

report

PALESTINIAN CHILDREN AND MILITARY DETENTION



A REPORT OF THE DUTCH MULTIDISCIPLINARY EXPERT GROUP ON THE PRACTICES AND
CONSEQUENCES OF ARREST, INTERROGATION, DETENTION AND TRIAL OF PALESTINIAN
CHILDREN BY THE ISRAELI MILITARY AUTHORITIES.

April 2014



FOREWORD

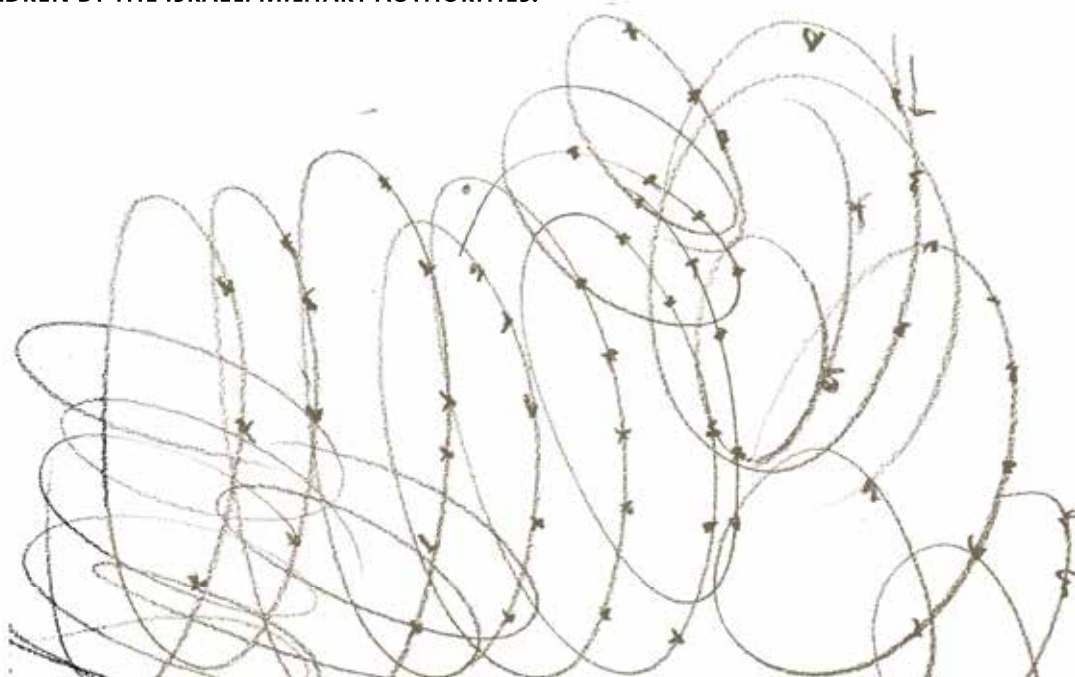
This document is the English translation of a report that was originally published in Dutch in April 2014. This translation was prepared by Dr. Antoinette Hildering and was edited by Prof. Dr. Karin Arts, with the support of War Child Holland.

The aim of this report is to request the Dutch government, and particularly the Dutch Minister of Foreign Affairs, to pay special attention to the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities in the West Bank. This report seeks to encourage the Minister, in his relations with the Israeli and Palestinian authorities and where possible in the context of the European Union, to promote that arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities only takes place in accordance with the internationally recognized rights of the child and related standards.

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SUMMARY

At the request of *gate48* - Platform for Critical Israelis in the Netherlands and *Palestine Link*, a Dutch multidisciplinary expert group visited Israel and the Occupied Palestinian Territories in the West Bank from 23 November until 1 December 2013. The visit was a response to alarming reports from Israeli, Palestinian and international organizations, including UNICEF, about the situation of Palestinian children in Israeli detention. The purpose of the visit was to get an accurate picture of the practices of arrest, interrogation, detention and trial of Palestinian children, who are being accused by the Israeli military authorities of having committed crimes. The expert group was particularly interested in the ways in which

these practices affect the accused children, as well as their families and their communities. Ultimately, the expert group aimed to develop a concrete set of recommendations for the Dutch government on actions which, in good consultation with the Israeli government and the Palestinian Authority, could lead to a treatment of Palestinian children in Israeli detention that respects that their internationally recognized rights.

The expert group conducted interviews with many individuals and organizations: children and their parents, school teachers, lawyers who attempt to provide Palestinian children with adequate legal



Photo: Karin Arts

assistance, professionals who provide mental health services to Palestinian children, as well as representatives from UNICEF, the Palestinian Authority and Israeli, Palestinian and international non-governmental children's and human rights organizations and representatives of the Dutch government (in Ramallah and Tel Aviv). The group also attended a number of military court sessions in the West Bank, where members met with a spokesperson from the Israeli military authorities (IDF). Despite numerous attempts and requests, the Israeli authorities did not provide the group any opportunity to speak with representatives from the Israeli government. Efforts to meet with members of the Israeli parliament were unsuccessful as well.

Based on its own observations and interviews, as well as on the Concluding Observations of the UN Committee on the Rights of the Child in relation to Israel,¹ the recent UNICEF report,² and many other publications³ and sources of information, the expert group has reached the conclusion that the treatment of Palestinian children accused of having committed crimes by the Israeli military authorities represents a serious, systemic violation and disregard of the rights of these children. This way of treating the children has a significant negative impact on their lives and on the lives of their families and their communities. This situation also raises many questions about the rights of these children and their families.

The practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities cannot be separated from their general context and, in particular, the nearly fifty-year military occupation of the Palestinian Territories by Israel. Various authoritative international bodies have found the military occupation, as well as specific Israeli activities in the Occupied Palestinian Territories (such as the building of the Wall), to be in violation of international law. The UN Security Council,

the International Court of Justice, the International Committee of the Red Cross, the Human Rights Council and several UN human rights committees have expressly denounced these activities.⁴

A structural solution requires ending the military occupation, which the UN has expressly urged Israel to do.⁵ This will need to be part of a (peace) agreement between the Israeli government and the Palestinian Authority. The expert group takes the view that, in the context of the current peace talks, the Dutch government, where possible in conjunction with the European Union, should ask special attention for the treatment of Palestinian children by Israeli military. Changes in the short term will have to be pursued within the existing framework of arrest, interrogation and detention of Palestinian children by the Israeli military authorities, their trial by Israeli military courts, and the international law applicable to them, such as the Convention on the Rights of the Child and the Fourth Geneva Convention.

The primary responsibility for ending the child rights violations involved lies with the Israeli government. In the opinion of the expert group, the Dutch government, in its relations with the Israeli government and the Palestinian Authority, where possible in the context of the European Union, should exert maximum efforts to contribute to ending those violations.

The expert group urges the Dutch government to explicitly voice its concerns about the serious violations of children's rights associated with the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities. Where possible, this should be done within the context of the European Union. The Dutch government should also urge the Israeli authorities to fulfill their obligations under the Convention on the Rights of the Child, which is also ratified by Israel.

1 UN Committee on the Rights of the Child 2013.

2 UNICEF 2013.

3 DCI 2013; DCI 2012; British lawyers delegation 2012; DCI 2011; B'Tselem 2011; No Legal Frontiers 2011.

4 See e.g.: UN Security Council, Resolution 242 (S/RES/242), 22 November 1967; UN Security Council, Resolution 446 (S/RES/446), 22 March 1979; International Court of Justice 2004, p. 136; International Committee of the Red Cross 2001; UN Human Rights Council, Resolution 19/17, 10 April 2012; UN Committee on the Rights of the Child 2013, para. 7.

5 See: UN Security Council, Resolution 242 (S/RES/242), 22 November 1967.

The expert group proposes a number of practical measures that the Dutch government should recommend and support. These include, among others, the following measures, which are necessary to ensure that the arrest, interrogation, detention

and trial of Palestinian children by the Israeli military authorities is only carried out in accordance with the internationally recognized rights of the child and the standards associated with those rights:⁶

1. Ensure that arrest, detention and imprisonment of Palestinian children is only used as a measure of last resort and for the shortest period of time possible;
2. Replace the practice of nightly arrests with a summons system. Make sure that, in cases of arrest of a child, its parents will be notified within 24 hours of their child's whereabouts as well as the visiting hours. If parents need a permit in order to visit their child frequently during the detention period, they shall be issued such a permit promptly;
3. Make audiovisual recording of interrogations of Palestinian children mandatory. Ensure that a lawyer representing the child and one of the child's parents or a person of confidence appointed by them are present during interrogations. In case these requirements are not met, or when the audiovisual recording reveals abuses during the interrogation, incriminating evidence resulting from the interrogation shall not be admissible;
4. Develop alternatives to pre-trial detention to ensure that this means of deprivation of liberty is a means of last resort;
5. Take measures to ensure that the existing practices of trials by military juvenile courts are brought in line with prevailing international standards;
6. Make sure that the living conditions of Palestinian children in detention meet international standards, with particular attention to appropriate education, medical and psychological care, sports and recreation, and independent monitoring of the treatment of these children;
7. Support and strengthen existing programs designed to help the physical and psychological recovery and the social reintegration of Palestinian children, who return into the society after having been arrested, interrogated, detained and tried by the Israeli military authorities. Programs that assist the families of these children should also be supported and strengthened.

The expert group calls upon the Dutch government to request the Israeli authorities to introduce and implement these concrete measures in a manner that is verifiable.

⁶ For a complete overview of the recommendations, see chapter 7 of this report.

1. INTRODUCTION

In recent years, various parties raised serious concerns in relation to the current practices of arrest, interrogation, detention and trial of Palestinian children by Israeli authorities on the West Bank. For example, the Committee on the Rights of the Child of the United Nations recently expressed its grave concern about the violations of children's rights during these practices.⁷ In February 2013 UNICEF published an alarming report entitled 'Children in Israeli Military Detention'. In this report, it is concluded that the ill-treatment of Palestinian children within the Israeli military detention system "appears to be widespread, systematic and institutionalized".⁸

7 UN Committee on the Rights of the Child 2013, par. 73 en 74.

8 UNICEF 2013, pp. 1 and 13. In the report, UNICEF urges the Israeli authorities to improve the situation of children in Israeli military detention as soon as possible and presents concrete recommendations in this regard.

Following a visit to Israel and the Occupied Palestinian Territories (OPT) in 2012, a British delegation, consisting of nine authoritative jurists from the United Kingdom, found that the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities in various ways are in violation of the United Nations Convention on the Rights of the Child (hereafter CRC) and other international treaties.⁹ Furthermore, in recent years various reports were released by Israeli and Palestinian non-governmental children's and human rights organizations that each paint an alarming picture of the legal position and wellbeing of Palestinian children in the Israeli military detention system.¹⁰

9 British lawyers delegation 2012, p. 30.

10 DCI 2011; DCI 2012; DCI 2013; B'Tselem 2011; No Legal Frontiers 2011.



Photo: Alrowwad Cultural and Theatre Center for Children

In response to these widely expressed concerns, a Dutch delegation of experts (hereafter the expert group) visited Israel and the OPT on the West Bank from 23 November to 1 December 2013, in order to more closely study the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities.¹¹ The group consisted of experts from various disciplines, including child psychology, child psychiatry, (juvenile) criminology, juvenile justice and children's and human rights.¹² This report is the result of this expert mission. In comparison to the above-mentioned previous reports, the added value of the Dutch expert mission and the resulting report primarily lies in its specific focus on the psychological and social impact of the arrest, interrogation, detention and trial practices on the Palestinian children concerned, their families and the community as a whole. Another key aspect of added value of this report is that it specifically addresses the Dutch government. By providing concrete and substantiated policy recommendations, through this report the expert group aims to clarify the responsibilities of the Dutch government in relation to the Israeli practices of military arrest, detention and trial of Palestinian children.

The expert group urges the Dutch government to use these recommendations in her relations with the Israeli and Palestinian authorities, where possible at EU level, to enhance her goal of promoting that arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities only takes place in accordance with the internationally recognized rights of the child and the associated standards.

This report is structured as follows. First, Chapter 2 explains the methodology of the expert group. In Chapter 3 follows a thematic description of the findings of the expert group on the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities. Chapter 4 then places these practices in the broader context of the Israeli-Palestinian conflict and the ongoing Israeli military occupation of the Palestinian territories on the West Bank. This is followed, in Chapter 5, by a review of 'stone throwing' by Palestinian children as the most common charge at the military juvenile court. In Chapter 6, specific attention is paid to the consequences of the Israeli practices of arrest, interrogation, detention and trial on the Palestinian children involved, their families and the community as a whole. Finally, in Chapter 7 the conclusions and recommendations to the Dutch government are presented.

11 The expert mission was organized and supported by *gate48* and *Palestine Link*. See appendix IV for more information on these organizations.

12 The expert group consisted of: prof. dr. Jaap Doek (chair), prof. dr. Karin Arts, prof. dr. Peter van der Laan, Linda Vogtländer M.Sc. and prof. dr. Micha de Winter, supported by secretary Yannick van den Brink LL.M., MA. Prof. dr. Ton Liefwaard has been involved (as expert) in the preparation of the mission and the substantial drafting of the report. See appendix III for short biographies of the members of the expert group.

2. METHODOLOGY OF THE EXPERT GROUP

From 23 November to 1 December 2013, the expert group visited Israel and the OPT on the West Bank to gather information about the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities and their impact on children, their families and communities. During this visit, the expert group interviewed a large number of relevant people, including children and parents who experienced the practices first hand, but also schoolteachers, lawyers, academics, representatives of Israeli and Palestinian children's and human rights organizations and UNICEF, government officials of the Palestinian Authority, a representative of the Israeli army (IDF) and an Israeli military judge.¹³

In addition, the expert group visited among others the city of Hebron, the Palestinian refugee camp Aida in Bethlehem and the Israeli military court in Ofer (located near Ramallah on the West Bank) where it attended a number of sessions. The expert group also visited both the Dutch ambassador in Tel Aviv and the Dutch representative in Ramallah.

Despite repeated requests by the organizers of the expert mission, the Israeli authorities were unwilling to talk to the expert group and render further assistance.¹⁴ The expert group did speak with a spokesperson of the Israeli army during the visit to the military court in Ofer. After the court sessions that were observed during this visit, the expert group also had the opportunity to ask some questions to the sitting military judge. Besides the information that the expert group received during these meetings, the points of view of the Israeli authorities that are referred to in this report are based on information presented in previous research reports to which the authorities did contribute, or on official reactions to previous reports.

As a matter of fact, the whole of this report builds on previous reports. To this end, the expert group extensively studied existing literature and research, including reports of children's and human rights organizations, UN organizations and previous research delegations, and the official responses thereto by the Israeli authorities.¹⁵

This report primarily focuses on the Israeli military arrest and detention practices in the OPT on the West Bank. These territories fall within the jurisdiction of the Israeli military courts that have been established there. However, the expert group also paid a visit to Silwan in East Jerusalem. This area has been annexed by Israel, which repeatedly has been labelled as a wrongful act by the UN.¹⁶ However, this territory falls outside the jurisdiction of the military courts on the West Bank¹⁷ and, therefore, in principle outside the scope of this report. Nonetheless, the expert group learned that in Silwan too there is a practice of arrests of Palestinian children by the Israeli army. Accordingly, it became clear to the expert group that many of the findings presented in this report are also relevant for situations of arrested Palestinian children in East Jerusalem.

In this report, the internationally recognized rights of the child, as codified in the United Nations Convention on the Rights of the Child (CRC), serve as the starting point and frame of reference. Both Israel and the Netherlands are states parties to this treaty. Reportedly, the Palestinian Authority is at present looking into possibilities to ratify the CRC. In accordance with article 1 of this Convention, this report defines 'children' as persons who (at the time of the alleged crime) did not yet reach the age of eighteen.¹⁸

13 See appendix I for a complete overview of people and organizations interviewed by the expert group.

14 See appendix II for an overview of the Israeli (governmental) authorities approached by the organization of the expert mission.

15 The literature study undertaken for this report encompassed publications up to 1 March 2014.

16 See e.g. UN Security Council, Resolution 476 (S/RES/476), 30 June 1980; UN Security Council, Resolution 478 (S/RES/478), 20 August 1980.

17 Since the annexation of East Jerusalem by Israel, the Israeli civil law is in force in this territory.

18 See also: UN Committee on the Rights of the Child 2007, par. 31.



Photo: Alrowwad Cultural and Theatre Center for Children

3. PALESTINIAN CHILDREN IN THE ISRAELI MILITARY LEGAL SYSTEM

3.1 AN INTRODUCTION

Since 1967, the Palestinian territories on the West Bank have been occupied by the Israeli army. For nearly fifty years, the daily lives of millions of Palestinian civilians on the West Bank are dominated by Israeli military regulations, which are being enforced by the Israeli army, police and security services. Breaches of these military regulations fall within the jurisdiction of Israeli military courts which were especially established for this purpose. Formally, the military regulations apply to anyone present on the West Bank. In practice, however, this military law is exclusively applied to Palestinians. Settlers on the West Bank, as Israeli citizens, fall within the general Israeli legal system.¹⁹

According to Israeli military law, the Israeli military authorities are mandated to arrest and detain Palestinian children from the age of twelve years on in case they are suspected of committing acts punishable under military regulations.²⁰ In the last ten years, an estimated 7,000 Palestinian children were detained, interrogated, prosecuted and/or imprisoned by the Israeli army, police or security services.²¹ Still annually about 500 to 700 Palestinian children are in contact with the Israeli military penal system.²² In November 2013 – the month in which the expert mission took place – 173 Palestinian children were in Israeli military detention, of which 16 children were between twelve and fifteen years old.²³

19 Israeli law provides the Israeli courts with jurisdiction over Israeli citizens that commit offences in the Palestinian Territories on the West Bank. See: *Law for Amending and Extending the Validity of Emergency Regulations (Judea and Samaria – Jurisdiction in Offences and Legal Aid)*, 2007, chapter B, section 2. Furthermore, the response of the advocate-general of the Israeli military court to a report of the Israeli human rights organization Yesh Din (2007, p. 59) shows that since the eighties it is standard policy not to prosecute Israeli citizens before a military court.

20 Cf. Military regulation, nr. 1651, section 191.

21 UNICEF 2013, p. 9.

22 DCI 2013, p. 3; UNICEF 2013, p. 9.

23 <http://www.dci-palestine.org/content/child-detainees>. See appendix V for statistics on Palestinian children in Israeli military detention.

Most of the Palestinian children who are arrested by the Israeli military authorities on the West Bank are under suspicion of having thrown stones towards (vehicles of) Israeli soldiers or settlers. Such incidents mainly take place at so-called ‘friction points’, such as along traffic roads that are frequently used by Israeli settlers and soldiers (and to which Palestinians are denied access), around settlements and at military checkpoints. Such incidents also occur in situations of direct confrontation between Palestinians and the Israeli army, for example during demonstrations by Palestinian civilians or military operations of the Israeli army.²⁴

The Israeli authorities consider the throwing of stones in the direction of objects, persons or vehicles a grave “security offence”. This act has been specifically made punishable through a specific explicit criminal provision in a military regulation.²⁵ Based upon this provision, the maximum penalty for this act, for children too,²⁶ is twenty years.²⁷ Notably, the common Israeli criminal law does not provide for such a specific criminalization of this act.²⁸

The expert group has no doubt that throwing stones in the direction of persons and vehicles can be dangerous and may possibly result in serious injury. Nonetheless, there do not seem to be many cases known in which actual injury was caused to persons by stones thrown by Palestinian children. The Israeli human rights organization B’Tselem and the British lawyers delegation requested the Israeli authorities to provide insight into the number of cases in which people actually got injured by the throwing of stones by Palestinian children.²⁹

24 B’Tselem 2011, p. 5.

25 Military regulation No. 1651, section 212.

26 From the age of fourteen onwards.

27 Military regulation No. 1651, section 212(3).

28 B’Tselem 2011, p. 5.

29 B’Tselem 2011, p. 5; British lawyers delegation 2012, p. 13.

The response of the Israeli authorities remained limited to one single incident in which two persons were killed as a consequence of throwing stones, though it remained unclear whether the stone was thrown by a child. Also, six cases were mentioned in which vehicles were damaged by stones. However, in none of those cases were persons injured.³⁰ After studying 89 cases of 'stone throwing' by Palestinian children, the Israeli human rights organization *No Legal Frontiers* identified one case in which stone throwing by a Palestinian child caused physical injury to a person and three cases in which a vehicle was damaged. In the remaining 85 cases, no injuries or damage as a result of throwing stones occurred.³¹

Nonetheless it appears that also such cases are regularly followed by severe reprisals by the Israeli military authorities, including nightly, violent arrests and detention of allegedly involved Palestinian children.³² This raises serious questions about the proportionality of this intervention, also in the light of the internationally recognized rights of the child.³³

The next paragraphs present a thematic description of the findings of the expert group relating to the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities on the West Bank. These findings are substantiated by findings of other reports.

³⁰ British lawyers delegation 2012, p. 13.

³¹ No Legal Frontiers 2011.

³² No Legal Frontiers 2011; UNICEF 2013; DCI 2013; DCI 2012; B'Tselem 2011; DCI 2011.

³³ See: article 40(4) CRC.



Photo: Galit Saporta

3.2 ARREST

3.2.1 Nightly arrests

The expert group found that the arrests of Palestinian children by Israeli military authorities in many cases occur during nightly hours and are accompanied by violence and intimidation.

Based on a significant number of sworn statements (affidavits) by Palestinian children, UNICEF and various local children's rights and human rights organizations have extensively reported about this situation.³⁴ These reports paint an alarming picture of a practice in which Palestinian children are picked up from their beds at night by heavily armed Israeli soldiers,³⁵ and in which the soldiers do not hesitate to use physical and verbal violence.³⁶ Many children declared that during the arrest their wrists were painfully tied together with a plastic tie-*rap*.³⁷ Moreover, many children declared to have been blindfolded.³⁸ Subsequently, arrested children – often in front of their parents and other family members – are taken away in an army vehicle.³⁹ Parents are hardly informed of the reason of the arrest and stay behind in fear and uncertainty.⁴⁰ During the transport to the interrogation centre, many children remain tied up and blindfolded.⁴¹

Many children stated that they were subjected to physical and verbal violence by the soldiers during the transport, such as kicking, hitting, calling names and insulting their family members.⁴² There are many reported cases of children being transported on the metal bottom of an army vehicle.⁴³ After arrival at the police station or interrogation centre, the children sometimes have to wait for hours – some of them are then still tied up and blindfolded – until the interrogation starts in the morning.⁴⁴ A number of children declared that during this period they were intentionally kept awake by the soldiers.⁴⁵

During its visit to the West Bank, the expert group also interviewed Palestinian children and parents who experienced an arrest by Israeli soldiers. Their experiences were very similar to the picture painted above on the basis of various reports. The children and parents indicated that they experienced the nightly arrest as a very frightening moment. Parents stated that they felt extremely powerless during the arrest of their child. A number of children indicated that, months after their arrest, they still had trouble sleeping.

34 UNICEF 2013; DCI 2013; DCI 2012; B'Tselem 2011.

See also: British lawyers delegation 2012, p. 14-16.

35 B'Tselem (2011) observed that, in their sample of 50 cases, 60% of the arrests of Palestinian children by the Israeli military authorities took place during the nightly hours (i.e. between 22.00 and 07.00 hours). DCI (2013) established that, in 45,4% of the 108 cases studied by them, the arrest took place in the middle of the night, between midnight and 05.00 o'clock in the morning. In a previous sample of DCI (2012), 60% of the 311 studied arrests took place between midnight and 05.00 o'clock in the morning.

36 UNICEF 2013, p. 10.

37 DCI (2013) reported that this was the case in no less than 97,2% of the 108 cases studied by them. In a previous sample of DCI (2012), tie-raps were used to bind the hands of arrested children in 95% of the 311 studied cases. See also: UNICEF 2013, p. 10 and B'Tselem 2011, p. 27.

38 DCI (2013) established that in 95,4% of the 108 studied cases the child was blindfolded during the arrest. A previous sample of DCI (2012) revealed that this was the case in 90% of the 311 studied cases. B'Tselem (2011) even established 100% on the basis of a study of 50 cases. See also: UNICEF 2013, p. 10.

39 UNICEF 2013, p. 10; B'Tselem 2011, p. 26-28.

40 UNICEF 2013, p. 10; B'Tselem 2011, p. 26-28.

41 DCI 2013, p. 7.

42 DCI (2013) reported, on the basis of 108 statements, that during arrest, transport or interrogation in 74,1% physical force was used and in 67,6% verbal force was used by soldiers. In relation to a previous sample of 311 statements, DCI (2012) came to the conclusion that in 75% of the cases physical force and in 54% of the cases verbal force was used. See also: UNICEF 2013, p. 10 and DCI 2011, p. 15 ff.

43 In the research of DCI (2013) this occurred in 45,4% of the 108 studied cases. In a previous sample of DCI (2012) this concerned 32% of the 311 studied cases. See also: UNICEF 2013, p. 10.

44 DCI 2013, p. 7; B'Tselem 2011, p. 28.

45 B'Tselem 2011, p. 28.

In a number of reports of children's rights and human rights organizations it is stated that this practice of nightly arrest is an intentional strategy of the Israeli army to have arrested children start the interrogation as fearfully and unstably as possible, which increases the chances of confessions and statements.⁴⁶ This could also be a conscious strategy to spread fear throughout the Palestinian community.

The spokesperson of the Israeli army with whom the expert group spoke at the premises of the military court in Ofer, stated that the arrests take place during the night to safeguard the security of the soldiers and the stability in the region. Should Israeli soldiers perform the arrests during daytime in Palestinian villages, according to the spokesperson, this would create unrest and possibly unsafe situations for the soldiers. Furthermore, the spokesperson emphasized that the use of serious violence during arrests is unlawful. According to him, the use of such violence does not often occur. However, statements of former soldiers who served in the Israeli army on the West Bank, among others as collected in reports of the Israeli NGO *Breaking the Silence*, show a practice in which the use of brutal force against Palestinian children is not shunned.⁴⁷

Reports of the United Nations confirm that during arrests systematic and serious force is used against Palestinian children by Israeli soldiers.⁴⁸ In 2013 the UN Committee on the Rights of the Child expressed its serious concern about the practices of arrest by the Israeli army in which Palestinian children are systematically subjected to a humiliating treatment and even to acts that the Committee qualifies as torture. The Committee has called upon the Israeli authorities to end these practices as soon as possible.⁴⁹

3.2.2 Arbitrary arrests

During meetings with the expert group, various representatives of children's rights and human rights organizations pointed out that the practice of Israeli military arrest frequently takes place arbitrarily. This can also be deduced from the statements of former soldiers that served in the Israeli army on the West Bank, as collected by the Israeli non-governmental organization *Breaking the Silence*.⁵⁰

During a meeting with the expert group, a representative of the human rights NGO *Military Court Watch* stated that, in response to incidents in which for example Palestinian children have thrown stones in the direction of vehicles of settlers or military personnel, sometimes arbitrary arrests of Palestinian children in the nearest Palestinian village by the Israeli army take place. The main reason for this practice of arbitrary arrest that he mentioned is that after such incidents it is often difficult for the Israeli army to identify and track the perpetrators, while – from an Israeli military perspective – direct retaliation is nonetheless considered necessary in order to give a clear signal that such incidents are not tolerated. Furthermore he pointed out that – again from an Israeli military perspective – the arbitrary arrest practice has the “additional advantage” that it induces fear, uncertainty and tensions (for example between perpetrators and innocently arrested) within the Palestinian community, which makes it an “effective instrument” for maintaining order in occupied territory.

The UN Committee on the Rights of the Child leaves no doubt that arbitrary arrests of children constitute a pertinent violation of the internationally recognized rights of the child.⁵¹ Thus the Committee has expressed its severe concerns about the practice of arbitrary arrests of Palestinian children by the Israeli army on the West Bank.⁵²

46 DCI 2011, p. 10; B'Tselem & Hamoked 2010, p. 40-46.

47 See e.g.: *Breaking the Silence* 2011.

48 UNICEF 2013; UN Committee on the Rights of the Child 2013, par. 35, 36 and 73.

49 UN Committee on the Rights of the Child 2013, par. 35, 36 and 73, at the start and under d.

50 See: *Breaking the Silence* 2011.

51 UN Committee on the Rights of the Child 2007, par. 79. See: CRC article 37, at the start and under item b.

52 UN Committee on the Rights of the Child 2013, par. 73, at the start and under item a.

3.2.3 Arrests of young children

The expert group has been informed by children's rights and human rights organizations that there are cases known of the arrest of children under the age of 12 by the Israeli army. This would mainly serve as a form of intimidation. Namely, because of their age, these children cannot be prosecuted by a military court and are, therefore, usually released after a couple of hours. Statements of former soldiers of the Israeli army collected by the Israeli NGO *Breaking the Silence* confirm that sometimes young Palestinian children (under the age of twelve) are being arrested and held in custody for a short period of time.⁵³

The expert group spoke with a Palestinian boy of eleven years old who, despite his young age, had already been arrested twice by Israeli military personnel. He stated to have been arrested during the night and to have been released after a couple of hours of verbal and physical intimidation.

According to the father of this boy, ever since his son is so scared that he keeps his shoes on during his sleep at night "so that he can flee if the military come to get him". Ever since, he is also performing badly at school and shows aggressive behavior towards fellow students.

The expert group is deeply concerned about the practice of arrest and short detention of Palestinian children under the age of twelve, since this concerns a very vulnerable group of children. Moreover, this practice has no legal ground in the Israeli military regulations, leaving the child with no legal protection at all and completely at the mercy of the military commander in charge. The UN Committee on the Rights of the Child expressly stated that that arrest and detention of children without legal ground is a breach of the internationally recognized rights of the child.⁵⁴

53 See e.g.: *Breaking the Silence* 2011, statement 6.

54 UN Committee on the Rights of the Child 2007, par. 79. See CRC: article 37, at the start and under item b.



Photo: Micha de Winter

3.2.4 Summons as an alternative?

In October 2013 UNICEF reported in her 'first periodic progress report'⁵⁵ that the Israeli authorities have agreed to a pilot, in which a system of summons is used as an alternative for (nightly) arrests of Palestinian children. The underlying idea of the pilot is that Palestinian children who are suspected of a crime receive a letter requesting them to report to the police station, so that in most cases arrests will no longer be necessary. UNICEF indicates that this system could prevent the generally traumatizing experience of nightly arrest for Palestinian children and their families⁵⁶

The expert group acknowledges that a system of summons as an alternative for arrests is in line with international children's rights standards. Nevertheless, the expert group has doubts about the chances of success of the above-mentioned pilot.

Representatives of children's rights and human rights organizations with whom the expert group met indicated that practical problems could bar the feasibility of the pilot. For example, many Palestinian houses on the West Bank have no address and the postal system does not always function well. Moreover, police stations are frequently located in areas inaccessible for Palestinians, making it practically impossible for a Palestinian child to report there. It is important to prevent that failure of the pilot caused by such practical reasons provides legitimacy for continuing the practice of nightly arrests.

Furthermore, there is much unclarity on the starting date and the exact content of the pilot.⁵⁷ Representatives of UNICEF, with whom the expert group met, indicated that it is up to the Israeli army to commence the pilot, but that it is in any case clear that the army wants to keep the option of (nightly) arrests open.

55 This follow-up report concerns the first periodic update of the developments following the UNICEF report 'Children in Israeli Military Detention' published in March 2013.

56 UNICEF 2013(b).

57 On 18 February 2014, the chief prosecutor of the military courts on the West Bank announced to the Israeli media to 'soon' start a pilot. See: <http://www.jpost.com/Defense/EXCLUSIVE-Chief-West-Bank-Prosecutor-says-IDF-may-end-long-standing-night-arrests-of-Palestinians-341749>.

In that light the army is suggesting exception clauses by which for instance the pilot would only apply to minor offences. In practice, this could deteriorate the situation for example if the pilot were to result in heavier charges against Palestinian children in order to keep them outside the pilot.

As things stand at present, the expert group is not at all convinced that the pilot will provide a solution on the short-term in terms of addressing the abuses in the current practice of arrest. In any case, the expert group is of the opinion that independent monitoring – by an authoritative body – of the substance and implementation of the pilot is necessary, which among others should pay attention to the question which criteria determine whether the pilot fails or succeeds.

3.3 INTERROGATION

Based on a significant number of statements of Palestinian children, various Israeli and Palestinian children's rights organizations and UNICEF have established large-scale occurrence of intimidation, threats and physical violence during interrogations.⁵⁸ Children are often cuffed or tied up and sometimes blindfolded during the interrogation.⁵⁹ Many children declared that during the interrogation they were compelled, by means of physical force or threats to that end, to confess or give testimony incriminating others.⁶⁰ Also threats of arrest, rape or death of family members appear to be used as means of exerting pressure.⁶¹ In addition, as a result of the earlier described practice of nightly arrests, many of the arrested children start the interrogation already fearful and unstable.⁶²

58 UNICEF 2013, p. 11; DCI 2013, p. 8; DCI 2012, p. 34-40; B'Tselem 2011, p. 36-39; DCI 2011.

See also: British lawyers delegation 2012, p. 16-17.

59 In a sample of DCI (2012), 57% of the 311 interviewed children declared that they were cuffed or tied up during the interrogation. See also: UNICEF 2013, p. 11; DCI 2013, p. 7; DCI 2011, p. 17 ff.

60 For example, DCI (2013) reported that in 56,5% of the 108 studied cases the child declared to have been threatened during the interrogation. In a previous sample of DCI (2012) this applied to 52% of the 311 studied cases. See also: UNICEF 2013, p. 11.

61 UNICEF 2013, p. 11.

62 B'Tselem 2011, p. 28.

Furthermore, these statements show that during interrogation children are systematically denied the formal rights they have according to the CRC and which are essential to a fair trial.⁶³ The children are rarely informed of their rights before the interrogation.⁶⁴ A lawyer or parent is hardly ever present during the interrogation.⁶⁵ The children also declared that they had to sign documents, including their own statements, written in Hebrew, a language they do not master.⁶⁶

The expert group spoke with a number of children that had to undergo an interrogation after being arrested by the Israeli army. They too indicated that no lawyer or parent was present during that interrogation. One child declared that he was compelled to confess guilt during the interrogation and made a confession “to make it stop”.

In a report of the Israeli human rights NGO No Legal Frontiers, it is concluded that the overwhelming majority of convictions of Palestinian children by the Israeli military courts on the West Bank is based upon confessions of the child (the ‘suspect’) during the interrogation and incriminating confessions of other children (the ‘co-defendants’) that are in the same situation.⁶⁷ This experience is shared by various lawyers who assist children in military courts on a daily base. For example, one of the lawyers who spoke with the expert group during the visit to the military court in Ofer explicitly stated that the evidentiary question hardly plays a role during the court session. Forensics and other ways of collecting evidence are hardly practiced. This observation is supported by the findings of the British lawyers delegation.

The report of this delegation shows that Israeli military prosecutors also indicated that confessions, evidence from interrogations of other children, and statements of soldiers are the primary sources of evidence.⁶⁸

In 2013, the UN Committee on the Rights of the Child sharply condemned the Israeli military interrogation practice.⁶⁹ The use of intimidation, threats and force during an interrogation is a pertinent violation of various internationally recognized rights of the child. The Committee therefore urged Israel to immediately cease this practice.⁷⁰ Furthermore, the Committee recommended the Israeli authorities to guarantee that arrested children have immediate access to free and independent legal assistance and can contact their parents.⁷¹ It also recommends the Israeli authorities to ensure that documents that contain statements in Hebrew and are signed by a Palestinian child are excluded from evidence by the military court.⁷²

To prevent abuses during the interrogation, the UN Committee on the Rights of the Child, UNICEF and local children’s rights and human rights organizations underline the importance of independent monitoring of the interrogation.⁷³ This can be safeguarded by the presence of a lawyer and a family member of the child during the interrogation and by audiovisual recording of the interrogation.⁷⁴ Audiovisual recording of the interrogation protects the interrogated child against maltreatment during the interrogation and prevents discussion on what exactly took place during the interrogation.⁷⁵ Children’s rights and human rights organizations point out that the current military regulations do not contain a provision making audiovisual recording mandatory.⁷⁶

63 See: CRC Article 40(2).

64 DCI (2013) reported that in 95,4% of the 108 studied cases the child was not read his rights prior to the interrogation. See also: UNICEF 2013, p. 11.

65 DCI (2013) reported that in 99,1% of the 108 studied cases there was no lawyer present during the interrogation. In a previous sample of DCI (2012) this was even the situation in 100% of the 311 studied cases. In this last-mentioned sample, in 99,4% of the 311 studied cases no parent was present during the interrogation either. See also: UNICEF 2013, p. 11; B’Tselem 2011, p. 31-35.

66 DCI (2013) reported that in 15,7% of the 108 studied cases, the child was presented a statement written in Hebrew. In a previous sample of DCI (2012) this occurred in 29% of the 311 studied cases. See also: UNICEF 2013, p. 11.

67 No Legal Frontiers 2011. According to this report, in 65 of the 70 studied cases, witness statements (often of other arrested children) were used as evidence.

68 British lawyers delegation 2012, p. 16.

69 UN Committee on the Rights of the Child 2013, par. 73, at the start and under items c and d.

70 UN Committee on the Rights of the Child 2013, par. 73, at the start and under item d and par. 74.

71 UN Committee on the Rights of the Child 2013, par. 74, at the start and under item b.

72 UN Committee on the Rights of the Child 2013, par. 74, at the start and under item d.

73 UN Committee on the Rights of the Child 2007, par. 58; UNICEF 2013, p. 11; DCI 2013, p. 11; No Legal Frontiers 2011. See also: British lawyers delegation 2012, p. 20.

74 UNICEF 2013, p. 11; DCI 2013, p. 11.

75 UNICEF 2013, p. 11; DCI 2013, p. 11.

76 DCI 2013, p. 3; No Legal Frontiers 2011.

During a meeting with the expert group, a spokesperson of the Israeli army stated that most interrogations are audiovisually recorded. A lawyer with whom the expert group met stated that sometimes audio recordings are made of an interrogation, but that in practice the military judges do not have time to listen to these recordings, as a result of which they still rely solely on the written transcript of the interrogation. To guarantee an effective protection, it is therefore not sufficient to make audiovisual recordings of the interrogation. It is essential that the lawyer has access to the recordings and that the judge is held to view/listen to and involve these recordings in case of suspicions of violence or other abuse during the interrogation. If such violence or abuse is confirmed by the recordings or other solid information, the incriminating information based upon this interrogation is to be excluded from the evidence.⁷⁷

Finally, attention needs to be paid to information that the expert group received during its stay on the West Bank which indicates that during the interrogation Palestinian children are not only compelled to confess guilt or to give testimonies in a concrete case, but sometimes are forced to become an informant of the Israeli army.⁷⁸ According to representatives of children's rights and human rights organizations with whom the expert group met, the practice of recruiting informants has a deep impact on the level of mutual trust within the Palestinian community. As soon as within the community a child is suspected of being an informant for the Israeli army, the child may be labelled a "collaborator", which can even result in the local community ousting the child and his family (and thereby forcing them to move).

3.4 PRE-TRIAL DETENTION

Based upon the recent reports and the information received by the expert group, it can be established that pre-trial detention of Palestinian children by the Israeli military authorities is practiced without restraint. Few of the children that are being prosecuted are allowed to await their trial in freedom. Moreover, alternatives to pre-trial detention are hardly available.

Recently, the Israeli military authorities did shorten the period of time during which arrested Palestinian children can be detained without judicial review. Since April 2013, twelve and thirteen year old children may not to be held longer than 24 hours in pre-trial detention without judicial review of its lawfulness. Fourteen and fifteen year old children currently need to be brought before a judge within 48 hours.⁷⁹ Before, an arraignment term of 96 hours applied to all Palestinian minors arrested by the Israeli military authorities.⁸⁰ At present this period still applies to sixteen and seventeen year old children.

From the perspective of children's rights, the shortening of the arraignment term can be viewed as a positive development. Various representatives of children's rights and human rights organizations with whom the expert group met, however, indicated that the shortening of these terms is a relatively easy and mainly symbolic measure to meet international criticism about the inadequate compliance with children's rights by the Israeli military courts. These changes do not address the most serious children's rights violations. After all, those take place within the first 24 to 48 hours; during the arrest, transportation and interrogation of the child.⁸¹

⁷⁷ See also: DCI 2013, p. 11.

⁷⁸ See e.g.: YMCA & Save the Children Sweden 2012, p. 50.

⁷⁹ The alterations are the result of the entry into force of a new regulation. See: Military regulation, nr. 1711.

⁸⁰ Till August 2012, this term was even 8 days (i.e. 192 hours).

⁸¹ See e.g.: DCI 2013, p. 11.

Moreover, the UN Committee on the Rights of the Child points out that an arraignment term of 96 hours is also far too long for sixteen and seventeen year old children.⁸² The Committee strongly recommends Israel to guarantee that all minors who are taken into custody are brought before a judge for the first time within 24 hours.⁸³

Various reports of children's rights and human rights organizations indicate that a judicial review of the pre-trial detention in practice does not often result in Palestinian children being allowed to await their trial in (provisional) freedom. The overwhelming majority of the children is denied release on bail and is kept in pre-trial detention until their trial.⁸⁴ Besides bail, there are little or no alternatives to pre-trial detention of children within the Israeli military legal system on the West Bank.

The UN Committee on the Rights of the Child and UNICEF observed that this practice is difficult to reconcile with the child rights principle that deprivation of liberty of minors, especially if it concerns pre-trial detention during the trial, is only allowed as a means of last resort and for the shortest time possible.⁸⁵

82 UN Committee on the Rights of the Child 2013, par.73, at the start and under c.

83 UN Committee on the Rights of the Child 2013, par.74, introduction and under b.

84 No Legal Frontiers (2011) reported that in 94% of the 71 studied cases, the child stayed in pre-trial detention during the whole process; only 6% was released on bail. DCI (2011) reported previously that in 87,5% of 164 cases release on bail was denied.

85 See: CRC, article 37(b); UN Committee on the Rights of the Child 2013, par. 74, introduction and item c, and UNICEF 2013, p. 12-13. See also: UN Committee on the Rights of the Child 2007, par. 80.

3.5 TRIAL

3.5.1 The military juvenile court

In 2009, the Israeli military authorities established a military juvenile court, with special safeguards for the trial of children under the age of sixteen. The Israeli military juvenile court is considered to be the first and only military juvenile court in the world.⁸⁶ Since 2011, the minimum age for adulthood has been increased from sixteen to eighteen years, which brought also children of sixteen and seventeen years old within the competence of the juvenile court.⁸⁷ However, for children of sixteen and seventeen years old the regular sanction system remains applicable, and therefore they can still receive the same punishments as adults.⁸⁸

DCI and UNICEF have critical comments on the functioning of the military juvenile court. In the first place they point out that in fact the military juvenile court differs little from the military court for adults. For example, the same facilities are being used and also the personnel is not different from the regular military court.⁸⁹ This is in line with the observations of the expert group during the visit to the military court in Ofer, where juvenile sessions take place in barracks in the same heavily secured military complex as where the sessions of adults take place and where the personnel is dressed in army uniforms. UNICEF also expressed concern about the safeguards of a 'child specific' and/or 'child friendly' process of justice for minors in the current military regulations. For example, the regular military court can, although in special cases, deal with a case against minors "as if it were a juvenile court". This does not do justice to the "appropriate training" that military judges have to receive according to the same regulations in order to be allowed to deal with juvenile cases. The regulation also leaves space to, "if necessary", adjudicate children in the same room as adults and to transport children together with adults to and from the court.⁹⁰

86 UNICEF 2013, p. 7

87 'The Military Courts Unit (Judea and Samaria)', updated April 2013 (this document was made available to the expert group during its visit to the military court in Ofer on 27 November 2013), p. 3.

88 UNICEF 2013, p. 8; DCI 2013, p. 4.

89 UNICEF 2013, p. 6; DCI 2013, p. 4.

90 UNICEF 2013, p. 7.

Until recently, court sessions in which decisions are made on the (continuation of the) pre-trial, or about release on bail of underage suspects, were explicitly excluded from the juvenile court.⁹¹ The regular military court had jurisdiction for such sessions. According to the Israeli military authorities, this has changed since June 2013. Based upon a verbal agreement between military judges and prosecutors, for children these sessions should now take place separately from adults.⁹² However, this has not been laid down in a regulation. Moreover, UNICEF pointed out that for decisions on release on bail of underage suspects, the same guidelines remain applicable as for adults.⁹³

3.5.2 Negotiating guilt and punishment

The expert group learned that practically all cases in the military juvenile court are dealt with by so-called 'plea bargains'.⁹⁴ This means that the child pleads guilty in exchange for a lower sentence. Often this comes down to imprisonment for the time of the served pre-trial detention, which results in the child being released immediately after the conviction in exchange for a confession.⁹⁵

A defense lawyer, with whom the expert group met during its visit to the military court, explained that in practice it takes so much time to win a case – "to prove the innocence of the client" – that a confession results in earlier release than if the child keeps on denying and has to await the outcome of the case in pre-trial detention. For this reason, lawyers often advise the children that they represent to confess. Despite the fact that thereby in fact the children waive their right to a fair trial, according to this lawyer it is nonetheless often in the interest of the child to confess and make a 'deal'. The children and their parents themselves often prefer this too, because they wish the release to take place as soon as possible.⁹⁶

91 Ibid.

92 UNICEF 2013(b).

93 UNICEF 2013, p. 7.

94 B'Tselem (2011, p. 52) observed, based on data provided by the Israeli army, that 97% of 642 cases were dealt with by means of a plea bargain. No Legal Frontiers (2011) reported that 98% of the 71 cases studied by them were handled by a plea bargain. The annual numbers of the Israeli military court show that over 2010 99,14% of all cases – both adults and youth – brought before the military court that year were closed by a plea bargain. See: Addameer 2011; Haaretz 2011.

95 B'Tselem 2011, p. 52.

96 A British research delegation (2012, p. 22) made the same observation.

Furthermore, the expert group came to understand that 'plea bargains' often come down to negotiations between the defense lawyer and the prosecutor on the gravity of the punishment. Considering the large number of confessions and incriminating statements during the first interrogations, the evidentiary question in many cases hardly plays a role. In these cases, the judge in fact only has to determine the sentence. A lawyer with whom the expert group spoke explained that in practice this sentence often is the result of negotiations between the defense lawyer and the prosecutor. Considering the large number of cases, the court and the prosecutor have an interest in a speedy and efficient closure of the case and the lawyer has an interest in the shortest possible sentence for his client. Often a deal is struck on the sentence preceding the session. According to the above-mentioned lawyer, a session is often no more than a judicial confirmation of such a deal, except if the judge is of the opinion that the sentence should be higher.

Therefore, it appears that a practice exists in which negotiating guilt and punishment is the basis of the trial and sentencing of children. In a meeting with the expert group, a representative of the *Palestinian Prisoners Society* drew a comparison between the Israeli military court and the daily [vegetable] market, where deals are also closed by bargaining.

The expert group observes that this practice of negotiating guilt and punishment is not in accordance with the right to a fair trial, as stipulated by the CRC.⁹⁷ This is confirmed by a recommendation of the UN Committee on the Rights of the Child to the Israeli authorities to ensure that convictions of children by the military juvenile court are not exclusively based on confessions.⁹⁸

97 See: CRC Article 40(2).

98 UN Committee on the Rights of the Child 2013, par. 74, introduction and item d.

3.5.3 Sentencing

The conviction rate of the Israeli military juvenile court is extremely high. Based on a sample of 89 children who were prosecuted by the military juvenile court, DCI came to a conviction percentage of 98%.⁹⁹ Based on 71 studied cases, *No Legal Frontiers* even reported a conviction percentage of 100%.¹⁰⁰ The annual figures of the Israeli military court over 2010 showed a conviction percentage of 99,74%.¹⁰¹ Of course, this high conviction rate cannot be separated from the above described practice of the ‘plea bargains’.

A conviction of a child by the military juvenile court in most cases results in imprisonment, often combined with a fine.¹⁰² Based upon military regulations, the maximum term of imprisonment for twelve and thirteen year old children is six months.¹⁰³ For fourteen and fifteen year old children this maximum term is twelve months, unless it is imposed for a crime for which the military regulations prescribe a maximum prison sentence of five years or more.¹⁰⁴ In that case, the sanctions regulations for adults apply to this age group. For sixteen and seventeen year old children the same sanctions as for adults apply in all cases.¹⁰⁵

The most frequent offence for which Palestinian children are convicted by the Israeli military juvenile court is the throwing of stones in the direction of objects, persons or vehicles. Based on a military regulation, a person who throws a stone “in a way that possibly damages the traffic on a road”, or in the direction of an object or person with the intention to cause damage, can be sentenced to a maximum of ten years imprisonment.¹⁰⁶ In case the target is a moving vehicle, imprisonment can even amount to twenty years.¹⁰⁷

The fact that ‘throwing stones’ is punishable by a maximum imprisonment of more than five years, entails that in practice many fourteen and fifteen year old children that are being tried in the military juvenile court could receive the same maximum penalties as adults. Therefore, it is possible for fourteen or fifteen year olds who are convicted for throwing stones to receive a punishment of ten or even twenty years of imprisonment. However, this does not seem to occur in practice. Usually, the prison sentences of children for throwing stones vary between two weeks and ten months.¹⁰⁸

The UN Committee on the Rights of the Child has urged the Israeli authorities to revise the legislation by which Palestinian children can be sentenced to twenty years of prison because of throwing stones. The Committee also called upon Israel to release children that are sentenced to (prolonged) imprisonment based upon these provisions.¹⁰⁹

3.6 THE EXECUTION OF MILITARY DETENTION

Imprisonment imposed by the Israeli military juvenile court, as well as the preceding pre-trial detention, are usually executed in prisons managed by the Israeli Prison Service.¹¹⁰ Two out of the three prisons in which most Palestinian children are detained are located on Israeli territory.¹¹¹ Both the UN Committee on the Rights of the Child and UNICEF point out that transporting Palestinian children to prisons in Israel is in breach of article 76 of the Fourth Geneva Convention.¹¹²

99 DCI 2013, p. 3.

100 It concerned a study of 71 cases that were handled by the military juvenile court in Ofer between April 2010 and March 2011. See: *No Legal Frontiers* 2011.

101 See: Addameer 2011; Haaretz 2011. This concerned the conviction percentage of all cases – both adults as well as youth – that were brought before the Israeli military court in 2010.

102 *No Legal Frontiers* (2011) observed, based on a sample of 71 juvenile cases that in 98% imprisonment was imposed. In 96% of the cases a fine was imposed as well. If not paid, the latter would be replaced by an extension of the imprisonment.

103 Military regulation No. 1651, section 168(B).

104 Military regulation No. 1651, section 168(C).

105 UNICEF 2013, p. 8.

106 Military regulation No. 1651, sections 212(1) and (2).

107 Military regulation No. 1651, section 212(3).

108 DCI 2011. In cases dealt with by *plea bargaining* the length of the imprisonment imposed often equals the time the child has spent in pre-trial detention. See: B’Tselem 2011.

109 UN Committee on the Rights of the Child 2013, par. 74, introduction and item a.

110 This is valid for the prisons in Ofer, Megiddo and Rimonim. See: B’Tselem 2011, p. 56 ff. See also: UNICEF 2013, p. 13.

111 UNICEF 2013, p. 13. The prisons in Megiddo and Rimonim are located in Israel. The human rights organization Military Court Watch points out, in its newsletter of January 2014, that of the 154 Palestinian children detained in Israeli prisons by the end of December 2013, 49% stayed in a prison on Israeli territory. A sample of DCI (2012) shows that 63% of the 311 interviewed Palestinian children declared to have been detained in a prison on Israeli territory.

112 UN Committee on the Rights of the Child 2013, par. 73, introduction and item g; UNICEF 2013, p. 13.

This provision seeks to guarantee that, in a situation of occupation, people who are taken prisoner by the 'Occupying Power' because of an alleged offence have the right to serve pre-trial detention and any subsequent imprisonment in a prison in their own (occupied) country or territory.

A practical implication of the detention of Palestinian children in prisons in Israel is that visits by parents or other family members are not or hardly possible.¹¹³ The main reason for this lies in the restrictions that apply for Palestinians with an ID-card of the West Bank to travel to and within Israel and the long time the procedures to receive a permit to this end take.¹¹⁴ Various Palestinian children with whom the expert group spoke declared that during their detention they did not have contact with their parents, sometimes for months.

UNICEF points out that, based on the CRC, children in detention have the right to maintain contact with their family by means of correspondence and visits.¹¹⁵

Despite repeated requests to that effect, the expert group was not granted permission by the Israeli authorities to visit a prison.

The expert group did talk with children about their stay in an Israeli prison. The picture that these conversations paint is that detained children share a prison cell with about nine other children; that there hardly is any communication between the Israeli prison personnel and the detained children; that the children receive education from the adult Palestinian detainees; that there are hardly any facilities for sports or entertainment and that boredom prevails among the children.¹¹⁶

113 UNICEF 2013, p. 13; DCI 2013, p. 9; B'Tselem 2011, p. 61-62.

114 UNICEF 2013, p. 13.

115 See: CRC article 37(c).

116 See also: B'Tselem 2011, p. 56 ff.



Photo: Karin Arts

Based on the Israeli military regulations, minors in prison are to be kept separately from adult detainees.¹¹⁷ In practice, this provision is usually upheld by placing children in special departments, separately from adults. Nevertheless, children's rights and human rights organizations report that there are cases known in which Palestinian children shared a cell with adult detainees.¹¹⁸

A general exception to the separation of minor and adult detainees seems to be made in order to provide for education. During meetings with Palestinian children, lawyers and representatives of children's rights and human rights organizations, the expert group was informed of the apparent standard practice that Palestinian children in Israeli prisons do not attend an official curriculum, but are taught by adult Palestinian detainees. The expert group was informed that this practice is based upon an agreement between the Israeli and Palestinian authorities.¹¹⁹

In any case, it became clear that the education of Palestinian children in Israeli prisons is inadequate. For example, a number of children who met with the expert group declared that during their stay in an Israeli prison they only received one-and-a-half hour of education a day and were taught solely Arabic and mathematics. They also declared that all children received the same education, regardless of age or level. However, based on a report of the Israeli human rights organization *B'Tselem*, it should be noted that there appear to be big differences between prisons when it comes to the system and quality of education.¹²⁰

The UN Committee on the Rights of the Child urges Israel to ensure that all Palestinian children detained by the Israeli military authorities stay in prisons or institutions located in the OPT. Due care also needs to be exercised to ensure that these children stay separately from adult detainees, under appropriate circumstances and with access to education.¹²¹

117 Military regulation No. 1651, section 149.

118 DCI 2013, p. 2; B'Tselem 2011, p. 58-60; DCI 2011, p. 3. See also: British lawyers delegation 2012, p. 27.

119 From the Palestinian perspective, the underlying idea of this agreement seems to be that adult Palestinian detainees can function as a mentor to Palestinian children in Israeli prisons. See: B'Tselem 2011, p. 59-60.

120 B'Tselem 2011, p. 56 ff.

121 UN Committee on the Rights of the Child 2013, par. 74 at the start and item e.

3.7 AFTERCARE

It became clear to the expert group that the Israeli authorities do not provide any form of aftercare for Palestinian children that are released after having spent a period in Israeli military detention. The Israeli human rights organization *B'Tselem* reported that upon their release some children are even literally turned into the street, without informing their parents, leaving these children to sort out by themselves how to get home.¹²²

The Palestinian Authorities also do not provide Palestinian children who are in need of care and assistance after their release from Israeli military detention with adequate facilities.¹²³ The aftercare for these children is in fact left to local non-governmental organizations. Especially the *East Jerusalem Young Men Christian's Association Rehabilitation Program* (YMCA) and the *Treatment and Rehabilitation Centre for Victims of Torture* (TRC) play an important part as aftercare providers.¹²⁴ The expert group visited YMCA in Beit Sahour. This organization offers a rehabilitation program – including assistance in returning to school and career orientation – and trauma therapy to Palestinian children that were in Israeli military detention and to their families.¹²⁵ The representative of YMCA with whom the expert group spoke estimates that his organization reaches about half of the Palestinian children released from Israeli military detention.

Based on information provided by the Palestinian Ministry of Prisoners Affairs, the YMCA and other children's rights and human rights organizations, the expert group is concerned that a significant number of the Palestinian children involved return to the society after their arrest and detention without any kind of aftercare and that their families often do not receive any support either.

122 B'Tselem 2011, p. 63-64. See also: British research delegation 2012, p. 28.

123 Save the Children Sweden & YMCA 2008, p. 50.

124 Save the Children Sweden & YMCA 2008, p. 52-53.

125 See: Save the Children Sweden & YMCA 2012.

4. THE CONTEXT: DEEPLY ROOTED CONFLICT AND PROLONGED OCCUPATION

The practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities cannot be perceived outside their general context. This context is one of deeply rooted conflict about, among others, self-determination, land and natural resources such as water, and of a by now nearly fifty year-long military occupation of the Palestinian Territories by Israel. This part of the report provides a short overview of the situation on the West Bank (4.1), provides information on the nature and consequences of the occupation, mainly for the daily life of Palestinian children (4.2) and zooms into the role of the military court within this context (4.3).

4.1 A SUMMARY OVERVIEW OF THE HISTORICAL CONTEXT

The current situation on the West Bank cannot be separated from its historical context. This paragraph is limited to a short overview of the most directly relevant historical events in this regard.¹²⁶

On 27 November 1947, the Security Council of the United Nations adopted a Resolution on the division of the territory of the then British mandate Palestine in a Jewish State, an Arab State and a neutral zone around Jerusalem.¹²⁷

¹²⁶ For more elaborate analyses see, for example: De Waart 1994; Handmaker 2011.

¹²⁷ UN Security Council, Resolution 181, 29 November 1947.



Photo: Micha de Winter

Disagreement on this division caused the fights, that had already commenced, between Jewish and Arab inhabitants of this territory to erupt in full force. Following the end of the British mandate in 1948, the situation escalated into the Arab-Israeli War between the new State of Israel, established in May 1948 by means of a unilateral declaration of independence, and surrounding Arab states. This bloody conflict ended in 1949 with a cease-fire and bilateral agreements by which the Palestinian Territories were divided between Israel, Jordan (the West Bank) and Egypt (Gaza).¹²⁸

After almost twenty years of rising tensions, in 1967 during the Six Days War Israel conquered the Palestinian Territories that were held by Jordan and Egypt at the time. Israel occupied the West Bank, the Gaza strip and East Jerusalem. In the same year still, the Security Council of the United Nations adopted a Resolution declaring the Israeli conquest of these territories unlawful and urging Israel to withdraw its military forces from the occupied territories.¹²⁹ Up until today Israel has not adhered to this urgent request, at least not as far as the West Bank and East-Jerusalem are concerned.

From the end of the 1970s onwards, Israeli civilians ('settlers') started to reside in settlements on the West Bank. In response to this, in 1979 the Security Council of the United Nations adopted a Resolution which explicitly stated that the Israeli policy and practice of settlements in the OPT is illegal and forms a serious obstacle to reaching lasting peace in the Middle East.¹³⁰

Although there has been Palestinian resistance to the Israeli occupation from the beginning, between 1987 and 1993 a period of particularly intense Palestinian resistance (the 'First Intifada') followed and met with tough actions by the Israeli army. There were casualties at both the Palestinian and Israeli sides. This period of large-scale and active resistance ended (temporarily) with the conclusion of the Oslo Accords,

by which the Palestinian Authorities obtained the daily governance of parts of the West Bank but which left the Israeli occupation unaltered. A few years later, during the 'Second Intifada' (2000-2005), the violence escalated again in full force.

Since the Second Intifada, the Israeli 'security measures' towards Palestinians have been intensified further, which has had a deep impact on the daily lives of millions of Palestinian civilians (see the following paragraph 4.2). The population of Israeli settlers in the OPT on the West Bank has kept on growing and the Israeli army remains prominently present. In the year 2014, the consequences of the almost fifty years of ongoing Israeli occupation remain harshly tangible on a daily basis for the Palestinian children who are growing up in the OPT.

4.2 THE DAILY REALITY OF PALESTINIAN CHILDREN ON THE WEST BANK

Throughout the years, Israel made it increasingly hard for Palestinians to move freely within the OPT on the West Bank, to leave these territories, or to return to them. For a long period of time already, the freedom of movement for Palestinians has been seriously limited by means of an extensive system of identity cards and permits that are required in order to be allowed to be present somewhere or to travel from one location to another. This has also significant consequences for Palestinian children. For example, without the required permit sick or wounded Palestinian children cannot go to hospitals on Israeli territory. Another, earlier mentioned example is that Palestinian parents often cannot visit their children who are staying in prisons on Israeli territory.¹³¹

In addition, physical obstacles and constraints play an important part in the daily life in the OPT on the West Bank, such as the Wall, roadblocks, permanent and temporary military checkpoints, roads exclusively accessible to Israelis, as well as areas where the Israeli army does not allow the presence of either Palestinian or Israeli civilians.¹³²

¹²⁸ The thereby established borders are indicated as the 'Green Line' and are recognized by the United Nations.

¹²⁹ UN Security Council, Resolution 242 (S/RES/242), 22 November 1967.

¹³⁰ UN Security Council, Resolution 446 (S/RES/446), 22 March 1979.

¹³¹ See paragraph 3.6.

¹³² See: UN Office for the Coordination of Humanitarian Affairs 2013(a).

These obstacles have resulted in segregation of Israelis and Palestinians, isolation of Palestinians and fragmentation and division of Palestinian territory and make it increasingly easy for the Israeli military authorities to control the area.

During its visit to Hebron, the expert group witnessed examples of Israeli measures to 'sterilize' certain neighbourhoods,¹³³ in other words, to declare them prohibited territory for Palestinians. This can even mean that front doors of Palestinian houses that border a street that was declared forbidden for Palestinians are sealed by the Israeli army, as a result of which the residents can only leave their house through the backdoor or even via the roof of the house.¹³⁴ During its stay in Hebron, the expert group also witnessed that, on their way to school, Palestinian children had to pass a checkpoint with heavily armed Israeli military personnel and how they had to take detours to reach their school safely. International volunteers were actively present in the area with the intention to protect these children against potential violence.

Another obstacle that has a great influence on the lives of many Palestinian children on the West Bank is the Wall that Israel is building since 2002. According to Israel, the Wall is necessary to protect its civilians against Palestinian violence. However, this Wall for a large part is not located on the internationally recognized official borderline of 1949 (the 'Green Line'), but mainly within the West Bank. The Wall physically separates Palestinian communities and denies many Palestinian families access to their agricultural lands.¹³⁵ In 2004 the International Court of Justice established that the building of the Wall by Israel is a wrongful act.¹³⁶ Nevertheless, the building of the Wall still continues.

As among others fact sheets of the UN Office for the Coordination of Humanitarian Affairs show,¹³⁷ it is also

a reality that throughout the years many Palestinian families were forced to leave East Jerusalem and other Palestinian territory, because their houses were demolished or their lives were otherwise seriously hampered by the Israeli authorities.¹³⁸

At the same time, many Israeli settlers built a life in settlements in the OPT.¹³⁹ Direct violent confrontations between settlers and/or Israeli military and Palestinians mainly occur in the surroundings of such settlements and other 'points of friction', such as important parts of the road network on the West Bank that is solely accessible to Israelis.

The increasing population of settlers in the OPT on the West Bank has direct implications for the Israeli military presence in these areas, given that the Israeli army is primarily responsible for ensuring the security of Israeli civilians (i.e. the settlers). Therefore Israel often invokes the safety of its citizens as a justification for imposing (preventive) restrictions on Palestinians, such as the above-mentioned physical and bureaucratic restrictions of the freedom of movement, as well as the tough action against Palestinians who endanger the 'security' of the Israeli citizens, including Palestinian children who 'throw stones'.

Inevitably, the current situation on the West Bank also has serious consequences for the Palestinian economy and the level of income of the Palestinian inhabitants of the Occupied Territories. A report published in July 2012 by the UN Conference on Trade and Development showed that the impact of the occupation on the Palestinian agricultural production is disastrous.¹⁴⁰ Moreover, the unemployment rates are high (30% in 2010 and 26% in 2011) and the salaries continue

¹³⁸ Ibid.

¹³⁹ According to the Association of International Development Agencies (AIDA), an international forum of over 80 international non-governmental and non-profit organizations involved in development work and humanitarian aid activities in the Palestinian Territories), partly based on sources of the United Nations and the Israeli and Palestinian Statistical Bureaus, the population of Israeli settlers in Palestinian territory (including East Jerusalem) has doubled since 1993, to a current number of over 500,000. According to the same source, since 1993 at least 11,000 Palestinians were forced to leave Jerusalem and, also since 1993, 53,000 houses were built for settlers in occupied territory and 15,000 Palestinian house demolished. See: AIDA 2013. See also: the report on this issue of the Secretary-General of the United Nations (UN Secretary-General 2013).

¹⁴⁰ UN Conference on Trade and Development 2012, p. 1.

¹³³ The term 'sterilization' is, according to a former Israeli military associated with the Israeli NGO Breaking the Silence, who guided the expert group during its visit to the center of Hebron, used within the Israeli army to indicate the areas in town that are off-limits for Palestinians.

¹³⁴ For a short video on this of an Israeli human rights organization, see <http://www.btselem.org/video/2006/11/rooftops-hebron>.

¹³⁵ UN Office for the Coordination of Humanitarian Affairs 2013(b).

¹³⁶ International Court of Justice 2004, p. 136.

¹³⁷ See: UN Bureau for the Coordination of Humanitarian Affairs 2013(c).

to decrease, as a result of which poverty amongst Palestinians in occupied territory spreads and deepens.¹⁴¹ Obviously, this also has a significant impact on the standard of living for Palestinian children who grow up on the West Bank.

The above-mentioned circumstances have a tremendous impact on the daily life of Palestinians, including the Palestinian children. Ordinary life, such as going to school or work, family visits, medical treatment, or access to one's own agricultural land, is increasingly hampered. The expert group learned that this reality could even result in Palestinian families feeling compelled to leave the OPT.

4.3 THE ROLE OF THE MILITARY COURT

The role of the Israeli military courts on the West Bank cannot be separated from the context of the occupation. In June 1967, Israel introduced military law in the OPT on the West Bank. According to the official statement by the Israeli army, the aim of the introduction of military law was "to enable the existence of sound governance, security and public order".¹⁴² The military law provides the Israeli military commander (the 'area commander') full legislative, executive and judicial authority to this end.¹⁴³ Since 1967, between 750.000 and 800.000 Palestinians were prosecuted by Israeli military courts.¹⁴⁴ While the military regulations formally apply to anyone present on the West Bank, as stated earlier,¹⁴⁵ in practice military law is solely applied to Palestinians. Israeli civilians, including settlers, in practice fall within the regular Israeli civil law system, which offers much better legal protection.¹⁴⁶

The Israeli military court primarily serves to safeguard the 'security' of the state of Israel and its citizens. Against this background, the Israeli military court can be considered an instrument to maintain and strengthen the military control over the OPT and the

residing Palestinian people.¹⁴⁷ A report of Save the Children Sweden, on the occasion of the East Jerusalem YMCA Rehabilitation Project 2012 which was carried out with humanitarian aid of the European Union, articulated this as follows:

"The military courts in the West Bank are not intended to function as a comprehensive legal system. They must be understood as the 'judicial arm' of the occupying power, which means that the emphasis lies more on security than on justice. Its purpose lies in imposing the Israeli perception of security on the Palestinian population in the occupied areas. This also explains why they lack the necessary tools to target root causes, instead only issuing punishing sentences."¹⁴⁸

During a meeting with the expert group an Israeli international law professor formulated this as follows: "Military courts are not there to do justice, but to maintain law and order."

Considering the important role of the military courts in maintaining the Israeli occupation of the Palestinian Territories on the West Bank, one should not lose sight of the fact that the occupation as such, the settlements as well as a number of specific other Israeli activities in the OPT, including the building of the Wall, are considered to be in violation of international law by various authoritative international organs.¹⁴⁹ Amongst others the Security Council, the International Court of Justice, the International Committee of the Red Cross, and the Human Rights Council as well as UN human rights committees have pronounced this explicitly.¹⁵⁰

Moreover, the expert group ascertains that the earlier mentioned role of the Israeli military juvenile court is in no way in accordance with the objectives of a child rights compliant juvenile court, which should aim at rehabilitation and reintegration of the child in order to guide him towards accepting a constructive role in society.¹⁵¹

141 Ibid., p. 4-5.

142 Israel Defense Force Proclamation No. 2, Regarding Law and Administration, 7 June 1967.

143 Ibid.

144 Military Court Watch (2014) bases this on numbers of the UN and the Israeli organization B'Tselem.

145 See paragraph 3.1.

146 British lawyers delegation 2012, p. 7.

147 YMCA & Save the Children Sweden 2012, p. 24. See also: Weill 2007.

148 YMCA & Save the Children Sweden 2012, p. 24.

149 See e.g.: UN Security Council, Resolution 242 (S/RES/242), 22 November 1967; UN Security Council, Resolution 446 (S/RES/446), 22 March 1979; International Court of Justice 2004, p. 136; International Committee of the Red Cross 2001; UN Human Rights Council, Resolution 19/17, 10 April 2012; UN Committee on the Rights of the Child 2013, para. 7.

150 Ibid.

151 See: CRC article 40(1).

5. IS THROWING STONES A FORM OF TERRORISM OR ITS PRECURSOR?

5.1 THE STONE THROWERS AND THE IMPORTANCE OF THEIR MOTIVES

For most of the Palestinian children who are taken into custody on the West Bank by the Israeli army, the throwing of stones towards (vehicles of) settlers or military constitutes the main charge and ultimate reason for conviction. According to the Israeli authorities, the first reason for this of course is that throwing stones is dangerous and therefore illegal. But the main motivation for the systematic and hard actions against young suspects of this presumed crime seems to be that the throwing of stones is a precursor of terrorism: today a stone-thrower, tomorrow a suicide-bomber. The extent to which this ‘precursor-

theory’ is actually correct is questionable. As far as the expert group was able to ascertain, in any case this has not been researched systematically. Moreover, the throwing of stones itself is regularly referred to as an act of terror: stones are called “missiles” with the sole purpose of wounding or killing people who have the misfortune to be within their reach.¹⁵²

Part of the Israeli public (and political) opinion sees stone-throwing as an expression of the culture of violence of Palestinians, sometimes even as a popular Palestinian hobby.¹⁵³

¹⁵² Cf. Tobin 2013.

¹⁵³ Ibid.

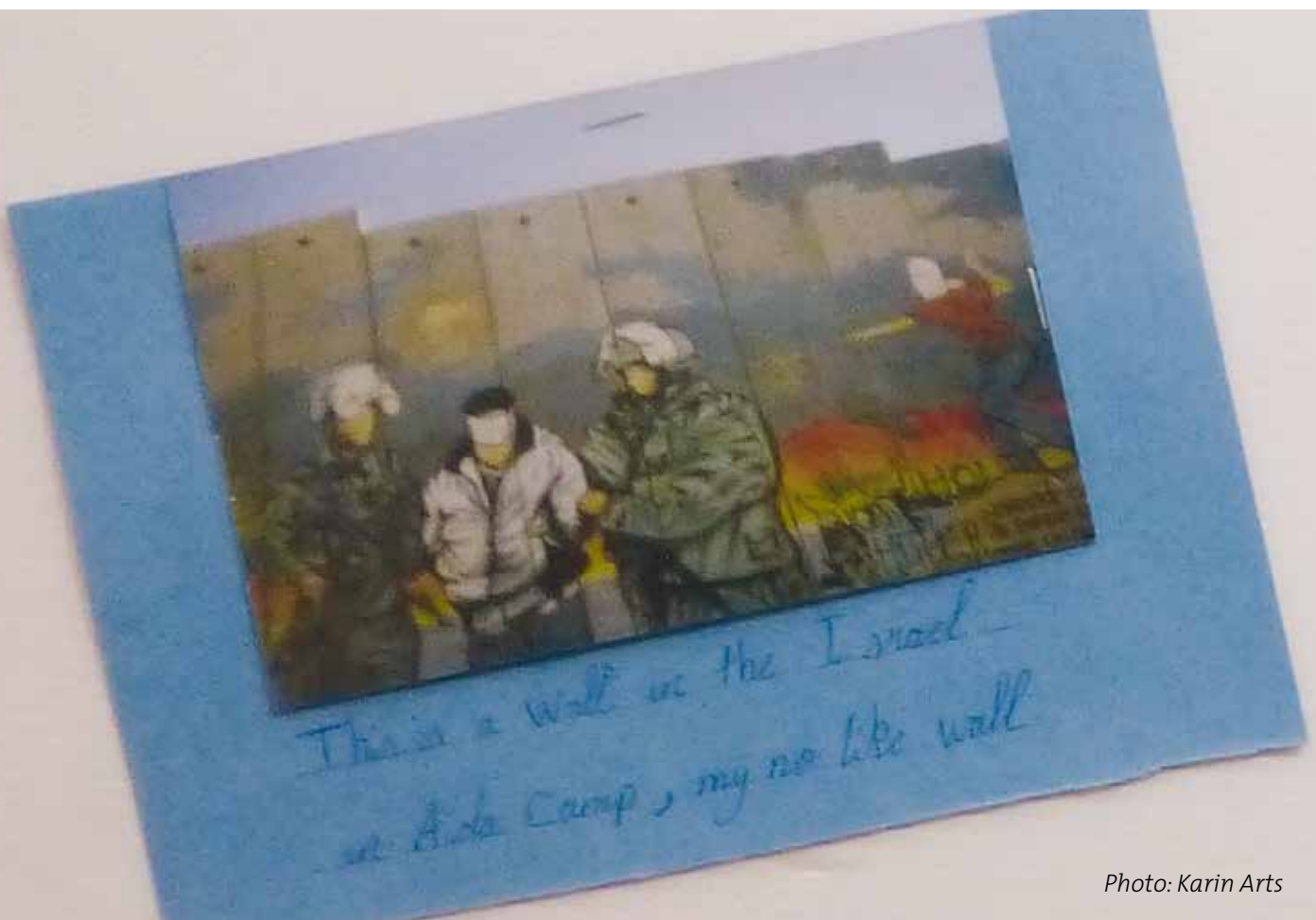


Photo: Karin Arts

“Defenders of the Palestinians may say that those who throw rocks have no other way of protesting the settlements or what they consider wrongful behaviour on the part of the Israel Defence Forces. But this ignores the fact that most of the tense encounters between the IDF and Palestinians stems from the violence that the latter habitually commit... Perhaps it would be better for the Palestinians’ quality of life and even their political aspirations if they decided to treat the Jews who live near them as human beings rather than merely enemy targets.”¹⁵⁴

This kind of reasoning reflects the opinion that (a) stone-throwers never have a legitimate reason for their behavior, that (b) they therefore provoke the force used against them, and that (c) it is in the own political interest of Palestinians not to commit resistance against the acts of the authorities and settlers on the West Bank.

There is plenty of academic literature that shows that it is very unwise to deny the motives of young people and to decontextualize their behavior.¹⁵⁵ The use of the word “hobby” is an example of such denial and de-contextualization. The motives for the behavior are not taken seriously, and the behavior is disconnected from the situation in which it arose. The labelling of this behavior as terrorism, and the legitimization that this label offers for the violent approach that was described elsewhere in this report, provide a good example. As a result, from childhood onwards young people get the message that there is no place for their opinions, interests and frustrations. In fact, this is the best way to further radicalize young people.

5.2 FROM ZERO TO HERO

Academic research on radicalization of youth shows the importance of the identity motive.¹⁵⁶ Radical young people do not only want to achieve something by their participation, they also want to belong to a community in which they can play a meaningful and important role.

¹⁵⁴ Ibid.

¹⁵⁵ Van San, Sieckelinc & De Winter 2010.

¹⁵⁶ Ibid.

Growing up in circumstances in which young people themselves and the ones close to them feel ignored and humiliated only makes this desire more intense. The positive social identity theory from Tajfel and Turner, for example, shows that all people have a need for a positive self-identity and that the status of the group to which they belong helps them to obtain this identity.¹⁵⁷ These positive associations are among others established by rebelling against others. External conflicts are often sought because they contribute to the group identity. An attack on the group is then considered a personal attack, and vice versa. Therefore, groups offer both an identity as well as self-confidence. For young people whose identity in fact is reduced to zero, this process applies to an even greater extent. They battle in a group based on the conviction that injustice is being done to them and that change is needed. In a psychological sense, this is also a way to prove yourself towards others. It is a fundamental human need to be able to actually mean something to the community you belong to. In other words: if children and young people from young onwards are conveyed the message that they are a ‘zero’, they will take any opportunity they get to become a ‘hero’.

This leads to the conclusion that it is of great importance to take the motives, frustrations and interests of children and young people seriously. This doesn’t mean that the political contradictions suddenly are to be denied. Political contradictions are inherent to any form of society, and especially in the context of the Palestinian-Israeli conflict these are profound. However, those who do not want to aggravate the contradictions further and want to prevent new generations from growing up in a hostile environment will have to realize that fundamental contradictions do not per definition need to be interpreted as hostility.

¹⁵⁷ Tajfel & Turner 1986.

It is a fundamental mistake of the Israeli authorities to interpret the antagonism of Palestinian children a priori as a form of terrorism or its precursor. From that position follows the practice that we have been able to observe: during the interrogation and the trial, the motives of the children play no role at all. This kind of denial, de-contextualization and often even dehumanization per definition can only result in further radicalization. In this way it becomes a self-fulfilling prophecy: out of fear for terrorism, further radicalization is created.

5.3 DISRUPTIVE BEHAVIOR AND TAKING IT SERIOUSLY

The throwing of stones by Palestinian children and youth has to be seen as a practice of 'disruptive politics'.¹⁵⁸ This constitutes a form of 'politics' that does not necessarily adhere to accepted formal, moral and legal rules, but that does constitute an expression of feelings of injustice, humiliation and exclusion that is to be taken seriously. A trademark of such expressions is that they usually are not premeditated or organized. Often they form an unexpected or unpredictable reaction to all kinds of disciplinary measures that were actually meant to get the youth in line. Obviously, the throwing of stones by children is an expression of anger, an attempt of 'disruption' that is born out of a feeling of powerlessness. But in the first place it is a, sometimes chaotic, expression of criticism on a situation that is perceived as extremely unjust in every respect. Those feelings of injustice are of course strengthened exponentially by the violent – and from every human rights perspective unjust – action against the children by the Israeli authorities. In other words, the latter are well on their way to, perhaps unintentionally, create the next Intifada.

From a socio-pedagogical and political perspective, it is of the utmost importance to provide young people with a 'voice', or in other words: to take seriously what preoccupies and affects them. This is important to any child and to any young person within the framework of the development of a social and personal identity.

However, this is even more important for a young generation that is growing up in an environment full of social and political tensions and the associated violence. Behavior that, in the eyes of part of the Israeli public opinion and politics, is disruptive, dangerous and seemingly useless, can take more extremist and violent forms when the message behind that behavior is completely ignored or even denied.

158 Kauflingfreks 2013.

6. THE CONSEQUENCES

The protracted Israeli-Palestinian conflict and the ongoing Israeli military occupation of the West Bank undeniably have consequences for the children who grow up there. This chapter specifically addresses these consequences (6.1 and 6.2). Furthermore, it explicitly looks into the impact of the Israeli practices of arrest, interrogation, detention and trial on the Palestinian children concerned, their families and the community as a whole (6.3).

6.1 THE CONSEQUENCES OF CONFLICT AND OCCUPATION FOR GROWING CHILDREN

The director of the kindergarten in Hebron, with whom the expert group spoke, has witnessed how the children in the neighborhood of her school became more aggressive in recent years.

According to her, it is important to note that, for already almost ten years, after the visibly open fight



Photo: Karin Arts

between Israelis and Palestinians during the Second Intifada, Palestinian children on the West Bank experience invisible violence that shapes them. She called this the “omnipresent intimidating presence of the military in the daily life of the Palestinian community where both adults and children are approached as potential terrorists and humiliated”.

Research has shown that the direct experience of humiliation or witnessing humiliation of others (for example, seeing that a parent is being humiliated), is not only experienced as a personal feeling of humiliation by Palestinian youth, but is also seen as a social process that is inextricably connected with feelings of loss of dignity, honor and justice.¹⁵⁹ Humiliation which is systematically induced by social, political or military conflicts, and war-like conditions, in itself forms an independent traumatic event, besides the exposure to other violent or traumatic events.¹⁶⁰ Research has shown that for many Palestinian young people on the West Bank this results in experiences of mental and physical health problems.¹⁶¹ The above-mentioned kindergarten director in Hebron confirmed this and indicated that the majority of the Palestinian children in the Kashba is troubled by nightmares.

Palestinian children who are arrested and undergo imprisonment are individually exposed to traumatic experiences. In addition, many Palestinian children on the West Bank experience collective traumatic events, such as attacks with teargas, stun grenades, explosions and shelling in their neighborhood, or they witness friends, neighbors or strangers getting injured. Research shows that these collective traumatic experiences, also separately from individual traumatic experiences, appear to be an important predictor for complaints of depression among Palestinian youth.¹⁶² Children who witness military violence being used against ‘others’ (loved ones) even seem to be at higher risk of developing aggressive and antisocial behavior, than if they themselves are the direct victim.¹⁶³

In 2008, the way in which Palestinian youth handles the stress of the prolonged military occupation was researched.¹⁶⁴ This research revealed that the value of supportive relationships with friends, peers and family is essential in this regard: “No matter how intense the problems are, in the end we return to our families because that is all we have”.¹⁶⁵ Besides this, many Palestinian youth seem to strive towards keeping their daily life as normal as possible in order to derive structure and stability from that normality: doing your homework and domestic chores, watching television, hanging out with friends and visiting family and acquaintances. Against the background of the occupation, political involvement and activism are ‘a way of life’ for some young Palestinians. This may include the throwing of stones to Israeli soldiers and military jeeps or participating in demonstrations and protests in the street. In addition, education seems to play a vital role in maintaining and shaping a political identity for Palestinian youth: “Education is a way of fighting. Education means everything. It is our weapon”.¹⁶⁶ Thus, young people are apparently capable to consciously take their development into their own hands, even in times of serious setbacks.

Nonetheless, the expert group wishes to emphasize that adolescence is a critical stage in the development of the young person, in which (s)he starts to discover the world, to search for her/his place in it and to make choices for her/his future. The adolescent who is growing up under the circumstances of a chronic social-political conflict, is strongly influenced by this in terms of his identity development and his view towards the future. This applies to the youth in Israel as well. They too undergo direct consequences of the ongoing political and armed conflict. They grow up in a country that considers itself surrounded by enemies, whereby the threat of violent attacks is deemed to be constantly present. Moreover, Israeli children grow up knowing that when they will turn 18 they will have to fulfil a number of years of active military service in (for them) ‘hostile territory’, such as the West Bank.

159 Giacamani et al. 2007(a).

160 Ibid.

161 Ibid.

162 Giacaman et al. 2007(b).

163 Qouta et al. 2008.

164 Nguyen-Gillham et al. 2008.

165 Internationally recognized research has shown for decades that offering positive support by parents to their children during and after serious setbacks of any kind, is of essential importance to help them recover. See: Thompson, Flood & Goodvin 2006.

166 Nguyen-Gillham et al. 2008.

The concerns about the wellbeing and future of both groups of children (Israelis and Palestinians), the future generation, are among others reflected in research on the effect of the conflict on their mutual well-being.¹⁶⁷ The UN Committee on the Rights of the Child has also pronounced explicitly on this in 2013.¹⁶⁸

6.2 DEHUMANIZING ‘THE OTHER’

The conflict that is already going on for decades and the current situation on the West Bank, on both the Israeli as well as Palestinian side, lead to circumstances in which dehumanization of ‘the other’ can easily if not inevitably take place.

Many young Israelis grow up with the image of Palestinians as ‘the enemy’. A former Israeli military, told the expert group that prior to his compulsory military service he only knew the Palestinians via the Israeli media, which primarily pay attention to Palestinian attacks and acts of violence. Many Israelis have no knowledge at all of the living conditions of the Palestinians on the West Bank. This former Israeli military also declared that, during the military training that precedes their military service, young Israelis are drilled to view Palestinians, including Palestinian children, as the enemy and potential terrorist and not to shun the use of violence against them. This can also be derived from statements of other former Israeli soldiers that were collected and bundled in the reports of the Israeli NGO *Breaking the Silence*.¹⁶⁹

At the same time, many Palestinian children grow up with the image of Israelis as ‘the enemy’. This image is inevitably reinforced by the daily contact of Palestinian children on the West Bank with ‘the occupier’. A kindergarten teacher in Hebron, with whom the expert group spoke, strikingly stated that many Palestinian children have never seen an Israeli without a weapon.

The children see exclusively military and armed settlers. According to the kindergarten teacher, this manifests itself, for example, in the fact that many young Palestinian children make drawings of military and army vehicles and play ‘war’. The expert group witnessed some concrete examples of this during the visit to a school in the Aida refugee camp in Bethlehem. Thus, the expert group is concerned that the ongoing conflict and the current situation in the OPT contributes to a downward spiral of mutual dehumanization that potentially will be passed on from generation to generation.

6.3 THE CONSEQUENCES OF PRACTICES OF ARREST, INTERROGATION, DETENTION AND TRIAL

6.3.1 The consequences for the children

The practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities on the West Bank that were described in chapter 3, almost inevitably have very negative effects on the physical, psychological and emotional wellbeing of the children concerned, both on the short term as well as the long term.

In 2012, the non-governmental children’s wellbeing organizations *YMCA* and *Save the Children Sweden* published a report on the impact of these practices on the concerned Palestinian children.¹⁷⁰ Based on in-depth interviews and focus-group interviews with ex-detained Palestinian children, an alarming picture is painted of the visible and invisible consequences of the arrest and imprisonment for the wellbeing and the development of these children.¹⁷¹

Various children declared that they found the nightly arrest by the overwhelming force of armed military and the associated memories of the fear, screaming and helplessness of their parents, little brothers and sisters worst of all.

167 See e.g.: Dubow et al. 2012 and Harel-Fisch et al. 2010.

168 UN Committee on the Rights of the Child 2013, par. 7.

169 *Breaking the Silence* 2011.

170 *YMCA & Save the Children Sweden* 2012.

171 *Ibid.*, p. 47.

Regardless of the length of the subsequent detention, for many children the arrest forms their nastiest reliving.¹⁷² This was confirmed by a representative of the rehabilitation program of the YMCA during a meeting with the expert group.

In this connection, the fact that the arrest caused some children to lose confidence in their parents, since they experienced that their parents were incapable to protect them from the soldiers, was also raised.

In the above-mentioned 2012 report, children also declared that they experienced the interrogations as frightening because of the physical and psychological force they had to endure. This is an important explanation for the high number of convictions of children by the military juvenile court based on their own confessions and incriminating testimonies of other children. Children are physically, socio-emotionally and cognitively still in development. Children have more trouble in overseeing situations, to understand what is being said and to bear physical and emotional pain and stress. Under the intimidating, violent and humiliating circumstances of a nightly arrest, the subsequent transportation to and stay at the interrogation location and the interrogation itself, they will feel extremely helpless and be very fearful. This makes children during interrogation especially vulnerable to pressure to make confessions and incriminating testimonies.¹⁷³

The YMCA and Save the Children research of 2012 furthermore established that many children experience the lack of contact with their family during their detention as the worst part. This makes them feel isolated and unprotected.¹⁷⁴ The formerly detained Palestinian children with whom the expert group spoke also said that they greatly missed the contact with their parents during their detention. When asked, a number of them indicated that, if given the option to change one aspect of the current detention circumstances, they would make sure that during the imprisonment children could remain in contact with their parents.

Furthermore, according to the abovementioned report, long after their detention children still were hypersensitive, tense and down, their self-confidence was low and they experienced difficulties in the contact with their parents and other family members.

These children also declared that after their detention they were troubled by nightmares, sleep- and eating disorders and bedwetting.¹⁷⁵ This was confirmed to the expert group by a youth worker of the YMCA rehabilitation program, who stated that after detention children are often fearful and isolate themselves, that tensions arise at home and that some children show aggressive behavior.

These negative effects on the well-being and the development of the children concerned follow from a period of chronic stress, traumatic experiences (threats of the physical integrity which are experienced as overwhelming and are accompanied by intense fear and helplessness), loneliness and loss of faith in adults, among whom possibly even their own parents. Thereby the child in fact loses his/her position as a child.

6.3.2 The return of the children into the society

During an interview with the expert group a YMCA representative explained that, after their release from military detention, Palestinian children often present themselves as heroes to the outside world, while they are actually broken inside. Palestinian children who are released from Israeli military detention are often hailed as heroes by the community in their village. Many children also feel like a hero, a 'resistance fighter who suffered for the Palestinian people'. Some children came in contact with Palestinian political leaders in prison. This proud feeling may help children temporarily to suppress miserable feelings and overshadow their position of victim. However, the 'heroism' is of a transitory nature.

172 Ibid., p. 50.

173 This is also recognized by the UN Committee on the Rights of the Child (2007, par. 57).

174 YMCA & Save the Children Sweden 2012, p. 52.

175 Ibid., p. 50.

In a meeting with the expert group, the YMCA representative phrased this as follows:

“After two weeks the party is over. People from the community turn back to their own activities; school is not on track yet; the fear to be arrested again keeps the child at home; there is no money; the child is not allowed by his parents to meet his old friends in order to avoid risky situations; the child isolates himself, becomes bored and lonely, which brings the traumas and memories to the surface”.

A problem of a special nature, according to the YMCA spokesperson and other sources, is the practice of recruiting “collaborators” by the Israeli army. This can seriously impair the return of a child into the society. Arrested and detained Palestinian children are sometimes put under pressure to cooperate with the Israeli military authorities as informant after their return. If a child falls into this ‘trap’, the child itself often perceives this as an unforgivable sin. The child does not feel like a hero, but a traitor. If it becomes known that a child has functioned as an informant for the army, the community and even the family of the child can become a danger to this child.

A specific further point of concern is the high school dropout rate amongst Palestinian children who return from Israeli military detention.¹⁷⁶ Various representatives of YMCA, during meetings with the expert group, stated that a significant number of these children quit school prematurely. Many children have trouble motivating themselves to go back to school, experience concentration problems and tend to isolate themselves. Moreover, depending on the duration of the detention, children have fallen behind. Furthermore, the school climate does not seem to match their socio-emotional experience anymore. Many children feel that they matured in prison and have trouble with authority. Thereby they are often perceived as difficult by teachers. Children find it hard to accept help, after they had to cope on their own during their sometimes prolonged detention. These children do not want to return to a school environment with order and duties.

¹⁷⁶ Ibid., p. 53.

Within the YMCA rehabilitation program, the main objective is to get children who return from military detention back into school. As an alternative, an intensive career counselling path is offered and youth can receive guidance in finding an internship related to a practical training.

According to a YMCA representative, his organization reaches about half of the children that return from military detention. A large part of the children therefore remains without any kind of aftercare. Based on the above-mentioned findings (par. 6.3.1 and 6.3.2), the expert group finds that well organized and free aftercare, which at least contains the option of participating in a rehabilitation program and trauma therapy, should be available and accessible for all Palestinian children that return from military detention.

6.3.3 The consequences for the parents and the family

In the abovementioned research of the YMCA and Save the Children Sweden, attention is also paid to the consequences of the Israeli practices of the arrest, interrogation, detention and trial of Palestinian children on their parents and the rest of the family. The expert group spoke with a number of Palestinian parents whose children were arrested and detained by the Israeli army in the past. In the first place it became clear that the nightly arrest of a child by the Israeli army is also a traumatic experience for the parents and other family members, including brothers and sisters.¹⁷⁷

A father of a Palestinian child with whom the expert group spoke shared that he experienced the nightly raid in their home as a horrible moment. His son was arrested hard-handedly by the Israeli military. When he wanted to intervene, he received a blow on his back with a rifle. He felt powerless and had no idea where his son was taken. Also, a soldier called out to him: “we will raise your kid for you”.

¹⁷⁷ Ibid., p. 57.

In such a case, in which a father is beaten while he is trying to help his son, his authority is undermined and he is not able to prevent the arrest of his son, the son experiences the deep helplessness of his father. This will seriously damage his fundamental faith in protection by his parents. Brothers and sisters too witness how their brother is being dragged away forcefully, the material havoc the military sometimes leave behind and the powerlessness of their parents. All members of the family are traumatized by these events.

During the detention, many parents are unable to visit their child, since many Palestinian children spend their detention in prisons on Israeli territory which is inaccessible to Palestinian parents without the required permit (see par. 3.6). The parents also do not have telephone contact with their child. Often the sessions in the military court are the only moments that parents see their child, though only from a distance from the public gallery.

The complete absence of contact with their child during the detention causes much insecurity and worries for parents. These tensions regularly result in symptoms of depression among the parents.¹⁷⁸ A mother with whom the expert group spoke indicated that, during the detention of her son, she felt extremely powerless and was continuously thinking: “where would he be? Will he be alright? Can he cope by himself in prison? How will he come home? How does this affect his future?” During a meeting a father told the expert group that his biggest fear was that during the detention his son would come in touch with collaborators and would be persuaded to function as informant for the Israeli authorities.

A YMCA representative indicated to the expert group that parents face various problems when their child returns home after a period of detention.¹⁷⁹ Often the child has become more self-determining, while his parents want to protect their child extra out of fear of losing him again. The child is traumatized, often sleeps poorly, is tense and sometimes behaves more aggressively than before.

The child has lost his basic trust in his parents, while parents lost their self-confidence as parents. Moreover, it is often also difficult to motivate the child to attend school, while parents value this highly. Obviously, these circumstances can cause tensions and conflicts within a family.

In short, from the moment that the Israeli soldiers are banging on the door until their child returns home again after a period of detention, the parents are completely powerless and cannot protect their child. The parent thereby loses his position as parent and a different child returns.

The YMCA offers guidance and therapies to parents whose child has been arrested and detained by the Israeli military authorities,¹⁸⁰ but by no means reaches all families. The expert group is convinced that well-organized and free counseling and aftercare should be available and accessible for all families of Palestinian children in Israeli military detention.

6.3.4 The consequences for the community

Nightly arrests of children by the Israeli army spread fear and unrest within Palestinian communities. This holds all the more true when within the community the assumption prevails that the army arrests children arbitrarily. Moreover, during the interrogation by the Israeli military authorities arrested children can be put under pressure to name other children from the community. This can contribute to the feeling within the community that no child is safe.

Moreover, the Israeli practice of arrest and detention of Palestinian children may lead to mutual tensions within the Palestinian community. When, for example after an incident of ‘stone throwing’ children, arbitrary arrests are conducted by the Israeli army (see par. 3.1.2) this can cause tensions between the (families of) innocent arrested children and the (families of) children that were actually involved in the incident. This is a form of ‘collective punishment’ that may disrupt a community.¹⁸¹

¹⁷⁸ Ibid., p. 57.

¹⁷⁹ See also: YMCA & Save the Children Sweden 2012, p. 57-58.

¹⁸⁰ Ibid., p. 68-69.

¹⁸¹ Ibid., p. 60.

Furthermore, the practice of recruitment of informants among arrested and detained Palestinian children by the Israeli army leads to the emergence of mutual distrust within the Palestinian community. Furthermore, this practice especially creates distrust and aloofness towards children who return from military detention, which can seriously complicate or even completely obstruct their reintegration.

The Israeli military practice of arrest and detention of Palestinian children can thus lead to the gradual disruption of Palestinian communities by mutual reproaches, distrust and even the departure of families. This may seriously weaken the social support system of these children, whilst this system is all the more important in times of stress.



Photo: Alrowwad Cultural and Theatre Center for Children

7. CONCLUSIONS AND RECOMMENDATIONS

On the basis of the findings presented in this report, the expert group concludes that the treatment of Palestinian children accused of having committed crimes by the Israeli military authorities represents

a serious, systemic violation of internationally recognized rights of these children. This conclusion can be specified as follows:

1. Children are not treated in a manner which “does not detract from the feeling of dignity and self-esteem of the child and which increases the child’s respect for the human rights and fundamental freedoms of others’ (this is in violation of the key starting point of juvenile justice; CRC art. 40(1)).
2. Children are subjected to a treatment that is in breach of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (this is in violation of CRC art. 37(a)).
3. Children are denied the right to be informed promptly and directly of the charges against them (this is a violation of CRC art. 40(2bii)).
4. Arrested and detained children cannot promptly access legal and other appropriate assistance, also not during the interrogation (this is a violation of CRC art. 37(d) and art. 40(2ii) and (iii)).
5. Children are insufficiently protected against self-incrimination and are put under pressure to give incriminating testimony or to confess guilt (this is a violation of CRC art. 40(2biv)).
6. Children have no access to an independent and impartial authority or judicial body, also not to have the legality of their detention reviewed (this is in violation of CRC art. 40(2)(biii) and (iv) and art. 37(d)).
7. Children are insufficiently protected against arbitrary deprivation of liberty (this is in violation of CRC art. 37(b)).
8. Deprivation of liberty of children is insufficiently applied as a measure of last resort and for the shortest possible period of time (this is in violation of CRC art. 37(b)).
9. Insufficient alternatives for detention are available. There are also no extrajudicial settlement means available that fit the development stage of the children and whereby the rights of the child are respected (this is a violation of CRC art. 37(b) and art. 40(3 and 4)).
10. Detained children are insufficiently protected against inhuman treatment and treatment without respect for their human dignity. His/her needs and age shall be taken into account (this is a violation of CRC art. 37(c)).
11. Detained children have insufficient to no possibilities to maintain the contact with their family through correspondence and visits (this is a violation of CRC art. 37(c)).
12. The children’s right to a treatment that contributes to the child’s reintegration and to the possibilities to assume a constructive role in society is insufficiently safeguarded (this is a violation of CRC art. 40(1)).

In all of this attention has to be demanded for the significant impact that the practices that are at the center of this report have on the lives of children, their families and their direct environment. The negative consequences thereof for the development chances of the children and their health and well-being cannot be neglected. The interests of children and their right to a good and healthy development which is aimed at an independent and constructive role in the society are trampled upon, which in turn results in a violation of international children's rights (see CRC art. 3 and 6). There is also a systematic breach of the right to protection of the privacy and the family life of the children and their families and a serious risk of disruption of the communities of which the children are part. By extension, the expert group wishes to point out that the future of a whole generation is at stake and that the current practice does not bring a sustainable and peaceful solution of the underlying conflict any closer.

It will be clear that undoing these violations necessitates a thorough change of the existing conduct towards and treatment of Palestinian children by the Israeli military authorities. However, the practice of military detention of children cannot be separated from the context of the conflict between Israel and the Palestinian Authority and the nearly fifty year old military occupation of the Palestinian Territories. A structural solution thus lies in the end of this occupation, which the UN has expressly urged Israel to do.¹⁸² This would then need to be part of a (peace) agreement between the Israeli government and the Palestinian Authority. The expert group takes the position that, in the context of the current peace talks and where possible at EU level, the Dutch government should draw attention to the treatment of Palestinian children by Israeli soldiers.

¹⁸² See: UN Security Council, Resolution 242 (S/RES/242), 22 November 1967.



Photo: Karin Arts

Changes in the short term will have to be pursued within the existing frameworks of arrest, interrogation and detention of Palestinian children by the Israeli military authorities and their trial by Israeli military courts, and the international law that is applicable to them, such as the CRC and the Fourth Geneva Convention. In the opinion of the expert group, the Dutch government, in its contacts with the Israeli government, the Palestinian Authority and where possible again in the context of the European Union, should exert maximum efforts to contribute to the ending of the current practices by a thorough revision thereof.

The expert group in the first place calls on the Dutch government to, also at EU level, explicitly voice its concerns about the serious violations of children's rights that are associated with the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities, whereby these authorities do not adhere to their obligations under the CRC which Israel has ratified.

The expert group furthermore calls on the Dutch government to urge the Israeli government to fulfill its obligations under the CRC by guaranteeing that arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities solely takes place in accordance with the internationally recognized rights of the child and related standards. More concretely, this means that the Dutch government has to insist that at least the measures that are mentioned hereafter are taken and to offer concrete support to this end, for example, by means of support of relevant local actors and activities, and in the form of making expertise and financial means available where that is desirable and possible.

The expert group recommends the following specific measures:

1. General:

measures need to be taken to ensure that the arrest, detention and imprisonment of Palestinian children by the Israeli military authorities will only be used as a measure of last resort and for the shortest period of time possible.

2. The arrest:

measures need to be taken to end and replace the practice of nightly arrests with alternatives, including a summons system for children suspected of crimes. Exceptions to the summons system ought only to be possible on the basis of grounds or circumstances that are laid down accurately in a law or regulation. It is desirable that the introduction of the summons system, for example by means of a pilot, will be monitored and evaluated by an independent, authoritative commission. If the summoning will result in an arrest, the parents need to be notified within 24 hours of the child's location and be informed about the visiting hours (day and hour) and frequency (at least once a week). In addition, if required, a permit will be issued promptly to enable the visit to be made.

3. The interrogation:

for the monitoring of the nature and quality of the interrogation it is of great importance that audiovisual recording of this interrogation will become mandatory. This prevents abuses during the interrogation. At the interrogation, at least a lawyer has to be present and the child cannot waive this right to legal assistance. Confessions or statements made by the child without the presence of the lawyer should not be admitted as evidence. Also, the presence of one of the parents or a person of confidence appointed by them is to be mandatory. It is of great importance that the military or others who conduct the interrogations have received a good training in the interrogation of children. Also the lawyers are to receive a good training.

4. Pre-trial detention:

the use of pre-trial detention has to be actually a measure of last resort, because deprivation of liberty can have a large negative impact on the development of the child, but also because at this specific stage it has not yet been established by a judicial body that the child is guilty (the presumption of innocence). In order to achieve this, alternatives need to be developed and applied as much as possible, including the option of release on bail. The bail should be proportionate to the gravity of the alleged offence.

5. The trial by the military juvenile court:

measures need to be taken to bring this trial in line with the international standards for the trial of children, which require a fair and 'child friendly' trial. The current practice comes down to already treating the child as guilty in the phase of the judicial investigation. The fact that, already at that stage, negotiations are taking place on the punishment is a fundamental violation of basic rules of a fair trial. As a result, the hearing in which the judge is to decide on the guilt and the punishment is no more than a formality implementing what was agreed between the

prosecutor and the lawyer representing the child prior to the session. Any communication with the child itself lacks completely.

6. Execution of detention:

the living conditions of Palestinian children in detention need to conform to the international standards in this field (e.g. UN Rules for the Protection of Juveniles Deprived of their Liberty). Measures need to be taken to ensure among others appropriate education, medical and psychological care, and possibilities for sports and recreation. Moreover, independent monitoring of the treatment of Palestinian children in detention needs to be ensured.

7. Aftercare:

measures are required to offer children the essential support for physical and psychological recovery and social reintegration after the traumatic experiences of the arrest, the interrogation, the detention and the trial. More specifically: support of activities and programs of local NGOs is required ('human and financial resources') to promote that all Palestinian children who return to society after arrest and detention, as well as their families, are reached and will receive professional aid and support.

The expert group calls upon the Dutch government to request the Israeli authorities to enable verification of these concrete measures.

APPENDIX I:

OVERVIEW OF PERSONS AND ORGANIZATIONS WITH WHOM THE EXPERT GROUP HAS MET

During the visit to Israel and the OPT the expert group has spoken with the following persons/organizations:

INDIVIDUALS:

- Formerly detained children and their parents – Bethlehem (Aida refugee camp), Beit Ommar and East-Jerusalem (Silwan)
- Elementary schoolteachers – Hebron and Bethlehem (Aida refugee camp)

ISRAELI, PALESTINIAN AND INTERNATIONAL ORGANIZATIONS:

- Addameer Prisoner Support and Human Rights Association (www.addameer.org) – Sahar Francis (director, as well as lawyer)
- Al Rowwad Center, Aida Refugee camp, Bethlehem (www.alrowwad.org) – Amira Abdelfattah
- Association for Civil Rights in Israel (www.acri.org.il/en) – Raghad Jaraisy (lawyer) and Nisreen Alyan (lawyer)
- B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories (www.btselem.org) – Naama Baumgarten-Sharon (researcher)
- Breaking the Silence (www.breakingthesilence.org.il) – Avihai Stollar (research coordinator; former Israeli soldier)
- Combatants for Peace (cfpeace.org) – Sulaiman Khatib (co-founder)
- Defence for Children Palestine (www.dci-palestine.org) – Rifat Kassis (director) and Ayed Abu Eqtaish (head 'accountability' program)
- Ensan Center for Democracy and Human Rights (www.ensancenter.org) – Shawqi Issa (director, as well as lawyer)

- HaMoked (www.hamoked.org) – Daniel Shenhar (lawyer)
- Madaa Center, Silwan, East-Jerusalem (www.madaasilwan.org) – Sahar Abbassi (coordinator), Tamer Nafer (youth worker), Ahmad Qaraeen
- Military Court Watch (www.militarycourtwatch.org) – Gerard Horton (co-founder, as well as lawyer)
- Palestinian Prisoners Society – Qaddura Fares (head of Prisoners Society; former Palestinian member of parliament)
- Physicians for Human Rights Israel (www.phr.org.il) – Dr. Graciela Cors (psychiatrist and chairperson)
- Psycho Active - Mental Health Professionals for Human Rights (www.psychosactive.org.il) – Dr. Maya Mukamel (clinical psychologist)
- Public Committee Against Torture in Israel (www.stoptorture.org.il/en) – Louis Frankenthaler (head 'development and international outreach')
- UNICEF oPt (www.unicef.org/infobycountry/oPt.html) – Bruce Grant (head child protection) and Catherine Weibel (head communication)
- War Child (www.warchildholland.org/occupied-palestinian-territory) – Francesca Bombi (coordinator 'Advocacy and Child Rights Monitoring in the OPT')
- Women's Centre for Legal Aid and Counselling (www.wclac.org) – Salwa Duabis (head of the international advocacy-program)
- YMCA Rehabilitation Center, Beit Sahour (www.ej-ymca.org) – Nader Abu Amsha (director)

ISRAELI AUTHORITIES:

- Military judge – Israeli military court in Ofer
- Zohar Halevi – spokesperson Israeli army (IDF)

PALESTINIAN AUTHORITY:

- Issa Qaraqe – Palestinian Minister of Prisoners Affairs
- Majed Bamyá; First Secretary at the Palestinian Ministry of Foreign Affairs, in charge of the portfolio ‘Palestinian prisoners’
- Khalida Jarrar – Palestinian member of parliament and head of Parliamentary Committee on Prisoners

DUTCH GOVERNMENT OFFICIALS:

- Caspar Veldkamp – Ambassador Kingdom of the Netherlands, Tel Aviv (Israel)
- Roos Frederikse – political staff member, Embassy Kingdom of the Netherlands, Tel Aviv (Israel)
- Gert Kampman – head of Dutch representation at the Palestinian Authority, Ramallah (Occupied Palestinian Territories)
- Joost van Ettore – senior policy advisor, Dutch representation at the Palestinian Authority, Ramallah (Occupied Palestinian Territories)

ACADEMICS:

- Prof. Charles Greenbaum – emeritus professor of social psychology, Hebrew University of Jerusalem
- Prof. Nadera Kevorkian – professor of criminology, Hebrew University of Jerusalem
- Prof. David Kretzmer – emeritus professor of international law, Hebrew University of Jerusalem / University of Ulster in Northern Ireland

OTHER PROFESSIONALS:

- Nery Ramati – Israeli solicitor
- Smadar Ben Nathan – Israeli solicitor
- Gideon Levy – columnist and editorial board member, Haaretz (www.haaretz.com)

APPENDIX II:

OVERVIEW OF APPROACHED ISRAELI (GOVERNMENTAL) AUTHORITIES

The organization of the expert mission approached various Israeli (governmental) authorities to arrange meetings with their representatives. The following governmental bodies were, despite repeated requests, unfortunately unwilling to talk to the expert group or to otherwise cooperate with the expert mission:

- The Israeli Ministry of Foreign Affairs
- The Israeli Ministry of Justice
- The Israeli Ministry of Defense
- The Israeli Court Office
(request for meetings with juvenile judges denied)
- The Israeli Prison Service
(no access to prisons granted)

Furthermore, the organization has in vain approached various Israeli members of parliament for a meeting with the expert group. The efforts of the organization to arrange a meeting with a representative of 'The Israel National Council of the Child' were also not successful.

The expert group was able to talk to a spokesperson of the Israeli army during the visit to the military court in Ofer. The expert group was also given the opportunity during this visit to, after the attended sessions, ask some questions to the serving Israeli military judge.



Photo: Alrowwad Cultural and Theatre Center for Children

APPENDIX III:

MEMBERS OF THE EXPERT GROUP

BIOGRAPHIES OF THE EXPERT GROUP MEMBERS:

Prof. Dr. Jaap Doek (Chair)

Jaap Doek is emeritus professor of family and youth law at the Vrije Universiteit Amsterdam. Between 1999 and 2007 he was a member of the UN Committee on the Rights of the Child, which he chaired between 2001 and 2007. From 1988 to 1992 he was Dean at the Faculty of Law of the Vrije Universiteit. From 1998 to

2003 he was also professor of youth law at Leiden University. From 1978 to 1985 he was a judge at the juvenile courts of Alkmaar and The Hague, and from 2005 to 2012 he was deputy judge at the Amsterdam Court of Justice. From 1982 to 1986 he was a member of the Council of the International Association of Juvenile and Family Court Magistrates. Currently, Jaap Doek is chair of the 'Aflatoun Child Savings International', an international NGO promoting social and financial education for children.



The members of the expert mission at the YMCA in Beit Sahour.

Since 2006, he is a member of the advisory board of the Innocenti Research Centre of UNICEF in Florence and of the expert committee for the selection of candidates of the annual Children's Peace Prize (initiative of the Dutch NGO KidsRights). Since 2008 he also serves on the advisory board of Plan Netherland, is a member of the jury for the Human Rights Defenders Tulip (an international award for human rights defenders founded by the Dutch Minister of Foreign Affairs) and a member of the Global Agenda Council on the Welfare of Children as developed by the World Economic Forum. Furthermore, Jaap Doek acted as a consultant e.g. for the Special Representative on Children and Armed Conflicts, the regional office of UNICEF for East and South[ern] Africa, a number of national UNICEF offices (Armenia, Azerbaijan, Kazakhstan, Nepal and Surinam) and a number of governments of states parties to the CRC.

Prof. Dr. Karin Arts

Karin Arts is professor of international law and development at the International Institute of Social Studies (ISS), which is based in The Hague, The Netherlands but part of the Erasmus University Rotterdam. After a law study in Leiden, she obtained her Ph.D at the Vrije Universiteit Amsterdam. Karin Arts examines the role of international law as an instrument that can either stimulate or obstruct development. She teaches, does research and advisory in this field, and especially focuses on a human rights approach to development. She pays special attention to the situation and rights of children in developing countries. Together with the Erasmus School of Economics and the Dutch NGO KidsRights, Karin recently launched the KidsRights Index; the first index that comprehensively maps child rights implementation worldwide (www.kidsrightsindex.org). Karin Arts is a member of the Human Rights Committee of the Advisory Committee on International Affairs and a member of the advisory board of the Dutch NGO The Rights Forum.

Prof. dr. Peter van der Laan

Peter H. van der Laan is professor of probation at the Vrije Universiteit Amsterdam and senior researcher at the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR). He studied remedial education at Leiden University and obtained his Ph.D degree in 1991 at the Vrije Universiteit on a thesis on experiments with alternative sanctions for juveniles. He is among others a member of the youth section of the Council for the Administration of Criminal Justice and Protection of Juveniles and of the supervisory board of the Altra Foundation for Youth and Parental Assistance and Special Education. As scientific expert he took part in numerous juvenile justice assessment missions of, among others, the Council of Europe and UNICEF. He also co-wrote various recommendations of the Council of Europe, including 'New ways of dealing with juvenile delinquency'. For years already, his research and education activities focus on judicial youth care and juvenile justice with increasing attention for questions relating to the effectiveness and meaning of (criminal law) interventions for juveniles and adults.

Prof. Dr. Ton Liefwaard

Ton Liefwaard is professor of children's rights (UNICEF-chair) at the Faculty of Law of Leiden University. He specialized in international human rights and children's rights, juvenile (justice) law, children in detention and violence against children. His Ph.D thesis is entitled *Deprivation of Liberty of Children in Light of International Human Rights Law and Standards* (Intersentia Publishing 2008). He regularly acts as an advisor of national and international organizations (e.g. UNICEF, Council of Europe, US Department of Justice, Council for the Administration of Criminal Justice and Protection of Juveniles) and supervises several Ph.D candidates. Currently, he works as an advisor for the Council of Penal Co-operation of the Council of Europe in the area of violence within juvenile institutes in Europe. Furthermore, Ton Liefwaard is a member of the scientific editorial board of the Dutch language *Journal for Family and Juvenile Law* [tijdschrift voor Familie- en Jeugdrecht] and the *Flemish Journal for Youth and Child Rights* [Tijdschrift voor Jeugd-en Kinderrechten]. He also serves as a deputy (juvenile) judge at the court of Amsterdam.

Linda Vogtländer (M.Sc)

Linda Vogtländer (M.Sc) is a child and adolescent psychiatrist, who since 2003 works at de Waag Utrecht, the Netherlands, which is a center for outpatient forensic psychiatry for youth and adults. In her clinical work, she focusses on the diagnostics and treatment of anti-social behavioral problems and sexual behavioral problems with youth, relational violence between parents and its effect on the security of the children. She developed and implemented a treatment program for the whole family in cases of child abuse. On request of the court, she wrote the expert research report 'about the possible psychic consequences of the sexual abuse and the child pornography for the (very) young children and their families in the indecency case in Amsterdam'. She is a member of the Working Group Trauma and Child Abuse of the Dutch Knowledge Centre for Child and Adolescent Psychiatry. She is leading a research on the development of a methodology (the GIPS) for structured decision-making by and cooperation of professionals around families in cases of child abuse.

Prof. Dr. Micha de Winter

Micha de Winter is professor of social education and youth policy at the Faculty of Social Sciences of Utrecht University. He was trained as a development psychologist and family therapist at the Philadelphia Child Guidance Clinic (United States). His research and education activities focus on social education issues, including prevention of child and youth problems, youth participation and radicalization of youth. He is the author of numerous books and articles, including 'Children as Fellow Citizens, Participation and Commitment' (1997), 'Someone who Treats you as an Ordinary Human Being: Homeless Youth Examine the Quality of Professional Care' (2003), 'Childrearing, Education and Youth Policy for the Common Good' (2007) and 'Socialization and Civil Society' (2012).

Yannick van den Brink (LL.M, MA) (secretary)

Yannick van den Brink is a Ph.D. candidate at Faculty of Law of Leiden University. He obtained his LL.B degree in Dutch Law (2009, cum laude), his LL.M degree in Criminal Law (2011, cum laude) and his MA degree in Global Criminology (2012, cum laude) at Utrecht University. Besides his studies, he was employed for two years as a student assistant at a leading law firm. Furthermore, as a junior lecturer he taught classes in the minor 'Youth and Crime' at Utrecht University. He also worked as a research assistant in the Youth Law department of the Leiden University, where among others he co-authored the first Dutch Children's Rights Monitor. In 2012 he obtained a Ph.D grant from the E.M. Meijers Institute to conduct research on the application of pre-trial detention in the Dutch juvenile justice system. Since then he is a Ph.D candidate at Leiden University. Yannick van den Brink publishes and lectures in the field of juvenile justice and the deprivation of liberty of children.

APPENDIX IV:

ORGANIZATION AND SUPPORT OF THE EXPERT MISSION

The expert mission was organized and supported by *gate48* and *Palestine Link*.

GATE48 – PLATFORM FOR CRITICAL ISRAELIS IN THE NETHERLANDS



gate48 is a platform for Israelis living in the Netherlands who oppose the occupation of the Palestinian territories and call for its end. It was founded in 2007 by three Israeli women, living in the Netherlands. In our activities we wish to convey to the Netherlands opinions and voices which show that criticizing Israel's official policy is not the same as being anti-Israeli.

gate48 provides a platform to people from Israel/Palestine who work together in non-violent ways to resist the occupation and to find a just solution for all. We organize public-meetings, exhibitions, screenings and lectures in the Netherlands and expert missions to Israel/Palestine. We strongly believe that the two peoples who share the same land must share equal justice and equal rights.

For further information, see: www.gate48.org

PALESTINE LINK



Palestine Link is an initiative for Palestinians in the Netherlands committed to Palestinian national and human rights. It promotes Palestinian interests. Palestine Link seeks to put, in an open manner, the Palestinian question on the agenda by countering myths and stereotypes, and functioning as a bridge to link up individuals and organizations in the Netherlands and Palestine. Palestine Link is an independent knowledge and service center, and a portal to all aspects of the Palestinian society and the socio-economic, historical, cultural and political developments in the region.

For further information, see: www.palestinelink.nl

APPENDIX V:

FIGURES ON THE NUMBER OF PALESTINIAN CHILDREN IN ISRAELI MILITARY DETENTION

Number of Palestinian children in Israeli military detention:

	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	221	211	195	189	164	178	195
2013	223	236	238	238	223	193	195	179	179	159	173	154
2014	183											

Source: <http://www.dci-palestine.org/content/child-detainees>

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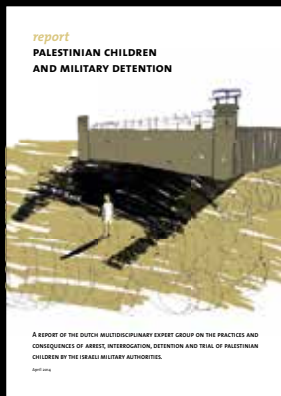
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report

PALESTINIAN CHILDREN AND MILITARY DETENTION



This document is the English translation of a report that was originally published in Dutch in April 2014. The aim of this report is to request the Dutch government, and particularly the Dutch Minister of Foreign Affairs, to pay special attention to the practices of arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities in the West Bank. This report seeks to encourage the Minister, in his relations with the Israeli and Palestinian authorities and where possible in the context of the European Union, to promote that arrest, interrogation, detention and trial of Palestinian children by the Israeli military authorities only takes place in accordance with the internationally recognized rights of the child and related standards.



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