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The treatment of Palestinian minors in the Israeli justice system

Report¹

Committee on Social Affairs, Health and Sustainable Development

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Summary:

The Parliamentary Assembly has always made the defence of human rights, in particular the rights of children, its priority. It is one of the rare fora which combines expertise on children's rights and the Middle East with wide parliamentary representation.

The treatment of Palestinian minors in the Israeli justice system tarnishes the image of Israel as a democratic State which respects human rights and the rule of law, and poses an obstacle to the peace process. Notwithstanding that the criminal behaviour of some Palestinian minors should be strongly condemned, since no person, and especially no child, forfeits his/her human rights, no matter what he/she has done, there is no excuse for ill-treatment of a child.

Without taking a position on the underlying conflict, the Assembly should thus call on the Israeli authorities to work with UNICEF, the International Committee of the Red Cross, civil society and all relevant stakeholders with a view to changing, as appropriate, laws, practice and attitudes so as to fully protect the rights of Palestinian children in the Israeli justice system. The Assembly should stand ready to assist the Knesset and the Palestinian authorities in this regard.

1. Reference to committee: [Doc. 13979](#), Reference 4200 of 22 April 2016.



Contents

Page

A. Draft resolution.....	3
B. Explanatory memorandum by Ms Liliane Maury Pasquier, rapporteur.....	5
1. Introduction.....	5
2. Aim and scope of the report.....	5
2.1. International law and standards.....	6
2.2. The work of international organisations and of NGOs.....	7
2.3. The Parliamentary Assembly perspective.....	8
3. The treatment of Palestinian minors in the Israeli justice system.....	8
3.1. Laws.....	8
3.2. Practice.....	9
3.3. Attitudes.....	11
4. The way forward: conclusions and recommendations.....	12

A. Draft resolution²

1. Recalling its Resolution 2202 (2018) “The Israeli-Palestinian peace process: the role of the Council of Europe”, the Parliamentary Assembly reiterates its support for a two-State solution to the Israeli-Palestinian conflict, based on the 1967 borders. The Assembly is convinced that the two sides to the conflict and the international community (including the Council of Europe and its Assembly) must work together to overcome obstacles to the peace process.

2. One of the obstacles to the peace process is the hardening of attitudes on both sides, to the detriment, in particular, of children and the young generation. In its Resolution 2204 (2018) on protecting children affected by armed conflicts, the Assembly underlined the importance of educating children and young people who have experienced traumatising armed conflicts on non-violent approaches to ending aggression and conflict, in order to make them resilient to the trans-generational transmission of violence and allow them to grow up in a culture of constructive dialogue.

3. The Parliamentary Assembly has always made the defence of human rights, in particular the rights of children (aged 0-18), its priority. In its Resolution 2010 (2014) “Child-friendly juvenile justice: from rhetoric to reality”, it reiterated its support for the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, which take into account the unique needs of children when they come into contact with the justice system. The Assembly is one of the rare fora which combines expertise on children’s rights and the Middle East with wide parliamentary representation.

4. Bringing law and practice into conformity with the human rights standards modelling juvenile justice at international and European level not only serves the best interests of the child – a primary consideration – but is also less costly and more likely to ensure public safety and help young people to reach their potential. In the case of the Israeli-Palestinian conflict, such a move would also help the peace process as the treatment of Palestinian minors in the Israeli justice system tarnishes the image of Israel as a democratic State which respects human rights and the rule of law. However, while very much regretting the absence of progress in the underlying conflict, the Assembly would not like to take position on this conflict, but take only the side of children, based on international and European law and standards.

5. According to the United Nations Children's Emergency Fund (UNICEF) and the vast majority of non-governmental organisations (NGOs) (international, Palestinian and Israeli), ill-treatment of Palestinian minors in the Israeli military detention system is widespread, systematic and institutionalised throughout the process, from the moment of arrest until the child’s prosecution and eventual conviction and sentencing. The Israeli military court system also fails to comply with basic standards applicable to children as regards due process. Notwithstanding that the criminal behaviour of some Palestinian minors should be strongly condemned, since no person, and especially no child, forfeits his/her human rights, no matter what he/she has done, there is no excuse for ill-treatment of a child.

6. The Parliamentary Assembly thus calls on the Israeli authorities to work with UNICEF, the International Committee of the Red Cross, civil society and all relevant stakeholders with a view to changing, as appropriate, laws, practice and attitudes so as to fully protect the rights of Palestinian children in the Israeli justice system. The Assembly stands ready to assist the Knesset and the Palestinian authorities in this regard. In particular, the Assembly recommends that:

6.1. the provisions of international law related to the rights of children (including of children in conflict with the law) be fully applied, and endeavours be made to apply the higher Council of Europe standards included in its Guidelines on child-friendly justice, thus truly making the best interests of the child a primary consideration;

6.2. each individual case be carefully reviewed before any intervention takes place, to ascertain whether the arrest, detention or imprisonment of a child is really necessary, mindful of the provisions of the United Nations Convention on the Rights of the Child (UNCRC), which stipulate that such arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time;

6.3. night-time arrests (or summons) of children in their homes and night-time interrogations be avoided;

6.4. handcuffing and strip-searching children be limited as far as possible, and the blindfolding/hooding of children be prohibited;

2. Draft resolution adopted unanimously by the committee on 25 April 2018.

- 6.5. parents be promptly notified of an arrest, the reasons therefore, and the place where the child is detained;
 - 6.6. all forms of physical, psychological or other abuse of children during arrest, transit and waiting periods – and during interrogations themselves – be ended (including coercive tactics to make minors confess or sign confessions in a language they do not understand), and that measures be taken to prevent such abuse;
 - 6.7. audiovisual recordings of all interrogations be made mandatory, and that children be informed of their rights in a language and manner they can understand, so that they can exercise their rights effectively, including the right to remain silent and to speak to a lawyer before interrogations;
 - 6.8. the rules on interrogations be revised to make them consistent with the Guidelines on child-friendly justice, and the conditions under which bail and plea bargains are granted be revised to make them consistent with the UNCRC;
 - 6.9. no child be held in administrative detention or solitary confinement for any reason;
 - 6.10. Palestinian children be held in facilities located in the occupied Palestinian territories and that the rights of family members to visit be fully respected in practice;
 - 6.11. a system of effective oversight be put in place to prevent and punish ill-treatment of Palestinian children in the Israeli justice system, ensuring redress and adequate reparation to child victims of ill-treatment and ending the impunity for the perpetrators of such abuse.
7. The Parliamentary Assembly calls on Israel to raise the age of criminal responsibility of children to at least 14 years of age for all children who come under its jurisdiction, in conformity with Resolution [2010](#) (2014).
 8. The Parliamentary Assembly calls on the Israeli and the Palestinian authorities to educate children and young people in their communities on non-violent approaches to ending aggression and conflict with a view to giving new life to the peace process.

B. Explanatory memorandum by Ms Liliane Maury Pasquier, rapporteur

1. Introduction

1. On 5 February 2016, Ms Annette Groth (Germany, UEL) and 19 other Parliamentary Assembly members tabled a motion for a resolution on “Detention of Palestinian minors in Israeli prisons”.³ According to the motion, “a sharp increase in the number of Palestinian children in Israel prisons has been noted by several human rights organisations”. The motion refers to investigations by the non-governmental organisation (NGO) Human Rights Watch, which “indicate that existing laws are insufficient to safeguard the rights of Palestinian children in the custody of the Israeli police and the IDF [Israel Defense Forces], and that officials often adhere to legal requirements and procedures in a manner that undermines the protections they aimed to guarantee”. The motion calls for an investigation into “how Israel – and other countries as well – could better safeguard the rights of children in custody and thereby would be able to fully abide [by] the UN children’s rights conventions”, proposing a possible co-operation between the Israeli Government and the Council of Europe Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

2. This motion was referred to our committee for report on 22 April 2016, and I was appointed rapporteur on 2 June 2016. On 25 January 2017, I submitted an introductory memorandum to the committee,⁴ which agreed to declassify it⁵ and authorised me to undertake a fact-finding visit to Israel (subject to Bureau authorisation). The Bureau authorised the fact-finding visit, but, unfortunately, I received a letter from the Chairperson of the observer delegation of Israel to the Parliamentary Assembly on 15 March 2017, informing me that no co-operation would be provided in the preparation of the report.⁶

3. On 25 April 2017, the committee heard a video statement by Ms June Kunugi, (then) Special Representative of the United Nations Children’s Emergency Fund (UNICEF), and held an exchange of views with Mr Khaled Quzmar, General Director, “Defense for Children International – Palestine (DCIP)”, and Ms Sarit Michaeli, International Advocacy Officer, “B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories”.⁷

2. Aim and scope of the report

4. The Parliamentary Assembly does not work in a vacuum. On the contrary, it builds on internationally recognised human rights standards, developed by the Council of Europe, the United Nations and its agencies, the Interparliamentary Union, as well as other regional organisations and assemblies (as appropriate). Regarding its own work on the treatment of children in conflict with the law, the Council of Europe Committee of Ministers adopted Guidelines on child-friendly justice in 2010,⁸ and the Assembly adopted Resolution 2010 (2014) “Child-friendly juvenile justice: from rhetoric to reality” four years ago.⁹

3. Doc. 13979.

4. At the request of the Israeli delegation, the consideration of the first introductory memorandum in the committee was postponed from the October 2016 part-session to the January 2017 part-session. In any case, I intended – as far as possible – to hold discussions on the different stages of the report during committee meetings in part-sessions, to ensure that both the Israeli observer delegation and the Palestinian partnership for democracy delegation could take part more easily. However, I did not intend to make the participation of either or both delegations even a *de facto* precondition for discussion in the committee.

5. AS/Soc (2017) 06: <http://website-pace.net/documents/19855/3127056/AS-SOC-2017-06-EN.pdf/d767af37-1c7c-4348-aa87-7e402a34e793>.

6. I informed the committee thereof at its meeting on 24 March 2017, which took note with regret of the letter, agreed to bring said letter to the attention of the Bureau, and decided to hold a hearing on the subject of the report during the second part-session of 2017.

7. The statement was published in written form straightaway (AS/Soc/Inf (2017) 06: <http://website-pace.net/documents/19855/3127051/AS-SOC-INF-2017-06-EN.pdf/23d756f4-6dca-43ff-9f8c-42e40e8a9e0c>) and the minutes of the exchange of views were declassified by the committee at its meeting on 27 June 2017, AS/Soc (2017) PV 03 add 2rev: <http://website-pace.net/documents/19855/3127051/AS-SOC-2017-PV-03-ADD2-EN.pdf/fc33aaad-3ad3-46a0-8001-c1ead00ae5ef>.

8. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3>.

9. Doc. 13511 (rapporteur: Mr Stefan Schennach, Austria, SOC). The committee has not yet worked on the situation of children in conflict with the law in the Middle East, but in paragraph 13.1.2 of its Resolution 1940 (2013) thereon, the Assembly recommended to the Israeli authorities to: “put an end to arbitrary arrests and administrative detentions of Palestinians (**including of scores of children**), unfair trials and acts of violence against detainees, as well as to stop transferring Palestinian detainees to Israeli prisons in violation of international humanitarian law” [emphasis added].

5. As a parliamentary body, the Parliamentary Assembly of the Council of Europe does not work in a political vacuum, either, of course. The Assembly comprises parliamentary delegations from both the Israeli parliament (the Knesset), which holds observer status with the Assembly, and the Palestinian parliament (the Palestinian Legislative Council), which holds partner for democracy status.¹⁰ The Assembly is thus one of the rare fora which combines expertise on children's rights and the Middle East with wide parliamentary representation.

6. The Assembly adopted two resolutions in January 2018 which have some bearing on this report: First, Resolution 2204 (2018) on protecting children affected by armed conflicts, in which the Assembly called on States to educate children and young people who have experienced traumatising armed conflicts on non-violent approaches to ending aggression and conflict, in order to make them resilient to the trans-generational transmission of violence and allow them to grow up in a culture of constructive dialogue.¹¹ In this resolution, the Assembly also called on States to support and rehabilitate children actively involved in conflicts by "treating them as children and not like adult offenders throughout all proceedings".¹² Second, Resolution 2202 (2018) "The Israeli-Palestinian peace process: the role of the Council of Europe", in which it reiterated its support for a two-State solution to the Israeli-Palestinian conflict, based on the 1967 borders, and called on all Palestinian forces to "cease support for those imprisoned following convictions for terrorist acts and their relatives".¹³

7. However, I would like to divorce the analysis of the issue at hand as far as possible from its political context. In other words, I do not intend to "take sides", except for one side: the side of children. The interests I will defend in this report are the interests and rights of the children concerned, based on international law and standards.

2.1. International law and standards

8. The Conventions which are central to the topic at hand are the United Nations Convention on the Rights of the Child (UNCRC), the International Covenant on Civil and Political Rights (ICCPR), and the Fourth Geneva Convention.¹⁴ All have been ratified by Israel. However, Israel argues that it is not bound to apply them to the Palestinians living under Israeli occupation, a position which is not in line with the opinion of the International Court of Justice¹⁵ and several United Nations human rights treaty bodies. The Parliamentary Assembly is on record as promoting the equal enjoyment of human rights, democracy and the rule of law for all people, whether in territories under Israeli or Palestinian control, Arabs and Jews, Israeli and Palestinian citizens.¹⁶

9. I believe that there is one provision in the UNCRC which we should all be able to agree to apply, regardless of our position on which conventions formally apply in which circumstances: Article 3 on the best interests of the child. Children are, first and foremost, children, and should be treated as such, i.e. afforded

10. The delegations are of the same size (three representatives, three substitutes), and have the same rights in the Assembly.

11. Resolution 2204 (2018), paragraph 5.3.

12. *Ibid.*, paragraph 5.5.1.

13. Resolution 2202 (2018), paragraph 9.2.

14. A good summary of the rights concerned is included on pages 7-8 of the NGO DCIP report "No way to treat a child – Palestinian Children in the Israeli Military Detention System", April 2016, www.dci-palestine.org/palestinian_children_in_the_israeli_military_detention_system.

15. International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004, paragraph 101: "In view of the foregoing, the Court considers that the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out. The Court accordingly finds that that Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories", paragraph 111: "In conclusion, the Court considers that the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory", and paragraph 113: "As regards the Convention on the Rights of the Child of 20 November 1989, that instrument contains an Article 2 according to which 'States Parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction ...'. That Convention is therefore applicable within the Occupied Palestinian Territory." www.icj-cij.org/docket/files/131/1671.pdf.

16. See Resolution 1940 (2013) on the situation in the Middle East, paragraph 11: "The Assembly notes that, alongside status issues, matters regarding standards should also be addressed so that, whether in territories under Israeli or Palestinian control, all people, Arabs and Jews, Israeli and Palestinian citizens, will equally enjoy respect for human rights, democracy and the rule of law."

special protection. In accordance with Article 3 of the UNCRC, the best interests of children must be of primary concern in making decisions that may affect them: all adults should do what is best for children, and this includes children who are in conflict with the law.

2.2. The work of international organisations and of NGOs

10. There are a number of reports, many of them quite recent and well-documented, from both UN agencies such as UNICEF,¹⁷ and NGOs such as Human Rights Watch,¹⁸ Defence for Children – Palestine (DCIP),¹⁹ B'Tselem²⁰ and Military Court Watch,²¹ to name but a few, on the issue of Palestinian children in the Israeli military detention system (and in administrative detention), as well as on the detention of Palestinian children in East Jerusalem, for example by the NGOs B'Tselem and Hamoked.²² NGO Monitor has published a number of reports²³ putting the findings of UNICEF and the above-mentioned NGOs in question. The International Committee of the Red Cross (ICRC) conducts regular visits to places of detention for Palestinians in Israel. During the 430 visits to detention places in 2017, the ICRC also spoke to over 200 minors individually. In addition, also in 2017, the ICRC facilitated over 3 600 family visits to minor detainees. The ICRC discusses its findings and recommendations with the relevant authorities in a confidential and bilateral dialogue.

11. The most recent update by UNICEF (of February 2015), other than the statement of UNICEF to our committee of April 2017,²⁴ includes a review of the 38 recommendations UNICEF had addressed to the Israeli authorities in 2013, of which it classified 4 “in progress”, 15 “partially addressed”, 14 “under discussion”, 4 “closed” and one “rejected”.²⁵ The Israeli authorities have, however, stressed that, “for various reasons, both factual and legal, the Israeli authorities did not, and do not accept the findings of the report by UNICEF in March 2013”.²⁶ The current Special Representative of UNICEF in the area, Genevieve Boutin, is on record (29 December 2017) confirming that “a proportion of children in military detention continue to face treatments

17. UNICEF: “Children in Israeli military detention, observations and recommendations”, February 2013: https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf, with two bulletins dated October 2013 and February 2015 updating on its engagement with the Israeli authorities and reporting on actions taken.

18. Human Rights Watch: “Extreme Measures: Abuses against Children Detained as National Security Threats”, 28 July 2016, <https://www.hrw.org/report/2016/07/28/extreme-measures/abuses-against-children-detained-national-security-threats>, “Israel: Security Forces Abuse Palestinian Children”, 19 July 2015, <https://www.hrw.org/news/2015/07/19/israel-security-forces-abuse-palestinian-children>.

19. DCIP: “No way to treat a child – Palestinian Children in the Israeli Military Detention System”, April 2016, and “Bound, Blindfolded, and Convicted: Children Held in Military Detention”, April 2012, www.dci-palestine.org/bound_blindfolded_and_convicted.

20. B'Tselem, Minors in Jeopardy – Violation of the Rights of Palestinian Minors by Israel's Military Courts, March 2018, https://www.btselem.org/sites/default/files/publications/201803_minors_in_jeopardy_eng.pdf.

21. Military Court Watch: “Monitoring the treatment of children held in Israeli Military Detention, Annual Report – 2016/17”, 25 June 2017, [www.militarycourtwatch.org/files/server/MCW%20ANNUAL%20REPORT%20-%202016%20\(FINAL\).pdf](http://www.militarycourtwatch.org/files/server/MCW%20ANNUAL%20REPORT%20-%202016%20(FINAL).pdf).

22. B'Tselem and Hamoked: “Unprotected: Detention of Palestinian Teenagers in East Jerusalem”, October 2017, https://www.btselem.org/sites/default/files/sites/default/files2/201710_unprotected_eng.pdf.

23. NGO Monitor: “UNICEF and its NGO Working Group: The Campaign to Blacklist the IDF”, January 2018, <https://www.ngo-monitor.org/reports/unicef-ngo-working-group-campaign-blacklist-idf/>, “No Way to Represent a Child: Defense for Children International Palestine's distortions of the Israeli justice system”, September 2017, https://www.ngo-monitor.org/pdf/DCIP_No_Way_to_Represent_A_Child_Web.pdf, “The Origins of ‘No Way to Treat a Child’”, September 2017, https://www.ngo-monitor.org/pdf/UNICEF_No_Way_to_Treat_Child_Web.pdf, “Analysis of B'Tselem's “Minors in Jeopardy” Report”, 26 March 2018, <https://www.ngo-monitor.org/reports/analysis-of-btselems-minors-in-jeopardy-report/>.

24. Op. cit., AS/Soc/Inf (2017) 06.

25. See page 7 of Bulletin No. 2: “During the dialogue with the Israeli authorities, the 38 recommendations were reviewed. In this outline, they are assigned primary responsibility for implementation and are measured individually in terms of actions taken by the relevant Israeli authorities. In the matrix below, for the purpose of measuring implementation:

- ‘in progress’ means steps are being undertaken, but the outcome is yet to be determined;

- ‘partial’ signifies that a standing operating procedure, policy or legislation is in place, but in totality the recommendation has not been realised and/or rights violations continue to be reported;

- ‘under discussion’ means the dialogue is ongoing;

- ‘closed’ refers to the recommendation no longer being relevant or there are no reports of ill-treatment relating to this recommendation to warrant further action. If reports occur following “closure” of the recommendation, the status will revert to one requiring action.

- “No agreement on recommendation” refers to those recommendations where the Government of Israel has stated that it will not take any action.” https://www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf.

that are not in line with the provisions of International Law, including the CRC. We continue pursuing efforts for a dialogue with relevant Israeli institutions as we believe it is in our mutual interest and that of children to end such violations".²⁷

12. The "No Way to Treat a Child" campaign,²⁸ a joint project of Defence for Children International – Palestine and the American Friends Service Committee in the United States, "seeks to challenge and end Israel's prolonged military occupation of Palestinians by exposing widespread and systematic ill-treatment of Palestinian children in the Israeli military detention system".²⁹ This campaign is thought to have influenced the bill proposed by Representative Betty McCollum of Minnesota on 13 November 2017, which seeks to require the US Secretary of State to certify that United States funds are not "supporting security forces that harm Palestinian children".³⁰

2.3. The Parliamentary Assembly perspective

13. The perspective of the Parliamentary Assembly is certainly influenced by the fact that it is one of the two organs of the Council of Europe, tasked with upholding human rights, democracy and the rule of law across the continent. Council of Europe standards are, in fact, often higher than those of the United Nations when it comes to the protection of both children's rights and detainees' rights.³¹ I will hold the Israeli authorities to the standards as they apply to Israel by virtue of its international obligations, though I will, of course, recommend that Israel endeavour to reach Council of Europe standards whenever this is in the best interest of children.

3. The treatment of Palestinian minors in the Israeli justice system

14. It is the assessment of UNICEF and the vast majority of NGOs that ill-treatment of Palestinian minors in the Israeli military detention system is "widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing".³² The Israeli military court system also fails to comply with basic standards applicable to children as regards due process. In order to end any possibility for ill-treatment, in my opinion changes are necessary to the law, to practice and to attitudes.

3.1. Laws

15. First of all, it is important to understand that different laws apply to different categories of children:³³ Israeli civilian law is applied to all children who live in Israel proper (whether they are Israeli or Palestinian), to Israeli children living in settlements, and to Palestinian children from East Jerusalem. Israeli military law is applied to Palestinian children who live in the occupied territories.

16. Israeli civilian law generally provides better safeguards for due process and against ill-treatment than is provided under military law.³⁴ However, the age of criminal responsibility is set at the (relatively low) age of 12 in both laws. The improved protection provided by Israeli civilian law is also reported to have been eroded somewhat since 2015, when, for example, amendments to the Israeli Penal Code and the Youth Law instituted minimum and maximum sentences for the most typical offence Palestinian children are charged with (throwing stones), much reducing judicial discretion.³⁵

26. Response Letter to Human Rights Watch from the Israeli Military Regarding Military Arrests of Palestinian Children in the West Bank, 13 July 2015, p. 2, <https://www.hrw.org/news/2015/07/13/response-letter-israeli-military-regarding-military-arrests-palestinian-children>.

27. Appendix V of the NGO Monitor report "UNICEF and its NGO Working Group: The Campaign to Blacklist the IDF", op. cit., NGO Monitor communication with UNICEF-oPt, p. 30.

28. <http://nwtac.dci-palestine.org/about>.

29. Ibid.

30. Human Rights Watch, Bill Van Esveld: "US Military Aid to Israel – from Another Perspective", article published in the *Huffington Post* on 14 November 2017.

31. See, for example, the work of the CPT, or the Council of Europe Guidelines on child-friendly justice.

32. UNICEF Bulletin No. 2 and DCIP report "No way to treat a child".

33. See UNICEF statement to the committee on 25 April 2017, op.cit.

34. Ibid.

35. Mandatory minimum sentences of no less than one fifth of the maximum potential sentence for cases involving throwing stones or other objects: maximum 10-year prison sentence for throwing stones or other objects at moving vehicles with the possibility of endangering passengers or causing damage, maximum 20-year prison sentence for throwing stones with the purpose of harming others. DCIP, "No way to treat a child", p. 11.

17. Israeli military law, in particular, is not in line with a number of specific guarantees and protections included in international human rights law relevant to juvenile justice (such as the UNCRC).³⁶ It is not always entirely clear whether it would be necessary to amend the military law to stop abusive practices, but in some cases this would seem necessary.³⁷

18. A recent report by B'Tselem on the treatment of Palestinian minors by Israel's military courts³⁸ details the changes the State has made in recent years to the military orders that deal with the arrest of minors and their treatment in the military courts. According to the report: "On the face of it, these changes were meant to improve the protections afforded to minors in the military justice system. ... However, the changes Israel has made have had no more than a negligible impact on minors' rights. It would seem that they have far more to do with improved appearances than with what happens in actual practice. ...". Thus, for example, the launching of the military juvenile courts in 2009 has had little effect in practice, since these courts are only tasked with the actual trial and do not handle arrest and release procedures either before or after an indictment is served, and more than 90% of cases end in a plea bargain rather than a full trial.³⁹

19. In any case, both Israeli civilian and military law do not reach the level of Council of Europe standards in important aspects. Thus, for example, according to the Guidelines on child-friendly justice: "A child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child's parents or, if no parent is available, another person whom the child trusts."⁴⁰ While all Israeli and Palestinian children have the right to consult a lawyer,⁴¹ no Israeli law bestows on the lawyer or the parents of the child the right to be present during the interrogation.⁴²

3.2. Practice

20. As UNICEF put it in its statement to the committee on 25 April 2017: "UNICEF is concerned by reports that Palestinian children regularly incur due process and ill-treatment violations when apprehended by Israeli security forces and while being held in Israeli detention facilities. ... Palestinian children have been placed in administrative detention, i.e. without charges and for a prolonged period of time, ..." This statement is based on affidavits (sworn testimonies) collected by UNICEF and its partners from hundreds of children each year.⁴³ The DCIP testified at the same hearing on 25 April 2017 that between 500 and 700 children aged 12 to 17, including girls, were detained in Israeli prisons and prosecuted by military courts each year, with "about 60% of them transferred from the occupied territory to prisons inside Israel, which violated the fourth Geneva Convention".⁴⁴ According to figures provided by the Israeli Defense Forces (IDF) to the BBC, about 1 400 minors have been prosecuted in special military youth courts over the past three years.⁴⁵

21. The DCIP reported in March 2018 that, "according to data released by Israeli Prison Service (IPS), 352 Palestinian children were detained in Israeli prisons at the end of December 2017, a 73 percent increase by IPS data from 2012 to 2015 where Israeli authorities held an average of 204 Palestinian children in custody each month. In October 2015, and the first time since 2011, Israel renewed the practice of administrative detention against Palestinian children in the West Bank".⁴⁶ According to the DCIP, 26 minors have been placed under administrative detention since October 2015 (all male).⁴⁷

36. For an instructive summary list of these guarantees and protections, see *ibid.*, pp. 8-9.

37. For example, Military Order 1651 does not apply the age of majority of 18 years to sentencing provisions, allowing 16- and 17-year-olds to be sentenced as adults. It also stipulates an offence of insulting or offending a soldier's honour, punishable with a maximum sentence of one year in prison. *Ibid.*, p. 12. Military orders also place no restrictions on keeping minors in remand pending the end of legal proceedings, unlike Israeli (civilian) law which prohibits this practice in the case of children under the age of 14. B'Tselem, *Minors in Jeopardy*, *op. cit.*, p. 18.

38. B'Tselem, *Minors in Jeopardy*, *op. cit.*

39. *Ibid.*, p. 15.

40. Guideline C 30 of the Council of Europe's Guidelines on child-friendly justice.

41. Even if this right is not always respected in practice, in particular regarding Palestinian children detained in the West Bank.

42. See pages 8-10 of UNICEF Bulletin No. 2.

43. See UNICEF statement to the committee on 25 April 2017, *op. cit.*

44. AS/Soc (2017) PV 03 add 2rev, *op. cit.*, p. 1.

45. BBC News, Yolande Knell, "Ahed Tamimi: Spotlight turns on Palestinian viral slap video teen", 17 January 2018.

46. United Nations Human Rights Council, 37th Regular Session, 19 March 2018, Statement on behalf of Defence for Children International (DCI), <https://defenceforchildren.org/wp-content/uploads/2018/03/HRC37-@doc-DCIP-Oral-Statement-FINAL.pdf>.

47. In March 2018, three Palestinian teens (one of whom has since turned 18) remained in administrative detention.

22. The main forms of ill-treatment and violations of the children's rights documented in the affidavits collected by UNICEF and its partners are in violation of Israeli law itself (as well as international human rights standards), with more than two thirds of children swearing that they had endured some form of physical violence following arrest, and/or had faced verbal abuse, humiliation and/or intimidation, and had been arrested without their parents being notified of the reasons.⁴⁸

23. The most recent B'Tselem report on the issue paints a portrait of the "standard practice" during the arrest, investigation and prosecution of Palestinian minors as one of "systematic and systemic ongoing abuse of their rights": night-time arrests (more than 40%), handcuffing and blindfolding after arrest (80%), various forms of abuse during transit, waiting, and interrogations themselves, the denial of their right to let them see or speak to a lawyer prior to questioning (90%), coercive tactics to make minors sign confessions in a language they do not understand, leading to military court hearings which result – as a rule – in minors being held in prison from the moment of their arrest until they complete their sentence, and a conviction rate of more than 95% due to the preponderance of plea bargains.⁴⁹

24. After the release of the original 2013 UNICEF report on the matter, Israeli officials had promised to improve the situation, according to newspaper reports:⁵⁰ "The Military Advocate General distributed a memorandum among brigade and battalion commanders, reminding them of the proper arrest rules. Among other things the memorandum stressed that using physical violence was prohibited. The IDF reported to the Association for Civil Rights in Israel in 2014 that the memorandum says the commander of an arrest unit must make sure the detainee is held in reasonable conditions, including a place protected from intense heat or rain, provision of food and water and access to toilets, with a prohibition on physical and verbal violence, as well as other forms of abuse." However, according to the October 2017 report published by Military Court Watch, no improvement was made in practice regarding the physical abuse of minors.⁵¹

25. Another problem is posed by the increased use of administrative detention.⁵² While international humanitarian law permits administrative detention in strictly limited circumstances in only the most exceptional cases for "imperative reasons of security" when there is no other alternative, NGOs such as the DCIP allege that Israel's administrative detention of Palestinian children appears to be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction.⁵³ According to the United Nations Special Rapporteur on Human Rights, François Crépeau, "[d]etention for administrative purposes can never ever be in the best interest of a child. It harms their physical and psychological well-being and has adverse effects on their development".⁵⁴ The same, of course, applies to solitary confinement.

26. Particular problems are also posed by the practice of arresting Palestinian children in night-time arrest operations, usually in raids on their homes. These operations are evaluated at between 25% and 45% of cases, depending on the source and the time period taken into consideration.⁵⁵ While I understand that the reason for the night-time arrests and raids are linked with security fears of the Israeli Defense Forces, which wish to avoid disturbances of the peace, this is, in my opinion, one of the gravest and most counter-productive violations of the rights of the children concerned: It is clear that, even without any other violations, the chances of getting a truthful confession from a terrified, overtired child separated from his or her parents (with no lawyer in the interrogation room) are slim. This means that, not only are rules such as denying children the presence of a lawyer or one of their parents during interrogations, and practices such as night-time arrests of

48. AS/Soc (2017) PV 03 add 2rev, op. cit., p. 1.

49. B'Tselem, *Minors in Jeopardy*, op. cit., pp. 6-8.

50. Amira Hass, *Two-thirds of Palestinian Minors Testify to Abuse in Israeli Detention*, 21 December 2017, *Haaretz*, <https://www.haaretz.com/israel-news/.premium-two-thirds-of-palestinian-minors-testify-to-abuse-in-israeli-detention-1.5629260>.

51. *Ibid.* The children reported "slaps (51%), kicks (19%), pinches (14%), being beaten with various objects (9%)", 93% reported that their hands were cuffed and 79% reported that they were blindfolded. The large majority, 79%, reported that they were made to sign documents written only in Hebrew.

52. In its [Resolution 2122 \(2016\)](#) on administrative detention, the Assembly stressed that all restrictions to liberty must be "based on a clear, predictable legislative authorisation ensuring that they are necessary in a democratic society for the legitimate purpose pursued", and called on States to refrain from "placing peaceful protesters, or persons intending to participate in peaceful protests, in administrative detention in order to prevent them from taking part in a given protest or to deter them from participating in such protests in the future".

53. United Nations Human Rights Council, 37th Regular Session, 19 March 2018, Statement on behalf of Defence for Children International (DCI), <https://defenceforchildren.org/wp-content/uploads/2018/03/HRC37-@doc-DCIP-Oral-Statement-FINAL.pdf>.

54. "Administrative Detention of Children is a Violation of Children's Rights", Statement by François Crépeau, United Nations Special Rapporteur on Human Rights, Office of the United Nations High Commissioner for Human Rights, <https://www.unicef-irc.org/article/1393-administrative-detention-of-children-is-a-violation-of-childrens-rights.html>.

55. See pages 8-10 of UNICEF Bulletin No. 2, and AS/Soc (2017) PV 03 add 2rev, op. cit., p. 1.

children, clearly not in the best interests of the child, but they are also not in the best interests of the Israeli authorities, who seek to find the culprits of crimes, not to terrify and wrongly accuse and convict innocent children and their families.⁵⁶

27. Worryingly, in more than a third of cases, military court judges based their convictions on confessions drafted in Hebrew, a language that most Palestinian children do not understand.⁵⁷ These judges also seem to exclude confessions obtained by coercion or ill-treatment only rarely, contributing to the extremely high conviction rate (95%),⁵⁸ and deny bail practically systematically⁵⁹ – in contrast to the civil courts, which deny bail to Israeli children in only 18% of cases.⁶⁰ This, in turn, leads to lawyers for Palestinian children agreeing to plea bargains even if they believe them to be innocent, as the alternative would be a prolonged period of remand that would likely exceed any sentence imposed following a plea agreement.⁶¹

3.3. Attitudes

28. The case of Ahed Tamimi (then 16) hit the headlines in December 2017. As the BBC explained, it all started with an online video filmed on 15 December 2017, “in which she [Ahed] confronts two Israeli soldiers outside her family home in the occupied West Bank village of Nabi Saleh, demanding they “get out”. She pushes them and one swats her away. Then she slaps and kicks them with her older cousin, Nur. The Israeli soldiers do not react and Ahed’s mother, Nariman, intervenes. The incident was livestreamed on Nariman Tamimi’s Facebook account”.⁶² According to several NGO reports, the video was filmed after the girl had learned that her 15-year-old cousin had been severely injured by a shot to the face of a rubber-coated bullet fired by a soldier at a protest in the village.⁶³

29. After the video went viral, Ahed Tamimi was arrested in a night-time raid at 4 am on 19 December 2017. The Education Minister Naftali Bennett told Army Radio the same morning that the young women shown assaulting the soldiers should “finish their lives in prison”.⁶⁴ Nariman Tamimi was detained when she went to a police station to inquire about her daughter later that day. Defense Minister Avigdor Lieberman called for “severe” punishment of Ahed and her family, “to serve as a deterrent,” and banned 20 members of her family from visiting her in detention in Israel, where she had been transferred.⁶⁵

30. While the military judge released Ahed Tamimi’s 20-year-old cousin Nur from detention in early January on bail (she was charged with aggravated assault), on 17 January 2018, the judge approved the prosecution’s request to remand both Ahed and her mother in custody. Ahed was indicted on 12 charges, including assaulting an Israeli soldier, interfering with a soldier’s duties, and two past instances of stone throwing, while her mother was charged with “incitement” for livestreaming the altercation.⁶⁶

31. Both Ahed’s family and Ahed herself have been the subject of intense debate on prior occasions, “leading to Israeli accusations that her family deliberately provokes soldiers to stage anti-Israeli propaganda”.⁶⁷ Aged 11, Ahed was filmed threatening to punch a soldier after her older brother was arrested. Two years ago, she was filmed biting a soldier trying to detain her younger brother – but before the December 2017 incident, she had never been detained or charged with any crimes.⁶⁸

56. In its most recent report, B’Tselem alleges in its conclusions that the military justice system “continues to ignore the basic tenets that are the cornerstone of juvenile justice systems under both international law as well as in many countries around the world, including Israel”. For B’Tselem, Israel “takes pains to create a façade of legality in an attempt to hide the human rights abuses associated with enforcing the regime of occupation”, with the sole purpose of legitimising the regime of occupation. B’Tselem, *Minors in Jeopardy*, op. cit., pp. 29-30.

57. AS/Soc (2017) PV 03 add 2rev, op. cit., p. 2.

58. *Ibid.*, p. 2.

59. DCIP, “No way to treat a child”, p. 50.

60. Human Rights Watch, Bill Van Esveld, “Israeli Prosecutors Throw Book at Palestinian Child Protestor”, 14 January 2018.

61. DCIP, “No way to treat a child”, p. 50.

62. *BBC News*, Yolande Knell, op. cit.

63. For example, Human Rights Watch, “Israeli Prosecutors Throw Book at Palestinian Child Protestor”, op. cit.

64. *Haaretz*, “Israeli Army Arrests Palestinian Teenage Girl Who Slapped Soldiers; ‘She Should Finish Her Life in Prison’”, 20 December 2018.

65. Human Rights Watch, “Israeli Prosecutors Throw Book at Palestinian Child Protestor”, op. cit.

66. Ma’an news agency, “Ahed Tamimi indicted on charges of assaulting a soldier and stone throwing”, 2 January 2018.

67. *BBC News*, Yolande Knell, op. cit.

68. *Ibid.*

32. Ahed's trial opened on 13 February 2018 (she turned 17 in Hasharon prison (Israel), in January). The trial at Ofer military court was held in closed-door proceedings, as the judge ruled that open proceedings would not be in the interest of Ahed, who was tried as a minor (despite a request from Ahed's lawyer for the media to be able to observe). The judge adjourned the trial until 11 March upon a request from prosecutors for more time to prepare.

33. On 21 March 2018, Ahed was sentenced to eight months' imprisonment and a 5 000 shekels fine (around US\$1 400) with a three-year suspended sentence after entering into a plea deal. Her mother was sentenced to eight months in prison in addition to a fine of 6 000 shekels (around US\$1 780) and a three-year suspended sentence for assisting in assaulting a soldier, obstructing a soldier and incitement. Ahed's cousin, Nur Tamimi, was fined 2 000 shekels (around US\$500).⁶⁹

34. Ahed Tamimi makes an unlikely poster child for "the cause" on any of the two sides of the conflict, and the way this case provoked extreme comments from both sides to the conflict only serves to harden attitudes further. Ahed seems to be a child who is growing up in conditions of conflict, engaging in behaviour which is certainly not advisable and possibly criminal,⁷⁰ perhaps manipulated by adults in her family, but she is definitely not a criminal who deserves to spend the rest of her life in prison (as the Education Minister Naftali Bennett had called for). Amnesty International commented: "By sentencing Ahed to eight months in prison the Israeli authorities have confirmed yet again that they have no regard for the rights of Palestinian children, and have no intention to reverse their discriminatory policies. ... The Israeli authorities must stop responding to relatively small acts of defiance with such disproportionately harsh punishments."⁷¹

35. I believe we should go back to the basics: a child does not forfeit his/her human rights no matter what he/she has done. There is no excuse for ill-treatment of any child, Israeli or Palestinian. Physical and psychological violence against Palestinian minors in the Israeli justice system must stop. This will require a change in law, practice and attitudes, as explained above.

4. The way forward: conclusions and recommendations

36. There is ample documentation of the view of NGOs and international bodies on the subject at hand, but very little documentation of the point of view of the Israeli authorities. I very much regret that the Israeli observer delegation has refused to co-operate with me in the preparation of this report, neither facilitating the requested fact-finding visit to Israel to meet with the competent Israeli authorities, including my colleagues in the Knesset, nor providing any information in April 2017 during the exchange of views on the subject held in the committee, or since. While the reports by the Israeli NGO, NGO Monitor,⁷² can perhaps be considered representative of the opinion of at least part of the Israeli population, if not also of some of the authorities, this is a poor alternative to parliamentary co-operation.

37. So what can be done? Israel has not been spared by the general trend in many democracies in recent years towards populism and radical movements; indeed, certain factors specific to Israel's history and situation (including the perceived need for security above all, and the increasing strength of the settlers' movement and the influence of religious parties) have, if anything, exacerbated the trend. The construction of new settlements and the pressure of these settlements on the land situation represent an additional obstacle to the two-State solution.

38. On the other side, the Palestinians have not been spared by radicalisation trends either: acts of terrorism against Israel are not, or not uniformly, rejected and condemned, indoctrination – including of children – seems rife, and the reign of Hamas in Gaza, and its 10-year blockade by both Israel and Egypt, has produced a humanitarian catastrophe which in turn has exacerbated radicalisation. The Palestinian reconciliation, announced so many times, has not yet produced concrete results, thus undermining the prospects of relaunching peace negotiations with any prospect of success. Both the Israeli and Palestinian

69. Press release by Amnesty International, 21 March 2018, <https://www.amnesty.org/en/latest/news/2018/03/israelopt-palestinian-child-activist-ahed-tamimi-sentenced-to-8-months-in-prison/>.

70. In the explanatory memorandum to her report on "Protecting children affected by armed conflicts" (Doc. 14461), Ms Sevinj Fataliyeva has explained very well how in a context of war and conflict, many children experience a sort of "normalisation" of violence. This can lead on to political radicalisation and inter-generational transmission of violence.

71. Magdalena Mughrabi, Amnesty International's Deputy Director for the Middle East and Africa, Amnesty International press release of 21 March 2018.

72. Op. cit., see footnote 23. For example, Mr Maurice Hirsch, a former "Head of IDF Military Prosecution for Judea and Samaria" works as the NGO's "Senior Military Justice Consultant". See its report "UNICEF and its NGO Working Group", p. 12.

authorities use school textbooks with non-objective material which selectively reinforces each community's national narrative. The feasibility of the two-State solution supported by the international community (and the Assembly) is threatened by these developments, and others.

39. It is in this context that I am writing this report, whose main objective is to contribute, as much as possible, to a better protection of children's rights – the rights of Palestinian children which are unfortunately not respected in the Israeli justice system. These rights have the priority, as everywhere else in all member States and States which are connected with the Council of Europe in one way or another! Some of my committee colleagues have criticised the fact that I have refused to explicitly link my report to the underlying conflict. Of course I have my own opinions on the underlying conflict, as do we all – but, apart from the fact that other Assembly committees have addressed or are addressing this conflict, with more emphasis on political or legal aspects – I am convinced that in the climate of radicalisation, increasing extremist influences and hardened attitudes on both sides of the conflict (which I have described in the preceding paragraphs), only by divorcing the issue from the underlying conflict as far as possible can we hope to have any impact, even if this may seem artificial to some.

40. My aim in pursuing this report is to help stop the ill-treatment of Palestinian minors in the Israeli justice system by bringing the issue to parliamentary attention. Bringing law and practice into conformity with the human rights standards modelling juvenile justice at international and European level not only serves the best interests of the child – a primary consideration – but is also less costly and more likely to ensure public safety and help young people to reach their potential. In the case of the Israeli-Palestinian conflict, such a move would also remove an obstacle to the peace process which is contributing to tarnishing the image of Israel as a State which respects human rights and the rule of law, and could help Israel meet its commitments and obligations under international law.

41. Others have criticised my report as one-sided, pointing out that Israeli children are also detained, and that Palestinian children have been indoctrinated or instrumentalised as fighters for the Palestinian cause. Allow me to point out several facts: First of all, I have made the subject and scope of this report very clear, in conformity with the reference of the Bureau as validated by the Assembly – I am dealing with the treatment of Palestinian minors in the Israeli justice system, not with the treatment of Palestinian minors in the Palestinian justice system, nor with the treatment of Israeli minors in the Israeli justice system, nor with any other issues, connected or not. Second, a child does not forfeit his/her human rights no matter what he/she has done. There is simply no excuse for ill-treatment of a child, Israeli or Palestinian, at the hands of the State. However, all reports on the issue, by international organisations and international, Palestinian and Israeli NGOs,⁷³ point to the same factual findings which demonstrate that it is the rights of Palestinian children (not Israeli children) which are regularly and systematically violated in the Israeli justice system (not in the Palestinian justice system, though the treatment of Palestinian minors in the Palestinian justice system is not above criticism and may merit a separate report).⁷⁴

42. That said, some changes, such as raising the age of criminal responsibility to 14 in both Israeli military and civilian law, would benefit all children under Israel's jurisdiction, be they Israeli or Palestinian, and wherever they live. Other changes suggested to both the Israeli and the Palestinian authorities, such as educating children and young people in their communities on non-violent approaches to ending aggression and conflict, would also benefit all children living in the area, as well as help give new life to the peace process.

43. However, the main message of the Parliamentary Assembly in this report should be to call on the Israeli authorities to work with UNICEF, the International Committee of the Red Cross, civil society and all relevant stakeholders with a view to changing laws, practice and attitudes as necessary to fully protect the rights of Palestinian children in the Israeli justice system. The Assembly should stand ready to assist the Knesset and the Palestinian authorities in this regard. If we can manage to effect an improvement in this field, we can consider it a small step towards stopping the radicalisation and hardened attitudes which feed the underlying conflict and the cycle of violence.

73. With the exception of the reports by the Israeli NGO NGO MONITOR.

74. B'Tselem, *Minors in Jeopardy*, op. cit., p. 5.