



Defense for Children International - Palestine
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ISRAEL

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Submitted by:

Defense for Children International - Palestine
Al-Sartawi Building 3rd Floor
Sateh Marhaba, Ramallah, Occupied Palestinian Territory
e. advocacy@dcips.org | www.dci-palestine.org

Defense for Children International - Palestine (DCIP), a national section of the international non-governmental child rights organization and movement, Defense for Children International, established in 1979, with consultative status with ECOSOC.

DCIP is a local Palestinian child rights organization dedicated to defending and promoting the rights of children living in the West Bank, including East Jerusalem, and the Gaza Strip. For over 25 years, we have investigated, documented, and exposed grave human rights violations against children; held Israeli and Palestinian authorities accountable to universal human rights principles; and advocated at the international and national levels to advance access to justice and protection for children. We also provide direct legal aid to children in distress.

Overview

1. Since Israel's last Universal Periodic Review in October 2013, the situation for Palestinian children living under Israeli military occupation in the West Bank, including East Jerusalem, and the Gaza Strip has deteriorated dramatically.

2. Israeli settlements, their accompanying fixtures and Israeli forces deployed in the occupied West Bank have created an increasingly hyper-militarized environment for Palestinian children to grow up in.

3. In 2016, West Bank children suffered the highest losses of the past decade with 32 child fatalities at the hands of Israeli forces and security guards.¹ Significant numbers of West Bank children were also displaced as Israel carried out a record-breaking pace of home demolitions, even as the number of Jewish-only settlements increased. Equally alarming, Israel's systematic military detention of Palestinian children showed no signs of abatement.

4. In Gaza, due to 10 years of military blockade, children continue to slip deeper into poverty, with many still living in protracted displacement. Despite overwhelming and repeated evidence of war crimes committed by Israeli forces during the 2014 military assault on Gaza, dubbed 'Operation Protective Edge,' including direct attacks on civilians and indiscriminate and disproportionate attacks on civilian homes, schools, and residential neighborhoods that left at least 547 Palestinian children dead, justice and accountability for these children remain elusive.²

Follow up to the previous review

5. During Israel's last Universal Periodic Review on October 29, 2013, numerous UN member states, including the United Kingdom, the Netherlands, Finland, Ireland, and others commented on or criticized Israel's lack of respect for international law and grave violations against Palestinian children, particularly the systematic ill-treatment of Palestinian children in Israeli military detention. Member states made a total of 28 recommendations related to the rights of the child during Israel's 2nd-cycle Universal Periodic Review in October 2013. Of those, Israel accepted four recommendations and noted the remaining 24.³

6. Among the noted recommendations, the United Kingdom called for an end to the practice of "solitary confinement of child detainees, and that audio-visual recordings are made of all interviews with child detainees by the Israeli police and security forces."⁴ The Netherlands urged Israel to "[t]ake all steps necessary to ensure that Palestinian children in military custody receive the same level of care and have the same rights as provided by Israeli criminal law to youth offenders."⁵ Similarly, Finland urged Israel to "[e]nsure that detention of civilians, especially children, is carried out in accordance with international law and standards and without any discrimination paying particular attention to the recommendations of the [Convention on the Rights of the Child]."⁶

7. More specifically, Ireland called on Israel to "[e]nd urgently night arrests of Palestinian children, the admissibility in evidence in military courts of written confessions in Hebrew signed by them, their solitary confinement and the denial of access to family members or to legal representation."⁷

¹ DCIP, *Children in West Bank face deadliest year of past decade*, Dec. 23, 2016, http://www.dci-palestine.org/children_in_west_bank_face_deadliest_year_of_past_decade.

² DCIP, *OPERATION PROTECTIVE EDGE: A WAR WAGED ON GAZA'S CHILDREN* (2015), https://d3n8a8pro7vhmx.cloudfront.net/dcipalestine/pages/530/attachments/original/1436292897/OPE_A_War_Waged_on_Children.pdf

³ See United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review, 25th Session*, U.N. Doc. A/HRC/25/15 (Dec. 19, 2013), https://www.upr-info.org/sites/default/files/document/israel/session_17_-_october_2013/a_hrc_25_15_israel_e.pdf

⁴ *Id.* at ¶ 136.126.

⁵ *Id.* at ¶ 136.114.

⁶ *Id.* at ¶ 136.113.

⁷ *Id.* at ¶ 136.139.

8. One of the accepted recommendations was made by Norway and called on Israel to “[t]ake measures to provide for the safety and protection of the Palestinian civilian population and adhere to international standards on juvenile detention.”⁸

9. Despite the fact that Israel has ratified most of the core international human rights treaties, and, as a result, has bound itself to act in accordance with those treaties; Israeli authorities persistently disregard and fail to comply with international law, including the recommendations concerning the rights of the child that were accepted and noted in Israel’s 2nd-cycle Universal Periodic Review.

Widespread, systematic and institutionalized ill-treatment of child detainees

10. Israel has the dubious distinction of being the only country in the world that systematically prosecutes between 500 and 700 children each year in military courts lacking fundamental fair trial rights. Children within the Israeli military system commonly report physical and verbal abuse from the moment of their arrest, and coercion and threats during interrogations.

11. DCIP collected affidavits from 590 West Bank children detained and prosecuted under the jurisdiction of Israeli military courts between 2012 and 2016. The data shows that 72 percent of children endured some form of physical violence following arrest and 66 percent faced verbal abuse, humiliation, and/or intimidation.

12. In 265 out of the 590 cases (45 percent), the Israeli military arrested children from their homes in the middle of the night. In 513 out of the 590 cases (87 percent), Israeli forces arrested children without notifying parents of the reason for arrest.

13. Of the 590 documented cases, 568 children (96 percent) had no parent present during the interrogation or access to legal counsel. Israeli police also did not properly inform children of their rights in 81 percent of the cases.

14. Interrogators used physical violence, position abuse, threats, and isolation to coerce confessions from some of these children. Of the 590 children, 91 spent an average of 14 days in solitary confinement for interrogation purposes.

15. Israeli military court judges seldom exclude confessions obtained by coercion or torture, even those drafted in Hebrew – 225 out of 590 cases (38 percent) – a language that most Palestinian children do not understand. In fact, military prosecutors rely on these confessions to obtain a conviction.

16. Children most commonly face the charge of throwing stones, which carries maximum sentences of 10 or 20 years, depending on the circumstances.

17. Many children maintain their innocence, but plead guilty, as it is the fastest way to get out of the system. Most receive plea deals of less than 12 months. Trials, on the other hand, can last a year, possibly longer. Military judges rarely grant bail, which leaves most children behind bars in as they await trial.

18. Data provided by the Israel Prison Service shows that around 60 percent of Palestinian children end up incarcerated in prisons inside Israel.

19. While Israeli authorities have made slight changes to the military law applicable to Palestinian children since 2013, these changes undoubtedly fail to address the systematic and widespread ill-treatment that Palestinian children experience at the hands of Israeli forces following arrest.⁹

⁸ *Id.* at ¶ 136.112.

⁹ See DCIP, NO WAY TO TREAT A CHILD: PALESTINIAN CHILDREN IN THE ISRAELI MILITARY DETENTION SYSTEM, (2016),

https://d3n8a8pro7vhm.cloudfront.net/dcipalestine/pages/1527/attachments/original/1460665378/DCIP_NWT_TAC_Report_Final_April_2016.pdf

20. Recent amendments to Israeli military law concerning children have had little to no impact on their treatment during the first 24 to 48 hours after an arrest, when most of the ill-treatment occurs at the hands of Israeli soldiers, police, and the security service.

Solitary confinement for interrogation purposes

21. Israeli authorities held increasing numbers of Palestinian children in solitary confinement for longer periods in 2016, for interrogation purposes. DCIP collected affidavits from 161 West Bank children detained by Israeli forces and prosecuted under the jurisdiction of Israeli military courts during 2016. Of these children, 25 were held in solitary confinement for interrogation purposes for an average period of 16 days, a 23 percent increase over the previous year. The longest period of isolation for a child that DCIP documented in 2016 was 29 days. In 2015, DCIP documented a total of 15 children held in solitary confinement by Israeli authorities for interrogation purposes.¹⁰

22. While globally children in conflict with the law are often held in solitary confinement either as a disciplinary measure or to separate them from adult populations, the use of isolation by Israeli authorities does not appear to be related to any disciplinary, protective, or medical rationale or justification.

23. Evidence and documentation collected by DCIP overwhelmingly suggests an apparent policy and practice implemented by Israeli authorities to use isolation for Palestinian child detainees solely for interrogation purposes, particularly to obtain a confession or gather intelligence or information on other individuals.

Renewed use of administrative detention against child detainees

24. In October 2015, Israel renewed the practice of administrative detention against Palestinian children in the West Bank for the first time in four years. Administrative detention is the imprisonment of individuals by the state for prolonged periods without charge or trial and based on secret evidence.

25. DCIP has documented the use of administrative detention against six children in 2015, 14 in 2016, and two in 2017. Of these, 18 were released without charge after spending between three and 10 months in administrative detention, and two were charged, convicted and sentenced after spending three months in administrative detention. Two Palestinian children, one of whom has since turned 18 years old, remain in administrative detention.

Increasing use of live ammunition and child fatalities

26. Israeli forces in the occupied West Bank, including East Jerusalem, have increasingly targeted Palestinians, including children, with live ammunition to quash protests since the beginning of 2014. DCIP independently verified the deaths of 15 Palestinian children killed by Israeli forces during 2014.¹¹ This figure nearly doubled in 2015 as Israeli forces fatally shot at least 29 Palestinian children.

27. In 2016, Israeli forces and security guards killed 32 Palestinian children, making it the deadliest year in a decade for West Bank children. In just the first five months of 2017, a further nine Palestinian children have been killed by Israeli forces.

28. In response to escalating violence since October 2015, Israeli forces appear to be implementing a ‘shoot-to-kill’ policy, which in some incidents may amount to extrajudicial or willful killings. This comes alongside the decision by Israeli authorities to relax open-fire rules, allowing Israeli forces to use live ammunition during protests in Jerusalem when there is a “threat to life.” Previously, live ammunition was permitted only when there is a direct, mortal threat to the life of a police officer or

¹⁰ DCIP, *Palestinian children held in solitary confinement for longer periods*, Apr. 17, 2017, http://www.dci-palestine.org/palestinian_children_held_in_solitary_confinement_for_longer_periods.

¹¹ This figure excludes 535 children killed as a direct result of Israeli attacks during the 2014 Israeli military offensive on the Gaza Strip, known as *Operation Protective Edge*.

soldier. International law requires that intentional lethal force be used only when absolutely unavoidable.

29. Of the 32 children killed in the West Bank, including East Jerusalem, by Israeli forces and security guards in 2016, 24 were accused of committing some kind of an attack. However, in several cases, DCIP evidence and Israeli internal investigations determined that the child did not pose a direct, mortal threat at the time they were killed.

30. Crowd-control weapons have also proved fatal in some cases. Faris al-Bayed, 15, died from his injuries on December 23, 2016, two months after Israeli soldiers shot a rubber-coated metal bullet at his head, which entered his skull and lodged in his brain.¹² In another blatant example of the misuse of crowd-control weapons, Israeli forces fired a sponge-tipped plastic bullet at 10-year-old Muhyee Tabakhi's chest on July 19, 2016, killing him.

31. Accountability for shootings by Israeli forces is extremely rare. Only one incident, the fatal shooting of Nadeem Nawara, 17, in May 2014, has resulted in both an investigation and indictment.

Normative and institutional framework of the State

Relaxing live-fire regulations and harsher penalties for children

32. In December 2015, Israeli police live-fire regulations were updated, permitting officers to use live-fire against an individual who appears to be throwing or about to throw a firebomb, fireworks or is using a slingshot. This is one of several increasingly aggressive policy changes that appear to target Palestinian youth.

33. On August 2, 2016, the Israeli Knesset, or parliament, passed a law under the civilian criminal justice system that enables Israeli authorities "to imprison a minor convicted of serious crimes such as murder, attempted murder or manslaughter even if he or she is under the age of 14," according to a Knesset statement. The actual serving of the sentences would be deferred until the minor reaches the age of 14. Thirty-two members of the Knesset voted in favor, while 16 voted against, and one abstained.¹³

34. Israel's civilian criminal justice system previously had prohibited custodial sentences for children under 14 in accordance with international juvenile justice standards. Israeli military law, which applies to Palestinians, including children, in the occupied West Bank, already allowed imprisonment for any person 12 years and older. Under both Israeli civilian law and military law, children under the age of 12 cannot be held criminally responsible.

35. The legal distinctions between East Jerusalem and the West Bank trace back to 1967, when Israel captured the eastern part of the city and declared all of Jerusalem its "indivisible" capital. Since then, Palestinian children who happen to live in Jerusalem fall under Israeli civilian law.

36. Children in East Jerusalem are generally subject to the Israeli Youth Law, which theoretically applies equally to Palestinian and Israeli children. However, documentation collected by DCIP shows Israeli authorities implement the law in a discriminatory manner, denying Palestinian children in East Jerusalem of their rights from the moment of arrest to the end of legal proceedings.

37. Israeli lawmakers pushed forward a slew of harsh policies in 2015 that target Palestinian children.¹⁴ Amendments to the Israeli penal code included stricter penalties in mandatory sentencing laws such as a 10-year sentence for throwing a stone, or other object, at traffic, without intent to cause injury, and 20 years for throwing a stone, or other object, at traffic with intent to cause injury. While

¹² DCIP, *Children in West Bank face deadliest year of past decade*, Dec. 23, 2016, http://www.dci-palestine.org/children_in_west_bank_face_deadliest_year_of_past_decade.

¹³ DCIP, *New Israeli law allows children as young as 12 to be jailed*, Aug. 11, 2016, http://www.dci-palestine.org/new_israeli_law_allows_children_as_young_as_12_to_be_jailed

¹⁴ DCIP, *Israel targets Palestinian children in East Jerusalem with harsh policies*, Nov. 28, 2015, http://www.dci-palestine.org/israel_targets_palestinian_children_in_east_jerusalem_with_harsh_policies.

the 20-year maximum sentencing existed prior to 2015, the word “stone” was added to specifically target Palestinian society.

38. The Knesset also instituted mandatory minimum sentences of no less than one-fifth of the potential maximum sentence. Despite a provision in the Israeli Youth Law that should shield children from minimum sentencing laws, the Israeli Supreme Court in several decisions has held that judges have discretion and are not bound by the Israeli Youth Law. The Knesset also amended the national insurance law to deprive children convicted of “nationalistic-motivated” offenses and “terrorist activities” from social benefits during their imprisonment.

39. Palestinian youth convicted of throwing stones in Jerusalem in 2016 felt the effects of changes to the Israeli penal code from the previous year that increased customary punishment. A Jerusalem court in March 2016 sentenced Saleh E., 16, to 39 months and Murad A., 14, to 36 months in prison. DCIP documented eight other Palestinian youths who received sentences between 12 and 28 months in 2016.¹⁵

Recommendations for action by the State under review

40. In no circumstance should children be detained or prosecuted under the jurisdiction of military courts. However, as a minimum safeguard while Palestinian children living under Israeli military occupation continue to be arrested and prosecuted within the Israeli military court system, Israeli authorities must respect and ensure basic due process rights and the absolute prohibition against torture and ill-treatment. From the moment of arrest, operations and procedures must be carried out in accordance with international juvenile justice standards, specifically the UN Convention on the Rights of the Child, including:

- Detention must only be used as a last resort, and only for the shortest appropriate time;
- Children must not be subjected to physical or psychological violence;
- Children must have access to legal consultation and parents prior to and during interrogations;
- Children must be properly informed of their right to silence;
- Children must not be blindfolded or painfully restrained;
- Children must not be subjected to coercive force or threats;
- All interrogations must be audio-visually recorded;
- Any incriminating evidence obtained during interrogation where a child was not properly and effectively informed of his or her right to silence must be excluded by the military courts;
- Any statement made as a result of torture or ill-treatment must be excluded as evidence in any proceeding;
- The practice of using solitary confinement on children in Israeli military detention, whether in pretrial detention for interrogation purposes or as a form of punishment, must be stopped immediately and the prohibition must be enshrined in law;
- The practice of using administrative detention orders against Palestinian children must stop immediately and the prohibition must be enshrined in law;
- All credible allegations of torture and ill-treatment and unlawful killing must be thoroughly and impartially investigated in accordance with international standards, and perpetrators brought promptly to justice; and
- Children must not be transferred out of the West Bank in violation of the Fourth Geneva Convention.
- Israeli forces at all times must act in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

¹⁵ DCIP, *East Jerusalem teens hit with harsh sentences for throwing stones*, Jul. 20, 2016, http://www.dci-palestine.org/east_jerusalem_teens_hit_with_harsh_sentences_for_throwing_stones.