
'MINOR I.' FROM NABI SALEH

The Rights of Minors in Criminal Proceedings in the West Bank

CASE BRIEFING DOCUMENT

The Association for Civil Rights in Israel (ACRI)

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SUMMARY

- In the middle of the night on 23 January 2011, 14-year old A. was arrested in his home in the Palestinian village of Nabi Saleh in the Ramallah district. The arrest took place in the presence of massive numbers of armed security forces in A.'s home and village.
- A. reported that he was held in detention for many hours before the soldiers transferred him to a police station the next morning for interrogation. He noted that during the hours between his arrest and the interrogation, he was terrified and intimidated, subjected to harsh and inadequate detention conditions, unable to sleep, and not offered any food or drink.
- The next day, following a sleepless night, A. was interrogated for many hours by several interrogators, most not trained as youth interrogators. During the interrogation, A.'s basic right to due process was violated, and he was not given the special protections afforded to minors in keeping with both Israeli and international law.
- On 30 January 2011, an indictment was filed, charging A. with stone throwing and organizing and participating in an illegal demonstration.
- A. was held in detention for two months until his release to house arrest, still in force as of publication of this paper.
- On 9 January 2012, the military court issued a ruling in response to a request by Atty. Gaby Lasky, legal counsel for A., asking that the statements made by A. during the police interrogation be disqualified. The court rejected the defense arguments, ruling that the statements, which include confession to having thrown stones, were admissible despite the acknowledgement by the judge that there had been many serious flaws in the interrogation of the minor.
- The detailed ruling of the court in this case provides an unconventional interpretation of many violations of the rights of minors in criminal proceedings, both on the level of policy and legislation as well as on a

practical level, and at all stages of the process – from the arrest and detention through the interrogation to the legal procedures in the military courts.

- This ruling reflects and illustrates the widespread violation of the rights of minors in criminal procedures handled in the Occupied Territories. It testifies to the deep flaws in these procedures and reflects a need for the significant reorganization and correction of these systems.

BACKGROUND

Until the date of his arrest, A., a 14-year old minor from the Palestinian village of Nabi Saleh in the Ramallah district, was a regular participant in weekly demonstrations. Demonstrations have been held in the village of Nabi Saleh for over two years to protest encroachment by the nearby settlement Halamish onto the village's land and the ongoing restrictions on the villagers' access to their agricultural lands and the al-Qus spring, which supplied the village with water until it was seized in 2006.

A. was threatened and arrested in his home in the middle of the night on 23 January 2011 by a large contingent of Israeli security and military forces. This happened just one week after a similar night raid on A.'s home that did not end in arrest.

During A.'s arrest, the security forces disregarded his basic rights as a suspect who is a minor. Although A. was only 14 at the time of his arrest and interrogation, he was detained for hours in difficult conditions, deprived of sleep, and not given any food or drink. All of this took place prior to his transfer in the morning to the police station for the interrogation.

A.'s interrogation began before he was given an opportunity to consult with a lawyer, even though his lawyer explicitly asked the interrogators to await his arrival before beginning the interrogation. The lawyer arrived at the police station within an hour, but was prevented from meeting with A. for many hours. The interrogators allowed them to meet only towards the end of the interrogation, some five hours after it had begun.

The interrogation itself – conducted by four interrogators, only one of whom was a trained youth interrogator – continued for many hours, with A. appearing tired and exhausted through most of it. At some stage, A. began to sob and asked his interrogators several times when he could go home.

Throughout the interrogation, conducted in the absence of a parent or relative, the minor was not properly cautioned about his right to remain silent. On the contrary, the interrogators repeatedly emphasized that he must tell the truth, the whole truth. The judge in her ruling noted that these matters are a serious breach of the proper conduct of an interrogation and can "misrepresent [to the minor], leading him to believe that his only option is to give information during the interrogation".¹

The day after the interrogation, A. was remanded in custody for another four days, and this was followed by another eight days at the request of the military prosecutor. When this period ended, the court decided to release A. to house arrest in Ramallah, but because his family could not meet the terms of the release, A.'s remand in custody was again extended.

¹ See p. 28, lines 14-15 in the ruling of the trial-within-a-trial:
http://www.btselem.org/download/20120109_1367_11_juvenile_military_court_ruling.pdf

A. spent approximately two months in detention until the military court decided to release him to house arrest with restrictions as of 21 March 2011 in the wake of A.'s testimony to the court about the physical and emotional abuse he experienced during his detention.

On 30 January 2011, an indictment was filed charging A. with two offenses under military law:

- **Throwing an object at a person or property**, an offense according to para. 212(2) of the Order Regarding Security Directives [consolidated version] (Judea and Samaria) (No. 1651), 2009.
- **Organizing and participating in a procession without a permit**, an offense according to paras. 1, 3 and 10 of the Order Regarding Prohibition of Acts of Incitement and Hostile Propaganda (Judea and Samaria) (No. 101), 1967.

Immediately upon reading the indictment, A.'s lawyer asked for a trial-within-a-trial to challenge the admissibility of the minor's statements made during the police interrogation in which he allegedly confesses to the charges and supplies information that provides the evidentiary basis incriminating two leaders of the popular protest and organizers of demonstrations in his village. On 22 February 2011, the defense attorney submitted her arguments on this issue to the court (details below). On 9 January 2012, the military court rejected the defense attorney's arguments against the admissibility of A.'s statements. Because this is a criminal proceeding, Israeli law does not allow for appeal of the trial-within-a-trial ruling until the trial ends and is appealed – hence, the case is still pending before the court.

It should be noted that A.'s statements provided key evidence for the arrest and trial of Naji Tamimi and Basem Tamimi, two leaders of the demonstrations and popular struggle in the village of Nabi Saleh, despite the many claims about irregularities during both the detention and interrogation of the minor.

ANALYSIS OF THE COURT DECISION

IN THIS SECTION:

Flaws in Interrogation of A.

1. The Detention
2. The Interrogation
 - a. Presence of a parent in interrogations of minors
 - b. Prevention of meeting with attorney
 - c. Night arrest and the minor's physical and mental state during the interrogation
 - d. The right to remain Silent

From the Specific to the General: Lessons Drawn from the Ruling

Flaws in the INTERROGATION of A.

The defense arguments against the admissibility of A.'s statements during the police interrogation relate both to the arrest and interrogation stages, and can be summarized as follows: **The violent, demeaning, and illegal**

nature of his detention and the trampling of his dignity and rights during interrogation as a suspect and a minor cumulatively led A. to confess falsely, not freely and voluntarily.

The following claims were raised by the defense concerning irregularities in the detention and interrogation:

- Irregularities during the **detention stage**: violence, intimidation, and inadequate conditions
- Irregularities during the **interrogation stage**:
 - Interrogation despite the minor's fatigue and sleep deprivation during detention.
 - Interrogation for long hours by four interrogators, only one of whom was trained as a youth interrogator.
 - Absence of a parent during the interrogation.
 - Violation of constitutional rights – failure to caution the defendant about his right to remain silent and preventing him from meeting with his lawyer; an interrogation that began without providing an opportunity for meeting with his lawyer, and delaying this meeting for several hours even after the lawyer had arrived at the police station.

As noted, the reasoned ruling of A.'s trial-within-a-trial is a rare and important illustration of the widespread violation of the rights of minors in criminal proceedings in the military courts of the Occupied Territories. This ruling must be examined critically to identify the underlying problems with these procedures in an effort to correct them.

To that end, we examine briefly the primary flaws raised during the trial, and the judge's ruling on each.

1. The Detention

The judge opens her discussion of the detention with the words, "There is no dispute that in certain circumstances, the use of violence, threats, or inappropriate treatment of the detainee immediately before his interrogation could influence the free admission of his guilt..." and then criticizes the military prosecutor for "regularly refraining from bringing witnesses to counter the minor claims related to how the detention was handled". Nevertheless, the judge reaches the overall conclusion that in the evidence presented to her, she saw "no support for the claim that the manner in which the defendant was detained affected his statement to the police", and thus rejected the defense arguments with regard to the illegality of A.'s detention procedure.

2. The Interrogation

a. Presence of parents during interrogation of a minor

Although current military legislation, unlike Israeli law, does not explicitly enshrine the right of a minor to have a parent in the interrogation room, Judge Sharon Rivlin Ahai still chose to relate to the "spirit" of Israel's Youth Law within the Occupied Territories as well, and the importance of applying the principle of the best interests of the child to Palestinian minors as well, noting:

Although the amendment to the Youth Law was not applied to security legislation in the region, at the time it came into force, the Military Appeals Court stated, "It is impossible to ignore their spirit or the principles underlying the protection of a minor's rights, even if he is suspected of committing offenses, and dominance must be given to the supreme principle of the best interest of the minor, as stated in the proposed law. Ultimately, a minor is a minor whether he lives in a place where Israeli law applies in its

entirety or in another place, where although Israeli law does not fully apply, it is subject to the influence of the Israeli court system” (Mil. App. Ct. 2912/09 *Military Prosecutor vs A.R.*).²

The judge continues, “The police should try to uphold the obligation of allowing parents to be present in the interrogation, even for a Palestinian minor who lives in the region, as long as the conditions in the region permit it.” With regard to the specific instance of A., however, despite the judge’s statement that “no real effort was made to check the option of having the parents present in the interrogation,” she qualifies this statement, asserting that under the circumstances of this specific case, and in light of the fact that the case involves many participants, including the minor’s neighbors and relatives, she does not regard the interrogation of a minor in the absence of his parents to be a substantive flaw.³

b. Prevention of meeting with an attorney

The judge does not contest the constitutional right of a person interrogated to meet with his or her attorney, and notes, “There was no dispute that the interrogators knew that the defendant’s attorney was on the way to the police station, yet they chose to begin the interrogation. I believe that it is a worthy rule that when the defendant is a minor, about 14 years of age, being interrogated in the absence of his parents, that the interrogators wait a reasonable time for the arrival of the attorney”. However, the judge qualifies this by stating that because of the concern that the attorney would be delayed, “it is hard to say that the decision not to wait...was so unreasonable and unjust that it critically undermined the fairness of the interrogation”. She rules similarly on the matter of delaying the meeting with the minor’s lawyer even after his arrival at the police station.⁴

c. Night arrest and the minor’s physical and mental state during the interrogation

In this matter, the judge ruled that it was her impression that the defendant was not so tired that he could not have a substantive interrogation. After this specific determination, the judge states the broad principle that “in general, a minor arrested at night should be allowed to rest before interrogation and, when appropriate, the interrogation should be halted to allow the defendant to rest if he complains of tiredness. I am aware that police stations are not always logistically equipped to accommodate a detained minor, but in my view a solution must be found for this logistical problem to ensure both the best interests of the minor and the quality of the interrogation.”⁵

In an interim summary of her ruling, the judge states:

To avoid misunderstanding: On its own, each of the circumstances reviewed above – interrogation in the absence of a parent, failure to await the lawyer, prevention of a meeting, and the tiredness of the defendant – could in certain conditions, each on its own and certainly cumulatively, lead to the conclusion that the fairness of the interrogation was significantly and substantively compromised. In extreme cases, the conclusion might be drawn that a statement taken under these circumstances was not given freely and voluntarily by the person interrogated..⁶

² Ibid., p. 24, lines 29-35.

³ Ibid., p. 26.

⁴ Ibid., p. 27.

⁵ Ibid., p. 27, lines 30-34.

⁶ Ibid., p. 27, lines 36-39.

d. Right to remain silent

With reference to the fact that A. was not informed of his right to remain silent, the judge opens with “I find a real defect in the fairness of the interrogation in that A. was not explicitly informed of his right to remain silent.”⁷ The judge continues:

Even if this were a “technical” error by the interrogator, it is a substantive defect that under no circumstances can be considered a “technical” defect. The fact that the right to say nothing during an interrogation was repeatedly forgotten by the interrogator, despite the fact that he does bother to read the defendant his other rights from the formulated warning, and yet at the same time repeatedly tells the defendant that he must tell the truth, can misrepresent to the defendant, leading him to believe that his only option is to give information during the interrogation. The interrogator’s obligation to inform the defendant of his rights in a manner that is clear, explicit, and appropriate to his age and level of maturity is an absolute obligation derived both from the explicit words of Israel’s Youth Law and the general obligation of fairness that I cited earlier, an obligation that was explicitly violated in the case of the defendant.⁸

At the end of her discussion of the irregularities in the detention and interrogation procedures of A., the judge summarizes as follows:

Parenthetically I note that although in this specific case because of the special circumstances described above, I decided not to render the statement inadmissible, as noted above, however, the conduct of the interrogators in the matter of the defendant was not free of defects. These could definitely have led to the disqualification of statements made during interrogation under certain circumstances. The military prosecution is hereby requested to pass on this decision to those in charge of the interrogation of youth in this region, so that they will learn from it, draw lessons, and correct what should be repaired.⁹

Yet despite everything said above, the judge ruled to deny the defense attorney’s request to render A.’s statements inadmissible, explaining:

As noted, the defects in the interrogation of the defendant were serious. On the other hand, I have concluded that these defects did not have a substantive effect on the manner in which the defendant gave his confession. Therefore I believe that the violation of the defendant’s rights in this specific case did not result in a greater than necessary violation of his right to criminal due process, to the extent that would render his confession inadmissible and thereby impede revelation of the true facts and prevent advancement of the public interest in combating criminality.¹⁰

From the Specific to the General: Lessons Drawn from the Ruling

Since Israel's occupation of the West Bank in 1967, Palestinian minors have been tried in military courts based on military laws and orders. Even after the two recent amendments to this legislation – the establishment of a Military Youth Court in 2009 and raising the age of minority in the territories from 16 to 18 in 2011 – military

⁷ Ibid., p. 28, line 6.

⁸ Ibid., p. 28, lines 11-21.

⁹ Ibid., p. 30, lines 17-21.

¹⁰ Ibid., p. 30, lines 11-15.

laws in the West Bank still include many provisions that harm minors while they lack provisions giving the special protection to minors that is common in Israel and the world.

As a result, the existing legislation inflicts severe, substantive harm upon the rights of Palestinian minors and their protection in a criminal proceeding. This harm is experienced by a large number of minors at every stage of the criminal proceeding that takes place in the territories – harm that contravenes the provisions of international law.

Beyond the problems with the existing military legislation, we are witness to many serious violations of the rights of Palestinian minors at every stage of the criminal process stemming from improper and unconstitutional practices of the security forces in how they treat minors – the use of physical and verbal violence during arrests, intimidation and threats, handcuffing and blindfolding of minors, and many other practices that A.'s arrest only partially illustrates. A key factor here is the failure of the occupying authority to establish, convey, and improve the procedures and instructions to the security forces regarding the proper and sensitive treatment of minors during criminal procedures in the territories.

As noted, the case of A. illustrates only some of the range of rights violations of Palestinian minors who live under occupation in the West Bank, both at the level of military law and improper practices in the field. The many irregularities in detention and interrogation of minors are not just unconscionable from a moral perspective, they are also a patent violation of international human rights law, which explicitly calls for special consideration of minors at every stage of a criminal proceeding, based on the principle of the best interests of the child, and the designation of rules and mechanisms for the proper protection of the rights of children in a criminal proceeding, which mandate, inter alia, the presence of parents during the interrogation of minors, documentation of the interrogation, and conditions and restrictions on the procedures for the arrest, detention, interrogation, and trial of minors.

The proper standards for dealing with Palestinian minors in the Occupied Territories can be learned from the standards that apply within Israel to Israeli minors, including those who live in the Occupied Territories, standards that are compatible with the norms and decisions of international law in this context: Israeli law, unlike military law that applies in the territories, prohibits the sentencing of minors under the age of 14 to actual imprisonment. In another example, Israeli law explicitly enshrines the obligation of a parent or relative to be present during the interrogation of minors, while in the territories, this obligation is not anchored in law and applied only in isolated cases based on the subjective judgment of the officer in charge of the police interrogation.

In addition to the foregoing, the case of A. exemplifies a serious and tangible violation of the freedom of expression and protest in the territories, as a result of the merging of unconstitutional legal norms and improper tools and mechanisms for detention, interrogation, and trial of the participants and organizers of demonstrations in the territories: as mentioned above, and in addition to the fact that A. himself was arrested and interrogated on suspicion of participating in an illegal demonstration and throwing stones during that demonstration, A.'s statements to the police – extracted under the flawed circumstances described above – constitute the primary evidence incriminating Basem Tamimi and Naji Tamimi, two leaders of the popular struggle and organizers of the demonstrations in Nabi Saleh.

RESOURCES

ACRI letter to the MAG on minor's rights in English) –

http://www.dci-palestine.org/sites/default/files/acri_2nd_letter_to_mil_adv_gen-26jun2011-eng_2.pdf

Defense of Children International (DCI) detention bulletin, December 2012 – [http://www.dci-](http://www.dci-palestine.org/sites/default/files/detention_bulletin_dec_2011_1.pdf)

[palestine.org/sites/default/files/detention_bulletin_dec_2011_1.pdf](http://www.dci-palestine.org/sites/default/files/detention_bulletin_dec_2011_1.pdf)

ACRI Know-Your-Rights pamphlet in English – <http://www.acri.org.il/en/2011/09/18/rights-of-demonstrators-in-the-occupied-territories-informational-pamphlet/>

***Please note that translations of Court documents were done by ACRI, they are not official translations.*