**At the Supreme Court** **HCJ 9733/03**
**Sitting as the High Court of Justice** **8102/03**

**HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
represented by counsel, Att. Daniel Shenhar et al.
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555

**The Petitioner**

v.

1. **The State of Israel**
2. **The Israel Defense Forces**
3. **The Israel Security Agency**
4. **Israel Police**
5. **Commander of the Incarceration Facility named "Facility 1391"**
   by the State Attorney's Office
   Ministry of Justice Jerusalem

**The Respondents**

# Response on behalf of Respondents to Petitioners' Request to Submit Document

In accordance with the decision of the Honorable Court dated 22 June 2009 which was received on 24 June 2009, the State's response to Petitioner's request to submit a document is hereby filed.

According to the request, the Petitioner seeks to submit to the Court the concluding observations (hereinafter: the conclusions) of the UN Committee against Torture (hereinafter: the Committee), as it is of the opinion that this document has validity for the continued proceedings in this case.

The State opposes submission of the Committee's conclusions as, in its view, they are irrelevant for the review. We shall elaborate below:

1. A review of the first part of the conclusions which the Petitioner seeks to submit indicates that the Petitioner wishes to inform the Court of the fact that the Committee voices "concern" over a certain ruling of the Supreme Court in which a number of petitions concerning Facility 1391 were rejected (the reference is to the judgment rendered in HCJ 11447/04, 1081/05).

It is our position that this information – regarding the "concerns" an international committee has over a judgment handed down by the Supreme Court – is entirely irrelevant to the review conducted by the Supreme Court – particularly considering that the Committee never held hearings on the merits of the petitions, never reviewed all the Court documents submitted and only heard brief arguments in this context.

2. In any event, these petitions (in which arguments concerning the exertion of pressure during interrogation and holding conditions in the facility) **are entirely irrelevant** to the current petition – which concerns an entirely different question, and for this reason also, the request must be denied.

3. The Committee subsequently states its opinion that a detainee must not be held in a "secret detention facility". However, as clarified at length in the context of hearings in the petition, this detention facility is not "secret", as reports regarding detainees held in it are submitted in accordance with the law, meetings between counsels and detainees are made possible, etc.
   The only detail which is prohibited from disclosure is the facility's physical location. In any event, for this reason also, the conclusions of the Committee are irrelevant to the petition at hand. Moreover, in this context too, the Committee did not hear the State's claims as they were presented to this Honorable Court and based its position mainly on arguments presented to it by various organizations and on a very brief statement by the State on this matter – which focused mainly on the fact that no detainees have been held in the facility since 2006.
   Therefore, for these reasons also, we seek the rejection of the request.

4. As a side note, we shall note that Article 5 of the request states the following: "attempts by the undersigned to obtain the consent of counsel for the Respondents to the submission of this document have failed".

   For the sake of propriety, we shall clarify that these attempts amounted to counsel for the Petitioners speaking with the undersigned's intern who informed him that he was not familiar with the petition and that he must speak on this matter with the undersigned's assistant, who was in a meeting at the time.
   Counsel for the Petitioners settled for this, did not bother trying to make further contact and on the very same day submitted the request to the Court.
   It is rather difficult to call these actions "attempts by the undersigned to obtain the consent of counsel for the Respondents to the submission of this document have failed".

5. In conclusion, for all the reasons detailed above, we request the denial of the Petitioners' request.

6. Beyond this, we wish to note that there have been no changes to the State's position regarding the manner in which Facility 1391 is used.
   In this context we recall that in the first supplementary response submitted by the State on 15 August 2005, the Court was informed that security officials have decided, on the basis of the suggestions of the Honorable Court and with the authorization of the Attorney General to "establish an arrangement which significantly restricts use of Facility 1391 for the purpose of holding detainees". The response briefly listed the details of the restrictive arrangement and emphasized that it had been determined, that as a rule, no detainee who is an Israeli resident or resident of the Territories would be held in the facility.

   Following a hearing held on 22 January 2006 and other suggestions made by the Honorable Court, the State took upon itself to further decrease use of Facility 1391 for the purpose of holding detainees and informed the Honorable Court of the same in a second supplementary response filed on 29 January 2006. The restrictions imposed concerned the identity of the detainees in the facility, the rank

empowered to authorize the holding of detainees in the facility and at the maximum length of time for holding in the facility.
The specifics of the restrictive arrangement were submitted to the Court in a confidential appendix.

This restrictive arrangement has remained unchanged ever since.

Therefore we again request the petition be denied.

Today: 23 Tamuz 5769
15 July 2009

[signed]
Shai Nitzan
Deputy to the State Attorney
(special operations)