

LAW - The Palestinian  
Society for the Protection  
of Human Rights and the  
Environment

The Public  
Committee against  
Torture  
In Israel (PCATI)

The World  
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(OMCT)

## **The Treatment of Detained Palestinian Children by the Israeli Authorities**

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## Introduction

This report is devoted to the treatment of Palestinian children detained by Israeli forces.

The Convention against Torture is, of course, equally applicable when the victims of torture and other cruel, inhuman or degrading treatment or punishment are children. It should be highlighted however, that because of the particular vulnerability of children a number of specific instruments have been developed within the UN system for their special protection, most importantly the Convention on the Rights of the Child (CRC), which Israel ratified in 1991.<sup>1</sup> Other instruments focusing on appropriate treatment of juvenile offenders are the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) of 1985, which were further interpreted by the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the UN Rules for the Protection of Juveniles Deprived of their Liberty.<sup>2</sup>

Therefore, in examining the treatment accorded to children in detention by the Israeli authorities, the Convention against Torture should be interpreted, when relevant, in the light of other applicable international norms and standards. These norms and standards establish that child detainees are to be treated with humanity and respect for their dignity, taking into consideration the special needs and vulnerability of their age. In those exceptional cases where children are deprived of their liberty, the provisions of the law should be scrupulously respected.<sup>3</sup>

In Israel however, Palestinian child detainees have been subjected to many of the methods which, in the case of adults, have been considered to constitute torture or other ill-treatment, such as: beatings including with objects; painful manacling of hands and feet; pouring of freezing water onto the child's head, being kept in fetid isolation cells; preventing the child from changing his or her clothes for long periods of time; covering the head with a foul smelling sack; tight blindfolding; shooting at the child's head with small plastic pellets from as close distance; placing weights on the detainees shoulders for an extended period of time; denial of water; denial of access to the toilet; continuous long interrogations; and prolonged incommunicado detention<sup>4</sup>.

Once imprisoned, children mostly accused of stone-throwing, have been kept together

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<sup>1</sup>Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990 in *Human Rights A Compilation of International Instruments Volume I (First Part) Universal Instruments*, United Nations, New York and Geneva, 1994, pp. 174-200. Hereafter the CRC.

<sup>2</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985, *op. cit.* pp. 356-385; United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990, *op. cit.* pp. 346-355; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990, *op. cit.*, pp. 275-292.

<sup>3</sup> The CRC establishes that children should not be arrested, detained or imprisoned except as a measure of last resort and for the shortest appropriate time. Rule 5 (2) of the UN Minimum Rules for the Treatment of Prisoners also emphasizes that "as a rule, such young persons should not be sentenced to imprisonment."

<sup>4</sup> See the case of 17-year-old Muhammad Ibrahim Huhammad al-Matur, featured in the general report on page 10.

with criminal prisoners often resulting in grave threats to their physical and psychological integrity. The use of solitary confinement as a form of punishment against detained Palestinian children, as reported in Tel-Mond Prison near Netanya and Neve Titzza Prison in Ramle, both under the administrative control of the Israel Prison Authority, are also a matter of grave concern. Children have reported being placed in solitary confinement in tiny, dark, dirty, foul-smelling cells with open toilets.

Moreover, the laws governing arrest and detention of children from the Occupied Palestinian Territories<sup>5</sup> (OPT), are laid down in Israeli Military Orders which do not provide the level of protection granted to children under Israeli and international law. Israeli Military Orders concerning detention are only applied to Palestinians from the West Bank and the Gaza Strip including those living under the control of the Palestinian National Authority – and not to Israeli settlers who are an illegal presence in the OPT – and have continued to be in force after the signing of the Oslo Accords.

In 1998 the Human Rights Committee recommended in its Concluding Observations that “coordinated and targeted efforts be made to establish basic standards that are applicable equally to all persons under the jurisdiction of Israel.”<sup>6</sup> The situation of detainees from the OPT, in particular child detainees, illustrates how Israel has failed to implement the aforementioned recommendation of the Human Rights Committee.

As for legal procedures, prosecutors usually request that Palestinian children suspected of stone-throwing be remanded in custody until criminal proceedings are completed. In most cases the courts have refused bail without taking into consideration the individual circumstances of each case, alternative options and the best interest of the children.

The transfer of Palestinian child detainees to Israel, in violation of international law has imposed serious limitations on the possibility of family visits.

The Palestinian branch of the Geneva-based international NGO Defence for Children International (DCI/PS) estimates that since the beginning of the Al Aqsa Intifada on 29 September 2000 through 15 September 2001 about 600 Palestinian children from the West Bank including East-Jerusalem and the Gaza Strip have been arrested and detained by the Israeli security forces. Of those arrested, dozens have been subjected to torture or other ill-treatment during arrest, interrogation or detention and imprisonment.

DCI/PS estimates that as of mid-September 2001 about 160 Palestinian children were being held in detention centers and prisons throughout Israel and the OPT. The majority of those arrested are either from Jerusalem, Hebron (especially the Old City and Al Arrub refugee camp) or Hussan village near Bethlehem. While children from the West Bank and Gaza are held in custody in detention centers in the OPT, juveniles from East Jerusalem are usually interrogated at the Russian Compound Detention Center in Jerusalem. According to DCI/PS, as of 22 September 2001 about 75 Palestinian boys aged 12 – 16 were held in Tel-Mond Prison; about 60 children aged 16 or more were imprisoned as adults in Meggido prison under the control of the Israeli army; about 20 minors were being held in detention centers in the OPT and 4 girls aged between 14 and 17 were being held in the Neve Titzza women’s prison in Ramle.

Considering the number of Palestinians currently in detention who are under the age of 18 and the gravity of the treatment reported, LAW, the Public Committee against

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<sup>5</sup> With the exception of East Jerusalem where Israeli law applies.

<sup>6</sup> Human Rights Committee, Concluding Observations: Israel, 18 August 1998, CCPR/C/79/Add.93.

Torture in Israel (PCATI) and the World Organisation Against Torture (OMCT) would like to express their regret that the Israeli authorities have failed to include in their third periodic report to the CAT any information regarding the situation and rights of child detainees from and in the OPT.

## Part One: Torture and Other Ill-Treatment of Children (issues under articles 1 and 16 of the Convention)

Child detainees have been subjected to torture and other forms of ill-treatment at the moment of arrest and transfer to detention centers, during interrogation, and during imprisonment.

A number of statements and affidavits which illustrate the practice of torture or ill-treatment by the Israeli security forces during arrest, interrogation and detention of children from the OPT are included in the annex.

### **1. Abuse during arrest and transfer to detention centres**

The circumstances under which many Palestinian children from the OPT, mostly 14-17 years old, have been arrested, interrogated, detained and imprisoned suggest that there have been serious violations of the Convention against Torture, the Convention on the Rights of the Child and the Fourth Geneva Convention.

As a matter of routine, children have been arrested, in the middle of the night, literally taken from their beds to the interrogation rooms by members of Israeli security forces, including officers with balaclavas or with their faces blackened.<sup>7</sup> Arrests have been carried out by large groups of Israeli security forces (between 30 and 40 men), who arrive in military jeeps, surround the children's family homes and forcibly enter them, at times with guns drawn, at times pointing at family members with flashlights. The noise of the military vehicles, the heavy pounding at the doors, the yelling of the soldiers and the screams of the minors' family including small brothers and sisters usually wakes up the whole neighbourhood. In practically all cases no explanation was given as to the reason of the arrest and no arrest warrant was shown.

Moreover, security forces have ill-treated the children and their relatives during arrest, employing means such as beatings, kicking, verbal abuse, humiliation and threats, and the destruction of property during searches. Children are transported to detention centers in military vehicles, usually handcuffed and some of them blindfolded or hooded, and often being beaten with rifle butts, punched, kicked and subject to verbal insults and curses during displacement. After the arrest, in numerous cases, families have had to search for their children, as they were either not informed of or received misleading information regarding their whereabouts.

The methods described above do not only violate international law but are also contrary to legislation regulating arrest and detention of children of Israeli nationality.

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<sup>7</sup> See B'Tselem. Torture of Palestinian Minors in the Gush Etzion Police Station. Information Sheet. July 2001.

In a recent case involving similar methods in Colombia the Human Rights Committee expressed the view that such treatment amounted to a violation of article 7 of the Covenant on Civil and Political Rights<sup>8</sup> which prohibits torture and inhuman and degrading treatment.<sup>9</sup>

Considering both the age of those arrested and the nature of the offenses the vast majority are accused of - stone-throwing - it seems extremely doubtful that the employment of such methods is dictated by security needs. In fact, these practices seem principally designed to terrorize, intimidate and deter a civilian population living under military occupation.

Also considering the age of those arrested and the nature of the offenses they are accused of, the procedure described above should be regarded to be not only disproportionate, inflicting unnecessary suffering on the children, their families and the neighbours, but also to constitute a violation of article 16 of the Convention against Torture.

## **2. Torture and ill-treatment during interrogation**

Many of the methods of torture and ill-treatment described in the general report have been reported by child detainees.

Arrests of children have been carried out by the Israeli army and the Israel Police. Interrogations have been carried out by the Israel Police and the GSS.

Psychological forms of torture or other ill-treatment have included: humiliation, insults, curses and threats (death threats, threats of torture with electric shock, threats of a sexual nature and threats related to family members). In some cases children have been forced to hear the screams of their family members as they were being beaten.

Severe restrictions regarding family visits and access to the telephone also constitute a form of psychological pressure, especially bearing in mind the age of those detained.

Physical forms of torture or other ill-treatment have included the following methods:

- Beating the detainees all over their bodies including with objects such as rifle butts or helmets;
- Kicking including by officers wearing military boots;
- Painful manacling of the hands and the feet
- Pouring of freezing cold water on the child's head
- Pushing the child's head into the toilet bowl and flushing the toilet
- Putting the child in a dirty and smelly isolation cell
- Preventing the child from changing his clothes for a long period of time

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<sup>8</sup> International Covenant on Civil Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force 23 March 1976, *op. cit.* pp. 20-40. Hereafter: ICCPR.

<sup>9</sup> The treatment involved forcible entry and search of a house at 2 am by a group of armed men, followed by threats and verbal abuse of family members present including young children. *Rafael Armando Rojas García v Colombia*, CCPR/C/71/D/687/1996. 16 May 2001 paras.2.1-2.2 and 10.5.

- Covering the head with a foul smelling sack
- Tight Blindfolding
- Shooting at the minor's head and face with small plastic pellets from close distance
- Placing weights on the detainee's shoulder for an extended period of time
- Dunking his head in ice water
- Continuous and long interrogation, in one case approximately 7 hours.
- Denial of water
- Denial of access to the toilet

We note that some children had to be hospitalised after interrogation. In other cases children have complained that they did not receive adequate medical attention for the bruises and injuries caused by the beatings and other forms of ill-treatment.

Methods which have been held to constitute torture when applied to adults should be strictly prohibited in the interrogation of children. In the case of children, the techniques described above should be considered to be incompatible with the Convention against Torture in all cases.

### **3. Detention and imprisonment conditions**

Affidavits collected from children reveal harsh conditions of detention and severe abuse. After their release, children are reported to be depressed, unbalanced and to suffer from sleep disturbances. (see annex)

#### **a. Detention centres in the OPT**

Detention centers in the OPT, which are, in the majority of cases, under the control of the Israeli army, are mostly located inside heavily guarded Jewish settlements. As a consequence, a climate of tension, fear and hostility as well as preponderant security and military considerations set the tone, creating an environment which is clearly inappropriate for holding children in custody. Of special concern are the conditions in detention centers located in the West Bank, such as Ma'ale Adummim (near Jerusalem), Gush Etzion (near Bethlehem), Adorayim (near Hebron, known as the "al-Majnouna")<sup>10</sup>, Beit El (near Ramallah), Huwarra (near Nablus), Kedumin (near Tulkarem and Qalqilya) and Salem (near Jenin).

The ICRC does not visit these detention centers and family visits are prohibited. Although the situation may have improved in some detention centers after the intervention of human rights organizations such as DCI/PS and the Association for Civil Rights in Israel (ACRI), detainees were generally not allowed to keep personal items such as watches and books. Neither was there furniture to keep clothes and other personal items. Children held in custody during their interrogation at the Gush Etzion police station reported to PCATI that they were denied adequate clothing, personal items and toilet articles.

LAW, PCATI and OMCT believe that the detention centers in the OPT do not meet the

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<sup>10</sup> The English translation of "al Majnouna" is madhouse.

minimum standards for holding child detainees. However, in one case a child was held for several months in custody under such conditions. According to DCI/PS, 14-year-old Shadi Abu Fahida, from Ras Karkar village west of Ramallah, who was arrested on 27 February 2001 on charges of stone-throwing, was held until mid June 2001 in Bet El detention center.

#### b. Imprisonment and detention in Israel; restrictions on contacts with families

Contact with families are particularly important to detained children who are normally in a situation of great emotional dependence on their parents and other close relatives. Being deprived of contact with their families can cause children great anguish and suffering, in particular in the case of young children. As under military law children as young as 12 can be arrested and sentenced to imprisonment the question of family visits is particularly important and raises issues regarding the humane treatment of child detainees.

The CRC stipulates that child detainees shall have the right to maintain contact with their families through visits and correspondence.<sup>11</sup>

Palestinian detainees including children from the OPT are usually transferred to and imprisoned in Israel.<sup>12</sup> In practice, the illegal transfer of Palestinian detainees from the OPT to Israel has curtailed the rights of these detainees both to legal counsel and family visits: Palestinians from the West Bank and the Gaza Strip who want to visit their children in prison have to first obtain a permit to enter Israel, as do Palestinian lawyers who want to visit prisoners. Visits by family members and lawyers to Palestinian detainees including children thus depend on whether a permit to enter Israel is granted. Entry permits can, however, be refused on “security grounds” without any further explanation. The Israeli policy of closures and curfews during the Intifada has further exacerbated the problem. (see annex)

Since the beginning of the Intifada, family visits have been seriously hampered and detainees including children have received no family visits for months. The change of conditions for family visits and severe restrictions of movement caused the ICRC<sup>13</sup> to inform the Israeli authorities that the new regulations for prison visits were unacceptable and that the ICRC was not in a position to carry on with its family visits program under such conditions. After months of negotiations and a failed attempt in February, family visits were resumed in the West Bank in April 2001. However, in June family visits were only carried out during the first week of the month, in July only the last week of the month and on 28 August 2001 the Israeli army completely stopped the ICRC program for security reasons.<sup>14</sup>

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<sup>11</sup> See article 37 (c).

<sup>12</sup> Such transfers are in contravention of article 49 and 76 of the Fourth Geneva Convention. See Convention Relative to the Protection of Civilian Persons in Time of War (Convention IV of 12 August 1949) in *The Geneva Conventions of August 12 1949*, International Committee of the Red Cross, Geneva, 1996.

<sup>13</sup> Under its family-visit program, the ICRC organizes visits of Palestinians living in the OPT to Israeli prisons, e.g. the application for Israeli permits and the transportation, and covers the costs.

<sup>14</sup> In any case, family visits in the summer of 2001 have taken place under difficult conditions due to the closures and the fact that people had to undergo thorough searches at every checkpoint. Under such conditions it usually took a family from the West Bank almost 24 hours to visit relatives in Israeli prisons.



It should be noted that the perceived security risks by Israeli authorities of family visits to prisoners from the OPT are, in fact, a consequence of their decision to transfer Palestinians detainees and prisoners from the OPT to Israel, in contravention of international law.

Considering the extreme vulnerability of child detainees, the Israeli authorities should adopt all necessary measures to guarantee frequent and periodic visits from family members.

c. Circumstances of imprisonment: no separation from criminal prisoners; application of solitary confinement

A major problem is the detention and imprisonment of Palestinian children<sup>15</sup> with criminal prisoners, in violation of international standards for the treatment of prisoners, which stipulate that different categories of prisoners shall be kept separate

“taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.”<sup>16</sup>

The failure to separate different categories of prisoners has resulted in a number of situations where the children’s physical and mental integrity were under threat. There have been reports of attempted rape, sexual and other forms of harassment, theft of personal belongings, threats and constant physical and psychological violence. Children have complained about beatings, being injured with razors, having their food and clothes stolen or scalding with boiling water. A father reported to LAW that while his son was imprisoned in Tel-Mond prison, he was afraid of falling asleep for fear of being attacked by criminal prisoners who possessed drugs and knives. Attempts by children to complain to the prison authorities have been met with reprisals or threats of reprisals by criminal prisoners. Children thus feel unprotected and defenseless in prison, at the mercy of criminal prisoners who abuse them.

Human rights organizations have requested the Israeli Prison Authority to take appropriate measures in order to protect Palestinian children and ensure their physical and mental well-being. These demands have been ignored, and Palestinian children continue to be held together with criminal prisoners.

Following a violent incident, on 30 June 2001 children held in Tel-Mond prison went on hunger strike in order to protest prison conditions, maltreatment and abuse. They demanded that personal items confiscated be returned and that child detainees be

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For example, some people would leave their village at 5.30 a.m. and return the following night at 3.30 a.m.

<sup>15</sup> Palestinian children from Jerusalem sentenced for stone-throwing view themselves as political prisoners (termed by Israel as security prisoners). As different laws apply to East Jerusalem and the rest of the OPT (whereby under Israeli law stone-throwing is a criminal offence and a security offence under military law applicable in the OPT), two categories of prisoners are seemingly created. However, this distinction is artificial. As a matter of fact, Palestinian children from the West Bank, the Gaza Strip and East Jerusalem sentenced for stone-throwing are one and the same category of prisoners as the offence committed as well as the political motivation to commit it are exactly the same. They should therefore be held together, and should definitely be kept separate from criminal prisoners, be they Israeli or Palestinian.

<sup>16</sup> See UN Standard Minimum Rules for the Treatment of Prisoners, Rule 8. See also Rules 67 and 68.

released from solitary confinement. On 26 June 2001<sup>17</sup>, children detained in Section 8 at Tel-Mond began yelling and shouting “Allah Akbar” after hearing loud screaming from fellow detainees held in Section 7. According to DCI/PS, prison staff have repeatedly beaten, yelled at and cursed child detainees in Section 7.<sup>18</sup> The prison Director, Mr Tafesh, and a security officer of the Prison Service named Maher Halabi, accompanied by approximately 30 police officers, then entered Section 8 and ordered the confiscation of all electronic appliances such as TV, hot plates and fans. When the representative of the children, Nasser Zaid from Jalazoun Refugee Camp, refused to hand over the items requested, the police officers began assaulting Zaid and his fellow detainees. They beat them, kicked them and sprayed tear gas into their eyes and into closed cells. Some of the detainees were manacled by the hands and feet, forced to lie on the ground, beaten, kicked and verbally abused. As a consequence of the acts of ill-treatment and abuse, minors complained of headache, pain in the back and hands and shortness of breath.

After the incident, 4 children were placed in small (2 m x 1,5 m), dark and filthy isolation cells: Abed al Jawwad Hamuda and Rashad al Tutanji were held in solitary confinement for 15 days, Abdallah Atta for 35 days and Nasser Zaid for 45 days. As one of the cells was damaged, the children from Section 8 were crowded into a small number of cells. Moreover, as a punishment they were denied their daily walk and the use of the library; the items confiscated such as electric appliances and kitchen utensils have so far not been returned.

According to the UN Rules for the Protection of Juveniles Deprived of their Liberty, solitary confinement as a disciplinary measure constitutes, as a minimum, cruel, inhuman and degrading treatment and should be prohibited.<sup>19</sup> It is contended that depending on the personal circumstances of the detainee, including the age, the state of health and the period of time it is used, the suffering inflicted by solitary confinement may amount to torture.

The Israeli authorities should adopt, as a matter of urgency, measures which ensure the psychological and physical integrity of children in detention including: measures to make sure child detainees are kept separate from criminal prisoners; and measures to prohibit the application of solitary confinement to children.

## Part Two: The Legal Context (issues under articles 2.1 and 15 of the Convention)

Israeli military law adopts a definition of the Palestinian child which is incompatible with international law and provides, in a discriminatory manner, that the offence of stone-throwing by Palestinian children, which is categorized as a security offence, be tried by the military court system with all its implications. Such legislation, which in fact ensures that a disproportionate amount of Palestinian children come into contact with the military court system, which in practice offers no alternative to imprisonment for children and imposes harsher sentences than the Israeli criminal courts, should be held to be incompatible with article 2.1 of the Convention against Torture. Legislation allowing children to be sentenced on the sole basis of confessions leads to convictions based on confessions by third persons, often obtained through torture or other ill-

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<sup>17</sup> See the statement by Adel Mubarak on page x.

<sup>18</sup> See DCI/PS. Press release of 5 July 2001. Palestinian Child Prisoners Beaten by Israeli Prison Police.

<sup>19</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty. Rule 67.

treatment, in contravention of article 15. While under Israeli law a detainee can be prohibited from meeting with counsel for 21 days, under military law applicable in the West Bank detainees including children can be held incommunicado for up to 90 days. This piece of legislation is inconsistent with article 16 of the Convention, as UN Commission on Human Rights resolutions have asserted that prolonged incommunicado detention can in itself constitute a form of cruel, inhuman and degrading treatment.<sup>20</sup>

### **1. Definition of the child under military law applicable in the OPT contrary to international law**

While under international law the generally accepted definition of the child is “every human being below the age of eighteen years”<sup>21</sup> and under Israeli law majority is attained at the age of 18, Military Order No. 132 defines a minor as someone under the age of 16.<sup>22</sup>

Furthermore, it provides that children between 12 and 14 years can be arrested and imprisoned. According to DCI/PS, this resulted in an increased number of detentions of 14-year-old children. In 2000 the number of children between the ages of 13-14 years arrested in relation with the total number of child arrests amounted to 21,83%, that is to say about one in five.

We note that children under the age of 12 have also been arrested and ill-treated or tortured.

DCI/PS<sup>23</sup> reported that 10-year-old Saddam Ali Ayed Awad from Beit Ummar near Hebron was arrested the night of 10 July 2001, beaten and asked to provide information about youths who had thrown stones and the political activities of his father. He was taken to Gush Etzion settlement area where he was reportedly beaten up including with objects, threatened with death, left alone overnight in a dark cell without light, blindfolded and with his hands tied and not allowed to use the toilet for two days.

### **2. Stone-throwing as a security offence subject to military jurisdiction**

#### **a. Introduction**

The overwhelming majority of children from the OPT detained by the Israeli security forces were arrested on suspicion of stone-throwing and had no criminal past. Under Military Order Concerning Security Provisions NO. 378 of 1970, applicable in the West Bank, security offences cover stone-throwing, participating in a demonstration<sup>24</sup> and failing to carry appropriate documentation. For this reason, children from the West

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<sup>20</sup> For more information on incommunicado detention, see page 9 of the general report.

<sup>21</sup> See CRC, article 1.

<sup>22</sup> In April 1999, Military Order No. 132, which was implemented during the first Intifada (1987-1993) and cancelled after the signing of the Declaration of Principles in 1993, was reinstated in the West Bank.

<sup>23</sup> See DCI/PS website ([www.dci-pal.org/prisonweb/cases/casestudy.saddam.html](http://www.dci-pal.org/prisonweb/cases/casestudy.saddam.html))

<sup>24</sup> The mere fact that active participation in a demonstration is categorized as a security offence is in violation of the rights to assembly and freedom of expression under the ICCPR.

Bank<sup>25</sup> (with the exception of East Jerusalem) charged with stone-throwing are tried in Israeli military courts, which have been found to fall short of international fair trial standards. There are no military courts and judges designated especially for children, no specifically trained officers for the interrogation of children, no probation officers and no social workers to accompany them.<sup>26</sup>

#### b. Sanctions established by military law for stone-throwing

M.O. 132 establishes the maximum penalties for security offences committed by children. In the case of offences which carry a maximum penalty of up to 5 years, a child aged between 12 and 14 at the time of passing sentence shall not be sentenced to more than 6 months' imprisonment, a child aged between 14 and 16 at the time of the passing sentence to no more than one year imprisonment.

With regard to adults (those over 16), under article 53 of M.O. 378, the maximum penalty for stone-throwing on cars is 20 years imprisonment, while stone-throwing on soldiers can be punished with up to 10 years imprisonment.

Acquittals of Palestinian children charged with stone-throwing are rare at Israeli military courts. In most cases, fines as well as prison sentences are imposed, thus also punishing the families of the children as well.

We would like to draw the attention to the following shortcomings in these provisions:

a) Although the provisions refer to children, they do not offer any alternative to imprisonment. Fines are also imposed but rather as an additional punishment and very rarely as the sole punishment for stone-throwing.

b) The age at the time children stand trial determines the sentence and not the age at the time of arrest or when the offence was committed. Thus Palestinian children can be sentenced as adults even if they were younger than 16 at the time they committed the offence. This is clearly to the detriment of the child and thus contradicts article 3(1) of the CRC, which provides that "the best interests of the child shall be a primary consideration" in all actions undertaken by courts of law, administrative authorities and legislative bodies.

c) Under Israeli military law no security offence carries a maximum penalty less than 5 years' imprisonment. As the maximum penalties for stone-throwing are far more than 5 years, the court can pass harsher sentences on children than those stipulated in M.O. 132.

According to DCI/PS, the Military Appeals Courts have recently argued that as children are the only ones who throw stones that they should therefore be punished more harshly. According to the same source, in 1999 prosecutors began requesting longer sentences than those stipulated in M.O. 132. This trend has reportedly grown stronger since the

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<sup>25</sup> Children from the Gaza Strip are also tried in military courts, albeit under a different military order.

<sup>26</sup> Some Palestinians from East Jerusalem arrested since the outbreak of the Intifada have also been charged under M.O. 378, previously only applied to Palestinians from the West Bank. This happened for example to children from Jerusalem arrested in the West Bank. However, children from the West Bank arrested in Jerusalem are never tried according to Israeli law but always according to the harsher military law.

beginning of the Intifada with prosecutors routinely asking for sentences of a year or more and a marked increase in the length of sentences received by Palestinian minors mostly accused of stone-throwing.

Under Israeli law prisoners who have served two thirds of their sentence are eligible for parole. In accordance with this law, children who had served two thirds of their sentence were likely to be released. However, since the beginning of the Intifada there has been a change of policy and parole has only been granted in rare cases.

### c. The discriminatory nature of the law: stone-throwing by children under Israeli law

Israeli law defines a child as someone under the age of 18 and provides special treatment for juvenile offenders. Standing Police Order 14.01.05 establishes the following procedures: “In general children are to be brought by their parent or guardian for investigation to a police station; questioning of children must generally be done during the day; with certain exceptions, the questioning of a child is carried out by a specifically-trained police youth officer; children are not to be handcuffed except in extraordinary circumstances, such as if the child is known to be violent, has attempted to abscond from lawful custody in the past, or there are reasonable grounds to believe that the child will tamper with evidence.”<sup>27</sup>

Palestinian children from the OPT do not the enjoy the level of protection afforded by Israeli law, as the different provisions regarding e.g. stone-throwing clearly show:

a) Whereas under Israeli law stone-throwing is a criminal offence, described as aimed at “disrupting the traffic”, military law defines stone-throwing as a “security offence”, described as designed to harm property or kill or injure individuals. Thus one and the same act is presented as a graver offence under military law, seeking to justify a harsher punishment.

b) Whereas under Israeli law, the punishment established for stone-throwing by children is in most cases 2 or 3 months’ imprisonment<sup>28</sup>, the average sentence in military courts is 6 months<sup>29</sup>.

c) Whereas under Israeli law house-arrest is a possible alternative to imprisonment for stone-throwing, imprisonment and fines are the only punishments established for minors by military law. It is however very rare that a child convicted of stone-throwing is sentenced to a fine only. In most cases fines are imposed in addition to imprisonment.

d) Whereas under Israeli law children (defined as under age 18) charged with stone-throwing are tried in juvenile courts, there are no courts or judges for minors (defined as

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<sup>27</sup> Cited as in Amnesty International. Israel and the Occupied Territories: Mass Arrests and Police Brutality. MDE 15/058/2000. November 2000.

<sup>28</sup> The punishment will depend on the age group (12-13) or (15-16) and on the target of the stone-throwing. Stone-throwing at a house or immobile object is considered a much lesser offence than throwing stones at a vehicle on the road as this could endanger lives.

<sup>29</sup> Harsher punishments for stonethrowing by Palestinian children are often justified by arguing that among Palestinians stone-throwing is a widespread phenomenon whereas Jewish Israelis rarely engage in stone-throwing.

under age 16) tried under military jurisdiction.

e) Israeli law provides that a juvenile probation officer has to submit a detailed report of the minor's social situation and other circumstances and a recommendation before the court can issue a sentence. Palestinian children from the OPT, subject to military law, do not enjoy a similar right, which makes a serious difference.

#### d. Sentences on the sole basis of confessions, often extracted under torture or other ill-treatment

In 1981 Military Order N° 53a (Military Order of Evidence)<sup>30</sup> was issued allowing military courts to sentence a defendant solely on the basis of a testimony given by another person. As a consequence, a lot of efforts are made during interrogation to get written confessions since these written statements will, almost automatically, become the major evidence in trials and will be used to convict the defendant. For example, 'A' can be found guilty of stone-throwing if 'B' in his own written statement given to the police states that he was present when 'A' was throwing stones. Even if 'B' denies his testimony later in court, the court is entitled to prefer the written statement over the oral testimony which is sufficient to convict him if the court is convinced that the statement was given legally. Interrogations thus usually cover both the offence the detainee is suspected of and information about others. Confessions, many times extracted under torture or other ill-treatment, therefore often include lists of names, which are used to carry out further arrests. This procedure explains "group arrests" in specific locations such as Husan<sup>31</sup> village near Bethlehem where over 30 children have been arrested during several detention operations by the Israeli army.

Regarding confessions, DCI/PS points out that they are written in Hebrew, "a language that Palestinian children from the OPT do not understand, casting serious doubt on the veracity of the confession. Such doubt is reinforced by the minute detail included in confessions, such as the exact number of times the child threw stones (for instance, 75, 100, 150...) as well as a complete list of each of the children who threw stones with him, sometimes including as many as 30 names."<sup>32</sup>

#### e. Judges at military courts

The fact that some of the military men, who serve as judges and prosecutors, are also settlers calls the impartiality and independence of the military court system under which Palestinian children are tried in the OPT into question. We recall that Israeli soldiers and settlers, who are perceived as the embodiment of the occupation, are themselves the targets of stone-throwing by Palestinians including children. We also recall that stone-

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<sup>30</sup> M.O. Nr 53a was based on the Israeli Civil Law of Evidence (1971) which was amended in 1980 with article 10a. This particular amendment was originally aimed at facilitating preference of evidence given at the police stations over testimonies by witnesses in courts (since many witnesses in civil courts withdrew from the testimonies previously given at police stations) provided the court was convinced that the wrong reasons affected the testimony in court and assured about the conditions under which the statement was given.

<sup>31</sup> DCI/PS. Press release of 15 January 2001. More than 250 Palestinian Children Detained since 28 September 2000. See also B'Tselem. Torture of Palestinian Minors in the Gush Etzion Police Station. Information Sheet. July 2001.

<sup>32</sup> DCI/PS. Military Courts and Orders. A Maze of Injustice. Fact-sheet. September 2001.

throwing does not occur in a political vacuum but against the background of a military occupation and creeping annexation through settlement-building, as reflected in tensions between Palestinian villages and adjacent settlements<sup>33</sup>, built on land confiscated from these very villages and protected by the Israeli army.

## Conclusion

The children featured in this report had no previous criminal record, and were neither recruited nor trained for violent or military action. They are ordinary Palestinian youths as can be found in many families, who used to work or attend school. The arrest during the current Intifada was their first direct encounter with the Israeli security forces. Taking advantage of the vulnerability and frailty of these children, as well as of their lack of experience, interrogators have used physical and psychological forms of torture and other ill-treatment in order to receive quick confessions. Under the shock and pain of torture and ill-treatment, children interrogated in the middle of the night, often after having been ill-treated during the arrest and transfer to a detention center, easily broke down and signed confessions written in a language, which they often did not understand.

Unfortunately the examples presented in this report do not constitute isolated or exceptional cases but are representative of attitudes and practices of Israeli law enforcement officials towards Palestinian detainees including minors.

Following abuse numerous complaints requesting investigations into allegations of torture or ill-treatment have been filed with the Israeli authorities. As a state party to the Convention, Israel has the duty to carry out “prompt and impartial” investigation of complaints in order to bring to justice individuals suspected of acts of torture or cruel, inhuman or degrading treatment. Moreover, children who have suffered torture or ill-treatment have the right to receive appropriate medical treatment or training for recovery and rehabilitation as well as compensation.

We believe that as long as torturers are not punished and the state signals by its behavior that it condones the use of illegal methods of interrogation, torture and ill-treatment against Palestinian detainees including minors will continue in Israel.

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<sup>33</sup> In some cases settlements with Israeli flags on top have been established in the heart of Arab neighborhoods, for example in Silwan village near Jerusalem. See the cases of Bilal Awida and Tamer Abu Naba from Silwan on page x.