At the Supreme Court in Jerusalem **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 Salzberger (Reg. Assoc.)

represented by attorneys Leah Tsemel and/or
Yossi Wolfson *et al*.
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax. 02-6276317

The Petitioner

v.

The State of Israel *et al.*

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

The Respondents

Response on behalf of the State Attorney's Office

Preamble

In this petition, the Honorable Court is requested to order the closing of

the detention facility referred to as "Facility 1391" (hereinafter: the facility), and to order that the facility no longer be used for interrogation or for holding persons in custody.

The basis of this unusual request is that the physical location of the facility is kept secret. According to the Petitioner, the very fact that the facility is kept secret breaches various provisions of law and, for this reason, the facility should be closed.

In addition, the Petitioner argues that keeping the location of facility secret infringes various fundamental rights of the persons detained there, and for this reason, too, it is necessary to close the facility.

It is further argued that forbidden and improper interrogation methods are used in the facility and that the conditions there are harsh, and for this reason as well, it is demanded that the facility be closed.

In response to all these arguments, the Respondents will argue that there is no basis in law that requires that an order be made to close the facility, in which from time to time (but not all the time) detainees are lawfully held there.

It will first be argued that there are substantive and legitimate reasons why the state keeps the physical location of the facility secret. These reasons are – essentially – confidential for reasons of state security, and will, therefore, be presented here only briefly. In any event, we wish to present these reasons to the Court at length *ex parte*. The state is of the opinion that these reasons require that the location of the facility be kept secret.

We shall further argue that there is no statutory requirement that the physical location of each detention facility be made public. Indeed, the law requires that notification be given to the detainee's family and to his attorney that the detainee has been detained, and that they be given the opportunity to maintain contact with him (unless such contact is forbidden pursuant to law), but this does not prohibit the state from holding a person in a detention facility whose physical location is kept secret for legitimate reasons.

As regards the contention that keeping the location of the detention facility secret infringes the detainee's rights, we shall argue that such an argument is baseless, for the reasons that, in *the* facility that is the subject of the petition, all the substantive rights of the detainees are safeguarded, including, inter alia, the right to be held in a facility under reasonable prison conditions and the right to meet with attorneys, relatives, and any other person with whom detainees are entitled to meet (unless prohibited in accordance with law). The Respondent will argue that as long as all the detainees' rights are safeguarded, no right of theirs is infringed by the very fact that they are being held in a facility whose location is kept secret.

In the alternative, even if any rights of the detainees are infringed, the infringement is relatively minor, and is justified when weighed against the grave harm to state security that is liable to result if the location of the detention facility is revealed.

As regards the argument that the conditions in the facility are harsh, and should for this reason be closed, we shall argue that the factual contentions set forth in the petition on this subject are baseless, in that the conditions under which the detainees are held in the facility meet the requirements of law. The same is true regarding the interrogation methods used in the facility. The interrogation methods used in the facility are legal, and do not differ from the methods that are permitted and are used in other interrogation facilities.

In this context, we shall emphasize that the grave contentions in these matters that the Petitioner raises are based on affidavits given by ten persons who were detained in the

facility. According to the investigation that we made, most of these detainees never filed complaints in the past regarding the alleged detention conditions and the purported interrogation methods used against them, even though, according to the affiants, the conditions and methods were clearly illegal. All the contentions were raised for the first time only a short while ago, in a prior petition that was filed in the same matter. This fact is, of course, bewildering and reflects on the credibility of the contentions set forth in the affidavits.

Furthermore, even if it is found that, on this subject, one or another of the conditions imposed on the detainees in the facility or of the methods used against them is illegal, this fact is not cause to close the facility, but, at the most, to bring about a decision that the state must improve the particular condition or to prohibit the interrogators in the facility from using a particular method of interrogation. This conclusion is obvious, and, therefore, it is clear that these contentions – even if correct – are irrelevant to the relief requested in the petition.

We suspect that the Petitioner decided to dedicate a large part of the petition to contentions on these subjects only to paint a "black" picture, and in that way achieve objectives that are unrelated to the relief requested.

The above, then, is a brief description of the Respondents' position.

Below we shall discuss each of the subjects mentioned above, in order. However, we shall first present the relevant factual background of the facility that is the subject of the petition.

Factual background

1. Facility 1391 – the facility that is the subject of the petition – **is located within a secret army base**. The base is used by security officials for various secret purposes, for which reason the location of the base is kept secret.

   For fear of harm to state security, we are not able to reveal the details in this open response; however, there is not, of course, any reason preventing us from presenting the details to the Court, *ex parte*, if the Petitioner agrees.

2. An IDF detention facility, which was declared a military prison, is located inside the base.

   The detention facility is not used as a routine detention facility, but is intended, generally, for special cases and for detainees who are not residents of the territories.

   The primary purpose of the facility is as an "interrogation facility" in those special cases, and as a rule it is not intended as a "detention facility" for persons whose interrogation has been completed.

3. **Except for two administrative detainees who were held in the facility for years even after their interrogation was completed (Sheikh Obeid and Mustafa Dirani), and another detainee by the name of H.M., who was held in the facility for a year and a half, in exceptional circumstances and for special reasons, and who received better than usual conditions, a subject that we shall discuss below, <u>for years now, the facility has been used, in fact, only for interrogation</u> purposes, and shortly after the interrogation is completed, the persons are moved to other detention facilities.**

4. Details on the special reasons for which it is necessary to keep the location of this detention facility secret, other that the reason that it is located in a secret army base, cannot be presented in this open response, for fear that disclosure will harm state security. However, there is not, of course, any reason preventing us from presenting the details to the Court, *ex parte*, if the Petitioner agrees.

5. Because of the uniqueness of the facility, **only few detainees were kept there over the past five years**, except for the period of less than one year – from April 2002 to March 2003 – during which, because of the grave shortage of places in interrogation facilities in which the General Security Service operates, a shortage created by Operation Defence Shield, the General Security Service used this facility **on a temporary basis**. During this period, residents of the territories were held in the facility for relatively short periods and were interrogated there by the General Security Service.

6. On March 2003, the situation changed following a decision that the General Security Service no longer need this facility for its use.

   As a result, the General Security Service ceased using the facility for interrogations and removed the detainees who were held there. <u>The facility then returned to serve its original purpose.</u>

   From March, 2003 to the present, a few detainees have been held in the facility, for interrogation purposes, in the context of the facility's original purpose, and that only for short periods of time.

   <u>From mid-June 2003 to the present, no detainee has been held in the facility, because there was no need for it.</u>

7. It should be mentioned that, before the General Security Service began to use the facility for the interrogation of residents of the territories, the Minister of

Defence had declared the facility a "military prison," pursuant to his authority under Section 505 of the Military Justice Law, 5715 – 1955.

The declaration is attached to the petition as Appendix P/45.

8. During the period in which detainees were held in the facility, the detainees were provided the conditions that detainees receive in other military prisons.

The conduct of the interrogators and jailers are subject to binding written procedures. Violation of these procedures is deemed a disciplinary offense.

These procedures, part of which are confidential, include all matters relating to the manner in which the jailers and interrogators are required to act, beginning from the moment that the detainee arrives at the facility, through intake and the detention period, and ending with the release of the detainee from the facility. Where the unclassified procedures are relevant to the present matter, we shall relate to them below.

We shall now describe the conditions prevailing in the facility. Using this background, we shall later relate to the contentions on this subject that were raised in the petition.

Description of the conditions in the facility

9. As a rule, a standard cell in the facility is 4.5 sq. m. The large majority of the cells are this size. There are a few cells that are large (more than 6 square meters), and four cells that are smaller, about 3.7 square meters. In the small cells, there is room for only one detainee. In the standard cells, the large ones, there is room for two detainees. Despite this, because of interrogation needs, each detainee is usually held separately, though there are cases in which two detainees are held in a cell. For example, Sheikh Obeid and Dirani were held for long periods in one detention cell, larger than the standard cell. There are also isolated cases in which more than two detainees are held in a cell, but that generally lasts for short periods, and they are held in an especially large cell. In each and every case, the official in charge of the interrogation decides if it is necessary to hold the detainee separately, based on the need of the interrogation.

Holding one detainee in a cell that is 4.5 sq. m. big, which is the rule, and even holding two detainees in a cell of this size, is not improper in any way.

10. Every cell has a ventilation system.

11. The detainees receive three meals a day.

The food that the detainees receive comes from the facility's kitchen, which also provides the food for the commanders and soldiers in the facility.

The food is varied and of good quality, and is suitable for maintaining the detainees' health.

The food includes at least one hot meal a day.

In the morning and evening meals served during the winter, the detainees receive a warm drink.

12. Each detainee in the facility receives personal items, including clean clothes, underwear, a towel, socks, slippers, mattress, blankets, bath soap, toothbrush, and toilet paper.

Weekly, the detainee receives a new set of clothes; a change of underwear and towel is made as necessary.

Blankets are changed once a month, or as necessary.

Once a day, the detainees are allowed to shower (unless the head of the interrogation team decides to postpone the shower, which is allowed pursuant to the Criminal Procedure Regulations for up to three days). Shaving and haircuts are provided as necessary.

To clean the cell and the bathroom, the detainees are supplied the normal detergents.

Almost all the detention cells have "Turkish toilets" with a discharge system. Two cells have toilet bowls. Only four cells, which do not have bathrooms with a discharge system, have chemical toilets.

The sanitation conditions of the facility are checked daily by a medic and weekly by a physician.

13. A medic is located in the facility around the clock. **Every detainee is examined once a day by the medic** (the examination includes a check of blood pressure, temperature and weight, and the detainee can voice any complaints that he has). If treatment by the medic is required, he of course provides it to the detainee.

A physician examines each detainee at least once a week. The physician is not subordinate to the commander of the facility, but to the office of the IDF's chief medical officer.

Every detainee who complains of a medical problem is examined as soon as possible by a physician, in accordance with the directives of the office of the

chief medical officer, and the detainee is given the requisite medical treatment, either in the facility or elsewhere.

The facility has an infirmary equipped with medicines and medical equipment, and there are orderly procedures for taking detainees to hospital in emergency situations.

14. Subject to interrogation needs, the detainees are allowed to send and receive letters.

15. Notification of the detention of detainees held in the facility is delivered to the relevant persons, in accordance with the law. In addition, a few months ago a control center of IDF prison facilities (hereinafter: the Control Center), which gathers the data on the identity of the detainees and the places where they are detained, and provides this information to whoever requests it, was instructed to provide to everyone who requests information in the matter of a detainee held in the facility, the fact that the detainee is detained in Facility 1391 (this directive was given following malfunctions that previously occurred). Also, the Control Center provides a clear address to submit inquiries and requests regarding the detainee.

16. Detainees in the facility are allowed to meet with attorneys, unless a order was lawfully issued specifically preventing such meetings. Meetings with attorneys are held outside the facility. The rule is, when a request for a meeting is received, a location outside the facility is determined, and the meeting is held as soon as possible. Such meetings are arranged as soon as possible at any time meetings are requested with detainees held in the facility, unless a lawful reason exists not to allow the meeting.

As for family visits, it is known that, as a rule, during investigations, the detainees are not allowed to meet with relatives out of fear that it would obstruct the investigation, and the restriction is set forth in the Criminal Procedure Regulations. This is the policy in all interrogation facilities, and in the facility under discussion as well.

As for meetings with representatives of the Red Cross, meetings are allowed and take place according to the customary rules for such visits. When a meeting is requested and no special reason exists not to allow it, the meeting is held, similar to a meeting with attorneys, outside the facility. This is the policy regarding meetings held between Red Cross representatives and GSS interrogees, while they were in the facility, and so, too, in other cases.

17. We see from the aforesaid that, although the location of the facility is secret, that fact does not lead to an infringement of the detainees' rights. This is true

as regards the detention conditions and as regards the rights of the detainee to meet with persons with whom he is entitled to meet, primarily his attorneys (in the absence of a lawful impediment to such meeting).

18. **We should add that, throughout the period in which a person is held in the facility, the condition of the facility and the conditions in which the detainees are held are monitored in the manner that other military prisons are monitored.**

Such monitoring is conducted by IDF personnel, in particular from the judge advocate general's office. In addition, all the judge advocate generals in recent years have visited the facility.

Also, more than a few visits to the facility have been made by other governmental agencies, primarily by Ministry of Justice and defence officials. In this context, in recent years, two ministers of justice have visited the facility. Furthermore, in early March 2003, the head of the Special Matters Department of the State Attorney's Office, Ms. Talia Sasson, who is in charge of the department for investigation of complaints filed by persons interrogated by the GSS. Recently, visits were made by the attorney general, the state attorney, the judge advocate general, the head of the High Court of Justice Department, and the undersigned. Also, judges have visited the facility to hold hearings on extension of detention, in which cases the detainees are not represented by counsel.

19. Therefore, **the detainees in Facility 1391 are provided reasonable and lawful detention conditions, including the possibility to meet with attorneys and Red Cross representatives (in the absence of a lawful reason to prohibit the meeting) and including the receipt of letters and visits by other person who are allowed to visit. Relatives of the detainees are given a clear address to obtain information and to send inquiries and requests, including requests to visit, and it is thus clear that the secrecy of the location of the facility does not infringe the exercise of any rights of the detainees.**

20. This, then, is a description of the facility, the physical conditions existing there, the conditions provided to the detainees, and so on. This description is supported by the affidavit of the commander of the facility, referred to as "Adi," attached hereto. Below in this response, we shall provide additional details, as necessary to relate to the Petitioner's contentions.

This picture is clearly different , in factual terms, from that presented in the petition. Therefore, before we analyze the legal contentions set forth in the petition, we shall now relate to the factual contentions raised in the petition that relate to the facility and the conditions prevailing there.

Response to the Petitioner's factual contentions – general part

21. A person who studies the petition, in its factual sections, receives the "blackest" of pictures of the facility. This portrayal is based on the affidavits of ten detainees who stayed in the facility, and on a newspaper article (Appendix P/67).

Regarding the newspaper article, it is clear that it constitutes a source of information that is inadmissible as evidence in court. Throughout the petition, one finds quotations from the article, and we request that they be completely ignored.

Regarding the affidavits, some of them make contentions about the harsh conditions in the facility, the interrogation methods used, how they were brought to the facility, and so forth. In reading the affidavits (at least some of them), one receives an extremely severe picture, inter alia, of abuse and degradation of the detainees. We shall relate below to these contentions one by one.

22. **First, it should be mentioned that our examination showed that seven of the ten persons who gave affidavits did not complain to the authorities and detail their harsh contentions prior to the filing of this petition. This fact, of course, needs an explanation and raises grave doubt regarding the legitimacy and credibility of the contentions.**

One of these seven, Jadala, whose affidavit is marked P/61, was one of the petitioners in HCJ 10327/02, which also dealt with the matter presently being heard, but did not raise, over a period of many months, the contentions stated in the petition herein

Of the seven, only one affidavit, that of Mustafa Dirani, raised, before the filing of the petition, contentions on the interrogation methods in the facility, but these contentions were first raised six years after the interrogation, and were not raised as part of a complaint but in a six-million shekel civil action that he filed against the state. Although the contentions involved actions that remained suppressed for a long time, it was decided to open a Military Police investigation, the decision being based on the severity of the allegations set forth in the suit, which concentrated on the contention that Dirani was raped in the facility by one of the jailers. The Military Police investigation, which

was intensive, found no basis to support this contention. This fact, of course, does not hold the petitioner back from repeating Dirani's allegations about the rape, and to relate to them as "the living truth," without mentioning at all the results of the Military Police investigation, of which Dirani was aware, as presumably was the Petitioner.

Of the other three, one of them, J.S. (P/58), in the past filed a complaint about his interrogation, but we have been received clarification as to whether this complaint related also to the very short period of time that he was held in the facility.

23. We are left, then, with only two of the ten persons who gave affidavits. As to them, our examination revealed that they indeed complained about the interrogation they underwent in the facility, and that they did so prior to the filing of the petition. These complaints were thoroughly examined by the person in charge of examining complaints filed by detainees who were interrogated by the GSS (complaints examiner), in that these detainees were interrogated by the GSS during the year in which the facility was used for GSS interrogations. Regarding one complaint, filed on behalf of R. (P/63), we found that no final decision had been reached in the matter. Regarding the second complaint, which was filed on behalf of M.A. (P/59), the review was completed a few days ago with the decision of the attorney general, **who did not find that penal and/or disciplinary offenses had been committed.**

24. These introductory comments do not detract, of course, from the need to relate to the affidavits in a serious and deliberate manner. However, it is clear that their credibility must be examined also while taking into account the factual background described above, which indicates that most of the complaints were "suppressed" for a long time.

25. Furthermore, we wish to add that the affidavits include, on the one hand, a description of the physical conditions in the facility, to which it is relatively "easy" to relate, and, on the other hand, complaints about the conduct of the interrogators and jailers while the detainees were held in the facility, to which it is much harder to respond in a concrete manner. The reason is that serious response to the contentions relating to the conduct of certain interrogators and jailers requires much more intense examination and investigation, that in many cases cannot be done because of the time that has passed. Understandably, had the contentions been raised at the "crucial time," examination and investigation of the matter would have been made. However, as mentioned, six or seven of the affiants did not make complaint

in the past regarding their interrogation in the facility, and one complained after many years had passed since he was interrogated. Thus, it is not possible to examine some of the contentions because, for example, it is not possible to currently determine the identity of the officials who were present at one time or another in the facility, as to which one complaint or another is directed. Indeed, we are able, of course, to respond in this context *to* the binding directives on the interrogators and jailers, and we are also able to respond to various specific contentions that will be described below, however, it is clear that we are unable to respond to each and every contention about the conduct of one jailer or another towards one detainee or another.

26. As a rule, we can say already at the beginning of our response to the factual contentions made by the Petitioners, that the many specific contentions stated in the affidavits that could be checked were refuted. Some examples follow:

A. **H.R.** contends in his affidavit (P/63) that he was not examined by a physician despite his medical complaints. These contentions are refuted in their e ntirety, because it was found that there is written documentation in the facility indicating that R. underwent many physical examinations and received medical treatment.

B. **R.B.** contends in his affidavit (P/64) that he lost 14 kilograms during his stay in the facility. However, review of his medical file indicates that, during his stay, he lost only two kilograms in weight.

C. **Mustafa Dirani** contends in his affidavit that he was raped while incarcerated (P/56). However, as mentioned above, this allegation was examined by the Military Police and found to be baseless

D. **S.K.** complains in his affidavit (P/65) about the "miserable meals," which included "three pieces of bread, a quarter of a tomato, a half of a cucumber, and a roasted egg for breakfast." It should be noted that the detainees in the facility receive the same menu to that received by all members of the staff at the facility, and is a menu that meets the standards for IDF soldiers. This fact also appears from other affidavits attached to the petition, such as the affidavit of R.B. (P/64), which mentions that the food in the facility was good in comparison to food that he received in another facility where he had stayed.

27. These isolated examples are brought at the beginning of our response to show clearly that the contentions raised, even if supported by affidavits,

are not to be accepted as the truth. Unfortunately, the affidavits are tendentious and of low credibility, and should be regarded as such.

28. Before relating to the specifics of the petition's contentions, we wish to present one additional general fact. As mentioned above and in the petition, the only detainees who were held for many years in the facility are Sheikh Obeid and Mustafa Dirani. These detainees were taken from the facility to Ashmoret Prison, which belongs to the Prisons Service, in the middle of 2002, following their being declared "illegal combatants" pursuant to the Imprisonment of Illegal Combatants Law, 5762 – 2002.

And behold, we find that a short time after being taken from the facility to a Prisons Service installation, these two filed a prisoners' petition in which they requested, urgently, that they be provided, in their new place of detention, the same conditions that were provided to them in the facility where they had stayed for years. <u>In the alternative, they requested to be returned to the facility!!!</u> (Prisoners Petition (Tel Aviv) 2578/02).

If, indeed, the conditions in the facility are so harsh, as contended in the petition, so much so that they cause the detainees "sense deprivation" and the other afflictions, as contended, it is hard to overcome the fact that people who were detained in the facility for years, when they were subject – according to the allegations – to constant abuse, degradation, and so on, would file a court petition (!) in which they request that they be returned to this "horrible" facility.

29. We also wish to add that, as stated in the preamble to the petition, even if the contentions raised concerning the conditions or the methods used in the facility were accurate, and it was found that some of the conditions or methods or even all of them are illegal, <u>such fact would not lead to the granting of the relief requested in the petition</u> – an order closing the facility – but would lead to an order to change the illegal conditions and methods.

In effect, this legal determination is sufficient, making it unnecessary to respond specifically to the factual contentions raised in the petition. However, because of the gravity of the contentions and the publicity given them, we deem it appropriate to relate to them one by one.

30. Based on our introductory comments hereinabove, we shall now relate specifically to the subjects raised in the affidavits, insofar as we are able. Our

response is presented in the order that the contentions are raised in the petition.

Contentions regarding transfer of detainees to the facility – Sections 22-24 of the petition

31. The petition alleges that transfer to, and arrival at, the facility entails degradation and "transfer to another world." These contentions are baseless.

Transfer of detainees to and from the facility is generally performed by the Military Police, in accordance with the procedures for transporting prisoners of the Military Police to all military prison installations, with one difference that relates to the measures taken to protect the secrecy of the location of the facility. Thus, it was determined that detainees would be transported to and from the facility with their eyes covered with a dark blindfold (and not with a sack on their head, as contended in the petition). When detainees are being interrogated by the GSS in the facility, they are brought to it, as a rule, by GSS personnel, in accordance with the same procedure.

Upon the detainee's arrival at the facility, the detainee is taken from the vehicle and an external search is conducted, in customary manner, to locate weapons and other prohibited objects. The jailer then takes the detainee, in different directions and winding paths, to prevent him from learning the lay-out of the facility.

After that, the detainee is taken directly to the facility's infirmary, where his blindfold is removed and he is undressed except for his underpants (not including) to undergo a medical examination. In the exam, his bruises and scars are recorded to prevent future allegations that these bruises were caused during interrogation and his stay in the facility. Also, the detainee's vital measurements are taken, and a medical file is opened (more on this point later). The detainees is examined by a physician no more than 24 hours after arriving in the facility.

The binding procedure on this subject is as follows:

A. The detainees will undergo intake one after the other and separately in the infirmary. The following persons shall be present in the room:

Operations officer/N.C.O. – responsible to photograph the detainee, give a registration number, and organize intake.

Investigator – responsible for determining initial particulars.

Medic – responsible for physical examination.

Custodial official – responsible for physical examination (search).

B. Intake of a detainee will be conducted in the following order:

Thorough bodily search of his body and clothes, examination and change of clothes.

Photographing the detainee and issuing him an official identity number.

Questioning by the interrogator to obtain basic identifying particulars.

Reading the detainee his rights and having him sign a form stating his rights – see separate procedure.

Standard medical examination by a medic, unless a physician is present (otherwise, the detainee shall be examined by a physician within 24 hours of his arrival).

Taking the detainee to his detention/interrogation

cell, as required.

The petition contends that the procedures used in transferring a detainee to the facility are intended to give them the impression that they are being taken to another, unknown and forgotten, world, and to increase the sense of helplessness. These contentions are baseless. Transfer to the facility is conducted in a completely normal manner, except for the fact that the detainee is taken with his eyes covered, which is done for a legitimate purpose – to prevent revelation of the location and lay-out of the facility.

It is further contended in the petition that, at the time of arrival at the facility, "a violent and degrading reception await the prisoners." To the best of our knowledge, this contention is baseless. Violence and degradation are absolutely forbidden. In any event, any complaint about violence when detainees are received at the facility or thereinafter is examined, and any similar complaint filed in the future will be examined.

It is further contended in the petition that, at the time of intake in the facility, the detainees are provided clothes that do not fit them. Such contentions were not previously raised, to the best of our knowledge, by the affiants. In any event, according to the practice in the facility, if a problem exists on this point – the detainee can request a change of clothes – and such requests are generally approved. The facility contains clothes of various sizes for the detainees, and, because of the short time that detainees remain in the facility, the relevant officials do not recall that there was a problem in the past related to the size of the clothes.

Contentions regarding the creation of a sense of "finding oneself in a hopeless place" – Section 25 of the petition

32. The Petitioner contends that the location of the facility is not made public so as to benefit the interrogation, to "strengthen the sense of devastation" of the detainee. As was shown, this contention is baseless. The reason that the location is not made public is for purely security reasons, and there is no "interrogation related" purpose in this regard.

Contentions regarding the creation of "loss of sense of time" – Section 26

33. Section 26 of the petition, which is based on the lighting conditions in the cells, which allegedly create a "loss of sense of time" in the facility, and as if the facility is intended to transfer the detainees "from the real world to another realm" are mere statements, unsupported by fact.

Indeed, the cells where they are kept do not have windows, and are not lit by sunlight but by artificial lighting. However, there is no difference in this regard between the cells in this facility and those in many other interrogation facilities. The lack of windows results from the structure of the facility, and is not unusual. On this point, we wish to repeat that the detainee's stay in the facility is intended for interrogation only, which lasts a relatively short time, and the facility is not intended as a rule for permanent stay.

Contentions on "total isolation" – Sections 27-29 of the petition

34. In this matter, it is contended that, during the period they were held in the facility, which lasted as a rule 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."

Regarding this matter, we respond by saying that, as mentioned above, as a rule, the detainees' stay in the facility is temporary, for interrogation purposes, and the facility is not intended for incarceration of detainees whose interrogation has ended. Some of the detainees who were brought to the facility stayed there for a number of days only, while as regards some, their interrogation lasted a number of weeks up to a number of months. In any event, though, for years, except for Dirani, Obeid, and M., nobody was held in the facility for a longer period, and certainly not for years on end.

35. Regarding to the contention of "isolation," it is true that, for reasons related to the good of the interrogation, detainees are held separately, generally, unless a physician orders otherwise or the interrogation so requires. However,

there is nothing wrong in this, and this measure is accepted practice in interrogations.

As President Barak pointed out in HCJ 5100/94, *Public Committee against Torture v. Government of Israel, Piskei Din* 53 (4) 817, 838:

> **"We accept that there are interrogation related considerations concerned with preventing contact between the suspect under interrogation and other suspects and his investigators, which require means capable of preventing the said contact."**

In this context, we should mention that, according to the Prisons Ordinance, prisoners, too, may be held separately, even for a period of months and years, in the conditions that are set forth in the ordinance.

36. As regards Obeid, Dirani, and M., who for many years are the only ones who stayed in the facility for very long periods (not for interrogation reasons), they stayed together (and not in isolation) and were provided extremely reasonable detention conditions, including an air-conditioner, radio, television, satellite channels, newspapers, and more. As mentioned, after Obeid and Dirani were removed from the facility and taken to a Prisons Service installation, they requested to be returned to the facility.

37. As regards the contention that the detainees are not allowed to see the soldiers who serve as jailers in the facility, this contention is false. Indeed, for security reasons – when a soldier enters the cell of a detainee, who is not handcuffed in his cell, the detainee is required, our of fear for the safety of the soldier, to put on his blindfold and stand facing the wall, which is done to thwart the possibility they the detainee will attack the soldier. In addition, when the detainees are taken elsewhere in the facility (which takes only a few minutes), they are blindfolded, so that they will not learn the lay-out of the facility. At all other times, the detainee can see the soldiers and the interrogators. For example, when the soldiers guard the detainees during the daily examination by the medic or during the interrogation, the detainees see the soldiers, and there is nothing preventing this.

<u>Contentions regarding “sensory deprivation” – Sections 30-31 of the petition</u>

38. In this part, the Petitioner contends that the conditions in the detention cells cause “sensory deprivation,” because they do not receive sunlight, are painted a dark color, the lighting is minimal, and, when the detainees are taken out of the cells, their heads are covered with a sack. The inference is that for months, the detainees do not see a person and are engulfed in almost total darkness. This picture deliberately distorts the reality.

Indeed, the cells do not receive sunlight, as mentioned above, but the lack of sunlight is no different from the situation in hundreds of other detention cells. The cells are lit with standard light bulbs in rooms whose standard size is 4.5 sq. m. It goes without saying, that in their temporary stay in the facility for interrogation purposes, the detainees do not read in his cell. Indeed, most parts of the cells are painted a dark gray, but they certainly are not "all black," as alleged in the petition.

The contention, quoted from the affidavit of K. (P/65), that the light "blurs the appearance of the food," for which reason he did not eat for many days, is peculiar, because everyone can distinguish the food and its quality in a place containing the lighting provided, and it is hard to believe that because of poor lighting the detainee did not eat for many days.

As regards the contention that the detainees are always removed from the cell with sacks on their heads, as explained above, when detainees are moved throughout the facility (which only takes a minute or a few minutes), their eyes are covered so that they do not learn the lay-out of the facility. Their eyes are covered by a blindfold and not by a sack. At all other times, the detainees can see the soldiers and the interrogators, for many hours, during the interrogations and the medical examinations.

As regards the contention about the "deliberate noise" made in the cells, we have already mentioned that the noise is from the slight sound of the ventilator, a sound that is also heard in the rooms, because the cells are ventilated by means of a ventilation system. There is nothing wrong in this, and we are sure that the Petitioner is not requesting that the system be dismantled.

Contentions regarding "sleep deprivation" – Section 32 of the petition

39. According to these contentions, the jailers banged at night on the door of the cells of some of the detainees while they were sleeping, with the intention of waking them for no reason. The Petitioner calls this "sleep deprivation." The facility's officials are not aware of such contentions, and there is, of course, no way to check them at this time.

The only thing we can say is that the procedures forbid such action, and we refer to the relevant provisions of the procedures, which state:

> "An on-duty military policeman must visit a cell with an inmate at least once an hour (**without waking the detainee**)". (emphasis added)

It should be mentioned that the term "to visit" refers to the corridor next to the cell, while looking inside it through a slit designed for that purpose, and not entry into each cell every hour.

Contentions regarding "sexual humiliation and wallowing in feces"

40. Contention is made in the petition that the detainees are held in cells while they "wallow in their excretions." This contention is absolutely refuted because a bathroom facility is installed in each cell, and it is impossible that a situation is created whereby detainees "wallow in excretions," as contended in the petition.

A principal contention is directed toward cells in which, rather than bathroom facilities, a large, black plastic can is placed to meet toilet needs. It is contended that this situation causes a great stench in the cell. On this point, we wish to mention that, as stated in the previous part, almost all the cells have "Turkish toilets," which are connected to a discharge system. Two cells even have a toilet bowl. Only four cells lack a discharge mechanism; these cells contain "chemical toilets" that are indeed located inside black cans. These cans are closed by a tin cover and also on the inside. If the user closes them properly, there should be no stench. In addition, detainees are generally not held in these four cells, and if they are, it is only for a relatively short period of time.

41. Regarding toilet facilities, the procedures in the facility state:

> **"Each cell shall contain a toilet that will be cleaned daily and disinfected once a week. Detainees' cells shall be cleaned and disinfected daily by the detainees by means of a brush and liquid soap that will be provided to the detainees daily, this being the responsibility of the military policemen."**

These procedures are complied with to the letter. It should be emphasized that a sanitation check is made daily by a medic, and, once a week, a physician makes a sanitation check.

42. It is further argued in the petition that the detainees are undressed in front of the soldiers, which constitutes "sexual humiliation." If the reference is to the procedure described above, whereby at the time of arrival at the facility, the detainee is taken to the infirmary and is requested to undress (except for his underpants) to undergo an examination, this is the normal procedure and there is nothing wrong with it. If the contention is that in other cases detainees are undressed, for no reason, such action is absolutely forbidden and any complaint in this regard would be investigated.

43. Another contention relates to the purported rape of Dirani. As mentioned, this contention was investigated by the Military Police and was found to be baseless.

Contentions regarding "degradation" – Section 38 of the petition

44. This part of the petition contends that a detainee is not allowed to see the soldiers and that the detainees are routinely undressed in front of the soldiers. We responded to these contentions above, and they are not correct.

Contentions regarding the use of "physical methods during interrogation and threats" – Section 39-41

45. In this part, the petition presents contentions of various detainees about the violence and threats against them in the facility. It is impossible to respond to these allegations because most of the detainees whose affidavits are attached to the petition did not make complaint, except (apparently) for the two affiants who submitted complaints. One complaint is still under investigation. The investigation of the other complaint has ended, and it was found that no criminal or disciplinary offenses were committed against the detainee.

In any event, as mentioned above, these contentions do not affect the relief requested in the petition, which is closure of the facility. Allegations about violence in interrogations have always been voiced, and we suspect that they will also be voiced in the future, until such time that interrogees and interrogators disappear from the earth. It is clear that the petition's request to close an interrogation facility, because of the contention that one improper method or another is used, is insubstantial.

Contentions regarding "wallowing in filth" – Sections 42-43 of the petition

46. On this subject, the contention is made that, "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."

This contention is a total lie, to put it simply. Almost all the cells have toilet facilities and running water, except for the four cells we referred to above, in which they, too, have toilet facilities, albeit chemical toilets.

47. It is further contended that, in cells in which there is water, the water drips from an opening in the wall. This contention, too, is false. The water flows in a completely normal manner, with the jailers having control over the water faucets, which they open at the request of the detainees. Control over the faucets is given to the jailers and not the detainees to prevent detainees from

using the faucets to harm the jailers or themselves, and to prevent them from flooding the cells.

48. It is further contended that "showers are rare." This contention, too, is incorrect. According to the procedures, every detainee is allowed to shower once a day, and allowing him to shower cannot be postponed for more than three days, as set forth in the Criminal Procedure Regulations. The right to shower once a day has also appeared for several months in the information sheet to detainees (which set forth the rights and obligations of the detainee), which every detainee signs upon arrival at the facility (P/68 of the petition). This information is also posted in the infirmary, which the detainee visits daily for an examination by a medic. The information is posted in Arabic and Hebrew.

It is also contended that the detainees are not supplied with soap or other items with which to clean themselves. On this matter, we refer to the binding regulations which state that every detainee is to be given liquid soap once a day and toilet paper.

To complete the picture, we refer to the section of the binding procedure regarding the hygienic protections provided during detention:

> "2. Hygiene and cleanliness
>
> Every detainee will be allowed daily to shave and shower, unless the head of the interrogation team states otherwise (prohibition not to exceed three days).
>
> Every detainee arriving at the facility will receive clean clothes, towel, toothbrush, blankets, and mattress. After he is removed from the facility, the items that he received are to be taken to the laundry for cleaning for use by new detainees.
>
> The detainees will receive their meals on dispensable plates and cups which shall be thrown away after use.
>
> Each cell shall have a toilet that will be cleaned daily and disinfected once a week. Detainees' cells shall be cleaned and disinfected daily by the detainees by means of a brush and liquid soap that will be provided to the detainees daily, this being the responsibility of the military policemen. The detainees will be given toilet paper for their daily use by the policemen and also upon demand by the detainee.
>
> Because of the nature of the facility, all cleaning activity in the prison will be done by military policemen and not by other regular army soldiers in the facility.
>
> A medic will perform a daily hygiene check of the detention cells in which detainees are being held, and a hygiene check will be made once a week by a physician."

Contentions regarding "meals" – Section 44

49. In this part, it is contended that the meals were served on the floor or on the chemical toilets, and that some of the detainees contended that the food was meager and insufficient.

To this, we respond that the detainees receive the same food that is prepared for the soldiers and commanders in the facility. The food is served to the detainees in dispensable cups and plates, including cutlery. The food is brought into the cell of the detainee and is placed on a stone platform in the cell. In cells containing chemical toilets, which do not have the platform, the food is placed on the floor.

The binding procedures on this subject state:

> "Provisions
>
> A pitcher of drinking water will be placed in each cell containing a detainee.
>
> Every interrogee will receive three meals a day:
>
> Breakfast, no later than 8:30 A.M. + hot drink in the winter.
>
> Lunch between the hours 12:00 P.M. – 1:00 P.M.
>
> Supper between the hours 5:30 P.M. – 6:30 P.M. + hot drink in the winter.
>
> **The detainees will be given the food and menu provided to the facility's staff.**"

Contentions regarding "stench, suffocation, cold, and dampness" – Section 45 of the petition

50. In this part, it is contended that the cells are moist and damp, and the mattresses are damp and filthy. It is also alleged that there is insufficient ventilation and that the cells are cold.

These contentions are baseless. The detainees sleep on a standard military mattress, like those that IDF soldiers in the facility sleep on. There is no reason for the mattresses or blankets to be damp or filthy, and, in any event, they can be replaced at the detainee's request.

We again direct attention to the fact that sanitation checks are made once a day by a medic and once a week by a physician.

As regards the contention of suffocation in the cells, the cells are ventilated by a ventilation system. As for the allegation of cold, the temperature is normal, and, in any event., the detainees can receive a sufficient number of blankets.

Contentions regarding "lack of medical treatment" and "physical and psychological injury" – Sections 46-48

51. In this part, it is contended that there are many complaints of poor medical treatment. It is also contended that the conditions resulted in the detainees becoming ill and in the loss of their humanity.

To this, we respond that, as stated in the factual part, a medic is present in the facility 24 hours a day. **Every detainee is checked daily by the medic in the infirmary** (the exam consists of check of blood pressure, temperature, and weight).

Each detainee is examined at least once a week by a physician, even if the detainee has no complaints.

Every detainee with a medical complaint is examined as soon as possible by a physician, and the detainee is given the necessary treatment, either in the facility or elsewhere.

The facility contains an infirmary equipped with more extensive medicines and medial equipment than are found in an ordinary military infirmary, and includes, inter alia, an inhalator and a glaucometer. The medical-treatment procedures in the facility are issued pursuant to the directives of the IDF's chief medical officer (i.e., the directives for treatment of detainees is comparable to the directives relating to treatment of IDF soldiers).

The approach taken by medical personnel toward the detainees is dictated by the rule that the health of the detainees is given highest priority. To the best of our knowledge, in recent years, all the examinations made did not reveal any physical or psychological injury resulting from stay in the facility. In one instance, in which a concern for the psychological health of a detainee arose following his solitary stay in a cell, the detainee was placed in a cell with another detainee, and his condition improved.

To the best of our knowledge, all the directives of the medical staff are intended to rectify environmental impediments or to improve conditions, if found during their monitoring, such as regarding cleaning of cells, provision of hot drinks and appropriate treatment, are implemented by the facility's administration.

Where necessary, the medical staff recommends an additional change of clothes.

Toothaches are treated by a dentist.

52. Now is the time to mention that, despite the serious allegations raised on this subject, study of the affidavits attached to the petition reveal contentions of defective medical treatment in only one instance.

The case involves H.R., who contends in his affidavit (P/63), that the physician did not give him a physical examination even once, even though he complained of terrible stomach pains.

However, study of this medical file indicates that he was given a physical exam many time times during his stay, by various physicians, and he was especially checked following complaints of stomach pains. If requested, we can, of course, provide his medical file.

This obvious lie, of course, affects the credibility of his entire affidavit.

53. It is further contended by the Petitioner that, as a result of the harsh conditions in the facility, two detainees lost an appreciable amount of weight.

The one case mentioned is that of R.B., as presented in his affidavit (P/64), which alleges that he lost 14 kilograms during his stay in the facility. However, study of his medical file indicates that he arrived at the facility weighing 78.5 kilograms and was discharged weighing 76.5 kilograms. That is, his allegation that he lost 14 kilograms is a complete lie; in fact, he lost only two kilograms.

This obvious lie, of course, affects the credibility of his entire affidavit.

54. The second case is that of H.R., as presented in his affidavit (P/63), which alleges that he lost 20 kilograms. Study of his medical file indicates that he indeed lost weight, but not 20 kilograms. He lost 11 kilograms (some of it during a period in which he did not stay in the facility). It should be mentioned that the detainee suffers from gastroenterology problems and was examined numerous times and given medication during his stay in the facility. These facts, of course, are not mentioned in the petition.

Contentions regarding the length of time that detainees are held in the facility – Section 49 of the petition

55. In this matter, it is contended that the detainees are held in the facility for an unlimited period of time, and that some were kept there for months and even many years. We have also responded to this allegation, and wish to recall that the stay of detainees in the facility is limited as a rule only to the period of time in which the detainees are interrogated, and they are moved to other facilities shortly after the interrogation ends. As a rule, the period is relatively

short. The only exception to the rule over the past many years involves Dirani, Obeid, and M., whom we discussed at length above.

Contentions regarding "detainee yo-yo" – Section 53 of the petition

56. In this part, it is contended that the state made efforts to "empty" the facility to moot the two previous petitions that dealt with the facility.

This contention is contradicted by the facts that, at a certain stage, after the facility no longer had detainees because the GSS had stopped using the facility, and while the petitions were pending, the state gave notice that, at its initiative, new detainees had been brought to the facility. If the state wanted to moot the previous petitions by trickery, it certainly would not have brought new detainees to the facility at a time when there were none, and while the petitions were pending, but would have waited until the hearing on the petitions had ended.

These facts clearly prove the lack of substance to the contention that an effort was made to empty the facility to moot the petitions.

The detention of persons in the facility is based on the specific case involved and on necessity. Such is the nature of an interrogation facility and a house of detention, which become occupied only when the need arises (and good that it is so). Indeed, when such a necessity arises, detainees are brought to the facility and when their interrogation is completed, they are removed.

As we have mentioned above, in recent months, there was no necessity for interrogation of detainees in this facility, and thus, for several months now, there have not been any detainees in the facility.

Psychiatric opinion and report on separation of prisoners – Sections 54-58 of the petition

57. Attached to the petition is the psychiatric opinion of Dr. Stein that relates to the psychological processes that detainees in the facility undergo. The opinion is based on study of the affidavits that are attached to the petition.

As will be shown, for several reasons, this opinion, with all due respect, is of extremely minimal value.

58. First, the opinion relies on a weak foundation, in the form of testimonies of low credibility, if any credibility whatsoever, and without the psychiatrist having visited the facility. As mentioned above, there is a substantial disparity between the descriptions provided in the testimonies that support the petition and the situation in the facility and the conditions actually prevailing there. This disparity, of course, questions the factual foundation on which the opinion given on behalf of the petition is based.

The opinion describes the process of breaking down the detainee psychologically, referred to as DDD, "by craving for separation, extreme fatigue, illness, making the detainee completely dependent on his interrogator, fear of death, illness, torture, punishment, and so on." According to the opinion, the conditions in the facility are intended to induce this process which results in psychological breakdown, that is liable to cause "irreversible psychological damage."

Note well: the components leading to this process do not exist in the facility. In particular, there is no craving for separation, causing of extreme fatigue, illness, creation of fear of death, of illness or torture or punishment. Furthermore, some of these components are not even mentioned in the affidavits.

The above is sufficient to show that the opinion is irrelevant in the matter before the court.

59. Second, the opinion indicates various psychological and emotional phenomena that are liable to result from "sensory deprivation," which, he argues, is liable to be caused by the conditions in the facility (such as sensory disorders, disturbance of body image, hallucinations).

However, the opinion is not based on an examination of the affiants and a determination that these phenomena actually occurred to them, but solely on study of the affidavits. Such an opinion lacks substantive value.

For example, the opinion speaks about "irreversible psychological damage" following a stay in conditions that allegedly exist in the facility. However, the opinion does not describe even one instance – based on examination – in which such damage occurred to any of the persons who stayed in the facility, nor could there be such a description of a case, because the drafter of the opinion did not examine the affiants.

60. Third, with all due respect to the drafter of the opinion, study of the medical files of the detainees whose affidavits are attached to the petition does not show that any of them suffered from such phenomena. As stated above, every detainee is examined daily by a medic in the facility, and by a physician once a week, which enables monitoring of the detainee's medical condition, and revelation of signs that are liable to be interpreted by the physician as indicators of psychological distress. To the best of our knowledge, except for one case, mentioned above, in which the examining physician had a concern of psychological distress, which led to the physician instructing the interrogators to transfer the interrogee to a cell with another detainee (the

instruction was implemented and the detainee's condition improved). In no other case was any of the phenomena pointed out in the opinion diagnosed.

61. Fourth, the affiants themselves make almost no contention that they suffered from the phenomena that were supposed to occur to them according to the processes described in the opinion. The affidavits certainly do not describe "irreversible psychological damage" purportedly suffered by the affiants.

In these circumstances, the opinion should be given no weight whatsoever

62. Regarding the 1996 report that discusses holding prisoners separate from each other, which the petition also mentions, it does not relate at all to the holding of detainees separately during the course of interrogation, when separation is required for the good of the interrogation. Rather, the report deals with the holding of prisoners separately for other reasons altogether.

In any event, study of the report indicates that separation of prisoners is a worldwide practice. Indeed, most states customarily restrict the period in which detainees are held separately (not for interrogation-related reasons) to a period of 15-30 days, but some states allow separation for up to a year, and in many states, there is no time restriction at all. See page 9 of the report. As stated, in our case, the time periods are relatively short because the separation is imposed for purposes of interrogation.

The report describes the size of cells used in many states when prisoners are separated. The size of the cells in the facility certainly do not deviate from the size mentioned in the report.

The Petitioner refers to the part discussing the effect of separation on the prisoner, but ignores the clear determination that, "one of the elements that renders solitary confinement more or less unbearable is the length of time that a person will spend in this form of detention. One day alone in a cell is quite different from ten days, or ten weeks, months, or years." (page 11 of the report).

In sum, it should be mentioned that holding the prisoners separately is legal according to the Prisons Ordinance, being allowed up to a period of one year (in the conditions set forth in the statute – see Section 19B of the Prisons Ordinance), and, with court approval, even longer.

Even more so is it legal to hold a person separately for purposes of interrogation, and, as stated, the Honorable Court, too, in HCJ 5100/94,

held that such action is not improper. Indeed, holding prisoners separately is acceptable in many cases of interrogation that are conducted in other facilities.

On this subject, too, the Respondents' actions are not unlawful.

Summary of the factual part

63. We responded at length, at great length, to the Petitioner's factual contentions and to the opinion based on those contentions. We had good reason to do this.

As we mentioned, our position is that most of the contentions are unrelated to the relief that the petition requests – the closing of the facility. These contentions would be relevant if the petitioner requested improvement of the conditions in the facility or an order prohibiting the use of improper methods. However, the Petitioner seeks other relief, and thus, even if the contentions were well founded, they would not lead to the relief requested – an order directing the closing of the facility.

Despite this, we responded at great length to the factual contentions. The reasons we did so were the seriousness of the contentions and our desire to explain to the Honorable Court that the contentions are baseless and tendentious.

We shall now respond to the legal contentions raised in the petition in the order they are presented therein.

Response to the legal contentions raised in the petition

64. The first argument set forth in the petition is that there is no substantive reason not to disclose the location of the facility, and that the only reason it is kept secret is the desire to instill in the detainees a feeling of a "hopeless place." According to the argument, the only reason not to disclose the location of the facility is the desire to use the secrecy as an interrogation method, which is illegal.

As we have explained, this argument Is insubstantial, because there are concrete and legitimate reasons for the state to maintain the secrecy of the physical location of the facility. These reasons are – for the most part – confidential for reasons of state security, and will be presented at length *ex parte,* if the Petitioner consents.

65. The second contention raised by the Petitioner is that, in any event, the state is obligated, by statute, to reveal the whereabouts of each and every detainee, and to give his family notification thereof.

We view this contention as the primary contention raised in the petition, and we shall thus respond to it at length.

The Respondents believe that no statutory provision requires the disclosure of the physical location of every detention facility.

Indeed, the law requires that the detainee's family and his attorney be given notification that he has been detained and of his whereabouts so that the family and attorney can contact him (as long as contact is not lawfully prohibited). However, this requirement does not forbid the holding of a person in a facility whose physical location is kept secret for legitimate reasons.

To explain this contention, we refer to the survey of statutory provisions to which the Petitioner refers as the statutory sources that require, in its opinion, the giving of notification of the detainee's whereabouts.

66. The main provision in this matter is set forth in Section 33(a) of the Criminal Procedure (Enforcement Powers – Detentions) Law, 5756 – 1996 (hereinafter: the Detentions Law), which states that, when decision is reached to detain a person:

> **"Notification of his detention and of his whereabouts will be delivered without delay to a relative whose name he has given… unless the detainee requests that such notification not be delivered."**

Section 33(a) states that, at the request of the detainee, such notice is also to be given to an attorney whose name he has given.

These provisions apply also to a person detained pursuant to the Military Justice Law – see Section 227A of the said law.

It is also contented that, pursuant to the Detentions Law, these provisions also apply to administrative detention pursuant to the Emergency Powers (Detentions) Law, 5739 – 1979 (hereinafter: the Administrative Detention Law), and also to detention pursuant to the Imprisonment of Illegal Combatants Law, 5762 – 2002 (hereinafter: the Imprisonment of Illegal Combatants Law).

A provision comparable to Section 3(a) of the Detentions Law is found in section 78A(b) of the Order Regarding Defence Regulations (Amendment No. 53) (Judea and Samaria) (Number 1220) 5748 – 1988 (hereinafter: the Order), which states:

> **"Where a person is detained, notification of his arrest and whereabouts shall be made without delay to a relative, unless the detainee requests that such notification not be given."**

67. The relevant question in our matter relates to the interpretation of the term "notification of his arrest and of his whereabouts," which is set forth in the statute. The Petitioner thinks that the notification must state the physical location of the detention facility. The Respondents think that this interpretation is not required by the wording of the said statutory provision (which will be referred to below as "the notification provisions"), and that it is sufficient to provide the name of the facility where the detainee is being held, while giving an address to which requests can be sent relating to a person detained in that facility.

68. In determining the correct interpretation of the notification procedures, it is, of course, necessary to examine the purpose of the duty to deliver the notification, after which it will be possible to construe the statute based on its purpose. We shall do this now.

69. The common law holds that the clear purpose of the said duty of giving notification is to inform the detainee's relatives as to what befell their relative, so that detainees will not disappear, and also to provide the detainee's relatives with information that will enable them to provide their relative with the assistance necessary to safeguard his rights.

HCJ 670/89, *Musa Yunes Muhammad Odeh v. Commander of IDF Forces, Piskei Din* 43 (4) 515, 517, which discussed this provision, states as follows:

> **"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."** (emphasis added)

In another decision, given recently by Registrar Okun, which also dealt with the duty of notification, mention was made of similar purposes underlying the duty to deliver the notification, primary among them being that a person not be allowed to disappear "without explanation."

See HCJ 9332/02, *Jarar et al. v. Commander of IDF Forces* (unpublished).

70. From the time that notification of the detention of a person is delivered to his relative, that the relative is provided **the name of the detention facility in which the person is held**, and is given a **clear address** for sending letters and requests, including requests to visit the detainee, and to meeting with an attorney, **the purpose is met in regards to the duty of giving notification of**

the detention, and the duty set forth in Section 33 of the Detentions Law and Section 78A(b) of the Order Regarding Defence Regulations is fulfilled.

From the moment of delivery of the said information, the family knows that the detainee is in detention, knows how contact with him can be made, and knows to whom to write to submit requests relating to his detention. Such a situation fulfills all the purposes underlying the duty of notification. In providing the information, it is guaranteed that persons will not "disappear," as occurs in certain despicable regimes.

Unlike the contention made by the Petitioner, in such circumstances, no harm is caused to the detainee and his relatives, for they are not denied any right, to which they would be entitled, were the detainee held in another military prison or in any other detention facility.

71. As long as the detainee's relatives are informed about his detention, are told in which facility he his held, and are given a clear address to make various inquiries and requests, including matters related to visits and meeting with an attorney, **there is no significance in providing the physical location of the facility.**

72. **We see, then, that the rights of the detainees held in Facility 1391 and the rights of their families are not denied in any way whatsoever, even if they do not know the physical location of the facility.**

The same is true regarding meeting with attorneys and visits by the Red Cross (in cases in which there is no impediment to such meetings and visits). As explained above, when visits are allowed, the detainees are taken as soon as possible to a place outside the facility, where the meetings are held.

In this context, we should emphasize that the IDF Control Center, which gathers the information on the location of each and every detainee, is instructed to explain to every person who contacts the Control Center to learn the whereabouts of a persons detained in Facility 1391, that the detainee is detained in the facility, and the Control Center is required to provide every person who requests it a clear address for submitting requests, inquiries, and letters relating to the particular detainee.

As regards the family and attorney, there is no difference whether they know the physical location of the facility, or do not have that information, for even in a normal case, they are not allowed to meet the detainee without first obtaining approval and following coordination, and the same is true in the

matter presently before the court. The only difference is that, in a normal case, they know where the detainee about whom they submit their request is situated, while they do not have this information if the detainee is being held in Facility 1391. Also, it is possible that slightly more time may pass before the visit is made, though every effort is made to enable the visit as quickly as possible, and though visits in detention facilities are not necessarily made "from one moment to the next." Therefore, it is argued that, as regards this subject, the detainees' rights are not infringed in any way.

73. It should be added that, in accordance with the objective of the section, it is necessary to take into account that there are more actual and legitimate interests, which require that the location of the facility remain secret. Any interpretation that ignores this fact is improper.

In these circumstances, the Respondents are of the opinion that, in interpreting the purpose, it is necessary to interpret the obligation to provide notification as set forth in the statute as a duty to deliver notification of the detention of a person, indicating that the place of detention is facility X, stating either its name or nickname, and there is no obligation to provide the physical location of the facility.

74. <u>In summary</u> of our response to this contention of the Petitioner, which we believe is the principal legal contention that lies at the heart of the petition, we wish to emphasize that the purpose of the notification provisions can be fulfilled, as we have shown, also when the physical location of the facility is not disclosed. Rather, the purpose for which the location of the facility is confidential would be completely frustrated if the state is obligated to reveal its location. If that occurs, there is actual danger of severe harm to state security. Therefore, we request that the notification provisions be interpreted based on purpose, in accordance with the above interpretation.

75. <u>The Petitioner's third contention</u> is that the failure to publish the location of the detention facility infringes substantive rights of the detainees, contrary to the Respondents' contention. Therefore, even if there is no requirement in law to publish where the detention is taking place, there is an obligation to publish it because of the resultant infringement of the detainees' rights.

We shall analyze this argument by reviewing the rights mentioned by the Petitioner, one after the other, and shall show that this argument is baseless,

for no substantive right of detainees held in the facility has been infringed following the failure to reveal its location.

There is reason why, in the part describing the rights that have purportedly been infringed, the petition did not refer to any contention raised in the affidavits supporting the petition, as a basis for this contention.

76. In this context, the petition first mentions that the detainee's lack of knowledge as to where exactly he is located is liable to "disorient" him and raise a fear that he will be "made to disappear and be forgotten," which is liable to cause psychological harm.

77. With all due respect, this is mere conjecture. From the moment that notification is given to the family of the detainee that he is in detention and the family is given an address to make requests and inquiries, the detainee has no reason to feel anxiety that he has been made to disappear or is forgotten. The important information that has to be delivered relates to the fact of the detention and to the way to contact the detention authorities, and not to the physical location of the detainee.

78. Furthermore, even if there was substance to this contention, the harm to the detainee is marginal, and this consideration must be weighed against the security considerations mentioned above. In our opinion, such weighing of considerations must lead to the conclusion that the fear of harm to state security prevails in the present circumstances.

79. It is further contended in the petition that <u>the right of detainees to be visited by relatives and friends at the place in which they are detained is a fundamental right that is impossible to exercise if the location of the detention facility is not revealed.</u>

In this context, the Petitioner refers to Section 12(c) of the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Detention Conditions), 5757 – 1997 (hereinafter: the Detention Regulations), which state 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… "**

80. Note well, the Petitioner ignores Section 12(b), which states that:

> **"A detainee against whom an indictment has not yet been filed <u>shall not be entitled to receive visitors in the place of detention</u>,**

unless the person in charge of the investigation confirms that such visit will not impede the investigation."

The Petitioner also ignores Section 12(d), which states that:

"The commander of a place of detention may prohibit the entry of a person to the place of detention for the purpose of a visit… if he has a reasonable basis for believing that the visit of the said person in the place of detention <u>will harm state security</u>…"

Whereas, as explained above, the purpose of the facility is generally to hold detainees who are in interrogation, in circumstances that, as a rule, do not enable visits by family members, this problem does not arise in the matter of relatives visiting detainees in the facility.

In any event, if it is found that one detainee or another is entitled to receive visits by relatives, there is nothing prohibiting the visit outside the facility, at a prearranged site.

81. <u>Another contention is that the failure to reveal the location at which the detainee is being held infringes the right of the detainees to meet with their attorneys, which is a fundamental right.</u>

Nobody disputes, of course, that this right is a fundamental right. However, the right of detainees in the facility to meet with their attorneys is zealously protected, and nobody infringes that right. Therefore, whenever there is no specific statutory prohibition on such a meeting, the visit is allowed, outside the facility, at a prearranged site, and as soon as possible after the request to make the visit is submitted.

By way of illustration, Obeid and Dirani met numerous times with their attorney, outside the facility, without problem.

Similarly, one of the affiants, Mr. A.A., met with Attorney Abu Ahmad, from the office of Attorney Leah Tsemel, on 10 July 2003, a meeting that was arranged very quickly, and was held immediately following the request for the meeting.

Therefore, in this subject, too, no proof of infringement of the detainees' rights has been provided.

82. <u>As regards the "right to a public hearing,"</u> as a rule, in rare cases only were hearings held to extend detention in the facility, and these were cases in which the detainees were not represented. In any event, there is nothing to prevent such a hearing, held in open court, from being held outside the facility.

83. Regarding the right to meet with members of the clergy, with consuls (in the case of foreign nationals), with representatives of the Red Cross, and with assistance organizations (for detainees entitled to receive such visits), here, too, there is nothing to prohibit such visits – when allowed pursuant to law – outside the facility. The Respondents have so acted in the past. In this context, we mention the cases in which Red Cross representatives met with detainees who were interrogated in the facility by the GSS and with other detainees who were interrogated in the facility. These visits were made, as stated, following prior arrangement, outside the facility.

84. Regarding the right of Red Cross representatives to visit places in which protected persons and prisoners of war are held, this right does not apply in instances in which reasons of security prevent the visit. As stated, the location of the facility is secret for security reasons, and thus it is not possible to allow Red Cross representatives to visit these detainees inside the facility, but, as noted, visits are allowed outside the facility at which the Red Cross can ascertain the detainees' condition.

85. In sum, we see from the above that no substantive right of the detainees is infringed as a result of the location of the facility being kept secret. Thus, this contention, too, should be rejected.

86. The Petitioner further argues that the physical location of the detention facility cannot be allowed to remain secret because secrecy prevents it from being able to monitor the operation of the facility.

This contention is incorrect, as we shall show below.

As we all know, responsibility for the maintenance of proper conditions in detention facilities lies with the official empowered to declare a place of detention as a prison or house of detention.

When military prisons are involved, as in the present case, the official so empowered is the minister of defence, and it is the duty of the minister of defence to ensure that the conditions in the houses of detention comply with the law.

And indeed, to ensure that the declared prisons comply with the law, regular monitoring takes place, in accordance with an internal procedure of the judge advocate general's office. The monitoring is conducted by legal officials from the judge advocate general's office.

Such monitoring is conducted, of course, also as regards Facility 1391, when detainees are held in the facility.

In addition, as mentioned in the factual part, officials unrelated to the defence establishment, including ministers of justice, the attorney general, the state attorney, and others, have visited the facility.

Furthermore, every detainee is entitled, of course, to complain about the conditions of his detention and to have the matter presented for judicial review, and, where necessary, there is no prohibition on opening the facility to Israel's judges to examine the detention conditions.

Also, there is nothing prohibiting parliamentary monitoring of the facility, about which the Petitioner especially complains, provided that the visiting members of the Knesset meet the field security restrictions for the security reasons that require keeping the location of the facility secret. Therefore, there is nothing to prohibit, for example, visits by members of the Secret Services Subcommittee of the Foreign Affairs and Defence Committee, whose visit at the site would not raise any field-security problems.

As regards visits at the site by representatives of the bar association and of human rights organizations, the statutes do not provide any requirement that such visits be allowed, and in other interrogation facilities, too, such visits are not customary.

87. The other provisions of law to which the Petitioner refers deal with the power of an administrative official to declare a certain place a place of detention. The Petitioner also finds in these provisions a source of the obligation to disclose the physical location of every place of detention. Here, too, the contention is mistaken.

In our matter, the relevant provision is Section 505 of the Military Justice Law, which empowers the minister of defence to set forth by order that the place described in the order will be a military prison or military detention center. Such order must be published in the military commands. It does not have to be published in *Reshumot* (Section 506 of the Military Justice Law). Pursuant to this authority, the minister some time ago declared the facility presently under discussion a military prison. See Appendix P/45 of the petition.

The Petitioner argues that this provision requires that the physical location of the prison be stated in the order. This argument is unfounded in law, and we are of the opinion that the considerations set forth above allow the minister to

declare a facility whose name alone is given, without having to state where it is located. The minister so acted in the present case, and that action was not improper.

88. Another principal argument raised by the Petitioner is that the facility should be closed because of the severe detention conditions prevailing there and because of the interrogation methods used in the facility. We responded at length to this contention. In brief, we argued that, first, the contentions raised regarding these matters have not been proven by the Petitioner. In the alternative, we argued that, even if one contention or another was substantiated, it does not follow that the proper relief is granting an order to close the facility. At the most, it would be proper to issue an order directing a change in the specific detention conditions or prohibiting the use of a specific interrogation method. In any event, the Petitioner's contentions did not require issuance of the order requested in the petition. Therefore, this argument, too, should be rejected.

89. As regards the Petitioner's contention, raised at the end of the petition, that the state has other tools that enable it to achieve the objective for which the location of the place is kept secret (Sections 81-82 of the petition), this contention is unavailing, for the tools suggested by the Petitioner fail to protect the special security needs underlying the continuing secrecy of the facility.

Moreover, we believe that the proposal that the tools suggested by the Petitioner (postponing notification of the detention, prohibiting meetings with attorneys, postponing bringing the detainee before a judge, etc.), if adopted, would violate the dignity and rights of the detainee to a far greater extent that the ham caused to the detainee (if any harm is caused) currently.

However you look at it: Is it preferable to delay delivery of notification to the detainee's family about his detention rather than deliver this information and also the location of the detention (albeit not its physical location)?! Is it preferable to prevent the detainee from meeting with his attorney, in order to protect the secrecy of the location in which the detainee is being held, rather than enable a meeting outside the detention facility?! The answer to these questions is clear, and for this reason, too, the Petitioner's argument should be rejected.

90. In conclusion, for the reasons set forth above at length, the petition should be denied.

The application for a temporary injunction

91. As regards the application for a temporary injunction that would prevent use of the facility until a final judgment is given on the petition, this, too, should be rejected. Granting such a request would harm vital security interests, and is thus unjustifiable. On this matter, we request to respond at length *ex parte.*

Furthermore, granting a temporary injunction would change the status quo, thus making the request unjustifiable. The relevant principle of law is that:

> **"Interim orders are given by the High Court of Justice to preserve the status quo at the time the application is made, in order to prevent a change in the situation to the detriment of one of the litigants… so long as proceedings are pending in this court."**

HCJ 345/61, *Al-Kazen v. Director, Jerusalem Broadcasting Service, Piskei Din* 15 2364, 2366.

See also, Ranan Har Zahav, *Procedure in the High Court of Justice* (5751 – 1991) 92-97.

Therefore, it is requested that the Petitioner's application be denied.

92. To verify the facts set forth in this response, attached hereto is the affidavit of the person referred to as "Adi," who is in charge of Facility 1391.

Today: 3 Kislev 5764 (28 November 2003)

[signed]

Shai Nitzan
Acting Head of Special Functions