



International Commission of Jurists, Swedish Section

“FACILITY 1391” a secret prison

**Report from a hearing in the High Court of
Justice in Jerusalem, 01/12/2003**

including preparations

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INTRODUCTION

At the request of HaMoked - the Center for the Defence of the Individual, we were appointed, by the Swedish section of International Commission of Jurists- ICJ- (www.icj-sweden.org), as trial observers to be present at a trial in the Supreme Court sitting as the High Court of Justice in Jerusalem. It concerned a case where HaMoked had filed a petition to direct the State of Israel, the Israel Defence Forces, the General Security Service, the Israel Police Force and the Commander of the detention facility known as “Facility 1391” to examine the legality of this facility and a request to the High Court to issue a temporary injunction to not hold a person in custody in the detention facility until the completion of the proceedings of the petition.

Our preparations started in Sweden by reading the following background information:

HaMoked’s petition

an article in the Associated Press by Gavin Rabinowitz, 29 June 2003,
an article in the Swedish newspaper Dagens Nyheter, 1 July 2003,
an article in the Israeli newspaper Haaretz magazine 22 August 2003,
an article written by Jonathan Cook ,12 November,about “Facility 1391 Israel’s Guantanamo”
and an article in the Guardian 14 November 2003.

Before the trial we had a meeting with HaMoked in East Jerusalem.

The aim of the report is:

- to give the background of the petition
- to give HaMoked’s opinion of the secret prison “Facility 1391” and the State Attorney’s response to this
- to describe the procedure in the High Court of Justice including our impressions of the hearing

HaMoked

HaMoked is an Israeli organization founded in 1988 to defend human rights in the Occupied Territories. It has provided assistance to several thousand Palestinian victims of violence, human rights abuses and bureaucratic harassment. HaMoked’s main objective is to assist Palestinians whose rights are violated due to Israel’s policy. HaMoked registers complaints and follows them through administrative and legal channels until the matter is successfully resolved. In addition to its individual assistance, HaMoked promotes human rights at the policy level. (www.hamoked.org.il and www.hamoked.org. The email is: mail@hamoked.org.il)

The nature of the petition

The secret prison 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 or where they come from. Furthermore, it is not known which authority was responsible for the arrest and bringing them to the facility, neither is it known who conducted the interrogations in the facility, nor whether they had authority to do so..

The reasons for the arrests as well as the fate of some of the detainees remain unclear.

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.

The detainees' attorneys and relatives, Members of the Knesset, members of the Knesset committees, representatives of Human Rights organizations, both local and international, and representatives of international humanitarian organizations, most notably the ICRC, have been denied access to the facility. The facility has been operating for many years without being declared a detention facility, as required by statute.

The objective of the petition is

- to examine the legality of the operation of Facility 1391 as a detention facility 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.

The background of this petition

It began with HaMoked's filing of two *habeas corpus* petitions to IDF (Israeli Defence Forces) to locate three detainees, Palestinians from the Occupied Territories. Efforts by relatives as well as by HaMoked to locate them had failed. Little by little, details about the secret detention facility were exposed. During the many hearings in the court it became known that the facility later was declared a military prison with the

code name “Facility 1391”. HaMoked gathered information from former Lebanese detainees and from Palestinians who were held there in 2002-2003. An affidavit was also taken from a British national of Lebanese extraction who was brought to the said facility as well as affidavits from other ex-detainees.

After a hearing in September 2003, the court suggested HaMoked to withdraw the petitions relating to the specific petitioners, whose individual matters no longer were relevant (they were transferred to other facilities), and instead file a new petition on the question of the constitutionality of a detention facility whose whereabouts are defined by the state as secret.

The result is the present petition from HaMoked which contains the following.

The known facts about the Facility 1391

The facility managed to operate secretly for a prolonged period despite the large number of detainees, 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. Many affidavits were given to HaMoked about the situation in the facility as follows:

The detainees have testified that, at the time of arrest, their hands were tied behind their backs. Their legs were shackled, and a chain linking the handcuffs and leg shackles was used. Their heads were covered with an opaque sack on which dark sunglasses were placed.

None of the detainees were informed during the detention where they were being held. They were told “you are on the moon”, “you are in a grave”, “you are outside Israel”, “in a submarine”, “in space”, on another planet” in order to deepen the sense of abandonment.

They were placed in windowless cells. The detainees did not know if it was day or night. They had to guess the time for prayers and they had difficulty in keeping track of the number of days they had been in detention.

From the moment they arrived at the facility and during their incarceration there, which lasted in some cases for months and even years, they were kept in total isolation, making it impossible to make contact with persons inside the facility, much less outside.

The solitary cells had no windows. The walls were painted a very dark colour. It was impossible to read in the cell, if they had something to read. Noise was deliberately generated in the cells. When being taken

from the cell they put a sack on their heads. The only alleviation of the sensory deprivation was when they were interrogated or undergoing medical examination. The soldiers woke them at night by pounding at the door of the cell and the soldiers made other noise in order to prevent them from sleeping. Detainees were forced to undress in front of soldiers who kept them in cells covered with excrement. A stench steadily grew in the cell because the detainees were forced to remain with his feces in a tiny cell for days on end. One case reported that it was impossible to maintain personal hygiene. Another case reported that he was not allowed to empty his can for nine days. Severe beatings and a case of rape are mentioned in affidavits. The detainees had to cover their heads and put their hands on the wall when a soldier entered the cell. To undress in front of mocking soldiers was a routine.

During the very long interrogation time they were forced to sit on a chair without a back receiving punches and blows. Others have mentioned methods as “beatings, pushing detainees off the stool, stamping on them, making them eat cigarette ashes, shakings, forcing a stick up their anus-or at least the threat of it. One detainee was told that his son had to be placed in the worst cell until he -the father-confessed. Another detainee was told that they were going to arrest his father and mother.

The detention conditions made it impossible for the detainees to maintain their personal hygiene. Some cells had no bathroom or running water. Rather than giving them a towel they got a smelly rag. Detainees have testified that they were not given soap or other items to wash themselves and not given a change of clothes and sometimes they were left without underpants. The cells were moist and damp. The mattresses were damp and filthy. The cells did not have windows, only a small chink in the door. The ventilation was poor. The clothes and blankets did not protect the detainees from the cold. They underwent a daily check by a medic and from time to time by a physician. There are many complaints of poor medical treatment. The doctors’ recommendations were not followed. They lost their humanity and suffered skin diseases. One detainee lost 14 kilograms during his stay in the facility. Many testify about severe mental distress, the feeling that they were losing their minds. The detention period was indefinite. Some were held for many months and some for many years.

HaMoked was told that Police’s Kishon Detention Facility controlled the facility. Later this information was contradicted. It was found that the interrogators were not only from the Israeli Police Force, they were from the General Security Service (GSS).

After the *habeas corpus* petitions were filed, the three detainees were transferred to other places of detention. In a court hearing in March 2003 it was decided that GSS “no longer needs to use the facility” and therefore the “petition was moot”. But in later hearings they said that “a few” detainees were being held there and again that was changed later on to “no detainees” are being held in the facility.

Some of Hamoked’s legal arguments

- The fundamental rule is in section 7 of the Criminal Procedure Law (the Detentions Law) which provides:
- A person shall be held in a place, under the responsibility of the Israeli 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 *Reshumont*.
- Section 69 of the Prisons’ Ordinance deals with the declaration of a site as a prison.
- The Military Justice Law is about the obligation to give notification of the place of the detention.
- The Imprisonment of Illegal Combatants Law requires information to the detainee about the place where he is being held.
- The Emergency Powers Law states, in section 3, the obligation to mention the actual place of a detention
- Article 23 of the Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) requires the detaining power to provide all useful information on the geographical location of prisoner of war camps.
- Article 8 in the Fourth Geneva Convention is about “protected people” and article 106 is about the right of a detainee to inform his family.
- Military legislation in 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.

Expert opinion

To prove the consequences of the detention conditions and methods of interrogation, HaMoked attached a written expert opinion to the petition from Dr Yehuakim Stein, a Jerusalem psychiatrist.

Hamoked's written epilogue in the petition

- Who are the secret officials who hold the detainees in the facility? Who is the source of their authority?
- It is clear that concealing the location of the detention facility contravenes Israeli domestic law and international law.
- It is clear that concealing the location of the detention facility inside a secret army base frustrates the exercise of the detainee's rights and neutralizes the monitoring of the detention conditions in the facility.
- It is clear that the secrecy of the facility provides a veil for the use of forbidden methods of interrogation that constitute cruel and inhuman treatment, and also torture. The facility must be closed.
- Any of these facts taken separately 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.

The State Attorney's response to the petition

Secret Facility

There are substantive and legitimate reasons why the state keeps the physical location of the facility secret. These reasons are confidential for reasons of state security. In any event we wish to present these reasons to the court at length *ex parte*.

The facility –Facility 1391- is located within a secret army base. It 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 “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. Because of the uniqueness of the facility, only few detainees were kept there over the past five years except during the Operation Defence Shield

when the General Security Service used the facility on a temporary basis. 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”. On March 2003 the situation changed following a decision that the General Security Service no longer needed this facility for its use.

The argument that keeping the location of the detention facility secret infringes the detainee’s rights is baseless. If any rights of the detainees are infringed, the infringement is relatively minor, and justified when weighed against the grave harm to state security.

The statement that the conditions in the facility are harsh is unfounded. The conditions in the facility meet the requirements of the law and the interrogation methods used in the facility are legal. Even if it is found that one or another of the conditions imposed on the detainees in the facility or of the methods used against them are illegal, this is no cause to close the facility, but, at the most, to bring about a decision that the state must improve the conditions or prohibit the interrogators from using a particular method of interrogation.

The State Attorney’s opinion about the conditions in the facility

A standard cell is 4.5 sq.m. There are a few larger cells, of more than 6 sq.m. and four cells smaller, about 3.7 sq.m. Every cell has a ventilation system. Almost all the cells have “Turkish toilets”. Two cells have toilet bowls and only four cells have chemical toilets.

Each detainee, in the facility, receives personal items, including clean clothes, underwear, a towel, socks, slippers, mattress, blankets, bath soap, toothbrush and toilet paper. The detainees receive three meals a day from the facility’s kitchen, which also provides the food for the soldiers in the facility. The detainees are allowed to send and receive letters.

A medic is located in the facility and every detainee is examined once a day. A physician examines each detainee at least once a week.

Detainees are allowed to meet with attorneys, unless an order was lawfully issued specifically preventing such meetings. These meetings are held outside the facility. Meetings with representatives of the Red Cross are allowed when a meeting is requested and when there is no special reason not to allow it. The meeting is held outside the facility. The conditions of the facility and the conditions in which the detainees are being held are monitored in the same manner as other military prisons.

Monitoring is conducted by IDF personnel from the judge advocate general's office. Visits to the facility have been made by other governmental agencies. Therefore the detainees in Facility 1391 are provided with 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 persons 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.

What is said in the petition about the conditions in the facility and the way detainees have been treated in the facility are; baseless, unsupported by fact, this contention is false, is insubstantial, is false, is incorrect, is a complete lie, do not exist etc.

"As we mentioned, our position is that most of the contentions are unrelated to the relief that the petition request – the closing of the Facility 1391".

THE HEARING IN THE HIGH COURT OF JUSTICE

The hearing took place in one of the court rooms in the High Court of Justice on the second floor in the very beautifully designed building. There was no problem for us to enter. No one asked for our identity cards.

Present were: three judges, Chehin, Beinish and Chiot, two servicewomen responsible for taking minutes, three lawyers from HaMoked, Leah Tsemel, Manal Hazzan and Yossi Wolfson, and the State Attorney, Shai Nitzan, aside from us and our interpreter. Many listeners were also present.

The HaMoked lawyer Leah Tsemel informed the court of our presence. One of the judges asked for more information about us. The lawyer explained about ICJ and the aim of our presence.

First one of the judges expressed his anger at the State Attorney who had only one day in advance handed over his response to the petition. Then the judge raised objection that HaMoked had filed one petition which included both the question about the facility itself and also about maltreatment of individuals. He said "this is not acceptable" and "the existence of the facility is one petition and what is going on inside the facility is a different subject which can not be discussed here".

HaMoked's lawyers emphasized the importance to show what can happen inside a secret facility by giving examples from detainees' affidavits about sleep deprivation, torture methods, isolation and that the facility is used to create fear.

One of the judges expressed shock at the methods of interrogation and conditions of detention and criticized the conditions in the facility and said that the "appalling descriptions require investigation and clarification". One judge referred to decision 1999 in the High Court of Justice about the use of humiliating and inhumane methods which is forbidden.

HaMoked's lawyer continued to give examples of very bad treatment in the facility. With anger, one of the judges said that HaMoked cannot go on discussing the conditions "if you do not accept this you can go home". The judge said that there had not been any complaints from the detainees about the condition and said that HaMoked had no authorizations from the detainees.

The judges made clear that the complaints regarding the conditions of interrogation and detention had to be dealt with by the Department of Clarification of Complaints. This department is responsible for investigating complaints from detainees who have been interrogated by the General Security Services within the office of the State Attorney General and the Military Attorney General.

The judges ordered the State Attorney to check the conditions in the facility. The State Attorney responded that they do not need an order from the court to check the situation because a special section does it regularly.

The decision in the High Court of Justice

In the end of the hearing the High Court of Justice issued an *order nisi* regarding the secrecy of the physical location of the facility named Facility 1391 and required the State Attorney to explain within 45 days the reason for the secrecy. The court did not grant a temporary injunction.

Our comments

It was clear that the judges were interested to get more information about our presence. The lawyers' opinion was that our presence had made impact on the judges to some extent. The procedure in the court followed international standard. It was a public hearing and the parties could express their views. The court's decision to issue an *order nisi* implies that they took HaMoked's petition seriously.

The judges' decision not to include the conditions in the facility shows that they did not understand the very important point in the petition namely that the **secrecy** is both related to the location and the conditions.

It is important that the judges take into consideration that a secret facility without no insight can create inhuman treatment.

HaMoked's decision to file the petition has at least highlighted the very important matter - if it is legal to run a secret facility. It is now well known around the world that Israel has a prison named Facility 1391 located on a secret army base.

If the State of Israel has nothing to hide why does it not, at least, allow the ICRC access to the facility?

It is important to send a trial observer to the next hearing in the High Court of Justice.

More information about the Facility 1391 and the details in the petition, the response and the decision, can be found on;
www.hamoked.org.