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NO MINOR MATTER

**Violation of the Rights of Palestinian Minors Arrested
by Israel on Suspicion of Stone Throwing**

July 2011

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Table of Contents

Introduction	5	
Chapter 1	Minors in criminal proceedings - legal background	7
	International law	7
	Israeli law	9
	Military law	10
	Comparison: Rights of suspects and detainees	11
Chapter 2	Statistics on punishment of minors convicted of stone throwing	17
	Imprisonment	19
	Conditional prison sentence	20
	Exceptionally long prison sentences	21
	Fines	22
	Punishment of adults convicted of stone throwing	23
Chapter 3	Violation of the rights of Palestinian minors suspected of stone throwing	25
	The arrest	26
	The interrogation	29
	Remand until the end of criminal proceedings	46
	The trial	49
	Prison life	56
	Release from detention and imprisonment	63
Conclusions	65	
Response of the IDF Spokesperson	67	
Response of the Ministry of Justice	77	

Introduction

Between 2005 and 2010, more than 800 Palestinian minors were prosecuted in the military justice system for stone throwing.

Stone throwing by Palestinians is usually carried out at traffic arteries along which soldiers and settlers travel, at places where Palestinians and settlers come into direct contact with each other. It is also directed at security forces who face Palestinian civilians during demonstrations and military operations, and at the Separation Barrier deep inside the West Bank.

The offense of stone throwing does not require advance planning; it can be carried out on the spur of the moment and in reaction to existing circumstances. As former President of the Military Court of Appeals, Col. Shaul Gordon, said: "In this kind of offense, the persons involved do not have to prepare and plan. Stones are everywhere, and to complete the offense, the only thing they need is hands."¹

According to police statistics, from 2005 to 2010, the SHAI [Samaria and Judea] District Police Department reported that 2,100 to 3,000 stone-throwing incidents took place each year.² According to the IDF Spokesperson's Office, during the same period, there were 3,600 to 4,300 incidents of stone throwing at civilians, security forces, and the Separation Barrier.³ B'Tselem attempted to determine the number of persons injured by stone throwing during these years. All the government agencies we contacted replied that they did not have the requested data.⁴

Israeli penal law does not specify stone throwing as a separate offense; stone throwing is included in the offenses that endanger life and property. When it results in injury, it is considered as any other offense that endangers life, with the penalty ranging from three to 20 years' imprisonment, depending on the

1. Appeal (Judea and Samaria) 225/01, *Military Prosecutor v. 'Abd a-Latif Rajeh Musa Samhan*.

2. Letter of 13 February 2011 to B'Tselem from Avishag Zaken-Weisenberg, the official in charge of freedom of information in the ombudsman's office of the Israel Police, in response to B'Tselem's inquiry of 4 January 2011.

3. Letter of 15 March 2011 to B'Tselem from Itai Troim of the public inquiries section of the IDF Spokesperson's Office to B'Tselem's request of 4 January 2011.

4. In its letter of 13 February (*supra* note 2), the police indicated that it did not have computerized documentation on the injured persons that would enable their classification. The Magen David Adom (MADA) spokesman said, in a conversation on 19 January 2011, that MADA was unable to break down the various causes of injury in the cases it handles. The Israel Security Agency did not include stone-throwing incidents in its monthly reports until January 2009, and its reports contain only a minuscule percentage of the total cases documented by the SHAI Police Department, mentioning a total of seven injured persons throughout the West Bank and East Jerusalem in 2009-2010. See the ISA Terror Data and Trends Portal – monthly reports, <http://www.shabak.gov.il/english/pages/default.aspx>.

circumstances and the severity of the injury.⁵ Military legislation has one section specific to the throwing of objects, including stones, for which the penalty is up to ten years' imprisonment for an offender who throws an object at a traffic route, a person, or property, and up to 20 years' imprisonment in the case of an offender who throws an object at a moving vehicle.⁶ Throwing an object is classified as a serious offense, which enables extensive infringement of detainees' rights.⁷

Minors have more difficulty than adults in dealing with the criminal justice system. The separation from their families, the interrogation and the punishment imposed on them are felt more intensely by them, and the effect of this experience on their lives is greater and longer lasting. Therefore, most legal systems around the world, including Israel's, have established a separate criminal justice system for minors. Conversely, Israel's military justice system treats minors as adults; except in a few aspects, it does not recognize that rights are granted to minors solely on the grounds of their age.

This report describes the encounter minors suspected of stone throwing experience with law enforcement agencies, and the breach of their rights. Chapter One presents the legal background: the rights of minors in criminal proceedings as prescribed in international law, Israeli law, and military legislation. Chapter Two offers statistics on the number of minors who have been tried in recent years on charges of stone throwing, and the penalties imposed on them. Chapter Three, the principal section of the report, discusses the breaches of the rights of Palestinian minors suspected of stone throwing – from the time they are arrested, through the police interrogation, remand until the end of the proceedings, trial, imprisonment, and release. The report concludes with a list of actions that must be taken to ensure the rights of Palestinian minors arrested by security forces are protected.

5. Penal Law, 5737 – 1977, sections 332-335.

6. Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770 – 2009, (hereafter: "Order Regarding Security Provisions No. 1651"), section 212.

7. Annex 1 to Order Regarding Security Provisions No. 1651 (ibid.).

Chapter 1

Minors in criminal proceedings - legal background

International law

The primary document in international law protecting the rights of children is the Convention on the Rights of the Child, which the UN adopted in November 1989. Israel signed the Convention in July 1990 and ratified it in August 1991.⁸ The Convention defines a minor as a person who is under 18 years of age "unless under the law applicable to the child, majority is attained earlier."⁹

The Convention recognizes the significant difference between a minor and an adult, and the resultant need to protect children and contains comprehensive provisions relating to all aspects of a minor's life. Under the Convention, children are entitled to special protections due to the fact that they are in a state of development, only at the end of which they can act as adults. The Convention demands that minors' fundamental rights and wishes be considered, and every decision regarding them must take into account their age, level of development, and the types of decisions they are capable of making for themselves. These considerations are embodied in the principle of the best interest of the child.

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹⁰

The Convention specifies a number of principles regarding the treatment of children in criminal proceedings. These principles include the prohibition on capital punishment or life imprisonment without the possibility of parole in the case of a person who committed the offense while a minor. Imprisonment or detention of minors are to be used only as a measure of last resort, and only when no effective alternatives exist. When, nevertheless, a decision is made to deprive minors of their liberty, their right to education, contact with their family, respectful treatment, and human dignity are to be protected, and they are to be allowed prompt access to legal assistance. In addition, minors are to be kept informed

8. See the Convention on the Rights of the Child, available at <http://www2.ohchr.org/english/law/crc.htm>.

9. Ibid., article 1. The reservation is intended to enable the military recruitment of minors under age 18. See, for example, C. P. Cohen, "The Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child," *Human Rights Quarterly* 12:142-143 (1990).

10. Convention on the Rights of the Child, article 3.1.

of the proceedings against them and allowed to participate in making decisions in their matter. Thus, a minor may not be forced to undergo diagnostic tests or treatments he does not wish to undergo.¹¹

The Convention does not prescribe which system of justice is required to handle minors. However, two systems of rules adopted by the UN set guidelines for the administration of juvenile courts. In 1985, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) were adopted.¹² In December 1990, the UN General Assembly adopted the Rules for the Protection of Juveniles Deprived of their Liberty, which was based on the Beijing Rules.¹³ These rules are not binding, but they have been adopted, at least partially, as guidelines for the administration of juvenile courts in many countries, among them Australia, Holland, England, Finland, Sweden, and Israel.

These two systems of rules emphasize the best interest of the child as the guiding principle in handling minors in the criminal justice system. The rules prescribe that the circumstances of the offense and the circumstances of the life of the minor who committed the offense shall be taken into account in every proceeding, and at the time of sentencing.¹⁴ Incarceration of the minor must be the last resort and for the minimal time required.¹⁵ Remand until the end of the proceedings is to be avoided to the extent possible.¹⁶ The rules require the formulation of special justice systems for minors, special training of persons engaged in treating minors, and adaptation of incarceration facilities to meet the needs of minors.¹⁷

The Convention on the Rights of the Child is binding on Israel also with respect to its actions in the Occupied Territories, and UN committees that monitor the implementation of the Convention have rejected Israel's position that it does not

11. *Ibid.*, article 37. See, also, H. Oren-Reshef, *The Committee for the Examination of the Fundamental Principles Involving the Child and the Law and Their Implementation in Legislation: Subcommittee Report on the Minor in Criminal Proceedings* (Ministry of Justice, February 2003), 89-93 (hereafter: *The Minor in Criminal Proceedings*) [in Hebrew].

12. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ("The Beijing Rules"), Resolution 40/33 (29 November 1985), available at <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf>.

13. *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Resolution 45/113, 14 December 1990, available at <http://www.un.org/documents/ga/res/45/a45r113.htm>.

14. The Beijing Rules (*supra* note 12), 1.1, 5.1.

15. *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (*supra* note 13), I,1-2.

16. *Ibid.*, III, 17-18.

17. The Beijing Rules (*supra* note 12), 6.1, 6.3; 12.1; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (*supra* note 13), I, 2; II, 12-16; IV; V.

apply there.¹⁸ The UN committee monitoring the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict demanded Israel to report on the steps it had taken to implement the international standards regarding detention and interrogation of minors in the Occupied Territories.¹⁹

Israeli law

The rules relating to the rights of minors in criminal proceedings in Israel are prescribed in the Youth (Trial, Punishment and Modes of Treatment) Law, 5731 – 1971 (hereafter: “the Youth Law”).²⁰ The statute underwent comprehensive changes in Amendment No. 14, which was enacted in July 2008 and took force one year later. The amendment was intended to incorporate the rules of international law on the adjudication of juveniles into Israeli legislation.²¹

The amendment states that incarceration is to be a last resort, when no alternative exists.²² Regarding minors under age 14, the statute absolutely prohibits their incarceration.²³ The rationale underlying this prohibition was offered by Justice (as her title was at the time) Dorit Beinisch.

Placement of minors under age 14 in prison holds the potential for disproportionate harm to the minor. Incarcerating a minor of an age close to the age of childhood is liable to harm him much more than it would an adult who is incarcerated, and the result is manifestly undesirable, possibly even unjustified.²⁴

The amendment stipulates that in all cases, rehabilitation of the minors is preferred. Therefore, the statute allows alternatives to ordinary criminal

18. See, for example, United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* (4 March 2010), section 4, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/410/68/PDF/G1041068.pdf?OpenElement>.

19. United Nations Committee on the Rights of the Child, *Optional Protocol on the Involvement of Children in Armed Conflict: List of Issues to be taken up in connection with the consideration of the initial report of Israel* (12 October 2009), section 6, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-OPAC-ISR-Q-1.pdf>.

20. The Youth Law is available online, in Hebrew, at http://www.nevo.co.il/law_html/law01/305_004.htm.

21. In order to do so, an expert committee formulated a number of recommendations for legislative change, many of which were implemented in Amendment 14 to the Youth Law. See *The Minor in Criminal Proceedings* (*supra* note 11), 20-21.

22. Youth Law (*supra* note 20), section 10A.

23. With respect to remand until the end of proceedings, section 10J(1) of the Youth Law (*supra* note 20); regarding incarceration, section 25(d) of the Youth Law.

24. Crim. App. 534/05, *A. v. State of Israel*, January 20, 2005.

proceedings. First, the police can send the minor for rehabilitative treatment rather than prosecute him, even when there is evidence that he committed the offense. Such a referral appears in the Police Regulations and not in statute, despite the recommendation of professionals.²⁵ Also, by statute, the court does not have to convict the minor even if it determines that he committed the offense, and has the power to refer him to treatment.²⁶ Supreme Court Justice Edna Arbel explained the special considerations to be taken into account when punishing minors.

The point of departure for the punishment of minors is that their personality and moral precepts have not yet matured. This assumption leads to the conclusion that greater weight should be given to rehabilitation at sentencing, both for reasons of fairness and justice toward the minor and because of the greater chances for rehabilitation, which comport with the public interest.²⁷

Military law

Military legislation in the West Bank barely deals with minors in criminal proceedings. With a few exceptions, minors are treated as adults. The Order Regarding Adjudication of Young Offenders was enacted in 1967.²⁸ It divides minors into three age groups: "child" – under age 12; "youth" – from age 12 to 14; "young adult" – from age 14 to 16. A person over age 16 is deemed an adult, except for an amendment to the order pursuant to which parents can be obligated to post bail and pay fines imposed on their 16 and 17-year-old children.²⁹ The order prohibits imposing a prison sentence greater than six months on minors under age 14, limits imprisonment of minors aged 14-15 to a maximum of one year, unless the defendant committed serious offenses, and states that minors must be held separate from adults. The order enables the military commander to release a minor on bond rather than prosecute him.³⁰

25. *The Minor in Criminal Proceedings* (*supra* note 11), 200-208.

26. Youth Law (*supra* note 20), sections 24, 26.

27. Crim. App. 1463/09, *State of Israel v. A*. See, also, Crim. App. 5048/09, *A. v. State of Israel*.

28. The order improved the situation of minors in criminal proceedings compared with Jordanian law, which set the age of criminal responsibility at nine, and less stringent provisions were applied only to defendants under age 12. See Jordanian Criminal Law, section 16, published by the IDF in Statutory Law in Arab Countries: 3, Selected Jordanian Laws. See http://www.nevo.co.il/law_html/law80/LEKET-%d7%95.pdf#xml=http://www.nevo.co.il/Handlers/PdfHighlighter.ashx?index=9&type=Main [in Hebrew].

29. Amendment 2 to the Order Regarding Adjudication of Young Offenders (No. 311), 5729 – 1969.

30. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 181(b).

In November 2009, the military commander signed an order establishing a Military Youth Court in the West Bank. The court was empowered to hear offenses of minors under age 16. In practice, the military judges expanded the court's jurisdiction to include minors aged 16 and 17.³¹ The court's judges have been authorized to serve as youth court judges, and the hearings are held in camera. The Youth Court conducts only the principal hearings, while hearings on extension of detention are held in the regular military courts and appeals are heard by the military courts of appeals, on which the judges are not necessarily youth judges.³²

The order also contains a few protections for the minors, such as a limitation on the time between commission of the crime and prosecution for the alleged offense, and the possibility to appoint counsel for the defendant if the court thinks the interest of the youth requires it. The order also provides that minors must be kept in special detention facilities, and must be separated from adults in all detention and incarceration proceedings.³³ The order was enacted for one year, and extended for one more year.³⁴

Comparison: Rights of suspects and detainees

The differences between the principles underlying the relevant Israeli law and those underlying military legislation are reflected in the protections given to minors' rights at all stages of the criminal proceedings.

The Association for Civil Rights and Yesh Din Volunteers for Human Rights wrote to the military advocate general on 15 June 2010, demanding that he take action to amend the legislation regarding minors in the West Bank so as to grant them proper protections, comparable to those given under Israeli law.³⁵ The organizations sent an additional inquiry a year later, after having received no substantive response.³⁶

31. Letter of May 15, 2011 from Zohar Halevi, head of public inquiries section, IDF Spokesperson's Office to B'Tselem in response B'Tselem's inquiry of August 30, 2010.

32. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 38 (b).

33. Order 1644 (2009). Order Regarding Security Provisions No. 1651 (*supra* note 6) was also issued in 2009. This order consolidates the primary orders comprising the security legislation and replaces many previous orders, among them the Order Regarding Adjudication of Young Offenders. Below, mention of the legislation refers to the consolidated order, and not to the separate orders.

34. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 135(a), which was extended by a further year in a temporary order in Amendment 4 to the Order Regarding Security Provisions, September 20, 2010.

35. Letter of June 15, 2010 from Nasrat Dakwar, attorney at ACRI, to the military advocate general. See <http://www.acri.org.il/he/?p=2511> [in Hebrew].

36. Letter of June 26, 2011 from Raghad Jaraisy, attorney at ACRI, to the military advocate general. DCI-Palestine was also a partner to this letter.

Age of criminal responsibility and age of majority

Under Jordanian law, the age of criminal responsibility is nine. Military legislation raised the age to 12, which is the age of criminal responsibility in Israel and many other countries. Therefore, a person who commits an offense when he is under 12 years of age may not be prosecuted for that offense even if he is apprehended after he turns 12.³⁷

The age of majority in Israel and in most of the world is 18. Military legislation established the age of majority at 16. The only exception is the parents' obligation to pay bonds and fines for their children until they attain the age of 18. Despite this, following the establishment of the Military Youth Court, minors aged 16 and 17 have been tried before a Youth Court judge.

Interrogation

Under Israeli law, only persons trained as youth interrogators may interrogate minors. A parent or other relative must be allowed to be present during every interrogation of a minor child. There are certain exceptions which allow – following the authorized officer's approval in writing – the interrogation to begin without the parent being present. These are cases where the interest of the interrogation or the best interest of the child require the parent be absent from the interrogation. The minor also has the right to consult with a parent before the interrogation begins, barring exceptional cases.³⁸

Israeli law prohibits interrogating suspected minors at night: 12 to 13-year-olds may not be interrogated from 8:00 P.M. to 7:00 A.M. and minors aged 14-17 from 10:00 P.M. to 7:00 A.M., unless the offense of which the minor is suspected carries a penalty of more than three years' imprisonment, or the minor and his parent consent to the questioning, and only if the questioning is necessary for the sake of the investigation.³⁹

The military legislation contains no comparable provisions regarding these matters. The president of the Military Court of Appeals, Col. Aharon Mishnayot, wrote in this context:

Amendment No. 14 includes, as aforesaid, also restrictions on the interrogation of minors. These are restrictions that should be implemented, in principle, in every properly administered court, even where there is no explicit legislative

37. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 191.

38. Youth Law (*supra* note 20), section 9H.

39. *Ibid.*, section 9J.

requirement. I am referring primarily to the prohibition on interrogation late at

night and the right of the minor to have a parent or other relative present during the interrogation, who can take action to realize the minor's rights.⁴⁰

Involvement of welfare officials

Israeli law states that, upon arrest of a minor, notice shall be given to the Probation Service.⁴¹ The minor is entitled to meet with a social worker within 24 hours from the time he is turned over to the custody of the Israel Prison Service.⁴² Even before an indictment is filed, an arrest report may be made at the initiative of a probation officer to determine a position regarding the effect the detention would have on the minor; if an indictment is filed and an application to have the defendant remanded until the end of proceedings is made, the court must order a report before the application is heard. Also, a probation officer's report is required prior to sentencing. The report is prepared by a social worker who examines the youth's environment, the chances for his rehabilitation, and the anticipated effect detention or incarceration would have on him.⁴³ The Youth Law also requires consultation with a probation officer prior to filing an indictment against a minor under age 13.⁴⁴ The statute also prescribes the construction of a system of residential facilities and the employment of probation officers.⁴⁵

The military legislation, as amended in 2009, states that a judge may – but is not required to – request a probation report from the staff officer for welfare matters in the Civil Administration before sentencing a convicted minor.⁴⁶

Bringing the alleged offender before a judge

Under Israeli law, a minor over age 14 is to be brought before a judge within 24

40. Mil. Ct. App. (Judea and Samaria) 2912/09, *Military Prosecutor v. N.A.*

41. Youth Law (*supra* note 20), section 9F(3)(3).

42. *Ibid.*, section 13(b)(2).

43. *Ibid.*, sections 10G, 22.

44. *Ibid.*, section 12(b).

45. Residential facilities are defined in section 1 of the Youth Law (*supra* note 20) as follows: "Residential facility": A facility used for housing or holding minors in custody outside their family home, to which a minor was referred by the official in charge of residential facilities following a Youth Court order instructing he be held in a residential facility; "Secure residential facility": A facility used for housing or holding minors in custody outside their family home, in which the freedom of the residents is restricted and which has been declared by the Minister of Welfare and Social Services as a secure residential facility for purposes of this Law."

46. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 268(b).

hours from the time of arrest, and within 12 hours in the case of minors under age

14.⁴⁷ Military law provides that suspects – minors and adults – are to be brought before a judge within eight days following arrest.⁴⁸

In response to a petition filed by the Association for Civil Rights, Yesh Din, and the Public Committee Against Torture in Israel, which was joined to a petition filed by the Prisoners Ministry in the Palestinian Authority, the state proposed shortening the period in which suspects must be brought before a judge to 48 hours, and in cases involving security offenses, 96 hours.⁴⁹ The state summarily rejected the petitioners' demand to relate to the laws applying to minors separately, claiming that staff work was about to begin on that issue.⁵⁰ The state did not provide a time table, and as of July 2011 B'Tselem does not know of any change that has been made to these rules.

Remand until end of proceedings

Israeli law prohibits remand until the end of proceedings in the case of minors under age 14.⁵¹ A minor 14 years of age or older may be detained for up to six months. In rare cases, the detention can be extended for an additional 45 days at a time by decision of a Supreme Court justice.⁵²

Military law makes no reference to the question of remanding minors until the end of proceedings. When a person attains the age of criminal responsibility, he is subject to the same rules as adults, and may be detained until the end of proceedings for up to two years, a period that may be extended for six months at a time by order of the Military Court of Appeals.⁵³

Time until filing of indictment

Under Israeli law, the maximum time that a minor may be detained before an indictment is filed is 20 days. This time period may be extended by ten days at a time upon approval of the attorney general, but may not exceed a total of 40

47. Youth Law (*supra* note 20), section 10C(b).

48. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 32.

49. State's response in HCJ 3368/10, *Palestinian Prisoners Ministry et al. v. Minister of Defense and OC Central Command, Commander of IDF Forces in Judea and Samaria* and HCJ 4057/10, *The Association for Civil Rights et al. v. Commander of IDF Forces in Judea and Samaria*, 9 January 2011, section 33. The state estimates that it would need six to nine months to enable it to carry out the requisite changes (sections 51-52 of the response).

50. *Ibid.*, section 10.

51. Youth Law (*supra* note 20), section 10J(1)(a1).

52. *Ibid.*, sections 10K, 10L.

53. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 44.

days.⁵⁴

In comparison, Palestinian minors, like Palestinian adults, may be detained for 90 days before an indictment is filed. The detention may be extended for 30 days at a time by order of the Military Court of Appeals.⁵⁵

Punishment

Under Amendment 14 of the Youth Law, judges have a few options following conviction of the minor. The judges are also empowered to exempt the convicted minor from any punishment.⁵⁶ A judge may only impose a prison sentence on minors over age 14 at the time of sentencing.⁵⁷ Imprisonment of less than six months may be converted to public service. The court has a wide variety of non-custodial modes of treatment to choose from. The court may order the minor to be handed over to the supervision of an adult who is not the minor's parent, or to order that the minor be kept in a locked residence or in a day residence, or obligate the minor or his parent to make a payment – a fine, court expenses, or compensation to a person injured in the course of the offense. The court may also place the minor on probation or give any other order relating to the minor's behavior, as the court deems necessary.⁵⁸

Under military legislation, the judge may impose a maximum prison sentence of six months on minors aged 12 and 13, and one year on minors aged 14 and 15, except for offenses the penalty for which is greater than five year's imprisonment. The maximum prison sentence is determined on the basis of the offender's age at the time the sentence is given, but the age of the offender at the time he committed the offense should be taken into account at sentencing.⁵⁹

54. Youth Law (*supra* note 20), section 10I.

55. Order Regarding Security Provisions No. 1651 (*supra* note 6), sections 37-38.

56. Youth Law (*supra* note 20), section 24(3).

57. *Ibid.*, section 24.

58. *Ibid.*, section 26.

59. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 168.

Chapter 2

Statistics on punishment of minors convicted of stone throwing⁶⁰

The IDF Spokesperson's Office provided B'Tselem with figures on minors who were indicted for stone throwing between 2005 and 2010. The figures do not include minors indicted for additional offenses. B'Tselem was unable to obtain figures on the total number of Palestinian minors who were convicted of "security" offenses, so their percentage of all minors who were imprisoned in Israeli jails is unknown.⁶¹

In researching the matter, B'Tselem also requested the army and the police to provide figures on minors who had been arrested or detained for questioning for stone throwing, but were not charged. They could not provide the requested information.⁶²

60. The figures in this chapter are based on the final information provided to B'Tselem by the IDF Spokesperson's office, after the latter made numerous corrections. B'Tselem used these figures only after it was told that they included only cases of minors who had been charged with stone throwing. However, the IDF Spokesperson's response to the report, provided to B'Tselem the day before publication, indicated that the file in which a 14-year-old was sentenced to a 20-month prison term did not allege stone throwing. Considering the late notice, B'Tselem was unable to change the figures.

61. The figures, which the IPS provided to B'Tselem pursuant to a request under the Freedom of Information Law, related to the number of prisoners on the last day of each year, and not the total number of minors who served a sentence that year. Following a few telephone calls, Yafa Zenesh, IPS communications and freedom of information officer, told B'Tselem that the IPS' computer system was unable to produce the requested data. The IDF Spokesperson's Office provided information on the total number of files that were opened in the Youth Military Court in 2008-2010, including minors who were prosecuted for criminal offenses (letter of 12 May 2011 from Zohar Halevi of the IDF Spokesperson's Office, *supra* note 31). These figures indicate that, in 2008, 21 percent of the minors charged were accused of stone throwing, and in 2010, 31 percent of the minors charged were accused of stone throwing.

62. The police told B'Tselem verbally that it did not have this information. A letter of 15 November 2010 from Attorney Avishag Zaken-Weisenberg, the official in charge of freedom of information in the ombudsman's office of the Israel Police in response to B'Tselem's inquiry of 26 October 2010, indicates that she was unable to answer the question on the number of minors who had been detained for questioning and the number of minors who had been arrested in East Jerusalem. The number of criminal files opened against minors for stone throwing that B'Tselem was provided by Attorney Zaken-Weisenberg on 24 June 2010, in response to B'Tselem's inquiry of 24 May 2010, was hundreds of percent lower than the number of minors convicted of stone throwing, so the data were not useful. A letter of 15 March 2011 from Itai Troim of the public inquiries section of the IDF Spokesperson's Office (*supra* note 3), indicated the number of arrests of persons suspected of "popular hostile terrorist activity" that were made by the army in 2008-2010, but we do not have information on the percentage of arrests for stone throwing, or on the percentage of minors who were among the persons arrested.

According to the IDF Spokesperson's figures, in 2005-2010, 835 minors were charged with stone throwing: at the time the action was filed in court, 34 of the defendants were aged 12-13, 255 were aged 14-15, and 546 were aged 16-17.⁶³

Number of minors prosecuted for stone throwing, by year and age

Age	2005	2006	2007	2008	2009	2010	Total
12-13	4	5	6	3	10	6	34
14-15	34	28	39	37	64	53	255
16-17	68	48	81	99	105	145	546
Total	106	81	126	139	179	204	835

Stone throwing comes under three different sections of the law: throwing objects in a manner that impedes travel on a traffic artery, throwing objects at a person or property, and throwing objects at a moving vehicle. Of the minors convicted of stone throwing, 62.3 percent were convicted of throwing objects at a person or property, 32.2 percent were convicted of throwing objects at a moving vehicle, 1.3 percent of both of the above offenses, and 4.2 percent of throwing objects in a manner that impedes travel on a traffic artery.

The penalty imposed on minors convicted of stone throwing usually contains three components: imprisonment, a conditional prison sentence, and a fine. The judges balance these components and sometimes, rather than imposing the usual prison sentence, increase the fine or the period of the conditional sentence in exchange for part of the prison sentence, depending on the circumstances. The judges refer to the result as the "punishment mix" and in a few judgments have stated that they seek to achieve a proper balance between deterrence and rehabilitation.⁶⁴

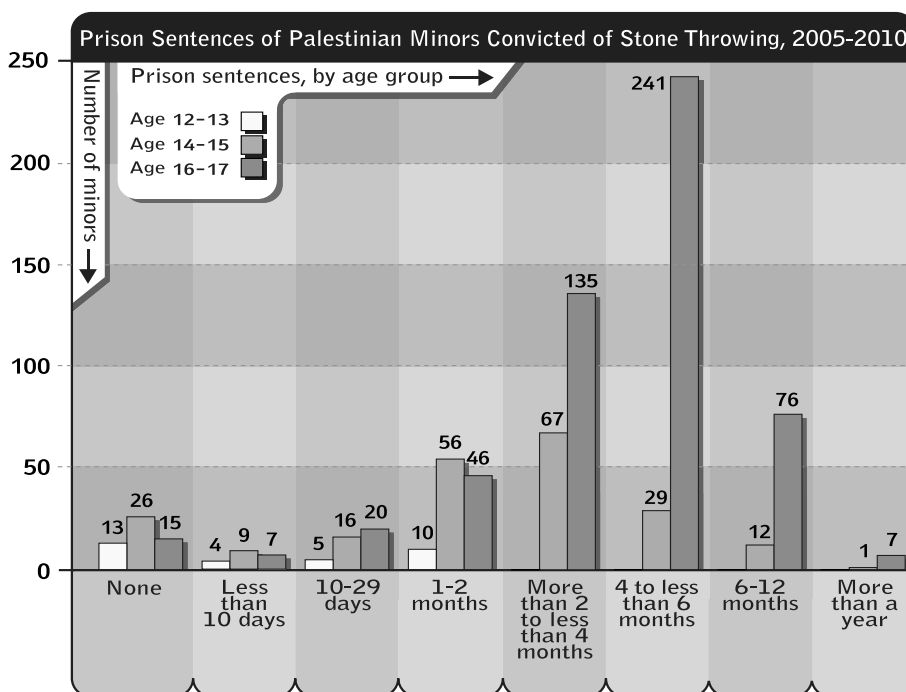
63. Response of the IDF Spokesperson's Office on 16 June 2011 to B'Tselem' inquiry of 24 May 2010. The data provided to us also included files that involved young adults and files that did not mention the results of the criminal proceedings, and therefore are not included in the statistics presented in this report. Also, the data cover only minors who were tried for stone throwing, and not minors who were released on bail and were not prosecuted, or minors who were released following interrogation. Despite our efforts, we were unable to obtain figures on these latter two groups of minors.

64. See, for example, Mil. Ct. (Judea and Samaria) 1374/10, *Military Prosecutor v. A.A.*; Mil. Ct. (Samaria) 2710/08, *Military Prosecutor v. Ahmad Muhammad Dib Abu 'Amira*; Mil. Ct. (Samaria) 2710/08, *Military Prosecutor v. Muhammad Sharif 'Isam Sliman Sabah*.

The figures relating to penalties presented below differ from the above, since they are based on the age of the minors at the time the sentence was given.⁶⁵ In some cases, minors had moved to a higher age group by the time they were sentenced. Also, 19 of the minors turned 18 while awaiting sentencing and are not included in these statistics. In addition, in 2007, one minor was acquitted. Thus, the following analysis is based on 815 cases, divided as follows: 32 minors aged 12-13, 236 aged 14-15, and 547 aged 16-17.

Imprisonment

In 2005-2010, the median period of imprisonment for minors who had turned 16 and not yet turned 18 at the time of sentencing was four months. Fifteen percent of them served sentences of six months or more. One percent of the minors in this age group served sentences of more than a year, and the longest sentence served was 20 months' imprisonment.



65. The precise figures on the date the file was completed were taken from the figures provided by the IDF Spokesperson on 2 August 2010 and 15 May 2011 (data for 2006). We later discovered that this data contained many files of defendants convicted not only of stone throwing, and the figures were re-sent on 16 June 2011 (*supra* note 63). However, this data contained many errors and only partial information in some cases. The more recent figures contained 193 cases that were not included in the first figures, and therefore we only have the precise date of the end of proceedings for the cases that appear on both lists. In cases where we do not have exact information regarding the date on which the file ended, the minors remain in the age group appropriate for the time the action was filed.

The median period of imprisonment for minors who had turned 14 and not yet turned 16 at the time of sentencing was two and a half months. Twenty-six percent of them served sentences of four months or more, and five percent of the minors in this age group served sentences of six months to a year.

The punishment imposed on minors aged 14 to 17 was uniform in 2005-2010, and the figures provided to B'Tselem by the IDF Spokesperson do not indicate any meaningful change that resulted from the establishment of the Youth Military Court in November 2009.

The 32 minors aged 12-13 were given lighter sentences. Forty percent of them were not given a prison sentence, and 31 percent were imprisoned for one to two months. It is not possible to point to a trend of punishment for this age group given its small number. However, in 2010, after the Youth Military Court was established, five minors of this age were convicted and the longest sentence given was nine days, significantly less than in previous years.

Conditional prison sentence

The median conditional sentence for the 16-17 age group was six months, and 57 percent of them were given a conditional sentence of six months or more. Relatively short conditional sentences generally accompanied relatively short prison sentences. However, identical prison sentences were accompanied by a wide variety of conditional sentences.

The median conditional sentence given to minors aged 14-15 was four months. 63 percent were given a conditional sentence of four months or more, and six percent were given a conditional sentence of more than one year. Generally, particularly long conditional sentences were imposed in cases in which the minor was given a relatively long prison sentence.

Of the 32 minors under age 14 who were convicted of stone throwing, 25 percent were given a one-month conditional sentence, and the others were given a conditional sentence of a few months. Three minors (nine percent) were given an especially long conditional sentence of six months, which was imposed as a substitute for imprisonment.⁶⁶

66. One minor was sentenced to three days' imprisonment and a conditional sentence of five months and 27 days (Mil. Ct. (Judea) 1739/05). Two minors were given a six-month conditional sentence (Mil. Ct. (Judea) 6054/06, and in File 1128/10 (B'Tselem does not know which court handled the case)).

indicating otherwise, the term “imprisonment” includes actual imprisonment and conditional imprisonment.⁶⁹

Despite this ruling, in 2008, a military court imposed prison sentences of more than six months on two 13-year-old minors convicted of stone throwing: in one case for a total of six and a half months, with one and a half months actual imprisonment,⁷⁰ and seven months in the other case, two of which were actual imprisonment.⁷¹ As far as B'Tselem knows, these sentences were not appealed.

With regard to minors over age 14, the limitation does not apply to minors convicted of stone throwing, in that the maximum penalty for the offense is 10 to 20 years' imprisonment. According to the information provided by the IDF Spokesperson's Office, between 2005 and 2010, of the 236 minors aged 14-15 who were convicted of stone throwing, 32 (13.5 percent) were given total prison sentences (actual and conditional) of greater than one year. Of the 547 minors aged 16-17, seven (1.2 percent) served a prison sentence of more than one year.⁷²

Fines

The military court may require the parents to pay the fines imposed on their children who are under age 18.⁷³ Col. Shaul Gordon, a former president of the Military Court of Appeals, noted that, “The fine, by its nature, is intended to be a burden and an impediment so that the ‘sufferers’ weigh their future actions, for if not – what good is a fine?”⁷⁴

The fines collected are handed over to the Civil Administration as part of its general budget.⁷⁵ According to the data provided by the IDF Spokesperson's Office, in 2005-2010, 994,750 shekels were collected in fines imposed on minors convicted of stone throwing.

In the 16-17 age group, no fine was imposed on 7 percent. A fine of up to 1,000 shekels was imposed on 58 percent, and 8 percent were fined more than 2,000 shekels.

69. Mil. Ct. App. (Judea and Samaria) 358/03, 378/03, *R.N. v. Military Prosecutor* (emphasis in original).

70. Mil. Ct. (Judea) 1929/08, *Military Prosecutor v. Y.R.*

71. Mil. Ct. (Judea) 3909/08, *Military Prosecutor v. M.F.*

72. The figures are taken from the IDF Spokesperson's response of 16 June 2011 (*supra* note 63).

73. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 176.

74. Mil. Ct. App. 358,378/03 (*supra* note 69).

75. Letter of 3 January 2011 to B'Tselem from Second Lieutenant Amos Wagner, public requests officer in the office of the head of the Civil Administration.

In the 14-15 age group, no fine was imposed on 10 percent. A fine of up to 1,000 shekels was imposed on 48 percent, and 9 percent were fined more than 2,000 shekels.

In the 12-13 age group, no fine was imposed on 13 percent, and a fine of up to 1,000 shekels was imposed on 65 percent.

Punishment of adults convicted of stone throwing

The sentence imposed on adults convicted of stone throwing is not uniform. Vice-President of the Judea Military Court, Lt. Col. Ronen Atzmon, noted, in a sentence he gave on 3 January 2011, that:

In the extensive case law in this sphere, one can find an extremely broad range of punishments given for stone throwing; beginning with a conditional prison sentence or a prison sentence of a few days or weeks – primarily in the case of minors and for throwing stones at an army vehicle – to a case in which a 4-8 months’ prison term was imposed, where no injury was caused, to a holding by the [Military] Court of Appeals that the proper punishment should be 10-12 months’ imprisonment (Mil. Ct. App. (Judea and Samaria) 277/03, *Alatrash*), and one judge went even further, holding that a prison sentence of more than 24 months was warranted (2976/08, *Salah Darwish*).⁷⁶

In this case, Judge Atzmon rejected the plea bargain offered to a defendant, according to which an adult convicted of stone throwing would be sentenced to 91 days’ imprisonment. The judge explained: “The proper punishment these days in a plea bargain involving an adult who threw stones at a rapidly moving, unprotected vehicle, but which caused no damage, is at least 6-8 months’ imprisonment, based on the circumstances of the case, the proceeding, and the defendant.⁷⁷ Yet, Atzmon quoted Youth Court judge Sharon Rivlin-Ahai, who held in another case that, “the ‘accepted’ level of punishment in plea bargains for adults is four and a half months’ imprisonment.”

76. Mil. Ct. (Judea) 4693/10, *Military Prosecutor v. 'Alaa Gh'naim Ibrahim Warasneh*, 3 January 2011.

77. *Ibid.*

Chapter 3

Violation of the rights of Palestinian minors suspected of stone throwing

The rights of Palestinian minors are flagrantly violated at every stage of the proceedings conducted against them, from the initial arrest and removal from their homes, through interrogation and trial, to serving the prison sentence, and then release. The entities responsible for the violations are the agencies involved in the process – the army, the police, the Israel Security Agency (ISA), the courts, and the Israel Prison Service (IPS).

To study the process from the moment of arrest and the treatment they receive in the military justice system, B'Tselem spoke with 50 minors aged 12-17 who were arrested between November 2009 and February 2011, and with persons who witnessed some of the arrests. Of the minors who were interviewed, six were 12-13 years old, 23 were 14-15 years old, and 21 were 16-17 years old. Fourteen of the minors were released immediately after they were interrogated, one minor, who had a heart defect, was hospitalized. The remaining 35 were detained or imprisoned, six of them for a few days, and the rest for periods ranging from one week to ten months. Thirteen of the minors were released without restrictions; the others were prosecuted. One girl was among the 50 minors with whom B'Tselem spoke. B'Tselem also documented the detention for interrogation of two minors under age 12, the age of criminal responsibility. Minors who did not want to be identified and minors about whom information was obtained from other sources are referred to by their initials.

Much of the infringement of the minors' rights results from the failure of military law to grant them rights due to their age. The judges often recognize there was a fundamental defect in defining the rights of Palestinian minors in military law. They expressed their desire to better protect minors' rights and, among other things, to create diagnostic and rehabilitative means similar to those existing inside Israel.⁷⁸

For example, judgments of a Judea Military Youth Court judge, Major Sharon Rivlin-Ahai, indicate that, in her opinion, the Convention on the Rights of the Child is a fundamental document that should also apply to the military courts and serve

78. See, for example, Mil. Ct. (Judea) 4937/08, *Military Prosecutor v. S.H.*, 6 August 2009; Mil. Ct. (Judea) 4936/08, *Military Prosecutor v. A.D.*, 6 August 2009; Mil. Ct. (Judea) 1959/09, *Military Prosecutor v. J.A.*, 13 July 2009; Mil. Ct. (Judea) 1600/09, *Military Prosecutor v. R.Z.*, 14 May 2009; Mil. Ct. (Judea) 1261/09, *Military Prosecutor v. H.F.*, 23 February 2009; Mil. Ct. App. (Judea and Samaria) 1889/09, *Military Prosecutor v. R.F.*, 7 April 2009.

as a basis for enacting legislation and sentencing minors in the Military Youth Court. In one of her judgments, she held that, “the spirit of the Convention, like the statutes and case law, require an approach that gives substantial weight to the age of the minor at the time the offense was committed, and at the time of sentencing.”⁷⁹

In his precedent-setting judgment dealing with the release of N.A., a minor charged with stone throwing, from remand until the end of proceedings, President of the Military Court of Appeals, Col. Aharon Mishnayot, presented his worldview on the rights of Palestinian minors facing trial in the military court system.

Although the provisions of Amendment No. 14 to the Youth Law do not apply in the Region, it is impossible to ignore their spirit or the principles underlying the protection of a minor’s rights, even if he is suspected of committing offenses, and dominant weight must be given to the supreme principal of the best interest of the minor, as stated in the proposed law. Ultimately, a minor is a minor is a minor, whether he lives in a place where Israeli law applies in its entirety, or in another place, where, although Israeli law does not apply in its entirety, it is subject to the significant influence of the Israeli legal system.⁸⁰

Despite these comments, as we shall see below, the spirit of the Youth Law does not permeate the acts of the authorities, including the courts, that deal with Palestinian minors who are suspected offenders, and their rights are severely breached.

The arrest

Of the 50 minors who were arrested on suspicion of stone throwing between November 2009 and February 2011 with whom B'Tselem spoke, 30 were arrested at night (10:00 P.M. to 7:00 A.M.). These minors stated that other minors were arrested along with them. Eleven of them related that the soldiers used violence against them while they were driven from their homes to the interrogation site. Seven of the minors arrested at night were released the next day, one was hospitalized and then released due to his illness, and the others were detained for a few days up to ten months. Night arrest was the first means used to bring in these minors for interrogation. These were not nocturnal arrest operations carried out after the minors had failed to appear when summoned for questioning.

A few scenarios commonly occurred during night arrests. Many of the minors said soldiers ordered the entire family to step outside, and after checking the identity

79. Mil. Ct. (Judea) 4941/08, *Military Prosecutor v. K.D.*, 6 August 2009.

80. Mil. Ct. App. (Judea and Samaria) 2912/09 (*supra* note 40), emphasis in original.

of each member of the family, arrested the minor. In other cases, security forces entered the house. The minors were taken to the interrogation in a military vehicle alone, with no parental accompaniment. All the minors related that, although they did not resist arrest, they were handcuffed and blindfolded with a piece of cloth.⁸¹ Mahmoud Salim, 14, from 'Azzun, described his arrest.

Around 2:30 Wednesday morning, 4 August 2010, Israeli soldiers broke into our house. I was sleeping and my mother woke me up. I was surprised to see a few soldiers in our house. There were five I think.

One of the soldiers who were in the living room asked where Mahmoud was. I told him it was me and he told me to give him my ID card. I told him I was young and didn't have an ID card yet. Later, the same soldier asked for my birth certificate. My mother gave it to him. He looked at it and took it with him.

The soldiers took me outside, where a soldiers' transport van and a small army jeep were parked. The soldiers blindfolded me, tied my hands in front and put me in the jeep.⁸²

Malek 'Omar, 14, from the Jalazun refugee camp, described his arrest at night along with at least 16 other minors.⁸³

On Thursday, 11 February 2010, at about 1:15 in the morning, I was sleeping in my room with two of my brothers. Our apartment, in the Jalazun refugee camp, is on the second floor of the house. My grandfather lives on the first floor. I woke up and saw a soldier standing over me. He nudged me with the barrel of his rifle. I was scared. He said, "Get up and get dressed because we need you a bit." I was afraid because this was the first time I had ever seen an Israeli soldier so close up. I thought they wanted to search the house. I got up. The soldier ordered me to get dressed and I got dressed.

There were a few other soldiers with him who were masked. They spread out around the house. They had rifles with lights. Two soldiers grabbed me by my arm pits and took me outside. My father was with the soldiers when I was taken from my room. He gave them my birth certificate because I don't have an ID card. I'm still under 15. I was born on 3 July 1995. My father told them, "He's a minor, what do you want from him?" The soldiers said: "We want him for a bit, half an hour. Then we'll bring him back."

81. For a comparable description of a night arrest of a minor, see Moran Levy and Dan Tamir, "Rolling Stone," *Bamahane*, 3 November 2010 [in Hebrew], 32-35.

82. The testimony was given to 'Abd al-Karim a-S'adi on 8 August 2010.

83. The figure of 17 arrests is based on a report by DCI-Palestine regarding the night arrest in Jalazun on 11 February 2010. See <http://www.dci-pal.org/english/display.cfm?DocId=1377&CategoryId=1>.

On my way out, I saw that the doors on the first floor had been broken. The soldiers took me outside and one of them tied my hands behind my back with plastic cuffs. They covered my eyes with a strip of cloth and then took me on foot to a place in the village where there were other children who had been arrested.⁸⁴

Despite the soldier's promise, 'Omar was arrested, interrogated, tried, convicted, and sentenced to three months' imprisonment. Three other minors related to B'Tselem that, in their cases too, soldiers had promised their parents they would be brought back within a short time, but they were interrogated, tried, and sent to prison.

Night arrests have a great effect on the interrogation, even when it is not carried out until morning. Being rushed out of their beds, the fatigue, and the dread of having soldiers inside their homes make the minors extremely malleable. Only three of the 30 minors said they had been allowed to get a reasonable amount of sleep before the interrogation; in five cases, the minors said that soldiers woke them if they fell asleep while waiting for the interrogation to begin. Maher Abu Hanaineh, 16, who was arrested at night and taken in for questioning at the Ariel police station, related to B'Tselem what happened there:

When we arrived [at the police station], they took us from the jeep, put us in a room and told us to sit on the floor. About half an hour later, they removed our blindfolds. Three soldiers guarded us. I was very tired and my eyes closed a few times. Every time I closed my eyes, a soldier kicked me in the legs with his heavy boots.⁸⁵

An article published in the IDF's magazine *Bamahane* concerning a night arrest operation in the Beit Ummar village, in which a 15-year-old minor was arrested on suspicion of stone throwing, confirms that night arrests are routine, and that the soldiers view them as an ordinary military operation. The deputy commander of the Nachshon Battalion, in the Kfir Brigade, Major Yoni, said that, "The fact that the wanted person is a minor does not affect the forces." The article also contained comments made by a soldier: "This child caused a lot of trouble, and he has to pay for it." The company commander noted that the parents prevented their children from taking part in the weekly demonstration held immediately after the arrest for fear the children would be arrested and they would have to pay a high bond, and considered it a positive deterrent.⁸⁶

84. The testimony was given to Iyad Haddad on 28 June 2010.

85. The testimony was given to Salma a-Deb'i on 17 June 2010.

86. Levy and Tamir, "Rolling Stone" (*supra* note 81).

The removal of minors from their beds in the middle of the night by a large contingent of soldiers frightens them greatly. Conducting a night arrest of a minor whose interrogation is generally not urgent, and the minor is not suspected of having committed serious offenses, is patently unreasonable. On 3 October 2010, B'Tselem wrote to the attorney general, the state comptroller, the inspector general of the Israel Police, and the OC Central Command demanding that minors not be arrested at night. B'Tselem has not received a substantive response to its letter.

Gathering information in advance of arrest

In January 2011, the army began to use an additional tool for identifying stone-throwing minors in a-Nabi Saleh. B'Tselem volunteers in the village, Nariman a-Tamimi,⁸⁷ and Bilal a-Tamimi,⁸⁸ said there had been at least four cases that month alone in which the army entered the village in the middle of the night to photograph residents, primarily minors. On 17 January 2011, the forces went from house to house, checking the identity cards of the parents and asking them to wake all the (male) youths over age ten so they could take their picture. The soldiers recorded the names of the minors and the adults they photographed. On 23 January, soldiers came and arrested two members of one of the families in whose house they had photographed people the week before, one 14 years old and the other 24.

The photos were taken for what the army calls “mapping”: the army did not have any basis for suspecting any particular minor they awoke to photograph, but wanted to build a reservoir of pictures they could later use for identification purposes, should the minor be involved in stone throwing or other violent activity. In response to a report on the issue which was broadcast on Channel Ten News, the army said that “it uses a variety of means to maintain order and security.”⁸⁹

The interrogation

Following arrest, the minors are taken for interrogation at an army base, police station, or prison. Three of the minors who were interviewed for the purposes of this report were taken from an army base to a police station and were questioned in both places.

87. The testimony was given to Iyad Hadad on 24 January 2011.

88. The testimony was given to Iyad Hadad on 26 January 2011.

89. Or Heller, “Exclusive: This is How the IDF Raids Houses of Palestinian Minors,” Channel 10 News, 13 February 2011, available at <http://news.nana10.co.il/Article/?ArticleID=780336> [in Hebrew].

Prior to the questioning, whether on the way there or once they arrive, someone from the army's medical staff speaks with them briefly to check their medical condition. In the case of Wasfi al-Jundi, 16, who has a heart problem, the information he provided prevented his being taken into questioning. Rather, the day after he was arrested, he was hospitalized at Hadassah Ein Kerem Hospital in Jerusalem, and later released from custody.⁹⁰

In some cases, the minors were first questioned in Arabic. Sometimes, they were taken from questioner to questioner. The questioners may be the tracker in the field at the time of arrest, a detective who operated with the military force, a patrol officer, or a police intelligence officer at the police station.⁹¹ Sometimes, an agent from the Israel Security Agency does the questioning. Since the questioning is not an official interrogation, the questioner is not required to warn the suspect, and the suspect does not have the right to consult with an attorney. Therefore, the information arising from the questioning cannot be used against the person at trial.

Following the questioning, the minors are taken into an official police interrogation. Often, the person who conducted the questioning and speaks Arabic, accompanies the minor and serves as an interpreter. Security forces who come in contact with the minors do not explain the stages of the interrogation to them, and the minors are not aware of the difference between the questioning and interrogation stages. In practice, the responses given by the minors at the preliminary questioning stage form the basis for their subsequent statements at the police station.

The interrogators do not introduce themselves, but often use only code names. They also do not explain their functions and powers. It is unclear whether they are youth interrogators who have received the training mandated by law. For example, in the interrogation of I.D., from a-Nabi Saleh, three interrogators were present. Only one of them had received the requisite training as a youth interrogator, but he had not taken refresher courses after Amendment No. 14 to the Youth Law came into force. Despite this, the police contended that he served as a youth interrogator during the course of the interrogation.⁹²

At the end of the interrogation, the minors sign their statement, which is written in Hebrew. Five of the minors with whom B'Tselem spoke related that they refused to sign the confession since it was not written in Arabic. In one of the cases, the

90. The testimony was given to 'Amer 'Aruri on 1 August 2010.

91. According to the testimony of "Da'ud" at the Department for the Investigation of Police (DIP) File 3516/10, 12 August 2010. The investigative material in the file was forwarded to the Public Committee Against Torture in Israel on 7 December 2010.

92. Mil. Ct. (Judea) 1367/11, *Military Prosecution v. I.D.*, protocol of hearing of 10 March 2011.

statement was translated into Arabic in order to be signed and in another case, the minor was given an oral explanation of the content of the document he was required to sign.

Some minors were released immediately after the interrogation or after a short detention, following a decision not to file charges against them or to release them on bail. Of the 50 minors interviewed for the purpose of this report, 13 were released without charges being filed against them – nine following their interrogation and four after more than a week in detention. The minors who were not released were generally taken to Ofer Prison or to a prison inside Israel that had been adapted for minors. A few of the minors were taken to army bases and held there for a few days before being transferred to one of these prison facilities.

Presence of parents at the interrogation

Unlike Israeli law, military legislation makes no reference to the presence of parents during the interrogation of their children, and Palestinian minors are not granted the right to have a parent present.

Of the 50 minors who were interviewed for this report, only two were accompanied by an adult during their interrogation. Akram D'ana, 13, from Hebron, was arrested by soldiers on 22 September 2010 and taken to a police station. The soldiers allowed a neighbor who was in the area to accompany him. The neighbor was also present during the interrogation and served as an interpreter. When the interrogation ended, the minor was released. He was ordered to return the next day. He arrived with his father, but the police officers did not allow the father to enter the interrogation room.⁹³

The other case involved Suhad al-'Awiwi, 13, the only girl who was interviewed for this report. On 23 March 2010, she arrived at the police station accompanied by her neighbor, who was in the room during the interrogation.⁹⁴

In the other cases, soldiers did not allow the parents of the minors to accompany them, despite their express requests. On 22 April 2010, soldiers came to the house of the Qawazbeh family, in the village al-Maniya, near Bethlehem, and arrested two members of the family – Jihad, 16, and Nadim, 15. Their father insisted that he be allowed to accompany them and the soldiers allowed him to get into the army jeep with them, but when the jeep reached the outskirts of the village, they ordered the father to get out.⁹⁵ On 27 September 2010, Sa'il Abu Qweidar, 15, was arrested in Hebron. One of his teachers and an elderly woman who knew the

93. The testimony was given to Musa Abu Hashhash on 30 September 2010.

94. The testimony was given to Musa Abu Hashhash on 24 March 2010.

95. The testimony was given to Suha Zeid on 11 and 12 May 2010.

family were present at the time of the arrest and requested that they be allowed to accompany the youth, but the soldiers refused.⁹⁶

None of the minors were given an opportunity to consult with their parents before the interrogation. Muhammad Hamamreh, 14, asked to speak by telephone with his father. The interrogator called the father and spoke with him, but did not permit Muhammad to speak with him.⁹⁷

Even when the parents are present, security forces do not allow the minors to speak with them. U.A., 12, related to B'Tselem that:

The soldiers took us to Etzion and dropped us off in the yard. We sat on the ground, our hands cuffed and eyes covered, for more than three hours. When they took us from the yard, I heard my father's voice. He called to an officer. I saw him from under the blindfold. He was standing behind the main gate. Later, they took us and the other children to another place, far from the gate. I couldn't see my father anymore, but I could hear him call to a soldier: "Soldier! Soldier!"⁹⁸

The presence of parents during the interrogation is intended to protect the minors' rights. However, the rare cases in which there was any involvement of an adult on the minor's behalf during the interrogation are the exceptions that prove the rule: Palestinian minors, even those who are very young, and who have only just reached the age of criminal responsibility, were interrogated without a parent present, by interrogators who were not necessarily authorized as youth interrogators, often after they were taken from their home in the middle of the night.

Detention of minors under the age of criminal responsibility

The age of criminal responsibility in Israeli law and military legislation is 12. Therefore, a criminal proceeding may not be initiated against an offender who is under age 12. However, in researching this report, B'Tselem uncovered two cases in which security forces detained minors under the age of criminal responsibility.

On 25 January 2011, around 10:00 A.M., the police special patrol unit arrested, Karim Saleh Dar Ayub, 11, in a-Nabi Saleh, on suspicion of stone throwing. He was arrested on the street and taken in for questioning by police officers without a parent present, even though his mother was

96. The testimony was given to Musa Abu Hashhash on 27 November 2010.

97. The testimony was given to Suha Zeid on 15 November 2009.

98. The testimony was given to Musa Abu Hashhash on 24 June 2010.

at the site and others there informed the police officers of his age.⁹⁹ A representative of B'Tselem contacted the police and demanded that the child be released. Numerous conversations were held before the police told B'Tselem's representatives to ask the parents to bring proof of the child's age to the police station in Binyamin. Around noon, some two hours after the child was arrested, his father arrived at the police station. Karim and his father went into the interrogation room, where he was questioned by an Arabic-speaking youth interrogator. The police officers at the station pointed out to B'Tselem's representative that due to the child's age, the interrogation was being conducted by a youth interrogator, although military legislation did not require it. During the interrogation, Karim admitted that he had thrown stones that morning in protest against the arrest of his 14-year-old brother a few days earlier. At the end of the interrogation, which lasted about 30 minutes, the police demanded that the father supervise his son, and the boy was released.¹⁰⁰

The second case occurred on Friday, 18 February 2011, around 1:30 P.M., when military forces entered the home of the 'Alameh family in Beit Ummar. The soldiers told the family that the cameras on the guard tower at the entrance to the village showed two children throwing stones at the road. The soldiers detained the son Mamun 'Alameh, who is eight years old. An inquiry with the guard tower indicated that he was not the person they were looking for, and they released him and arrested his brother, Mahmoud, who is nine years old. Mahmoud was taken by jeep, handcuffed and blindfolded. Local residents demanded that the officer release the child. The officer replied that the child would be released only if the stone throwing in the village stopped, thereby using a nine-year-old child as a hostage for the conduct of the entire village.

Mahmoud was then questioned by a soldier without his parents' presence. The soldier asked him if he had thrown stones or had seen children throwing stones. He was then taken to the Etzion camp. His father went to the camp, but was not allowed to enter and remain with his son. From the moment the soldiers took him, B'Tselem was in contact with the authorities – the Civil Administration, the police, and the army – demanding that he be released and that his father be allowed to remain with him until then. Even though all the officials knew the child's age, the father was not allowed to enter the camp. It was not until 7:00 P.M. that Mahmoud was

99. Or Heller, "Documentation: How Police Use Violence When Arresting Palestinian Child," Channel 10 News, 27 February 2011, <http://news.nana10.co.il/Article/?ArticleID=780336> [in Hebrew].

100. Testimony about the arrest was given to Iyad Hadad on 1 March 2011. Another B'Tselem staff member was present, and the description of the events is also based on her report.

released, after having been with the soldiers, without the presence of an adult on his behalf, for more than five hours.¹⁰¹ The spokesperson for the Judea and Samaria Division explained to B'Tselem's representative that the child's release was delayed because the authorities intended to fine his parents, but they ultimately released him without a fine, and his father was warned to supervise his son better in the future.¹⁰²

The right to meet with an attorney

Military legislation states that, as a rule, detainees have a right to meet with an attorney. The right may be restricted when the detainees are suspected of having committed certain offenses, including stone throwing, for a maximum period of 90 days, if necessary "for reasons related to the security of the region" or for the needs of the interrogation.¹⁰³

According to the law, preventing a meeting with an attorney should be the exception. Yet, of the 50 minors with whom B'Tselem spoke, only one was given the opportunity to meet with his attorney prior to the interrogation.¹⁰⁴ Another minor was asked during the interrogation if he had a lawyer, and later in the day, after the interrogation had ended, an attorney visited him for about five minutes.¹⁰⁵ Six minors related that they had spoken with an attorney only shortly before the trial, and described the case to him; one minor met with his lawyer about two weeks after he was arrested. Also, in one case, the minor's attorney contacted the interrogators prior to the interrogation, but they refused to let the youth speak with him until the interrogation ended.¹⁰⁶

101. The testimonies were given to Musa Abu Hashhash on 20 February 2011. Part of the arrest was filmed by B'Tselem volunteer Muhammad 'Ayad 'Awad on 18 February. On 18 February, Noam Preiss of B'Tselem, spoke with Lior and Yulia of the Civil Administration's Humanitarian Hotline, with Amitai Amos, investigations officer in the Hebron Police Department, with Zohar Halevi, head of the human rights and public inquiries section in the IDF Spokesperson's Office, and with Liad, spokesperson of the IDF's Judea and Samaria Division.

102. Imposing a fine on parents of a minor under the age of criminal responsibility who is suspected of stone throwing began during the first intifada, and was approved by the High Court of Justice (see HCJ 591/88, *Taha, a Minor, et al. v. Minister of Defense et al.*). The military commander may impose the fine directly, without the involvement of the police or the military justice system.

103. The first 30 days are set forth in a written decision of the person in charge of the investigation, and the 60 additional days are pursuant to judicial order. See, Order Regarding Security Provisions No. 1651 (*supra* note 6), sections 58-59.

104. 'Alaa Kahush, 17, was arrested on 29 April 2010. The testimony was given to Iyad Hadad on 5 July 2010.

105. Ahmad Burnat, 16, was arrested on 19 July 2010. The testimony was given to Iyad Hadad on 2 August 2010.

106. Mil. Ct. (Judea) 1367/11, *Military Prosecutor v. I.D.*, decision of 21 March 2011.

The statements made to the police by the minors indicate that some of them were asked if they wanted to meet with an attorney, but it seems that the question was a formality, and that the police do nothing to enable such a meeting. In the statement of O.Z., 15, at the Hebron police station, he said, in response to a question, that he did not have a telephone number for a lawyer, and the interrogation continued.¹⁰⁷ Muhammad Hamamreh, 14, said during his interrogation, "I'm young, I don't have a lawyer."¹⁰⁸

The problem inherent in the police's conduct in this regard was described by President of the Military Court of Appeals, Col. Aharon Mishnayot:

Given the young age of the respondent, I doubt if he understood the meaning of the right to counsel, even assuming that the right was explained to him in clear and understandable language, and it is very doubtful that he was aware of his right not to incriminate himself.¹⁰⁹

Time of the interrogation

Of the 30 minors with whom B'Tselem spoke who were arrested at night, only three were interrogated immediately following their arrest. Nineteen said they were not interrogated until morning, three said they were interrogated in the afternoon, and two said they were interrogated only five days later. Seven minors who were arrested during the day were interrogated at night, and two minors who were arrested around 8:00 P.M. were interrogated after 10:00 P.M. None of the minors who were arrested at night were interrogated about the incident that took place the same day. Generally, they were questioned about incidents that allegedly took place at least a week earlier.

Israeli law states that a minor under age 14 shall not be interrogated after 8:00 P.M.; a minor 14 years or older may not be questioned after 10:00 P.M. The reason for the prohibition is obvious. The darkness – and the confusion and fear it creates – along with the fatigue of minors, who are normally asleep at these hours, put pressure on them during the course of the interrogation. Military law does not contain a similar prohibition. Nevertheless, Judge Netanel Benisho, Vice-President of the Military Court of Appeals, held that it was improper to interrogate a minor at night, even if it was not unlawful.

107. O.Z.'s statements to the police on 6 and 10 November 2009, from DIP File 198/2010, which was provided to B'Tselem on 1 December 2010.

108. Muhammad Hamamreh's statement to the police on 6 November 2009, from DIP File 198/2010.

109. Mil. Ct. App. (Judea and Samaria) 2912/09 (*supra* note 40).

I shall begin by saying that the fact that the interrogation of the appellant took place at 4:00 A.M., immediately following his arrest, raises complicated questions. Indeed, the law does not prevent such an action. However, case law has recognized the possibility that interrogation late at night could harm the judgment of the person under interrogation (see Crim. File (Jerusalem) 915/07, *State of Israel v. M. H. et al.*, published in Nevo). Clearly, this concern intensifies when the interrogee is a minor, only 15 years of age and it is doubtful that he is aware of his rights. It is easy to imagine the mental state of a child who is arrested in the middle of the night by soldiers and is immediately taken to a police interrogation.¹¹⁰

These comments also apply to daytime interrogation after the minor is denied sleep at night, as a judge of the Judea Military Court, Major Ety Adar, pointed out.

Personally, I do not think that the defect in nighttime interrogation, as occurred in the said case, and the degree of harm it might cause to the judgment of a person interrogated at that time, is greater than the harm that might be caused to the judgment of a person who is arrested at night, is not interrogated for hours, but is held in conditions in which he is not sleeping or comfortable, and is taken to interrogation in the morning, without any rest whatsoever.¹¹¹

Yazen a-Sha'ar, 16, from Husan, was arrested on 15 November 2009 at around 1:30 A.M. He related to B'Tselem that he was not interrogated until the afternoon and that in the interim he did not sleep at all.

In the afternoon, I confessed because I was very tired and my whole body ached, and I wanted to end the interrogation and the beatings by the two interrogators. I confessed that I threw stones, and I signed my confession.¹¹²

Disregarding the physical needs of minors during interrogation

Twenty-three of the minors with whom B'Tselem spoke mentioned that they were not given food or drink for many hours following their arrest, and some said they were not allowed to go to the bathroom. U.A., 12, from Beit Ummar, was arrested around 6:00 P.M. and taken to interrogation at Etzion. It was not until 4:30 A.M. that he and his friends who had been arrested with him were given

110. Mil. Ct. App. (Judea and Samaria) 2763/09, *A. 'A. v. Military Prosecutor*, 16 August 2009.

111. Mil. Ct. (Judea) 1367/11, *Military Prosecutor v. I.D.*, decision regarding release pending completion of proceedings, of 21 March 2011 (*supra* note 106).

112. The testimony was given to Suha Zeid on 3 July 2010.

sliced bread.¹¹³ Fadi Khatib, 13, from Bil'in, was arrested around 6:00 P.M. on a Friday. Three hours later, he asked the soldier who was guarding him for water, but the soldier refused. He was released on bail on Tuesday. He said that during his time in detention, he was not given sufficient amounts of food. On the day he was released, he was taken at noon to a waiting room with other detainees who were being released. He was not released until 8:00 P.M., and was given only water in the interim.¹¹⁴

Adham Salim, 17, from 'Azzun, related that he was arrested at midnight and taken to the Ariel police station, where he was interrogated until the following evening. During that time, neither he nor the other detainees who were with him were given anything to eat except water.¹¹⁵ The Qawazbeh brothers, Jihad and Nadim, who are 15 and 16, from al-Maniya, said they, too, had been arrested at night and interrogated all day at Etzion without being fed, and that soldiers left them outside, in the cold and rain for more than two hours, and even took their jackets. It was not until nighttime, when they got to Ofer Prison, that they were given something to eat.¹¹⁶

'Omar Hamamreh, 15, from Husan, told B'Tselem that he was interrogated from morning to afternoon. In addition to the violence he suffered at the hands of the interrogator "Da'ud," he described other difficulties: "During my whole interrogation, the interrogator did not let me go to the bathroom, even though I really had to go. They didn't bring me food, or even water."¹¹⁷ Saqer Jibrin, 17, said he wanted to go to the bathroom before the interrogation began, but was told he would be allowed to go only afterwards. His interrogation lasted six hours.¹¹⁸

Threats and violence during interrogation

Of the 50 minors interviewed for the purposes of this report, 19 complained they were subjected to physical and verbal violence during their interrogation at the police station. Twelve of them were interrogated at the Etzion camp.¹¹⁹ One was interrogated at Salem, three at the Ariel police station, two at the Kiryat Arba police station, and one at a police station that the minor was unable to identify. Five of the minors reported that they were not subjected to direct physical violence but complained that they had been pressured by verbal threats, such as threats

113. The testimony was given to Musa Abu Hashhash on 24 June 2010.

114. The testimony was given to Iyad Hadad on 9 June 2010.

115. The testimony was given to 'Abd al-Karim a-S'adi on 4 July 2010.

116. The testimonies were given to Suha Zeid on 11 and 12 May 2010.

117. The testimony was given to Suha Zeid on 11 July 2010.

118. The testimony was given to Suha Zeid on 22 September 2010.

119. B'Tselem has received complaints of violence during interrogation at Etzion in the past. See, for example, B'Tselem's report, issued in July 2001, *Torture of Palestinian Minors at the Gush Etzion Police Station*, available at http://www.btselem.org/publications/summaries/200107_torture_of_minors.

of physical harm, prolonged imprisonment, or revocation of their father's work permit – and were exposed to cold and isolation. Three of these minors were interrogated at Etzion, one at Ariel, and one at the Russian Compound, in Jerusalem.

Saqer Jibrin, 17, from Tuqu', was released after being detained for eight days without being brought before a judge. He described his interrogation by "Amran" at Etzion.

During the interrogation, the interrogator threatened that if I didn't confess that I threw stones, he would take away my father's work permit, and my father would be left without work. He also threatened to send me to the Russian Compound, and that I would sit there for five years in isolation.

I'm still afraid because of the arrest and interrogation I underwent, especially because of the interrogator's threat that he would cancel my father's work permit. My father is the sole provider for our family. I wonder: can the interrogator carry out his threat and cancel my father's permit? That really scares me.¹²⁰

The minors who told B'Tselem they were subjected to physical violence provided extremely severe descriptions of slapping, beatings, kicks, and application of pressure to various parts of their body. Yazen a-Sha'ar, 16, related what happened to him during his interrogation by two interrogators at Etzion.

They took me to another room. There was an interrogator there who said his name was "Captain Da'ud". He asked me questions about cases of stone throwing and told me to give him the names of my friends who threw stones with me. When I denied that I threw stones, the interrogator "Da'ud" slapped me in the face. It was a hard slap. He said to me, "We'll terminate your father's permit, and he won't be able to work. Your mother and little brothers will go hungry; they won't even have bread to eat. You'd be better off if you admitted that you threw stones."

About half an hour into the interrogation, another interrogator arrived. He said his name was "Abu Yusef." He hit and kicked me all over my body, mostly in the head and back. I cried out in pain. "Abu Yusef" told me to shut up. He said to me, "Confess that you threw stones or we'll put you in a room that has lethal scorpions and snakes!"¹²¹

Shaker Hamamreh, 16, was arrested a few days after his friend Yazen. He, too, described violent treatment during his interrogation at Etzion.

120. The testimony was given to Suha Zeid on 22 September 2010.

121. The testimony was given to Suha Zeid on 3 July 2010.

There was an interrogator in the room. I don't remember what he said his name was. He asked me about stone throwing by me and my friends from school. After each question, he slapped me in the face. It hurt a lot, and I cried out in pain each time.

After about two hours, he left the room and another interrogator came in. He said his name was "Da'ud." He continued the interrogation, and he hit and kicked me too. He said, "If you don't confess, I'll put your brothers and father in jail. You've got to confess." Then he forced me to sign a paper that had something written on it that I did not understand. From morning until the second night, the two interrogators took turns interrogating me, and both of them beat me.¹²²

Mahmoud 'Amira, 14, from Ni'lin, described the violence he suffered during his interrogation at a police station whose location he didn't know.

They put me in a room with two interrogators. They didn't give me their names. One of them was short and fat, and the other was tall and thin. They had police uniforms on. The fat interrogator sat behind the table, and the other one sat behind me. He tied my hands behind me with metal cuffs.

After that, the fat interrogator asked me, in Arabic, "Who threw stones at the road?" Whenever I said I didn't know, he slapped, punched, and kicked me. The two of them interrogated me like this for about half an hour. I was scared and I cried. I kept repeating one sentence: "I didn't do anything." They ignored me, and just hit me harder. After half an hour, they left the room and closed the door behind them.¹²³

Investigation of claims of violence

The Department for the Investigation of Police (DIP) is the agency authorized to investigate complaints on the use of violence by police officers. Only 13 of the 24 minors who complained to B'Tselem about physical or verbal violence filed a complaint with DIP. The others preferred not to complain, either out of fear that the authorities would revoke the work permits of family members or harm them some other way, or out of lack of trust in the Israeli criminal justice system. Furthermore, filing a complaint with DIP is liable to create another harsh experience for the minors: they are questioned by DIP officials who are not necessarily youth interrogators, and there is no requirement that an adult be present on their behalf while they give their testimony.

Of the complaints that were filed, investigations were opened in seven cases. Two were closed – one on grounds of lack of evidence and the other on grounds

122. The testimony was given to Suha Zeid on 30 June 2010.

123. The testimony was given to Iyad Hadad on 6 July 2010.

of lack of guilt.¹²⁴ Five cases are still under investigation.¹²⁵ In five other cases, DIP decided not to open an investigation. In four of them, the minors complained of incidents related to an investigation that had been closed, and given the long time that elapsed since the incidents occurred, it was decided not to investigate them.¹²⁶ In another case, DIP stated that it had decided, after a few preliminary investigative measures were taken, not to open a full investigation.¹²⁷

B'Tselem examined two DIP investigation files that had been opened following complaints in which minors claimed they were treated violently during their interrogation at Etzion.

The first case involved the complaints of two minors from Husan – Ahmad Za'ul, 15, and Muhammad Hamamreh, 14 – who were interrogated in November 2009.¹²⁸ In these two cases, DIP only questioned the person whom the minors contended had treated them violently. Ahmad Za'ul told DIP investigator who met him in jail that he wanted to devote himself to his studies and did not want to pursue his complaint. As a result, DIP closed the file, even though it had the detailed testimony he had given them when he filed the complaint.

The investigative file that was opened in the case of Muhammad Hamamreh's complaint against the police questioner "Da'ud" was closed as well, after the suspect denied the allegations against him. Other minors who wanted to complain against "Da'ud" were not summoned to give testimony.

The investigative material in the two cases indicates that DIP carried out a superficial investigation and made no real attempt to get to the bottom of the matter. DIP investigators fully accepted the versions given by the persons against whom the minors complained, and rushed to close the file. For this reason, in February 2011 B'Tselem appealed the closing of the file.¹²⁹ In late April, B'Tselem was informed that the file would be reopened and that additional witnesses would be summoned to give testimony.¹³⁰

124. Letter of 8 November 2010 to B'Tselem from Ayala Plotnick of DIP; letter of 14 November 2010 to the Public Committee Against Torture in Israel from Ayala Plotnick of DIP.

125. Letter of 2 March 2011 to B'Tselem from Dalit Ben-Yaakov of DIP; telephone conversation of 16 March 2011 with Ayala of DIP reception.

126. Letter of 10 January 2011 to B'Tselem from Uriel Kadmon of DIP. Regarding the fifth case, see the letter of 24 January 2011 to B'Tselem from Ayala Abeson of DIP.

127. Letter of 10 January 2011 to B'Tselem from Uriel Kadmon of DIP.

128. Investigative material in DIP File 198/10 (*supra* note 107).

129. Letter of 24 February 2011 from Attorney Gaby Lasky to State Attorney Moshe Lador.

130. Telephone conversation of 28 April 2011 between Noam Raz of B'Tselem and Tareq Abu Taha of DIP.

The second investigative file was opened following the complaint of I.M., 15, from Beit Ummar. He contends that he was severely abused by an interrogator who identified himself by the name “Abu Zaki,” who allegedly beat him and threatened to attach an electric current to his penis thereby preventing him from marrying in future.¹³¹ When the minor submitted the complaint to DIP, the investigator prevented a B'Tselem staff member, the only adult who was with him at the time, to enter the room during his testimony.

A reading of his testimony indicates that, after he described the violent treatment he suffered in detail, the investigator challenged his testimony numerous times, focusing on marginal details. For example, I.M. was unsure if he confessed to “Abu Zaki” or only to another interrogator, and the DIP investigator wondered out loud if I.M. had a memory problem. During his testimony, I.M. also stated that he was not interested in investigating the cases, but later said that, “if it is forbidden to beat [somebody], then I do want you to investigate him.”¹³² Although the investigator has to attempt to properly understand the complainant’s version, this case involved an attempt to challenge the credibility of a 15-year-old youth who was giving testimony about severe trauma he had undergone, in a room without an adult on his behalf, but with two DIP personnel present – the interrogator and an interpreter. Such conduct does not help uncover the truth.

In comparison, the questioning of “Da’ud,” whom the DIP investigator identified from the police file as the person I.M. complained against, took place in a different atmosphere. I.M.’s hand was injured in a soccer game he played prior to the arrest. When “Da’ud” was asked if he had used violence against the interrogee, he denied it, saying, “Not true. For the simple reason that you mentioned in the memorandum, that his hand was broken and injured; I wouldn’t take the risk of injuring him. It’s clear that if a person is injured, you don’t take the risk of causing greater injury.”¹³³ The investigator accepted this answer and did not question him further on that issue even though, according to B’Tselem’s information, at least one other minor had complained to DIP about violent treatment he suffered at the hands of the same interrogator prior to I.M.’s complaint.

The DIP investigator also ignored a clear inconsistency in “Da’ud”’s testimony. He was asked if I.M.’s hands and legs were cuffed. At first, he replied, “Negative. During my questioning, he sat in front of me without a blindfold, without cuffs, and we don’t have leg cuffs, only plastic cuffs, which we sometimes remove.”

131. The testimony was given to Musa Abu Hashhash on 7 June 2010.

132. DIP File 3516/10, statement of I.M. to DIP investigator Shai Natanel on 9 August 2010 (*supra* note 91).

133. DIP File 3516/10, statement of “Da’ud,” 12 August 2010 (*supra* note 91).

However, immediately afterwards, he said: "He was cuffed, but only the hands. I can't sit with a person who is not bound, especially when the person is a security suspect believed to have committed popular hostile terrorist activity."

In the investigation, DIP also obtained testimony from the Dan Rosenberg, an interrogator who took I.M.'s confession at the police station. Rosenberg contended that he was just a typist, and that the person who conducted the interrogation was "Da'ud," who told him what to write. Rosenberg said he did not understand what was happening, since he did not speak Arabic, and that he did not know what happened when I.M. was alone in the room with "Da'ud."

The three testimonies – of I.M., "Da'ud," and Rosenberg – were the only investigative actions taken in the file. Three months after the complaint was filed, DIP gave notice that the file had been closed due to lack of evidence.¹³⁴

Prolonged interrogations

Four minors with whom B'Tselem spoke were interrogated for more than one week: a 16-year-old minor who was interrogated for 12 days¹³⁵ and a 13-year-old who was interrogated for 13 days¹³⁶ were released without any charges being filed against them; a 16-year-old minor, who was interrogated for 22 days, indicted, convicted, and sentenced to time served.¹³⁷ A 17-year-old minor was held in an interrogation facility for 53 days, including a full month after his interrogation, during which he confessed to throwing one stone at a military jeep, had ended. He was sentenced to 80 days' imprisonment and was incarcerated for two weeks in a prison for minors until he was released.¹³⁸

Three of the four minors reported they were moved to a cell with collaborators for a few days in an attempt to gain a confession. All four of them reported intensive interrogations and being held in isolation part of the time between interrogations. Throughout the interrogation, they were not allowed to meet with members of their family, and one of them was prohibited from meeting with an attorney. 'Imad Hussein, 17, described the conditions in the interrogation facility.

134. Letter of 14 November 2010 to the Public Committee Against Torture in Israel from Ayala Plotnick of DIP (*supra* note 124).

135. The testimony was given to 'Atef Abu a-Rub on 7 July 2010.

136. The testimony was given to Iyad Hadad on 5 July 2010.

137. The testimony was given to 'Abd al-Karim a-S'adi on 23 December 2010.

138. The testimony was given to 'Abd al-Karim a-S'adi on 5 July 2010.

Each interrogation lasted about six hours. I did not admit anything, and the interrogators returned me to solitary confinement after each interrogation. I was very tired and had a head ache. A generator next to my cell made a lot of noise. It really bothered me, and I put toilet paper in my ears to lessen the intensity of the noise. This continued every day, except for Fridays and Saturdays, when there were no interrogations. I didn't admit to anything. . .

They put me in a large cell, about 4x5 meters. There were four beds and nobody else in the cell. In solitary confinement, there was a shower, bathroom, and sink in the cell. I was there for eight days without being questioned because it was Passover. Then they took me to the interrogation room. There, I admitted that I threw one stone at an army jeep once.¹³⁹

The incrimination method

During interrogation, minors are also questioned about other minors who throw stones, in an effort to identify other suspected stone throwers. The method works in the following manner: First, one youth or a few youths are arrested. During the interrogation, they are required to provide the names of other youths who throw stones, and then these youths are arrested and are required to provide more names. The arrests are based on information given by minors under pressure, often after they were taken from their homes in the middle of the night, without their parents present, and while being threatened with lengthy prison sentences and lasting harm. Many of the minors said that violence was used against them on the way to detention and during the interrogation. In such circumstances, it is hard to justify the almost exclusive reliance on information that the minors provide as a basis for arresting other youths.

Two examples of the use of this method follow.

Arrest of minors in Husan, November 2009¹⁴⁰

Route 60, the main traffic artery in the West Bank, passes close to the village of Husan. Around 7:00 P.M. on 29 October 2009, large stones were thrown at a car in which two Israelis were traveling on the road, near Husan. The right side of the front windshield shattered, and the hood was damaged. Around 2:00 A.M. on 6 November 2009, a contingent of soldiers came to the village and arrested M.H., 15, on suspicion of involvement in the stone-throwing incident. He was interrogated and released on bail after denying he threw stones.

139. Ibid.

140. The testimonies in this case were given to Suha Zeid on 15 and 22 November 2009, and on 30 June, 3 July, and 11 July 2010, the investigative material is from DIP File 198/2010 (*supra* note 107).

Two days later, another youth from Husan, A.Z., 15, was arrested. In his interrogation, he gave a few names of minors who threw stones. One of the names was that of M.H. M.H. was arrested again the next day, also during a night arrest operation. He was taken again to interrogation, during which the interrogator castigated him: "I sent you home and later found out that you lied to me." After the interrogation ended, he was released.

Two other minors were arrested a week later – Y.S., on 15 November, and S.H., on 19 November – as a result of the information A.Z. had provided. A.Z. himself was released three days after his arrest, but was arrested again on 30 November, after the minors who had been arrested on the basis of the information that he provided said that he had thrown stones.¹⁴¹

B'Tselem's investigation indicates that in November 2009, seven minors from Husan were arrested and taken to interrogation at the Etzion camp, all in night arrest operations. Five of the minors were given prison sentences of three to three and a half months, one was released after three days, and the youngest of the group, who was 14, was interrogated twice, and in both instances released following the questioning. The two minors who were not tried did not admit to stone throwing during their interrogation; according to police records, that was the reason they were released.

Arrest of minors in Bil'in in 2009

In 2009, many minors were arrested in Bil'in on charges of stone throwing in the weekly demonstrations against the Separation Barrier. In most cases, the arrests were made at night. Confessions by minors led to the arrest of other minors and also aided in incriminating three persons for organizing the demonstrations – Adib Abu Rahma, Abdallah Abu Rahma, and Muhammad Khatib. The first two were convicted of incitement, organizing demonstrations, and other offenses, and given jail sentences of about 18 months. Khatib was acquitted on grounds of reasonable doubt.

B'Tselem does not have complete details on all the minors in Bil'in who were arrested, or on the information they provided and how the information was used. However, the police investigation files illustrate how the method works.

On 23 June 2009, K.K. and K.Y., both 16 and both from Bil'in, were arrested. In their statements to the police, they admitted to stone throwing and gave names of minors and adults who were with them.¹⁴² One name they gave was that of H.Y., 16, from

141. Y.S. and O.H. appear as prosecution witnesses in the indictment filed against A.Z. (Mil. Ct. (Judea) 3650/09). The hearing on the matter before the Military Court of Appeals (Mil. Ct. App. (Judea and Samaria) 3568/09, *A.Z. v. Military Prosecutor*), held on 14 December 2009, also shows that his arrest was based on information from persons who incriminated him. The judge, Lt. Col. Ariyeh Noah, found: "But in his second arrest, and following the accumulation of prima facie incriminating evidence provided by others, the appellant admitted to eight instances of stone throwing, and more evidence against him was obtained."

142. Statement of K.K., 23 June 2009; statements of K.Y., 23 June and 22 July 2009.

Bil'in, and he was arrested on 29 June. In his interrogation he also provided many names.¹⁴³ One of them was N.A., whose name was also given by other minors.

In mid-August, soldiers came to N.A.'s home in the middle of the night and arrested him. Five days later, he was released on bail. Ultimately, he was convicted and sentenced to days served in detention, a four months' suspended sentence, and a fine of 1,300 shekels.¹⁴⁴ The president of the Military Court of Appeals explained his release on bail on the fact that the charges against him were based on incomplete evidence, which had led to the conclusion that he threw one stone at the Separation Barrier, an action that did not endanger human life.¹⁴⁵

Female minors in the military justice system

The army does not have any figures on the number of minor boys and girls who were arrested by soldiers. The IPS informed B'Tselem that, for technical reasons, it could not determine how many Palestinian female minors accused of security offenses were held in its facilities each year, and that it could only provide information on how many female minors were in its facilities at the end of each month.¹⁴⁶

According to these statistics, between 2007 and 2009, the number of female minors held in IPS custody each month ranged from zero to five. In October 2009, all the female minors were released in an exchange deal in which Israel was provided with a video of Gilad Shalit. It was not until November 2010 that another female minor was placed in the custody of the IPS, where she remained for two months.¹⁴⁷ The IPS did not provide information on the charges on which the girls were being held, but we know that some of them were not charged with stone throwing.

In the course of preparing this report, B'Tselem located only one female minor, 13 years old, who had been interrogated on suspicion of stone throwing. She was interrogated on 23 March 2010 during the day at the Hebron police station. Present in the room was an adult woman on her behalf. When the interrogation ended, she was released.¹⁴⁸

143. Statement of K.Y. , 29 June 2009.

144. The information is in the IDF Spokesperson's Office response of 2 August 2010 (*supra* note 65).

145. Mil. Ct. App. (Judea and Samaria) 2912/09 (*supra* note 40).

146. See explanation *supra* note 61.

147. The information was provided to B'Tselem, in the framework of its regular request for monthly updates, by the IPS official in charge of implementation of the Freedom of Information Law.

148. The testimony was given to Musa Abu Hashhash on March 24, 2010.

Remand until the end of criminal proceedings

Israeli law prescribes that every effort must be made not to hold minors in detention, and minors under age 14 are not to be detained. The president of the Military Court of Appeals has held that the spirit of the Youth Law must guide the judges in making their rulings, also with respect to holding minors in custody until the end of the proceedings: "When a minor does not have a criminal record and is not a recidivist, and the act attributed to him does not entail an inherent substantive danger, it is appropriate to give great consideration to a suitable alternative to detention, together with guarantees and appropriate monitoring, to give the minor the opportunity to mend his ways."¹⁴⁹ In this matter as well, these important comments are almost never applied.

Hearings on extending the detention of minors are not held in the Youth Military Court, but in a regular military court, before the on-duty judge. The presence of the minor's parents is not required. These hearings are sometimes held a few days after the minor was taken into detention, since military legislation enables Palestinians – minors and adults – to be detained for up to eight days before bringing them before a judge. On occasion, police interrogators and prosecution officials utilize the full eight days allowed them by, even when the needs of the investigation do not justify the delay.

Involvement of a minor's attorney can hasten his being brought before a judge to decide whether he should remain in custody. For example, the detention of S.S., 16, was extended by the interrogations officer, who ordered that he not be brought before a judge until the end of the eight-day period. The minor's attorney filed an urgent application to the court to release his client. As a result of the application, the prosecution was compelled to review the evidence in the file and consequently agreed to release the minor on bail.¹⁵⁰ The attorney's involvement can also affect the extension given for investigation purposes. For example, L.S., 17, was detained for eight days, during the high school matriculation exam period, even though it was clear at the beginning of his interrogation that he was not the person in the incriminatory photograph that led to his arrest. The interrogators requested that he be held for an additional seven days, but his attorney insisted there was no evidence linking his client to stone throwing. The judge ordered his unconditional release.¹⁵¹

149. Mil. Ct. App. (Judea and Samaria) 2912/09, (*supra* note 40).

150. Mil. Ct. (Judea), Misc. Appl. 108/10, *Military Prosecutor v. S.S.*, 18 March 2010.

151. Hearing held on 21 December 2009 in the military court in Samaria before Major Yariv Navon.

A review of decisions regarding release on bail of minors shows that the judges almost never express an opinion on the question of the effect of prolonged detention on the minor. The decision is made on the specific merits of the case, based on the circumstances.¹⁵² However, three factors are likely to affect the judges in making their decision to release the minor.

1. *Young age*: In cases of minors under age 14, the judges declare their readiness to make special efforts to find an alternative to detention. For example:

When minors 14 years old or younger are involved, it is necessary to thoroughly examine an alternative to detention that will negate the dangers. Youths, and maybe one can say children, of this age are not set in their ways and are easily influenced. The intent underlying their acts is often different in nature from that of their older friends.¹⁵³

The readiness to take into account the young age of the defendants is inconsistent with the provision of the Youth Law, which forbids detaining a minor under age 14 until the end of legal proceedings.

In any case, in many cases involving minors under age 14, the penalty specified in the plea bargain equals the number of days they had been held in detention. In these cases, the question of release on bail is irrelevant.¹⁵⁴

2. *Frequency of commission of the offense*: Minors who are suspected of having engaged in stone throwing on many occasions are considered to be more dangerous than persons suspected of a one-time offense. President of the Military Court of Appeals, Col. Aharon Mishnayot, accepted the appeal of a minor who sought to be released from detention pending completion of the criminal proceedings against him. The judge held, inter alia, that, "this was also an isolated incident, which was not premeditated, and was not carried out in the framework of more extensive public disturbances. The appellant, who was on his own, threw only one stone, which apparently caused no damage."¹⁵⁵
3. *Evidentiary difficulties*: Problematic evidence in the file which lessen the likelihood of a conviction might convince the judge to release the defendant on bail. For example, M.H., 16, from Hebron, was accused of stone throwing

152. Mil. Ct. (Samaria) 4577/10, *Military Prosecutor v. L.A.N.S., a minor*, 1 December 2010.

153. Mil. Ct. App. (Judea and Samaria) 1889/09 (*supra* note 78).

154. This information was provided in the letter of 2 June 2011 from Zohar Halevi, as a response to correspondence with B'Tselem on 24 May and 30 August 2010 and on 17 May 2011, and was confirmed by attorneys with whom B'Tselem spoke, as well as by files of DCI-Palestine that B'Tselem examined.

155. Mil. Ct. App. (Judea and Samaria) 2409/10, *N.M. v. Military Prosecutor*.

and injuring two soldiers during a public disturbance. At the court hearing, it came to light that the soldiers had not been injured. After being detained for 27 days, he was released on bail when the judge accepted his attorney's argument that there were questions regarding the defendant's identification by the soldier who detained him.¹⁵⁶ The prosecution's appeal of the release was rejected.¹⁵⁷ M.H. ultimately pleaded guilty as part of a plea bargain, and was sentenced to time served in detention – 27 days.¹⁵⁸

The existence of a number of these and other mitigating factors increases the likelihood that a minor will be released on bail. This occurred, for example, in the case of L.S., where the judge held:

I found that the cumulative circumstances justify deviation from the rule that a person throwing stones should be detained: the defendant's young age; his clean record; the fact that it was a one-time incident; the fact that the evidentiary material could not attribute the soldier's hand injury to the defendant, and the fact that the defendant's father was present at the hearing, which indicates that there is a family network that can support the defendant and guide him so that he does not fail again.¹⁵⁹

B'Tselem requested the IDF Spokesperson's Office to provide data on release on bail of minors accused of stone throwing. Following a lengthy correspondence, the IDF Spokesperson's Office informed B'Tselem that the IDF's computerized database on release of minors on bail "is imprecise, so no conclusions can be drawn from it."¹⁶⁰

However, from B'Tselem's discussions with attorneys who frequently appear in the Youth Military Court and from study of court judgments, we found that judges almost never release a minor who has been accused of stone throwing on bail. Rather, the judges accept the prosecution's request that the minor be remanded until the end of the proceedings. A military court judge in Samaria, Major Yariv Navon, explained:

People who throw stones at IDF forces are usually supported by the general population, so there is an inherent concern that these minors will repeat

156. Mil. Ct. (Judea) 1923/10, *Military Prosecutor v. M.H.*, decision of Judge Major Eti Adar, given on 6 April 2010.

157. Mil. Ct. App. (Judea and Samaria) 1495/10, *Military Prosecutor v. M.H.* (appeal against Mil. Ct. (Judea) 1923/10, *Military Prosecutor v. M.H.*, decision of Judge Major Eti Adar, given on 6 April 2010, *ibid.*).

158. Mil. Ct. (Judea) 1923/10 (*supra* note 156), sentence given by Youth Court Judge Sharon Rivlin-Ahai on 5 July 2010.

159. Mil. Ct. (Samaria) 4577/10 (*supra* note 152).

160. Letter of 2 June 2011 from Zohar Halevi (*supra* note 154).

their acts. This is especially true with respect to young defendants whose worldview is not fully formed, and who are readily influenced. Therefore, there are few cases in which the court will be convinced there is an alternative to detention. But there may also be situations in which the balance struck by the court will prefer the right of the defendant's liberty over the public interest in keeping him behind bars.¹⁶¹

Analysis of the files that DCI-Palestine handled in 2009 and 2010 strengthens this assertion. In those two years, DCI-Palestine dealt with 133 files in which minors were prosecuted for stone throwing. In only 31 cases (23 percent), the judge released the minor on bail. Only 23 of the minors were actually released: nine of them were in the 12-13 age group, five were aged 14-15, and nine were 16-17 years old. Twenty-one of them were convicted, but none were returned to prison to serve a further sentence. They were sentenced to the number of days they had been held in custody, along with a conditional prison sentence, and/or a fine. In two cases, the indictment was dismissed.

Two minors whom the court ordered released on bail remained in jail because their parents did not have the financial resources to post bail, which had been set at a few thousand shekels. Five other minors preferred to enter into a plea bargain even though the court had ordered their release on bail. In one case, the prosecution successfully appealed the court's decision to release on bail, and the minor remained in custody.

The trial

In researching this report, B'Tselem observed dozens of hearings at the Military Youth Court at the Ofer army base in cases of minors accused of stone throwing.

There are two types of hearings: procedural hearings in which indictments are read, motions with respect to evidence are submitted, previous proceedings are recapped etc., and hearings in which sentences are given in the context of plea bargains. We observed only one case in which a trial was held and witnesses were questioned or evidence was submitted to prove the defendant's guilt.

On the day of the hearing, the minors are brought to court from the facility where they are being held. Until their case is called, they wait with other detainees in a trailer with a window. The detainees are not given the court's agenda and do not know the order of the hearings. They are given water to drink while they wait, and if they have a long wait, they are also given a meal.

161. Mil. Ct. (Samaria) 4577/10, (*supra* note 152).

At the first hearing, the defendants enter prior to the judge. Their hands and legs are bound, and they normally wear IPS prison uniforms. They sit in a designated space, and their handcuffs are removed. Their families enter at this time. Each defendant is given two permits for members of his family, and for most of the minors, this is the first time they meet their family since the arrest. These minors are usually allowed a longer period of time to speak with their relatives, which extends until the judge enters and the hearings begin. The relatives sit in the row of seats furthest from the defendants, and IPS personnel do not allow them to move closer to the front, so the detainees and their families speak with one another using calls and hand gestures, with no physical contact between them.

Defendants who are released on bail appear with their families and sit next to their attorneys. The hearings are conducted in Hebrew, a language most of the defendants and their relatives do not understand. The court has an interpreter on whom the defendants and their relatives depend in order to understand what is being said in the courtroom.

Since the Youth Courts were established, an effort has been made to speed the trials. According to figures provided by the court, in 2008, 74 percent of the cases of minors in remand were completed within less than six months and 10 percent proceeded for more than nine months. In 2010, 90 percent of the cases of minors in remand were completed in less than six months and the number of cases that proceeded for longer than nine months went down to 1.5 percent.¹⁶²

Generally, the Youth Court does not conduct a hearing without the parents present, so if they are not present, the court will adjourn the hearing. The parents have the right to express their position during the trial, and some judges have relied, in deciding to mitigate the penalty, on the presence of the parents and on their undertaking to look after their children.

In the cases B'Tselem observed, the emotions of the minors when they saw their parents, and the dismay of those whose parents were not present in the courtroom, were evident.

Some of the minors described their feelings when they were brought to court to B'Tselem. Fadi Khatib, 13, from Bil'in, spoke to B'Tselem about being brought to court for a detention extension hearing.

At 6:00 A.M. on my third day in detention, they took me to court. The guards took me with my hands and feet tied with steel cuffs. They put me on the bus without a blindfold. There were 20 other prisoners on the bus with me.

162. Letter of 15 May 2011 from Zohar Halevi, head of public inquiries section, IDF Spokesperson's Office (*supra* note 31).

The bus drove a short distance and dropped us off at a small trailer. They separated the smokers from the non-smokers. I was with eight prisoners in this trailer. The guards closed the door and then they started to take us out, one by one.

While I was waiting there, I was very scared about what was going to happen. After about three hours, they brought us yogurt, cucumbers, olives, and bread. I stayed in the trailer until the evening. I was the last to be taken to trial. I was afraid being there alone, isolated from the whole world, not knowing what was going to happen to me.

When my turn came, a policeman took me to court. I started crying in the court when I saw the military judge and the interpreter. The interpreter told me even before the judge read the indictment against me, "If you pay 3,000 shekels, you can go home!" I told him, "All right." Then he asked me: "Do you have a telephone number to call your parents?" I said, "Yes." I asked one of the women, who had come for her son's hearing, to call my father and tell him to pay a 3,000 shekel bail to release me.¹⁶³

Shaker Hamamreh, 16, from Husan, described his difficult experience during the transportation to court and the wait for his trial.

After they moved me to Rimmonim Prison, they took me to the court in Ofer a few more times. Each time, they took me out of the cell at night and put me in a cell with adult detainees. At the court, I waited with 15 other detainees for a few hours until my hearing. There were a whole lot of detainees waiting for their case to come up. The room we were in was so small and narrow that it was hard to breathe. I suffered from this every time I went to court. At my last court hearing, the judge gave me three months' imprisonment and a 1,000 shekel fine. My parents and my lawyer came to the hearing. After it was over, they took me back to Rimmonim, and I stayed there until I served my sentence.¹⁶⁴

Upon conviction, the minors are usually given a prison sentence, a conditional sentence, and a fine. Military legislation does not provide alternative punitive measures for imprisonment, and it is a means of first rather than last resort for penalizing Palestinian minors.

163. The testimony was given to Iyad Hadad on 9 June 2010.

164. The testimony was given to Suha Zeid on 30 June 2010.

Plea bargains

Plea bargains, which entail waiver of a trial, are common in the Israeli justice system, with more than one-half of the indictments ending this way.¹⁶⁵

The data provided to B'Tselem by the IDF Spokesperson's Office indicate that trials in the case of minors charged with stone throwing are extremely rare, and the vast majority of cases ended with a plea bargain. In only five of the 642 files whose outcome is known to B'Tselem were full trials held.¹⁶⁶ One ended in an acquittal and in another the defendant was convicted and sentenced to four months' imprisonment. In the other three cases, the defendant was convicted and given a relatively long sentence – six months imprisonment. In 13 additional cases, the defendant pleaded guilty and was sentenced, without a plea bargain.

The remaining 624 cases (97 percent of the total) ended in a plea bargain. In six of these cases, the hearing of evidence began but the cases ended in a plea bargain. One of the main reasons for the widespread use of plea bargains, is the long time it takes for the court to hear the evidence, and the judges' refusal to release minors on bail. Each component of the criminal case takes place in a separate hearing, such as reading the indictment, calling witnesses etc. There are long intervals between these stages: witnesses often do not appear and the hearing is adjourned. Consequently, the trials take many months, during which the minors are held in detention. The Military Youth Court tries to speed the proceedings, but this is not always possible as these also depend on witnesses' appearing and actions taken by both the prosecution and the defense (see the box below).

Military judges view the protracted proceedings as legitimate, particularly if the trial is completed within a period of time no greater than the term of the prison sentence the minor would be given if found guilty. In the case of a 16-year-old minor whose attorney sought to have released because the trial had gone on for five months, the appellate court judge Col. Eli Wilf held that:

Regarding continuation of the proceedings, a period of five months from the time of arrest to the filing of the indictment and setting of a time for hearing the matter cannot be deemed such a long period as to justify release

165. See, for example, the data published by the Movement for Freedom of Information following the state's response to its petition for information on plea bargains, <http://www.meida.org.il/?p=2004> [in Hebrew].

166. The data on the completed files are taken from the information provided by the IDF Spokesperson's Office on 2 August 2010 and 15 May 2011 (*supra* note 65). It subsequently became clear that the data included files of minors who were convicted of more than stone throwing. On 16 June 2011, the IDF Spokesperson's Office provided updated data to B'Tselem (*supra* note 63). This data, which included an additional 193 files, did not relate to the final disposition of the file. Therefore, the information on the end result relates only to files that appear on both lists.

from detention. This length of time is acceptable; it is neither unusual nor unreasonable. To hold that this period of time justifies a detention alternative would lead to the conclusion that, in almost all cases, we would have to consider release, which is an unacceptable result.¹⁶⁷

When the defendant accepts the plea bargain, the proceeding usually ends shortly afterwards, sometimes the day the indictment was filed.¹⁶⁸ In the case of defendants under age 14, the case often ends with a sentence to time served prior to the plea bargain, so the sooner the minor pleads guilty, the sooner he is released.

In such a reality, attorneys representing minors accused of stone throwing face a permanent dilemma: The great majority of minors are held in custody until the end of the proceedings, which can last up to two years. A trial might last longer than the sentence they are likely to ultimately be given. So it is better for them to plead guilty in a plea bargain, regardless of whether they are guilty or innocent, in order to reduce their time in detention.

Minors who gave testimonies to B'Tselem said they pleaded guilty for fear of prolonged detention. Rashid 'Awad, 15, from Beit Ummar, denied the charges against him. He told B'Tselem that his attorney explained that since a soldier claims he saw him throw stones, it would be better for him to plead guilty, since it would take "a long time, at least eight months, until the soldier was brought to testify." Rashid pleaded guilty and was sentenced to one month in prison.¹⁶⁹

In this state of affairs, there is grave concern that innocent minors plead guilty only in order to be released from jail. In an unusual case, the prosecution withdrew indictments it filed against eight Palestinian youths two years after their trial began.¹⁷⁰ Following their appeal of the decision to remand them until the end of criminal proceedings, the eight were released on bail after 27 days in detention, and their attorney was able to go to trial. At the trial, defense counsel proved that the testimony of the three soldiers, on which the indictment was based, was false: the soldiers contended they had arrested

167. Mil. Ct. App. (Judea and Samaria) 4516, 4517/08, *Military Prosecutor v. M.A. and I.A.*, 24 September 2008. The age of one of the defendants, who was 16, appears in the IDF Spokesperson's Office's response of 2 August 2010 (*supra* note 65).

168. B'Tselem was so informed by a number of attorneys with whom the organization spoke, and by Rinat Hameiri, human rights officer in the IDF Spokesperson's Office, in her letter of 14 November 2010 to B'Tselem.

169. The testimony was given to Musa Abu Hashhash on 24 June 2010.

170. Amira Hass, "Eight Palestinian Youths and the Crime They Didn't Commit," *Ha'aretz*, 6 August 2010, <http://www.haaretz.com/print-edition/features/amira-hass-eight-palestinian-youths-and-the-crime-they-didn-t-commit-1.306641#article>.

the youths on the road while they were throwing stones, but photographs proved that the youths were arrested inside the school they attended. It was also revealed that the soldiers did not see the stone throwing at all. Defense counsel stated that he intended to call school teachers to testify and they would say that the youths were in class at the al-'Arub agricultural school at the time the soldiers alleged they had been throwing stones, and that the soldiers had entered the school. The prosecution then announced it was withdrawing the indictments.

An adult who was arrested in the same case was not released on bail due to a prior conviction. He consented to a plea bargain after spending six months in detention, during which he refused to plead guilty, and was released the same day, after being sentenced to time served in detention. His arrest and conviction were based on the testimonies of the soldiers which the prosecution ultimately decided could not support the indictment against the minors.

The case of the adult from the al-'Arub school illustrates not only what might happen, but what does in fact happen: some defendants plead guilty to an offense they did not commit. When a minor is prosecuted, there is little chance he will be released on bail, so even when there is weak evidence against him and he contends he is innocent, he faces two possibilities: conviction and a criminal record in exchange for a plea bargain pursuant to which he will be given a short prison sentence, or a lengthy detention and trial at the end of which he might be given a harsher sentence.

The probation report

Under the amendment to the military legislation that established the Youth Court, the judge may order that a probation report be prepared following the conviction of a minor and prior to sentencing. The report reviews the conditions in which the minor lives, including his family, economic, and health situation. The report is prepared by the welfare officer in the Civil Administration.¹⁷¹ In Israel, in comparison, the law requires a probation report prior to a decision on holding a minor in custody until the end of the proceedings and prior to sentencing, and the judge cannot rule without one.¹⁷²

The probation report was introduced into military law following repeated demands by military judges.¹⁷³ However, the change in the law has not been followed by an actual change in practice. According to figures provided by the IDF Spokesperson's Office, prior to 2 August 2010, the court had requested

171. Order Regarding Security Provisions No. 1651 (*supra* note 6), section 148.

172. Youth Law (*supra* note 20), sections 10G(b) and 22.

173. See *supra* note 78.

only four probation reports for convicted minors.¹⁷⁴ The main reason for the small number is that military law provides for a probation report only following conviction. Since almost all the cases end in a plea bargain, conviction and sentencing take place at the same time, and there is no opportunity to prepare a probation report.

Also, in the few cases in which a probation report is ordered, the welfare officer's options are limited. Lack of rehabilitation services that are acceptable both to the court and to Palestinian bodies, as well as intra-Palestinian political issues, prevent offering alternatives for imprisonment to minors. Generally speaking, Palestinians do not think a youth who throws stones at the occupying force requires rehabilitation, as would a youth with a pattern of criminal behavior. The army, on its part, does not offer modalities that can serve as an alternative to imprisonment. There are a number of rehabilitation agencies in the Palestinian Authority, some of which are run by international organizations, but the army is dissatisfied with the cooperation with these institutions. The defendants, on their part, do not want to be perceived as collaborating with the military justice system, and some also do not want to cooperate with the Palestinian Authority.

For example, 'Abd a-Rahman Abu 'Alia, 16, was convicted on four counts, one of them for stone throwing, and the judge ordered a probation report prior to sentencing. However, the defendant refused to cooperate with the Palestinian Authority, which is responsible for rehabilitation institutions in the West Bank. Therefore, in her report, the welfare officer in the Civil Administration stated that she was "unable to recommend modes of treatment for the youth."¹⁷⁵

Defense counsel in military courts

DCI-Palestine is an organization which specializes in defending minors. It represents 30-40 percent of the children who are prosecuted in the military courts. In 2010, the organization represented 243 minors accused of committing criminal offenses.¹⁷⁶ Other cases are handled by attorneys who do not necessarily have particular training for cases involving minors.

The performance of some of these attorneys compounds the violation of the rights of Palestinian minors in military courts. The observations

174. IDF Spokesperson's Office's response of 2 August 2010 (*supra* note 65).

175. Mil. Ct. (Judea) 5121/09, *Military Prosecutor v. A.A.*

176. The information was provided to B'Tselem by Attorney Khaled Quzmar of DCI-Palestine, on 3 March 2011.

of court proceedings conducted by B'Tselem indicated two major deficiencies in the performance of some of these attorneys.

1. Repeated adjournments: In many cases, the attorneys request an adjournment on the grounds that they had been unable to properly prepare or that they had prior engagements. Sometimes, they request that the hearing be adjourned to a distant date in the future, even if the case was a few months old. There were some cases in which the court suggested an early date, but the attorney requested a later date. There were cases in which the judge censured defense counsel for the many adjournments in the file and the protracted proceedings. Since most minors charged with stone throwing are remanded until the end of the proceedings – until a plea bargain is reached or a sentence is given by a judge – every adjournment delays their release and prolongs their uncertainty as to when they will be released. Some of the minors are charged with stone throwing and remain in custody until the end of proceedings for more than six months. To aggravate matters, in some cases, they are detained in Ofer Prison, where they are unable to continue their studies.
2. Consent to remand: In many cases, defense counsel give their consent to their client's detention until the end of the proceedings. Also, when they object, and the judge accepts the prosecution's request for remand, they rarely appeal. The prosecution, on the other hand, often appeals when a suspect is released on bail.

Prison life

Of the minors interviewed for this report, 29 were held in detention or prison for one week or more. Most were held in Ofer Prison. The others were held in the minors' wing in the Rimmonim and Megiddo prisons, which are inside Israel. The incarceration of Palestinians, whether minors or adults, in prisons inside Israel, and not in the occupied territory, is prohibited by the Fourth Geneva Convention.¹⁷⁷

Rimmonim Prison, which opened in 2004, is relatively new. The average living space per inmate is 4.7 square meters.¹⁷⁸ There is one room for every two prisoners, a

177. Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949, articles 49 and 76, available at <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>.

178. Uri Tal, *Data on the Physical Condition of Incarceration Facilities in Israel* (Knesset Research and Information Center, November 2009), section 3.1 [in Hebrew].

shower in each room, central heating, an educational center, exercise rooms, and more.¹⁷⁹ On the other hand living conditions at Megiddo Prison and Ofer Prison are much harsher. These facilities are used only for incarcerating security detainees and prisoners, and were handed over to the responsibility of the IPS in 2005 and 2006 respectively. Average inmate living space in Megiddo Prison is 2.5 square meters, and 2.2 in Ofer Prison. Structures with asbestos roofs were reported in both prisons, and at Megiddo, one such structure is used to house 30 prisoners.¹⁸⁰

The minors described their routine in prison: roll call, meals, breaks, and so forth. At Rimmonim and Megiddo, there were activities to occupy the minors' time, and teachers to help them with their studies. The minors complained about the physical conditions, primarily about insufficient and poor-tasting food. The minors who were held at Ofer, generally for a few days or weeks, said they felt disgust, boredom, and lack of purpose during their time there. Most of them had difficulties coping with the strict regimen and the requirement to eat at set times. They said they managed to maintain a high level of personal hygiene and of cleanliness of the rooms.

Majdi Burnat, 15, from Bil'in, described his routine during the week he was held in Ofer Prison.

The conditions were very harsh. The food was not always good, especially the rice, which wasn't fresh sometimes. It was very boring, and there weren't any games other than ping-pong, which we could play during breaks in the morning and evening for two or three hours. But there was only one table for all the detainees in the wing, about 80 people. There was also a chess set, but I don't know how to play chess. There weren't any books to read. There was a TV, but it only had a few channels, about eight. It had Palestinian and Israeli channels, MBC, and al-Misriya. There was a shower in the wing, and we could shower during breaks. There was hot and cold water.

My cell was clean. They let us clean it, and we washed it three times a day. I didn't see insects or cockroaches, and there were no diseases. . . I passed the time watching TV and talking with friends. It was hard to fall asleep at night because of all my worries.¹⁸¹

Mahmoud Samara, 15, from Bil'in, described his difficulties coping with the stringent meal times in Ofer Prison.

179. The description as it appears on the Israel Prison Service's website, <http://www.ips.gov.il/Shabas/PRISON/Jailing+Facility+-+MAP/%D7%9E%D7%97%D7%95%D7%96+%D7%9E%D7%A8%D7%9B%D7%96/%D7%91%D7%99%D7%AA+%D7%A1%D7%95%D7%94%D7%A8+%D7%A8%D7%99%D7%9E%D7%95%D7%A0%D7%99%D7%9D.htm> [in Hebrew].

180. Tal, *Data on the Physical Condition of Incarceration Facilities* (*supra* note 178), sections 2, 3.1.

181. The testimony was given to Iyad Hadad on 15 August 2010.

The conditions in the prison were very hard for me. I felt crowded. You can't eat when you want to, and you have to wait until it's time for the meal. Breakfast is at ten in the morning, lunch is at one o'clock, and dinner at eight. If you're hungry at night, you have to wait until morning.¹⁸²

'Omar Hamamreh, 15, from Husan, described the conditions in Rimmonim Prison.

After ten days in Ofer, they moved me to Rimmonim, near Haifa, where I met my brother Shaker and Fadi Muhammad Hamamreh, our neighbor's son. The conditions there were horrible. They gave us very little food and it was poor quality. For breakfast, we received a bit of jam and a piece of bread, and sometimes a container of sour cream and a piece of bread. Other days they would also bring an egg with a piece of bread for breakfast. Lunch was usually rice or couscous. Sometimes they brought us okra mixed with tuna or lentils with zucchini. The food was all mashed together and I and the rest of the detainees didn't like it. Once a week, on Fridays, we got a piece of chicken at lunch. For supper, they usually brought us the leftovers from lunch, and on some days they brought us fried chicken cutlets and hot dogs.¹⁸³

Separation of minors and adults

Military legislation prescribes that minors must be kept separate from adults in detention and prison facilities, and to the extent possible, also when brought to court.¹⁸⁴ In the incarceration facilities inside Israel – Rimmonim and Megiddo – minors up to age 18 are held separately from adults. In Ofer Prison, the separation is between minors under age 16 and minors and adults over 16, but B'Tselem's investigation indicates that even this separation is not maintained.

Military Youth Court judge Sharon Rivlin-Ahai emphasized that the age of minors that prescribes separation between minors and adults is 16, so that minors over age 16 are incarcerated with adults. She added: "It is unnecessary to go into detail on the damage such incarceration can cause a minor later in life."¹⁸⁵

Minors who were interviewed for the purposes of this report who were held in Ofer Prison related that they were in a cell with adult detainees and prisoners. Fadi and Shaker Hamamreh, from Husan, told B'Tselem that they were incarcerated

182. The testimony was given to Iyad Hadad on 15 August 2010.

183. The testimony was given to Suha Zeid on 11 July 2010.

184. Order Regarding Security Provisions No. 1651 (*supra* note 6), sections 149 and 143.

185. Mil. Ct. (Judea) 1261/09 (*supra* note 78).

with some 20 detainees, and that they were the youngest in the group.¹⁸⁶ Defense counsel objected to this, and the president of the Military Court of Appeals expressed his concern.

This is a complete breach of section 46N of the Order Regarding Security Provisions, as amended in Amendment No. 109 of the aforesaid Order, which was recently signed. . . These are minors also pursuant to the laws of the region, who appear even younger than their age, and it is strictly forbidden to house them in detention facilities together with adults. In light of the aforesaid, a copy of the decision shall be delivered to the Ofer Prison commander for urgent examination of defense counsel's allegations regarding the incarceration of minors together with adults, and immediate separation of the minors, if they have not already been separated. It is also expected that the rules be refreshed, and that the necessary lessons be learned to prevent the recurrence of similar errors in the future.¹⁸⁷

In response to B'Tselem's inquiry regarding this case, an official from Ofer Prison stated that:

1. Minor detainees are held in Ofer Prison in a cell separate from adult prisoners. However, where it is necessary to ensure their wellbeing, taking into account their young age, they are kept with an older prisoner, who is deemed suitable for that purpose by the prison commander, thereby assuring the detainees' wellbeing.
2. It should also be noted that they are held together for short periods of time, until they are transferred to their proper place.
3. This was the case with respect to the two minors raised as an example in your letter.¹⁸⁸

Based on statements made by Shaker and Fadi Hamamreh, and of other minors with whom B'Tselem spoke, section 1 of the aforesaid letter is inaccurate. The minors were held in a cell not with one adult prisoner but with many adults. However, some minors did say that this was the arrangement in their case. For example, Saeil Abu Qweidar, 15, from Hebron, related that he was kept in a cell in Ofer with minors and with one adult, who was responsible for the room. Saeil was transferred to Rimmonim, where, he said, it was more difficult because there

186. The testimony was given to Suha Zeid on 30 June 2010.

187. Mil. Ct. App. (Judea and Samaria) 3569, 3570/09, *Fadi Muhammad Da'ud al-Hamamreh and Shaker 'Abd al-Wahab Shaker Hamamreh v. Military Prosecutor*, 14 December 2009.

188. Letter of 2 February 2011 from Nofar Chocheyma, Prisoners' Officer, Ofer Prison, in response to B'Tselem's inquiry of 1 August 2010 and its follow-up inquiry of 5 October 2010.

were no adults to care for him.¹⁸⁹ Ahmad a-Salibi, 15, from Beit Ummar, also said he was kept in a cell in Ofer with minors, and one adult was assigned to them.¹⁹⁰

Some believe this is a good arrangement for protecting the minors. Attorneys with whom B'Tselem spoke pointed out that when the adults are not criminal detainees who are liable to endanger the minors' wellbeing, they can help them cope with prison routine, which is beneficial for the minors. This arrangement has been implemented before. In 1996, for example, minors were separated from adults in Sharon Prison at night, but during the day, five adults stayed with them and helped them manage life in prison. The presence of adults also aided in protecting the minors' rights. They received better treatment from the prison guards and suffered less from the treatment given them by other adult prisoners. This arrangement ended after the five adults were released.¹⁹¹

School studies

According to information provided to B'Tselem, Rimmonim and Megiddo prisons offer an opportunity to continue studying some of the curriculum of the Palestinian Authority's educational system. This opportunity is given to junior high school and high school students. They are able to take only four courses: mathematics, Arabic, a personal subject, and world history.¹⁹² Other courses – such as religion and economics (all tracks), current events, geography and history (academic track) and all sciences (science track) are not permitted.¹⁹³ The teachers are employed by the Department for the Advancement of Youth in the Israeli Ministry of Education. The minors are tested on the material they study in jail and are allowed to take matriculation exams.¹⁹⁴ This option is not available in other prisons, such as Ofer Prison.

A few of the junior-high-school students who spoke with B'Tselem said they were not taught the material they had missed. Also, the effect of detention reaches beyond missed school material. The minors' parents reported a drop in the level of their children's studies and emotional problems they had developed, including nightmares. Maher Hanaineh, 16, from Beita, related that, while in Megiddo Prison,

189. The testimony was given to Musa Abu Hashhash on 27 November 2010.

190. The testimony was given to Musa Abu Hashhash on 28 February 2011.

191. The comments were made to B'Tselem by Attorney Khaled Kuzmar of DCI-Palestine, on 17 May 2010.

192. Letter of 28 February 2011 from Levana Levy-Shai, Head of the Education and Academic Studies Department in the Prison Service, in response to B'Tselem's inquiry of 7 February 2011.

193. The examples of courses that are not taught are brought from the Palestinian curriculum.

194. Response of 28 February 2011 from Levana Levy-Shai (*supra* note 192).

he was not given school books that covered the material he had been studying at school. Regarding his fears about the material he missed, he said:

I really missed my family, especially my mother. I also missed my school, because I am an A student, and I was worried I would be held back a year because I was detained at the end of the year and during final exams

Thank Heaven, because I am an A student, they took my grades for the first semester and for the first half of the second semester, and promoted me to 11th grade. I want to go to university and study accounting.¹⁹⁵

Minors who continued their studies while in prison had less difficulty overcoming the gap in their studies. For example, 'Omar Hamamreh, 15, from Husan, who was imprisoned with his brother at Rimmonim Prison, spoke about their success in their studies.

They let us study in prison. There were volunteer teachers who taught us and we were tested to assess our level. Our studies in prison helped us after we were released, and enabled us to complete the courses we had missed because we were in jail. We took the final exams and did well at school, and my brother Shaker and I were promoted.¹⁹⁶

On the other hand, Adham Salim, 17, from 'Azzun, who was held in Megiddo Prison, said that since he was in prison the entire second semester, although he was able to complete English, Arabic, and mathematics, he was unable to complete his studies in the other subjects. As a result, he did not finish tenth grade.¹⁹⁷

Khaled Abu Haniyah, 16, from 'Azzun, who spent most of his prison sentence at Ofer Prison, related his difficulties when he returned to school.

I returned to school after being absent for 50 days. The long absence had a bad effect, especially in mathematics and science. I failed the final exams in these two courses. Now I'm preparing to take the tests again.¹⁹⁸

Family visits

Like other security prisoners, Palestinian minors are not entitled to use the telephone in jail, and their only contact with the outside world throughout their incarceration is through family visits. However, most minors held in detention and

195. The testimony was given to Salma a-Deb'i on 17 June 2010.

196. The testimony was given to Suha Zeid on 11 July 2010.

197. The testimony was given to 'Abd al-Karim a-S'adi on 4 July 2010.

198. The testimony was given to 'Abd al-Karim a-S'adi on 7 July 2010.

imprisonment do not receive family visits.¹⁹⁹ Of the 29 minors interviewed who were held in custody for more than a week, only one said he received regular visits, in his case once every other week by his mother.²⁰⁰ Four other minors received a few visits – two of them are brothers.²⁰¹ The rest of the minors, who were in custody for periods ranging from one week to ten months, told B'Tselem they had not been visited by any family member. Visitors at incarceration facilities are usually women and small children, as they have a better chance of obtaining a permit.

From a legal perspective, security detainees and prisoners, minors and adults, are entitled to receive visits by first-degree relatives once every two weeks for 45 minutes.²⁰² However, in many cases, obtaining a permit for visits in prisons in Israel is a lengthy process. According to the manager of the family visit program at the ICRC, obtaining a permit usually takes between two weeks and two months.²⁰³ According to Civil Administration procedures the maximum response time to a request for a permit to enter Israel is two and a half months.²⁰⁴

Since some of the minors remain in detention for a relatively short time, their families do not manage to obtain visitation permits, and sometimes do not request them because of the long time it takes to process the request. Furthermore, there is some confusion among the detainees and their relatives: many think it is impossible to obtain a permit to visit detainees who have not yet been sentenced, though nothing prevents it. A person who is aware of this can insist on his rights. The only minor mentioned in this report who received regular visits also met with his mother before he was sentenced. In addition, a few of the minors told B'Tselem they heard, apparently from fellow detainees, that prisoners who are sentenced for less than three months are not allowed to receive visitors at all. Some families also believe that by appearing at the trial, they have used up their right to visit.

199. In his response of 26 April 2011 to B'Tselem's request of 27 March 2011 under the Freedom of Information Law, Second Lieutenant Amos Wagner, public requests officer in the office of the head of the Civil Administration, said that the Civil Administration was unable to provide figures on the number of minors whose families requested permission to visit them in prison and the number of requests that had been approved. For an extensive discussion on the prevention of family visits with Palestinians incarcerated by Israel, see B'Tselem, *Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons* (September 2006), http://www.btselem.org/Download/200609_Barred_from_Contact_Eng.pdf.

200. The testimony was given to 'Abd al-Karim a-S'adi on 4 July 2010.

201. The testimonies were given to Suha Zeid on 30 June and 11 July 2010.

202. Letter of 15 March 2011 from Deputy Warden Yaron Zamir, IPS Spokesperson, in response to B'Tselem's request of 10 February 2011 under the Freedom of Information Law.

203. Conversation with Expedite Bandak, manager of the family visits program, ICRC Tracing Center, Jerusalem, on 23 March 2011.

204. Response of 26 April 2011 of Second Lieutenant Wagner (*supra* note 199).

Release from detention and imprisonment

Of the 50 minors interviewed by B'Tselem, only 13 recounted an orderly release procedure, in which their parents or other adults waited for them at the prison gate. Four said that the army returned them to their villages, and one minor, a heart patient, was released from the hospital to the care of his uncle, who had stayed with him while he was hospitalized.²⁰⁵

In some of the cases, notice was sent to the parents, but in a manner that prevented them from picking up their children upon release. For example, 'Alaa Kahush, 17, was told around midnight to contact his father to come to the Qalandiya checkpoint to pick him up. Police officers took him to the checkpoint and he had to wait about an hour, alone, in the middle of the night, until his father arrived.²⁰⁶

Ten of the minors related that the authorities did not inform anyone of their release, and they had to get home on their own, relying on the compassion of passing motorists or even by going a long distance on foot. Only one minor said prison officials gave him money to get home by public transportation. The case of Mustafa Salim, 17, from 'Azzun, was different. He told B'Tselem how he got home – by hitching rides.

When the soldiers arrested me at home, I didn't have any money on me. When they released me, I had no money to pay for public transportation and I had to hitch rides to get home. I told drivers who stopped that I had been detained. That was how I got from the Huwara checkpoint to the Za'tara checkpoint, and from there to the Hares checkpoint, and from there to the junction of the Immanuel settlement. From there, I walked to the village Jinsafut, where I met a relative of mine, and he drove me to my home, in 'Azzun.²⁰⁷

Fadi Khatib, 13, from Bil'in, waited at Ofer Prison from noon until eight at night to be released. He related what happened then.

At 8:00 P.M., I was released. They took me to the prison gate, but nobody was waiting for me there. At the gate, I met somebody from my village. He took me with him and paid for a taxi that took the two of us to the center of Ramallah. There I met a driver from my village, and he took me to my home, in Bil'in. I got home at 9:15.²⁰⁸

205. The testimony was given to 'Amer 'Aruri on 1 August 2010.

206. The testimony was given to Iyad Hadad on 5 July 2010.

207. The testimony was given to 'Abd al-Karim a-S'adi on 8 August 2010.

208. The testimony was given to Iyad Hadad on 9 June 2010.

Muhammad al-Khatib, 14, from Bil'in, spoke about how he and his friend, A.Y., arrived home on foot.

Soldiers took us to the Beit Sira [army] base. They removed our handcuffs and released us on the road next to the base and ordered us to walk along a hilly path to get to our village. We didn't know where we were. There were settlements all around us and only one Arab village. We started walking. A. tried calling on his cell phone but there was no reception. We were hungry and tired. A. had a pack of cigarettes and we smoked to overcome the hunger. We walked toward the Arab village, which was really far away. It took us two hours to get there. When we got there, we knocked on doors and asked people to call our families. They helped us.²⁰⁹

209. The testimony was given to Iyad Hadad on 16 February 2011.

Conclusions

International law and Israeli law provide that minors suspected of criminal offenses are entitled to different treatment from the treatment adults are given. One reason for the difference is that minors do not fully understand the results of their actions. For them, arrest, interrogation, trial, and incarceration are much more difficult experiences than for adults. In addition, the manner in which the justice system treats minors is liable to have a critical effect on their development and their chances for successful rehabilitation. Despite this, the present report indicates that the rights of minors are severely violated, that military law almost completely fails to protect their rights, and that the few rights granted by the law are not implemented.

The violation of the rights of Palestinian minors suspected of stone throwing begins when they are arrested and continues during their interrogation. It is not uncommon for minors to be arrested in the middle of the night and taken alone, without being accompanied by their parents, to interrogation, without allowing them to consult with an attorney and while subjecting them to violence. It continues during their encounters with the judges, who, in the vast majority of cases, remand them until the end of the proceedings. The military justice system views incarceration as the primary means for penalizing the minors, and forces plea bargains rather than an orderly investigation of the accusations against them. When minors are incarcerated, their fundamental rights to education and to maintain ties with their family are not properly protected.

This report describes the events from the moment the name of a minor is raised in an interrogation as being involved in stone throwing, to the moment of his release from custody. All the relevant officials – police officers, judges, and soldiers serving in the Occupied Territories – are well aware of the reality described in the report. Nevertheless, in practice, other than assertions by a few judges on the need to apply the provisions of Israeli law in the Occupied Territories and their discomfort with a particular behavior of the police or the army, no substantive action has been taken to end the infringement of minors' rights. The amendments to the military legislation are marginal and have failed to bring about meaningful change in the military system's treatment of minors.

Israel, the occupying power, has the moral and legal obligation to ensure the rights of Palestinian minors under its responsibility. Israel must, without delay, bring the provisions of military law on par with those of Israel's Youth Law, including the rules applicable to arrest, interrogation, trial, and penalties.

Until this change is made, Israel must immediately:

1. set the age of minority in the military legislation to conform with the age of minority in Israel and the rest of the world immediately;
2. prohibit night arrests of minors;
3. restrict interrogations to daytime hours, with parents present, and give minors the opportunity to consult with an attorney in an orderly manner that respects the minors' rights;
4. prohibit the imprisonment of minors under the age of 14;
5. promote alternatives to detention and find solutions offering alternatives to imprisonment;
6. establish educational programs in all prisons and offer study opportunities in all subjects to minimize the harm to the minors' studies while they are detained and imprisoned;
7. facilitate the issuing of permits to visit minors who are incarcerated.

Response of the IDF Spokesperson

A response to the "Betzelem" Report relating to Military Jurisdiction, dated July 2011.

The responses have been reviewed by elements at the Ministry of Justice.

The Principal Claims

1. Israeli Military Jurisdiction is the product of internationally recognized Laws of War. Similar jurisdictions elsewhere do not make separate allowances for the judgment of Minors, yet nevertheless, during the past year, a separate court was established for the handling of juveniles bringing about an improvement in the defense of Minors' rights. The assigned court enables the appearance of minors without the presence of majors, allowing for total freedom of expression, and is prepared to consider the role and responsibility of parents as a disciplinary alternative to punishment.
2. Despite repeated requests to deal with Minors' Jurisdiction in a fully encompassing manner, including the use of juveniles by the various terror organizations for the purpose of executing terror acts that have led to injury and death on all sides (Betzelem were provided with 160 severe cases implicating Minors, Stone and rock throwing as well as bomb throwing that have caused death), Betzelem have chosen not to deal with Minors' Jurisdiction in an even-handed manner, nor have they addressed the use of Minors by Terror groups, which strictly contradicts Human Rights as well as International Law.
3. Despite numerous attempts at creating Review Tests for Minors, the Military Courts face a perpetual lack of response from Palestinian Authorities, Parents and the Accused themselves, who inadvertently see their offensive acts as ideological ones. This is best expressed in Betzelem's Report under Chapter D – "The Trial" – sub section under the headline of "Plea Bargains", where it is openly admitted that there are real difficulties in ascertaining a rehabilitation course for the Minors involved.
4. Anonymous Surveys cannot serve as reliable sources when wanting to monitor the level of violence towards Minors during arrest procedures. Transparency is imperative to publicize claims and accusations, especially when dealing with Betzelem who are known for lodging numerous complaints with the Investigating Military Police. In the only published and named incident at Beth Omer, a Palestinian Minor was indeed arrested for Stone and Rock Throwing, and, in view of his young age, he was handed to the care of his parents. The forces involved acted civilly without extraordinary incident. Subsequently no complaint was lodged by coordinating bodies.
5. Betzelem's Report relates to expressions of concern and care for Minors' Rights by Judges in the courts. This is a clear indication of the initiative of Military Courts to protect these rights. Furthermore, Judges have been known to release prisoners where these basic Minors' Rights were not observed. Such judgments have brought about changes in the work of the Police as well as an improvement in protecting Minors' Human Rights. The involvement of Judges and the creation of a juvenile court show a clear expression of sensitivity to Youth, a point not adequately addressed in the Report's conclusions.

6. Advocates representing Minors seem to give clear advantage to sealing Plea Bargains rather than revealing the force of evidence, a clear indication that the use of Plea Bargains is advantageous for the purpose of protecting Minors' Rights. Led by the High Court of Justice, courts have generally encouraged Plea Bargains. The choice to lodge a Plea Bargain is entirely in the hands of the accused and finally in the hands of his Advocate. We wish to stress that contrary to the norm in Israeli civil courts, almost ALL accused in Military Courts *are* represented.

The Response from the Military Courts

Much thought is being invested by the Military Courts, bringing about changes in court customs throughout the court system in Judea and Samaria. This has led to corrections in the legal code as well as the *unprecedented creation of a Military Juvenile Court*.

All these actions have brought about vast improvements in the handling of Minors whilst maintaining a balance between the Public Interest and the Rights of the Individual Minor.

THIS IS UNPRECEDENTED IN ZONES OF CONFLICT nor in any legal system operating under Laws of War.

Further comments as follows:

Among the vast and varied number of cases handled by the military court system in Judea and Samaria, the banner to maintain Justice at all costs, is best shown in the handling of cases involving Minors.

The Youth appearing in the court system are accused with a variety of Acts of Violence, starting with causing death with intent and its derivatives (parallel to first degree murder in an Israeli civil court), through to Stone Throwing. The Report clearly states that " Stone Throwing , normally executed by youth, is a violent act that can risk injury and even death". It is in the public interest to struggle against this phenomenon because of the admitted inherent dangers to security forces and civilian by-standers, expressed in assigning legal proceedings when dealing with such offenses on all it entails in investigating suspects, trying them and often having to keep them under arrest until the end of proceedings.

The level of danger incurred in Stone Throwing which warrants arrest till end of proceedings has been addressed in the High Court of Justice during a series of judgments. For example, **Judge Heshin** notes in the case of Hamed “ ***The throwing of stones at policemen and passing vehicles has become a daily norm in our lives, the danger involved being evident to the naked eye. The throwing of a stone at the head of a man could kill him or at least incapacitate him and turn him invalid for the rest of his life, and we should by no means overlook this danger. Even the young age of the accused is no deterrent as it has been proven beyond doubt that the throwing of a stone by the hand of a 15 year old is no less fatal than that thrown by an adult***”.

Similar words, though sharper, were expressed by **Judge Joubran** in the case of Awiss’at :- “ ***He who intently throws a stone at a passing vehicle thereby endangering traffic, he who throws rocks at police who are there to establish order, be his motives and national identity, whatever they may be, be his age whatever it may be, He must be aware that he IS dangerous, and as such, if caught, his chances of being released from arrest are remote, and any alternative to arrest is no guarantee that he will not find himself performing the same offence once again***”....

Nevertheless, the Report clearly states that despite the above-said, Military Courts maintain strict monitoring of Minors’ Rights regardless of the severity of the offences judged.

It is worth mentioning that even though specific legislation with regard to Minors is sparse, this has not prevented Military Courts from giving appropriate importance to age during the various phases of the legal process, especially at conviction. Already in 2000 the **Military Court of Appeals** noted:- “***when dealing with a Minor , especially one who has entered the age of criminal responsibility, bereft of previous offences, and has not caused apparent damage to property or people, allows for the consideration not to apply severe punishment, and leave the Minor the hope and opening to correct his ways, whilst remaining in his natural family and home surroundings.***”

A number of footnotes in the Report (#144, 150, 185 and 187) clearly stipulate that the age of an accused is taken into consideration to release from arrest, norms that the Military Courts have adopted from the Israeli procedure of handing down justice. Furthermore, courts have been known to release accused parties when one of their basic rights has been infringed, even when addressing a right not necessarily protected by law.

A number of prominent examples of these norms adopted by the military Courts: The courts have been known to accept that Night Interrogation, contrary to legislation covering youth in Israel, often leads to release even though the legislation does not necessarily apply in the Administered Areas. Similarly, the same could apply in cases where the interrogator is not an appointed Youth Interrogator. Furthermore, due attention has been granted to the right of representation when addressing the extension of arrest procedures of Minors. This goes as far as releasing a suspect Minor when not duly represented, due to the absence of his attorney as a result of delays at Road Blocks. In fact, delays in legal proceedings are a

cause for release, when the courts are conscious of the need to expedite proceedings. Minors whose cases have not been heard within reasonable time are often released as well. The same applies to a Minor who has been hurt whilst under arrest.

Age is a consideration also when establishing punishment. This applies to all offences, especially in the case of stone throwing, which despite the severity of the offense, punishment is not severe. After verification, it would seem that the level of punishment in the Administered Areas is no different from that adopted in Israel. The Report clearly states that the level of punishment is relatively low especially to Minors under the age of 14 (the most severe case judged to a Minor in that age group during 2009-2010, being 9 days of incarceration, being the number of days he had already been under arrest.)

Indeed, as quoted in the Report's Footnote #175, ideological motives mixed with the lack of cooperation of the accused as well as Palestinian Authorities, in establishing rehabilitation programs, limit the means of rehabilitation despite the clear advantage in such programs over standard punitive procedures. Despite this, Military Courts will pursue the keeping of Rights of Minors without relating to the type of offense and will do everything in their power to bring about creative rehabilitation.

Nevertheless we wish to point out some discrepancies from the Report:-

- a. Chapter 3 under the heading " The violation of Minors' Rights suspected of Stone Throwing", the first clause reads : "the rights of Palestinian Minors are blatantly violated during the entire process against them from the arrest, through the investigation, the legal process and the trial.", the responsible parties being the bodies handling the Youth through to the Courts. With all due respect, it is preposterous to accuse the Courts of such especially having quoted previous comments from the Report, which clearly show the consistent effort to protect the rights of Minors handled by the courts. The inconsistencies in the Report are such that one inflammatory comment is immediately followed by comments on how the Military Courts are leaders and initiators in bringing about change and protection of Minors' rights. Then, actual cases are quoted.
- b. The chapter dealing with Arrest until End of Proceedings, it is said that the presence of parents is not needed at these sessions. This is incorrect. Though the corrections to the law that grants statutory status to the parents during the trial, do not actually apply to the arrest period, the Military Courts insist strictly on the publicity and openness of the trials to enable the presence of families particularly in the cases of Minors. In some instances, suspects have actually been released from arrest when their families were unable to attend.
- c. The chapter dealing with Plea Bargains it is correctly stated that " the Juvenile Military Court attempts at expediting procedures" however it is incorrect to state that " Military Judges see in the extension of legal proceedings a legitimate phenomenon". Whilst the Juvenile Military Courts make every effort to expedite proceedings, the procrastination of proceedings lies squarely with the Defense who often demand delays and postponements to the displeasure of

the Courts. The court will not hesitate in demanding release due to procrastination as stated in Footnote #9. A case is mentioned in this chapter relating to a suspect whose attorney recommends he remain under arrest for 8 MONTHS, the time needed to bring relevant witnesses! This seems an unreasonable and refuted claim as it is clear that in the cases of Minors, the courts will allow for delays of this nature not to go beyond several days only.

- d. In the chapter dealing with Reviews, it is correctly said that “the lack of rehabilitation facilities acceptable to the courts and the Palestinian officials, alongside internal Palestinian political interests, prevent the availability of alternative arrest facilities for Minors”. It is also said that as a principle, Palestinian society does not see the need to rehabilitate a stone throwing youth, and the fact is quoted, that largely, suspects do not cooperate with the Palestinian Authority (PA). Nevertheless original solutions are constantly being sought. For example in Case 1192/10(Judea), a female suspect, subject to possible domestic violence, was transferred to an institution for girls of the PA in accordance with a Social Welfare Officer.
- e. The chapter dealing with conclusions, once again, the Military Courts are classified as those who harm Minors’ Civil Rights. This is inconsistent with all that has been said above and material that appears throughout the Report. The claim that the Legislative Process imposes Plea Bargains instead of proper legal proceedings, is totally refuted and has no basis in the facts reviewed above.

In conclusion, one can establish beyond doubt that the Military Courts have initiated and led for changes in the behavioral norms of the enforcement officials in all that concerns the rights of Minors. This will be part and parcel of the future as well. Decisions of the Military Courts bear immediate operative implications as well as influence, both on investigative and incarcerating elements, as well as on the promotion of legislation that covers Minors’ Rights in the region. Sitting Military Judges will continue to pass judgment according to their conscience and discretion, and will continue in the ever so difficult tasks to seek the balance between maintaining Civil Rights generally and Minors’ Rights in particular, on the one hand, and the protection of the public peace and national security, on the other hand.

The Response from the Military Prosecutor's Office

We shall first relate to Stone Throwing in general and then to Stone Throwing by Minors in particular; then we shall relate to the Military Prosecutor's approach to youth and Minors. We shall then relate to the various claims laid down in the Report that require response, taking into account the limited material provided that identifies various cases and instances.

1. Stone Throwing at traffic ways, man or property, all the more at passing vehicles, is considered a severe offense. The mere act exposes the victim to extreme danger and is a blatant challenge to the law. The offense is simple to perform and hard to detect, to investigate and to prevent. More often than none, the act of stone throwing is considered by the Terror Organizations as an "Admission ticket" to the organization by the culprit, who if successful, can be "promoted" to more serious terror activity. In Judea and Samaria, Stone Throwing is rampant on roadways against passing civilian and security vehicles, and in built up areas it is directed towards the security personnel.
2. The phenomenon of Stone Throwing is spreading widely. The commonality of the offense has reached thousands of instances every year. The increase in instances is evident in the Report. This intensity requires severe enforcement with a view to reduce instances, deter offenders and offer security to the wider public. This requires adequate punitive measures, as well as appropriate detaining of offenders until end of proceedings.
3. It should be stressed that the State Prosecutor who controls the prosecuting bodies in Israel, instructs for the immediate arrest of a stone Thrower, and demand punitive arrest with an assessment of the likely further danger this offender poses. This will be amplified as instances of Stone Throwing increase, both on ideological basis or as part of general unrest. All these considerations apply also to the areas of Judea & Samaria.
4. Stone Throwing is indeed not a new phenomenon, and most of the offenders are young adults and minors. The courts have dictated: " this hard reality requires harsh response, both to punish the offenders adequately and deter the wider public from performing such offenses." In view of the above-said, the High Court has handed 7 months imprisonment to a minor found guilty of throwing stones at passing vehicles.
5. It should be further noted that the State Prosecutor relates to a typical case of a 16 year old with no previous record, member of a gang, performing a single act of Stone Throwing at a passing vehicle without causing any damage, is subject to 3-4 months incarceration without labor.
6. In summation, the policy of the Military Prosecutor with regard to offenses related to stone throwing, is to demand detaining until end of proceedings with mandatory Imprisonment thereafter, maintaining a coordinated policy with that of the High Court of Justice.
7. As reported, security regulations underwent adjustments some 2 years ago, with the establishment of a juvenile court to handle offenses by Minors up to the age of 18 (even though the maximum age to be officially handled by that court should be 16), thus providing a protective net means to guarantee the Minors' Human Rights.

8. We wish to stress that the setting up of a juvenile court is only the start of reforms, part of an overall process which generally seeks to address the rights of Minors being tried and investigated in the region. The past year has seen an inter organizational research being done with the purpose to further protect the rights of Minors undergoing an investigative or judicial process. This is the direct result of numerous protests and approaches to the military judicial authorities. The results of this research will be made available within months.
9. Regardless, in practice, the military prosecuting authorities conduct very close supervision with regard to arrests of Minors up to the age of 16, over and above the required supervision by law. As such, the arrest of a Minor requires the authorization of a senior judicial official who is not part of the investigative body. The decision to place under arrest and bring a Minor in front of a military judge, is taken by that same unaffiliated official after having studied the case brought against the Minor, evidence available, investigative procedure and the age of the suspect.
10. Under the headline “time lapse before handing an indictment”, the report relates to arrest periods and their length prior to indictment. These periods are up for review and considerable shortening both vis a vis young adults as well as Minors. The various officials in the region have been advised of this imminent adjustment.
11. We now relate to the chapter headed “ Data relating to punitive actions against stone throwing minors”. The way this chapter is being presented is steering well away from the truth. No reference is made to the complexity of considerations with regard to Palestinian Minors accused of stone throwing. Periods of detention cannot be critically analyzed without relating to the many factors involved such as the number of previous offenses, the target at which stones were thrown, the measure of damage caused to humans, if any, the level of spontaneity of a given event, the age of the offender, his criminal past (if any), the time lapse since the last offense, the measure of admission and regret, special personal predicaments, to name some.
12. As a rule, the punitive means include actual incarceration, probation or even a financial fine or a period of incarceration in exchange. More often than none, punishment is a balance of all three elements. For example, where actual incarceration is limited to a short period, the relative weight of probation and fine is larger so as to create an all-round punitive measure.
13. The Report relates to the case of a Minor sentenced to 20 months jail. It must be noted that the culprit was a member of a cell that had thrown previously Molotovs, stones as well as improvised explosive devices. The court took into consideration the fact that no apparent damage had been caused from the youth’s action, his young age, and thus respected the request for plea bargain. The accused was 15 years old at the time of sentencing. Regardless and with due consideration, this is no “normal” stone throwing event, but a far more severe crime that needs to be kept in proportion when demanding punitive measures.
14. Similarly, in the said case involving the punishment of young adults for stone throwing, the Report fails to state that the appeal of the defense was accepted, and that the Military Court of

Appeals reinstated the plea bargain in agreement with the prosecution, such that had been agreed on previously. The court of appeals furthermore agreed that the evident erosion in punitive actions must be halted with regards to stone throwing offenders.

15. In response to the chapter dealing with arrest (as well as the detaining of juveniles under the age of criminal responsibility), we note that suspects are generally arrested either very close to the time of the alleged offense, to the extent that security considerations allow for this ; or at night, when initiating arrests. Initiated arrests take place under cover of darkness, normally as a result of due consideration of the arresting force to maintain its own safety and the general surrounding security.
16. In response to the chapter dealing with investigations, we note that all interrogations take place in Arabic (though written reports are drawn in Hebrew), and furthermore they are recorded on audio tape, and very often video-taped, so that fair judgment can be assessed from the nature of the interrogation and the way admissions are being drawn. In practice, the interrogation of juveniles in the region complies with all the dictates & reservations that exist on this subject, within Israel.
17. In response to the chapter dealing with the right to legal counsel, we wish to note that the prevention of such a meeting does not imply it does not materialize. One should differentiate between factual and legal predicaments. Every suspect is advised in his language that he has right to legal counsel, before commencement of interrogation. He, the suspect, is the one to decide if he wishes to exercise this right. There exist conditions that a suspect may be forbidden legal counsel, by law.
18. The Report relates to a case where a suspect, awaiting trial, legally prevented to legal counsel. Then the case of two Minors, on whom evidence has been relayed to the investigating police, which refrains us from relating to these particular
19. In relation to the chapter dealing with the time of interrogation, we wish to state that the time of interrogation is a factor determined by the time of arrest. Accordingly, if a suspect is arrested at night during initiated arrests, then it is reasonable to assume that interrogation will take place close to the time of arrest.
20. We stress that laws pertaining to Juveniles, in Israel, allow for interrogation to take place at night, particularly if the suspected offense took place shortly before arrest, and if the suspected offense is of a criminal nature (Stone Throwing is considered a criminal offense), with few exceptions. It is worth noting that the Report relates to 3 out of 30 cases of Minors spoken to by the Organization, who were arrested and/or interrogated at night.
21. When addressing the case of A.D.A. (suspect name), whose case is presently suspended, concerning the fact that he was interrogated during daytime after having been deprived of sleep the previous night, we justify the complaint. BUT, for accuracy's sake, one should add that the

Military prosecution appealed against the release from arrest. The appeal was rejected, but the court did state that it is unclear as to how the hour of interrogation directly affected the fact that the suspect admitted to all charges, even after having consulted with his lawyer.

Accordingly, the court stated that the appeal claims were no justification for release, even though he was released soon after for claiming undue procrastination of proceedings.

22. When addressing the chapter on “methodological incriminations”, we wish to stress that the claims therein are generalized and not based on any substantial evidence and/or judicial decisions which confirm the claims. We stress that the arrest of Minors, as well as the question of putting them on trial, is studied on a case by case basis paying close attention to available evidence whether these are by admission or provided from others’ witness.
23. We point out that in the case of A”Z , the arrest mentioned in the Report, was approved by the Military Court of Appeals. Furthermore, the suspect himself admitted having made it a habit to throw stones and rocks along a particular route, having hit a number of Military Jeeps.
24. The case of N.A. as well mentioned in the Report, ended with his admission in court to the two offenses of stone throwing he was charged with. The suspect admitted to aiming specifically at an Army patrol in one of the two incidences.
25. When addressing the claims on arrest until the end of proceedings, we re-iterate that the cases of stone throwing Youth being charged with Stone and Rock Throwing addressing youngsters under the age of 14 is almost non- existent. We further repeat that the initial period of arrest for those under the age of 16, is decided on by a senior legal official who is not connected with the inquest (a senior advocate or his deputy), And as such, a minor is brought before a judge within the specified initial arrest period. As the Interrogation ends, the file is handed to Military Prosecution, who needs to confirm the evidence of a crime to the suspect well within the initial arrest period, and strive at terminating the initial handling of the file within this arrest period. Charges need to be placed with the initial arrest period.
26. In the case of ZZ in the Report, we point out that the suspect admitted to all charges of Stone Throwing placed against him, including one against military targets specifically, and was charged with imprisonment and a fine, by means of a Plea Bargain.
27. Then there is the chapter dealing with the actual trial ; it is incorrect to claim that military law does not make mention of alternative punitive measures to being incarcerated. Clause 180 of the Military legal code relating to security instructions enables the court which has indicted a person, to accept a commitment not to be involved in further transgressions, in addition or instead of other punitive measures.
28. The chapter criticizing the use of Plea Bargains, does not necessarily address the practice in Military Courts, but seems to be rather a general criticism of the use of Plea Bargains, even though the latter has received due encouragement from all the court systems, headed by the High Court of Justice. In any case, it MUST be note that the final decision to place a Plea Bargain is in the hands of the accused, represented by an advocate, (a point to be stressed being that almost ALL suspects ARE represented by counsel contrary to the state of affairs in Israel).
29. There seems to be equally unfounded reason to the claims that trials are unduly protracted so as to lead to Plea Bargains. In any case, when a suspect admits in court, it is evident he does so of his

own free will, as any other assumption would lead to the undermining of legal proceedings as well as the basic values of the criminal process.

30. In the case of a 16 year old who was released by the Military Court of Appeals, despite the relatively long duration of arrest, we wish to elaborate. The suspect, operating in full coordination with his older brother, threw stones at a passing Israeli Bus with the intent to cause harm to the passengers therein. The suspect and his accomplice did succeed in their purpose, and one of the stones penetrated the bus, breaking a window and causing injury to both a 9 year old female passenger as well as the driver who was slightly injured. This is considered a most serious offense which stresses the inherent dangers of stone throwing. The suspect and his accomplice chose to conduct a trial, at the end of which both were charged. After conviction they reached a Plea Bargain, in which both were sentenced to imprisonment of 20 months each, an additional probation period as well as a fine and financial compensation to the injured passenger. It is understandable that the Military Court of Appeals did not see in the preliminary arrest period as extraordinary, since the accused chose to go to trial.
31. In connection with the specific case of the dropping of charges against 8 suspects by the Military Prosecution, we did respond to this case last August 2010. For good order, we do stress that, during the latter part of the trial, additional evidence was provided by the defense which was not seen previously by the prosecution. After further study of the evidence, the conclusion was drawn that there were insoluble evidential difficulties and the prosecution reached the decision to drop charges.
32. With regard to Reviews, and from data in our hands, over 20 cases exist in which the Military Courts requested a Review after conviction, mostly relating to Minors. The decision to accept a Review on a convicted suspect is in the hands of the Court, and is normally raised by his advocate.
33. We shall stress that in the few instances whereby a Review was approved, it is reasonable to conclude that the introduction of Rehabilitation programs has been a failure, to say the least. Reasons for this are – a lack of cooperation from the accused, a lack of cooperation on behalf of the Palestinian welfare organizations who fail to recognize the authority of the Israeli Military Courts, the lack of professional infrastructures to conduct these Reviews, and more.
34. We further wish to point out that the said criminal activity of Stone and Rock Throwing is not condemned in those areas in which there is a military presence outside of Israel proper. This is an important fact to consider when addressing the drawing of a Review on a suspect, in an area and community which undermines from the onset the legitimacy of the Military Courts on the one hand, and will be incapable of offering the support mechanisms to the suspect necessary to steer him away from ideologically criminal activity, on the other.
35. In relation to the routines of imprisonment and release from arrest or imprisonment, we note that the possibility to imprison Palestinians in Israeli jails has been approved more than once by the High Court of Justice.

Response of the Ministry of Justice



The State of Israel Ministry of Justice

The Department for International Agreements And International Litigation

Date: Tamuz 15, 5771

July 17, 2011

Number: 4422

To
Mrs. Naama Baumgarten-Sharon
B'tselem Organization
Hata'asia rd. 8, Talpiot
Jerusalem

Dear Madam,

Re: **B'tselem's Draft Report Concerning Stone-throwing by Minors**

Your application that we address the issue of the report under discussion was received in our office and hereinafter is our response:

Methodology

The report was edited based on a non-statistical sampling, which seems at first sight to have been chosen in a tendentious manner, which distorts the existent reality, as far as the military judicial system is concerned, and especially concerning stone-throwing minors, including interrogations, protection of suspects' rights, the derived punishments and so forth.

The presentation of the report with a description of cases without identification details and without enabling the pertinent entities to examine the specific cases presented in it, deny them the possibility of examining the claims presented in the draft report pertinently to the point.

Allegation concerning field levels

The Department for Investigation of Police Officers

As a rule, the Department for Investigation of Police Officers (henceforth: "DIPO") performs its duties while recognizing the legal rights of minors, their special status and the sensitivity required while treating them.

All the DIPO employees, including the investigators, are briefed to treat minors who submit complaints while paying attention to their age and to fact that they are minors, as well as treating them with the required sensitivity.

The decisions concerning opening an investigation, or the decisions made following an investigation, are based on the law, as well as on the rules of criminal justice and on the State Attorney's directives, and these decisions are taken professionally and pertinently to the point.

The DIPO has informed that they cannot address the issue of the general data detailed in the report and the quantity of investigated cases and the results of these cases, due to the fact that it is not clear which cases are mentioned in the report.

As for the specific files which have been detailed it has been informed that:

- DIPO File 198/10 – As mentioned in the report, an investigation was opened in this case following an application on behalf of the minors, and in that framework, the minor's versions were also collected. Contrarily to what has been said in that report, despite the fact that the complainant A.Z. had pointed out that he was not willing to continue the complaint proceedings, the suspect against whom he had filed the complaint was interrogated and a witness to the incident was questioned as well. As for the complaint filed by the minor M. H., this complaint has been investigated, but the collected evidences didn't provide sufficient basis for submitting an indictment, due to problems arisen in the minor's version. As for other minors' complaints concerning these incidents – as mentioned in the application, the file concerning the application was reopened in order to receive the minors' versions and the following measures will be considered accordingly.

- DIPO File 3516/10 – The claims presented in the report regarding this file relate to the way the investigation was carried out. From the details, as well as from what has been claimed in the report, it's evident that the investigation was conducted professionally in order to collect as many relevant details as possible from the complainant, with the intention of reaching as close as possible to the truth and basing the complaint on evidences. The file was

eventually closed due to lack of sufficient evidence after comparing the complainant's version with the suspect's version, and since DIPO could not reach a decision concerning the two versions, and since no further investigative actions capable of promoting the investigation could be carried out as well.

Sincerely,


Assaf Radzyner, Adv.

Cc: Adv. Hila Tene-Gilad

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