

# Children in Military Custody

## Executive Summary

June 2012

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A report written by a delegation of British lawyers on the treatment of Palestinian children under Israeli military law

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## Terms of Reference

1. The delegation's terms of reference were to undertake an evaluative analysis of Israeli military law and practice as they affect Palestinian children in the West Bank by reference to the standards of international law and international children's rights. The terms of reference did not include the legality of the occupation. Nor did the terms of reference include the impact of the occupation on the welfare and rights of children outside the legal process.
2. The questions which concern us are what are the differences in the treatment of Israeli and Palestinian children in law or in practice and is there any justification for such differences.

## Guiding Principles

3. First, Israel, as the Occupying Power in the West Bank, carries its international human rights obligations with it.
4. Secondly, the Israeli domestic juvenile justice system in our view conforms substantially to the standards required by the United Nations Convention on the Rights of the Child (UNCRC) and adopted in most of the so-called 'developed world'.
5. Thirdly, under international law, no state is entitled to discriminate between those over whom it exercises penal jurisdiction on the basis of their race or nationality. Unequal or differential justice is not justice.

## Conflicting Accounts

6. Although we received radically conflicting accounts, which we have recorded in detail, of how Palestinian children are treated by Israeli forces, we have not found it necessary to choose between them. This is because the legal differentials between Palestinian and Israeli children, which we are concerned with, are a matter of record. We do, however, touch on the legal implications if some of the allegations made against Israel were to be true.

## Conclusions

7. On the basis solely of legal differentials, we have concluded that Israel is in breach of articles 2 (discrimination), 3 (child's best interests), 37(b) (premature resort to detention), (c) (non-separation from adults), (d) (prompt access to lawyers), and 40 (use of shackles) of the UNCRC. Transportation of child prisoners into Israel is in breach of article 76 of the Fourth Geneva Convention. Failure to translate Military Order 1676 from Hebrew is a violation of article 65 of the same convention.
8. If the manner of arrest and detention is to any significant extent that which was described to us by the UN, Israeli and Palestinian NGOs, former Israeli soldiers and Palestinian children, Israel will also be in breach of the prohibition on cruel, inhuman or degrading treatment in article 37(a) of the UNCRC. With regard to what is set out in paragraph 101 of our report, we record our view that to hold children routinely and for substantial periods in solitary confinement would, if it occurred, be capable of amounting to torture in breach not only of article 37(a) but also of other well-known international instruments.
9. Forty specific recommendations are set out in the report. They cover areas of potential improvement in relation to arrest, interrogation, bail hearings, plea bargains, trial, sentencing, detention, complaints and monitoring.

10. Of our general recommendations, we would highlight these:
11. International law, international humanitarian law and the UNCRC apply to the Occupied Palestinian Territories and therefore should be fully and effectively implemented.
12. The international legal principle of the best interests of the child should be the primary consideration in all actions concerning children, whether undertaken by the military, police, public or private welfare institutions, courts of law, administrative authorities or legislative bodies.
13. Israel should not discriminate between those children over whom it exercises penal jurisdiction. Military law and public administration should deal with Palestinian children on an equal footing with Israeli children.

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