In some of the facilities, the glass has no holes, so not even this contact is possible. About twenty prisoners receive three or four visitors each, all at the same time and in the same room. To communicate, they have to shout. Some of the facilities have a phone hookup, one per family, which provides for, at best, minimal conversation. A real, satisfactory conversation, not to mention an intimate conversation that a husband and wife or other close relatives would like, is impossible under these conditions.

K.H. described the conditions as follows:

The prison guards call us one after the other. Each group contains from sixty to eighty people. They take us from gate to gate, each of them electrically operated. Then they take us to halls for body checks and then via a corridor to two underground rooms and other rooms above ground. They always force us to take off our shoes and head covering so they can check. The checks take more than an hour. Then you get to the visiting room, which is about 160 square meters in size. It is divided by a concrete partition with netting and reinforced glass. The glass has small holes, too small to pass anything through it, even a finger. The authorities don't allow more than twenty prisoners in the room at a time. Each prisoner meets with three or four visitors, so there are about one hundred persons in the room. It is uncomfortable for everybody, because everybody is shouting to be heard. Nobody can understand what the other is saying. I have to put my ear to the glass to hear what my husband is saying.⁶¹

M.G., 58, from the Jenin area, related to B'Tselem his experience when he visited his son.

The visiting room looks like a long corridor, about thirty meters in length. There are seats and a thick glass panel, without holes, that separates the prisoners from the families. We can see each other, but cannot hear what the other person says, and we cannot touch each other. The atmosphere is not particularly calm, with the prison guards closely supervising us. We feel helpless, being unable to express our emotions in a normal, human way. We are left with saying simple things like, "How are you," "How is everything," and it is

⁶⁰ Prisons Commissioner's Orders 03.02.00, Rules Relating to Security Prisoners.

⁶¹ The testimony was given to Iyad Hadad on 30 January 2006.

impossible to carry on a meaningful conversation. The visit ends, and I am left with the feeling that I didn't see my son. Many times, I kissed the glass as if I were kissing my son. Imagining myself kissing the glass, I feel the injustice in providing us with such harsh conditions.⁶²

The way the visit is conducted, in particular the possibility of physical contact, is especially important for relatives visiting security prisoners. Security prisoners are held separately and are subject to special restrictions on their contact with the outside world. Unlike other prisoners, they are not allowed to make or receive phone calls, and their only contact, other than letters, is the biweekly visits, if they indeed receive visitors.⁶³

In August 2004, security prisoners began a hunger strike that lasted more than two weeks. One of their major demands was to remove the partition separating them from their families during visits; the Prisons Service rejected the demand on security grounds.⁶⁴

In their response to petitions filed in these matters, the Prisons Service officials contended that, based on past experience, the absence of a partition enables the transfer of forbidden information and items, such as cell phones and weapons, to and from the prisoners.⁶⁵

The ICRC runs the visiting program without any assistance or support from Israel, and cannot alone ensure maximum conditions for all the visitors. In particular, the ICRC does not always separate persons who are visiting security prisoners from those visiting criminal prisoners, even though the Prisons Service's regulations distinguish between the two and provides better conditions to persons visiting criminal prisoners. On visits in which the ICRC for logistical reasons is unable to separate the visitors, the visitors are separated at the time of the visit.

Still, the visits are conducted in the same room, so the conditions are the same for both – with all the visitors being subjected to the more stringent and restrictive conditions, meaning that no physical contact is allowed. An attorney from the Prisons Service's legal department informed B'Tselem that, on days when the ICRC does not separate the visitors based on the classification of the prisoner they are visiting, the more stringent conditions are applied

⁶² The testimony was given to 'Atef Abu a-Rub on 13 December 2005.

⁶³ Prisons Commissioner's Order 03.02.00, Rules on Security Prisoners, Section 1B.

⁶⁴ From 15 August-3 September 2004, some 4,000 security prisoners in Israel went on a hunger strike to attain four primary objectives: to allow them to use the public telephones in the prisons; to remove the partition during visits with relatives; to prohibit body checks while they are naked; to cease the use of fines to punish them for disciplinary offenses.

⁶⁵ See, for example, HCJ 7585/04, *Hakim K'ana'an et al. v. Prisons Service*, Response on Behalf of the Respondent, 15 November 2004.

because the Prisons Service does not have sufficient personnel to enable maximum conditions for all the prisoners.⁶⁶

Whether because of the ICRC's limitations or the Prisons Service's lack of resources, the result is denial of the right of prisoners jailed for criminal offenses and their families to conduct an open visit, without any security reason justifying the denial. The State of Israel, and the Prisons Service in particular, bears sole responsibility for enabling exercise of these rights, and not the ICRC or any other third party involved in the family visit framework. They must ensure that the criminal prisoners and their families receive the visiting conditions granted them in the Prisons Service regulations, and as required by Israel's obligation to respect their right to family life. A shortage of personnel, or any other administrative problem, is an unacceptable reason for such a substantial infringement of the rights of the prisoners and their families.

Physical contact during the visit is especially important for the prisoners' children. In the past, the prison authorities allowed the children and siblings of security prisoners who were under ten years old to spend the last fifteen minutes of the visit in physical contact with the prisoner. However, since the visits were renewed, the Prisons Service has not allowed, other than in exceptional cases, physical contact between security prisoners and their minor relatives.

Physical contact between children and their parents is extremely important for the children's education and development, and to develop the ties between parent and child. The added importance of physical contact when a parent is in prison was noted in an expert opinion filed in a petition to the High Court of Justice, as follows:

The ties between the child and his father [the prisoner] lie essentially in his consciousness, through memories from the period preceding the detention and from stories that he hears.⁶⁷

A special report prepared by the National Insurance Institute, which deals in part with the effect of a parent's imprisonment on the prisoner's child, describes the father's imprisonment "as one of the most tense and grave situations the child faces." The visit enables the child to express his feelings about the imprisonment and to maintain a natural tie with the parent, which will facilitate the renewal or continuation of their relationship after the parent is released. The glass partition creates a real obstacle to building such a connection, particularly

⁶⁶ Attorney Tali Nissan, of the Prisons Service's legal department, provided the information to B'Tselem in a conversation on 29 March 2006.

⁶⁷ Dr. Mili Mases, expert opinion filed on behalf of Adalah, in *K'ana'aneh*.

given the conditions in which the visits are held.⁶⁸ It also adds to the already difficult conditions during prison visits, particularly family visits organized by the ICRC. The trauma inherent in visiting a parent with a glass partition between them stays with the child long after the visit has ended. From the prisoner's perspective, maintaining family ties, particularly with the children, is an important part of rehabilitation, and greatly affects the prisoner's adjustment and conduct in jail.

In the petition, Adalah requested the High Court to order the Prisons Service to allow again physical contact at the end of visits of children with security prisoners. Based on the response to the petition, despite all the above comments on the importance of such contact, the state considers physical contact between prisoners and their children an exception that is permitted from time to time, and not a right to be respected as a matter of course. In its response, the Prisons Service reduced the age in which children are allowed physical contact with their parent from ten to six years of age, and limited such visits to once every two months.⁶⁹ In a subsequent response, the Prisons Service withdrew its restriction on the frequency of physical-contact visits, but refused to commit itself to allowing physical contact during every visit, and stated that, "the frequency of holding open visits will be determined... in accordance with the security and logistic needs in the prison." In addition, the Prisons Service set conditions for such visits: good conduct of the prisoner and the absence of any security reason to deny the physical contact.⁷⁰

The state contends that the prohibition on physical contact was instituted after the outbreak of the second intifada because the relatives have used such contact to hand over forbidden messages and objects to and from the prisoners:

The main concern is that, without strict supervision, information (dispatches) would be smuggled into and out of the prison along with other forbidden materials, such as cell phones and weapons, which would harm state security, public safety, order and discipline in the prisons, and the safety of the prison staff... *The security prisoners continue to remain in contact with their organizations outside the prison and to act inside the prison as well...* Contact with activists in the terrorist organizations on the outside is carried out by smuggling dispatches, smuggling cell phones, and transmission of messages via the visitors... One of the most common channels for smuggling... has been the misuse of

⁶⁸ Ibid., Section 37. Taken from Debbie Ovadia, *Special Program for Tutors of Prisoners' Children* (Second Year), National Insurance Institute, Research and Development Department, Jerusalem, February 1990, 1-2.

⁶⁹ Ibid., Revised Response on Behalf of the Respondent, 22 June 2005.

⁷⁰ Ibid., Revised Response on Behalf of the Respondent, 11 June 2006.

physical contact previously allowed between the prisoner and his visitors... and the misuse of the physical contact that was permitted with the minors.⁷¹

This position violates the state's obligations under the Convention on the Rights of the Child and under the Basic Law: Human Dignity and Liberty, as described in Chapter One of this report. The sweeping decision to prevent physical contact between prisoners and their children over age six, and from most children of prisoners held for committing criminal offenses, is inconsistent with the best interest of the child, which must be taken into account in matters relating to children. Clearly, the decision on whether to allow physical contact during visits directly affects the children, so the state and prison authorities must give serious consideration to the best interest of the child, while also taking into account other interests, such as state security, public safety, order and discipline in the prisons, and the safety of the prison staff. The Supreme Court has held that,

As a rule, restricting contact between a detainee and his children by use of a glass partition, when the limitation is intended to maintain safety and public order, is considered a reasonable restriction on the detainee's right of parenthood, and the child's right to meet with his father.⁷²

However, such a restriction must be carried out in a reasonable manner, based on the facts of the individual case, and on concrete information.

The Prisons Service's "solution" does not balance these principles proportionately. The arbitrary and sweeping restriction on physical contact, limiting implementation of the special arrangement to children under six years old, and the long, three-year period that the prohibition has been in effect clearly fail to meet the minimal-harm test. Also, it is questionable whether the injury to the children is proportionate when one compares the number of cases in which children's visits have been improperly exploited and the benefit gained by the Prisons Service from forbidding physical contact.

Furthermore, the prohibition collectively punishes every child of security prisoners because of the few cases in which the visiting rules and procedures have been violated. Rather than making restriction of the right the exception, and reaching a decision as to whether the prohibition is justified in each case based on the facts at hand, the Prisons Service has taken the easy route and prevents physical contact with every child over six years old. Past cases of misuse do not warrant such a sweeping, collective restriction: the measure is disproportionate

⁷¹ Ibid., Response on Behalf of the Respondent, 15 November 2004. The emphasis is in the original.

⁷² Ibid. See, also, App. Pet. 436/04, *Sa'id Sa'ad Shaluf v. Minister of Defense and General Security Service*, Judgment, 1 August 2004.

and fails to balance the best interest of the children and their rights with the Prisons Service's security and administrative needs. Where there is a reasonable, concrete concern that exercise of the right will breach this balance and disproportionately prejudice the interests of the Prisons Service, the Prisons Service may, in the particular case, restrict the right.

Conclusions

The official position of Israel has always been that the Fourth Geneva Convention does not apply in the territories it occupied in 1967. However, shortly after the occupation began, the state declared that it would fulfill, though not required by law, the "humanitarian provisions" of the Convention, without delineating the provisions to which it was referring. Jurists and organizations from Israel and abroad, including the International Committee of the ICRC, the body authorized to interpret the Convention and monitor its implementation, have repeatedly rejected Israel's position.

Israel has used its position to turn the most fundamental rights of Palestinians in the Occupied Territories into "gestures" that it grants or withholds as it wishes. This is also true regarding the rights of Palestinian detainees and prisoners and their families. The Knesset has blatantly ignored the prohibition that the Fourth Geneva Convention imposes on the transfer of civilians from occupied territory, and enshrined in law the authority of the state to hold Palestinian prisoners inside the State of Israel.⁷³ As in many other issues, the Supreme Court refused to interfere and protect the rights of Palestinians in the Occupied Territories, and rejected, primarily on procedural grounds, a petition against holding Palestinian prisoners in Israel.⁷⁴

Furthermore, upon completion of implementation of the disengagement plan, in September 2005, Israel declared the end of the military government in the Gaza Strip, i.e., the end of Israeli occupation of that area. This claim is doubtful in light of the enormous control that Israel continues to maintain over the lives of the residents of the Gaza Strip.⁷⁵ However, even if the occupation has ended, as Israel argues, it is still required, under the Fourth Geneva

⁷³ Amendment and Extension of the Validity of the Emergency Regulations (Judea and Samaria and Gaza Strip – Jurisdiction over Offenses and Legal Assistance) Law, 5748 – 1987, Annex, Section 6(b).

⁷⁴ The High Court held, in part, that the Fourth Geneva Convention "is not enforceable in the court, in that it is not deemed domestic law," and also that, in a conflict between domestic law and international law, "the court must prefer the instruction of the domestic legislator and give it effect..." HCJ 253/88, *Ibrahim 'Ibn Hamid Sajdiya et al. v. Minister of Defense*, Judgment, Sections 3(h) and 6(d)(2).

⁷⁵ For an extended discussion on this subject, see www.btselem.org/english/special/Gaza_Status.asp.

Convention, to hand over the prisoners who are residents of the Gaza Strip to the Palestinian Authority.⁷⁶

As this report has shown, Israel's disregard of the Fourth Geneva Convention's prohibition on transferring prisoners to its territory is one of the primary reasons that the prisoners and their families are unable to exercise their right to visit in a reasonable manner. Israel itself is obligated to ensure that all residents of the Occupied Territories are able to visit their relatives imprisoned in Israel. This obligation arises from its control of the Occupied Territories and its responsibility toward persons it holds in custody. As noted above, this obligation is derived, in part, from the general obligation to ensure "public safety and order," pursuant to the laws of occupation, and from its obligation to respect the right of every person to family life, pursuant to international human rights law and Israel's Basic Law: Human Dignity and Liberty.

In practice, the ICRC, and not Israel, has organized and implemented the visits at great effort, both in handling the logistics and coordinating and negotiating with the Israeli authorities. Many of the changes and improvements in the family visits over the past few years have resulted from the numerous petitions filed in the High Court of Justice by human rights organization, primarily HaMoked: Center for the Defence of the Individual. Without diminishing the importance of the positive measures Israel has taken in recent years on this issue, one must not forget that, in almost every case, Israel took action only after being taken to court.

Despite these improvements, Israel's permit regime results in tens of thousands of Palestinian who are still unable to visit their relatives imprisoned in Israel, or are able to visit only once or twice a year. Israel contends that "security reasons" justify the restrictions it imposes. However, it has never delineated these reasons, so it is impossible to refute them effectively. Israel's refusal to give reasons for the restrictions enables arbitrary and unreasonable denial of permits and conditions for granting of permits. The state, in particular the Prisons Service, contends that some restrictions and problems result from a shortage of resources and personnel. However, these contentions cannot provide a lawful basis for the sweeping and disproportionate infringement of the rights of thousands of Palestinians.

Israel's arbitrary and disproportionate policy not only infringes the right to family visits, it also brings about the violation of other rights and principles of international humanitarian law and Israeli law. The policy breaches, for example, the right of the prisoner's children to have

⁷⁶ Fourth Geneva Convention, Article 77. A petition arguing this position was filed, and is pending, in the High Court of Justice (HCJ/8849/05, *MK Dr. Ahmad Tibi et al. v. Government of Israel et al.*).

physical contact with their parents, the prohibition against collective punishment, and the principles of proper administration.

In light of the report's findings and analysis, B'Tselem urges the government of Israel to transfer to detention facilities inside the Occupied Territories all Palestinian prisoners currently being held inside Israel. If the transfer requires the building of new facilities, Israel must ensure that it constructs the facilities while respecting the rights of the residents of the Occupied Territories, in particular their property rights.

Also, so long as Palestinians are held inside Israel, and in general, B'Tselem calls on the government of Israel to:

- ease the granting of permits to enter Israel for family visits, for example by issuing permits to persons who are not first-degree relatives;
- increase the speed and efficiency of issuing permits and thus enable relatives to visit as frequently as possible;
- take measures to shorten the travel time to and from the prison, and ease the hardships entailed in the visits, for example by shortening the inspection time at the crossing points between the Occupied Territories and Israel, shortening the waiting time in the prisons before and after the visit, and improving the physical conditions while waiting at the prison;
- ensure the right of *all* minor children of prisoners to make physical contact with them, except in cases where the authorities have a concrete basis for believing that physical contact would create a real danger, and make it easier for the prisoners and their families to communicate with each other during the restricted visits.

Response of the Ministry of Justice



מדינת ישראל
משרד המשפטים
State of Israel
Ministry of Justice

The Department for International Agreements and International Litigation

Date: 20 Av, 5766
August 14, 2006
Re: 2340

Mrs. Anat Barsella, researcher
B'tselem
8 HaTa'asiya St. (4th Floor)
P.O. Box 53132
Jerusalem 91531

Dear Sir,

Re: Reference to "B'tselem"
Draft Report – Visitation by Inmates Families

Your request regarding the abovementioned report was received in our office, and the following is our reply:

Preface

1. The State of Israel acknowledges the importance of the existence of family visitations, and as clarified in *HCJ 11198/02 – Salah Diria v. The Head of the military detention facility*, Tak-Al 2003(1)1695, - "The State does not dispute the inmates' right to receive family visitations". The state has been acting relentlessly, despite the many security and administrative difficulties involved, to enable the existence of these visitations.
2. It should be emphasized, that inmates' family visitations are performed as a regular procedure, where a request is filed to the Civil Administration, and, in most cases, is approved after a short time and visitations are performed in a continuous manner. Sometimes, due to security needs, the visitations are temporarily stopped.
3. The above-mentioned draft report, mostly relates to the group of those precluded from entry to Israel due to security grounds, that is to say, residents of the territories regarding whom there exists a security hindrance for them to visit their incarcerated family members.
4. The Supreme Court in HCJ 7277/94 *Anonymous v. The Gaza Strip Military Commander*, Takdin-Elyon, volume 95(2) 889, where residents from the Gaza Strip petitioned the Supreme Court, requesting a permit to enter Israel, held the following: "...granting a permit is forever subject to the lack of a security hindrance compelling the prohibiting of entry".

רח' צלאח א-דין 29 ת.ד. 49029 ים מיקוד 91490 סל' 02-6466569

E-Mail: international@justice.gov.il

5. In light of the current grave security condition in Israel and the area, the need to ensure those entering from the PA areas are not endangering public security increases, this including the visitations of families of inmates in prisons in Israel.
6. When specific information exists regarding a family member, concerning whom a security hindrance for visitation is present, the security consideration, relating to the danger to State security from allowing the said persons' entry to Israel, is certainly a relevant and worthy consideration in the military commander's decision, whether or not to grant the entry of a resident of the area to Israel. This position, according to which, the objection of the security forces, based on an individual examination of the said persons' affairs, can constitute ground to prevent the entry of a resident of the area to visit his family member, who is an inmate in Israel, was approved by the Supreme Court – HCJ 11515/04 – *Nada Muhammad Hassan v. The Commander of the IDF forces in the West Bank*.

Visitation of those Precluded from Entry to Israel due to Security Grounds

7. However, and inter alia, due to the importance the State of Israel relates to this issue, a procedure was formed whereby requests to allow entry to Israel for visitation of inmates relatives, filed to the Civil Administration in Judea and Samaria, through the Red Cross, by inmates' family members regarding whom a security hindrance exists from allowing their entry to Israel, shall undergo an individual examination and diagnosis, based on criteria reflecting a proper balance between the will and willingness to enable the inmate/detainee and family members to meet each other, and the existing security considerations in the matter. This provided the applicants adhere to the general criteria for inmates' visitations.
8. If it is found that despite the existing hindrance from allowing the said person to enter Israel, his entry can be allowed for the purpose of visiting his incarcerated family members, and for this purpose alone, the applicant is granted an entry permit, valid for 45 days, to visit detention facilities, to be used for one time only, and only through the Red Cross organized transports to the detention facilities.
9. In this regard it should be emphasized, that an examination for granting permits for visitation of inmate relatives in general, is fundamentally different from an examination for granting family visitations through the Red Cross mechanism, where different standards apply for different objectives, since the latter permit does not grant free entry to Israel, but only a one-time permit to a supervised and controlled visitation (direct entrance to the prison in a bus, etc.)
10. Since HCJ 11198/02 – *Diria v. The Head of the Military Detention Facility*, Tak-Al 2003(3)2099, the visitations of family relatives to their family members imprisoned in detention facilities in Israel and the area are made possible. Over 4,000 permits are granted per month and over 20,000 visitations are held every month, from the different districts, at their relatives incarcerated in Israel and the area, and this, as stated before, through the Red Cross organization.
11. As of December 2005, most of the requests were approved, and only a small minority was refused for security grounds (for example, in the first "round" of

requests by those precluded from entry, only 41 out of 4,616 requests were refused).

12. This data indicates as to the proper balance made between the prevention of entry to Israel of residents which the security forces are of the opinion that a substantial danger exists in allowing their entry to Israel. Also of that this is not an arbitrary procedure, but an individual and wide-scaled examination.
13. Note that an extensive administrative work was done and continues to take place to create the above mentioned mechanisms, a complicated administrative work, that by its nature, encountered difficult labour pains until its completion. Nevertheless, the relevant factors continue to perform an administrative work in this matter to improve and perfect these mechanisms.

The Durations of Processing Requests by those Precluded from Entry

14. Regarding the duration of processing, in the course of an additional response, filed to the Supreme Court on 16.2.06, in HCJ 10898/05, *Nahil Muhammad Hamed Fatafta et.al. v. The Commander of the IDF forces in the West Bank* (hereinafter: HCJ Fatafta) it was relayed that the duration required to process the said requests, from the moment they arrive to the IDF authorities, is between two to two and a half months. This time evaluation was based on the extent of requests on the date it was filed, and so a change in the extent of requests, may result in a change in the duration of time required to process them. For example, the IDF authorities conveyed that in one of the last groups pf requests forwarded by the Red Cross, there were 10,000 requests by those precluded from entry to Israel. This extent of requests, defined as extraordinary, shall naturally require a longer period of time for response.
15. These time tables were found to be reasonable by the Supreme Court, in its decision from 20.2.06, in HCJ Fatafta, as follows:

"1. Regarding the time tables – the respondents declaration of intents in their response from 16.2.06, is sufficient, and in this regard the petitioners are satisfied"
16. Regarding the reasoning for the hindrance of a resident from visitation, the only factor that defines as to the "preclude" status, is the Israel Security Agency, that is not obligated to explain its decisions, and its decisions are usually based on confidential intelligence.
17. In all fairness it should be acknowledged that there are currently several pending petitions concerning the duration of processing requests for permits.

"Open Visitations"

18. Regarding the issue of open visitations, it should be noted that in a notification submitted to the Supreme Court in HCJ 7585/04, *Hakim Knaane et.al. v. The Israeli Prison Service*, it was conveyed:

1. "A security related prisoner will not be required to file in advance a request for an open visit, in other words, a visit where in its last 10 minutes, contact will be made possible between a security related inmate and his minor child aged less than 6 (hereinafter – an open visit).
2. In accordance with the above, as a rule, a security related inmate shall be allowed to receive an open visit without having to file a request in advance, provided the lack of a hindrance to do so, whether it is a security hindrance or a discipline and public order in prison hindrance, according to the respondent orders."
19. The procedures of examination and search held prior to an open visit are separate from those held towards a routine visit behind a barrier and are stricter in any standard and therefore take a longer time. In wide scales, when a large number of inmates are permitted to receive open visits, this may harm the routine of prison visitations, as well as their duration.
20. Additionally, holding open visitation in a large scale, necessitates an additional personnel to monitor the procedure of handing over the child behind the barrier and close supervision throughout the open visit itself. This supervision is also, in its nature, stricter and closer than that necessary in a regular visit held with a barrier separating the inmate and his family members.
21. Accordingly, the State declared before the Supreme Court that the frequency of open visits shall be determined according to the requisite security and logistic arrangement, as specified above, in order to ensure that implementing the arrangement will not harm State security and the safety of the prison.
22. In addition to the above, it should be emphasized that any inmate requesting to contest an individual decision in his matter, whether a decision to prevent a visitation or a decision regarding the manner of implementing the arrangement in his matter, can petition the authorized court in a inmate petition, according to article 62A of the Prisons Ordinance.

Sincerely yours,

Hila Tene, Adv.

Response of the Israel Prisons Service

PRISONS SERVICE

Office of the Legal Advisor

Date: 26 July 2006

File: Legal Department, Gila Shaviro

Reference: 12659406

Ms. Anat Barsella
B'Tselem
8 Hata'asiya Street
PO Box 53132
Jerusalem 91531

Dear Ms. Barsella,

Re: B'Tselem report on visits by prisoners' families

1. The report for the most part contains chapters (chapters 1, 2, and 3) that require response by the relevant entities, and not the Prisons Service.
2. I would like to note that Palestinian prisoners are held in Israel pursuant to legislation, both the Israeli legislation and the military legislation. Also, this subject was approved by the High Court of Justice (HCJ 235/88, *Sajida et al. v. Minister of Defense*).
3. The Prisons Service does everything it can to ensure that visitors do not come for visits in which there is some reason to prevent the visit, both by informing the Red Cross regarding the prisoners who are not allowed visitors for some reason, and by notice to the Coordinator of Government Operations in the Territories. Regarding visitors who are former prisoners, Section 30(a) of the Prisons Regulations states that persons who are former prisoners are not allowed entry, except with the Commissioner's approval. The requests are checked and examined by the competent persons in the Prisons Service in accordance with criteria that are set forth in the Commissioner's Orders.

4. Regarding the conditions of the visit, as the report itself shows, the Prisons Service is constantly improving the conditions (as was done in Eshel Prison). The prison administration at Damon Prison is aware of the conditions visitors face as they wait to enter the prison, and the Prisons Service will make every effort to improve the conditions, taking into account, of course, budget and engineering constraints.
5. Given that the prisons contain prisoners from different populations which require that separate visiting days be held, arrangement is made to satisfy the needs of all the prisoners, so that it is not possible to add more visiting days for persons visiting the Palestinian prisoners.
6. The matter of physical contact between the prisoner and a minor during the visit is presently pending before the Supreme Court in the petition filed by Adalah. It seems proper to await the High Court's decision in this matter.

Sincerely,

Attorney Gila Shaviro

Senior Assistant to the Legal Advisor

**B'Tselem's work in 2006 has been made possible
by the support of the following bodies and foundations:**

British Foreign and Commonwealth Office, Christian Aid (UK)/Development Cooperation Ireland,
Naomi and Nehemia Cohen Foundation, DanChurchAid, Diakonia, EED, European Commission,
Ford Foundation, ICCO, Mu'assasat – Secretariat for Human Rights and Good Governance,
Norwegian Foreign Ministry, SIVMO - Stichting Het Solidaritetsfonds,
Swiss Department of Foreign Affairs, Trocaire