At the Supreme Court **HCJ 9733/03**
Sitting as the High Court of Justice

In the matter of:

HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Sulzberger
represented by attorneys Yossi Wolfson (Lic. No. 26174) and/or Manal Hazzan (Lic. No. 28878) and/or Leah Tsemel and/or Labib Habib and/or Hava Matras-Ivron (Lic. No. 35174) and/or Adi Landau (Lic. No. 29189) and/or Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Shirin Batshon (Lic. No. 32737)
of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Sulzberger
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Tel. 02-6283555; Fax. 02-6276317

The Petitioner

v.

1. **The State of Israel**
2. **Israel Defense Forces**
3. **General Security Service**
4. **Israel Police Force**
5. **Commander of the detention facility known as "Facility 1391"**

The Respondents

Petition for Order Nisi

A petition for order nisi is hereby filed to direct the Respondents to state, if they wish, why they do not close the detention facility known as Facility 1391, and cease to use it for the interrogation of detainees or for holding detainees in custody.

Petition for Temporary Injunction

The Honorable Court is requested to issue a an temporary injunction enjoining the Respondents, or persons on their behalf, from holding a person in custody in the detention facility known as Facility 1391 until the completion of the proceedings on this petition.

The Honorable Court is further requested to direct Respondent 1 to set forth the particulars of all the bodies that made use of the facility known as Facility 1391, whether they are bodies that operated on its behalf or bodies that do not belong to it but operated with its permission, the use that was made of the facility, and pursuant to what authority that use was made.

The grounds for the temporary injunction are as follows:

As appears from this petition and from the great amount of evidence attached thereto, the detention conditions in Facility 1391 are not proper for holding a human being, and are liable to cause physical and psychological injury, which may even be irreversible, to the detainees held in the facility.

The facility does not contain a basic safety net (in the form of the customary external monitoring) to ensure the fundamental rights of the detainees.

The detention conditions in the facility ostensibly breach international law, for which the persons responsible may be personally subject to criminal charges.

In addition, the petition raises legal arguments against the legality of a detention facility whose location is not made public (either because it is located in a secret army base or for any other reason).

On the other hand, the State of Israel has many facilities to hold detainees, which enabled it to evacuate the facility of all the persons held there for the hearings on the original petitions. There are, therefore, alternatives to holding detainees in the facility that will not place a heavy burden on the Respondents.

In these circumstances, it is proper to freeze the situation as it is today, in which the facility has no detainees (as stated in Appendix P/43 below) so that in the course of the hearing on the petition additional persons will not be subject to violation of their rights, and to the suffering and serious harm entailed in staying in the said secret place known as Facility 1391.

As regards the second interim relief sought, for the purposes of handling the petition, and to direct it to the relevant authorities, the Petitioner must obtain the said details. The Petitioner tried, at various stages of the proceedings, to obtain precise and detailed information, but counsel for the respondent (in the previous proceedings) avoided responding on the grounds of irrelevancy. Insofar as the results of the present petition will apply to all the bodies using this facility, these are the parties whose presence in court is necessary to enable the Honorable Court to rule and reach a decision in an efficient and complete manner as to all the questions raised in the petition, and they are the parties that are liable to be affected by the decisions the Court will make.

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The grounds for the petition are as follows:

Nature of the petition

1. This petition deals with a secret detention facility that has been operating in Israel for many years within the walls of a secret army base, distant from the eyes of the law and the public. Nobody knows how many detainees were held in the facility over the years, how many detainees are held there now, who the detainees are, where they came from, the bodies that arrested them and brought them to the facility, the bodies that conduct interrogations in the facility, and whether they had authority to do so, the basis for detaining the individuals, and what happened to some of them.

   The testimonies collected by the Petitioner indicate that, under the shelter of secrecy of the facility's location, illegal and immoral methods of interrogation are employed in this facility. These methods constitute torture and degrading and inhuman treatment, and violate the individual's humanity and dignity.

   Under the shelter of secrecy, the facility is placed outside the rule of law also in that the facility is not subject to review of the manner in which it is operated, the interrogation methods used, and the horrible detention conditions prevailing there.

   As a result, the detainees' attorneys and relatives, Members of Knesset, members of Knesset committees, representatives of human rights organizations, both local and international, and representatives of international humanitarian organizations, most notably the Red Cross, have been forbidden access to the facility.

   In addition to all the above, the facility has been operated for many years without being declared a detention facility, as required by statute.

2. The objective of this petition is to examine the legality of the operation of Facility 1391 as a detention facility in general and as a secret detention facility in particular, operating outside the legal system, without any supervision or monitoring, and also the legality of the conditions in the facility and the use of improper interrogation methods that, in some instances, constitute torture or degrading and inhuman treatment.

3. The Petitioner will refer below to many provisions in domestic and international law that dictate standards for the disclosure and monitoring of detention facilities. Of primary import is the Basic Law: Human Dignity and Liberty and the precedent-setting, historic ruling of this Honorable Court that prohibits torture in General Security Service (GSS) interrogations (HCJ 5100/94, *Public Committee against Torture in Israel et al. v. Government of Israel et al., Piskei Din* 53 (4) 817). We shall

also refer to international conventions, primarily the Rome Statute, which defines as crimes against humanity the refusal to disclose the location of detainees, as part of the forced disappearance of persons, and the use of torture and degrading and inhuman methods during interrogations.

The facts

The background of this petition

4. This matter began with the filing of two habeas corpus petitions to locate three detainees, Palestinians from the Occupied Territories: M. S., B. J., and M. J.. They had disappeared, and their family's efforts to locate them had failed (hereinafter: the original petitions).

Petitioning the Court was necessary after their relatives' attempts to determine what befell them were unsuccessful. Also, the Petitioner was unable to locate them, and the Control Center in the headquarters of the chief military police officer (hereinafter: the Control Center), stated that they did not find the place where the three were being held. Incidental to the petitions, it was disclosed that a detention facility exists regarding which the State Attorney's Office was unable to give its name (but only the name of the liaison person for the facility). Later, bit by bit, additional details about Facility 1391 were revealed.

Two of the original petitions, HCJ 8696/02, *Shahin et al. v. Commander of IDF Forces in the West Bank* and HCJ 10327/02, *Jadala et al. v. Commander of IDF Forces in the West Bank*, all court documents filed in these cases and the decisions given therein and the substantive correspondence between the parties are attached to the petition without their appendixes. The appendixes relevant to the present petition will be attached separately.

The documents are marked P/1 – P/44.

Among these appendixes are:

The petition in HCJ 8696/02 (*Shahin*) is Appendix P/1.

The petition in HCJ 10327/02 (*Jadala*) is Appendix P/11.

The response in the two petitions is Appendix P/35.

The request for additional particulars in regards to the response is Appendix P/36.

The response to the request for additional particulars is Appendix P/3.

The judgment in the two petitions is Appendix P/44.

HCJ 8696/02, *Shahin v. Commander of IDF Forces in the West Bank*

5. In *Shahin* (Appendix P/1), the detainee was arrested on 4 October 2002. Following the Petitioner's inability to locate him through the Control Center, the petition was filed on 10 October 2002. On 13 October 2002, a response was filed with the Court on behalf of the Commander of IDF Forces in the West Bank, who was the respondent in that specific petition (hereinafter: the Respondent) (Appendix P/3). The response states that the detainee was interrogated by the General Security Services in cooperation with the Israel Police Force, and that "inquiries and requests in the matter of the detainee can be directed to Madi Hareb, head of the Hostile Terrorist Activity Unit in the Kishon Detention Facility." Regarding the location of the detention site, nothing was provided. However, Madi Hareb informed the Petitioner by telephone that the detainee was being held at a **secret detention site** annexed to Kishon Detention Facility. In this situation, HaMoked: Center for the Defence of the Individual insisted that the petition be heard. At that stage, the State Attorney's Office said nothing regarding the information that Mr. Hareb gave to HaMoked. In his supplementary response, of 17 October 2002 (Appendix P/7), the Respondent settled for providing information of the site where the detainee was currently being held – at the **Rosh Pinna** Police Department – and argued that, in light of this information, the petition was moot.

HCJ 10327/02, *Jadala et al. v. Commander of IDF Forces in the West Bank*

6. At the end of November 2002, while *Shahin* was pending, the Petitioner received another case that led, as stated, to another bit of information on the persons being concealed in a secret facility. This was the case involving B. and M. J., who were arrested by security forces on 22 November 2002 at the Allenby Bridge on their way home from Jordan.

   For about one week, the Petitioner used every customary means and procedure to locate the two men. The Petitioner failed to find them. The actions taken by the Petitioner included contacting the same police official, Madi Hareb, from the Kishon Detention Facility, who confirmed that the two men were being held in **a secret facility subordinate to Kishon Detention Facility**. He also stated that the detention of the two had been extended on 3 December 2002 and that they were forbidden to meet with their attorneys. When additional particulars were requested – details on the site in which they were being held, whether it was officially declared an interrogation

site or detention site, the conditions in which they were being held, and so on – Mr. Hareb refused to respond. Simultaneously, the Control Center indicated that the petitioners were being held in the detention facility in **Petach-Tikva**. On its face, in light of the comments of the police officer, this information is not credible, and was indeed later found to be false. On this background, HCJ 10327/02 (Appendix P/11) was filed on 5 December 2002.

This time, the Respondent did not hesitate to mention in his response (of 5 December 203, Appendix P/13) that the Petitioners were being held in what was described in the response of an "interrogation facility that administratively belonged to the Kishon Detention Facility." No further particulars were provided on that detention facility. We now know that the facility is a military installation used by the General Security Service on a temporary basis, and, therefore, it is unclear as to what was intended when the contention was made that the facility was administratively subordinate to the Kishon police detention facility.

The sequence of events in the two petitions

7. The two petitions developed in the same manner. The Respondent tried to mend the breach of secrecy regarding Facility 1391 resulting from the filing of the petitions. The Petitioners were taken from the secret facility to other installations, and were later allowed to meet with attorneys. Ultimately, one of them was released. The Respondent contended that, upon the giving of the information regarding the current place in which the Petitioners were being held, the petitions were moot. As for the arguments that it was illegal to hold them in a secret facility, the Respondent contended that those arguments were now only theoretical.

8. The Petitioner believed that it had exposed the existence of a secret interrogation facility, the name of which was to be kept silent, located in a secret place and controlled solely by the security services. This exposure raises a constitutional question of the first degree, requiring profound deliberation by the Court. The question of the constitutionality of a facility that enables the concealment of people in a democratic state and of the actions performed in the facility, cannot be allowed to fade when the Petitioners are removed from the facility and transferred to other sites.

9. On 30 March 2003, the Respondent. filed a joint statement in the two petitions (Appendix P/26). In this statement, the Respondent released a few more bits of information regarding the secret facility.

The facility in which the Petitioners were held is situated on an army base, and the General Security Service used it only temporarily, because of the lack of detention sites.

To meet this need, actions were also taken to conform the facility to hold General Security Service detainees. First, of course, a check was made to ensure that the facility met all the standards of a military prison. Following that, on 16 April 2002, the Minister of Defense declared the facility a military prison pursuant to his authority under Section 505 of the Military Jurisdiction Law, 5715 – 1955.

We would also like to emphasize that, while the facility was used by the General Security Service, regular visits were made to ensure that the detention house and the conditions in which the detainees were held met the requisite standards.

This time, too, the Respondent attempted to prevent judicial review of the existence of a secret detention facility. Not only are the Petitioners not being held in that facility, but it was decided that the GSS no longer needed it for its use, and thus the persons detained by the GSS were removed from the facility.

10. In a hearing held on the two petitions on 2 April 2003, counsel for the Respondent stated that the facility was declared a military prison a year earlier, on 16 April 2002, the declaration was not made public, and the facility was given the code name "Facility 1391."

This new information raised great concern because of two things that were revealed: for a prolonged period of time, the facility was used illegally by unknown bodies; the very existence of the facility and the actions taking place there were concealed over time.

The order declaring the facility a military prison is attached to the petition as Appendix P/45.

[Note: Due to an error in drafting, the following appendix is marked P/55. No appendixes are marked P/46 – P/54.]

During the hearing, it became apparent that the GSS was then no longer using the facility, but this was not true about other bodies – bodies whose identities were not

revealed. A representative of the State Attorney's Office who was ready to promise that the Petitioner would be informed if and when the GSS renews its use of the facility, said that she was unable to make a commitment to provide a similar statement if and when one of these bodies (whose name was not mentioned) holds a detainee or detainees in the facility.

Therefore, an order nisi was given in the two petitions.

11. On 9 June 2003, the Respondent submitted an affidavit-response on his behalf (Appendix P/35). In the affidavit, the Respondent provides additional particulars on the secret facility, but continues to argue that the orders nisi issued by the Court (after the site where the various petitioners were being detained was already known) was academic.

12. On 3 September 2003, the petitioners submitted a series of affidavits and a psychiatric opinion on the conditions prevailing in Facility 1391 (the application is Appendix P/41. The affidavits and psychiatric opinion are attached below).

13. On 4 September 2003, counsel for the Respondent provided a partial response to the request for additional particulars that counsel for petitioners filed (the request is attached as Appendix P/36, the response as Appendix P/43).

    In his response, counsel for the Respondent chose not to respond to many questions, arguing that they were not necessary in clarifying the petition that was filed concerning specific individual petitioners.

14. The factual conclusions inherent in the affidavit-response, the affidavit, and the answers to the interrogatories, will be described at length below.

15. On 7 September 2003, a judicial panel conducted a hearing on the two petitions. The Court suggested to counsel for the petitioners to withdraw the petitions relating to specific petitioners, whose individual matters were no longer relevant, and to file a new petition on the question of the constitutionality of a detention facility whose whereabouts is defined by the state as secret. The Court suggested that this petition be filed by HaMoked: Center for the Defence of the Individual as a public petitioner, and ruled that it would deem such a petition – if filed – as justiciable even though it does not relate to a specific individual who is being held in the said detention facility.

    Counsel for the petitioners accepted the Court's suggestion. The judgment, which contains the Court's suggestions and rulings, is attached as Appendix P/44.

    The present petition is the result.

The parties

16. The Petitioner is a non-profit society that is engaged in the protection of human rights. The Petitioner files this petition as a public petitioner in accordance with the suggestion of the Honorable Court, as described above.

17. Respondent 1 operates the secret facility, in which persons are detained and interrogated by bodies belonging to the said Respondent, whose involvement, as stated, has so far remained secret. Respondent 1 has many bodies whose objective is, inter alia, to perform acts of interrogation, monitoring, intelligence gathering, espionage, and counter-espionage, and other kinds of secret assignments. Some of these institutions are known: military intelligence, the Mossad, the GSS, and others. Following a prolonged legal battle, Respondent 1 was compelled to enshrine the GSS as a body and establish its powers by statute. The other bodies are not enshrined in statute. Based on information obtained to this point in time, there is reason to fear that at least some of these bodies have made ongoing use of the facility. The orders requested in this petition, both the temporary order and the order nisi and the absolute order, are directed to each and every one of the bodies belonging to Respondent 1, which will be requested to set forth the identity of the relevant authorities for the purpose of obtaining additional particulars of the Respondents.

18. Respondents 2, 3, and 4 have connections with the facility – whether regarding interrogations or regarding administrative or operational responsibility for the facility in one way or another.

19. The identity of Respondent 5, if such a person indeed exists, is unknown to the Petitioner, as is the source of his authority under administrative law. This individual is made a respondent as a necessary party in the hearing of this petition.

The known facts about Facility 1391

20. It is impossible to ignore the shock felt by the Israel public upon revelation of a secret facility in the middle of the country. The facility managed to operate secretly for a prolonged period despite the large number of detainees, interrogees, interrogators, jailers, maintenance personnel, medical staff, and soldiers who were involved in the installation for years and were aware of its existence and what was taking place there. This fact raised grave doubts, and indicates the lack of trust in the ability of the public and of officials of the various governmental institutions to monitor the government and the focal points of power. A brave judicial response is now needed to uproot this norm.

21. Little by little, details on the secret detention facility were exposed. Along with court action, the Petitioner gathered information on the facility from former detainees. The Petitioner took affidavits from Palestinians who were held there in 2002-2003 and from a Lebanese man who was seized at sea and brought to Israel and held in the facility. An affidavit was also taken from a British national of Lebanese extraction who was brought to the said facility. These affidavits were compared with material in the Petitioner's counsel's files and with affidavits taken from Mustafa Dirani by the attorney of Dirani and Sheikh Obeid, which related to the cruel and degrading conditions and interrogation methods employed against them. It was found that the conditions, the treatment, and the interrogation methods in this facility had not changed over the years.

The evidence that was collected is attached, as follows:

> Affidavit under warning of Attorney Tsemel, which contains a summary of the file of her client M. A., a Lebanese resident, who was held and interrogated in 1992 in a secret facility in which Sheikh Obeid and other Lebanese were also held, and is apparently Facility 1391. Barak Facility was the name given to the facility in the documents in the said file. The affidavit is marked P/55.
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> Two affidavits of Mustafa Dib Mar'i Dirani, a Lebanese citizen who has been held since 1994, marked P/56 and P/57.
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> The affidavit of J. S., a British national of Lebanese extraction who was held in the facility in early 2001, marked P/58.
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> Affidavit of M. D., a Palestinian resident of the West Bank, who was held in the facility in 2002, marked P/59.
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> Affidavit of J. A. A., a Palestinian resident of the West Bank, who was held in the facility in 2002, marked P/60.
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> Affidavit of A. J., a Palestinian resident of Nablus (Petitioner 2 in HCJ 10327/02) who was held in the facility in the winter of 2002/2003, marked P/61.
>
> Affidavit containing a description in the words of B. J., a Palestinian resident of Nablus (Petitioner 1 in HCJ 10327/02)

who was held in the facility in the winter of 2002/2003, marked P/62.

Affidavit of H. R., a Palestinian resident of the West Bank who was held in the facility in late 2002 and early 2003, marked P/63.

Affidavit of R. B., a Palestinian resident of the West Bank who was held in the facility in 2003, marked P/64.

Affidavit of S. K., a Palestinian resident of the West Bank who was held in the facility in 2003, marked P/65.

Affidavit of H. A. A., a Lebanese national who was held in the facility in the summer of 2003, marked P/66.

Also attached is the investigative report prepared by the journalist Aviv Lavie and published in *Ha'aretz* on 22 August 2003, which contains additional particulars about the facility. The article is marked P/67.

The shock among the public increased when the conditions in the facility were exposed. From the testimonies given in the affidavits, one may conclude the permanent nature of the conditions and the methods employed inside the secret facility:

Transfer to the facility

22. Transfer to the facility is intended to intensify the helplessness of the detainee, to sharpen the awareness that he is crossing the border to a different kind of place, one that is extremely secret and forgotten, and to increase his feeling of disorientation.

The detainees testify that, at the time of arrest, their hands were bound behind their backs. Some of the detainees stated that their legs were also shackled, and that a chain linking the handcuffs and leg shackles was used.

Their heads were covered with an opaque sack, on which dark sunglasses were placed.

The detainees were thrown onto the floor of an army vehicle, and a thick blanket was placed over their bodies.

In this way, they were taken by vehicle to a detention facility, which was later found to be the secret facility.

A violent and degrading "reception" awaited the detainees on their arrival. This, too, was structured in a way that emphasized their entry into a different world, where the

law does not apply, where the prisoner is completely helpless, devoid of protection and human dignity.

23. J. S. (the person who gave the affidavit marked P/58), a British national of Lebanese extraction, describes his arrival at the facility, to which he was taken in 2001:

> **I was taken there from the Russian Compound. The military police took me before dawn. They came into my cell and took me as if they were abducting me: they blindfolded me with a piece of black cloth, handcuffed me to a jeep or some tall vehicle…**
>
> **When they took me out of the jeep, they pulled the cuffs, causing me to fall, and then they dragged me. I couldn't see a thing.**
>
> **Two soldiers spun me around and shook me, which also caused me to fall. They spun me around again. They were laughing as they did it. They took me inside and then outside and spun me around again, apparently so that I wouldn't know where I was.**
>
> **I heard sounds behind me, and I was pushed from room to room. I got that feeling from the doorways. In the last room, they removed my blindfold. I saw 15 armed soldiers, some with clubs, standing around me. Some of them beat me, pushed me, and punched me from behind.**
>
> **I stayed in the room…. One of those in the room began to interrogate me while the others were still there. He was dressed in an army uniform. "You have to confess, or you're done for, and no one will know what happened to you. Confession or death"… From there, they took me to a very large room, a hall…In this room, I was ordered to undress. I refused to undress completely, and the people in the room began to joke about my nakedness. They brought me pants twice my size and a shirt that was too small. It was very cold in the room... Then they covered my eyes and took me outside. They spun me around so much so that I was**

unable to stand, and then dragged me, my pants falling and me grabbing at them. They took me to a cell.

24. K., a resident of the West Bank, also states (in Appendix P/65) that, when they took him to the facility, he was forced to undress while he was surrounded by ten soldiers armed with clubs:

> **They took me into a room and removed the blindfold. The room was empty. Ten soldiers in regular army uniforms came into the room. They made me undress completely and then searched me. It was very degrading, in particular because there were ten soldiers standing around when one would have been sufficient. The soldiers surrounded me and had clubs in their hands.**

Finding oneself in a hopeless place

25. None of the detainees was informed during his detention where he was being held. Quite the opposite: it was made clear to them that they were in a hopeless place severed from the outside world. Detainees who wanted to know where they were located were told: "You are on the moon," "You are in a grave," "You are outside of Israel," "in a submarine," "in space." From this, it can be concluded that the secret facility's location in an unknown place threatened the self-confidence of the detainee, and was intended to make it clear to him that nobody is interested in what befell him, that nobody knows his whereabouts, and the people holding him can make him disappear without any difficulty. The nicknames given to the place, "moon," "another planet," and so on, and referring to it as a "grave" were intended to strengthen the sense of devastation.

Disorientation

26. As we have seen, the method in which the detainees were brought to the facility and the intake procedures emphasize the transition from the real world to another realm. Along with the devastation comes the loss of sense of time. In windowless cells, the detainees do not know if it is day or night. In the affidavits, the declarants state that they were unable to determine if it was light or dark outside, that they guessed the times for prayers, and even had difficulty counting the number of days they had been in detention.

Total isolation

27. From the moment that they reach the facility and during their incarceration there, which lasted in some cases for four months and even years, every detainee is held in total isolation, making it impossible for him to make contact with another person inside the facility, much less in the external world. The interrogators emphasized to them that nobody knows where they are, and that they are under the complete control of the interrogators. For example, K. related (Appendix P/65) that:

> **Throughout the time that I was detained, I was totally isolated. I did not see other detainees. I saw only the interrogators. They repeatedly told me that nobody knows where I am, and that they can keep me detained as long as they want, even 100 days.**

D., a resident of the West Bank, who was held in the facility in 2002, described the situation (Appendix P/59), as follows:

> **The two cells in which I stayed in the secret facility had dark walls and poor lighting. I did not hear the voices of other detainees. I did not know if other people were being detained there. I felt as if I had lost all control over my life, and that my fate was solely in the soldiers' hands. I feared for my life.**

28. Even the contact with the soldier-jailers lacked any human aspect: the detainees are not allowed to see the soldiers. Before a soldier enters the cell, the detainee is required to stand facing the wall and cover his head with a dark cloth that makes it impossible for them to see.

A., a resident of Lebanon, who was brought to the facility in 2003 (Appendix P/66), stated:

> **A detainee is absolutely forbidden to see the soldiers. There is a fixed order that when a detainee is in his cell and a soldier wants to enter or bring something into the cell, the soldier knocks on the door. Then the soldier orders me to put a black covering over my eyes and to face the wall and raise my hands and place them on the wall. When I am in that position, the soldier opens the door and enters. The rest of the time, the soldier looks into the cell through a slit in**

the door. When they take me to interrogation, they blindfold me with a black cloth and drag me all the way by grabbing my handcuffs.

29. The state's response to the request for additional particulars (Appendix P/43) confirms, in Answer 18, the said statements in the affidavits (the answer states that the detention is "generally" solitary, and the only example in which two detainees are held in the same cell is that of two detainees who were held in the facility for years, and only some of the time were not held in isolation).

Sensory deprivation

30. The solitary cells have no windows, much less daylight. The walls are painted a very dark color, black or dark gray, and the cell is shut by a heavy iron door. The lighting is minimal, unchanging, and remains on at all times. The light, which, according to the descriptions, penetrates the room from an unidentifiable source (because it is impossible to see the ceiling), is so slight that it would be impossible to read in the cell, if the detainee had something to read. The lighting also blurs the appearance of the food, so much so that, as K. states (Appendix P/65), because of the poor lighting, he thought that the color of the food indicated it was spoiled, which deterred him from eating for many days, until he realized his error. Noise is deliberately generated in the cells; a large number of the detainees stated that they heard sounds of the sea or the noise of slight ventilation.

When being taken from the cell, the detainees are dragged, sacks covering their heads, so that they cannot see a thing. The only easing of the sensory deprivation is when they are in front of their interrogators in the interrogation rooms or when they are undergoing medical examination.

R. B., a resident of the West Bank who was in the facility in 2003, relates (Appendix P/64) that his eyeglasses were taken from him and were only returned to him some days later.

It goes without saying that, even if a cage for walking about in the yard had been erected, in light of the demands of Dirani and Obeid, the detainees as a rule do not go out for walks.

These facts were supported by the response of the original respondent to the request for additional particulars (Appendix P/43).

31. The sensory deprivation is combined with the disorientation and the isolation. The consequences are described by B. (Appendix P/64):

> **The room is all black. Its walls are painted black. I never saw the ceiling. When I looked up, I only saw darkness. Light containing the power of a candle penetrates in a peculiar way from one side of the room, from a device that lies about a meter beyond the ceiling, and the light is filtered from three thick pieces of glass. The light in the room was so weak that it only lit a small part of the room. If I had a book, I would not have been able to read it. It was almost impossible to see anything in the room.**
>
> **Obviously, the room has no windows. It is impossible to know whether it is day or night, and when day turns into night. I could only guess the time for prayers.**
>
> **The ceiling has a pipe or two (maybe it is a flue?), apparently for ventilation purposes. I say apparently, because I could never be sure there was ventilation. Most of the time and in all the cells, I felt that I did not have enough oxygen, and there were many times that I thought I would faint.**
>
> **I spent many days in this cell and in others like it, and hour after hour speaking to myself, feeling that I was going insane, or laughing to myself. I used to sit on the mattress, get up, turn around, and sit down. Thinking about my wife and children was the only thing that enabled me to maintain my sanity.**

Sleep deprivation

32. J. relates (Appendix P/61) that the soldiers would wake him to prevent him from sleeping. R. (Appendix P/63), A. D. (Appendix P/59), and H. (Appendix P/60) state that the soldiers woke them at night by pounding on the door of the cell. B. J. (Appendix P/62) tells of the intentional noise that the soldiers made to prevent him from sleeping. K. (Appendix P/65) relates that:

> **At night, they used to come while I was sleeping and pound and kick the door to wake me up, and then ask if I needed to**

go to the bathroom. No matter what my reply was, they said, "Go to sleep. No bathroom."

All of the above detainees were residents of the Occupied Territories who were detained in the secret facility in 2002-2003.

Sexual humiliation and wallowing in feces

33. A major element of the method used against detainees in the facility centers around violation of their physical privacy, forcing them to undress in front of soldiers, and keeping them in cells while they are wallowing in their excretions. The detainee is deliberately left in the midst of the filth, a stench steadily grows because the detainee is forced to remain with his feces in a tiny cell for days on end. He is not given a change of underwear. One case was reported of a detainee wearing diapers (Appendix P/57), and of the lack of any possibility to maintain personal hygiene.

It appears that the soldiers and the interrogators handling the detainees are specially instructed to withstand situations of such extreme stench, but according to some of the testimonies, they, too, found the stench difficult to bear.

34. B., for example, describes (Appendix P/64) how he was held in a cell in which, rather than a bathroom, there was a large black plastic can (a cell or cells similar to his are also described in other testimonies; in response to the request for additional particulars – Appendix P/43 – the plastic can is described as "a chemical bathroom"). For nine days, the can was not emptied. In his affidavit, he states as follows:

The stench became intolerable. I tried to keep my face in the direction of the cracks in the lintel of the heavy steel door of the cell so that I could breathe a bit, but it was a heavy door and my idea didn't work..

On the ninth consecutive day of my stay in the stench-filled cell, one of the soldiers was supposed to come and take me out. He almost vomited and then rushed out of the cell. I was standing, as usual, facing the wall with my head covered with a black sack. He called to another soldier, and they arranged for removal of the garbage can. They told me to drag the can. I told them that I can't do that with my eyes closed. I dragged it, but did not manage to get it out of the cell because of its weight. The soldiers agreed to take the

sack off, which enabled me to drag the pail outside. Then they covered my eyes again. As they did that, one of the soldiers grabbed my shirt and pulled me while I was dragging the smelly can.

They took me to another cell, put me and the smelly can inside, and told me to spill the contents into the hole of a Turkish toilet [hole in the floor] that was in the cell. The soldiers governed, *from outside the cell,* the water flow, and while I was spilling the contents, they turned on the water full blast, which dirtied me and my clothes.

Following these events, B. insisted that he be allowed to shower, and the soldiers let him:

I undressed. As I did, they watched through the small window and made insults. I stood there naked. The soldiers turned the water on. They only let me shower for five minutes. At the end of five minutes, they turned the water off.

It was winter and it was cold, but I had no choice, and I put my filthy clothes onto my wet body. They had me put the sack back on my head and took me back to my stench-filled cell along with the empty can.

When the interrogators finished questioning him, they often told him, in Arabic, "Go back to your shit can."

35. A rape description (in the case of Mustafa Dirani – Appendixes 56-57, and testimonies reported in *Ha'aretz*), and severe beatings are also mentioned in the affidavits.

36. Detainees are regularly given clothes too big for them, making their pants fall down. This description was confirmed in the statement made by a former interrogator in the facility (named George) to a journalist, which was quoted in a *Ha'aretz* investigative report (Appendix P/67):

This interrogation facility is not a boutique. They don't take measurements when they prepare the clothes. A detainee comes in, they undress him, and give him something from the storage room. Sometimes, he receives a shirt and pants that

are five sizes too big for him. He does not receive a belt or string. If his hands are free, he holds his pants; if he is handcuffed, the pants fall and stop on their way down by the leg irons, making him naked. The shirt? It gets torn a million times during interrogation… When the interrogator grabs the detainee and shakes him, he does think for a second about the buttons on the shirt.

37. Undressing the detainee in front of many soldiers occurs time and again, as does the mocking of the detainees' nakedness.

Degradation

38. A major element in the treatment of detainees in the secret facility is degradation and inhuman treatment of the detainee. Testimonies indicate that the detainee is not allowed to turn to his jailers or to see them; he must cover his eyes whenever a soldier enters his cell, and turn his head to, and put his hands on, the wall.

Forcing the detainee to undress in front of mocking soldiers is reported to be routine. Wherever the detainee is taken, he is dragged with his eyes covered.

Extreme degradation of the detainees is the second element found in all the descriptions set forth in the affidavits.

Physical methods used during interrogation

39. The interrogations, which at times were extremely long, were conducted with the detainee seated on a chair without a back. B. tells of punches to his face. Others, too, tell of the blows they received during their "treatment" in the facility.

K. states (Appendix P/65):

The interrogations during the first three days took place in that room. They did not let me sleep. I was tied to a chair in the "shabah" position. They sat me on a wooden bench about a meter long in the corner of the room so that I was unable to lean on the back. They beat me during the interrogation. One of the interrogators, and Captain Eldad, too, would put their feet on my genitals in a very annoying way. My hands were bound. I told that captain that I had undergone an operation to that area of my body, and that he was hurting me and bothering me. He said that he was aware of that fact. The

entire interrogation was characterized by abuse. Every time I gave a wrong answer, they beat me. More than once, I fell from the chair. The beatings they gave me were humiliating.

40. The investigative report in *Ha'aretz* (Appendix P/67) presents other sources that confirm the information that severe physical methods (beatings, pushing detainees off the stool, stepping on them, making them eat cigarette ashes, shakings, forcing a stick up their anus – or at least the threat of it) were repeatedly used in the facility.

Threats and use of relatives

41. A. states (Appendix P/60) that they used his son, who was placed in the worst of the cells, to pressure him, threatening that his son would stay in the stench-filled cell until he, the father, confessed. B. relates (Appendix P/64) that they told him that they had arrested his wife and mother. J. testifies (Appendix P/61) that they brought him a picture of his father in prison clothes and threatened to imprison and torture him, and also made threats relating to his brother and uncle.

Wallowing in filth

42. The detention conditions make it impossible for the detainees to maintain personal hygiene. Many detainees were held in cells that *have no bathroom or running water.* In other cells, a hole in the floor serves as a bathroom and sometimes a drizzle of water enters from a hole in the wall, right over the hole. In these cells, too, the detainee has no control over the water and is completely dependent on the will of the soldiers, who decide when to turn the water on and for how long to let it run. It is also possible to open the water for the detainee to enable him to shower, but that occurs rarely, according to testimonies of the detainees. Rather than being given a towel, the detainee receives a smelly rag, at best. The detainees reported much abuse relating to showers.

The detainees testified that they were not given soap or other items with which to clean themselves. They were not given a change of clothes, and sometimes were left without underpants.

43. The answers to the request for additional particulars in the original petitions (Appendix P/3) support parts of the affidavits: the cells have no sink (Answer 26); control over the flow of water in bathrooms is controlled by the jailers in most cells (end of Answer 27); the small cells have no normal bathrooms nor even a Turkish

toilet (in Answer 25, the Respondent states that, instead, there is a "chemical toilet" – the testimonies show that this refers to a black, plastic, smelly can).

Meals

44. Meals are served in the cell, without a table or without providing any other hygienic means. Some of the affidavits state that the soldiers placed the food on the toilet can. Others mentioned the small, insufficient quantity of food provided to them. K. (Appendix P/65) found that the water he was given to drink was full of food particles and dirt.

Stench, suffocation, cold, and dampness

45. The detainees state that the cells are moist and damp. The mattresses are damp and filthy, as are the blankets, when there are blankets. The cells do not have windows, but only a small slit in the door that enables monitoring of the detainees. Ventilation is poor. The lack of ventilation is aggravated by the stench from the toilet, the clothes that are not changed, and the detainee's body, which he is not allowed to clean properly. The clothes and blankets do not protect the detainees from the cold.

K. testifies (Appendix P/65) that they only gave him a shirt and pants, which were not his size, no underpants, and that he suffered from the cold throughout his time in the facility. S. (Appendix P/58) gives a similar description. B. J. (Appendix P/62) relates that he was punished by the cold in the cell. R. states (Appendix P/63) that he had to use the two blankets given him as a sheet to protect himself against the dampness of the filthy mattress, and was cold because he had nothing to use to cover himself. B. states (Appendix P/64) that most of the time, and in all the cells, he felt he had insufficient oxygen and often felt faint.

Lack of medical treatment

46. The detainees undergo a daily check by a medic and from time to time by a physician. It seems that the medical staff is instructed to refrain from any personal contact. There are many complaints of poor medical treatment; in any event, and most importantly, the medical staff does not fulfill its fundamental duty – to assist the detainee in light of the shameful conditions in the facility. Even when the physicians recommend that certain conditions be provided, their recommendations are not implemented. For example, R. states (Appendix P/63) that:

> **Throughout the entire period, they did not let me walk around in the yard at all. After I contracted scabies, I was**

taken to Jalameh (Kishon), where a physician examined me and suggested to the guards that they allow me a daily 30-minute walk outdoors. Only then did they let me go outside into the sun for 30 minutes – but only *twice* before I was released.

47. In effect, the medical staff collaborates with the harsh interrogation means, including the conditions in which the detainees are held, which comprise an integral part of the tools used to put pressure on the detainees and to break them. S. relates (Appendix P/58) that a medic handcuffed him. B. mentions (Appendix P/64) that:

> **The medic and the doctors, whom I would have expected to be medical practitioners and compassionate people, saw me day after day in the same clothes, without underpants. They smelled my stench day after day and said nothing, as if everything was normal.**

Physical and psychological harm

48. The conditions resulted in the detainees falling ill and in the loss of their humanity. A. (Appendix P/60) and R. (Appendix P/63) suffered skin diseases. B. states (Appendix P/64) that:

> **I spent many days in this cell and in others like it, and hour after hour speaking to myself, feeling that I was going insane, or laughing to myself. I used to sit on the mattress, get up, turn around, and sit down. Thinking about my wife and children was the only thing that enabled me to maintain my sanity.**

He relates that he lost 14 kilograms during his stay in the facility.

R. (Appendix P/63) also lost a significant amount of weight:

> **The day that they detained me, I weighed 95 kilograms. I lost 20 Km during the detention. The loss resulted from the psychological hardship, the food, and the other conditions.**
>
> **When I left the secret facility, the one that nobody knows its name, my appearance was frightful. My hair was long, my beard long and wild, I was thin, and my nails were long and black.**

Many of the detainees testify about the severe mental distress, the feeling that they were losing their minds, and that they managed to survive only because of their religious faith or thoughts about their families. In one case, a Lebanese detainee (who has since been returned to Lebanon) was taken from the facility to a psychiatric hospital.

Period of time held in the facility

49. The detention period is indefinite. Some detainees were held for many months, and some for many years, such as Dirani and Obeid.

Interrogators

50. The names Roni, Efi, Avi, Yoni, Beni, and many others are mentioned as being our agents and acting on behalf of all of us in operating a structured system of torture under their close supervision and instructions.

51. Originally, it will be recalled, the Petitioner was told that the facility is under the administrative control of the Police's Kishon Detention Facility. This information was later contradicted.

It was found, from the documents that the Respondent filed relating to the original petitions, that the interrogators in the facility are not necessarily from the Israel Police Force or the General Security Service: quite the opposite, the GSS only used the facility temporarily. Which government agencies use the facility? What is the basis for the powers of the interrogators operating there? On these points, the state has been silent so far.

52. In a court session held on 7 September 2003, the State Attorney's Office provided a document in three languages which it contended was distributed to detainees in the facility. The document was titled, "Information Sheet for Detainees." The words "State of Israel" "Israel Defense Forces" (and, in English, rather than IDF, "Israel Security Agency") appears at the top. The sheet states: "You are under intelligence interrogation (in Hebrew, for some reason, "laboratory") of the intelligence agency (in English, in distinction, "Israeli Security Agency") together with the Israel Police Force…" It should be mentioned that, according to the Arabic version of the sheet, the detainee must provide information even if it is liable to incriminate him (contrary to what is stated in the Hebrew text. The English version is also defective on this point). The Information Sheet for Detainees, then, not only does not provide any additional light on the identity of the persons operating the facility, but adds to the confusion.

The document called the Information Sheet for Detainees is attached hereto as Appendix **P/68**.

Detainee yo-yo

53. HaMoked filed the first petition (*Shahin*) on 10 October 2002. Immediately thereafter, the petition in *Jadala* was filed regarding two other detainees, as mentioned above. After the petition was filed, M. S. was transferred from the secret facility to a house of detention in Rosh Pinna; the others, too, were immediately taken to houses of detention.

On 30 March 2003, in anticipation of the court hearing, the state filed a statement indicating that, "recently, the situation has changed, and it was decided that the General Security Service no longer needs to use the facility in which the detainees were held," and that the petition was moot (Appendix P/26).

These were the declarations in effect at the time the Supreme Court issued an order nisi on 28 April 2003.

On 11 May 2003, the State Attorney's Office stated, in response to a request for instructions (Appendix P/32) that, "recently, the situation has changed, and the GSS no longer needs to make use of the facility. It is currently not being used."

On 4 June 2003, counsel for the Respondent in the original petitions wrote that, "there has been a change in circumstances, and security officials informed me that detainees are currently being held in Facility 1391" (Affidavit P/34).

The response, of 9 June 2003, to the original petitions (Appendix P/35) states, in Section 12, that "a few detainees" are being held.

On 4 September 2003, the response to the request for additional particulars (Appendix P/43) states that no detainees at all are currently being held in the facility.

The above statements indicate that the facility is actively being used, and that, despite efforts to empty it in order to render the court hearing meaningless, detainees continue to be transferred to the facility, detainees whose identity and pretext for detention are unclear, as is the case also with the identity of the persons conducting the interrogations and their powers.

What does the facility contain that makes it necessary to transfer detainees there for interrogation? It has those very conditions necessary to pressure the detainees and break down. These conditions come within the definition of torture and of inhuman,

cruel, and degrading treatment by any legal criterion and norm, as we shall show below.

The objective and consequences of the detention conditions and method of interrogation

54. The purpose underlying the manner in which detainees are held in the secret facility is explained in the expert opinion of the psychiatrist Dr. Yehoyakim Stein.

The opinion is attached as Appendix P/69.

The opinion shows that a system of means, the legality of which will be discussed below, is used to break the detainees:

> **The psychological basis used for breaking a person down psychologically is referred to in the professional literature as DDD: debility, dependency, dread.**
>
> **Debility is based on the craving for separation, extreme fatigue, illness, all or some of the above, intended to decrease resistance.**
>
> **Dependency is a situation and atmosphere in which the detainee is completely dependent on his interrogator for everything.**
>
> **Dread is the fear of death, illness, torture, punishment, harm to relatives, never being able to return home, isolation, being forgotten.**
>
> **All or some of the component elements of DDD are employed. The fundamental technique is based on combining sensory deprivation and sleep deprivation. With the resultant psychological forming a foundation, other techniques are used to break the detainee, if he is not broken before then.**
>
> **Sensory deprivation is a situation in which a person is denied external, optical, and aural stimuli. To achieve this, the person is placed in a small, dark room and is prevented from maintaining any contact with the outside world. All his personal possessions, including his watch, is taken from him to make it impossible for him to orient himself in terms of**

time. Motor deprivation, such as being placed in an isolated cell, intensifies the psychological responses to sensory deprivation.

Sensory deprivation is liable to rapidly cause the following psychological phenomena:

1. **sensory disorders**
2. **disturbance of body image**
3. **hallucinations**
4. **concentration disorders**
5. **confusion**
6. **changes in spatial orientation**
7. **labile emotions**

Deprivation of orientation in time by keeping the cell dark quickly led to lack of control of the situation. Sensory deprivation and motor deprivation led to difficulties in thought processes. The ego functions require feedback to maintain continued functioning. In order to balance even slightly the lack of external stimuli, the individual creates substitute internal stimuli. This explains the hallucinations in some of these cases. Hallucinations indicate the inability to distinguish between reality and fantasy. Disorientation in time also contributes to a significant breakdown in distinguishing between reality and fantasy. Because of the difficulty in checking reality where the person does not benefit from feedback, paranoia leads to disturbance in self-perception. Some of the symptoms created by sensory deprivation are psychotic. In this situation, the individual is unable to differentiate between truth and falsity: he has difficulty in benefiting from his ability to think logically, from his memory, and from his past experience, and is affected greatly by external influences, to the extent that his reactions become automatic.

55. The psychiatrist then summarizes the effects of the deprivation of sensory perception and of sleep:

> **<u>Interim conclusions</u>: The use of sensory deprivation alone is sufficient to create a situation whereby, within days or weeks, a person is no longer responsible for his decisions. Even in a case of sensory deprivation, in which no other deprivations as described by the detainees are used, a person can become confused within a short period of time. A person can be in a situation of sensory deprivation and show the stated symptoms even though the sanitary conditions are favorable, the food is reasonable in quality and quantity, and the walls of the room are normal.**
>
> **Sleep deprivation causes severe disturbance to ability to remember, to discriminate, and to concentrate, creates a tendency to pathological suspicion, impulsiveness, and false thoughts. In most cases, consciousness is blurred, thus leading to a rapid decline in reaction and memory.**

56. Further on in his opinion, the psychiatrist mentions the serious psychological effects of these methods, which are liable to be irreversible:

> **This case demonstrates how quickly a balanced, normal, and even strong-willed person can reach the breaking point without the use of physical or psychological pressure, except for sensory deprivation and partial sleep deprivation. When persons with psychological disorders are involved, the likelihood of severe consequences increases, *and may lead to irreversible psychological conditions*.** (emphasis added)

And later in his opinion:

> **Sensory deprivation, with or without sleep deprivation, is sufficient in many cases to confuse a person in a situation in which he no longer has a clear self-perception and body image. Judgment is undermined, as is the sense of reality and ability to check reality. If we add to sensory deprivation and sleep deprivation other elements of interrogation, such**

as those described, *the likelihood that grave psychological changes will follow increases*. (emphasis added)

57. Further review of the effect of solitary confinement, including isolation accompanied by various degrees of sensory and motor deprivation can be found in the 1994 report, "A Study of the Effects and Uses of Solitary Confinement in a Human Rights Perspective," by Attorney Mary Howells. The report is attached as Appendix P/70.

The report indicates that many diverse research projects reveal that holding a person separate from others (most instances also involve the lack of intellectual or sensual stimuli, in addition to the social isolation) leads to numerous psychological and physical damage.

A. **Hallucination is liable to begin as early as 15 minutes after isolation begins**. Persons held in isolation are liable to see flashes of light or geometric forms, the cell walls are liable to start wavering, and they hear voices without being able to distinguish if they are real or imaginary. These hallucinations occur in a high percentage of cases of solitary confinement: one study found that they appeared in 38.4 percent of the cases, and in another study, even reached 50 percent.

B. **Hypersensitivity to external stimuli is another phenomenon**. Normal noises and smells become intolerable in the conditions of the secret facility. This phenomenon has grave consequences where detainees are held amidst great stench. Relevant in this context are the descriptions of the noise from the ventilation system or of the bothersome light from the ceiling that were mentioned in some of the affidavits given by detainees in the facility.

C. **Isolation creates thought disorders** and affects the ability to concentrate and to a loss of memory. Uncontrollable thought content of a primitive, violent and frightening type appears; at times, paranoid fear occurs.

D. **Anxiety is a common feeling in isolation conditions**. Despair and fear take over and the person's mental and physical strength are shattered. The feelings of total abandonment and anxiety coupled with thought disorder and hallucinations put the person into a constant state of doubt and uncertainty, in which he may lose his self-confidence, self-esteem, and finally his identity.

E. Other psychological effects are **body-image distortions; a feeling of suffocation** (these effects, too, are mentioned in the affidavits - does the constant suffocation felt by B. result only from the physical conditions or

possibly from the psychological effect of being held in conditions of deprivation); **panic; apathy; lack of emotional stability and extreme emotional response**, and so on.

F. Along with the psychological disturbances, there are also numerous **physiological disturbances** related to isolation. The report describes persons suffering from, inter alia, symptoms of disturbances related to the gastrointestinal tract, blood and urine problems, migraine headaches, insomnia, and fatigue. There are also cases reported of attacks of shortness of breath, increased pulse rate, and severe sweating.

G. **Some of the phenomena, physical and mental, continued for a prolonged period of time**, extending also to the time following release from isolation, and are liable to be **permanent** – and to worsen if treatment is not provided.

58. A report of the Attorney General's office, of 1996, recognizes the grave risks of entailed in holding persons in isolation. The report states, at page 11:

> **Effect of holding a prisoner separately:**
>
> **Research findings on the subject unequivocally show that isolation of prisoners created profound psychotic responses, such as hallucinations (optical and acoustic), distorted bodily appearance, sense of suffocation and mental confusion, loss of memory, difficulty in concentrating, obsessions, and paranoia. These occur in addition to physical conditions resulting from the anxiety caused by being imprisoned separately.**
>
> **Obviously, the length of time in which a prisoner is held in isolation directly affects the side-effects of being held separately, for holding a person alone in a cell one day is not similar to holding a person, as stated, for ten weeks, months, or years.**
>
> **There is undoubtedly a limit on the time after which most persons will sense that the isolation is intolerable and will suffer, as a result thereof, long-term phenomena.**

The report also paid heed to the fact that the damage inherent in social isolation is liable to be aggravated when other stimuli are reduced. Thus, the committee recommended (at page 20 of the report) greater leniency with prisoners being held in

isolation by expanding their telephone contact and visitation, and by providing items that will make their time alone easier for them, such as a cooking platter, fan, heat dispenser, personal computer, television, and video.

The report is attached hereto as Appendix P/70.

The legal argument

Obligation to publish the location of a detention facility

59. A detained person must, by law, he held in a recognized and declared facility, whose location is known and made public, and is provided to the detainee's relatives, attorneys, and others (such as a foreign consul in the event that the detainee is a foreigner). Only in extremely exceptional cases is deviation from these rules permitted, and then only temporarily and provided that the tests and procedures set by law are met.

60. This fundamental rule is enshrined in legislation. It also draws its effect from essential principles of our legal system, as expressed in the Basic Law: Human Dignity and Liberty, whereby the basic rights of persons in Israel are based on recognition of the inherent value and freedom of human beings. Every person is entitled to defend his life, body, and dignity. It is forbidden to take or limit the liberty of a person in prison, detention, quarantine, or any other manner – except when done by law that befits the values, of the state, a proper purpose, and to an extent no greater than necessary.

As we shall see, notification of the place of detention, and the place of detention being declared and made public, are necessary to protect the autonomy of the individual, even when his liberty is restricted, and is necessary as a safety net to prevent harm to the person's human liberty and dignity, and to his physical and psychological integrity.

The fundamental rule: The Detentions Law

61. The basic rule in this matter is stated in section 7 of the Criminal Procedure Law (Enforcement Powers – Detentions), 5756 – 1996 (hereinafter: **the Detentions Law**), which provides:

> **A person shall be held in a place of detention, under the responsibility of the Israel Police Force or the Prisons Service, which the Minister of Public Security has declared a place of detention; declaration pursuant to this section shall be published in *Reshumot.***

Section 33(a) of the Detentions Law states that, when it is decided to detain a person, "notification of his detention and of **his whereabouts** will be delivered without delay to a person close to him whose name he has given… Where the detainee's **whereabouts** is changed, the Police shall also give notification thereof" (emphases

added). At the request of the detainee, the said notification must also to be sent to an attorney.

In very extreme cases, the law provides tools for a limited time and under direct judicial supervision to *postpone* giving notice of the detention of a person (and automatically, for the same limited period, of the place where he is being held). The law speaks only of delay and not of refraining from providing information. In cases of secret detention only, Section 36 of the Detentions Law allows delay in giving notification of the detention, following the issuance of an order by a district court judge, with the involvement of the Minister of Defense or Police Commissioner themselves, and for defined reasons. The decision to maintain the secrecy of the detention is for a period not to exceed 48 hours each time, after which the procedure must be started anew. In the most extreme cases, detention may be kept secret for no more than 15 days. No provision enables concealment of the place of detention when concealment of the existence of the detention is not permitted.

These provisions of the Detentions Law are supreme, applying to every detention made pursuant to any statute, unless the statute states otherwise (Section 1(c) of the Detentions Law).

Other statutes

62. Section 69 of the Prisons Ordinance (New Version), 5732 – 1971, deals with the declaration of a site as a prison. The wording of the section is important in the present case, in that it reflects the manner in which such a declaration must be seen. It is insufficient to mention a code that is known only to a few, such as "Facility 1391." The declaration is on:

Building X, or Camp X, or another place

As the Interpretation Ordinance requires, declarations on prisons are published in *Reshumot.*

63. The Military Justice Law, 5715 – 1955, expressly adopts (in Section 227A) the provision of the Detentions Law regarding the obligation to give notification on the place of the detention. As regards holding a person only in a declared facility, rather than declaration by the Minister of Public Security, which is published in *Reshumot*, the Military Justice Law requires declaration by the Minister of Defense which is published in military orders (Sections 504 and 506). Military orders are exempt from publishing in *Reshumot,* but they must be brought to the attention of the relevant

persons (in our case, at least the detainees, their families, and their attorneys) in a manner directed by the IDF Chief-of-Staff (Section 2B of the Military Justice Law).

64. The Imprisonment of Illegal Combatants Law, 5762 – 2002, requires that the detention order set forth the place of detention (Section 3(a)) and inform the detainee of the order, including the place where he is being held (Section 3(b)). The statute does not establish directives regarding the places in which detainees may be held, nor does it establish directives regarding notification of the place of detention, implying that the provisions of the Detentions Law apply: the place of detention (which must be mentioned in the detention order) may only be one of the facilities declared by the Minister of Public Security, and which are under the responsibility of the Israel Police Force or the Prisons Service, and that immediate notification of the place of detention is to be given. (Section 1 of the Imprisonment of Illegal Combatants Regulations (Detention Conditions), 5762 – 2002, assumes that an illegal combatant may be held also in a military detention facility – an assumption that is legally suspect).

65. The Emergency Powers (Detentions) Law, 5739 – 1979, states in Section 3 that the administrative detention order will form the basis for holding a detainee in a "place of detention" that shall be set by order or by subsequent order. For the purpose of the obligation to mention in an administrative detention order the concrete place of detention, see, also, HCJ 95/49, *Khoury v. IDF Chief-of-Staff, Piskei Din* 4 34A. Here, too, the statute requires that the place of detention be mentioned, but does not state the places that qualify for holding detainees, and does not set forth directives regarding the giving of notification of the detention. Thus, in this matter, too, the provisions of the Detentions Law apply regarding the obligation to hold a person only in a facility declared by the Minister of Internal Security, for which the Israel Police Force or the Prisons Service is responsible, and regarding the giving of notification of the place of detention. The Detentions Law should be perceived as nullifying the possibility of holding an administrative detainee in a military facility (an option that arose in the past from Section 1 of the Emergency Powers Regulations (Detentions) (Conditions for Administrative Detainees), 5741 – 1981.

66. Detentions are liable to be made also in accordance with the Defense Regulations (Emergency), 1945 (hereinafter: the Defense Regulations). Sections 17 and 72 of these regulations apply the Criminal Procedure Ordinance (Imprisonment and Searches) Ordinance on detentions made pursuant to the Defense Regulations. The said Criminal Procedure Ordinance was replaced by the Criminal Procedure Ordinance (Arrest and Search) (New Version), 5729 – 1969, and later by the Detentions Law. Section 8 of

the said latter Criminal Procedure Ordinance states that, places used as police stations for the purpose of the Detentions Law will be so established by the Police Commissioner, with the approval of the Minister of Police, by an order that will be published in *Reshumot.* Together with the Detentions Law, a dual-declaration is thus required: first as a place of detention (declaration of the Minister of Public Security), and second, as a police station. Thus, a person who is detained pursuant to the Defense Regulations must also be held only in a place of detention declared as such in *Reshumot* by the Minister of Public Security, and which is administered by the Israel Police Force or the Prisons Service. Also in cases in which a person is detained pursuant to the Defense Regulations, it is necessary to give notification to his relatives of the place in which he is being held.

Relevant provisions in international law

67. Article 23 of the Geneva Convention Relative to the Treatment of Prisoners of War, 1949 (The Third Geneva Convention), requires the detaining power to provide all useful information on the geographical location of prisoner of war camps, and to indicate them such that the marking can be clearly visible from the air. Article 70 of the Third Geneva Convention grants prisoners of war the right to write a card to their families and to the Central Prisoners of War Agency, shortly after they fall prisoner, which informs them, inter alia, of his address.

Comparable provisions regarding administrative detainees in occupied territory are found in Articles 83 and 106 of the Geneva Convention on the Protection of Civilian Persons in Time of War, 1949 (The Fourth Geneva Convention).

Military legislation in the Occupied Territories

68. The military legislation in the Occupied Territories also recognizes that a detention facility be declared as such, its location made public, and that a person brought to the facility be allowed to inform the outside world of his whereabouts.

Section 78A of the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, states the obligation to give notification of the detention of a person **and of his whereabouts** to a relative of the individual (and also to his parent if he is a minor, and to his attorney if he so requests) without delay following his detention. The notification may be delayed, but not prevented (pursuant to Section 78D of the Order Regarding Defense Regulations); however, no arrangement exists whereby notification is not given of the place of detention from the moment that the detention itself is not secret.

The Order Regarding Operation of Detention Facilities (West Bank Region) (No. 29), 5727 – 1967, states the authority of military commanders to establish sites as detention facilities. In accordance with Section 6 of the Proclamation Regarding Administration and Law Procedures (West Bank Region) (No. 2), 5727 – 1967, declaration of a detention facility requires publication, and the military commander indeed made sure to publish (in Military Proclamations and Appointments) declared detention facilities. In addition, according to Section 3 of the said Order Regarding Operation of Detention Facilities, a detention facility requires a marking with an appropriate sign.

Common law obligation to give notification of place of detention

69. The great importance of the notification of the place of detention was expressed in judgments of this court.

Regarding the obligation to give notification of the detention and the place of detention, in accordance with the defense legislation in the Occupied Territories, the Court stated, in the words of Honorable Vice-President M. Elon:

> **The obligation to give such notification stems from a fundamental right accorded to a person who is lawfully arrested by the competent authorities, to inform his relatives of his arrest and his place of detention so that they will be apprised of what befell their detained relative, and how they are able to proffer him the assistance he requires to safeguard his liberty. This is a natural right derived from human dignity and general principles of justice, and accrues both to the detainee himself and to his relatives**. (HCJ 670/89, *Odeh et al. v. Commander of IDF Forces in Judea and Samaria et al., Piskei Din* 43 (4) 515, 517)

The Honorable Registrar Okun recently stated the reasons underlying the importance of the obligation to give notice of the place of detention. These reasons relate both to the emotional need to know the place of detention – to ensure that a proper procedure was implemented to deny the liberty of a person – and to ensure that the power to detain is not misused. The Registrar's decision was given in a case in which the authorities did not give notice of the place in which a person was being detained,

where the family knew that their relative was being held by the security forces. The Honorable Registrar wrote, as follows:

> **Providing information on the arrest and location of the detainee is indeed a cornerstone of the right to due process… The provision of information is a means of control and supervision, but it is important from a human perspective in that the detainee loses control over his life in a single moment. The importance of thorough reporting to the relative whose family member disappeared "without explanation" cannot be exaggerated. Giving public notification is a guarantee against misuse of the state's capability to detain individuals, and prevents unrestrained use of this capability. Indeed, the power of the state, regardless of how good its intentions, is great. Concession or flexibility intrinsically entails risks. Experience teaches us that the excessive use of power, which is not timely eradicated, creates a new reality. The power is not like a boomerang; when it is released, it does not return. Therefore, the authority is commanded to give meaningful attention in all matters related to the exercise of detention powers. This attention requires immediate reporting of the detention.** (HCJ 9332/02, *Jarar et al. v. Commander of IDF Forces in the West Bank*) (not yet published)

See, also, HCJ 6757/95, *Hirbawi et al. v. Commander of IDF Forces in Judea and Samaria, Takdin Elyon* 96 (1) 103.

Placement of detention facility inside secret base – substantive violation of detainees' rights

70. In the original petitions, the Respondent contended that the secrecy of Facility 1391 does not relate to the secrecy of the facility itself but from its location within a secret army base.

Are the Respondents permitted to hold detainees in a facility whose location cannot be made public, or even given to the persons detained in the facility, because of its location within a secret army base, and that access of attorneys and monitoring officials should be restricted? As we have seen, several legislative provisions prevent

holding detainees in such conditions. Now we shall show how such action infringes the detainees' fundamental rights.

71. Notification of the place where the person is being held is necessary to enable the individual to maintain his autonomy, and to prevent disorientation that entails a risk of psychological harm.

Dr. Stein writes in his opinion (Appendix P/69) that, "The very existence of a place that is 'on the moon,' a place without location or address, is part of the method to disorient the detainee." The interrogation methods used in Facility 1391, as described in the affidavits, combine disorientation in time and severe sensory deprivation, which together break the interrogee and are liable to result in grave psychological consequences. The detainee's awareness that the place in which he is being held is secret naturally causes fear, for it results in the feeling that the officials can make him disappear, and that he is abandoned by the outside world – or in a position in which assistance is unattainable. As Dr. Stein writes: "[T]hey live with the troublesome feeling that they are totally abandoned, and that their families do not know what befell them. The interrogators keep them like a blind mole, in the words of one of the detainees. They have a fear that they will disappear without anybody knowing what happened to them. This situation undermines their fundamental sense of security."

It appears that, even accepting the Respondent's argument, that secrecy of the facility is required only because of its location, its secrecy is used simultaneously as a means to put pressure on the detainees and break them.

Whether or not secrecy is used as a forbidden interrogation means, a person's right to know basic details about himself – in this case, where he is situated – is an inherent element of his autonomy, and thus part of the fundamental elements of human dignity and liberty.

72. Access by outsiders to the facility is required if the detainees are to be able to exercise their rights:

A. **The right to visitation** at the place of detention by relatives and friends. This right is a fundamental right and is available to all detainees where no special grounds exist to prevent or restrict the visit. This right is a fundamental right the legal source of which is extensive – in domestic and international law, in legislation, and in the common law – and does not need repeating here. It is sufficient to mention that Section 12 of the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Detention Conditions), 5757 – 1997, but

states that, "a person entitled to visitation shall not be held in a place of detention where it is not possible to enable visitors to visit him, for a period of more than seven days from the day this such right arose…"

B. **The right to meet with an attorney** is also a fundamental constitutional right of every detainee, and a "great principle" in our legal system, even if it may be restricted somewhat by procedures and grounds set forth in statute.

On this point, see HCJ 128/84, *Mazan v. Me'ir, Piskei Din* 38 (2) 24, 27; HCJ 6302/92, *Rumhiya v. Israel Police Force, Piskei Din* 47 (1) 209, 212; HCJ 4965/94, *Kahalani v. Minister of Police, Takdin Elyon* 94 (3) 531; HCJ 2568/90, *John Doe v. State of Israel, Takdin Elyon* 90 (2) 423. On the right to meet even in special cases involving security, see HCJ 102/82, *Tsemel v. Minister of Defense, Piskei Din* 37 (3) 365. Regarding the importance of the right, and the principle of law that the right to exercise the right must also be granted during combat from the moment that the detainee reaches an organized detention facility, see HCJ 3239/02, *Mar'av et al. v. Commander of IDF Forces in Judea and Samaria et al*., in Sections 44-45 of the judgment.

C. **The right to a public hearing***:* Answer 20 of the Respondent's answers to the interrogatories in the original petition indicates that, judges went to the facility to hold hearings on extending detention, in cases in which the detainees were not represented." Obviously, when a judicial hearing is held within a secret, confidential base, a public hearing is impossible – and the judge loses his discretion whether to hold the hearing in open court or *in camera.* In this way, the existence of a secret facility brings with it a clandestine court, where the place it holds its deliberation is unknown and its courtrooms are *a priori* closed to the public.

Regarding hearings being conducted in public, and the need to make arrangements that enable public hearing in actions to extend detention that take place in a detention facility, see HCJ 2560/96, *Salhab et al. v. Commander of IDF Forces in Judea and Samaria et al., Takdin Elyon* 97 (1) 313. Regarding the fundamental importance that a hearing be conducted in public and on the discretion give in this matter to the judicial body hearing the file, see HCJ 103/92, *Boulous et al. v. The Advisory Committee et al., Piskei Din* 46 (1) 466.

D. **The right to meet with members of the clergy**.

E. The right of **foreign nationals** to meet with the **consul** handling the matters of the state of which he is a national.

F. **As regards prisoners of war**: The right of **assistance organizations** to enter the places of detention and visit the prisoners of war in accordance with Article 15 of the Regulations Attached to the Hague Convention on the Laws and Customs of War on Land (1907) and Article 125 of the Third Geneva Convention.

G. **As regards prisoners of war**: Article 126 of the Third Geneva Convention states that representatives or delegates of the Protecting Powers, and delegates of the International Committee of the **Red Cross**, "shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment, and labor, and shall have access to all premises occupied by prisoners of war… [They] shall have full liberty to select the places they wish to visit… visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

H. **As regards protected persons pursuant to the Fourth Geneva Convention**: The right of **assistance organizations** to conduct visits in order to assist protected persons, in accordance with Article 142 of the Fourth Geneva Convention.

I. **As regards protected persons pursuant to the Fourth Geneva Convention**: The right of representatives of the Protecting Powers and of representatives of the **Red Cross** "to go to all places where protected persons are, particularly to places of internment, detention and labor" such that they have access to all premises occupied by protected persons…" The said representatives and delegates "shall have full liberty to select the places they wish to visit" (Article 143 of the Fourth Geneva Convention). As regards visits to places in which prisoners of war are being held, here, too, a visit may be prohibited only for imperative military necessity, and then only as an exceptional and temporary measure. In any event, access to a specific facility may not be prevented regularly and constantly. As Pictet states in his commentary to the convention (at page 574):

> **Only imperative military necessity would allow such permission being postponed (but never refused)…**

Pictet adds and emphasizes that no restriction is imposed in regard to places open to inspection. He also mentions that the right to visit includes places that are directly used by the detainees (dormitories, canteens, sanitary installations, infirmaries, and so on) and areas not used directly by detainees but devoted to their needs (such as warehouses) (at page 575).

J. As regards a person considered an **illegal combatant**, the individual is necessarily a "protected person." In any event, the right to meet with representatives of the Red Cross is also enshrined in Section 12(a)(1) of the Imprisonment of Illegal Combatants Regulations (Detention Conditions), 5762 – 2002.

73. In HCJ 794/98, *Sheikh Abd Alkarim Obeid et al. v. Minister of Defense, Piskei Din* 55 (5) 769, the Honorable Court stated the special importance of visits by representatives of the Red Cross to detainees who are prohibited from meeting with their attorneys, and are also prohibited from family visits, and are not exposed to the outside world. In that case, visits of representatives of the Red Cross were permitted – even though the detainees met frequently with their attorney, were given public exposure, and were not detached from the outside world – during the period in which the petition was filed to permit visits by Red Cross representatives.

74. The impression received from the proceedings to this point, and from what has been published about Facility 1391, is that most (if not all) of the persons held in the facility are protected persons pursuant to the Geneva Conventions, particularly the Fourth Geneva Convention. That is, they are persons who find themselves – at a given moment and in any manner whatsoever – in case of a conflict or occupation, in the hands of a party to the conflict or Occupying Power of which they are not nationals (Article 4 of the Convention).

75. In the original petitions, the Respondent argued that visits could be arranged, even in instances in which the facility is situated in a secret base, by bringing the detainee to a place off the base, where the meeting will be held.

As we have seen, detainees have a right that certain outside officials visit them ***wherever they are***. This right is vital: genuine monitoring and protection of detainees' rights are only possible when there exists a combination of visits in the facility and undisturbed interviews with the detainees held there. Visits to the facility enable review of the conditions by professionals who are expert in detainees' rights, and are not solely dependent on the personal reports given by detainees. Visits enable an

examination of the facility from a perspective not always available to the detainees, who are limited in their movement within the facility and are not always aware of their rights.

The secrecy of the facility also impairs the exercise of rights that are ostensibly exercised outside the facility. The time and logistical needs required to organize meetings off-base are liable not only to delay and complicate exercise the right to visits, but to thwart them. Thus, for example, considerations of the good of the interrogation, which would allow a detainee to receive a visitor for a short period, are liable to have greater weight in prohibiting the visit when it entails more prolonged procedures in removing the detainee from the facility, taking him to another installation, and returning him. In addition, the trouble and resources entailed in arranging every meeting and visit is liable to create a negative incentive for the facility's administrators, and result in making it more difficult to exercise the right to visits. For example, a tendency may arise whereby requests for visits will be denied where they are subject to the discretion of the facility's administration, such as visits of relatives and friends more frequently than the law requires. Prohibiting a detainee from meeting with his attorney, which often occurs with this type of detainee, will be affected both by placing and removing the logistical problems mentioned above. Even a court order to remove a prohibition cannot be implemented immediately, as it should be.

76. Access to the facility by outside officials serves an important function by connecting the detainees to the external world, to obtain legal and other assistance, and to maintain their family and social relations. In addition, access of outside officials to detainees and to the facility itself is a necessary means of monitoring and a security net against infringement of the detainees' fundamental rights and against the maintenance of detention conditions and interrogation methods that are inhuman, cruel, and degrading.

Law and custom have created other safety means to protect the rights of detainees. These means cannot be completely effectuated in a facility located in the midst of a secret army base. These supervisory mechanisms include, inter alia:

A. Review by Members of Knesset. Members of Knesset may not be refused entry to a detention facility (or other non-private place) except for reasons of state security or military secrecy (Section 9 of the Knesset Members Immunity, Rights, and Duties Law, 5711 – 1951). Placing the detention

facility in a secret army base provides the Respondents with a basis for circumventing the right of Knesset members to enter the facility and to prevent them from actively monitoring the events taking place there.

B. Review of the Israel Bar Association, committees of which deal with rights of detainees, customarily visit detention facilities.

C. Review of human rights organizations, which also conduct regular visits as a mechanism for monitoring detention conditions.

77. In the original petitions, the Respondents argued that the facility is subject to monitoring by the executive authority – the IDF and the Ministry of Justice. This argument does not exempt the hampering of the normal and customary external monitoring mechanisms. As is known, even detention facilities in Israel that are under extensive external monitoring grossly fail in meeting all the statutory standards. This is even more the case, where nobody other than a small number of officials in the executive branch have access to the facility. In response to the request for additional particulars, (Appendix P/40, Answer 17), counsel for the Respondent mentioned that the conditions in the facility before its declaration as a detention facility did not change following it. This fact teaches that the declaration, and its subsequent internal monitoring, did not lead to any change in the dismal conditions there; thus, the monitoring did not prove effective.

78. As described in the affidavits, as will be set forth below, the lack of a safety net of external review and monitoring brought about the expected result: Facility 1391 became a scene of routine violation of fundamental rights of the detainees, of physical and psychological damage, of forbidden detention and interrogation methods and of inhuman and degrading treatment. These violations and acts were made possible by the cloak of secrecy covering the facility.

79. As the investigative report published in *Ha'aretz* (Appendix P/67) shows, the secretive nature of the facility served, at least in the past, to cause the disappearance of the detainees – in simple terms – while Israel denied that it was holding a Lebanese national (H. F.), who was held in the facility and was not allowed contact with the outside world, and possible many other cases, which, because of the secrecy, cannot be known.

80. As the interrogators told the persons who were detained in Facility 1391, the persons held there were like individuals located on the moon. And as the gravitational force is

minimal on the moon, so, too, is the weight of the law neutralized and vague between the walls of secrecy of Facility 1391.

Statutory tools for maintaining secrecy that are available to the Respondents

81. The Respondent argued that the only reason for the secrecy of the facility is its location within a secret army base. Even if the Respondent argues that the state has an interest that requires secrecy, the law provides it with other ways to achieve that objective.

The legislature deemed it proper to establish a system of measures, at times draconian, in which detainees' rights give way to interests – such as the good of the interrogation, security of the "region" and the state – which by their nature gnaw away at the constitutional rights of detainees, interrogees, and suspects. These measures, which are available to the Respondents, include postponing notification of detention, prohibiting meeting with an attorney, administrative detention, privilege and confidential material, *in camera* hearings and prohibition on publication of the proceedings, postponing the bringing of a detained before a judge, solitary confinement, prohibiting visits, forbidding correspondence, and prohibiting the provision of assistance in religious matters.

A. **Postponing notification of detention**

This means is found both in the defense legislation and in the penal law.

Section 78D of the Defense Regulations enable postponement making public the detention of a person, upon order issued by a **legally-trained judge**, for a period that does not exceed 96 hours. This period may be extended up to a period of **eight days. For certain offenses, the prohibition may be extended for a total of 12 days**.

The section also authorize a GSS interrogator to postpone a notification about an arrest for a period of 24 hours.

Section 36 of the Criminal Procedure (Enforcement Powers – Detentions) Law, 5756 – 1996, a district court judge is empowered to order that information of the detention of a person not be provided in the case of certain security offenses, if the Minister of Defense confirmed, in writing, that state security dictates maintaining secrecy of the detention (as distinct from the place of detention), or if the Police Commissioner confirmed, in writing, that the good of the investigation dictates maintaining secrecy of the detention.

Postponement is allowed *for a period of no more than 48 hours, which may be extended up to a period of seven days. For certain offenses, the information may be postponed for a period of up to 15 days, with the approval, in writing, of the Minister of Defense and to safeguard state security.*

B. **Prohibiting meeting with an attorney**

A number of legislative enactments prevent a meeting between a detainee and his attorney. Each of these enactments set forth the grounds for the prohibition, the maximum period of prohibition, and the authority empowered to order the prohibition.

Pursuant to the defense legislation:

Sections 78B-D of the Order Regarding Defense Regulations, which provides a continuous period of prohibition that can reach 60 days!

Pursuant to the "illegal combatants" law:

Section 6 of the Imprisonment of Illegal Combatants Law grants the power to postpone the individual's meeting with an attorney for seven days from the day the detention order is issued.

Pursuant to the penal law:

Section 2 of the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Postponement of Meeting between Detainee held for Security Offenses and Attorney), 5757 – 1997, empowers the defense authorities to postpone a meeting with an attorney for a period of up to ten days.

See, also, Sections 34 and 35 of the Criminal Procedure (Enforcement Powers – Detentions) Law, 5756 – 1996.

Section 35 of the said law enables postponement of a meeting between a detainee and his attorney, under certain circumstances, for a period of up to 21 days!

C. **Administrative detention**

In addition to all the remedies set forth above and below, and possibly the most important of all, is the power to detain a person administratively, i.e., without trial. This power is enshrined in two principal enactments:

(1) Order Regarding Administrative Detention (Temporary Order) (Judea and Samaria) (No. 1229), 5748 – 1988.

(2) Emergency Powers (Detentions) Law, 5739 – 1979.

D. **Privilege and confidential material, *in camera* proceedings, and prohibition on publication**

A number of enactments enable prohibition on making public the holding of judicial proceedings and of evidence.

For example, see:

In the matter of secrecy of proceedings to extend detention, Section 15(a)(2)(c) of the Criminal Procedure (Enforcement Powers – Detentions) Law, 5756 – 1996.

The provisions on privilege found in Sections 44 and 45 of the Evidence Ordinance [New Version], 5731 – 1971.

Regarding the possibility of *in camera* hearings and prohibition on publication, see Sections 68 and 70 of the Courts Law [New Version], 5744 – 1984.

E. **Delay in bringing the detainee before a judge**

Section 30 of the Criminal Procedure (Enforcement Powers – Detentions) Law, 5756 – 1996, which is titled "urgent investigation actions," the official in charge of an investigation may order delay in bringing the detainee before a judge, for the purpose of performing the said action, for a period of up to 48 hours from the beginning of the detention.

F. **Solitary confinement**

Pursuant to Section 19B of the Prisons Ordinance [New Version], 5732 – 1971, it is permitted to hold a "prisoner in separation" – (1) alone in a cell; or (2) in a cell with another prisoner or prisoners, who also need to be held in separation; for the reason, inter alia, that the separation is necessary for state security. The separation is allowed for a period of 48 hours and may be extended periodically for a total period of up to 14 days.

Also, the law permits a jailer who is so empowered to order as follows:

(1) That a prisoner in separation be held in a cell *alone* for a period between 14 days and one month, and to extend this period for not more than six months.

(2) That a prisoner in separation *in a cell with another prisoner or prisoners* be held for a period between 14 days and two months, and to extend the period periodically for additional periods of up to two months each, provided that the total of the period does not exceed 12 months; holding a prisoner in separation that exceeds six months requires the approval of the Prisons Commissioner.

(3) For periods exceeding 12 months, a court order is needed.

G. **Prohibition on visits**

Section 12 of the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Detention Conditions), 5757 – 1997, empowers the Police Commissioner or the Prisons Commissioner, as the case may be, to order the prohibition of visits to a detainee, for a period of up to thirty days, if he has a reason to suspect that the detainee is liable to exploit visits to promote activity whose purpose is to harm state security or public safety.

Prohibition on visits may be ordered for a consecutive period exceeding 90 days, subject to the approval of the Minister of Public Security.

H. **Prohibiting correspondence**

Section 13 of the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Detention Conditions), 5757 – 1997, empowers the official in charge of an investigation to prohibit correspondence for reasons of the good of the investigation, or may set conditions for allowing correspondence.

Section 47A of the Courts Law [New Version], 5732 – 1971, establishes, inter alia, the power to restrict or prohibit entirely the sending of letters from a prisoner to Knesset members, and, in certain conditions, to censor these letters, where necessary to prevent harm to security or to the investigation and the legal proceedings.

I. **Prohibitions regarding religious matters**

Section 14 of the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Detention Conditions), 5757 – 1997, enables the prohibition on a detainee from taking part in public worship, where dictated by reason of security or maintaining order in the place of detention, or to safeguard the welfare of the detainee. Regarding a suspect against whom an indictment has not yet been filed, the prohibition may be imposed when necessary to protect the investigation.

82. In light of these numerous and severe tools, the Respondents cannot reasonably make the argument that they require another tool, which contravenes existing law, that of holding a person in a secret facility.

Illegality of interrogation methods

83. Thus, we have seen that the secrecy of the facility necessarily results in infringement of most of the detainee's fundamental rights. The lack of supervision and monitoring by state bodies and other entities necessarily enables the use of improper and illegal interrogation methods, such as take place in Facility 1391.

84. The interrogation methods described in the factual portion of this petition are forbidden both by international humanitarian law and by Israeli domestic law.

The fight against the use of torture in GSS interrogations in Israel lasted many years and was crowned by the precedent and important judgment of this Honorable Court that was reached by a nine-judge panel. The decision prohibited the use of methods that constitute torture or degrading and inhuman treatment, such as the interrogation methods used in Facility 1391.

The principle of law relevant to the present case is set forth clearly and unambiguously in HCJ 5100/94*, Public Committee against Torture in Israel et al. v. Government of Israel et al., Piskei Din* 3 (4) 817.

85. First, the very handling of the interrogation, the asking of questions, which requires the interrogee to provide true answers, must be authorized in primary legislation:

> **In a state adhering to the Rule of Law, interrogations are therefore not permitted in absence of clear statutory authorization, be it through primary legislation or secondary legislation, the latter being explicitly rooted in the former**. (ibid., p.831)

In our case, the GSS clearly comprises only some of the interrogators in the facility, and the identity of other interrogators and the agencies to which they belong are veiled in secrecy. The source of their authority to conduct interrogations is unknown.

86. Second:

> **First, a reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever. There is a prohibition on the use of "brutal or inhuman means" in the course of an investigation… Human dignity also includes the dignity of the suspect being interrogated…This conclusion is in perfect accord with (various) International Law treaties -to which Israel is a signatory -which prohibit the use of torture, "cruel, inhuman treatment" and "degrading treatment"… These prohibitions are "absolute". There are no exceptions to them and there is no room for balancing. Indeed, violence directed at a suspect's body or spirit does not constitute a reasonable investigation practice.** (ibid., p.836)

87. The judgment prohibited methods that are very similar to some of the methods commonly used in the secret facility.

The Court prohibited methods that entail physical violence to the body of the interrogee – shakings – and we found in the secret facility that interrogators used various kinds of beatings, rape, placing the interrogator's foot on the interrogee's genitals, shaking the interrogee and spinning him until he lost sensation, and more

The Court prohibited placing the interrogee on a chair in a manner that causes him substantial pain and suffering. In the secret facility, prolonged interrogations are commonly conducted while the interrogee is seated on a stool, handcuffed, causing him to fall to the ground.

Regarding that matter, the Court also prohibited two methods that related to sensory deprivation. Regarding use of a sack, the Court recognizes that there are times when it is necessary to prevent the interrogee from seeing other detainees. However, the officials use the sack far in excess of that limited purpose. It

> **… is not part of a fair interrogation. It harms the suspect and his (human) image. It degrades him. It causes him to lose sight of time and place. It suffocates him. All these things are not included in the general authority to investigate**. (ibid., p.838)

In the secret facility, the degradation, loss of orientation in time and place and the suffocating atmosphere underlie the interrogation method and desire to break the interrogees.

Similarly, the Court agrees that it is permitted to isolate a detainee from **certain** sounds and voices – the voices of other detainees or the sounds and tones that the detainee is aware of that can harm the interrogation. However, this permission does not justify the continuous playing of loud music.

> **Do these methods fall within the scope or the general authority to conduct interrogations? Here too, the answer is in the negative. Being exposed to powerfully loud music for a long period of time causes the suspect suffering.**

The same is true about the sensory surroundings in which the detainees are kept in the secret facility – either by prohibition on stimuli or by exposure to monotone, constant stimuli.

Finally, the Court recognizes that the continuing interrogation is liable to result in sleep deprivation. However,

> **If the suspect is intentionally deprived of sleep for a prolonged period of time, for the purpose of tiring him out or "breaking" him- it shall not fall within the scope of a fair and reasonable investigation. Such means harm the rights and dignity of the suspect in a manner surpassing that which is required**.

In the testimonies presented to the Honorable Court, sleep deprivation was deliberately caused, even when the detainees were not in interrogation, but were trying to rest in their stench-filled cells. Thus, here, too, the principle established by the High Court of Justice was breached by means of the dim and gloomy world of the secret facility.

88. These rulings of the High Court are especially relevant in the case where detainees are held in filthy, reeking, and stench-filled cells, with ill-fitting clothes whereby their pants continuously fall, without underpants or any change of clean clothes, with damp mattresses and an insufficient number of blankets, without running water that they can control and without basic bathroom facilities, while being subject to violence, insults, and jokes by the jailers whose faces they are not even allowed to see…

89. In light of the Supreme Court's decision given by the expanded panel, which directly relates to our matter, we shall not write at length on the (many) sources for the prohibition on cruel, inhuman, and degrading treatment and on torture. We shall only mention that the Statute of the International Criminal Court (The Rome Statute) includes torture among the crimes against humanity, over which the International Criminal Court has jurisdiction (Article 7.1(f) of the Statute). Among the war crimes under the International Criminal Court's jurisdiction is torture or inhuman treatment Article 8.2(a)(ii)); willfully causing great severe suffering or serious injury to body or health (Article 8.2(a)(iii)); committing outrages upon personal dignity, particularly humiliating and degrading treatment (Article 8.2(b)(xxi)). These provisions join many other and older legal sources that enshrine the prohibition on torture and inhuman, cruel, or degrading treatment as part of international customary law. It goes without saying that these prohibitions also are clearly reflected in Israeli law, and are given constitutional stature in the Basic Law: Human Dignity and Liberty. The Basic Law not only prohibits harm to the life, body, and dignity of every individual. It obliges the authorities to protect actively the lives, bodies, and dignity of the individual.

Epilogue

90. Now, too, even after the earlier proceedings that we conducted regarding the facility, the concealed facts continue to outnumber the revealed facts. Who are the secret officials who hold detainees in the facility and interrogate them there before the General Security Service begins to use it and after it ceases to use the facility? What is the source of their authority? Who are the detainees held by them? Pursuant to what law do they hold them?

91. However, there are also things that are clear as the sunlight that never penetrates the cells in the facility:

    It is clear that concealing the location of the detention facility contravenes Israeli domestic law and international law.

It is clear that the location of a detention facility inside a secret army base frustrates the exercise of the detainees' rights and neutralizes the monitoring of the detention conditions in the facility.

It is clear that the secrecy of the facility has provided a veil for the use of forbidden methods of interrogation that constitute cruel and inhuman treatment, and also torture. The detainees' knowledge that they are being held in a secret, hidden facility play an important role in the implementation of these interrogation methods.

It is clear that the detention conditions in the facility, including the structure of the cells, are also juxtaposed with the method of interrogation used there, which is based on isolating the detainees, detaching them from the outside world, depriving them of their motor senses and trampling on their humanity.

It is clear that the existence of groups of jailers or interrogators whose powers are not defined, and who have the capability of holding persons in the facility without statutory definition and without restriction, creates an intolerable situation of control not governed by the rule of law.

92. Any one of these facts taken separately, and even more so when considered cumulatively, is sufficient to justify the order requested herein, i.e., to close the secret facility, known as Facility 1391, so that it no longer is used to hold individuals.

For these reasons, the Honorable Court is requested to issue an order nisi and temporary injunction, as requested at the beginning of the petition, and after receiving the Respondents' response, make the order absolute, and to order the Respondents to pay the Petitioner's attorney's fees.

Jerusalem, 30 October 2003

[signed]	*signed]*	*[signed]*	*[signed]*
Leah Tsemel Attorney	Manal Hazzan Attorney	Yossi Wolfson Attorney	Hava Matras-Ivron Attorney

C o u n s e l s f o r t h e P e t i t i o n e r