

**Public Committee Against  
Torture in Israel**

**Defence for Children International  
Palestine Section**

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15 August 2010  
Our Ref: m/292

Mr. Yehuda Weinstein, Advc.  
Attorney General  
Ministry of Justice

Mr. Herzl Shabiro, Advc  
Head, Internal Affairs  
Ministry of Justice

Dear Sirs,

**Re: Complaint of torture and sexual maltreatment of a minor detained in Etzion Station**  
**The minor: A. - I.D. No. \*\*\*\*\***

On behalf of our juvenile client, Mr. A. (I.D. \*\*\*\*\*) from Beit Ummar (hereinafter the complainant) we hereby approach you with a request to open a criminal investigation of the complaint according to which he was subjected to mental and physical torture and sexual maltreatment while in lawful detention at Etzion Police Station, as arises from his statement given on 27/05/2010 to Advc. Iyad Misk on behalf of Defence for Children International DCI. Attached herewith a power of attorney.

**The Chain of Events:**

1. Our client, a 15 year old juvenile born 26/06/1995 was arrested on 25/05/2010 around 01:30 am by IDF soldiers in Beit Ummar. Upon the juvenile's arrest and before he was placed in an army jeep, the soldiers cuffed his hands together behind his back with a plastic cuff and covered his eyes with a strip of cloth. Those same soldiers forced him to lie on his stomach on the floor of the jeep and trod on him during the journey. When he requested that the cuff be loosened slightly, one of the soldiers shouted at him to be quiet and struck him on the shoulder, apparently with the butt of his rifle. After a journey of less than an hour, the jeep stopped, apparently at Etzion Military Base. According to his impression, he was held in a large room in which soldiers, male and female, were circulating. He was held in this room blindfolded, hands tied behind his back with a plastic cuff and a leg cuffed to the leg of another detainee who was with him in the room. The complainant's request to go to the toilet was not answered and the first time he was allowed to use a toilet was after his interrogation ended at around 11 am. A separate complaint is being submitted today against the behaviour of the soldiers (copy attached).
2. Around 10:00 am the complainant was transferred to another room, where the plastic cuff was replaced by metal handcuffs, but his eyes remained blindfolded. A man who entered the room ordered the complainant to sit on the floor and began to ask him questions about stone throwers, from which he deduced that this was an investigator. That same man, who did not identify himself, cursed the complainant crudely after the latter denied that he throws stones. The man who interrogated the complainant kicked him hard in the

back, causing intense pain. When the complainant did not continue his denials, the “investigator” threatened to hurt him “at a different level” and contended that he is empowered to beat him, then left the room.

3. When the “investigator” returned, the complainant sensed that the man had attached something like a cable for starting a car with one end attached to the metal handcuffs and the other end attached to the complainant’s genitals. The juvenile complainant immediately felt a very harsh pain. He began to shout since the thing attached to his genitals was resulting in extreme pressure on the organ. According to the juvenile, the “investigator” threatened him that if he did not confess, the cable would be attached to an electric current ensuring that the complainant would not be able to sire children for his whole life.
4. As a result of the severe pain and great fear our client asked the “investigator” to remove the cable, but the latter conditioned that upon confession. The juvenile said that he has nothing to confess even if the cable is attached to electricity. The complainant answered the investigator’s question saying that he was not afraid. Then the “investigator” began to kick his back, and after five minutes he removed the cable from his genitals and handcuffs. Afterwards, the “investigator” tried to stand on the handcuffs behind the complainant’s back, and when he fell back on the floor, the “investigator” demanded that he sit up, then again stepped on the handcuffs, again causing him to fall. The complainant describes that at this stage he was willing to confess to anything in order to stop the “investigator” from tormenting him. Therefore, he confessed to throwing stones two years ago and three weeks ago.
5. The complainant was impressed that the man who interrogated him after the torment, and after the blindfold was removed, was the same man who attacked him while blindfolded. This is because the voice of “both” sounded the same. The man was tall and thin, seemed to be young, between 25-30.
6. In the course of our client’s remand extension hearing, on 30/5/2010, his lawyer told the military judge, Lt. Col. Avshalom Mausher, that he had undergone severe sexual and physical maltreatment. A copy of the protocol and the decision from that hearing are attached herewith. On 1/6/10 the complainant was released under a financial guarantee of 500 shekels.

#### **The Normative Frame:**

7. The behaviour of the investigator or policeman who attacked the complainant as described above struck, criminally, at the juvenile’s humanity. This behaviour is torture, expressly forbidden as anchored in international law, custom and agreements, whether in International Humanitarian Law or Human Rights Law (Geneva Conventions, e.g., Articles 3, 27, 31 and 33 of the Fourth Convention); the International Covenant on Civil and Political Rights (Articles 7, 10); the Convention Against Torture and Cruel Inhuman or Demeaning Punishment (Articles 2, 16); and the Convention on the Rights of the Child (Article 37) that the State of Israel signed and ratified.

8. The investigative methods used by the investigator or policeman that included harsh physical attack and sexual maltreatment, are a breach of many criminal prohibitions in the Law of Punishment, such as Articles 277 (Pressure of Public Servant), 334 (Injury), 348 (Indecent Act), 379 (Assault), 380 (Attack Causing Real Injury), 382 (Attack in Severe Circumstances) and 427 (Extortion by Force).
9. It may also be noted that HCJ 5100/94 **Public Committee Against Torture in Israel v. State of Israel**, ng(4), p.817, declares:

“The use of torture or cruel and inhuman attitude to the interrogated is prohibited during investigation. A reasonable investigation is likely to cause discomfort, and the conditions of its holding are likely to be unpleasant. It is permissible to resort, in the frame of law, to certain stratagems and sophisticated actions. And yet it is possible to hold an efficient investigation also without violence... actions, such as shaking of the interrogated, seating him in a painful position, covering his head with a sack and preventing sleep over a long period, are not obligated by the needs of investigation and they detract from the human respect of the interrogated. Therefore, these are actions prohibited in the course of investigation (pp. 836g – 840a).”
10. The prohibition of torture and/or maltreatment was strengthened in the light of HCJ 7195/08 **Abu Rahma v. Chief Military Advocate** (as yet unpublished, given on 1.7.09) when it was determined, in para 41, that:

“Harm to an arrested person, cuffed and without any deliverance, has always been considered a serious and cruel transgression, obligating appropriate punishment. In the words of President Shamgar in HCJ 253/88 *Sejidia v. Minister of Defence*, Verdicts mb(3) 801, 823 (1988): If there has been an unacceptable and forbidden phenomenon as contended, then it harms and not only harms the detainee, and humiliates not only him, but whosoever uses violence or power against him; Harm to a manacled person lacking deliverance is a cruel and disgraceful action, and it obligates a response appropriate to the severity of the act.”
11. In the light of all the above, you are requested to use your authority as obligated by Articles 49i and 49i(1)a of the Police Ordinance (New Text), 1971, and to order a criminal investigation against the policeman or investigator involved in torture and sexual assault on the complainant, and at its conclusion to bring him to criminal justice by fair process.
12. Similarly, we will request the presence of an attorney representing the complainant during the taking of evidence by the investigating elements, this in the spirit of Article 14 of the Law on Rights of Persons Harmed by Offence, 2001. This in the light of the juvenile’s natural fear of appearing alone before investigative and enforcement elements in Israel. This because, while cuffed and without deliverance, he endured a harsh episode of torture and maltreatment at the hands of soldiers and the “investigator” identified with the investigative and enforcement authorities in Israel.

We will be grateful for your urgent treatment.

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Bana Shoughry-Badarne, Advc  
Head, Legal Department  
**Public Committee Against Torture in Israel**

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Adnan Rabi, Advc  
Legal Department  
**Defence for Children International**