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Date: November 22, 2017  
In your response please note: 93794

To:  
Deputy Commissioner Ayelet Elyashar, Adv.,  
Legal Adviser  
Israel Police – National Headquarters  
Jerusalem 91906

**By Registered Mail**  
**And by fax 02-5898762**

Dear Madam,

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

References: our letter 93794 dated August 8, 2016; your letter 41516017 dated April 3, 2017 (received in our office on May 25, 2017)

1. I hereby write to you again on the above captioned matter as follows.
2. In our letter from August 2016, referenced above, we wrote to you regarding the manner in which Palestinians minors are interrogated shortly after their arrest in the various police stations scattered across the West Bank (particularly the Ariel, Binyamin and Kiryat Arba stations, as well as the stations in East Jerusalem to which Palestinians minors from the West Bank are occasionally brought, and the police point at the Ofer [military] camp). We noted that affidavits from many minors indicate that interrogations in these facilities and others are conducted in an illegal manner – the minors' right to legal counsel is not respected; the minors are interrogated on their own, without the presence of their parents or any other responsible adult; the interrogations are selectively documented, at best; and the interrogators treat the minors violently, contrary to the manner expected from certified youth interrogators. These conditions, we stressed in conclusion, lead to the inevitable result of confessions being made when the minors are broken and shattered.
3. In May, 2017, as stated, we received a response on your behalf (Adv. Dana Chernobilsky). In your response, you rejected our claims completely, which, as we noted, were substantiated by findings on the ground. You claimed that in recent years, an overarching process has been taking place to apply the provisions of the Youth Law (Trial, Punishment and Modes of Treatment), 5731-1971 (hereinafter: **the Youth Law**), to the interrogations of minors from the West Bank, and that in any case the Israel Police is guided by its light and spirit. This, both by granting the right to counsel in each case prior to the interrogation; and by enabling the minors' parents to be present during the interrogations, when possible; and that in any event, interrogations are conducted by youth interrogators, other than in exceptional cases. Finally, you criticized the general nature of our letter, and its lack of any concrete claim.



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4. Following your letter we returned to the field. We collected 26 up-to-date affidavits, covering the very recent period (July-October 2017). Alas, the affidavits once again point to systematic and worrying rights violations. We wish to stress that these problems recur almost exactly, and there is no sign of improvement in relation to the previous affidavits.
5. The minors, sometimes on the threshold of criminal liability, are largely still arrested in the small hours of the night, taken straight from their beds on a grueling journey across the West Bank, during which, the minors suffer verbal and physical abuse.
6. Under these circumstances, by the time they reach the police stations, the minors are tired, hungry, thirsty and scared. Sometimes they are not even allowed to use a toilet before their interrogation commences.
7. We wish to stress that a reasonable interrogator would never begin interrogating a minor in such a state. However, it seems that the police interrogators do not hesitate to do so when it comes to the interrogation of Palestinian minors from the West Bank.
8. This is the worrying picture that arises from the new affidavits we collected, and this is how the ordeal of interrogations of children in poor physical and mental condition begins. Notwithstanding their difficult condition, these minors, as a rule, are not given the opportunity to consult with a lawyer prior to their interrogation. And only rarely are minors allowed to speak to a lawyer, who is tracked down by the interrogator himself, by phone. Thus, their rights as interrogees are jeopardized and almost always violated, which necessarily leads to a critical violation of procedural rights and to severe sentencing 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. Finally, the minors' grim descriptions of how the interrogations proceeded suggest that the interrogators conducting them are not youth interrogators or trained in any way to work with children and youth, or minimally, that their training was insufficient.
9. As said, these unlawful phenomena appear systematically in 26 affidavits recently collected by HaMoked. We shall hereby describe in more detail each one of the issues which should be addressed and amended.

#### **The right to consult with a lawyer prior to the interrogation**

10. The police should be guided by the Youth Law and use it as a compass when interrogating children, even when minors who are not Israeli citizens and residents are concerned. You yourselves have confirmed as much in your letter to us.
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 must also inform the lawyer or the Public Defender's Office of the minor's interrogation.

12. Explicit references to this issue can 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 United Nations Rules for the Protection of Juveniles Deprived of their Liberty from 1990 (Havana Rules) explicitly provide that every minor who is detained and interrogated shall have the right to professional legal counsel that will assist him to defend himself 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 on 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) that: "In view of the 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 26 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**; to be precise, of the 26 cases, 11 minors were notified they have a right to consult with a lawyer, but only 6 of them were granted the opportunity to speak to an attorney by phone prior to the interrogation (note that they only spoke to their attorneys by phone, and the calls were placed for them by their interrogators). In other words, only in about one fifth of the cases did the minors speak to someone who allegedly represented them, and this too was done in a flawed manner.
16. The systematic deprivation of the right to counsel – among other things, by informal "preparatory softening interrogations" before the formal interrogation (while in the "preparatory softening interrogations" no mention is made of the right to consult with a lawyer) – causes helpless and scared minors to incriminate themselves almost automatically. Consequently, the 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 "easy" convictions of many minors and a severe violation of these minors' basic rights for protection of their rights, their innocence and their right to due process.

#### **Parents' presence in the interrogation**

17. The Youth Law contains explicit provisions concerning the high parental involvement required for 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. Only in exception cases may this rule be deviated from only, and this also only after the reason for the exception is recorded in writing. In addition, Section 9H of the Law

explicitly states that the rule which applies to minors is the presence of a parent (or another adult of 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 a 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 the ground is very far from this standard. An examination of dozens of cases indicates that **in no case were the parents, or any other adult, 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. Thus, the minors remain exposed and particularly vulnerable, at the mercy of interrogators of a different nationality, whose language they do not speak and whose laws they do not understand (and considering, as aforesaid, the fact that they are in a poor physical and mental condition to begin with).

#### **Documentation of the interrogation**

21. In 2002 the Criminal Procedures Law (Interrogation of Suspects), 5762-2002 (hereinafter: the Interrogation of Suspects Law) was enacted by the Knesset. The purpose of the Law was to regulate the interrogation methods of suspects within and outside 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 suspects in the best possible manner, and for the purpose of making 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, wherein it recommended 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 veracity of the complaints and in order to better protect the rights of the interrogees.
23. However, the above obligation to document does not apply to interrogations of persons suspected of what are designated as "security offenses", including minors suspected of such offences (and regretfully this concerns the vast majority of detainee 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 an adult.
24. The testimonies before us paint 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 official, they underwent a "softening interrogation" by another interrogator (whether a police interrogator or an ISA agent). In these informal interrogations many of the

minors experienced severe abuse, both 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 in a written transcript (mostly in Hebrew, which the interrogees do not understand and certainly cannot 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 selective documentation does not satisfy the rationales underlying the obligation to document interrogations. 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 the ground 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 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 abuse, threaten the minors and do not bother to explain to them their rights during the interrogation. Clearly, not only are the interrogations conducted unlawfully, but it seems that these parties are not youth interrogators.
30. Sometimes said "interrogators" join the "official" interrogations. In the vast majority of cases, the minors are interrogated by many interrogators simultaneously, an intimidating situation in and of itself. The testimonies portray a severe picture of violent and intimidating interrogations; 4 of the 26 minors testified they underwent serious physical abuse, and in the vast majority of the cases (22 of the 26) the minors testified they experienced blunt threats and a variety of verbal humiliations. The above description raises heavy doubt as to whether all or even most of said interrogators are youth interrogators, or at the very least whether their training is sufficient in any way.
31. Moreover, according to data the Israel Police provided to HaMoked in the framework of a response to an application under the Freedom of Information Act, 5758-1998 (dated April 14, 2016), there are only 26 youth interrogators working in the Police District of Judea and Samaria. This, while many

hundreds of minors are detained in the West Bank each year. Under these circumstances, it seems that interrogate all minors as required by law is impossible 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 non-implementation of the protections prescribed by law to Palestinian minors in the West Bank**

32. As noted above, the fact that the Israel Police leaves the Palestinian minors exposed and defenseless necessarily leads to a massive violation of their most fundamental rights.
33. When a minor reaches an interrogation room scared, exhausted, hungry, thirsty, and without having relieved himself for several hours, no special effort is required to bring him to a state of physical and mental break down, hampering his ability to defend his rights in interrogation, which necessarily leads to a quick self-incrimination, a highly consequential self-incrimination.
34. This is the situation in the vast majority of cases. However, there are exceptions to the rule, some particularly strong minors who are not "broken" so easily. In such cases disturbing testimonies arise regarding the exercise of violence against said minors in their interrogations, consisting of both verbal abuse (curses, threats and intimidations) and physical violence (spitting, shoving, yelling and even beatings). This combination of a weakened mental and physical condition and the exercise of violence by the interrogators, necessarily leads to the breaking of the minors' spirits during interrogation, as well as 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 interrogation, allowing a parent or another adult to be present in the interrogation, documenting the interrogations, and the engagement of designated youth interrogators, may all improve the condition of minors and better protect their rights, both their basic human rights and 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 the Israel Police are severely violated. This is a systemic failure which leads to comprehensive violations of minors' rights during interrogations. In its injurious conduct, the police acts contrary to the provisions established in international law regarding the protection of minors' rights, as well as the standard established in Israeli law.
37. It should be emphasized that we are not concerned with sporadic or incidental 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 your response to our previous letter you deplored the general nature of our letter and its lack of details of any particular complainant. However, this was due to the fact that by and large, the minors from whom we collected the affidavits are not interested in prolonging their dealings with the Israeli

authorities; as soon as they are released from detention, almost none of them are interested in submitting formal complaints about their treatment during the interrogation. So the avenue of submitting individual complaints is naturally limited. In the present letter, we have attempted to clearly note in how many cases each of the issues discussed arises, in order to provide as clear a picture as possible.

39. In view of all of the above, we again ask you to act forthwith to amend the current situation concerning the 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 or visually record the interrogations; and to ensure that minors are interrogated only by qualified youth interrogators.
40. Your substantive handling and response will be appreciated.

Sincerely,  
Daniel Shenhar, Adv.

CC:

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