

Child Rights Situation Analysis

**Right to Protection in the occupied
Palestinian territory - 2008**



Defence for Children International/ Palestine Section
الحركة العالمية للدفاع عن الأطفال / فرع فلسطين



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Defence for Children International – Palestine Section

Sartawi Building
Sateh Marhaba
Ramallah
Tel: +972 2 2427530
Fax: +972 2 2427018
Email: dcipal@dcipal.org
www.dci-pal.org

Save the Children Sweden

oPt Office for the Middle East and North Africa
Hala Sakakini St., Beit Hanina
P.O. Box: 25042
Shu'fat
97300 Jerusalem
Phone: +972 2 6561936 / 02 2973631-4
Fax: +972 2 2973635
www.scsmena.org

Researched and written by: **Vanina Trojan**

Edited by: **Leigh Brady**

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Table Of Contents

Acknowledgements	3
Acronyms and Abbreviations	5
Operational Definitions	6
Executive Summary	8
General Recommendations	11
The Palestinian Authority	11
The State of Israel	11
UN Agencies	11
Civil Society Actors, including the Media	12
Other Needed Actions	12
Introduction	14
Methodology	15
Context Analysis	16
Geographic and Demographic Overview	16
Political Context	16
Legal Context	19
Economic Context	20
Socio-cultural Context	21
The Role of Local Civil Society including Media Actors	22
1. Children Vulnerable to Violence in Their Homes and Communities	25
Background and Context	25
Gaza Strip and West Bank, Excluding East Jerusalem	29
Domestic Legal Framework vis-à-vis international Standards	29
Law Enforcement	30
The Role of Non-governmental Stakeholders	34
The Case of East Jerusalem	39
Conclusion and Recommendations	41
Summary: Children Vulnerable to Violence in Homes and Communities	44
2. Children in Conflict with the Law under PA Jurisdiction	45
Background and Context	45
Gaza Strip and West Bank, Excluding East Jerusalem	47
Domestic Legal Framework vis-à-vis International Standards	47
Law Enforcement	49
The Case of East Jerusalem	55
Conclusion and Recommendations	56
Summary: Children in Conflict with the Law under PA Jurisdiction	60
3. Children Detained under the Israeli Military Order System	61
Background and Context	62
Facts and Figures	63
Child Detainees: Arrest, Interrogation, Trial, and Detention	64
Legal Framework Applying to Child Detainees	67
Analysis of Major Legal Issues	69
Recommendations	75
Summary: Child Detainees under the Israeli Military Order System	79
Bibliography	80
1- Books	80
2- Chapters and Articles	80
3- Publications from UN Agencies and other International Organizations	80
4- Publications from Non-governmental Organizations and Societies	81
5- Interviews	81
6- Focus Groups Reports	83
Annexes	84
Annex I: Protection of Children from Violence in their Homes and Communities: Legal framework and Stakeholder Identification	84
Annex II: Protection of Children in Conflict with the Law under PA Jurisdiction: Legal Framework and Stakeholder Identification	86
Annex III: Protection of Children Detained under the Israeli Military Order System: Legal Framework and Stakeholder Identification	97

Acronyms and Abbreviations

ACRI	Association of Civil Rights in Israel
CBOs	community - based organisations
CPN	Child Protection Network
CRC	United Nations Convention on the Rights of the Child
CPWG	Child Protection Sector Working Group
DCI	Palestine - Defence for Children International - Palestine Section
EJ YMCA	East Jerusalem Young Men's Christian Association
GC10	General Comment No. 10 of the Committee on the Rights of the Child on Juvenile Justice
ICHR	Independent Commission for Human Rights
ICCPR	International Covenant on Civil and Political Rights
ISS	Israeli Security Services
MO	Military Order
MoDEDA	Ministry of Detainees' and Ex-Detainees' Affairs
MoEHE	Ministry of Education and Higher Education
MoH	Ministry of Health
Mol	Ministry of Interior
MoJ	Ministry of Justice
MoSA	Ministry of Social Affairs
MoU	Memorandum of Understanding
NGO	non-governmental organisation
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
oPt	occupied Palestinian territory
PCBS	Palestinian Central Bureau of Statistics
PCDCR	Palestinian Centre for Democracy and Conflict Resolution
PCATI	Public Committee Against Torture in Israel
PLC	Palestinian Legislative Council
PA	Palestinian Authority
PNCR	Palestinian Network for Children's Rights
SCS	Save the Children Sweden
TRC	Treatment and Rehabilitation Centre for Victims of Torture
UNICEF	United Nations International Children's Fund
UNRWA	United Nations Relief and Works Agency for Palestinian Refugees in the Near East

Operational Definitions

- Duty-bearer¹:** Body or individual who has responsibilities and obligations towards rights holders, as enshrined in international and national law and human rights instruments. The State, as the primary duty bearer, has an obligation to respect, protect and fulfil the rights of individuals.
- Rights holder²:** The individual or collection of individuals who possess a right and who can make a claim to see the right respected, protected and fulfilled. The rights holder may also have duties and obligations in relation to other rights holders.
- Stakeholder³:** Groups of people – including children, individuals, institutions, enterprises or government bodies that have an influence on the realisation of children’s rights in general or, more specifically that may have an interest or involvement in a project or program. There are differences in the roles and responsibilities of all stakeholders, their access to and control over resources and the role they play in decision-making.
- Violence** (also intended as physical abuse)⁴: The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, stunted development or deprivation. The major manifestations of violence are physical violence, including corporal punishment, emotional ill treatment, sexual abuse, neglect, deprivation, exploitation, trafficking and harmful traditional practices such as honour crimes.
- Emotional abuse⁵:** includes acts or omissions by parents or other persons responsible for the child’s care and that have caused or could cause serious behavioural, cognitive, emotional or mental disorder. It is the most difficult form of child maltreatment to treat.
- Sexual abuse⁶:** includes a wide range of behaviour; fondling of a child’s genitals, intercourse, rape, sodomy, exhibitionism and commercial exploitation through prostitution or the production of pornographic materials.
- Neglect⁷:** Child neglect is characterized by the failure to provide for the child’s basic needs. Neglect can be physical, educational or emotional. *Physical neglect* includes refusal of or delay in seeking health care, abandonment, inadequate supervision and expulsion from home or refusing to allow a runaway to return home. *Educational neglect* is the failure to enrol a child of mandatory school age and inattention to a special educational need. *Emotional neglect* includes such action as chronic or extreme spouse abuse in the child’s presence, permission of drug abuse or alcohol use by the child and refusal or failure to provide needed psychological care.

1 *Getting it Right for Children: A practitioners’ guide to child rights programming*. Save the Children, 2007.

2 Ibid.

3 Ibid. Adapted.

4 WHO, *World Report on Violence and Health*, <http://www.crin.org/violence/formsofviolence/index.asp>.

5 http://www.bantaybata163.com/articles_operational.htm, last visited 18 March 2008

6 Ibid.

7 Ibid.

Child Exploitation: is the unfair use of a child for another persons' own advantage. Children can be exploited commercially through child labour or sexually. *Sexual exploitation*⁸ occurs when children whether male or female, who for money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, and/or are deemed to be children exploited in prostitution and other sexual abuse.

Executive Summary

This situation analysis provides an overview of the extent to which Palestinian children living in the occupied Palestinian territory (oPt) in 2008 enjoy their rights to protection, as enshrined in international child rights standards. The scope of the analysis is not comprehensive, rather it focuses on the level of protection available to three particular target groups of children living in the oPt, in terms of laws, policies, mechanisms and practices. The target groups in question are children vulnerable to violence, neglect, abuse and exploitation in their homes and communities; children in conflict with the law under Palestinian Authority (PA) jurisdiction and children detained by Israel under its military order system. The research methodology consisted in conducting a desk review of relevant international and national literature, in-depth interviews with governmental and non-governmental duty-bearers and stakeholders, and focus group discussions with children. The purpose of this study is to assist child rights actors in the oPt, Israel and elsewhere, in shaping their strategies towards enhancing, advocating for and ensuring a better realization of Palestinian children's rights to protection in the oPt.

The situation analysis is structured as follows: each target group has been analysed according to the same steps and criteria, albeit dealt with separately. First there is a review of the international child protection standards relevant to the specific target group and to what extent these standards are reflected in the existing domestic legal framework. Secondly, the main duty-bearers and stakeholders of Palestinian child rights in relation to the relevant target group are identified, and subsequently the current intervention and non-intervention of these actors is discussed, highlighting in particular the level of enforcement of existing legal provisions and policies. Thirdly, the obstacles faced by the various duty-bearers and stakeholders in protecting children in the oPt are discussed. For each target group analysed, a set of recommendations is provided for action to be taken by the various duty-bearers and stakeholders.

The findings of the desk review and field research conducted showed that, as of May 2008, many children, whether within their home or communities, or in conflict with the law under PA jurisdiction or detained in an Israeli detention facility under the Israeli military order system, are not provided with the adequate protection they are entitled to as children according to international standards.

There are many factors identified by this study that prevent children from enjoying effective protection from violence, abuse, neglect and exploitation in the oPt but this research attributes two of these factors as the general root causes of the non-realization of children's right to protection: firstly, the legislative framework that regulates child protection at the domestic level is outdated, lacks crucial detail and does not fully incorporate international safeguards. Secondly, and more worryingly, there is weak enforcement of the existing laws and policies in force.

This situation analysis also discusses the factors that are hindering legislative and policy reform in the oPt and impeding enforcement of the provided legal safeguards. The primary causal factor individuated is the context of the conflict and current Israeli occupation of Palestinian territory. Israeli policies, measures and practices - including closure and other restrictions on the movement of people and goods, the Separation Wall/Barrier, and the carving up of the West Bank into administrative areas A, B, and C with different jurisdictions - limit the independence and undermines the authority of the PA and greatly impairs the effectiveness of its work, especially in ensuring protection to Palestinians, including children. A relevant example is that Palestinian police forces and other governmental authorities need to obtain authorization from Israel when transferring children in need of protection between areas A, B, and C.

Furthermore, other occupation policies and practices by Israel actively increase the vulnerability of children to violence, abuse, neglect and exploitation, such as targeted and/

or negligent killing, indiscriminate attacks, maiming, physical and psychological violence - including torture, arbitrary arrest and detention, house demolitions, land confiscation and obstruction of livelihoods, discrimination and harassment. These policies and practices represent physical obstacles for children to receive educational, social and cultural services as well as constitute one of the main causes of poverty, which, in turn - social research indicates - further aggravates social and domestic violence and leads to increased levels of juvenile delinquency.

The existence of the Palestinian Authority, which was created as an 'interim self-government' in 1994 through the Oslo Accords, adds a layer of complexity to the context. With the creation of the PA, the oPt did not lose its occupied status and Israel still retains ultimate control thereof. Thus, although a state-like apparatus has been built around the PA, with the creation of an executive, legislative and judiciary, the PA still has only limited autonomy and lacks capacity and resources as a 'government'. Compounding this issue is the fact that its legal and political jurisdiction is also fragmented within the oPt: firstly, through the existence of areas A, B and C in the West Bank - each representing a different administrative jurisdiction; secondly, through the fact that the West Bank and Gaza Strip follow different legislative frameworks for some issues; and thirdly, through the fact that East Jerusalem is under *de facto* administration of Israel, with the PA denied almost all access. The result is alarming: a *de facto* and *de jure* fragmentation. In other words, in the case of three Palestinian children in conflict with the law, for instance, committing the same offence in the West Bank, East Jerusalem and Gaza Strip, respectively, three different legal bodies will apply three different legal procedures to which will likely follow three different legal charges.

In addition, since June 2007, yet another layer of complexity must be taken into consideration: the PA exists as two separate interim governments in the West Bank and the Gaza Strip, respectively - a Hamas-led PA in the latter and a Fatah-led PA in the former. This has created two *de facto* jurisdictions and has severely hampered the work of various ministries relevant to child protection. In the Gaza Strip, many ministries and other public institutions are understaffed and barely functioning, and in some ministries there is complete estrangement between the Gaza and West Bank branches. In addition, following the Hamas take-over of Gaza, the juvenile rehabilitation centre and protection centres for children in the Gaza Strip were shut down for several months.

This situation analysis also focuses on further causal factors that are keeping child protection laws and policies from being developed, enforced and implemented. For example, while there have been notable efforts by both PA and non-governmental child rights activists to influence and accelerate the drafting processes for updated child protection legislation, the Palestinian Legislative Council (PLC) has been inactive since early 2006, when Israel detained 45 Hamas-affiliated parliamentarians, following the Hamas victory in the legislative elections in January of that year. The ongoing detention of 45 Hamas-affiliated parliamentarians, in addition to the recent hostile rift between Hamas and Fatah prevents the PLC from convening. The physical fragmentation of the oPt also makes it difficult for parliamentarians to regularly attend sessions even when the PLC is functioning. However, since the inception of the PLC and even prior to the open political schism between the two dominating parties, developing and enforcing new laws and policies has often proven difficult, given that Gaza Strip and West Bank legislators are drawing on different legal frameworks and traditions, and thus reaching consensus on various issues is a very drawn-out process. For instance, the drafting process of the new juvenile justice bill started in 1999 and is still ongoing in 2008. Furthermore, while some child protection legislation exists, the necessary by-laws and policies to interpret legal provisions at the ministerial level are to a large extent absent.

Furthermore, at the Palestinian level, this research found that there is some reluctance as well as a widespread lack of skills in enforcing existing child rights legislations and policies. Stakeholders interviewed for the situation analysis also emphasised the mistrust and lack of faith that parts of Palestinian society feel towards the PA and attributed this to the internal difficulties faced by governmental bodies and public institutions and the short track record of

the PA. In addition, parts of Palestinian society are used to more traditional legal systems, such as the tribal justice system. At the level of Palestinian children's rights, this mistrust translates into poor rule of law and carelessness among certain duty-bearers to fulfil their legal accountability. The findings of this research also show that primary law enforcers are disengaged, and not taking the legal dictates that hold them accountable seriously. Police officers, Ministry of Social Affairs social workers, teachers, doctors as well as parents and guardians are not satisfactorily fulfilling their obligations vis-à-vis children's rights to protection.

On the other hand, the problem of inconsistent enforcement of existing child protection laws and policies that have been set up by the PA can also be attributed to a number of factors; namely the aforementioned undermined authority, a lack of capacity and resources, and disorganisation and inefficiency of law enforcers and other governmental officials. In addition to citing an absence of internal policies and by-laws and insufficient financial and human resources, the main ministries responsible for child protection in the oPt cited during interviews for this research poor inter-ministerial cooperation as a factor exacerbating inconsistent law enforcement.

Beyond the primary duty-bearers - Israel and the PA - this situation analysis also focuses on the roles, responsibilities and intervention of other child protection stakeholders, such as primary caregivers, Palestinian civil society actors, and UN agencies. In fact, the civil society sector in the oPt is particularly dynamic, with Palestinian non-governmental organisations (NGOs) and community-based organisations (CBOs) attempting to bridge the gap of missing institutional support. Although there are many active organisations trying to provide protection for children, these efforts tend to offer relief activities or services to vulnerable children without contributing towards structural change. In addition, at the time of writing, the services and activities of these civil society actors – whether local or international – were not covering by far the needs of all children requiring protection in the oPt. Some areas and some specific categories of children, such as children living in the Jordan Valley and Bedouin children, were being neglected by both civil society and governmental bodies, while in other areas there is an over-representation of actors and duplication of some services and activities.

General Recommendations

The Palestinian Authority

- The PA should upgrade the Palestinian legal framework applicable to its jurisdiction relative to child protection to be in line with international child rights standards, including the Convention on the Rights of the Child and other relevant human rights instruments, by developing new, unified laws or amending already existing ones.
- Relevant Palestinian ministries should develop internal as well as inter-ministerial policies in order to clarify on paper the roles and responsibilities of each ministry within the overall child protection system.
- The PA should ensure consistent enforcement of laws, by-laws and policies currently in place.
- Relevant PA ministries should improve their knowledge about and understanding of child rights related issues.
- The PA should increase the amount of financial and human resources allocated to relevant ministries to enable them to fulfil their roles and responsibilities to protect children, as proscribed in international law.
- The PA should make consistent efforts to improve child protection mechanisms and practices despite the destabilizing effect of internal political clashes.

The State of Israel

- Israel should ensure its compliance with relevant international conventions and human rights standards relating to child protection, such as the Convention on the Rights of the Child, the Convention against Torture, and the International Covenant on Economic, Social and Cultural Rights.
- Israel should facilitate the movement of Palestinian authorities within the occupied Palestinian territory, especially between areas A, B and C of the West Bank, in order to allow for a more effective response to cases of children in need of protection.
- Israel should enforce its own domestic legal framework in a non-discriminatory way, e.g. in Jerusalem.
- Israeli law enforcement officers should intervene when Palestinian children are in need of protection under their jurisdiction.

UN Agencies

- UNICEF and other UN agencies should consider further developing its role as child protection sector working group lead in the oPt to include facilitation of relevant child protection stakeholders.
- UNICEF and other UN agencies should ensure systematic intervention in critical areas with a very poor child protection framework, which are currently uncovered by UN agencies, e.g. East Jerusalem and the Jordan valley.

- Given the important role of UNICEF worldwide in child protection, UNICEF headquarters should develop a clear strategy on communication and advocacy, which allows field offices to reach the general public directly.

Civil Society Actors, including the Media

- Relevant NGOs and CBOs should join forces towards strengthening a child protection system with oPt scope.
- Relevant NGOs and CBOs should coordinate to avoid duplication of work in over-represented areas and to ensure that protection services are provided to children in critical areas that are currently lacking services or protection mechanisms, e.g. such as the Jordan Valley and East Jerusalem.
- In addition to their work as services providers, Palestinian NGOs and CBOs should consider implementing more actions aimed at long-term structural social changes and prevention of violence, abuse, neglect and exploitation against children.
- A higher number of child protection NGOs should consider addressing the protection issues related to children in conflict with the law.
- Relevant NGOs and CBOs should work at the community level to create what the Committee on the Rights of the Child defines as “a positive environment for a better understanding of the root causes of juvenile delinquency and to work towards implementing a rights-based approach to this social problem”⁹
- Relevant NGOs and CBOs should systematically target primary caregivers to increase their awareness of the basic rights of children, their roles and responsibilities as parents and to improve parenting skills.
- Media actors should actively raise awareness about the existence of established child protection services and promote behaviours and attitudes towards children that are conducive to their protection from violence, abuse, neglect and exploitation.

Other Needed Actions

- Establishment of a functioning nation-wide system that monitors cases of violence, abuse, neglect and exploitation against children in the oPt.
- Establishment of national databases accessible to all relevant child protection actors providing up-to-date data on cases, trends and risks of violence, abuse, neglect and exploitation.
- Further research is recommended on the following issues relating to the protection of children from violence, abuse, neglect and exploitation in their homes and communities: disabled children, Palestinian child labourers, begging Palestinian children in East Jerusalem and Israel, early marriage of young girls in East Jerusalem, the sex trade involving Palestinian girls in East Jerusalem, violence among children in schools, Bedouin children, refugee children and children living in the Jordan Valley.
- Further research is recommended on the following issues relating to the protection of children in conflict with the law under PA jurisdiction: discrimination by law enforcement authorities against Palestinian children residents of East Jerusalem who come into

9 Para. 96 of the General Comment N. 10.

conflict with the law in East Jerusalem and/or Israel, and Palestinian children holding West Bank or Gaza Strip identity cards who come into conflict with the law in East Jerusalem and/or Israel.

- Further research is recommended on the following issues in relation to the protection of children detained under the Israeli military order system: underlying causes leading to arrest and detention of Palestinian girls.

Introduction

Child protection is an inalienable human right, not a relief activity or a service. It is central to human development and hence it must be conceptualized as such. This principle is enshrined in the United Nations Convention on the Rights of the Child (CRC), enacted in 1989, as well as other international human rights standards, such as the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights. These universal human rights instruments have been ratified by the State of Israel as well as endorsed by the Palestinian Authority (PA), which, considering the *occupied status* of the occupied Palestinian territory by Israel and the status of the PA as the interim government of parts of the oPt since 1994, leads to the conclusion that both Israel and the PA are prime duty-bearers of Palestinian children's rights, one being the right to protection. As such, the two governments have clear responsibilities towards the protection of Palestinian children living under its jurisdiction.

The *de facto* situation on the ground, however, is that the aforementioned duty-bearers either deny having jurisdiction over the oPt (State of Israel) or are not adequately equipped to fulfil their legal commitments as a duty-bearer, due to lack of autonomy, institutional capacity and resources (PA). This means that neither duty-bearer satisfactorily upholds its obligations to respect and ensure the rights of, and to provide protection for Palestinian children living in the oPt. Moreover, not only does the State of Israel refuse to uphold its obligations to protect Palestinian children in the oPt, it actively increases the vulnerability of children to violence, abuse, neglect and exploitation through its occupation policies and practices in the oPt, which include targeted and negligent killing, maiming, physical and psychological violence - including torture, arbitrary arrest and detention, house demolitions, land confiscation and obstruction of livelihoods, discrimination, harassment and restrictions on the movement of people and goods.

The vulnerability of Palestinian children in the oPt to violence is further exacerbated by the internal political instability arising from factional fighting and tensions between Hamas and Fatah since 2006, which in turn, has had a further adverse impact on their economic and social instability. Poverty has also been increasing exponentially in recent years as a result of the internal political instability and economic sanctions applied by Israel and the international community to the PA in 2006 and 2007, as well as the ongoing blockade of Hamas-controlled Gaza by Israel. The re-emergence of restrictive social norms and oppressive cultural and religious behaviours seem to further exacerbate the vulnerability of children to violence, and especially girls, due to the male-dominated culture that characterizes Palestinian society. For instance, stakeholders interviewed reported their perception of increased social disempowerment of women and the prevalence of gender-based violence.

In effect, this means that Palestinian children living in the oPt grow up in an unstable and unsafe environment and are generally denied the enjoyment of many of their basic rights. The aforementioned context and the findings of this research clearly indicate that children are highly vulnerable to violence, abuse, neglect and/or exploitation in various situations. This study analyses the level of effective protection provided to three particular target groups of Palestinian children living in the oPt in the face of such vulnerability, in terms of laws, policies, mechanisms and practices. The target groups in question are children vulnerable to violence, neglect, abuse and exploitation in their homes and communities; children in conflict with the law under PA jurisdiction and children detained by Israel under its military order system. Given time and resource constraints, the scope of the research is far from comprehensive, rather it represents a general analysis of the situation for Palestinian children in the oPt regarding their rights to protection in 2008, from which gaps, opportunities and niches for child protection work can be recognised. Important information gaps are highlighted and recommendations for further research and necessary follow-up actions are made. Thus the purpose of the study is to provide a resource that can assist child protection actors operating in the oPt in shaping their strategies towards enhancing, advocating for and ensuring a better realization of Palestinian children's rights to protection in the oPt.

Methodology

This situation analysis was carried out between March and May 2008, according to a rights-based approach and the following research methodology: First, a review of international standards and principles on child protection was conducted to serve as a benchmark. Second, the existing legal and policy framework in the oPt was analysed to determine the extent to which domestic legislation, systems and policies reflect the principles and provisions of international standards; and third, the factors that hinder the implementation of this framework were also examined. This was followed by an identification of all the categories of duty-bearers and stakeholders – both governmental and non-governmental - of Palestinian children’s rights to protection. In order to actively involve key duty-bearers and stakeholders, the major players within each category were individuated and interviewed as part of the field research. The interviews sought to measure the level to which stakeholders are aware of their role, discern their attitude towards their accountability and identify the gaps in fulfilling legal commitments.

In addition, a number of focus groups and individual interviews with children were carried out to support the data gathered in the field and to include children’s views on the major obstacles preventing them from enjoying their right to protection. Their recommendations for action were also obtained and integrated into the set of recommendations addressed to duty-bearers and the main stakeholders that are included at the end of each of the three main sections, each corresponding to the analysis of one of three target groups of children that the study focuses on (as explained in the introduction above).

The following have been the main means of data collection:

1. Desk review of available literature, including collection of secondary data from government offices, such as statistics and internal policy documents, as well as reports and surveys conducted by local and international NGOs.
2. Focus groups and personal interviews with children. The research team sought the views of children from different geographical locations in the Gaza Strip and the West Bank, including East Jerusalem. The focus groups were carefully structured so as to give every child a chance to express his/her experiences, opinions and recommendations.
3. In-depth interviews with child rights’ duty-bearers and stakeholders. The interviews mainly centred on the awareness of the roles and responsibilities of each duty-bearer and stakeholder, activities being implemented, and any gaps between what should be done and what is being achieved.
4. Focus group with media actors.

Context Analysis¹⁰

Geographic and Demographic Overview

Children comprise one of the most important sectors of Palestinian society – representing 53 percent of the overall population of 3.76 million. According to the preliminary results of the 2007 census¹¹, this represents a 29.9 percent population increase compared to the results of the 1997 census. Of the total population, 62.3 percent or 2.3 million reside in the West Bank, and 37.7 percent or 1.4 million reside in the Gaza Strip. The 2007 census also indicated that the mean size of Palestinian families is 5.8 individuals (5.5 in the West Bank and 6.5 in Gaza Strip).

The average Palestinian household is formed at an early age. 2006 figures from the Palestinian Central Bureau of Statistics (PCBS)¹² indicated that 47 percent of females got married between the ages of 15 and 19, whereas 1.7 per cent of females became pregnant in this age period and 4.3 percent of females became mothers. The average age at first marriage was 18 for females and 25 for males, and at the time of writing, the fertility rate according to the PCBS was 5.6 percent.¹³ These figures indicate that children will continue to constitute the majority of the population in the coming years.

Political Context

Understanding the political context of the oPt is crucial to understanding other aspects of the overall oPt context, including economic, legal and socio-cultural affairs. There are three key elements to consider: The Israeli occupation of Palestinian territory, the status and capacity of the PA, and the internal conflict between Hamas and Fatah.

Regarding the first element, the Gaza Strip and the West Bank, including East Jerusalem (collectively known as the occupied Palestinian territory – oPt) has been occupied by the State of Israel since 1967. Over the 41 years of its occupation, Israel has implemented policies and practices in the oPt that have aimed at keeping the Palestinian population under tight control and the Palestinian socio-political and economic fabric fragmented, unstable and underdeveloped.

Although under international humanitarian law the State of Israel is the Occupying Power of the oPt, it has refused to recognise and respect its legal obligations to protect the civilian population of the occupied territory, including children. Israel's claims that the Fourth Geneva Convention does not apply to its relations with the Palestinian population living in the oPt have become more insistent since the creation of the Palestinian Authority (PA) in 1994, which was created as an interim self-government with semi-autonomous powers and jurisdiction over parts of the oPt through the signing of the Declaration of Principles by the State of Israel and the Palestinian Liberation Organisation (PLO) in 1993.

In fact, the jurisdiction of the PA is very limited. With the signing of the Interim Agreement on the West Bank and the Gaza Strip in 1994, the PA was granted full civil and security control of most of the Gaza Strip, whereby the West Bank was divided into areas A, B and C. Areas A fall under full security and civil control of the PA¹⁴ and include the largest Palestinian urban cities, but comprise overall only 17 percent of West Bank territory. Areas B include population centres outside major urban areas and fall under the control of the

10 Updated in December 2008

11 PCBS, *Palestinian Children: Issues and Statistics*, April 2008.

12 PCBS, *Palestinian Family Health*, 2006.

13 <http://www.pcbs.gov.ps/>, last visited 8 May 2008.

14 In fact, as reported by the OCHA West Bank Barrier Map, this full security and civil control arrangement only applies to the Jericho area. Downloadable at www.ochaopt.org

PA for civil affairs while Israel controls these areas concerning security matters. Areas C, which account for the remaining parts of the West Bank - amounting to almost 60 percent of the whole territory - include some Palestinian villages, Israeli settlements and environs, all the main roads linking Israeli settlements, Israeli military bases, land reserves and roads linking Palestinian towns and population centres in Areas A and B. Israel retains full civil and security control in areas C. Areas A, B and C are geographically non-contiguous, which translates as a *de facto* physical, political and jurisdictional fragmentation of the West Bank¹⁵, besides the same fragmentation existing between the West Bank and the Gaza Strip. The limited authority of the PA greatly impairs the effectiveness of its work, especially in ensuring protection to Palestinians, including children.

The West Bank has been even further fragmented by the construction of the Separation Barrier, the extension of the areas taken up by Israeli settlements, and the presence of a high number of physical barriers, including permanent and flying checkpoints, roadblocks, earth-mounds and other types of closures. The number of physical barriers increased from an average of 410 in 2005, to 445 in 2006, and 459 in 2007. As of 30 April 2008, the number of closures in the West Bank amounted to 607, a 53% increase since the Agreement on Movement and Access was signed in November 2005 between Israel and the Palestinian Authority¹⁶. This physical division has hindered full realization of basic human rights for the Palestinian population as it not only hampers access to health, protection and education services but also obstructs livelihoods and the day-to-day functioning of Palestinian society. A relevant example is that Palestinian police forces and other governmental authorities need to obtain authorization from Israel when transferring people or goods between areas A, B, and C.

The Advisory Opinion of the International Court of Justice (ICJ) on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory from 9 July 2004 stated that the portions of the Separation Barrier/Wall built on land within the West Bank, including East Jerusalem, is illegal. Despite the ruling, Israel has continued its construction of the Wall, which is now in its final stages. The Barrier/Wall negatively impacts the well-being of all those living in the West Bank and has had devastating consequences for many. In fact, it has led to the confiscation of Palestinian lands¹⁷ as well as the separation of people from their land, work, schools, and medical and other social services. Palestinians are not allowed to pass through the Barrier/Wall without special permits, which are difficult to obtain for many and impossible to obtain for others¹⁸.

The issue of colonies of Jewish nationals in the oPt is also of particular relevance for the political context. These colonies represent illegal settlements of the occupier's civilian population and have been growing exponentially since 1967. The estimated settler population at the time of writing ranged from 480,000-550,000 and is growing at almost double the rate of the Israeli population. Settlers are often armed and violent attacks against Palestinians have been steadily on the rise since the start of the second intifada in September 2000. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA) there was a 20 percent increase in reported cases of settler violence resulting in death or injury to Palestinians from 2007 to 2008, and the number of attacks against children from January – September 2008 reached 19, resulting in one child fatality.

The situation in East Jerusalem is particularly complex from a political, legal, economic and socio-cultural perspective. Although East Jerusalem is part of the oPt, it was illegally annexed by Israel in 1981 and is under its full administrative control. The PA and the Palestinian population from the rest of the oPt are denied access to East Jerusalem unless

15 <http://www.poica.org/pal-in-a-century/pal-in-century.php>

16 OCHA-oPt Humanitarian Briefing, May 2008. Downloadable at www.ochaopt.org

17 Approximately 92 percent (141,974 acres) of the lands confiscated for construction of the Separation Barrier are in the Jerusalem area.

18 Shir Hever. *The Economy of the Occupation*, The Alternative Information Centre, Jerusalem, 2007. <http://domino.un.org/unispal.NSF/0145a8233e14d2b585256cbf005af141/b4a30a68ce68632a852572ce00515a1a!OpenDocument>, last visited 8 May 2008

they obtain a permit from Israel, which, as mentioned in the case of permits to cross the Barrier/Wall, are difficult if not impossible to obtain. Palestinians residing in East Jerusalem suffer overcrowded living conditions (especially those living inside the Old City), constant harassment by Israeli citizens and police, alienation, and a deep national identity crisis¹⁹. This environment increases the vulnerability of children to violence both in the domestic environment as well as the community. NGOs working in East Jerusalem have observed that many Palestinian Jerusalemites tend to boycott Israeli-provided services in East Jerusalem as they refuse to acknowledge the authority of Israel in East Jerusalem²⁰. Thus, in this area Palestinians do not always demand the benefits, i.e. functioning social, health and education services, they are legally entitled to. At the same time, Israeli authorities refrain from allocating adequate social services in quality and quantity.

The situation in the Gaza Strip is also extremely complex. Since Israel's unilateral disengagement from Gaza in September 2005, Israel claims to no longer occupy the Strip. However, international jurists have rejected this claim, given that Israel still controls all borders and air and sea space. In fact, since disengagement Israel has conducted severe major-scale incursions into the Gaza Strip and sealed off borders for lengthy periods, blocking commodities and other goods entering the Strip, as well as preventing people from exiting. The current blockade has been ongoing since Hamas took control of the Gaza Strip by force in June 2007. This take-over was the culmination of deadly armed clashes between Hamas and Fatah that erupted as part of an internal factional conflict which began in December 2006 when PA President Mahmoud Abbas announced early elections.

The blockade has worsened an already severe ongoing humanitarian crisis, which was triggered by a series of political events beginning with Hamas' victory in the PLC elections in 2006. Following this victory, Israel began to withhold Palestinian tax and customs revenues of some US\$ 60 million per month from the PA, which represented 55% of the PA's annual budget²¹. In April 2006, key donors including the US, the EU and Canada suspended direct aid to the Hamas-led PA, making it contingent on three conditions: recognising Israel, renouncing violence, and accepting previous agreements. Direct aid continued to be blocked even when Hamas and Fatah joined in a unity government through the Mecca Agreement in February 2007.

When PA President Mahmoud Abbas dissolved the unity government in June 2007, the international donor community re-established political dialogue with, and direct aid payments to a Fatah-led emergency government in the West Bank. Also in July 2007 Israel announced that it intended to return the VAT revenue it owed to the PA, starting with an initial payment of \$120 million²².

In November 2007, the Annapolis conference was held, launching an round of talks between Israel and the Fatah-led 'caretaker' government, as Mahmoud Abbas' emergency government became baptised in the language of the international community, particularly the Quartet (Russia, US, UN and the EU). Talks were still ongoing at the time of writing, although no concrete advances had been made.

On the other hand, the Hamas-led government in the Gaza Strip continues to be isolated to a large extent, and Israel continues to lay siege to its 1.5 million population, with restrictions on the supply of electricity and fuel, plunging the Gaza Strip into an ever-deepening humanitarian crisis (see economic context).

19 Nadera Shalhoub-Kevorkian, Nahla Abdo, "Palestinian Women's Ordeals in East Jerusalem", Women's Studies Centre, East Jerusalem, March 2006, p. 37 ff.

20 The Arab Study Society, "East Jerusalem Multi Sector Review Project. Multi Sector Strategy for East Jerusalem", Final Report, Occupied Palestinian Territories, February 2003, p. 10 ff.

21 <http://www.palestinemonitor.org/spip/spip.php?article13>

22 Ibid.

Legal Context

Given the complex political identity and historic evolution of the West Bank and Gaza Strip since the time of the Ottoman Empire, the legal context applying to the oPt is consequently very complicated and at times ambiguous.

As a result, to understand who the legal duty-bearers of the rights of Palestinian children living in the oPt are, it is important to bear in mind the following points:

First of all, the oPt is an occupied territory, not a sovereign State. According to the Fourth Geneva Convention, this means that the State of Israel, as Occupying Power, is the primary duty-bearer of the basic rights of all Palestinians, including children, living within the occupied territory. As such, it is legally accountable for those rights.

Although Israel claims that the Fourth Geneva Convention does not apply to their relationship with the Palestinian people living under occupation, many resolutions of the UN General Assembly and Security Council, as well as statements issued by governments, have all affirmed the *de jure* applicability of the Fourth Geneva Convention in the oPt, as well as the applicability of customary human rights norms such as the prohibition against torture, certain basic due process guarantees and the principle of non-discrimination.

Furthermore, as well as its obligation to implement international customary human rights law, UN treaty bodies and independent experts have all repeatedly reaffirmed that Israel is considered legally responsible to provide and ensure in the oPt the provisions of human rights treaties which it has signed and ratified, such as the CRC, the Convention against Torture and the International Covenant of Economic Social and Cultural Rights. Israel has continued over time to apply policies and practices that do not ensure Palestinian children all the guarantees provided by these conventions, although it does generally ensure these guarantees to Jewish Israeli children, thus infringing the principle of non-discrimination, a cornerstone of human rights discourse.

The existence of the Palestinian Authority, which was created as an 'interim self-government' in 1994 through the Oslo Accords, adds a layer of complexity to the situation. With the creation of the PA, the oPt did not lose its occupied status and Israel still retains ultimate control thereof. Thus, although a state-like apparatus has been built around the PA, with the creation of an executive, legislative and judiciary, the PA still has only limited autonomy and lacks capacity and resources as a 'government'. Compounding this issue is the fact that its legal and political jurisdiction is also fragmented within the oPt, through the existence of areas A, B and C in the West Bank – each representing a different administrative jurisdiction, as described in the above section – and the fact that East Jerusalem is under *de facto* administration of Israel, with the PA denied almost all access. However, despite this fact, it still represents the *de facto* government in the oPt and therefore is considered a primary duty-bearer of the rights of Palestinian children living in the oPt.

Prima facie, it seems that the government is not bound by any official commitments towards the international community. However, Art. 10 of the Palestinian Basic Law of 1993 places a legal responsibility upon the PA towards the incorporation of international standards within the national legal framework. In turn, it appears that despite the lack of an *international legal status*, autonomously the Palestinian government has declared its willingness to adhere to the standards of basic rights provided by the international legal framework as well as to carry out the necessary efforts to enforce these standards.

Beside the general commitments towards human rights stated by the Basic Law, the PA seems to consider children's rights, as they are provided by the CRC, a priority issue. In 1995, PA President Yasser Arafat declared the PA's endorsement of the CRC and, at the UN General Assembly Special Session on Children in May 2002, the PA representative reiterated the commitment of the interim government in the oPt to respect and ensure

implementation of the provisions of the CRC²³. Consequently, the most common child rights principles are reflected in the Palestinian Child Law, enacted in 2004.

Unfortunately, the aforementioned explicit pledges have not found an easy soil to grow internally. With the exception of a few unified laws and policies enacted recently by the PA and in force in both the West Bank and the Gaza Strip, the domestic legal system applicable in the occupied Palestinian territory is far from unified; rather it is a patchwork of different laws and legal traditions - the combined legacy of a number of authorities that have ruled the area throughout history. Accordingly, multiple legal systems have affected the political and legal structures and different regulations coming from the Jordanian and Egyptian administration are in force respectively in the West Bank and the Gaza Strip. At the time of writing, the legal system applicable to the oPt was still an amalgamation of Ottoman codes, British amendments thereto, mandatory and emergency regulations, Jordanian laws, constitutional principles, Palestinian law recently developed and enacted by the PLC (including the Child Law, the Disability Law, the Labour Law and draft legislations such as the Penal Code and the Juvenile Justice Bill), and Israeli military orders. Given the aforementioned fact that East Jerusalem is under complete Israeli administration with the PA denied access, the legal system applying to Palestinian children residing in East Jerusalem represents yet another set of regulations different to those applying in the rest of the oPt.

In addition, since June 2007, yet another layer of complexity regarding legal accountability of the rights of Palestinian children living in the oPt must be taken into consideration: the PA exists as two separate interim governments in the West Bank and the Gaza Strip, respectively - a Hamas-led PA in the latter and a Fatah-led PA in the former. This has created two *de facto* jurisdictions and confusion regarding non-state duty-bearers in the oPt.

Economic Context

Israel occupation policies and practices over the decades have always suppressed the economy of the oPt and hindered development. However, since the beginning of the second intifada in September 2000, restrictions on trade and movement of goods and people imposed by Israel have caused an overall progressive economic deterioration.

However as a result of a series of aforementioned political events starting in 2006, the oPt is facing a prolonged socio-economic crisis with the Gaza Strip being the hardest hit. These events include the financial sanctions imposed on the Palestinian population as a result of the Israeli and donor boycott of the Hamas government, loss of fiscal revenues and the strike of public employees in the last trimester of 2006. The ongoing Israeli blockade of the Strip has plunged the Gazan population into a deep humanitarian crisis with over 80 percent of Gaza's 1.5 million population being partially or totally dependent on aid to survive, as of December 2007. This represents a 17% increase in aid reliance in the Gaza Strip from 2004.²⁴ In July 2008, UNRWA reported that the real average unemployment rate in the Gaza Strip in 2007 was among the highest in the world (29.5 %) ²⁵, and stated that when this figure was "adjusted to account for the sharp increase in unpaid absentee workers in Gaza during the second half of the year, joblessness in Gaza between July and December 2007 reached an unprecedented high of 45.3 percent."²⁶

Poverty levels in the rest of the oPt are also worsening. According to a Save the Children UK fact sheet published in October 2007²⁷, overall "58% of Palestinians in the oPt (2.3 million persons) live below the poverty line (\$2.40/day/person) and 42% of households in

23 Save the Children Sweden (2006), Children's rights in MENA Regional CRP/RBA Situation Analysis WB/Gaza office.

24 OCHA-oPt Special Focus. 'The Closure of the Gaza Strip: The Economic and Humanitarian Consequences' December 2007

25 United Nations Relief and Works Agency. Prolonged Crisis in the Occupied Palestinian Territory: Socio-Economic Developments in 2007 (Report No. 3). Gaza. July 2008

26 Ibid.

27 Child Rights Fact Sheet, Occupied Palestinian Territory, Save the Children UK, October 2007.

Gaza live in extreme poverty (\$1.38/day/person) compared to 26% in the West Bank". The same fact sheet cited the outcome of a 2007 joint WFP/FAO survey, which found that one in three Palestinian households were food insecure, i.e. they cannot afford to buy enough food to meet their needs.

The current critical economic situation faced by Palestinians both in the West Bank and the Gaza Strip is a factor that strongly hinders the enjoyment of children's rights. For example, according to an Oxfam survey of household heads and other adults in the West Bank (including East Jerusalem) and Gaza carried out by the Palestinian Centre for Public Opinion in March 2007, households had resorted to taking their children out of school in order to alleviate the financial burden they have been facing²⁸. Furthermore, Save the Children – UK has reported an increase from 3.1% in 2004 to 4.2% in 2006 in the recorded cases of child labour in the oPt, meaning that increasing numbers of Palestinian children are now working to support their families instead of attending school²⁹.

It is important to consider that this economic crisis, besides heavily affecting the lives of children, has had a negative impact on the productivity, professionalism and the effectiveness of the work of governmental and non-governmental duty-bearers and stakeholders of child rights. The long-term sustainability of PA work towards child protection is undermined as well as the ability of the PA to build its own institutional capacity.

Socio-cultural Context

The Palestinian socio-cultural context can best be understood by examining elements of Palestinian culture combined with the living conditions in the oPt. In general, the identity of the individual is tied to the collective, especially the family, and to their geographical region, specifically their land. Relations within the family are usually traditional – with the extended family representing a tight-knit solidarity and support network and providing the best coping mechanism in the face of the difficult economic and political circumstances that arise from the policies and practices of the Israeli occupation as well as the internal political instability. In traditional families, decisions are usually taken by male family members, and in particular, elders.

The effects of Israeli policies and practices of ever tightening control in the oPt, especially since the outbreak of the second intifada in 2000, have had an adverse impact on the Palestinian socio-cultural fabric. On the one hand, Israeli measures have undoubtedly brought families and smaller communities closer together, especially during periods of particular aggression, such as during land confiscations, targeted assassinations and house demolitions. At the same time however, Israel, through the geographical fragmentation of Palestinian territory, and especially by cutting off East Jerusalem from the West Bank, has purposefully sought to and has partially achieved a fragmentation and weakening of communities and a stifling of Palestinian social and cultural life.

Emigration has been on the rise since the beginning of the second intifada³⁰, as well as internal migration from rural to urban areas – especially to Ramallah.

In this environment where social and cultural life is oppressed and the community fabric has weakened, the prevalence of domestic and community violence is notable. Not only is this violence often directed against children, there are also many incidences of violence among children. The findings of this situation analysis also points to a prevalence of parents, relatives and schoolteachers using violence against children as a tool to educate them. For instance, of a sample of mothers surveyed by the Ministry of Education and Higher

28 Poverty in Palestine: the human cost of the financial boycott, Oxfam International, April 2007

29 Ibid.

30 According to an opinion poll conducted by Birzeit University in September 2006, the percentage of individuals aged 18 years and above who wish to emigrate from the oPt has reached 32.4 per cent.

Education (MoEHE) in 2007, some 83 percent agreed that beating children could be used in some cases to discipline and educate them³¹. Both girls and boys face violence inside and outside the home, although the type of violence faced by both genders is often different. Girls do not always receive the same opportunities as boys under the pretext that they are more vulnerable and in need of greater protection. As a result, in some cases, especially in rural areas and the refugee camps, families do not allow their female children to finish mandatory schooling because the families believe it is safer for them to remain at home; school drop-outs or non-enrolment among both boys and girls can also be attributed to economic reasons, whereby struggling families might require children to work to supplement the family income or at least to remain at home so as to release the financial burden of paying school fees and associated costs. Girls are also more likely to be married off while still a minor due to the prevailing attitude within traditional communities that girls are vulnerable and in need of protection and therefore also a financial burden to the family because it is too dangerous for them to go out and join the normal work force.

The Role of Local Civil Society including Media Actors

Although civil society can include the media, professional associations, trade unions, academia, etc., in this study, civil society mainly refers to NGOs and CBOs that work in the field of child protection, although when explicitly mentioned, it includes also media actors.

As mentioned above, Israel, as the Occupying Power in the oPt, and the PA share responsibility for ensuring protection of Palestinian children living in the oPt. However, given the context of the occupation and Israel's refusal to uphold its obligations under international law vis-à-vis Palestinian children as well as the limited autonomy and capacity of the PA in fulfilling its role to protect children under its jurisdiction, civil society organizations have progressively been establishing themselves to try to fill the void, mostly in terms of providing some protection services and prevention or mitigating activities, as well as attempting in some cases to improve structures and mechanisms that should be provided by Israel and/or various PA ministries.

This sector in the oPt is thriving, with many different NGOs and CBOs operating oPt-wide. The number of NGOs active in the West Bank and the Gaza Strip has increased over the last few years, especially since the start of the second *intifada*. According to 2007 statistics released by the Palestine Economic Policy Research Institute³², from 2000-2007, the number of registered NGOs in the Gaza Strip increased from 206 to 437, with 73.5 percent operating in urban locations, 3.4 percent in rural areas, and 23.1 percent in the camps. Meanwhile, in the same period, the number of West Bank registered NGOs increased from 881 to 1388, with 57.2 percent operating in urban areas, 30.3 percent in rural areas, and 12.5 percent in the refugee camps.³³

The oPt has a history of civil engagement and community initiatives, and local civil society actors have always played a central role in societal development in the oPt. Prior to the creation of the PA, popular committees and community associations played a pivotal role in self-organisation and social entrepreneurship in Palestinian communities, their dynamic self-reliance and creative capabilities coming to the fore during the first *intifada* in the late 1980s. With the creation of the PA, the role of these associations and committees changed and slowly but surely a spate of professional NGOs emerged to complement the role of the PA, monitor the government's work or fill the void of the inadequate or inexistent governmental services.

31 MoEHE. Violence at Palestinian Schools. 2007.

32 MAS, Palestine Economic Policy Research Institute, "Mapping Palestinian Non-Governmental Organisations in the West Bank and the Gaza Strip", 2007.

33 Ibid.

Given their important role during the first intifada as political activists, many civil society actors continue to be considered primary leaders of social change within the community, specifically change regarding children. As such, they continue to enjoy a certain level of legitimacy in the eyes of the community although their mandates and roles have changed over the years. This notwithstanding, it warrants mention that it is also true that in recent years the public perception of NGOs in general in Palestinian society has deteriorated and it is not uncommon among the public to find the attitude that these organisations are corrupt and inefficient, with some accusing NGOs of having become too donor-driven and hence having lost touch with the community, i.e. their beneficiaries. Nevertheless, it is hard to deny that there are many NGOs and CBOs in the field that play a very positive role and display remarkable activism. As a result, despite the absence of explicit legal provisions regarding their accountability in enhancing children's rights, civil society actors in the oPt are *de facto* crucial child rights' stakeholders.

Three main factors are identified by this research as contributing to this. Firstly, the unique experience of the inception and the development of associations have led to the creation of a civil society sector that has always bridged the gap of missing governmental support to society. This was self-evident before 1994 as, in the absence of a governmental structure, civil society groups (popular committees, local associations, neighbourhood collectives) were the only entities providing social services and support to society and in particular to vulnerable groups of children. Moreover, from 1994 on, with the creation of the PA, specific social roles and legal duties for the protection of children were assigned to key governmental institutions, such as MoSA. However, an inexperienced, bureaucratic and under-resourced PA, both in terms of financial and human resources, could not, and did not, replace the already established and relatively well-functioning civil society sector. Consequently, despite the current efforts of the PA to improve its capacity and its organisational skills, civil society groups have remained leading stakeholders for children's rights. In fact, comparing projects and actions offered to unprotected children by the PA and the civil society sector, respectively, currently the latter seems to be better equipped to meet the immediate and long-term needs of Palestinian children.

Secondly, the regulatory framework in place under PA jurisdiction of the civil society sector has likely facilitated their role in becoming important child rights stakeholders. This sector is regulated essentially by Art. 26 of the Basic Law that provides for the freedom of association and the right to participation in political life as individuals or groups; as well as by the Palestinian Law on Charity Associations and Civil Institutions³⁴; The Law on Charity Associations and Civil Institutions does not impose particular rules or restrictions on NGOs and CBOs. On the contrary, once registered, civil society actors generally enjoy a high level of independence. For instance, they are entitled to the right to public assembly, to form their internal policies and general direction and to carry out various activities to realize their goals without any restriction or approval by governmental institutions³⁵. In addition, there is no legal limitation to the freedom of movement of the association's members, the freedom of communication and the freedom of association with other actors. Moreover, although the law underscores the importance of developing a good level of coordination between NGOs and relevant governmental institutions, the law does not provide the latter with any official power to interfere in the daily life of the organisations except for monitoring their work according to their own internal statutes³⁶. Recently however, in this context, some presidential decrees have been issued by PA President Mahmoud Abbas that several NGOs and CBOs have perceived as being politically motivated and potentially restrictive.³⁷ Despite these recent

34 The Palestinian Law of Charity Associations and Civil Institutions No. 1, 2000.

35 Ibid, p. 79.

36 Ibid, p. 80 ff. It is interesting to note that civil society actors are free to receive and use funds and property with the only restriction that their use be regulated through an internal organisational policy that is stipulated in the statutes of the organisation in question.

37 For instance, regarding a 2007 decree that requires official registration of all associations in the oPt at the MoI in order to be considered a legal entity, a Euro-Mediterranean Human Rights Network report published in the same year suggested that this decree was issued with the intent to target and closely monitor associations that belong to the Hamas Movement in the West Bank and the Gaza Strip. See "Freedom of Association in the Euro-Mediterranean region", published by the Euro-Mediterranean Human Rights Network, Copenhagen K, Denmark, 2007, p. 76 ff.

potentially restrictive decrees, the regulatory framework remains relatively liberal, and as a result, the civil society sector has been able to grow exponentially and to freely develop their own missions, goals and activities covering almost all relevant social issues.

Finally, through their long-standing experience in the field, civil society organisations have built solid experience with regards to the major problems faced daily by children. Despite all the shortcomings in their actions – which will be analysed below, this experience has enabled them to become the entities that better understand children's needs which therefore puts them in the position to theoretically better design intervention to effectively protect children and/or to directly tackle the primary root causes of rights violations. Thus, in light of the absence of an effective governmental structure, as well as through their first-hand knowledge of the socio-economic environment of children, and facilitated by a generally enabling regulatory framework, the civil society sector has become the primary referral point for children in need of protection.

1. Children Vulnerable to Violence in Their Homes and Communities³⁸

“...Protection is being strong and fighting back when other children or adults use violence against us; (it) is when we are protected from our fears, (from) Israeli invasions and arrest. (...) Protection means feeling secure within our families; (it means not fearing our) parents and brothers at home, teachers and children inside the school...”

Mohammed³⁹, 13, Gaza, Focus Group Testimony, April 2008.

The Right of the Child to Protection against Violence, Abuse, Neglect, and Exploitation

Art. 19 of the Convention on the Rights of the Child

States Parties shall take all **appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse**, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include **effective procedures for the establishment of social programmes to provide necessary support** for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Art. 39 of the Convention on the Rights of the Child

States Parties shall take all **appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts**. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 18 of the Convention on the Rights of the Child

States Parties shall use their best efforts to **ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child**. Parents or, as the case may be, legal guardians, have the **primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern**.

Background and Context

Many Palestinian children living in the oPt are vulnerable to violence, abuse, neglect and exploitation within their domestic and community environment. A survey conducted by the PCBS in 2005 reported that, according to the perceptions of mothers, **in the West Bank some 53.3 percent of children are subjected to violence**. The same source reports that **93.3 percent of Palestinian children who were victims of violence have suffered it at home and 38.3 percent in the neighbourhood**. The situation is much the same in the **Gaza Strip where out of 48.5 percent of children who suffered violence, 93.2 percent experienced domestic violence and 35.3 percent stated to have been subjected to**

38 Violence as cited here refers to violence, abuse, neglect and exploitation as it appears in the rest of the text

39 Not his real name.

violence in the neighbourhood⁴⁰. Gathering reliable data on domestic violence against children in East Jerusalem is more problematic. In fact, leading child rights organisations based in East Jerusalem have stated, “although **domestic violence in East Jerusalem is a widespread phenomenon, very little research has been carried out on the topic and no clear data has been surveyed**⁴¹”.

Regarding the distribution of violence against children across urban centres, rural areas and refugee camps in both the West Bank and Gaza Strip, a source published in **October 2007** reveals that the **highest percentage of home violence** suffered by children was in **rural areas (56%) followed by urban centres (50%) and then refugee camps (47%)**⁴². According to these figures, children living in refugee camps are least at risk, and yet **the number of refugee children who notify UNRWA counsellors of having suffered violence within the community seems to have increased over the past few years**. In fact, as stated by a representative of UNRWA “a high number of children attending UNRWA clinic and school counsellors report to have been victims of domestic and/or community violence”⁴³. This statement gives cause for concern considering that the number of recorded cases of children benefiting from UNRWA community services in 2006 was 18,171, rising to 36,156, in 2007, while in the first quarter of 2008 alone, the number of recorded cases reached 11,112⁴⁴.

One of the factors that could explain the widespread prevalence of **domestic and community violence** suffered by Palestinian children in the three geographical areas examined, is that **it is often viewed as an acceptable means to discipline and control children**⁴⁵. For instance, PCBS statistics published in **2005** showed that **more than 50 percent of mothers in the oPt were in favour of subjecting their children to physical punishment when they misbehave**⁴⁶. The same attitude was reflected in the results of a survey conducted in the south of the **Gaza Strip in 2007**. Of the **679 parents interviewed, nearly 100 percent of them admitted to subjecting their children to physical and/or verbal punishment**⁴⁷.

Child rights specialists see this behaviour as a direct **consequence of the daily violence suffered by Palestinians due to Israeli incursions, clashes and the imposed system of movement restrictions** in the West Bank and even more so in the Gaza Strip⁴⁸. These **events**, in fact, have had **dramatic consequences on the traditional unity of extended families, which have always represented the strongest coping mechanism for children and adults**⁴⁹. Also, NGO representatives from **East Jerusalem** attributed the prevalence of domestic violence towards children to the extremely **overcrowded and repressive**

40 <http://www.pcbs.gov.ps/DesktopDefault.aspx?tabID=4114&lang=en>, last visited 23 April 2008. For an analysis of the geographical distribution of cases of physical, mental and sexual abuse suffered by children in the West Bank in 2004, see Ministry of Planning and UNICEF, “Child Protection in the Occupied Palestinian Territories: a National Position Paper”, Logo Production, Jerusalem, occupied Palestinian territory, June 2005, p. 87. Note that the reported percentages refer to the latest data found. Given the political situation of the last two years as well as anecdotal evidence and testimonies collected as part of this research it is reasonable to induce that up-to-date statistics on violence against children would reveal a similar or worse situation.

41 Interview with Hadeel Younis, DCI-Israel, director, 15 April 2008. On the same topic see also interview with Emad Salah Jaduny, Burj Al Luq Luq, director, 3 April 2008.

42 Child Rights Fact Sheet, occupied Palestinian territory, Save the Children UK, October 2007.

43 Interview with Amal Hadweh, UNRWA, Community Mental Health Program Manager, 14 April 2008.

44 Ibid.

45 Most of the civil society stakeholders interviewed during this research have expressed their concern regarding the daily presence of violence within the domestic and community environment to the extent that many “parents and relatives make *normal use* of cruel punishment towards their children”. See Interview with Emad Salah Jaduny, Burj Al Luq Luq, director, 3 April 2008; interview with Sama Aweidah, Women’s Studies Centre, director, 5 May 2008; phone interview with Iyad Abu Hujayer, PCDCR, deputy director, 26 April 2008.

46 PCBS tables from 2005 on married woman who agrees to violence against their children when they behave in an unacceptable way, on file at the DCI-Palestine Ramallah office.

47 See survey results conducted during the “Community-Based Child Protection” project, Al Shoka, South Gaza Strip, Palestinian Centre for Democracy and Conflict Resolution and SCS, 2007, on file at the DCI-Palestine Ramallah office.

48 Interview with Dominique Sbardella, SCS, child protection officer, Ramallah, 19 April 2008. See also interview with Chrissie Gale, UNICEF, child protection officer, Jerusalem, 17 April 2008. As already reported, it is reasonable to induce that, due to the intensification of incursions, internal political instability and political divisions, the level of violence that children suffer or are exposed to has increased over the past few years.

49 Ibid.

living environment and subsequent **lack of privacy**, especially inside the Old City. This contributes towards the **development of feelings of anger, frustration and tension**, which **may trigger violence, usually towards the most vulnerable, namely children and women**⁵⁰.

Children's Voices

The figures reported here appear to match the impression given by children who engaged in focus group activities as part of this research. When asked who the main perpetrators of violence towards them are, children in both the West Bank and the Gaza Strip answered, "**our parents and brothers at home, (...) also child gangs in the street**". Girls in the Gaza Strip reported to be regularly beaten at home when they refuse to make supper or do house work. In the West Bank, **100 percent of the surveyed girls stated to be in need of protection** as they are either neglected by the family or because they have suffered sexual abuse. A mentally disabled girl reported to have been raped and forced to get married at the age of 14. This was confirmed by a staff member of a protection centre.

(Focus Group Testimonies, West Bank and Gaza, April 2008)

Another possible contributing factor to the prevalence of violence towards children is **the existence of harmful traditional practices within Palestinian society that increase the domestic vulnerability and the social exclusion of certain categories of children**. An example of one such practice is **honour killing**, which usually targets adult women, although there have been some cases of girls who were killed to protect their family's honour in both the West Bank and the Gaza Strip. In fact, a report published in 2006 stated that Palestinian girls' and **women's lives are at risk "(...) when suspected of engaging in behaviours (that their) family or community considers taboo**, such as talking with a man who is not her husband or a blood relative"⁵¹. To confirm this, the director of one of the existing protection shelters in the oPt that hosts both girls and women, and which in April 2008 hosted 25 females, stated "(...) I am protecting the girls (in the shelter) from being killed by their fathers or brothers (...)"⁵².

As in most patriarchal traditional societies, within the domestic environment in the oPt, in the majority of cases, men are invested with near absolute authority and women and girls are socially disempowered to challenge this authority. Consequently, although up-to-date and comprehensive data is lacking on the issue, it is widely believed that acts of **sexual violence against women and girls** by male family members are not infrequent. It is difficult to ascertain the exact rate of occurrence given that sex is considered a social taboo and family affairs are generally not to be discussed outside the family. Subsequently, it is widely believed that many cases go unreported. However, in a survey of 1,153 adolescent girls from the West Bank conducted in 2004, 7.4 percent reported to have been sexually harassed by a brother and 4.3 percent reported to have been raped by their father⁵³.

Therefore, girls are deemed to be a particularly vulnerable group in the oPt. Another category of children at-risk is **mentally and physically disabled children, considered amongst the most neglected within Palestinian society**. A representative from the East Jerusalem YMCA, a leading NGO in the oPt dealing with mental health and psychosocial rehabilitation projects for disabled children, declared that **not only are disabled children**

50 Interview with Emad Salah Jaduny, Burj Al Luq Luq, executive director, Jerusalem, 3 April 2008.

51 Human Rights Watch, "A Question of Security: Violence against Women and Girls", Occupied Palestinian Territories, November 2006, p. 48 ff.

52 Interview with Dyana Mubarak, Al Mehwar organisation, Director, Bethlehem, 12 April 2008. On this and another topic related to the vulnerability of Palestinian girls and adolescents to sexual violence and abuse see Dr. Ayesha Al-Rafai, Women's Studies Centre, "Sexual Violence Against Female Teenagers in the West Bank: from a gender perspective", East Jerusalem, January 2007.

53 A. Al-Rafai, "Political Instability and Nation-Building: Sexual Violence against Female Teenagers in the Occupied Palestinian Territories", in P. Ouis and T. Myhrman, *Gender Based and sexual violence against teenage girls in the Middle East*, SCS, Beirut Lebanon, 2007, p. 78.

subjected to severe social discrimination within the school environment, but it is also not uncommon to find parents denying their disabled children medical care and support because they fear social stigmatization⁵⁴.

The above indications of violence against Palestinian children give cause for concern. However it is difficult to gauge the exact extent of the phenomenon based just on the few testimonies and data presented here. In fact, **many cases of domestic physical and psychological violence**, including sexual abuse and other forms of gender-based violence, **either go unreported due to the social dishonour that might arise for the family⁵⁵ or are resolved through informal mediation without reaching official channels⁵⁶.**

Although some efforts are being made to protect children through various legal provisions, mechanisms and practices, unfortunately, in general, the primary duty-bearers and other stakeholders of Palestinian children's rights are far from meeting their international obligations. The following sections aim at firstly describing what legal and policy framework applies to Palestinian children in need of protection in the oPt and how this framework is translated into practice. Secondly, there will be an analysis of the reasons that prevent the full realization of the right to protection of children in the oPt.

This research does not intend to differentiate one child from another within the group of Palestinian children living in the oPt. However, given that East Jerusalem has been under full administrative control of Israel since 1967⁵⁷, the legislation and system that protects Palestinian children and binds relevant stakeholders living in this area is different to the legislation and system in place in the rest of the West Bank and the Gaza Strip. As a result, the following analysis is divided into two, one referring to the West Bank and Gaza Strip and one concerning East Jerusalem.

54 Interview with Fardoss Abd Al-Haq, EJ YMCA, mental health trainer and supervisor, 12 April 2008.

55 Most of the interviewed stakeholders were of this opinion, including Dyana Mubarak, a representative of the Ministry of Social Affairs with 30 years experience who is also the director of the semi-governmental protection shelter for girls based in Bethlehem. See interview with Dyana Mubarak, Al Mehwar organisation, director. 12 April 2008.

56 Human Rights Watch, "A Question of Security: Violence against Women and Girls", Occupied Palestinian Territories, November 2006, pp. 70 ff. and Ministry of Planning and UNICEF, "Child Protection in the Occupied Palestinian Territories: a National Position Paper", Logo Production, Jerusalem, Occupied Palestinian Territories, June 2005, p. 83.

57 For a detailed explanation of the historical and political evolution of East Jerusalem see The Arab Study Society, "East Jerusalem Multi Sector Review Project. Multi Sector Strategy for East Jerusalem", Final Report, Occupied Palestinian Territories, February 2003, pp. 10 ff.

Gaza Strip and West Bank, Excluding East Jerusalem

Domestic Legal Framework vis-à-vis international Standards

The PA has acknowledged the right of children to protection from violence, abuse, neglect and exploitation within the family and community, as stipulated in Art. 19 of the CRC, **by adopting the Palestinian Child Law (hereinafter Child Law)**, which was enacted in 2004. This law represents a first step towards establishing a culture that condemns violence against children in accordance with international standards, which in essence dictate that **all State signatories (national governments) must ensure the protection of all children under their jurisdiction**. In legal terms, this means ensuring that, at all levels of the law, legislation, by-laws and mechanisms exist to guarantee that children are effectively protected from violence, abuse, neglect and exploitation.⁵⁸

The Child Law requires the establishment of a reporting mechanism to ensure that children are not exposed to violence in the public and private domains and to oversee the care of children who have been exposed to violence⁵⁹. Key to the creation of this mechanism is the **establishment within the Ministry of Social Affairs (hereinafter MoSA) of the “Childhood Protection Department,” which employs “several” social workers, called protection officers, responsible for the protection of any Palestinian child**. The Child Law states that **protection officers have the power to take a number of measures to ensure the protection of children**. For instance, a protection officer has the authority to investigate a suspected case of child domestic violence and separate the child from his/her family, should the protection officer determine that the child is at-risk. The Child Law also imposes a **duty on MoSA to establish institutions, called protection centres, where protection officers can refer children to in case of emergency**. The centres are to be established in order to provide these children with the necessary protection and social support⁶⁰. **The Child Law does not state any further legal obligation for other governmental stakeholders such as the Ministry of Interior (hereinafter MoI), the Ministry of Education and Higher Education (hereinafter MoEHE) or the Ministry of Health (hereinafter MoH).**

The Child Law goes on to provide the **legal accountability of primary caregivers, i.e. parents, guardians, teachers, and physicians, as well as a general recommendation (but not a legal duty) towards the community as a whole to report cases in which children have either suffered or are at risk of suffering violence, abuse, neglect and exploitation**. The Child Law also states that it is the **responsibility of all adults to assist children when they would like to inform the authorities (i.e. the protection officer) of any act of violence, abuse, neglect or exploitation suffered by them**⁶¹. In addition, other domestic legal provisions **prohibit the use of force and/or cruel treatment towards children by relatives**⁶² and **identify penalties for relatives, caregivers and guardians for sex crimes against children**⁶³. For a detailed analysis of all the legal provisions enacted in the oPt on the right to protection of children see ANNEX I.

However, **the Palestinian national legal framework falls short of effectively providing protection for children as according to international standards**. Granted, three entire

58 For an analysis on the domestic legal framework in the oPt vis-à-vis international standards on protection of children from violence, abuse, neglect and exploitation in the family and community environment, see ANNEX I

59 Art. 42-66 of the Palestinian Child Law, N. 7 2004.

60 Art. 50-57 of the Palestinian the Child Law, N. 7 2004.

61 Art. 53 and 54 of the Palestinian Child Law, N. 7 2004.

62 Art. 29 of the Palestinian Basic Law, 2003.

63 Art. 292-298 of the Jordanian Penal Code.

sections of the Child Law (a total of 24 Articles) are dedicated to detailing the enforcement mechanisms and key actors for child protection⁶⁴. However, **the Child Law is similar to a constitution on the rights of the child, in that it does not identify precise legal accountability, nor does it provide adequate detail in assigning responsibilities among duty-bearers, including primary caregivers.** Moreover, and perhaps more crucially, **it neither provides penalties for cases of non-compliance by governmental duty-bearers and non-governmental stakeholders, nor penalties for the perpetrators of crimes of violence against children⁶⁵.**

For instance, as mentioned above, one of the major failures of the **Child Law is that it does not explicitly state the legal accountability of the Mol** and subsequently police officers. In fact, the only provision that calls for Mol participation is Article 52.1, which states that MoSA should establish further cooperation among governmental bodies. **In the absence of explicit legal responsibility, and in a society that is accustomed to associating authority with security forces and not with MoSA employees⁶⁶, the protection mechanism is weakened.** Consequently, many cases of violence and abuse are not adequately addressed⁶⁷.

Another effect of the generality of the Child Law is that Palestinian governmental authorities are not required to develop policies or bylaws that translate into practice the protection of the rights and duties provided by the Child Law. In fact, with the exception of the MoSA systematic Guidelines for Child Care for Child Care⁶⁸ there is no formal policy that identifies the internal tasks and responsibilities or an external inter-ministerial agreement on establishing collective cooperation.

Furthermore, there is no Palestinian domestic law or bylaw that provides explicit legal accountability of international or local NGOs and CBOs towards the fulfilment of children's rights in the oPt. Thus, the Child Law does not require the civil society sector to actively work on establishing the necessary conditions for Palestinian children to enjoy their basic rights. However, as it stands, **this sector is characterized by a large number of dynamic associations that are playing a crucial role in the development of the child rights discourse in the oPt.** In fact, through their projects implemented in the West Bank, the Gaza Strip and East Jerusalem, **NGOs and CBOs are voluntarily taking on responsibilities towards the enforcement of children's rights** according to international standards. In other words, **while laws and policies list governmental institutions as the actors accountable by law to ensure the achievement of children's rights in the oPt, their obligations are actually being partly fulfilled by the civil society sector.**

Law Enforcement

The Child Law is applicable to both the West Bank and the Gaza Strip. However, **consistent enforcement of the law has been problematic due to the overall context of the occupation** as well as other related factors, such as a general lack of respect for the rule of law and the system of movement restrictions imposed by Israel. **The recent internal political clashes that led to the establishment of the Hamas government in the Gaza Strip have exacerbated the situation to the extent that currently some ministerial**

64 Art. 42-66 of the Palestinian Child Law, N.7 2004. In particular, the first section (Art. 42- 49) talks about the child's right to protection in general, the second section (Art. 50-57) indicates the tasks and the responsibility of the protection officer, and the third section (Art. 58-66) describes the protection mechanism.

65 The only article of the Child Law, N. 7 2004 that provides accountability for parents is Art. 53.2, which states their duty to report cases of violence, abuse, neglect and exploitation. With regard to the community, Art. 53.1 states that all adults have the right to report cases in which children are threatened, and Art. 54 only states that "any adult shall help a child vulnerable to violence to report to the protection officer.

66 Interview with Mohammed Al-Khatib, MoSA, Childhood Protection Department, 26 March 2008

67 Interview with Iman Salameh, Bethlehem police officer and social worker, member of the Child and Family Unit in the Bethlehem main police station, 12 April 2008. During the interview, Ms. Salameh reported how the relationship between the police and MoSA was further degraded due to the police not being used to accepting orders from MoSA.

68 MoSA Guidelines on Child Care, 2004.

branches, such as those of MoSA, **are not cooperating at all**⁶⁹. Consequently, the efforts of the West Bank branch of MoSA are not followed by the Gaza Strip branch and vice versa and it is not easy to assess to what level the Gazan governmental institutions are actually complying with existing domestic legal dictates.

As it stands, although **MoSA has allocated a total of 13 protection officers to the West Bank (each governorate has at least one protection officers)** through its Childhood Protection Department, **it is unclear how many protection officers have been allocated to the Gaza Strip**⁷⁰. Worryingly, a representative of the **Gazan branch of MoSA declared that at the present time there is no protection officer in place for girls**⁷¹. In terms of protection centres, there are **three centres under the full or semi authority of MoSA: two of these centres, one in Ramallah and one in Gaza City**, are currently open for the protection of **boys**, and a **semi-governmental shelter for girls and women** has been established with the support of international aid in **Bethlehem**⁷². The **number of children hosted in these centres varies from day to day – on average between 15 and 20 children are hosted there daily**. Alarmingly, there is **no protection centre for girls in Gaza**. The **West Bank branch of MoSA operates a fourth centre in Jericho** together with relevant NGOs and CBOs, such as the EJ YMCA. This centre **provides a home and vocational training to underprivileged children from all over the West Bank**. Children are referred to this centre by MoSA via the protection officers according to criteria that determines their neediness. In March 2008 the number of children hosted at the centre was 23⁷³. In addition, **there is a fifth emergency short-term shelter for women only in Jericho run completely by NGOs**. MoSA plays a coordination role in referring women to this shelter. Although officially only for women, girls may be sent there as an absolute last resort when there are no other options available.

Moreover, at the governmental level, **in three districts of the West Bank**, the police have initiated a process of voluntary mobilization towards the better protection of children. To this end, the Bethlehem **police force has established a Child and Family Unit** that includes 4 social worker police officers as well as a child-friendly room within one of the main police stations where children can be interrogated or interviewed as needed. The same process is on-going in both the Hebron and Ramallah police departments⁷⁴. Additionally, **police officers recently have shown interest in receiving training on child rights and on suitable practices to adopt when dealing with children**⁷⁵.

As provided by the Palestinian legal framework, many other actors should play a role in enforcing the right to protection of children. It is remarkable to note that **a network of close cooperation has begun to be built among different players (governmental and non-governmental)** towards the protection of children both in the West Bank and the Gaza Strip over the last two years. In fact, with the **supervision and the financial support of UNICEF, five pilot referral systems, called Child Protection Networks (hereinafter CPN), were launched in 2006**. With joint actions of all the actors involved, **these systems aim at creating local technical units consisting of protection officers, medical personnel, lawyers and other representatives of key NGOs and CBOs to ensure a multi-disciplinary response to cases of violence against children, including cases of abuse, neglect and exploitation. Two of the CPNs, in Hebron and Bethlehem, were established and led by**

69 Interview with Mohammed Al-Khatib, MoSA, Childhood Protection Department, 26 March 2008 and Interview with Mashdi Bashar, MoEHE, Director of Education Counselling, 6 April 2008. While it seems that MoSA branches are not cooperating at all, according to a representative of the ministry there is some cooperation between the two branches of MoEHE built to ensure consistency in guaranteeing the right to education.

70 Ibid.

71 See personal correspondence between DCI-Palestine and the Ministry of Social affairs in Gaza. Fax received on 19 May 2008, on file at DCI-Palestine Ramallah office.

72 Interview with Mohammed Al-Khatib, MoSA, Childhood Protection Department, 26 March 2008.

73 Interview with Fatima Da'ana Nazal, DCI– Palestine, lawyer, 25 March 2008.

74 Interview with Iman Salameh, Bethlehem police officer and social worker, member of the Child and Family Unit in the Bethlehem main police station 12 April 2008.

75 Ibid. See also Interview with Galal Khader, SAWA, director. 14 April 2008

the Palestinian section of the NGO Defence for Children International (hereinafter DCI-Palestine), **while MoSA was responsible for the remaining three networks based in Ramallah, Jenin and Gaza.** At the time of writing the ministry was in the process of assuming the responsibility for the CPNs in Hebron and Bethlehem⁷⁶. **The referral systems that had been led by DCI-Palestine function relatively well**, indicators for this being the high level of coordination among different actors, the establishment of the abovementioned Child and Family unit within the Bethlehem police force and the high number of children whose cases have been successfully addressed⁷⁷. On the other hand, it seems that **the CPNs that had been led by MoSA are not functioning properly**, although there is evidence of good cooperation among the institutions and NGOs involved⁷⁸.

MoSA recently requested DCI-Palestine's support in facilitating the improvement of the networks in Ramallah, Jenin and Gaza City. Furthermore, **on 19 April 2008, a conference was organised by MoSA in order to launch a national referral system for the protection of children on the basis of the existing pilot projects.** Notably, all the actors involved made an official commitment to make the national system a success. The process of institutionalization of the national child protection network is ongoing. This represents a fundamental step considering that currently the commitment to the CPN and the working relationships between members has not been legally regulated yet, rather it depends largely on good relations forged on an interpersonal level⁷⁹.

Children's Voices

The voices of children surveyed for this research confirmed the inefficiency of MoSA's child protection work in the Gaza Strip. In fact, although they listed the PA as the first actor that should be in charge of their protection, when asked if there is someone offering them protection, they didn't seem to be aware of the existence of neither protection officers nor protection centres. On the contrary, they stated that most of the time "we have to use violence to protect ourselves from bad guys (...)" As for the need for additional protection centres, Gazan children dream about "a place (that) provides care and protection for children. (...) It has to be beautiful and well furnished." They wished that the parents of the children could stay at the centres, emphasising, "only the parents who love their children not the ones who abuse their children".

(Focus Group Testimonies, West Bank and Gaza, April 2008)

However, despite MoSA's efforts and its role as a key stakeholder, it fails to fully fulfil its legal responsibility to protect Palestinian children. As stated by the Child Law, MoSA is the primary actor responsible for the implementation and supervision of the entire child protection mechanism. However, **MoSA is not adequately fulfilling its role** in this regard. In fact, **when children choose to voluntarily report on violence they have suffered, they do not find a functioning governmental referral system in most parts of the oPt.** At the same time, **the number of protection officers allocated to monitor cases of violence is inadequate** given the vulnerability of children to violence in their homes and communities, and the established **protection centres are not enough** to host the many

76 Interview with Chrissie Gale, UNICEF, child protection officer. Jerusalem, 17 April 2008.

77 In 2007, DCI-Palestine received and followed up successfully the cases of 279 children victims of violence, abuse and neglect in their Socio-Legal Defence Centres in Hebron and Bethlehem (DCI-Palestine Annual Report 2007). Moreover for testimonies on the good cooperation that exists between CPN actors, see interviews with Fatima Da'ana Nazal, DCI- Palestine, lawyer (Ramallah, 25 March 2008), Iman Salameh, Bethlehem police officer and social worker, member of the Child and Family Unit in the Bethlehem police station (Bethlehem, 12 April 2008) and Fardoss Abd Al-Haq, EJ YMCA, mental health trainer and supervisor (Beit Sahour, 12 April 2008), respectively.

78 Interview with Galal Khader, SAWA, director. Ramallah, 14 April 2008 stating the fact that the CPN in Ramallah is not functioning properly. On the topic see also phone interview with Iyad Abu Hujayer, PCDCR, deputy director. 26 April 2008.

79 In the coming months MoSA shall release an official document listing all the actors involved as well as their tasks and responsibilities. As is mentioned below, this is one of the most positive initiatives towards establishing an effective system tackling child protection.

children in need of protection⁸⁰. On this point, it is worthy to note that although many children do receive support through MoSA, the ministry has not yet established a systematized mechanism for keeping record of the number of the children supported, the specifics of each case and the means for following up. As a consequence, **no database on children in need of protection is available**. This in turn, means that neither MoSA nor any other actor is able to strategically plan effective interventions to prevent domestic violence, abuse, neglect and exploitation. Additionally, **MoSA is not playing a definitive role in enhancing cooperation with other relevant governmental and non-governmental stakeholders**. Moreover, there is the **absence of an inter-ministerial policy** jointly developed with other ministries and the unsuccessful experience of the Child Protection Network led by MoSA also demonstrates poor cooperation with relevant actors⁸¹. Lastly, although the establishment of **preventive measures** falls under the scope of MoSA, it is **not a priority** of the work currently carried out by the ministry⁸².

MoSA attributed as a justification for its poor performance the severe financial situation faced by the PA as a whole. Most of the Palestinian ministries **lack sufficient funds to support their activities and compensate their staff**. Salaries are very low and the reimbursement of transportation or communication costs is not systematic. As a result, protection officers are often unmotivated and rarely make additional efforts than those explicitly requested from their supervisors⁸³. Worryingly, **a large portion of ministerial funds come from international aid**, which, in turn, directly affects the establishment of long-term sustainability⁸⁴. Also, **traditional cultural and social constraints jeopardize the activities of social workers in the field**. In fact, besides the unwillingness among family members to report incidents of domestic violence (given the prevailing attitude that it is a private family matter), the **community has also not yet accepted the authority of the protection officers from MoSA in investigating** without police authorization⁸⁵.

As mentioned above, the **law does not assign the Mol with any legal accountability regarding child protection**, although the police force – in as much as they ensure the security and well-being of the population - should take on responsibilities towards the protection of children. As reported above, there are anecdotal examples of valuable initiatives undertaken by the police in this regard. However, these good practices are not enough to fulfil the ideal role of Mol. **The lack of professionally trained staff on child rights and child protection issues⁸⁶**, as well as **the absence of cooperation with MoSA and the fact that only three police stations have an internal specialized Child and Family Unit are all indicators** of poor enforcement of international standards of child protection for which the Mol is accountable⁸⁷.

The **police officers** interviewed also **attributed the difficult financial situation** faced by the PA as the main reason for poor law enforcement in cases of domestic violence. They

80 Interview with Mohammed Al-Khatib, MoSA, Childhood Protection Department. 26 March 2008

81 Ibid.

82 The enforcement of measures that prevent child violence, abuse, neglect and exploitation is provided by Art. 42.2 of the Palestinian Child Law, N. 7 2004.

83 Interview with Mohammed Al-Khatib, MoSA, Childhood Protection Department. 26 March 2008. This MoSA representative stated that if protection officers do not go to the field, it is most likely because their transportation and communication costs are not covered. In addition, they usually leave the office at 4pm leaving emergency cases uncovered from 4pm to 8am the next day. Furthermore, low salaries make it difficult to retain protection officers for longer periods of time. This means a high turnover of staff which has a negative impact on the relationship and trust built among protection officers and the community.

84 Ibid. In fact, MoSA operates in a state of limbo where it is not possible to plan for the long-term implementation of a project. It seems that the working method of MoSA is similar to the one of national and international NGOs with the additional difficulty that staff are generally not skilled in building sustainable relationships with donors.

85 Ibid. Also on the topic see Human Rights Watch, "A Question of Security: Violence against Women and Girls", Occupied Palestinian Territories, November 2006, p. 33 ff. and Ministry of Planning and UNICEF, "Child Protection in the Occupied Palestinian Territories: a National Position Paper", Logo Production, Jerusalem, Occupied Palestinian Territories, June 2005 p. 81.

86 Interview with Galal Khader, SAWA, director. 14 April 2008 and interview with Fatima Da'ana Nazal, DCI-Palestine, lawyer. 25 March 2008.

87 Interview with Iman Salameh, Bethlehem police officer and social worker, member of the Child and Family Unit in the Bethlehem police station. 12 April 2008.

also cited financial constraints within individual police departments as the reason why there are so few specialized Child and Family Units in Palestinian police stations and why there is not enough staff trained specifically to deal with children. In fact, it has been pointed out that even when police officers are willing to be trained and to establish a child-friendly room, the lack of financial resources prevents them from doing so⁸⁸. Lastly, **movement restrictions within the West Bank imposed by the State of Israel severely affect the efficiency of the police forces**⁸⁹.

The Role of Non-governmental Stakeholders

UN Agencies

According to international standards, UN agencies are also key stakeholders in the enforcement of children's right to protection. Both UNICEF and UNRWA are undertaking community-based projects in order to address domestic and community violence affecting children. For instance, UNRWA has allocated counsellors to UNRWA schools, community centres and health clinics to intervene in cases of child violence and abuse⁹⁰. Also, UNICEF has taken charge of establishing a multi-sector response to this issue, initiating a process to achieve comprehensive coverage for child protection-related issues⁹¹. However, **given funding constraints and the complexity of the issues involved, the agency has been unable to implement a systematic approach**, whereby certain target groups of children or geographical areas of intervention are neglected⁹². Currently, the UNICEF field office in the oPt is cooperating with international and local NGOs to support their work and share information⁹³. In terms of advocacy however, although **UNICEF is currently reporting information on child rights violations occurring in the oPt internally and issuing occasional statements**, it appears that the field office has limited capacity and limited mandate to carry out international advocacy on Palestinian children's rights⁹⁴.

Primary Caregivers

Primary caregivers must play a key-role in supporting and protecting children and are explicitly forbidden by law from using violence, including sexual violence, against children. However, as repeatedly highlighted by the children surveyed⁹⁵, **parents are often the primary perpetrators of violence towards their children**. Also, there is evidence that **they rarely report acts of violence** by other family members against their children in order to **preserve the family's name and honour**⁹⁶. There is a general consensus among child rights actors that parents lack the necessary parental skills to support children and are unaware of their important role. Furthermore, **mothers** – who have been indicated by the vast majority of Gazan children surveyed as the only person to whom they would ask

88 Ibid.

89 Interview with Galal Khader, SAWA, director. 14 April 2008 and interview with Fatima Da'ana Nazal, DCI-Palestine, lawyer. 25 March 2008.

90 Interview with Amal Hadweh, UNRWA, Community Mental Health Programme Manager, 14 April 2008. Also UNRWA works at the community level especially through prevention. On the one hand, the agency implements training courses for parents and other caregivers in order to ensure that they deal with children in an appropriate manner. On the other hand, UNRWA carries out awareness raising campaigns in order to increase the level of knowledge of the general public on the rights of the child, on the services provided as well as on the dangerous consequences of violence.

91 Interview with Chrissie Gale, UNICEF, child protection officer. 17 April 2008. Unfortunately, it seems that for the time being there is no common identification of key issues by child protection actors, nor is there a unified working approach, according to Ms. Gale.

92 For instance, groups such as Bedouin children, disabled children, and girls at risk of suffering sexual abuse are currently not addressed.

93 Interview with Chrissie Gale, UNICEF, child protection officer. 17 April 2008.

94 Ibid. Nonetheless, at the time of writing, UNICEF headquarters was drafting a global communication and advocacy strategy.

95 Report of the Focus Group with children, child protection session, Gaza Strip and West Bank.

96 Ministry of Planning and UNICEF, "Child Protection in the Occupied Palestinian Territories: a National Position Paper", Logo Production, Jerusalem, Occupied Palestinian Territories, June 2005 p. 83.

for help⁹⁷ - are **socially disempowered from protecting their children**. In fact, given the patriarchal nature of society, women have little means to impose their role and position within the family⁹⁸.

Local Civil Society, Including Media Actors

As previously explained in the section on the historical, political and legal evolution of the civil society sector in the oPt, child-focused NGOs and CBOs are crucial stakeholders in the right to protection of children living in the oPt.

It is important to note that due to the limited timeframe allowed for this research and the complexity of the issue at hand, it was not possible to conduct a systematic investigation of all the child protection initiatives implemented by the various relevant civil society actors in the three geographical areas. To better gauge the quality and quantity of the services offered by NGOs and CBOs and to identify gaps in intervention, further research is recommended on this topic. However, some general conclusions can be drawn based on an analysis of the information collected.

First of all, regarding the right of children to protection from violence, abuse, neglect, and exploitation in the domestic and/or community environment, **three different types of organisations can be identified**. The **first type** advocates and lobbies for a **better legal framework vis-à-vis the right of children to protection**; the **second type provides direct intervention in case of emergency** or generally when children are in need of protection; and the **third type works towards strategic development of an overall more protective environment for children**. It should be highlighted that the strategic approach adopted by legal-oriented organizations generally differs from that of NGOs providing emergency intervention. On the one hand, **the delivery of emergency social services, undertaken by a large number of NGOs and CBOs working usually at the local or regional level, usually addresses individual or small group cases**, and is conducted according to an evaluation of the specific needs of the targeted children. On the other hand, the **work of legal-oriented organisations**, which represent relatively few actors among the many child protection NGOs and CBOs operating in the oPt, **rarely addresses violations suffered by individual children, but rather advocates for the accountability of duty-bearers responsible for common violations suffered by Palestinian children as a group**.

Some NGOs integrate the approaches of all three of the aforementioned types of organisation. An example is **DCI-Palestine**, one of **the current major child protection stakeholders** in the oPt. For instance, at the legislative level, DCI-Palestine is guiding the process of pushing for amendments to relevant domestic laws and the setting of official policies in order to achieve a domestic legal framework in line with international standards on child rights. In this regard, DCI-Palestine is cooperating closely with governmental branches as well as UN agencies and other relevant actors to lobby for amendments to a number of laws (namely the Child Law, the Family Law and the Disability Law) that directly impact the realization of the right to protection as well as lobbying for a new Juvenile Justice Bill.

Furthermore, DCI-Palestine in the West Bank and the **Palestinian Centre for Democracy and Conflict Resolution** (hereinafter PCDCR) in the Gaza Strip spearhead efforts to provide support services to children victims of domestic or community violence or at risk of suffering violence. Their efforts include having each set up in their respective areas of intervention (DCI-Palestine in the West Bank; PCDCR in the Gaza Strip) a toll-free help line and socio-legal defence centres where children can avail of initial legal advice or psycho-social support before being referred to a relevant authority or institution for further help and support. Both DCI-Palestine and PCDCR have also pioneered local child protection

97 Report of the Focus Group with children, child protection session, Gaza Strip. In this regard, a girl stated “*Mom was once beaten up by my dad because she wanted to protect me*”.

98 Dr. Ayesha Al-Rafai, Women’s Studies Centre, “Sexual Violence Against Female Teenagers in the West Bank: from a gender perspective”, Women’s Studies Centre, East Jerusalem, January 2007, p. 9 ff.

networks in their communities comprising of a variety of different actors to whom children victims of violence can be referred. Other concrete examples of civil society child protection initiatives include another toll-free help line set up by SAWA in the West Bank; the creation of a Child Protection Advocacy Network of 21 CBOs spearheaded by PCDCR in the Gaza Strip; the capacity-building by DCI-Palestine of a network of 65 CBOs in the West Bank (called the Palestinian Network for Children's Rights – www.pncr.org) to be able to effectively report and refer cases of child victims of violence, abuse, neglect and exploitation; and the establishment by the Gaza Community Mental Health Program of clinics that offer support services to traumatised Gazan children.

With regard to improving the environment of children in the long-term through social and cultural changes, it appears from initial information gathered that **several Palestinian NGOs have recently adopted a holistic approach in carrying out their activities**. This means that **while their primary purpose is supplying children with direct services, such as legal and social support, they also work to bring about structural changes within Palestinian society as an overall goal**. Therefore, organisations may primarily serve as direct service providers or legal aid agencies while simultaneously working towards an enabling environment that ensures greater protection for children. Clear evidence that confirms the adoption of such a holistic approach is that recently many NGOs have started encouraging the participation of the community as a whole in their field activities. Indeed, by working directly with children, organisations are able to assess the major contributing factors that lead to domestic violence. Moreover, by targeting the community, and specifically primary caregivers, organisations are opening doors for social and cultural changes that will surely impact the identified causes of domestic violence. In the West Bank for instance, DCI-Palestine undertakes a child participation program which aims to empower children and assess their needs through various child-led initiatives, such as a children's editorial committee that oversees the publication of DCI-Palestine's bimonthly newsletter, "Little Hands", which is distributed as a supplement to a national newspaper. There are also many projects that target key actors within the community in order to address and overcome the social constraints that prevent children from enjoying their right to protection. A good example is Burj Luq Luq, an organisation based in East Jerusalem that aims at building up a protective environment for children offering social-cultural community activities. This NGO specifically targets primary caregivers, namely parents and teachers, in child rights awareness-raising and educational activities, such as building skills to guard against domestic violence and physical and humiliating punishment of children⁹⁹.

Media actors also form part of the civil society sector. Therefore, they also should contribute to the full realization of the rights of Palestinian children through, for instance, dissemination of important information to raise the general public's awareness of issues related to child protection. Unfortunately, media professionals attending the focus group activities stated that **media sources (radio, television, and newspapers) do not regularly broadcast or print stories about domestic violence including information on how to get help**. In addition, due to financial constraints **there is no dedicated child protection agency responsible for coordinating unified messages for the media**¹⁰⁰.

However, despite the child protection efforts and initiatives from civil society, these actors also face challenges in carrying out their activities and in accomplishing their role as stakeholders to the right to protection of Palestinian children living in the oPt. These challenges have prevented this sector from achieving comprehensive protection for Palestinian children.

First of all, **civil society organisations are not systematically implementing long-term programmes aimed at children's rehabilitation as well as preventive measures towards a reduction in the level of violence that children are exposed to**.

99 Some further examples of organizations targeting primary caregivers: DCI-Palestine, DCI-Israel, EJ YMCA, the Faisal Hussein Foundation, the Gaza Community and Mental Health Program, and the Palestinian Centre for Democracy and Conflict Resolution.

100 See Report of the focus group with media actors. Ramallah, April 2008.

In addition, from the information reviewed for this research, it seems that the **distribution of the services provided by organisations focusing on emergency intervention and/or social and cultural services for children-** although widespread in all of the three geographical areas examined in this research - **does not always take into consideration strategic criteria such as geographical isolation, social stigmatization of certain groups of children, such as disabled children, and the financial conditions of local communities.** The resulting situation is such that social and cultural services aimed at lowering the vulnerability of children to violence are provided in abundance in areas such as the Ramallah and Bethlehem governorates where demand for them is not so high, while at the same time areas such as the north of the Tulkarem governorate or the Jordan Valley are largely neglected, despite the extremely critical social, cultural and financial situation faced by these communities¹⁰¹.

Another issue that has also led to a **duplication of efforts** in some areas and for some target groups is the lack of systematic cooperation and coordination between the many child protection NGOs and CBOs that are operating in the field. **Examples of good practices of cooperation and coordination do exist¹⁰² but are few and far between.** Moreover, even **when a certain level of cooperation is established, it is not usually institutionalized.** It hinges therefore on **the good personal relations between the staff members of the cooperating NGOs.** For the most part, many organisations striving for achieving better protection of Palestinian children do not coordinate with each other. In other words, **the few examples of good practices of cooperation among two or more NGOs and CBOs are not enough for the civil society sector as a whole to reach an effective and coordinated national approach to child protection and a commonly shared prioritized plan of intervention.** Unfortunately, a similar situation applies to the cooperation and coordination between local civil society actors and other governmental and non-governmental stakeholders, including UN agencies. This lack of consistent coordination of valuable efforts results in an **overlap of interventions** by actors in some areas and/or for some target groups, while at the same time **leaving complete areas of the oPt or groups of children uncovered¹⁰³.**

Consequently, the establishment of an oPt-wide entity is recommended, such as a committee composed of representatives of relevant NGOs, that would conduct an in-depth analysis of the current needs of children throughout the oPt, assessing also to what extent the civil society sector is meeting these needs. The results of the assessment would serve as a basis to develop a joint prioritized plan of intervention. Following this plan, the entity should be in charge of coordinating and supervising the group of civil society organizations in fairly allocating their financial and human resources according to areas or groups of children that lack coverage of services or interventions.

Another problem is that many of the organisations interviewed, which provide direct psychosocial interventions in response to emergency situations, **do not adopt a child rights-based approach in their planning.** However, on a positive note, from most of the interviews it was clear that over the past years the level of knowledge of child rights issues among NGO personnel as well as their willingness to adopt a child rights perspective in planning and implementing their activities have increased remarkably. Indicative of this was that the interviewees had started to use child rights standard terminology as well as seem keener to adopt a holistic response to emergency situations that aims to improve the overall

101 It is important to note that the limited timeframe for this study did not allow for a thorough analysis of the geographical distribution of social services *versus* the neediest areas. In-depth research on this issue is strongly recommended as a follow up action to this situation analysis.

102 A concrete example is the network established by the PCDCR in the Gaza Strip that aims at improving coordination of child protection activities carried out by different NGOs. See phone interview with Iyad Abu Hujayer, PCDCR, deputy director. 26 April 2008.

103 For instance, the researcher could not find any evidence of a referral system established by NGOs and CBOs specifically for the benefit of refugee children, Bedouin children or other neglected groups of children such as street children, orphans, and married children. Due to the lack of time and the complexity of the issue at hand a systematic analysis of the level of neglect of the aforementioned groups of children and the services they are lacking was not feasible. Further research is therefore recommended.

situation of children in the long term¹⁰⁴. In other words, **international standards on child rights are increasingly becoming the long-term indicators of civil society actors**. In fact, many of the NGOs surveyed indicated that, although they must look at the immediate needs of children when planning their activities, their overall aims include generally improving the realization of children's rights as enshrined in international law¹⁰⁵.

A very important issue to analyse is the **role of civil society actors in holding Palestinian authorities to account for their legal obligations in ensuring protection to children**. The Child Law in fact states clear responsibilities for the PA regarding this matter, but the reality is that these responsibilities are not being met. As mentioned previously, the civil society sector is currently bridging the institutional gap and thus contributing to the provision and promotion of the right of children to protection. This reality, in which civil society actors play the vital role that the PA is expected to play, creates a vicious circle. Firstly, **the numerous and well-functioning services provided by civil society organisations have had a counter-productive effect on the establishment of an efficient oPt-wide governmental child protection mechanism**. In fact, since local and international NGOs are functioning relatively well and succeed to provide some protection services and mechanisms, **the PA is not pressured** to undertake the necessary steps to establish a national protection system for children. Consequently, the general public pay less attention to the fact that the PA is not meeting its legal responsibilities. Secondly, **since NGOs and CBOs tend to prioritise planning and implementing emergency interventions and legal aid projects, they do not dedicate enough time and resources to monitoring the performance of governmental and non-governmental duty-bearers in meeting their legal obligations vis-à-vis child protection and subsequently lobbying them to hold them account thereto**.

Although this is considered to be a significant part of the civil society sector's mandate, apart from the Independent Commission for Human Rights (hereinafter ICHR), there is almost no civil society actor playing a role in this regard. The ICHR is a semi-governmental organisation that works as an ombudsman in the West Bank and Gaza Strip, with the mandate - as regulated by the Basic Law - to monitor the work of the PA in relation to the realization of the basic human rights of all oPt inhabitants under its jurisdiction. Considering its broad mandate, one can easily understand that for the ICHR the child protection sector represents but a small fraction of the sectors it is tasked with monitoring¹⁰⁶. Apart from this, there are few other anecdotal cases of NGOs that monitor the PA in relation to child protection, one example being DCI-Palestine, which has monitored the flow and duration of the stay of children in the protection centres established by MoSA¹⁰⁷. However, these efforts are neither systematic nor effective. Rather than having NGOs act in lieu of governmental bodies, a preferable solution might be mobilising the civil society sector to adopt a national approach to push for these bodies to fulfil their role towards children's protection.

Furthermore there is **no systematic monitoring of cases of domestic and community violence** against children in the oPt, nor the existence of a national database where statistics and trends could be generated in order to help child protection actors better plan preventive measures and implement more targeted responses.

Last but not least, a **major problem** that representatives of NGOs and CBOs in all the three areas examined have highlighted when attributing reasons for their lacking performances **the**

104 This was the case for almost all the NGOs and CBOs interviewed, some examples being Burj Al Luq Luq, EJ YMCA, and SAWA

105 For instance, see Interview with Galal Khader, SAWA, director. 14 April 2008 and phone interview with Iyad Abu Hujayer, the PCDCR, deputy director. 26 April 2008. On the other hand, more established organisations that have a specific focus on legal issues like DCI-Palestine and the Women Studies Centre do adopt a child-rights based approach in planning.

106 This does not mean that the ICHR is not dealing with issues related to child protection. On the contrary, the issue of child rights is one of the main priorities of the organisation. However, the limited budget and the scarce financial and human resources prevent the organization from adequately tackling the sector. See also interview with Farid Alafresh, ICHR, field researcher. 8 April 2008.

107 Interview with Fatima Da'ana Nazal, DCI-Palestine, lawyer. 25 March 2008.

system of movement restrictions imposed by the Israeli military on both people and goods in the oPt. The presence of checkpoints and the system of permits required to enter certain areas of the West Bank heavily limit the effectiveness of NGOs' personnel working on child rights. In fact, there have been many instances in which **prompt intervention in emergency situations was prevented due to the restrictions on movement imposed on Palestinians**. Moreover, as stated by an actor in the Gaza Strip **"the lack of fuel – as a result of the continued closures- represents an obstacle to our efficiency and regular attendance to our work"**¹⁰⁸. Another problem mentioned was the **limited funding available for civil society organisations**. This has directly impacted NGOs and CBOs in that a lack of funds has blocked them from hiring enough staff and improving the implementation of programmes. In addition, most of the individuals interviewed lamented the fact that the Palestinian civil society sector is largely donor-driven making it difficult to maintain sustainability. Lastly, in the Gaza Strip, some civil society actors cited armed clashes – between the Israeli military and Palestinian fighters and/or factional fighting among Palestinians – as further reason for their poor performance as they prevent social workers from going into the field to carry out child protection activities¹⁰⁹.

The Case of East Jerusalem

As mentioned in the background and context, East Jerusalem has been under full administrative control of Israel since 1967, and thus the legislation and system that protects Palestinian children living in East Jerusalem and binds relevant stakeholders responsible for Palestinian children's protection is different to the legislation and system in place in the rest of the West Bank and the Gaza Strip. In fact, the legal system in place for **the protection of Palestinian children living in East Jerusalem is the domestic legal framework that applies to the whole territory of Israel**¹¹⁰. The welfare system established by the Israeli authority is similar to the one in place in the oPt. In fact, in Israel, much like the oPt, the Israeli **MoSA is the body responsible for the protection of children** through the establishment of social welfare chambers and the allocation of social workers in charge of monitoring and following up on cases of domestic and community violence, abuse and neglect suffered by children. At the time of writing, **three chambers and 49 social workers were active in the East Jerusalem area**¹¹¹. In addition, **police stations have set up juvenile departments with specialized staff trained to deal with children**. From grassroots sources it seems that **there is good cooperation between MoSA social workers and police officers from juvenile departments**¹¹².

At first glance, the above scenario appears to guarantee better protection to Palestinian children in East Jerusalem. Israeli laws and policies are quite advanced and to a large extent have been drafted according to the main human rights treaties and principles including the rights of children to protection.¹¹³ In addition, the quantity of the services offered by Israeli authorities is much higher than those provided in the West Bank and Gaza Strip. Yet, despite these laws and policies, **Palestinian children do not enjoy a high level of protection** and are just as vulnerable if not more vulnerable to the violence,

108 Ibid, see also interview with Dominique Sbardella, SCS, child protection officer. 19 April 2008.

109 Phone interview with Al Mehwar A. Diab, Gaza Community Mental Health Program, 3 May 2008. This is a controversial point among civil society actors. According to the child protection officer of SCS working in Gaza Israeli military action and internal clashes paralyze only specific areas of the Strip and for a short time of period.

110 The Arab Study Society, "East Jerusalem Multi Sector Review Project. Multi Sector Strategy for East Jerusalem", Final Report, Occupied Palestinian Territories, February 2003, p. 10 ff. Because the analysis of the Israeli legal system and its stakeholder concerning child protection in East Jerusalem goes beyond the scope of this research, the following part is limited to briefly describing the social services provided to Palestinian children seeking protection within East Jerusalem and investigating the underlying reasons for the lack of protection received.

111 Data reported in an official letter from the East Jerusalem Municipality to ACRI, Jerusalem office and dated 26 December 2007. It is important to note that all the employees of the social welfare chambers are Arabs, and therefore can communicate with Palestinian children in need of protection in their mother tongue. They are also more likely to understand the underlying causes of domestic and community violence within Palestinian society.

112 Interview with Tali Nir, ACRI, attorney in charge of the East Jerusalem area. 15 April 2008.

113 Ibid.

abuse, neglect and exploitation that pervades their homes and communities. The main reasons for this are **weak law enforcement by Israeli authorities in terms of allocation of protection services** on the one hand, and **discriminatory application of the law** to Palestinians, on the other¹¹⁴.

While **living in East Jerusalem** affords Palestinians valuable benefits such as better functioning social, health and education services and access to better paid work opportunities, it also **means extremely overcrowded living conditions, constant harassments by Israeli citizens, isolation of family, and a loss of national identity**¹¹⁵. This environment increases the vulnerability of children to violence as it can create tension and anger in adults who might then act violently towards children.

The services provided by Israeli authorities are insufficient and inadequate to deal with the high number of cases of violence generated by such an environment. Moreover, there is evidence that **governmental law enforcers have a propensity to apply laws and policies in a discriminatory way towards Palestinian children** as compared to Israeli children¹¹⁶. For instance, **social services are unequally allocated**. Given a similar number of family units to monitor, 49 social workers are assigned to the East Jerusalem area while 85 are allocated for the remaining areas of Jerusalem (North, West and South Jerusalem). Also, the establishment of social welfare chambers is by no means proportional to the population and level of need in a given area; while a total of 18 chambers have been established in West, North and South Jerusalem, only three are the chambers active in East Jerusalem¹¹⁷.

Israeli law enforcement officials systematically apply an **unofficial policy of discriminatory practices and measures when dealing with Palestinian children**. For instance, police officers often do not intervene when Palestinian children are in need of protection such as in cases of child drug addiction, child drop-outs, street children, child beggars or labourers¹¹⁸. It deserves our attention to note that this situation is exacerbated by the **boycott that many Palestinians in East Jerusalem exercise towards the authorities as they refuse to acknowledge Israeli power**¹¹⁹. Thus, **Palestinians do not request the benefits *de jure* guaranteed to them while at the same time Israeli authorities refrain from allocating to them adequate social services in quality and quantity.**

Further complicating matters, **due to limited human and financial resources, UN agencies are not currently addressing the serious violations of the right to protection suffered by Palestinian children in East Jerusalem.** Moreover, the **majority of Palestinian civil society actors based in the West Bank** that would be willing to tackle these issues **face regular difficulties** in implementing their work **due to the restrictions of movement** and the permit system imposed by Israel on the staff. Lastly, although positive activism should be highlighted when it comes to actions undertaken and services provided by **Palestinian**

114 Ibid. When asked about the poor enforcement by Israeli authorities of protection provisions within the law, attorney Nir stated that generally speaking the government is facing financial and organisational difficulties in enforcing the law in their area of jurisdiction as a whole.

115 Interview with Hadeel Younis, Defence for Children International/Israel, director. 15 April 2008. On the same topic see also interview with Emad Salah Jaduny, Burj Al Luq Luq, executive director. Burj Al Luq Luq, 3 April 2008 and interview with Ahmad Shurafa and Fadwa Hussein, Faisal Hussein Foundation. 7 April 2008. A detailed analysis of this topic is provided by Nadera Shalhoub-Kevorkian, Nahla Abdo, "Palestinian Women's Ordeals in East Jerusalem", Women's Studies Centre, East Jerusalem, March 2006, p. 37 ff.

116 Interview with Tali Nir, ACRI, attorney in charge of the East Jerusalem area. 15 April 2008. Data reported in an official letter from the East Jerusalem Municipality to ACRI, Jerusalem office and dated 26 December 2007.

117 Ibid.

118 Interview with Hadeel Younis, Defence for Children International/Israel, Director. Jerusalem, 15 April 2008. On the same topic see also interview with Emad Salah Jaduny, Burj Al Luq Luq, Executive Director. Burj Al Luq Luq, 3 April 2008 and interview with Ahmad Shurafa and Fadwa Hussein, Faisal Hussein Foundation. Al Ram, 7 April 2008.

119 The Arab Study Society, "East Jerusalem Multi Sector Review Project. Multi Sector Strategy for East Jerusalem", Final Report, Occupied Palestinian Territories, February 2003, p. 10 ff. The Palestinian resident, in fact, do not want to give legitimacy to the governmental structures established by Israel as the consequence would be acknowledging the occupation itself. Many Palestinians, therefore, although they are entitled to vote at the municipal and the council level are not standing the political elections. While reinvigorating the resistance to the Israeli occupation, this hinders political leaders from allocating budget and services to Palestinian areas.

NGOs and CBOs based in East Jerusalem, their representatives expressed great concern when talking about child protection¹²⁰. According to their own words, “our work is regularly undermined by the reality of the situation which requires continuous emergency intervention as opposed to long-term investments in social projects”. On this point, they cited some of the main obstacles to program sustainability: the carelessness of caregivers; the scarcity of legal and social research to address the particular hardships faced by Palestinian children living in East Jerusalem; and the fact that their programs are donor driven¹²¹.

Conclusion and Recommendations

Thus, in conclusion, Palestinian children are severely under protected from violence, abuse, neglect and exploitation in their homes and communities in all the three geographical areas under scrutiny. In the West Bank (excluding East Jerusalem) and the Gaza Strip this is mainly due to a poor domestic legal framework and an even poorer policy framework, internal political instability, scarcity of social and legal services provided to children, limited funds to invest in child protection both at the governmental and non-governmental level, and the lack of systematic coordination among different stakeholders. In the East Jerusalem area, the lack of PA jurisdiction combined with the discriminatory practices of Israeli authorities, the absence of intervention by UN agencies, as well as a civil society sector that cannot meet the huge demand for services, make Palestinian children living in East Jerusalem one of the most unprotected groups of Palestinian children.

In light of these findings, it is hereby recommended that the following urgent actions be undertaken by stakeholders who are legally accountable for the protection of Palestinian children living in the oPt:

The Palestinian Authority

- The PA (at the time of writing the Fatah-led government in the West Bank and the Hamas-led government in the Gaza Strip) should enforce a consistent legal framework on child protection in both the West Bank and the Gaza Strip.
- The PA should amend the current Child Law to bring it more into line with international standards on child protection. In particular, the law should provide clear roles and responsibilities for the relevant governmental and non-governmental stakeholders. At the same time, appropriate penalties should be incorporated for failure to enforce the law.
- The PA should consider a more effective reallocation of the government’s budget among the ministries and seek external technical assistance to increase ministerial capacity in fundraising and developing long-term strategic plans to ensure sustainability.
- MoSA should lead the process of developing an official inter-ministerial policy to define the roles and responsibilities of the various child protection actors within each relevant ministry and lines of cooperation needed between them.
- MoSA should coordinate the development of a comprehensive framework on child protection to be applicable to all of the oPt and which all stakeholders should adopt. In particular, this framework should set standard definitions for child protection related issues.

¹²⁰ Amongst the main NGOs dealing with child protection in East Jerusalem could be listed DCI/Israel, Burj Al Luq Luq, Faisal Hussein Foundation, Spafford and Juzur foundation. As regard to the NGOs-led initiative a clear example is represented by the implementation of the East Jerusalem Project by that, through the collaboration of a high number of NGOs and Palestinian authorities, aims at improving the standards on birth registration, education, health, and other social services for children.

¹²¹ Interview with Emad Salah Jaduny, Burj Al Luq Luq, executive director. Burj Al Luq Luq, 3 April 2008.

- Together with relevant stakeholders MoSA should establish an oPt-wide child protection referral system, institutionalised by law. This system should be developed on the basis of the CPN and should allocate specific tasks and responsibilities to each stakeholder.
- MoSA should allocate a number of protection officers to each governorate proportionate to the child population and the level of vulnerability of children in that governorate.
- MoSA should establish an additional number of protection centres proportionate to the demand for protection by children. The protection centres should take geographical and gender needs into consideration.
- MoI should develop internal policies to regulate the establishment of child units within police departments, including child-friendly rooms and specialized training for staff on how to deal with children.
- There should be coordination between MoSA and MoEHE in order to provide education to children hosted in MoSA protection centres.
- MoSA should implement measures to prevent cases of domestic violence.

The State of Israel

- Israel should facilitate the movement of police officers between areas A, B and C of the West Bank to allow for a more effective response to cases of violence and abuse against children and/or child neglect and exploitation.
- Israel should allocate a number of social chambers and social workers to East Jerusalem that is proportionate to the high level of domestic violence and abuse.
- Israel should enforce its domestic legal framework in a non-discriminatory way.
- Israeli law enforcers should not refrain from intervention when Palestinian children are in need of protection.

UN Agencies

- UNICEF should ensure child protection intervention in all geographic areas of the oPt. In particular, children living in East Jerusalem should benefit from its intervention.
- UNICEF should continue to advance the process of developing a national referral mechanism with a view to encouraging MoSA to undertake its role and responsibilities therein.
- Given the important role worldwide of UNICEF in combating child abuse, UNICEF headquarters should develop a clear strategy on communication and advocacy, which allows field offices to reach the general public directly.

Civil Society Actors including the Media

- Relevant NGOs and CBOs should commit to using the national child protection referral system. Joint action among the different stakeholders will maximize the benefits of the system and avoid duplication of efforts.
- Relevant NGOs and CBOs should set up and run community-based child protection referral systems in the most marginalized and neglected areas.
- Relevant NGOs and CBOs should work jointly to reach all groups of children in need of protection in the oPt by first mapping the child protection needs in all geographic

areas and of particularly neglected target groups of children, such as Bedouin children, disabled children, and children suffering sexual abuse in their homes; and subsequently responding to the identified needs with strategic programmes and projects.

- Relevant NGOs and CBOs should work at the community level to build a culture that condemns violence against children and breaks the silence on the issue of child abuse. Relevant NGOs and CBOs especially in East Jerusalem should implement long-term strategies as well as emergency intervention projects.
- Relevant NGOs and CBOs should systematically target primary caregivers in an effort to increase their awareness of their role and improve their parental skills.
- Media actors should strategically use the media to raise awareness of the negative consequences of violence and of the existence of protection, prevention and rehabilitation services.

Needed Actions

- Establishment of a functioning nation-wide system that monitors cases of violence, abuse, neglect and exploitation against children in the oPt.
- Establishment of national databases accessible to all relevant child protection actors providing up-to-date data on cases, trends and risks of violence, abuse, neglect and exploitation.
- Both governmental and non-governmental actors should carry out programmes aimed at empowering and encouraging adults and children to report cases of violence against children, including sexual violence.
- Further research is recommended on the following target groups to better gauge their protection needs: disabled children, Palestinian child labourers, Palestinian child beggars in East Jerusalem and Israel, young girls in East Jerusalem married at an early age, Palestinian girls in East Jerusalem involved in the sex trade, children affected by violence from other children in schools, Bedouin children, refugee children and children living in the Jordan Valley.

Children's Recommendations

"We should make a parliament for children to make the laws so children know what to do and where to go when they need protection"

"We should make posters and games to stop the violence"

"We should ask for help when we are in trouble"

(Focus Group Testimonies, West Bank and Gaza, April 2008)

Summary: Children Vulnerable to Violence¹²² in Homes and Communities

Article 19 of the CRC provides that children should be “(...) protect(ed) from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (...)”. Despite the endorsement of the CRC by the PA in 1995, **children in the oPt are not provided with the adequate means to fully enjoy their right to protection.** Both in the West Bank and in the Gaza Strip the percentage of children who are exposed to violence on a regular basis is about 50 percent. A similar trend exists in East Jerusalem where representatives of child rights organisations revealed that children experience daily violence in the streets, at school and within their homes. In the three geographical areas analysed, Palestinian children live in a repressive environment characterized by Israeli incursions, movement restrictions and border closures, combined with internal political instability, poverty, overcrowding, and re-emergence of restrictive traditional and religious behaviours. As a result, **Palestinian children regularly suffer humiliation, physical violence, neglect and exploitation.** Moreover, the patriarchal structure of the family together with the social disempowerment of women heightens the vulnerability of girls to gender-based violence.

Although these phenomena have been acknowledged by governmental and non-governmental actors as problems that need to be tackled at the roots, efforts have not yet led to substantial progress. The Palestinian Child Law (enacted in 2004) appoints **MoSA as a lead player in ensuring child protection in the oPt.** The Ministry is responsible for establishing a comprehensive referral system for children, carrying out preventive measures, appointing key-figures for intervening in serious cases and establishing relevant institutions to offer Palestinian children the legal and social support they deserve. Unfortunately, **due to limited financial and human resources and the widespread conception among Palestinians that domestic violence is a matter pertaining to the private family sphere, MoSA fails to provide sufficient services to many children in need of protection.** In addition, with the exclusion of anecdotal good practices, other governmental duty-bearers, such as **Mol and MoEHE, do not regularly cooperate and support MoSA in fulfilling its role.** For example, police officers are not systematically trained to deal with children and the cases of violence in schools are not addressed jointly by MoSA and MoEHE. The situation seems to be even more alarming in **East Jerusalem** where, due to a combination of factors (mainly discriminatory practices of Israeli institutions towards Palestinians and a popular boycott by Palestinians of these Israeli institutions), **the services offered to children either by the Government of Israel or by a few local NGOs and CBOs are not sufficient in quantity nor quality.**

In recent years, UN agencies, governmental actors, including MoSA itself, and relevant players at the civil society level came together to join efforts and take collective and coordinated action on this issue. Consequently, a national child protection network was established, although it is still in its initial phase and needs to be consolidated. Meanwhile, civil society organisations continue in their attempts to bridge the gaps. Through a wide range of projects, **NGOs try to offer vulnerable children the daily social support and protection they do not find within their homes and communities or from the appointed governmental institutions.** Unfortunately, but to be expected, **civil society cannot meet the demand of all the children who need protection** and, in doing so, substitute the role of the government. Nonetheless, there are some factors that prevent civil society from reaching its full potential as child protection actors and advocates, including poor coordination and cooperation between actors offering complementary services, as well as duplication of efforts largely concentrated in some geographic areas while completely neglecting other marginalised areas. The result is that some categories of children, such as **children with special needs, girls who are married at an early age, Bedouin children, and children living in the Jordan valley** are by and large **neglected** by both governmental and non-governmental duty-bearers and stakeholders.

¹²² Here violence also refers to abuse, neglect and exploitation

2. Children in Conflict with the Law under PA Jurisdiction

“Immediately after arresting me, police pushed me in the car and started to ask me questions about my family. I felt threatened, they were shouting at me and they told me if I didn’t answer they would beat me...”

Ahmad¹²³, 14, Juvenile Rehabilitation Centre, Betuniya, West Bank. April, 2008

The Right to Protection of Children in Conflict with the Law under PA Jurisdiction

Art. 40 of the Convention on the Rights of the Child (most relevant parts)

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law **to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth**, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which **takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society**.
2. (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (iii) To have **the matter determined without delay**
 - (vii) To have **his or her privacy fully respected** at all stages of the proceedings.
3. States Parties shall seek to **promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law**, and, in particular:
 - (a) The establishment of a **minimum age** below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, **measures for dealing with such children without resorting to judicial proceedings**.
4. A variety of dispositions, such as **care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available** to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Background and Context

Although international child rights standards include safeguards and guarantees for the protection of children in conflict with the law (e.g. Article 40 of the CRC), in many societies around the world, these children are not usually perceived as children in need of protection. On the contrary, they are usually stigmatised as criminals and social misfits. In the oPt, this perception is also widespread. It is difficult to gauge the exact number of children who come into conflict with the law in the oPt due to a number of factors, including the fact that many incidences of juvenile delinquency are dealt with outside of the official justice system. However, **figures from 2006 set the number of Palestinian children who had been accused of an offence in the West Bank and Gaza Strip at 1,118**, out of which

123 Not his real name.

673 were in the **West Bank** and 445 in the **Gaza Strip**¹²⁴. The same source also indicates the **geographical distribution** of these cases according to governorates: the majority of juveniles in conflict with the law are to be found in **Rafah (138)**, followed by **Nablus (100)** and **Ramallah (72)**. The most **common type of offence was “theft” followed by “participating in assaults”**¹²⁵. The PCBS does not report the percentage of male and female offenders, although it is reasonable to induce that the **number of girls in conflict with the law is very low**. Representatives of MoSA and NGOs state that girls are much less likely to enter the official justice system. When girls are in conflict with the law, the case either goes unreported or is settled through informal traditional channels because of the implications a court case may have on the family name¹²⁶. In this regard, a 2005 report states that, “the percentage of girls among children accused of crimes has not risen above 2.7 percent since 1998”¹²⁷.

FACTORS INFLUENCING JUVENILE DELINQUENCY

“Children in the centre usually come from large, unstable, poverty-stricken families. These children do not get the social and emotional support they need and deserve from their family. They usually drop out of school early - either voluntarily or because they have been neglected by their family and have to find their own way in life.”

“Also in the Gaza Strip, the harsh socio-economic conditions that characterize the life of families have been reported as the primary trigger for juvenile criminality.”

(Testimonies of the Directors of Juvenile Rehabilitation Centres, West Bank and Gaza, April 2008)

This study considers the **socio-economic and political environment in which Palestinian children live as the main underlying cause** that leads them to act in conflict with the law. The legacy of the 41-year occupation by Israel, with its military actions, border closures, permit system and movement restrictions has left the economic infrastructure in the oPt weak and suppressed. In October 2007, Save the Children – UK reported that 58 percent of Palestinians in the oPt (around 2.3 million), were living below the poverty line¹²⁸. In a society characterized by large families, young children develop a sense of economic responsibility at an early age. Unfortunately, this is unlikely to be satisfied by means of getting a job due to the lack of job opportunities as well as the scarcity of vocational training offered to adolescences to equip them with the necessary skills to meet job’s requirements. Moreover, since its inception in 1994, the PA has not been able to develop a functioning social welfare system. As a result, not only are there no government-led income-generation projects to help the poorest families, there are also very few social and cultural services that aim to keep juveniles engaged in educational and/or leisure activities to help take their minds off the difficult environment in which they live¹²⁹.

This situation is exacerbated for many by a tense **atmosphere within the family**. As mentioned in the previous chapter, there is evidence that **domestic violence** is a regular occurrence in many families, with children often being beaten by their parents, older brothers or other relatives. Some children come from **broken, separated or dysfunctional families**, which can give rise to feelings of anger and rebellion among teenagers¹³⁰. Finally, conservative religious practices and socio-cultural behaviours, especially towards girls, are

124 http://www.pcbs.gov.ps/Portals/_pcbs/victimz/Crv0-05.htm, last visited 7 May 2008.

125 Ibid.

126 Interview with Dyana Mubarak, Al Mehwar organisation, director. 12 April 2008 and interview with Jihad Shomaly, DCI-Palestine, Juvenile Justice Programme coordinator. 26 April 2008. On this topic see Human Rights Watch, “A Question of Security: Violence against Women and Girls”, Occupied Palestinian Territories, November 2006, p. 70.

127 Ministry of Planning and UNICEF, “Child Protection in the Occupied Palestinian Territory: a National Position Paper”, Logo Production, Jerusalem, Occupied Palestinian Territories, June 2005 p. 51.

128 Child Rights Fact Sheet, Occupied Palestinian Territories, Save the Children - UK, October 2007.

129 Interview with Jihad Shomaly, DCI-Palestine, Juvenile Justice Programme coordinator. 26 April 2008.

130 Interview with Emad Salah Jaduny, Burj Al Luq Luq, director. 3 April 2008. This is considered to be a typical outcome of the occupation of East Jerusalem in 1967 and the construction of the Separation Barrier.

elements that might create **exploitative or oppressive situations**. In turn, this foments the need of the younger generations for autonomy, empowerment and respect. This can lead to some children leaving the family home at a very early age in search of other groups with which they identify¹³¹.

In need of financial means, at times filled with a sense of revenge and anger towards their family and a society that failed to provide them with their basic needs, and in the absence of the rule of law and functioning governmental bodies, some children resort to physical and psychological violence in resolving disputes and are more likely to engage in illegal activities such as working or begging on the street, dropping out of school, shoplifting, taking drugs, acting as vandals and engaging in street fights¹³².

As mentioned in the context of children vulnerable to violence in their homes and communities, this research does not intend to differentiate one child from another within the group of Palestinian children living in the oPt. However, given that East Jerusalem has been under full administrative control of Israel since 1967, the legislations and systems that protect and apply to East Jerusalemite children in conflict with the law and Palestinian children with West Bank or Gaza Strip ID who come into conflict with the law while in East Jerusalem, respectively, are different to the legislation and system in place for children who come into conflict with the law under PA jurisdiction. As a result, the following analysis is divided into two, one referring to the West Bank and Gaza Strip and one concerning East Jerusalem.

Gaza Strip and West Bank, Excluding East Jerusalem

Domestic Legal Framework vis-à-vis International Standards

The international community has developed conventions and principles to ensure basic safeguards to any person deprived of his/her liberty. Most of these, such as the Riyadh Guidelines and the Beijing Rules¹³³, refer directly to children. Within the CRC two provisions, **Articles 37 and 40**, describe additional rights that should be guaranteed to children once they enter the justice system. Moreover, **General Comment No.10** (hereinafter GC10), issued in 2007 by the Committee on the Rights of the Child, presents detailed **guidance and recommendations for each State Party to the CRC to follow in developing national juvenile justice systems and policies**¹³⁴. Worldwide, child rights defenders advocate that **children in conflict with the law should be considered victims and should receive the appropriate social support to address the root causes of their unlawful behaviours**.

The GC10, in explaining Articles 37 and 40 of the CRC, individuates the following as core elements of a comprehensive policy on juvenile justice: the **prevention of juvenile delinquency; diversion and interventions** in the context of judicial proceedings; setting the **minimum age of criminal responsibility** for juveniles; articulating **guarantees for a fair trial**; and **special measures to apply to children** deprived of their liberty¹³⁵.

Disappointingly, despite the national endorsement of the CRC by the PA, **the current juvenile justice system in the oPt neither legally nor socially ensures the aforementioned core elements**. In fact, according to two professionals working in the field of juvenile

131 Ibid.

132 Art. 47 of the Palestinian Child Law, N. 7 2004 condemns as crimes all the abovementioned acts.

133 The United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") adopted and proclaimed by General Assembly Resolution 45/112 of 14 December 1990 and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice («The Beijing Rules») adopted by General Assembly Resolution 40/33 of 29 November 1985.

134 "Children's Rights in Juvenile Justice", General Comment No. 10, Committee on the Rights of the Child, doc. CRC/C/GC/10, 25 April 2007.

135 "Children Rights in Juvenile Justice", General Comment No. 10, Committee on the Rights of the Child, doc. CRC/C/GC/10, 25 April 2007.

justice, the Palestinian community tends to **stigmatize dishonourable behaviours** in children and systematically marginalizes those juveniles in conflict with the law rather than recognize and reduce those underlying social factors that lead to juvenile delinquency¹³⁶. On the other hand, the current state of the legal system on this matter is worrying. In fact, two separate systems of legal rules and procedures from the Jordanian and the Egyptian administrations are currently in force in the West Bank and the Gaza Strip respectively. The main document referring to the West Bank is the “Ordinance of Reforming Juveniles No. 16, Jordan, 1954” whereas the following laws play a central role in the Gaza Strip: “Juvenile Offenders Ordinance No. 2 of 1937 as amended by Juvenile Offenders Ordinance No. 31, Egypt, 1938”, “Rules of Trial of Juvenile Offenders, British Mandate, 1937/1938/1941” and “Regulations of Prisons and Reformatory Schools, Chapter 117, Art. 12, British Mandate, 1932”¹³⁷.

This **de jure fragmentation leads to de facto discrimination**. In other words, in a situation where there are two juveniles committing the same offence, one from the West Bank and the other from the Gaza Strip, two different legal bodies will apply two different systems of legal rules, which will most likely lead to two different charges. This system of institutionalized discrimination is compounded by the fact that since 1967, Palestinian residents of East Jerusalem have been under complete Israeli control, which in turn leads to a third institutional body applying a third legal system to Palestinian children committing an offence in either East Jerusalem or Israel.

In addition to this legal fragmentation and discrimination, **the Jordanian and Egyptian regulations in force date back to 1954 and 1937**, respectively. Although the regulations do provide additional guarantees for children alleged to be in conflict with the law, they address these children as criminals and, accordingly, **focus on punishing** them instead of providing social services to address the root causes of their unlawful behaviours. For instance, the **minimum age of criminal responsibility**, which the Committee on the Rights of the Child urges State parties to set no lower than 12 years¹³⁸, is set at **nine years** by both the Jordanian and Egyptian regulations. Moreover, although penalties for offences are lowered for child offenders, **the draft penal code makes no distinction between children ages 10 to 17**¹³⁹. The group of lawyers and human rights activists who drafted the juvenile justice bill have been lobbying for an increase of the minimum age of criminal responsibility to 12 years of age¹⁴⁰. It deserves our attention however, that although the legal system is sorely outdated concerning juvenile offenders’ issues, recent developments in the practice have shown, that both at the governmental and non-governmental level efforts have been made to offer children in conflict with the law a suitable environment when they are serving their sentence, an example being the rehabilitative focus of the juvenile rehabilitation centres.

Unfortunately, the **Child Law** enacted in 2004 does not fully address the substantial loopholes in the two current legal systems in place in the West Bank and Gaza Strip. In fact, only 3 of the 75 articles of the Child Law address juvenile offenders¹⁴¹. These articles include principles such as the **prohibition of cruel treatment**, the necessity of establishing **special procedures in dealing with children** and the **duty to treat children in a manner appropriate to their age**. However, these articles **do not hold duty-bearers legally accountable or identify detailed procedures for enforcement**. Thus, in order to be implemented, the Child Law requires additional articulation by relevant institutions¹⁴².

136 Interview with Daoud Darawi, DCI-Palestine, lawyer. 7 May 2008. See also interview with Farid Alafsh, ICHR, field researcher. 8 April 2008.

137 For a complete analysis of the law, see DCI-Palestine, Juvenile Justice Annual Report, 2006.

138 Para. 33 of General Comment No.10.

139 Ministry of Planning and UNICEF, “Child Protection in the Occupied Palestinian Territories: a National Position Paper”, Logo Production, Jerusalem, Occupied Palestinian Territories, June 2005 p. 59.

140 “The Draft Law for Juveniles in Conflict with the Law”, on file at the DCI-Palestine Ramallah office.

141 Art. 67-69 of the Child Law, N. 7 2004.

142 “Child Protection in the Occupied Palestinian Territory Structures, Policies and Services”, the Institute of Community and Public Health Birzeit University and the National Plan of Action Secretariat, unpublished report, April 2006, p. 45.

Efforts to build a legal system in line with the international dictates on juvenile justice started in 1999 when the **drafting process for a new and unified law on juvenile justice** began¹⁴³. Governmental branches in the West Bank and the Gaza Strip, in conjunction with UNICEF and relevant Palestinian NGOs, have been involved in developing a bill that encompasses international safeguards for children in conflict with the law. For instance, the bill¹⁴⁴ addresses preventive measures and programmes, the required level of specialization for police officers and judges, the right of the child to privacy, rules for police and prosecutors related to questioning children, the establishment of a domestic juvenile court, the right to appeal, the introduction of “diversion”¹⁴⁵ measures, such as referring the child to alternative social services instead of subjecting him/her to judicial proceedings, as well as the provision of “intervention”¹⁴⁶ measures. Unfortunately, the political clashes and the differences among the various legal schools of thoughts have prevented the bill from reaching the forum of the PLC¹⁴⁷. Moreover, even when a final agreement will be ultimately achieved, it is difficult to know when the PLC, which has been frozen since early 2006 after Israel arrested 45 parliamentarians, will be activated. It is reasonable to deduce that the establishment of a new, unified Palestinian system on juvenile justice in line with basic standards provided by the CRC and the GC10 still **has a long way to go**.

Law Enforcement

Policy Development

The three main ministries relevant for juvenile justice are **MoSA, Mol and MoJ**, which, besides developing their own internal policies, should cooperate closely to establish inter-ministerial documents to jointly address juvenile justice related-issues. However, this is not the case in practice. Adequate internal and inter-ministerial policies are lacking in all three ministries. An ICHR representative cited the case of poor cooperation between Bethlehem and Ramallah police officers as an example of how missing internal policy negatively affects the protection of children¹⁴⁸. In addition, neither **juvenile departments nor juvenile courts have been established within the police force and court system**¹⁴⁹. Granted there is a legal provision that calls for the establishment of a juvenile court. However, the only difference with the adult court seems to be that the juvenile trial is supposed to be carried out behind closed doors, and even this minor guarantee does not apply when the crime has been committed by the child together with adults. Moreover, there is no juvenile judge appointed or other special measures applied. Regulations on how to deal with children in the absence of specialized juvenile chambers are also lacking. What usually happens,

143 Ministry of Planning and UNICEF, “Child Protection in the Occupied Palestinian Territories: a National Position Paper”, Logo Production, Jerusalem, Occupied Palestinian Territories, June 2005 p. 59.

144 The following measures reflect those recommended in Para. 28 of the General Comment N. 10 to the CRC, 2007. For a complete list of the measures provided by the draft Palestinian juvenile justice bill see “The Draft Law for Juveniles in Conflict with the Law”, on file at the DCI-Palestine Ramallah office.

145 The legal term “diversion” is generally defined as a measure “ (...) diverting a defendant out the criminal justice system by having him/her complete a diversion program rather than be incarcerated or serve another alternative sentence. Criminal charges are typically dropped when a defendant successfully completes a diversion program. The defendant therefore avoids the stigma of a criminal conviction”, see <http://definitions.uslegal.com/d/diversion/>, last visited 2 June 2008. For the definition given by the Committee on the Rights of the Child see para. 22 of the General Comment N. 10 to the CRC, 2007.

146 “Intervention” measures refer to actions that aim to limit the pre- and post-trial detention period served by a child in conflict with the law, such as ordering custody in safe institutions and offering educational opportunities and/or vocational training.

147 Interview with Asmahan W. Nasser, UNICEF, child protection officer, 17 April 2008. According to Nasser, as of April 2008, there were 3 drafts of the juvenile justice bill. The first one was compiled primarily by members of Al-Haq and DCI-Palestine in 2002 and the second by a pool of lawyers and ministerial representatives guided by the Diwan el-Fatwa wa al Tashri (a body that assists the government in drafting legislation) in the Gaza branches of the Ministry of Justice in 2003. Following disagreement between the working groups in the West Bank and Gaza Strip, UNICEF recently hired an international consultant to design a new draft that integrates all elements of the two prior drafts into one combined document. Despite UNICEF’s efforts, no final agreement has been reached yet.

148 Interview with Farid Alafsh, ICHR, field researcher. April 8, 2008.

149 “Child Protection in the Occupied Palestinian Territory Structures, Policies and Services”, the Institute of Community and Public Health Birzeit University and the National Plan of Action Secretariat, unpublished report, April 2006, p. 45.

according to the ICHR representative is that “there are individual policemen unofficially responsible for dealing with juvenile justice issues according to broad imperatives rather than specific policies or procedures”. The situation regarding MoSA is just as problematic. At the time of writing, **MoSA had developed virtually no internal policies** addressing children in conflict with the law. In fact, Art. 61 of the MoSA systematic Guidelines for Child Care for Child Care is the only reference to children in conflict with the law and specifically deals with the issues of coordination between judges and MoSA social protection agents and ensuring that investigations are conducted with the assistance of social experts and doctors¹⁵⁰.

Major International Principles vis-à-vis Palestinian Practice

As mentioned in the section above, the GC10 individuates a number of core elements that should be prioritised in order to implement a comprehensive policy on juvenile justice: the **prevention of juvenile delinquency; diversion and interventions** in the context of judicial proceedings; setting the **minimum age of criminal responsibility** for juveniles; articulating **guarantees for a fair trial**; and **special measures to apply to children** deprived of their liberty¹⁵¹. The following section analyses the extent to which these principles are put into practice in the Palestinian context.

With regard to the implementation of **measures that prevent juvenile delinquency**¹⁵², at the time of writing, although one article of the Child Law includes the obligation to enforce such measures, it appears that no duty-bearer or stakeholder is systematically addressing the issue. Preventive measures should be carried out at both the governmental and non-governmental level. However, efforts on both levels have been minimal, with the exception of some attempts by MoSA to implement prevention measures through awareness raising campaigns, an example being an anti-drugs campaign carried out in 2007¹⁵³. The Juvenile Justice Programme Coordinator at DCI-Palestine, which represents the only NGO in the oPt focusing specifically on juvenile justice, attributes the lack of preventive actions undertaken by actors on both levels to a prioritization of other activities, such as social support¹⁵⁴.

Another aforementioned core element of a comprehensive juvenile justice policy would be ensuring **alternatives to the detention of children**, such as **diversion** – i.e. measures that do not resort to judicial proceedings – and **intervention** – i.e. educational and social activities that children are provided with as part of the judicial proceedings¹⁵⁵. According to DCI-Palestine, these measures are “far from being fully incorporated within the national system”¹⁵⁶. For example, while awaiting trial, children are most likely to be detained in police stations. Moreover, both pre-trial and sentenced children may, if considered “dangerous,” be transferred to a prison facility for adults¹⁵⁷.

According to Art 61 of the MoSA Guidelines on Child Care, **MoSA should have a central role in ensuring diversion and intervention** for children through the establishment of **probation officer** positions and juvenile rehabilitation centres under MoSA’s Department of Defence¹⁵⁸. Probation officers are social workers **in charge of carrying out a holistic investigation of the socio-economic background of the child to identify the underlying**

150 Ibid. at p. 45.

151 “Children Rights in Juvenile Justice”, General Comment No. 10, Committee on the Rights of the Child, doc. CRC/C/GC/10, 25 April 2007.

152 The importance of establishing preventive measures is also underscored in the UN Guidelines on the Prevention of Juvenile Delinquency (also known as the Riyadh Guidelines) adopted by the UN General Assembly in its resolution 45/112 of 14 December 1990.

153 This campaign, focusing on the negative impact of smoking and consuming drugs, was cited in an interview with Mohammed Maysoun Alwhedi, MoSA, Juvenile Justice Department. Ramallah, 26 March 2008.

154 Interview with Jihad Shomaly, DCI-Palestine, Juvenile Justice Programme coordinator. 26 April 2008.

155 Para. 28 of the General Comment N. 10 to the CRC, 2007.

156 Interview with Jihad Shomaly, DCI-Palestine, Juvenile Justice Programme coordinator. 26 April 2008. Shomaly pointed out that in his experience, “often, principles such as “the last resort” and the “absence of delay in the adjudication of the case” are not even known by lawyers and judges”.

157 Interview with Mohammed Maysoun Alwhedi, MoSA, Juvenile Justice Department. 26 March 2008.

158 Art. 61 of the MoSA Guidelines on Child Care, 2004.

causes of the alleged offence committed. According to the file compiled by the probation officer, the release of the child or measures other than judicial proceedings (i.e. diversion) may follow¹⁵⁹. In any case, when no diversion follows from the probation officer's investigation, this file is the basis on which judges will make a final decision¹⁶⁰. Moreover, when a child is convicted, the probation officer is responsible for monitoring and following up the case for the duration of the sentence¹⁶¹.

At present, there are only **11 probation officers** (one for each governorate) allocated by MoSA in the entire West Bank. Considering the high number of juveniles in conflict with the law reported above, the difficulties probation officers face in carrying out full investigations is evident¹⁶². The main reasons attributed by MoSA for the small number of probation officers is the **lack of financial and human resources** due to the fact that MoSA's budget depends so heavily on international aid¹⁶³.

As a result of the abovementioned legal fragmentation between the West Bank and the Gaza Strip, the role of probation officers in the Gaza Strip is partially different. According to a representative of the Gaza branch of MoSA, besides following up on cases of children in conflict with the law, probation officers have clear responsibilities with regards to raising public awareness on the consequences of juvenile delinquency. In addition, they work closely with the families of children in order to improve their parental skills and raise greater awareness on child rights related issues¹⁶⁴. Unfortunately, at the time of writing, **the number of probation officers allocated to the Gaza Strip remained unclear**¹⁶⁵.

Intervention is provided by law through the establishment under MoSA of **juvenile rehabilitation centres** where the child should be hosted if legally convicted. Here children in conflict with the law are to be offered adequate support through **education, vocational training, and psychosocial rehabilitation and cultural activities** to enable them to understand the unlawful nature of their past behaviour and to be able to gradually overcome the underlying causes of their delinquency. There are **three juvenile rehabilitation centres** in the oPt: **two in the West Bank**, one of which is Dar Al Amal in Betuniya for boys and the other is Ria'iet Al Fataiat in Bethlehem for girls, and **one in the Gaza Strip** for boys known as Al Rabee'¹⁶⁶. The number of children at the centres varies from day to day with a **daily average of 15 children at the boys' centres**¹⁶⁷. At the girls' centre, the situation is more complex as the institution simultaneously hosts convicted girls and girls in need of protection¹⁶⁸. However, at the time of writing, the centre was hosting only **two convicted girls**¹⁶⁹.

159 Interview with Mohammed Maysoun Alwhedi, MoSA, Juvenile Justice Department. 26 March 2008.

160 Ibid.

161 Ibid.

162 Ibid. Also, on the topic interview with Emad Mustafa, Dar Al Amal juvenile rehabilitation centre, director. 7 April 2008. Before becoming the director of the centre Mustafa had worked for seven years as a probation officer.

163 Interview with Mohammed Maysoun Alwhedi, MoSA, Juvenile Justice Department. 26 March 2008.

164 Ibid.

165 Interview with Iman Mahmoud Oduan, MoSA – Gaza branch, deputy director of the Public Administration and Child Unit. 13 May 2008.

166 For a description on how these institutions work, see DCI-Palestine, Juvenile Justice Country Report, 2006, p. 22.

167 Interview with Jihad Shomaly, DCI-Palestine, Juvenile Justice Programme coordinator. 26 April 2008. This DCI-Palestine representative stated that it is very difficult to know the real dimension of the phenomenon as "children are constantly coming and going from the centre".

168 Dyana Mubarak, both director of the Al Mehwar organisation (semi-governmental protection centre for women and girls) and in charge of the girls' juvenile rehabilitation centre, Ria'iet Al Fataiat, attributed the fact that the centre hosts also girls in need of protection to the inexistence up until March 2007 of a protection shelter for girls. See interview, 12 April 2008.

169 Ibid.

Children's Voices

"I don't want to go back home" – juvenile, 16, awaiting trial, staying at Dar Al-Amal, April 2008

This is one of a few testimonies by children voicing their wish to stay in the juvenile rehabilitation centres in both the West Bank and Gaza Strip, indicating that they are well cared for and that the centres offer a child-friendly and safe environment.

Although no official policy has been drafted by MoSA on how to manage the juvenile rehabilitation centres, social workers in the *Dar Al-Amal* centre in Beituniya near Ramallah have developed their own internal chart including the rights, rules and responsibilities of the children in the centre, which includes a list of (non-violent) disciplinary measures.

"There is a poster with a list of our rights and duties and our punishment if we break the rules. We all follow the rules on the poster" – sentenced juvenile, 15, staying at Dar Al-Amal, April 2008

Furthermore, children engage daily in a group psychosocial activity and/or an individual therapy session.

(Focus Group Testimonies, West Bank and Gaza, April 2008)

There is a large **discrepancy between the average number of children hosted at the centres both in the West Bank and Gaza Strip and the high figures related to juvenile offenders** reported above. One might conclude that many children are not referred to the centres due to the lack of space. However, according to MoSA, the main reason for this discrepancy is that many children do not actually reach the centre due to either a **lack of coordination among police departments** in different geographical areas¹⁷⁰ or **difficulties arising from the need for police officers to obtain official authorization from Israel** to transfer the child between areas A, B and C of the West Bank¹⁷¹. Furthermore, in the Gaza Strip many children do not reach the centre because **governmental bodies are not functioning** adequately and do not sufficiently cooperate¹⁷². In addition, MoSA also pointed out that there are cases in which the directors of juvenile rehabilitation centres **do not accept a sentenced child if he or she has not undergone a medical exam or when it is known that the child suffers from drug addiction**. It is the responsibility of the MoI to conduct a medical exam and issue a health certificate for each child before referring him/her to the juvenile rehabilitation centre¹⁷³. As a result, it happens that children are often **left in prisons or police stations** where "they are likely to experience unhealthy and unsafe conditions, including beatings, humiliation and sexual abuse"¹⁷⁴.

It warrants mention that at the time of writing the juvenile rehabilitation centre in the Gaza Strip had recently re-opened, after closing in June 2007 following the Hamas takeover. The current director is no longer a MoSA employee, but is working voluntarily¹⁷⁵. He stated that, during the period the centre was closed, all the children who had been hosted at the centre were released with no follow-up from social workers.

At the time of writing, the status of children in perceived conflict with the law in the Gaza Strip was alarmingly unclear, due to conflicting accounts of what is going on given by different

170 Interview with Emad Mustafa, Dar Al Amal juvenile rehabilitation centre, director. 7 April 2008. According to the director many are the cases in which children actually remain detained at police station or in prison although they should be sent to a rehabilitation centre, either due to arbitrary lack of enforcement of the order or a lack in cooperation between different police departments. On the topic see also interview with Farid Alafsh, ICHR, field researcher. 8 April 2008.

171 Interview with Mohammed Maysoun Alwhedi, MoSA, Juvenile Justice Department. 26 March 2008.

172 Interview with Nael Al Maqadma, Al Rabee' juvenile rehabilitation centre, director. Gaza, 10 April 2008.

173 Interview with Mohammed Maysoun Alwhedi, MoSA, Juvenile Justice Department. Ramallah, 26 March 2008. In this regard, it is important to note that, according to the children surveyed, the medical check is almost never carried out professionally. See also Focus Group Report, Juvenile in Conflict with the Law, West Bank.

174 Ibid.

175 Interview with Nael Al Maqadma, Al Rabee' juvenile rehabilitation centre, director. Gaza, 10 April 2008. According to the director, ordinary expenses are covered by Hamas-led MoSA while food is provided by the World Food Program.

authoritative sources. According to the director of the juvenile rehabilitation centre for boys in Gaza, the fate of children in perceived conflict with the law was being decided by police officers without recourse to the court system. In his words, if, upon interrogating an arrested child, a police officer should conclude that the child committed the suspected offence, the child is brought directly to the juvenile rehabilitation centre without appearing before the court and without knowing the duration of his/her 'sentence'¹⁷⁶. This account contradicts however the statement given by the director of Al Mezan – a well-established human rights organisation in the Gaza Strip, who said that even though the judiciary system does not enforce measures adequate for children, the majority of the juveniles in conflict with the law *have been* tried and sentenced before reaching the juvenile centre¹⁷⁷.

In addition to the above issue, sources affirmed that **arrested and charged children are being detained at police stations or in prisons where they are held with adults**. According to the juvenile rehabilitation centre director, generally the **police do not take into consideration the age or status of the child**. He added that, based on the condition of the children who are brought to the centre, he suspects that while in custody at police stations or prisons, they are regularly **beaten and abused** either by police officers or other detainees¹⁷⁸. There is evidence to indicate that **Gazan girls in conflict with the law are held in prisons for women**¹⁷⁹.

It appears that **education, vocational training** as well as psychosocial rehabilitation and other social and cultural activities are generally provided in the centres in both the West Bank and the Gaza Strip. However, as the testimonies of the directors of the three centres indicate, no systematic programme was being implemented at the time of writing and the education or vocational training offer depends on funding and staff availability¹⁸⁰. It is important to note that the current domestic legal framework does not properly address the **right to education** of children hosted at the centres. In fact, although **MoEHE welcomes juvenile offenders in public schools, MoEHE is not obliged or mandated by law to offer education within the centres nor is MoSA obliged or mandated by law to accompany the children to public schools**¹⁸¹.

A further aforementioned core element of a comprehensive policy for juvenile justice is ensuring all the **safeguards that ensure a fair trial**. The GC10 adds that these and other basic child rights are crucial and should be provided systematically¹⁸². The rights and principles associated with a fair trial, although not explicitly provided in existing laws in the oPt dealing with children in conflict with the law, are found elsewhere within the domestic legal framework¹⁸³. The enforcement of these rights is the responsibility of **MoI** because of the regular involvement of police forces, and **MoJ** because of the crucial role played by judges. Unfortunately, based on testimonies from experts and from the children surveyed,

176 Ibid.

177 Phone interview with Assam Younis, Al Mezan for Human Rights, general director, 3 May 2008.

178 Interview with Nael Al Maqadma, Al Rabee' Juvenile Detention Centre, director. Gaza, 10 April 2008. This has also been testified by children themselves. Focus Group Reports, Juveniles in Conflict with the Law, West Bank and Gaza Strip, on file at DCI-Palestine Ramallah office.

179 Ibid.

180 Ibid. For example, in Dar Al Amal during April 2008 a teacher provided three hours of lessons every day. Unfortunately, the level of education provided to children is not usually tailored to their level of knowledge and capacity. As regard to vocational training, quoting the words of the director of Dar Al Amal "my children attend courses whenever there is a trainer and sufficient material. In the past few months children were taught hairdressing and gardening".

181 Ibid. It seems that although social workers at the centre would be keen in accompanying children to public schools, the limited staff does not allow this and they do not feel comfortable allowing children leave the centre alone as the children are their responsibility.

182 Para. 40 of the General Comment No10.

183 Interview with Daoud Darawi, DCI-Palestine, lawyer. 7 May 2008. The lawyer specified that these principles are mainly reflected in the Palestinian Basic Law, 2003, the Penal Code or the Procedural Penal Code. The only measure specifically provided for in existing juvenile justice legislation is the right to privacy for children suspected to be in conflict with the law.

law enforcement officials generally do not apply these principles¹⁸⁴. Moreover, among police officers, prosecutors, lawyers and other representatives, there appears to be a “**very low awareness of the needs and legal rights of the child**”¹⁸⁵.

The GC10 also identifies **special measures for children**, referring to a set of best practices in law enforcement when dealing with children from the time of arrest to their release. These measures incorporate the principle of proportionality, meaning that the punishment for an offence should always be proportionate to the circumstance, the gravity of the offence, the age of the child, the culpability and the needs of the child¹⁸⁶. In the oPt today, **almost no official provision has been drafted on this topic by the Mol, MoSA or MoJ**. As a result, pillar principles such as separation from adults in prison and the prohibition of torture and inhumane treatment are not consistently respected. According to a MoSA representative, the principle of separation applies “whenever possible”, and there have been many incidences of police officers beating and maltreating children¹⁸⁷.

Role of Non-Governmental Stakeholders

There are very few Palestinian NGOs addressing the issues related to children in conflict with the law. In fact, **DCI-Palestine** is the only local NGO that focuses specifically on this target group. However, its capacity is limited and they focus mostly on legislative reform and capacity-building of law enforcement personnel in the West Bank. It also monitors the situation of children who are detained (in the West Bank only) – as does the **ICHR** (in both the West Bank and the Gaza Strip)– but neither actor conducts systematic monitoring nor do they implement systematic programmes that specifically aim to support reintegration of child ex-detainees into society and the family unit. In essence, at the time of writing, **very limited social support** was being offered by civil society actors to this target group of children. In addition, **few preventive measures were being implemented by civil society actors either**. Also, media actors seem to be unaware of the needs of this target group of children and thus the stories of what happens to children in conflict with the law upon their release are largely missing from mainstream print and audiovisual media.

The GC10 also discusses the importance of **awareness-raising activities and training** in order to “create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem”¹⁸⁸. **Civil society actors**, including media actors, have the potential to be **major players in this regard**. They must mobilize the traditional Palestinian community as a whole, and in particular parents and relatives to provide the necessary support that children need and are entitled to following their release¹⁸⁹. In this regard, the director of Dar Al Amal centre highlighted that in the vast majority of cases the **relationship between children and members of their family as well as the community** is a decisive factor relating to the effective social reintegration of the child, and perhaps more so in cases when the domestic environment represents one of the major factors influencing the child’s delinquency¹⁹⁰. On the one hand, MoSA should establish psychosocial projects involving both children and parents as part of the rehabilitation period within the juvenile rehabilitation centre. On the other, civil society actors should implement regular activities to educate primary caregivers about their important role and responsibility towards children. For the time being, very few actors are active specifically in this regard.

184 Interview with Jihad Shomaly, DCI-Palestine, Juvenile Justice Programme Coordinator. 26 April 2008. Also, see Focus Group Report, Juveniles in Conflict with the Law, West Bank. For instance, the representative of DCI-Palestine expressed great concern regarding delays in court proceedings and the behaviour of police officers who treat children who have yet to be convicted of a crime as criminals.

185 Interview with Farid Alafrsh, ICHR, field researcher. 8 April 2008.

186 Para. 70 ff. of General Comment No. 10.

187 Interview with Mohammed Maysoun Alwhedi, MoSA, Juvenile Justice Department. Ramallah, 26 March 2008.

188 Para. 96 of General Comment No.10.

189 Interview with Mohammed Maysoun Alwhedi, MoSA, Juvenile Justice Department. Ramallah, 26 March 2008.

190 Interview with Emad Mustafa, Dar Al Amal juvenile centre, director. Ramallah, 7 April 2008.

The Case of East Jerusalem

Palestinian children residents in East Jerusalem, who come into conflict with the law in East Jerusalem or Israel, are dealt with under the Israeli criminal justice system. As with Israeli law related to protection of children from violence in their domestic and community environments, the Israeli domestic legislation on juvenile justice **generally provides the legal guarantees and protection recommended by international standards to children who come into conflict with the law**. For example, there are special rules and procedures for juvenile departments within the police force and for training juvenile judges; the Israeli MoSA appoints a number of probation officers to investigate the economic and socio-cultural background of juveniles who come into perceived conflict with the law; the penalties provided for children are less severe than those for adults; there are juvenile courts and judges specialized in child rights and juvenile justice; special measures detail the separation of children from adults in prisons as well as the necessary rehabilitation programmes for children while in juvenile detention and following their release¹⁹¹.

As described in the case of children exposed to violence, abuse, neglect and exploitation, **prima facie the Israeli legal framework provides greater safeguards for Palestinian children** who come into conflict with the law, as it encompasses the international standards on juvenile justice. However, there is evidence to indicate that Palestinian children who enter the juvenile justice system in East Jerusalem and Israel face acute discrimination.

As indicated by human rights NGOs based in East Jerusalem that deal with this issue, **Israeli police officers have very little respect for Palestinian children who are arrested**. They are more likely to detain and interrogate them at police stations without immediately notifying the child's parents or a probation officer¹⁹². Moreover, **law enforcement officials often use physical and psychological abuse during interrogation as a deterrent for repeated action against the law**¹⁹³. Additionally, **police officers often refrain from enforcing the law** in certain situations, in order to worsen the situation in Palestinian communities, such as when juveniles are suspected of dealing or abusing drugs, or in cases of child labour, child beggars and when children drop out of school¹⁹⁴. Discrimination is also evident at the judicial level. To quote the words of the director of DCI-Israel, "although in their power, Israeli judges do not tend to suggest alternative measures to detention, such as house arrests or psychosocial therapy, when trying Palestinian kids"¹⁹⁵.

The existence of "**cross-border cases**", which completely lack legal regulation, also gives rise for concern. **This occurs when Palestinian children holding a West Bank identity card act in conflict with the law in East Jerusalem or Israel**¹⁹⁶. In such instances, it is impossible for the PA to intervene but at the same time, Israeli authorities deny their responsibility on the grounds that these children are not "residents or citizens of Israel". In the absence of any coordination between Palestinian and Israeli authorities, it is unclear what happens to these children. NGO representatives offered three possible scenarios based on their experience. Either Israeli police officers bring the children back to the West Bank without coordinating with Palestinian police for follow-up or they may keep the children

191 Interview with Tali Nir, ACRI, attorney in charge of the East Jerusalem area. 15 April 2008.

192 Ibid. The lawyer stated that although the duty of police officers to immediately notify the illegal behaviour of children to their parents or primary caregivers is explicitly dictated by law, this dictate is not systematically enforced vis-à-vis Palestinian children.

193 Ibid.

194 Ibid. On the topic see also interview with Emad Salah Jaduny, Burj Al Luq Luq, director. 3 April 2008.

195 Interview with Hadeel Younis, DCI-Israel, director. East Jerusalem, 15 April 2008. Unfortunately, the limited timeframe of this research did not allow for an in-depth assessment of the level of effective discrimination that Palestinian children in conflict with the law in East Jerusalem and/or Israel are subjected to by various law enforcement figures such as police officers, judges, probation officers and social workers. Further research on this issue is therefore recommended.

196 The presence of Palestinian children from the West Bank in East Jerusalem is permitted until they obtain their own identity cards, which occurs usually when they reach the age of 15 or 16. However once they obtain their own identity card, their presence in East Jerusalem without a permit is considered illegal by Israeli authorities, despite the fact that under international humanitarian and human rights law, Israel is responsible for providing and protecting the basic rights of these children. Interview with Hadeel Younis, DCI-Israel, director. East Jerusalem, 15 April 2008.

in police stations; in which case they are likely to abuse them physically and psychologically and then try them before the military courts¹⁹⁷; or in a third scenario, Israeli police might not intervene at all¹⁹⁸. In the absence of more concrete data on these cases, it is difficult to know the extent to which these children's rights to protection are infringed or violated in such situations and therefore further research is recommended on this issue. Nonetheless, whichever the case, it is very improbable that these children are provided with the protection they are entitled to as stipulated by the CRC.

Conclusion and Recommendations

From the scenario described above, Palestinian children in conflict with the law in the three geographical areas examined do not fully enjoy their rights as enshrined in Articles 37 and 40 of the CRC and the Committee's GC10 for a number of reasons. In some cases they are not legally entitled to these rights as the domestic legal framework is not fully in line with international standards. In addition, the PA does not fully enforce the law due to a lack of legal knowledge on child rights, insufficient cooperation between relevant ministries, and a scarcity of human and financial resources. Furthermore, due to the existence of two *de facto* jurisdictions in the West Bank and the Gaza Strip and the difficulty in monitoring the Hamas-led governmental branches in Gaza, it is unclear what kind of law – if any - is being enforced there¹⁹⁹. Moreover, Palestinian children from the West Bank or Gaza Strip who enter into conflict with the law in East Jerusalem and Israel are not provided with the protective measures that are entitled to, due to *de facto* discrimination practiced by both law enforcement personnel.

The following section makes recommendations for relevant stakeholders for the purpose of enhancing the system, in accordance with basic international legal dictates, to ensure protection to children in conflict with the law from their arrest to their final release.

General Recommendations

- Relevant governmental and non-governmental actors, including UN agencies, should pressure stakeholders to finalize the draft juvenile justice bill, ensuring it is in accordance with international standards, in particular Article 37 and 40 of the CRC and General Comment No.10 of the Committee on the Rights of the Child.
- Accordingly, relevant governmental and non-governmental actors, including UN agencies, should lobby the PLC to enact the bill the earliest possible date.
- Once enacted, the bill should be enforced and implemented by relevant governmental and non-governmental actors through the establishment of appropriate bodies and measures in both West Bank and Gaza Strip at the earliest possible date.

State of Israel

- Israeli authorities should facilitate the movement of PA police officers between areas A, B and C of the West Bank.
- Israeli authorities, namely police officers and judges, should enforce Israeli domestic law without distinction or discrimination in accordance with its international law obligations.

197 See next section for more information on the military courts.

198 Interview with Hadeel Younis, DCI-Israel, director. East Jerusalem, 15 April 2008 and interview with Tali Nir, ACRI, a - torney in charge of the East Jerusalem area. Jerusalem, 15 April 2008.

199 The researcher made several unsuccessful attempts to obtain clear situational data on services provided to juveniles in conflict with the law in the Gaza Strip. Different sources, such as the ICHR, Al Mezan for Human Rights and the director of the Gazan juvenile rehabilitation centre gave divergent statements. Thus, it is impossible to give an unequivocal statement on the current status in the Gaza Strip in this regard.

- Israeli and Palestinian authorities should initiate a process of coordination and cooperation to settle “cross-border cases” in which Palestinian children from the West Bank or the Gaza Strip come into conflict with the law in East Jerusalem and/or Israel. UN agencies and relevant NGOs, both Israeli and Palestinian, should facilitate this process.

The Palestinian Authority

- All relevant PA ministries and ministerial branches in the West Bank and Gaza Strip should initiate a process for building close cooperation to achieve consistent legal enforcement. UN agencies as well as relevant national NGOs (i.e. ICHR and DCI-Palestine) should facilitate this process.
- The PA should allocate a sufficient budget to MoI local departments to enable the establishment of child-friendly juvenile units in all police stations, where children will be held pre-trial and while waiting for Israeli authorization to be transferred from the station to the juvenile rehabilitation centre.
- The PA should reallocate the governmental budget to ensure sufficient funding to the department of defence within MoSA; and seek external technical assistance to increase ministerial capacity in fundraising and developing long-term strategic plans to ensure sustainability.

Ministry of Interior

- Police forces should immediately cease the practice of detaining children with adults and using physical or psychological abuse against child detainees.
- Police forces should systematically conduct a health examination before referring a child to a juvenile rehabilitation centre. Following the examination, the child should be provided with a health certificate.
- Police forces should be trained specifically to respect and ensure the protection rights of children in conflict with the law as enshrined in international standards. Relevant social NGOs and CBOs should facilitate this process.
- An MoI policy should be introduced to explicitly oblige police departments in different areas of the West Bank to cooperate in order to facilitate the movement and re-location of child detainees as needed.

Ministry of Social Affairs

- MoSA should find alternatives to the detention of children in conflict with the law in adult prisons, even when they are considered “dangerous”.
- MoSA should allocate to each governorate a number of probation officers proportionate to its population and the risk factors that might lead to a greater incidence of juvenile delinquency.
- MoSA should establish at least one juvenile rehabilitation centre for girls in the Gaza Strip.
- MoSA should establish two additional juvenile rehabilitation centres for boys – one in the North and one in the South of the West Bank – to overcome the difficulties due to internal movement restrictions and avoid having to detain children in conflict with the law in prisons.
- MoSA should cooperate closely with relevant ministries, including MoI, MoJ, and MoEHE to draft inter-ministerial policies that ensure the highest level of protection for children in conflict with the law during pre- and post- trial periods. UN agencies and relevant NGOs should facilitate this process.

- MoSA should increase the education offer, including vocational training, provided to children in custody at the juvenile rehabilitation centres. Relevant NGOs and CBOs should facilitate this process.
- Together with other relevant actors, MoSA should develop a multidisciplinary response to prevent juvenile delinquency. Measures could include conducting an oPt-wide campaign that aims to eradicate the factors that provoke juvenile delinquency.
- MoSA should carry out psychosocial activities involving both children and their parents as part of the rehabilitation process within the juvenile rehabilitation centres.

Ministry of Justice

- Judges should be trained to ensure and respect the rights of children in conflict with the law as reflected in international standards. In particular, judges should refrain from the following actions: sending children to a prison facility for adults on the basis that they appear to be “dangerous”; using psychological violence, namely intimidation, against children during trial; treating children in a manner that does not respect his/her age, status, condition and best interest; trying children together with adults; and causing systematic delays in the trials of children. Relevant NGOs and CBOs should facilitate this process.
- The MoJ should develop a juvenile justice policy that provides the establishment of juvenile chambers/courts and juvenile procedures. UNICEF and relevant NGOs should facilitate this process.

Ministry of Education and Higher Education

- MoEHE should allocate a sufficient number of teachers to juvenile rehabilitation centres so as to guarantee the right to education for children in detention.

UN Agencies

- UN agencies should act as facilitators of the implementation of the recommended actions to be taken by the PA and relevant PA ministries.
- UNICEF and other UN agencies should continue to facilitate the implementation and enforcement of the rights of children in conflict with the law as provided by international standards.
- UNICEF should focus supporting preventive measures as well as post-detention measures related to children in conflict with the law.

Civil Society Actors, including the Media

- Relevant NGOs and CBOs should act as facilitators of the implementation of the recommended actions to be taken by the PA and relevant PA ministries.
- Relevant NGOs and CBOs should provide social services and other activities that aim to prevent juvenile delinquency, as well as work at the community level to create what the Committee on the Rights of the Child defines as “a positive environment for a better understanding of the root causes of juvenile delinquency and to work towards implementing a rights-based approach to this social problem”²⁰⁰.
- Relevant NGOs and CBOs should implement reintegration and rehabilitation programmes for child ex-detainees.

²⁰⁰ Para. 96 of General Comment N. 10.

- Relevant NGOs and CBOs should systematically target primary caregivers to increase their awareness of the rights of their children, their particular role and responsibilities as caregivers and train them how to improve their parenting skills.
- Relevant NGOs and CBOs should provide community-based social services such as counselling and guidance services for families of children in conflict with the law.
- Media actors should promote the rights of children in conflict with the law through the media and raise awareness about the existence of established social services and the negative consequences of social stigmatization.

Needed Actions

- Establishment of a national database providing up-to-date data on children in conflict with the law.
- Further research is recommended on the following issues: discrimination by law enforcement authorities against Palestinian children residents of Jerusalem who come into conflict with the law in East Jerusalem and/or Israel, and Palestinian children holding West Bank or Gaza Strip identity cards who come into conflict with the law in East Jerusalem and/or Israel.

Children's Recommendations

"We should have more hours of education and some courses to learn, for example, how to take pictures."

"We should have more things to do, like more games or films."

(Focus Group Testimonies, West Bank and Gaza, April 2008)

Summary: Children in Conflict with the Law under PA Jurisdiction

Although international child rights standards include safeguards and guarantees for the protection of children in conflict with the law (e.g. Article 40 of the CRC), in many societies around the world, these children are not usually perceived as children in need of protection. On the contrary, they are usually stigmatised as criminals and social misfits. In the oPt, this perception is also widespread. It is difficult to gauge the exact number of children who come into conflict with the law in the oPt due to a number of factors, including the fact that many incidences of juvenile delinquency are dealt with outside of the official justice system. However, **figures from 2006 set the number of Palestinian children who had been accused of an offence in the West Bank and Gaza Strip at 1,118.** Child rights experts ascribe poverty as the main trigger for children who act in conflict with the law in the oPt, also citing poverty-related factors such as difficult family situations, as well as repressive cultural traditions as contributing causal elements. **The Palestinian domestic legal framework dealing with children in conflict with the law currently in place is fragmented and does not ensure the safeguards stipulated in international standards by far. Outdated regulations from the pre-1967 Egyptian and Jordanian administrations are still in force in the Gaza Strip and West Bank respectively and are grounded in a philosophy that views children in conflict with the law as criminals who must be punished instead of provided with necessary psychosocial support. Very little has changed with the enactment of the Palestinian Child Law (2004) since it fails to detail basic guarantees for juvenile offenders and specify the explicit legal accountability of duty-bearers.** Furthermore, **the draft bill of a new Palestinian juvenile justice law in line with international standards has been nine years in the making and had still yet to be finalised** at the time of writing, due to contrasting legal schools of thought between the Gaza Strip and the West Bank. Once finalised, the draft bill will still need to await the reactivation of the PLC, which has been paralysed since 2006, before it can undergo the parliamentary process towards its enactment.

In addition, according to NGOs monitoring the situation of children in conflict with the law in the oPt, **even the insufficient safeguards provided in the applicable Jordanian and Egyptian regulations are not consistently enforced by governmental actors.** NGOs cite the **inefficiency of police officers** or the **difficulties encountered in transferring children between Areas A, B and C** of the West Bank as reasons why **children are often kept in police stations or prisons along with adults.** Moreover, although somewhat reflected in domestic legislation, **MoJ** personnel do not apply certain measures relating to guarantees for a fair trial, such as an *in camera* trial and the establishment of special juvenile chambers. The role played by **MoSA** does not ameliorate the situation. The **high caseload, a severe lack of financial and human resources and the lack of cooperation between the West Bank and the Gaza ministerial branches hinder MoSA's ability to provide effective legal and social assistance for juvenile offenders.** As a result, there are neither enough juvenile rehabilitation centres nor enough probation officers allocated to carry out investigations that ultimately form the basis of judges' decisions.

Furthermore, the **response of civil society actors has been insufficient and unsystematic.** Very few Palestinian NGOs address this target group of children, mostly focusing on legislative reform and capacity-building of law enforcement personnel. However **monitoring** activities by NGOs are **unsystematic** and very **limited social assistance or preventive measures are implemented.**

Similarly, Palestinian children from the West Bank or Gaza Strip who come into conflict with the law in East Jerusalem and/or Israel face similar infringements and violations of their rights to protection, albeit for slightly different reasons. Despite greater safeguards and guarantees afforded by Israeli laws, juveniles in conflict with the law are *de facto* discriminated against by primary law enforcers and are unlikely to find adequate support from either civil society actors or their families.

3. Children Detained under the Israeli Military Order System

“We are not treated any better than adults, during the interrogation by the police, at the courts by the judges, and even when we were in prison... all the same. (...) In prison there was no special room for us, we had to stay with adults. (...) Nobody told me what I could do; nobody ever told me I had “rights”. Sometimes, only children that have experienced the same as me can really understand what I am talking about (...).”

Nidal²⁰¹, 15, from Nablus, in prison for 6 months.

The Right to Protection of Children Detained under the Israeli Military Order System

Art. 40 of the Convention on the Rights of the Child (most relevant parts)

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to **be treated in a manner consistent with the promotion of the child’s sense of dignity and worth**, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which **takes into account the child’s age and the desirability of promoting the child’s reintegration** and the child’s assuming a constructive role in society.
2. State parties shall ensure that:
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be **presumed innocent** until proven guilty according to law;
 - (ii) To be **informed promptly and directly of the charges** against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the **matter determined without delay by a competent, independent and impartial authority or judicial body** in a fair hearing according to law, in the **presence of legal or other appropriate assistance** and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) **Not to be compelled to give testimony or to confess guilt**; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (vi) To have the **free assistance of an interpreter** if the child cannot understand or speak the language used.
3. State Parties shall seek to **promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law**, and, in particular:
 - (a) The establishment of a **minimum age** below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, **measures for dealing with such children without resorting to judicial proceedings**.
4. A variety of dispositions, such as **care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available** to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

201 Not his real name.

Art. 37 of the Convention on the Rights of the Child (most relevant parts)

State parties shall ensure that:

- (a) **No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.**
- (b) **No child shall be deprived of his or her liberty unlawfully or arbitrarily.** The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) **Every child** deprived of liberty **shall be separated from adults unless it is considered in the child's best interest not to do so** and shall have the **right to maintain contact with his or her family through correspondence and visits**, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have **the right to prompt access to legal and other appropriate assistance.**

Background and Context

In 1937 the Privy Council in London authorized the British High Commissioner in Palestine to enact defence regulations that allowed the establishment of military courts to adjudicate civilians living under the British Mandate who had committed offences under the law. These regulations were compiled in 1945 and titled "British Defence (Emergency) Regulations". Upon the creation of the State of Israel in 1948, the Regulations were incorporated into Israeli domestic law. In 1967, after the Israeli occupation of the West Bank including East Jerusalem and the Gaza Strip, **these Regulations constituted the legal basis for the issuing of Military Orders issued by Israeli military commanders to adjudicate Palestinians living in the oPt.** Since then, **a total of 1,500 Military Orders have been issued resulting in the establishment of a military system that rules most aspects of the lives of Palestinians living in the oPt.** As such, **Palestinians** who are suspected of having committed an act in violation of one of the 1,500 orders **are tried before a Israeli military court according to the rules set forth in the Military Orders** and may be charged with a multitude of offences listed within the many Military Orders. According to a 2007 report these acts are grouped by the Israeli army into five categories including "*hostile terrorist activities*", e.g. involvement in terrorist attacks; "*disturbance of the peace*", e.g. stone throwing; "*classic*" criminal offences, e.g. stealing; "*illegal presence in Israel*"; and "*traffic violations in the oPt*"²⁰².

The Military Orders apply to all Palestinians from the age of 12 with no distinction made between children aged 12-17 and adults. As a result, *Palestinian children of the above age group are regularly arrested, interrogated, sentenced and imprisoned by the Israeli military through the military court system if they are perceived as having transgressed any of the Military Orders.* Furthermore, **Palestinian children** are also **subjected to "administrative detention"**, which is a measure that permits the internment of a person without charge or trial, in exceptional circumstances when "the security of the Detaining power makes it absolutely necessary"²⁰³. While administrative detention is admissible according to the Fourth Geneva Convention when certain conditions are met, the Israeli military use the measure regularly, arbitrarily and, often unlawfully, as it does not always meet the primary requirements under international law which allows for its use ²⁰⁴.

While it goes beyond the scope of this paper to investigate the lawfulness of the actions carried out by Palestinian children, the following section, after presenting some facts and

202 Yesh Din, "Backyard Proceedings, the Implementation of due Process Rights in the Military Courts in the Occupied Territories", Report, December 2007, p. 42.

203 Art. 42 of The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

204 Administrative detention is dealt with in further detail further below in the text.

figures related to child detainees, briefly examines the legal framework regulating the detention and the trial of Palestinian children within the military system. Subsequently, there will be an analysis of the treatment of children from the time of their arrest to the moment of their release by Israeli authorities. Finally, the last section will illustrate how both the legal system comprised of Military Orders and its practical enforcement violate the basic rights of children guaranteed by the CRC as well as most of the additional safeguards for children deprived of their liberty as enshrined in the body of international law.

Facts and Figures

According to DCI-Palestine, **since the start of the second Intifada in September 2000, around 6,000 Palestinian children have been arrested and detained by Israeli forces**²⁰⁵. **In 2007 alone, 700 Palestinian children** were arrested by Israeli soldiers in the West Bank²⁰⁶. As stated by representatives of Gazan NGOs and UN agencies, despite Israel's disengagement from Gaza in September 2005, **Palestinians from Gaza, including children as young as 13, are still deprived of their liberty by the Israeli military**, often occurring during mass arrest operations in which Israeli soldiers arrest adults and children from Gaza and bring them outside the Strip for a few hours in order to carry out extensive interrogations. Unfortunately, **there is no systematic monitoring of this phenomenon**²⁰⁷. **In December 2007, the total number of Palestinian children detained by Israeli military amounted to 311**, of which 192 were awaiting trial; 101 were serving their sentences; and 18 were in administrative detention²⁰⁸. A primary evaluation by DCI-Palestine reveals that the figures as of March 2008 had not changed substantially²⁰⁹. Based on a sample of 276 case files handled by DCI-Palestine in 2007, it is reasonable to infer that **most of the overall number of children detained in 2007 were aged between 15 and 17 years**, the majority of whom were from the northern areas of the West Bank, followed by the southern and the central areas, respectively²¹⁰. Based on the same 276 case files, it is also reasonable to infer that **the most recurrent charges were "attempting to kill an Israeli and conspiracy", and "stone throwing"**²¹¹. Also, DCI-Palestine reveals that **most of the children who were convicted received sentences of up to a maximum of six months**²¹².

In 2007, three Palestinian girls were detained in Israeli prisons²¹³. A 2005 report stated that the low percentage of girls detained in Israeli prisons has been a trend since 2000²¹⁴. However, although few in number, several of the cases of girls represented by DCI-Palestine over recent years have been, according to Khaled Quzmar, a lawyer with DCI-Palestine who has represented child detainees for 15 years, **"the outcome of a deliberate decision of Palestinian girls to carry out "dangerous political actions", e.g. showing a knife while crossing a checkpoint, in order to get arrested by Israeli soldiers to escape a problematic family situation"**²¹⁵. From this testimony, it appears that some Palestinian girls may prefer the terrifying experience of Israeli detention to being subjected to abuse and violence in the home. In light of the prevalence of domestic violence against girls, as previously mentioned in the research, the call for governmental and non-governmental action to properly address the issue of violence, abuse, neglect and exploitation within the domestic environment becomes even more urgent. In other words, as long as relevant

205 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 5.

206 Ibid.

207 Interview with Dominique Sbardella, SCS, child protection officer. Ramallah, 19 April 2008, interview with Catherine Cook, OCHA. Ramallah, 10 April 2008 and phone interview with Khalil Abu Shammala, Al Dameer, Gaza, 23 April 2008.

208 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 5.

209 DCI-Palestine, internal document, on file at DCI-Palestine Ramallah office.

210 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 23.

211 Ibid. p. 24.

212 Ibid. p. 24.

213 Ibid. p. 24.

214 Ministry of Planning and UNICEF, "Child Protection in the Occupied Palestinian Territories: a National Position Paper", Logo Production, Jerusalem, Occupied Palestinian Territories, June 2005, p. 35.

215 Interview with Khaled Quzmar, DCI-Palestine, lawyer. Ramallah, 20 March 2008. Due to time constraints, the issue was not addressed in an in-depth manner. The author recommends more research on the topic.

stakeholders do not adequately address the phenomenon of domestic violence and abuse against girls, these girls are more likely to voluntarily put themselves in the hands of the Israeli military, unaware of the physical and psychological consequences this might entail.

Child Detainees: Arrest, Interrogation, Trial, and Detention

[This section provides background information on the context of Palestinian child detainees and has been mainly taken from the DCI-Palestine 2007 Palestinian Child Prisoners Report and a 2007 Yesh Din report on the same subject. See bibliography for full citation].

Arrest

Palestinian children are arrested at checkpoints, off the street or most commonly, from the family home. In the case of home arrests, a large number of armed soldiers typically surround the home between midnight and 4.00 am. Regardless of weather conditions, the child's family is forced into the street in their nightclothes. The family's home is often violently searched and the **child is frequently physically abused**. The arrested **child** is then handcuffed, blindfolded and placed in a military jeep, sometimes face down on the floor, and **transferred to an interrogation centre**. The process of transferring the child to an interrogation centre can take several hours, during which time the child is often beaten, kicked, threatened and verbally abused by the soldiers in the jeep".

The following are the **main locations where Palestinian children are brought for interrogation:**

- **Huwara** detention and interrogation centre near Nablus in the West Bank
- **Etzion** detention and interrogation centre near Bethlehem in the West Bank
- **Salem** Military Court and detention and interrogation centre near Jenin on the border with Israel
- **Askelon** prison and interrogation centre based near Gaza in Israel
- **Jalama** prison and interrogation centre based near Haifa in Israel
- **Mascobiyya** police station, prison and interrogation centre, more commonly known as "The Russian Compound", based in Jerusalem
- **Petah Tikva** police station and interrogation centre based in central Israel

Interrogation and Confession

A Palestinian **child** held by the Israeli military **can be detained** at an interrogation centre for **up to eight days before being brought before a military judge**. Normally during this period interrogation takes place, during which cruel practices are often used in order to **compel the child to confess**. The **interrogation** takes place **in the absence of a lawyer** and, according to Military Order 378, a **military judge can prohibit a child from seeing a lawyer for 15 to 90 days**.

After eight days the military judge will normally extend the child's detention until the end of the court process. Under military orders, a Palestinian **child can be detained for up to 188 days before being charged with an offence and can be held for up to 2 years between being charged and brought to trial.**

Worryingly, the abovementioned interrogation and detention **centres provide Palestinian children with neither education nor an adequate environment.**

Children's Voices

"During the interrogation the soldiers told me that they would have left me in prison for 20 years if I was not telling them the truth. I had told them everything already. I didn't know what to do..."

(Focus Group with Child Ex-Detainees, Hebron, April 2008.)

It is important to note that the child is also **denied access to her/his family** in the period leading up to the signing of the confession.

The following are some of the many techniques used by Israelis while interrogating children:

Physical Abuse

- Excessive use of blindfolds and handcuffs
- Beatings (slapping and kicking)
- Sleep deprivation
- Solitary confinement
- Denial of food and water for up to 12 hours
- Denial of access to toilets
- Denial of access to a shower or change of clothes for days or weeks
- Exposure to extreme cold or heat
- Position abuse
- Yelling and exposure to loud noises
- Insults and cursing

Threats

- Being beaten or having family members beaten
- Revocation of work or study permits
- Being sexually abused
- Being attacked by a dog
- Being tortured with electric shocks or subjected to other forms of physical abuse
- Having the family home demolished²¹⁶.

After verbally confessing, the **child** will sometimes be asked to write out a confession but more **commonly will be given pre-prepared papers to sign**. The contents of the papers given to the child to sign are almost never explained and are sometimes **written in Hebrew**, a language few Palestinian children understand.

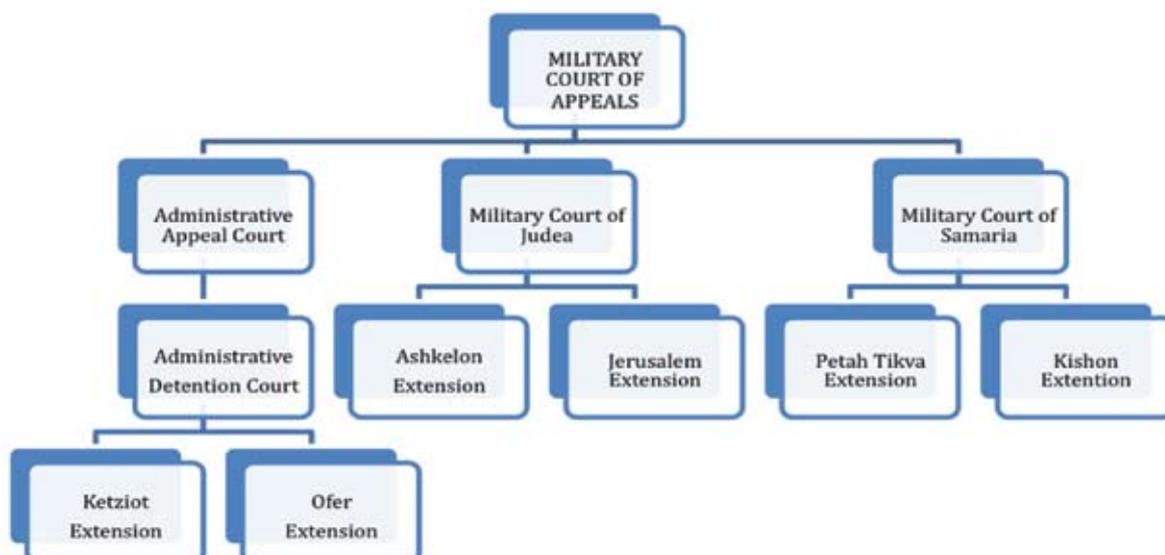
The **signed confession obtained during interrogation then forms the basis of the child's indictment** in the Israeli Military Courts. According to Khaled Quzmar, a DCI-Palestine lawyer, in most cases the conviction of children relies on confessional evidence.

The Trial and the Military Court

After the interrogation stage the child is brought to a military court for trial. The **military courts have extra-territorial jurisdiction** which enables the Israeli military to **try any person, resident or non-resident of the oPt, for any offence, whether committed in the oPt or not**. The jurisdiction is also over Israeli settlers living in the West Bank. However, invariably they are tried by the Israeli civil or criminal court. This implies a violation of the principle of non-discrimination according to which the same laws should apply to the same geographical area.

²¹⁶ On the topic see also Hamoked and B'Tselem, "Absolute Prohibition. The Torture and Ill-treatment of Palestinian Detainees", Jerusalem, May 2007, p. 66.

The Israeli **military courts system** includes the following courts:



With the exception of the courts of Judea and Samaria, all the **military courts are located outside the West Bank**, a fact that directly violates Article 66 of the Fourth Geneva Convention. In fact, this Article provides that military courts must be situated “within the occupied territories”²¹⁷. While the judges appointed to the military courts are usually military officers on regular or reserve duty, the prosecutors are officers of the Military Advocate General. Alarming, **not all the prosecutors are qualified lawyers yet. There is no juvenile court or juvenile judge** or any other special measures that apply when children are tried. Although provided by Military Order 132, **the separation of children from adults does not apply systematically and several cases are not held *in camera***. Moreover, **Israeli judges tend not to release children on bail**.

Detention Centres

Once Palestinian children are finally sentenced, they are transferred to one of the following prisons run by the Israeli Prisons Service (IPS):

- **An Naqab (Ketziot)**
- **Ofer**
- **Telmond**
- **Megiddo**
- **Addamoun.**

Israeli **prisons do not present conditions suitable for children**. In fact, all child detainees that DCI-Palestine have represented or have targeted for follow-up activities have reported that cells are generally overcrowded and unhealthy, with metal plates covering the window to exclude light, and that food received is of poor quality. Moreover, **in Ketziot, Ofer and Megiddo prisons, children are systematically being detained alongside adults**. As for education, in **Telmond and Addamoun prisons children receive two hours and nine hours tuition per week, respectively**. However, the only educational equipments available to the children in these facilities are exercise books and pencils to use in class. **All the prisons but Ofer are located outside the oPt**, in breach of Article 76 of the Fourth Geneva Convention that orders the detention of protected persons, including children, in the occupied country²¹⁸.

217 Art. 66 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

218 Art. 76 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

Children's Voices

"(...) This is my recommendation: allow children to see their parents. If you have been sentenced for less than 60 days, you cannot even see your parents (...)"

(Focus Group with Child Ex-Detainees, Hebron, April 2008.)

Family Visits

Children are allowed to receive 24 visits per year from their family, but starting only after 60 days of detention. Only three family members are permitted to visit the child at any time. During the visit families are separated from their children by a glass partition and communication takes place by telephone or through holes in the glass partition. **Each visit lasts approximately 45 minutes.**

Children's Voices

"I felt people in the prison were respecting me because of the high presence of Fatah people not because of Israeli soldiers (...)"

(Focus Group with Child Ex-Detainees, Hebron, April 2008.)

As all the prisons, with the exception of Ofer, are based inside Israel, **family members need a permit to enter Israel.** Sometimes, **Israeli authorities issue the permit up to 3 months** after the application has been made. Once permits are obtained, **family visits are limited to once every two weeks.** According to DCI-Palestine, **approximately 30 percent of Palestinian child detainees do not receive any family visits as their family members are denied permits by the Israeli authorities to travel to the prisons in Israel for "security" reasons.**

Legal Framework Applying to Child Detainees

As already mentioned, all Military Orders apply to both Palestinian children (aged 12 and above) and adults, with no distinction made. However, one particular order refers directly to children, in that it contains an operational definition of a child as well as procedures for judges to follow when trying children before the Israeli military courts. This is Military Order Number 132, issued in 1967 and otherwise known as the "*Order Concerning Adjudication of Juvenile Offenders (West Bank Area)*". According to Section 1 of Military Order 132, by definition, a "**child**" is a person not yet 12 years of age; a "youth" is a person who has already reached 12 years of age but is not yet 14 years of age; and a "young adult" is a person who has already reached 14 years of age but is not yet 16 years of age. Therefore, **all persons above 16 years of age are considered "adults"**. This is in contrast to Israeli domestic law, which adheres to the generally accepted international standard, which defines a child as any person under the age of 18. Israel violates the principle of non-discrimination under customary international law by using two distinct definitions of a child within areas under its jurisdiction or control as occupying power.

Military Order 132 goes on to state that while children are "absolved from arrest and criminal trial"²¹⁹, "**youth and young adults (when arrested and detained) must be held in custody and must be separated from adults**"²²⁰. In terms of sentences, sections 4 and 5 of Military Order 132 provides that "**youth could be charged for up to 6 months (and) young adults**

219 Order Concerning Adjudication of Juvenile Offenders (West Bank Area). 1967, Section 2.

220 Ibid. Section 3.

could be charged **for up to one year** unless they have been convicted of an offence requiring five or more years of confinement". Worryingly, in breach of basic human rights principles as well as Israeli criminal law, the **military courts sentence Palestinians according to their age at the time of sentencing as opposed to their age at the time the alleged offence was committed**²²¹. Considering that military trials are routinely delayed, a child, for instance, who was a **"young adult" at the time of his first hearing, could possibly turn 16 by the time of his sentencing which means he could be sentenced as an adult rather than as a child (or "young adult", to use the Israeli military terminology)**²²².

Only three provisions of the military regulations **have been partially drafted in accordance with international standards on juvenile justice**. Firstly, section 5a of Military Order 132 states that the court, **in determining the punishment for youth or young adults**, shall take into **consideration**, among other things, **the age of the person at the time of the offence**. Secondly, according to section 6 of the same order, **children may be released on bail** while awaiting trial or **may accept a plea bargain upon payment of a fine**. Disturbingly, in such cases when parents or guardians do not immediately make the requested payment, section 6 also provides authorization for judges to order the minor's father, mother or guardian to serve a prison sentence instead of making the payment. Lastly, the third relevant provision, which is contained in section 11(a) of Military Order number 378 (*Order Concerning Security Provisions*), states that the **military commander "may" order an in camera hearing for several reasons, including the protection of "a minor's well-being"**. These three provisions however, are by no means enough to ensure that Palestinian children detained under the Israeli military order system are granted the rights and guarantees accorded to them under international law. Moreover, as already mentioned, a point-by-point comparison of Military Orders with the Israeli domestic legislation related to juveniles in conflict with the law clearly indicates that the Israeli government applies a different set of rules to Palestinian children living in the oPt, despite the fact that according to its obligations under international humanitarian law as occupying power of the oPt, it should treat the occupied civilian population, including children, as it treats its own citizenry²²³.

Military Order number 1229 (hereinafter Military Order 1229), issued in 1988, is also particularly relevant in the context of detention of Palestinian children as it **authorizes the detention of Palestinian adults or children for up to six months without charge or trial** by force of an administrative decree, whenever **there are "reasonable grounds to presume that the security of the area or public security requires detention"**. As mentioned above, the legal basis of this order is the measure of "administrative detention", provided by Art. 42 of the Fourth Geneva Convention²²⁴, which allows the internment of civilians without charge or trial when **"the security of the Detaining Power makes it absolutely necessary"**²²⁵. The Convention lists specific **limitations** that have to be respected by the occupying power when arresting and detaining individuals under administrative detention. For instance, **the detainee should be promptly informed of the reason** for his/her detention and **should be guaranteed** certain rights and procedures, such as the **right to appeal** and the **release of the detainee with the minimum delay possible**²²⁶. However, these **conditions are**

221 Ibid. Section 5.

222 Yesh Din, "Backyard Proceedings, the Implementation of due Process Rights in the Military Courts in the Occupied Territories", Report, December 2007, p. 126.

223 On the topic of institutionalized discrimination against Palestinian children see C. Cook, A. Hanieh, and A. Kay, *Stolen Youth*, Pluto Press, London, 2004, p. 109. The source gives the following examples of points of discrimination vis-à-vis Palestinian child detainees: the definition of the child; establishment of procedures dealing with child detainees; the authority to arrest children; the possibility of detaining a child before settling the case; the right to see a lawyer; and the provision of education for children while serving a sentence.

224 Art. 42 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949. The deprivation of liberty without charge or trial is considered to be a violation of some basic human rights of an individual. However Art. 4 of the International Covenant on Civil and Political Rights provides that "The State Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".

225 Ibid.

226 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 27.

neither listed by Military Order 1229 nor applied by the Israeli military when making use of the measure.

Firstly, **the order does not give the definition of “public security”**. As a result, any action could be interpreted by judges as an act undermining the public security of Israel. Secondly, **the administrative decree** or “administrative detention order” issued to authorize the arrest of the person **is sometimes issued after the time of arrest**. Thirdly, Military Order 1229 obliges the military to bring the administrative detainee before a judge **within 8 days** from the arrest where **the adjudicator should decide whether to cancel, shorten or confirm the disposition**. Alarming, there is the evidence that **this decision is based on “confidential material or secret evidence” that is not shared with the detainee or his/her lawyer**²²⁷. This systematically violates due process rights of the detainees, including the right to a meaningful appeal and other means to challenge the legality of the decision. Fourthly, according to the Israeli military regulation, **there is no limit to the extension of the initial six-month period of administrative detention**. Moreover, **administrative detainees are usually held inside Israel**, which is in clear violation of the **Fourth Geneva Convention**, which stipulates that administrative detainees must be detained within their state territories,²²⁸. In light of the above, Palestinian children who receive administrative detention orders can be arbitrarily detained outside the oPt for years with no mention of the reason for their detention, no possibility to examine the Israeli prosecutor’s evidence against them, and no means to adequately appeal or challenge their detention²²⁹. In addition, as stated by B’Tselem, an Israeli human rights organization, the measure of **administrative detention appears to be practiced by Israeli soldiers as “a quick and efficient alternative to the criminal proceedings” and “to detain political opponents”**²³⁰.

Considering that, as stated by the CRC, “no child should be deprived of his/her liberty arbitrarily and child detention should only be used as a measure of last resort for the shortest appropriate period of time”²³¹, the use of administrative detention towards children as described above is undoubtedly a breach of international law. However, **from 2004 to 2007, on average, 27 children per year have served administrative detention sentences**²³².

Analysis of Major Legal Issues

The State of Israel ratified both the CRC and the Convention Against Torture (hereinafter CAT) in 1991. Consequently, Israel is legally accountable for the enforcement of these human rights documents towards any child under its jurisdiction, including Palestinian child detainees. Moreover, the 2004 Advisory Opinion (*Legal consequences of the construction of a Wall in the occupied Palestinian territory*) of the International Court of Justice confirmed that international humanitarian law, and in particular the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War is applicable to the oPt. As mentioned above, the CRC, as well as other international documents, lists many safeguards that shall apply when children are deprived of their liberty, as well as emphasising the need for measures to affect the root causes that drive children into conflict with the law and to guide them towards understanding the illegality of their acts and preventing reiteration. In particular, rehabilitative measures should be guaranteed to children deprived of their liberty during detention as well as after their release.

Unfortunately, the figures referring to Palestinian child prisoners and even more their experiences from the arrest to the release demonstrate that **when it comes to Palestinian children, Israeli authorities, including military forces, follow almost none of the**

227 Ibid.

228 Art. 76 of The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

229 See http://www.btselem.org/english/Administrative_Detention/Index.asp, last visited 11 May 2008.

230 Ibid.

231 Art. 37 of the CRC.

232 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 38. The source reveals the trends on administrative detention from 2004 to 2007.

international dictates that they should adhere to. On the contrary, they clearly and regularly violate basic rights of these children. This situation is exacerbated by the fact that **other duty-bearers and stakeholders of the rights of Palestinian children**, including the Palestinian Ministry of Detainees and Ex-Detainees, UN agencies, relevant NGOs and CBOs as well as primary caregivers, accountable by virtue of the PA's endorsement of the CRC in 1995, **do not properly adhere to their obligations under international law in terms of establishing effective means of prevention and rehabilitation of Palestinian children** before and after their confinement in Israeli detention centres and prisons.

The following legal analysis describes some of the common violations suffered by Palestinian child detainees referring to the main rights and principles provided by international standards. Please note that not all child detainees' rights are examined by this paper. For the full list of international safeguards and how they are implemented or not in this context, see ANNEX III.

Two of the cornerstone principles of juvenile justice according to international standards are **respect for the child's sense of dignity and worth**²³³ and a suitable **minimum age of criminal responsibility**²³⁴. Based on the account given above of the usual practices child detainees are subjected to, it seems that Israeli soldiers, police, interrogators, and judges have **no respect for Palestinian child detainees**. DCI-Palestine's lawyers representing child detainees in military courts affirmed that, from what they have seen and have been told by their clients, **children receive an even worse treatment than adults** as they are more vulnerable to violence and less likely to complain²³⁵. In addition, the testimonies of child ex-detainees during the focus group carried out as part of this research reflected that while in detention these **children suffered daily psychological violence and humiliation** from soldiers as well as other detainees and "no one paid attention to the fact that they are underage"²³⁶. Moreover, as already mentioned by this study, while in line with international standards **the minimum age for arresting and trying Palestinian children in Israeli courts is 12 years**²³⁷, Military Order 132 defines **adults as any person above 16 years of age**. This implies a **violation of the principle of non-discrimination**, a core principle of the whole human rights discourse, since the Israeli Guardianship and Legal Capacity Law states that "an individual who has not yet reached the age of 18 is a minor"²³⁸.

Articles 6 and 29 of the CRC state that **preventive measures** should be provided to children. Prevention aims at stopping children from acting against the law as well as informing children about the potential negative consequences of detention and educating them about the rights of children as detainees. In the context of the occupation, children rarely benefit from preventive actions aiming at increasing their knowledge of their rights and the consequences of detention. On the one hand, **it is clear that the Israeli government is not willing to implement any preventive measures**. Further exacerbating the situation is that **Israeli law enforcers**, namely soldiers and judges, are **systematically violating children's rights** and are more likely to **interpret Military Orders against children** according to the specific case²³⁹. On the other hand, there is a widespread **lack of knowledge among Palestinian stakeholders regarding Israeli military regulations and this hinders their ability to prevent the detention of children**. In fact, there are almost no examples of preventive programmes or activities being implemented by **governmental or non-governmental actors in the oPt**²⁴⁰. Although the PA Ministry of Detainees and Ex-Detainees' Affairs do have the mandate to implement such programmes or activities, a ministry representative cited a limited budget as the reason why no focus is currently given to prevention²⁴¹. As a

233 Art. 3.1; 37d and 40.1 of the CRC.

234 Art. 40.3(a) of the CRC.

235 Interview with Khaled Quzmar, DCI-Palestine, lawyer, 10 May 2008.

236 Focus Group Report, Child Detainees, Bethlehem, April 2008.

237 Para. 33 GC10 and Military Order 132.

238 See C. Cook, A. Hanieh, and A. Kay, *Stolen Youth*, Pluto Press, London, 2004, at p. 111. The source provides in-depth analysis of the issue of discrimination of child detainees, comparing the Military Orders to Israeli domestic laws.

239 Interview with Khaled Quzmar, DCI-Palestine, lawyer, 10 May 2008.

240 DCI-Palestine, Juvenile Justice Country Report, 2006, p. 35.

241 Interview with Jawad Amawy, MoDEDA representative. Ramallah, 24 March 2008.

result, generally **children are not informed of the behaviours and practices that Military Orders list as “offences”**.

As mentioned in the analysis of children in conflict with the law under PA jurisdiction, another cornerstone of the international discourse on juvenile justice is the focus on rehabilitation, as opposed to punishment, of a child in conflict with the law. Linked to this focus is the principle that alternative measures should be applied to children in conflict with the law that aim to avoid detention or reduce the duration thereof. This is achieved through ***diversion***, i.e. avoiding judicial proceedings or ***intervention***, i.e. as part of the judicial proceedings, through the use of social and/or educational activities²⁴².

To some extent *diversion* is legally provided by Military Order 132 by regulating the release of children on bail. However, it is necessary to put this legal provision into context. The rate of poverty in the oPt is very high. According to DCI-Palestine lawyers, when asked whether they would accept to be released upon payment of a bail, Palestinian **children are likely to refuse since they are aware** that this might have heavy implications on the families' financial situation²⁴³. Moreover, **when children are released on bail**, Military Order 132 states that **judges could order the detention of their parents or guardians when the payment is not immediately disbursed.**

Alternative measures of social and educational intervention should be provided for Palestinian children while detained under the Israeli military order system as part of the judicial proceedings, as well as upon their release programs in order to facilitate the process of rehabilitation after imprisonment. However, in this case Israel again fails to satisfactorily implement international standards. **None of the interrogation centres provide any form of education or vocational training** to children while they are awaiting trial²⁴⁴. Also, **only 2 of the Israeli prisons in which Palestinian children are held offer education** and even there the service is by no means sufficient to guarantee full realization of children's right to education²⁴⁵. In this regard, it is important to note that, according to a representative of the Palestinian MoEHE, **no systematic cooperation has been built between this ministry and Israeli authorities in order to compensate for the loss of months, and sometimes years, of education** of the many children that have been detained by Israel²⁴⁶.

Children's Voices

“There are many people, especially foreigners, interested in hearing my stories. But, I don't believe there is any centre or person that is really willing to help me. (...) Once, I accepted to receive help. The organisation followed up my case for a few months and then I never heard from them again (...).”

(Focus Group with Child Ex-Detainees, Hebron, April, 2008.)

As for ***measures of intervention after detention***, the Palestinian Prisoners and Ex-Prisoners Law states that MoDEDA has the duty to ensure financial, legal, psychosocial, and medical support to ex-detainees, including children²⁴⁷. Specifically, psychosocial support is provided through the allocation of social workers to the field to conduct various activities targeting either individuals or groups of ex-detainees. As of **April 2008, according to a representative of MoDEDA, there were 11 social workers in the West Bank, 1 for each governorate, assigned to address the psychosocial rehabilitation of child ex-detainees**²⁴⁸. These social workers are in charge of opening a file for each released child

242 Para. 27 of the General Comment No. 10.

243 Interview with Khaled Quzmar, DCI-Palestine, lawyer, 10 May 2008.

244 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 13.

245 Ibid.

246 Interview with Mashdi Bashar, MoEHE, Director of Counselling Education. Ramallah, 6 April 2008.

247 Art. 3 of the Palestinian Prisoners and Ex-Prisoners Law, N. 19 of 2004.

248 Interview with Jawad Amawy, MoDEDA representative. 24 March 2008.

and following up on his/her social needs. Also, they **organise workshops** and offer medical and psychological support services **to help the process of reintegration**. Notably, **they work together with the family** of the children to ensure a smooth reintegration within the domestic and community environment. In addition, **the ministry provides the families of detained children with a small amount of money** for the length of the period that the child has to spend in prison as well as **an allowance for the child ex-detainee until he/she finds a job upon release (if he/she is over 18 when released)**²⁴⁹. However, according to the children surveyed the activities implemented by MoDEDA are neither adequate nor sufficient. The number of social workers is by no means enough to properly address all the cases of child ex-detainees and as a result not all child ex-detainees benefit from the activities. For instance, **only children who had been detained for more than a year can attend some of the social and vocational trainings offered by MoDEDA**²⁵⁰. Moreover, many children do not benefit from MoDEDA services because the social workers do not **carry out out-reach projects and only provide psychosocial rehabilitation to children that voluntarily ask for help**²⁵¹. Although not legally provided, Palestinian relevant NGOs and CBOs are to be considered stakeholders of the rights of Palestinian child ex-detainees especially with regard to carrying out projects of rehabilitation and reintegration for child ex-detainees locally. As a matter of fact, **there are many NGOs and CBOs that, in offering cultural and social activities to the community as a whole, indirectly facilitate the family and community reintegration of child ex-detainees**.

Children's Voices

"We received a training course from the MoDEDA on how to get our driver's license. They also issued medical insurance for us. However this training was only for the children who had been in prison for more than a year".

(Focus Group with Child Ex-Detainees, Hebron, April 2008.)

Moreover, it warrants mention that two well-established NGOs recently initiated projects that focus on the psychosocial reintegration of child ex-detainees. These NGOs are the **Treatment and Rehabilitation Centre for Victims of Torture** (hereinafter TRC) and the **EJ YMCA**. Both organizations **implement activities throughout the West Bank** using quite a similar working approach. Their rehabilitation teams consist of a variety of specialists, including counsellors, psychologists, psychiatrists and social workers, and **intervention, which aims to heal the trauma experienced by children during the deprivation of liberty**, is usually tailor-made to each case. Intervention takes the form of **individual or family therapy** sessions, usually conducted at the child's home. However, if the team assesses that the child faces difficulties reintegrating and recommends the separation of the child from the family, therapy sessions can be conducted in-house at their main centres based in Ramallah and Beit Sahour, respectively. To this end, **EJ YMCA runs a shelter that hosts children for a maximum period of 3 months**²⁵².

Unfortunately, despite the positive results of the work of both NGOs, their **intervention only reaches a tiny percentage of child ex-detainees** in need of psychosocial support. Moreover, according to the testimonies of children surveyed through focus group activities, these efforts **do not seem to be systematic**. In fact, the children expressed their feelings of **increasing mistrust** of and **lack of faith** in those who say they want to help them upon their release.

249 Ibid.

250 Focus Group Report, Child Ex-Detainees, April 2008.

251 For more details on the roles and activities implemented by major duty-bearers and stakeholders of child ex-detainees, specifically regarding psychosocial rehabilitation after detention, see V. Trojan and M. Warriner, SCS and EJ YMCA, "The Social Rehabilitation of Palestinian Child Ex-Detainees: A Long Run to Freedom. A report to assess Palestinian children's needs and rights after detention", Jerusalem, August 2008, p. 42 ff.

252 Ibid.

Another important principle of international juvenile justice standards is the establishment of **special measures for children** within the governmental institutions involved in the juvenile justice system²⁵³. From the analysis of Military Order 132 it is clear that **no internal policy has been issued by Israeli institutions** in this regard. Consequently, there is **no juvenile department** within the Israeli military forces, and there are neither **separate pre- or post-trial detention centres for juveniles** nor **separate juvenile courts** established specifically to try children. As a result, children are tried and detained along with adults²⁵⁴. According to DCI-Palestine and Yesh Din, the only difference from adult trials is that the length of the punishment for children is shorter.

The CRC explicitly prohibits the **arbitrary arrest and detention of children**²⁵⁵. The reported figures and the account given above of the usual practices of detention applied by the Israel military reveal that **Israel is systematically violating this international dictate**; the most flagrant violation consisting in the practice of “administrative detention” against children. In fact, **during 2007 alone, 30 children served administrative detention sentences**²⁵⁶. Moreover, **some actions carried out mainly by lawyers and judges can be defined as a measure of arbitrary arrest and detention**. For example, military judges base their decisions of confirming, shortening or cancelling the decree of administrative detention solely on “secret evidence” that is shared neither with the administrative detainee nor with the detainee’s lawyer²⁵⁷.

According to international standards, children alleged to be in conflict with the law are entitled to the **right to a defence and legal counsel**²⁵⁸. First of all, it deserves our attention that the Military Order number 378 provides that any **Palestinian detainee**, whether child or adult, **can be denied access to a lawyer** for up to 15 days from the date of arrest. This period can be extended a number of times **up to 90 days**. This provision clearly violates the aforementioned international safeguard. Moreover, the **Israeli government does not provide any free of charge legal representation** to Palestinian children in the case that they cannot afford a lawyer. The efforts of Palestinian actors both at governmental and non-governmental level partially fill the void created by Israel’s failure to respect this right. On the one hand, **MoDEDA ensures legal representation to children through a pool of 4 lawyers**²⁵⁹. On the other hand, **3 lawyers from DCI-Palestine offer free legal representation and support to child detainees**. Accordingly, in 2007 alone DCI-Palestine represented 276 cases of Palestinian children detained by the Israeli military²⁶⁰. It deserves mention that on 17 April 2008 the NGO announced that its lawyers would begin to refuse to follow rules against due process rights imposed by the Israeli military system²⁶¹.

The legal representation and support provided to children by MoDEDA and DCI-Palestine certainly represents an important step towards the fulfillment of the children’s right to a defence and legal counsel. Unfortunately, the services provided by the two actors are not sufficient to cope with the high number of Palestinian child detainees. A worrying consequence of this is that **when child detainees are not provided with legal assistance from either MoDEDA or DCI-Palestine, they are more likely not to receive any representation at all due to their difficult financial situation**²⁶². In addition, according to DCI-Palestine, it is not rare for **Palestinian lawyers** to be either totally **prevented from reaching, or delayed in reaching, Israeli prisons in order to visit their clients**²⁶³.

253 Art. 43.1 of the CRC.

254 Focus Group, Child Detainees, Bethlehem, April 2008.

255 Art. 37(b) of the CRC.

256 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 5.

257 Interview with Khaled Quzmar, DCI-Palestine, lawyer, 10 May 2008.

258 Art. 37(d) of the CRC.

259 Interview with Jawad Amawy, representative of MoDEDA. Ramallah, 24 March 2008.

260 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 23.

261 www.dci-pal.org, last visited 13 May 2008.

262 Interview with Khaled Quzmar, DCI-Palestine, lawyer, 10 May 2008.

263 Ibid.

A number of breaches of the fundamental ***due process rights*** provided by Article 40 of the CRC can be individuated analyzing the scenario presented above regarding the experience suffered by Palestinian children tried by Israeli military courts. First of all, as mentioned before, **continuous delays apply at both the indictment and during the trial**. In fact, **children can be detained for up to 188 days before being charged**²⁶⁴. Secondly, children are **regularly compelled to confess** through the use by soldiers of cruel treatment, humiliation and psychological violence²⁶⁵. Moreover, although most of the time an interpreter is provided to children during the interrogation as well as the actual trial, according to DCI-Palestine lawyers, **interpreters are neither professional nor accurate**²⁶⁶. In addition, there are cases in which **children have to sign a written confession in Hebrew, without understanding its meaning**²⁶⁷. Finally, a component of the children's due process rights is ensuring a private trial to children. This is also implied by the military regulation when providing that a trial *in camera* should be ensured, if necessary, according to the minors' "well-being"²⁶⁸. However, as a matter of fact, **very rarely children are tried behind "closed doors"**. On the contrary, juveniles are usually tried in the presence of other child detainees or adult detainees²⁶⁹.

An important safeguard listed by international standards on juvenile justice is offering to children deprived of their liberty ***adequate living conditions***. Many are the testimonies of children, as well as Palestinian lawyers visiting their clients in Israeli prisons, that emphasise the **inappropriate conditions of Israeli detention facilities**. In the first place, violating one of the cornerstones of international juvenile justice standards, **the separation of children from adults does not apply systematically in detention centres, in courts or in prisons**²⁷⁰. Furthermore, the health conditions, reported by representatives of both Palestinian and Israeli NGOs when talking about Israeli prisons, usually include the following: **small and unhealthy cells, lack of adequate medical care, overcrowding, inadequate provision of supplies, lack of outdoor recreational time, and presence of rodents, humidity and scarce ventilation**²⁷¹. Moreover, children surveyed by the researcher stated to have **slept in tents throughout the year** regardless of the outdoor temperature²⁷².

Children's Voices

"We didn't even sleep in houses. We had tents and one night, when we were sleeping, the soldiers started to burn our tents, leaving us in the cold".

(Focus Group with Child Ex-Detainees, Hebron, April 2008.)

Another right that all child detainees should be guaranteed and which is extremely relevant in this case is the ***right to be free from torture, cruel, inhuman and degrading treatment or punishment***²⁷³. The infringement of this right by Israeli soldiers is self-evident. **Physical and mental abuses**, such as beatings, sleep deprivation, solitary confinement, and threats of being sexually abused or imprisoned for an indefinite period of time are **used often against Palestinian children both during the interrogation with the purpose of compelling to confess and after the confession**²⁷⁴. From the testimonies of children interviewed, it seems

264 DCI-Palestine, Palestinian Child Prisoners Annual Report, December 2007, p. 18.

265 Ibid.

266 Interview with Khaled Quzmar, DCI-Palestine, lawyer, 10 May 2008.

267 Ibid.

268 Yesh Din, "Backyard Proceedings, the Implementation of Due Process Rights in the Military Courts in the Occupied Territories", Report, December 2007, p. 40.

269 Interview with Khaled Quzmar, DCI-Palestine, lawyer, 10 May 2008.

270 Focus Group Report, Child Ex-detainees. Hebron, April, 2008.

271 Interview with Khaled Quzmar, DCI-Palestine, lawyer, 10 May 2008 and interview with Eliauh Abram, Public Committee Against Torture in Israel. Jerusalem, 15 April 2008. On the topic see also C. Cook, A. Hanieh, and A. Kay, *Stolen Youth*, Pluto Press, London, 2004, p. 86.

272 Focus Group Report, Child Ex-detainees. Hebron, April, 2008.

273 Art. 19,1; 34 and 37a of the CRC.

274 DCI-Palestine, Palestinian Child Prisoners Report, December 2007, p. 23.

that, especially during the interrogation, children are more often subjected to psychological threats than to physical violence²⁷⁵. **Cruel treatment is also exacted by the military as part of “mass arrest” operations carried out both in the West Bank and Gaza Strip.** As stated by a representative of an NGO working in the Gaza Strip, during these operations children as young as 13 are systematically handcuffed and blindfolded²⁷⁶. In addition, also in violation of the right under scrutiny, **Israeli soldiers constantly carry guns and other weapons when in the presence of children**²⁷⁷.

It is important to note that **by using torture and other forms of cruel treatment**, besides infringing pillar articles of the CRC and the entire Convention Against Torture, **Israeli soldiers are also breaching Israeli military law.** In fact, according to this law “*a soldier who hits or abuses a person under detention if not necessary is subjected to imprisonment for a maximum of 3 years*”²⁷⁸. As a result, **legal complaints against treatment during detention can be filed by virtue of both international law and the Israeli military law.** However, at the present time **neither the Public Committee Against Torture in Israel** (hereinafter PCATI), the main Israeli NGO that legally challenges the Government of Israel on the methods and practices used during interrogation by Israeli soldiers and files legal complaints on torture and inhuman treatment²⁷⁹, **nor any Palestinian NGOs have achieved satisfactory results from complaints submitted to formal mechanisms.** In the view of a representative of PCATI, this is mainly due to the fact that **NGOs usually fail to adequately compile all the required elements of an official complaint**, such as the confession of the person tortured, a medical certificate that proves physical aggression, and the testimony of a soldier or any other Israeli official relating what happened²⁸⁰. Disappointingly, **very little cooperation between Israeli and Palestinian NGOs has been established for the purpose of jointly challenge cases of torture suffered by Palestinians in Israeli detention**²⁸¹. Considering the legal expertise on Israeli laws and policies of Israeli lawyers working for Israeli NGOs on the one hand and the in-depth knowledge of children’s experience in detention of Palestinian civil society actors on the other, the **establishment of a system of regular cooperation between the two sides would certainly put actors on both sides in a better position to help children who have been maltreated in Israeli interrogation and detention centres.**

The high number of violations presented by this section is not a novelty. International, Israeli and Palestinian NGOs working on this issue have long been striving for the universal acknowledgement of the unlawful practices of the State of Israel when dealing with Palestinian child detainees. UN agencies also play a role in this battle, reporting internally and through some advocacy statements on the conditions experienced by and treatment of Palestinian children in Israeli interrogation and detention facilities. However, it seems that these **efforts have not been effective in changing this situation.** As of June 2008, over 300 Palestinian children were in Israeli detention, suffering regular physical and psychological violence, deprived of their basic right to education, in the absence of a due process of law, with trials that do not respect some of the pillar safeguards provided by international law.

Recommendations

A set of recommendations for action to be taken by the various duty-bearers and stakeholders follows in order to ensure a higher level of protection for Palestinian child detainees and increase the enjoyment of some of their basic rights.

275 Ibid.

276 Interview with Dominique Sbardella, SCS, child protection officer. Ramallah, 19 April 2008.

277 Focus Group Report, Child Ex-detainees. Hebron, April, 2008.

278 Art. 65 of the Israeli Military Jurisdiction Law, 1995. The article also adds that if the violence is carried out in aggravating circumstances the imprisonment is up to 7 years.

279 Interview with Eliauh Abram, Public Committees Against Torture in Israel. Jerusalem, April 15, 2008.

280 Ibid.

281 Ibid. An example: PCATI cooperates with Palestinian lawyers to follow-up on complaints for Palestinians ex-detainees. Also, lately both DCI-Palestine and Al-Haq have participated to a legal workshop organized by an Israeli NGO, B’Tselem, on complaining methods.

State of Israel, Including Israeli Soldiers and Judges

- The State of Israel should treat Palestinian children as minors up to the age of 18, as per Israeli domestic law and international human rights law.
- The State of Israel should respect the principle of only issuing administrative detention orders to children when strictly necessary.
- The State of Israel should ensure that child detainees are sentenced according to their age at the time of the offence and not at the time of sentencing.
- The State of Israel should establish separate juvenile detention centres or juvenile areas within adult detention facilities.
- The State of Israel should establish separate juvenile military courts.
- Judges should apply basic due process rights when trying children.
- Judges should adjudicate child detainees without delay and should be held legally accountable in the cases where delays occur.
- The State of Israel should facilitate the movement of lawyers when trying to visit their clients detained in Israel.
- The State of Israel, and in particular the Israeli Security Services and soldiers should refrain from using cruel treatment, torture or any act of physical or psychological violence against child detainees, nor use any other coercive means to compel a child detainee to confess.
- The State of Israel should respect the right to a family of Palestinian child detainees; in particular it should allow an adequate number of family visits to child detainees from the beginning of their detention post-trial and should facilitate these visits by issuing visit permits that are valid for the whole duration of a child's sentence.

MoDEDA

- MoDEDA should reactivate the preventive programs as part of the work of the Child and Woman Unit. From the voice of children, programs that involved ex-detainees seem to be particularly useful. UN agencies and NGOs should facilitate this process.
- MoDEDA should increase the number of social workers in charge of following up on cases of child detainees. More social workers should be allocated to areas where more children tend to be arrested and detained.
- MoDEDA should ensure that all child ex-detainees are eligible to partake in rehabilitation programmes regardless of the length of their detention.
- MoDEDA should allocate a higher number of lawyers to ensure free legal representation to the highest number of Palestinian child detainees.

UN Agencies

- UNICEF should continue supporting the Child and Woman Unit of the MoDEDA in order to intensify the preventive programs as well as the rehabilitation projects.
- UNICEF should strengthen advocacy efforts to decry the regular human rights violations suffered by Palestinian child detainees.

Israeli NGOs

- Relevant Israeli NGOs should lobby their government to ensure the due process rights of child detainees.
- Relevant Israeli NGOs should assist Palestinian NGOs working on the issue of child detainees in improving their capacity and knowledge vis-à-vis Israeli domestic law, the military order system and official complaint mechanisms.
- Israeli NGOs should carry out activities within Israel to increase public awareness of how Palestinian child detainees are treated by the Israeli military.

Civil Society Actors, Including the Media

- Palestinian NGOs should cooperate to run a campaign to raise the awareness of children on issues relating to detention under the Israeli military order system.
- Relevant CBOs should provide informal education and cultural activities to children that aim to encourage possible avoidance of their potential arrest and detention by the Israeli military.
- Relevant CBOs and NGOs should identify and follow-up problematic female cases in order to tackle the potential voluntary offences of girls that aim at “escaping” from an oppressive domestic environment. Further research should be conducted on this topic if necessary.
- Media actors should work on prevention by disseminating case studies of ex-detainees and disseminating information about social services in place for ex-child detainees and families of detainees.
- NGOs and CBOs should implement psychosocial projects for ex child-detainees in a systematic way, targeting all geographical areas proportionally to the demand.
- NGOs and CBOs should carry out group therapy sessions allowing ex-child detainees to de-brief and share their experiences.
- NGOs and CBOs should target primary caregivers to raise their awareness regarding the importance of both prevention and rehabilitation.
- Palestinian NGOs and other relevant civil society actors should receive training by relevant Israeli NGOs to increase their knowledge of Israeli laws and policies (e.g. on Israeli legal complaints procedures).
- Palestinian NGOs should be as precise and comprehensive as possible when filing complaints and preparing advocacy documents in order not to lose credibility (i.e. it is necessary to first increase the legal knowledge regarding Israeli laws and policies including Military Orders).
- Palestinians and Israeli NGOs should closely cooperate in order to establish a systematic mechanism for challenging the unlawful actions committed by any actor involved in the Israeli military system (i.e. cooperation is needed on filing complaints).

Needed Actions

- Systematic monitoring of Gazan children arrested, interrogated and deprived of their liberty by the Israeli military should be carried out.

Children's Recommendations

"Children in prison should be able to see their families more (...) my parents were only allowed to see me for the first time after I had served two and a half months"

"Children should be allowed to have a phone to call home or their friends"

"There should always be a warm building to sleep in and not tents"

"Soldiers were beating and shouting at us for nothing, someone should stop them"

"Children should be staying with other children, sometimes other prisoners scared me; they ordered me around"

(Focus Group Testimonies, West Bank and Gaza, April 2008)

Summary: Child Detainees under the Israeli Military Order System

Since September 2000, more than 6,000 Palestinian children have been arrested by Israeli forces. In December 2007, there were 311 Palestinian children held in Israeli detention centres and prisons, of which 192 were awaiting trial, 101 serving their sentences, and 18 serving administrative detention sentences. **The military system established by the State of Israel in the oPt through the issuing of 1500 military orders, fails to guarantee Palestinian child detainees any of the basic rights that international law identifies for children in general and for juveniles deprived of their liberty in particular.** Traumatic and violent arrests, interrogations characterised by the use of physical and psychological violence - often as a tool to compel children to confess, detention in unsafe prisons along with adults, lack of a fair trial and lack of juvenile measures that should be applied in military courts are elements commonly experienced by Palestinian children arrested and detained by the Israeli army. To compound matters, **when providing legal representation before the military courts, neither MoDEDA nor relevant Palestinian NGOs are able to cope with the high number of arrested children.** Also, **the military system itself hinders the quality of service Palestinian lawyers can offer** by often denying them access to their clients while in pre-trial or post-trial detention or by denying them the possibility to review the prosecutor's evidence in the case of administrative detention.

Alarmingly, **once released, child ex-detainees rarely find an environment that adequately supports them.** At the Palestinian ministerial level, the actions of **MoDEDA fail to systematically address the problems faced by child ex-detainees.** In fact, neither the quantity nor the quality of the services provided by the ministry is sufficient to properly meet the needs of these children. The same applies for civil society interventions that do not seem to be effective and systematic enough to tackle the phenomenon from the perspective of both prevention and rehabilitation. Furthermore, advocacy efforts that aim to pressure Israel into ensuring the rights of Palestinian children have thus far had negligible results and have not stopped the violations suffered by Palestinian children in Israeli detention and interrogation centres. Lastly, **due to the considerable workload, Israeli and Palestinian civil society actors that try to challenge cases of tortures and other breaches of international humanitarian law and human rights law have so far failed to achieve satisfactory results.** On the one hand, the lawyers and other legal personnel of Palestinian NGOs require additional expertise to file complaints correctly, and on the other hand, although there is cooperation between Palestinian and Israeli actors, it would need to be more systematic and strategic in order to maximize the potential impact of the work of both sides.

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Annexes

Annex I: Protection of Children from Violence²⁸² in their Homes and Communities: Legal framework and Stakeholder Identification

Rights and/or principles in international law	Where these rights and/or principles are reflected in domestic law	Policy level	Stakeholders Responsible (when applicable)
MAIN PRINCIPLES REGULATING CHILD PROTECTION			
1) <i>Non-Discrimination</i> (Art. 2 CRC)	Child Law , Art. 3	---	---
2) <i>Best interest of the child</i> (Art. 3 CRC)	Child Law , Art. 4	---	---
3) <i>Separation from the family when they abuse or neglect the child</i> (Art. 9,1 CRC)	Child Law , Art. 50-57 (Protection officer); Art. 58-66 (Protection measures)	---	MoSA (protection officer) MoI (Police) MoJ (Judges to order separation)
4) <i>Right to privacy</i> (Art. 16 CRC)	---	---	---
DEFINITIONS			
5) <i>Protection from physical and mental violence</i> (Art. 19.1 CRC)	Basic Law , Art. 29 (prohibition of cruel treatment to children by parents) Child Law , Art. 42	Draft Social Affairs Law , Art. 26 (MoSA shall... protect children from violence, harm, neglect, exploitation and trafficking) MoSA systematic Guidelines for Child Care Art. 53 (MoSA works towards the care and protection of children living in difficult circumstances which threaten his well-being or physical or psychological health, including: (exposure to) neglect, vagrancy, and all types of physical or psychological violence (and) sexual exploitation)	MoSA (protection officers) Civil society actors Parents/guardians Community

²⁸² Here violence includes abuse, neglect and exploitation

6) <i>Protection from injury and abuses</i> (Art. 19.1 CRC)	Basic Law , Art. 29 (prohibition of cruel treatment to children by parents) Child Law , Art. 42	Draft Social Affairs Law , Art. 26 MoSA systematic Guidelines for Child Care , Art. 53	MoSA (protection officers) Civil society actors Parents/guardians Community
7) <i>Protection from neglect and negligent treatment</i> (Art. 19.1 CRC)	Child Law , Art. 44 (children in need of protection: children without family; street children; children whose parents are not able to deal with them)	Draft Social Affairs Law , Art. 26 MoSA systematic Guidelines for Child Care , Art. 53	MoSA (protection officers) Civil society actors Parents/guardians Community
8) <i>Protection from sexual abuse</i> (Art. 19.1 CRC)	Family Law 1976 (valid in the West Bank) 1967 (valid in the Gaza Strip)	Draft Social Affairs Law , Art. 26 MoSA systematic Guidelines for Child Care , Art. 53	MoSA (protection officers) Civil society actors Parents/guardians Community
STATE'S RESPONSIBILITIES – ENFORCING MECHANISMS			
9) <i>State parties shall implement social programs to provide support to children</i> (CRC Art. 19.2)	Child Law , Art. 47.2 (State shall provide adequate care and measures to protect children in need); Art. 48 (Fosterage measures); Art. 49 Social control and reformation measures	MoSA systematic Guidelines for Child Care , Art. 54 (establishment of PROTECTION CENTRES), Art. 55 (personnel at the centre)	MoSA (protection officers) MoSA (social workers working in protection centres) Mol (police) Civil society actors, including the media
10) <i>Prevention of violence and abuse</i> (CRC Art. 19.2)	Child Law , Art. 42.2	Draft Social Affairs Law , Art. 26 (MoSA shall... prevent them from being subjected to physical, sexual or other harassment or abuse)	MoSA (protection officers) MoSA (social workers working in protection centres) Mol (police) Civil society actors, including the media
11) <i>Reporting, Referral system, Investigation and Treatment and follow-up</i> (CRC Art. 19.2)	Child Law , Art. 50-57 (Protection officer); Art. 58-66 (Protection measures)	MoSA systematic Guidelines for Child Care , Art. 56 (social responsibility in reporting), 57-62 (working methods, including situation of rape or harassment)	MoSA (protection officers) MoSA (social workers working in protection centres) Mol (police) MoEHE Civil society actors, including the media

Annex II: Protection of Children in Conflict with the Law under PA Jurisdiction: Legal Framework and Stakeholder Identification

Rights and/or principles in international law	Where these rights and/or principles are reflected in domestic law	Policy level	Stakeholders Responsible (when applicable)
MAIN PRINCIPLES REGULATING CHILD PROTECTION			
<p><i>Respect for the child's sense of dignity and worth, promotion of child reintegration within society + the best interest of the child principle</i></p> <ul style="list-style-type: none"> - ICCPR Art. 10.1; - CRC Art. 3.1 and 37.d and 40.1; - GC10 para 13 ff 	<p>Child Law, Art. 69.1</p>	---	<p>Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centres MoSA (Department of Defence: juvenile justice + probation officers) MoEHE Community Family NGOs + CBOs Media</p>
<p><i>Prevention of Juvenile delinquency (social programmes)</i></p> <ul style="list-style-type: none"> - CRC Art. 6 and 29; - GC 10 para 15 	<p>Child Law, Art. 69.3</p> <p>West Bank <i>Regulation on Assistance to Juveniles No. 48 – Jericho 1959</i> (Assistance in money and kind through the MoSA)</p> <p>Gaza Strip <i>Regulation of Reformatory School Chapter 117, Art. 122 – British Mandate – 16 May 1932</i> (provision of elementary education)</p>	---	<p>MoSA (Department of Defence: juvenile justice) MoEHE Community Family Media NGOs + CBOs</p>

<ul style="list-style-type: none"> • <i>Last resort principle:</i> • <i>Intervention, diversion</i> • - CRC Art. 37.b • - GC 10 para 22 • - Beijing rules Art.19.1 • - UN Rules for the Protection of Juveniles Deprived of their Liberty, Art. 2 and 27-30 	<p>West Bank <i>Ordinance of Reforming Juveniles No. 16 – Jordan – 1954</i> (explanation of alternative measures to the deprivation of liberty such as release with fine, allocation of probation officer)</p> <p>Gaza Strip <i>Regulation of Reformatory School Chapter 117, Art. 122 – British Mandate – 16 May 1932</i> (No young person shall be imprisoned if there is an alternative measure including probation, corporal punishment, fine)</p> <p><i>Ordinance of Supervising the Conduct of Offenders No. 42 – British Mandate – 1944</i> provision of alternative measures – pay of a fine)</p>	<p>MoSA systematic Guidelines for Child Care for Child Care, Article 61</p>	<p>PLC (draft yet in PLC) Judges Lawyers MoSA (Department of Defence) in writing policies</p>
<ul style="list-style-type: none"> • <i>Principle of non-discrimination</i> • - ICCPR Art. 2.1; • - CRC Art. 2; • - Standard Minimum Rules for the Treatment of Prisoners Art. 6.1; • - GC 10 para 6 	<p>Child Law, Art. 3</p>	<p>---</p>	<p>Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centre MoSA (Department of Defence: juvenile justice + probation officers) MoEHE Community Family NGOs + CBOs Media</p>
<ul style="list-style-type: none"> • <i>Be presumed innocent until proven guilty</i> • - UDHR Art. 11; • - CRC Art. 40.2 b.i; • - Standard Minimum Rules for the Treatment of Prisoners Art. 84.2; 	<p>Palestinian Basic Law and Penal Code</p>		<p>Police Probation officers Court police Judges Lawyers</p>

<ul style="list-style-type: none"> • <i>The aim of punitive measures is rehabilitation and reformation</i> (provision of rehabilitation programs) • - ICCPR Art. 10.3; • - CRC Art. 40.1; 	<p>West Bank + Gaza Strip <i>Child Law Art. 69.1</i></p>	<p>MoSA systematic Guidelines for Child Care, Article 61</p>	<p>Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centres</p>
<ul style="list-style-type: none"> • <i>Children shall receive treatment appropriate to their age and legal status</i> • - ICCPR Art. 10.3; • - CRC Art. 37c; • - GC 10 para 30 	<p>West Bank + Gaza Strip <i>Child Law Art. 67</i> (criminal responsibility age 9)</p> <p>West Bank <i>Ordinance of Reforming Juveniles No. 16 – Jordan – 1954</i> (introduction of age brackets of 9-13, 13-15, 15-18; no person under 13 may be admitted to prison; <i>Penal code</i> (exempts children under 9 from criminal responsibility; exempts from criminal responsibility children under 12 unless proven capable)</p> <p>Gaza Strip <i>Penal Code No. 74 – British Mandate, Art. 9</i> (criminal responsibility age 9; exempts from criminal responsibility any child under 12 unless proven capable)</p>		<p>Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centres</p>
<ul style="list-style-type: none"> • <i>Establishment of law and policies specifically for children</i> • - CRC Art. 40.3; 	<p>West Bank + Gaza Strip <i>Child Law Art. 67.2</i></p>		<p>PLC MoJ MoSA (Department of Defence: juvenile justice + probation officers) MoEHE NGOs + CBOs</p>

<ul style="list-style-type: none"> • <i>Establishment of special measures appropriate to children such as care, guidance and supervision, education and vocational training</i> • - CRC Art. 40.4, 	<p>West Bank Ordinance of Reforming Juveniles No. 16 – Jordan – 1954 (probation officers)</p> <p>Gaza Strip <i>Juvenile Offenders Ordinance No. 2 of 1937</i> (probation officer) <i>Regulation for Prisons and Reformatory Schools</i> (children shall be transferred to a reformatory school, if girls - to an institute of social affairs)</p>		<p>MoSA (Department of Defence: juvenile justice + probation officers) MoEHE</p>
<ul style="list-style-type: none"> • <i>Right to communicate with the outside world, especially family</i> • - CRC Art. 9.3 and 37c; • - Beijing Rules Art. 26.5; • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 30 and 59-62; 	<p>Gaza Strip <i>Rules for Trial of Juvenile Offenders – British Mandate – 1938</i> (contact with the family and visits are encouraged)</p>		<p>Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centres</p>
ARREST AND PROCEDURES			
<ul style="list-style-type: none"> • <i>Prohibition of arbitrary arrest and detention</i> • - UDHR Art. 9; • - ICCPR Art. 9.1; • - CRC Art. 37b; 	<p>Basic Law</p>		<p>Police Judges Lawyers</p>
<ul style="list-style-type: none"> • <i>Right to be promptly brought to court before a judge</i> • - ICCPR Art. 9.4; • - CRC Art. 37d 	<p>West Bank <i>Ordinance of Reforming Juveniles No. 16 - Jordan – 1954</i> (Juveniles under 18 shall be brought immediately before a court)</p> <p>Gaza Strip <i>Juvenile Offenders Ordinance No. 2 of 1937</i> (Juveniles under 18 shall be brought immediately before a court)</p>		<p>Police</p>

<ul style="list-style-type: none"> • <i>Right to be informed of reasons for arrest</i> • - ICCPR Art. 9.2 • - CRC Art. 40.2b.ii 	<p>Gaza Strip <i>Regulation for Prisons and Reformatory Schools</i> (child shall be immediately informed of his/her charge)</p>		Police
<ul style="list-style-type: none"> • <i>Right to a defence and legal counsel</i> • - UDHR Art. 11; • - CRC Art. 37d 	<p>Gaza Strip <i>Rules for Trial of Juvenile Offenders – British Mandate – 1938</i> (father or guardian shall help the juvenile in his/her defence when there is no legal representation)</p>		Police Probation officers Court police Judges
<ul style="list-style-type: none"> • <i>Right not to be compelled to confess</i> • - CRC Art. 40.2biv 	<p>West Bank + Gaza Strip <i>Procedural penal code 2002, Art. 11</i> (if child confesses during interrogation)</p>		Police Judges
DETENTION			
<ul style="list-style-type: none"> • <i>Separation between children and adults</i> • - ICCPR Art. 10.2b/3; • - CRC Art. 37c • - Beijing Rules Art. 26.3 • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 29 	<p>West Bank <i>Ordinance of Reforming Juveniles No. 16 – Jordan – 1954, Art. 7.3</i> (separation from adults if person under 18)</p> <p>Gaza Strip <i>Regulation for Prisons and Reformatory Schools</i> (if possible young persons shall not be associated with adults)</p>		Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centres

<p><i>Presence of qualified personnel</i></p> <ul style="list-style-type: none"> - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 81 	<p>West Bank Ordinance of Reforming Juveniles No. 16 – Jordan – 1954 (special court session to be held on a different date or at a different time than adults court session; presence of probation officer)</p> <p>Gaza Strip <i>Juvenile Offenders Ordinance No. 2 of 1937</i> (a court session hearing children is to be considered a juvenile court session and shall, if possible, be held in a different building/room as well as at a different time and day from an ordinary court session; presence of probation officer in court)</p> <p><i>Trial of Juvenile Offenders – British Mandate – 1938</i> (juvenile court shall be convened when no criminal court sessions for adults are being held)</p>	<p>MoSA systematic Guidelines for Child Care for Child Care, Article 61</p>	<p>Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centres MoSA (department of defence: juvenile justice + probation officers) NGOs+ CBOs</p>
<p><i>No detention with convicted person during pending trial</i></p> <ul style="list-style-type: none"> - ICCPR Art. 10.2a; - Standard Minimum Rules for the Treatment of Prisoners 8b 	<p>NO PROVISION</p>		<p>Police Court police Judges Lawyers</p>
<p><i>Detention with same category of prisoners</i></p> <ul style="list-style-type: none"> - Standard minimum rules 8 	<p>NO PROVISION</p>		<p>Police Court police Judges Lawyers Social workers in rehabilitation centres NGOs + CBOs</p>
<p><i>Condition of detention hygienic</i></p> <ul style="list-style-type: none"> - Standard Minimum Rules for the Treatment of Prisoners 12-13 	<p>Gaza Strip <i>Regulation for Prisons and Reformatory Schools</i> (details in the condition of cleanliness of juvenile)</p>		<p>Probation officers Social workers in rehabilitation centres MoSA (department of defence: juvenile justice + probation officers) NGOs + CBOs</p>

<ul style="list-style-type: none"> • <i>Right to health care</i> • - CRC Art. 24 • - UN Rules for the protection of Juveniles Deprived of their Liberty Art. 27-30 and 49-55 and 87; • - Beijing Rules Art. 26.6 	<p>Gaza Strip <i>Regulation for Prisons and Reformatory Schools</i> (details in the condition of cleanliness of juvenile)</p>		Social workers in rehabilitation centres MoSA (department of defence: juvenile justice + probation officers) NGOs + CBOs
<ul style="list-style-type: none"> • <i>Food supply sufficient, of good quality and well prepared to maintain good health</i> • - Standard Minimum Rules for the Treatment of Prisoners Art. 20.1 	<p>Gaza Strip <i>Regulation for Prisons and Reformatory Schools</i> (details in weight and portion of food for juvenile)</p>		Social workers in rehabilitation centres MoSA (Department of Defence: juvenile justice + probation officers) NGOs + CBOs
<ul style="list-style-type: none"> • <i>Right to practice religion while detained</i> • - Standard Minimum Rules for the Treatment of Prisoners 41-42 	<p>NO PROVISION</p>		Social workers in rehabilitation centres MoSA (Department of Defence: juvenile justice + probation officers) NGOs + CBOs
<ul style="list-style-type: none"> • <i>Right to education while detained</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 38; • - Beijing rules Art. 26.2; Standard Minimum Rules for the Treatment of Prisoners Art. 77 	<p>Gaza Strip <i>Regulation for Prisons and Reformatory Schools</i> (requires elementary education for juvenile)</p>		Social workers in Rehabilitation Centres MoSA (Department of Defence: juvenile justice + probation officers) MoEHE NGOs + CBOs
<ul style="list-style-type: none"> • <i>Right to pursue vocational training</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty 42 	<p>NO PROVISION</p>		Social Workers in Rehabilitation Centres MoSA (Department of Defence: juvenile justice + probation officers) NGOs + CBOs
<ul style="list-style-type: none"> • <i>Right to recreational and daily exercise in open air</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 47 	<p>NO PROVISION</p>		Social Workers in rehabilitation centres MoSA (Department of Defence: juvenile justice + probation officers) MoEHE NGOs + CBOs

<p><i>External inspectors on regular basis to the prison</i></p> <ul style="list-style-type: none"> - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 72 and 74 	<p>NO PROVISION</p>		<p>Social Workers in rehabilitation centres MoSA (Department of Defence: juvenile justice + probation officers) community NGOs + CBOs</p>
<p>JUDICIAL PROCEEDINGS</p>			
<p><i>Adjustment of legal procedures in the court room to the minor's age (i.e. juvenile judge and juvenile court)</i></p> <ul style="list-style-type: none"> ICCPR Art. 14d - CRC Art. 40.2biii 	<p>West Bank Ordinance of Reforming Juveniles No. 16 - Jordan – 1954 (special court held in different day and time than adults court; presence of probation officer)</p> <p>Gaza Strip <i>Juvenile Offenders Ordinance No. 2 of 1937</i> (court hearing children is a juvenile court and shall if possible sit in a different building/ room as well as different time and day from ordinary court; presence of probation officer)</p> <p><i>Rules of Trial of Juvenile Offenders – British Mandate – 1938</i> (juvenile court shall be headed when no criminal court for adults are being held)</p>		<p>Probation officers Court police Judges Lawyers NGOs + CBOs</p>

<ul style="list-style-type: none"> • <i>Non-judicial proceeding shall be used whenever possible</i> • - CRC 40.3b 	<p>West Bank <i>Ordinance of Reforming Juveniles No. 16 – Jordan – 1954</i> (explanation of alternative measures to the deprivation of liberty such as release with fine, allocation of probation officer)</p> <p>Gaza Strip <i>Regulation of Reformatory School Chapter 117, Art. 122 – British Mandate – 16 May 1932</i> (No young person shall be imprisoned if there is an alternative measure including probation, corporal punishment, fine; if young person in conflict with the law is a girl she will have to be kept at an institute of social affairs or reformatory school) <i>Ordinance of Supervising the Conduct of Offenders No. 42 – British Mandate – 1944</i> provision of alternative measures – pay of a fine)</p>		<p>Probation officers Court police Judges Lawyers NGOs + CBOs</p>
<ul style="list-style-type: none"> • <i>Fair trial by impartial body, taking into account his or her age or situation</i> • - UDHR Art. 10; • - CRC Art. 40.1biii 	<p>West Bank <i>Ordinance of Reforming Juvenile No. 16 – Jordan – 1954</i> (details in the role and duties of probation officers)</p> <p>Gaza Strip <i>Ordinance of Supervising the Conduct of Offenders No. 42 – British Mandate – 1944</i> (details in role and responsibilities of probation officers)</p>		<p>Probation officers Court police Judges Lawyers NGOs + CBOs</p>
<ul style="list-style-type: none"> • <i>No delay in the adjudication of the case</i> • - ICCPR Art. 10.2b; • - CRC Art. 40.2b.iii 	<p>NO PROVISION</p>		<p>Probation officers Court police Judges Lawyers NGOs + CBOs</p>

<p><i>Right to appeal</i> - CRC 40.2b.v</p>	<p>West Bank + Gaza Strip <i>Procedural Penal Code 2002</i> (there should be an appeal court)</p>		<p>Probation officers Court police Judges Lawyers</p>
<p><i>Right to free assistance of an interpreter</i> CRC Art. 40.2vi</p>	<p>No specific provision but principle accepted as common sense</p>		<p>Probation officers Court police Judges Lawyers NGOs + CBOs</p>
<p><i>Right to privacy</i> - CRC Art. 40.2vii</p>	<p>West Bank Ordinance of Reforming Juveniles No. 16 - Jordan – 1954, Art. 7.4 (only parents/guardian or probation officers allowed in); Art. 7.5 (no one allowed to publish juvenile's names) Gaza Strip <i>Juvenile Offenders Ordinance No. 2 of 1937</i> (no person is allowed within the courts except the people directly concerned)</p>		<p>Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centres MoSA (department of defence: juvenile justice + probation officers) MoEHE Community Family NGOs + CBOs Media</p>

TREATMENT

<p><i>Right to be free from torture, cruel, inhuman and degrading treatment or punishment</i> - UDHR Art. 5; - ICCPR Art. 7; - CRC Art. 19.1; 34 37a; - CAT; - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 66 and 87d</p>	<p>West Bank + Gaza Strip <i>Child Law Art. 68</i></p> <p>Gaza Strip <i>Regulation of Reformatory School Chapter 117, Art. 122 – British Mandate – 16 May 1932</i> (the following punishments are considered legal: flogging, reduction of amount of food, solitary confinement)</p> <p>NB: THE LAW PROVIDES THE PUNISHMENT OF TRANSFERRING DANGEROUS CHILDREN TO PRISON</p>		<p>Police Probation officers Court police Judges Lawyers Social workers in rehabilitation centre NGOs + CBOs Media</p>
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<ul style="list-style-type: none"> • <i>Carrying and use of weapons by personnel should be prohibited by any facility where juveniles are detained</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 65 	NO PROVISION		<ul style="list-style-type: none"> • Police • Court police • Judges • Lawyers • Social workers in rehabilitation centres • NGOs + CBOs
<ul style="list-style-type: none"> • <i>Disciplinary measures such as torture of beating should be prohibited</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 63-65 and 67 	Gaza Strip <i>Regulation of Reformatory School Chapter 117, Art. 122</i> – <i>British Mandate – 16 May 1932</i> (the following punishments are considered legal: flogging, reduction of amount of food, solitary confinement)		<ul style="list-style-type: none"> • Police • Court police • Judges • Social workers in rehabilitation centre • Media • NGOs + CBOs
COMPLAINT MECHANISMS			
<ul style="list-style-type: none"> • <i>Right to make a complaint for suffered violations of their rights when deprived of their liberty</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 75-77 	NO PROVISION		<ul style="list-style-type: none"> • PLC • MoSA (Department of Defence: juvenile justice + probation officers) • NGOs + CBOs • Media

Annex III: Protection of Children Detained under the Israeli Military Order System: Legal Framework and Stakeholder Identification

Rights and/or principles in international law	Where these rights and/or principles are reflected in domestic law	Policy level	Stakeholders Responsible (when applicable)
MAIN PRINCIPLES REGULATING CHILD PROTECTION			
<p><i>Respect for the child's sense of dignity and worth, promotion of child reintegration within society + the best interest of the child principle</i></p> <ul style="list-style-type: none"> - ICCPR Art. 10.1; - CRC Art. 3.1 and 37d and 40.1; - GC10 para 13 ff 	<p>- Military Order n. 836 (amending Military Order n. 132)</p>	---	<p>Israeli soldiers Police Israeli security services (ISS) Military intelligence Staff of Israeli detention and interrogation centres Security guards Lawyers Judges</p>
<p><i>Prevention of Juvenile delinquency (social programs)</i></p> <ul style="list-style-type: none"> - CRC Art. 6 and 29; - GC 10 para 15 	<p>No legal reference within the military orders specifically addressing juveniles</p>	---	<p>MoDEDA Family Schools Community Peer groups NGOS + CBOS PA</p>
<p><i>Last resort principle: Intervention, diversion</i></p> <ul style="list-style-type: none"> - CRC 37.b - GC 10 para 22 - Beijing rules 19.1 - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 2 and 27-30 	<p>- Military Orders n. 471, 587, 639, 961 (amending Military Order n. 132)</p>		<p>Lawyers Judges</p>
<p><i>Principle of non-discrimination</i></p> <ul style="list-style-type: none"> - ICCPR Art. 2.1; - CRC Art. 2; - Standard Minimum Rules for the Treatment of Prisoners Art. 6.1; - GC 10 para 6 	<p>NO PROVISION</p>	---	<p>Israeli soldiers Police Staff of detention and interrogation centres Security guards Lawyers Judges Palestinian authority</p>
<p><i>Be presumed innocent until proven guilty</i></p> <ul style="list-style-type: none"> - UDHR Art. 11; - CRC Art. 40.2 b.i; - Standard Minimum Rules for the Treatment of Prisoners Art. 84.2; 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Israeli soldiers Police ISS Military intelligence Staff of detention and interrogation centres Security guards Lawyers Judges</p>

<ul style="list-style-type: none"> • <i>The aim of punitive measures is rehabilitation and reformation</i> (provision of rehabilitation programs) • - ICCPR Art. 10.3; • - CRC Art. 40.1; 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Lawyers Judges Staff of detention and interrogation centres</p>
<ul style="list-style-type: none"> • <i>Children shall receive treatment appropriate to their age and legal status</i> • - ICCPR Art. 10.3; • - CRC Art. 37c; • - GC 10 para 30 	<p><i>Military Order n. 132: definition of age groups for criminal responsibility (13/14-15/16)</i></p>		<p>Israeli soldiers Police ISS Military intelligence Staff of Israeli detention and interrogation centres Security guards Lawyers Judges</p>
<ul style="list-style-type: none"> • <i>Establishment of law and policies specifically for children</i> • - CRC Art. 40.3; 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Israeli soldiers Police ISS Military intelligence Staff of Israeli detention and interrogation centres Security guards Lawyers Judges</p>
<ul style="list-style-type: none"> • <i>Establishment of special measures appropriate for children such as care, guidance and supervision, education and vocational training</i> • - CRC Art. 40.4, 	<p>NO PROVISION</p>		<p>Israeli authorities MoDEDA</p>
<ul style="list-style-type: none"> • <i>Right to communicate with the outside world, especially family</i> • - CRC Art. 9.3 and 37c; • - Beijing Rules 26.5; • - UN Rules for the Protection of Juvenile Deprived of their Liberty 30 and 59-62; 	<p>NO PROVISION</p>		<p>Israeli soldiers Staff of detention and interrogation centres Security guards</p>
<p>Arrest and procedures</p>			
<ul style="list-style-type: none"> • <i>Prohibition of arbitrary arrest and detention</i> • - UDHR Art. 9; • - ICCPR Art. 9.1; • - CRC Art. 37b; 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Israeli soldiers Police</p>

<ul style="list-style-type: none"> • <i>Right to be promptly brought to court before a judge</i> • - ICCPR Art. 9.4; • - CRC Art. 37d 	8 days is the period that a child could be kept in interrogation before he/she will be brought before a judge (NB: Period might be extended up to 90 days with no access to lawyer) Military Order 378		Israeli soldiers Police ISS Military intelligence Staff of detention and interrogation centres Security guards
<ul style="list-style-type: none"> • <i>Right to be informed of reasons for arrest</i> • - ICCPR Art. 9.2 • - CRC Art. 40.2b.ii 	No legal reference within the military orders specifically addressing juveniles		Police
<ul style="list-style-type: none"> • <i>Right to a defence and legal counsel</i> • - UDHR Art. 11; • - CRC Art. 37d • - 4th Geneva Convention Art. 72 	Military order 378, 78 (c) (1.2)		Israeli soldiers Police ISS Military intelligence Staff of detention and interrogation centres
<ul style="list-style-type: none"> • <i>Right not to be compelled to confess</i> • - CRC Art. 40,2biv 	“A soldier who uses or threatens to use violence in order to compel to confess is subject to imprisonment for a maximum of 3 years” (Art. 65 of the Israeli Military Jurisdiction Law, 1955)		Israeli soldiers Police ISS Military intelligence Staff of Israeli detention and interrogation centres Security guards Lawyers Judges
Detention			
<ul style="list-style-type: none"> • <i>Separation between children and adults</i> • - ICCPR Art. 10.2b/3; • - CRC Art. 37c • - Beijing Rules Art. 26.3 • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 29 	Partially referred to in Military Order 132		Israeli soldiers Police ISS Military intelligence Staff of Israeli detention and interrogation centres Security guards - judges (once children are in court)
<ul style="list-style-type: none"> • <i>Presence of qualified personnel</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty 81 	No legal reference within the military orders specifically addressing juveniles -		Israeli soldiers Police ISS Military intelligence Staff of Israeli detention and interrogation centres Security guards Judges (once children are in court)

<ul style="list-style-type: none"> • <i>No detention with convicted person during pending trial</i> • - ICCPR Art. 10.2a; • - Standard Minimum Rules for the Treatment of Prisoners Art. 8b 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Detention with same category of prisoners</i> • - Standard minimum Rules for the Treatment of Prisoners Art. 8 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Right to be visited by protecting power and international committee of red cross</i> • - 4th Geneva Convention Art. 76 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Right to be detained inside the Occupied Territories</i> • - 4th Geneva Convention Art. 76 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards • Judges
<ul style="list-style-type: none"> • <i>Condition of detention hygienic</i> • - Standard minimum Rules for the Treatment of Prisoners Art. 12-13 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Right to health care</i> • - CRC Art. 24 • - UN Rules for the protection of Juvenile Deprived of their Liberty Art. 27-30 and 49-55 and 87; • - Beijing Rules Art. 26.6 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Food supply sufficient, good quality and well prepared to maintain good health</i> • - Standard Minimum Rules for the Treatment of Prisoners Art. 20.1 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards

<ul style="list-style-type: none"> • <i>Right to practice religion while detained</i> • - Standard Minimum Rules for the Treatment of Prisoners Art. 41-42 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Right to education while detained</i> • - UN Rules for the Protection of Juvenile Deprived of their Liberty Art. 38; • - Beijing rules Art. 26.2; • - Standards Minimum Rules for the Treatment of Prisoners Art. 77 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Right to pursue vocational training</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 42 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Right to recreational and daily exercise in open air</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 47 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>External inspectors on regular basis to the prison</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 72 and 74 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Staff of Israeli detention and interrogation centres
Judicial proceedings			
<ul style="list-style-type: none"> • <i>Adjustment of legal procedures in the court room to the minor's age (i.e. juvenile judge and juvenile court)</i> • - ICCPR Art. 14d • - CRC Art. 40.2biii 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Police • Lawyers • Judges
<ul style="list-style-type: none"> • <i>Non-judicial proceeding shall be used whenever possible</i> • - CRC 40.3b 	<p>Military Orders n. 417, 587, 698, 961, 1172 (amending Military Order 132)</p>		<ul style="list-style-type: none"> • Lawyers • Judges

<ul style="list-style-type: none"> • <i>Fair trial by impartial body, taking into account his or her age or situation</i> • - UDHR Art. 10; • - CRC Art. 40.1biii 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Lawyers Prosecutors Judges</p>
<ul style="list-style-type: none"> • <i>No delay in the adjudication of the case</i> • - ICCPR Art. 10.2b; • - CRC Art. 40.2b.iii 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Israeli soldiers Police ISS Military intelligence Staff of Israeli detention and interrogation centres Security guards Lawyers Prosecutors Judges</p>
<ul style="list-style-type: none"> • <i>Right to appeal</i> • - CRC 40.2b.v 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Lawyers Prosecutors Judges</p>
<ul style="list-style-type: none"> • <i>Right to free assistance of an interpreter</i> • - CRC Art. 40.2vi 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Lawyers Prosecutors Judges</p>
<ul style="list-style-type: none"> • <i>Right to privacy</i> • - CRC Art. 40.2vii 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<p>Israeli soldiers Police ISS Military intelligence Staff of Israeli detention and interrogation centres Security guards Lawyers Prosecutors Judges</p>
TREATMENT			
<ul style="list-style-type: none"> • <i>Right to be free from torture, cruel, inhuman and degrading treatment or punishment</i> • - UDHR Art. 5; • - ICCPR Art. 7; • - CRC Art. 19.1; 34 37a; • - CAT; • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 66 and 87d 	<p>Military Order n. 863 (amending Military Order n.132)</p> <p>“A soldier who hits or abuses a person under detention is subject to a maximum of 3 years imprisonment, if the abuse is made under extreme condition the imprisonment can be prolonged until 7 years”</p>		<p>Israeli soldiers Police ISS Military intelligence Staff of Israeli detention and interrogation centres Security guards</p>

<ul style="list-style-type: none"> • <i>Carrying and use of weapons by personnel should be prohibited by any facility where juveniles are detained</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 65 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
<ul style="list-style-type: none"> • <i>Disciplinary measures such as torture of beating should be prohibited</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 63-65 and 67 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Police • ISS • Military intelligence • Staff of Israeli detention and interrogation centres • Security guards
COMPLAINT MECHANISMS			
<ul style="list-style-type: none"> • <i>Right to make a complaint for suffered violations of their rights when deprived of their liberty</i> • - UN Rules for the Protection of Juveniles Deprived of their Liberty Art. 75-77 	<p>No legal reference within the military orders specifically addressing juveniles</p>		<ul style="list-style-type: none"> • Israeli soldiers • Lawyers • Judges • Staff of Israeli detention and interrogation centres • NGOs + CBOs

