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including the right to development

Written statement* submitted by Defence for Children International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2012]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The situation facing Palestinian children prosecuted in the military court system

Since the Israeli occupation of Palestinian territory in 1967, Palestinians have been charged with offences under Israeli military law and tried in Israeli military courts. It is estimated by the UN that since 1967, over 700,000 Palestinians have been detained under Israeli military orders, including children.

Each year approximately 500-700 Palestinian children from the occupied West Bank are prosecuted in Israeli military courts after being arrested, interrogated and detained by the Israeli army, police and security agents. Since 2000 alone, around 7,500 Palestinian children have been detained and prosecuted in the system, which has now been operating for over 44 years. Credible reports of torture and other cruel, inhuman or degrading treatment or punishment are persistent.

Arrest

Children are frequently arrested from the family home by heavily armed soldiers in the middle of the night. The children are then painfully tied and blindfolded before being placed in the back of a military vehicle and transferred to an interrogation and detention centre. In many cases, these interrogation and detention centres are located in Israeli settlements, declared illegal under international law. It is rare for a child, or his/her parents to be told the reason for arrest, or where the child is being taken. The arrest and transfer process is frequently accompanied by both physical and verbal abuse.

Interrogation

On arrival at the interrogation and detention centre, the child is questioned in the absence of a lawyer or family member, and there is generally no provision for the audio-visual recording of the interrogation as a means of independent oversight. Children are frequently threatened and physically assaulted during interrogation, often resulting in the provision of a coerced confession, or the signing of documents which the child is not given a chance to read or understand. Some of the most common types of abuse reported by the children are beating, kicking and threats to themselves and to their families, and exposure to the elements. In some cases, children are held in solitary confinement in windowless cells with a dim yellow light that is kept on 24 hours-a-day for prolonged periods of time.

Military court proceedings

Following interrogation, children are brought before a military court which has jurisdiction over children as young as 12 years old. In the overwhelming majority of cases bail is denied and an order for detention until the end of the legal process will be made. Most children ultimately plead guilty, whether the offence was committed or not, as this is the quickest way out of the system. According to the military court's most recent annual report, 99.74 percent of cases end in conviction, with custodial sentences being imposed on children in 98 percent of cases. This contrasts with a custodial sentence rate of around 6.5 percent for Israeli children in the civilian juvenile justice system.

Imprisonment

Once detained a significant proportion of children (72 percent) are transferred to prisons and detention facilities inside Israel, in violation of Article 76 of the Fourth Geneva Convention which prohibits such transfers out of occupied territory. The practical consequences of this violation is that many children receive infrequent, or no family visits, due to the length of time it takes to obtain a permit, or because permits are denied for unspecified "security" reasons. Further, Palestinian children are not permitted use the telephone or send and receive letters whilst in detention.

Discriminatory nature of the military court system

This pattern of abuse and lack of fair trial rights in the military "legal" system is compounded by the fact that this system is only applied to Palestinian children living

in the West Bank.¹ Israeli children living in illegal settlements in the West Bank are subjected to Israeli civilian law, which affords far greater rights and protections. In other words, two legal systems for children operate in the same territory (West Bank), but adopt different standards and protections depending on whether the child is Israeli or Palestinian. Some of the key discrepancies are presented in the Table below:

Some basic rights and protections: Comparative table

#	Event	Israeli civilian legal system	Israeli military detention system
1.	Minimum age of criminal responsibility	12 ²	12 ³
2.	Minimum age for custodial sentences	14 ⁴	12 ⁵
3.	Age of majority	18 ⁶	18 ⁷
4.	Child's legal right to have parents present during questioning	Partial ⁸	No
5.	Child's legal right to have a lawyer present during questioning	No	No
6.	Audio-visual recording of interrogations	Partial ⁹	No
7.	Maximum period of detention before being brought before a judge	12-24 hrs ¹⁰	8 days ¹¹
8.	Maximum period of detention without access to a lawyer	48 hrs ¹²	90 days ¹³
9.	Maximum period of detention without charge	40 days ¹⁴	180 days ¹⁵
10.	Maximum period of detention between being charged and conclusion of trial	6 months ¹⁶	2 years ¹⁷
11.	Percentage of cases in which bail is denied	20% ¹⁸	87.5% ¹⁹
12.	Percentage of cases in which a custodial sentence is imposed	6.5% ²⁰	83% ²¹

Recommendations

Children should not be prosecuted in military courts which lack comprehensive fair trial and juvenile justice standards. DCI-Palestine recommends that as a minimum safeguard in the light of consistent reports of mistreatment and torture, that the Israeli authorities:

- Ensure that no child is interrogated in the absence of a lawyer of their choice and family member.
- Ensure that all interrogations of children are video recorded.
- Ensure that all evidence suspected of being obtained through ill-treatment or torture be rejected by the military courts.
- Ensure that all credible allegations of ill-treatment and torture be thoroughly and impartially investigated.

Notes

¹ Palestinian children living in Gaza are subjected to the Israeli civilian security legislation.

² Penal Law (1977) – Section 34F.

³ Military Order 1651 – Sections 1 and 191.

⁴ Youth (Trial, Punishment and Modes of Treatment) Law (1971) – Sections 25(d).

⁵ Military Order 1651 – Sections 1, 136 and 168.

⁶ Youth (Trial, Punishment and Modes of Treatment) Law (1971) – Section 1.

⁷ On 27 September 2011, General Avi Mizrahi, the Israeli military commander in the occupied West Bank, issued Military Order 1676 raising the age of majority in the military courts from 16 to 18 years.

⁸ Youth (Trial, Punishment and Modes of Treatment) Law (1971) – Section 9H. A parent is allowed to be present at all times in circumstances where the child has not been formally arrested, but may not intervene in the interrogation process. An exception to this rule is permitted upon written authorization of an authorized officer, and in cases in which the well-being of the child requires the parent not to be present.

⁹ In all cases other than security offences where the maximum penalty is 10 years or more - Criminal Procedure (Suspects Interrogation) Law (2002) – Sections 4 and 17. There is no requirement for the audio-visual recording of interrogations in security offences.

¹⁰ Amendment 14 to the Youth (Trial, Punishment and Modes of Treatment) Law (2008). Children aged between 12 and 13 must be brought before a judge within 12 hours, and children 14 years and over must be brought before a judge within 24 hours.

¹¹ Military Order 1651 – Sections 32 and 33.

¹² Criminal Procedures (Powers of Enforcement-Arrests) Law (1996) – Section 34.

¹³ Military Order 1651 – Sections 58(C) and (D), 59(B) and (C).

¹⁴ Youth (Trial, Punishment and Modes of Treatment) Law (1971) – Section 10K; and the Criminal Procedure (Enforcement Powers – Arrests) Law (1996) – Section 59.

¹⁵ Military Order 1651 – Sections 32(A), 37 and 38.

¹⁶ Youth (Trial, Punishment and Modes of Treatment) Law (1971) – Section 10L; and the Criminal Procedure (Enforcement Powers – Arrests) Law (1996) – Section 61 – 9 months for adults, with possible indefinite extensions.

¹⁷ Military Order 1651 – Section 44(A) - with possible indefinite extensions.

¹⁸ The Israel National Council for the Child, Annual Report (2009). This figure relates to 2008.

¹⁹ The analysis was prepared by DCI-Palestine's Legal Unit based on 164 cases closed by the Unit in the Israeli military courts in 2009. Out of these 164 cases, 28 children were released after questioning and did not appear before the military court. The sample used to assess the percentage of children granted bail does not include these 28 children who were released before entering the court system. The sample covers children aged between 12 and 17 years.

²⁰ The Israeli National Council for the Child, Annual Report (2009/2009). This figure relates to 2008.

²¹ The analysis was prepared by DCI-Palestine's Legal Unit based on 164 cases closed by the Unit in the Israeli military courts in 2009. The sample covers children aged between 12 and 17 years.