

Children in Military Custody

June 2012

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

Contents

| | |
|--|----|
| Introduction | 2 |
| Methodology | 3 |
| Historical and Political Background | 4 |
| Guiding Principles | 6 |
| Israeli Law and Military Law | 7 |
| International Law and the United Nations Convention on the Rights of the Child | 9 |
| Conflicting Accounts | 11 |
| Procedures and Practices | 13 |
| Proportionality | 13 |
| Arrest | 14 |
| Interrogation | 16 |
| Bail hearings and Plea bargains | 21 |
| Trial | 23 |
| Sentencing | 24 |
| Detention | 26 |
| Complaints | 28 |
| Conclusions | 30 |
| Recommendations | 32 |
| Appendix 1 - Meetings attended by the delegates | 36 |
| Appendix 2 - Biographies of the delegates | 38 |
| Appendix 3 - Extracts from United Nations Convention on the Rights of the Child | 40 |
| Appendix 4 - Child Detention Figures | 44 |

Introduction

1. The delegation that produced this report comprised nine lawyers¹: The Rt Hon Sir Stephen Sedley, The Rt Hon the Baroness Patricia Scotland of Asthal QC, Frances Oldham QC, Marianna Hildyard QC, Judy Khan QC, Jayne Harrill, Jude Lanchin, Greg Davies and Marc Mason. Bea Randall and Greg Davies were responsible for the organisation of the visit, and Lou Dawson was the delegation's communications consultant. The group was brought together solely for the purpose of the visit and report. Its members, who have not worked as a group for any other purpose, were selected for their knowledge and experience of human rights law and procedure relating to both crime and child welfare, and for experience of socio-legal research.
2. The delegation visited Israel and the West Bank from 10 to 17 September 2011. 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
3. The visit was funded by the United Kingdom Foreign & Commonwealth Office, which also provided diplomatic support throughout the visit, on the shared understanding that the delegation was to be entirely independent. The content, conclusions and recommendations of the report are accordingly the delegation's own.



Foreign &
Commonwealth
Office

1 Short biographies of the delegates can be found at Appendix 2.
2 Whilst evidence was not sought on the broader issues of child welfare, circumstances described in this report raise concerns which, in our view, warrant further enquiry.

Methodology

4. The delegation visited both Israel and the West Bank and had the benefit of the engagement of the Israeli Government during this time. As a result, the members are confident that they were able to assemble a substantial and balanced body of relevant information.
5. The delegation:
 - Commissioned an advice from a specialist Israeli lawyer on the differences between Israeli civilian law and military law in relation to children in custody.
 - Undertook a review of existing literature and research, including reports by NGOs and UN Agencies, and official Israeli responses to the reports where available.
 - Held meetings with a substantial number of individuals (including lawyers, former child prisoners, former Israeli soldiers), NGOs, UN agencies, Israeli Government departments, the then Chief Justice of the Israeli Supreme Court, and senior military judges and prosecutors at the military courts at Ofer prison (outside Jerusalem). We also had an unscheduled meeting with Israeli settlers in Hebron. Appendix 1 sets out a full list of the delegation's meetings.
 - Sent formal requests to the relevant Israeli Government agencies for further information agreed upon during our meetings and invited those agencies to provide any further data they considered relevant.
 - While this report adopts, with one exception, the 'Chatham House principle' of not attributing quotes to individuals, our practice at our meetings with Israeli officials and judges was to obtain their agreement to our taking contemporaneous notes or tape-recording our discussions. We are accordingly able to confirm the accuracy of those paragraphs which recount what we were told. The exception referred to above is the interview we were granted with the former Chief Justice, whose identity cannot be concealed, and some of whose conversation with us was of obvious importance in explaining the Israeli position. We obtained consent from the former Chief Justice to include certain references to our meeting with her.

Historical and Political Background

6. The West Bank, since 1967, has been subject to Israeli military occupation and to governance by military laws and tribunals. Following the occupation, many Israeli settlements have been established in the West Bank. We have no reason to differ from the view of Her Majesty's Government and the international community that these settlements are illegal. For the purposes of this report however we treat them, like the occupation, as a fact.
7. In consequence of the establishment of Israeli settlements, the population of the West Bank is governed by two separate systems of law. Those who possess Israeli citizenship – that is, in practice, the population of the settlements – are subject to Israeli law. Those who do not – that is, for practical purposes, the Palestinian population – are subject to Israeli military law as well as Palestinian law³.
8. After 42 years of trying Palestinian children in the same courts as adults, in 2009 the military juvenile court was created by Military Order 1644. In the new court, judges are trained to deal with children. Whilst at the time of the delegation's visit the court was empowered to deal with children under 16, we were informed by the military that, in practice, it heard cases of children up to the age of 18. Since our visit, by virtue of a new Military Order, 1676, which was passed on 27 September 2011, the court now officially has jurisdiction over children up to the age of 18. The delegation welcomes this change to the age of majority for Palestinian children but is concerned that the change does not appear to apply to sentencing provisions. The benefits of the military juvenile court, as described by the Ministry of Justice and the military judiciary, are that trials are separated from those of adults, parents are allowed to participate, and a probation report may be obtained.⁴ We were informed by the military judges with whom we met that the courts sit in closed session but that access is given to human rights organisations. It is the view of the NGOs with whom we met, however, that considerably more progress is required in spite of recent reforms to the law and that there remains a gulf between law and practice.

3 The Ministry of Justice described the position to us in detail: "Legally speaking...the law in the West Bank applies the same to the Palestinians and the Israelis in the West Bank who are throwing stones...Regarding the Israelis also the Israeli law applies to them because in 1967 we amended the Israeli law and said that a court in Israel can try an Israeli for an offence he did in the West Bank. If he would do it in Israel and the court would have jurisdiction over the offence then the court can judge him even though the offence was committed in the West Bank. So we did not want Israelis to feel that they would be free from the Israeli criminal law just because they are in the West Bank. In the beginning of the days of the military government Israelis were tried before the military courts in the West Bank also...It didn't work so well. Since then, for many years they are being tried in Israel according to Israeli laws...The people who investigate them may be the people who investigate both people. It can be the general security service or the policemen. Israelis who are under security service investigation for suspect of setting fire in a mosque, response for acts that people from the right wanted to do, they were investigated and after many days of investigation there was not enough evidence so they were released. If there would have been evidence an indictment would have been presented to a court in Israel, according to Israeli law for an offence that was committed there. So the law can be different, the investigators may be the same. The judges at the end of the day, a Palestinian will be tried before a military court if he did something in the West Bank. If he did it in Israel he will be tried before an Israeli Court. An Israeli, even if he lives there and did it there, practically speaking, most times will be tried in Israel."

4 Although this is not a compulsory requirement as it is in Israel.

9. The position in East Jerusalem is complex and is not within the scope of our report. We limit ourselves to noting a recent publication of the Association for Civil Rights in Israel⁵ which reports that, while the Israeli Youth Law of 1971 on adjudication, punishment and methods of treatment formally applies to all children in East Jerusalem, it is constantly departed from by the Israeli police when dealing with Palestinian children, in respects similar to those we record on the part of the military in the West Bank in this report. We also note that since our visit, Defence for Children International (DCI) has reported⁶ an increase in reports of physical violence and threats against Palestinian children detained in East Jerusalem.

5 Alyan et al., *Violations of the Youth Law...by the Israeli Police in East Jerusalem*, March 2011. www.acri.org.il/en/2011/06/01/police-violations-of-rights-of-minors-in-east-jerusalem

6 In their own Words. A report on the situation facing Palestinian children detained in occupied East Jerusalem (dated 30 January 2012) http://www.dci-palestine.org/sites/default/files/un_sp_-_detention_-_west_bank_-_jan_2012.pdf. The report covers a six-month period from 1 July 2011 to 31 December 2011. Defence for Children International is an independent non-governmental organisation which works to protect, defend and advocate for the rights of children and young people in conflict with the law. They have direct knowledge of the military court system through their work in providing legal representation to children. In 2009 to 2010 they provided representation to 243 children in the military court. (Defence for Children International – Palestine Section Annual Report 2010). Defence for Children International also collects evidence on the treatment of children passing through the justice system.

Guiding Principles

10. The United Nations Convention on the Rights of the Child (UNCRC), which was ratified by Israel in 1991,⁷ is one of the major applicable sources of international human rights law. For our purposes, its central relevance is that, by prioritising the best interests of the child, it commits each State signatory to a regime of the kind from which every Israeli child already benefits. The questions which concerns us are what are the differences in the treatment of Palestinian and Israeli children in law or in practice and is there any justification for such differences.
11. In addressing these questions, we start from three propositions of law.
12. Firstly, Israel, as the Occupying Power in the West Bank, carries its international human rights obligations with it.⁸ It is as fully bound, for example, to respect the right to life of Palestinians as of Israelis. Our report explains why we adopt this position. No Israeli lawyer or judge to whom we have spoken has expressed any contrary view. However, differences begin to emerge, as will be seen, when one turns to such issues as the right to a fair trial in practice.
13. Secondly, the Israeli domestic juvenile justice system in our view conforms substantially to the standards required by the UNCRC and adopted in most of the so-called '*developed world*'. We therefore use it as a suitable yardstick for assessing legal propriety.
14. 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. We have encountered official Israeli attitudes which, while not overtly contesting this proposition, implicitly challenge it. Beyond this, however, it is uncontested that there are major differentials between the law governing the treatment of Palestinian children and the law governing treatment of Israeli children. There are also grounds for believing there to be serious differentials in procedure and practice.
15. Without embarking on its legality or desirability, we treat as a given fact the use of military courts to try Palestinian civilians, in particular children.
16. The first issue in this situation is whether the Israeli system of military law by which the Palestinian population is governed is required to conform to the first two standards set out above – respect for human rights and non-discrimination. In our view, it is. The second issue is compliance. This report will set out the delegation's findings on the level of compliance with international human rights standards by Israel and will suggest ways in which, even within the context of an on-going military occupation, Israeli military law and public administration can and should deal with Palestinian children on an equal footing with Israeli children.

7 www2.ohchr.org/english/law/crc.htm

8 Advisory Opinion on the Legal Consequences of Construction of a Wall in the Occupied Palestinian Territories, dated 9 July 2004 at paragraphs 102-113
<http://www.icj-cij.org/docket/files/131/1671.pdf>

Israeli Law and Military Law

17. According to Defence for Children International, every year approximately 500-700 Palestinian children come into contact with the military justice system in the West Bank.⁹ No Israeli child does.
18. Within Israel and the West Bank the two legal systems in operation are different. Israeli citizens (including the settler population in the West Bank) are subject to Israeli civilian and criminal law and Palestinians in the West Bank are subject to Israeli military law.
19. The table that follows sets out formal differences affecting Palestinian and Israeli children respectively in the criminal justice process.¹⁰

| # | Event | Israeli Child subject to Israeli civilian legal system | Palestinian child subject to Israeli military detention system |
|----|---|--|--|
| 1 | Minimum age of criminal responsibility | 12 | 12 |
| 2 | Minimum age for custodial sentences | 14 | 12 |
| 3 | Age of majority | 18 | 18 (prev. 16) ¹¹ |
| 4 | Legal right to have parents present during questioning | Generally yes ¹² | No |
| 5 | Legal right to have lawyer present during questioning | No | No |
| 6 | Audio-visual recording of interrogations | Partial ¹³ | No |
| 7 | Maximum period of detention before being brought before a judge | 12-24 hrs | 8 days |
| 8 | Maximum period of detention without access to a lawyer | 48 hrs ¹⁴ | 90 days |
| 9 | Maximum period of detention without charge | 40 days ¹⁵ | 188 days |
| 10 | Maximum period of detention between being charged and conclusion of trial | 6 months | 2 years |

9 Defence for Children International – Palestine (2011) In their own Words: A Report on the situation facing Palestinian children detained in the Israeli military court system, at page 3.

10 Table adopted from Bound, Blindfolded and Convicted: Children held in military detention, April 2012, p. 61 http://www.dci-palestine.org/sites/default/files/report_0.pdf, and in consultation with a specialist Israeli lawyer.

11 Recently changed by Military Order 1676. However, adult sentencing provisions still apply to 16 & 17 year olds.

12 Youth (Trial, Punishment and Modes of Treatment) Law (1971) – section 9H. A parent is allowed to be present at all times in circumstances where the child has not been formally arrested, but may not intervene in the interrogation process. An exception to this rule is permitted upon written authorisation of an authorised officer, and in cases in which the well-being of the child requires the parent not to be present.

13 In all cases other than security offences where the maximum penalty is 10 years or more – Criminal Procedure (Suspects Interrogation) Law (2002) – sections 4 and 17. There is no requirement for the audio-visual recording of interrogations in security offences.

14 For security offences the maximum period is 21 days.

15 To continue detention over 30 days before charge requires the approval of the Attorney General.

20. While stone-throwing can be prosecuted under both Israeli civilian law and Israeli military law, the fact that article 332 of the 1977 Penal Law (under which an Israeli child would be prosecuted) is not the same as article 212 of Military Order 1651 (under which Palestinian children are prosecuted) highlights the fact that two different systems of law are applied by Israel depending on the nationality of the accused.
21. In July 2009, new legislation¹⁶ came into effect in Israel, which brought about significant changes to Israeli internal law. These changes underscored the fundamental principle of the child's best interests in criminal proceedings, placing proper weight on considerations of rehabilitation and integration into society. One key aspect of this legislation was that it placed significant restrictions on the procedures for detention and interrogation of Israeli children and set out special procedures for them to be tried for criminal offences.
22. On 29 July 2009, the Israeli Defence Force Commander in the West Bank signed Amendment No. 109 to the Defence Order. This amendment brought about the establishment of the military juvenile court and provided that deliberations should take place, as far as possible, in a place where, and at a time when, trials for adults are not being held. The amendment also directed that children should be separated from adults while in prison and, if possible, when they are brought to and detained at court. According to the amendment, the military juvenile court is not qualified to deal with matters of detention and release of children, which only take place in the main trial after an indictment is lodged. Consequently, the legal position is that procedures for the detention of children are held in adult courts. However, in practice, they are sometimes held in juvenile courts.
23. On 27 September 2011, military law changed as a result of Military Order 1676. The order amends article 136 of Military Order 1651, raising the age of majority from 16 to 18. It also makes provision for notifying a child's parents that the child has been arrested, and informing the child that he or she has the right to consult with a lawyer, although it does not state when this consultation should occur. This change to military law is welcomed by the delegation. It is important to highlight however, that under article 168(C) of Military Order 1651, although a '*minor*' (now defined as a child between the ages of 14 and 17 inclusive) can receive a maximum sentence of 12 months' imprisonment, there is an exception in cases where the maximum penalty for the offence is five years or more. In such a case children (14 to 17) can be sentenced as adults. Under articles 212(2) and (3) of Military Order 1651, the maximum penalty for throwing stones (the most common offence) ranges from 10 to 20 years, making children aged between 14 to 17 years subject to the same penalties as adults.
24. Defence for Children International has since reported that the provision relating to notifying parents is seriously flawed as it only applies to the Israeli police and not the army, which, in practice, conducts arrests in the West Bank and has custody of the child for several hours and sometimes days before they are handed over to the police.¹⁷
25. At the time of publishing this report, Military Order 1676 has not been translated from Hebrew. This appears to us to be a violation of article 65 of the Fourth Geneva Convention¹⁸, which we hope will be speedily addressed.

16 Amendment No. 14 to the Youth (Adjudication, Punishment and Methods of Treatment) Law-1971 published on 30.07.08 and in force in July 2009.

17 Defence for Children International: Bound, Blindfolded and Convicted: Children held in military detention, April 2012 p18-19.

18 Art. 65. The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language.

International Law and the United Nations Convention on the Rights of the Child

26. The United Nations Convention on the Rights of the Child, as stated before, was ratified by Israel in 1991. Outlined below are the major provisions of the UNCRC relevant to this report. In the next section we highlight areas in which we believe that Israeli military procedure and practice breach the UNCRC and other international norms and fall short of Israeli domestic standards.
27. The UN Convention on the Rights of the Child sets out to acknowledge and protect the special rights that all children must be accorded, as individuals with a lower maturity and greater vulnerability than adults. It is built upon the principle of non-discrimination, the best interests of the child and the inherent right to life, survival and development. These, together with the right to participate, are the guiding principles by which all other rights within the Convention are realised. The preamble quotes the Declaration of the Rights of the Child: The child by reason of physical and mental immaturity *“needs special safeguards including appropriate legal protection before as well as after birth”*; *“the child should be fully prepared to live an individual life in society and brought up in the spirit of ideals proclaimed in the Charter of the United Nations and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”*.
28. The most material provisions of the UNCRC, (including article 2 – see paragraph 29 below), are set out in Appendix 3. In short they are the following:
 - Article 3: the best interests of the child are to be a primary consideration.
 - Article 6: the right of every child to life and to development.
 - Article 12: the right of the child to be heard, especially in judicial proceedings.
 - Article 28: the right of a child to education.
 - Article 37: the child’s right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; to arrest and detention being a measure of last resort and for the shortest appropriate period of time; to humane and dignified treatment in custody, including family contact; to prompt access to legal advice and representation; and to a prompt hearing before an independent court.
 - Article 40: the state’s duty to provide non-penal measures where appropriate and desirable; to treat accused or convicted children with dignity and with a view to rehabilitation; to accord the child full due process, including legal assistance and interpretation where appropriate; and not to require self-incrimination.
29. An essential issue is whether the UNCRC binds Israel in its capacity as the Occupying Power in the West Bank. Article 2(1) of the Convention provides: *‘State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind...’*. Israel is a full party to the UNCRC and has entered no reservations or representations as to its territorial application.

30. In our meetings with the various Israeli Government agencies, we found the universal stance by contrast was that the Convention has no application beyond Israel's own borders. We respectfully disagree. In our judgment it is factually and legally unreal to suggest that children who are arrested by the Israeli Defence Force, interrogated by either the Israeli police or the Israeli Security Agency, held in Israeli prisons and judged by Israeli military courts, are not within the jurisdiction of the State of Israel.
31. We recognise the International Court of Justice's 2004 Advisory Opinion¹⁹ which concludes categorically that the UNCRC is applicable in the Occupied Palestinian Territories. The International Court of Justice also confirmed the applicability of the International Covenant on Economic, Social and Cultural Rights of 19 December 1966 and the International Covenant on Civil and Political Rights of the same date.
32. As the Grand Chamber of the European Court of Human Rights has held in the case of *Al-Skeini v United Kingdom* (55721/07; 7 July 2011), a state in military occupation of a territory is obliged, by virtue of its adherence to an international human rights treaty, to accord those rights in full to the persons over whom, without assuming full sovereignty, it exercises '*physical power and control*', or who inhabit an area of which the contracting state has effective control. The population of the West Bank is within the physical power and control of Israel, and Israel has effective control of the territory. Our visit dispelled any doubts we might have had about this.
33. The occurrence of hostilities or physical conflict in the Occupied Palestinian Territories does not alter or dilute Israel's consequent obligations. The International Court of Justice considers that in times of war, human rights obligations are not suspended, save by the recognised process of derogation, but that they operate in harness with international humanitarian law – the body of law which applies to situations of armed conflict.²⁰
34. We do not believe, however, that this difference of legal view represents an insuperable barrier to change. More than one official Israeli body has accepted, in our discussions, that whatever its formal obligations, Israel should seek to respect the rights set out in the UNCRC in administering the Occupied Palestinian Territories.

19 Advisory Opinion on the Legal Consequences of Construction of a Wall in the Occupied Palestinian Territories, dated 9 July 2004 at paragraphs 102-113.

20 International Court of Justice (2004) Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion, ICJ Reports 2004 p136, at paragraph 10; International Court of Justice (1996) Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996 p226, at paragraph 25.

Conflicting Accounts

35. We have been given two irreconcilable accounts of the treatment and rights of Palestinian children detained by the Israeli authorities in the West Bank.
36. The first account, provided to us by Palestinian and Israeli NGOs, UN agencies, lawyers, former Israeli soldiers and Palestinian children whom we met,²¹ is that those who have been identified as offenders or suspects are arrested by soldiers, usually in nighttime raids on their homes are blindfolded, and, with their wrists painfully bound behind them, are then transported to interrogation centres, sometimes face-down on the floor of military vehicles. The majority are verbally and / or physically abused and, without being informed of their right to silence or the right to see a lawyer, are sometimes held in solitary confinement, pressured to inculcate themselves and others, and are often made to sign statements which they cannot read because they are written in Hebrew. Interrogations are not, save on rare occasions, audio-visually recorded, and those tapes that do exist are almost impossible to obtain by defence lawyers representing the children.
37. After several months on remand, almost always in custody, often in primitive conditions, with limited or no education and extremely restricted access to family, the children are in most cases advised by their lawyer that their best hope is a plea bargain which will reduce the overall time spent in custody whether they are convicted or acquitted. In this process, every year hundreds of Palestinian children are traumatised, sometimes irreversibly, are denied part of their schooling, and then live at on-going risk of much harsher punishment if they are arrested again.
38. The second account was provided to us by the Israeli Government departments, military judges and prosecutors.²² This account, which varied between the different departments, is that, once the child has been brought into custody, he or she is informed prior to interrogation of his or her right to silence and to counsel. Children are treated appropriately throughout this process, violence and threats are forbidden, and if shown to have occurred will result in the exclusion of any consequent confession. Some departments reported that protection against ill-treatment and coercion is secured through the use of audio-visual recording of interrogations. Any complaint of violation of these norms, if raised by the defence at trial, is inquired into by the military judge, who has access to the live recordings of the interviews and may reject a case based on prosecutorial misconduct.
39. Pleas of guilty are tried with the same procedural safeguards as in an Israeli court: plea bargains are not passively accepted and the judge has to be satisfied that the agreed sentence is a fair one. In contested cases an appeal is lodged first with the Military Appeal Tribunal and thereafter with the Supreme Court.
40. In custody, children receive education to such a high standard that Palestinian children have been known to offend in order to access it.

21 See Appendix 1.

22 This did not include the police who conduct interrogations, a group with whom we were unable to meet.

41. For one critical reason it is not necessary for us to choose between these accounts. The legal differentials between Palestinian and Israeli children are a matter of record, to which we are about to turn. As the United Kingdom has itself learned by recent experience in Iraq, the risk of abuse is inherent in any system of justice which depends on military force. In our view, which is based in large part on a candid discussion with the military court judges, there are no sufficient procedural or practical reasons why identical safeguards as those accorded by Israeli law to Israeli children should not be accorded, albeit by military law, to Palestinian children, and powerful reasons of international law why they should be.
42. We say '*albeit by military law*' because we recognise that to extend the corpus of Israeli law to the Occupied Palestinian Territories would push occupation towards annexation.
43. What encourages us to think that this assimilation is possible and workable is that we were informed by the military judges and prosecutors that, without waiting for a change in military orders, they were aiming not to impose or seek a custodial sentence on a child of 14 or less; to treat all under-18s as juveniles despite the respective ages of majority attributed to Israeli and Palestinian youths (at that time); and to equalise sentences. It is a positive development that Military Order 1676 has now formally addressed the difference in the age of majority; however, there is room, in our view, for the order to go further and reform sentencing powers in cases where under-18s may still be given the same sentences as adults.
44. It is clearly contrary to principle for any State to criminalise different acts for children of different nationalities or ethnicities. At the same time this difference may be less concerning if in practice (a) the acts, though differently described, are essentially the same and (b) the children are questioned, tried and punished on the same principles. What is important is that, whatever the offence charged, an Israeli child and a Palestinian child should from start to finish be treated by the Israeli justice system, whether civilian or military in form, according to the same principles and procedures. We turn to this in the next section.

Procedures and Practices in the West Bank

45. In this section we outline our understanding of the procedures and practices adopted at each stage of the military law system when dealing with children. It comes from all parties with whom the delegation met. As already reported, we encountered conflicting accounts, and details of these differences are described below. The delegation has borne in mind the need to deal with criminal activity but believes it to be of fundamental importance that humane, fair and non-discriminatory procedures and practices are used throughout the justice process and that the welfare of the child is properly safeguarded.

Proportionality

46. Representatives of the Israeli Government and the military judges and prosecutors placed strong emphasis on the dangerousness of stone-throwing. Without undermining the seriousness of such an act, the delegation requested statistical or other evidence of the injuries or damage caused by these offences. We were grateful to receive a response to a comprehensive list of enquiries from the Israeli Government; however, the evidence was limited to one stone-throwing incident in September 2011 which caused the death of an adult and a child, and sight of a photograph²³ of a man with fairly severe facial injuries. The trial was pending and it was not clear if the accused was a child.²⁴ The statistics also cited six cases in August to September 2011 where the suspects were charged with actual damage to vehicles. In these cases no injury had occurred.²⁵ No Legal Frontiers²⁶ reported that in their study of 89 cases of stone-throwing, physical injury was caused in one case and damage to a vehicle was caused in three cases.

23 Shown to us by the military prosecutors and dated 17 February 2009.

24 We have since been informed that a sentence of 50 months was handed down after a guilty plea (Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011). It remains unclear whether the accused was a child.

25 Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011.

26 No Legal Frontiers is an Israeli organisation engaged in research, legal work and advocacy in relation to the legal system in the Occupied Palestinian Territories. Their report "All Guilty!" is based on observations of the military juvenile court in Ofer military camp between April 2010 and March 2011. They conducted a large number of observations but focused on collecting longitudinal information of each stage in 71 cases: www.nolegalfrontiers.org/en/reports/77-report-juvenile-court.

47. The delegation is not aware of the existence of any effective monitoring system for categorising the severity of different incidents of stone-throwing. The Israeli NGO B'Tselem was informed by the police that it did not have computerised documentation on injured persons that would enable classification.²⁷ Stone-throwing incidents began to feature in the monthly reports of the Israel Security Agency in January 2009. The reports contain a very small percentage of the total cases documented by the SHAI [Samaria and Judea] District Police Department, mentioning a total of seven injured persons throughout the West Bank and East Jerusalem in 2009 to 2010.²⁸ It is clearly desirable for such data to be comprehensively collected and published.

Arrest

48. Defence for Children International's evidence suggests that children, sometimes as young as 12, are arrested,²⁹ often at night, and have their hands tied using unlawful and painful methods, before being transported to an interrogation centre, sometimes on the floor of military vehicles. In the course of the arrest process, the vast majority of children interviewed have reported physical and verbal abuse. It is unclear whether they are told their rights at this stage or at all.³⁰
49. The Ministry of Justice's statistics show that of those children investigated by the General Security Service, 70% of their sample are aged 16 to 18, and 30% are aged 13 to 15. This appeared to fluctuate year by year. According to figures provided by the Ministry of Foreign Affairs, in 2009 43% of cases were against children under 16; for 2010 this figure was 13%, and for 2011 the figure was expected to be 45%.³¹
50. Defence for Children International stated that of the Palestinian children they interviewed the majority were arrested in the family home by heavily armed soldiers in the middle of the night, in 62% of cases surveyed between midnight and 5 a.m.³² B'Tselem reported that 60% of arrests from their sample of cases were at nighttime.³³

27 B'Tselem is The Israeli Information Center for Human Rights in the Occupied Territories. It was established in 1989 by a group of academics, lawyers, journalists and Knesset members. The report 'No Minor Matter' is based on research including interviews with 50 children aged 12-17 who were arrested between November 2009 and February 2011 and with individuals witnessing those arrests. B'Tselem (2011) No Minor Matter, p5 (footnote 4).

28 ISA Terror Data and Trends Portal monthly reports, www.shabak.gov.il/english/pages/default.aspx

29 Defence for Children International reports that in East Jerusalem in particular three of the 20 children they investigated who were arrested and interrogated were below the age of 12. It should be noted that these were children that the Israeli Government say are under Israeli civilian law not military law (being in East Jerusalem). Defence for Children International – Palestine (2011) Voices from East Jerusalem: The situation facing Palestinian Children. http://www.dci-palestine.org/sites/default/files/east_jerusalem_final_design.pdf. B'Tselem also describes the detention of an 11-year-old and a nine-year-old in the West Bank, B'Tselem (2011) No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing, at p32-33 <http://www.btselem.org/publications/summaries/2011-no-minor-matter>

30 Defence for Children International – Palestine (2011) In their own Words.

31 Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation, dated 30 November 2011. It is noted that many of the figures provided in this letter are drawn from indictments submitted in August and September 2011. In this sample 13 of 51 (25%) cases involved under-16s.

32 Defence for Children International – Palestine (2011) In their own Words.

33 B'Tselem (2011) No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing.

51. Representatives of the Ministry of Justice stated that nighttime arrests are necessary for security. The Israeli public defenders informed us that arrests in East Jerusalem were not conducted at night although it is apparent that the Israeli Government also has security concerns in East Jerusalem. The Ministry of Justice acknowledged that improvements could and should be made.
52. An alternative to nighttime arrests, which would still avoid entering a potentially hostile area in daylight, is to use a summons. The Ministry of Justice stated that were this feasible, it would already be done. We nevertheless believe that there is scope for the use of summonses and that this potential reform deserves careful consideration. The option would allow for arrests to be carried out in a far less traumatic way for the child, and in a way which would involve less risk and cost for the military personnel involved. If, in any particular case, there was a failure to surrender to a properly served summons then the arrest could be carried out in an appropriate manner. It is our respectful view that to pilot this option is highly desirable. It is clear that nighttime raids of the type described in paragraph 36 above would be traumatising not only for the children involved, but also for siblings and children in neighbouring homes who witness such arrests.
53. As a result of legal action by the Public Committee Against Torture in Israel in early 2010, the Government of Israel altered its procedures to require hands to be tied at the front, using three plastic ties.³⁴ The Ministry of Defence and COGAT (Co-ordination of Government Activity in the Territories) stated that this procedure is supervised from central command and that to their knowledge it is being observed. Data confirming this was requested in the meeting with the Ministry of Defence and COGAT and subsequently in a letter from the delegation. At the time of writing, this information has not been received. Defence for Children International reports that 98% of children surveyed in the West Bank³⁵ have their hands tied, most commonly with a single plastic tie and behind the child's back. B'Tselem notes that this occurs where there has been no attempt to resist arrest.³⁶ The practice causes severe pain and has been reported by children to cut off circulation causing their hands to swell and turn blue.³⁷ Defence for Children International was not able to document a single case between April 2010 and June 2011 where the amended procedure had been followed.³⁸ This situation is a source of significant concern for the delegation.
54. Defence for Children International reports that in 33% of the cases it surveyed, children are placed on the floor of the military vehicle when being transported after arrest³⁹. The Ministry of Defence and COGAT denied that this was part of approved procedure but added, "*soldiers are soldiers*"; a comment that caused us concern. We were informed by children who have been arrested that transportation on the floor of military vehicles routinely occurs, usually in a kneeling position, but sometimes face down on the floor of the vehicle.

34 One tie around each wrist and the third connecting them, with the space of a finger between the ties and the wrist.

35 In East Jerusalem the figure is 60% of those surveyed.

36 B'Tselem (2011) No Minor Matter.

37 Defence for Children International – Palestine (2011) In their own Words, at page 10.

38 Defence for Children International – Palestine (2011) In their own Words, at page 10-11.

39 Defence for Children International – Palestine (2011) In their own Words, at page 11.

55. Defence for Children International reports additional physical violence in 87% of the cases they surveyed (typically punching, slapping, pushing and kicking), verbal abuse in 60% of the cases (commonly derogatory statements about the child's mother or sister) and threats in 38% of the cases⁴⁰. 56% of the children interviewed by DCI were also strip-searched.⁴¹ Children we spoke to who had been arrested, recounted a process similar to that described by Defence for Children International, including blindfolding, being transported on the floor of a vehicle, being hit and verbally and physically abused. They reported that this treatment continued into the interrogation, where some were beaten until they confessed.
56. We were unable to secure any assurance that children are formally cautioned on arrest. The Ministry of Justice expressed uncertainty. The Israeli public defenders confirmed that there was a right to silence for children, but were not clear how the child is informed of this right. Children we spoke to did not understand what it meant.
57. Save the Children (Sweden) alleges that some arrests of children have been carried out by settler security personnel⁴². We were not able to investigate these allegations but the delegation spoke with a child who alleged that he had been arrested and taken to a settlement.

Interrogation

58. The importance of proper safeguards during interrogation cannot be over-emphasised, particularly where the vast majority of trials and convictions are based either on children's confessions made during these interrogations or on incrimination by other children in the same circumstances.⁴³ This pattern was confirmed by the military prosecutors, who stated that confessions, evidence from other child interrogations⁴⁴ and soldier testimony were the main sources of evidence.
59. According to Defence for Children International, 69% of children interviewed⁴⁵ make confessions after a process that DCI describes as '*typically a coercive interrogation*'.⁴⁶
60. Defence for Children International reports that the physical and verbal abuse described above occurs not only during arrest and transportation, but also during interrogation. The children we spoke to all reported that this treatment continued into the interrogation, where some were beaten until they confessed. Some also stated that they had reported this to the judge at their hearing, but said they had been ignored.

40 Their figures for East Jerusalem are: physical violence in 80% of cases surveyed and verbal abuse and threats in 55% cases, Defence for Children International – Palestine (2011) Voices from East Jerusalem.

41 Defence for Children International – Palestine (2011) In their own Words.

42 The Impact of Child Detention: Occupied Palestinian Territories 2012 – www.mena.savethechildren.se/MENA/News-and-events/News/Launch-of-new-report-on-the-Impact-of-Child-Detention-in-Palestine/

43 No Legal Frontiers (2011) All Guilty!

44 B'Tselem give examples of the way that pressure is put on children to provide names of other children who threw stones, which is then relied upon as the sole basis for arresting these children. B'Tselem (2011) No Minor Matter, at p46-48.

45 30% of cases surveyed in East Jerusalem, Defence for Children International – Palestine (2011) Voices from East Jerusalem.

46 Defence for Children International – Palestine (2011) In their own Words, at p 19.

61. B'Tselem reports that nearly half of the children in their sample were not given food or drink for hours following arrest and 38% reported physical or verbal violence during interrogation.⁴⁷ All of the children reporting maltreatment to Defence for Children International report multiple forms. In 4 of B'Tselem's 50 cases interrogations lasted for longer than a week, with isolation between interrogation sessions (12, 13, 22 and 53 days respectively).⁴⁸
62. The delegation was informed by B'Tselem that interrogations they had reviewed did not immediately follow arrest, and that the child was often kept awake until the interrogation took place in the morning. B'Tselem reports from its sample of cases that only 10% of those arrested at night said they had been allowed reasonable sleep before interrogation, and that they were woken by soldiers if they fell asleep whilst waiting for the interrogation.⁴⁹
63. According to Israeli civilian law, a child is not to be interrogated at night,⁵⁰ save in exceptional circumstances. No such provision exists in Israeli military law. The military judges whom we met stated that an agreed policy encouraged the police to refrain from interrogating children at night. However, according to NGOs with whom we met, nighttime interrogations do take place in the West Bank. B'Tselem, for example, found that 24% of their cases involved a nighttime interrogation. An end to this procedure has been called for by both the Ministry of Justice and Military Court of Appeals. The Ministry of Justice stated that nighttime interrogations occur due to security considerations but, accepted that the approach used in Israeli civilian law should apply in the West Bank. The Military Court of Appeals has acknowledged that nighttime interrogations are problematic.⁵¹ Furthermore, as interrogations typically concern incidents that took place at least a week before arrest,⁵² the argument for immediate interrogation appears weak.
64. In response to the allegation that children were asked to sign documents including confessions that were written in Hebrew,⁵³ the Ministry of Justice showed us a form with fields identified in Hebrew, Arabic and English. The boxes on the proforma were, however, blank and we are consequently unable to confirm or refute the allegation.

47 B'Tselem (2011) No Minor Matter.

48 B'Tselem (2011) No Minor Matter.

49 B'Tselem (2011) No Minor Matter.

50 From 8pm to 7am for 12 to 13 years olds; 10pm to 7am for 14 to 17 year olds.

51 For example, Judge Netanel Benisho, Vice-President of the Military Court of Appeals: *"I shall begin by saying that the fact that the interrogation of the appellant took place at 4:00 A.M., immediately following his arrest, raises complicated questions. Indeed, the law does not prevent such an action. However, case law has recognized the possibility that interrogation late at night could harm the judgment of the person under interrogation (see Crim. File (Jerusalem) 915/07, State of Israel v. M. H. et al., published in Nevo). Clearly, this concern intensifies when the interrogee is a minor, only 15 years of age and it is doubtful that he is aware of his rights. It is easy to imagine the mental state of a child who is arrested in the middle of the night by soldiers and is immediately taken to a police interrogation."* 110. Mil. Ct. App. (Judea and Samaria) 2763/09, A.'A. v. Military Prosecutor, 16 August 2009 as cited in Defence for Children International – Palestine (2011) In their own Words.

52 B'Tselem (2011) No Minor Matter.

53 29% said that they signed documents in Hebrew. In other cases children were required to sign documents in Arabic without the opportunity to read them – Defence for Children International – Palestine (2011) In their own Words . This was also reported by B'Tselem (2011) No Minor Matter.

65. The children who Defence for Children International took testimony from were, without exception, questioned in the absence of a lawyer or parent (B'Tselem noted two cases out of 50 where the child was accompanied by an adult – one involving a 13-year-old girl, and one case where the child was allowed to meet with an attorney)⁵⁴ and were only permitted access to a lawyer after interrogation (with the exception of one child reported by B'Tselem).⁵⁵ Children we spoke to said that a lawyer was only available to them at court. When asked by members of the delegation whether they were informed of a right to remain silent, the concept of such a right appeared completely alien to them. The military prosecutors stated that often the first time a lawyer sees the defendant is at the first hearing. The Ministry of Defence and COGAT stated that as a matter of practice, but not of law, children are informed of the right to an attorney before the interrogation, but many choose not to have one. Military Order 1676 provides that children be notified of their right to consult with a lawyer and prior to commencing the investigation, the police must contact the lawyer named by the child provided this does not delay the investigation. Defence for Children International criticises this provision in its most recent report⁵⁶ as it assumes that a child will be in possession of the contact details of a lawyer and because there is no stipulation as to when consultation must occur, either before, during or after questioning. Since the introduction of this requirement, DCI has not documented a case in which a child has consulted privately with a lawyer either before, or during their interrogation.⁵⁷ The Ministry of Defence and COGAT stated that confessions should not be admissible in court if the right to silence had not been made known to the suspect. The military judges who met with the delegation stated that failure to allow legal representation may result in the release of a child suspect. The Association for Civil Rights in Israel records the case of 'Minor A' where serious flaws during interrogation and detention did not lead to a ruling that confessional evidence should be excluded⁵⁸.
66. The Ministry of Justice stated that in Israel parents are normally not present in security cases. The Israeli public defenders explained that in East Jerusalem parents may be excluded from the interrogation. This is decided on a case by case basis and not necessarily in security offences. We were given examples of when these exclusions might occur, namely where the parent could not be found or where it might harm the investigation.
67. The military judges informed us that great efforts are made to find parents and to allow them to be present at the interrogations. The recent Military Order 1676 requires '*notification*' of a parent but does not make provision for the parent's attendance at the interrogation. There are also wide-ranging exceptions including an exception for offences causing '*disruption of security*' in the area. Given the Israeli public defenders' comments on the dilution of the equivalent provision in East Jerusalem, the delegation is concerned by Defence for Children International's report that this provision is having little effect.

54 B'Tselem (2011) No Minor Matter.

55 Defence for Children International – Palestine (2011) In their own Words, p 20; B'Tselem (2011) No Minor Matter, p 36; In East Jerusalem 75% were questioned without a parent present. Defence for Children International – Palestine (2011) Voices from East Jerusalem, at page 42.

56 Bound, Blindfolded and Convicted: Children held in military detention, April 2012 p. 19

57 Bound, Blindfolded and Convicted: Children held in military detention, April 2012 p. 19

58 www.acri.org.il/en/wp-content/uploads/2012/02/Minors.pdf

68. The military judges stated that the courts had ruled that an interrogation not carried out by a specially trained youth investigator may result in the release of a child suspect. B'Tselem records instances in which it is not apparent that the interrogators had received this training. It also considers that there is a blurring of lines between questioning which occurs informally (and without caution) before an interrogation and the interrogation itself (where the questioner sometimes also acts as the interpreter).⁵⁹
69. According to the Ministry of Justice, there is likely to be a reduction in the time allowed by law before a juvenile has to be brought before a judge for the first time. This is currently set at eight days and will be reduced to what is said to be a much shorter period. This is welcomed by the delegation, who hope to see this come into line with Israeli law as a matter of urgency. However, we were concerned to learn that there are no plans currently for the time to be reduced to 24 hours in parity with the limit for Israeli children of 14 or over and 12 hours for under-14s.⁶⁰ At the time of our meeting this change was expected to be brought in with the renewal of the legislation in September 2011, or alternatively within the coming months.⁶¹ We were informed that the current period of 8 days is in fact a reduction from the previous deadline of 18 days. The deadline will be longer for security offences, which include stone-throwing, than for other criminal offences. Four days was given as an estimate for security offences. It was explained that the longer time period was due to the fact that *"interrogation is more difficult, there is an organisation behind the people, it is not like you have collected someone for pick-pocketing, you have Hamas, Islamic Jihad..."*. At the time of writing, these proposed changes are yet to be made.
70. The military prosecutors suggested another potential reform is the preliminary approval of arrests by the prosecutor, who will also set the time within which the child has to be brought before the court. Approval would be based on the child's age and the severity of the alleged offence. The prosecutor would see evidence to assess whether the arrest and interrogation were properly conducted. Neither of these reforms was included in the recent Military Order 1676.
71. Given the many issues surrounding interrogation and the importance of this stage to ensuring a just process, the delegation was interested in the use of audio-visual recording of interrogations. Irrespective of the current practice, the military judges were in agreement that audio-visual recording was necessary and should be the norm, and that it would be difficult to justify proceeding without such recording. The military prosecutors expressed a similar wish, as did the former Chief Justice, who has stated to us that the use of audio-visual recordings is advantageous provided the resources and conditions are available for recording. Whilst there was inconsistency with regard to the current position, there was near unanimity with regard to the desirability of routine audio-visual recording. The only reservation came from representatives of the Ministry of Justice, who expressed concern that there would be excessive cost implications relating to equipment and staffing. They nonetheless asserted that the police had found audio-visual recording beneficial in Israel, and that recording could lead to overall cost savings.

59 B'Tselem (2011) No Minor Matter

60 Youth (Trial, Punishment, and Modes of Treatment) Law (1971)

61 The change was however said to be conditional on there not being any form of unrest.

72. In June 2011, Defence for Children International reported that there was no provision for the audio-visual recording of children's interrogations in the West Bank.⁶² Statements on this issue from the Israeli government bodies with whom we met were inconsistent. Regarding recordings within the Israeli civilian legal system, representatives of the Ministry of Justice explained that audio-visual recording occurs very rarely in Israel, and only where the possible prison sentence exceeds 10 years, for children and adults alike. The maximum penalty for stone-throwing ranges from 10 to 20 years⁶³ and audio-visual recording of interrogations in such cases is required under Israeli civilian law. The Israeli public defenders who met with the delegation further stated that, in the Israeli civilian legal system, there is no consistent approach to audio-visual recording, but production of any recordings can be demanded, and exclusion of evidence can be sought on the basis of such recordings. Furthermore the absence of a tape can affect plea bargains and bail decisions.
73. Representatives of the Ministry of Defence and COGAT, in contrast, stated that in many cases interrogations are audio-visually recorded. We were informed by the military prosecutors with whom we met that many interrogations are not recorded in the West Bank due to the fact that there is no requirement to do so. If there is no recording, the written statement must be in Arabic. They shared the wish for more audio-visual recording, which we support. In contrast, one of the military judges stated that there is "*almost always*" a video-recording, and that tapes are watched by the defence and by the court with a translator wherever coercion is suspected in relation to a confession. The last case that one of the military judges could recall of stone-throwing where there was no recording was in 2008-09. When asked about the process for the defence obtaining tapes, we were informed by one of the military judges that tapes are readily available and that if necessary an application can be made to the court for disclosure. Statistics obtained from the Israeli government in relation to this issue stated that the vast majority of interrogations are recorded, "*most by video and others by audio recording*". Out of 51 cases (both adult and child cases) brought to the Military Prosecutor in August 2011 to September 2011, 48 were either audio or visually recorded or there was a written record in Arabic. Of the three remaining cases, we were informed that two suspects were released without charge and in the third case, the recording equipment suffered technical problems. The statistics stated that approximately 70% of the 51 cases were either audio or visually recorded. In respect of children under 16 (the numbers for which were not included), the Ministry of Foreign Affairs reported that all but one case involved either audio or visual recording.⁶⁴
74. Given the universal acknowledgment of the value of audio-visual recording, and particularly the importance allotted to it by the judiciary, the delegation strongly recommends⁶⁵ the introduction of a legal requirement that all interrogations of children under military law be audio-visually recorded, together with the necessary technical training in using the equipment. The delegation recalls the transformation of criminal justice in the United Kingdom which was brought about in the 1980s by the introduction of such a requirement.⁶⁶ It also seems to us that the presence of a security concern would make reliable recording even more necessary.

62 Defence for Children International – Palestine (2011) *In their own Words*, p20

63 Military Order 1651, paragraph 212

64 Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011

65 See Specific Recommendation 13

66 Police and Criminal Evidence Act 1984, Code E (audio recording of interviews) and Code F (visual recording of interviews) www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/

Bail hearings and Plea bargains

75. In Israel and East Jerusalem, the Israeli public defenders reported that the prosecutor usually requests remand in custody for stone-throwing, after which the court assesses various factors including risk of flight and dangerousness. The court will also consider possible alternatives such as re-housing the child within the family, detaining him under house arrest or placing him in a bail hostel outside the community. This is explored by probation officers and results in bail being granted to approximately half of the accused, with a slightly higher proportion in cases of stone-throwing.
76. The situation in the West Bank appears to be significantly different. When observing 71 cases at Ofer military juvenile court, the NGO No Legal Frontiers reported that 94% of the children interviewed were denied bail.⁶⁷ Defence for Children International reports a slightly lower but still very substantial proportion of cases where bail was denied: 87.5% of 164 cases.⁶⁸ There is a great disparity between these figures and those provided by the Ministry of Foreign Affairs,⁶⁹ who reported that 268 (35%) children were released on bail in 2010. From the data provided it seems that this figure is based on a sample of 10% of cases although the sample size was not made available.
77. In a review of bail decisions, B'Tselem was critical of military judges for rarely acknowledging the effect of prolonged detention on the child.⁷⁰
78. The military judges informed us that, where there is little risk of re-offending and a “*good chance of keeping the minor away from bad influence*”, children are released on bail. However, it would seem from the figures available, that it is only in a very small minority of cases in the West Bank that these circumstances are found to apply. The proportion of such cases within Israel or East Jerusalem is much higher.
79. The significance of this disparity grows when one considers that according to No Legal Frontiers, 53% of cases remain untried after three months, and 18% after 6 months.⁷¹ This length of delay, recorded by the NGOs with whom we met and confirmed by the military prosecutors and judges, represents a 43% reduction since 2008, according to the latter. An explanation was provided by the military prosecutors: trial delays are due largely to defence requests for adjournments, due in turn to the fact that many defence lawyers meet the child for the first time at the first hearing. The defence can only see the evidence after the indictment. We suggested that the evidence might be provided earlier and were informed by the military prosecutors that this was not necessary as it is “*usually only a small file and if there is a problem he can request another adjournment. There is no limit to the number of hearings allowed*”.

67 No Legal Frontiers (2011) All Guilty!

68 Defence for Children International – Palestine (2011) In their own Words

69 Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011)

70 B'Tselem (2011) No Minor Matter

71 No Legal Frontiers (2011) All Guilty! which also makes the point that one must consider how reasonable these lengths of time are given the expected lack of complexity of a stone-throwing charge, and the fact that the majority of cases end in a plea bargain.

80. An average trial delay of three months includes cases which conclude with a plea bargain. It follows that the time to the conclusion of a full trial will be considerably longer. Given the prevalence of remands in custody, it is unsurprising that many children, on advice, enter into plea bargains. The Israeli public defenders with whom we met reported a preference outside the West Bank for avoiding plea bargains where the charges are not severe and particularly if bail has been granted. In contrast to this, within the West Bank 98% of cases observed by No Legal Frontiers ended in plea bargains, and the conviction rate was 100%.⁷² B'Tselem similarly reports that 97% of 642 cases they examined ended in a plea bargain, frequently for a sentence of the same number of days as already spent in detention, particularly for under 14s.⁷³ In the data provided by the Israeli Government it has not been possible to determine the percentage of children convicted, but the data is not inconsistent with that provided by the NGOs.⁷⁴
81. The military judges stated that they do not make enquiries into sentence where a plea bargain is equal to time served, if the sentence is within what they consider to be an acceptable range. In their response to the B'Tselem report, the Ministry of Justice stated that the use of plea bargains by defence advocates indicates that they are '*advantageous for the purpose of protecting minors' rights*'. We do not consider that this analysis takes into consideration the interplay between the lack of bail and the length of time to trial. This combination creates a strong disincentive to pursuing a defence to a trial where, even if found not guilty, the defendant will have spent much longer in prison than if he had entered into a plea bargain.
82. B'Tselem reports that defence lawyers seem to acquiesce in this process, consenting to remands, requesting adjournments and failing to contest evidence or appeal.⁷⁵ We are concerned by the extremely difficult conditions, including the lack of elementary rights, in which defence lawyers in the military courts have to work. To attempt to defend a child on a serious charge, and on evidence that the lawyer has only just seen, may well not be possible professionally. To try to challenge confessions in the absence of independent and objective evidence of how they were obtained, and where the balance of credibility lies with the interrogator, is likely to be seen as near impossible. Whether or not the military authorities are aware of this, of the effect of prolonging the time spent in detention if the charge is contested, and of the consequent incentives to plea bargain, we believe that the military authorities should give greater weight to this phenomenon. We are confident that if bail were more available the current approach to plea bargains would change.

72 No Legal Frontiers (2011) All Guilty!

73 B'Tselem (2011) No Minor Matter, at p 53

74 We were informed that in 2010 for example 57.3% (1016) of charges ended in convictions but that each charge was counted separately. The Ministry of Foreign Affairs reports that in 2010 there were 1773 charges in the 752 cases that were 'tried and closed', and 1016 charges resulted in convictions, making it possible that anything between 522 (the number of children the Ministry of Foreign Affairs state were imprisoned for over 21 days) and 752 cases resulted in conviction - letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011. This appears to be consistent with the NGO figures that have been cited.

75 B'Tselem (2011) No Minor Matter, at page 56.

Trial

83. We make no comment here on the propriety of trying children in military tribunals, save to point out that if it is to happen, it calls for a high level of vigilance on the part of the Occupying Power to ensure that proper national and international standards of justice are observed.
84. In practice the military youth court is used only for trials and not for interim hearings, bail hearings included.⁷⁶ Given the high incidence of plea bargains, it is therefore unclear how much of an impact the introduction of the youth court has actually had or been capable of having. B'Tselem reports no noticeable difference in the sentences handed down before and after the introduction of the court, save in the cases of a small number of 12 to 13-year-olds.⁷⁷ We understand that military juvenile judges would not be averse to undertaking interim hearings, including bail hearings and we believe that they should.
85. Defence for Children International reports that groups of children are brought into court in shackles, dressed in the brown prison uniforms worn by adults, and that handcuffs are removed on entering the court room and replaced on leaving.⁷⁸ This corresponds with our own observations of the military juvenile court in Ofer which we attended: the accused children were brought into court in iron shackles which remained on throughout the hearing. We found this a matter of serious concern. The United Nations Standard Minimum Rules⁷⁹ provide that chains and irons shall not be used as restraints; that any other restraints should only be used as a protection against escape during transfer provided they are removed when the prisoner appears before a judicial authority (or on medical grounds or to prevent injury); and that they should not be applied for any longer period than necessary. The practice of the military courts is not in accordance with these rules.
86. No Legal Frontiers, in their report, documented no '*trial within a trial*' on the admissibility of confessions, despite there being issues raised in relation to night arrests and interrogations, beatings, threats, violation of the suspects' rights to silence and violation of children's right to counsel.⁸⁰ The military judges stated that procedural requirements are always followed in this regard.
87. Representation through the public defender system⁸¹ is available to Palestinians and Israelis alike if they are tried in courts in Israel or East Jerusalem. No such representation is available to those tried in military courts in the West Bank. Many children tried in military courts rely on representation by NGOs and voluntary organisations.

76 Here the law (as laid down in paragraph 138 of Military Order 1651) and practice appear to be the same.

77 B'Tselem (2011) No Minor Matter, at page 21

78 Defence for Children International – Palestine (2011) In their own Words

79 United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 33

80 No Legal Frontiers (2011) All Guilty!

81 The public defender service in Israel is in effect a mixed model public defender and *judicare* system. It operates in Israel and not in the Occupied Palestinian Territories.

Sentencing

88. Defence for Children International records that in 2009, in 83% of surveyed juvenile cases, the military court handed down custodial sentences. In comparison, 6.5% of surveyed juvenile cases in the Israeli civilian justice system ended in custodial sentences.⁸² In military court cases observed by No Legal Frontiers in 2010-11, 98% of cases surveyed ended in a custodial sentence, with suspended sentences in the remaining 2%. In 90% or more of cases surveyed by No Legal Frontiers a fine was also imposed. DCI and B'Tselem report that if parents fail to pay the fine, the child will serve additional days in prison.⁸³
89. The prescribed sentence for stone-throwing under Military Order 1651 is 10 years if directed at a person or property, and 20 years if directed at a vehicle⁸⁴. The maximum penalty which can be imposed on a 12 or 13-year-old is six months imprisonment⁸⁵. Defence for Children International reports that custodial sentences for children generally range from two weeks to 10 months for stone-throwing. B'Tselem reports that the median period for 14 to 16-year-olds is 2 ½ months and for 16 to 18-year-olds 4 months. The Israeli Government reported similarly that the average number of days in detention (where the imprisonment exceeded 21 days) was 181 in 2011 (approximately 6 months).⁸⁶ B'Tselem also noted that of the 32 children in their sample aged 12 to 13, 31% were given a custodial sentence ranging from one to two months.⁸⁷ The Israeli Government stated that imprisonment of children under the age of 14 is rare.⁸⁸ We were unable to form our own view of this as data from this age group was not incorporated in the official Israeli statistics supplied to us.⁸⁹ We were informed in our meeting with the Ministry of Justice that there had been a decrease in the detention of under-14s, with 25 cases in 2009, 14 in 2010 and 1 in 2011 to the date of meeting, who had been detained for 4 days. The military prosecutors made reference to the Attorney General's Guidelines which apply in Israel and which give a guideline sentence of 3 to 4 months for a 16-year-old with no previous convictions.
90. The welfare co-ordinator of the Civil Administration COGAT, reported that recommendations are made to the court and that meetings are held with the family and lawyer beforehand. In contrast, No Legal Frontiers recorded welfare officer reports in 4% of cases observed and then only in the more severe cases.⁹⁰ We observed no probation officer or social worker during our visit to the military courts at Ofer. B'Tselem noted from Israeli Defence Force (IDF) files that in the period to August 2010 there had been only four requests for probation reports on children.⁹¹
91. The military judges stated that part of the reform on sentencing was a greater emphasis on rehabilitation. However, both they and the military prosecutors described difficulties in creating rehabilitative mechanisms in the Occupied Palestinian Territories, emphasising

82 Based on 164 cases closed by DCI-Palestine in 2009 and the Israeli National Council for the Child, Annual Report (2009) (This figure relates to 2008). Defence for Children International – Palestine (2011) In their own Words, at page 5.

83 Defence for Children International – Palestine (2011) In their own Words; B'Tselem (2011) No Minor Matter.

84 Military Order 1651, paragraph 212.

85 Military Order 1651, paragraph 168.

86 Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011.

87 B'Tselem (2011) No Minor Matter, p20-21.

88 Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011.

89 Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011.

90 No Legal Frontiers (2011) All Guilty!

91 B'Tselem (2011) No Minor Matter.

what they termed the “*ideological nature*” of the offences and the lack of parental and societal co-operation. This was described by the Ministry of Defence and COGAT as “*trying to do something normal in an abnormal environment*”. They described difficulties in co-operation with the local population and lack of infrastructure and explained that whilst the Israeli civilian law is tailored to rehabilitation of children, the main challenge in the West Bank is that the behaviour is politically motivated. The Ministry of Defence and COGAT stated that attempting to apply the same system and goals of rehabilitation in the West Bank as in Israel would be “*completely ineffective*”. Information on the extent to which attempts had been made to offer or explore rehabilitation options in sentencing has not been provided⁹².

92. The emphasis on the ideological nature of offences described above contrasts with other descriptions by the military juvenile court judges of child offenders, who, we were informed, were often motivated by a desire for a better education or to escape abuse at home.
93. The Ministry of Justice explained to us that they face difficulty in dealing with the civil administration in the Occupied Palestinian Territories in relation to welfare issues. The welfare co-ordinator similarly reported difficulties in dealing with the Palestinian Authority. The welfare co-ordinator expressed a willingness to co-operate with the Palestinian Authority and stated that the Israeli Government was ready to invest money to create appropriate institutions and to cooperate with NGOs. There are self-evident difficulties about co-operation, which we regret we did not have an opportunity to discuss with the Palestinian Authority.
94. In respect of rehabilitative options, the military judges stated that the situation is such that it is “*mainly a thing for the legislator to deal imaginatively with offenders that require rehabilitation.*” One option which they suggested could assist was the ability to place a child in a hostel.
95. Reform in this area is called for by article 40(1) of the UNCRC, which requires convicted children to be treated in a manner which ‘*takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society*’ and by article 40(4) which calls for ‘*a variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence*’.
96. We support the military judges’ wish for the legislator to provide more imaginative schemes for rehabilitation. Making provision in law for a probation report without providing any tools with which the probation officer can work does not lead to any effective change. We respectfully suggest that the absence of systems to support child welfare in the West Bank needs to be taken seriously by the Israeli Government.

92 See Specific Recommendation 29

Detention

97. The Ministry of Justice reported that as at 30 November 2011, there were 196 children in detention either awaiting trial or serving sentences. Of these, 93 were in detention pending trial for security offences, and 19 pending trial for other criminal offences, the implication being that the remaining 84 were serving a sentence. These figures correspond broadly with the figures provided by the NGOs. Defence for Children International reported 209 Palestinian children in detention in June 2011, with a peak since 2008 of 423 children in February 2009.⁹³ UNICEF put the figure at 164 as of 1st October 2011.⁹⁴ A significant number of these children were aged between the ages of 12 and 15: 38 in June 2011, with a peak of 54 in February 2009.⁹⁵ From the official Israeli statistics provided a downward trend in the number of children imprisoned each year can be seen, going from 539 in 2009 to 522 in 2010 and an expected 315 in 2011.⁹⁶ The table in Appendix 4 shows a recent increase in numbers from 135 in December 2011 to 234 in May 2012 which is a matter of concern.
98. Child prisoners are entitled to one 45 minute visit from immediate relatives every fortnight. Obtaining a permit can take between two weeks and two months.⁹⁷ According to B'Tselem, child detainees and their families are confused about visiting rights and reportedly believe, for example, that they are not entitled to visits prior to sentence or for short sentences. These two factors combined mean that most Palestinian children do not receive family visits.⁹⁸
99. International law has enshrined access to education as a fundamental right of any child, and this right cannot be derogated from if a child is deprived of his or her liberty.⁹⁹ In a landmark ruling at the Tel Aviv Central Court in 1997¹⁰⁰ the right of Palestinian child prisoners to access education on an equal footing with Israeli children was established. This decision however held that such a right would be subject to '*security conditions*'. In 2010, the prisoner's rights organisation, Addameer¹⁰¹ reported that the Israeli Prison Service allows for the organisation of classes, but not of educational programmes, in Megiddo and Rimonia prisons (located in Israel), while it deprives child prisoners in Ofer prison and other interrogation and detention centres in the West Bank of any educational rights.¹⁰² During a meeting with the delegation, Addameer stated that child prisoners continued to receive little or no access to education. By contrast we were informed by the military judges that the standard of education available in prison is such that they were aware of cases where Palestinian children had offended in order to access it.

93 Defence for Children International – Palestine (2011) In their own Words.

94 UNICEF (2011) UNICEF appeals for Release of Palestinian Child Detainees. Retrieved November 6, 2011, from www.unicef.org/oPt/media_6690.html

95 Defence for Children International – Palestine (2011) In their own Words.

96 Letter from Ehud Keinan, State of Israel, Ministry of Foreign Affairs (Legal Division), to the delegation dated 30 November 2011.

97 B'Tselem (2011) No Minor Matter, at p69.

98 B'Tselem (2011) No Minor Matter, at p69.

99 Article 26 of the Universal Declaration of Human Rights, (issued in December 1948), article 94 of the Fourth Geneva Convention (1949), article 28 of the United Nations Convention on the Rights of the Child and article 38 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (14 December 1990).

100 Farahat & Ors v Israeli Prison Service (IPS), petition no. 97/400.

101 Established in 1992, Addameer, is a Palestinian non-governmental prisoner support and human rights organisation.

102 Addameer (2010) The Right of Child Prisoners to Education www.addameer.org/files/Reports/addameer-report-the-right-of-child-prisoners-to-education-october-2010-en.pdf This report was based on 30 interviews between September and December 2009, including 10 interviews with child ex-detainees.

100. Another major concern is the transfer of child prisoners from the West Bank into Israel, for example to Megiddo and Rimonim prisons, as reported by Defence for Children International¹⁰³ and B'Tselem and confirmed by Israeli Prison Service statistics.¹⁰⁴ This represents a violation of article 76 of the Fourth Geneva Convention and is classed as a grave breach by article 147.¹⁰⁵ On a practical level it also serves to make family visits very difficult or impossible. It is a cause for concern that the military prosecutor's office reported that this practice has been approved more than once by the High Court.¹⁰⁶
101. During our meetings in Israel and the West Bank the issue of solitary confinement was raised on more than one occasion. According to Defence for Children International's report, 9% of children interviewed spent between 24 hours and 20 days in solitary confinement during the interrogation process¹⁰⁷. We have been informed by the former Chief Justice that a challenge to such a practice could reach the Supreme Court, and we have noted with respect her view that this would not be the case if there were such a practice. The delegation heard directly from a 16-year-old that he had been held in solitary confinement for five days, which, if true, accords with Defence for Children International's report. We can make no firm finding about the use of solitary confinement, but we record the view of the United Nations Special Rapporteur on Torture that *'the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture'*.¹⁰⁸ If solitary confinement is to be used for juveniles, it can only be for pressing reasons and with stringent safeguards.
102. Conflicting accounts were given about the provision of separate detention facilities for adults and children. B'Tselem reports that separation is not maintained, and that the prison authorities (specifically Ofer prison) justify this on the basis of the well-being of the child.¹⁰⁹ The Ministry of Defence and COGAT assert that there should be separation of children and adults in prison, but stated that this creates challenges in terms of infrastructure. They provided assurances to us that the issue was being explored. We were informed by the Israeli public defenders that, in addition, there is no separate detention facility for female juveniles and that they are therefore kept with adults.
103. The delegation was told that the use of administrative detention for children is increasingly rare, which is a welcome development. However, the delegation can see no justification for its continued practice and in the strongest possible terms, recommends its abolition. Imprisonment without trial requires the most powerful justification in any society, even when applied to adults.

103 Defence for Children International – Palestine (2011) In their own Words.

104 B'Tselem (2011) No Minor Matter, at p62.

105 Thus attracting personal criminal responsibility to those conducting or ordering the transfer (Article 146).

106 Response for the Military Prosecutor's Office to the B'Tselem report. Paragraph 35.

107 See also HaMoked & B'Tselem's report Kept in the Dark: Treatment of Palestinian Detainees in the Petach-Tikva Interrogation Facility of the Israel Security Agency (2010) http://www.hamoked.org/files/2010/113160_eng.pdf

108 Interim Report to the UN General Assembly by the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268 paragraph 77, dated 5 August 2011 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement>

109 B'Tselem (2011) No Minor Matter, p 64-5.

104. A final concern in relation to detention is appropriate dealing with children on release. B'Tselem reports that there is no uniform approach to the release of child prisoners. Parents are sometimes not informed of their child's release, or are informed too late to ensure that he or she can be met.¹¹⁰ The release of a child from prison without ensuring that the child has a means of getting home is not acceptable. If this practice is occurring, it should be urgently addressed.

Complaints

105. When discussing allegations of the mistreatment of Palestinian children, the possibility of making formal complaints or appeals was raised a number of times by the Israeli Government representatives with whom we met. It was the view of the former Chief Justice that, had abuses occurred, an appeal could reach the Supreme Court. The former Chief Justice has stated to us however that only a few such cases have reached the Court. The Ministry of Defence and COGAT state that procedure ensures that the military police investigate any complaints from defence lawyers or NGOs. They also comment that NGOs are particularly active, resulting in almost daily complaints. However, we have been given only one example of a complaint being upheld. This was two to three years ago when a soldier was sentenced to some months in prison (we were not given the exact term) for humiliating and/or mistreating a detainee.
106. The Ministry of Defence and COGAT reported that it was reassured by the fact that complaints are almost universally dismissed. In the light of the nature and extent of the concerns raised we are not so sanguine about this explanation and the apparent absence of recourse to law. There appears to us to be a significant number of allegations of physical and emotional abuse of child detainees by the military which neither the complaints system nor the justice system is addressing satisfactorily.
107. It would appear from the information available to us that the outcome of any complaint is tied to the likelihood of a successful criminal prosecution of the soldier involved. The Ministry of Defence and COGAT stated that if there is evidence of a criminal offence, the soldier is brought to justice. It would seem then that a child bringing a complaint of mistreatment would need to provide evidence to a criminal standard for further action to be taken. We obtained no clear indication of how this would affect the proceedings relating to the child. It seems clear to us that a more effective system of dealing with complaints is needed.

110 B'Tselem (2011) No Minor Matter, at page 69-71

108. The Palestinian children we met with strongly felt that their complaints of mistreatment were not heard. No Legal Frontiers found no evidence to support the assertion that cases against children can be discharged as a result of procedural improprieties. The military judges nevertheless stated that they do take note of serious procedural improprieties and may as a result discharge the case against a child. For example in their response to the B'Tselem report 'No Minor Matter' they stated that: *'courts have been known to release accused parties when one of their basic rights have been infringed... The courts have been known to accept that night interrogation, contrary to legislation covering youth in Israel, often leads to release even though the legislation does not necessarily apply in the Administered Areas'*. They gave an example of a child who was released due to the fact that his lawyer was delayed at checkpoints.
109. We are troubled by the differences between the responses we received from departments of the Israeli Government and the military to some of the issues we raised. Such inconsistencies emphasise the clear need for a comprehensive and independent monitoring and investigative system.

Conclusions

110. As we have explained, we have been given two radically different accounts of Israeli practice. It is not our role to adjudicate between them. But within them are certain undisputed facts which compel us to conclude 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) and (d) (prompt access to lawyers) and 40 (use of shackles)¹¹¹ of the United Nations Convention on the Rights of the Child. If the manner of arrest and detention is to a significant extent that which is described in paragraphs 36 and 37, Israel will also be in breach of the prohibition on cruel, inhuman or degrading treatment in article 37(a) of the Convention. 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 Fourth Geneva Convention.
111. With regard to what is set out in paragraph 101, 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) of the UNCRC but of other well-known international instruments.
112. The changes brought about by Military Order 1676 are positive. However, as this report indicates, there is still a long way to go before Israel can be confident that it satisfies its international and humanitarian obligations. We hope that the changes already made to improve the system will be the start of a process of continuing improvement so as to deliver parity between the treatment of Israeli and Palestinian children.
113. We are concerned at early reports of a divide between this new law and ongoing practice. For instance, the military order was published only in Hebrew. We are told that this is common with military orders, but it is a fundamental obligation of a State to let those subject to its jurisdiction know what laws it is promulgating.
114. When the Ministry of Justice discussed the proposed changes with us, it described them as conditional on there being no significant unrest or '*third intifada*'. We record our concern about this conditionality. A major cause of future unrest may well be the resentment of continuing injustice. We hope that the Israeli Government will recognise this, and will recognise too that justice is not a negotiable commodity but a fundamental human right which can itself do much to defuse anger.
115. It may be that much of the reluctance to treat Palestinian children in conformity with international norms stems from a belief, which was advanced to us by a military prosecutor, that every Palestinian child is a "*potential terrorist*". Such a stance seems to us to be the starting point of a spiral of injustice, and one which only Israel, as the Occupying Power in the West Bank, can reverse.

111 The use of shackles is specifically prohibited by rule 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners and we find breach of Article 40 of the United Nations Convention on the Rights of the Child on the basis that the use of shackles is not consistent with the promotion of the child's sense of dignity and worth.

116. A fair criminal justice system deals with offenders case by case, not by prior stereotyping. We recognise nevertheless that there is no straightforward way in which the objectives of probation, in particular rehabilitation, can be transposed into a social setting which does not share the premises or aims of the governing system. However, there are realistic, non-custodial ways of dealing within the Palestinians' own community with children who are awaiting trial or have been properly convicted of crimes.
117. For these reasons we believe it to be critically important that the modest measures taken so far to close the large gaps between deficient current practice and the best interests of Palestinian children should be developed in a positive and principled direction. Our report is aimed at assisting this process.

Recommendations

118. As discussed in this report, there have been some moves towards addressing concerns about the treatment of Palestinian children in the Israeli military justice system, in particular the decision in *Farahat & ors v IPS* in 1997, the establishment of the Youth Court in 2009, the change in the law prohibiting the use of single plastic hand ties in 2010 and the passing of Military Order 1676 in 2011. There are, however, limitations to these reforms and evidence that, in spite of legal reform, practices are not changing. There is, in our view, considerably more work necessary to improve the system and address the current disparity between the treatment of Palestinian children under military law and the treatment of Israeli children under civilian law.
119. The delegation therefore submits the following **Core Recommendations**:
1. International law, international humanitarian law and the UN Convention on the Rights of the Child apply to the Occupied Palestinian Territories and therefore should be fully and effectively implemented.
 2. 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.
 3. 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.
120. Furthermore, the delegation submits the following **Specific Recommendations**. We bear in mind that some of them relate to practices which are contested:

Arrest

1. Arrests of children should not be carried out at night save for in extreme and unusual circumstances. A pilot study of issuing summonses as an alternative means of arrest should be carried out.
2. At the time of their arrest, all children should be informed, in their own language, of the reasons for their arrest and their right to silence, and relevant documents should be provided to them in that language.
3. The parent or guardian of the child should be promptly notified, in their own language, of the arrest, the reasons for it and place of detention.
4. Children should never be blindfolded or hooded.
5. Methods of restraint should not be used unless strictly necessary. If used, they should respect the child's dignity and not cause pain or suffering.
6. Single plastic hand ties should never be used. The existing prohibition should be

monitored and enforced, and arresting personnel should be trained accordingly.

7. Children should not be transported on the floor of vehicles. They should be properly seated and treated with dignity at all times.
8. Children should be conveyed to the place of interrogation or detention without delay and be provided with food and water.
9. The prohibition on violent, threatening or coercive conduct towards children should be strictly observed throughout all stages of arrest.

Interrogation

10. On arrival at a place of detention, children should be immediately reminded of their right to silence. Their right to consult a lawyer prior to interrogation (in accordance with Military Order 1676) should be respected.
11. Children should have a parent or guardian present prior to and during their interrogation.
12. Children should have access to a full medical examination both prior to and after interrogation. The assessment should document any complaints and findings and consider both the psychological and physical state of the child. The child's lawyer should have access to the assessment.
13. Interrogations should be conducted during daytime (in accordance with Israeli youth law), after an appropriate period of rest and refreshment, and only by specially trained youth interviewers.
14. Interrogations should be audio-visually recorded and the tapes should be made available to the child's lawyer.
15. Children should not be required to sign confessions and statements written in a language other than their own.
16. The prohibition on violent, threatening or coercive conduct towards children should be strictly observed throughout all stages of interrogation and detention.

Bail hearings, Plea bargains and Trial

17. The maximum period of detention before production at court should be reduced to 24 hours and the periods of detention without charge should be reduced in line with Israeli youth law.
18. The Israeli Government should develop and implement procedures and programmes for children that constitute viable alternatives to custody.
19. All hearings, including applications for bail, should be heard in the youth court. Children should not be shackled at any time.
20. There should be a presumption in favour of bail. At the first hearing, the court should

only order custody as a last resort and should provide its reasons for any denial of bail.

21. The audio-visual tapes of the interrogations and viewing equipment should be provided to the defence prior to the first hearing.
22. Military prosecutors should not base prosecutions of children solely on confession evidence without first adopting a system of the kind set out in these recommendations, and should fully assess the conditions under which any confession was obtained.
23. Allegations or evidence from other children should not be relied upon if obtained in breach of these recommendations.
24. Any confession written in any language other than the child's own should not be accepted as evidence.
25. Trials should be dealt with expeditiously and in full compliance with international standards of justice.

Sentencing and Detention

26. The Israeli prohibition against imprisoning children under the age of 14 should be extended to include Palestinian children.
27. Children should only be deprived of their liberty pending trial as a measure of last resort and for the shortest possible period of time.
28. Solitary confinement should never be used as a standard mode of detention or imprisonment.
29. The Israeli Government should develop and implement procedures and programmes for children that constitute viable alternatives to custody focussing on rehabilitation and development.
30. Probation reports should be mandatory in all cases, unless the defence waive the right to have a report.
31. At sentencing hearings all alternatives to custody should be fully considered. If a custodial sentence is passed, it should be for the minimum possible term.
32. All Palestinian children detained under Israeli military law should be held in facilities in the Occupied Palestinian Territories and not in Israel, which constitutes a breach of article 76 of the Fourth Geneva Convention.
33. There should be separate detention for children and adults subject to an independent assessment to the contrary based on the best interests of the child.

34. Children should be able to access a full education whilst in detention.
35. Parents or guardians should be granted regular access and visiting rights to children in detention.
36. Parents or guardians should be informed of release dates and places in good time and given proper facilities for meeting the children.
37. No child should be the subject of administrative detention.
38. Breach of these principles should result in the discontinuation of the prosecution and the child's release.

Complaints and Monitoring

39. There should be prompt independent investigation of any complaint made by, or in respect of, a child about unlawful or ill-treatment.
40. There needs to be a comprehensive and independent monitoring system.

Appendix 1

Meetings

Israeli and Palestinian Individuals:

- Former soldiers in the Israeli military, who served between 2001 and 2008
- Former child detainees and their families in the villages of Beit Sahour, Beit Ummar and a-Nabi Saleh
- Former child detainees at the East Jerusalem YMCA Rehabilitation Program
- Israeli lawyers (Smadar Ben Natan and Gaby Lasky)

Israeli and Palestinian NGOs and International Agencies:

- Addameer (www.addameer.org/) – Sahar Francis, Director, Gemma Houldey, Advocacy and Outreach Officer
- Al Haq (www.alhaq.org/) – Salma Karmi-Ayyoub, International Lawyer, Hisham Sharabati, Monitoring & Documenting Department
- Breaking the Silence (www.breakingthesilence.org.il/) – Yehuda Shaul, Co-Director, Mikhael Manekin, Co-Director
- B'Tselem (www.btselem.org/) – Yael Stein, Research Director, Naama Baumgarten-Sharon, Researcher and Author of report 'No Minor Matter'
- Defence for Children International (DCI) (www.dci-palestine.org/) – Gerard Horton, International Advocacy Lawyer
- East Jerusalem YMCA (www.ej-ymca.org/) – Nader Abu Amsha, Director of The East Jerusalem YMCA Rehabilitation Program
- No Legal Frontiers (nolegalfrontiers.org/en) – Dr. Susan Lourenço
- OCHA (United Nations Office for the Co-ordination of Humanitarian Affairs in the OPT - www.ochaopt.org/)
- Save the Children (Sweden) (www.savethechildren.se/) – Karen Mets, Advocacy and Communications Officer, Kete Shabani, Field Documentation Officer
- UNICEF (www.unicef.org/infobycountry/oPt.html) – Jean Gough, UNICEF OPT Special Representative, Saudamini Seigrist, Chief of Child Protection Section, Catherine Weibel, Chief of Communication
- Women's Centre for Legal Aid and Counselling (www.wclac.org) - Salwa Duaibis

United Kingdom Foreign & Commonwealth Office:

- Jude Muxworthy, Former Vice Consul (Political)
- Sir Vincent Fean, British Consul-General, British Consulate General in East Jerusalem
- Edward Evans, Current Vice Consul (Political)
- Matthew Gould, British Ambassador to Israel, British Embassy in Tel Aviv (ukinjerusalem.fco.gov.uk/en/) (ukinisrael.fco.gov.uk/en/)

Palestinian Authority:

- Dr. Mustafa Barghouthi, Secretary General, MP, Palestine National Initiative (www.mustafabarghouthi.org/)

Israeli Governmental and Judicial Departments:

Ministry of Justice (www.justice.gov.il/mojeng):

- Dr. Guy Rotkopf, Director General of the Ministry of Justice,
- Malkiel Blass, Deputy Attorney General
- Dr. Yoav Sapir, Deputy Chief Public Defender Director, Supreme Court Appellate Division,
- Dori Pinto, District Public Defender (Jerusalem),
- Tal Avraham, Deputy to the Public Defender of the Northern District and Head of the Juvenile Delinquency Department (Northern District)

Ministry of Foreign Affairs (www.mfa.gov.il/MFA):

- Director of the Europe Department, Ministry of Foreign Affairs
- Ehud Keinan, Legal Advisor

Ministry of Defence (www.mod.gov.il/) and **COGAT** (Coordination of Government Activity in the Territories):

- Achaz Ben-Ari, Legal Advisor of Ministry of Defense,
- Lieutenant Colonel Aviv Feigel, Head of Foreign Relations Branch COGAT
- Mrs. Elian Hadad, Welfare Coordination, Civil Administration COGAT,
- Major Dr. Eran Shamir Borer, Head of Security and Legal Affairs Section, International Law Department IDF
- Colonel Eli Bar-On, Legal Advisor to Judea and Samaria

Supreme Court (elyon1.court.gov.il/eng/home/index.html):

- Dorit Beinisch, Justice of the Supreme Court of Israel and former Chief Justice of the Supreme Court of Israel (left the post in February 2012)

Military Courts:

Military Judges:

- Lieutenant Colonel Tzi Lekach, President of the Military Courts
- Colonel Aharon Mishnayot, President of the Military Court of Appeals
- Professor Ariel Bendor, Lieutenant Colonel
- Major Sharon Rivlin-Achai, Juvenile Judge of the Military Courts

Military Prosecutors:

- Lieutenant Colonel Robert Newfeld, Chief Military Prosecutor
- Major Ronen Shor, Deputy Chief Military Prosecutor

Appendix 2

Biographies (in alphabetical order)

Greg Davies

Greg Davies was called to the Bar in 2005 and practises at 4 Brick Court. He specialises in cases involving children and acts in the fields of both public and private family law. He has conducted cases involving human rights and international law and regularly appears in the Family Proceedings Court, County Court and High Court. Greg has lectured on the Children Act 1989 and trained the London Probation Service in criminal law and procedure.

Jayne Harrill

Jayne Harrill was called to the Bar in 1990 and is Deputy Head of Chambers at 4 Brick Court. Jayne specialises in cases involving children and has extensive experience of representing children in public law proceedings. Jayne has a particular interest in representing vulnerable clients and those lacking capacity, which has led her to establish the Court of Protection team within chambers.

Marianna Hildyard QC (Lady Falconer of Thoroton)

Marianna Hildyard QC was called to the Bar in 1977, became a QC in 2002 and practises at 4 Brick Court. She is a Deputy High Court Judge, a Recorder on the Southern Circuit, sitting in crime, civil and in both public and private family law cases, and a Bencher at Inner Temple. Marianna has a wealth of experience in law pertaining to children and childcare with over 30 years of practice, and has a number of published cases. She regularly gives talks on the issue of women and the law, and addressed the Commonwealth Law Conference on hearing the voice of the child in litigation.

Judy Khan QC

Judy Khan QC was called to the Bar in 1989, was appointed a Crown Court Recorder in 2006 and became a QC in 2010. She has experience of criminal defence work across a wide spectrum of criminal cases and has been instructed as leading counsel in cases involving allegations of murder, attempted murder, kidnap, fraud, money laundering and large scale importation/supply of drugs. Judy also has extensive experience of cases involving sexual allegations. She finds representing young and vulnerable defendants particularly rewarding.

Jude Lanchin

Jude Lanchin was admitted to the Solicitors Roll in 1994 after a career in community-based work. She is a Senior Associate Solicitor at leading human rights firm Bindmans LLP, specialising in criminal defence. Her work often involves high-profile cases, complex and serious organised crime and spans a wide range of allegations including murder, firearms, drugs supply/importation, fraud and confiscation. She is also known for her protest-related work and her defence of young people and has a particular interest in youth justice.

Marc Mason

Marc Mason was called to the Bar in 2006 and is a barrister at 4 Brick Court, specialising in law relating to children. He is a former Research Fellow at the Faculty of Laws, University College London, Lecturer at the University of Westminster and Research Assistant at the Institute of Advanced Legal Studies (IALS). Marc is also a lecturer at the Institute of Law, Jersey and continues to teach quantitative research methods to PhD students at IALS.

Frances Oldham QC

Frances Oldham QC was called to the Bar in 1977 and became a QC in 1994. She is the former Head of Chambers at 36 Bedford Row, a Deputy High Court Judge in the Family Division, a Crown Court Recorder, a Master of the Bench at Gray's Inn and was Leader of the Midland Circuit 2002 to 2005. Chambers and Partners 2010 cited her as a Leading QC in Criminal Law, London. Frances is regularly instructed in high profile and complex cases and is listed as preferred Counsel for the Equality and Human Rights Commission. She has considerable experience in criminal and family law. Her substantial criminal practice includes all aspects of serious and complex crime.

The Rt Hon the Baroness Patricia Scotland of Asthal QC (former Shadow Attorney General and Attorney General of England, Wales and Northern Ireland)

Baroness Scotland QC was called to the bar at the Middle Temple in 1977, specialising in family and children's law. Baroness Scotland made history in 1991 by becoming the first black woman and youngest person to be appointed a QC. She was a founding member of 1 Gray's Inn Square barristers' chambers. Early in 1997 she was elected as a Bencher of the Middle Temple. On 28 June 2007 Baroness Scotland was appointed Attorney General by Prime Minister Gordon Brown. She was the first woman to hold the office since its foundation in 1315. Baroness Scotland also held the position of Advocate General of Northern Ireland and served as Shadow Attorney General from May 2010 to October 2011. She continues with her parliamentary duties and is now back in private practice at 4 Paper Buildings.

The Rt Hon Sir Stephen Sedley (formerly Lord Justice Sedley)

Sir Stephen Sedley was called to the Bar in 1964, became a QC in 1983 and was appointed a High Court judge in 1992, serving in the Queen's Bench Division. In 1999 he was appointed to the Court of Appeal of England and Wales, retiring in 2011. He has sat as a judge ad hoc of the European Court of Human Rights and on the Judicial Committee of the Privy Council. He is currently a Visiting Professor of Law at Oxford University and a Judicial Visitor at University College, London. Sir Stephen chaired the Judicial Studies Board's working party on the Human Rights Act 1998 and since 1999 has been President of the British Institute of Human Rights.

Appendix 3

Extracts from the United Nations Convention on the Rights of the Child

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Appendix 4

These figures are compiled by Defence for Children International from sources including the Israeli Prison Service (IPS) and Israeli army temporary detention facilities.¹¹²

Number of Palestinian children in Israeli detention:

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 2008 | 327 | 307 | 325 | 327 | 337 | 323 | 324 | 293 | 304 | 297 | 327 | 342 |
| 2009 | 389 | 423 | 420 | 391 | 346 | 355 | 342 | 339 | 326 | 325 | 306 | 305 |
| 2010 | 318 | 343 | 342 | 355 | 305 | 291 | 284 | 286 | 269 | 256 | 228 | 213 |
| 2011 | 222 | 221 | 226 | 220 | 211 | 209 | 202 | 180 | 164 | 150 | 161 | 135 |
| 2012 | 170 | 187 | 206 | 220 | 234 | | | | | | | |

112 www.dci-palestine.org/content/child-detainees

Report written by The Rt Hon Sir Stephen Sedley,
The Rt Hon the Baroness Patricia Scotland of
Asthal QC, Frances Oldham QC, Marianna
Hildyard QC, Judy Khan QC, Jayne Harrill, Jude
Lanchin, Greg Davies & Marc Mason
Project Co-ordinator: Bea Randall
Communications Consultant: Lou Dawson

www.childreninmilitarycustody.org
info@cimc.org.uk