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Date: August 8, 2016
In your response please note: 93794

To:
Brigadier General Shaul Gordon, Adv.,
Legal Adviser
Israel Police – National Headquarters
Jerusalem 91906

By Registered Mail
And by fax 02-5898762

Dear Sir,

Re: **Interrogations of Palestinian Minors from the West Bank in Police Stations in Israel**

1. I hereby write to you on the above captioned matter as follows.
2. On behalf of HaMoked: Center for the Defence of the Individual (HaMoked), a human rights organization which has been engaged for many years in protecting the rights of Palestinians residents of the occupied Palestinian territories (OPT), *inter alia*, during detention and interrogation, I wish to bring to your attention an extremely sensitive issue which is not handled properly by the law enforcement bodies in Israel, particularly, by the Israel Police.
3. This concerns the manner by which minor Palestinians are interrogated shortly after their detention in the various police stations scattered around the west bank (particularly in the stations located in Ariel, Binyamin, Kiryat Arba as well as stations in East Jerusalem to which minor Palestinians from the West Bank are occasionally brought, and the police spot in Ofer Camp). We shall start by saying that numerous testimonies of minors indicate that the interrogations in these and other facilities are conducted contrary to the law.
4. It is important to note that these are current testimonies which were given very recently. Over the last months HaMoked secured dozens of affidavits from minors in the West Bank, which portray a systematic and disturbing picture of violation of rights. Hence, we are not concerned with mere allegations.
5. Minors, sometimes virtually on the verge of criminal liability, the vast majority of whom are arrested in the wee hours of the night, are taken straight from their beds to an unsettling journey in the West Bank. In most cases the minors experience verbal and physical violence on their way to the interrogation facility, in addition to the fact that they were abruptly torn from their families without any explanation.



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6. Under these circumstances the minors reach the police stations tired, hungry, thirsty and scared. Sometimes they are not even allowed to go to the bathroom before the interrogation commences.
7. It would be inconceivable for a reasonable interrogator to commence an interrogation of a minor under such circumstances. However, it seems that the police interrogators do not hesitate when an interrogation of Palestinian minors from the West Bank is concerned.
8. This is how the ordeal of interrogations of children in depressed physical and mental condition begins. Notwithstanding their difficult condition, these minors are not given the opportunity to consult with a lawyer prior to the interrogation. Consequently, their rights as interrogees are jeopardized and are almost always violated, which necessarily leads to a critical violation of procedural rights and severe punishment in the framework of the criminal proceeding; these minors are almost never given the opportunity to contact their parents prior to the interrogation, and the parents are obviously not present in the interrogation; the interrogations are either not documented or documented selectively; and finally, the minors' harsh descriptions of the interrogations indicate that the interrogators running them are not youth interrogators and have not been trained to work with children and youth.
9. As aforesaid, these unlawful and systematic phenomena have been recently described in dozens of testimonies which were given to HaMoked. We shall describe in more detail below each one of the issues which should be handled and amended.

The right to consult with a lawyer before the interrogation

10. The police should be guided by the Youth (Adjudication, Punishment and Manner of Treatment) Law, 5731-1971 (hereinafter: the **Youth Law**) and use it as a compass while interrogating children, even if minors who are not Israeli citizens and residents are concerned.
11. With respect to the right to consult with a lawyer section 9I(a)(2) of the Youth Law stipulates categorically that prior to the commencement of the interrogation the interrogator must inform the minor of his right to consult with a lawyer and the interrogator must also inform the lawyer or the public defender's office of the minor's interrogation.
12. Explicit references to this issue may also be found in international law. The Convention on the Rights of the Child from 1989 (hereinafter: the **Convention**) which was ratified by Israel in 1991 and which is therefore binding upon it, explicitly stipulates in Article 37(d) thereof that every child whose liberty was deprived shall have the right to receive professional legal assistance, which will be provided as soon as possible. Article 40(2)(ii) of the Convention stipulates further that every minor shall be given the opportunity to protect his rights before he is indicted by means of professional legal consultation.
13. In addition, the UN rules on the manner minors should be treated in detention and interrogation from 1990 (Havana Rules) explicitly provide that every minor who is detained and interrogated shall have the right to professional legal counsel who will assist him to defend against criminal charges (rule 18(a) which also mentions the right to free legal aid).

14. The military court of appeals also expressed its opinion of the severe consequences arising from the failure to uphold the right to consult with a lawyer when interrogation of children is concerned. Accordingly, it was held by the court in Detention Appeal (Judea and Samaria) 2912/09 **Military Prosecution v. NAR** (judgment dated September 30, 2009) as follows: "In view of respondent's young age, I am doubtful whether he properly understood the meaning of the right to counsel, even assuming that the mere right had been explained to him in a clear and simple manner, and I highly doubt whether he was aware of his right against self-incrimination."
15. As aforesaid, the examination of dozens of recent cases which were brought to our attention indicates that **Palestinian minors who are interrogated shortly after their arrest are not given the right to consult with a lawyer before the interrogation**, and even in the few cases in which the interrogators inform the minors of their right to counsel, in fact, it is meaningless and only lip service is paid when the minor is informed of his right to counsel.
16. The systematic deprivation of the right to counsel – *inter alia* by informal "preparatory preliminary inquiries" before the formal interrogation (while in the "preparatory preliminary inquiries" no mention is made of the right to consult with a lawyer) – causes helpless and scared minors to incriminate themselves almost automatically. Consequently, minors' right against self-incrimination, which is a fundamental right, in criminal law and in general, is critically violated. Hence, the severe violation of the right against self-incrimination yields "light" convictions of many minors and a severe violation of the basic rights of these minors to protect their rights, innocence and right to due process.

Parents' presence in the interrogation

17. The Youth Law contains explicit provisions concerning the high involvement which is required of parents of minors who are interrogated and indicted. Firstly, section 9E of the Law provides that a minor may not be interrogated unless prior notice to that effect was given to his parents. This rule may be veered from only in exceptional cases, and only after the reason thereto was documented in writing. In addition, section 9H of the Law explicitly states that the rule which applies to minors is the presence of the parent (or another adult at the minor's choice) in the interrogation. Exceptions to this rule may be made only in extraordinary circumstances and subject to express documentation in writing.
18. Article 37(c) of the Convention explicitly emphasizes the great importance of the family connection between the minor and his parents and Article 40(2)(b)(ii) provides that the entire criminal proceeding, commencing from the interrogation stage, should be communicated to the minor through his parents and/or legal guardians.
19. Regretfully, the situation on scene is very far from this standard. The examination of dozens of cases indicates that in neither one of them the parents or any other adult was given the opportunity to be present in the interrogation of their beloved minor. In the vast majority of the cases the interrogated minor is not even given the elementary right to inform his parents, or any other family member, of his upcoming interrogation and of his whereabouts.

20. Hence, the minors remain exposed and extremely vulnerable, subjected to the mercy of foreign interrogators, whose language they do not speak and whose laws they do not understand (considering, as aforesaid, the fact that they are in a depressed physical and mental condition to begin with).

Documentation of the interrogation

21. In 2002 the Criminal Procedure Law (Interrogation of Suspects) 5762-2002 was promulgated by the Knesset (hereinafter: the **Suspects Interrogation Law**). The purpose of the Law was to regulate the interrogation methods of suspects within and without police stations. Among other things the law established a host of provisions regarding the obligation to audio-visually document interrogations for the purpose of protecting the rights of the suspects in the best possible manner and for the purpose of making the court hearings more efficient.
22. In addition, the Public Commission to Examine the Maritime Incident of May 31, 2010 (**Turkel Committee**) published its second report on February 6, 2013, and recommended in the context thereof that visual documentation be the standard not only in police interrogations but also in Israel Security Agency (ISA) interrogations so as to enable the investigation and examination bodies investigating complaints of violations of the law to examine more efficiently the correctness of the complaints and to protect the rights of the interrogees in the best possible manner.
23. However, the above obligation to document does not apply to interrogations of persons suspected of offences which are defined as "security offenses", including minors suspected of such offences (and regrettably this concerns the vast majority of detained minors in the West Bank). Section 17 of the Suspects Interrogation Law explicitly excludes such "security interrogations" from the applicability of the law, regardless of whether it is an interrogation of a minor or of an adult.
24. The testimonies before us portray an extremely severe picture with respect to the documentation of interrogations of minors. Many minors testified that prior to the "official" interrogation by a police agent, they underwent a "preparatory inquiry" by another interrogation agent (either a police interrogator or an ISA agent). In these informal interrogations many of the minors experienced severe violence, verbal and physical. These episodes were not documented in any manner, including in writing.
25. Thereafter the minors were transferred to an "official" interrogation in an interrogation room. However, here too, many testified that the documentation was made in a selective manner; sometimes the interrogations were not documented at all other than a written transcript thereof (mostly in Hebrew which the interrogees do not understand and certainly do not read); and in cases in which the interrogees noticed that audio recordings of the interrogations were taken they testified that when the interrogators started to use threats or even resorted to physical interrogation methods, they switched off the recording devices.
26. It is clear that such a selective documentation does not satisfy the rationales underlying the obligation to document. The lack of documentation, as aforesaid, leaves the minors exposed and extremely vulnerable.

Interrogation conducted by youth interrogators

27. Section 5 of the National Headquarters Order 14.01.05 "Interrogation of Minors" explicitly provides that minors should be interrogated solely by youth interrogators. The reason is clear – interrogation of minors requires special awareness of the minors' unique emotional and physical needs, and their vulnerable psychological condition, with the supreme goal being, according to Israeli law and according to the Convention, to protect in the best possible and optimal manner the minors' safety, dignity and wellbeing.
28. However, it seems that the situation on scene does not nearly satisfy the requirements of the law. The testimonies before us portray a severe picture with respect to the quality of the interrogators engaged in the interrogation of minors.
29. Many minors are being questioned as aforesaid on their way to the interrogation or before the commencement of the official interrogation by different parties (ISA personnel as well as police personnel). Said parties use physical and verbal violence, threaten the minors and do not deign to explain to them their rights during the interrogation. Clearly, not only are we concerned with an unlawful interrogation, but it apparently seems that these parties are not youth interrogators.
30. Sometimes said "interrogators" join the "official" interrogations. In the vast majority of the cases the minors are interrogated by many interrogators contemporaneously, an intimidating situation in and of itself. The testimonies portray a severe picture of violent and intimidating interrogations. The above description raises a heavy doubt as to whether all or even the vast majority of said interrogators, are youth interrogators.
31. Moreover. Data provided by Israel Police to HaMoked in the context of a response to an application according to the Freedom of Information Act, 5758-1998 (dated as of April 14, 2016) indicate that only 26 youth interrogators act in the Judea and Samaria district, while many hundreds of minors are detained each year. Under these circumstances it seems impossible to interrogate all minors as required by law and it seems that there are many minors who are interrogated as if they were adults by "ordinary" police interrogators. Obviously, this entails a severe violation of the fundamental rights of minors during interrogation.

The consequences of the failure to apply the protective measures prescribed by law to Palestinian minors in the West Bank

32. As noted above, the fact that Israel Police leave the Palestinian minors exposed and vulnerable necessarily leads to a massive violation of their most fundamental rights.
33. When a minor reaches an interrogation room scared, exhausted, hungry, thirsty and after he had not gone to the toilette for a number of hours, no special effort is required to bring him to a state of physical and mental fragility, which encumbers his ability to protect his rights in the interrogation and necessarily leads to a quick self-incrimination, a very meaningful self-incrimination.
34. This is the situation in the vast majority of the cases. However, there are exceptions to the rule, some particularly strong minors who are not "broken" so easily. In such cases disturbing testimonies are given of the exercise of

violence against said minors in the interrogation consisting of verbal violence (cursing, threats and intimidations) as well as physical violence (spitting, pushing, yelling and even beatings). Said combination of depressed mental and physical condition and the exercise of violence by the interrogators, necessarily leads to breaking the minors' spirit in the interrogation, to self-incrimination the consequences of which are clear.

35. It is clear that the implementation of the minimum protective measures prescribed by law, such as the right to consult with a lawyer before the interrogation, allowing a parent or another adult to be present in the interrogation, documenting the interrogations and the engagement of specifically designated youth interrogators may all improve the minors' condition and to better protect their rights, their basic human rights as well as their criminal-procedural rights.

In conclusion

36. The above description indicates that the most basic rights of minors who are currently arrested in the West Bank and interrogated by Israel Police are severely violated. We are concerned with a systemic flaw which leads to comprehensive violations of minors' rights during interrogation. In so doing the police acts contrary to the provisions of international law pertaining to the protection of minors' rights and contrary to the standard established by Israeli law.
37. It should be emphasized that we are not concerned with sporadic or accidental violations. We are concerned with a method, with a system that interrogates in this manner. As aforesaid, the dozens of testimonies in our possession attest to that.
38. In view of all of the above, we ask you to act forthwith to amend the current situation concerning interrogation of minors: to enable every minor to consult with a defense lawyer prior to the interrogation; to enable parents, guardians or another adult, at the minor's choice, to be present during the interrogation; to regularly audio-visually document the interrogations; and to engage only qualified youth interrogators for the purpose of interrogating minors.
39. Your pertinent attention and response is highly appreciated.

Sincerely,
Daniel Shenhar, Advocate

CC:

Brigadier General Sharon Afek, Military Advocate General, Headquarters of the Military Advocate General, Military P.O.Box 9605 IDF, by registered mail and fax: 03-5694526