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6. The Association for Civil Rights in Israel

Represented by its attorney, Adv. Dan Yakir and others
PO Box 35401 Jerusalem 91352

The Petitioners

Versus

The Minister of Defense

Represented by the State Attorney
Ministry of Justice, Jerusalem

The Respondent

Affidavit in Response

I, the undersigned, Brigadier Dan Halutz, hereby state as follows:

1. I serve as the head of the Operations Division in the IDF and am in charge, among other things, of the operational activity of the IDF in the Security Zone in Lebanon. I am making this affidavit in response to the order nisi that was issued by the honorable Court, on behalf of and with the consent of the Respondent - the Minister of Defense.

2. According to the terms of the order nisi the Respondent was asked to explain:

a. Why he would not order the immediate release of Petitioners 1-4 who are imprisoned in the detention facility in al-Khiam in South Lebanon;

b. Alternately, why would the request not be granted of Adv. Tamar Peleg-Sryck, to meet with the Petitioners in the al-Khiam facility;

c. Why would the request not be granted of Petitioners 5-6 to visit the al-Khiam facility in order to examine the conditions of detention and the condition of the detainees therein.

3. The Respondent will ask the honorable Court to reject the petition for the reasons set forth hereinbelow.

**THE PETITION SHOULD BE REJECTED IN LIMINE
DUE TO THE COURT'S LACK OF AUTHORITY TO DISCUSS THE
MATTER**

4. The said Petition is based on several assumptions that are intended to base the authority of the Respondent to decide on the remedies requested in the Petition. The Petitioners argue, that Israel is responsible for the welfare and fate of Petitioners 1-4, for three reasons:

a. By power of Israel's effective control in South Lebanon; and/or

b. By power of its authority over the SLA; and/or

c. By power of its involvement in the activity in the al-Khiam facility.

The Petitioners attempt to support these arguments in their Petition, by means of various documents. The Respondent will argue, that the assumptions in the Petition lack factual grounds, and therefore the conclusion deriving therefrom is not legally based. For these reasons the Petition should be rejected in limine.

5. The al-Khiam facility is located in South Lebanon, several kilometers north of the Israeli border. This facility is maintained by the South Lebanese Army (SLA). This facility serves both for interrogating detainees and for the imprisonment thereof. The interrogators, the jailers, and all of the staff of the facility are Lebanese, who serve in the SLA.

6. IDF soldiers or other Israelis are not routinely present in the al-Khiam facility, and they do not administer it, nor do they conduct interrogations there.

7. The al-Khiam facility serves for holding people (who are not citizens or residents of Israel), whose main activity was directed at harming the SLA or undermining security in the Security Zone, although part of their activity was sometimes also directed against the IDF.

8. The connection between Israel and the activity in the al-Khiam facility as far as concerns the interrogations that are conducted therein will be elaborated upon hereinafter in the chapter in which it will be clarified, that Israel does not administer the al-Khiam facility.

9. The Respondent does not deny that there is cooperation in various security areas between the security establishment of the State of Israel and the SLA, as both sides constantly deal with hostile elements in South Lebanon, and that the State of Israel has an interest in strengthening the SLA in its war against the said hostile elements.

Along with that, while both sides consult each other regarding the arrest and release of people in the al-Khiam facility, the issue of the release of Petitioners 1-4 by the SLA, as well as that of the rest of the detainees in the al-Khiam facility, is under the responsibility and discretion of the SLA, and not within the authority of the Respondent.

10. In this context, it would not be needless to stress, that since there is no effective Lebanese system in South Lebanon for maintaining security, and since the Lebanese government encourages warfare activity against the IDF and the SLA, the SLA was forced to take different actions for maintaining the security of the people and of the area, including the arrest and interrogation of people.

11. In these circumstances, in which the Petitioners are being held in Lebanon in an SLA detention facility, and the question of the duration of their detention there is under the responsibility and discretion of the SLA - the issue of releasing these detainees from detention, as well as the issue of the Petitioners' visiting the facility, do not fall within the authority of the honorable Court according to Article 15 of Basic Law: The Judiciary. Therefore, the Petition should be rejected in limine for this reason alone.

12. In this regard, the Honorable Court has already ruled in HCJ 4887/98 'Assaf vs. the State of Israel (not published):

"... It is known, that the authority of this Court extends to civil servants, but it does not apply, neither with regards to this matter nor with regards to any other matter, to the members of the South Lebanese Army."

MS/1 Photocopy of the ruling in HCJ 4887/98, which for some reason was not attached to the Petition, attached hereto and marked MS/1.

13. In this context, it would not be needless to mention, that the acceptance of the Petition, contrary to the previous ruling of the Court, practically means, that all of the actions of SLA soldiers would be subject to the judicial supervision of this honorable Court, and opening the doors to petitioners to complain about acts that take place outside the borders of the State, by people who are not civil servants or IDF soldiers, and which derive from interests that are not necessarily the interests of the State of Israel.

ON THE JUDICIAL FRAMEWORK FOR DEFINING BELLIGERENT OCCUPATION

14. Regulation 42 of the auxiliary regulations of the Hague Convention of 1907, which constitutes customary international law, that has been absorbed into the law of our land, determines when a territory is considered to be under belligerent occupation:

"Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."
(Our emphasis - M.B.)

15. From the language of Regulation 42 it arises, that a territory is considered to be under belligerent occupation when it is actually under military authority. The belligerent occupation covers an area that is territorially limited to the area in which there exist two cumulative conditions:

- a. The authority of a military government has been established;
- b. The said authority can be implemented.

>From Regulation 42 it arises, that a territory is considered to be under belligerent occupation when there is no other factor that is capable of exercising authority in the territory, and the territory is practically subject to the absolute control of the foreign army. Therefore, when a territory is not under the absolute control of the foreign army - the territory is not considered to be under belligerent occupation.

16. When the IDF was present in Lebanon in the years 1982-5, during the Lebanon War, and it established and managed a detention camp for Lebanese detainees, the Court ruled that even without establishing a special military framework for the needs of military government, the said territory

should be considered to be a territory over which the army took control in a practical and effective manner as being under belligerent occupation (High Court of Justice 102/82 Tsemel et al v. The Minister of Defense et al, Rulings 37 (3), 365, 373). The said ruling was given with regards to a period during which there were in Lebanon military forces many times larger than the IDF forces that are currently in Lebanon, in much larger areas of Lebanon, and when the army held thousands of detainees in what was for all intents and purposes a military installation. This factual basis does not exist at this time, neither with regards to the IDF's presence in Lebanon, nor with regards to the al-Khiam facility.

ISRAEL DOES NOT HAVE EFFECTIVE CONTROL OVER SOUTH LEBANON

17. Already in 1976 there was a certain presence of IDF forces in the Security Zone in South Lebanon. In 1985 the government adopted a resolution concerning the redeployment of the IDF forces for securing Israel's northern border, which contained, among other things, the following:

"... Stage 3 - The IDF will be deployed along the international border between Israel and Lebanon while maintaining the South Lebanon Zone (SLZ) in which local forces (SLA) will operate with support from the IDF."

18. Following the said government resolution, most of the IDF forces left Lebanon and the deployment of the forces in the Security Zone was also changed, with the main goal of the IDF forces being defending the northern border. In addition, the IDF also operates the Lebanon Liaison Unit (LLU), which provides civilian aid to the residents of South Lebanon. Among other things, this is done out of the assumption, that the said aid also serves the defense of the northern border. As will be elaborated upon hereinbelow, Israel did not establish a military government in the Security Zone, nor did it step into the shoes of sovereign as far as concerns the enacting of the governmental authorities deriving therefrom.

19. The government's resolution reflects a policy of support for the local Lebanese force, SLA, which operates in the Security Zone, and which bears a heavy security burden, and not a desire to maintain full Israeli control of the territory. It should be emphasized, that although the SLA Lebanese force has relations with the IDF, it was first and foremost established, by Major Sa'ed Hadad, already in the mid-seventies, in order

to protect the interests of the residents of South Lebanon, in a period during which a civil war was taking place in that State. Today, as well, the main goal of the SLA is protecting the interests of the residents of South Lebanon in the face of hostile elements that threaten to harm the residents of South Lebanon. For this reason the SLA maintains a presence in many outposts in the Security Zone.

20. The territory of the South Lebanon area is about 790 square kilometers. Approximately 75,000 Lebanese residents live in this area, and there are about 70-75 villages and three towns therein.

21. A state of de facto warfare exists in the Security Zone between different Lebanese elements, such as Hizbollah, Amal, the Lebanese army and others, and the IDF and SLA forces, while UNIFIL soldiers are also present in the midst. This warfare is conducted by means of all types of weapons - guns, hand grenades, mortars, cannons, tanks, aircraft, helicopters, anti-tank missiles, etc. This warfare is conducted by means of a variety of methods, which include not only laying land mines, but also close-range infantry battles, including attempts by Hizbollah forces to occupy SLA outposts, bombings and bombardments of outposts and civilian settlements, etc.

Thus, for example, since early 1998 to 30.8.99, there were 21 incidents of confrontations between IDF or SLA infantry forces and Hizbollah forces in South Lebanon; in the said period there were also 1888 incidents of firing at IDF or SLA outposts; in addition, there were 14 incidents of firing from the Security Zone towards the territory of the State of Israel.

It is known, that this warfare regrettably causes casualties on both sides.

22. As part of the preparation for these conditions of warfare, the IDF maintains a permanent presence in a very small number of military outposts in the Security Zone. In addition, from time to time the IDF carries out various activities also outside the outposts, in order to prevent terrorist activities by hostile elements. The IDF does not maintain army bases in South Lebanon, except for three locations.

23. The significance of the above is, that the nature of the IDF's presence in South Lebanon is completely different than the presence that the IDF maintained up to 1995 in Judea, Samaria and Gaza, where the army maintained a permanent presence in the heart of the Palestinian civilian centers, as part of implementing effective control of the territory. In addition, in Judea, Samaria and Gaza there was no other organized armed

force besides the IDF, and there was no other sovereign that exercised sovereign authorities in the territory.

24. As to the size of the forces acting in South Lebanon, it should be noted, that in 1998 there were more than 2,500 SLA soldiers in South Lebanon, compared to about 1,100 IDF soldiers. In 1998 there were more than 4,400 soldiers from the United Nations UNIFIL force (Appendix A/13 of the Petition, page 4). The meaning of this is, that the largest force that is active in South Lebanon is in fact the UNIFIL force, the second largest force is the SLA, and the IDF is the smallest force in the area.

25. In Section 37 of the Petition, it was argued that "the IDF and the SLA conduct searches in many villages in the area, and occasionally restrict the movement of the residents." This statement is based on a report of the UN General Secretary (Appendix A/13 of the Petition). In this context it should be noted, that for several years now the IDF forces hardly ever search villages in the Security Zone, and do not perform activities that are designed to restrict the movement of Lebanese residents. Actions of searching villages are almost exclusively performed by the SLA.

26. In Section 38 of the Petition it was argued that "Israeli forces conduct arrests in South Lebanon on a regular basis". This statement is based on an article published in Ha'aretz newspaper on 12.4.98 which is based on an Amnesty report on incidents in 1997 (Appendix A/16 of the Petition). This statement that is contained in the Petition is not correct, since the arrests in South Lebanon are conducted by SLA forces. To complete the picture it will be stated, that there are exceptional situations in which IDF soldiers are required to arrest people in South Lebanon, and thus, for example, in 1998 IDF soldiers arrested six people in the Security Zone, but they were released.

27. One of the examples for the absence of effective control of the territory is in fact the by-pass roads that the IDF built in South Lebanon. These roads were built in order to by-pass the Lebanese villages and to enable military forces to move without entering them, due to the danger that is inherent in driving within the villages and the increased friction with the Lebanese population that this would cause.

Building the roads indicates the ability to conduct the physical act of building a road in order to increase the soldiers' security, but at

the same time it testifies to the absence of effective control by the IDF in the populated territory of settlements in South Lebanon.

In the same context it should be noted, that by-pass roads were built in Judea and Samaria after signing the Declaration of Principles with the PLO, towards the transfer of control over Palestinian population centers to the Palestinian Authority, and the end of the IDF's effective control in the transferred territories.

28. No one contests, that the IDF and the SLA coordinate their military activity, since both forces are fighting the same enemy, and that the IDF has influence over the SLA; however, the SLA also has its own judgement concerning its military activity, and there are situations in which it decides to conduct independent military activity, which is sometimes opposed to Israel's security policy. Such independent actions by organized military units, which are not part of the IDF, indicate the absence of full effective control by the IDF in the territory.

As an example for the absence of military control in the territory by the IDF, it may be mentioned, that from time to time the SLA, in response to firing by Hizbollah, fires at civilian population centers, contrary to Israel's policy and to its interests and contrary to the understandings of the "Grapes of Wrath", and following which the State of Israel is harmed and complaints are lodged with the monitoring committee. For example -

a. On August 18, 1997, children, the orphans of an SLA commander, were killed in the Jezzín area from a land mine that was set by Hizbollah; in response, the SLA opened fire at the city of Sidon and caused several casualties and injuries; on the following day Hizbollah fired dozens of Katyusha missiles at the Galilee.

b. On August 25, 1998, Hizbollah forces fired at an SLA force in the Jezzín enclave, and in response the SLA fired at the town of Mashrara, which is located outside the Security Zone, wounding several civilians. In response Hizbollah fired dozens of Katyusha missiles at the Galilee.

29. A more prominent example of the independent judgement of the SLA occurred recently, in May 1999, when the SLA commander, General Lahad, decided to evacuate his forces from the Jezzín enclave, following several losses that were incurred by SLA soldiers in the Jezzín area. At a press conference General Lahad announced, that just as the decision to leave the SLA forces in Jezzín after the withdrawal of the IDF forces was his own, so was the decision now to withdraw the SLA forces from Jezzín his own decision. In this context it should be mentioned, that the general

announced his position to the relevant Israeli factors, and heard their positions on the matter before he went public with his decision on the matter, however - the decision was made by himself as the commander of the SLA, and as the person responsible for the welfare of his soldiers.

MS/2 - a photocopy of the transcript of the press conference is attached hereto and marked MS/2.

30. The meaning of the above is, that the IDF not only does not have effective control over the entire Security Zone and its main involvement is operational activity in the area, but also, that the extent of its influence over the SLA is limited, in light of the obvious difference between the two forces and the partially different interests of the two forces.

31. Up to now we have addressed the military side of effective control. In addition to this aspect, the IDF does not have effective control in civilian areas in the Security Zone, nor is the IDF interested in such control. Although the IDF has a unit that provides civilian aid to the residents of the Security Zone, the said aid is considerably less than that of the Lebanese government. Most of the civilian activity is performed by Lebanese government agencies. The Lebanese government continues to operate in different ways in the Security Zone, and examples of this activity will be specified hereinbelow.

32. The central Lebanese government is active in the Security Zone, among other things, in the area of public order. In Marj Ayoun there is a Kadi [Moslem priest], who was appointed by the Lebanese government and receives a salary therefrom, and he conducts judicial hearings on claims amongst Lebanese. There is also a Lebanese court in the Jezzine enclave.

In the Jezzine enclave, where an SLA brigade was deployed until recently, there was at that time (and now) the headquarters of the Lebanese Gendarmie (police). This police force handles investigations of criminal offences that occur in the area. In addition, the police are also active in the Security Zone. Charges are brought before Lebanese courts. In the event that a resident of the Security Zone is sentenced to a prison term - they serve the time in a Lebanese prison.

33. Other Lebanese government agencies also work in the Security Zone in South Lebanon, and consider themselves to be obliged to continue development works in the area. Among the activities of the Lebanese government in the Security Zone, the following may be noted:

- a. The Lebanese Ministry of the Interior has governors in Marj Ayoun and Hatsbaya and representatives in Bint Jebail, who handle the affairs of residents of the Security Zone.
- b. The Lebanese Education Ministry maintains the education and school system in the Security Zone: it determines the curriculum, finances the teachers' salaries and maintains the schools.
- c. The Lebanese Health Ministry operates clinics in certain villages in the Security Zone and even small hospitals.
- d. Water is supplied to the residents, among other ways, through the Lebanese water company. The Lebanese government handles the digging of wells in the Security Zone, and the establishment of pumping stations and systems of potable water, irrigation water and sewage.
- e. Electricity is provided, among other ways, by the Lebanese electricity company.
- f. The registration of lands in the Security Zone is done by the Lebanese government.
- g. The Ministry of Agriculture has established an agricultural school in al-Khiam and conducts educational and assistance activity for farmers.

34. The Lebanese government invests money in the Security Zone, and in previous years its investment were sometimes, according to the estimate of the security establishment, three times higher than the Israeli aid.

35. The significance of the above is, that when it is said, that Israel did not establish a military government in the Security Zone, this is not merely a matter of semantics, but rather patterns of activity on the ground, according to which the central Lebanese government continues to work all the time in various areas with connection to the Lebanese residents, and Israel does not prevent this in any way. This is, therefore, a complex reality, that includes the involvement of different parties, and which is far-removed from effective control by the IDF and Israel in the area.

36. In Section 40 of the Petition the Petitioners attempt to support their argument concerning Israel's effective control of South Lebanon by quoting from the resolution of the Ministers' Committee from 1.4.98, to adopt Security Council Resolution 425. In the said resolution by the Ministers' Committee it was stated, among other things, that "the government of Israel calls upon the government of Lebanon to begin

negotiations, according to UN Security Council Resolution 425, for returning the control of the Lebanese government to the areas that are currently controlled by the IDF..." (Appendix /19 of the Petition).

As was noted hereinabove, there are areas within the Security Zone in which the IDF has outposts and bases for the purpose of the military activity of IDF soldiers, and IDF soldiers perform security activity, as necessary, in different places in this area. The government's resolution should be seen as directed towards returning the Lebanese government's security control over South Lebanon, instead of the IDF forces that are currently forced to perform security activity in this area, and not as a statement that Israel is the sole effective ruler in the entire security area.

37. In Sections 42-45 of the Petition, the Petitioners attempt to support an argument, according to which there is wide agreement in the international community, that Israel controls South Lebanon, and this is based on statements of the U.S. State Department, the UN Commission on Human Rights, the International Red Cross and Amnesty International (Appendixes A/22 and A/23 of the Petition). The statements in the said documents are very general, they do not provide an in-depth examination of the relevant facts, and they cannot establish binding factual findings on the matter at hand.

38. In light of the above, the position of the Respondent is, that both from the military aspect and from the civilian aspect, the IDF does not have effective control, in the sense of full control, over the entire Security Zone, and especially in the al-Khiam facility, and therefore it cannot be said, that this facility is under the authority of the Respondent or that of the State of Israel.

THE SLA IS NOT SUBORDINATE TO THE IDF

39. As was stated above, the SLA is comprised of 2,500 Lebanese soldiers. They are headed by a commander, General Lahad. This army has a common hierarchic military structure. The SLA recruits soldiers who are Lebanese living in the Security Zone.

40. The State of Israel assists the SLA, among other ways, through financing, weapons and maintenance. Previously, the IDF also assisted the SLA by training its soldiers, and training even took place in bases in Israel; however, for about six years the SLA has been training its soldiers through different courses (basic training, command training, officers' course, medics, lookout). It should be mentioned, that sometimes Israel carries out professional training for SLA soldiers, such as in the field of navigation.

41. The IDF and the SLA coordinate their routine activity in the Security Zone, since there is no other possibility for effective and secure activity, when two military forces are active in the same area, each of which has a separate command headquarters. The IDF also tries to create a situation, in which the activity of the SLA is compatible with the policy of Israel, for example, so that there is no harming of innocent civilians.

42. Along with that, as was stated above, the SLA sometimes conducts military activity within and outside the Security Zone, according to the conditions to which it is subjected, based on the judgement of its commanders and [for] advancing its interests and goals. The SLA also makes decisions according to its interests, and the example of the withdrawal from Jezzini is the most striking recent example in this regard.

43. It should be noted, that the SLA also has certain funding sources of its own, since it collects a certain percentage of the salaries of about 2,000 residents of the Security Zone who work in Israel, and it also charges certain amounts for importing gasoline into the Security Zone from Israel, and for the transfer of merchandise to the Security Zone from Israel and from Lebanon.

44. On the subject of the detainees in the al-Khiam facility, as was clarified above and in response to the previous petition on this subject (High Court of Justice 4887/98 Assaf) - the question of their continued detention is under the responsibility and discretion of the SLA. Although Israeli security forces bring their position on the issue of the release of the detainees to the attention of the SLA, the decision on the detention, as well as on the release of the detainees, is in the hands of the SLA.

Thus, for example, in the framework of the relations between the IDF and the SLA, the SLA assists, by means of releasing detainees that it holds for the purpose of returning our prisoners or bodies of IDF soldiers, as recently occurred with regards to the body of soldier Itamar Iliya, RIP. However, the decision on who is released and who is not, is ultimately made by the SLA.

In the recent prisoner exchange, the SLA released detainees who were not on the list that Israel gave it, and also acted to include in the list certain names, according to its judgement.

45. In the framework of the cooperation between the State of Israel and the SLA, more than 18 months ago the SLA, at Israel's request, stopped the Red Cross visits and family visits at the facility, during the period in

which Hizbollah held the body of Itamar Iliya RIP. These visits were renewed after the return of the body of the commando soldier, and they now take place regularly (A/32 of the Petition, p. 205). It should not be concluded from this, that the SLA is subject to the authority of the IDF, but rather, that there are relations of cooperation and mutual aid between the parties, especially during periods of hardship of one of the parties.

46. In Section 54 of the Petition it was claimed, that the SLA is subject to the authority of the IDF also in light of the fact that Israel undertook on behalf of the SLA not to harm civilian targets in Lebanon, and that it represents it in the sessions of the monitoring committee that supervises the understandings of the "Grapes of Wrath" operation for examining disagreements concerning the understandings document. This claim

has no grounds. Only states appear at the sessions of the monitoring committee, not organizations such as the SLA or Hizbollah. Therefore, Israel addresses the activity of the SLA when required, to the same extent that the government of Lebanon addresses in the committee's session, the activity of Hizbollah and other terrorist organizations, although these organizations are not actually subject to its authority.

ISRAEL DOES NOT ADMINISTER THE AL-KHIAM FACILITY

48. As was stated above, the al-Khiam facility is administered, operated and guarded by Lebanese who serve in the SLA. The interrogators who work in

the facility also belong to the SLA. The documents that the Petitioners attached to the petition indicate that for some years there has been no Israeli participation in interrogations within the al-Khiam facility (appendixes A/5 A/8 and Section 59 of the Petition).

49. In Section 61 of the Petition it was argued, that it may be concluded from the fact that detainees were released from the al-Khiam facility in the framework of the deal for returning the body of Itamar Iliya, RIP, that the State of Israel is the supreme administrator and supervisor of the facility. As was stated above, the release of detainees from the facility was done in the framework of cooperation between the parties, and the recognition of the SLA of the importance of the exchange for the Israeli side and therefore came its response to the needs of the State of Israel. The same applies to the matter of suspending the Red Cross visits at the facility for a period of several months.

50. From the presentation of the facts in the Petition it arises, that visits by Israelis to the facility are very rare, and most relate to events that took place years ago (see A/35 newspaper interview with a detainee who

was released in 1993, A/36 newspaper interview from February 1997 with an anonymous Lebanese woman who does not specify the period during which she was in the facility, as well as the affidavit of Suha Bishara, Appendix A/6 of the Petition, who mentions that she was interrogated by Israelis in 1992, Section 62 of the Petition).

51. In this context it should be mentioned, that there is a connection between the General Security Service [GSS - Shin Bet] and the SLA as far as concerns the gathering of intelligence and interrogations that are geared towards preventing terrorist attacks in the Security Zone against IDF and SLA soldiers. In this framework GSS personnel cooperate with members of the SLA, and even assist them by means of professional guidance and training, however they do not participate in the frontal interrogation of detainees. According to what I have been told, GSS personnel hold meetings several times annually with SLA interrogators at the al-Khiam prison, and thus, for example, since 1.1.99 to the end of July there have been only three visits by GSS personnel to the prison.

52. In addition, it should be stated, that information from the interrogations in al-Khiam is transferred by the SLA to Israeli security forces. In addition, certain detainees under interrogation are examined by means of polygraph by the Israeli side in the framework of the security cooperation between the parties. However, this cooperation, which derives from the common goal of fighting elements that constantly endanger the security of IDF soldiers and of the northern region, bears no relation to control and management of the al-Khiam facility.

53. In Section 64 of the Petition it was argued, that "a large part of the detainees, who are held in al-Khiam prison, were brought to there after being arrested by IDF soldiers. Thus, for example, all of the Petitioners were arrested by Israeli forces or by joint forces of the IDF and the SLA." This claim is incorrect. The detainees in the al-Khiam prison, about one hundred people, including the Petitioners, were arrested by SLA forces.

54. Addressing the claim in Paragraph 65 of the Petition, it should be stated, that the guards and interrogators in al-Khiam do not receive their salaries directly from an Israeli officer, but rather from the SLA. A re-examination of the matter showed that this claim in the Petition was indeed correct, and therefore it was decided to cease the direct payment of salaries to members of the SLA who serve in al-Khiam, and that will be done starting from the next salary.

55. In Sections 68-70 of the Petition several newspaper articles taken from the foreign press are presented to prove the involvement of Israelis in what is transpires in the prison. Needless to say, those articles bear no weight as tangible evidence. Thus, for example, regarding the article of The Guardian from 25.5.98, which includes an interview with a detainee who was apparently released in 1998, after 12 years in prison, who describes the stages of his interrogation. It may be assumed, that his statements, in which he did not mention any date whatsoever, referred to the period closely after his arrest, in 1986 (?), and they bear no relevance to the present time (Appendix A/34 of the Petition).

The Associated Press article also addresses a prisoner who was released already in 1993, six years ago (Appendix A/35 of the Petition).

The third article that was attached to the Petition (A/36) presents a sort of interview with a woman who was not identified by name and in which there is no reference to the dates of arrest and release.

56. Despite the above, I would like to emphasize, that in the framework of the relations between Israel and the SLA, Israel sees great importance in activity for improving the conditions of imprisonment in the facility and in maintaining proper detention conditions in the facility. Israel has approached the SLA several times and requested to improve the conditions of imprisonment in the facility, and even provided the SLA with funding for improving the conditions in the facility. As was stated in Sections 21-22 of the Petition, different changes have indeed been introduced in the facility which significantly improved the conditions of imprisonment.

TO THE ADDITIONAL CLAIMS IN THE PETITION

57. In Sections 77-94 of the Petition the Petitioners address the legal aspect of detainees' right to fair representation. Obviously, there is no disagreement in principle that every detainee has the right to meet with a lawyer for the purpose of representing his interests. However, in the case at hand, the matter is within the authority and discretion of the SLA which, as stated above, is not subject to the authority of the Respondent.

58. In Sections 99-100 of the Petitions it was argued, that the SLA constitutes one of the State's authorities, in the terms of Section 11 of Basic Law: Human Dignity and Freedom. In light of the factual basis that was set forth hereinabove, the Respondent will argue, that the SLA is a foreign military force, which has not been given any governmental power by the Israeli governmental authorities, and it does not fall within the definition of a governmental authority of the State of Israel.

59. In Section 101 of the Petition the Petitioners argue, that even if the SLA is not the equivalent of an Israeli governmental authority, indeed "public law in Israel obliges the authorities of the State to see to it, that every body, which operates under its supervision and on its behalf, observes the principles of Israeli constitutional law and international law regarding the issue of human rights." This argument does not apply to the relationship between Israel and the SLA since, as was stated above, the SLA

is not subject to the authority of the IDF. As was stated, Israel influences the SLA to act as much as possible towards improving the conditions of imprisonment in the facility, and also assists it in this area, but the bottom line is, that the question of what procedures should be done in the facility is an issue that falls within the sole authority of the SLA, considering the overall complex conditions of the situation in Lebanon and the security and other necessities which it faces in upholding security in the Security Zone.

60. With regards to Section 102 of the Petition, which addresses the report of the Inquiry Committee concerning the events in the refugee camps in Beirut, it should be stated, that the Inquiry Committee did not determine any conclusions regarding the status of the State of Israel and its forces in South Lebanon. The Committee determined conclusions concerning the matter of indirect responsibility relating to the special factual situation that existed in the Sabra and Shatilla refugee camps, which led to the massive massacre of innocents. The Respondent will argue,

that there is no similarity between the factual situation in that case, and the factual situation at hand, in which the SLA has for years maintained an imprisonment facility for people who endanger security and human lives, and

in which there is no other governmental system in the area that is prepared to undertake the interrogation and detention of those people. Thus, for example, Suha Bishara shot General Lahad in South Lebanon and severely wounded him, and following that she was arrested.

THE FACTS CONCERNING PETITIONERS 1-4

61. On 19.8.98 the Military Attorney replied to the inquiry by Adv. Tamar Peleg-Sryck and specified the reasons due to which the SLA is holding Petitioners 1-4 in detention. From the factual information it arises, that all of the Petitioners were involved in one way or another in terrorist activity against the IDF and the SLA, and some of them even caused casualties to the SLA. In these circumstances it is obvious, that the release of the Petitioners might lead to endangering human lives (Appendix A/3, pages 49-50 of the Petition).

62. In these circumstances, and in light of the absence of any effective law enforcement system in South Lebanon that is able to guarantee the welfare of IDF and SLA soldiers, it is obvious that Israel has no interest in working for the release of Petitioners 1-4.

ADDRESSING THE REMEDIES REQUESTED IN THE PETITION

63. From the above it arises, that the Respondent has no legal authority to work for the release of Petitioners 1-4 who are held at the al-Khiam facility, and it is not clear why the Petitioners filed a petition specifically against him.

64. Regarding the requests of Adv. Tamar Peleg-Sryck and Petitioners 5-6 to conduct a visit at the facility, as an aside it should be noted, that this issue does not only concern the Respondent, who is not authorized to decide on this issue; moreover, since security considerations are involved. It is known, that Lebanon is one of the list of states, travel to which is considered to be a violation of the Law for Preventing Infiltration (Offenses and Judgement)-1954. According to Regulation 5 of the regulations in the appendix to the Ordinance for Extending the Validity of the State of Emergency Regulations (Travel Abroad)-1948, the entrance of an Israeli citizen into any of the states in the said list requires a permit from the Minister of the Interior.

From the Petition it arises, that Petitioners 5-6 did not make any prior contact with the Minister of the Interior and did not request his approval for leaving Israel in order to enter Lebanon for the purposes outlined in the Petition. Therefore, the Petitioners are certainly not entitled to the remedies in the Petition.

65. Addressing the remedies that concern Israeli elements entering Lebanon, it should be stated, that if Petitioners 5-6 had submitted the said request to the Minister of the Interior, then assuming that, among other things, the position of the security establishment would have been asked for, the Respondent would have opposed the request due to the security risk caused by Israeli citizens entering the Security Zone.

66. The purpose that serves as the basis for the request of Petitioners 5-6 to visit the al-Khiam facility, is their desire to examine the conditions there, according to them, due to the lack of clarity on this subject (Section 24 of the Petition). In addition to the position of the Respondent concerning the lack of IDF control over the facility, it should be said, that there are no real grounds for this claim, for several reasons, as follows:

a. It is known, that dozens of detainees were released from al-Khiam more than one year ago, in the framework of the exchange and the return of the body of soldier Itamar Iliya RIP, and these detainees can testify to the conditions in the facility.

b. Representatives of the Red Cross who come from Beirut visit the facility and maintain direct contact with General Lahad and submit reports on the subject.

c. Detainees' families routinely visit the facility and meet with their relatives, who can describe to them exactly what are the conditions at the site and what is the health condition of the detainees.

Therefore, there is nothing to prevent the flow of information concerning the conditions of imprisonment in al-Khiam, and there is no necessity for the Petitioners specifically to visit there in order to bring to light information concerning the conditions in the facility.

67. In light of all of the above, the honorable Court will be asked to reject the Petition.

68. This affidavit is supported by the affidavit of the person known as "Khalil" from the General Security Service for the purpose of confirming all of the facts concerning the GSS that are set forth in my affidavit.

69. I hereby state that this is my name, this is my signature and the contents of my affidavit are correct to the best of my knowledge and belief; the legal claims are correct on the basis of legal advice that I have received.

(signed)
Brigadier Dan Halutz
Confirmation

I, the undersigned, Gavriella Blum, Advocate, hereby confirm that on the day of 16.9.99 Brigadier Dan Halutz, who is known to me, appeared before me and after I warned him that he must state the truth, and that if he did not do so he would be liable to the penalties prescribed by law, he signed the above affidavit in my presence.

(signed)
Gavriella Blum, Adv.