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 Attorney Lea Tsemel and/or
Yossi Wolfson *et al*. of Hamoked: Center for the
Defence of the Individual
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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

Preface

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 cease to be used for interrogations or for holding persons in custody.

The ground for this unusual request is that the physical location of the Facility is kept secret. According to the Petitioner, the very secrecy of the Facility breaches various provisions of law and, therefore, for this reason itself, demands that it be closed.

In addition, the petition contends that keeping the location of the Facility a secret infringes various fundamental rights of detainees held there, and for this reason, too, the Facility should be closed.

Furthermore, the petition contends that use of forbidden and improper interrogation methods are used in the Facility and that detention conditions are harsh, and for this reason, too, it is demanded that the Facility be closed.

In the first hearing held on the petition, the Honorable Court issued an Order Nisi "**only as regards the secrecy of the physical location of the Facility**." The Court refused to issue an Order Nisi regarding all the other claims raised in the petition, which related to the interrogation methods and the conditions in the Facility.

Therefore, we shall relate in this response only to the question of the Facility's physical location. In this regard, it is argued that keeping the physical location of the Facility secret is justifiable and is certainly not grounds for closing it.

In support of this contention, it is first argued that there are *substantial and legitimate reasons why the state keeps the Facility's physical location a secret.* These reasons are, for the most part, confidential for reasons of state security. Thus, the response herein will be brief. In any event, we request to provide the Court, *ex parte,* with the reasons relating to state security. The state believes that these reasons require that the Facility's location be kept secret.

It is further contended that *there is no statutory requirement to reveal the physical location of every detention facility*. Indeed, the law requires that the detainee's family and attorney are to be notified that the individual has been detained, and to enable them to communicate with him (as long as such communication is not forbidden pursuant to law). However, this requirement does not prohibit the person from being held in a detention facility whose physical location is kept secret for legitimate reasons.

As regards the contention that the very secrecy of the detention facility violates detainees' rights, such a claim is baseless in that, *as regards the facility that is the subject of the petition, all the substantive rights of the detainees are safeguarded.* These rights include, in part, the right to reasonable detention conditions and the right to meet with counsel, family members, and every other person with whom detainees are entitled to meet (where not forbidden by statute). The Respondents will argue that, as long as all the detainees' rights are preserved, their right is not infringed in any way by keeping the location of the Facility a secret.

In the alternative, even if some right of detainees is harmed as a result of the secrecy, the harm is relatively minor, and justified when balancing it against the grave harm to state security that might result from disclosure of the detention facility's location.

Regarding the petition's claims about harsh detention conditions and the uses of improper interrogation methods, as stated, **no Order Nisi was issued**, so we shall not relate to them in this response. However, to complete the picture, it should be mentioned that these contentions were rejected the previous response filed by the state, which stated **that the conditions of detainees in the facility meet the legal requirements and that the interrogation methods used in the Facility are lawful and do not differ from the methods that are allowed and are used in other interrogation facilities**.

This, then, is a brief statement of the Respondent's position. Below, we shall relate at length to the question of secrecy. However, we shall first present a brief description of 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 inside a secret army base***. Security officials use the base for various confidential purposes, for which reason the location of the entire base is kept secret.

   For reasons of state security, we cannot disclose further details in this open response, but there will not be, of course, any problem in presenting them to the Court, *ex parte*, if the Petitioner consents.

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

   The detention facility *is not used as a routine detention facility,* but is intended, in general, *for special cases and for detainees who are not residents of the Territories.*

   The Facility is primarily used *as an "interrogations facility"* in special cases, and, as a rule, is not intended *as an "incarceration facility"* for persons whose interrogation has ended.

3. Except for the cases of two administrative detainees who were held in the Facility for years after their interrogation ended (Sheikh Obeid and Mustafa Dirani), and another detainee – H. M. – who was held in the Facility for a year and a half, and whose case involved exceptional circumstances and special reasons, the three of whom received better than usual conditions, *for years the Facility has only been used for interrogations,*

and shortly after completion of the interrogation, the interrogees have been transferred to other detention facilities.

4. As stated, the special reasons for keeping the Facility's location a secret, in addition to the fact that it is located in a secret army base, cannot be revealed in this open response, for fear that revelation of the reasons would compromise state security. However, there will not be, of course, any problem in presenting them to the Court, *ex parte*, if the Petitioner consents.

5. Because of the special nature of the Facility, ***in the past six years, only a few detainees have been held there.*** The exception is a period of less than a year, from April 2002 to March 2003, during which there was a severe shortage of space in detention facilities in which the General Security Service operates. The shortage resulted from Operation Defensive Shield, and led to the Facility being used, *temporarily,* by the GSS. During this period, detainees from the territories were held in the Facility for relatively short periods of time, during which GSS agents interrogated them.

6. In March 2003, the factual situation changed, and it was decided that the GSS no longer needed to use the Facility.

Following this decision, the GSS ceased to use the Facility as an interrogations facility and removed all the detainees who were being held there, *and the Facility reverted to its original purpose*.

From March 2003 to July 2003, few detainees were held in the Facility, for interrogation purposes, in the framework of the Facility's original purpose, and for short periods of time.

Since the middle of July 2003, for a period that has extended for almost a year, no detainee has been held in the Facility, there having been no reason to hold detainees there.

7. It should be mentioned that, before the GSS began to use the Facility to interrogate residents from the Territories, the Minister of Defence declared the Facility a "military prison" in accordance with his authority pursuant to Section 505 of the Military Justice Law, 5715 – 1955.

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

8. **During the times that detainees are held in the Facility, the detainees are provided the conditions to which detainees in other military prisons receive. The detention conditions are reasonable and lawful and fully comply with the law.**

The actions taken by interrogators and prison guards are subject to binding written procedures. Violation of these procedures constitutes a disciplinary offense.

These procedures, some of which are confidential, relate, in part, to all aspects relating to the manner in which the prison guards and interrogators are required to act, from the moment that the detainee arrives in the Facility, during their intake, and while being held there, until the time that the detainee is released from the Facility.

9. A medic is located at the Facility around the clock, and a medic checks every detainee once a day. Every detainee is checked once a week by a physician.

10. Notification that the detainees are being held in the Facility is delivered to the relevant persons, in accordance with law. In addition, the IDF has a Detention Facilities Control Center (hereinafter: "the Control Center"), which assembles the data on the identity of the detainees held by the IDF and their location, and provides this information to anyone who requests it. The Control Center is instructed to provide every person who contacts it regarding a person being held in the said facility that the detainee is being held in a facility referred to as 1391. The Control Center is also instructed to provide the person seeking information with a clear address for sending letters and requests regarding the detainee.

11. The detainees in the Facility are allowed to meet with *counsel,* unless a proper specific order has been issued preventing it. Such meetings are held outside the Facility. The rule is that, when a request for a meeting is received, a location outside the Facility is set for the meeting. And the meeting takes place as quickly as possible. Meetings of this kind are held as quickly as possible when meetings with detainees in the Facility are requested, unless there is a legal basis preventing it.

As for meetings with *family members*, 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.

12. **Review of the Facility is conducted any time detainees are held there, as are the conditions in which detainees are being held**, in the same manner as in other military prisons.

    Regular review on this kind is conducted by IDF personnel, in particular personnel from the Judge Advocate General's Office. In addition, all the Judge Advocate Generals who have served in recent years have visited the Facility.

    Also, over the years, more than a few visits have been made by other governmental officials, and in recent years, two ministers of justice have visited the Facility. In addition, about a year ago, the Attorney General, the State Attorney, the head of the High Court of Justice Division [of the State Attorney's Office], and the undersigned visited. Also, judges went to the Facility to hold hearings on extending detention in cases in which the detainees were not represented.

13. **We see from the above that, contrary to the contentions set forth in the petition, the fact that the location of the Facility is kept secret does not detract from the rights of persons detained there, either as regards the detention conditions or regarding the detainee's right to meet with persons with whom he is entitled to meet, most importantly his attorney (when no specific reason pursuant to law forbids it).**

14. The facts set forth above are supported by the affidavit of the commander of the Facility, attached hereto.

15. In that the Honorable Court did not issue an Order Nisi as regards the detentions conditions and the interrogation conditions in the Facility, it is not necessary to relate herein to the factual contentions set forth in the petition on these subjects. It should be mentioned, however, that these contentions were discussed at length in the preliminary response filed on behalf of the Respondents to the Honorable Court, and these comments portrayed a situation entirely different from that presented in the petition.

In this context, we would like to mention one fact. As mentioned above and in the petition, the only detainees who stayed in the Facility for many years were Sheikh Obeid and Mustafa Dirani. These detainees were transferred to Ashmoret Prison, an installation of the Prisons Service, in the middle of 2002, after they were declared "illegal combatants: pursuant to the Imprisonment of Illegal Combatants Law, 5762 – 2002.

And we see that, a short time after they were removed from the Facility and taken to the Prisons Service installation, the two of them filed a prisoners' petition in which they filed an urgent request to be provided, in their new place of detention, the same conditions that had been available to them in the Facility over the years. *In the alternative, they requested to be returned to the Facility!!!* (Prisoners Petition (Tel-Aviv) 2578/02).

If the conditions were indeed so harsh in the Facility, as alleged in the petition, so much so as to cause "sensory deprivation" and other evils, as contended, it is inconceivable that persons who were detained in the Facility for years would file a petition (!) with the court in which they sought to return to this "horrible" facility.

We shall not expand on this point in that, as stated, the Honorable Court did not issue an Order Nisi regarding the interrogation methods and the detention conditions in the Facility.

16. These, then, are the relevant facts on the subject. Having reached this stage, we shall now discuss the legal contentions raised in the petition, on which the Petitioner relies in alleging that there is an obligation to divulge the physical location of the facility.

Response to the legal contentions raised in the petition

17. ***The first contention*** made by the Petitioner is that there is no substantial reason not to reveal the Facility's location, and that the only reason for secrecy is the desire to give the detainees a feeling of "disorientation." According to the contention, the only reason not to reveal the Facility's location is the desire to use the secrecy as an interrogation means, which is illegal.

This contention is baseless. The reason for not announcing the Facility's location is based purely on security grounds, and has no "interrogation" objective. As mentioned in the preface to this response, *there are substantial, legitimate reasons for which the state keeps the physical location of the Facility a secret.* These reasons are – for the most part –

confidential for reasons of state security; thus, they will be presented at length *ex parte*, if the Petitioner gives its consent.

18. The petition also contends, in this context, that transfer to the Facility is intended to give detainees the impression that they are going to "another, hidden, forgotten world," whose physical location is kept secret, and to increase the detainees' feeling of helplessness.

These contentions, too, are baseless.

The transfer of detainees to and from the Facility is generally carried out by the Military Police, in accordance with the procedures for transporting prisoners of the Military Police to all the military prisons, with one difference that relates to the measures taken to ensure the secrecy of the Facility's location. To achieve this, it was determined that detainees would be transported to and from the Facility with a dark covering over their eyes (and not a sack on their heads, as contended in the petition). Also, when detainees were being interrogated in the Facility by GSS agents, they were generally taken to interrogation by GSS personnel, in line with the same procedure.

When the detainee reaches the Facility, he is taken from the vehicle and is searched externally, as is customary, to see if he is carrying weapons or other forbidden objects. A prison guard then takes him in various directions and along winding paths to make it impossible for him to learn the Facility's structure. After that, the detainee undergoes normal intake.

From the above description, we see that transfer to the Facility is done in a completely normal manner, except that the detainees' eyes are covered, which is done for a legitimate purpose – to prevent disclosure of the location and structure of the Facility.

19. ***The second contention*** made by the Petitioner is that, in any case, the state is required – by law – to disclose the physical location of each and every detainee, and to inform the detainee's family thereof.

In our opinion, this is the main contention raised in the petition, and for this reason, we shall 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 informed of the detention and of *his whereabouts*, the objective being to enable the family and the attorney to communicate with him (as long as such communication is not prohibited pursuant to law). However, this requirement does not prohibit holding the individual in a detention facility whose physical location is kept secret for legitimate reasons.

To clarify this contention, we refer to the survey of the statutory provisions to which the Petitioner refers as the statutory sources that *require,* in the Petitioner's opinion, the giving of notification of the physical location of the detainee.

20. The primary relevant provision 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 it is decided 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(b) states that, at the detainee's request, such notification shall also be provided to an attorney whose name the detainee has given.

These provisions also apply to detention pursuant Military Justice Law – see Section 227A of the law.

These provisions apply, as contended, *also* in he case of administrative detention pursuant to the Emergency Powers (Detentions) Law, 5739 – 1979 (hereinafter: the Administrative Detention Law) and to detention pursuant to the Imprisonment of Illegal Combatants Law, 5762 – 2002 (hereinafter: the Illegal Combatants Law), and that pursuant to Section 1(c) of the Detentions 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) (No. 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.**

21. The relevant question on this point relates to the interpretation of the term "**notification of his detention and of his whereabouts**", of the detainee, as set forth in the statute. The Petitioner believes that the notification must provide the physical location of the detention facility. The Respondents, on the other hand, believe that this interpretation is not required by the wording of the said statutory provisions (which shall be referred to below as "provisions for giving notification"), and it is sufficient to mention the name of the facility in which the detainee is being held, while providing an address to which requests can be sent in all matters related to the detainee being held in that facility.

22. To determine the proper interpretation of the provisions for giving notification, it is of course necessary to examine *the purpose* in obligating the delivery of notification, which will then enable interpretation of the statute *based on its purpose*. We shall do that now.

23. The common law states that the clear ***purpose*** of the said obligation of giving notification is to inform the detainee's relative of the fate that has befallen their relative, so that the detainee will not disappear, *and to supply the detainee's relatives information that will enable them to provide the requisite aid to the detainee to safeguard his rights.*

The obligation to give notification was discussed in HCJ 670/89, *Musa Yunis Muhammad Odeh v. Commander of IDF Forces, Piskei Din* 43 (4) 515, 517, in which the Court states on this matter 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 – S.N.)

In another decision, recently given by the Honorable Registrar Okun, which also dealt with the obligation to give notification, emphasis was given to similar objectives underlying the obligation to give notification. The main purpose is to ensure that a person does not disappear "without explanation."

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

24. From the time that notification of a person's detention is delivered to his relative, by means of which he is provided the ***name of the facility in which he is being held,*** and he is given ***a clear address*** to send letters and requests, including requests for visits and for meeting with counsel, ***the purpose of the obligation to give notification about the detention is met, as is the obligation set forth in Section 33 of the Detentions Law and Section 78(a) (b) of the Order Regarding Defence Regulations***.

From the moment of delivery of the said information, the family knows that its relative has been detained, knows how to communicate with him, and knows to whom to file requests regarding the detainee. ***In such a situation, all the purposes underlying the obligation to give notification are met, and there is certainty that persons will not "disappear," as occurs in certain abject regimes.***

Contrary to the Petitioner's contentions, in such circumstances, the detainee and his relatives suffer no harm from the failure to provide the physical location of the detention facility, because they are not denied any right to which they are entitled had the detainee been held in another military prison or in any other prison facility.

25. So long as the detainee's relatives are given information about his detention, and they are informed in which facility he is being held, and are given a clear address for making requests in his matter, including for the purposes of visits and meetings with counsel, ***providing the physical location of the facility is meaningless***.

26. **We see that the rights of detainees held in Facility 1391 and their families['] rights are not reduced at all, even if they do not know or are not informed of the Facility's physical location.**

This statement also applies in full to the right to meet with counsel and to be visited by the Red Cross (where no reason exists to forbid such meetings), for as has been explained above, in order to hold a meeting that is allowed, the detainees are taken as soon as possible from the Facility to a site where the meeting is held.

On this point, it should be mentioned that, as was explained in the factual chapter, 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 seeking to learn the location of a detainee being held in Facility 1391, that he is being held in the facility. The Control Center is also required to provide every person who contacts the Center with a clear address for addressing requests and correspondence regarding the said detainee.

As regards the family and the attorney, knowing the physical location of the Facility is irrelevant, for even if a person is detained in an interrogation facility whose physical location is not known to his family, family members and counsel cannot meet the detainee without approval and coordination, and the same is true in the present case. The only difference is that, in an ordinary case, they know where the detainee who they wish to meet is, while in the case of a person detained in Facility 1391, they do not have this information. Also, it may take a bit more time before the visit is held, but every effort is made to enable the visit as soon as possible. Even visits held in other detention centers are not necessarily held "from one moment to the next." Therefore, it is contended that no right of the detainees is violated on this issue.

27. **It should be added that, in accordance with the purpose of the section, consideration also must be given to the fact that there are extremely legitimate and substantial interests that require keeping the Facility's location secret. It would be improper to give the section an interpretation that ignores these interests.**

28. **In these circumstances, the Respondents believe that *an interpretation based on purpose* requires that the obligation to give notification as set forth in law must be construed as an obligation to provide notice of the detention of a person, while clearly stating that the place of detention is in Facility X, whose name or nickname is given, and there is no obligation to provide the physical location of the facility.**

29. ***In summary of our response to the Petitioner's second contention,* which, to the best of our information, is the principal legal contention lying at the core of the petition, we wish to emphasize that the purpose of the provisions for giving notification can be met, as we have shown, also in a way that does not disclose the Facility's physical location. Contrarily, the purpose for which the physical location of the Facility is kept secret would be completely thwarted if the state is required to reveal its**

location, for there is a real fear that disclosure of the Facility's physical location would cause severe harm to state security. Therefore, we request that the provisions regarding the giving of notification *be construed based on their purpose*, in the manner of the interpretation given above.

30. ***The third contention raised by the Petitioner*** is that the failure to announce the location of the detention facility infringes substantial rights of detainees, contrary to the Respondents' contention. Therefore, the petition states that, even if the law does not require that the location of the detention be announced, there is an obligation to announce it following the resultant infringement of the detainees' rights.

We shall now analyze this contention, by discussing, one after the other, the rights mentioned by the Petitioner, which will show that this contention is baseless. No substantial right of detainees in the Facility has been infringed as a result of the failure to disclose its location.

There is good reason why the petition did not refer, in the part delineating the rights purportedly infringed, to any contention made in the affidavits supporting the petition, in support of this contention.

31. On this point, the petition first contends that the lack of knowledge of the detainee as to his precise whereabouts is liable to cause the "disorientation" of the detainee and a situation of anxiety "of disappearing and being forgotten," which is liable to cause psychological harm.

32. With all due respect, this contention is frivolous. From the moment that notification is provided to the detainee's family, they know that their relative is detained and they are given an address for corresponding in his matter, so there is no reason for the detainee to have a feeling of anxiety that he has disappeared or is forgotten. The important information to be provided relates to the fact of the detention and the way to communicate with the detention authorities, and not the physical location of the detainee.

33. Furthermore, even if there is substance in the Petitioner's contention, it is a marginal harm, and must be balanced against the security considerations mentioned above. In our opinion, such a balancing leads to the conclusion that the fear of harm to state security *prevails* in the current circumstances.

34. It is further stated in the petition that *the detainees' right to be visited by relatives and friends in the place where he is being detained is a fundamental right, and that the failure to disclose the location of the detention facility impedes exercise of the right.*

On this point, the Petitioner refers to Section 12 (c) of the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Holding a Person in Detentions) 5757 – 1997 (hereinafter: the Detention Regulations), states that:

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

35. Note well: The Petitioner ignores Section 12 (b) of the same Regulations, which states that:

> **A detainee against whom an indictment has not yet been filed *shall not be entitled to receive visitors in the place of detention,* 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 *will harm state security…***

As explained, the purpose of the Facility is, generally, to hold detainees *under interrogation,* usually in circumstances that do not enable the family to visit; thus, no problem arises regarding the matter of ***family visits*** with the detainees in the Facility.

In any event, if it is found that one detainee or another is entitled to receive visits by his family, there is nothing to prevent holding the visit outside the Facility, at a place coordinated in advance, as has been done with regard to visits by attorneys.

36. *Another contention raised in the petition in this context is that the failure to disclose the location of the facility impairs the detainees' right to meet with counsel, which is a fundamental right.*

Our response is this: there is no dispute that this right is a "fundamental right." However, the right of detainees in the Facility to receive visits by counsel is strictly safeguarded, and nobody violates the right. Therefore, whenever there is no specific grounds, pursuant to law, to forbid such a meeting, it is allowed outside the walls of the Facility, at a pre-coordinated site, as soon as possible after the request for the visit is made.

By way of illustration, we point out that Obeid and Dirani, who were held for a prolonged time in the Facility, met many times with their attorneys, outside the walls of the Facility, without problem.

Similarly, one of the persons whose affidavit was submitted in regard to the petition, Mr. A. A., met with Attorney Abu Ahmad, of the office of Attorney Tsemel, on 10 July 2003, following rapid coordination, with the meeting being held immediately following the making of the request for the meeting.

Therefore, on this subject, too, no violation of detainees' rights has been proven.

37. *Regarding the "right to a public hearing,"* as a rule, hearings to extend detention are rarely held in the prison. These cases [hearings inside the prison] occur when detainees are not represented. In any event, there is nothing to prevent such hearings, as long as they are held in open court, be conducted outside the Facility.

38. *Regarding rights to meet with clergy, consular officials (for subjects of foreign states), Red Cross officials, and assistance organizations* (for detainees who are entitled to visits from such persons) – when the law permits the meetings – outside the Facility. Indeed, the Respondents so acted in the past in those cases in which Red Cross personnel 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 held, as stated, following prior coordination, outside the Facility's walls.

39. Regarding the right of Red Cross officials to visit places where protected persons and prisoners of war are being held, this right does not apply in cases in which security reasons prevent it. In that the Facility is secret for security reasons, Red Cross officials cannot visit detainees at the Facility itself, but, as stated, meetings with detainees are

allowed outside the Facility's walls, at which the Red Cross can determine the detainees' condition.

40. ***In sum*, as we have seen from the above details, no substantial right of the detainees is infringed because the physical location of the Facility is kept secret. Therefore, *the third contention* raised in the petitions should also be rejected.**

41. The Petitioner further contends, ***as a fourth contention***, that the physical location of the Facility cannot be allowed to remain secret also for the reason that such secrecy makes review impossible.

This contention, too, is incorrect, and we shall explain below.

As everyone knows, responsibility for maintaining proper conditions in detention facilities rests with the person empowered to declare a place of detention a prison or a house of detention.

Where military prisons are concerned, among which the Facility is included, the person empowered to make this declaration is the Minister of Defence, and the Minister of Defence is charged with ensuring that the conditions in the houses of detention comply with the law.

Indeed, to ensure that the declared prisons comply with the law, regular review is made, in accordance with an internal procedure of the Judge Advocate General's Office. This review is conducted by legal officials from the Judge Advocate General's Office.

Of course, Facility 1391 also undergoes reviews of this kind when detainees are held there.

In addition, as mentioned in the factual chapter, officials not part of the defence establishment, among them ministers of justice, the Attorney General, the State Attorney, also visited the Facility.

Furthermore, every detainee is entitled, of course, to complain about his detention conditions and even to demand *judicial review*, and, where necessary, there is nothing to stop opening the Facility to judges to review the conditions in which the detainees are held.

Also, there is nothing to stop *parliamentary review* of the Facility, the failure of which forms a special complaint of the Petitioner, provided that this review does not raise a real

fear of disclosure of the location of the Facility. To enable, on the one hand, parliamentary review of the Facility, and, on the other hand, ensure that its location is not divulged, it was decided that parliamentary review could be conducted provided that it is done by members of the Knesset who serve on the Secret Services Subcommittee of the Foreign Affairs and Defence Committee, to whom state secrets are divulged in any event. In this way, a balance is achieved between the two said considerations.

We responded to this matter at length in our response in HCJ 8102/03, *MK Zehava Gal'on v. Minister of Defence*, the hearing on which was joined with the present petition; thus, it is unnecessary to expand on this issue.

Regarding the possibility of visits at the Facility by representatives of the Bar Association and of human rights organizations, the law does not require that such visits be allowed, and even in various other interrogation facilities, visits of this kind are not permitted.

In sum, the ***fourth contention*** of the petition, too, should be rejected.

42. ***A fifth contention*** of the Petitioner deals with other statutory provisions to which the Petitioner refers, which deal with the administrative authority to declare a certain place a place of detention, and the Petitioner finds in these provisions the source of an obligation – purportedly – to divulge the physical location of every place of detention. This contention, too, is not correct.

In our matter, the relevant provision is Section 505 of the Military Justice Law, which empowers the Minister of Defence to establish by order that the place described in the order shall be a military prison or military detention base. Such an order is to be published in the military commands, and publication in *Reshumot* is not required (Section 506 of the Military Justice Law). Pursuant to this authority, the minister some time ago declared that the Facility is a military prison. See Appendix P/45 of the petition.

The Petitioner contends that this provision requires that the order set forth *the physical location of the prison.* However, this contention is unfounded in law, and is unreasonable in that all the considerations set forth above enable the minister to declare a facility a prison, by stating its name or nickname only, and it is not necessary that its physical location be stated. The minister so acted in the present case, and there is nothing improper in that action.

Therefore, the ***fifth contention****,* too, should be rejected.

43. Regarding the contentions made by the Petitioner at the end of the petition, whereby the state has other tools to enable it to achieve the objective for which the location of the Facility is kept secret (Sections 81-82 of the petition), this contention is completely unfounded, for the other tools suggested by the Petitioner do not protect the special security need for which the location of the facility is kept secret. This contention can be discussed at length when studying the confidential material forming the basis for keeping the physical location of the Facility secret.

Furthermore, we believe that, if the Respondents had adopted the suggestion to use the alternative tools proposed by the Petitioner (such as delaying giving notification of the detention, preventing the detainee from meeting with his attorney, and postponing bringing the detainee before a judge), such actions would result in harm to the dignity and rights of the detainee to a far greater extent than the harm caused him (if any) today.

To illustrate this point, we shall relate to the primary suggestions made by the Petitioner and compare them with the way the Respondents currently act:

Is it preferable not to give any notification to the detainee's family that he is being detained, for some time, as the Petitioner suggests, rather than provide the family with this information and even the place where he is being detained (albeit not its physical location), as is currently done?!

Is it preferable to prevent the detainee from meeting with counsel, in order to safeguard the secrecy of the place where the detainee is being held, as the Petitioner suggests, rather than allow this meeting at a location outside the Facility's grounds, which is the current practice?!

44. As a final comment, we have examined the Petitioner's contentions one after the other, and have shown that they should be rejected. Therefore, it is argued that, for the reasons set forth above at length, the petition should be denied.

45. To verify the facts set forth in this response, attached hereto is the affidavit of the official in charge of Facility 1391.

Today, 19 May 2004

Shai Nitzan

Deputy State Attorney

A F F I D A V I T

I, the undersigned, nicknamed "Johnnie" (whose complete details are on file at the High Court of Justice Petitions Division, in the State Attorney's Office), after being warned that I must tell the truth and that, if I do not do so, I shall be subject to statutory punishment, hereby declare as follows:

1. I am in charge of Facility 1391.
2. This affidavit is given in support of the response made by the Respondent in HCJ 9733/02.
3. The facts stated in the response that relate to Facility 1391 are true to the best of my knowledge.

19/05/04 — *[signed]*

Date — Name of Declarant

C O N F I R M A T I O N

I, the undersigned, Robert Neufeld, Attorney, hereby confirm that, on 19 May 2004, the person nicknamed "Johnnie," with whom I am personally acquainted, appeared before me, and after I warned him that he must tell the truth and that if he does not do so, he shall be subject to statutory punishment, signed the above affidavit before me.

Robert Samuel Neufeld
L. N.
Attorney

Stamp — *[signed]*

Signature